

**A REVIEW OF THE WORKING OF THE
KARNATAKA STATE HUMAN RIGHTS COMMISSION
AND THE
KARNATAKA STATE COMMISSION FOR WOMEN**

DAKSH & ACCOUNTABILITY INITIATIVE

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ABOUT DAKSH

Daksh was started in 2006 by a group of citizens concerned about the lack of accountability in politics and governance. Daksh currently consists of people from diverse backgrounds including academics, entrepreneurs, lawyers, teachers, social and political activists and ordinary citizens.

Daksh is a movement to bring together three aspects of socio-political life:

- **Politics** and the people who engage in that arena,
- people's **Perceptions** of their elected politicians and development in their constituency, and
- **Participation** by people to bring about better accountability and governance.

Daksh's operational objectives are to:

- Track performance of elected governments and representatives by collecting relevant information on a regular basis,
- Collect and present detailed, query-friendly background information about people in politics
- Elicit and present the perceptions of citizens at a local level,
- Present human development indicators at the most important unit of political activity- the constituency, and
- Promote active citizen participation to ensure accountability in politics and governance.

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ABOUT ACCOUNTABILITY INITIATIVE

Accountability Initiative is a research initiative which *seeks to improve the quality of India's public services by promoting informed and accountable governance.* The **Center for Policy Research** is the Institutional anchor for Accountability Initiative.

The Accountability Initiative aims to:

- Provide regular, accessible, and relevant analysis of the implementation of government programs,
- Develop practical, people-friendly tools to improve the capacity of both citizens and government to monitor service delivery, and
- Inform the public debate on how to strengthen accountability links and improve the provision of public services.

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Foreword

It is widely acknowledged that India's accountability institutions – Parliament, judiciary, oversight bodies, and regulatory institutions- have underperformed significantly. Worryingly, with growing corruption and heightened public scrutiny in the recent past, the credibility of these institutions is now a matter of serious concern. Despite this, there are almost no systematic analytical studies of the various accountability institutions in India. Relatively little is understood about the day to day functioning of these institutions, the incentive structures within these institutions, and the quality of their performance. This is one important reason why the current debate on reforming institutions of accountability is couched in rhetoric rather than substantive critique.

Part of the reason for this neglect of institutional analysis comes from the very nature of the evolution of the accountability debate in recent years. Over the last two decades or so, as the notion of public accountability gained ground in academic and civil society discourse, much of the focus has been on citizen led accountability efforts. This emphasis emerged from a legitimate sense of public dissatisfaction with efforts to create or revive, through public sector reforms, oversight institutions and a widely accepted view that greater citizen voice holds to key to greater public accountability. Consequently, the analytical focus of much accountability research and practice has shifted to questions and concerns around citizen-centric accountability initiatives – the instruments available to citizens, mechanisms and spaces for collective action and participation, the nature and form of organized civic activism in this space and so forth.

Yet, institutional design – the rules and incentives that govern them – matter, for state performance is a product of its institutions. In fact, as recent accountability research argues, the very nature and form of citizen engagement for accountability is shaped by the micro dynamics of state institutions. A proper, holistic discussion of accountability requires, at minimum, that attention be paid both to state institutions and the mechanisms of citizen engagement that pressurize the system to align incentives for accountability.

But this gap is not limited to research. With the exception of efforts to monitor the Indian Parliament, civil society activism has not yet developed mechanisms and systems to monitor and push the debate on the effectiveness of accountability institutions. This review of two critical oversight bodies- the Karnataka State Human Rights Commission and the Karnataka Commission for Women is the first step to address this gap. One important objective of this review is to experiment with developing a series of indicators against which the performance of these institutions could be analytically reviewed. We hope that this will be the start of a larger civil society effort to monitor the functioning of accountability institutions and bringing much needed analytical rigour to the in going debate on creating effective, functional institutions of accountability in the Indian State.

Civil society activism too has not effectively developed mechanisms and systems to monitor the day to day functioning of accountability institutions as activism has largely focused on mobilizing citizen demand for accountability for services. There are two key questions that need to be addressed here: How does the design of institutions open up the opportunity for citizens engaging with the state for accountability? And, what are the incentives and mechanisms of accountability?

**Review of the Working of the Karnataka State Human Rights Commission
and the Karnataka State Commission for Women**

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LIST OF ABBREVIATIONS

AIR	All India Reporter
AIDS	Acquired Immuno Deficiency Syndrome
ALF	Alternative Law Forum
All	Allahabad
ANNI	Asian NGOs Network on NHRIs
BBMP	Bruhath Bangalore Mahangara Palike
Bom	Bombay
CBI	Central Bureau of Investigation
CID	Central Investigation Department
CJ	Chief Justice
CPRs	Civil and Political Rights
DySP	District Superintendent of Police
ESCRs	Economic, Social and Cultural Rights
FIR	First Information Report
Govt	Government
HIV	Human Immuno Deficiency Virus
HRC	Human Rights Commission
HRF :	Human Rights Features
HRI :	Human Rights Institution
IANS :	Indo-Asian News Service
IAS :	Indian Administrative Services
ICCPR :	International covenant on Civil and political rights
ICESCR :	International Covenant on Economic, social and cultural rights.
ICHRP :	International Council on Human Rights Policy
ICU :	Intensive Care Unit
IGP :	Inspector General of Police
KAS :	Karnataka Administrative Service
Ker :	Kerala
KSCPCR :	Karnataka State Commission on the Protection of Child Rights
KSCW :	Karnataka State Commission for Women
KSHRC :	Karnataka State Human Rights Commission
LJ :	Law Journal
NCPCR :	National Commission for Protection of Child Rights
NCW :	National Commission for Women
NGO :	Non-Governmental Organisation
NHRC :	National Human Rights Commission
NHRI :	National Human Rights Institution
OHCHR :	Office of the United Nations High Commissioner for Human Rights
PLR :	Punjab Law Review

PO	Protection Officer under the PWDVA
PUCL :	Peoples' Union For Civil Liberties
PHRA :	Protection of Human Rights Act
PRO :	Public Relations Officer
PWDVA	Protection of Women from Domestic Violence Act, 2005
Retd :	Retired
RSS :	Rashtriya Swayamsevak Sangh
RTI :	Right to Information
s. :	Section
SC :	Supreme Court
SCC :	Supreme Court Cases
SCPCR :	State Commission for Protection of Child Rights
SHRC :	State Human Rights Commission
SICHREM :	South India Cell for Human Rights Education and Monitoring
TADA :	Terrorist and Disruptive Activities (Prevention) Act
UN :	United Nations
UNCRC :	United Nations Convention on the Rights of the Child

INTRODUCTION

The last three years have witnessed growing tension and violence against Christians in West Coast of Karnataka and rising incidences of cultural policing. The violence against the Christian community included attacks on women, children and desecration of Churches and Christian educational institutions. The communal attacks which took place all over Karnataka, predominantly in the West Coast, resulted in few arrests or action against right-wing Hindu activists by the State. Women were largely victims of moral policing. Protests by civil society activists against the BJP ruled Karnataka State and police for its complicity were met with indifference. In case of complicity of the State the role of an independent monitoring body, like the State Commission for Women (SCW) and State Human Rights Commission (SHRC), becomes crucial in intervening and protecting rights of the vulnerable.

Concerned by the state of human rights protection in Karnataka, the need to assess the performance of human rights institutions aimed at monitoring the government and promoting human rights was felt necessary.

The need to have independent oversight bodies which will monitor the State's protection and promotion of human rights and also contribute to policies on human rights is widely acknowledged and established within the framework of the Constitution of India. The Constitution of India is a repository of human rights available to citizens and persons living in India. Majority of these rights are available against the State, in that, it is the duty of the State to guarantee the protection of these rights. The Constitution also sets out the manner in which these rights can be enforced against the State. The establishment of independent institutions is an effort to further the commitment of the Indian State under the Constitution and fulfil its commitment under several international human rights conventions which mandate the State to respect, protect, promote and fulfil rights.

The United Nations emphasises that National Human Rights Institutions (NHRIs) should play a critical role "in promoting and monitoring the effective implementation of international human rights standards at the national level."¹ In order to discharge their functions in an impartial and effective manner, such institutions should be accorded independence and autonomy. They can be created either under the Constitution or a statute. In India, the statutory route has been the preferred mechanism for establishing majority of the human rights institutions (HRI). Whether such institutions are indeed independent has been the subject matter of several evaluations.

Human rights institutions are uniquely positioned between the government and civil society organisations. Yet, they have to be independent of the influence of both. However, this can be complicated as the Commissions are supposed to be constituted by the State as well as funded by them.² In order to gain credibility and earn the confidence of the people, such institutions will have to discharge their functions without any fear or favour. They should be willing to challenge the government and hold it to task for violation of human rights. At the same time they should not be discerned to be driven by NGOs. Anne Smith describes the complexities:

¹ "OHCHR and NHRIs" at <http://www.ohchr.org/EN/COUNTRIES/NHRI/Pages/NHRIMain.aspx>

² Anne Smith, "The Unique Position of National Human Rights Institutions: A Mixed Blessing?", HUMAN RIGHTS QUARTERLY, 28 (2006), 904-946, at 909.

...if a NHRI is seen as being too close to the government or holding an agenda dictated by government departments, especially those who provide the funding, then they will be viewed by NGOs and the civil society at large as simply a puppet of the government and, therefore, damage their credibility. Conversely, if a NHRI allows NGOs to influence its workings such that an overly close relationship develops between the two, a NHRI will simply be seen as another “pro-NGO”...Notwithstanding, if it is deemed to be pro-NGO, the NHRI's credibility in the eyes of the most powerful group, the government, will be diminished.³

The objective of studying the institutions which protect and promote human rights, specifically the interests of women is important given that there is limited information available on the actual functioning of these institutions. With growing incursions on human rights, these statutory institutions assume a lot of importance in the State. Such Commissions play a significant role in evaluating existing safeguards, recommending amendments to strengthen the safeguards, inquire into violations of rights by the State, and spread human rights literacy. Given the recent violations in the State and the State complicity, we felt it was imperative to study these independent quasi-judicial bodies and evaluate their work, function and powers in light of the statutory law and the international principles on human rights institutions.

RESEARCH METHODOLOGY

For the purpose of our study, we examined the working of the Karnataka State Commission for Women (KSCW) and the Karnataka State Human Rights Commission (KSHRC). The KSCW was constituted under the KSCW Act, 1995 and the Karnataka Human Rights Commission was constituted under the Protection of Human Rights Act, 1993 (PHR Act).

What are the benchmarks against which we can judge the KSHRC and the KSCW? What is the perception of the civil society organisations of the Commissions and their work? What changes to the Acts are necessary for their effective functioning? These are some of the questions the report seeks to respond to.

We believe that the key ingredient that determines the success or failure of a human rights institution is independence. The Commission should have the foundational, functional, operational, and financial independence to conduct its affairs and discharge its functions. We have attempted to assess whether the Commissions are truly independent in their working, whether they are meeting their statutory objectives and whether the legislations itself are in compliance with the Paris Principles⁴ and other international standards such as the Commonwealth Secretariat, *National Human Rights Institutions Best Practice*, 2001, and ICHRP & OHCHR, *Assessing the Effectiveness of National Human Rights Institutions*, 2005 and Amnesty International, *National Human Rights Institutions: Recommendations On Effective Protection and Promotion of Human Rights*, 2001 (hereinafter collectively referred to as ‘International Guidelines or International Benchmarks’). An overview of the international guidelines and the benchmarks of

³ Anne Smith, “The Unique Position of National Human Rights Institutions: A Mixed Blessing?”, *HUMAN RIGHTS QUARTERLY*, 28 (2006), 904-946, at 909.

⁴ In 1993, the UN General Assembly adopted *Principles relating to the Status of National Institutions (The Paris Principles)* which laid down the core minimum standards on competence, composition, responsibilities, and methods of operation. There is a definite need to assess whether the Commissions are working in compliance with the Paris Principles.

assessing the performance of the KSHRC and KSCW have been discussed in Chapter I of this Report.

Chapter II details the manner in which the KSHRC was established, its composition, and the appointment process. The structure of the Commission is explained along with the role of the Secretary and staff, administrative issues, and infrastructural concerns. A lot of emphasis has been given to the Commission's function of inquiring into complaints. Important cases dealt with by the Commission have been included to analyse the work done and the intervention made. An attempt has also been made to evaluate whether the Commissions are accessible and accountable, especially in the last two years (2008-2010). The Commission's relationship with NGOs working in the field of human rights has also been addressed. This Chapter also highlights the key problems the KSHRC faces, the shortcomings of the legislation and whether or not the KSHRC is independent and autonomous in its functioning.

Chapter III of the Report maps the performance of the KSCW from 2008-2010. The performance of KSCW is studied in context of the initial reasons for its establishment, composition and appointment process of the Commission. The Chapter underscores the concerns regarding the functioning of the KSCW and the flaws with the KSCW Act in light of the requirements under the International Guidelines/Benchmarks. The benchmarks for evaluating the KSCW include but are not limited to: accessibility, transparency, media awareness, staff strength, limitation of the KSCW Act and interaction with women's organisations in Bangalore.

A comparative analysis of the statutory framework governing the KSHRC and KSCW is provided in Chapter IV.

Chapter V provides recommendations for the State Government, KSHRC and the KSCW. Based on our study, we have also suggested amendments to the Protection of Human Rights Act, 1993 and the Karnataka State Commission for Women Act, 1995 with the aim of strengthening the institutions.

We hope this report shall answer some of the questions raised and point towards the possibility of engaging with the Commissions in the present scenario.

DATA COLLECTION

We commenced work on the project from June 2010. Shruthi Ramakrishnan, a fifth year law student and Preethi Srinivas, a second year law student, both from the School of Law, Christ University, Bangalore assisted us in gathering data. Advocate Geeta Sajjanashetty helped us with translations and with interviews of women who had approached the KSCW.

The research methodology adopted for the purpose of the report included collecting data on the work of the Commissions, like annual reports, cases and orders/recommendations passed by the Commissions. Additionally, we interviewed staff, Members and Chairperson of the Commissions, civil society organisations and gathered media reports on the work of the Commission. We approached legal experts and former Member and Chairperson of the KSCW to throw light on the working of the Commission. In cases where we were denied access to information, RTI applications were filed under the Right to Information Act, 2005.

The information collected was tested against the set standards and objective of the parent statute the KSCW Act, 1995 and the Protection of Human Rights Act, 1993 (PHR Act) and the International Guidelines.

A. Document Analysis

Primary data from both KSHRC and KSCW was gathered, this included cases, complaints, orders/recommendations passed and annual reports of last two years. We gathered information about the administrative setup, complaints received and disposed, significant work done, budgets, and details of staff from the Annual Reports of the KSHRC and KSCW. The data on KSCW was difficult to access. The case workers working on contractual basis at the KSCW were the most approachable and willing to provide information on the Commission.

We also received a copy of the amendments suggested by the KSHRC to the Protection of Human Rights Act, 1993, which provided us with an insight to the provisions that hinders the ability of the Commission to discharge its mandate effectively.

B. Key Informant Interviews

For the purpose of our study, in addition to the aforementioned principles, we drew up questionnaires which were addressed to civil society organisations in the state, legal experts, Chairperson, Members, Secretary and staff of the Commissions.

The questions ranged from constitution of the Commission, knowledge of the staff on laws pertaining to women/human rights, initiatives in the last two years, powers, complaint mechanism and relationship between the Commissions and civil society organisations. The questions were framed to assess the independence, function, transparency and accessibility of the Commissions.

For the purpose of gathering information on the work done by the Commission we conducted interviews with officials at the Commission:

(i) KSHRC

1. Hon'ble Justice S.R.Nayak, Chairperson KSHRC
2. Mr. R.H.Raddi, Member, Member KSHRC
3. Shri Bannikuppe Parthasarathy, IAS(Retd.), Member KSHRC
4. Mr. Javid Pasha, Secretary KSHRC
5. Mr. Abdul Hafeez, Assistant Registrar KSHRC
6. Mr. Shivmurthy, Deputy Superintendent of Police, Investigation Wing, KSHRC

The KSHRC was very cooperative and allowed us access to the complaints and order copies.

We also interviewed Mr. Kamath, Deputy Registrar and Mr. A.K.Parashar, Joint Registrar of the National Human Rights Commission (NHRC) to collect information on the number of complaints received by the Commission from Karnataka and cases

transferred to the KSHRC and the relationship between the NHRC and State Human Rights Commissions, in general.

(ii) KSCW

1. Ms. Parvathi Thimmaiah, Secretary KSCW
2. Ms. Maheshwari, Counsellor, KSCW
3. Ms. Veena, First Division Clerk
4. Ms. Shobha, Case worker, KSCW
5. Ms. Sowbhagya, Case worker, KSCW
6. Ms. Sumitra Acharya, Legal Consultant, KSCW

All our attempts at meeting Mr. C.N.Sitaram, Secretary, Department of Women and Child, Karnataka failed as his office refused to grant us an appointment. We, however, managed to meet Mr. S.Narayanswamy, Deputy Secretary to Government, Women and Child Development Department.

We felt that a former Member and Chairperson of the KSCW would be able to provide a more honest evaluation of the functioning of the Commission, as opposed to present members/staff. Therefore, we interviewed:

1. Ms. Pramila Nesargi, Former Chairperson, KSCW (April 2007-October 2007)
2. Ms. Hemalata Mahishi, Former Member, KSCW. (till 2005)

We were denied access to the complaints and orders passed by the Commission in recent years. We have, however, through our conversations with the case workers gathered information on a few complaints. RTI applications made to gain access to cases/orders yielded no results.

(iii) Civil Society Representatives

We also interviewed select civil society organizations actively working on human rights and women's rights issues in the State. We tried to map the experience and interaction of the civil society with the Commissions. Interviews with civil society members were conducted by Preethi Sreenivas and Shruthi Ramakrishnan.

1. Ms. Maitreyi Krishnan & Clifton D'Rozario, Alternative Law Forum, Bangalore
2. Ms. Indhu Subramaniam, Hengasara Hakkina Sangha, Bangalore.
3. Ms. Donna Fernandes, Vimochana, Bangalore
4. Mr. Manohar Ranganath, South India Cell for Human Rights Education and Monitoring (SICHREM), Bangalore
5. Ms. K.S. Vimala, Janavadi Mahila Sanghatane, Bangalore
6. Ms. Geeta Menon, Stree Jagruti Samiti, Bangalore
7. Ms. Sheela Ramanathan, Human Rights Law Network, Bangalore. (on email)
8. Ms. S. Mallige, Campaign and Struggle Against Acid Attacks on Women (CSAAAW)
9. Mr. Ramdas Rao, Non-Office Bearer, PUCL, Bangalore.

(iv) Experts

We also interviewed legal experts and others who have been working on NHRIs to collect their views and insights on how laws should be amended to empower the Commissions and ensure their independence:

1. Justice Santosh Hegde, Lokayukta, Bangalore
2. Mr. Ravi Nair, South Asia Human Rights Documentation Centre, New Delhi
3. Ms. Sadhna Arya, New Delhi. Author of *The National Commission for Women: Assessing Performance*.

C. Applications under the Right to Information Act, 2005

We also obtained information about the total number of complaints received and disposed off and the details of the staff working at the KSHRC and KSCW through RTI applications. We also requested for information on annual budgets, action taken reports, and recommendations passed by the KSCW in certain cases. The KSCW denied information on specific reports and recommendations on the grounds that these were confidential.

D. Media Reports

We tracked media reports on both the Commissions from 2008-2010 so as to assess the nature of their interventions in matters concerning human rights and women's rights.

CHAPTER I – NATIONAL HUMAN RIGHTS INSTITUTIONS – INTERNATIONAL STANDARDS AND BENCHMARKS FOR EVALUATION

1.1. Role of National Human Rights Institutions

National Human Rights Institutions (NHRIs) play a major role in monitoring a country's record of human rights protection and promotion. As stated by the Commonwealth Secretariat, “[t]heir ability to understand national circumstances and local challenges often means that NHRIs are better placed than external evaluators to monitor the human rights performance of government.”¹

The core responsibilities of NHRIs as has been outlined in several international guidelines include the following:

- Inquiry into complaints of human rights violations. This is a key function which should be accompanied by the power to inquire into violations committed by public servants as well as private entities.
- Independent investigation into human rights violations.
- Review and evaluation of domestic safeguards for human rights and recommendations for their better enforcement.
- Visits to custodial institutions to assess the living conditions and examine whether the rights of people living in the institutions are protected.
- Recommendations for necessary new laws or amendments.
- Encouragement of harmonization between domestic law and international human rights law.
- Encouragement of ratification or accession to human rights treaties.
- Promotion of human rights literacy.
- Reporting on specific or general violations of human rights.
- Advising the government on existing and proposed legislation on human rights.
- Conducting quasi-judicial hearings.

A significant number of the functions of NHRIs are policy oriented. Apart from inquiring into complaints and visiting custodial institutions, they are also expected to evaluate safeguards and recommend to the government on how the domestic human rights framework can be further strengthened. They are quite distinct from non-governmental organisations as they are equipped with certain powers to carry out their functions. They also need to distance themselves from the government in order to be able to fairly discharge their role of a monitoring body. Even if NHRIs are vested with powers of inquiry available to a civil court, they are not courts and are not meant to function like one. Their decisions are not binding and no appeal lies from their orders. They cannot impose liabilities or penalties. They, however, have the power to issue recommendations to appropriate authorities urging them to take action or grant appropriate relief. They are largely recommendatory bodies and rely on persuasion to ensure compliance with their decisions. On a positive note, they “should be more

¹ Commonwealth Secretariat, *National Human Rights Institutions Best Practice*, London: Commonwealth Secretariat, 2001, p.3. available at http://www.asiapacificforum.net/members/international-standards/downloads/best-practice-for-nhris/nhri_best_practice.pdf

accessible and offer a more cost-effective and less formal means of conflict resolution than the courts.”²

1.2. Objectives underlying the establishment of NHRIs

Various motives have been attributed to States that have proceeded to establish human rights institutions in their country. Reports have indicated that States have resorted to the creation of these institutions to prevent international scrutiny of a country’s human rights situation³. According to the International Council on Human Rights Policy (ICHRP), for governments having a poor record of human rights protection, this is a “low-cost way of improving their international reputation”⁴. In India, for instance, the National Human Rights Commission (NHRC) is said to have been established to deflect international criticism particularly with respect to excesses by the police and border security forces and draconian laws such as the TADA.⁵

There are other reasons for establishing NHRIs as well. Countries transitioning from dictatorship to democracy have also chosen to create NHRIs to address human rights violations.⁶ NHRIs may also be established to give effect to a country’s obligations under an international convention.⁷

1.3. Paris Principles

In October 1991, the Center for Human Rights conducted an International Workshop in Paris on National Institutions for the Promotion and Protection of Human Rights. It was attended by representatives of governments, NGOs, the UN and its specialized agencies, and national institutions.⁸ The substantive outcomes that emerged from the workshop were the Paris Principles which were later endorsed by the Commission on Human Rights and the UN General Assembly.⁹ The Vienna Declaration and Programme of Action which was adopted by the World Conference on Human Rights on 25 June 1993 encouraged States to establish and strengthen national institutions in light of the Paris Principles.¹⁰ The General Assembly recognised the important role played by human

²*Id.* at 29.

³ Asia Pacific Human Rights Network, “National Human Rights Commission of India: Time to Stand Up and Speak Out”, February 2004, p.2., Vijayshri Sripati, “India’s National Human Rights Commission: A Shackled Commission?”, 18 B.U. Int’l L.J. 1 at 9.

⁴ International Council on Human Rights Policy, *Performance & Legitimacy: National human rights institutions*, Geneva: ICHRP, 2000, (Second edition, 2004) p.1.

⁵ Vijayshri Sripati, *India’s National Human Rights Commission: A Shackled Commission?*, 18 B.U. Int’l L.J. 1 at 9.

⁶ *Supra* note 4 at 1, Michael Parlevliet, et. al. ed., *Defenders of Human Rights, Managers of Conflict, Builders of Peace? National Human Rights Institutions in Africa*, The Centre for Conflict Resolution, University of Cape Town, 2005, p.9.

⁷ The Commission on Protection of Child Rights Act, 2005, which provides for the establishment of the National Commission on Protection of Child Rights and State Commissions for Protection of Child Rights, was enacted to implement India’s commitments under the UN Convention on the Rights of the Child, 1989.

⁸ OHCHR, Fact Sheet No.19, National Institutions for the Promotion and Protection of Human Rights, available at <http://www.ohchr.org/Documents/Publications/FactSheet19en.pdf> at 6.

⁹ Paris Principles, National institutions for the promotion and protection of human rights, A/RES/48/134, 85th Plenary Meeting, 20 December 1993.

¹⁰ Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993. A/CONF.157/23 12 July 1993 available at <http://www.unhcr.ch/huridocda/huridoca.nsf/%28symbol%29/a.conf.157.23.en>, Para 36.

rights institutions in the promotion and protection of human rights at the national level, in creating awareness about rights, advising governments, remedying violations and also encouraged States to comply with Paris Principles.¹¹

The Paris Principles are a set of core minimum international standards on NHRIs that stipulate that these institutions should be independent and autonomous, have a broad mandate, and should not be subject to the financial control of the government. The composition of the institution should be pluralistic. Further, the institution should be established by an official act which will ensure a stable mandate.

In the case of *People's Union for Civil Liberties v. Union of India*¹², the petitioners challenged the appointment of a Member of NHRC on grounds that the appointment was in violation of the parent Act, the Constitution of India, and the Paris Principles. The Member was a former Director of the Central Bureau of Investigation and Vice-President of Interpol. One of the arguments was that the appointment of a police officer to the NHRC was opposed to Paris Principles. The first respondent submitted that the Paris Principles did not prohibit a former civil servant or police officer from becoming a member of the Human Rights Commission. Besides, the appointment should be tested solely on the basis of the Protection of Human Rights Act, 1993. The Supreme Court agreed with the argument of the respondent and observed that "...neither the Paris Principles nor the subsequent U.N. General Assembly Resolution can be exalted to the status of a covenant in international law. Therefore, merely because India is a party to these documents it does not cast any binding legal obligation on it."

Nevertheless, the Paris Principles have been repeatedly emphasized and endorsed by the United Nations. They have been used by organisations across the world to lobby with governments to consider the Principles at the time of establishing human rights institutions. In 2005, the erstwhile Commission on Human Rights adopted Resolution 2005/75 on National institutions for the promotion and protection of human rights in which it reemphasized the significant role of NHRIs and encouraged States to follow the Paris Principles.¹³ Further, it recognised that some States had guaranteed independence and autonomy to these institutions and have also vested them with powers of investigation. It encouraged others States to consider emulating this.

1.4. Other International Guidelines and Best Practices

In 2001, the Commonwealth Secretariat endorsed the Paris Principles and developed best practice for the establishment and operation of national human rights institutions.¹⁴ The International Council of Human Rights Policy (ICHRP), a non-profit foundation based in Geneva, and Amnesty International have developed benchmarks for assessing the NHRIs and proposed recommendations to ensure a strong and effective institution. The ICHRPs' *Assessing the Effectiveness of National Human Rights Institutions, 2005*¹⁵ and *National Human Rights Institutions: Amnesty International's Recommendations for Effective Protection and*

¹¹ *Supra* note 9

¹² AIR 2005 SC 2419.

¹³ Resolution 2005/74. National institutions for the promotion and protection of human rights, Commission on Human Rights, at <http://www.nhri.net/pdf/Final-CHR-RES-2005-74-E.pdf>

¹⁴ *Supra* note 1.

¹⁵ International Council on Human Rights Policy, *Assessing the Effectiveness of National Human Rights Institutions*, Switzerland: ICHR, 2005 available at <http://www.ohchr.org/Documents/Publications/NHRIen.pdf>.

*Promotion of Human Rights, 2001*¹⁶ along with the Paris Principles and the Commonwealth Secretariat's Best Practice for NHRIs have been relied upon to formulate the benchmarks for the evaluation of the KSHRC and the KSCW.

