

# NATIONAL COMMISSION FOR WOMEN : LEGAL FRAMEWORK\*

## I Introduction

UNEQUAL STATUS of women, being offensive to human dignity and violative of human rights, has emerged today as a fundamental crisis in human development the world over. India is no exception. Despite social reform movements, constitutional and legal provisions aimed at securing equal status for, and removing all discriminations against, women, positive judicial trends, various welfare schemes of the government and contribution of voluntary organisations to the welfare of women, they continue to suffer from inequalities and inequities, and are victims of increasing tide of violence. The enactment of the National Commission for Women Act in 1990 is, therefore, a timely step to ensure steady and even development of women. The object of this paper is primarily to scrutinise this important legislation keeping in view the various problems Indian women are confronted with, to raise certain issues and suggest certain improvements in the legislation. This analysis is preceded by a brief historical perspective, constitutional frame, relevant legislation, decisional law, governmental and voluntary action.

## II Historical perspective

Indian women enjoyed an exalted position in ancient times and had a fair measure of equality in all spheres of human activity including war and statecraft. This glorious status of women suffered a socio-cultural setback in the medieval period, resulting gradually in loss of their freedom and decline in their education. This eroded their personality and lowered their status. It is during this period that many evils cropped up, e.g., *purdah* system,<sup>1</sup> the practice of *sati*,<sup>2</sup> child marriage, female infanticide, polygamy and exclusion of women from succession to property.<sup>3</sup>

Social inhibition and discriminatory practices continued to exist during the British rule. However, social reform movements of the nineteenth century aroused considerable awakening against the prevailing social evils. With freedom movement coming into being, the social scenario began to

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1. A system under which a woman lived under veil.
2. A practice whereby a woman immolated herself on the funeral pyre of her dead husband.
3. See, S. Shridevi, *A Century of Indian Womanhood* 1-2 (1965); Rama Mehta, *Socio-Legal Status of Women* 157-8 (1987); Kamaladevi Chattopadhyaya, *Indian Women's Battle for Freedom* 9-29 (1983).

change. Eminent leaders of the movement believed in women's equality and inspired womenfolk to get into the mainstream of national life along with men. The period of British enslavement became, in fact, the era of social reform. Many women organisations, which sprang up in the beginning of the current century, promoted women's cause through education, employment, etc.<sup>4</sup>

### III Constitutional framework

The framers of Indian Constitution were committed to the pledge of pre-Independence era, that is, to accord an equal status to women and give them a place of honour and dignity in the society. Consequently, the Constitution in its preamble envisaged the ideal of equality and elaborated it, especially, in several provisions of its parts dealing with fundamental rights, directive principles of state policy and fundamental duties.

Apart from the general equality provision,<sup>5</sup> the fundamental law prohibits discrimination on the ground of sex.<sup>6</sup> It enables the state to make special provisions beneficial to women.<sup>7</sup> It also prohibits traffic in human beings.<sup>8</sup> Besides these justiciable provisions, some of the non-justiciable directive principles obligate the state to secure adequate means of livelihood and equal pay for equal work for both men and women,<sup>9</sup> to ensure that health and strength of workers, both men and women, are not abused,<sup>10</sup> and to provide maternity relief.<sup>11</sup> The Constitution also casts on every citizen the fundamental duty to renounce practices derogatory to the dignity of women.<sup>12</sup>

### IV Legislation

In accordance with the letter and spirit of the Constitution, the legislation, that followed, comprised, *inter alia*, some codified personal laws of Hindus, newly enacted and amended labour and criminal laws and some special laws improving the position of, and penalising crimes against, women.

