

NATIONAL HUMAN RIGHTS COMMISSION OF INDIA

INDIA

Combined Fourth and Fifth Periodic Reports of India : NHRC-India Submission to the Committee on the Elimination of Discrimination against Women on the Implementation of CEDAW in India - WRITTEN SUBMISSION OF NHRC INDIA

Introduction

As per Census of India 2011, women constitute 48.46 per cent of the total population. Hence, the importance of women as human resource in the overall development and progress of the country is without doubt. The Constitution of India has enshrined the principle of gender equality. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive intervention in favour of women. Within the framework of a democratic polity, the development policies, programmes and laws have been aimed at women's empowerment. In the Government of India, the Ministry of Women and Child Development (MWCD) is the nodal Ministry for all matters concerning women. At the state level there are similar Departments dealing with women issues.

A number of other institutions are also in place like the National Commission for Women¹ and State Commissions for Women to help women get speedier justice like establishment of women police cells in police stations and exclusive women police stations. The MWCD, NCW and concerned Departments at the State level also work in partnership with bilateral, multilateral and UN agencies on women-specific and women related projects.

In a few metropolitan cities, Rape Crisis Intervention Centres have been set up in police stations. Helplines for women in distress have also been set up. Women self-help groups are being organized and involved in the formulation and implementation of various schemes and programmes.

However, despite the above institutional and programmatic framework, the women of India still suffers from a large number of problems due to poor implementation on ground.

¹ The National Commission for Women (NCW) was established by an Act of Parliament in 1992 to safeguard the rights of women. It acts as a statutory ombudsperson for women. Its Chairperson is a deemed member of National Human Rights Commission.

Role of National Human Rights Commission of India in Protecting and Promoting Women's Rights

The NHRC is an embodiment for the promotion and protection of human rights. Ever since it came into existence in October 1993, its efforts to protect and promote the rights of women have evolved in a variety of inter-connected ways over the past two decades. Gender related issues and especially discrimination against women have been a matter of concern for the Commission since it was constituted. During 1994-95, it recommended vigorous implementation of the country's obligations under the CEDAW. It also recommended that well-coordinated steps be taken to act upon the Declaration and Programme of Action adopted at Beijing.

The violation of the rights of women was also considered from the point of view of health. Maternal anaemia was identified as a rights issue in 1996-1997. In 2000, it focused on HIV/AIDS, Public Health and Human Rights related issues impacting on the rights of women. During 1999-2000, the Commission took up issues the elimination of gender discrimination in the light of the concluding observations made by the CEDAW Committee on India's first country report and the concluding observations and recommendations made by the CRC Committee on India's initial country report.

In 2000-2001, it called for a concerted effort to end the misuse of sex-determination tests which encouraged the evil practice of prenatal sex selection having ramifications like adverse sex ratio.

In 2000, it took keen interest in the implementation of the Vishaka guidelines prescribed by the Supreme Court of India on preventing and combating sexual harassment of women at the workplace. It also organized a Colloquium on Population Policy, Development and Human Rights and took up the issue of incentives/disincentives in the population policies of State Governments/Union Territories vis-à-vis the National Population Policy.

It organized a National Conference in January 2013 on Violence against Women in the wake of the brutal rape and death of a young woman in Delhi. In February 2014, it again organized a two-day National Conference on Human Rights of Women and had detailed discussions with all stakeholders on the problem areas relating to rights of women. Many of the concerns raised below are an outcome of the work carried out by NHRC-India since its inception.

Civil and political rights

- Rising sexual crimes against women and girls is a cause of concern. A total of 293 cases of rape were registered in NHRC from January to April 2014, clearly indicating that women and young girls continue to be the

worst victims of violence, in particular, sexual violence and have little or no access to justice. This is despite the recent Criminal Law (Amendment) Act, 2013 that seeks to make more rigorous various sections of the Indian Penal Code, Code of Criminal Procedure, 1973; the Indian Evidence Act, 1872; and the Protection of Children from Sexual Offences Act, 2012. There is immense need for law enforcement officials including the judiciary to be sensitized and held accountable for not complying with laws if strict enforcement of the existing laws and policies for the protection of women is to be achieved. The national/state/district legal services authorities must also create awareness among women and girls about women enabling laws and their rights, which is not adequate at present. The NHRC is making efforts in this direction but other concerned agencies also need to devote attention to this issue.

