Secretary: (a) to pay a sum of rupees 50,000 to the victim of rape within a period of one month: (b) to inquire into the circumstances which led to a delay in sending the intimation of this incident to the Commission; and (c) to intimate the Commission regarding the criminal prosecution launched against the accused and the disciplinary action against the Superintendent and Deputy Superintendent of the Observation Home.\(^{26}\)

It may be remembered that earlier NHRC had established a high level Advisory Committee under the Chairmanship of Mr. Justice *A.M Ahmadi*, former Chief Justice of India, to assess the need for structural changes and amendments to the Protection of Human Rights Act, 1993 and its report. The Advisory Committee submitted its report to the Commission on 18 October, 1999. The Commission after careful considerations presented its report to the government in March 2000. Some of the recommendations are the following:

(i) Commission to be empowered to transfer complaints before it to respective State Commissions.

(ii) To amend Section 36(2) to provide for enquiry into a complaint of human right violation by National and State Commissions even after the expiry of one year from the date of occurrence subject to there being good and sufficient reasons for the same.

(iii) To amend Section 18 to enable payment of interim compensation at any stage during the pendency of the enquiry.

(iv) To amend Section 36(1) to provide for the NHRC to make cognizance of and inquire into violation of human rights, notwithstanding the cognizance taken thereof by a human rights Commissions or any other Commission (excluding a Commission appointed under Commission of Inquiries Act), with a view to providing the Commission an over arching ability to oversee the issue of human rights violation and their remedies.

(v) To add a proviso to Section 36(1) to provide for the NHRC to entertain, either *suo motu*, or at the instance of the aggrieved person, any matter already considered and decided by any other Commission except on the question of quantum of compensation, with a view to giving Commission, a certain power of judicial superintendence and power similar to those exercised by the Supreme Court vis-à-vis the High Courts under Article 136 of the Constitution in order to prevent any miscarriage of justice in case of human rights violation.

In their concluding observations, *Justice J.S Verma*, Chairperson and other members of the Commission, observed that the Commission’s recommendations, opinions, directions and guidelines, must be seen in the deeper context of the objectives for which it was established, which was to ensure the ‘better protection’ of human rights in the country.

During the year 2000-2001, the Commission received 71,555 complaints including 1,045 complaints relating to custodial death and rapes. The NHRC took cognizance of a complaint received from the Juvenile Rights Forum, *Hyderabad, Andhra Pradesh* regarding the plight of a ten year old girl who was an inmate of the Juvenile Observation Home in *Hyderabad*. The petitioner alleged that the girl was transferred from the *Raichur* Observation Home, *Karnataka*. She was found to be bleeding at the time of her admission in the Home in *Hyderabad* on 10 July 1998 and again on 3 August 1998. It was further stated that the officials did not provide any medical treatment to the victim. Upon examination at *Nilofer* hospital on 11 September 1998, the doctors found evidence pointing to brutal rape. The petitioner also alleged that the girl was in a severe state of shock. Though the police had registered a case under Section 376 of the Indian Penal Code, the petitioner alleged that no proper investigation had conducted. The petitioner added that certain journalists from *Karnataka* had pointed to the involvement of officials of the Observation Homes, both of *Raichur* and

Hyderabad, as well as of certain politicians. Taking serious note of the allegations in the petition, the Commission sought and obtained a report from the Government of Andhra Pradesh. Upon careful consideration of the report, the NHRC on 18 October 2000 directed the Government of Andhra Pradesh to speed up efforts to complete the investigation of the case and to pay an interim compensation of rupees 50,000 to the parents of the girl for the suffering and trauma that the girl had gone through in a Juvenile Home. 28

The Commission took cognizance of a complaint from a resident of Kokrajhar, Assam alleging that her 16 year old daughter had been raped by Rajan Mushahary, a Minister of State in Assam. 29 No action was taken against the erring minister even though the girl had conceived. NHRC issued notice to the Government of Assam. A report dated 29 November 2000 was submitted by the DGP, Assam which pointed to the involvement of the Minister in the commission of the offence amongst others. The police had arrested three persons out of the seven who were named. A further report submitted by the State Government stated that the State CID had directed the SSP to take steps for DNA profiling, in order to complete investigation in the case. Further the reports submitted to the Commission indicated that the DNA test established that Shri Rajan Mushahary was the father of the child that had been conceived and that he had been arrested on 6 August 2001.

During the year of 2001-2002, the Commission devoted its attention to a large number of subjects including right to health, rights of women and children, rights of vulnerable such as disabled and elderly persons and promotion of human rights literacy. The Commission over the years has focused its attention on child labour, child marriage, child trafficking and prostitution, child sexual violence, female foeticide and infanticide, child rape, HIV/ AIDS afflicted children and juvenile justice. The NHRC in partnership with Prasar Bharati and UNICEF held four workshops for radio and television producers. It was during the course of


these workshops that an idea of bringing out a guidebook for the media to address the issue of sexual violence against children emerged. Pursuant to the request of the United Nations High Commissioner for Human Rights, the Commission, in, 2001 designated one of its members Mrs. Sujata Manohar to serve as a Focal Point on Human Rights of Women including Trafficking and Sexual harassment of Women at work place and in trains. Subsequently, in order to deal with the problem in all its dimensions, it undertook an Action Research on Trafficking in Women and Children in India along with the UNIFEM and the Institute of Social Sciences based at New Delhi.

The Commission expresses its deep concern over the repeated delays in placing the annual reports before the Parliament. The delay in tabling the report leads to further delay in releasing the contents to the public. In this process, both the elected representatives of the people of India and the people of India themselves were denied timely and comprehensive information on the work and concerns of the Commission.

Finally, the Commission took the opportunity to reiterate that, both in respect of Human Rights Courts and in respect of State Human Rights Commissions, it is insufficient merely to designate or establish them. Their quality must be ensured, both in terms of personnel and financial autonomy, and they must be extended the support that they need if they are to fulfill the purposes envisaged for them under the Protection of Human Rights Act, 1993.

As compared to 496 complaints in 1993-1994, in 2001-2002, it received 70,388 complaints. The increased number in complaints shows that the Commission has performed commendable works in various fields. It has not only won the confidence of the people but has aroused great hopes especially in vulnerable ones. This has become possible because of the prompt and effective action it has taken on the complaints and the way it has endeavored to solve the problems of the people. The Commission has also taken a number of steps to prevent the violation of human rights especially by police, persons responsible for detaining the persons in jails and protective homes of children, women and mentally ill and disabled persons, etc. The steps taken by the Commission has
brought about good results. In the annual reports the Commission has made a number of recommendations including the amendments of Protection of Human Rights Act, 1993, especially Sections 2 (1) (d), 2 (1) (f), 11(1) (b) and 11 (2), Section 13 (1) (f), Sections 18,30 and 36 so as to remove ambiguities and impediments concerning its competence and autonomy. It suggested revision of Indian Prison Act and making a new All India Jail Manual incorporating reforms in the prison system starting a movement or a wider scale programme of human rights literacy and awareness through Doordarshan and All India Radio. The Commission continued to work towards improving the status of Scheduled Caste and Scheduled Tribes and minorities and starting of a large scale programme of social regeneration to rectify the ancient societal wrongs.

During the year 2004-2005, Justice Shivraj V. Patil was appointed in the Commission as a member on 03 February, 2005 and subsequently nominated by the Chairperson to serve as the focal point on Human Rights of Women, including Trafficking. During the course of the year, the area of major thrust remained the rights of Women and Children with more stress on Combating Trafficking for Commercial Sexual Exploitation. In this context, the Department of Women and Child Development, Ministry of Human Resource Development, Government of India approached the Commission with a proposal of preparing a Handbook under the joint aegis of the Commission and the Department of Women and Child Development, for the usage of the judicial officers dealing with cases of trafficking in women and children. The main objective of the Handbook was to sensitize the judicial officers to the overall issue of trafficking and to realize how women and children experience the process of law relating to trafficking and the functioning of related support services so as to enable them to proactively safeguard the rights of victimized women and children through sensitive interpretation of the law.

While dealing with the problem of trafficking in women and children, the process of rescue and post-rescue are two major challenges faced by the personnel of law enforcement and welfare agencies. Keeping this in view, the Commission organized a two-day National Workshop to Review the Implementation of Laws
and Polices Related to Trafficking: Towards an Effective Rescue and Post-Rescue Strategy in collaboration with PRAYAS on 27 and 28 February, 2004 in Mumbai. The focus of the Workshop was to review the effectiveness of the provisions of the Immoral Traffic (Prevention) Act, 1956; the Juvenile Justice (Care and Protection of Children) Act, 2000; the Indian Penal Code, 1860 and other laws relating to rescue and post-rescue work so as to work out a uniform policy, scheme and plan for effective results. The recommendations emanating from this workshop were accepted by the Commission and sent to the concerned Departments, Ministries and all State Governments and were requested to send their Action Taken Reports. Some of the recommendations included:

1. The first and foremost requirement is to see the whole problem of trafficking from a human rights perspective. Every action, policy, programme or project, should be oriented towards the best interests of the trafficked victim and protection of vulnerable victim. Therefore, all such activities have to be built upon the basic substratum of human rights. The NHRC and State Human Rights Commissions could be the appropriate catalysts for bringing about this paradigm shift.

2. Government should bring out State polices, including guidelines on the minimum standards of care, attention and service to be extended to the victims by all the service providers including law enforcement officials, judicial officers, prosecutors, medical professionals, psychosocial professionals, counsellors, people manning after care homes. These guidelines must be in conformity with the human rights of the victim. They should also specify the accountability of the agencies concerned in providing services. These guidelines should not be confined to law enforcement and justice delivery, but also extend to prescribing minimum standards with respect to prevention, rehabilitation, counselling, providing livelihood options, economic and social empowerment, etc.

3. There is a need to lessen the gap between the working of various government agencies at the centre and in the States to address the problem of trafficking. A national nodal agency to counter this menace needs to be
set up, by integrating the anti-trafficking activities of the central and State
governments, especially involving the departments of women and child,
labour, social justice, health, home, tourism, railways, information and
broadcasting, law and justice, and agencies like NACO and CBI.

4. Traffickers and exploiters have no boundaries but the law enforcement
officials and others are bound by limitations of jurisdiction. This has
become a serious impediment to anti-trafficking programmes and
activities. The SAARC Convention envisages setting up a task force for
dealing with trans-border trafficking. Trans-border cooperation
requirements cannot be geographically confined to the bordering districts.
The SEVA model of setting up a Rights Awareness Centre at the Indo-
Nepal border has been successful in preventing trafficking under the garb
of migration. While not interfering with the migration, the strategy of
making the migrants aware of their human rights has succeeded in
preventing trafficking of girl children. Such models could be replicated in
other areas on the border by involving the NGOs working on such cross-
border issues.

5. The recommendation stresses upon the need for psycho-social
intervention. The traumatized victim requires counseling. It would be of
great help to provide trained counselors at every police station by
networking with the welfare department and other agencies like the
Central Social Welfare Board (CSWB). The police department could set
up Family Counselling Centres (FCC). These counsellors should be given
thorough professional training like the one organized by SARTHAK, an
NGO in Delhi.

6. Lastly, the prevention of trafficking is possible only if the community is
fully involved. Trafficking has deep roots in the social ethos of the society
and, therefore, cannot be handled by law alone. The larger issues of lack
of livelihood options, gender discrimination and depravation of
opportunities cannot be ignored. Therefore, any preventive strategy should
focus on eradication of poverty, illiteracy, lack of awareness of rights and
livelihood options, as well as on issues of social and economic empowerment. The lack of options provides a fertile ground for the exploiters to enhance their commercial motivation and grow rich faster. Thus, the basic question is to uphold community values and create a culture against exploitation of women and children. Community should become a guarantor of human rights. The prevailing ‘culture of silence’ of the community has to be transformed into ‘community involvement.’ Every unit of the society has to play its important role, viz., the family, the schools, the panchayats, other democratic institutions, NGOs, religious teachers, media persons and all members of the community.

The year 2004-2005 draw the attention of the Commission towards monitoring the implementation of the guidelines issued by the Supreme Court in Vishaka v. State of Rajasthan\textsuperscript{30} to prevent and combat sexual harassment of women at the workplace. It is with the intervention of the Commission that the role of the Complaints Committee prescribed in Vishaka guidelines has been redefined. Complaints Committees are now deemed to be an inquiry authority for the purposes of the Central Civil Services (Conduct) Rules, 1964 and the report of the Complaints Committee shall be deemed to be an inquiry report under these Rules. With the same spirit, the Commission has been working for the eradication of sexual harassment of women passengers in trains in collaboration with the Ministry of Railways. The Commission made the following recommendations:

1. Availability of FIR forms in all regional languages;
2. Preparation and display of messages in the railway coaches;
3. Preparation and display of graphics and other publicity materials at the railway platforms;
4. Printing of the message on the back of the ticket saying that sexual harassment of women in trains is a crime and
5. Preparations of power point presentation on the problem of sexual harassment in trains and its implications so that the same could be made in software for public viewing on television.