1.5. Benchmarks for Evaluation

For the purpose of the report, we have evaluated the HRIs based on the benchmarks that emerge from a collective reading of the Paris Principles, ICHRP, Commonwealth Secretariat and Amnesty International. The following benchmarks will be relied upon to assess the working of the Karnataka State Human Rights Commission and the Karnataka State Commission for Women:

1.5.1. Independence

In order to discharge its mandate effectively, an HRI should be absolutely independent of governmental, political, or social influences or interferences. It should distance itself from the government whose policies and actions it is expected to scrutinize and inquire into. It should strive to ensure that it is not perceived as a government body or an NGO. If the NHRI conducts itself in a manner to suggest its proximity to the government then it is likely that it will be discerned as a “puppet of the government” thus affecting its “credibility”.¹⁷ On the other hand “if a NHRI allows NGOs to influence its workings such that an overly close relationship develops between the two, a NHRI will simply be seen as another “pro-NGO.”¹⁸

The term “independence” must be understood in its fullest sense and should signify *foundational, functional, and financial independence*. The foundational independence depends on the manner in which the institution has been brought into existence, its composition, and the process followed to appoint members. The appointment process should be fair, transparent, and bereft of political influences. Political appointees often lack necessary qualifications and their actions can be dictated by the government. From the experience of the National Commission for Women, it is observable that a change in government at the Centre, impacts the stability of the Commission as Members appointed by the previous government are removed.¹⁹

The NHRIs should have the autonomy to appoint their own staff as per their needs and requirements. They should be able to advertise for staff. They should not depend on the government to provide them with resources. It is not desirable to have staff members deputed from government departments as they may not have the requisite knowledge and expertise to deal with human rights issues and may also bring certain bureaucratic baggage with them which might hinder the accessibility of the Commission. The Commission should also be able to independently investigate into complaints and not

¹⁶ *National Human Rights Institutions - Amnesty International's Recommendations on Effective Protection and Promotion of Human Rights, 2001* available at <http://www.amnesty.org/en/library/asset/IOA40/007/2001/en/3c676e38-d8e3-11dd-ad8c-f3d4445c118e/ior400072001en.html>

¹⁷ Anne Smith, “The Unique Position of National Human Rights Institutions: A Mixed Blessing?”, *Human Rights Quarterly*, 28 (2006) 4, 904-946, at 910.

¹⁸ *Id.*

¹⁹ Anon, “Expulsion of NCW members degrading and unconstitutional”, *Deccan Herald*, 29 May 2005, <http://archive.deccanherald.com/Deccanherald/may292005/national1841462005528.asp>; Anon, “UPA axe falls on three NCW members”, *The New Indian Express*, 21 May 2005, <http://www.hvk.org/articles/0505/62.html>.

depend on the State investigation machinery. For this purpose, they should be vested with adequate powers to undertake investigation.

Without adequate financial independence, the institutions will not be able to realize their mandate. NHRIs should have adequate funding of its own to be able to appoint staff and rent or own premises. They should not be subject to the financial control of the government as this will seriously compromise its independence. Institutions may be unwilling to challenge the government for fear of finances being cut off. The NHRIs should therefore not be answerable to the government in power, but to an authority other than the executive, like the legislature. Adequate remuneration and status to members would additionally ensure independence, integrity and commitment of members.

1.5.2. Legal foundation

According to the Paris Principles, a NHRI should be established by an official Act.²⁰ The Best Practice (Commonwealth Secretariat, 2001) ranks in order of preference the different modes of establishment. Establishment under a Constitution is preferred, under legislation is “less preferable, but acceptable”, and under a Presidential decree is “undesirable”.²¹ The way in which an NHRI is constituted determines the independence and stability the body will have. Creation under the Constitution or legislation, guarantees greater legitimacy and also safeguards the powers and independence of the institution.²² Also, the structure or powers of the institution cannot be easily altered as it will require an amendment to the Constitution or legislation. In contrast, establishment under an executive decree may upset the stability of the body as another decree could be easily issued to disband it.²³

What emerges is that a NHRI should either be constituted under the Constitution or by way of legislation.

1.5.3. Mandate

NHRIs should have a broad mandate²⁴ and have the jurisdiction to investigate into human rights violation by all State actors and private actors.²⁵ A limited mandate or jurisdiction will restrict its functioning and dilute the purpose of having a human rights watchdog. For this purpose, the Commonwealth Secretariat advises that human rights should be broadly defined to include domestic law as well as international human rights conventions, irrespective of whether they have been acceded to by the State.²⁶

In sum, the NHRI should have a broad mandate and should be able to inquire into violations by public as well as private entities. It should also rely on international human rights conventions while exercising its mandate.

²⁰ *Supra* note 9 at para 6.

²¹ *Supra* note 1 at 10.

²² *Supra* note 15 at 13.

²³ *Supra* note 16 at p.3.

²⁴ *Supra* note 9 at para 1.

²⁵ *Supra* note 1 at 19-20.

²⁶ *Supra* note 1 at p.18.

1.5.4. Functions

The primary function of NHRIs as per International Guidelines is monitoring human rights condition in the country and protecting and promoting the human rights. The functions can be broadly classified as follows:

Reporting

NHRIs should prepare timely reports on human rights situation in the country and draw attention of the Government to cases of violation and propose initiatives to be adopted to change the situation.²⁷

Reviewing and monitoring the implementation of Laws

The primary function of NHRIs is to protect and promote the rights of the citizens, especially the disadvantaged. In order to effectively perform its role NHRIs should monitor the implementation of human rights laws in the country. It should be empowered to undertake review of the existing laws, proposed Bills, and make recommendations to ensure their conformity with human rights.²⁸ In furtherance of this function, it can also propose new legislations or amendments.²⁹

Amnesty International recommends an open and effective method of communication with "...government, the prosecuting authorities and the judiciary in order to promote their recommendations" and urge the institutions to "not accept recommendations being ignored." Additionally, they should also make recommendations to the judiciary and the legislative organs on issues concerning human rights.³⁰

Promoting compliance with international human rights law

NHRIs have to ensure that domestic and international laws concerning human rights are duly implemented and encourage ratification of and accession to international human rights instruments.³¹ Given its advisory role, NHRIs should promote harmony between domestic law and international human rights law.

While the Paris Principles state that NHRIs should contribute to the reports the State is required to submit to the UN treaty bodies and record their opinion with "due respect for their independence",³² the ICHRP categorically states that NHRI "should not prepare government reports to international human rights mechanisms" as "[t]hey are not government departments."³³ The ICHRP's position is in alignment with the overall objective of establishing independent human rights institutions.

Inquiring into Complaints

²⁷ *Supra* note 9, Principle 1(2)(a).

²⁸ *Id.*, Principle 1(3)(a).

²⁹ *Id.*

³⁰ *Supra* note 16 at 10.

³¹ *Supra* note 9, Principle 1(3)(b & c).

³² *Supra* note 9, Principle 1(3)(d).

³³ *Supra* note 15 at 19.

They should receive and address complaints concerning violations, take *suo motu* action, bring legal cases to protect the rights of individuals or to promote changes in law and practice. Amnesty International recommends “NHRI should also have the legal power to bring cases (such as judicial review) to challenge the legality of executive action and to obtain judicial orders to remedy the situation, particularly where the executive has ignored the NHRI’s recommendations on the subject.”³⁴ Further, NHRI should have the power to advise courts and act as *amicus curiae* on human rights cases in an independent capacity.³⁵ According to the Commonwealth Secretariat, the limitation period should not be narrow so as to prevent the NHRI from exercising this function and further the statute should not prevent the NHRI from inquiring against any agencies of the state by exempting them.³⁶

Promotion of Human Rights Awareness

NHRI should as part of their mandate, educate and create awareness on their work, services and human rights issues in the country. Such awareness could be in the form of trainings, through use of media, holding meetings with civil society organisations and disseminating human rights publications. They should promote the teaching of human rights in schools and universities and create human rights literacy through information and education and with the help of the media.³⁷

1.5.5. Composition

An NHRI should comprise of experts drawn from various fields and should ensure “pluralist representation of the social forces involved in protection and promotion of human rights”.³⁸ The composition should reflect gender balance and diversity.³⁹ Smith elaborates on pluralism and states that the composition should “reflect differences such as religion, language, geographical and socioeconomic factors, ethnicity, gender, sexual orientation, and disability.”⁴⁰

The Paris Principles state that the composition should include representatives of NGOs working on human rights, trade unions, lawyers, doctors, journalists, eminent scientists, universities, and Parliament.⁴¹ As per the Principles, if the institution comprises of representatives of government departments, they should act only in an advisory capacity.⁴² The ICHRP suggests that civil servants or persons belonging to political parties should be excluded from the membership so as to assure the independence of the institution.⁴³ The qualifications for membership should be clearly outlined in the law and the selection should be based on merits.⁴⁴

³⁴ *Supra* note 16 at 10.

³⁵ *Id.*

³⁶ *Supra* note 1 at 24.

³⁷ *Supra* note 9, Principle 1(3)(f & g).

³⁸ *Id.* at para 4.

³⁹ *Supra* note 1 at 15.

⁴⁰ *Supra* note 17 at 928.

⁴¹ *Supra* note 9 at para 4.

⁴² *Id.*

⁴³ *Supra* note 15 at 14.

⁴⁴ *Id.* at 14-15.

In sum, the composition should be pluralistic and qualifications should be specified within the law. If representatives of the government are part of the institution, they should act only in an advisory capacity.

1.5.6. Appointment process

The appointment process should ensure that qualified and deserving persons are appointed to the institution. Political appointments should be eschewed completely. The composition of an NHRI should inspire confidence and credibility. In order that it is not discerned as a mere extension of a government department, the appointees must be selected in a transparent manner. Political appointees are likely to be hesitant in questioning its appointer on human rights incursions. The Commonwealth Secretariat, the ICHRP, and Amnesty International emphatically state that the executive should not solely decide on the composition of the Commission.⁴⁵ If they are to dictate the selection process, serious doubts will be cast on the independence of the institution. Further, the tenure, grounds of removal, and other terms of appointment should also be clearly stated so that office-bearers are not dispensed with at the whim of the government. In order to lend credence to the appointment process, the Commonwealth Secretariat recommends that the legislature and civil society should also be involved and that the process should be consultative.⁴⁶ The ICHRP adds that a judicial service commission which appoints judges could also be involved in the appointment process in order to ensure that the NHRI is fairly independent.⁴⁷

The appointment process should be consultative and transparent. The selection should be determined by representatives of legislature, executive, and civil society.

1.5.7. Skill and knowledge of Human Rights among Staff

NHRIs should ensure that their staff has the skill and expertise in human rights. NHRIs should hold regular trainings to ensure that the staff is equipped and up-to-date with the laws and are capable of dealing with issues at hand.⁴⁸

1.5.8. Financial Independence

The Paris Principles state that the NHRI should have adequate funding so that it can “have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.”⁴⁹ The need to secure financial independence has been emphasized by the Commonwealth Secretariat and the ICHRP as well.⁵⁰

As slashing or restriction on budgets of NHRIs is common, especially when they are too critical of the Government, Amnesty International and the ICHRP recommend that NHRIs should have powers to seek funding from alternative sources such as private or international agencies, other than the Government.⁵¹ Amnesty International warns that

⁴⁵ *Supra* note 1 at 15, *Supra* note 15 at 14, *Supra* note 16 at 5.

⁴⁶ *Supra* note 1 at 15.

⁴⁷ *Supra* note 15 at 14.

⁴⁸ *Ibid.*, p.15

⁴⁹ *Supra* note 9, Para 2.2.

⁵⁰ *Supra* note 15 at 13, *Supra* note 1 at 15.

⁵¹ *Supra* note 15 at 13.

NHRIs should develop guidelines to ensure that the outside funding “does not compromise its independence and impartiality.”⁵² External funding has its downsides as the institution may be compelled to charter a particular course in order to please the donors.

The Commonwealth Secretariat⁵³ and the ICHRP⁵⁴ suggest that public funds should be made available to NHRIs by the Parliament and the NHRIs should have the power to determine the utilisation of the funds.⁵⁵

In sum, the NHRIs should have adequate funding allocated to them by Parliament so that they do not depend on the executive for finances.

1.5.9. Quasi-jurisdictional competence

Paris Principles recommend that an NHRI should be authorised to hear and consider complaints of violation brought by individuals, their representatives, third-parties, NGOs or any other organisation. NHRIs should in complaints before them⁵⁶:

- Seek an amiable settlement through conciliation or through binding decisions within the limits prescribed by law, or on the basis of confidentiality.
- Inform complainants of their rights, remedies and make it accessible for them.
- Hear complaints and transmit them to authorities having the competence to address them.
- Make recommendations to the competent authority for law reform.

They should also have the power to recommend prosecution against those alleged to have committed a human rights violation and to also approach the courts for remedies.⁵⁷

NHRIs, in dealing with complaints should ensure that the complainant has access to all documents relating to their complaint and all necessary facilities to ease the procedure.⁵⁸ The complainant should be informed of the procedure, investigation process and consulted whenever necessary.⁵⁹ In cases where victims require financial assistance for travel, NHRIs should provide the same.⁶⁰ Complaints received should be dealt within a certain set time frame. All international guidelines recommend that NHRIs should have the power to investigate and accordingly hire staff with investigation skills. ICHRP recommends that investigation in serious human rights violation cases should not have time limits.⁶¹ NHRIs should follow the principles of natural justice and procedural fairness.⁶²

⁵² *Supra* note 16 at 23.

⁵³ *Supra* note 1 at 15.

⁵⁴ *Supra* note 15 at 13.

⁵⁵ *Id.* at 13.

⁵⁶ *Supra* note 9, Additional Principles concerning the Status of Commissions with Quasi-Jurisdictional Competence.

⁵⁷ *Supra* note 1 at 24.

⁵⁸ *Supra* note 16 at 15.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Supra* note 15 at 21.

⁶² *Supra* note 1 at 22.

NHRIs should have the power to take *suo motu* action and be able to act on individual or collective cases of violation. Additionally, they should have the power to compel witnesses to testify, conduct on-site investigation and require presentation of evidence.

Recognising that NHRIs do not have the power to ensure compliance with their recommendations, the ICHRP recommends that NHRIs should have the power to compel authorities to respond to their recommendations within a certain time-period.⁶³ Further, they should be able to refer findings and recommendations to courts.⁶⁴

At a minimum, NHRIs should have quasi-judicial powers to be able to undertake inquiries into violation of human rights.

1.5.10. Accountability

NHRIs should be accountable for their functioning and should uphold high standards of transparency. Their work should be available to general public in the form of annual reports, evaluative reports of the programmes held by NHRIs and the effectiveness of the programs. Evaluation reports by NHRIs should be available to the general public in forms of media releases and summary reports. Such reports should include information such as complaints received, relief given, advice/recommendations to the government, and cases investigated. The ICHRP suggests that such reports should be scrutinised by the Parliament thoroughly.⁶⁵ Such reporting, in addition to the work of the NHRIs, should include reporting on budget which should include operative and administrative costs.⁶⁶ Public availability of the work of NHRIs increases transparency and accountability and enhances its credibility.

The Commonwealth Secretariat recommends that the NHRI should engage independent consultants to undertake a quantitative and qualitative evaluation of the institution and include the findings in its annual report.⁶⁷

While enjoying financial independence, NHRIs should also be financially accountable and should clearly indicate the sources of income and the manner in which it has been spent.⁶⁸ Their accounts should be audited by an independent agency.⁶⁹

NHRIs should be accountable for the work done and should submit reports to the Parliament for scrutiny. They should also be financially accountable and their accounts should be independently audited.

1.5.11. Accessibility

For NHRIs to be accessible to the vulnerable and disadvantaged they have to be physically accessible. Accessibility can be promoted by having decentralised offices, forming alliances with NGOs, having representatives at grassroots level, providing services in different languages, and accepting complaints in any language. Offices of

⁶³ *Supra* note 15 at 21-22.

⁶⁴ *Id.* at 21

⁶⁵ *Supra* note 15 at 23.

⁶⁶ *Id.* at 23.

⁶⁷ *Supra* note 1 at 27.

⁶⁸ *Supra* note 15 at 23.

⁶⁹ *Id.* at 13.

NHRIs should be located far away from government or military centres.⁷⁰ This is so that people are not threatened to approach such bodies and also to distance them from the government. Both ICHRP and the Commonwealth Secretariat recommend NHRIs should ensure that physical spaces and communication systems are accessible to persons living with disabilities.⁷¹ Further, ICHRP suggests that staff which is culturally diverse also enhances the accessibility of the institution.⁷² Also, publicizing the values of the institution serve as a reminder for staff and public on the role of institution.⁷³

NHRIs should be physically, geographically, and culturally accessible. They should not be located alongside government officers or military centres.

1.5.12. Relationship with civil society

The Paris Principles encourage NHRIs to cultivate relationships with NGOs working for the protection and promotion of human rights, particularly those serving vulnerable groups such as children, persons with disabilities, and migrant workers or working on specialised areas.⁷⁴ The ICHRP endorses this principle and advocates it as a way of strengthening the “public legitimacy” of the institution and ensuring that the work of the institution mirrors relevant issues.⁷⁵ This engagement can be fostered through regular consultations and partnering on implementation of programmes.⁷⁶ Relationship with civil society will bridge gaps and create linkages with the general public.

NHRIs should foster working relationships with NGOs working on human rights.

⁷⁰ *Supra* note 1 at 31, *Supra* note 15 at 17.

⁷¹ *Supra* note 15 at 17.

⁷² *Id.*

⁷³ *Id.* at 16.

⁷⁴ *Supra* note 9, Principle 3(g)

⁷⁵ *Supra* note 15 at 15.

⁷⁶ *Id.* at 16.

CHAPTER II –EVALUATION OF THE KARNATAKA STATE HUMAN RIGHTS COMMISSION

2.1. Establishment

The manner in which a NHRI is constituted determines its independence, stature and stability to a large extent.

2.1.1. Objectives underlying the establishment of the Human Rights Commission

The Statement of Objects and Reasons to the PHR Act provides an insight to the circumstances that led to its enactment. It points to the “... growing concern in the country and abroad about issues relating to human rights” and the “changing social realities and the emerging trends in the nature of crime and violence” that made it imperative to review “existing laws, procedures and the system of administration of justice, with a view to bringing about greater accountability and transparency in them, and devising efficient and effective methods of dealing with the situation.”

2.1.2. Indian legislative framework and the role of the judiciary in establishment of NHRI

In India, strong and vigilant civil society actors have taken recourse to the courts to compel State Governments to establish State Human Rights Commissions (SHRCs). Section 21 of the Protection of Human Rights Act, 1993, (PHR Act) vests the State Government with the discretion to constitute a SHRC.¹ The Peoples’ Union for Civil Liberties filed writ petitions before the Bombay High Court² and the Allahabad High Court³, praying for the writ of mandamus directing the respective State Governments to establish SHRCs. The Bombay High Court observed that in view of the objects and reasons of the PHR Act and the prevailing situation in Bombay, the term “may” in Section 21 ought to be interpreted as “shall” and the State Government should establish a SHRC. In the case before the Allahabad High Court, PUCL highlighted the egregious violation of human rights in the State of Uttar Pradesh and urged the court to direct the constitution of a SHRC. The government strongly resisted this and submitted that the Human Rights Cells under the Home Department and Police and other Commissions such as the Minorities Commission, Backward Caste Commission, and the Scheduled Castes and Scheduled Tribes Commission were sufficient to deal with human rights violations. The government also contested the court’s power to issue mandamus on policy issues. All these arguments were rejected and the High Court ordered the establishment of the SHRC.

2.1.3. Establishment of the Karnataka State Human Rights Commission

The KSHRC was constituted only in July 2007, nearly 14 years after the PHR Act came into existence. The First Annual Report 2007-08 of the KSHRC informs that the State Government had passed an order for the constitution of the Commission on 28 June

¹ 21. Constitution of State Human Rights Commission:---(1) A State Government may constitute a body to be known as the(name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission under this Chapter.

² *Peoples’ Union for Civil Liberties v Union of India*, 1999(4) Bom CR 608.

³ *Peoples’ Union for Civil Liberties v. State of Uttar Pradesh*, AIR 2000 All 103.

2005 and that this was “in cold storage” for two years.⁴ What has not been stated in the report but could have actually led to its constitution was a *diktat* from the Karnataka High Court directing the State Government to constitute a SHRC.⁵ In *Sri. P. Hanumanthappa v. The Home Secretary, The State of Karnataka*⁶, the Karnataka High Court highlighted the significant role played by such a Commission and referring to its power to take *suo motu* cognizance of a violation, it noted that its very existence “will act as a deter (sic) as against erring officials and it may provide relief even before any person is compelled to file a complaint before the Human Rights Commission.” The High Court ordered the State Government to establish the Commission within six months.

While the appointments were notified in July 2007, owing to the lack of office space and infrastructure, it commenced functioning only from October 2007 from a temporary accommodation.⁷ The lack of political will is palpable from the number of years the State took to establish the KSHRC and that too because of a direction from the High Court. In the following sections, the reluctance of the government to the very existence of such a body is pronounced by its refusal to provide the Commission with adequate staff and infrastructure necessary for it to fulfil its functions.

2.2. Composition

2.2.1. International Guidelines and the PHR Act, 1993

According to the Paris Principles, the composition of a human rights institution should “ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights”. Representatives of NGOs working on human rights, trade unions, concerned social and professional organisations such as lawyers, doctors, journalists, and eminent scientists; Universities and qualified experts; Parliament; government departments in an advisory capacity should be part of the institution.

A bare reading of Section 21(2) of the PHR Act, 1993 indicates that little or no attempt was made to ensure that the composition of the SHRC is pluralistic, diverse, or gender balanced. Further, the presence of representatives of civil society organisations on the Commission has also not been assured. Prior to the amendment of 2006, according to this provision, a SHRC comprised of a Chairperson who has been a Chief Justice of a High Court, one Member who is or has been a High Court Judge, one Member who is or has been a district Judge in that State and two members “from amongst persons having knowledge of, or practical experience in, matters relating to human rights.” To combat the excuse of lack of resources available to constitute the Commission, the 2006 amendment brought down the membership of the SHRC from five to three. Presently, the Act provides for a Chairperson who has been a Chief Justice of a High Court, one member who is or has been a judge of the High Court or a District Judge in the State with a minimum of seven years experience, and one member having experience in human rights.

⁴ Karnataka State Human Rights Commission, First Annual Report 2007-08, p.7.

⁵ *Sri. P. Hanumanthappa v. The Home Secretary, The State of Karnataka*, decided on 05.12.2006 by the Karnataka High Court.

⁶ Decided on 05.12.2006 by the Karnataka High Court.

⁷ Karnataka State Human Rights Commission, First Annual Report 2007-08, p.17.

Criticism has been levied against the membership criteria for the Chairperson and judicial member on the ground that their judicial background cannot be considered sufficient and that an expertise in human rights law is also necessary.⁸ However, the presence of judicial members on the Commission has definite advantages. It lends the SHRC with a much required credibility, assures its “political neutrality” and boosts its standing.⁹ Commissions that are not headed by a Judge have often complained about their letters and recommendations being ignored by the State and its functionaries and the office-bearers being denied appropriate status thus lowering its stature.¹⁰

Unlike the NHRC which has the Chairpersons of the NCW, the National Commission for Scheduled Castes, the National Commission for Scheduled Tribes, and the National Commission for Minorities as deemed members, the SHRCs do not have a similar provision enabling the Chairpersons of the respective State Commission to be deemed members. The deemed members of the NHRC can participate in the meetings of the Commission and can exercise functions stated in clauses (b) to (j) of Section 12. The advantages of having deemed members from these various Commissions is that it provides a necessary platform for them to engage with each other and to frame a coordinated response to human rights issues.

In Karnataka, Justice S.R.Nayak, former Chief Justice of the Chhattisgarh High Court has been appointed as Chairperson, and Mr. R.H.Raddi, retired District Judge, and Mr. B.Parthasarthy, retired IAS Officer have been appointed as Members of the Commission.

2.2.2. Appointment of retired public servants to the Commission

The Act allows no subjectivity in the appointment of the Chairperson and a judicial member. The only subjective element is the clause requiring appointment of a person having experience in human rights. However, what constitutes “having knowledge” or “practical experience” is rather vague.

In *PUCL v Union of India*¹¹, the petitioner contended that Mr. P.C. Sharma, former Director of CBI and Vice-President of Interpol, could not be considered as having knowledge or practical experience in human rights. His appointment to the NHRC would undermine the public confidence in the institution as the police are perceived as violators of human rights. The petitioner had also invoked the Paris Principles and urged that since the Principles list the entities who should be represented on such institutions, by exclusion former police officers should not be part of the Commission. The Supreme Court, however, rejected both the argument and stressed on the plain meaning of the provision to conclude that there was no express bar on the appointment of police officers to the Commission. It refrained from extrapolating on the import of the terms “knowledge of” and “experience in”.

⁸ SICHREM, *A Report on the Progress of the Karnataka State Human Rights Commission*, SICHREM: Bangalore 2010, p.15. G.P.Singh, “National Human Rights Commission –Need for Review”, Commonwealth Human Rights Initiative, http://www.humanrightsinitiative.org/programs/aj/police/papers/gpj/national_human_rights_commission.pdf p.2.

⁹ Vijayshri Sripati, “India’s National Human Rights Commission: A Shackled Commission?”, 18 B.U. Int’l L.J. 1 at 5.

¹⁰ Sugata Srinivasaraju, “Drill them all into line”, *Outlook*, 24.05.10, at <http://www.outlookindia.com/article.aspx?265435>

¹¹ AIR 2005 SC 2419.

Justice Santosh Hegde, Lokayukta, who incidentally penned the above decision, reiterated that there is nothing in the law that prevents the police from being appointed as Members to the Commission. He said “if we perceive police only as human rights violators, then all constitutional posts would be vacant. Ministry is corrupt and judges are also seen with skepticism. Who is left? There are good police officers.”¹² While his argument may appear sound, civil society organisations are of the firm opinion that the presence of former police officials on the Commission will affect its ability to look into complaints against the police and above all they do not meet the criteria of having “knowledge of” and “experience in human rights”.

A trend that is observable from appointments to the NHRC and SHRCs is that retired government servants have been appointed under this clause. In an evaluation of the performance of the NHRC, People’s Watch-India points to the presence of IPS and IFS officials on the Commission instead of persons from civil society who have devoted their career to the protection and promotion of human rights.¹³

There are three points of concern that arise in this context:

1. Appointment of bureaucrats may compromise the independence of the Commission. It may pave the way for interference with or control over the working of the Commission by the government. The South India Cell for Human Rights Education and Monitoring (SICHREM), a leading NGO working on civil and political rights in Bangalore, in its recent evaluation of the KSHRC has noted that the present Chairperson and Members of the KSHRC have through their work and action demonstrated their independence, but warned against future appointees not being so independent.¹⁴

2. Even if they work independently, retired bureaucrats may not have the requisite expertise to deal with human rights violations and this may reflect in their responses and approaches to complaints. PUCL-Karnataka believes that excepting the Chairperson, the other members do not have a good understanding of human rights.¹⁵

This is made out from a case dealt with by the Commission in 2007 –a NGO based in Udupi complained that a dalit widow who used to cook mid-day meals for a school was being ostracized because they presumed she had “AIDS”. The Commission directed the Deputy Commissioner to have her examined by doctors to ascertain if she was indeed HIV-positive.¹⁶ Based on the medical report, the Commission concluded that the allegation was false as she had not tested positive. Appreciably, the Commission recommended that the District Administration should create awareness among parents and students and that they should eat food prepared by her and that appropriate action should be taken against those who spread false propaganda.¹⁷ They also recommended that the Udupi Deputy Commissioner ensure that the lady is not threatened or troubled. While the Members of the Commission are well meaning and the outcome of this case was desirable, their approach does not reflect knowledge or understanding of human

¹² Interview with Justice Santosh Hegde, Lokayukta on 22.09.10 (On file with Daksh).

¹³ People’s Watch-India, “The NHRC in India – Another Department of the Govt of India?” 2010 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia, p.70.

¹⁴ *Supra* n.8 at p.15.

¹⁵ Interview with Mr. Ramdas Rao, Non-Office Bearer, PUCL, on 16 November 2010. (On file with Daksh)

¹⁶ Interview with Mr. R.H.Raddi, Member KSHRC on 07.09.10 (On file with Daksh).

¹⁷ *Supra* n.7 at p.19.

rights. Determining the HIV-status of the woman was irrelevant to this case. Considering that the HIV virus cannot spread through casual contact or through sharing of food, the Commission's direction to get her tested was not warranted. Further, the Commission does not have the authority to order for such a test. HIV testing has to be voluntary and with informed consent. Would the Commission's recommendation have been altered if the victim of discrimination had tested positive? If yes, this would reflect poorly on the Commission.

