

In accordance with the mandate of the commission, under Section 10 of the National Commission for Women Act, 1990, the Commission during the year 2009-10 reviewed various laws. The recommendations on enacting of fresh legislations/policies as well as the amendments to the existing laws, affecting and concerning women are briefly given as under:-

Review of Laws undertaken during the period

1. Scheme for Relief and Rehabilitation for Victims of Rape, 2008

The National Commission for Women had prepared the above scheme in pursuance of the Hon'ble Supreme Court of India's Judgement in Delhi Domestic Women's Forum V's. Union of India & Others (Writ Petition No.362/93). The scheme provides for monetary compensation for counseling and rehabilitation of the victim. Rehabilitation of the victim includes counseling, medical and legal aid including provision for shelter. A National Consultation on the Scheme was organized on 25th July, 2009 to discuss the matter. In the light of the recommendations made during the Consultation the scheme was redrafted and sent to the Ministry (**Annexure IV**).

2. Amendments to Indecent Representation of Women (Prohibition) Act, 1986.

The National Commission for Women after consultation with NGO's and advocates working in the field have prepared the recommendation on

Amendments to Indecent Representation of Women (Prohibition) Act, 1986. The Recommendations have been sent to the Ministry of Women and Child Development. Salient features of the recommendations may be seen under the **Chapter on Recommendations**.

3. Tenancy Rights Of Deserted/Divorced Women: Amendment In The Rent Act Of States

A memorandum dated 09.06.2009, addressed to the Hon'ble Chairperson, for and on behalf of an NGO, PRAGATHI was sent to the Commission. The issue was primarily upon the tenancy rights of deserted/divorced wives whose husband had entered into the tenancy. Vide the said memo; intervention of the Commission has been sought for in light of the judgment of the Hon'ble Supreme Court of India, in the case of **B.P Achala Anand Vs. S. Appi Reddy (ILR 2005 Kar 1721)**. Vide the said judgment, the Hon'ble court had exercised its power vested under Article 142 of the Constitution and had stated about the need for the tenancy rights of deserted and divorced women and had opined that all the States of India should amend the Rent Act to that effect.

The Karnataka legislature has tabled an amendment bill before the Legislative Assembly, for affecting necessary amendments in the Rent Act, in accordance with the Hon'ble Supreme Court Judgment. The said amendment proposes to incorporate the following changes within its ambit.

The amendment appears to be in conformity with the said judgment. In the **Karnataka Rent (Amendment) Bill, 2008**, amendment of Section 3, in clause (n), after item (ii), the following to be inserted, namely:-

- (iii) A deserted wife of a tenant who has been or is entitled to be in occupation of the matrimonial home or tenanted premises of husband; and
- (iv) A divorced wife of a tenant who has a decree of divorce in which the right of residence in the matrimonial home or tenanted premises has been incorporated as one of the conditions of the decree of divorce.

As of now, the Rent Acts of various States, though are dealing with the tenancy rights of widow, is silent upon that of the deserted or divorced wives who equally need the same protection..The directions as issued by the Hon'ble Supreme Court by invoking the provisions of Article 142 are binding upon the States so as to do "complete justice".

This, however, being within the legislative powers of the State may be taken up with the State Government, so that necessary amendment in the Rent Control Act may be brought into, if deemed fit.

Accordingly, the Commission has written to the Chief Ministers of all the States to introduce an amendment to the Rent Acts dealing with the tenancy rights which will be a step toward empowering deserted / divorced women.

4. Domestic workers Welfare and Social Security Act 2010

The issue of exploitation of women and children domestic workers is frequent and regularly

reported. With no rights and rules to fall back on, most of the domestic helps have become contemporary slaves. It is also a known fact that many women and children are trafficked and exploited by the placement agencies, which operate openly without any form of restrictions and regulations. In last few decades there has been a tremendous growth in the demand for domestic workers which has led to the trafficking and other forms of exploitation of millions of Women and children of the both sexes and to meet this growing demand there has been a spurt of thousands of placement agencies providing domestic workers in metro-towns of many states who are exploited in various ways as well as trafficked and remain outside the purview of any legislative control.

Absence of any legal protection , has led to severe exploitation women and children which include depriving domestic workers from there entire salary average more then 16-18 hours of work per day, absence of proper food and living/sleeping condition, forced and total cut off from their family members, bounded labour , sexual exploitation by agent during transit, at the office of agency and at the work place in houses of employers, The list of exploitation is endless and frequently reported upon by the media.