\textsuperscript{30} AIR 1997 SC 3011.
During the year 2005-2006, the Commission received 74,444 complaints. Against this, the Commission disposed of 80,923 complaints which included the complaints carried forward from earlier years. The complaints received covered a broad spectrum of human rights violation including custodial deaths, bonded labour issues, exploitation of women and children, exploitation of SC/STs etc. Mainly and broadly the concerns of the Commission was handling complaints dealing with civil and political rights and economic, social, cultural rights and issues relating to good governance and systematic reforms which are essential for better protection of human rights. In pursuance thereof, the Commission instructed all Chief Secretaries to ensure that all cases of custodial death and rape be reported to it within twenty-four hours of occurrence, failing which an adverse inference would be drawn by the Commission. Thereafter, it went a step further, whereby the Chief Ministers were requested to ensure that all post-mortem examinations of deaths in custody be video graphed.

The rights of children’, is another area that has drawn the attention of the Commission from the beginning. The Commission has over the years focused its attention on child labour, child marriage, child trafficking and prostitution, child sexual violence, female foeticide and infanticide, child rape, HIV/AIDS afflicted children and juvenile justice.

When it came to the notice of the Commission that the children below the age of 14 years were employed as domestic servants in the homes of the Government officials, it took up the matter with the Government seeking amendment to the Government Servants (Conduct) Rules, 1964 to the effect that such employment amounted to misconduct inviting major penalty. Accordingly, the Conduct Rules were amended. Recently, Ministry of Labour, Government of India announced that employment of children below the age of 14 years as domestic servants in dhabas, restaurants, tea shops or any other recreational centres is banned with effect from 10 October, 2006. Anyone employing children in these occupations is liable for punishment upto one year and/or fine. The Commission feels satisfied that in this way children may be released from child labour but more important is to ensure that they do not relapse to the old position
for lack of support. Hence, there is an urgent and imperative need for the Governments both at the Centre and State level to have a concrete and practical policy in this regard.

The Commission deeply concerned over the poor implementation of Juvenile Justice (Care and Protection of Children) Act, 2000 devised a format seeking information regarding implementation of the Act.


The Commission has taken up the task of preparing the National Action Plan. The Commission constituted a Working Group and an Advisory Committee including representatives of various departments of the Government, NGOs and eminent lawyers to prepare a National Action Plan for Human Rights. The Working Group decided to focus on the following areas: Human rights education; Criminal justice system- encompassing police, prosecution etc; Rights of vulnerable (women, children, bonded labour, dalits, elderly, tribes, minorities, disabled etc.); Right to food, water, health and environment; Right to social security, Globalization and human rights.

Creating Human Rights awareness is considered important and useful for better protection and promotion of Human Rights. With this in view, the Commission organized/supported several workshops, training programmes and seminars inviting academicians, activists, NGOs, civil servants, etc. on Human Rights issues. In the year 2005-2006, twenty-five training programmes were conducted addressing problems of human rights and prevention of atrocities against the weaker sections, legal literacy for the women, education, mental health, combating trafficking in women and children, and many more.

India has been facing tough challenges in the task of protection of human rights of the citizens of the country, tackling issues amongst others, such as
terrorism, trafficking in women and children, disappearance of persons, displacement of persons due to disasters, conflicts, child labour, education, health, custodial deaths, prisons and disabled. The Commission has tackled these issues by not only dealing with the individual cases but also issuing policy guidelines for implementing agencies.

The Commission received only 496 complaints of violation of human rights in 1993-94, the first year of its establishment. Their number steadily increased over the years with the Commission receiving 82,233 complaints during the year 2006-2007. The Commission disposed off 93,421 complaints during 2006-2007 which included complaints carried forward from earlier years. In seventy cases, the Commission recommended immediate interim relief of rupees 32,507,500.

In matters relating to Human Rights, the Commission firmly believes in the value of collective efforts, co-ordination with other agencies and convergence of efforts and resources. Trafficking in women and children remained on top concern of the Commission in the year 2006-07. The Commission with other agencies like Ministry of Home Affairs, Ministry of Women and Child Development, National Commission for Women and the UNICEF, took a collective decision in September 2006 to work in unison and draw up an Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women. This collective effort would help in eradicating the problem of trafficking from its very roots.

The National Human Rights Commission drafted the guidelines for speedy disposal of child rape cases. It recommended that complaint relating to child rape can be made by the victim or eyewitness or anyone, including a representative of non-governmental organization and should be recorded promptly and accurately. It suggested the following:

a) The case should be taken by an officer not below the rank of SI and preferably lady police officer.

b) Recording should be verbatim.

c) Person recording to be in civil dress.
d) Recording should not be insisted in police station, it can be at the residence of the victim.

e) If feasible assistance of psychiatrist should be taken to make victim comfortable.

f) The Investigation Officer shall ensure that medical examination of victim of sexual assault should preferably done within 24 hours.

g) The Investigation Officer shall secure the clothes of the victim as well as of the accused and send them for forensic analysis to find out whether there are traces of semen and also matching the blood group and if possible DNA profiling.

h) Identity of the victim and the family shall be kept secret and they must be ensured protection.

i) Trial should be held in-camera and preferably presided over by a lady judge.

j) To avoid the proximity of the accused with the victim, recordings can be done through video conferencing.

k) Magistrate should commit case to session within 15 days after filing of the charge-sheet.

In 2006-07, the NHRC concentrated its efforts on other areas like; Countering terrorism and insurgency; Improvements in juvenile justice system by organizing the two-day National Conference on Juvenile Justice System in India at New Delhi on 3 and 4 February, 2007; Rights of the disabled; Rights of the Elderly by organizing “Health Awareness Week” in collaboration with Help Age India from 26 February to 2 March, 2007 at Ahmedabad.

As a part of its mandate, the Commission approved forty-eight training programmes on various facets of human rights in 2006-07 to be conducted in different parts of the country focusing on the North-eastern States, Backward States and Union Territories. Encouraging the efforts of non-governmental organizations working in the field of human rights and building up a strong relationship with them, the Commission entered into consultations and dialogues at regional levels and provided financial assistance to NGOs for organizing
seminars, workshops and training programmes. The Commission held the two-
day National Conference on the role of NGOs in support of NHRC in better
promotion and protection of human rights at the Karnataka State Judicial
Academy, Bangalore during 28-29 April, 2007.

Thus, on the whole, it can be well said that National Human Rights
Institutions are entrusted with greater responsibilities to meet today’s challenges
which can be effectively confronted by free and frank exchange of views, co-
ordination at all levels, convergence and technical co-operation.

In 2007, Uttar Pradesh was the worst violator of human rights in India.
Home Minister Shivraj Patil informed the Lok Sabha on 27 November, 2007 that
a total of 31,096 human rights violations were reported in India during 2006-2007
and Uttar Pradesh accounted for 21,899 or nearly 66% of all cases in India. On 1
December, 2007, then Chairperson of National Human Rights Commission,
Shivraj Patil stated that the majority of the 82,000 complaints received by NHRC
in 2007 were from Uttar Pradesh, followed by Bihar and Delhi.31

The year 2007 saw violence against Dalit women on a large scale. Dalit
women continued to be victims of killing and sexual violence. Asian Centre for
Human Rights(ACHR)sought information from NHRC through Right to
Information and recorded a number of crimes against dalits.

On 14 July, 2007, two Dalits girls were reportedly gang raped by four
persons identified as Zahir, Nizammudin, Ikrammudin and Fiammudin at Upeda
village under Babugarh police area in Ghaziabad district.

On 20 December, 2007, a fifty-five year old Dalit died while trying to
save his two daughters-in-law from being raped by upper caste men in Unnao
district. Similarly, on 27 December, 2007, a Dalit youth was killed while trying to
save his wife from being raped by two upper caste youths at Purwa in Unnao
district.

Often the police connive with the upper castes in committing the crimes.
In March 2007, fifteen year old Dalit girl of Nirpura village was gang raped and

31 India Human Rights Report 2008 available at
http://www.achrweb.org/reports/india/AR08/uttar_pradesh.html visited on 6-01-10 at
18:00 hrs.
killed by some persons who had reportedly came along with some police in a police jeep. The police including a Sub-Inspector allegedly watched the incident mutely.\footnote{http://www.achrweb.org/reports/india/AR08/uttar_pradesh.html visited on 6-01-10 at 18:00 hrs.}

Between January and July 2007, 11,453 cases of crimes against women were reported in Uttar Pradesh. In many of the reported cases the police were found responsible for committing rapes. On 4 February, 2007, Constable Jaswant Singh was arrested for allegedly raping a twenty-one year old woman in Gorakhpur district. On 29 January, 2007, the accused constable entered the house of the victim after hearing her cries for help but raped the girl finding her alone.

In March 2007, a woman was allegedly gang raped by seven police personnel including the Station House Officer of Sheshamau and Inspector after forcefully entering her house in Kanpur. The police refused to register her complaint. On 13 July, 2007 a local court in Kanpur ordered the police to register a case against the accused policemen.

Poor migrant women were also targeted for sexual violence. On the night of 21 February, 2007, 17 tribal women including minors were allegedly gang raped by about 25 youths at a brick kiln at Sirohideeh village in Ballia district.

6.4 Overview

From the above analysis it is quite evident that the Commission’s purview covers the entire range of civil and political, as well as economic, social and cultural rights. Rights of the women subjected to violence, sexual harassment and discrimination have been the focus of the Commission’s action on numerous occasions. All the National Human Rights Institutions have statutory limitations. The National Human Rights Commission of India is no exception. Among the statutory limitations, the following are the major issues of concern:

1. The composition of National Human Rights Commission does not reflect the plurality. Although Chairman of the National Commission for Scheduled Tribes, National Commission for Scheduled Castes,
National Commission for Women and National Commission for Minorities are included as statutory members, these members are busy with their own commissions that their representation cannot be made effectively.

2. Since the Commission has the power to only “recommend to the concerned government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons” but has no power to enforce the same. This renders it as a “paper tiger” for the States violating the rights.

3. It is an admitted fact that atrocities against women are largely committed by the members of the armed forces where there is political unrest in the country. Yet, under Section 19 of the Human Rights Protection Act, NHRC does not have jurisdiction over the armed forces of the government of India who are responsible for the gross violations in armed conflict situations.

4. The need to provide prior intimation to the authorities for visiting jail or any other institution under the control of the State government, where persons are detained or lodged for the purposes of treatment, reformation or protection to study the living conditions of the inmates defeats the purpose of prisons reforms.

5. Asian Centre for Human Rights has brought forward the issue of non-registration of complaints by NHRC. As NHRC does not register the complaints, Asian Centre for Human Rights has been delivering the complaints by hand on which NHRC puts the “receipt stamp”. Although there prevails lot of shortcomings in the working of the Commission, one cannot undermine the role it has played in protection and improvement of the rights and restoring the public faith in justice. The researcher humbly submits the following suggestions which can certainly improve the efficiency of the Commission:
**Firstly**, there should be an increase in the budgetary provisions allotted to the Commission and power to intervene in areas where armed forces are employed.

**Secondly**, the Commission should have its own independent investigation wing so as to lessen the dependency on State police machinery and thereby avoiding any political interference.

**Thirdly**, there is a need for the Commission to work in co-ordination with the State Human Rights Commissions and facilitate the process of their capacity building.

The fact that in spite of all said and done the NHRC is making an earnest effort to live up to its mandate. It is an institution which can be looked upon by all Indian citizens to seek justice. Undoubtedly, NHRC has played and continues to play an effective role in promotion and improvement of human rights.

### 6.5 National Commission for Women

An Indian woman presents a paradoxical picture. On one side, she is worshipped and given the status of the goddesses *Lakshmi* and *Durga*. She is considered the embodiment of virtue and chastity. The religious scriptures adhered to the view that only in a household where women are respected are really prosperous. She has always been considered and looked upon as the source of power.\(^{33}\) Women have always played a specific and crucial role whether visible or not in society and history. Traditionally, the Indian woman has been the foundation stone of the family and society in general. Many festivals are observed in the honour of feminine power. However, this idea of virtue and honour also attached great rider. The concept of honour and chastity worked in favour of patriarchal society where the women can be chained in the name of false values of family honour. In reality, so called virtues of modesty and honour

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\(^{33}\) *Argala-Stotrum* calls upon famine powers "O Parameshwari, (The supreme Goddess) who is praised by the husband of the daughter of *Himalayas* (Shri Shiva).O Parameshwari, who is worshipped with true feelings by the husband of *Indrani* (*Indra*) please give us the spiritual personality, the victory, the glory and destroy our enemies." Soft copy of the prayers translation in English is available on http://www.valaya.co.uk/IN-DEEP-NAVARATRI5.htm (visited on 4 June, 2010)
worked against the betterment of women. By bestowing the family honour on the females, they were expected to be obedient daughters, wives, and mothers. All her virtues tend to diminish all of sudden if she raises a feeble voice to assert her rights. Woman’s individuality was restricted to her so called tendency “to be lured by basic instincts.”

