

National Commission for Women

An Overview of Its Performance

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The paper attempts an assessment of the National Commission for Women, which was created in 1992 as an autonomous apex body to monitor and influence state policies with regard to women. It examines the State's approach to women's issues through the evolution of national mechanisms as also through an understanding of the engagement of women's movements with the state, both by way of challenging and participating in its institutions. It argues that the willingness to intervene on behalf of women is determined by the interests of the state and political actors in securing and maintaining power. The questions that women's movements face are: to what extent do these national machineries effectively address the issues for which they had been created and to what extent are they able to bring in changes in the culture and practices of the bureaucratic structures of the state.

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The response of the National Commission for Women (NCW) to the public molestation of a young girl in Guwahati on 12 July 2012 left women organisations and activists all over the country enraged over the manner of functioning of the NCW as well as the role of persons occupying important positions within the commission. The case once again brought to the centre stage the issues of composition and functioning of an apex institution like the NCW that is expected to address the issues of gender inequities and injustices and stand strongly by women victims of state and non-state violence. It is also expected that while demanding redressal for women, the commission takes cognisance of substantive issues at hand, thereby asking questions of accountability in such cases of violence. Many women activists and organisations have written to the chairperson of United Progressive Alliance (UPA) government in the context of the conduct of the commission over successive years, highlighting the manner in which the NCW has obscured systemic injustices to women, trivialised their violations, and reduced the dignity of the institution indicating an institutional collapse of this national body. Citing many cases, the women's organisations have asked in their letter to safeguard the political autonomy of this nodal women's rights institution by replacing the current nomination system with a transparent, democratic and non-partisan selection process for members and chairperson of the commission, undertake a comprehensive review of the performance of the commission and replace it with an immediate effect the current chairperson of the NCW.¹

The issues that the Guwahati case has thrown up and the subsequent demands made by the women's groups have been the core areas of tension between the women's organisations and the central government both before and after the NCW came into being. The issues mainly relate to the composition, autonomy and functioning of the commission as an apex body entrusted with the tasks of monitoring the state and its agencies on women's issues and investigating and redressing the complaints of women.

This paper attempts an assessment of the NCW within the wider political and institutional context of Indian democracy. It examines the state's approach to women's issues through the evolution of national mechanisms dealing with women's issues as also through an understanding of the engagement of women's movements with the state, both by way of challenging and participating in the state institutions. While women's movements have been able to create political constituencies within the democratic spaces available to them, the state's willingness

to intervene on the behalf of women, or create mechanisms and opportunities that promote women's interests is also determined by the interests of the state and political actors in securing and maintaining power. This creates a certain tension among activists in their work with state institutions, as this assessment of the functioning of the ncw indicates. The questions women's movements face are: to what extent do these policy initiatives and national machineries effectively address the issues for which they had been created and to what extent are they able to bring in changes in the culture and practices of bureaucratic structures of the state. There are also issues of institutional autonomy, the need to use institutions creatively to bring in changes and make them more accessible and participatory. What is the possibility of using such national institutions in a positive way? How should activists engage with such institutions? The debates and deliberations between women's organisations and the government at the time of constituting of the commission throw light on the differences in their perception of such a body along with apprehensions on the part of women activists and organisations as to whose purpose this institution would serve?

Background

The need for an autonomous watchdog institution was first voiced in the Report of the Committee on the Status of Women in India (CSWI) 1974 that raised the issue of continued subordination of women in society resulting from the working of state institutions, laws and development policies. It noted that the processes of development had adversely affected women by leaving them out of "both the discourse and practice", resulting in their decreased work participation rates and share of employment, along with evidence of gender gaps in virtually every sector.² The report also raised issues of inadequate and biased redressal mechanisms in cases of widespread though unrecognised and invisible violence against women in both private and public spheres. It recommended creating apex bodies at the national and state levels to collect information from different government agencies, evaluate existing policies, programmes and laws and recommend to Parliament or the state legislature new laws, policies and programmes and also intervene in cases of actual violations of laws. The report asked for two things: one that the state set-up follow-up mechanisms and processes that incorporated women's perspectives and concerns in its policies and structures, and two, the establishment of a single agency, a statutory and autonomous commission that could coordinate and examine these measures, provide expert advice on methods of implementation and monitor state institutions to ensure equality between women and men and full integration of women in all sections of life.