The legislations such the recent notification on prohibition of child labour in domestic work under Child Labour (Prohibitions & Regulation) Act, 1986 cannot be implemented in the absence of any implementation mechanism in this Act. Recently few State Government have taken different initiative such as including domestic workers under minimum wage notification but in the absence of a central legislation

capable of reaching all domestic workers none of these state level measures can really benefit the domestic workers

That only a **Comprehensive Central Legislation** specifically designed to meet the working condition of the domestic workers including registration , who are an important segment of service sector of Indian economy and who have an Multiplier impact on the economy by enabling the women in particular to work by sharing the family burden, can ensure the end of the exploitation of these domestic workers.

That in the public interest that the domestic workers, employing, as it does, a very large number of women and whose conditions of work and living need amelioration and to whom regularity of employment must be assured, Placement agencies must be regulated so that the Directive Principles of the Constitution more particularly the relevant provisions Article 39, 41, 42, 43, and 43-A of the Constitution are given effect to by a law made by Parliament with reference to entries 22, 23 and 24 of List III in the 7th Schedule in the Constitution. Draft Bill is at **Chapter on Recommendation**.

5. NCW views on Criminal law Amendment Bill 2010

The criminal law Amendment Bill prepared by the Ministry of Home Affairs seeks to amend the laws relating to rape. Rape and other forms of sexual assault is an experience of humiliation, degradation and violation. Restricting an understanding of rape to an outdated notion of penile/vaginal penetration and to treat sexual violence, other than penile/vaginal penetration, as lesser offences falling under either Section 377 or 354 of the IPC and not as a

sexual offence under Section 375/376 IPC is highly restrictive . It has been found that offences such as sexual abuse of minor children and women by penetration other than penile/vaginal penetration, which would take any other form and could also be through use of objects whose impact on the victims is in no manner less than the trauma of penile/vaginal penetration as traditionally understood under Section 375/376.

This view was recognised by the Apex Court in *Sakshi vs. Union of India* Writ Petition (Crl.) No. 33 of 1997. The court went on to observe that “The suggestions made by the petitioners will advance the cause of justice and are in the larger interest of society. The cases of child abuse and rape are increasing at alarming speed and appropriate legislation in this regard is, therefore, urgently required. We hope and trust that the Parliament will give serious attention to the points highlighted by the petitioner and make appropriate legislation with all the promptness which it deserves”

The existing laws neither define nor reflect all kinds of sexual assault undergone by women. There is a standard notion of rape - the penetrative one - while other forms of penetration by other parts of the body as well as by objects have never come under the ambit of sexual assault. Recognising these lacunae, the Supreme Court in *Sakshi versus Union of India* had suggested that the legislature bring about the required changes.

Subsequently, the apex court directed the Law Commission to examine the law and suggest changes. The law commission examined the entire law relating to rape and sexual assault in IPC and suggested a complete overhauling of the law, in its

172nd report. In the meantime the National commission for Women also drafted a Bill relating to sexual assault, independently, which was on the same lines as the Law Commission report, with some additional provisions.

The Department of Legal Affairs prepared a Draft Bill called "Criminal Law Amendment Bill" based on these recommendations with some modifications .The Bill recognizes new categories of sexual assault and consolidated them in section 375/376 of IPC . The salient features of the proposed amendments based on the recommendations of NCW are :-

1. Substitution of new Sections of 375 and 376 wherein Section 375 is now being proposed to be defined as Sexual Assault and includes various forms of Sexual Assault.
2. However as already written to Ministry of Home Affairs earlier some important points may be included in the draft Bill, which were also by and large accepted by the states
 - (a) Section 304 B (1): In 304 B(1), the words "soon before" used in section 304-B(1) must be deleted and replaced by the words "anytime before".

The minimum punishment in Section 304 B (2) be raised from seven years to ten years. After the words "imprisonment for life" occurring in section 304 B(2), the words "or death" may be added.

- (b) Section 354 IPC: An additional Section 354 (A) be added saying "whoever strips a woman, attempts or abets to strip a woman in a public place, shall be

punishable for a term of not less than one year, which may extend upto 7 years rigorous imprisonment" the bill does not recognize marital rape.

3. Section 354 of IPC needs to be amended and punishment made stringent, presently the provision is bailable and cognizable. However States like Andhra have made this provision cognizable and non bailable.

6. Report of the National Commission for Women on the Alleged rape of the Domestic Maid at Mumbai.

Introduction:

The victim aged about 18 years is a domestic maid and resident of Anand Narayan Society, building No. 4, first floor, flat No. 408, Manvel Pada Road, Yirar (East), District Thane, Mumbai. The victim is originally from district Raigad, and has been working as a domestic maid at the house of accused, Shiny Ahuja, Resident of flat No. 390, 7th floor, M -block, Tarapur Tower, New link road, Andheri West Mumbai -53 since May, 2009. She complained to the police that she had been subjected to rape by Shiny Ahuja on 14.06.2009.