A well defined selection process will go towards ensuring that able and qualified persons are appointed to the Commission. It will also safeguard against allegations of appointments being political.

3. The retired government officials may import bureaucratic processes that will definitely impede the efficacy of the Commission and affect its accessibility.

The KSHRC is still in a nascent stage of evolution and in order for it to function effectively in future, it should continue to assert its independence. It remains to be seen whether the Selection Committee appoints an NGO representative or anyone other than a retired bureaucrat after the term of the present Member comes to an end.

2.2.3. Need to increase the membership to deal with caseload

An operational concern raised by Mr. B. Parthsarthy in the course of his interaction with us was that with just the Chairperson and two members, the Commission is finding it difficult to handle the caseload. Considering the broad mandate of the KSHRC, the PHR Act should be amended to increase the membership of the Commission by at least two members. Further, the Act must clearly state the fields from which the members should be drawn from or the specializations that they should have so as to ensure that people having grounding in human rights law are appointed to the Commission.

2.3. Appointment Process

2.3.1 International Standards and the PHR Act, 1993

According to Commonwealth Secretariat's Best Practice, the executive should not "exclusively" select the members of a Commission.¹⁸ Further, the selection process should be transparent, should allow public nominations and should involve the legislature as well as civil society.¹⁹ This has also been reiterated by the ICHRP in *Assessing the Effectiveness of National Human Rights Institutions* where it has designated direct appointments by the executive as being "undesirable".²⁰

Under the PHR Act, 1993, the appointments to the SHRC are made by the Governor based on the recommendation of a Committee comprising of the Chief Minister, Speaker of the Legislative Assembly, Minister-in-charge of the Department of Home, and Leader of the Opposition in the Legislative Assembly.²¹ In States having a Legislative Council, the Chairman and Leader of the Opposition in that Council will also be members of the

¹⁸ Commonwealth Secretariat, *National Human Rights Institutions Best Practice*, 2001, p.15.

¹⁹ Ibid.

²⁰ International Council on Human Rights Policy, *Assessing the Effectiveness of National Human Rights Institutions*, 2005, p.14.

²¹ Section 22(1), Protection of Human Rights Act, 1993.

Committee. The composition of the Committee is largely political and representatives of the opposition are in a minority. It comprises representatives of the executive and the legislature. The second proviso to Section 22(1) states that a sitting Judge of a High Court or a sitting District Judge can be appointed only after consultation with the Chief Justice of the High Court.

According to Sections 4(2) and 22(2) of the PHR Act, vacancies in the Committee will not render the appointments invalid. These provisions clearly undermine the objective of having an impartial and high powered committee in place to determine the composition of the Commission. The idea of having a Committee comprising of representatives of the ruling party and opposition party is to assure a semblance of balance and to safeguard against political appointments. But, if the law legitimizes appointments that take place without all the members of the Selection Committee, political appointments can easily take place.

Further, the Act does not require the positions to be advertised or selections to be carried out in an open and transparent way. Civil society members are not represented on the Selection Committee and no opportunity is afforded to them to submit objections or comments on the candidates considered for appointment. Since there is nothing in the Act which suggests that the Committee should interview the candidates or even meet to finalise the names, in some instances appointments have been carried out through circulation among the members of the Selection Committee²² A high powered Selection Committee of the kind specified in the PHR Act cannot take its responsibilities lightly. Even though the Act is silent on the procedure to be adopted such a Committee should evolve a process through which the relative merit of each candidate is vigorously tested against the qualifications set forth in the Act. The present process of appointment lacks transparency. Mr. Ravi Nair, Executive Director of the South Asia Human Rights Documentation Centre rightly recommends that “the best way to ensure that the best candidate is appointed is to subject appointments to legislative and public scrutiny. Mere age or specific number of work experience is not a sufficient test to ensure ability.”

2.4. Terms and Conditions of Service

The terms and conditions of service of the Chairperson and Members should be well defined. Their tenure should be fixed and the grounds of removal should be stipulated and the method of removal should “parallel” the process applicable to judges.²³

The Chairperson or Member of SHRC can resign from office by way of a written notice to the Governor.²⁴ They can be removed from office by order of the President of India on grounds of proved misbehaviour or incapacity after an inquiry by the Supreme Court.²⁵ However, the Chairperson or Member can be removed by the President without an inquiry by the Supreme Court on grounds of insolvency, engaging in paid

²² Mr. P.C.Sharma’s name was circulated to the members of the Selection Committee before he was appointed as Member of NHRC. He was appointed even though the Leader of the Opposition had not responded.

²³ *Supra* n.18 at p.16.

²⁴ Section 23(1), Protection of Human Rights Act, 1993.

²⁵ Section 23(1A), Protection of Human Rights Act, 1993.

employment outside duties of office, unfitness to continue in office because of infirmity of body or mind, unsound mind declared by a competent court, and conviction and sentence to imprisonment for an offence which in the view of the President involves moral turpitude.

The Act provides for a fixed term of service for Chairperson and Members. The Chairperson and Members can serve a term of five years from the date of assuming office.²⁶ This is a reasonable term as it gives the office-bearers sufficient time to develop work plans and implement them. The Chairperson and Members will cease to hold office after they attain the age of seventy years. Members are eligible for re-appointment for another term of five years.²⁷ The Act contains an important provision to secure the independent functioning of the office-bearers. Section 24(3) states that “on ceasing to hold office, a Chairperson or Member shall be ineligible for further employment under the Government of a State or under the Government of India.”

The salaries and allowances and other terms and conditions of the Chairperson and Members are to be prescribed by the State Government.²⁸ The salary and allowances of the Chairperson on KSHRC are determined in accordance with the High Court Judges (Salaries and Condition of Services) Act, 1954.²⁹ The Commission has recommended an amendment to the PHR Act to expressly provide that the salary and allowances of the Chairperson and Members of the Commission be at par with the Chief Justice and Judges of the High Court, respectively.

2.5. Secretary and Staff of the Commission

2.5.1. Secretary

The Secretary is the Chief Executive Officer of the SHRC³⁰ and is appointed by the State Government. His or her rank should not be below the rank of a Secretary to the State Government. The Secretary heads the Administration wing of the Commission.

All orders and decisions of the Commission are authenticated by the Secretary.³¹ The Secretary has to prepare the agenda for the meeting of the Commission in consultation with the Chairperson. The Secretary is responsible for the circulation of the agenda, recording of minutes of the meetings, and circulation of the minutes after the approval of the Chairperson.³²

2.5.2. Secretary from Judicial Services

The notification relating to the appointment of the Secretary issued by the Karnataka government states that a District and Sessions Judge from Karnataka Judicial Services may be appointed as Secretary.³³ This is a refreshing and laudatory notification. Usually, the post of the Secretary is occupied by IAS Officers or government servants. According

²⁶ Section 24, Protection of Human Rights Act, 1993.

²⁷ Section 24(2), Protection of Human Rights Act, 1993.

²⁸ Section 26 read with Section 41(2)(a), Protection of Human Rights Act, 1993.

²⁹ Information obtained from Mr. H.S.Raghavendra, KAS, Under-Secretary, KSHRC on 19.10.2010. (On file with Daksh).

³⁰ Section 21(3), Protection of Human Rights Act, 1993.

³¹ Section 10(3) read with Section 29(b), Protection of Human Rights Act, 1993.

³² Regulations 7 and 28, KSHRC Regulations, 2007.

³³ Government notification no. LAW 20 LAG 05 dated 28.06.05 as referred to in Karnataka State Human Rights Commission, First Annual Report 2007-08, p.9.

to Mr. A.K.Parashar, Joint Registrar NHRC, the Secretary forms a pivotal link between the government and the commission and should be a bureaucrat and should be employed without consideration of any specific department.³⁴ Mr. Kamath, the Deputy Registrar of NHRC was of the view that the Secretary need not be from judicial service as the Registrar is from that background and that is sufficient.³⁵ According to him, “the knowledge of law is not necessary for administration.”

The benefits of having a Secretary from a judicial background are twofold. Firstly, it will minimize governmental control and influence over the activities of the Commission and will also lessen the possibility of internal friction between the Secretary and the Commission. One of the grievances against Mr. P. Ganesan, former Secretary of the KSHRC, was that he communicated with the government without the knowledge of the Commission. Secondly, a District Judge’s background in law and legal processes will aid the smooth functioning of the Commission. The Judge also understands the role of the Commission and how information relating to its functioning should be accessible to the general public. It is likely to promote alignment of the administrative department with the rest of the Commission.

2.5.3. Appointment of Secretary of KSHRC

Unfortunately, the post of the Secretary at the Commission has been fraught with controversy. Despite the notification, the government proceeded to appoint an IAS Officer of Additional Secretary rank as Secretary to the Commission.³⁶ The Commission brought to the attention of the Government that this appointment was not in compliance with the PHR Act which specified that the rank of the Secretary should at least be equivalent to that of the Secretary to the State Government.³⁷ Consequently, the government appointed Mr. P.B.Ramamurthy, IAS, who met the requirement under the Act as Secretary to the Commission.

In its Second Annual Report, 2008-09, the Commission noted that this appointment was made in consultation with the Commission. However, the government bypassed this convention of consulting the Commission when it appointed his successor Mr. P.Ganesan as Secretary.³⁸ In its annual report, the Commission expressly recorded its dissatisfaction with regard to the working of the Secretary. It stated that the Secretary had from the start “acted against the smooth functioning of the Commission” and had “committed number of highly objectionable misconduct.”³⁹ In a bold move, the full Commission relieved the Secretary and informed the Chief Secretary and the Secretary of the Law Department of this action.⁴⁰ On the insistence of the Commission, the Law Department initiated an inquiry into the matter. The Department of Personnel and Administrative Reforms sought a response from the Commission to the reply submitted by Mr. Ganesan.⁴¹ Distressingly, the Law Department chose to close the case and arrived at the conclusion that formal disciplinary enquiry against him was not warranted without even waiting for the KSHRC’s response.⁴² In the words of the Commission, the

³⁴ Interview with Mr. A.K.Parashar, Joint Registrar of NHRC on 13.10.10 (On file with Daksh)

³⁵ Interview with Mr. Kamath, Deputy Registrar of NHRC on 13.10.10 (On file with Daksh)

³⁶ *Supra* n.7 at p.9.

³⁷ *Supra* n.7 at p.10.

³⁸ Karnataka State Human Rights Commission, Second Annual Report, 2008-09, p.4.

³⁹ *Ibid*, p.5.

⁴⁰ *Ibid*, p.5.

⁴¹ *Ibid*, p.6.

⁴² *Ibid*, p.7.

“malicious acts of Sri P.Ganesan and subsequent refusal of the Government to initiate disciplinary proceedings against him...tend to lower and tarnish the image of the Commission in the eyes of the general public.”⁴³

Later, the government consulted with the Commission on the appointment of a District and Sessions Judge and Mr. Javid Pasha, a District Judge was deputed by the High Court as Secretary to the Commission. Mr. Pasha has been with the Commission since August 2009. In an interview with Daksh, Mr. Pasha informed that owing to the past problems with the previous Secretary who was an IAS Officer, the Chairperson had insisted that a person from judicial background should occupy this position.⁴⁴

The KSHRC has, in fact, proposed an amendment to Section 11(1) of the PHR Act so as to require the government to appoint the Secretary with the concurrence of the Commission. This amendment will definitely smooth the creases that have accompanied the appointment of the Secretary General of the Commission.

2.5.4. Staff and Infrastructure

2.5.4.1. International Standards and the PHR Act, 1993

According to the Best Practices, 2001, the Commission should have the autonomy to select and appoint staff.⁴⁵ Further, the persons appointed to the Commission should have the requisite qualifications and be “sensitive” to the mandate of the Commission. In order to discharge all its functions, the Commission should have sufficient staff.⁴⁶

Section 27 of the PHR Act places obligation on the State Government to provide the Commission with a Secretary whose rank should not be below the rank of Secretary to the State Government, investigative staff and police under an officer not below the rank of an Inspector General of Police and other officers required for the efficient discharge of the functions. Even though the SHRC can appoint necessary administrative, technical, and scientific staff, it can do so only subject to the rules made by the State Government in this regard.⁴⁷ The salaries, allowances and service conditions of these staff are, also to be determined by the State Government.⁴⁸ The Act results in rendering the SHRC dependent and at the mercy of the State Government for allocation of staff.

2.5.4.2. Structure of the Commission

For the purpose of structural, operational and administrative convenience, the Commission has constituted four divisions:

I. Chairperson and Members – Personal Establishment

This Division comprises of the Personal Secretary to the Chairperson, court officers, home orderlies, stenographers, and drivers.

⁴³ *Ibid.*, p.8.

⁴⁴ Interview with Mr. Javid Pasha, Secretary KSHRC on 07.09.10. (On file with Daksh)

⁴⁵ *Supra* n.18 at p.13.

⁴⁶ *Ibid.*

⁴⁷ Section 27(2), Protection of Human Rights Act, 1993.

⁴⁸ Section 27(2), Protection of Human Rights Act, 1993.

II. Administrative Division

The Administrative Division is headed by the Secretary and he is assisted by a Deputy Secretary, Under Secretary, Section Officer, and other staff. This division primarily provides secretariat assistance to the Commission.

III. Law Division

This division is headed by the Registrar. The key responsibilities of this division include scrutiny of the complaints, maintaining of case files, and providing requisite assistance to the Chairperson and Members in respect of complaints.

IV. Investigation Division

This division is headed by the Inspector General of Police and consists of the Deputy Superintendent of Police, Police Constables, and others. The staff in the division undertakes inquiry into the cases registered with the Commission.

2.5.4.3. *Inadequacy of staff at the KSHRC*

The Commission had requested for 491 staff members, but the government has sanctioned only 105 staff, a meagre 21% of the actual requirement, of which only 76 have been actually appointed.⁴⁹ Of the 76 staff members, 51 are employed on contract basis and 25 are on deputation.⁵⁰ The appointments on contract basis are usually for six months. 17 i.e. 68% of the deputed staff have been drawn from the police department.⁵¹

Other staff members though sanctioned by government were not appointed due to lack of space. Firstly, it is despicable that the Commission is not able to appoint the staff on its own. The Commissions should be empowered to advertise and make all the necessary appointments and should not have to depend on the State Government to make officers available to it. Secondly, it is a grave cause of concern that the Commission has been unable to appoint all the sanctioned staff members on account of shortage of space.

The table below indicates the actual requirements, sanctioned staff, and filled-up positions in the four divisions.

Table 2.1: Details of Staffing Requirement⁵²

Division	Required	Sanctioned	Filled-up
Chairperson and Members – Personal Establishment	42	25	23
Administrative	58	28	14
Law	70	16	20

⁴⁹ Interview with Hon'ble Justice S.R.Nayak, Chairperson of KSHRC on 20.10.10. (On file with Daksh). These figures have also been gathered from the Administrative Department of the Commission.

⁵⁰ Interview with Hon'ble Justice S.R.Nayak, Chairperson of KSHRC on 20.10.10. (On file with Daksh).

⁵¹ Information received pursuant to an RTI application sent to the KSHRC. (On file with Daksh)

⁵² Obtained from the Administrative Department of the KSHRC on 19.10.10.

Investigation Division	111	36	19
Total	281	105	76

Presently, the Commission's employees are only 27% of its actual requirements. As is evident, the KSHRC is grossly understaffed. This directly impacts its functioning and its ability to intervene in pressing cases of human rights violations. The disparity is particularly acute in the Law and Investigation Divisions which are primarily responsible for inquiring into complaints of human rights violations. The Commission is in urgent need to expand the Investigation division. With just one Inspector General of Police, one Deputy Superintendent of Police, two Head Constables, and two police Constables, investigation is obviously delayed thus affecting the Commission's ability to respond timely to complaints. The Commission has put in a request for an additional 200 staff members in this division:

Table 2.2: Additional Requirement for Investigation Division⁵³

Post	No required	Filled up
Superintendent of Police	6	-
DySP	12	1
Inspector of Police	12	-
Sub Inspector	24	-
Head Constables	24	2
Police Constable		2
Men	48	
Women	12	
Police Constable Drivers	30	3
Assistant Police Constable	24	-
Stenographers	6	-
Computer Operators/Typists	6	-
Dalayaths/Group D	6	2
Total	210	10

The staff at the KSHRC was not rated highly on their awareness and knowledge of human rights by PUCL and SICHREM. According to these organisations, apart from the Chairperson none of the others at the Commission have a strong understanding of human rights. As a result, all issues end up being forwarded to him.⁵⁴ SICHREM also pointed out that the Commission is barely aware of the Paris Principles. This aspect of the Commission's working can be easily addressed by organizing regular training programmes for the staff. The Commission should consider roping in experts from civil society for these trainings. It will definitely improve the quality of the Commission's interventions in policy matters.

2.5.4.4. Appointment Process

The Commission has repeatedly urged the government to consult or take the Commission into confidence before appointments are made to the Commission. In its

⁵³ Data collected from the Administrative Division of the KSHRC on 19.10.2010.

⁵⁴ Interview with Mr. Ramdas Rao, Non-Office Bearer, PUCL, on 16 November 2010. (On file with Daksh)

Second Annual Report, it stated that it had not been consulted by the government when the Inspector General of Police was appointed to the Commission.⁵⁵ The Commission was, however, consulted during the appointment of the Deputy Superintendent of Police. The government had sent the service records of officers under consideration for this post and the Commission chose the officer.⁵⁶

The ability to appoint staff on its own will contribute to the independence of the Commission. To a large extent it will help ensure that people who are qualified and have an understanding of human rights are appointed. The Commission has been given ample power under Section 27(2) to appoint staff. It should make full use of this power and adopt transparent processes to select staff. All positions should be advertised and screening processes should be fair so as to not invite any criticism of bias or arbitrariness. This will enhance the overall effectiveness of the Commission in handling victims and addressing the complaints. The appointed staff should necessarily undergo training to equip them with the necessary information and skills required to discharge their duties. The training programme should include primers on international human rights law, the Indian Constitution, and relevant domestic laws and how to respond appropriately to victims of human rights violations.

Deputed Staff

The presence of deputed staff within the Commission may hinder their ability to discharge their functions without fear or favour. Commenting on the downside of deputation, one of the staff members was of the view that deputed officers have to function very carefully. They cannot easily challenge the work of other Departments of the State as when their term at the Commission comes to an end they will have to revert to the State Government. They cannot afford to jeopardize their future career by antagonizing the government. Considering that the Commission receives a large number of cases concerning police atrocities and that a large number of deputed staffs are from the police department, passing recommendations against the police can be complicated. In such cases, the deputed official would prefer keeping a low profile than taking on the government owing to the fear of future ramifications. A sense of belonging will be lacking and their loyalty to the Commission will definitely be compromised

Another disadvantage of having deputed staff is that in the absence of any training, they replicate bureaucratic practices and approaches which affects the public's smooth interaction with and access to the Commission. The Commonwealth Human Rights Initiative succinctly states the problem with staff deputed from various government departments – “[a]fter years of working in the government departments, they join the Commission with a certain mind-set, deep resistance to change, bureaucratic procedures of work and a very heavy accumulated backlog of bad practices.”⁵⁷

Like the NHRC, the KSHRC also requires the services of investigation officers to be able to independently inquire into complaints. The Investigation Division of the Commission comprises entirely of deputed staff from the police department who will revert back to the department after the expiry of the term their deputation. This is serious and should be addressed as a matter of priority.

⁵⁵ *Supra* n.39 at p.9.

⁵⁶ *Ibid* at p.10.

⁵⁷ G.P.Singh, “National Human Rights Commission –Need for Review”, Commonwealth Human Rights Initiative, p. 2.

2.5.4.5. Terms and conditions of appointment

The salaries, allowances and conditions of service of the staff appointed by the Commission are determined by the State Government.⁵⁸ The Commission has no say in the matter although it is advisable that the Commission is consulted by the government while framing the Rules. The Commission has taken the initiative and prepared draft Cadre and Recruitment Rules for Staff but this has not yet been notified by the government.⁵⁹ Presently salaries are paid in accordance with the scales followed by the Central Government and State Government.

2.5.5. Infrastructural concerns

When the Chairperson and Members assumed office in July 2007, the Commission had not been allocated premises to operate from. In the frank words of Hon'ble Justice S.R.Nayak, they were like a "wandering tribe". They were provided with only half a floor space in the building in which they are presently located.⁶⁰ The Commission had requested for 20,000 square feet of office space.

However, they have been provided only with 4634 square feet of space in three installments.⁶¹ Mr. Abdul Hafeez, Assistant Registrar, shared that the major problem faced by the Law Division is the lack of space to store files and inadequate staff to deal with the workload.⁶² Files are stored in the corridors and the one court room that the Commission has doubles up as a storage space for case files. A vital cause of concern is that the case files are still managed manually, and there is no computerised system and hence there is no way of retrieving information based on thematic heads. The present form of categorization is very basic and is limited to general and *suo moto* complaints and cases. The Commission maintains no separate record of cases where prosecution is initiated or cases where compensation has been recommended.

The Commission's basic requirements include at least three court halls, a library, conference hall, and space to accommodate the staff.⁶³ They also need space to seat people who approach the Commission to make representations or come for hearings. It has been over three-and-a half years since the Commission came into existence and yet its appeal for additional space has not been heeded to. Unfortunately, the Commission is dependent on the State Government for the provision of space. The lack of space is preventing them from fulfilling their research functions under the Act. The Commission has been unable to appoint Special Rapporteurs or Consultants to undertake research work as there is no space to accommodate them.

2.6. Statutory Mandate of the Commission

⁵⁸ Section 27(3), Protection of Human Rights Act, 1993.

⁵⁹ Interview with Hon'ble Justice S.R.Nayak, Chairperson of KSHRC on 20.10.10. (On file with Daksh).

⁶⁰ Interview with Hon'ble Justice S.R.Nayak, Chairperson of KSHRC on 20.10.10. (On file with Daksh)

⁶¹ Interview with Hon'ble Justice S.R.Nayak, Chairperson of KSHRC on 20.10.10. (On file with Daksh)

⁶² Interview with Mr. Abdul Hafeez, Assistant Registrar KSHRC on 19.10.10. (On file with Daksh)

⁶³ *Supra* n.39 at p.14.

Section 12 of the PHR Act read with Section 29 sets out the functions to be discharged by the SHRC. The Commission should perform “all or any” of these functions:

2.6.1. Inquiry into complaints

According to Section 12(a), the Commission can inquire, *suo motu*, or based on petitions filed by or on behalf of a victim into complaints of:

- (i) violation of human rights or abetment thereof; or
- (ii) negligence in the prevention of such violation, by a public servant

Pursuant to its power to make procedural regulations under Section 10(2) of the PHR Act, the KSHRC has made the Karnataka State Human Rights Commission (Procedure) Regulations, 2007 (“KSHRC Regulations”), which details the procedure relating to complaints and transaction of business. Complaint has been broadly defined to mean “all petitions or communications received in the Commission from a victim or any other person on his behalf, in person, by post, by telegram, by fax, or by any other means whatsoever, alleging violation or abetment thereof or negligence in the prevention of such violation, by a public servant, of all or any of the human rights”.

The PHR Act, 1993, defines “human rights” broadly to mean “the 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”.⁶⁴ International Covenants has been defined to include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights and “such other Covenant or Convention adopted by the General Assembly of the United Nations at the Central Government may, by notification, specify”.⁶⁵ Prior to 2006, the definition of “International Covenants” was confined to mean the ICCPR and ICESCR. The amendment to the PHR Act in 2006 resulted in the inclusion of other international conventions adopted by the UN General Assembly. However, as has been noted by the South Asia Human Rights Documentation Centre, by stating that only those conventions which have been notified by the Central Government will fall under the definition, the “executive still has final say over the scope of human rights protections”.⁶⁶

2.6.1.1. Complaints against public servants

Section 12(a) and Regulation 9(f) of the Karnataka State Human Rights Commission (Procedure) Regulations, 2007 (“KSHRC Regulations”) indicates that complaints can be dismissed at the very outset if the “allegations are not against any public servant”. The Commission’s mandate is restricted to inquiring into allegations of human rights violations only against public servants.

In *Santhosh Hospitals v. State Human Rights Commission, Tamil Nadu*, the Madras High Court addressed the issue as to whether the words “by a public servant” would apply to both sub-clause (i) and (ii) of Section 12(a). The court settled the issue by reading Section 12 in conjunction with Section 18 of the PHR Act. Section 18 stipulates the steps to be taken

⁶⁴ Section 2(d), Protection of Human Rights Act, 1993.

⁶⁵ Section 2(f), Protection of Human Rights Act, 1993.

⁶⁶ South Asia Human Rights Documentation Centre, “Wasted opportunity to reform India’s NHRC”, *Human Rights Features*, HRF/160/07, 28 February 2007, <http://www.hrdc.net/sahrdc/hrfeatures/HRF160.htm>

after inquiry into the “commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant”. It arrived at the conclusion that Section 18 resolves the ambiguity and clarifies that the SHRC can only entertain complaints against public servants.

The Supreme Court in the recent case of *Remdeo Chauhan v. Bani Kant Das*⁶⁷, observed that the residuary clause under Section 12(j) which reads “such other functions as it may consider necessary for the promotion of human rights” enlarges the scope of the Commissions’ functions. The apex court made the following vital observations:

It is not necessary that each and every case relating to the violation of human rights will fit squarely within the four corners of section 12 of the 1993 Act, for invoking the jurisdiction of the NHRC. One must accept that human rights are not like edicts inscribed on a rock. They are made and unmade on the crucible of experience and through irreversible process of human struggle for freedom. They admit of a certain degree of fluidity. Categories of human rights, being of infinite variety, are never really closed. That is why the residuary clause in sub-section (j) has been so widely worded to take care of situations not covered by sub-sections (a) to (i) of Section 12 of the 1993 Act. The jurisdiction of NHRC thus stands enlarged by section 12(j) of the 1993 Act, to take necessary action for the protection of human rights. Such action would include inquiring into cases where a party has been denied the protection of any law to which he is entitled, whether by a private party, a public institution, the government or even the Courts of law. We are of the opinion that if a person is entitled to benefit under a particular law, and benefits under that law have been denied to him, it will amount to a violation of his human rights.

In this case, the NHRC had made a recommendation to the Governor of Assam to consider the petitioner’s pleas of commutation of death sentence. The NHRC’s jurisdiction to do so was questioned. The Supreme Court noted that “(t)he assumption ... that there can be no violation of a person's human right by a judgment of this Court is possibly not correct” and took a broad view of the functions of the Commission to hold that it had the jurisdiction to make such a recommendation.

What emerges is that while under Section 12(a) the Commission can only entertain complaints against public servants, it can proceed to act on complaints against private entities and even courts under Section 12(j). This will radically expand the jurisdiction of the Commission and challenge the understanding that human rights are available only against State and its authorities. The full implications of this decision are yet to be seen. The definition of “human rights” in the Act also defines the mandate of the Commission. The fundamental rights guaranteed under the Constitution and provided for in the ICCPR and ICESCR are mostly available against the State. Recommendations of the Commission against a private entity could be challenged on the ground that technically human rights are available only against the State and that therefore the Commission cannot intervene in matters that at best can be termed private disputes.

⁶⁷ Decided on 19.11.2010 by the Supreme Court of India. Available at <http://www.indiankanoon.org/doc/1656850/>

The KSHRC has largely looked into complaints against the police, BBMP, and other departments of the government. However, its Second Annual Report indicates at least two cases which relate to violations by private persons. In December 2007, a disabled man was brutally lynched by people in Hassan as they mistook him to be a thief. The Commission took suo motu notice of the matter and directed the Superintendent of Police, Hassan District to undertake an inquiry into the matter.⁶⁸ The inquiry revealed that the victim had requested for water from a lady. She took him to be a thief and raised an alarm. People gathered and began beating him without even giving him an opportunity to explain. The perpetrators of the crime were arrested. The Commission took note of the fact that the deceased victim had a family and thus recommended the government to pay Rs 1 lakh as compensation to his dependants. Information is not available as to whether this was complied with.⁶⁹

The second case concerned negligence by the management of a private garment company as a result of which a girl employee of 16 years of age lost her eyesight.⁷⁰ The victim's father had approached the Commission. The Commission directed the Labour Commissioner to undertake an inquiry. The inquiry revealed that the management had indeed been negligent and that many other employees had also suffered. The Labour Department ordered the management of the company to pay a sum of Rs 2,39,967 to the victim. The Commission was of the view that the loss of eyesight of a young girl warranted a higher sum and thus directed the Labour Commissioner to grant an additional sum of Rs 5 lakhs as compensation.