- Similarly, women continue to be victims of domestic violence in the absence of a coordinated implementation mechanism consisting of protection officers, service in the form of facilities and shelter homes that are mandated to provide better access to justice and other support services under the Protection of Women from Domestic Violence Act, 2005. Despite guidelines issued by the MWCD to State Governments/UTs for proper implementation of the Act, there is still no proper coordination and the designated authorities remain dysfunctional.
- Acts of sexual harassment including sexual harassment of women at the workplace are still frequent and these acts take a variety of forms. In 1997, the Supreme Court in *Vishaka v. State of Rajasthan* recognized sexual harassment of women at the workplace as a human rights violation. However, even in 2006, 420 cases of sexual harassment of women (general), 63 cases of sexual harassment of women at the workplace (government offices) and two cases of sexual harassment (army/para military personnel) were registered in NHRC. In spite of, India's obligations under CEDAW and other human rights instruments, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was enacted as late as 2013.
- The status of implementation of the Family Courts Act, 1984 can also be easily gauged that only 212 Family Courts are functional across the country.
- The Armed Forces Special Powers Act remains in force in Jammu & Kashmir and the North-Eastern States, conferring an impunity that often leads to the violation of human rights, including that of women.
- The Hindu Succession (Amendment) Act, 2005 was enacted to guarantee property rights to a daughter and bring her at par with a son or any male member of a joint Hindu family. However, its implementation is poor on

account of deep-rooted cultural mindsets and lack of knowledge and awareness of rights and entitlements among women and girls. There is need for a codification of the property rights of women, regardless of caste, class, religion or ethnicity, which should take precedence over all personal laws and customary practices.

- The Pre-Conception and Prenatal Diagnostic Technique (Prohibition of Sex Selection) Act, 1994 was amended in 2003 prohibiting use of technologies for detection and disclosure of sex leading to termination of female foetuses and its resultant implication on sex ratio. Its implementation is still weak and to enhance its effectiveness, there is a need to sensitize all implementing authorities - Central Supervisory Board, State Supervisory Board, State Appropriate Authority, District and Sub-District Appropriate Authorities, Advisory Committee - regarding their role, functions, investigative powers and tasks including issues around adverse sex ratio and the given Act.
- The existing Immoral Traffic (Prevention) Act, 1956 is inadequate in need of a thorough review. There is a need to enact a new comprehensive legislation on human trafficking from a gender and rights perspective in accordance with the Trafficking Protocol, the CRC, the CEDAW and the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking.
- NHRC, carried out a comprehensive action research on trafficking in women and children, and then formulated an Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women along with MWCD, MHA and other line Ministries but the same is yet to be adopted and subsequently implemented by the Government. The Integrated Plan of Action (IPOA) on adoption by the Government of India would replace the 1998 Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children, which is ineffective as to human trafficking and especially of women and girls is rampant. In fact, trafficking is taking new forms both for purpose of sexual exploitation as well as for forced/bonded labour.
- The 'Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill' was initially introduced in the Rajya Sabha in 2005. A parliamentary standing committee rejected the bill and called for a new bill. The new bill – 'Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011' – was approved by the Government for introduction in Parliament. But the same could not be tabled. It may be stated that the legal framework should be strictly used to prevent communal violence as it has severe repercussions on the rights of women and children.

- The scheduled caste and scheduled tribe women remain particularly vulnerable despite laws to protect them because of the indifference of public servants. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 seeks to protect people belonging to these communities. However, its implementation is ineffective, which results in the culprits not being punished even in cases of severe crimes like rapes, etc. This is equally true of other disadvantaged women, especially those belonging to minorities, older women and women with disabilities. Large number of widows suffer from lack of financial security and many of them are homeless and find refuge in cities like Vrindavan where they live on charity. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 seeks to protect the rights of older persons, including widows but its implementation is weak.
- The practice of bonded labour continues unabated both in the agriculture and non-agriculture sectors due to insensitiveness of the government machinery. In 2012, a total of 503 cases of females were registered under 'bonded labour' in NHRC. This is in spite of the Bonded Labour System (Abolition) Act, 1976 according to which no activity of bonded labour is permissible. The officials responsible for implementation of the Act are not only unaware of their provisions but also indifferent. As a result, not only male earning members but in many instances entire families including women suffer bondage.
- Protection of human rights defenders, especially women, is another area of concern. In 2011, the focal point for protection of human rights defenders that was set up in the NHRC in 2009, registered 33% of cases of female victims relating to different kinds of harassment including false implication and unlawful detention.
- Women's Reservation Bill that proposes 33.3% seats to be reserved for women in Parliament and state legislatures has been pending for long. The 16th Lok Sabha should urgently pass the Constitution (108th Amendment) Bill, to reserve for women one-third of the seats in the Lok Sabha and in the State Legislative Assemblies, since it will be critical for the success of other policies to have a much higher representation of women in political and public life and in power and decision-making.
- The Government needs to take urgent steps to sign and ratify the Optional Protocol to CEDAW.