As a follow-up to the CSWI recommendations, the state created a number of new mechanisms to look into issues concerning women like the Women's Welfare and Development Bureau (1976) and a National Committee on Women with the prime minister as the chairperson and similar committees at the level of states. In 1985, a separate Department of Women and Child Development (DWCD) was established (upgraded to

ministry since 2005) followed by a number of special structures for women such as a women's division in the National Institute of Public Cooperation and Child Development (NIPCCD), cells in various ministries, women's directorates in states, and separate institutions for economic advancement of women (like the women's development corporations, Rashtriya Mahila Kosh). The creation of a national commission for women was not taken up.

Over time, experience with these new initiatives by the state pointed showed that the institutional autonomy and the ability of this new machinery to function in a collective, coordinated and cohesive manner continued to be areas of tension and an uneasy relationship existed between women's movements and the state over the issue of their performance.³ In 1988, the Report of the National Commission on Self-Employed Women and Women in the Informal Sector, which made a comprehensive study of the working conditions of women in the self-employed and informal sector in the country pointed out the extremely vulnerable position of women labour and the repressive nature of the state in its day-to-day dealings with poor women.⁴ The findings revealed that the state machinery's patriarchal biases against women continued in its dealings with women. The report of this commission was never placed before Parliament. Women activists were realising the limitations of working within the government with little possibility of using the structures creatively. They continued to be worried about the form of participation and limits of government programmes, and how women and women's groups should engage with the state structures.⁵ Still efforts continued on how institutional politics could be harnessed to expand the possibilities for women, with the belief that the presence of women within these institutions would change the settled manner of their working.

Significantly, while activists within women's movements continued to engage with the state by both challenging and participating in its processes, the demand for such a commission in the 1990s did not come from women's movements. The proposal was put forward in the National Perspective Plan (NPP) 1988, a document prepared by the Ministry of Human Resource Development and seemed to be an initiative of the then ruling government that was looking for the political constituency of women in an era of coalition politics. But once the proposal was put forward by the government, women's organisations decided to respond.

The expectations from such an agency were greater and in certain ways, different from what they would have been in the 1970s; even the challenges it faced were greater. As the post-1970s were marked by a decline in the quality and values of governance – increasing bureaucratisation, centralisation of political power, political corruption and criminalisation of politics – the autonomous functioning of many institutions was adversely affected.⁶ The post-1970s period was also marked by the changing role of the state in the context of liberalisation and globalisation processes and policies, signifying the withdrawal of the state from social sectors. Communalisation in society and politics demanded a rethinking of the very terms in which women's issues were initially raised and the modes in which they were being reconstituted. While these created new

challenges for women's movements in their engagement with the state, it also signalled a more proactive role for the NCW, an institution that was meant to represent and take forward the interests of women.

Design and Structure of NCW

The proposal to constitute a national commission was received with a lot of apprehension by various sections of the women's movements about the effectiveness of such a body. Their experiences with the earlier machinery for women as well as other similar commissions, such as the one for scheduled castes (scs) and scheduled tribes (sts), were quoted in various meetings of the women's organisations.⁷

Three major issues dominated the debates within and outside Parliament between the government and the women's organisations on the setting up of the NCW: (1) status, (2) composition and structure, and (3) functions and powers of the NCW. The government note on the setting up of the NCW released at a meeting with the women organisations⁸ and the processes that followed indicated that there were substantial differences of perception between the government and the women's organisations regarding the status and role of the commission. As the discussions between the government and the women's organisations progressed, it became clear that for the government the creation of the commission was tokenism and there were repeated efforts to keep the institution weak and subordinate to the DWCD, while for women's organisations the most important concern was that the commission should be an autonomous and effective institution.

The women's groups rejected the initial proposal of the NPP for a commissioner for women's rights who they felt would merely be an officer in the DWCD and would remain subordinate to the department.⁹ Quoting the experience of the commissioner for scs and sts in checking atrocities against these sections of society, many women organisations expressed their apprehensions about the effectiveness of a single officer in dealing with the issues of women across the country.¹⁰ They also opposed the government's attempt to create the commission by an executive order with no attribute of autonomy.

In their consultations with government the women's organisations envisaged a proactive commission that combined investigative, monitoring, evaluative, advisory and remedial roles and not just a recommendatory body. They asked for time-bound submission of annual reports of the commission to the government and action taken reports by the government. There was a consensus that the role of the commission was not to execute the government's policy or to run projects. It was also agreed that the commission should not convert itself into a litigating body that took up individual cases, but should use its discretion to take up cases that have implications for large sections of women. As for the composition of the commission, it was recommended that there should be a chairperson, and three to five members representing various groups, namely, central labour/trade unions, legislative and legal bodies, women's organisations and women activists. As an autonomous body,

the commission should evolve its own procedures of functioning and decide on the composition of its staff.