The first legislative step was to ensure sex equality by removing all legal disabilities women suffered from in medieval times. The sanctity and inviolability of the institution of marriage had degenerated into the instruments of their subjection.<sup>13</sup> This was corrected by a series of legislations enacted during mid-fifties, introducing monogamy,<sup>14</sup> enabling daughter, widow and

4. See, Mehta, *id.* at 42-3, 158; Chattopadhyaya, *id.* at 40-1, 44-9, 97-8.

5. Art. 14.

6. Arts. 15 (1) (2) and 16 (2).

7. Art. 15(3).

8. Art. 23.

9. Art. 39 (a) (d).

10. Art. 39 (e).

11. Art. 42.

12. Art. 51 A(e).

13. See, P. Thomas, *Indian Women through the Ages* 365 (1964).

14. Hindu Marriage Act 1955.

mother to inherit property along with son;<sup>15</sup> requiring the consent of wife for the adoption of a child by a married man, enabling a woman to adopt a child; as also entitling a wife living separately to claim maintenance;<sup>16</sup> and empowering a woman to appoint a guardian at will.<sup>17</sup> This is how the codified law conferred an equal status on women. On the procedural side, the establishment of family courts has facilitated speedy disposal of cases and appointment of women as judges.<sup>18</sup>

As women constituted a sizeable proportion of workers in industries, various labour laws have sought to implement the women specific directive principles. They reflect welfare and protection through provisions of minimum wages;<sup>19</sup> maternity leave and benefits;<sup>20</sup> facility of creches in factories, prohibition of nightwork by women as also restriction on work unsuitable to their health;<sup>21</sup> and prohibition of employment of women in the mines below ground.<sup>22</sup> This was followed by an economic measure securing equality to women at workplaces.<sup>23</sup>

The prostitution, a feudal offshoot, and indecent representation of women are both derogatory to the dignity of women. The law now punishes the prostitution in commercialised form<sup>24</sup> as also advertisements and publications containing indecent representation.<sup>25</sup>

The pernicious evil of the dowry system, which has taken heavy toll of many young brides, has incurred the wrath of law and invited stringent punishments.<sup>26</sup> The criminal law has also been amended to deal effectively with cases of dowry death, cruelty to married women and rape.<sup>27</sup>

The commission of *sati* and its glorification have been prohibited. An attempt to, abetment of an attempt to commit *sati*, and its glorification have been made punishable.<sup>28</sup>

## V Judicial trends

The judicial approach has, on the whole, been positive in constitutional and other litigation. For example, the Supreme Court struck down as

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15. Hindu Succession Act 1956.

16. Hindu Adoption and Maintenance Act 1956.

17. Hindu Minority and Guardianship Act 1956.

18. Family Courts 1984.

19. Minimum Wages Act 1948.

20. Maternity Benefits Act 1961.

21. Factories Act 1948.

22. Mines Act 1961.

23. Equal Remuneration Act 1976.

24. Immoral Traffic (Prevention) Act 1986.

25. Indecent Representation of Women (Prohibition) Act 1986.

26. Dowry Prohibition Act 1961, as amended.

27. Criminal Law (Amendment) Act 1983; Criminal Law (Second Amendment) Act 1983.

28. Commission of Sati (Prevention) Act 1987.

unconstitutional many provisions which discriminated against women;<sup>29</sup> enforced the principle of equal remuneration at work places,<sup>30</sup> and upheld the constitutionality of laws in cases of favourable discrimination.<sup>31</sup>

### VI Governmental and voluntary action

The Government of India alone has more than 27 schemes for women, administered by different ministries and departments. There is a separate department in the Ministry of Human Resource Development for the development of women and children. This department also funds the Central Social Welfare Board. Besides, the Women's Development Bureau has direct responsibility for welfare and development of women in the country.<sup>32</sup>

Since 1970, a number of activist agencies have come up and aroused consciousness among women on various issues. They have preferred to work directly with women and sought intervention of the state (especially judiciary) and the press to project their rights to better their situation.<sup>33</sup>

### VII Situational review

Despite all this, women, especially rural, continue to suffer from inequalities and inequities inherent in socio-political structure and attitude. Some of the negative indices are as follows :

(i) According to the 1991 Census, a disquieting feature is unexpected decline in sex ratio. The number of females per 1000 males is 929, one of the reasons being the higher rate of mortality among girls; in the age group of 1-4 years, *i.e.*, 10.1 per cent while among boys of this age group the rate is 6.8.