Almost all feminists theories agree in one way or other that sexuality and chastity and honour of a woman are related to her subjugation universally. In India the ancient values of culture, traditions and rituals are in a way inheriting unconsciously in modern times. The result is the victimization of women’s sexuality. Any women trying to challenge the old norms of the society is subject to humiliation which perpetrates against her sexuality. She is raped, mutilated, degraded, offended and treated like an object deserving such treatment owing to her alleged loose character. The result is the increasing trend of sexual offences against the women.

The Indian Constitution bestowed equality upon all irrespective of gender and empowers the government to make certain laws in favour of women in the name of ‘protective discrimination’ to eliminate the cultural and physical gender biases. Significant steps like Hindu Marriage Act, 1955 rendering polygamy illegal and giving widow’s right to remarry etc. were introduced for making the position of Indian women better. But these reforms remained more on paper as no real body was available to assess the ground realities and thereby protect women rights. The government has attempted to introduce various welfare schemes for women. Several commissions had been set up by the government to look into the matter of status of woman in the Indian society. Successive commissions had noted in their reports the unequal status of women obtaining in every sphere of life and had suggested the setting up of an agency to fulfill the surveillance functions as well as to facilitate redressal of the grievances of women. Several women activists and voluntary action groups had also been making persistent demands for setting up of a commission for women.

The United Nations Commission on the Status of Women in its twenty-fifth report had recommended to all member States to establish national commissions or similar bodies with a mandate to review estimates 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’s organizations, the government of India set up a committee in 1971 known as the Committee on the Status of Women. Keeping in view the desirability of a commission for women at national level, the National Commission for Women Bill, 1990 was introduced in the Lok Sabha on 22nd May, 1990.\(^{35}\)

The National Commission for Women (hereinafter cited as NCW) was set up as statutory body in January 1992 under the National Commission Act, 1990.\(^{36}\) It was constituted to look into the issues related to women and the researcher attempts to study the working, strengths and weaknesses of the women commission particularly in context of sexual offences in India. It is given the task to study and monitor all matters relating to the review of constitutional and legal safeguards provided for women, to review the existing legislations and suggest amendments, wherever necessary. It shall also recommend remedial, legal, social and political measures to facilitate the betterment of Indian women. It is also authorized to take *suo- motu* notice of the cases involving the deprivation of the rights of women in order to provide support legal or otherwise, to helpless women. The Commission shall monitor the proper implementation of all legislations made to protect the rights of women so as to enable them to achieve equality and equal participation in the development of the nation. The


\(^{36}\) The First Commission was constituted on 31st January 1992 with Mrs. Jayanti Patnaik as the Chairperson. The Second Commission was constituted on July 1995 with Dr. (Mrs.) Mohini Giri as the Chairperson. The Third Commission was constituted on January 1999 with Mrs. Vibha Parthasarathy as the Chairperson. The Fourth Commission was constituted on January 2002 and the government had nominated Dr. Poornima Advani as the Chairperson. The Fifth Commission has been constituted on February 2005 and the government has nominated Dr. Girija Vyas as the Chairperson.
fundamental working of the NCW is divided into six different cells which are created for the smooth functioning of the Commission:-

a) Legal Cell.
b) Complaint and Counselling Cell.
c) Public Relation Cell.
d) Non Indian Resident Cell.
e) Research and Study Cell.
f) Right to Information Cell.

a) Legal Cell

The NCW is authorized and empowered to investigate and examine all matters which relate to ensure protection of women under the Indian Constitution and other related laws. It reviews and studies the laws of land and after conducting inquiries into the related fields and presents regular and annual reports or suggestions to the Central Government. It guides the Centre to introduce amendments to the existing statutes. It also reviews, from time to time, the existing provisions of the Constitution and other laws affecting women and recommends amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislation.

It takes up the cases of violation of the provisions of the Constitution and of other laws relating to women with appropriate authorities. The primary mandate of the Commission is to review the constitutional and legal safeguards provided for women, recommend remedial legislative measures, and facilitate redressal of grievances and advice the Government on all policy matters affecting women. Some of the important bills and amendments ensured by the Commission are contained under: Indian Penal Code, 1860 relating to the laws to curb the incidence of sale of minor girls, Compulsory Registration of Marriage Act, 2000, The Protection of Women from Domestic Violence Act, 2005, The Protection against Sexual Harassment of Women Bill 2006. It proposed that the offence under The Commission of Sati (Prevention) Act, 1987 may be called “Sati Murder”. Taking up the cases of minor marriages, it proposed that the marriage of
the minors should be declared void, and the offence be made non-bailable and cognizable. NCW recommended that Section 1 of the Indecent Representation of Women (Prohibition) Act, 1986, should be amended to make definition of derogatory more wide and enhancing the punishment for the culprits. While making suggested amendments in the Immoral Traffic (Prevention) Act, 1956 (for elimination of child prostitution and devising a comprehensive package for rehabilitation), the NCW proposed that the age of majority should be increased to eighteen and government should formulate a group insurance scheme to rehabilitate the women and children in prostitution. The Commission suggested that the names of the women in red light areas should be included in the voter’s list.\(^\text{37}\) It further recommended that the woman’s consent should be made mandatory in every case under Medical Termination of Pregnancy Act, 1971.\(^\text{38}\)

The Commission further suggested that definition of rape needs to be redefined and made wider to deal with sexual offences. And these recommendations are proposed to be incorporated in Criminal Law (Amendment) Bill 2006. The Commission also recommended amendments in The Dowry Prohibition Act, 1961 and lays stress upon the need of setting up of more family courts in every district.

\(\text{b) Complaint and Counselling Cell}\)

The Complaints and Counseling Cell of the Commission processes the complaints received oral, written or \textit{suo-moto} under Section 10 of the NCW Act, 1990. The complaints received relate to various categories of crime against women such as domestic violence, harassment, dowry, torture, desertion, bigamy, rape and refusal to register FIR, cruelty by husband, deprivation of women’s rights, gender discrimination and sexual harassment at workplace. The major areas of the complaints relate to non-implementation of laws enacted to provide


protection to women and also to achieve the objective of equality and
development, non-compliance of policy decisions, guidelines or instructions
aimed at mitigating hardships and ensuring welfare and providing relief to women
and taking up issues arising out of such matters with appropriate authorities,
which include the law enforcing agencies and police departments. The
Commission initiated investigating committee to monitor the role of the police.
And it expedites the matter if need be. It provides counseling in instances of
family disputes to affect the reconciliation. But in cases of gross injustice, high
level inquiry committee (consisting of eminent experts and lawyers) is constituted
to examine the place of crime, record the testimonies of the witness and victim. It
collects all relevant information and sent final reports with recommendations that
help to provide immediate relief and justice to the victims of violence and
atrocities.

The cell also monitors the number and nature of complaints received to
study the trend of crimes against women. It helps to propose suggestions and
changes needed at different legal and administrative levels to reduce the gender
specific crimes. The complaints are also used as case studies for organizing
sensitization programmes for the police, judiciary, prosecutors, forensic scientists,
defense lawyers and other administrative functionaries.
Statistical Review of the Complaints handled by NCW

\[\text{As given in http://ncw.nic.in/frmComp_Stat_Overview.aspx, visited on 10 June, 2010 at 22:00 hrs.}\]
c) Public Relation Cell

The NCW is committed to the protection of the rights of women in the country and their welfare and development. To attain these goals and objectives, the Commission organizes countrywide campaigns, workshops and consultations. The Public Relation Cell throws light upon the activities under taken by the Commission to fulfills its mandate by participating, rendering advice on the planning process of socio-economic development of women and evaluate the progress and development of women under the policies framed by Union and the State Government.

d) Non Indian Resident Cell

The NCW has been nominated as the Coordinating agency at the National level for dealing with issues pertaining to NRI marriages vide Ministry of Overseas Indian Affairs order dated 28 April, 2008. Based on the recommendation of the Parliamentary Committee on Empowerment of Woman (14th Lok Sabha) on the subject “Plight of Indian Woman deserted by NRI husbands” which was discussed and deliberated upon the Inter Ministerial Committee meeting held on 7 July, 2008.

The desire of having and giving a better life has resulted in to another problem. It has been observed that the fascination towards foreign countries is so strong among certain sections of Indians that they prefer marrying their daughters to NRIs without going into much details. The NRI grooms takes advantage and many a time, the promises of heavenly life in foreign land results in a nightmare where brides are left deserted without any trace of foreign groom. In other cases, it is found that many such NRI grooms are already married and Indian wives are taken and preferred mainly for satisfying the lust of dowry and sexual gratification. To the horror of Indian wives, they are left helpless and used as mere domestic help in foreign countries. The situation becomes more adverse in absence of Indian jurisdiction in foreign countries and complexities of the

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40 Times of India dated 8 July. 2008.
International Laws. Thus, this cell is constituted by NCW to study such cases and propose suitable safeguards for Indian girls cheated by the NRI grooms.

e) Research and Study Cell

The Research & Studies Cell is responsible for issues related with socio economic conditions of women in the country and calls for special studies or investigations into specific problems or situations arising out of discrimination against women and undertakes promotional and educational research so as to suggest ways of ensuring due representation to women in all spheres. Social mobilization, maintenance and divorcee women, Panchayati Raj in action, women labour-under contract, gender bias in judicial decisions, family courts, gender-component in the various Commission’s reports for women, violence against women, women's access to health and education in slums etc. are some of the major factors and concern which helps in the formulation of Commission’s policies for recommendations. The Cell evaluates the progress of the development of women for which clear gender profile for different States is being prepared. This Cell also conducts seminars and workshops in collaboration with State governments for understanding the various problem areas in the field and to suggest action plan or remedial measures to resolve them.

i. Legal Awareness Programmes

The National Commission for Women regularly extends financial support to NGOs and educational institutions to conduct Legal Awareness Programmes to enable women and girls to know their legal rights and to understand the procedure and method of access to legal system.

ii. Parivarik Mahila Lok Adalats

The fact that hundreds of cases remaining pending with courts causing undue delay in justice delivery and sometimes no justice at all had been a cause of anguish for the Commission. The National Commission for Women has evolved an innovative concept of PMLA for redressal and speedy disposal of cases under
Legal Services Authority Act, 1987, which has its roots in the traditional *Nyaya Panchayats*.41

The essential features of PMLA are amicable mutual settlement and flexibility in its functioning. The NGOs in association with District Legal Aid and Advisory Board, activists, lawyers and others, organize *Parivarik Mahila Lok Adalats* with the Commission's financial assistance. The Commission doesn’t want the special fiber of the society to be strained. On the contrary, it helps to

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41 A Nyaya Panchayat is a system of dispute resolution at village level. In India, Nyaya Panchayats can be endowed with functions based on broad principles of natural justice and tend to remain procedurally as simple as possible. They can be given civil and minor criminal jurisdiction. But they should never follow Civil and Criminal Procedure Code in toto. The earliest nyaya panchayats were the village courts established under the Village Courts Act of 1888. The Royal Commission on Decentralisation of 1909, recommended of revival of nyaya panchayats having both civil and criminal jurisdiction in petty cases arising within the village. In May 1915, by a resolution passed by the Government of India, the matters regarding the establishment of nyaya panchayat was left to the State Government. In 1920, Bombay Village Panchayat Act was passed and that resulted in the conduct of a series of panchayat adalats. But Select Committee of the Legislative Council opposed the investing of judicial powers on panchayats. In 1933, a village bench consisting of elected members and outsiders were created as per provisions of the Bombay Village Panchayat Act in Bombay. Since independence, almost all States enacted Village Panchayat Acts as guided by the Directive Principles and have resulted in the creation of statutory nyaya panchayat legislation. The Village Panchayat and Nyaya Panchayat existed as dual entities in order to have separation of judiciary from the executive. Since a forum for the resolution of disputes with the participation of people in local justice administration is the goal envisaged by Article 39A of the Constitution of India, it is strongly felt by some jurists and social scientists that it is incumbent on the government to take immediate steps to activate nyaya panchayats, given that it might not be possible to render access justice in rural areas simpler and quicker. It is also argued that nyaya panchayats guided by local traditions, culture and behavioral pattern of the village community instill confidence in the people towards the administration of justice. The 114th Law Commission of India, in its report observed that “Article 39A of the Constitution of India directs the State to secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by economic or other disabilities. This is the constitutional imperative. Denial of justice on the grounds of economic and other disabilities is in nutshell referred to what has been known as problematic access to law. The Constitution now commands us to remove impediments to access to justice in a systematic manner. All agencies of the Government are now under a fundamental obligation to enhance access to justice. Article 40 which directs the State to take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government, has to be appreciated afresh in the light of the mandate of the new article 39A.”
promote the empowerment of women. It is also aware about the complexities of legal system and unavailability of proper legal channel to the victims in real situation. Thus, it conduct Parivarik Mahila Courts to resolve the disputes at local level to struck compromises and get the women their due from their families. In 2008-2009, the NCW has conducted 216 Legal Awareness Programmes and 9 Parivarik Lok Mahila Adalats.42

iii. Public Hearings

The scheme of Public Hearings, being implemented by the National Commission for Women, gives first-hand insight into the conditions of the women in their own surroundings. Under the Scheme, public hearings are organized on various aspects relating to women’s welfare and empowerment and the funds are provided to the NGOs working for women in various regions of the country to hold the hearings in easily accessible places where the complainants can come and speak for themselves. The Commission’s members record their depositions with a view to redress their grievances as well as gain insight into their problems. The attendance of senior police officers, the District Magistrate, Secretary (Welfare) and others are ensured to witness for themselves the sufferings of poor women, who have been subjected to cruelty and humiliation.

f) Right to Information Cell

This cell has been created after the enforcement of the Right to Information Act, 2005 in which the Commission’s working is subjected to be informed when demanded. This cell contains the information regarding the details and particular of Commission’s employees, about the powers of the Commission, their salaries, Service Rules, and List of RTI applicants and other required data as needed from time to time to study its working and functioning.