The government bill to constitute a NCW that came in May 1990 did not include any of the above suggestions. It rather included certain regressive features relating to the termination of services of any member of the commission, including the chairperson, without giving any reasons and the right of the central government to direct the commission's activities. The government wanted to pass the bill within a day but for pressure from the women's organisations who asked for another round of consultation¹¹ where they reiterated the points that they had raised earlier. The new bill did incorporate suggestions given by women's groups but it still contained many provisions that had the possibility of an adverse impact on the autonomous and independent functioning of the commission. These included the method of appointing the chairperson and members of the commission by the central government without any consultation, the absence of a time limit for the government to respond to the recommendations of the commission and the appointment of a member secretary by the government. On the administrative side, despite the recommendations of the women's groups that the commission should have the authority "to appoint its Secretariat including the Secretary", the commission was not granted any authority to decide on its staff requirements and the matter was left to government, who was also to determine its budgetary support.

The role of the government of the time and of the bureaucracy point to a constant effort to keep the institution weak in its structure and powers. There were efforts to block the setting up of the commission even after the bill to constitute the commission had been passed; sometimes by floating the abandoned proposal of appointing a commissioner and at others by announcing the setting up of two commissions, one to protect women's rights and the other to study women's status and problems. The move of the caretaker government in 1991 to finalise the panel for the first commission just two weeks before the general elections were announced pointed to the intent of the government to politically control the commission.

Institutional Design

According to the NCW Act, the commission will consist of a chairperson and five members and a member secretary to be nominated by the central government. Using its power to regulate its procedures, the commission divides responsibilities and allocates work through the constitution of various expert committees and special desks. The commission does not have a field staff, and mainly depends on consultants and experts in various areas taken on temporary basis to work on a range of issues the commission is working on. These expert committees work on subjects of law and legislation, take up special studies on issues of concerning the socio-economic and political status of women in the country with a view to suggest policy recommendations to the government in the field of law and policy. Among other measures to probe into developmental problems, formulate recommendations and to understand issues and

devise strategies, workshops, seminars/conferences are held. The members of the commission also make field visits to various states to take stock of the ongoing development activities concerning women and to monitor the conditions of women in various ways. The NCW is to be consulted by the government on all important policy issues concerning women. An important area of commission's work is to attend to the individual complaints of women or to take suo motu notice of cases of violence against women. A complaints unit looks into the complaints of women; a counselling cell was added to this unit in 1996. The commission also has a library and a research unit. All orders and decisions of the commission are to be authenticated by the member secretary or any other officer of the commission duly authorised by the member secretary.

Mandate

Section 10(1) of the Act enumerates the investigative, monitoring, evaluative, advisory, and remedial functions of the commission. As an investigative agency, the NCW has the powers to investigate and examine all matters relating to safeguards provided for women under the Constitution and other laws, and to look into specific problems and situations arising out of discriminations and atrocities against women. While investigating any matter it can exercise the powers of a civil court to summon and enforce attendance of any person, and ask for discovery or production of any document, public record and evidence on affidavits.

In its advisory role, the commission is to participate and advise on the planning process on issues concerning women. It has the specific task of recommending amendments to meet any lacunae, inadequacies or shortcomings in the existing legislations.

As a monitoring and watchdog body, the commission is to look into and take suo motu notice of matters relating to non-implementation of laws and non-compliance of policy decisions, guidelines or instructions aimed at ensuring welfare and providing relief to women. It has the power to evaluate the progress of the development of women under the union or any state and also to inspect a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise, and take up with the concerned authorities for remedial action. It is mandatory for the central government to consult the commission on all major policy matters affecting women. The commission is to prepare an annual report and submit it to the central government which, together with a memorandum of action taken report, would lay it before each house of Parliament. The NCW Act thus stipulates a wider area with regard to its functions and role, which gives the commission a lot of scope for interpreting its role as well as intervening at various levels.

Functioning of the Commission

The wide range of responsibilities assigned to the commission required it to play a dual role of a watchdog body to scrutinise and check anti-women policies of the state and also positively help to develop capacities within the government to address their issues. This also required that the commission as an autonomous body needed to generate capacity within the institution to perform these tasks. It also meant that though the formal

powers and status of any public institution have an important bearing on its functioning, the manner in which these powers are used to fulfil the objectives for which it has been created can have an important bearing on its performance. The powers and position can be creatively used to enhance their status and effectiveness, at the same time institutions can abdicate their powers by choosing not to exercise them. Thus, statutory autonomy may be necessary but not the most important thing to ensure real autonomy. The functioning of the NCW points to the self-limiting perception of its role as resulting from its design.