(ii) Aminocentesis test is being misused on account of cultural preference for male children resulting in the abortion of female foetus.

(iii) Age specific death rates are higher in case of females till the age of 35 years. Again, over 50 per cent of women suffer from anaemia, which accounts directly for 15-20 per cent of all maternal deaths.

(iv) As per the 1991 Census, the literacy rate for females is 39.42 per cent, while that for males is 63.86 per cent. The illiteracy among women is compounded by the high drop out rate for girls at the primary and middle school stage. Besides, there are substantial disparities in enrolment of boys and girls at the higher education stage.

29. See, *e.g.*, *C.B. Muthamma v. Union of India*, A.I.R. 1979 S.C. 1868; *Air India v. Nargesh Mirza*, A.I.R. 1981 S.C. 1829.

30. See, *e.g.*, *Mackinnon Mackenzie and Co. Ltd. v. Audrey D'Costa*, A.I.R. 1987 S.C. 1281.

31. See, *e.g.*, *Yusuf Abdul Aziz v. State of Bombay*, A.I.R. 1954 S.C. 321.

32. See, *India 1991*, pp. 280-1, 288-94 (a Government of India publication).

33. *National Perspective Plan for Women, 1988-2000 A.D.* 185-6 (Report of the Core Group set up by the Department of Women and Child Development, Ministry of Human Resource Development, Government of India, 1988).

(v) As per the 1981 Census, the work participation ratio for females declined in the census decades up to 1981. The percentage of women workers in the unorganised sector is 89.5 and in the organised sector 13.3. The percentage of working and economically independent male population is 51.6, whereas that of female is 23.

(vi) About five years back only 994 women held senior management/administrative posts as against 15,993 men in similar jobs. In the all India services, women constituted only 5.8 per cent. In Indian Police Service the percentage of women officers was just 0.9 and in the Indian Administrative Service 7.5.

(vii) The women's percentage of the membership of registered trade unions was estimated at 7.5 and that of the office bearers and executive members as less than 10.

(viii) Proportional representation of women in elected offices either remained stagnant or declined. This is so despite their increased voting turnout in the general elections. For example, only 6 per cent of the members of the House of the People are women.<sup>34</sup>

Despite a number of stringent penal laws and a well organised criminal justice system, there is an increasing tide of violence against women. For example, during 1991 the number of reported offences was, 2,448 dowry deaths, 5,916 rapes, 6,000 molestations and 7,116 kidnappings and abductions.<sup>35</sup>

Since women comprise a little less than half of the country's population, what ails and affects them has a direct impact on the rest of the society.

## VIII National Commission for Women

### (1) Background

In this context, though belated, the enactment of the National Commission for Women Act in 1990 is the first major step in the direction of women's development. The idea of establishing a national commission for women is not new. The United Nations Commission on the Status of Women in its Twenty-fifth Report had recommended to all member states the establishment of national commissions or similar bodies "with a mandate to review, estimate and recommend measures and priorities to ensure equality between men and women and the full integration of women in all spheres of national life." Acting on this resolution and on the demands of several women organisations, the Government of India set up a committee in 1971 known as the Committee on the Status of Women, (i) to evaluate the changes that

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34. See, e.g. Ashish Bose, *Population of India : 1991 Census Results and Methodology* 36, 38, 44, 47; *Lok Sabha Debates*, vol. VIII, no. 2, p. 722 (8 Aug. 1990); *supra* note 33, pp. 77, 98, 99; *Data India, 1991*, p. 3 (18-24 Nov. 1991); National Documents, 1 Education, appended in *supra* note 33 at xxiv; *Indian Express* (24 April 1991) *Hindustan Times* (1 July 1992).