The present work aims to study the role and working of NCW played by it with particular reference to the sexual crimes perpetuated against the women folk.

42 As quoted in http://ncw.nic.in.
The work attempts to explore the role of NCW in addressing the menace of sexual offences and critical appraisal of its success and failures. Sexual offences like rape, molestation, indecent representation of women, eve teasing, prostitution and women trafficking not only represent general crimes against women but they also reflect the existing and prevailing social biases and prejudices which direct heavily against women gender and bring them to subservient position as compared to their male counter parts. Many of these sexual offences are results of deep rooted psychology where women are just passed on as mere objects of sexual gratification. As discussed, Indian society is no exception to it and deep rooted patriarchal structure had worked against the women. In many instances, rape is committed where females are at disadvantageous level of empowerment and lack proper access to redressal machinery. Administrative machinery is more often taken as a mirror to the social structure. And thus, the wronged woman is left without any help. She is made to feel guilty as if fault lies in her and not with the accused. Many a time, the accused occupies influential position and capable of using muscle and money power. Sometimes, he could muscle his way out of such allegations and it is the victim who was left to bear the brunt of the society and system. The NCW is specially created for the empowerment of weaker section. Its efficiency could only be assessed by analyzing how far it has been able to achieve justice in cases where the victim comes from the downtrodden section and lack empowerment. In such a case the victim not only fights a legal battle but also the social, economic and psychological battle.

6.6 Rape Offences and NCW

In the simplest of definition ‘rape’ is an assault by a person involving sexual intercourse with another person without that person's consent. However in India, it is defined as intentional and unlawful sexual intercourse with a woman without her consent. The essential elements to constitute this offence under Section 375 of the Indian Penal Code are ‘sexual intercourse with a woman’ and
‘the absence of consent.’\(^{43}\) Section 375 made it clear that intercourse would amount to rape only during the absence of the woman’s consent.

However, the recent judgement of Delhi High Court on 13 January, 2008 declared that having a sexual relationship with a woman on a false promise of marriage can also be termed as rape.\(^{44}\) The case was being heard in a Delhi Court and it involved a man having a sexual intercourse with his neighbour. The man was found guilty of rape and sentenced to seven years of rigorous imprisonment. “The so-called consent under a false promise to marriage is no consent,” Justice Mahavir Singhal declared.\(^{45}\)

Not going into much details what judiciary has done regarding initiating the dialogue on rape laws as this topic has already been studied under different chapter. The present part as stated earlier would concentrate on the working of the NCW. But before going into the functioning and contribution of the NCW, it would be advisable to have some glimpses on some of the most important judgments which necessitated the setting of the Commission for the protection and recognition of women rights.

In the Mathura\(^{46}\) rape case, wherein Mathura- a sixteen year old tribal girl was raped by two policemen in the compound of Desai Ganj Police station in Chandrapur district of Maharashtra. Her relatives, who had gone to register a complaint, were patiently waiting outside while the heinous act was being committed inside the police station. When her relatives and the assembled crowd threatened to burn down the police chownky, the two guilty policemen, Ganpat and Tukaram, reluctantly agreed to file a panchnama. The case came for hearing on 1 June, 1974 in the Sessions Court. The judgement however, was given in favour of the accused. Mathura was accused of being a liar. It was stated that since she was ‘habituated to sexual intercourse’ her consent was voluntary.

\(^{43}\) Section 375 in Indian Penal Code, 1860.


\(^{45}\) Ibid.

\(^{46}\) Tukaram v. State of Maharashtra AIR 1979 SC 185.
Therefore, under the circumstances only sexual intercourse could be proved and not the ‘absence of consent’ which necessitates the offence of rape. On appeal, the Nagpur Bench of the Bombay High Court set aside the judgment of the Sessions Court, and sentenced the accused namely Tukaram and Ganpat to one and five years of rigorous imprisonment respectively. The Court held that passive submission due to fear induced by serious threats could not be construed as consent or willing sexual intercourse. However, the Supreme Court again acquitted the accused policemen. The Supreme Court held that Mathura had raised no alarm and also that there were no visible marks of injury on her person which negated the commission of rape upon her.

In Mohd.Habib v. State\textsuperscript{47}, the Delhi High Court allowed a rapist to go scot-free merely because there were no marks of injury on his penis which the High Court presumed was an indication of no resistance. The most important facts such as the age of the victim (being seven years) and that she had suffered a ruptured hymen and the bite marks on her body were altogether ignored by the High Court. Even the testimony of eye- witnesses, who witnessed this ghastly act, could not sway the High Court’s judgment.

Another classic example of the judicial pronouncements in rape cases is the case of Bhanwari Devi, wherein a judge remarked that the victim could not have been raped since she was a dalit while the accused hailed from an upper caste, who would not stoop down to sexual relations with a dalit.\textsuperscript{48}

In another conscience stirring case, Sakina, a sixteen year old girl from Kerala, who was lured to Ernakulam on a false promise of finding her a good job, was sold and forced into prostitution. There, for eighteen long months, she was held captive and raped by clients. Finally, she was rescued by the police acting on a complaint filed by her neighbour. With the help of her parents and alawyer,

\textsuperscript{47} (1989) Cri.L.J. 137.

\textsuperscript{48} The Trial judge declared, “rape is usually committed by teenagers, and since the accused are middle aged and therefore respectable, they could not have committed rape. An upper caste man could not have defiled himself by raping a lower caste woman.” As quoted in Smita Narula, Broken people: caste violence against India's "untouchables", p. 176.
Sakina filed a suit in the High Court giving the names of the upper echelons of the bureaucracy and society. The suit was quashed by the High Court, while observing that ‘it is improbable to believe that a man who desired sex on payment would go to a reluctant woman; and that the version of the victim was not so sacrosanct as to be taken for granted.’

The Section 10(1) (f) of the Act, 1990 authorizes the Commission to take *suo moto* notice of matters which relate to the subjugation of women rights and non implementation of laws enacted to protect the women. The Commission in such a situation can take up the cases with the concerned authority. The Commission has on many occasions used its power and initiated action against the persons and authorities involved in the denial of women rights. On more than one occasion, the Commission constituted separate committees and sent its delegates to the different parts of the country where these ghastly incidents of injustices have been reported. The NCW has also intervened in some of the landmark cases to grant women the elusive justice.

6.7 Some Case Histories of NCW

*Bhateri gang Rape:*

Shrimati Bhanwari Devi was working as a *sathin* under Women Development Program in the village Bhateri of Rajasthan. Her efforts to stop child marriage infuriated some families of Gujjar community. In order to take their vengeance, they gang raped her on 22 September 1992 after tying her husband. Her efforts to get justice got futile because the powerful lobby of the Gujjar community dominated the government machinery. Her medical examination was done fifty two hours after the incident and the High Court came up with a strange notion and reason in denying her justice. This infuriated the intellect of the country. The NCW immediately formed a committee and visited the village. They held discussions with the police, medical experts and the

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50 Smita Narula (1999), *Broken People: Caste Violence against India's "Untouchables"*, p. 176.
workers of WDP. They also met the Chief Minister and urged him to take stringent action against the guilty persons. The Commission took up the issue with Human Resource Development. The persistent efforts of NCW and its deliberation with even Prime Minister of India forced the case to be handed over to CBI to grant Bhanwari Devi justice.

**Child Rape Case:**

In Madhya Pradesh, a medical practitioner, who was charged for raping a minor girl of eight years, was not arrested by the State police even after being found guilty by the court. The Commission took strong objection on the incident and sent committee to have dialogue with the State machinery. As a result of Commission’s pursuance the, practitioner was arrested in February 1993.

**Gang Rape of a Young Girl in Calcutta:**

The Commission took suo moto notice of gang rape of a pavement dweller Nehar Banu who was picked by the police and gang raped in the police barrack. However, she was denied justice and the Commission on learning about the incident sent specially constituted team to Calcutta which held talks with the higher authorities and by their efforts disciplinary action was initiated against the guilty constables. During its enquiries the committee came to know about many such other incidents of rape and brought thirteen more cases to the notice of the Commissioner of Police and I.G West Bengal.

**Marine Drive Rape Case:**

On 21st April 2005, a heinous act of rape was perpetrated by a police constable Sunil Atmaram More while on duty at a police chownki located adjacent to the Marine Lines Railway Station in South Mumbai. The abhorrent incident was committed by a policeman upon the victim of age of about seventeen years in


52 [http://ncw.nic.in/frmComp_Success_Stories.aspx](http://ncw.nic.in/frmComp_Success_Stories.aspx) visited on 10 April, 2010 at 12:00 hrs.
the police *chownki*. The incident compelled the Commission to take immediate
cognizance of the matter. On 4 May, 2005 the Commission sent its team to meet
the teenaged girl (victim). The team, comprising two members of the National Commission for Women and
two from an NGO met the victim in her parents' presence. Both the victim and her parents demanded a severe punishment for the culprit. The team later met Police Commissioner A. N. Roy and discussed the incident as well as security of women in the metropolis. The Commissioner apprised the team of the immediate inquiry and filing of the charge sheet against *More* and his dismissal from the service. The Committee not only demanded justice for the victim but also proposed certain measures to the Commissioner for the security and safety of women in metropolitan cities. The inquiry committee suggested that every police outposts should have at least one women police officer.

**Imrana Rape Case**

On 6 June, 2005 in *Charthawal* village in the *Muzaffarnagar* district Uttar Pradesh, *Imrana*, 28 years old at that time, and the mother of five children, was raped by her 69 year-old father in-law *Ali Mohammad*. Soon after she was raped, a local Muslim *panchayat* (council of elders) asked her to treat her husband *Nur Ilahi* as her son and declared their marriage null and void. *Imrana* defied the panchayat's ruling and continued living with her husband. The leading Islamic seminary *Darul Uloom Deoband* also issued a *fatwa* or opinion, which quotes from Quran 4:22: *wa la tankihoo ma nakaha aaba-o-kum*, “And marry not women whom your fathers married”, and not distinguishing between rape and adultery, said that as a result of her father-in-law's act, she should now be treated as the mother of her husband and she could no longer live with him even though *Imrana* had not married her father-in-law. She was still married to her husband when she was raped by her father-in-law therefore; the fatwa provided by the *panchayat’s* disregard the Islamic rulings against rape and the punishment for the rapists. Because of such *fatwa*, *Imrana* was in a way being prosecuted instead of her rapist father-in-law as she was being ordered to leave her husband and begin her
life with her rapist. The fatwa was taken as a justification of the ruling by the village leaders who disregarded the Islamic teachings for such cases and for the sake of shunning Imrana who is thought to have brought shame to the community by having sexual intercourse with her father-in-law.

This fatwa was based on the Abu Hanifa school of Islamic Jurisprudence (Hanafi fiqh), which rules that on having sex with a man she marries, a woman has the status of mother to all his children. The other three schools, Maliki, Shafi'i, and Hanbali, reject this proposition. The All India Muslim Personal Law Board also endorsed the fatwa, but opinions were divided between the Hanafi and Shafi'I, the two sunni fiqh's mostly represented in India. At one point, Uttar Pradesh Chief Minister Mulayam Singh Yadav also endorsed the view of the Darul Uloom that she can no longer live with her husband.

After Imrana's case was highlighted by the national media, the NCW directed authorities in Muzaffarnagar to take action. The body's chairperson Girija Vyas asked the Uttar Pradesh government to punish the guilty and sought a report on the incident. On the findings of the Commission, the authorities in Muzaffarnagar were directed to file a rape case against the accused and asked the State Welfare Minister to draft the proper action plan against the accused and rehabilitation of the victim and her family. The ministry responded favourably. The accused was punished and the victim found herself rehabilitated and well settled in university and was further provided adequate security.