2.6.1.2. Grounds for rejection of complaints

Regulation 9 lists grounds for dismissal of complaints at the very outset. Complaints can be dismissed if they are vague or anonymous or pseudonymous or illegible or trivial or frivolous. The SHRC cannot entertain matters pending before a State Commission or any other Commission constituted under a law. It also cannot look into complaints filed after the expiry of one year from the date on which the alleged violation occurred. Matters that relate to civil disputes, service matters, or industrial disputes can also be dismissed.

As stated earlier, if the allegations are not against public servants, it can be rejected. The Commission may have to revise its Regulation in light of the recent decision of the Supreme Court in which it was held that the Commission can inquire into complaints against private persons and even courts pursuant to its residuary function under Section 12(j).

The Commission should not entertain matters that are pending before a court of law or tribunal or are covered by judicial verdict or decision of the Commission. Considering that the KSHRCs decisions are not easily available in the public domain, it is not clear how a person could avoid filing a complaint pertaining to matter covered by a decision of the Commission. Further, if the subject matter of the complaint does not indicate a specific violation of human rights or if it is outside the ambit of the Commission, it can be rejected. Complaints not signed by the sender or not containing full postal address of

⁶⁸ HRC no. 641/07 c/w. HRC Nos. 677 and 830/07 in Karnataka State Human Rights Commission, *Second Annual Report 2008-09*, pp. 34-35.

⁶⁹ *Ibid*, p. 35.

⁷⁰ HRC No. 113/08 in *supra* n.39 at p. 36.

the sender or full identity of the public officer, can also be rejected. The complaint can also be rejected if it is addressed to an authority other than the Commission.

2.6.1.3. Complaints Mechanism

The complaints must provide “a complete picture” of the case. If necessary, the Commission can ask for additional information that may be required to process the complaint.⁷¹ The Commission receives about 30-40 fresh complaints on a daily basis.⁷²

Complaints are received by the Receipt and Dispatch Section and details such as date of receipt, diary number, sender’s name, and the district to which the complaint belongs is entered into a register.⁷³ The complaint is then forwarded to the Law Division. Complaints are accepted in all languages. They are then translated into English or Kannada by a competent person. The translated complaint is not, however, sent to the complainant.⁷⁴ Once a response or report is received from the government department, the copy of this report is sent to the complainant for his comments. If the complainant requests, a translated copy of the report is sent.

Thereafter, the complaint is registered by the Law Division and a complaint receipt number is assigned. The complaints are then presented to the Chairperson. All complaints are dealt with by a Single Bench. The Chairperson may direct that complaints “involving vital or complex issues” be listed before a Division Bench.⁷⁵ The KSHRC Regulations state that complaints pertaining to custodial crimes such as torture, death, and rape, and illegal detentions should be heard by the Division Bench.⁷⁶ A Single Bench or Division Bench could also refer a case to a Division Bench or Full Bench, respectively after recording reasons for doing so. Urgent matters should be placed before the Commission within three days of their receipt.⁷⁷

If the subject-matter of the complaint is hit by Regulation 9, it is dismissed. If not, the Commission calls for a report from the appropriate department of the government within six weeks. If the department fails to send a report within the stipulated timeframe, reminders are issued. If they still fail to comply, summons can be issued requiring the officer to appear and explain reasons for the delay. If they do not respond to the summons, the Commission can issue a bailable warrant. The Commission has rarely resorted to issuing warrants as in majority of cases, the Government responds to their request to submit a report after reminders.⁷⁸

After the report is received, it is sent to the complainant for comments. After the comments are received, orders are passed to dispose the case.

2.6.1.4. Jurisdiction

⁷¹ Regulation 8(3), Karnataka State Human Rights Commission (Procedure) Regulations, 2007.

⁷² Interview with Mr. Abdul Hafeez, Assistant Registrar KSHRC on 19.10.10. (On file with Daksh)

⁷³ Regulation 10(3), Karnataka State Human Rights Commission (Procedure) Regulations, 2007.

⁷⁴ Interview with Mr. R.H.Raddi on 07.09.10. (On file with Daksh)

⁷⁵ Regulation 11(3), Karnataka State Human Rights Commission (Procedure) Regulations, 2007.

⁷⁶ Regulation 11(4), Karnataka State Human Rights Commission (Procedure) Regulations, 2007.

⁷⁷ Regulation 11(3), Karnataka State Human Rights Commission (Procedure) Regulations, 2007.

⁷⁸ Interview with Mr. Abdul Hafeez, Assistant Registrar KSHRC on 19.10.10. (On file with Daksh)

Section 36 specifies that the NHRC cannot inquire into matters pending before a State Commission or any other Commission. Further, under Section 36(2), the NHRC or SHRC cannot inquire into a matter which has been filed a year after the expiry of the date on which the human rights violation took place. A further bar has been placed on the jurisdiction of the SHRCs – they can only inquire into human rights violation with respect to matters related to entries in the State List and Concurrent List in the Seventh Schedule of the Constitution.⁷⁹

In the case of *N.C. Dboundial v. Union of India*⁸⁰, the Commission took cognizance of a complaint filed by the victim four years after he had been allegedly illegally detained and tortured in custody by the CBI. When its jurisdiction was challenged on the ground that Section 36(2) prescribed a time limit, the Commission argued that it could take action as “every violation of human right is a continuing wrong until and unless due reparation is made” and that “it cannot be assumed that the mere lapse of a certain period would be sufficient to render the violation immune from the remedy of redressal of the grievance.”⁸¹ The Supreme Court rejected this argument as it would then render Section 36(2) nugatory. Also, the Commission’s justification of continuing wrong could not be applied to the instant case as the violation would come to an end after the unauthorized detention ends. Further, even though the NHRC could not entertain the petition, the victim would have the option to access justice through other redress forums. Reflecting on the exercise of jurisdiction by the Commission, the Supreme Court observed:

The Commission which is an 'unique expert body' is, no doubt, entrusted with a very important function of protecting the human rights, but, it is needless to point out that the Commission has no unlimited jurisdiction nor does it exercise plenary powers in derogation of the statutory limitations. The Commission, which is the creature of statute, is bound by its provisions. Its duties and functions are defined and circumscribed by the Act. Of course, as any other statutory functionary, it undoubtedly has incidental or ancillary powers to effectively exercise its jurisdiction in respect of the powers confided to it but the Commission should necessarily act within the parameters prescribed by the Act creating it and the confines of jurisdiction vested in it by the Act.

The Supreme Court has, however, in the case of *Paramjit Kaur v. State of Punjab*⁸² held that under Article 32 of the Constitution, which encapsulates the right to constitutional remedy for violation of fundamental rights, the apex court could request the NHRC to look into violations of human rights and that in such a case, the bar contained in Section 36(2) would not operate. Based on this, the NHRC proceeded to inquire into the Punjab Cremations which entailed gross violation of human rights.

2.6.1.5. Disposal of Complaints

According to the available statistics, from July 2007 to March 2009, majority of the complaints were received from Bangalore Urban, Dakshina Kannada, Belgaum, Uttara Kannada, Mysore, and Belgaum.⁸³

⁷⁹ Section 21(5), Protection of Human Rights Act, 1993.

⁸⁰ (2004) 2 SCC 579.

⁸¹ (2004) 2 SCC 579.

⁸² AIR 1999 SC 340.

⁸³ First and Second Annual Reports of the KSHRC.

Mr. Abdul Hafeez, the Assistant Registrar, shared statistics of complaints registered (both general and suo motu) and disposed off for the last three years i.e., from July 2007 to September 2010 (Table 3).

Table 2.3: Complaints Registered and Disposed Off, 2007-2010⁸⁴

Year	Complaints Registered			Complaints Disposed Off			
	General	Suo-Motu	Total	General	Suo-Motu	Total	Pending
2007 (From July to December 2007)	857	33	890	435	-Nil-	435	455
2008 (From January to December 2008)	3871	1034	4905	2172	89	2261	2644
2009 (From January to December 2009)	5975	2204	8179	3764	561	4325	3854
2010 (January to September 2010)	5540	1623	7163	4388	1020	5408	1755
Total	16243	4894	21137	10759	1670	12429	8708

The rate of disposal of complaints from July 2007 to June 2010 is as follows:

July 2007 – December 2007	: 48.8%
January 2008 – December 2008	: 46%
January 2009- December 2009	: 52.58%
January 2010 – September 2010	: 75.49%

While the rate of disposal has steadily increased over the years, the overall rate of disposal is approximately 58.80%, just over the half-way mark. The *suo-motu* cases constitute 30.12% of the total number of cases registered by the Commission from July 2007 to September 2010 and the disposal rate of such cases is only 34%. The Commission explains the delay in disposal of *suo motu* cases on account of the time required by the Commission to investigate the case as they are not based on complaints filed.⁸⁵

⁸⁴ Obtained from Mr. Mr. Abdul Hafeez, Assistant Registrar KSHRC on 19.10.10. (On file with Daksh) and from a reply to an RTI application seeking information on complaints received and disposed off by the KSHRC on 27.11.2010.

⁸⁵ *Supra* n.39 at p.20.

The NHRC has received about 1651 cases from Karnataka since April 2008. Of these, in 77 cases, notices were sent to the concerned authorities, in 71 cases were transferred to the KSHRC, 275 cases were dismissed with directions and 1132 cases were dismissed in limine.⁸⁶

Hon'ble Justice S.R. Nayak explained to us that the Commission does not just simply forward complaints to concerned departments... "[w]e issue notices, conduct enquiries, receive reports, we send them for comments and give parties the opportunity to be heard on oath. Then we decide the matter. If we see a violation of a human right, we also direct compensations for the benefit of the victims. In cases where public officers are involved, we also direct public authorities to initiate department procedure/ prosecution."⁸⁷ He, however, regretfully noted that the Commission does not have the power to finally decide cases or even initiate prosecutions on its own.

According to Mr. R.H. Raddi, Member of the KSHRC, "the delay in disposing off complaints is mainly on account of the delay on the part of the government in submitting reports." The Commission has had to issue warrants to public servants in some cases owing to their failure to respond to the Commission.⁸⁸ The public servants fail to respond in spite of repeated reminders and summons.⁸⁹ The manner in which the Commission is perceived by government authorities is a larger concern. It stems from the institutional neglect of human rights. Considering that the Commission's recommendations are not binding and it has not been equipped with any powers to implement its recommendation, departments take communication from the Commission very lightly.

Another cause for delay is shortage of staff in the Investigation Division. Mr. B. Parthasarthy, Member KSHRC, shared that the Commission would ideally like to have a unit headed by a Superintendent of Police to take up investigation at the District level.

The Commission, on its part, can take certain steps to reduce its workload. Clear parameters for scrutinizing complaints will help filter matters that are frivolous or do not fall within the purview of the Commission. The Commission should refrain from entertaining property related disputes or matters that are of a civil nature and should reject these complaints at the very outset. As a long term measure, all human rights institutions within the State should meet and discuss ways in which encroachment of jurisdiction can be avoided. This will help ensure that the institution best suited to deal with a particular complaint takes up the matter. It will also streamline the inquiries by the various Commissions' in the State.

2.6.1.6. Powers of Inquiry

The powers available to a Human Rights Commission clearly distinguish it from a non-governmental organization working for the promotion of human rights. For the Commission to be able to inquire into complaints, it should have the necessary powers to summon witnesses, order the production of documents, and requisition public records.

⁸⁶ Interview with Mr. Kamath, Deputy Registrar of NHRC, on 13.10.10 (On file with Daksh)

⁸⁷ Interview with Hon'ble Justice S.R.Nayak, Chairperson of KSHRC on 20.10.10. (On file with Daksh).

⁸⁸ Interview with Mr. R.H.Raddi on 07.09.10. (On file with Daksh)

⁸⁹ Interview with Mr. R.H.Raddi on 07.09.10. (On file with Daksh)

Section 13 of the PHR Act lays down the powers available to the NHRC and SHRC to fulfill its function of inquiring into complaints under Section 12(a). According to the provision, the Commission has all the powers of a civil court trying a suit under the Civil Procedure Code and in particular, has the power to summon and enforce attendance of witnesses, examine witnesses of oath, order discovery and production of documents, receive evidence on affidavit, requisition public records, issue commissions for examination of witnesses, or any other matter which may be prescribed. The Commission also has the power to require any person to furnish information that may be relevant to the inquiry and the person will be legally bound to provide information.⁹⁰ Failure to do so or giving false information will attract penalty under Sections 176 or 177 of the Indian Penal Code. Another additional power that is available only to the Human Rights Commissions' is the power to carry out search and seizure.⁹¹

Proceedings before the Commission are deemed to be judicial proceedings and provisions of the Indian Penal Code relating to punishment for providing false evidence and intentional insult or interruption to public servant sitting in judicial proceeding will apply.⁹² Further, the Commission is deemed to be a civil court for the purpose of prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence) and Chapter XXVI (Provisions As To Offences Affecting The Administration Of Justice) of the Code of Criminal Procedure, 1973.

The Commission does not, however, have the power to override or set aside the decision of any administrative or quasi-judicial authority or pass interim orders.⁹³

While under the statute the KSHRC's powers are limited and its recommendations are not binding, civil society organisations feel that the Commission has not even fully utilized the powers available to it. PUCL shared that after it had a filed a complaint with the Commission regarding deaths in the Beggars Home, Justice Nayak visited the Home and expressed his shock at the state of affairs. However, they did not use their powers to call for documents to look into the manner in which the Home is being run. Even if they have asked for these documents, they have not shared it with the complainant.

2.6.1.7. Investigation

Section 14 of the PHR Act, 1993, allows the Commission to seek the services of officers or investigating agencies of the Central Government or State Government to inquire into complaints. They can do so with the concurrence of the Central or State Government. The officers or agencies will discharge their functions under the direction and control of the Commission. They have the power to summon and enforce the attendance of persons, require the discovery and production of documents, and requisition public records.⁹⁴

⁹⁰ Section 13(2), Protection of Human Rights Act, 1993.

⁹¹ Section 13(3), Protection of Human Rights Act, 1993.

⁹² Section 13(5), Protection of Human Rights Act, 1993.

⁹³ *Jatt Ram v. Punjab State Human Rights Commission*, (2005) 141 PLR 297.

⁹⁴ Section 14(2), Protection of Human Rights Act, 1993.

After completion of inquiry, the investigating officer or agency should submit a report containing its findings to the Commission within the stipulated time frame. In such report, the Investigation team at the KSHRC usually highlights the relevant provisions under which the offence should be registered and in cases of violations by public servants, it also recommends departmental inquiries or compensation.⁹⁵ The Commission then passes recommendations based on the investigation reports.

The Investigation Division carries out a formal inquiry to assess if there is a prima facie case. If the case calls for detailed investigation, then it is directed to the CID or other agencies. Though the Act does provide the Commission with investigation powers, this Division only does some formal questioning and verification as they do not have adequate staff or time to undertake a thorough investigation.⁹⁶ The Division has been unable to investigate cases of custodial violence by the police as most of these cases are taken up by the CID for investigation. However, the CID's role is limited to the submission of a charge-sheet. Unlike the Commission, it cannot direct the payment of compensation to the victims. Unfortunately, the Commission has confined itself to routine cases of violations.

A representative illustration of the cases dealt with by the Investigation Divisions are as follows:

- The Division has investigated complaints against the police alleging failure to register FIRs. Based on the findings submitted by the team, the Commission issued recommendations to the government.
- In February 2008, the Investigation Wing visited Central Prison, Parappana Agrahara and discovered that several undertrials were below 18 years of age.⁹⁷ No medical examination had been carried out to determine their age. They recommended that the police should be questioned and if necessary criminal cases and departmental inquiries should be instituted against the errant officers.
- The Division has inquired into complaints relating to poor quality of food served in the jail and lack of escorts. They visited the jails and recorded statements of the inmates regarding specific complaints and submitted a report to the Commission.
- Conditions of a shelter home for children.
- Visits to police stations to understand the detention of a person and if there is torture.

Investigation in most cases is carried out within two to three months. In complex cases, it takes about six to eight months to complete investigations.⁹⁸ In majority of the cases, summons is issued to the parties and they are ordered to appear before the Commission. Only in rare cases where the parties cannot come, the Investigation team visits them to note their statements.⁹⁹ If the complainant belongs to a far flung village, for the sake of

⁹⁵ Interview with Mr. Shivmurthy, DySP Investigation Division on 22.09.10 (On file with Daksh).

⁹⁶ Interview with Mr. Shivmurthy, DySP Investigation Division on 22.09.10 (On file with Daksh).

⁹⁷ HRC No, 965/2008; (IGP/HRC/5/2008, Dt 31.03.2008) Information obtained from the Second Annual Report of the KSHRC, p. 64 and interview with Mr. Shivmurthy, DySP Investigation Division on 22.09.10 (On file with Daksh).

⁹⁸ Interview with Mr. Shivmurthy, DySP Investigation Division on 22.09.10 (On file with Daksh).

⁹⁹ Interview with Mr. Shivmurthy, DySP Investigation Division on 22.09.10 (On file with Daksh).

convenience he or she is summoned to nearby towns for the purpose of investigation.¹⁰⁰ To this extent, steps are taken to improve the accessibility of the Commission.

The Investigation Division of the KSHRC undertook 12 inquiries in 2007, 75 in 2008, 160 in 2009 and till 22 September 2010 had received 215 inquiries of which 90 were completed.¹⁰¹ Mr. Shivmurthy, Deputy Superintendent of Police, Investigation Division of the KSHRC highlighted the shortage of staff in the Investigation Division and stated that there was a definite requirement for additional resources to effectively deal with the growing number of required investigations. SICHREM shared that the problem with the system was that the complainant receives only the gist of the investigation report and not the entire report thus not affording a complete opportunity to respond to the contents of the report.¹⁰²

2.6.1.8. Nature of Cases

The definition of human rights contained in the PHR Act includes civil and political rights as well as economic, social, and cultural rights. Since its amendment in 2006, it would also include rights contained in other international conventions ratified by India and notified by the Central Government.

Following are representative cases dealt with by the Commission as gathered from interviews with the Members, Annual Reports, and study of complaint files.

Civil & Political Rights

The KSHRC has looked into a large number of violations of civil and political rights such as discrimination, illegal detention, custodial violence, custodial rape, torture of children and encounter killings.

The Commission has acted promptly on receiving complaints pertaining to illegal detentions in police stations. On a surprise visit to the Ulsoor Police Station in 2007, the Commission observed that no records were maintained as to when the victim had been brought to the police station. The Commission recommended that the victim should be immediately produced before the Magistrate and records should be maintained properly. This was complied with. The Commission has proactively taken cognizance of violation of civil and political rights. Without waiting for complaints to be filed, it has proceeded to call for reports from government authorities.

For instance, based on an article in Times of India, in February 2008, the Commission took cognizance of wrongful detention and torture of children playing in a garden by Police Inspector, Hanumanthanagar.¹⁰³ The Commission ordered the IGP, KSHRC to investigate into the incident and submit a report. The IGP secured the release of the children from the remand homes and restored them to the custody of their parents. The report submitted by the IGP indicated that the children were brought to the remand home because they were alleged to have been involved in a theft. They were ill treated

¹⁰⁰ Interview with Mr. Shivmurthy, DySP Investigation Division on 22.09.10 (On file with Daksh).

¹⁰¹ Interview with Mr. Shivmurthy, DySP Investigation Division on 22.09.10 (On file with Daksh).

¹⁰² Interview with Mr. Manohar Ranganath, Head of Programs, SICHREM, on 01.09.10 (On file with Daksh).

¹⁰³ HRC No. 433/SM-23/08.

and were kept in the remand home despite protests by their parents. When the parents approached the police for their release, they were asked to cough up Rs 10,000. The IGP found that there had been no entry in the any of the records about the detention or recovery of articles and the allegations were vague. The Commission recommended to the Chief Secretary to provide compensation of Rs 20,000 to each of the families of the children and that it was at liberty to recover this from the errant police officer.¹⁰⁴ The Commission also recommended initiation of disciplinary proceedings.

In a case of rape of 13 year old girl by a police constable, the Commission recommended the Chief Secretary to grant Rs 2 lakhs compensation to the victim.¹⁰⁵

The Commission has also taken cognizance of the controversial case of illegal mining in Chikkanayakanahalli Taluk and called for a report from the Chief Secretary and responses to the report.¹⁰⁶

In a case wherein inmates of the jail were not being remunerated for the work done by them the Commission called for a report from the jail authorities. The Commission came down heavily on the prison authorities and noted that they had sufficient funds and that it is their duty to pay prisoners for the work done by them.¹⁰⁷

The Commission has addressed the sensitive issue of communal or cultural policing time and again. Cultural or communal policing amounts to a gross violation of the right to equality, the right to freedom of speech and expression, and the right to freedom of religion. It militates against the core value of secularism contained in the Indian Constitution.

The Commission has taken cognizance of over six instances of communal policing in Dakshina Kannada in 2009. It looked into incidents of harassment by members of Bajrang Dal, RSS and Vishwa Hindu Parishad in preventing Muslim girls from wearing burkhas and objecting to communication between a Hindu girl and Muslim boy. It also addressed the assault of a Muslim boy by the Convenor of the District Unit for Ram Sene because he had attended a Hindu wedding reception. In its order dated 12 February 2009, it lamented on the despicable state of affairs after a newspaper reported that a 15 year old girl had committed suicide in Mangalore because she was allegedly harassed by men suspected to be from Bajrang Dal for having spoken to a Muslim boy:

“It appears that outfits and groups have emerged in recent time in the coastal districts particularly in the Dakshina Kannada District and have assumed the role of a parallel instrumentalities of governance, and their highhanded actions include attacking places of worship, attacking boys and girls visiting pubs, attacking Hindu girls found speaking to boys belonging to other religions, preventing Muslim girls from entering the premises of educational institutions if they wear Burkha and similar other illegal acts.”¹⁰⁸

¹⁰⁴ Karnataka State Human Rights Commission, Second Annual Report, 2008-09, p.30.

¹⁰⁵ HRC No.125/SM-7/08 in *supra* n.39 at p.33.

¹⁰⁶ HRC No.2516/08 c/w HRC Nos. 2523/08 to 2540/08 in *supra* n.39 at p.40.

¹⁰⁷ HRC NO 2670/08 02.08.08 in *supra* n.39.

¹⁰⁸ HRC No.746/SM-178/2009, 12.2.2009 in People’s Union for Civil Liberties, Karnataka, “Cultural Policing in Dakshina Kannada”, 2009, p.92, at

In each of these cases, the Commission ordered the transmission of the newspaper article reporting the incident to the Chief Secretary, Government of Karnataka and Additional Chief Secretary and Principal Secretary, Home Department, Government of Karnataka and also directed the Director General and Inspector General of Police to submit a report on the incident. The Commission consistently urged the government to address the grave issue of communal and moral policing and take stern action against those who indulge in such illegal acts. After visiting Dakshina Kannada and grasping the extent of the problem, in one of its orders, the KSHRC expressed its strong view that with the personnel in the District Police Unit, “it is not possible to contain these in[ci]d[ent]s of menace or to bring about social harmony among various religious groups in the district.”¹⁰⁹ The Commission recommended a reshuffling in the District Police Unit in order to maintain law and order in the district. The Commission should have also strongly recommended to the government to identify those responsible for the attacks and initiated prosecution against them. It should have also recommended payment of compensation to the victims of cultural policing.

While such incidents abated since 2009, in September 2010, Deccan Herald reported another incident of moral policing in Dakshina Kannada.¹¹⁰ Justice S.R.Nayak shared with us his concern that the “...recent acts of moral policing has been tearing up our democratic fabric to pieces.”¹¹¹ While the Commission has received communication from the government stating that action has been taken, it is not satisfied with the response and feels that the problem should be nipped in the bud before it assumes gigantic proportion.

Another grave issue addressed by the Commission is that of manual scavenging. Justice Nayak expressed his anguish over the continuance of this degrading practice. He was of the view that with the coming into effect of the Constitution, this scourge should have been eliminated.¹¹² Manual scavenging constitutes a violation of the right to life and human dignity guaranteed under Article 21 of the Constitution. Despite the enactment of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, States have failed to abolish the practice.

On 20 December 2008, the KSHRC passed an order directing the eradication of manual scavenging in the state within 6 months.¹¹³ The Deputy Commissioners of all Districts were asked to submit reports. However, no Action Taken Report was submitted by the government. The Commission also directed the Municipal Commissioner and Zilla Panchayats to find out through their agencies if such practices are continuing. The government did not even file a compliance report. In July 2010, *Deccan Herald* reported that the Bhangi community in Savanur poured human excreta over themselves to display their protest against this inhuman practice as well as attempts at evicting them from their

<http://www.sabrang.com/reports/Cultural%20Policing%20in%20Dakshina%20Kannada%20Book-1.pdf>

¹⁰⁹ HRC No. 702/SM-150/09 to HRC No. 725/SM-173/09, 07.02.2009 in People’s Union for Civil Liberties, Karnataka, “Cultural Policing in Dakshina Kannada”, 2009, p.94, at <http://www.sabrang.com/reports/Cultural%20Policing%20in%20Dakshina%20Kannada%20Book-1.pdf>

¹¹⁰ Anon, “Moral policing back to haunt M’lore”, *Deccan Herald*, 16 September 2010, <http://www.deccanchronicle.com/bengaluru/moral-policing-back-haunt-m%E2%80%99lore-127>

¹¹¹ Interview with Hon’ble Justice S.R.Nayak, Chairperson KSHRC on 20.10.10 (On file with Daksh).

¹¹² Interview with Hon’ble Justice S.R.Nayak, Chairperson KSHRC on 20.10.10 (On file with Daksh).

¹¹³ Interview with Mr. R.H.Raddi, Member KSHRC on 07.09.10 (On file with Daksh).

houses.¹¹⁴ In August 2010, the Commission again wrote to the Chief Secretary and all Deputy Commissioners to take measures to provide alternate vocations and to eradicate manual scavenging in the State.¹¹⁵

Economic, Social and Cultural Rights (ESCRs)

While inquiring into complaints, the KSHRC has also addressed the need to secure economic and social rights. Such an approach would go a long way towards implementing these rights, realizing the interdependence of rights, and placing ESCRs on par with civil and political rights. Human Rights Commission should play a major role in creating a culture of respect for human rights and “develop a broad level of consensus on human rights issues so that both CPRs and ESCRs are given due recognition not only at the normative level but also at the level of enforcement”.¹¹⁶

The Indian Supreme Court has enlarged the scope of the right to life contained in Article 21 to bring within its ambit several ESCRs such as the right to education¹¹⁷, right to livelihood¹¹⁸, right to health¹¹⁹, right to shelter¹²⁰ and workers right to health¹²¹. The Commission has, through its interventions addressed several of these rights.

Development of naxal areas

In 2007, while looking into a case involving naxalites and the police in Menasinahadya in Koppa Taluk, Chickmagalur District, the Commission passed an interim order urging the government to provide social and economic benefits for people living in the region and to develop a special package within a month.¹²² The Commission rightly recognised that apart from strengthening security, the Government needs to take urgent steps to develop naxal prone areas and provide basic facilities. In its Second Annual Report, the Commission noted that the government had taken some action in this regard and that the police department had been conducting “*Jansamparka* meetings to instill confidence among tribal people” living in Chikamagalur District.¹²³ In November 2010, in a public meeting in Udupi, Justice S.R.Nayak underlined the government’s failure to interdict naxalism in the State and its failure to extend basic facilities to naxal areas and criticized the resort to weapons to solve the crisis.¹²⁴

Relief for victims of floods

¹¹⁴ Anon, “Protesting Dalits smear themselves with human excreta”, *Deccan Herald*, 21.07.10 at <http://www.deccanherald.com/content/82745/protesting-dalits-smear-themselves-human.html>

¹¹⁵ Anon, “SHRC steps in to quash manual scavenging”, *The Hindu*, 03.08.10 at <http://www.hindu.com/2010/08/03/stories/2010080362470600.htm>

¹¹⁶ C.Raj Kumar, “National Human Rights Institutions and Economic, Social, and Cultural Rights: Towards the Institutionalization and Developmentalization fo Human Rights”, *Human Rights Quarterly* 28 (2006) 755-799.at 769.

¹¹⁷ *Mohini Jain v. State of Karnataka* (1992) 3 SCC 666; *J.P. Unnikrishnan v. State of Andhra Pradesh* (1993) 1 SCC 645.

