



REVISITING THE NATIONAL COMMISSION FOR WOMEN

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Abstract

The purpose of research is study deals with the appeal, advisory jurisdictions to the National Commission for Women in India. This study explores the powers for the National Commission for Women on superintendence and transfer of cases. By identifying the political intervention in during the appointment of chairman and its members in the National Commission for Women and eliminate the same by way of necessary amendment in the law, which has to provide the change in structure of the selection committee and requirement of constitutional status to the National Commission for Women.

Introduction

Many of provisions have been introduced in Constitution of India to ensure dignity and self respect to the women at large. The National Commission for Women was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 (Act No. 20 of 1990 of Government of India) to review the Constitutional and legal safeguards for women; recommend remedial legislative measures, facilitate redressal of grievances and advise the Government on all policy matters affecting womenⁱ.

Twenty five years had elapsed since the National Commission for Women Act came into force in India. Various studies have been made so far, especially in analyzing on National and State Commissions for Women. But, a detailed study on the National Commission for Women Act, 1990 still remains unexplored. In these circumstances, it is appropriate to examine the same.

Human Rights Institution

The term National Human Rights Institution has been defined as a body which is established by a government, under the constitution, or by law, or decree, the functions of which are specifically defined in terms of promotion and protection of human rights. It can refer to number of different institutions: human rights commission or commissioners, ombudspersons, or hybrid bodies, etc.ⁱⁱ The Chairperson of the National Commission for Minorities, the National Commission for the Scheduled Castes, the National Commission for the Scheduled Tribes and the National Commission for Women will be ex-officio members of the National Human Rights Commissionⁱⁱⁱ. Therefore, it is very clear that National Commission for Women and State Commissions for Women are established under the National Commission for Women Act, which are deemed to be women's human rights institutions.

At the United Nations sponsored first International Workshop on National Institutions for the Promotion and Protection of Human Rights (Paris 7-9 October 1991), a detailed set of principles on the status of national institutions was developed. These Principles, commonly known as Paris Principles, subsequently endorsed by the General Assembly (resolution 48/134 on 20 December, 1993) and have become the foundation for establishment and operation of the National Human Rights Institutions.^{iv}

The Paris Principles can be divided into four parts: (a) Competence and responsibilities, (b) Composition and guarantees of independence and pluralism (c) Methods of operation and (d) Additional principles. India has agreed Paris Principles on National Human Rights Institutions and signed. Hence, National Commission for Women and State Commissions for Women have adopt the Paris Principles.

Selection Committee

According to the National Commission for Women Act, 1990, Chairperson and other members of the National Commission for Women shall be appointed by Central government. The Chairperson and Members of the State Commission for Women shall be appointed by the State government.

The composition of the selection committee for the chairman and member of the commission have political involvement, which against the independent appointments quoted in the Paris Principles. The selection committee shall not have political people. Chairperson and other members of the tribunals like customs, railway claims, income tax, etc. are appointed by the President on the recommendations of a Committee composed of the Chief Justice of India or his nominee, who is a Judge of the Supreme Court as Chairman, secretary of the law ministry and secretary of the concern department as members in India.

Likewise, Chairperson and other members of the National Commission for Women have to be appointed by the President on the recommendations of a Committee composed of the Chief Justice of India or his nominee, who is a Judge of the Supreme Court as Chairman. Chairperson and other members of the State Commission for Women have to be appointed by the



Governor of the State on the recommendations of a Committee composed of the Chief Justice of High Court concern as Chairman, chief secretary of the State and secretary of the department of law. This type of change in the selection committee for the chairman and members of the human rights commissions shall have independent appointment system without political intervention.

Jurisdiction

Original jurisdiction is distinguishable from appellate jurisdiction, which is the power of a court or commission to hear and enter judgment or recommendation upon a case brought for review. National Commission for Women already have original jurisdiction as per the National Commission for Women Act, 1990. The power to transfer the suitable cases to the State Commissions has to provided to the National Commission for easy access and speedy disposal.

National Commission for Women Act has to provide a provision to appeal against the order of the State Commission before the National Commission. The National Commission must have original and appellate jurisdiction. This will provide a chance for the victims to fight against the state intervention in the State Commissions. The section 9 of the National Commission for Women Act says that the national commission shall meet at such time and place as the Chairperson may think fit. The regional benches of the National Commission for Women has to be established to hear the appeals against the State Commission, which will be convenient for the victims of human rights violations. It may be noted that here, benches of high courts are established in many States and there is a demand to establish regional benches of Supreme Court also.

The advisory function of the Inter-American Court of Human Rights enables it to respond to consultations submitted by agencies and member states of the Organization of American States regarding the interpretation of the American Convention on Human Rights or other instruments governing human rights in the Americas. It is also empowered to give advice on domestic laws and proposed legislation, and whether or not they are compatible with the Convention's provisions. Advisory powers have to be provided to the National Commission for Women as follows: If at any time it appears to the State Commission that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the National Commission upon it, he may refer the question to that Court for consideration and the National Commission may, after such hearing as it thinks fit, report to the State Commission its opinion thereon

General Powers

According to the Article 227 of the Indian Constitution, every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction, without prejudice to the generality of the foregoing provisions, the High Court may (a) call for returns from such courts; (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts. National Commission for Women has no power to superintendence over all State Commissions. The power of superintendence over all the State Commissions is essential for National Commission. It will lead to the uniformity in the rules, forms, books, entries and accounts, etc in the State Commissions.