Mrs. Sudha Bala (name changed) was allegedly gang-raped by BSF personnel in early 2002 at Gojhadanga at Indo-Bangladesh Border under the

53 See Annexure C for the copy of the fatwa.

54 “Fiqh is an expansion of the Shariat Islamic law—based directly on the Quran and Sunnah—that complements Shariah with evolving rulings/interpretations of Islamic jurists. Fiqh deals with the observance of rituals, morals and social legislation. There are four prominent Sunni schools of Fiqh (Madh'hab) and two schools for the Shi'a. A person trained in fiqh is known as a Faqih (plural Fuqaha).” As quoted in Cyril Glasse, The New Encyclopedia of Islam, p.141.

district of North 24 Parganas.\textsuperscript{56} Since then the victim along with her young daughter had been passing days in the Presidency Jail at Kolkata simply because of non-submission of charge-sheet by Police although a case under section 376 I.P.C. was duly registered against the BSF personnel. The matter was taken up by the Commission for the release of rape victim from the jail and for her rehabilitation. The joint efforts of the National Commission for Women and the West Bengal State Commission for Women resulted in the release of Mrs. Sudha Bala from jail. She was given into safe custody of her brother. The Commission was assisted by the Department of Social Welfare, Government of West Bengal, the SP of North 24 Parganas, lawyers at Basirhat Court and the Presidency Jail authorities.

The National Commission for Women not only acted swiftly as evident from some of the above-mentioned cases but has also tried hard to introduce new reforms in laws. The need for a new law on ‘sexual assault’ was felt as the present law does not define and reflect the various kinds of sexual assaults that women are subjected to in our country. The Bill as drafted by Advocate Kirti Singh of AIDWA with the support of NCW is based on the 172\textsuperscript{nd} report of the Law Commission to amend laws relating to sexual assault in Sections 375, 376, 354 and 509 of Indian Penal Code and the relevant Sections of the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 to deal effectively with the rape and other sexual offences. The major recommendation of this bill is the substitution of existing Section 375 of the Indian Penal Code by inserting the word ‘Sexual Assault’ which means:-

\begin{itemize}
  \item [a)] The introduction (to any extent) by a man of his penis, into the vagina (which term shall include the \textit{labia majora}), the anus or urethra or mouth of any woman or child-
  \item [b)] The introduction to any extent by a man of an object or a part of the body (other than the penis) into the vagina (which term shall include the \textit{labia majora}) or anus or urethra of a woman.
\end{itemize}

\textsuperscript{56} http://ncw.nic.in/frmComp_Success_Stories.aspx visited on 10 April 2010 at 13:15 hrs.
c) The introduction to any extent by a person of an object or a part of the body (other than the penis) into the vagina (which term shall include *labia majora*) or anus or urethra of a child.

d) Manipulating any part of the body of a child so as to cause penetration of the vagina (which term shall include *labia majora*) anus or the urethra of the offender by any part of the child’s body.

In circumstances falling under any of the six following descriptions: (1) against the complainant’s will.
(2) Without the complainant’s consent.
(3) When such consent has been obtained by putting her or any person in whom the complainant is interested, in fear of death or hurt.
(4) When the man knows that he is not the husband of such complainant and that the complainant’s consent is given because the complainant believes that the offender is another man to whom the complainant is or believes herself to be lawfully married.
(5) With the consent of the complainant, when at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by the offender personally or through another of any stupefying or unwholesome substance, the complainant is unable to understand the nature and consequences of that to which such complainant gives consent.
(6) With or without the complainant’s consent, when such complainant is under eighteen years of age.

Provided that consent shall be a valid defence if the complainant is between sixteen years and eighteen years of age and the accused person is not more than five years older.

It also proposed punishment with imprisonment of either description for a term which shall not be less than seven years but which may extend to ten years and shall also be liable to fine. Sub-Section (2) of the proposed Section 376 says that if the sexual assault is committed by a person in a position of trust or
authority towards the complainant or by a near relative of the complainant, being a police officer, public servant, staff of a jail, remand home or a hospital or being in a position of economic or social or political dominance or commits sexual assault on a person suffering from mental and physical disability or while committing sexual assault causes grievous bodily harm, maims, disfigures or endangers the life of a woman or minor, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend for life and shall also be liable to fine. A new section, namely Section 376 D is recommended which defines unlawful sexual contact:—

(1) Any man who with a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a woman, without the consent of such woman, shall be punished with simple imprisonment for a term which may extend to three years or fine or with both.

Provided that, if the man is related to the woman, he shall be punished with imprisonment of either description for a term which may extend to seven years and with fine.

(2) (a) Whoever, with a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a minor, or

(b) Whoever, with a sexual purpose, invites, counsels or incites a minor to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites or the body of the minor shall be punishable with imprisonment of either description which may extend to five years and shall also be liable to fine.

(3) Whoever, being in a position of trust or authority towards a minor or being a person with whom the minor is in a relationship of dependency,

(a) Touches, directly or indirectly, with a sexual purpose, with a part of the body or with an object, any part of the body of such minor, or

(b) With a sexual purpose, invites, counsels or incites a minor to touch, directly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites or the body of the minor
shall be punished with imprisonment of either description which may extend to seven years and shall also be liable to fine.

Further an amendment of Section 509 IPC is recommended as follows:

“Whoever, with a sexual purpose or with the intention to insult any woman, utters any word, makes any sound or gesture, or exhibit any object or part of the body intending that such word or sound shall be heard or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with imprisonment of either description for term which may extend to three years and shall also be liable to fine.”

New Sections 509 A and 509 B and 509 C to be added in the IPC in the following terms:

**509 A** (i) Whoever, with a sexual purpose utters any word, makes any sound or gesture or exhibit any object or a part of the body intending that such word or sound shall be heard or that such gesture or object shall be seen by a minor, or (ii) Whoever, with a sexual purpose utters any word, makes any sound or gesture or exhibit any object or a part of the body intending that such word or sound shall be heard or that such gesture or object shall be seen by a minor, or (ii) Whoever, makes a minor witness any sexual activity shall be punished with imprisonment of either description for a term which may extend to five years but shall not be less than three years.

**Explanation 1.** “Minor” for the purpose of this section will be any person under the age of sixteen years.

**509 B.** “Any person who stalks a woman with the intention to cause, (a) serious harm or injury to that woman or a third person, or (b) apprehension or fear of serious harm or injury to woman or to a third person shall be punished with imprisonment of either description which may extend to seven years or with fine or with both.”

**Explanation 1:** For the purpose of this section a person shall be taken to stalk a woman if, on at least three occasions, that person

(a) follows or approaches the woman; or
(b) loiters near, watches, approaches or enters a place where the woman resides, works or visits; or
(c) keeps the woman under surveillance; or
(d) interferes with the property in possession of the woman; or
(e) gives or sends offensive material to the woman or leaves offensive material where it is likely to be found by, given to or brought to the attention of, the woman; or
(f) acts covertly in a manner that could reasonably be expected to arouse apprehension or fear in the woman; or
(g) engages in conduct amounting to intimidation, or an offence under Section 509

Explanation 2. ‘Harm’ means physical as well as mental harm.

Section 509 C- Other forms of Sexual Harassment, “Whoever, by means of a telecommunication device or by other electronic form including the internet knowingly makes, creates, or solicits, or initiates the transmission of any comment, request, suggestion, proposal, image or other communication which is obscene, lewd, lascivious, filthy, or indecent, with intent to annoy, abuse, threaten, or harass or stalk another person or persons shall be punished with imprisonment of either description which may extend to seven years or with fine or both.”

6.8 Sexual Harassment and NCW

Indian social structure is somewhat complex in nature in which the concept of honour bestowed on women is so fanatic and irrational that many a time it has given birth to perversion. Any women who is outgoing, liberal and independent is looked down by the patriarchal society. Any women venturing out of her home is considered to be easily available and had to undergo sexual remarks or outrage. The evil of sexual harassment is rampant at workplaces. The women are forced not only to compete with their colleagues but also have to overcome the male psychology which targets their modesty. She is looked more upon as a sexual object which could be used for sexual pleasures.
It is strange that for a long time, the sexual harassment at work place was never taken seriously. However, with the rising economic scenario in India and more and more women coming into professional sectors, the need for a comprehensive legislation over sexual harassment was much called for. The Supreme Court had to interfere in the absence of a proper law. The Hon’ble Supreme Court laid down the guidelines to ensure the better working conditions for the women employees. The Apex Court opined that protection of women against sexual harassment is an extension of constitutional guarantee enshrined in Articles 14 and 21 which ensures equal protection and dignified life to all citizens. After the directions of the Supreme Court in 1997, the NCW took up the issue and organised numerous seminars and conventions to formulate the Bill on these guidelines and after much pursuance the Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Bill 2006 was drafted. The key points of the Bill are:

1. It extends to whole of India (except Jammu and Kashmir) and it covers all the institutions and organizations where women are employed on any permanent, temporary or contractual positions.

2. It attempts to define ‘hostile environment’ as to where women are subjected to any “unwelcome verbal, non-verbal or physical behaviour focusing on sexuality and is severe and pervasive enough to interfere with the victim’s performance at workplace or be intimidating or offensive to a reasonable person.” It further adds “it is clarified that it is the reasonable perception of the woman which could be relevant in determining whether any conduct was sexually coloured and, if so, whether such conduct was unwelcome or not and that her objection would be disadvantageous to her in connection with her employment, including recruitment, or when it creates a hostile working place.

3. It further directs all the organizations, companies to constitute women cell to redress their complaints and initiate enquiry against the accused.

The NCW has further proposed Revised Bill on Protection of Women from Sexual Harassment at Work Place Bill, 2008 which proposes a new

57 See Annexure D for details.
definition of “aggrieved woman” to include besides woman employee, also any woman associated with workplace including students, research scholars in any educational institution, university etc. It is further suggested that the new bill must be applicable to all workplaces in Government as well private sector, organized and unorganized. It also put forward provisions relating to the:

2. Appointment of District officer.
3. Constitution of Local Complaint Committee by the District officer.
4. Separate provisions for organized and unorganized sectors.
5. Penalty for publication or making known contents of complaint and enquiry proceedings.

The drafting of the Bill is a great achievement on the behalf of the Commission. It initiated dialogue and made available the protection to women at work place against sexual harassment due to their disadvantageous position.

The NCW also managed to address the issue of general sexual harassment of women at public places and even at homes.

6.9 NCW on Indecent Representation of Women

The indecent representation of the women is yet another impediment which has attempted to put women on back front. To curb this menace, The Indecent Representation of Women (Prohibition) Act, 1986 was implemented which aimed at prohibiting the indecent representation of women through advertisements, books and pamphlets. It defines indecent representation as “the depiction in any manner of the figure of a woman, her form or body or any part of it in such a way as to have the effect of being indecent or derogatory to or denigrating women or is likely to deprave, corrupt or injure public morality and morals.”

The NCW has sought an amendment in the Indecent Representation of Women (Prohibition) and Children Act 1986, incorporating more stringent punishment for its violators. The Commission stresses upon the inclusion of

58 The Indecent Representation of Women (Prohibition) Act, 1986.
electronic media in the definition and demands a fresh interpretation of the term “advertisement”, among other things, to widen the purview of the Act. The Chairperson of National Commission for Women, Girija Vyas has stressed, “The existing Act has many drawbacks and is not comprehensive,”59 “She further adds, “The amendment proposed by us includes extension of the applicability of the Act to the visual media and the computer, including internet and satellite related communication. A separate chapter on provisions relating to prohibition and penalties has also been proposed.” The Commission has worked tirelessly to form the opinion in this regard and after holding many deliberations and conferences and seeking opinion of the experts, it had even forwarded suggestions to amend the earlier Bill to the concerned ministry. The key features of this new Bill are:

1. Inclusion of sms, internet and advertisements.
2. It also recommends enhanced penalty to the defaulters.
3. The proposed amendment would make the punishment for a term not less than two months, which may extend to two years. And in the case of second or subsequent conviction, the punishment should be six months which could be extended to five years along with a fine of not less than Rs.10, 000 which could be extended to Rs.5 lakhs.

The Chairperson of the Commission stressed that “The existing Act does not have enough powers to deal with the electronic media, internet and mobile phones. It also lacked proper implementation and there were hardly any convictions, hence there is a need for a new law.”60 The Commission further proposed the Central Government to set up an authority to govern and regulate the manner in which the women are presented in any document, publication, broadcast or telecast. The Authority shall act like the Censor Board of the movies headed by member secretary of NCW and having representatives from Advertising Standards Council of India, Press Council of India, Ministry of Information and Broadcasting and a member experienced in working on women’s

59 The Hindu , 7 September , 2009.
60 Ibid.
issues. Widening the scope of the Act, the definition of “advertisement” is proposed to include any notice, circular, label, wrapper or other document, laser, light, sound, electronic or any other media.

The NCW is also concerned to protect the image of women in serials like ‘Balika Vadu’ and ‘Na Aana Is Desh Meri Lado’ portraying woman in a negative role. It had also forwarded certain suggestions to a TV channel telecasting an earlier reality show “Rahul ka Swayamvar” to avoid cheap and indecent representation of participants. It made an appeal to the Hon’ble Delhi High Court to put an injunction on the launching of +21 Adult Channel by the Ministry of Information & Broadcasting, Govt. of India.  