¹¹⁸ *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545.

¹¹⁹ *Paschim Banga Khet Majoor Samity v. State of West Bengal*, (1996) 4 SCC 37

¹²⁰ *Chameli Singh and Others v. State of Uttar Pradesh*, AIR 1996 SC 1051.

¹²¹ *Consumer Education and Research Centre v. Union of India*, (1995) 3 SCC 42.

¹²² HRC Nos. 32, 34, 36, 45, 122, 26, 260, 261 & 262/07 in Karnataka State Human Rights Commission, First Annual Report, 2007-08, p. 18.

¹²³ Status of the Cases Reported in *supra* n.39 at p. 23.

¹²⁴ Anon, “Bullets cannot solve naxal menace, says SHRC Chief”, *Deccan Herald*, 19.11.2010, at <http://www.deccanherald.com/content/114332/bullets-cannot-solve-naxal-menace.html>

In 2007, the KSHRC received a complaint from the Mr. H.K.Patil, Leader of Opposition, Karnataka Legislative Council drawing attention to the rights violations of people affected by the flood in Gadag district who were suffering because of negligence on the part of the District Administration. Members of the Commission and the IGP visited the affected places and examined the rehabilitation facilities. Mr. Raddi shared with us the pathetic living conditions. He said that “40-50 people were living in a 10 by 10 shed. No health and educational facilities were available. The sheds were not safe. A woman delivered a baby in these conditions. The mother could not sleep as she was worried that a dog may come and take the child away from the gaps in the shed. Each family had been given only 1 blanket.”¹²⁵ The team was quite disturbed by the poor living conditions and the lack of safety. It recommended the following:

- a) Separate sheds for people to live with proper doors to these sheds should be provided.
- b) Proper clothing, blanket, ration cards, medical treatment, and food for school going children should be provided.

According to Mr. Raddi, these recommendations were complied with by the District Administration of Gadag.

The government has not, however, provided relief to over 63,000 families affected by the floods in North Karnataka in 2009. While it had promised to rehabilitate the families within six months, it has not kept its word. Mr. B.Parthasarthy informed us that the KSHRC has asked the government to hasten the process of constructing houses for the families.¹²⁶ Justice S.R.Nayak shared with us that “as on 1 August 2010 not even one house had been handed over by the government” and that 63020 houses have to be constructed.¹²⁷ The Commission has expressed its disapproval over the delay and has recommended that the houses and all other necessities be handed over by 1 January 2011 and a compliance report to be sent by 10 January 2011. It remains to be seen whether the government complies with the recommendations.

This case also has taken a political dimension because of the friction it caused between the Chairperson who took on the government for their failure to respond timely to the crisis and the leaders of the BJP. The latter made several caustic remarks about the Chairperson to the media¹²⁸ and brought to light the manner in which the Commission was discerned by members of the ruling party.

Rehabilitation of persons displaced by the Upper Krishna Project

In 2008, a complaint was filed by G.V.Parvatikar and others from Bagalkot to draw the attention of the Commission to the plight of families whose properties had been acquired for the Upper Krishna Project because of submersion under backwaters of the Almatti Dam. The complainants claimed that rehabilitation and resettlement had not taken place except for the project displaced families. Their right to livelihood was severely affected and they also submitted that their properties would not be submerged

¹²⁵ Interview with Mr. R.H.Raddi, Member KSHRC on 07.09.10 (On file with Daksh)

¹²⁶ Interview with Mr. B.Parthasarthy, Member KSHRC on 19.10.10 (On file with Daksh).

¹²⁷ Interview with Hon'ble Justice SR Nayak, Chairperson KSHRC on 20.10.10 (On file with Daksh)

¹²⁸ Anon, “Karnataka BJP leaders, rights panel chief spar over flood relief”, *IANS*, 06.10.09 at http://www.thaindian.com/newsportal/politics/karnataka-bjp-leaders-rights-panel-chief-spar-over-flood-relief_100256867.html

and yet instead of addressing that the Bagalkot Development Authority had proposed the demolition of the shops and buildings. They stated that since the maximum level of water was 520.10 metres, buildings between 520.10 to 521 metres were not at risk of submersion and thus their demolition was not warranted. The Commission issued notice to the Chief Secretary and to the Regional Commissioner, Belgaum who was also the Commissioner for Rehabilitation and Resettlement and L.A. of Upper Krishna Project, Bagalkot. Upon receiving reports from them, the Commission came to the conclusion that demolition of the structures was in the best interest of the complainants and shifting of families was being carried out to protect them from future hardships.

The Commission, however, decided to visit Bagalkot to assess whether rehabilitation had taken place. The Commission met with the complainants and learned that their primary grievance was that there was no rehabilitation and resettlement package and that mere compensation would not amount to rehabilitation as their right to livelihood was impinged. The Commission also learned that people who had been moved to Navanagar still had to travel to Bagalkot to earn their livelihood. A visit to Navanagar revealed that government offices and residential houses had been constructed. But, no provision had been made yet to generate work so that people could earn their livelihood.

The Commission accorded importance to the right to livelihood and proceeded to direct the Bagalkot Development Authority “to provide the following basic necessities” so as to secure the right to life and livelihood of the persons shifting from Bagalkot to Navanagar¹²⁹:

- (a) Provide proper Shelter in keeping with the dignity of every human being. “Displacement shall not be carried out in a manner that violates the right to life, dignity, and security of those affected.”
- (b) Protect the right to security for their physical wellbeing and property. The government should setup adequate police stations to protect this right.
- (c) Offer bus facility on free pass basis or nominal charges to enable people to move within the area.
- (d) Generate employment and establish market areas.
- (e) Provide sites allotted for industrial establishment to those who will “develop the industries and generate income and employment for the displaced persons.”
- (f) Provide healthcare facilities on priority basis.
- (g) Assisting the people with loans from financial institutions to enable those engaging in business to shift to the new town.

It remains to be seen whether the Government has complied with these recommendations.

Right to health

The KSHRC has dealt with several cases involving lack of adequate medical facilities and medical negligence. It has recommended the government to fill vacancies in the Primary Health Care Centre in Jiregutti, Kumta Taluk, Uttara Kannada District¹³⁰ and has also recommended compensation to the family of a person who died on account of the negligence of a nurse in a government hospital.¹³¹

¹²⁹ Order dated 02.05.2009 passed by Mr.R.H.Raddi, Member KSHRC in HRC No. 4243/2008 connected with HRC 277/2009 and 279/2009.

¹³⁰ HRC No. 129/2008 in *supra* n.39 at p.28.

¹³¹ HRC No. 635/SM.26/07 in *supra* n.7 at p.23-24.

The Commission took *suo motu* cognizance of a report in the newspaper regarding a large number of casualties on account of consumption of hooch in D.J.Halli in Bangalore and other towns. Upon a visit to the victims at a hospital, the Commission was shocked by the pathetic facilities and treatment at the hospital. The Commission also learned that there were no ICU units available at the Bowring Hospital and Lady Curzon Hospital and that's why patients were being sent to private hospitals. Based on its observations, the Commission recommended the Principal Secretary, Health Department to provide ICU facilities at private hospitals at the cost of the State and to also provide ICU facilities in Bowring Hospital and all other major government hospitals. The government complied with the recommendations and subsequently 20 ICUs were setup in Victoria Hospital.¹³²

2.6.1.9. Steps During and after Inquiry

Section 18 of the PHR Act stipulates three steps that can be taken by the Commission during or after the inquiry process. Previously, the Commission could resort to these steps only after the completion of the inquiry. After the amendment in 2006, the Commission has been further empowered to act even while the inquiry is underway. Such a provision enables it to act immediately to interdict human rights violations. The steps that they Commission can take are as follows:

A. Recommendations

If the inquiry reveals the commission of a human rights violation or negligence in its prevention by a public servant, the Commission can make the following recommendations to the government:

(i) It can recommend payment of compensation or damages to the victim or his or her family.

The KSHRC has recommended payment of compensation in several cases. In 2007, in Chikmangalur District, a person running a petty shop was shot in daylight because the naxals felt he was passing on information to police. On an appeal from his wife, the Chairperson directed the Chief Secretary, Government of Karnataka to provide her with a job on humanitarian grounds. While the government was considering the request, the lady passed away leaving behind a minor son. The Commission recommended the government to pay compensation of Rs 5 lakhs to the minor son of the couple for his education.¹³³ Mr. Raddi informed us that Rs 3 lakhs had already been deposited in bank and the balance was still due. In another case in which a young girl died due to an explosion caused by illegal mining, the Commission recommended that Rs 1 lakh be paid as compensation to her mother and that the same be collected from the negligent officers.¹³⁴

(ii) It can recommend initiation of proceedings for prosecution or other suitable action against the concerned persons.

The KSHRC has ordered initiation of proceedings in several cases entailing violation of civil and political rights.

¹³² Interview with Mr. R.H.Raddi, Member KSHRC on 07.09.10 (On file with Daksh)

¹³³ HRC No. 257/07 in Status of the Cases Reported in *supra* n.39 at p. 24-25.

¹³⁴ HRC No.405/SM.12/07 in *supra* n.7 at p.21.

SICHREM had filed a complaint with the Commission alleging that a man had been picked up by the J.P.Nagar police station on the false ground that he had illicit relationship with his employer's wife. He had been beaten up and kept in illegal custody for three days.¹³⁵ He was released only after his family paid a bribe of Rs 20,000. However, he was picked up by the police on two more occasions at the instance of his employer and beaten quite severely. Unable to bear the stress of the harassment, the man attempted to kill himself. He survived and had to undergo treatment for over four months. His treatment had cost about Rs 4 lakhs. His brain cells were affected and he is completely bed-ridden. The Commission took cognizance of the case and ordered an investigation by the IGP, KSHRC. Based on the report and the evidences collected, the Commission concluded that the police officer concerned and the employer had violated the victim's human rights. The Commission then proceeded to direct initiation of proceedings for prosecution of both and suspension of the police officer. The Commission also ordered the Commissioner of Police to initiate departmental inquiry against the police officer and recommended to the Chief Secretary to pay Rs 1 lakh as compensation to the victim.

(c) It can recommend to the government to take such further action as it may think fit.

Upon receipt of a complaint from the President, Government Arrack & Shop Owners Association, Karwar alleging that the Government had not taken any measures to suitably rehabilitate displaced arrack vendors, the Commission recommended that immediate steps be taken to rehabilitate them.¹³⁶

In another case, the Commission recommended that the living conditions of a hostel maintained by the Social Welfare Department be improved by ensuring water supply and providing of bathroom and toilet facilities.¹³⁷

B. Approach the Supreme Court or High Court

Pursuant to Section 18(b), the Commission can approach the higher judiciary for writs, directions or orders upon completion of the inquiry. The Commission is yet to approach the courts for the promotion and protection of human rights. The Commission should seriously consider approaching the Karnataka High Court with respect to manual scavenging.

C. Recommend grant of interim relief

The Human Rights Commissions have the unique power to recommend grant of immediate interim relief to the victim or his or her family at any stage of the inquiry. The Commission can order interim compensation to enable the victim to tide over the difficulties faced because of the violation.

After the conclusion of the inquiry, the Commission should send the report along with its recommendations to the government or authority.¹³⁸ This is in order to afford the government an opportunity to send its comments on the report. The government should

¹³⁵ HRC No. 2838/08, Final order passed on 10.8.2009. (On file with Daksh)

¹³⁶ HRC No. 303/2008 in *supra* n.39 at p.29.

¹³⁷ HRC No.538/08 in *supra* n.39 at p.32.

¹³⁸ Section 18(e), Protection of Human Rights Act, 1993.

send its comments along with the action taken or proposed to be taken within one month or the time frame given by the Commission. The Commission should then publish the inquiry report along with comments, if any, and the action taken or proposed to be taken by the government.¹³⁹

The KSHRC has proposed an amendment to the PHR Act that will render the recommendations of the Commission binding on the Government. It has suggested that the following proviso be added to Section 18(e) – “Provided that if the concerned Government or authority do not forward its comments on the report, including the action taken or proposed to be taken thereon, within a period of one month, or such further time as the Commission may allow, the recommendations of the Commission shall be deemed to have been accepted, and the concerned Government or authority shall implement whatever recommendation that has been made by the Commission in the inquiry report.” This amendment will have far reaching consequences and will significantly empower the Commission.

2.6.2. Intervention in legal proceedings

The Commission is expressly authorized to intervene in proceedings involving allegations of human rights violations with the permission of the court. This is a unique power available to Human Rights Commissions. However, in the three years since it has been in existence, the KSHRC has not intervened in a single case before the High Court. Mr. Raddi mentioned that the KSHRC has been contemplating intervening in the matters pending before the High Court relating to the allotment of Bangalore Development Authority sites to politicians under “G” category. The State Government has been shirking from its duty to provide shelter to the people within the State. This power of the Commission to approach the courts should not be underestimated. The KSHRC should invoke this option to ensure that its recommendation on key issues such as the rehabilitation of persons affected by the Upper Krishna Project and the like are complied with.

Mr. Ravi Nair of South Asia Human Rights Documentation Centre lays emphasis on the role played by Commissions in courts and recommends that they should intervene in courts of law with an amicus brief in all cases of human rights violations.¹⁴⁰

2.6.3. Visits to Custodial Institutions

The Commission is required to visit jails and State institutions where people are detained or kept for treatment, reformation or protection with a view to assess the living conditions and make recommendations for their betterment to the government.¹⁴¹ Prior to 2006, the Act required the Commission to conduct these visits after intimating the State Government. This provision was heavily criticized as the requirement of prior intimation gave State Governments ample time to cover up and present a deceptive picture of the actual conditions. The amendment in 2006 rectified this anomaly by dropping this requirement.

¹³⁹ Section 18(f), Protection of Human Rights Act, 1993.

¹⁴⁰ Interview with Mr. Ravi Nair, Executive Director of South Asia Human Rights Documentation Centre, New Delhi on 01.10.2010 (On file with Daksh).

¹⁴¹ Section 12(c), Protection of Human Rights Act, 1993.

The KSHRC has visited jails, hospitals, beggars homes, and hostels. It took *suo motu* cognizance of a report that new born babies were being made to sleep on the ground in Karnataka Institute of Medical Sciences, Hubli and paid a surprise visit and took note of the pathetic conditions.¹⁴² They recommended the Department of Family Welfare and Health and Education Department to take necessary steps to remedy the situation.

In August 2010, the KSHRC also visited the Destitute Rehabilitation Centre, Bangalore in the wake of media reports on the death of 27 inmates living in the Centre. The Commission found that the place was very dirty and unhygienic and the food served was “unfit for human consumption”.¹⁴³ Mr. Raddi informed us that the investigation in connection with the recent deaths is still on and that upon its completion the Commission would make recommendations on how such homes should be maintained, the food quality, and cleanliness requirements.

The Commission has mostly undertaken visits to custodial institutions based on complaints or newspaper reports. Since this provision allows the Commission to make such visits even in the absence of complaints, it should not wait for incidents to be reported. In order to keep check on whether custodial institutions are complying with legal safeguards, the Commission should undertake more visits to jails, police stations, and remand homes to assess the situation. Based on its visits it can also draw up pre-emptive measures that can be taken by the State Government to prevent human rights violations.

2.6.4. Review of laws that safeguard human rights and factors that affect its enjoyment

The Commission has not been able to undertake a review exercise because of shortage of space and staff. It has not been able to appoint Special Rapporteurs who could help the Commission fulfil this function. This is a genuine problem faced by the Commission. However, it could explore ways in which the space problem can be overcome. The Commission could employ Consultants and Rapporteurs who need not operate from the Commission’s office.

We sought the Commission’s opinion on the controversial Karnataka Prevention of Slaughter and Preservation of Cattle Bill, 2010, which places a blanket ban on the slaughter of cow, buffalo, calf, bull, and bullock and criminalizes their sale, usage, and possession. This Bill will definitely impact the right to livelihood of cattle farmers. Mr. Raddi felt that the Commission had nothing to comment on this issue as it left to the wisdom of the Legislature to enact laws. This perception is not sound. The Commission’s mandate is not confined to inquiring into complaints. It has been vested with the task of promotion and protection of human rights. Pursuant to this, it can undertake analysis and review of proposed Bill to examine whether or not they violate human rights. It is easier to make changes to a law before it is enacted. The Commission should not circumscribe its mandate and should definitely look into Bills or laws that are likely to adversely impact the enjoyment of human rights.

2.6.5. Study of international instruments

¹⁴² Interview with Mr. R.H.Raddi, Member KSHRC on 07.09.10 (On file with Daksh).

¹⁴³ Ramu Patil, “Bangalore’s hellhole”, *The Week*, <http://week.manoramaonline.com/cgi-bin/MMOnline.dll/portal/ep/theWeekContent.do?sectionName=Current+Events&contentId=7842197&programId=1073754900&pageTypeId=1073754893&contentType=EDITORIAL>

The NHRC and SHRC have also been vested with the task of studying human rights conventions and making recommendations for their effective implementation.¹⁴⁴ So far, the KSHRC has not taken any steps to discharge this function. It is very important for the Commission to inculcate a knowledge and understanding of the rights contained in the ICCPCR, ICESCR, and other conventions such as the UN Convention on the Elimination of All forms of Discrimination Against Women, UN Convention on the Rights of the Child, and the UN Convention to Protect the Rights of Persons with Disabilities. While looking into complaints of human rights violations, the Commission should take into account these instruments as well so as to respond comprehensively to a violation.

The Commission should also examine whether the State laws are in consonance with these international instruments. If not, it should recommend amendments to the law so as to bring them in line with international human rights law. For instance, the Commission could examine the Karnataka Prevention of Slaughter and Preservation of Cattle Bill, 2010 from the standpoint of domestic law as well as international human rights law and base its recommendations on solid grounds.

2.6.6. Research

The Commission has been unable to undertake and promote research in the field of human rights¹⁴⁵ owing to the lack of space to accommodate staff or experts to carry out the research. As stated earlier, the Commission could appoint consultants or even use the expertise of civil society organisations to undertake research. Some of the areas which could be researched are the extent of prevalence of manual scavenging in Karnataka, rehabilitation and resettlement for development induced displacements, observance of *D.K.Basu guidelines*, compliance with guidelines issued by the NHRC on custodial violence and encounter deaths, etc.

2.6.7. Human Rights Literacy

The Commission has been tasked with spreading human rights literacy among various sections of society and promoting awareness of safeguards through publications, media, seminars, and other means. In furtherance of this function, in 2007-08, the Commission conducted five regional workshops on human rights with police officers. It has conducted sessions on rights of senior citizens, rights of HIV-positive children studying in schools.

The Commission has also brought out legal literacy materials such as a chart on steps to be taken during and after arrest, booklet on human rights and rights of prisoners. The KSHRC has disseminated these widely to all police stations, Superintendents of Police, Regional Officers, Commissioners and Special Units and has directed them to adhere to the guidelines.¹⁴⁶ Police stations have been directed to display the chart so as to ensure compliance with the guidelines.

The Commission has also addressed University students and Human Rights Clubs in colleges.

¹⁴⁴ Section 12(f), Protection of Human Rights Act, 1993.

¹⁴⁵ Section 13(g), Protection of Human Rights Act, 1993.

¹⁴⁶ *Supra* n.39 at p.76.

The Commission has also adopted an innovative measure to reach out to people all over the State. In April 2010, it launched *Maanava Hakukugala Vaartbe* in collaboration with the Bangalore Doordarshan Kendra. In ten minute slots, twice a month, information will be given on the PHR Act, the role of the Commission, and different kinds of human rights violations. This is indeed a laudatory measure adopted by the Commission to disseminate information on human rights.

2.6.8. Encouragement of efforts of NGOs working on human rights

The Paris Principles emphasize the need for NHRIs to collaborate with NGOs and recommend that “[i]n view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions” the NHRI should “develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.”

The PHR Act, partly echoes the above Principle, and stated that the Commission should “encourage the efforts of non-governmental organisations and institutions working in the field of human rights”.¹⁴⁷

In the course of our research, we encountered mixed responses to the KSHRC’s equation with NGOs. PUCL was of the opinion that the Commission should have come out in support of the human rights defendants who are being attacked and harassed by the State Government. Instead, the Commission has shown “a woeful lack of interest” in the concerns of NGOs. PUCL has had no joint meetings with the Commission and their interactions have been sparing. SICHREM also voiced the same concern that the Commission did not communicate much with civil society organisations. Except for invitations to functions such as Human Rights Day and inauguration of Human Rights news telecast, they have not had much interaction with the Commission on human rights issues.

Alternative Law Forum has, however, had a fruitful association with the KSHRC. They have been invited to some meetings by the Commission and have even participated in a meeting on starvation deaths organised by the Commission.

The KSHRC should consider emulating the NHRC by constituting a core group of NGOs in the State. In 2007, the NHRC organized a conference on the ‘Role of NGOs in support of NHRC for better promotion and protection of human rights’ in Bangalore and underscored the role played by NGOs working at the grassroots level in drawing the attention of the Commission to cases of human rights violations in remote areas.¹⁴⁸ The KSHRC should definitely capitalize the statutory opportunity to support the work done by NGOs and forge strong working relations with them.

2.7. Accessibility

¹⁴⁷ Section 12(i), Protection of Human Rights Act, 1993.

¹⁴⁸ Conference of NGOs in support of NHRC for promotion and protection of Human Rights, <http://nhrc.nic.in/disparchive.asp?fno=1462>

The SHRCs should be physically as well as geographically accessible to people in the State. Unfortunately, the KSHRC office is not disabled friendly. They have achieved little in terms of geographical access. All staff members are from Bangalore. The Commission is finding it difficult to reach out to the other districts.¹⁴⁹ On its part, the Commission has tried to announce its presence through articles in the local papers and through a program on Doordarshan.

The Commonwealth Secretariat Best Practice states that NHRIs should “proactively reach out to vulnerable and disadvantaged persons” and that States “should provide adequate resources to ensure that the services of an NHRI are widely accessible, including through processes such as decentralized field officers or other appropriate mechanisms.”¹⁵⁰ Unfortunately, the Commission has not consciously taken steps to reach out to particularly vulnerable groups such as dalits, persons with disabilities, persons living with HIV, etc. It has acted spontaneously to rights violations. The Commission should definitely consider adopting a targeted approach so as to create awareness about human rights among vulnerable groups and how the Commission can be approached. The Commission does not have a website presently. The Chairperson informed us that they did not have any technical staff to undertake this exercise. This is again something that the Commission can easily work out. Situated in the IT capital of India, it is shameful that the Commission has yet to start its own website. To promote greater transparency, the Commission can make all the necessary disclosures on its website.

Representatives of civil society have found the office-bearers of the Commission quite approachable. Maitreyi Krishnan and Clifton D’Rozario from Alternative Law Forum were appreciative of the fact that the Chairperson and Members of the Commission are easily accessible and that they do not have to go through any bureaucratic hurdles to contact them.¹⁵¹

According to the Commonwealth Secretariat Best Practice, as far as possible, office of the Commission should be located away from government and military offices¹⁵². Unfortunately, the KSHRC office is housed in the Multistoreyed Building campus wherein all other government departments also have their offices.

As stated earlier, the Commission accepts complaints in all languages. They are then translated into English or Kannada by a competent person. Orders are passed in English or Kannada. The Commission should try and ensure that orders are available in both English and Kannada so as to afford wide dissemination of its decisions.

2.8. Accountability

By virtue of being a public institution, the Commission is also accountable for its actions. One of the ways in which the PHR Act imposes accountability is by requiring the submission of Annual Reports. According to Section 28 of the Act, the Commission should submit its annual report to the State Government who should then have it laid before each House of State Legislature along with a memorandum of action taken or

¹⁴⁹ Interview with Mr. Javid Pasha, Secretary KSHRC on 07.09.10 (On file with Daksh).

¹⁵⁰ *Supra* n.18 at p. 31.

¹⁵¹ Interview with Maitreyi Krishnan and Clifton D’Rozario, Alternative Law Forums on 16.08.10 (On file with Daksh).

¹⁵² *Supra* n.18 at p.31.

proposed to be taken on the recommendations of the Commission. The government has to indicate the reasons for non-acceptance of the recommendations in its memorandum.

The KSHRC has submitted two annual reports for the years 2007-08 and 2008-09. The Commission has provided an overview and composition of the administrative section, law division and investigation division. It has also provided details of select cases and recommendations and workshops conducted by the Commission. The Annual Report of the Commission provides very basic information. Other than details of inquiry into complaints, it does not indicate the work done by the Commission with respect to the other functions listed in Section 12. Instead of classifying the cases dealt with by the Commission, they have been listed in a random fashion. The Commission also does not provide information on the work plan or goals that would be useful to evaluate its vision and performance.

The Commission has to maintain proper accounts and prepare an annual statement of accounts. The accounts of the Commission are audited by the Comptroller and Auditor General. In this way, financial accountability is also imposed on the Commission. However, the Commission does not include any information on how and for what has the money has been utilised or the balance sheet in the Annual Report. In order to promote greater transparency and accountability, such information should also be included within the Annual Report. It will help understand the priorities of the Commission and offer suggestions on what areas require more financial allocation.

2.9. Financial Independence

Financial independence of an NHRI is vital for its smooth functioning. The Paris Principles state that the NHRI should have “adequate funding” so as to “enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.”¹⁵³

Under the PHR Act, 1993, the Commissions funds are appropriated by the State Legislature, but are made available to it by the State Government by way of grants of “such sums of money as the State Government may think fit for being utilised for the purposes of the Act.”¹⁵⁴ The Commission will thus have to depend on the government to make the funds available to it. Also, the quantum of grants released depends on what the government thinks is fit for utilisation. This is in complete breach of the Paris Principles and the other international standards which unequivocally emphasize on the need for NHRIs to have financial independence. This provision in the Act is a tool in the hands of the government to control the functioning of the Commission. In the absence of the power to utilise the funds as it deems fit, the Commission’s financial independence stands compromised. Now, the Commission depends on the government for its premises and staff as well as funding. This position is not desirable. Mr. Ravi Nair, Executive Director of the South Asia Human Rights Documentation Centre recommends that in order to avoid financial dependence, the NHRC and the SHRCs should draw their budget from the Consolidated Fund of India and not depend on grants from a particular ministry of the government.¹⁵⁵

¹⁵³ Paris Principles, National institutions for the promotion and protection of human rights, A/RES/48/134, 85th Plenary Meeting, 20 December 1993, Para 2.2.

¹⁵⁴ Section 33(1), PHR Act.

¹⁵⁵ Interview with Mr. Ravi Nair, Executive Director of South Asia Human Rights Documentation Centre, New Delhi on 01.10.2010 (On file with Daksh)

In its First Annual Report, the KSHRC mentions that it had received a total grant of Rs. 250 lakhs (in two installments) for the year 2007-08.¹⁵⁶ It had requested Rs. 1269.12 lakhs for the year 2008-09, but the government granted only Rs. 208.28 lakhs i.e. about 16% of what the Commission had asked for. As is evident, this grant is a meagre fraction of the sum requested by the Commission. This is probably an explanation for the inability of the Commission to discharge all its functions under the Act and employ more staff. Clearly, the Commission stands crippled owing to the inadequacy of funds. Requests by the Commission to grant the remaining sum have not been heeded to.

2.10. Relationship with NHRC and other HRIs

In the words of Mr. Kamath, Deputy Registrar of NHRC, there is no coordination amongst the NHRC and the various SHRCs.¹⁵⁷ Mr. A.K.Parashar, Joint Registrar of NHRC added that while officially there is no relationship between the NHRC and the SHRCs, unofficially they try and meet once a year and try to build consensus on issues.¹⁵⁸

Under the PHR Act, there is no hierarchy between the NHRC and SHRC and there are no reporting requirements either. They are autonomous and independent entities. If the SHRC receives complaints which fall outside of its jurisdiction, it can only recommend to the parties to approach the NHRC. The Amendment to the PHR Act in 2006 expressly authorizes the NHRC to transfer complaints pending before it to the concerned SHRC.¹⁵⁹ The NHRC has been utilizing this provision to transfer complaints and reduce its workload.¹⁶⁰ The NHRC has encouraged greater coordination between the SHRC and itself and suggested sharing of cases and orders for insight.¹⁶¹

The KSHRC has little or no working relationship with the KSCW or KSCPCR. In the absence of coordination, it is likely that same complaints are filed before two or more institutions. The Commissions' have distinct powers and mandates. While the KSHRC mostly entertains complaints against public servants, no such restriction is contained in the Karnataka State Commission for Women Act, 1995 or the Commissions on Protection of Child Rights Act, 2005. The KSHRC has the additional powers of search and seizure and the power to take steps during inquiry, which the other two do not have. All the human rights institutions within the State should come together and discuss ways in which they could forge stronger working relationships and coordinate their efforts to protect and promote human rights.

