

Module 4 - International and National Response to Gender Discrimination

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Content

4.1 International Convention on Elimination of all forms of Discrimination against Women (CEDAW)

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4.1 THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

The Convention defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

The Convention has a similar format to the Convention on the Elimination of All Forms of Racial Discrimination, "both with regard to the scope of its substantive obligations and its international monitoring mechanisms". The Convention is structured in six parts with 30 articles total.

- **Part I** (Articles 1-6) focuses on non-discrimination, sex stereotypes, and sex trafficking.
- **Part II** (Articles 7-9) outlines women's rights in the public sphere with an emphasis on political life, representation, and rights to nationality.
- **Part III** (Articles 10-14) describes the economic and social rights of women, particularly focusing on education, employment, and health. Part III also includes special protections for rural women and the problems they face.
- **Part IV** (Article 15 and 16) outlines women's right to equality in marriage and family life along with the right to equality before the law.
- **Part V** (Articles 17-22) establishes the Committee on the Elimination of Discrimination against Women as well as the states parties' reporting procedure.
- **Part VI** (Articles 23-30) describes the effects of the Convention on other treaties, the commitment of the states parties and the administration of the Convention.

By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:



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- to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

The Convention provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life -- including the right to vote and to stand for election -- as well as education, health and employment. States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.

The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to acquire, change or retain their nationality and the nationality of their children. States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women.

Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

4.2 NATIONAL HUMAN RIGHTS COMMISSION

The National Human Rights Commission (NHRC) of India is a Statutory public body constituted on 12 October 1993 under the Protection of Human Rights Ordinance of 28 September 1993. It was given a statutory basis by the Protection of Human Rights Act, 1993 (PHRA). The NHRC is the National Human Rights Commission of India, responsible for the protection and promotion of human rights, defined by the Act as "Rights Relating To Life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India".

Functions of NHRC

The Protection of Human Rights Act mandates the NHRC to perform the following:

- Proactively or reactively inquire into violations of human rights by government of India or negligence of such violation by a public servant
- the protection of human rights and recommend measures for their effective implementation
- review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures



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- to study treaties and other international instruments on human rights and make recommendations for their effective implementation
- undertake and promote research in the field of human rights
- to visit jails and study the condition of inmates
- engage in human rights education among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means
- encourage the efforts of NGOs and institutions congress to working in the field of human rights.
- it considers the necessity for the protection of human rights.
- requisitioning any public record or copy thereof from any court or office.

Composition

The NHRC consists of: The Chairman and Five members (excluding the ex-officio members)

- A Chairperson, who has been a Chief Justice of India or a Judge of the Supreme Court.
- One member who is, or has been, a Judge of the Supreme Court of India , or, One member who is, or has been, the Chief Justice of a High Court.
- Three Members, out of which at least one shall be a woman to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.
- In addition, the Chairpersons of National Commissions viz., National Commission for Scheduled Castes, National Commission for Scheduled Tribes, National Commission for Women , National Commission for Minorities, National Commission for Backward Classes, National Commission for Protection of Child Rights; and the Chief Commissioner for Persons with Disabilities serve as ex officio members.

The sitting Judge of the Supreme Court or sitting Chief Justice of any High Court can be appointed only after the consultation with the Chief Justice of Supreme Court.

4.3 NATIONAL COMMISSION FOR WOMEN

The National Commission for Women was formed with an intention to establish an equal and just livelihood for women by making legal and constitutional amendments for women in India. The Violence against Women is a fundamental violation of human rights, across nations, societies, cultures and classes and to stop this violation of the fundamental right; this Commission was formed.

Problems faced by the women in the country has been one of the biggest concerns of the Government and other authorities. Over the years, many Commissions have been set up by the Government to look into the welfare of Women in the country. According to the reports of these commissions, all of them state the necessity of setting up an apex body for reviewing and



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addressing the grievances of women in the country. The demand for setting up a body persisted for long and ultimately to keep the interest of the people, the National Commission for Women Bill 1990 was introduced in the Lok Sabha on 22nd May 1990.

The National Commission for Women was set up in 1992 under the National Commission for Women Act, 1990. This body was established to review the constitutional and legal safeguards for women.

It recommends the remedial legislative measures, facilitates redressal of grievances and advises the government on all policy matters affecting women. It enjoys all the powers of a civil court.

The first commission was constituted on 31st January 1992 as Jayanti Patnaik as the chairperson. Alok Rawat IAS is the first male member of the National Commission for Women (NCW). His appointment filled the 4th seat on the five-member body. Ms Rekha Sharma is the current Chairperson of the National Commission for Women. She took over Lalitha Kumaramangalam as the new Chairperson in September 2018.

Composition of National Commission for Women

The Commission must consist of a minimum number of members which includes a chairperson, a member secretary, and the other five members.

Chairperson: The central government should nominate the chairperson.

Five members: The five members are also to be nominated by the central government from amongst the person of ability, integrity, and standing. They should possess experience in various fields like law or legislation, trade unionism, management of industry potential of women, women's voluntary organization, education, administration, economic development, and social good-being.