In the past years, another facet of violence against women in the form of acid attacks has assumed large proportions. Everyday we come acrosses the incidents of throwing acid upon women. Many a time, the frustrated lovers or men threw acid on women to deform them or rob them of their beauty. Acid attacks permanently disfigure, debilitate and, eventually, destroy the victim, both physically and psychologically. They continue to battle medical complications as acid seeps into the body and harms internal organs over an extended period of time. The victims needs both short term and long term medical facilities in the form of specialized plastic surgery. But it is almost impossible for the victim’s family to pay for the extensive surgeries needed to reconstruct the damaged face of the victim and thus many of the victims remain like a dead corpse.

The NCW has rook initiative in this regard and came with fresh proposed law focus on achieving the following major objectives:

1. Classification of acid attack as a separate and most heinous form of offence.
2. To assist the victim of acid attack by way of providing for her medical treatment services and also provide social and psychological support.

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61 http://ncw.nic.in.
3. To arrange legal support to the survivors.

4. To arrange rehabilitation mechanisms or schemes taking into account the specific needs of the victim.

5. Regulation and control of acid and other corrosive substances.

The data suggests that this crime is gender specific in India and is only committed against women. Hence it proposes to establish National Acid Attack Victim’s Assistance Board which shall have representatives of government and Non-Governmental Organisations. It is suggested that the out of five members of the Board at least three should be women. It is further proposed that corpus of fund be put under this Board to provide medical and legal aid to the victims. Monitoring Committees are to be established at Union territories and State level. These committees will not only regulate the sale of acids but also launch programs for the awareness and sensitization of masses. The Board shall be empowered to sanction relief of Rs.5,00,000 if it is satisfied that acid attack has been carried out against the victim and further assistance of Rs.30,00,000 can be extended if the extent of injury is grave.

The Commission for Woman has also proposed to introduce an amendment in Indian Penal Code to deal with such cases. An insertion of Section 326-A is proposed which shall say that “whosoever, does any act of throwing acid or using acid in any form on the other person with the intention of or knowledge that he is likely to cause such person permanent or partial damage or deformity or disfiguration or disability to any part of the body of such person shall be punished with imprisonment of either description for a term which shall not be less than 10 years but may extend to life and shall also be liable to fine which shall be minimum of Rs. 2,00,000 and may be extended to Rs. 5,00,000.” The offence is further proposed to be made cognizable and non compoundable. The proposal further stress that use of acid with intention or knowledge is a punishable offence irrespective of the nature and extent of injury, therefore there is no need for categorization of various forms of disability. The Commission also proposed amendment in the Indian Evidence Act, 1872 Section 114-B which states:
“When the question is whether a person has committed the act of throwing acid on the woman the court shall presume, having regard to the circumstances of the case and the statement of the victim, that such person had thrown acid on the woman.”

A further proposal of inserting new Section 357 in the Code of Criminal Procedure, 1973 regarding defraying of expenses is made. According to this proposed section 357 A of Code:

“Notwithstanding anything contained in Section 357 of Code of Criminal Procedure or in any other law for the time being in force, the court may when passing judgement for the offence under section 326 A and B of IPC:

a) In the payment to any person of any compensation for any loss or injury caused by the offence and may order the recovery of the amount from the assets of the accused.

b) Defraying of expenses incurred by the concerned authorities for rendering assistance to the victims of acid attacks.

c) If the fine is imposed in a case which is subject to an appeal, no such payment shall be made before the period allowed for presenting the appeal has expired, or where an appeal has been preferred, until the decision of the appeal.

d) Any order under this section may also be made by the Appellate Court or by the High Court or Court of Sessions when exercising its powers of revision.

6.11 Immoral Trafficking and Prostitution

Immoral Trafficking is yet another impediment faced by woman in India. The poverty and neglect of a girl child many a times has resulted in her being sold and pushed into prostitution to feed for herself. The Government in order to curb this menace passed Immoral Traffic (Prevention) Act, 1956 which makes trafficking and sexual exploitation of persons for commercial purpose a punishable offence. The Act was passed in line with the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the
Prostitution of Others, signed by India on 9 May, 1950. Although the Act was amended twice (in the year 1978 and 1986), it did not prove to be an effective deterrence to trafficking or sexual exploitation for commercial purposes. On the other hand, it victimized those women who were already suffering the sexual exploitation and made their position more vulnerable at the hands of prosecuting officers.

The Legal Cell of NCW has suggested for an amendment in the principal Act to make it more effective and relevant for the protection of women. In the earlier Act, “Prostitution” stood for the sexual exploitation or abuse of persons for commercial purposes, whereas in the amended Bill, the definition of “Prostitution” is made more wider and it means the sexual exploitation of persons for commercial purposes or for consideration in money or any other kind. The Immoral Traffic (Prevention) Amendment Bill, 2006 states that in section 2 of the Principal Act, the new words “or for consideration in money or any other kind shall be inserted” after the words “for commercial purpose”. In the clause (aa) of the same Section the words “eighteen years “ were substituted in place of “sixteen years”

The Bill proposes to be tough on the pimps and agents who lived on prostitution and in the section 3 of the Principal Act, a sub section (1) is inserted which declared “Any person who keeps or manages , or act or assist in the keeping or management of a brothel shall be punishable on first conviction with rigorous imprisonment for a term not less than two years and also with fine which may extend to ten thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which shall not be less than three years and which may extend to seven years and shall also be liable to fine which may extend to two lakhs rupees.”

It is further defined Section 5 (a) of the amended Bill, that anyone who recruits or transfers a person for the purpose of prostitution by means such as threat, coercion or abuse of power commits the offence of “trafficking in persons”. The Bill further proposes to put the onus of offence on the customers who visited such brothels for sexual gratification. Section 5(c) of the proposed
amended Bill, 2006, provides punishment for client visiting brothel for sexual exploitation of traffic victim. It provides imprisonment which may extend to three months and fine extending to Rs. 20,000, or both. On subsequent conviction, he can be imprisoned for a maximum period of six months and fined up to Rs 50,000.

It further proposes to delete the provisions of prosecuting the prostitutes for seducing and soliciting and their expulsion from the area by the magistrate. It also proposes to enhance the punishment of the offenders upto fourteen years if they are found to be trafficking in children, which means anyone below eighteen years in age. The proposed Bill also intends to invoke the Central and State governments to establish authorities to and nominate members to deal effectively with the problem of trafficking. Thus, the Immoral Traffic (Prevention) Amendment Bill, 2006 as envisaged by the NCW after painstaking efforts aims to punish traffickers in place of the prostitutes (who were earlier the victim of double exploitation by the agents and the State) and provide for stringent punishment to offenders who promote prostitution.

This Bill has five main features.
1. It deletes the provisions related to prosecution of prostitutes soliciting for customers.
2. It provides for the prosecution of clients.
3. It defines the term "trafficking in persons" and provides for penalties.
4. It increases penalties for some offences.
5. It constitutes authorities at the Central and State level to combat trafficking.

6.12 Conclusion

From the above analysis, it is quite evident that bodies like NCW has worked effortlessly towards realizing the goal of gender equality. Through its important interventions, it has fully played its role. It has seen that various suggestions and recommendations forwarded by the Commission shows its concern over the deteriorated condition of Indian woman. Every coin has two sides. The cases and
instances discussed above reflects the success of the Commission and deserves praise.

However, the picture is not always as rosy as it looks. It is unfortunate to note that the NCW managed to deliver justice to the victims mostly in the cases where the accused did not enjoy protection of the powerful lobbies. The Commission more than often found itself helpless when in confrontation with bureaucratic and political influence. Syeda Hameed, in her book *They Hang Twelve Women in my Portrait Gallery*, studies the sad state of the working of the Commission during her tenure as member of the NCW. She recollects how the NCW fails to ensure justice to *Lalita Oraon* who was molested and sexually abused be her employer, an Indian Ambassador in France. In the case of ‘The Alleged Exploitation and Abuse of *Lalita Oraon* in Paris, France’, she finds herself helpless and the NCW toothless. She describes that despite of her submitting various representations to all relevant government departments which were duly authorized to take action; the report was never taken into account. *Syeda* remarks "I was anxious to begin taking action, but the matter never saw the light of day. No matter how I tried, I could not get the report released. It disappeared mysteriously from the scene; fell between the cracks of procedure and protocol. *Lalita Oraon* vanished into thin air. Years passed without a word about *Lalita*."\(^62\)

In another report of the NCW, ‘Come In, but One by One: Sexual Harassment at *Delhi Public School*’ - connected with the alleged harassment of women by the Principal *Varma* of *DPS, Noida*, *Syeda* experienced the limitations of the Commission. The report was released at a crowded press conference in *New Delhi*. It got media attention, but soon vanished from the public sphere. She describes how the school protected its Principal; despite concrete evidences of sexual harassment of at least three women teachers (whose services he had terminated as soon as they refused to comply with his wishes). On the contrary, the accused *Varma* served his full term and, after superannuating, was given an extension for another three years. During the investigation, when the members of

the NCW offered to take up the case of a *peon* who was also assaulted by the Principal, she satirically replied:-

“My case? Who all will fight with? Every dog in this place wants a piece of flesh. In any case we can fight our own battle our own way. We can kick and bit and scratch. Your *court-kacheri* will never get us scarp of justice. They are there to cover up for Sampat so that he can continue evergreen in his flesh game and never get the shit on his face. Go home, Bibi”

The apprehension of the *peon Sheela* did come true when *Syeda* remorsefully notes, "My report probably still lies (in NCW), carefully preserved in files which no one ever opens, or it may have been shredded with all other five-year-old documents."

There were also some other important cases like that of *Lili Lakra, Maimun and Sajoni* where it was the accused who had the last laugh. And it is just the reflection of what would have really happened when the accused happened to be someone influential and powerful. As long as the NCW can not save women from these real sharks, the success remain more illusive and abstract.

The researcher in her own humblest of opinion has attempted to bring out some shortcomings in the working of the National Commission for Women and submits certain suggestions to tackle and achieve real and substantial success in such situations, incidents and occurrences.

**Firstly**, The NCW has no concrete legislative powers. All of its observations, findings and Bills are merely recommendatory in nature. As a result, few of its Bills and suggestions manage to become law of the Land. For example, the NCW’s recommendations on new definition of ‘Sexual Offences’ and ‘Acid Attacks’ on Women are rusting merely on papers.

**Secondly**, The Commission does not have the power to appoint its own members. It is in the normal course that the members are nominated by the Union

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64 Ibid., p. 80.
Government and in India’s volatile political scenario and political compulsion of the Central government to keep its allies and bases of support in good humour that has caused havoc on the efficient working of the NCW because the members remain more interested in saving their chairs rather concentrating on the development of woman. It is another open secret that no member dare to oppose the political whips and will when their offices are the gifts of their political bosses.

**Thirdly**, The Commission is dependent on grants from the Union Government for its financial functioning and this could compromise the independence of the Commission because these grants out of non planned budgets could be reduced drastically if the NCW happens to displease the powerful sections of the ruling parties.

Finally, The Commission’s jurisdiction does not extend to *Jammu and Kashmir* and considering the present political unrest and human rights violations in the region, the Commission’s presence there is all the more a necessity.

**Suggestions**

To overcome the aforementioned shortcomings and to improve the relevance of NCW, the following suggestions are deemed necessary to expect and feel appreciative of the contribution of NCW.

**Firstly**, the researcher suggests that the chairperson of NCW should be accorded the status of the Union Cabinet Minister and its Members that of Minister of State. This will make the Commission more powerful and enforcing of its recommendations will have a greater degree of force and compliances.

**Secondly**, there should be some well laid criteria for selection of its members and its working in a transparent manner thereby excluding political interference. It will add to its members and loyalty to constitution of the Commission. To reduce the delays, the number of its members should be increased. It is further suggested that the Chairperson and the members of the NCW should not be allowed to roll the two offices of profit as in the case of the present Chairperson *Girija Vyas* who
is also nominated as a member to Rajya Sabha. It is submitted that such step would free the working of the NCW against political interference.

Thirdly, separate corpus of fund should be provided for the NCW to reduced its dependence on the governments. It is also suggested that State government should be required to finance its State Commissions of the Women. The fixed sufficient funds shall enable the NCW to contribute more to the welfare of the Indian women by initiating more awareness programmes and enlarging its field of activity. Each Commission should have power to decide its financial requirements from time to time.

Finally, there are numerous incidents of women atrocities in Jammu and Kashmir attributed to both militants and security forces. The incidents like Sepore demands setting up of State Commission for Women in the State. It is a historical fact that it is the women who suffer the most inhuman treatment during the times of insurgency.