2.11. Conclusion: Impact of the KSHRC and Areas of Concern

In the three years since it came into existence, the KSHRC has managed to announce its presence to the State Government as well as civil society organisations. Its genuine efforts to rise above the infrastructural and resource crunches are palpable. The Chairperson and Members have not shied away from confronting the government and their conduct has inspired reasonable confidence in the efficacy and independence of the

¹⁵⁶ *Supra* n.7 at p.15-16.

¹⁵⁷ Interview with Mr. Kamath, Deputy Registrar of NHRC on 13.10.10 (On file with Daksh).

¹⁵⁸ Interview with Mr. A.K.Parashar, Joint Registrar of NHRC on 13.10.10 (On file with Daksh)

¹⁵⁹ Section 13(6), Protection of Human Rights Act, 1993. Inserted by the Protection of Human Rights (Amendment) Act, 2006.

¹⁶⁰ Interview with Mr. Kamath, Deputy Registrar of NHRC on 13.10.10 (On file with Daksh).

¹⁶¹ Interview with Mr. Kamath, Deputy Registrar of NHRC on 13.10.10 (On file with Daksh).

Commission. It has consistently demanded that the Commission be consulted before Secretary or staff is appointed by the Government and it appears from their Annual Reports that this has been largely complied with by the government. It has also voiced the need to need to have the autonomy to appoint staff and determine their pay and other terms and conditions.

One of the unique aspects of the Commission is that the Secretary has been drawn from the judicial services and not from the administrative services of the Central or State Government. The Secretary is in sync with the vision and objectives of the Commission, is aware of the legal aspects and has a sound understanding of the purpose of the Commission.

The Commission has also addressed several pressing issues such as cultural policing, custodial violence, conditions of jails, rehabilitation for victims of flood, rehabilitation for development induced displaced, and manual scavenging.

However, the statute has several shortcomings that prevent the Commission from fully realising its mandate. This in conjunction with a recalcitrant State Government which has displayed apathy towards the Commission by not heeding to its repeated pleas for staff, infrastructure, and funds and by not complying with its recommendations has posed a formidable challenge for the Commission.

2.11.1. Impact of the Commission

The impact of the Commission can be assessed from the reaction of the State Government to its recommendations and from the confidence reposed by the civil society and members of the public in the Commission.

According to Mr. Shivmurthy, Deputy Superintendent of Police, Investigation Division of the KSHRC, the Commission has succeeded in creating a fear among public officials that they will be brought to book if they commit human rights violations. Internal inquiries have little or no impact on errant officers. He claims that the Commission has brought in more accountability among public officials in the State. However, in the absence of available statistics on the rate of compliance with the Commission's recommendations, this claim is difficult to verify.

The government has chosen to act selectively on the recommendations made by the Commission. It has failed to take the desired steps in providing houses to those affected by the flood and in eliminating the practice of manual scavenging. A perusal of the case files at the Commission reveal that at least three to four reminders have to be issued before the departments submit reports to the Commission.

Civil society organisations have also endorsed that in the short span of time since the Commission has come into existence, it has announced its presence. Clifton and Maitreyi from Alternative Law Forum feel that "the Commission has been functioning well with the limited mandate that is given to them".¹⁶² According to PUCL, while the Commission does not ignore any of the burning human rights issues in the State, its role is limited to meeting the victims and asking for reports. In the words of Mr. Ramdas Rao, PUCL the

¹⁶² Interview with Mr. Clifton D'Rozario and Ms. Maitreyi Krishnan, ALF on 16.08.10 (On file with Daksh).

KSHRC is a “toothless body”. This has been the common refrain of most organisations working on human rights. The Commission lacks the power to provide a concrete solution and has inadequate powers to ensure compliance with its recommendations. The statute has provided for a limited role and the Commission cannot go beyond its mandate. Still, the volume of complaints received by the Commission is a testament to the expectations people have and a sign of faith that it will provide succour to victims.

The courts have also taken the view that the Commission must act in accordance with its statutory mandate. In *Jatt Ram v. Punjab State Human Rights Commission*¹⁶³ the Punjab High Court observed:

“The Commission was never intended to be a substitute for the regular Courts nor an alternative body for redressal of grievances which could be taken care of by the ordinary law...the Commission is a body of experts created for the purposes of making recommendations to the State Government, in such matters which might not have been brought to the notice of the State Government otherwise.”

The Commission is largely a recommendatory body, but it also contributes towards building a sound human rights culture by its constant pressure on the government. Whether or not its recommendations are complied with depends on the determination of the Chairperson and Members to pursue matters to its end, whether or not the State Government is really committed to its Constitutional obligations of safeguarding human rights, and whether the media is vigilant enough to question the government about violations and its failure to redress them.

2.11.2. Measuring against Benchmarks

Is the KSHRC independent?

Whether or not the KSHRC functions as an independent body can be assessed in several ways. Firstly, whether the manner in which the Chairperson and Members have conducted themselves evinces their ability to act independent of influence from the executive. Secondly, what is the perception of civil society organizations? Thirdly, does the Protection of Human Rights Act, 1993, secure the independence of the Commission and does it enjoy operational and financial independence?

Hon'ble Justice S.R.Nayak has openly expressed his displeasure over the government's failure to provide the Commission with necessary staff and infrastructure to carry out its mandate¹⁶⁴ and its lethargy and indifference to the recommendations made by the Commission.¹⁶⁵ His vocal views on the government's inaction to curb moral policing and

¹⁶³ (2005) 141 PLR 297.

¹⁶⁴ Anon, “Govt neglecting SHRC, regrets Justice S R Nayak”, *The Canara Times*, 22.11.10, at <http://thecanaratimes.com/epaper/index.php/archives/7516>, Anon, “S.R.Nayak criticises ‘G’ category site allotment”, *The Hindu*, 11.08.10, at <http://www.hindu.com/2010/08/11/stories/2010081161390400.htm>, S.Bageshree, “Human rights remains a casualty in State”, *The Hindu*, 10.12.10, at <http://www.thehindu.com/todays-paper/tp-national/tp-karnataka/article942748.ece>

¹⁶⁵ Anon, “Mangalore: SHRC Rendered Helpless Due to State's Indifferent Policy - S R Nayak”, *Dajiworld Media Network*, 20.11.10, at http://www.dajiworld.com/news/news_disp.asp?n_id=90083&n_tit=Mangalore%3A+SHRC+Rendered+Helpless+Due+to+State%27s+Indifferent+Policy+-+S+R+Nayak

attacks on minority and its poor efforts of providing relief in the flood hit areas of northern Karnataka evoked harsh reactions and threats from representatives of the ruling party.¹⁶⁶ Justice Nayak, did not, however, back down and instead declared that he was “no one’s slave” and that if the government was violating human rights, he had the right to criticize them in public forums.¹⁶⁷ All the organisations that we spoke to were of the opinion that the Commission is independent and that it does not refrain from confronting the government. Alternative Law Forum voiced that the Commission is “commendably independent” in its working.¹⁶⁸

But, does the PHR Act adequately secure the independence of the Commission? Independence of the Commission depends on the manner in which it has been constituted, the appointment process, the composition, the power to appoint its own staff, the power to frame regulations to determine the manner in which it will carry out its business, and necessarily includes the financial independence to use resources and funds to achieve its objectives.

While the Commission has been constituted by way of legislation, the appointment process leaves a lot to be desired. A NHRI should be independent of influence of the government and therefore political appointments should be completely avoided. However, the Selection Committee which determines the composition is fairly political. Majority of the members on the Committee are from the ruling party. No civil society organisations or actors are represented on the Selection Committee. The composition of the KSHRC is hardly pluralistic. It is not clear as to how a retired IAS Officer satisfied the criteria of having knowledge of and experience in human rights.

The Commission has little or no operational autonomy as it has limited powers to appoint technical and administrative staff. It depends entirely on the State Government to provide adequate staff and infrastructure. It is quite disturbing that from its very inception, the Commission has been pleading for additional space and staff. The PHR Act creates this dependence on the government which is very unhealthy for a human rights institution and detracts from its autonomous character. The staff at the Investigation Division is woefully inadequate in terms of number to deal with the volume of cases that the Commission is receiving. Besides, it has to receive the Central or State Government’s concurrence before seeking the services of an investigating agency or officer. The KSHRC has to depend on the State investigative agencies to undertake investigations into human rights violations as it has only one Deputy Superintendent of Police and two constables at its disposal. This has prevented the Commission from exercising its full mandate and addressing complaints speedily. The government has sanctioned only 105 staff of the 491 staff members requested for by the KSHRC and presently the Commission has only 76 staff members to carry out its functions. The figures are quite pathetic and point to the need for urgent appointments of staff.

The Commission has no say in the terms and conditions of the staff appointed by the Commission. In its Second Annual Report, the Commission has strongly urged the government to take the Commission into confidence before posting a Senior Officer to

¹⁶⁶ Sugata Srinivasaraju, “Drill them all into line”, *Outlook*, 24.05.10, at <http://www.outlookindia.com/article.aspx?265435>

¹⁶⁷ Anon, “I am no one’s slave, thunders Justice S R Nayak”, *The Canara Times*, 23.04.10, <http://thecanaratimes.com/epaper/index.php/archives/3968>

¹⁶⁸ Interview with Maitreyi Krishnan & Clifton D’Rozario, Alternative Law Forum on 16.08.10 (On file with Daksh)

the Commission so as to ensure smooth functioning.¹⁶⁹ Further, it has proposed an amendment to Section 27 of the PHR Act according to which the Commission will prescribe the salary, allowance and conditions of service of the officers and staff appointed by the Commission.

The presence of a significant number of deputed staff members also undermines the independence of the Commission. These staff members are likely to have divided loyalties and bring with them bureaucratic baggage that could potentially structure or alter the processes within the Commission so as to resemble a government department. Further, deputed staff may be lacking in knowledge of human rights and this will hamper the overall effectiveness of responses. Hypothetically, a person deputed from the police department could be influenced or be uncomfortable while investigating into complaints against a police officer. The person is likely to be reluctant to recommend initiation of proceedings for prosecution or disciplinary proceedings against a peer.

The Commission has limited financial independence. According to Mr. Manohar Ranganath, Head of Programs, SICHREM, “the SHRC is independent in its working. But the extent of their independence is compromised by the fact that they rely on the government for funding.” On conditions of anonymity, a staff at the KSHRC reflected on the irony of these bodies which are meant to be “independent”, but are dependent on funds from the State Government who truly believe that empowerment of such institutions will be detrimental to them. The Commission’s sanctioned budget is a marginal fraction of its actual requirements. This has severely hampered the functioning of the Commission. An amendment to the Protection of Human Rights Act, 1993, which will suitably empower the Commission to utilise funds without the interference of the government is the need of the hour.

Thus, the Commission enjoys little operational autonomy and financial autonomy. Its functional autonomy is rendered meaningless in the face of the limitations to appoint staff on its own and to raise and use a budget to realise its mandate.

Restrictions on Mandate

Commissions under the PHR Act can only inquire into complaints pertaining to public servants. Their mandate does not extend to private entities that may be responsible for violation of rights. Further, the Commission cannot look into complaints that may be filed a year after the violation took place. No discretion has been afforded to the Commission to overlook the delay in cases of grave violations.

Limited Accessibility

It is a matter of great concern that the Commission’s office is premised alongside other government offices. The rationale behind urging for separate location is so that people can approach the Commission without any fear and it will also reinforce that the Commission is not an extension of the government and is outside of it. The Commission’s office is not at all disabled friendly. Further, with no office in districts it is not easily accessible by those living outside of Bangalore. To its credit, it has made an effort to reach out to a larger population through its programme on Doordarshan.

¹⁶⁹ *Supra* n.39 at p.9.

However, information on the Commission and the work done by it is not easily available in the public domain. The Commission is very approachable though and has shared information requested for. In order to enhance its accessibility, the Commission should take measures towards starting its own website where its reports, orders, and interventions can be easily accessed. It should also consider setting up offices in the districts or appointing officers who can receive complaints and then transmit it to the Commission.

Marginal Accountability

The Commission has submitted two annual reports since it came into existence. Its third annual report is yet to be tabled before the Legislature. Distressingly, the Annual Reports carry no information on the manner in which funds were utilised. Along with providing information on the work done and difficulties faced, the Annual Report should also carry detailed information on budget heads and expenditures.

2.11.3. Non-compliance with Recommendations

While the recommendations passed by the KSHRC are more or less satisfactory, their inability to enforce the recommendations or compel compliance renders the entire exercise nugatory. Though the Commission is taken more seriously than other human rights institutions such as the Karnataka State Commission for Women, the reason for poor compliance with their recommendations or responses to their requests for report is because they cannot pass binding orders or enforce their recommendations. In the absence of defined consequences of non-compliance, the State Government has been ignoring its recommendations with impunity.

CHAPTER III
AN EVALUATION OF THE
KARNATAKA STATE COMMISSION FOR WOMEN

3.1. Establishment of the KSCW

3.1.1. Legislative Framework & Objective of establishing KSCW

The Karnataka State Commission for Women Act (KSCW Act) was enacted in the year 1995 pursuant to the enactment of the National Commission for Women Act, 1990. Subsequent to the enactment, the Karnataka State Commission for Women (KSCW) was constituted as a statutory body under the Act in the same year. The Commission was set up with the objective to protect and promote the rights of women in Karnataka. However, in more than a decade of its existence how has the State Commission for Women (SCW) in Karnataka performed? The response received to this question from legal experts and women's organisations in the field was mostly unflattering.

The need for an autonomous body monitoring the policies, rights and violations against women was first voiced in the Report of the Committee on the Status of Women in India.¹ The report, Sadhna Arya informs, recommended creation of autonomous bodies at the national and state level to collect information regarding women, examine policies and laws and recommend amendments and intervene in violations against women.² Women's movements in the 70s-80s further propelled the setting up of the Commission, with its agenda of law reform and incorporating the views of women in policy, departments and ministries.³

Since the establishment of the NCW and SCWs there has been little evaluation, assessment or re-structuring of these institutions. The founding legislations under which the Commissions were constituted have not been reviewed or amended for more than a decade. To quote Santosh Hegde, Ombudsman of Karnataka Lokayukta, "every enactment after a certain decade needs to be amended based on changes in human behaviour...."⁴

As indicated, the KSCW was set up under the KSCW Act in 1995. A founding legislation is one of the key criteria for setting up a quasi-judicial body as per most international guidelines. The objective of setting up an autonomous body under law is to ensure that its powers are not limited or curtailed by the government. International guidelines, in addition, to a founding legislation recommend that setting up of an autonomous body should be a consultative process which involves civil society and concerned public, such as professionals working in the field of human/women rights. The KSCW Act however does not provide for involvement of the civil society organisations in establishing of KSCW or selection or nomination of its members.

3.2. Composition of the KSCW & Criteria for Appointment under the KSCW Act

¹ Arya, S., *The National Commission for Women: Assessing Performance*, 2010, p.2

² *Ibid.*, p.2-5

³ *Ibid.*, p. 6

⁴ Interview with Justice Santosh Hegde on 22.09.10. (On file with Daksh)

The KSCW Act lays down the constitution of the Commission. The Act stipulates that the Commission shall consist of (Section 3):

- A woman Chairperson, committed to the cause of women;
- Six members⁵ of ability, integrity and standing who have experience in law or legislation, trade unionism, management of an industry or organisation committed to increasing the employment potential of women, women's voluntary organisations including women activists administration, economic development, health, education or social welfare.
- Three *ex officio* members consisting of the Secretary to Government in charge of Women and Child Development, Director of Women and Child Development, and Director General of Police or his nominee who should not be below the rank of Deputy Inspector General of Police. The *ex officio* member from the police should preferably be a woman.
- Secretary of the Commission, who shall be the Member - Secretary.

Under the Act, the Chairperson and the six members are to be nominated by the Government. The KSCW Act does lay down the selection, nomination and removal procedure of the members/Chairperson. However, the exclusive nomination and appointment of Chairperson and members by the Government is in violation of the international benchmarks on appointment process. International guidelines warn that selection, appointment and removal procedures of the members of the NHRI should not be handled exclusively by the executive branch of government.”⁶ A selection committee to nominate members and Chairperson of the Commission should be set up by the executive.

Further, the selection criterion for members is vague and not expressly defined. The criterion of ‘ability’ and ‘integrity’ and what it constitutes is ambiguous and subjective. The failure of the KSCW Act to define this has led to appointments of persons who lack the knowledge, expertise or experience in the field of women rights. It also affords the political class the opportunity to appoint their favourites as members and Chairpersons.

Sadhna Arya, who has studied the working of the National Commission of Women and written extensively on it, in an interview with us pointed out, “these qualities are inherently very subjective but nevertheless some unambiguous guidelines are necessary...Some minimum precise norms are necessary. There must be a selection panel wherever possible. These safeguards are necessary to ensure ‘ability’ and ‘integrity’ in members.”⁷

Similarly, the criterion of selecting a Chairperson who is ‘committed to the cause of women’ does not mandate an appointment of a Chair who has proved or displayed in any fashion her commitment to the cause of women. International guidelines recommend that “members should be selected on the basis of proven expertise, knowledge and experience in the promotion and protection of human rights.”⁸ In the

⁵ The Act recommends that at least one such member should belong to Scheduled Castes and Scheduled Tribes respectively, and majority of the members should be women. At present KSCW does not have full time members. The Annual Reports do not provide names of any members either.

⁶ *Amnesty International's Recommendations on Effective Protection and Promotion of Human Rights*, Recommendation 2.3 p.5

⁷ Interview with Sadhna Arya on 18.10.2010 (On file with Daksh).

⁸ *Supra* n.6, Recommendation 2.1, p.5

case of Women's Commission, members should have the necessary knowledge and experience in rights of women. Knowledge and experience in rights of women is necessary so as to effectively respond to the objectives of the KSCW. Although, the Act states members may be women involved in civil society, health, education or social welfare, it does not mandate it. Further, the sheer involvement in the aforementioned activities does not guarantee that the members are trained in rights of women and have the required expertise and knowledge.

Although, the Act mandates that majority of the members nominated should be women and have at least one member from Scheduled Castes and Scheduled Tribes, the mere appointment of women does not promise an effective KSCW. Representation from all spheres of society, such as minorities, women, disabled etc. are recommended by International Guidelines as well.

Further, the presence of representatives of the government within the Commission is highly problematic. Human rights institutions are meant to be independent of the government and are expected to maintain a distance from the executive. Section 3 of the KSCW Act is in complete breach of the International standards which unequivocally state that the executive should have no control over the working of the Commission. The Paris Principles, however, state that government representatives can be on the Commission only in an advisory capacity.⁹ The KSCW Act fails to clarify as to what exactly will be the role of the ex officio members entail. Instead, this provision legitimizes the government's interference with the working of the Commission, which is opposed to the very purpose and structure of a human rights institution. Notably, the National Commission for Women Act, 1990, does not provide for any ex officio members.

3.2.1. Appointment & Role of Chair and Secretary of KSCW

Terms of Office and Conditions of Service

The term of office for the Chairperson and members is stipulated as three years under the KSCW Act. The KSCW Act mandates that in case of resignation or removal of Chairperson or member owing to the reasons stipulated under Section 4 of the Act¹⁰, the

⁹ Paris Principles, National institutions for the promotion and protection of human rights, A/RES/48/134, 85th Plenary Meeting, 20 December 1993, Para 2(1)(e),

¹⁰ The Act stipulates: Term of office and conditions of service of Chairperson and Members.- (1) Subject to the pleasure of the Government, the Chairperson and every member shall hold office for such period not exceeding three years, as may be specified by the Government.

(2) The Chairperson or a member other than the ex- officio member may, resign the office of Chairperson or the member, as the case may be, by writing addressed to the Government.

(3) The Government shall remove a person from the office of Chairperson or a member referred to in sub-section (1) if that person,-

(a) becomes an undischarged insolvent; or (b) gets convicted and sentenced to imprisonment for an offence which in the opinion of the Government involves moral turpitude; or (c) becomes of unsound mind and stands so declared by a competent court; or (d) refuses to act or becomes incapable of acting; or (e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or (f) in the opinion of the Government, has so abused the position of the Chairperson or member so as to render that person's continuance in office is detrimental to the public interest: Provided that no person shall be removed under this clause until that person has been given a reasonable opportunity of being heard in the matter.

Government should fill the vacant position within three months of such removal or resignation.

International guidelines recommend that the removal of key members of the Commission should be for reasons specified in the law and should be similar to the rules applicable to the judiciary. A fixed term of five years is usually the recommended term, and in the event of expiry of the term of the Chairperson/commissioner, the term should continue till a new appointment is made.¹¹ A short term of three years fails to guarantee continuity in the work of the Commission.

Appointments of Key Persons

The Chairperson should lead the day-to-day activities of the Commission. The Act, however, fails to lay down in detail the mandate, activities and role of the Chair.

The SCW in Karnataka has been without a Chairperson for more than three years. The Commission consists of a Member-Secretary, K Parvathy Thimmayya, who runs the activities of the Commission and addresses complaints received by the Commission. Under the Act, the Secretary should be an officer not below the rank “of Joint Secretary to Government appointed by the Government.” and will function as the Chief Executive of the Commission.¹² The Secretary is to be in charge of accounts, manage the grants and other administrative tasks for the effective functioning of the Commission. Distressingly, the Act vests the financial powers with the Secretary who is appointed by the Government and belongs to the Government. This seriously impacts the autonomy of the institution. However, at present the Secretary also deals with complaints, counsels complainants, and passes recommendations. The Secretary is neither has the expertise nor the authority under the law to discharge functions to be delivered by the Chairperson and Members.

The salary to the Chairperson, Members, and Secretary is to be paid by the same Government which is to be monitored by the Commission. This puts into question, why would the ruling Government want to provide funding for a body which monitors and evaluates its performance with respect to status of women? This would inevitably fetter the powers of the Commission and its autonomy to evaluate the performance of the State with respect to status of women.

In our interview with Parvathy Thimmayya¹³, Member Secretary of the KSCW, she said C. N Sitaram¹⁴, Secretary, the Department of Women and Child Development is the official chair of the Commission.¹⁵ This is in complete abrogation of the parent statute

(4) The Government shall fill vacancies, arising out of resignation or removal within three months of such resignation or removal, by fresh nomination.

(5) The salary and allowances of the Chairperson and allowance payable to the member, if any, shall be such, as may be prescribed.

(6) The salary and allowance payable to the Chairperson and allowances payable to a member shall be defrayed out of the grants referred to in sub-section (2) of section 12.

¹¹ Commonwealth Secretariat, National Human Rights Institutions Best Practice, Article 2.3

¹² Section 5(4), The Karnataka State Commission for Women Act, 1995.

¹³ Daksh interviewed Member-Secretary, K Parvathy Thimmayya on 15 September, 2010.

¹⁴ Daksh made several attempts to meet C.N.Sitaram, but was not given any appointment.

¹⁵ The annual report for the period 2009-2010, states that Dr. Ashwath, IAS, who assumed office on 1 April, 2009 has been acting as the Chairperson of the Commission. It further adds, that Parvathy

which states that the Chairperson should be a woman committed to the cause of women. Besides, he is not a full time Chair, as required under the Act. Similarly, while the Secretary claimed that the KSCW does have ex-officio members, they were not present at the Commission during our visits. This would mean the members are not on full time basis or are mere titular heads. This information however was not presented to us in the RTI application filed by Daksh. The response to the RTI application requesting for the names of members and staff of the KSCW, only had the details of the staff and the Secretary.

The Government in the last three years failed to appoint the Chairperson despite some pressure from civil society organisations and media reports on the subject.¹⁶ The sole authority of the executive to appoint the Chairperson puts the functioning of the Commission in jeopardy, until the KSCW Act is amended to give powers to civil society to participate in the process or constitute a selection committee which can be in charge of such appointments.

At the time of finalising this report, C. Manjula was appointed as the Chairperson to the KSCW. Newspaper reports suggest she is a member of the the Bharatiya Janata Party's Women's Morcha and the president of the BJP's Women's Morcha Bhadravati unit.¹⁷ We have not interviewed or contacted the Commission for information or comments on her appointment. Newspaper reports suggest she joined office on January 12, 2011.¹⁸

Political Nature of Appointments

In our interviews with a former Member and a former Chairperson of the KSCW, we learnt that the last Chairperson resigned from her position owing to the change in government, as opposed to the expiry of the three-year term period as prescribed under the Act. As per the former Chair, Pramila Nesargi¹⁹, when the assembly dissolved in Karnataka, she resigned from the post. She said, although she was not asked to resign, she was not asked to continue by the Governor. Since the Chair and members are appointed by the Government in power, the nature of appointments is often political in nature and is made by the party to appease certain people. Under such circumstances, the Chair, like in the case of Nesargi has to resign despite the non-completion of the three year term as per the Act. In our research and interviews with civil society, it was revealed that Nesargi is a BJP party member.

The nomination or appointments of members of the Commission are usually guided by the motives of the Government in power. This view was articulated by most civil society

Thimmayya, has been working as Members Secretary to the Commission from 1 April, 2009. This is contrary to the information given to us by the Secretary and the staff. In our interaction with the staff and the Secretary the name of Dr. Ashwath, has not been mentioned.

¹⁶ Anon, "Women's Commission without a chief" The Deccan Chronicle, 20.12.2010 at

<http://www.deccanchronicle.com/bengaluru/women%E2%80%99s-commission-without-chief-392>

Also, Vaishali Chandra, "No one at helm of Karnataka women's commission for nearly 3 yrs" DNA

15.06.2010 at http://www.dnaindia.com/bangalore/report_no-one-at-helm-of-karnataka-women-s-commission-for-nearly-3-yrs_1396589

¹⁷ Anon, "C. Manjula is women's commission chief", The Hindu, 09/01.2011 at <http://www.hindu.com/2011/01/09/stories/2011010959400300.htm>

¹⁸ Anon, "Karnataka State Women's Commission will take up study", The Hindu, 13/01/2011 at <http://www.thehindu.com/todays-paper/tp-national/tp-karnataka/article1088561.ece>

¹⁹ Interview with Ms. Pramila Nesargi, Former Chairperson KSCW on 28.09.2010 (On file with Daksh). Ms Nesargi who is an advocate was the Chairperson of the KSCW from April 2007 to 5 October 2007.

organisations that we interviewed. This is possibly the reason why women's organisations in Karnataka have not pressurised the Government to appoint a Chair.

Sadhna Arya in an interview with us explained the reason for the lack of response or motivation on the part of civil society to urge or pressurise the Government:

“The Women's Commissions have not been taken up seriously by women's groups itself. This is because they have not made their presence felt. The women's rights groups do not view the Women's Commissions as a viable medium to address the concerns of women. When these groups are not interested in seeing a fully functional commission, they will not actively pressurise the government. Their mistrust in the commission lies very deeply at the way these institutions are being constituted. Even a fully operational commission will only attract the wrath of the civil society organisations for constituting the commission in such a manner that is not useful in addressing women's issues. Women's commission has no respect even amongst the women's groups... Organisations will evidently assess the powers of the commission and its uses before it even considers supporting such a commission.”

Donna Fernandes from Vimochna²⁰, like Arya, provides a similar reasoning for the civil society failing to pressurise the Government into nominating a Chairperson. As per her, “the exclusive power of the ruling Government to nominate under the Act itself is a fundamental flaw with the law. The provision allows the Commission to act in alliance with the government, thereby compromising on its independence and transparency. An inactive, headless commission is better than a corrupt one.”

As stated earlier, in order to discharge its mandate effectively, the Commissions should maintain a distance from the government. The implications of political appointment on the rights of women are severe. For instance, the KSCW failed to intervene in cases of moral policing of women in the State. It was the NCW that promptly intervened to review the attack on women in a pub in Mangalore by Sri Ram Sene. The NCW office-bearers had been appointed by the Congress government at the Centre. Nirmala Venkatesh, Member of the NCW who was part of the inquiry team and who was later removed from the Commission, revealed to the media that she had been pressurised to give an “anti-Karnataka Government” report.²¹ Venkatesh spoke only to the management of the pub and the accused. She made no attempts to contact the victims. In her report, she held the management lax in terms of providing security. Renuka Chowdhury, the then Minister for Women and Child Development, deputed another inquiry team and sacked Nirmala Venkatesh on the ground that the submission of the report was delayed, her inquiry was biased, and that she had made her findings public to the media before submitting the report.²² Subsequent to being sacked Nirmala Venkatesh joined the BJP party.²³

²⁰ Interview with Ms. Donna Fernandes, Vimochana on 19.08.10 (On file with Daksh). Vimochna is a women's rights organisation based in Bangalore.