Member Secretary: The Central Government also nominates member secretary. He/ she should be either an expert in the field of management, an organization, or an officer who is a member.

Functions of National Commission for Women

● Inquiry and Investigation

The National Commission of Women enjoys the powers of a civil court. It investigates and examines the matters related to the safeguards ensured for feminine society under the Constitution of India. It took complaints suo moto notice of issues related to the non- implementation of laws and non- enforcement of laws and non -compliance of policy decisions, guidelines enacted and aimed at mitigating hardships ensuring the welfare and then take up issues arising out of matter with the concerned authorities.

● Action Research



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NCW members take part in the planning process of socio-economic development of women, propose measures to encourage their representation in all spheres, and review their advancement. It also examines the safeguards provided for women in the Constitution and other laws study their working, recommend amendments to meet any inadequacies or deficiencies, and advocate measures for effective implementation.

● Legal Intervention

The Parivarik Mahila Lok Adalat, (PMLA) is an innovative component with its roots in the traditional Nyaya Panchayats. It is created by NCW for the redressal and speedy disposal of cases. It has taken up 7500 cases so far. The essential feature of PMLA is cordial mutual settlement and flexibility in implementation, aiming to empower women in the justice delivery mechanism.

The Commission shall perform all or any of the following functions:

1. **Investigation and Examination:** Investigate and examine all the matters relating to the safeguards provided for the women under the Constitution and other laws
2. **Presentation of Reports:** Table reports to the Central Government, every year and at such other times as the Commission may deem fit, reports upon the working of those safeguards
3. **Recommendations:** Make in such reports and recommendations for the effective accomplishment of those safeguards for enhancing the conditions of the women by the Union or any State.
4. **Review,** every now and then, the current provisions of the Constitution and other laws distressing the women and prescribe alterations and suggest curative legislative measures meet any break, inadequacies, and incapacity in such legislation.
5. **Cases of Violation:** Take up cases of infringement of the provisions of the Constitution and of other laws relating to the women with the relevant authorities
6. **Suo Moto Notice:** It looks into complaints, and takes Suo Moto notice of matters relating to – deprivation of women’s rights, Non-implementation of the laws, and Non-compliance of policy decisions guaranteeing the welfare for women society.
7. **Special Studies and Investigation:** It conducts special studies or investigation on the concerning issues or circumstances emerging out of segregation and outrages against ladies and recognizes the limitations in order to suggest techniques for their expulsion
8. **Research:** Undertake the promotional and educational research so as to propose ways of ensuring due representation of women in all fields and identifies the factors responsible for impeding the support services and technologies for reducing drudgery and professional health hazards and for escalating their efficiency.
9. **Participation in all spheres particularly in Planning:** take part and advice on the planning process of socio-economic development of women
10. **Evaluation:** assess the progress of the development of women society under the Union and State.
11. **Inspection:** investigate or cause to be inspected a jail, remand home women’s establishment or other places of guardianship where ladies are kept as detainees.
12. **Funding:** fund litigation, relating issues affecting a large body of women.



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13. **Reporting:** make periodical reports on any issue pertaining to women and in particular various difficulties under which women toil.

Drawbacks of National Commission for Women

- It has no actual legislative powers. It only has the powers to suggest amendments and submit reports which are not obligatory on a state or Union Governments.
- It does not have the power to choose its own members. The power selecting members is vested with the Union Government and the nature of the country's volatile political scenario tends the commission to be politicized.
- It is reliant on financial assistance from the Union Government and this could compromise the independence of the Commission.
- The jurisdiction of the commission is not operating in Jammu and Kashmir and considering the current political unrest and human rights infringements in the region, the presence of the commission is vital.

State Women Commission

A Bill corresponding to National Commission for Women was drafted out in the State of Kerala as the Kerala Women's Commission Bill, 1990 and sent for the consent of the President of India in 1990. The draft Bill was framed under the guidance of the then Minister for Social Welfare Smt. K. R. Gouri Amma with legal aid from Justice V. R. Krishna Iyer and Justice Subramanian Potti and suggestions of women's organisations.

But unfortunately the bill was pending for five years from 1990 to 1995 to get the consent of the President. The Kerala Women's Commission Act was finally passed with the consent of the President on 15-9-1995. The first Commission was headed by Smt. Sugatha Kumari, the eminent poetess and social worker. The Commission also constituted of 3 other Members and 2 ex-officio members who are noted dignitaries of the society. In 1997 the newly constituted commission was reconstituted as per the act and started function after the inauguration by Smt. Susheela Gopalan, Former Minister of Social Welfare.

The commission performs as a statutory body, it performs on all matters relating to women's problems. The commission inquire into the complaints of any unfair practice and take on decisions. Then the commission will recommend to the government, what action to be taken in that matter. The investigations relating to the issue concerning women is carried out by the head of the investigation wing, Director of KWC.

commission is also responsible to improve the social status of women. The commission ensures to guarantee equal opportunity to women in the state public service and state public undertakings in

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the matter of promotion and recruitment and if necessary the commission report or recommend it to the government action.

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