Four core areas of commission's working include – advisory, monitoring, investigative and remedial. The functioning of the commission indicates that the chairperson's role has been crucial to deciding the focus of work of each commission.¹² As a result, the functioning of each commission reflects the perception of the chairperson about the role of the commission. As no mechanisms have been developed to institutionalise the body, each commission seems to be working more or less independent of the previous one and has come to depend on the leadership provided by the chairperson, resulting in lack of continuity of work done by various commissions. For example, work on the Domestic Violence Bill process was started in 1992-93; nothing was heard of it till the Annual Report of 1999-2000, which demanded a comprehensive legislation on domestic violence without reference to earlier processes. The same has been the case with the Protection against Sexual Harassment at Workplace Bill, work on which began from 1999 onwards. In the absence of any tendency to acquaint itself with the work of earlier commissions, in all the consultations with women organisations, the old copy of the bill was being circulated. Expressing their anguish at the arbitrary process of holding discussions with select groups, excluding many organisations as also on the uncanny haste to pass a badly drafted legislation, women's groups registered their protest in a long letter addressed to the then chairperson.¹³ Currently, women's groups have been anxiously working on the Sexual Assault Bill that was cleared by the cabinet and was to be placed in Parliament though it has some highly problematic provisions. Women organisations initiated an online dialogue amongst themselves to get feedback on the bill to be sent to the government, an initiative that should have been ideally taken or at least joined by the commission.

As for the advisory role of the commission in the policy-making area, the commission has been treated as a purely recommendatory body whose recommendations are not binding. The chapter on "Planning Process for Socio-Economic Development of Women", a standard one in all the annual reports till 2005, supposedly recommending on the socio-economic development of women is the weakest if judged from the point of view of recommendatory role of the NCW on government policymaking on women. In all the reports, without any exception, the chapter actually does not so much refer to the planning and the development process and its impact on women. It is focused on the reporting of various programmes and projects being run by the government, national and international conferences, seminars, meetings and workshops, campaigns, studies and state tours and visits undertaken by

the commission members. If one looks at the latest reports since 2006, this chapter on socio-economic issues is completely missing. The recommendations of the NCW have been more protective and rehabilitative in nature with little emphasis on the structural aspects. The changes that are taking place in the nature of labour, steady decline of the state sector and withdrawal of protective laws for working class and declining employment opportunities have serious implications for women. The problems of female foeticide, female infanticide and the other basic issues of education and inadequacy of medical and health services have also not received enough attention from the NCW so as to raise them at the policy level. Any analysis of budgetary allocations to social sectors in general, and towards specific needs of women in particular, has been sadly lacking in all the annual reports of the commission.

The manner in which the recommendations of the commission have been handled by the ministry/department of WCD shows that the government does not take this apex body seriously. The normal pattern is to refer several of these recommendations to state governments as matters falling under "state jurisdiction" and set aside many others as matters "under consideration" with various ministries and departments. No action has been taken on most of the recommendations as it comes out from various action taken reports.

Violence against Women

Another important area of concern has been the manner in which the commission perceives and responds to issues. This perception and response is limited/guided by two things – one is the nature of political appointments that brings the commission in close proximity with the ruling party. And, two, the general inexperience of the members and chairperson of not having worked on issues thereby lacking any perspective and commitment on issues concerning women. Whether it is the denial of the scale and nature of sexual violence in Gujarat 2002, or the statement of a member of the commission on the Mangalore pub attack case, or the present chairperson's statement that being called "sexy" should be taken as a compliment, or her latest statement asking girls not to ape the west blindly after a girl was publicly molested in Guwahati, or terming the case of suicides by three schoolgirls in Rajasthan as a simple case of suicide, the list is endless on how the whole issue of sexual harassment, assault and violence in the lives of women is being viewed by the apex institution. While women's organisations have long dropped the terminology of "eve-teasing" and "outraging the modesty" as outdated and trivialising the whole issue of violence against women, the annual reports of the commission are still using this terminology while recording complaints that come to them.