Economic, social and cultural rights

The Government of India in its combined fourth and fifth periodic reports as well as in its replies to the list of issues and questions in relation to the combined reports has mentioned about health, employment, education and other

programmes/measures concerning women. However, the actual status of these areas remain a matter of concern as follows :

- While there has been an appreciable gain in the overall sex ratio of 7 points from 933 in 2001 to 940 in 2011, the decline in child sex ratio (0–6 years) by 13 points from 927 in 2001 to 914 in 2011 is a matter of grave concern.
- India leads a group of high-burden countries with respect to one more health indicator – neonatal (0-27 days) deaths. Of the three million neonatal deaths globally in 2012, some 779,000 were in India. Also, globally there were 2.6 million stillbirths in the same year, of which 600,000 were in India. Of the one million newborns dying globally on the first day of birth, nearly one-third are in India. The country, which had a neonatal mortality rate of 29 per 1,000 live births in 2012, recorded an average annual rate of reduction of just 2.6 % during 1990-2012².
- Despite the National Rural Health Mission, a flagship programme of Gol, many deliveries still take place at home, especially in the States of Uttar Pradesh and Bihar. There is thus a dire need to increase the number of well trained birth attendants and an urgent need to improve the quality of care. These initiatives would not only save neonates but would also help in reducing maternal mortality. With 50,000 deaths, India has the highest maternal mortality in the world³.
- Emphasis should be laid on universal access to reproductive health by promoting full antenatal care of pregnant mothers, institutional deliveries, availability of Emergency Obstetrics Care (EmOC) and postnatal care irrespective of place of birth. Coupled with this, there should be universal access to information/ counselling, services for fertility regulation and contraception with a wide basket of choices for men and women, including spacing of births and information on sexuality, maternal health and HIV-AIDS. These were stressed upon by NHRC to all stakeholders during a national colloquium held in 2003.
- Public spending on total health (core and broad health components) continues to be measly, 1.97% of GDP during the Eleventh Five Year Plan (2007-2012). It needs to increase much more over the next decade. The public health system has its own set of problems – vast numbers in the villages get little or no medical care in the absence of sub-centres, primary health centre, community health centres and district hospitals.
- Gender equality cannot be achieved without economic empowerment. Therefore, the macroeconomic policy framework and economic structures

² The Hindu, 5 June 2014, New Delhi.

³ Ibid.

must be tailored to ensure that women have equal access to and control over economic resources.

- Women's access to the labour market and decent work is another area of critical concern. Though in recent years, women's access to employment opportunities has increased, they are concentrated in low-paid jobs with little security, while occupational segregation and gender wage gaps persist. This must change, and the principle of equal pay for work of equal value applied in practice.
- Another limitation which hinders the ability of women to fully participate in the labour market is the unequal sharing between women and men of unpaid work, including care-giving. It is important to promote practices that would redistribute unpaid work between women and men, including parental leave policies for both genders.
- There should be greater investment in infrastructure, such as energy, water and sanitation, childcare facilities and transportation systems, which would facilitate the participation of women in the labour market.
- Greater attention should be given to social protection measures such as unemployment insurance schemes, universal health coverage and social pensions, which have played critical roles in promoting gender equality and the empowerment of women.
- Measures such as cash transfers, the provision of cheap fertilizers, microcredit schemes, the establishment of women's cooperatives and the promotion of women's entrepreneurial activities, including through reservations and allotments for women's self-help groups, should be used to tackle women's poverty.
- Poverty alleviation programmes should focus on the rights and the empowerment of women.
- Closer attention must be paid to the critical role of holistic education and human rights education. While the school curriculum might vary between States, all States should adopt a uniform message on gender equality, conducting a thorough review of text-books, weeding out passages that perpetuate gender stereotypes, and instilling an enlightened and modern approach on gender issues in the minds of children.
- The education of the girl-child is crucial, in itself and as a catalyst of social and economic change. It is essential to meet national targets for improving girls' access to education at the primary level. Along with this, it is important to ensure secondary, senior secondary and university education for girls. There is need to bridge the gender gaps in enrolment ratios at all

levels, especially for scheduled castes and scheduled tribes children. Drop out rates among girls need to be brought down. One of the factors responsible for high drop out rates among girls is the lack of toilet facilities in schools in many States. Other reason is also that girls have to walk long distance to reach schools. This is in spite of the fact that implementation of Sarva Shiksha Abhiyan has made lot of improvement in the availability of physical infrastructure relating to schools. However, lot more needs to be done.

- Lack of toilet facilities in large percentage of households in many States resulting in open defecation has repercussions relating to health of people. Need for open defecation, especially in rural areas, also increases the vulnerability of girls to rape and other forms of violence.