However, despite some shortcomings there is no denying the fact that NCW is contributing to the welfare of the women in Indian society. It has helped in starting the feminist critique in India and is bringing some important changes in the mindset of three organs of the State namely Legislature, Executive and Judiciary. Given more strength and financial support, it can make more significant contribution to the welfare of women in India. The path of woman struggle is tough yet the NCW is treading the path with determination and conviction. Towards the end the following lines of Robert Browning are adept to the role of the National Commission for Women:

“The woods are lovely dark and deep
But I have promises to keep
Miles to go before I sleep
Miles to go before I sleep.”
Chapter Seven

CONCLUSION AND SUGGESTIONS

“I ask no favour for my sex; All I ask our brethren
Is that they take their feet off our necks”- Sarah Grimke (1837)

The last century experienced great amount of destruction and civil strifes. Advancement of science has not only made human life more comfortable but also created mechanisms for its destruction and exploitation as were never done in earlier centuries. The destruction and large scale genocides forced the wise to create institutions for the betterment and safety of humans. Fortunately, it is also recognised that the prerequisite criteria of any civil society to exist and develop is the empowerment of its formerly exploited and weaker section. Women were not only deprived at social, political and economic front but they were also prone to more exploitation during wars and civil strifes because they are viewed more as an “authentic identity” of any community. At international level the Allied nations got together to create a new world system in which more co-operation among different nation was sought. United Nations was created in 1945 and with the help of its various organs like UNESCO UNIFEM ECOSOC; new institutions and Commissioners were created for the protection of women all over the world. Various International Conferences and Conventions were held and Declarations and Treaties signed among the nations for empowering the weaker sections.

It is seen in the present study that internationally, the women empowerment drew considerable amount of help from two sources. Firstly, by the struggle against colonialism and in national liberations wars, men and women joined hands on terms of equality. Secondly, as a result of Second World War, the movement for improved status of women gained momentum.

Initially, the UN attempted to improve the legal systems in various countries which worked as a barrier towards the growth of women. Women were found to be at receiving end when it came in civil and social matters. They were
denied equal opportunity and were not sharing equal status with men in politico-legal sphere in various countries. Though Indian Constitution does not recognize any discrimination in respect of gender yet civil and marriage laws were not in favour of women. Even the inheritance laws were framed against the women as they were barred from inheriting ancestral property. In education, they were denied the same opportunities as men and boys. Entering the workforce rapidly, they found impediments in both employment and pay structures. With the formation of the Commission on Human Rights and the Commission on the Status of Women (hereinafter cited as CSW) in 1946, and the adoption of the Universal Declaration of Human Rights in 1948, UN began its work on behalf of women with a drive to establish the legal basis for the promotion of their equal rights. The Commission on Status of Women recognized that the process of codifying the legal rights of women had to begin with factual information about the extent to which discrimination against women existed in law and practice. The United Nations undertook a massive research to assess the status of women worldwide. Subsequently, United Nations fact finding efforts produced a detailed country-wise report of the political and legal status of women, enumerating the gains and obstacles and these became the basis for global standards that were incorporated International law through a series of treaties and conventions. In drafting these human rights instruments close working relationships began to develop between the CSW and other United Nations bodies such as The International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). At the national level, the Governments were asked to deal with women’s political and legal rights, access to education and training, employment and violence.

India also responded to these recommendations and introduced reforms and amendments in Marriage and Civil laws. These legislations aimed at protecting women against social discrimination, violence and atrocities and also to prevent social evils like child marriage, dowry, rape, practice of Sati, etc. Hindu Marriage Act, 1955 was amended putting an end to the practice of polygamy and thus giving legitimacy to the relation of the first wife and thereby,
protecting her allied rights. Under the Hindu Marriage Act, girl is given the right to repudiate a child marriage before attaining maturity whether the marriage has been consummated or not. Property and inheritance laws were also amended and now much wider rights are given to women and widows. Still, a lot was to be done in response to criminal offences against women. In cases of Sexual harassment, rape and other forms of physical assault, women were looked upon as culprits and their character became one of the strongest defences for the culprit to escape rigours of law.

At International level, the issues related to women received more attention after 1965. In 1967, Declaration on the Elimination of Discrimination against Woman was adopted and it acted as a catalyst and encompassed codification of rights along with economic and social realities of women. It was recognized that if women were to achieve real empowerment then their participation in social and political institutions at all levels needed to be addressed. Political will has to be developed among males and to prepare them to give sufficient space to their counterpart who were many a times seen as a threat by men. United Nations increasingly structured its development assistance programmes and compounded it with women’s participation to meet this challenge. With the proclamation of 1975 as the International Women’s Year, the campaign for women’s rights gathered momentum. A major conference was held in Mexico in 1975 on the status of women. It was based on the three principals of ‘equality, development and peace.’

Declaration of 1975 as the International Women’s Year also coincided with the United Nations Decade for Women. Great impetus was laid on women related studies and issue. The results convinced the international organization that development of women is closely related to the health of civil society in developing countries. Soon the status of women in any given State was also accepted as to judge the civil institutions in that area. Thus, the United Nations succeeded to project the fact that women’s equality and rights are not mere isolated issues but were important factors in the well being of societies everywhere. The underestimation of woman’s capacities was identified as both a
cause and an effect of underdevelopment, closely linked to global problems such as poverty, overpopulation, illiteracy, malnutrition and poor health conditions. Following the suit, the Convention on Elimination of all forms of Discrimination against Women, 1979 or known as “Bill Of Rights” also generated a series of action programmes that recognized the need to promote equality among men and women.

India being signatory to these conventions was obliged to follow the suit and new chapter in women empowerment ushered in India.¹ The same principle is also highlighted in Vishaka case. The Apex Court observed that

“International conventions and norms, consistent with the spirit of the fundamental rights, can be read into those rights for interpreting them in the larger context to promote the objects of the Constitution. In the absence of domestic law on the particular aspect, these conventions and norms as ratified by India can be relied on by the Supreme Court to formulate guidelines for enforcement of fundamental rights.”²

On the question of property rights of women under Hindu Succession Act, 1956 the Apex Court observed that by virtue of the Protection of Human Rights Act, 1993 the principles embodied in CEDAW and the concomitant right to development became integral parts of the Indian Constitution. The State is enjoined by virtue of Article 2(f) and other articles of CEDAW to take all appropriate measures including legislation to modify or abolish all gender-based discrimination in the existing laws, regulations, customs and practices which constitute discrimination against women therefore interpreted the equality provisions under the Constitution in accordance with CEDAW and other

¹ Article 253 of the Indian Constitution empowers the Parliament with the power of making laws for the whole or part of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

international instruments, overriding the reservation made by the Indian government on account of customary and personal laws.\textsuperscript{3}

International bodies like IMF and various other UN agencies also fused women empowerment with various international grants which forced beneficiary nations to act speedily towards women empowerment. Institutions like National Commission for Women and National Human Rights Commission were created. New courses in women studies were introduced at college and university levels. Special schemes pertaining to scholarships were introduced to promote education among girls. Government initiated certain safeguards to protect the girl child and to reduce the maternal fatality rate.

Indian Government introduced number of development programmes for empowering rural women and ensuring their economic independence. The \textit{Integrated Rural Development Programme} (IRDP) and the \textit{Jawahar Rojgar Yojana} (JRY) were introduced and a stipulated quota was ensured for women beneficiaries. Taking leaf from the numerous rights being recognized by CEDWA, the Government also introduced micro-credit programmes for self-employment which are funded heavily by International Agencies. Schemes such as the Development of Women and Children for Rural Areas (DWCRA) and the Development of Women and Children in Urban Areas (DWCUA) are meant to create employment. To assess and safeguard the women rights in light of international guidelines, the Indian Government made commitment to review ‘protective’ legislations that govern women’s employment. Legislations such as the Minimum Wages Act,1956 guaranteed minimum wages to the workers, Equal Remuneration Act, 1976 incorporated the principle of ‘equal pay for equal work’ and the Maternity Benefit Act,1961 were introduced in order to provide social security and to give effect to ILO convention on maternity benefit.

Absence of women in political sphere and other forms of decision making process has hampered their prospects and progress. CEDAW declaration directs the States to promote equality among their citizens in political spheres like voting

\textsuperscript{3} \textit{Masilamani Mudaliar} (1996) 8 SCC 525.
rights and election process. Indian Constitution bestows equality in political rights to all irrespective of gender, caste and creed yet; the number of women representative in politics is dismissal. In Lok Sabha and Rajya Sabha elections women numbers are less than 6%. Taking guidance from international convention India set on framing laws to ensure women participation at political level. 73rd and 74th Amendments to the Constitution ensures reservation of women in Panchayats and municipal bodies (local governments). Panchayati Raj Acts have been passed by several State governments giving effect to the constitutional provisions. UPA government is also lobbying hard to introduce Women Bill in Parliament in the monsoon session of 2010 providing 33% representation to women in Parliament.

Despite all these developments, the truth remains that widespread violations of women’s rights continue to persist. The forces of globalization and extremism and the willingness of other segments of society continue to pose a threat to women’s human rights. Structural inequalities and power imbalances facilitate such violations. Desire for easy money, at times greed, facilitating a life full of comforts and luxury, has in the recent few years made women more susceptible to exploitation and violence. Laws have taken silent and slow steps in preventing gender biases and removing lacunas in procedural laws and laws relating to evidence. The law cannot change a society overnight, but it can certainly ensure that the disadvantaged are not given a raw deal. The courts can certainly go beyond mere legality and insulating women against injustice suffered due to biological and sociological factors. It is hoped that the forward looking ideas reflected in some decisions of the Supreme Court, and particularly in constitutional law cases, will percolate to the lower levels of the judiciary and the bar and that will ultimately expedite the social transformation that the feminist ideology envisions.

Indian Constitution in Articles 14,15 and 16 guarantee rights to equality to its citizens. Articles 15(3) allows for special measures in relation to women and children. Article 16 provides that all citizens shall be given equal opportunity in matters relating to employment or appointment to any office under the State.
Part IV of the Constitution under the Directive Principles guide the state policies for good governance. It lays stress on the need to have equality between men and women in employment opportunities, wages and control over material resources. The Chapter IVA on Fundamental Duties states that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women. Article 325 guarantees that all shall have the right to vote irrespective of sex. The 73rd Constitutional Amendment also provides for the reservation of one-third seats in all tiers of local government for women.

However, the Constitution does not define ‘discrimination’ and nor there is a special anti-discrimination law. The test for identifying discrimination has developed through the framework of equality, as evolved through case law. Equality has been interpreted to mean similarity of treatment and not identical treatment - the right to equal treatment among those similarly situated, in terms of privileges conferred or liabilities imposed. It does not mean universal application of law to different classes of persons. Differential treatment does not ‘per se’ constitute discrimination, but would mean different treatment without reasonable basis for the differentiation. Constitutional interpretations reflect conflicting approaches to equality. The approach to caste-based discrimination has often been substantive in nature, as reflected in the observation of the Apex Court that it is “necessary to take into account de facto inequalities which exists in the society to bring about real equality”.  

There is no clarity however on what should be the approach to gender equality should be, with the result that Constitutional guarantees are often used to reinforce protective measures in favour of women, rather than correcting norms and assumptions that underpin women’s inequality. This tends to treat ‘gender’ differences as being natural and incapable of change and therefore deserving of protection through special treatment. The three dominant trends are as follows:

**Limited and unsatisfactory relief**, on account of ‘sex’ alone being the basis of discrimination. This approach helps correct only surface discrimination allowing no space for a deeper and more complex inquiry into why ‘sex’ difference for

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women becomes the basis for restriction or denial of equal rights and opportunities. It does not take into account socio-economic factors that produce a further set of differences between men and women, thereby compounding the disadvantage and inequality caused. Hence, the need to produce a husband’s no-objection certificate for employment, or the requirement for female employees in foreign service to take permission from the Government before marrying have been struck down as discriminatory. However, this approach has also upheld the restriction of access of menstruating women between 10 years to 50 years of age in a temple on the ground that it only affects women of a particular age group and not as a class, and consequently is not discriminatory on grounds of sex alone.

**Protectionism:** The protectionist approach, regardless of any positive relief rendered, has been damaging because it reinforces the gender stereotypes instead of probelmatizing them, and treats women as a ‘vulnerable’ category often denying them any choice or agency in opting for or rejecting the protection imposed upon them. Hence, it has been possible to succeed in quashing the requirement that nurses must obtain their husbands’ permission for applying - but on the basis that a woman may have been forced to work because of the situation created by her husband rather than on the principle that it undermined equal employment opportunities for women. This reinforces the assumption that women take up employment to supplement the household income when the husband fails his duty as a primary breadwinner. Similarly, where a man entered into a false marriage with a woman and forced her to undergo abortion on each pregnancy, it was held that this violated the woman’s right to life and liberty “to live the roles assigned to them by Nature so that society may flourish” - the natural roles ascribed to women were that of mother, daughter, sister and wife. Protectionist approaches operate within a patriarchal framework and as a result deny relief to women. Hence, the right of daughters to reside in the natal dwelling house under Section 23 of the Hindu Succession Act, 1956 was extended only to unmarried, deserted, or widowed daughters. This had been interpreted to exclude daughters who desert or separate from their husbands on the ground that it will defeat the
object of the provision and “encourage married daughter to desert her husband and live separately.”