In the last many years, the women organisations have taken up the issue of increasing sexual violation of women in situations of caste and communal violence and by state agencies in conflict areas.¹⁴ State complicity and/or sanction of violence against women, either through direct involvement (grant of special powers through laws like Armed Forces (Special Powers) Act (AFSPA) or through inaction results in empowering

state agencies and communities to legitimately use violence by granting them immunity in the name of national security or the community being in danger. As a result, there is a tendency amongst the armed forces or community leaders/panchayats of treating themselves as above the law by raising the imagined threat from the "other". The state institutions that are meant to enforce the rule of law thus end up furthering patriarchal attitudes and violent practices that characterise domestic and public spaces for women. Such situations make redressals almost impossible. These situations especially call for the interventions of autonomous institutions like the NCW to investigate the conduct of state agencies and strengthen the redressal mechanisms by putting pressure on the governments in power. The record of NCW in these situations has been disappointing as the commission has failed miserably in its role as an autonomous and independent institution to raise the issue of arbitrary and excessive use of powers by the state and demand the accountability of the state in these matters.

The response of the commission after the widespread violence in Gujarat in 2002 which witnessed blatant and unabashed sexual violence targeted at the women of one community with the complicity and culpability of state agencies in Gujarat was most disappointing and disillusioning for women organisations all over India. It was a test case of autonomy of the commission at a time when governments both at the centre and the state were from the same political parties and a glaring example of the failure of an institution that was meant to enhance the accountability of governments and bureaucracies ended up in shielding them. Not only did the commission send its fact finding team 50 days after the violence but the observations of its report¹⁵ that was released after almost two months, evaded the issue of state and administrative complicity, referred to sexual violence on women as an aberration, and took no note of the minority angle of violence, saying the women of both the communities suffered. It asked the community to look forward and not backwards and focused only on relief and compensation. The fact-finding reports by civil rights groups, women's groups and constitutional state bodies like the National Human Rights Commission (NHRC) pointed to the complicity of various arms of the state in the attacks and violence against the Muslim community and their role in inflicting sexual violence on women, destroying property and killing members of the Muslim community.¹⁶ It needs to be noted here that the NCW chairperson is a member of NHRC and while the NHRC raised its finger pointing out the complicity of state agencies, the NCW report denied the scale and nature of targeted violence on women.

On the other serious issue of use of sexual violence against women by police and army personnel in the highly militarised areas of Jammu and Kashmir, north-east and now Chhattisgarh, where the state laws grant immunity, and to a certain extent, legitimacy to such acts by security personnel, the commission needs to come out against these repressive laws. Despite large-scale evidence of these violations where women have been targets of sexual violence, there has been a silence on this on the part of the commission. In the north-east an extraordinary protest by 15 middle-aged women demonstrating naked in front of the gates of

Kangla Fort of the 17 Assam Rifles in Imphal shouting “Indian Army Rape Us” after the custodial rape and killing of Thangjam Manorama Devi, a suspected insurgent, by the Assam Rifles in 2004, with the guilty being punished for “breach of discipline” and “indulging in misconduct” with a sentence of one year imprisonment, brought public attention to the routine sexual violations of women in these areas.¹⁷ Similarly, in the case of heavily militarised Jammu and Kashmir as well the voices of women facing rape and sexual assaults by security forces have not found a voice in the commission.¹⁸ In the case of Soni Sori, a tribal teacher in Chhattisgarh, who was framed on charges of acting as an intermediary for the Maoists and was brutally sexually tortured in police custody, women’s organisations approached the commission to intervene and send a fact-finding team. Even after about a year of Soni Sori’s ordeal the commission had not responded to the demand of women’s groups.¹⁹

Political Control

These cases are merely the tip of the iceberg of large-scale violations in these regions, gruesome details of which are available in numerous findings by women and human rights groups on which practically no action has been taken. The commission’s silence on this gendered violence by the state agencies is a negation of the history of women’s movements in these regions where women have come together to organise themselves against these draconian laws. It is a blatant tolerance of sexual crimes against women and the condoning of such crimes by the state. But, more importantly, it signals that the institution is unwilling to take a stand against the government’s (of whichever shade) official position on the issue (e.g., the National Democratic Alliance under the leadership of the Bharatiya Janata Party (BJP) that has strongly supported the draconian laws to tackle terrorism, while the UPA has been vacillating between withdrawing and promising to look at certain provisions of AFSPA). The commission’s composition being highly political, the chairpersons and members have refrained from taking stands against governments in power, or asking for their accountability, or supporting movements that raise issues of the democratic rights of citizens.

Political control over the institution has come in two ways: first, originally in the manner of its composition that remained mainly political – with political nominees of ruling parties becoming chairpersons and members of the commission, and, second, in its relationship with the DWCD. The political appointments had its ramifications on the self-perception and interpretation of the mandate of the commission as also in its functioning in various ways as can be seen from the above discussion.