Article 141 of Indian Constitution provides that any order of the Supreme Court shall be binding on all the lower courts of India. The orders of the National Commission for Women have to be made as bindings on all the State Commissions. According to the National Commission for Women Act, 1990, National Commission for Women has no power to transfer of certain cases, where cases involving the same fact or question of law or if it deems it expedient so to do for the ends of justice, transfer any pending case before any State Commission to National Commission or any other State Commission. This is a noticeable point that National Commission has no control on the State Commissions, which is not good quality for administration of human rights justice.

Article 139A of the Constitution Of India deals with transfer of certain cases as follows: (1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or an application made by the Attorney General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself: Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment . (2) The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court^v. Likewise, power of transfer the certain cases have to be provided to the National Commission for Women as follows: If the National Commission for Women is satisfied that a case pending in a National Commission, it shall withdraw the case and may (a) either dispose of the case itself, or transfer any State Commission to any other State Commission.



Constitutional Status

Article 14 of constitution of India ensures equality before the law or the equal protection of the laws within the territory of India. This is a very important provision which provides equal legal protection to women against any women based crime. This provision also paves way for the introduction of various laws and acts to ensure protection and enforcement of legal rights of women in India.

Article 15 of constitution of India ensures that no one should create any sort of discrimination only on the grounds of religion, race, caste, sex or place of birth or any of them within the territory of India. At the time of independence there was lots of discrimination in India against women which gradually abolished after introduction of article 15. As per article 15(3) of the constitution state has the authority to make any special provision for women and children. Article 16 of constitution of India ensures equal employment opportunity to every citizen of India. As per article 16 there should not be any discrimination in respect of employment opportunity under the State only on grounds of religion, race, caste, sex, descent, and place of birth, residence or any of them.

Article 39 of constitution of India ensures the benefit of the directive principles of state policy to the women. Directive principles of state policy mean guiding principles for the framing of laws by the government at state level. Article 39(a) of directive principles of state policy ensures and directs a state to apply policies which focus on a men and women have an equal right of adequate means of livelihood and article 39(c) ensures equal pay for equal work for both men and women.

Article 42 of constitution of India casts a duty on every employer to ensure just and humane conditions of work and for maternity relief. In reality the position and treatment of women in corporate offices is really bad and in fact they are exploited by their seniors and bosses. Article 243 of constitution of India ensures reservation of seats in gram panchayat for women. This opportunity of being a part of local level arbitration process has improved the social conditions of women in village areas.

The Section 10 (1) of the National Commission for Women Act, 1990 says that the first function of the National Commission for Women is to investigate and examine all matters relating to the safeguards provided for women under the Constitution and others law. The National Commission for Scheduled Castes, National Commission for Scheduled Tribes and National Commission for Backward Classes have constitutional status.

Many countries have given constitutional status for National Women's Rights Institutions. The Constitutional status will give more teeth for the National Commission for Women including independence and financial autonomy, etc. An Article has to be inserted in the constitution to provide constitutional status National Commission for Women.

Conclusion

The study found that National and State Commissions for Women is one of the human rights institution. To strengthen the National State Commissions for Women of India, the following measures are essential.

- a. A change in the selection committee for the chairman and members of the National Commission for Women is essential to provide independent appointment system without political intervention.
- b. The orders of the National Commission for Women have to be made as bindings on all the State Commissions. The power to transfer the suitable cases to the State Commissions has to provided to the National Commission for Women.
- c. National Commission for Women Act has to provide a provision to appeal against the order of the State Commission before the National Commission. The regional benches of the National Commission for Women has to be established to hear the appeals against the State Commission.
- d. Advisory powers have to be provided to the National Commission for Women. The power of superintendence over all the State Commissions is essential for National Commission for Women. The power of transfer the certain cases have to be provided to National Commission for Women.
- e. An Article has to be inserted in the constitution of India for the National Commission for Women by way of amendment to provide constitutional status. It is duty of the parliament to make needful amendments in the existing National Commission for Women Act to strengthen the women human rights.

ⁱ <http://ncw.nic.in/frmabtbreifhistory.aspx>

ⁱⁱ Mashood A. Baderin, Manisuli Ssenyonjo(Ed.), *International Human Rights Law: Six Decades After the UDHR and Beyond*, Ashgate Publishing Company, Burlington, USA, 2010, p.306.

ⁱⁱⁱ Asish Kumar Das and Prasant Kumar Mohanthy, *Human Rights in India*, Sarup & sons, New Delhi, 2007, p.175.

^{iv} David S. Weissbrodt, Connie de la Vega, *International Human Rights Law: An Introduction*, University of Pennsylvania Press, 2007, p. 346.

^v <http://indiankanoon.org/doc/333273/>