**Fundamental rights** are only enforceable in the public and not in private sphere against the State and its agencies. An application of the right to life and equality in the home were rejected on the ground that the “introduction of Constitutional law in the home is like introducing a bull in a china shop. In the privacy of the home and married life, neither Article 21 nor Article 14 of the Constitutional has a place. In a sensitive sphere which is at once most intimate and delicate the introduction of the cold principles of constitutional law will have the effect of weakening the marriage bond”. Although piecemeal discriminatory legal provisions of family law have sometimes been declared unconstitutional or interpreted progressively, by and large the courts have been disinclined to test the Constitutional validity of family law provisions. A public interest petition for scrapping gender discriminatory family laws was dismissed on the ground that these were issues of State policy and the remedy lies with the Legislature and not with the Courts.

It is suggested that the substantive approach to equality be followed. In this gender difference is recognized as the basis for ‘reasonable classification’ to determine the extent of disadvantage caused to women or the class of women in question, by taking into account the existing social norms and the historical disadvantage operating against the women. This is the basis for determining the extent of discrimination and for devising corrective measures to enable women to overcome that disadvantage. This analysis lends itself to affirmative action under Article 15(3), without either ignoring or reinforcing gender stereotypes.

Women are subjected to some of the gravest physical assaults due to the composition of their physique. Crimes against women have existed invariably with time and place. Types and trends of crimes, however, kept changing with change in mindset and technique. Unfortunately, women were not only accorded a lower status in the society but they also came to be used as objects of enjoyment and pleasure. Its culmination has been their regular exploitation and victimization.

Section 23 of Hindu Succession Act, 1956 has been omitted by Amendment Act, 2005.
On the continuation of this practice, exploiters became culturally violent, and opted violence as a way of life. Besides, there also developed situational and institutional violence against women along with the new demands of the time where they have to step out of the confines of their homes to earn a living. Thus, violence against women ranges from rape to eve teasing and rampant sexual harassment at workplace. Protection from harassment, oppression and discrimination has remained a distant goal to be achieved.6

Violence against women is an extremely complex phenomenon, deeply rooted in gender based power relations, sexuality, self identity and social institutions. Any strategy to eliminate gender violence must therefore confront the underlying cultural beliefs and social structure that perpetuates it.

Increase violence against the women not only hurts her body but also shatters her psychologically and more than often left permanent marks on her psyche. In addition to the trauma of rape itself, the victims have to suffer further agony during the legal proceedings. It is often seen that most of the victims develop post-traumatic stress disorders and Indian legal system is not equipped and properly gender sensitive towards these issue. In legal system, rape is a crime but at the same time, the accused is innocent till proven guilty. But the victim, on the other hand, faced the brunt of social stigma the moment the incident is reported. The issues of victim’s character, behaviour and self invitation of such an aggression further aggravates the trauma.

As mentioned earlier women are subjected to all kinds of violence ranging from physical, sexual, psychological and economic. All these abuses are interrelated and affect the women of every age. With the passage of time, the modus operandi of these crimes has changed. Some forms of crimes like prostitution and women trafficking have crossed national boundaries. And women became the ultimate victim when they are used as a tool of sexual gratification and their bodies became commodities of commercialized world. It is seen that

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many a time, such aggression takes the shape of obsolete practices further weakening the chances of women in the name of culture and values.

It is the duty of the government and through its three organs to harmonize the situation and play a positive role, but sadly it is happening at a snail’s pace. The Law has modified the definition of ‘sexual assault’ in case of child and made it gender neutral, yet the in respect of adult it is still marred by many handicaps. As Kirti Singh concludes, “Rape, as defined in the IPC was an archaic, patriarchal definition, and it was necessary to look at sexual assault from the point of women who experienced it and to craft that experience into laws.” Even according to the international legal framework in respect to the definition of rape in International Criminal Tribunal Yugoslavia, it is drafted that sexual assault amounts to penetration by the penis into vagina, mouth and anal cavity and this included inserting part of the body or objects into such orifices. The Indian Penal System has not yet come out with such a wider definition of sexual assault and hence has to take into account the women perspective leaving behind Victorian mind frame. A paradoxical situation prevails in criminal law where all assaults are rendered grievous if a weapon is used, as the risk of bodily injury is aggravated. Only in rape cases it is the reverse. A range of sexual violence meted out to little girls by inserting objects like bottles, sticks and iron rods into their tender and as yet not fully-formed vaginas, causing multiple injuries and risk to life, got swept away under the nomenclature of ‘violating modesty’, punishable with a maximum of two years of punishment. The legal explanation was given that the male sexual organ was not involved, however gruesome the sexual assaults may have been, and hence the offence could not be brought within the four corners of the offence of rape. Similarly, in case of molestation as defined in IPC, it is categorically stated that such offences should occur with the intention of “outraging the modesty” which leave a lot of scope for the culprit to escape. The recommendation of AIDWA to include any direct or indirect touching the body of the person with different degree should be seriously looked into and incorporated in Section 509. Indian women are beset with many challenges which place them

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7 Kirti Singh in an interview to Frontline Vol.27, No.13, July 2010.
at lower level. Women of minority sections are further placed at disadvantageous position as they experience both caste and gender discrimination. The communal riots of Gujarat and Kandmal (Orissa) has further stressed the vulnerability of women where they were raped and killed. However, Indian Penal System doesn’t show its concern to deal such cases. And the researcher strongly feels that such cases along with the sexual assault on the minority section should be brought within the ambit of ‘aggravated sexual assault.’

The Hon’ble Supreme Court has laid down the guidelines in case of sexual harassment at workplaces in Vishaka but its implementation is lacking and many institution runs without it. Even the campus where the researcher is working has no Women Cell or Female Security Officer inspite of so many females staff working/teaching/studying there. The situation is same in many educational institutions. Thus, some stringent provisions should be framed to curb the habit of leniency. It is further submitted that sexual assault by the person in place of influence or higher in rank should also be included in the ambit of ‘aggravated sexual assault’ because that crime itself is an outcome of political, economic and social dominance. And this dominance prevails everywhere. It is not constrained to urban institutions but also extended to the labour employed in the villages and working as tenants. Causing of grievous hurt or repeated commission of the offence on the victim’s body must also be included into ‘aggravated sexual assault’ and invites stringent punishment o the culprit.

The researcher acknowledge that the criminal law with regard to rape, custodial rape, dowry etc. has changed in response to the demands by the women’s movement but it still incorporates patriarchal values. But at the same time, it is submitted that criminal law provisions needs to be gender sensitive and in the process of its sensitization, the law makers and administrators must be sensitive to the prevailing social and cultural contexts in which they are applying law. In the ultimate analysis there can be no two opinions about the need for stringent laws, sensitive judiciary, effective law and enforcement machinery and women’s groups to deal with such atrocious crimes. But what is needed more than anything else is a total revolution in the thinking of our society. There should be a
change in the mind set of men towards women. And it demands serious thinking at judicial, social and political level.

Civil laws of any country are strong parameters of the level of equality and empowerment a woman has been accorded in any given society or State. India is a multi-religious and cultural country where large corpus of civil and personal laws exists. The studies of these different personal laws regulating the rules of marriages, property and adoption remains a comprehensive subject itself. It further raises the age old debate whether there should be Uniform Civil Code for India or not. The researcher, however, reserves her view about the issue of Uniform Civil Code because it is outside the purview of present discussion. But some light has been thrown on the practicability and legal approach towards the Hindu laws to assess the status of women in the majority community. Marriage remains, since antiquity, one of the most important social institutions. It builds family which remains the nuclei of any social system. Hindu marriage laws have no doubt undergone various changes since its inception and the greatest changes were introduced with the introduction of Hindu Marriage Act, 1955. It transformed the status of marriage from a sacrament to a contract. The Act no doubt gave Hindu wife, a right to dissolve the marriage and demand maintenance from her husband in case of separation. Still it fails to evolve a gender sensitive approach. Hindu marriages are performed with the ceremony of Saptapadi Thus in a away, The Hindu Marriage Act retains the concept of Smritis for its solemnization with an understanding that this is a contract which can be broken. kanyadan being an integral part of marriage ceremony has reduce the status of a girl to some kind of a commodity which can be gifted by her father to the groom. Thus, in a way it signifies the transfer of father’s right on her daughter to her husband, the supreme marital objective being to provide a successor to the property and to avoid extinction of the family line. Kanyadan and panigrahan-two important ceremonies of marriage in the first four approved forms of marriages are described as the acceptance by the bridegroom of a girl as his wife,
the girl being given away by her guardian. Even at the time of the enactment of the Hindu Marriage Act, *Kanyadan* as a ceremony depicting the lower or in fact inconsequential value of the girl was strongly disapproved of, yet was ignored by the majority. Hindu Marriage Act forbade the polygamy. However, it is not clear and there are instances when the men often manage to give slip to the legal system after performing more than one marriage. The reasons can be ascribed to the wrong interpretation of Hindu Law which retains the ritual of *Saptapadi* as an important constituent while solemnizing a Hindu marriage. Moreover, onus of proving the performance of second marriage lies heavily upon the second woman who in absence of substantial proof fails to get justice thereby aggravating her situation. It is seen that men might not be performing *Saptapadi* while luring another woman in marriage. If these ceremonies could not be proved by the first wife in respect of her husband’s second marriage, the husband could wriggle out of conviction even though he had cohabited with the second wife, the community had accepted the man and the second wife as husband and wife or even if he had fathered children through the second wife. In such a situation the definition of ‘solemnizing the marriage’ under Hindu Marriage Law should be expanded to include all kind of rituals. Only then the woman can be saved from becoming victimised in case of second marriage. In many instances women experiencing the trauma of their husband’s solemnization of second marriage face social and family pressures. Unable to beget their children, forces them to share their husbands with another woman. And it is the woman only who is the ultimate sufferer of this social evil. In such a situation absence of any complaint against the husband saves him from legal consequences which defeat the very purpose of anti-polygamy laws. In other words, the remedy the legislature provides to the first wife is that she can snap her relation with such a husband; can deny him her company (if he still wants her) but cannot have him punished or get him back to

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her, which is exactly what a majority of women trapped in these situations still want and hope and pray for. Interestingly even the status of second woman goes into dilemma. She does not acquire the status of a legally wedded wife. Such a position is also not accepted for the second woman who has been married fraudulently. If, however, the second marriage breaks up, then she is at the loosing end. The law can only pass a decree that she is not entitled to maintenance, she has to endure humiliation and social stigma as being only a mistress. It is therefore, suggested, that the progressive sounding provision of monogamy had also not saved Hindu women from victimization. It is found that the government should speedily work on the recommendation of women committee\(^\text{10}\) and replace the word “solemnization” in Hindu Marriage Act with “goes through a form of marriage” to broaden the purview of Hindu Marriage laws. It is further recommended that an omission to perform some of the essential ceremonies like Saptapadi shall not be construed to mean that the offence of bigamy was not committed. \textit{Secondly}, Section 6 of the Act, may be restored and a provision may be incorporated whereby, a relation or friend of the wife or of the second woman or of the husband should be allowed to ask for an injunction restraining the parties against proposed bigamous marriage. \textit{Thirdly}, a law providing compulsory registration of marriage would be of critical importance to various women related issues such as: prevention of child marriages and ensuring minimum age of marriage; prevention of marriages without the consent of the parties; checking bigamy/polygamy; enabling married women to claim their rights to live in their matrimonial home, maintenance claim; inheritance rights and other benefits which they may be entitled to after the death of their husbands. It is, therefore, in the general interest of the society if marriages are made compulsory registrable. The Supreme Court observed that though registration by itself cannot be a proof of a valid marriage \textit{per se}, and would not be a determinative factor regarding the validity of marriage, yet it has a great evidentiary value in the

matters of custody of children, their rights and the age of parties to the marriage. And finally, the admission by a person accused of bigamy or by the second woman that he or she has entered into second marriage, should be accepted by the court as a proof for the purpose of Section 494 of the Indian Penal Code. Moreover, the Section 496 of IPC should be applied to the Hindu Marriage Act, 1955.

It is an unfortunate fact that child marriages are still going on in large part of country. It not only hampers the psychological development of the children but also takes untold toll on female child’s physique and result in maternal (pregnancy) deaths. Hindu Marriage Act, 1955 prescribes 21 years as the age of bridegroom and 18 years of the bride, yet the marriage solemnized in contradiction to it is not declared void. Allahabad High Court gave a similar opinion in 1936 and 1939. Noting that the Parliament did not intend to treat child marriage as either void or voidable the Andhra Pradesh High Court in 1977 pronounced them as perfectly valid and the Supreme Court put their stamp on its validity in Lila Gupta v. Luxmi Narain in 1978. Even the quantum of punishment delivered to the parties involved in the marriage if the children also show the lopsided approach of the legislative as well as judiciary in the incidents of children marriage. In Public Prosecutor v. Thammanna Rattayya, Madras High Court refused to convict the mother of a child bride for marriage nor could prevent its solemnization. Similarly, relatives and invitees attending a child marriage but without any hand in performing or conducting it are not guilty of


12 Munshi Ram v. Emperor AIR 1936 All. 11; Ram Baran v. Sital Pathak AIR 1939 All. 340.

13 P. Venkataraman v. State AIR 1977 A.P.

14 AIR 1978 SC 1351.

15 AIR 1937 Mad. 490.