²¹ Anon, “Sacked NCW Member Nirmala Venkatesh joins BJP”, *Indian Express*, 05.03.09, at <http://www.indianexpress.com/news/sacked-ncw-member-nirmala-venkatesh-joins-bj/431286/>

²² Aarti Dhar, “Nirmala Venkatesh removed from NCW”, *The Hindu*, 28.02.09, at <http://www.hindu.com/2009/02/28/stories/2009022854781200.htm>

²³ Agency, Sacked NCW member Nirmala Venkatesh joins BJP, *The Indian Express*, 03/03/2009 at <http://www.indianexpress.com/news/sacked-ncw-member-nirmala-venkatesh-joins-bjp/431286/>

Arya adds, “The way the women’s commission works presently, there is a severe loss of autonomy... Large amounts of party politics enter into play due to the way the commissions are constituted. For e.g., during Gujarat riots, the Congress government immediately sent a fact finding team from NCW to Gujarat, under rule of BJP.”²⁴

The Amnesty International recommends that the procedure for selection, appointment, tenure and removal of NHRI staff should not only be laid down, but should not be exclusively handled by the executive branch of government.²⁵ Further, to ensure independence and win faith of the public, the selection process and removal should involve civil society organisations, academics and journalists etc. The present Act does not provide for involvement of the civil society in the nomination or removal proceedings.

Vacancy

Although Section 8 of the KSCW Act clarifies that vacancies or defect in the constitution of the Commission does not invalidate proceedings of the Commission, the vacancy of the Chairperson and Members who are the primary authority to inquire into complaints, initiate investigation and activities has affected the reputation and the morale of the staff in the Commission. International guidelines mandate that any vacancy should be filled expeditiously. Presently, the Secretary, who is in charge of the administrative duties, such as budgeting, maintaining accounts etc, is running the affairs of the KSCW. Although, Section 5 of the KSCW Act states that the Secretary should function as the Chief Executive of the Commission, the duties of the Secretary under the Act are administrative in nature. The position of the Secretary does not have the power to accept complaints and give recommendations.

3.2.2. Staff Details of KSCW

The current staff strength of KSCW is 27. This includes²⁶:

- The Member Secretary
- Section Officer (1)
- Personal Assistant (1)
- First Division Assistant (1)
- Second Division Assistant (1)
- Typists (3)
- Counsellors (3)
- DYSP (Retd) (1)
- Legal Advisors (3)
- Group D Officers (3)

²⁴ Interview with Ms. Sadhna Arya on 05.10.10 (On file with Daksh).

²⁵ *Supra* n.6., Recommendation 2.3, p.5.

²⁶ The other appointments, such as the Secretary to Government in charge of Women and Child Development, Director of Women and Child Development, Director General of Police or his nominee, preferably women would be ex- officio members of the Commission. The Secretary in most cases is Joint Secretary. The appointment of the Secretary and the salary is determined and paid by the Government.

- Drivers (1)
- Help Desks Counsellors (7)

We interviewed four Counsellors or as they are called case workers present at the KSCW office. All four case workers were women. Out of the four case workers: two had Masters in Women's Studies, one had done her Masters in Social Work (MSW) and the fourth was deputed from the revenue department. In our interaction, the three independent case workers were accessible and willing to interact with us on their work in KSCW. The role of the Case Workers is to meet women, explain the law and the reliefs the KSCW can provide and register complaints.

The case worker deputed from revenue department who is a First Division Assistant, despite the approval of the Secretary refused to communicate with or provide the required information to us. Her understanding of the work of the KSCW and its establishment was not accurate. She was of the opinion that the KSCW was a branch of the NCW.

We made several visits to the KSCW, but the Deputy Superintendent of Police (DySP), who was in charge of handling the criminal matters was never present in the office. We were informed by some of the present staff that the DYSP rarely comes to the KSCW.

Staff on Deputation

The KSCW has staff who have been deputed from other government departments. The staff deputed is not provided any training on human rights or women's issues. Most of them are deputed for a period of two-three years, and are transferred back to the original department or another department. The constant transfer of the staff impacts their motivation and performance in the Commission. Further, the staff may not be aware of the functioning of a public institution. They employ the same bureaucratic practices, which disrupts the functioning of the Commission and makes it inaccessible. The Commonwealth Secretariat, National Human Rights Institutions Best Practice, warns against the deputation of staff, stating the deputed staff are resistant to change and bring with them the same bureaucratic procedures of work.

Inadequacy of Staff

The KSCW has four case workers to deal with cases emerging from 20 districts of the State. The case workers are overburdened with case work, which also has an impact on documentation of the case work. Geeta Menon, founder of Stree Jagruti Samiti,²⁷ commented, the KSCW staff are unwilling to take up new cases owing to excess case load. This leads to not only denial of relief, but cases take more than 6 months to come up for hearing.

3.2.3. Meetings of the Commission

Section 7 of the Act states the KSCW should meet as and when necessary in Bangalore or at any place decided by the Chairperson. However, the Act mandates that the Commission should meet at least once in every three months.

²⁷ Interview with Ms. Geeta Menon, Founder of Stree Jagruti Samitu on 14.09.10 (On file with Daksh).

As per the KSWC staff, no internal meetings have been attended by them. Meetings are held only in case of an emergency. The Secretary though meets the Department of Women and Child Development (DWCD) once every month to update them about the work of Commission. It appears the KSCW functions as a subordinate or an office of the DWCD. The DWCD as per the staff exercises enormous control on the functioning of the KSCW. The Secretary therefore reports to the DWCD about the work and activities of the Commission. In that sense, the DWCD exercises control over the financial and administrative functioning of the KSCW which seriously hampers the role and function of the KSCW as an independent body protecting rights of women. As per the staff, the KSCW attends board meetings every year. They, however, were unable to explain the nature of the board meetings.

3.3. Functions and Powers of KSCW

The Commission was set under the KSCW Act to safeguard and protect the rights of women within the State of Karnataka. Its mandate requires it to examine, report and investigate on all matters relating to violence or discrimination against women. The role of the Commission is to protect the human rights of women and ensure enactment and implementation of laws protecting the rights of women. In view of the same, the Commission in addition to functioning as a body that monitors the progress and protection of women within the State, also has to recommend and advise the Government on measures to be adopted for protection or improvement of the condition of women. Such measures could include, investigating or reporting on condition or atrocities against women within the State, growing violence, recommending amendments to laws, or bringing to attention non-implementation of laws. The Commission has the power to take *suo motu* action in cases of violation and investigating the matter.

Additionally, the Commission has the powers to inspect the condition of women in places of custody, remand homes, jails, women's institution etc., allocate budget for filing a public interest litigation which affects women or intervene in disputes before family courts to ensure equal and fair justice to women. Such investigations or examinations on the condition of women have to be shared with the Government periodically in a form of a report. In preparing such reports or examinations the Commission may involve or collaborate with civil society organisations working for the betterment of women and undertake educational research so as to suggest ways of ensuring fair representation of women. Section 9 (n) of the Act stipulates, the Commission should "involve with voluntary organisations in the State, more particularly women's organisations besides governmental departments and its agencies in the discharging of its functions." International Guidelines also recommend that Commissions should engage with civil society in discharging functions. The civil society can act as additional "networks of communication and outreach."²⁸

The KSCW therefore can take assistance or collaborate with civil society to discharge any of its functions. However, as per women's organisations in the State there has been little interaction or contact with the Commission.

The functions, powers and work of the KSCW have been delineated below.

²⁸ *Supra* n.6, Recommendation 4.C.2, p 15

3.3.1. Inquiry into Complaints

The KSCW is required to look into complaints that relate to deprivation of women's rights, (ii) non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development, and the non-compliance of policy decision, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women and take up the issues arising out of such matters with appropriate authorities.

3.3.1.1 *Complaints Mechanism*²⁹

Format for Registering Complaint

The KSCW accepts any case filed or registered by a woman or her relative/ friend. There is no prescribed format for accepting complaints. Complaints are accepted via case workers, post, email or through a drop box at the KSCW in any language. The only factor for accepting complaints is that they should concern the rights of a woman.

In most instances complaints are accepted by the KSCW from the complainant or friend/ relative of the woman. The complaint is accepted in oral or written format. However, where a petition on the same subject has been filed before or is pending in Court, the KSCW does not accept a complaint on the same subject matter. The Case Workers also added that in cases where women have been promised marriage by men, in most cases the case is referred to the police or the woman is counselled and persuaded into forgetting the man. The reason being that in such cases securing relief is difficult.

Complaints Procedure

Once the complaint is registered, the Secretary goes through the complaint, identifies reliefs available and signs the complaint and hands it over to the Case Workers. Based on what is sought and what reliefs the KSCW can provide, the Case Workers take the necessary action. This could include ensuring the woman receives police protection or referring the woman to the Legal Service Authority (LSA) or Protection Officer³⁰, in case she has sought protection or summon the complainant and the respondent for a hearing. The notice for the date of the hearing is given within a week of the registration of the complaint. In the event of the respondent fails to turn up for the hearing, the KSCW seeks police intervention so as to ensure the respondent is present for the second date.

Jurisdiction

In cases where any matter or case is taken up by the NCW, the SCW shall cease to have jurisdiction in such matters. Further, cases involving NRI families or of an inter-state nature are transferred to the NCW.

Complaint Proceedings

²⁹ All the data on the procedure adopted in dealing with complaints by the KSCW has been received from interviews with the Secretary, case workers and the complainants.

³⁰ In case the woman wants to file a case under the Protection of Women from Domestic Violence Act, 2005 (PWDVA) then the case workers sent the complainant to the Protection Officer in their jurisdiction with a written complaint. The Protection Officer is the primary authority under the Domestic Violence Law.

At the time of hearing, both parties are summoned for counselling. Counselling takes place in a private room, where parties, the Secretary, and the case worker handling the complaint are present. A typist recording the events of the proceedings is also present. The Secretary in most cases tries to reunite the family or passes an order/recommendation to be followed by the parties. In the event the parties are not agreeable then they are sent to the LSA or the Family court help desk.

Orders/Recommendations Passed

As per the Act, all the orders and decisions of the Commission have to be authenticated by the Secretary or any other officer of the Commission duly authorised by the Secretary. However, the case of KSCW the orders for the last three years have been passed by the Secretary who does not have the powers under the Act to pass orders or give recommendations.

3.3.1.2. Case Follow Up Mechanism

Subsequent to counselling of parties and recommendations given by the Secretary of KSCW, the parties are mandated to report to the KSCW after two months or a certain period, so as to verify whether the recommendations are abided by the parties. In some instances, the Case Workers are asked to monitor the implementation of the recommendations by getting in touch with the petitioners. However, no reports are maintained on the monitoring of cases by the KSCW. The lack of documentation of relevant data such as this puts into question the figures of cases settled by the KSCW, as per its annual report. In our interview with the Secretary and in our attempts to access relevant cases, the oft reply given by the Secretary was that the case papers or inspection reports of the KSCW were misplaced and not available for our review.

Despite the help desks and the case workers in KSCW, the civil society is reluctant to approach KSCW. It is, as Menon³¹ says, ‘the last resort as they are highly ineffective’. In Menon’s experience, even the few cases that have been filed by her organisation have not been handled effectively by the KSCW. Further, as per her, follow up of cases and response to the cases filed is poor.

3.3.1.3. *Suo Motu* Cases

As a monitoring body the KSCW is to take notice of all matters relating to women, such as policy changes, law reform, implementation of laws. It is responsible of monitoring the status of women in the State.

Under Section 9(f) of the KSCW Act, women’s Commission should take *suo motu* action in case of matters relating to deprivation of women’s rights and non-implementation of laws for protection of women.

The staff confirmed that the KSCW has taken up cases *suo motu*. However, most civil society representatives stated that KSCW has failed to take action on many cases. As

³¹ Interview with Ms. Geeta Menon, Founder of Stree Jagruti Samiti on 14.09.2010 (On file with Daksh).

Menon, explained “In most cases the Commission takes up the controversial issues but the orders that they pass are highly unsatisfactory. In fact it is more frustrating to see an ineffective order that has been passed by KSCW...” She further questioned, how can the KSCW work in absence of the Chairperson?

As she observed, “Nobody (in KSCW) wants to take any extra responsibility as they are already overburdened with work. In cases where the KSCW has responded, it is mainly because of the political pressures that are faced by the organisation.”

However, the staff of the KSCW in interviews with Daksh highlighted the following cases which have been taken up by the KSCW based on media reports:

- The KSCW intervened in the Nokia suicide case where a girl committed suicide owing to harassment by her seniors at work. The KSCW gave advice to the parents of the girl on the legal action they can initiate against the company. Daksh requested for the relevant papers of the case and the advice given by the KSCW to the victim’s parents, the Secretary said the papers have been misplaced.³²
- One of the case workers said a spot inspection was conducted by the KSCW in the bar dancers case in Koramangala. In this case bar girls were kidnapped from the bar. The KSCW after rescuing the girls investigated whether the girls were forcibly made to join the profession and the conditions of their stay. The said inspection report was subsequently sent to the government. The inspection report was not available for our perusal. We were informed that it was a confidential document.

An RTI application was filed to gain access to the reports. The response to the RTI application and denial of access was the same, that the document is confidential. The information requested by Daksh is not exempted from disclosure under Section 8 of the RTI Act. Further, the KSCW is required to provide the exact reason for rejection to access information under the RTI Act. However, it failed to do so.

3.3.1.4 Nature of Cases

The cases registered with the KSCW are mostly matrimonial disputes, states one of the case workers. This could be in the nature of dowry harassment, domestic violence or incompatibility. Many women seek police protection from the KSCW in cases where the respondent is violent. There instances of cheating and a few property issues which are received by the KSCW.

Table 3.1: Total Number of Complaints Received and Disposed Of, 2008-2009

Cases	Receipt	Disposal	Balance
Counselling	270	141	129
Dowry Harassment	7	4	3
Protection	477	69	408
Maintenance	10	3	7

³² In September, 2008 a female employee of Nokia committed suicide owing harassment at work. See, Soumya Menon, “Woman alleges harassment at work, kills self”, *DNA*, 27.09.08, at http://www.dnaindia.com/bangalore/report_woman-alleges-harassment-at-work-kills-self_1193646

Property Issue	61	39	22
Cheating	18	7	11
Sexual Harassment	86	27	59
Domestic Violence	362	358	4
Miscellaneous	364	105	259
Total	1655	753	902

The rate of disposal of cases is variable and not consistent. The Annual reports fail to provide why out of 477 of protection cases only 69 have been disposed off? Further, what is meant by disposal of cases? In most Domestic Violence cases, the practice of the KSCW has been to forward it to the Protection Officer under the PWDVA. When the KSCW states 270 complainants have been counselled, what does it imply by counselling? Does that mean legal advice given? Or does it imply psychological counselling? The annual reports fail to provide details of any of these cases. Further, a large number of miscellaneous cases are shown as pending. What kinds of complaints fall under the miscellaneous category? Why have the cases not been dealt with? The KSCW Annual Report fails to provide any explanation for it.

In addition, to providing help at the KSCW office, KSCW in 2006 has set up help desks for women in family courts in seven districts: Bangalore, Mysore, Gulbarga, Raichur, Davangere, Belgaum and Bijapur. The KSCW helps desks were set up in family courts based on recommendation by Majlis, a non-profit organisation in Mumbai, which has studied the structure of Family Courts. KSCW has appointed additional Case Workers to provide legal assistance to women through these help desks.

Table 3.2: Total Number of Cases Assisted in Family Courts by the KSCW Help Desk, 2008-2009

S. No.	Details of Petition	Numbers
1.	Maintenance	394
2.	Divorce	203
3.	Contempt of Court	4
4.	Restitution of Conjugal Rights	61
5.	Custody of Child	20
6.	Domestic Violence	233
7.	Others (Property, Marriage, Registration, Rent)	363
	Total	1278

The cases received at the help desks have been largely matrimonial or marital in nature. What was the outcome of the cases handled by KSCW help desks in Family Courts is unavailable in the annual report.

Table 3.3: Total Number of Complaints Received and Disposed of in 2009-2010

Sl No	Category	Received	Disposed	Pending
1.	Counselling	360	207	153
2.	Dowry harassment	14	9	5
3.	Dowry death	13	11	2
4.	Protection for women in distress	342	62	280

5.	Property dispute	40	16	24
6.	Sexual Harassment	29	13	16
7.	Harassment at work place	61	10	51
8.	Domestic violence	148	145	3
9.	Others (House rent, Child protection, Rehabilitation, Rape, Murder, Fraud, Transfer, Financial assistance, Providing Employment)	383	186	197
Total		1390	659	731

How many of the cases provided in the table above are carried forward from the previous year? Majority of cases involve protection for women in distress, harassment at work, and miscellaneous category are pending. In the year 2008-2009 as well, the KSCW failed to provide protection to women in majority of cases. The total number of cases received and disposed off indicates that nearly half of women who have approached KSCW have not received relief.

The 2009-2010 table does mention cases relating to protection of children. However, in our interaction with the KSCW staff they said they do not deal with cases concerning children, girl or boy, subsequent to the setting up of the Karnataka Commission for Protection of Child Rights (KSCPCR). The Annual Reports of KSCW does not provide any case details with respect to children either. The KSCW, however, failed to provide any details regarding cases of children prior to the setting up of the KCPCR in July 2009. As per KSCW staff the KSCW mandate does not include protection of rights of children, irrespective of sex. Any case received with respect to violation of the rights of the child, the KSCW directs the victim to the KSCPCR. They said they send all cases with respect children to the KCPCR. On being questioned how cases of custody are handled, they said they have so far not received any case concerning custody of children. However, the annual report suggests that cases with respect to custody and under the Guardian & Wards Act, 1890 have been dealt with.

Table 3 indicates cases of sexual harassment were handled by KSCW. However, we were unable to get any information on sexual harassment cases from the case worker from the revenue department, who was handling the cases. She was unwilling to speak to us.

Table 3.4: The RTI application filed by Daksh procured the following information on cases received and disposed off by the KSCW

Year	Received	Closed	Running
2008-2009	1655	753	902
2009-2010	1390	659	731
April 2010- Sept 2011	547	197	350

Disposal of Complaints

The overall rate of disposal of complaints by the KSCW is 55.20%. The total number of complaints received by the Commission from 2008-2010 is quite low. In the year 2009-2010 the number of cases received have dropped further. The possible reason for the

gradual drop in cases could be the lack of confidence and faith in the effectiveness of the body among the civil society and the failure of the Government to appoint a Chairperson until now.

3.3.1.5 *Division of Complaints*

Complaints received by the KSCW are divided district-wise and on the nature of the complaint among case workers. Each case worker is in charge of seven districts. The case workers handle cases pertaining to sexual harassment, acid attack cases, domestic violence cases, dowry cases etc. Criminal cases, like rape, murder and dowry deaths are handled by the retired DYSP. Despite several attempts to meet the DYSP who acts as an investigating authority in the KSCW, we did not manage an interview with her. The DYSP, the case workers informed us deals criminal cases.

3.3.1.6 *Complainants and Complaints*

At the time of receiving complaints, there is a set procedure followed. The KSCW follows a format through which the Counsellor gathers information on the complainant, the problem faced, relief sought and other facts. “The primary aim of counselling is to reconcile the parties and to avoid breaking the family. If this is not possible, then other steps will be taken,” explains one of the case workers.

The procedure of counselling takes place in the private room of the Chairperson, with the petitioner and counsellor present. Both parties are called for counselling on Tuesday and Friday, which are the official days for counselling in KSCW. We met some of the complainants on Tuesday and Friday to understand their experience with the Commission.

3.3.1.6.1 *Interviews with Complainants*

We interviewed ten complainants in the period of six months. The purpose of the interviews was to understand the procedure followed by the KSCW in handling cases. The complainants were interviewed on the KSCW premises when they were awaiting their turn to be called in for counselling. Most complainants were willing to discuss their complaint.

Some of the questions we asked were: how did they learn about the KSCW? What is the procedure followed by the Commission? Did the complainants receive a copy of the complaint with the notice? Within what time frame was the notice sent? When was the first hearing of the complaint? What kind of delays did they face? What reliefs did they seek?

The complaints filed were generally pertaining to matrimonial disputes. Most of the complainants were made to wait long hours before being called for counselling. In most cases, the complainants said that the respondent did not appear for hearings, this caused further delay. In cases where the respondent does not appear the KSCW gives another date for hearing. For most complainants present at the KSCW, it was their second hearing. The Case Workers too had indicated the non-appearance of respondents as the primary problem faced in resolving disputes.

Most complainants had not yet received any relief by the KSCW. In three cases, it was their first hearing despite registering complaints more than six months ago. In two cases,

the complainants had not received any relief after two years of registration of the complaint.

The general nature of the complaints was:

- Dowry cases or return of *stridhan* by the wife
- Domestic violence case
- Property dispute
- One case of violence against domestic worker

The complainants had heard about the KSCW either through a relative, lawyer and in one case through the papers.

3.3.1.6.2 Cases Handled by KSCW

We analysed six cases handled by KSCW from 2007-2010. The KSCW refused access to any more case papers to Daksh. It is primarily the Case Workers that made the material available to us for our review.

Of the six cases we reviewed, the four cases we append below are representative of the nature of cases handled by the KSCW.

i. Year the Complaint: 2010

Details of the Complaint: The complainant had taken premises on rent. For the purpose of rent, security deposit was given. The Complainant vacated the premises and informed the landlord of the same. The landlord refused to return the deposit. The landlord did not return the entire deposit. The complainant filed a complaint with the Commission to get the entire deposit back. A notice was sent. Two hearings were held with both parties in the same month. At the intervention of the KSCW, the landlord returned the remaining sum.

ii. Year of the Complaint: 2007

Details of the Complaint:

The complainant filed a complaint against the management of a hospital. The complainant alleged of harassment and torture. She further alleged she was as a permanent employee although she is eligible for benefits like promotion, salary, hike as per new revised scale she was denied of the same. She sought various reliefs in the nature of transfer to the original department, promotion and revision of pay scale. Notice was sent in a month's time to all respondents. A copy of the complaint was also made available. Lawyers for both parties are present in the first hearing. The counsel for the respondent contested the Commission has no jurisdiction to entertain the matter and it is not maintainable. The parties however at a later date arrived at a compromise.

iii. Year of the Complaint 2008

Details of the Complaint: The complainant has filed a complaint on behalf of her mother. The mother is suffering from harassment from the son. The property owned by the mother is given on rent. However, the rent amount is being appropriated by the son. The complainant wants the property divided between them. Since a court case was filed, the KSCW sent the complainant to a Protection Officer to pursue complaint under the PWDVA.

iv. Date of Complaint: 31.3.2008

Details of the Complaint

Complainant had an arranged marriage. The respondent suppressed facts about his first marriage. When the complainant insisted on registration of the marriage, at that time, respondent revealed that as he was already married, hence registration of marriage is not possible. Later respondent started making false allegations against the complainant of having affairs and she was dispossessed from the house. The complainant has sought for a separate house and Rs.3,000/- as monthly maintenance and later she has submitted that she be given Rs.5,00,000/- in lieu of monthly maintenance. However the respondent did not agree to the settlement arrived at in the counselling. The KSCW has directed the complainant to the Protection officer.

Observations

The nature of cases handed by the KSCW, as indicated above, varies. In two of the cases indicated above, the KSCW clearly had no power or jurisdiction to intervene in the matter. However, as per the case papers it did manage to grant relief to the complainants or assist in arriving at a compromise. The other two cases which concern domestic violence, the only role the KSCW has played is sending the complainants to the Protection Officer, under the PWDVA. From our interviews with the complainants and the perusing of the case papers, we found the time of the Commission is spent in resolving rent disputes or disputes with neighbours, which do not fall within the purview of the Act. In other routine cases, the KSCW either directs the petitioner to the Protection Officer or Police or arrives at a settlement. How does the KSCW protect the rights of women? Or ensure enforcement of existing laws? In most cases it fails to do both.

3.3.2. Powers of Inquiry

Section 9 (a) of the KSCW Act states, the KSCW should “investigate and examine all matters relating to the safeguard provided for women under the Constitution and other laws”. At the time of investigating matters the KSCW has the power of a civil court under Civil Procedure Code, 1908 in trying a suit, such as the power to summon and enforce the attendance of any person, examine a person under oath, demand production of any documents, receive evidence on affidavits, requisition public records or copy thereof from any court or public office, issue commissions to examine witnesses and documents; and any other matter which may be prescribed.

Despite these powers the KSCW does not have an investigative wing. In our study we found that the KSCW essentially relies on police to conduct investigation. Further, unlike the KSHRC the KSCW Act does not provide for post-inquiry steps to be taken by the Commission, nor does it stipulate the directions to be given to the government.

International guidelines mandate not merely an investigative wing, but an established procedure to conduct investigation with a team of experts to lead it. Investigation on violation against women would further assist the body to determine the primary causes of such violation and recommend changes and adoption of measures to ensure protection to women. Further, a team of investigators in the Commission would assist in conducting an impartial investigation. Thus, the KSCW staff should be trained in law and the latest investigating techniques.

Investigation within the Commission would further help maintaining confidentiality of the victims and the witnesses and have a witness protection program.³³ However, there seems to be disagreement on the issues of whether the KSCW as a statutory body has powers to investigate like a criminal court. In *Vikram Sharma v Union of India*³⁴, High Court of Delhi, the Court observed that, “there are a large number of statutory commissions at the level of the Centre and the States which perform judicial functions and are vested with, for the purpose of conducting inquiries upon receiving complaints, the powers of a civil court... These statutory bodies, however, have not been vested with the powers of a criminal court and do not have powers to enforce criminal law.”

3.3.3. Initiatives by the KSCW

3.3.3.1 Suraksha Scheme

As per case workers the State Commission has introduced the Suraksha Scheme for victims of acid attacks and burns caused due to violence by husband or his family. Both these schemes have been well publicized on television and other mediums. Further, District Surgeons also inform victims about these schemes. The Commission pays upto Rs. 2,00,000 as compensation to the victims. Till date, 53 victims of acid attacks have received compensation from the Commission. From 2001-2010, Rs 75,16,447 has been disbursed as compensation to the victims. From 2008 till date, a total of Rs 10,69,815 was disbursed to nine burn victims. The Commission has requested the State Government to enhance the sum of compensation.

The annual reports of KSCW state that financial assistance is provided to victims of acid attacks.

As per the Annual Report 2008-2009, KSCW has under its Suraksha Scheme given financial assistance of Rs. 20,000 to maximum of Rs. 2,00,000 to acid victims and kerosene attack victims for their medical expenses and rehabilitation. The financial assistance is given based on the financial position of the woman and the extent of wounds.

The assistance is given for:

- Medical expenses, plastic surgery and shelter
- Create employment opportunities
- For self-employment
- Shelter facility to women under schemes like Ashraya/Ambedkar schemes
- To their children’s education
- Monthly pension facility to those women who have been handicapped from acid attack

In the year 2008-2009, financial relief of Rs. 64, 28,299 has been given to 51 Acid attack women and financial relief of Rs. 6,15,000 has been granted to five kerosene attack women.

³³ Amnesty International’s Recommendations on Effective Protection and Promotion of Human Rights, Recommendation, 4.

³⁴ *Vikram Sharma v Union of India*, MANU/DE/1994/2010, 171(2010)DLT671

Two victims of acid attacks have been given compensation of Rs. 2,00,000 each under the Suraskha Scheme.

During the reporting period of r 2009-2010, the State Commission has provided financial assistance to four acid victims amounting to Rs.3,48,148/- and to four victims of burns amounting to Rs. 4,54,815/-.

As per the Government of Karnataka Order, the State Commission has been providing financial assistance to the acid victims. There is provision for the assistance of twenty thousand to two lakhs. This assistance is based on the extent of burns the victim has suffered and is primarily meant for medical treatment and rehabilitation.