The political nature of the appointments has been one of the most important factors affecting the autonomous functioning of the commission in the manner it approaches an issue or intervenes in certain situations or deals with the government and departments, because the commission is constrained to act against those in power or those who have appointed them. In addition to being nominees of the government in power many of them have no history of working on women’s issues. As a result, they lack experience and the necessary understanding

and perspectives needed to handle issues. The non-institutionalisation of procedures for the appointment of the chairperson and members of the commission has increased the possibility that women who have remained active in the movement or are actively working on women’s issues through campaigns or activist research are less likely to get appointed as members or as the chairperson of the commission.

In terms of administrative and financial powers too, the commission has been subordinated to the bureaucracy through its absolute dependence on the government for staff requirements, financial grants, the position of the member secretary and the constant attempts by the DWCD to control the commission. The commission has been writing to the government for clarification on many issues and asking for more staff, but many of its letters have received no response from government officials, an indication that their authority is not being acknowledged by them (annual reports and interviews with chairpersons of NCW). The position of member secretary has been occupied by an Indian Administrative Service officer from the ministry, has further given a handle to the power play between the commission and the bureaucracy. The chairpersons have expressed their displeasure over interventions ranging from routine matters like deciding whether the department or the commission would be the representative on programmes concerning women to asking for additional staff, and seeking clarifications about the status of the commission. These have created an anomalous situation as the ministry itself is a body whose policies and actions are supposed to be monitored by the commission. Some chairpersons have complained that they had problems with the member secretary’s power to sign cheques. In a major showdown between the chairperson and the member secretary in 2002, the DWCD through a memorandum acquired greater control over the NCW’s finances by making it mandatory for the commission to consult the department on various expenses.²⁰ The perception in the then DWCD about the commission not being autonomous came out in another incident. In 2004, the member secretary on her own postponed the release of a Survey Report of the Commission, saying that it would go against the election code, while the chairperson thought otherwise. The argument that it was not a government report and that the commission is an autonomous body did not prevail on the secretary.

These details indicate how an autonomous institution is perceived within and outside the government and bureaucratic circles. In the case of the NCW, the fact that the institution is meant to address women’s issues – an area always accorded less importance – has also contributed to lowering its status. The institution is not taken seriously. The manner of constituting the commission further downgraded the status of the body. There is a general tendency within government of constituting such commissions as palliatives with a dilution of powers, and they are treated more as populist measures. There is also a history of keeping the institutions for women weak. The same did not happen so much in the case of NHRC. Probably in the context of international factors and the higher position accorded to the issue of human rights, the state took care to conform to

the international standards of constituting a Human Rights Commission (Mohapatra 2001: 39-79). This also led to getting a better standing and autonomous status for the NHRC. In the case of NCW, despite a strong women's movement, the state went ahead with creating a weak institution.

Experience of Intervening in Individual Cases

In the perception as well in the functioning of the commission, the core area of its work has been to look into individual cases of violence against women. The functioning of the complaints and counselling cell provides a window to understanding how violence in the lives of women is perceived and how the cases are handled by the cell. The first annual report of the commission listed 246 complaints received from across the country. This number has increased manifold. At present, the NCW receives more than 15,000 complaints per year. An analysis of the annual reports of the commission and discussions with the counsellors and members of the commission reveal that the normal method followed by the commission has been to write to the concerned authorities that could/should act on the complaint.²¹

The infrastructure or the kind of space required when women come to the commission with their problems has been highly inadequate. The commission did not seem to have much clarity about the kind of cases it would deal with,²² who would coordinate its work, or what skills, space and infrastructure were needed for this type of work. In fact, there were no counsellors in the commission during 1992-96. The direct involvement of the chairperson, member secretary and members for all the cases coming to the commission also could not be explained since these persons, because of their preoccupation with other issues, are not expected to have sufficient time to look into the details and follow-up of all the complaints. In 1996-97, after adding a Counselling Cell to the Complaints (CCC) unit, four full-time and two part-time counsellors were appointed. A full-time counsellor is expected to deal with an average of four cases in a day.

The introduction of the Parivarik Mahila Lok Adalat in 1996-97 with a view to providing speedy justice to women who suffer on account of pending cases in courts also did not help much in view of the very large number of complaints coming to the commission. The commission has the power of a civil court that enables it to summon a person or examine the person on oath, requisition documents and receive evidence on affidavits. It can bring parties in a dispute face to face, and try to resolve the case through mediation. It can also instruct the appropriate agency to attend to the matter and report back to the NCW. These powers at times are able to help women as some counsellors reported that the name of the NCW sometimes works. But in the absence of enforcement powers, the commission has not been able to go far.