35. See, *The Indian Express* (13 Jan. 1992).

had taken place in the status of women as a result of the constitutional, legal and administrative measures adopted since Independence; (ii) to examine the impact of the complex processes of social change on various sections of women; and (iii) to suggest measures to enable women to play their full and proper role in building up the nation. In 1974, the committee submitted a comprehensive report with a summary of its recommendations on, (i) the socio-cultural setting of women's status; (ii) women and the law; (iii) roles, rights and opportunities for economic participation; (iv) educational development; (v) political status; and (vi) policies and programmes for women's welfare and development. In order to ensure the implementation of various measures, the committee recommended the constitution of statutory, autonomous commissions at the Centre and in the states.<sup>36</sup> It is surprising that the government took sixteen years to give effect to the recommendation of the committee for setting up a national commission.

## (2) Constitution

The commission consists of a chairperson, committed to the cause of women, five members (at least one member each from among scheduled castes and scheduled tribes respectively) from amongst persons of ability, integrity and standing and who have had experience in law or legislation, trade unionism, management of an industry or organisation committed to increasing the employment potential of women, women's voluntary organisations (including women activists), administration, economic development, health, education or social welfare; and a member-secretary, either an expert in the field of management, organisational structure or sociological movement, or an experienced civil servant. The chairperson and all members have to be nominated by the Central Government for a term of three years. Under certain conditions the government can remove them (except civil servant) after giving a hearing.

The commission can appoint committees for dealing with special issues and co-opt other persons as members of various committees.

## (3) Powers and procedure

The commission, while investigating certain matters, has all the powers of a civil court trying a suit and, in particular, in respect of, (a) summoning and enforcing the attendance of any person and examining him on oath; (b) the discovery and production of any document; (c) evidence on affidavits; (d) requisitioning any public records; (e) commissions for the examination of witnesses and documents, *etc.* The commission has power to regulate its own procedure.

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36. *Towards Equality : Report of the Committee on Status of Women in India* (Department of Social Welfare, Government of India 1974).

#### (4) Functions

The commission has been entrusted with the following functions :

(i) Investigation and examination of all matters relating to the safeguards provided for women under the Constitution and other laws.

(ii) Presentation to the Central Government annually and at other times reports upon the working of those safeguards.

(iii) Making recommendations in such reports for the effective implementation of safeguards for improving the conditions of women by the Union or any state.

(iv) Reviewing of the existing provisions of the Constitution and other laws affecting women and recommending amendments so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislation.

(v) Taking up the cases of violations of constitutional provisions and of other laws with authorities.

(vi) Looking into complaints and taking *suo motu* notice of matters relating to, (a) deprivation of women's rights; (b) non-implementation of laws meant to provide protection to women and also to achieve the objective of equality and development; (c) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships, ensuring welfare and providing relief to women, and taking up issues arising out of such matters with authorities.

(vii) Calling for special studies or investigations into specific problems or situations arising out of discriminations and atrocities against women, and identifying the constraints so as to recommend strategies for their removal.

(viii) Undertaking promotional research so as to suggest ways of ensuring due representation of women in all spheres; identifying factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards, and for increasing their productivity.

(ix) Participating and advising on the planning process of socio-economic development of women.

(x) Evaluating the progress of the development of women under the Union and any state.

(xi) Inspecting a jail, remand home, women's institutions or other places of custody of women and taking up with the authorities the question of remedial action.

(xii) Funding litigation involving issues affecting a large body of women.

(xiii) Making periodical reports to the government on matters pertaining to women and, in particular, various difficulties under which women toil.

The Central Government has to consult the commission on all major policy matters affecting women. The reports submitted by the commission to the government have to be laid before each House of Parliament along with a memorandum by the government explaining the action taken or proposed to be taken on the recommendations and the reasons, if any, for their non-acceptance. A similar provision has been made for the states.