The National Commission for Women acting under its mandate, took suo-moto cognizance of the case and constituted an Inquiry Committee to inquire into the reported incident of rape. The Committee comprised of the following:-

1. **Dr. Girija Vyas**, Chairperson, National Commission for Women - Chairperson of the Inquiry Committee
2. **Ms. Yasmin Abrar**, Member, NCW, Member of the Inquiry Committee

3. Shri Yogesh Mehta, Law Officer, NCW - Member of the Inquiry Committee

The terms of reference of the Committee was:-

- a) To inquire into the incident and action taken by the concerned authorities.
- b) To meet the concerned police officials, victim and her family members etc.
- c) Recommend remedial measures and strategies to tackle such incidents.

The Committee proceeded to Mumbai on 18.6.2009 and held detailed discussions with the followings :-

1. The victim and her family members.
2. The investigating officers.
3. The Police Commissioner and senior officials of the Mumbai Police.
4. Mrs. Anupama Ahuja, wife of the accused .
5. Shri Mahesh Bhat , film producer and director

Findings:

1. A case under Section 376, 346, 506 IPC has been registered vide CR No. 188/09 at Oshiwara Police Station, Mumbai.
2. The case has been registered on 14.6.2009 at about 19.55 hrs. and the reported date of offence is 14.6.2009 between 1500 hrs to 1700hrs.
3. The case has been registered based upon the statement of the victim.
4. The accused Shiny Ahuja has been arrested on 15.6.2009 at 0415 hrs.

5. The Police has also taken charge of the clothes belonging to the victim, spot Punchnama of the place of the offence has also been conducted including seizure of the clothes of the accused.
6. The medical examination of the victim was also carried out by the police;and the medical report has suggested that the victim has been subjected to violent rape.
7. The accused has also been sent for medical examination and is presently now in judicial custody till 2.7.09.
8. The report of the chemical analyzer including DNA test is awaited.
9. The Committee met the victim, who appeared to be in trauma. She has stood by her statement made before the Police. The Committee also met wife of Shiny Ahuja who stressed that her husband was innocent and claimed that her husband had been framed. She requested the Chairperson that antecedents and whereabouts of the maid should be inquired into.
10. The Committee also met the Police Commissioner, Mumbai Police and other senior officials. The police has assured the Committee that they have been taking all the possible steps to ensure proper investigation and protection to the victim. The Chairperson also had an opportunity to meet the Hon'ble Chief Minister, Maharashtra who assured of all possible assistance including relief and rehabilitation to the victim.

11. Shri Mahesh Bhatt , noted film producer and director, was also present during the meeting. he indicated that one case should not vitiate the name of the film industry and that the case be speedily investigated to ensure justice.

Recommendations:

1. The Committee is of the considered view that the victim's statement under Section 164 of the Code of Criminal Procedure 1973 should be recorded expeditiously. The Mumbai Police has however assured that such action is being taken by them.
2. The case has revealed lacunae in the parent law. Section 376 IPC provides for punishment of rape and caters to situations such as Police officer committing rape (Section 376 (2)), intercourse by public servant with woman in his custody (Section 376B), intercourse by Superintendent of Jail, remand home etc. (Section 376 C) and intercourse by any member of the management or staff of a hospital(Section376D).

However, no specific provisions exist in cases where the employer, rapes or has intercourse with an employee including a contract worker. The National Commission for Women in its recommendations on rape laws and the draft Bill, amending Section 37, 376 and other provisions has recommended amendment to Section 376 IPC, which specifically caters to sexual assault committed by a person in a position of trust or authority towards the complainant, with an increased punishment of not less than 10 years but which may extend to life and with fine.

The Commission recommends that the Central Government considers the proposed amendments seeking giving more teeth to the rape laws.

3. The State Government may consider creation of "Rape Crisis" Cell , as is presently being implemented by Government of NCT, Delhi which co-ordinates, monitors the rape cases right from the point of report to the conclusion of trial and rehabilitation of the victim.
4. The State Government may ensure that the accused should not be brought in the presence of victim except for identification and endeavour made to commit such cases of offence to the Court of sessions expeditiously and preferably within one month.
5. State Government shall ensure that the victim be provided with a Counsel and is protected from all sorts of influence and enlist the support of NGO in order to ensure proper medical and psychological support to the victim at the expense of the Government.
6. The Chief Minister of Maharashtra has assured that the case will be tried in a fast track Court. The investigation should be thorough and should be conducted properly, so that there are no loopholes
7. The manner in which some section of the media has portrayed the case as "breaking news" and given an animated description of the event needs to be restrained , Information and Broadcasting Ministry may issue suitable guidelines in this regard.