In view of the huge number of cases, the counsellors complain of the workload and pressure to perform in terms of the number of cases they deal with, and with little or no infrastructure facilities.²³ Therefore, there is an emphasis on closing cases since the number of cases that a counsellor handles determines whether she will continue as a counsellor in the commission. The approach in cases of marital discord and domestic violence has been to bring reconciliation with the objective of saving

the family and interests of children. Since 2006 the commission came out with a new initiative titled "Save the Home, Save the Family" with the objective to train and sensitise police personnel in dealing with cases of atrocities against women, emphasising reconciliation methods in cases of marital disputes, implementation of the Protection of Women from Domestic Violence Act, 2005, complaints under Section 498A, Indian Penal Code and ensuring proper networking amongst non-governmental organisations (NGOs), NCW, etc, for the purpose. The programme is being part funded by the NCW and implemented in association with the Delhi Police Women Cell.²⁴

Despite the enormity of the task of attending to women's complaints, the CCC continues to remain marginal to the NCW. The higher levels of the commission have shown little interest in the working of the counselling cell. It is located low in the hierarchy within the NCW, as is evident from the service conditions of the counsellors,²⁵ the interaction with the chairperson and members, and the fact that its work is not seen as an input into the larger work of the commission. In the words of a counsellor who is no longer working with the commission, "the counselling cell is positioned very low in the hierarchy", while another one said that "it is nowhere in the hierarchy".

Possibilities

The process of constituting the commission as well as the period following it points to a continuous involvement of women's organisations both on issues concerning the formation of such a body and later on issues relating to its functioning. Because of a history of a strong women's movement, it was not possible for the government to ignore or totally brush aside the interventions made by women's groups on behalf of the movement. But as it came out to be, the government finally constituted a weak commission, a body that has become an instrument to distribute political patronage, and is, therefore, handicapped by manner of its composition. The functioning of the commission over the past 20 years indicates the commission's lack of familiarity with the political and transformational aspects of gender ideology and inability to function as an autonomous body. Interestingly, the picture that it presents is of a body caught in contradictions of different processes. It is a body constituted by the state to carry forward the agenda of the women's movement at a time when the state itself is coming down heavily on all social and political movements. It is supposed to represent the voices of masses of Indian women but its composition does not reflect the aspirations of these masses. This has resulted in distancing the commission from women's groups, but at the same time the commission is under pressure to get its legitimacy from the movement and for that reason has to work with them. On the other hand, the women's groups have been using the institution sometimes strategically for its purposes despite its highly disappointing performance.

The case of the NCW also indicates that the initial design and founding conditions have an important influence on how an institution evolves. This does not imply that the commission is in no position to take any initiatives by way of making an impact on policymaking or in taking issues forward. In fact, many

times women's groups have tried to use the institution strategically to carry forward the agenda of women's movements. The presence of the NCW at many public hearings organised by various groups highlighting the issues of women construction workers, mahila sarpanchs, women in prostitution, etc, have helped them to take their campaigns forward and to extract some minimal concessions from governments. The commission gave good support to women's groups and activists of the Women Development Programme of Rajasthan in restoring the position of the *sathin* (grass roots woman workers of the programme). The commission, by siding with the women's organisations in not accepting the Population Commission's recommendation on disqualification of elected members of panchayats, played an important role in checking the government in its population control designs at the expense of women. In the Bhanwari Devi rape case, its position was contrary to that of the state fact-finding commissions. The commission also took up the issue of reservation of seats for women in Parliament and legislative assemblies in a big way. Various studies have been undertaken highlighting the issues of migrant women,

Muslim women, women in prostitution, trafficking and child sex abuse, women in the unorganised sector, women prisoners and women of the north-east along with reports from 18 states titled "Situational Analysis of Women" and some reports on legal reform issues. Many of these reports have been done by various NGOs and/or activists from various movements with a view to using the name of this apex body to further their demands from the government. The commission has tried to review, investigate and examine government policy at different levels, though with limited success due to the lack of political will on the part of the government and political leaders.

Finally, it has also tried to establish links with regional, state level and international bodies engaged in lobbying for the advancement of women. All these point to possibilities that the commission can definitely use its position through its mechanisms of reporting and by taking a firm stand on issues to contribute to and guide debates at the level of society and policymakers on issues of social concerns. But as it stands today the commission is limited by its design as also by its own tendency to be self-limiting.

