

The National Commission for Women Act 1990 — A Critical Review

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When the National Commission for Women Bill was first introduced in the Parliament;¹ it caused a furor among various Women's organizations nationwide — they jointly prepared a memorandum and presented it to the Central Government, seeking more powers for the Commission. The Government considered the demands and even amended the Bill, but at no stage did public opinion stop pouring in; not even when the National Commission for Women Act, 1990² was enacted. The Act has retained some major loopholes that could prove detrimental to the purpose and spirit of the legislation.

The Act contemplates the constitution of a National Commission for Women (NCW) as a solitary national body comprising of a Chairperson and five members of professional standing to be nominated by the Central Government.³ The NCW is to function as a monitoring agency to review all laws concerning women and safeguard their interests by recommending steps for their effective implementation. Apart from spotting lacunae in laws, it may also investigate into specific matters (even suo motu) or fund litigation to promote the idea of justice and abolition of atrocities against women.⁴ The Commission is to maintain accounts and submit an Annual Report to the Government on consulting the Comptroller and Auditor General of India.⁵ Lastly, the NCW is left free to make its own rules of procedure.⁶

The Act is, no doubt, radically different from any previous endeavour to legislate for women and contemplates three types of actions to protect women's rights.

1. Legislative: By way of recommendations.
2. Political: Through screening policy decisions and
3. Judicial: By funding litigation.

Despite this thorough approach, the real status of the NCW still remains relatively obscure since there is no true indication as to how effective these

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¹ May 1990.

² September 1990.

³ Section 2; Section 3 provides for the co-opting of two SC/ST members in case none of the existing members belong to those categories.

⁴ Section 10.

⁵ Section 12.

⁶ Under Sections. 3, 8, 11, 12, 13.

measures will be. The NCW's entire energy seems to go towards *recommending* and *funding* litigation but not towards *undertaking* to do any specific function through its own autonomous implementative machinery. There is no guarantee that any reports or recommendations of the NCW will carry any weight beyond being deposited on dusty Government shelves. Furthermore, the Commission may land up being just another bureaucratised institution functioning as a Government department with no final say in any matter, caught in the mess of red tapism and laconic personnel.

Fears are expressed on the lack of autonomy of the NCW⁷ as even the Act does not expressly confer it. For instance, the Annual Report could be submitted to the President of India instead of the Government,⁸ to preserve some degree of autonomy.

There are concrete amendments that can be made to various sections in the Act. For instance, in section 3, fifty percent of the members should compulsorily be women and the chairperson should be a chairwoman.

Where the election of members is concerned, pre-screening of members before the names are sent to the Government was found necessary.⁹ There have been suggestions for the setting up of a "Search Committee", (to be provided for in the Act), consisting of a panel of a retired judge, the Vice-Chancellor of a Women's University, a Union Minister and the Opposition Leader, to further screen nominees and ensure that the posts are given only to persons with an outstanding record of service in women's development.

Where the status and efficacy of the NCW are concerned, a constitutional status should be conferred on the Commission¹⁰ to ensure that it retains its powers and remains autonomous. Extra powers could be granted to the NCW to enable it to have a concrete enforcement machinery of its own — for example all the powers of a Commission of Inquiry.¹¹ The Annual Report should be laid before the Houses of Parliament within three months or in the ensuing session — whichever comes first.¹² No enforcement machinery is provided for in the Act which is just about the biggest lacuna in it. Without power and autonomy, the NCW would be doomed because recommendatory and monitoring bodies have been notorious in the country for being practically defunct;¹³ the Government itself has been the single largest defaulter and has been violating its own protective legislations with impunity. Moreover, the Act speaks of the termination of the office of the Chairperson and members by notice, but with no allied reasons to be given. This must be amended.¹⁴

⁷ A statement by the All India Democratic Women's Organization in 'The Hindu', Oct. 3, 1990 pg. 6.

⁸ As Section 12 mandates.

⁹ This was proposed in a one-day workshop to discuss the Draft Bill, held on 24.7.90 arranged by the Director of Women and Childrens Welfare & the Women's Development Corporation, Bangalore.

¹⁰ Like the Commission for SC/STs constituted under Article 339 of the Constitution.

¹¹ As per the Commission of Inquires Act, 1952.

¹² A recommendation of the Centre for Women & the Law NLSIU.

¹³ Which is about monitoring agency of the Government.

¹⁴ Section 4. An outstanding example of this is the Civil Rights Enforcement Cell.

Apart from this, the functions of the Commission do not include:¹⁵

1. The power to file cases along with funding litigation.
2. Providing legal literacy to women.
3. Looking to the needs of disabled women.
4. Dealing with problems ensuing from matters relating to the employment of women.

The thrust should be on legal literacy because a majority of women are not even aware that they have special rights or that there exists a Commission to hear them out.

As far as litigation is concerned, it would be ideal if the emphasis is on public interest litigation to uphold the rights of rural poor and economically active women rather than the Commission's getting hijacked by sensationalized middle-class urban issues *alone*. It would be preferable if the Commission instituted a Redressal Forum of its own rather than deal with too much court litigation which would involve delay, expense and further injustice.

The Act does not in anyway propose any mode for decentralizing the NCW which is exclusively at the national level. For an effective survey of problems, the grass-roots level should be tangible as only a national network of state and district level commissions could come closer to achieving this. What is important is accessibility to the people. The rules made should also be readily available to the backward masses.

Most Commissions for oppressed classes suffer from financial crunches¹⁶ and lack of initiative. These inherent problems seriously impair their efficacy. It must be noted that Commissions prove to be as effective as the strength of movements backing them. Despite strictures being passed against the Commission for SC/STs,¹⁷ the movement of Dalits has caused welfare programmes to gain momentum. Earlier there was merely a Commissioner for SC/STs, but this office was replaced by a Commission consisting of five members¹⁸ to investigate into the non-implementation of welfare legislations for SC/STs, which was given greater powers.¹⁹ With the recent increase in Dalit movements, a 1989 amendment conferred on the chairman of the SC/ST Chairman the status of a Cabinet Minister,²⁰ and required the Annual report of the activities of the Commission to be submitted to the *Parliament*. It is therefore clear that the Dalit Movement is

¹⁵ Section 10.

¹⁶ The NCW proposes to start off on a shoe-string budget of Rs. 2 crores.

¹⁷ CWSCST (4th) 1 (1969).

¹⁸ EPW. 13: 1159. (July 28, 1978).

¹⁹ Galanter, Mark, *Competing Equalities*, OUP, 1984 ed. pg 71.

²⁰ It must be noted that the NCW Act contemplates for its members and chairperson merely the status of the members of the Minorities Commission.

stronger than the Women's Movement. Several Women's Organizations did not even take part in the discussions on the Draft Bill of the NCW Act before it was given effect.

The NCW therefore can function better mainly by existing as a totally independent body with no affiliations with the Government²¹ as such, but by speaking for Women's Organizations forcefully.

²¹ In UK and USA there are no formalized Commissions but merely ventilating agencies that force the government to take note of women's grievances.