The annual report of the commission containing a full account of its activities during the preceding financial year has to be sent to the Central Government. The government has to lay before each House of Parliament the report together with a memorandum of action taken on the recommendations.

#### **(5) Miscellaneous**

The government has to provide the commission with adequate staff for the efficient performance of its functions. The chairperson, members and staff of the commission are deemed to be public servants. Their salaries and allowances have to be paid out of the grants made by the Central Government for the purposes of the Act under the authority of a law of Parliament. The accounts are audited by the Comptroller and Auditor General of India. The accounts certified by him along with the audit report are forwarded annually to the Central Government. The report has to be laid before each House of Parliament. The Central Government has power to make rules for carrying out the provisions of the Act.

#### **IX Tasks before the commission**

The Act has obviously set challenging tasks before the commission. While discharging these tasks, it may keep in view the various strategies already drawn, for example, "Forward Looking Strategies for the Advancement of Women," adopted at Nairobi in 1985 and accepted by India as well, and also "The National Perspective Plan for Women 1988-2000 A.D.," drawn by the Government of India, which deserve serious consideration. It is an effort at a long term overall policy for Indian women guided by constitutional principles relevant to the development process. It is linked to the national targets set for the end of this century in regard to some basic indicators, especially health, education, employment and empowerment. The plan does not view women as a weaker segment of the society or as passive beneficiaries of the development process, but as a source of unique strength for achieving national goals.

The critical goals of the plan for the all round development of women are economic development and their integration into the mainstream of the economy as also equity and social justice for all women. What is kept in view is that women are not just producers and providers but also individuals with a right to human dignity in a society where 'class' and 'culture' discriminate against them.



The commission may surely be aware that legislation by itself would not suffice to uproot inequalities perpetuated by traditional social attitudes, prejudices and values responsible for the continuation of the inferiority of women. An overhauling of the value system as also a profound change of attitude are absolutely necessary. It is expected that the commission may, therefore, resort to affirmative action both in the form of 'stop order' such as termination of discriminatory practices through judicial process as also in the form of positive measures such as providing them with job opportunities, upgrading their work and work conditions, as well as job evaluation methods.<sup>37</sup>

### X Issues and suggestions

The following issues and suggestions may be considered for ensuring effective and meaningful role of the commission :

*First*, the commission does not have constitutional and autonomous status as was recommended by the Committee on Status of Women. The commission is also a monitoring agency of the government functioning; in many a case the government is itself a defaulter. The government is also an appointing and removing authority. There is no provision for consultation in the appointment nor for referring a case of removal to an impartial agency like the Supreme Court for inquiry. In order to ensure permanency, creditworthiness and autonomy, it is imperative that the commission be given constitutional status with a provision for consultation in appointment and for reference to the Supreme Court in removal cases.

*Second*, the number of the members of the commission is too small to represent, and take care of vast and varied problems of, around 420 million women in India. In view of its functions and consultative role under the Act, the strength of the commission should be fairly increased.

*Third*, the commission, even with an increased strength, would not be able to handle the work falling under the Central list. Keeping in view the Union-state relations, the Act should have provided for the establishment of commissions at state level as well.

*Fourth*, the Act does not fix any time limit for the government to respond to the recommendations of the commission. This might delay their implementation in case of acceptance. Some time limit may, therefore, be fixed.

*Fifth*, the association of a civil servant as a member-secretary might jeopardise the impartial functioning of the commission. The relevant provision may therefore, be deleted.

*Sixth*, Parliament had voted twenty million rupees for the present com-

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37. See generally, *supra* note 33; Irene Tinker (ed.), *Persistent Inequalities* (1990).

mission.<sup>38</sup> This amount is grossly inadequate keeping in view the strength of women and magnitude of their problems. The grant may, therefore, be substantially increased.

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38. Financial Memorandum, appended to the National Commission for Women Bill 1990, *The Gazette of India Extraordinary*, pt. II, sec. 2 (22 May 1990).

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