NOTES

- 1 Letter to Sonia Gandhi, chairperson, UPA, "Seeking Institutional Reform of the National Commission for Women and Replacement of the Current Chairperson", dated 23 July 2012.
- 2 *Towards Equality*, 1974, Report of the Committee on the Status of Women in India, Department of Social Welfare, Ministry of Education and Social Welfare, Government of India.
- 3 Gandhi and Shah (1993): "Conferences of the Women's Movements – History and Perspectives" in *Saheli Newsletter*, January 2000; and Majumdar et al (2001).
- 4 Report of the National Commission for Self-Employed Women and Women in the Informal Sector, 1988, Government of India, India, popularly known as the Shramshakti Report.
- 5 Reports of Patna, Kozhikode and Tirupati conferences of women's movements. For example, the involvement of many women activists in the government-funded women's programme known as Women Development Programme and the subsequent attempts by the government to control the programme and use it to carry forward its own agenda, which was not necessarily pro-women, led to the questioning of such participation as also the intention of the state in creating such mechanisms.
- 6 A reading of the Preface to *National Specialised Agencies and Women's Equality: Law Commission of India*, (1988), by Lotika Sarkar, CWDS, provides a good background and analysis of the changes that took place during this period, marking a shift from value-oriented social philosophy to the management-oriented approach of similar agencies created to intervene in the process of social change. She argues that this change affected their performance and capacity to intervene.
- 7 This emerged in the meetings of a joint forum of women's organisations created in the early 1990s known as "Women and Politics". The author had been part of these meetings that were held once in a month to discuss various issues on the engagement of women's movements with the state. The records of these meetings are not easily available. Also personal conversation with Vina Mazumdar in 2005.
- 8 File No 9-3/90-ww, Government of India, Ministry of Human Resource Development, Department of Women and Child Development,

- Government of India. Source: National Federation of Indian Women files.
- 9 *National Perspective Plan for Women, 1988-2000 AD*, Department of Women and Child Development, Ministry of Human Resource Development, Government of India, 1988, p 196. The plan proposed that "a special division be created in the Department of Women and Child Development for the enforcement of law for women under the charge of the commissioner who will liaise with various special cells for women created by the police, the CBI as well as the Department of Public Grievances at the centre and the state levels as well as also the Women's cell in Home Ministry".
- 10 *Why the National Commission for Women – a small booklet brought out by seven national women's organisations*, undated.
- 11 "National Commission Bill Disappoints Women" in *The Hindu*, 12 June 1990 and "Watchdog or Appendage", by Lotika Sarkar and Vina Mazumdar, *Indian Express*, 10 July 1990.
- 12 On the basis of annual reports of the commission since 1990 and the interviews conducted with chairpersons.
- 13 See "Bill on Sexual Harassment at Workplace: Yet Another Paper Tiger" in *Saheli Newsletter*, January-April 2002. The letter was signed by more than 20 women's organisations from all over the country.
- 14 A network of women's organisations, human rights organisations and individuals named Women against Sexual Violence and State Repression (WSS) has been formed since 2010 to raise the issue of atrocities and repression against women by state and non-state actors, especially in conflict zones.
- 15 Report of the Committee Constituted by the National Commission for Women to assess the Status and Situation of Women and Children in Gujarat in the Wake of Communal Disturbance, 22 April 2002.
- 16 "Gujarat Genocide: Telling It Like It Is and Gujarat: Some Other Reports" in *Saheli Newsletter*, May-August 2002.
- 17 For a detailed documentation of these violations see Banerjee in Ujjwal Singh (2009), pp 141-44.
- 18 For details see Chakravarti in Ujjwal Singh, (2009) *ibid*, pp 49-74 and *Saheli Newsletter*, September-July 2010, pp 10-12.

- 19 See *Saheli Newsletter*, September to April 2012 and July to December 2012.
- 20 This was clearly against the spirit of Section II, Clause (2) of the NCW Act which states that "The Commission may spend such sums as it thinks fit for performing the functions under this Act and such sums will be treated as expenditures payable out of the grants referred to it in sub-section (1)". The Act does not mention any consultation with any government department either on grants to organisations or individuals or to projects or schemes run by the NCW.
- 21 Based on the interviews conducted with the counsellors between 2003 and 2006 and from "Creating a Window to Redress Women's Grievances", A Report by Saraswati Haider, PRAJA Report, 2002, pp 8-15.
- 22 *Ibid*, p 28 and interview with an ex-counsellor.
- 23 Interviews with counsellors.
- 24 See the Annual Report, National Commission for Women, 2009-10.
- 25 The working conditions, poor payment to counsellors and ad hoc decisions about their honorariums and service and treatment meted out to them by members and chairpersons has adversely affected their work.

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