Contrary to the claims of the KSCW on how the Commission has been working on the issue of acid attacks, the Campaign and Struggle Against Acid Attacks on Women (CSAAAW),³⁵ is disapproving of the efforts of the KSCW. As per CSAAAW in its interaction with the KSCW it found although the Commission was aware of the cases of acid attacks in the State, its response was that it lacked funds and staff to address the issue. Subsequent to protests and demonstrations by CSAAAW, KSCW allocated a compensation amount for the acid victims.³⁶

The Karnataka High Court in 2006 in a writ petition filed by CSAAAW and Human Rights Law Network (HRLN) directed the KSCW to pay compensation to acid survivors. The High Court directed that the victims should be assisted with employment, loans under existing schemes of Women and Child Development Department, priority in housing schemes of the Government and education assistance. The compensation given by the KSCW is the result of this direction, as opposed to an independent initiative of the Commission.

3.3.3.2. *Parivarak Lok Adalat*

Every third Saturday of the month the KSCW in collaboration with the Parivarak Lok Adalat (PMLA) and LSA conducts sessions with complainants at Family Courts in Bangalore. Here petitioner and respondents who have filed a complaint with the KSCW or the KLSA are called before a sitting judge of the civil court with two counsellors (from an NGO and the KSCW) and a LSA lawyer. The parties are heard and a compromise is attempted. The objective is to ensure speedy disposal of cases generate awareness regarding conciliatory dispute settlement, legal sanctity of Lok Adalats and empower public, especially women to participate in the justice delivery mechanism. The KSCW initiated the concept of PMLA.

It is jointly sponsored by KSCW and NCW. In 2008-2009, out of 227 petitions before the Adalat, 128 were settled.

Table 3.5: Details of Petitions, 2008-2009

³⁵ CSAAAW is a collation formed in 2003 in Bangalore working on the issue of acid attacks on women. The CSAAAW has been campaigning for laws on acid attacks and rehabilitation of victims in Karnataka.

³⁶ CSAAAW., *Burnt Not Defeated, Women fighting against acid attacks in Karnataka*, 2007, p.64-65.

Sr. No.	Types of Cases	Number of Cases	Cases Settled
1	Original Suit	14	3
2	Maintenance Cases under S. 125 CrPC	23	3
3	Matrimonial Cases	184	122
4	GWA	6	0
5	Pre Litigation Cases	0	0
	Total	227	128

Table 3.6: Details of Petitions, 2009-2010

Sl no	Types of Cases	Complaint received	Cases Settled
1.	Maintenance complaint	11	0
2.	Matrimonial disputes	134	97
3.	Other	29	8
	Total	174	105

However, the nature of the settlement arrived by the parties is unknown. Were the women happy with the settlement arrived at? Or were they pressurised into arriving at a settlement? What is meaning of ‘settlement?’ The Annual Reports do not provide details of the cases, like the reliefs sought by women and the relief received. The Secretary was not able to describe how the case is dealt with in the Adalat. None of the case workers we interacted with have been part of the proceedings.

3.3.4. Training of Staff

The work of the KSCW requires the staff to be kept abreast of the latest developments in law with respect to the rights of women and the status of women in the State. The KSCW Case Workers said they have not received any training of law, rights of women or counselling/handling of clients. Arya, reiterates this point, as per her the SCWs lack adequate knowledge on women’s laws.

3.3.5 Surprise Visits and Inspection

As per the Counsellors the KSCW staff does make visits to sites to verify the condition of women in garment industries, prisons, state run institutions/homes etc. Although, the KSCW has made surprise visits to prisons, garment industries and to private companies to verify whether a sexual harassment committee has been set up as per the Vishaka Guidelines. The Secretary and the Case Workers however could not confirm the year in which the visits were made. We were informed the visits were made sometime in the last 3 years. The Secretary defended her inability to make surprise visits owing to the unavailability of members to allocate work to and her declining health. However, we learnt the reason for the gradual decline in work and the general disinterest on the part of the Secretary is her upcoming retirement in March 2011. .

3.3.6 Advocacy

As per the KSCW staff, case workers conduct awareness programs on rights of women and the work of KSCW in different districts in Karnataka. The case workers travel twice a month for such advocacy programs.

The Annual Reports of 2008-2009 and 2009-2010 state that following trainings/awareness programs have taken place in Bangalore, Gadag, Koppal, Devanahalli, Ramanagaram, Belgaum, Chikkaballapura, Haveri, Shimoga, Bagalkot etc:

The Annual Report of 2008-2009 states that following trainings/awareness programs have taken place in Bangalore, Gadag, Koppal, Devanahalli, Ramanagaram, Belgaum, Chikkaballapura, Haveri, Shimoga, Bagalkot etc. these programs have been held in collaboration with the District Legal Service Authority, Women & Child Development Department, Health and Family Welfare Department, Karnataka Factories & Boilers Department and civil society organisations on:

- Legal awareness programs
- Gender sensitisation programs
- HIV Aids

The Annual Report of 2009-2010 states that following legal awareness programs have taken place in Bangalore, Gadag, Koppal, Bagalkot, Belgaum among other places these programs have been held in collaboration with the various organisations, colleges on:

- HIV Aids
- Gender sensitisation programs
- Constitutional Rights of Women,
- Sexual harassment at work place,
- Female infanticide, Marriage, Divorce, Polygamy,
- Maintenance,
- Property rights,
- Protection of Women from Domestic Violence Act, 2005

3.3.7. Committees of the Commission

The Commission can under Section 11 of the Act set up committees necessary to deal with special issues. The Committee has the powers to appoint members of civil society. The members have the right to attend meetings and participate in the proceedings, without having the right to vote. The members of the Committee shall be entitled to receive allowances for attending the meetings. In our study, we found the KSCW has not set up any such special committees nor has the State Government notified any rules outlining the allowance of the persons on the Committees, unlike other Commissions like the Kerala State Commission for Women's Remuneration payable to members and Experts of Ad-hoc Committee Rules, 2001.

3.3.8 Media Awareness Programs

No media campaigns or advertisements have been issued by the KSCW to spread awareness on the work of the Commission and its functions, powers and reliefs it can provide. The staff and the Secretary however said there have been campaigns, but were not able to present any paper clipping, except for brochures. The KSCW has published brochures on female infanticide, sexual harassment and rape which explains the nature of the crime and the legal remedies available to a woman.

3.3.9 Recommendations to the Government

The Act mandates that the Commission make (Section 9):

- recommendations/report to the Government on any matter pertaining to women and the status of women in the State;
- submit annual reports and recommendations on measures to adopt for women's safeguard and effective implementation of safeguards for improving the condition of women
- review laws and provisions that need amendments for better protection of women

The KSCW staff and the Secretary in conversation with us said that the Commission had given recommendations on laws, submitted reports on sex workers in the State and their needs, and recommended compensation and reliefs that should be provided to rape and burn victims. However, the KSCW did not share the documents/reports with us on grounds it being confidential. Daksh had filed an RTI application for the same which did not yield the necessary documents.

Enforcement of Recommendations

As per the Act, the Government on receipt of such recommendation is not compelled to accept the recommendations. Nor is there any time period within which the Government should either accept or reject the recommendations. The Commission does not have powers to enforce or implement recommendations given to the State.

International guidelines recommend that the government should respond to the implementation or non-implementation of the Commission's recommendations within reasonable time. Further, the government's response should be made public.³⁷

As per the case workers, the power of the Commission to give recommendations is of little value. In case of non-implementation of the recommendation there is little the Commission can do. Even in private cases it is difficult to ensure implementation of the recommendation. The Case Workers felt that the orders or recommendations of the KSCW should be made binding. Also, they should have powers to prosecute in case of contempt of the order passed by the KSWC.

3.3.10 Action Taken Reports (ATRs)

Section 9(3) of the Act stipulates that the recommendations given by the Commission should be laid before each House of the State Legislature along with the memorandum explaining the action taken or proposed to be taken on the recommendations and the reasons for non-acceptance, if any, of any such recommendations. However, the recommendations given by the Commission are not binding on the State. The ATRs are not available to the general public.

Daksh filed an RTI application for the same. The Commission failed to understand what an ATR is, and instead provided the statistics on the number of cases filed and disposed off. ATRs are a way to assess whether the Commission has been effective in persuading or compelling the State to action or remedial measures in protecting women. At present,

³⁷ *Supra* n.6, Recommendation 5.3.

there is no way to assess or review the recommendations given by the KSCW and the status of those recommendations. The advisory role of the KSCW is one of the key functions of the Commission. In its advisory role, the KSCW has powers to recommend changes to laws and take *suo motu* notice of non-implementation of laws. It can propose guidelines or evaluate progress of women in the State. Further, under Section 17 of the Act the State should consult the KSCW on issues pertaining to women. How many recommendations have been given by the KSCW to the State? Has the KSCW reviewed any laws? None of this information is provided in the Annual Reports of the KSCW.

3.3.11 Civil Society Network & the KSCW

For the purpose of the report, interviews were conducted with some of the prominent civil society organisations working in the field of women. The interviews sought to assess the views and experience of civil society organisations of the KSCW. Majority of civil society organisations endorsed the view that the KSCW in the last three years has become a defunct and headless body. The present state of the KSCW has led to civil society organisations not approaching the KSCW.

Under the Act, the Commission should involve civil society bodies in discharging functions, such as research on issues concerning women. However in the absence of a Chair there has been little communication. Most civil society organisations have not collaborated or been contacted by the KSCW in the last three years.

As per Donna, “During the Chairmanship of Pramila Nesargi plenty of workshops and meeting were held on the issue of sex selection and the Commission invited many women’s rights organisations to participate.” Vimala³⁸, who is an activist who has worked for protection of women, said, “When the Commission had a Chair there would be discussions on the Protection of Women from Domestic Violence Act, 2005 with NGOs.”

Further, the common complaint against the KSCW is that the function of the Commission as a watchdog and a monitoring body has been reduced “to counselling and receiving complaints, the latter of which has been absolutely unproductive. The effect of this counselling has been more regressive as they encourage women to go settle the matter and refrain from taking any action,” adds Donna. This has been admitted by the Secretary as well. As per the Secretary the KSCW tries to reconcile the parties.

Sumitra Acharya,³⁹ Legal Consultant to the KSCW, admits that “[i]n most cases, the Commission passes police protection orders or orders to close the case if it is pending before a court. In some cases, they also refer the matter to the LSA for legal aid.” However, she defends the KSCW by saying that the Secretary does not have the powers to act under the KSCW Act and she is therefore reluctant to take initiatives. According to her, either the KSCW has under performed or in the term of Pramila Nesargi the KSCW has gone beyond the prescribed powers under the Act.

Although the civil society organisations were happy with the work of KSCW during the term of Pramila Nesargi, the KSCW has been accused of overstepping its powers and jurisdiction.

³⁸ Interview with Ms. Vimala, Janaridhi Mahila Sanghatane on 1.10.2010 (On file with Daksh).

³⁹ Interview with Sumitra Arya, Legal Consultant to the KSCW 20 October 2010 (On file with Daksh)

For instance, Nesargi who held the position of Chairperson of the KSCW from April 2007 to 5 October 2007 overstepped the statutory boundaries and proceeded to pass orders without authority or jurisdiction. From what Nesargi shared with us, she tried to function like a court of law, which is not the function or purpose of the Commission. For instance, in a case where there had been mass transfer of women employees in BSNL and the Karnataka High Court had dismissed their petition, Nesargi took cognizance and ordered stay on the transfers.⁴⁰ She stood her ground even when BSNL questioned her authority to intervene in the matter. She also passed orders for exhumation of bodies, opening of lockers, and took cognizance of cases filed by women residing in Tripura and Hyderabad against their husbands living in Bangalore. The Commission does not have the power to pass such orders.

In fact, orders of the KSCW were successfully challenged before the Karnataka High Court. In *V.M. Thiaggu v. Karnataka State Commission for Women*⁴¹, the Commission took cognizance of a complaint against the petitioners in which it was alleged that he misled the complainant into providing collateral security for a loan. The Karnataka High Court held that this did not amount to deprivation of women's rights and thus the Commission was without jurisdiction when it summoned the petitioner and issued a letter to the Inspector General of Police directing him to secure the presence of the petitioners. In the case of *Shivaram v Police Sub-Inspector*⁴², the Karnataka High Court observed that handling of matters relating to the custody of a child does not fall within the purview of the functions of the KSCW and held that the summons issued to the father by the Commission was without jurisdiction.

Further, the constant intervention of the DWCD in the matters of the KSCW is problematic. On conditions of anonymity, a staff at the Commission mentioned that, "the DWCD exercises control over the Commission. The Secretary hesitates to take independent decisions. Also, the government appoints people who are not interested in the job and as a result the Commission suffers."

3.4 Additional Parameters and Benchmarks of Evaluating the KSCW

We interviewed civil society members to evaluate the performance of the KSCW on additional benchmarks of transparency, accessibility and accountability.

3.4.1 Transparency & Autonomy of the KSCW

The nomination of the Chairperson and members by the Government casts serious doubt on the independence and transparency of the Commission. The Act does not mandate vacant positions to be advertised or selections to be carried out in an open and transparent way. Unlike the KSHRC which has a selection committee, KSCW nominations are made by the State. "The political nature of the appointments has affected both the autonomous functioning of the Commission as well as its approach to an issue or intervention in certain situations or in dealing with the government and

⁴⁰ Interview with Ms.Pramila Nesargi, former Chairperson of Karnataka State Commission for Women on 28.09.10 (On file with Daksh).

⁴¹ Writ Petition No. 6897 of 2007. Decided on 06.06.2009 by the Karnataka High Court.

⁴² 2009 (4) KarLJ 264

departments, both in its monitoring and recommendatory roles, because the Commission is constrained to act against those in power or those who have appointed them.”⁴³

Further, the political nature of the appointments and the exclusive powers with the executive to appoint Chairperson, decreased the chances of appointing competent persons with experience or expertise in women’s issues. The present appointment of C. Manjula is not any different.

As Arya, in her critique of the NCW observes, “Women who have remained active in the movement or are actively working on women’s issues through campaigns or activist research have rarely found a place in any of the Commissions.”⁴⁴ This rings true for the appointments to the KSCW as well.

Further, staff deputed from other Government departments, like in the case of KSCW bring with them bureaucratic style of functioning and fail to understand the role of a quasi-judicial body like the KSCW. For instance, in our interviews with deputed staff at KSCW that they were of the belief that the KSCW Act was not a public document. They refused to speak to us and denied us documents, despite the Secretary approving access to certain cases and statistics. As opposed to the deputed staff, the case workers appointed on contractual basis were cooperative and understood that the KSCW was a quasi-judicial body accessible to the general public.

3.4.2 Accessibility of the KSCW

Telecom Accessibility

International guidelines recommend quasi-judicial bodies like KSCW should involve civil society in making reports and consultation process to increase accessibility. Further, multiple access services, like toll-free telephone lines, email, and travelling offices or travelling field officers who can reach isolated areas should be implemented to make the Commission accessible.⁴⁵ The KSCW so far has no such facility available.

Geographical Accessibility

As one of the civil society member pointed out, women in villages and towns need to know about their rights and the existence of the Commission. The KSCW should establish centres at district and *taluka* levels to increase accessibility. Accessibility, as per women activists, is the primary reason why women from other town and districts do not approach the Commission to file a complaint. Menon, in her interaction with the NCW found it more accessible and effective in providing reliefs.

Civil Society Accessibility

Further, increased interaction with civil society and NGO networks facilitate contact with the public and enhances accessibility.⁴⁶ In the case of KSCW, as per the civil society networks, in the last three years there has been little interaction or communication. As per Menon, the staff of KSCW is not accessible. None of the staff are willing to interact⁴⁷

⁴³ *Supra* n.1 at p.14

⁴⁴ *Ibid.*

⁴⁵ *Supra* n.6, Recommendation 9.3

⁴⁶ *Ibid.*

⁴⁷ In our interviews with the case workers, we found some of the case workers were willing to interact with us. However, this comfort was established after a couple visits to the Commission. We later learnt the primary reason for the refusal of case workers to interact with media persons or civil society was

and owing to substantial amount of documentation work the staff are unwilling to take up new cases. Further, she added, the staff is not experienced in human rights and therefore lacks motivation.

Data Accessibility

Majority of the civil society organisations interviewed said their interaction with KSCW was not satisfactory. Further, the KSCW work is poorly documented which makes it difficult to access data or work of the Commission.

Another way of increasing accessibility is the easy availability of the KSCW's Annual Reports and reports and recommendations by the Commission. However, though the Commission gave us the Annual Reports after our repeated requests, the reports are not readily shared with the civil society. The Amnesty Guidelines recommend that Annual Reports should be widely circulated.⁴⁸ Also, the Commissions should be empowered to publish annual reports without first having to present it to the Parliament. As the Parliament may not have the time, and this would silence the body.

A good way to publicise the report is to make it available on the website of the Commission. This would make the work and the functioning of the Commission transparent. SCWs in Manipur and Meghalaya have annual reports available on their website after it has been tabled in the Parliament.

Online Accessibility

The KSCW Secretary claimed that in addition to accepting complaints by post and personally, they also consider complaints received by email. However, the email address is not publicised. The KSCW does not have a website where information or contact details of the KSCW are available.

In our study, we found many of the SCWs in other states have a website. For instance, Manipur and Tripura SCWs have an online complaints registration/submission mechanism. In some cases, the status of the complaints can also be checked. Details of the SCWs with websites are provided in Annexure 1 to this report. Further, data on complaints registered, disposed off and budget of the SCWs in Haryana and Punjab are available on their websites. Kerala and West Bengal are SCWs which provide most of the information on regulations passed by the Commission, nature of cases and the initiatives taken by the SCW and schemes available to women. The criteria required to avail certain schemes is also available in some cases.

The Kerala SCW website also provides contact details of the KSCW public information officer (under the RTI Act) anyone can contact for accessing information pertaining to the KSCW.

3.4.3 Infrastructure of KSCW

The term infrastructure includes adequate staff, telephone lines, access to the world wide web, and availability of vehicles to travel to meet complainants. In our interaction with the case workers of the KSCW, what emerged clearly is that the KSCW is under-staffed. Further, although the case workers travel twice a month for advocacy purposes, in case

owing to the instruction given by the Secretary. None of the staff in the KSCW was permitted to talk to outside members, except complainants, without express permission of the Secretary.

⁴⁸ *Supra* n.6, Recommendation 8.2.

of an emergency or immediate assistance required by a woman, the case workers are not adequately equipped to assist women. For instance, the National Commission for Women (Allowances Payable to Co-opted Members) Rules, 1992 GSR. 118(E) dated 21st February, 1992 provides for facility of conveyance of Chair and Members for official and private purpose in accordance with the Staff Car Rules of the Government of India. The KSCW does not provide for any such facility.

The official timings of case workers is 10.30 am to 5.30 pm. Although they are not expected to provide assistance after work hours, case workers do get request/calls from complainants. In the event case workers respond to such requests, they have to do it in their personal capacity. There is no infrastructure provided to counsellors in the nature of travel allowance or taxi for making such visits after their work hours. The lack of vehicle and financial assistance for the same would discourage the case workers from providing assistance in cases of emergency.

3.4.4 Budget of the Commission and grants by the Government

Budget (Section 12)

The grants for the Commission is approved and granted by the Government. The financial dependence of the Commission on the State for grants or financial aid seriously threatens the independence of the human rights institutions. As per the Act, the KSCW should prepare an estimate of its income and expenditure start of the financial year and intimate the Government about the same. The Act does not require the KSCW to share the budget for the year with civil society. The Government as per Section 12 (2) will decide on the grants to be given to the KSCW, as it thinks fit. The government thus exercises control over the sum of money that the KSCW may receive. The KSCW only has the power to decide how the money should be allocated.

(i) Budget for 2008-2009

As per the annual report, 100 lakhs budget was released by Govt. to KSCW. Out of the sum released a total of Rs. 96.4 lakhs was spent from April 2008-March 2009.

An additional, 100 lakhs budget was released for the Suraksha Scheme for 2008-2009 of the sum granted, Rs. 70.43 lakhs relief was given to 51 acid and 5 kerosene attack women.

How has the grant been utilised by the Commission? What and where has the money granted been allocated? The annual reports fail to provide any other details of expenditure, except for the money granted and spent.

(ii) Budget for 2009-2010

As per the annual report, 150 lakhs budget was released by the Government to the KSCW. Out of the sum released a total of 148 lakhs were spent from April 2009 to March 2010. An additional 75 lakhs was released by the Government for the Suraksha Scheme, out of which 8.03 lakhs was spent. The said amount was given to 4 acid attack victims and four disadvantaged women who were victims of violence.

Most civil society networks drew a blank to the question on budget. This is an indication of how the Commission has failed to provide its annual reports to concerned organisations. Indhu Subramaniam from Hengasara Hakkina Sangha commented:

“The spending of the commission has been wasteful on unproductive programs. For instance, under the chairmanship of Pramila Nesargi, there were meaningless programs conducted towards the end of the year where the budget had to be spent on women’s issues. In such meetings and seminars Ministers and other VIPs were called to speak who were not even aware or informed of the condition and problems of women.”⁴⁹

However, most organisations were in agreement that KSCW needs adequate funds to ensure well trained and adequate staff. Further, infrastructure for staff was another aspect that needed to be fulfilled. These recommendations have to be taken into consideration by the KSCW beginning of its financial year when it allocates funds to various heads. However, the lack of communication and transparency with respect to the KSCW, would make it difficult for NGOs to give specific recommendations with respect to budget. Further, if the KSCW shares the annual budget with NGOs, women’s organisation can accordingly lobby for greater allocation of funds for women. Gender budgeting in recent years has been on the agenda of women’s organisations.

Audit (Section 13)

The audits of the account, that is the annual statement of the Commission, have to be duly submitted to the Government. The Commission has to comply with any directions of the Government on the annual report. The auditor may be appointed by the Government. How does this affect the autonomy and the ability to monitor the Government when the government has the powers to direct the Commission with respect to its budget and reporting?

Funding

International guidelines recommend that the Commissions should have the power to ‘establish alternate routes to receive funding.’ This funding could be provided by private donors or international agencies. However, in a scenario where a quasi-judicial body is funded by an international donor the likelihood of such funding compromising the independence of the body is high. Although, the guidelines mention that such funding may be short-term, international donors or funding may lead to re-alignment of goals and outputs owing to the demands of the funder. This would affect not only the role of the institution but the objective and function of the Commission as well.

3.4.5 Annual Reports

Under section 14 of the Act, the Commission, should prepare annual report, “giving a full account of its activities during the previous financial year and forward a copy thereof to the Government.” The Annual Report (2008-2010) of last two years of the KSCW does provide information on its activities, statistical information on cases received and disposed off, trainings held and success stories. The reports, however, are not easily available. The annual reports are crucial to evaluate the work of the Commission, as they provide the budget allocated and spent. However, the nature of the spending and allocation of funds is not given in the reports. The annual reports should provide an account of the expenditure by the Commission in the financial year. The report should have a financial statement, such as the balance sheet, costs and expenses, and notes to financial statements which provides additional details of the expenditure.

⁴⁹ Interview with Ms. Indhu Subramaniam on 27.08.2010 (On file with Daksh).

The report further fails to provide an auditors report and details of the auditor who has audited the account of the Commission. In the given scenario, it is difficult to evaluate the nature of expenditure of the KSCW and conduct financial auditing of the accounts.

3.5. Power to make Rules

Section 19 of the Act confers powers on the Government to make rules for regulating and functioning of the Commission under the Act. The Karnataka Government has however not made any such rules or regulations pertaining to the functioning of the Commission. For instance, the Kerala State has made regulations pertaining to the remuneration to be given to member of a Committee, procedure for meetings, procedures to be followed during investigating a case, and meetings and the procedure of meetings held.

Daksh filed an RTI application to access rules that may be drafted by the Government. In response to the application, the KSCW reproduced Section 19 of the Act which gives the State the power to make rules. Additionally, in our interview with the Secretary, she was not aware of this power.

3.6. Relationship between SCWs and NCWs

The KSCW Act does not mandate that SCW should be reporting to the NCW nor is there a hierarchy. The law however mandates that if a case or matter is being intervened or investigated by the NCW, the SCW shall cease to have jurisdiction in such matters.

This happened in the Mangalore attack investigation. The KSCW failed to intervene or investigate the violence in the Mangalore attack, in the meantime the NCW intervened. However, the investigative report conducted by NCW was not shared with the KSCW. The NCW and the SCWs do not have any relationship or communication between each other. As former member of KSCW Hemalata Mahishi, puts it, “the relationship between the SCW and NCW is necessary. The NCW should be aware of the work and status of women in different states. At present, the NCW is occupied by Congress party workers and KSCW by BJP. How can there be any rapport of relationship between them? The focus becomes more political upmanship.”⁵⁰

An example of this as per her was the handling of the Mangalore pub attack, where the NCW intervened more to highlight the failure of the BJP constituted SCW to intervene in the case, as opposed to a genuine concern on the issue.

3.7 Conclusion: Impact of the KSCW and Areas of Concern

Given the Chairperson to the Commission has been recently appointed by the State after a gap of three years what has been the impact of KSCW does not require much debate or discussion. Further, the existence of KSCW is little known among the general public. Most civil society organisations we interacted with had little or no interaction in the last three years with the Commission.

⁵⁰ Interview with Ms. Hemalata Mahishi on 10.09.2010 (On file with Daksh)

The functioning of the KSCW was mocked in a recent media article which described KSCW as a 'dud panel'.⁵¹ In more than a decade of its existence, most civil society organisations are of the view that few women know about the existence of the Commission. In some cases the KSCW has failed to take notice of widely reported cases in the media. One of the members of civil society criticises the lack of response from KSCW in murder cases in Karnataka, like the recent case of the Infosys employee killing his wife.

Can the Commission, even if it were to increase its staff strength, respond to all cases of violation against women? Or should the Commission focus on issues which would have wider impact on women in general. A Commission would be unable to respond or intervene in each and every case of violence against women. The KSCW instead needs to intervene and make recommendations and policy changes that would have a positive impact on lives of all women. One example of this would be, campaigning for a law on acid attack and training medical professionals on how to respond in cases of acid attacks.

The impact of the KSCW can further be evaluated from the ATRs. However, none of the ATRs are available or possibly have been tabled in the Parliament. The staff at KSCW additionally not only lacks an understanding on the role of the KSCW, but does not have a basic understanding of the KSCW Act. The RTI responses to Daksh's queries on rules and ATRs are a testimony to the abysmal knowledge of the KSCW Act.

The lack of documentation of the cases or follow up of cases indicates the KSCW work in the last few years cannot be tracked. This information would remain inaccessible even after filing an RTI.

We are evaluating the Commission on the basis of benchmarks derived from International Guidelines.

Independence

The functioning of the Commission is dependent on, as Arya puts it the will of the government. The KSCW is occupied with either mundane cases or takes up controversial cases which hog media attention. These are acts of tokenism. What has been the impact of such cases? Has the KSCW made changes/amendments to laws pertaining to women? Or has it brought about any policy changes?

The independence of the KSCW is highly suspect because of the political nature of appointments and the presence of representatives on the Commission. Many activists have further questioned the politics of the Commission. Can the KSCW be regarded as a secular institution with constitutional obligations to fulfil? Given previously some of the Chairpersons of the KSCW have openly subscribed to right-wing ideology. What impact does this have on women from minority communities who wish to approach the Commission? Further, the nature of the constitution of the SCWs needs to be reviewed to ensure independence. At present, the KSCW functions like an agency or another bureaucratic department of the State.

Its financial dependence on the government has reduced it to a subordinate department. It lacks operational autonomy to appoint its own staff or frame regulations to determine

⁵¹ Senthilir S, "Dud panel fails to empower women", *The Times of India*, 22.12.10, at <http://timesofindia.indiatimes.com/city/bangalore/Dud-panel-fails-to-empower-women/articleshow/6603308.cms>

its procedures. The KSCW Act is flawed in this regard. It does not secure the independence of the Commission in any way. Instead the Act provides ample scope for the government to interfere in the working of the Commission by having the power to take decision on its appointments, budget grants and the appointment of Secretary who has the power to control and operate the grants of the Commission. Given the Secretary is from the Government and is paid a salary by the Government, how practical is it for the Secretary to control the finances of the Commission? In such a situation where the Commission is to be critical of the role of the State, the financial control by the Secretary would greatly impact the functioning and the impartiality of the Commission. Thus, the Commission lacks the operational, administrative and financial independence.

Limited Power and Continuity

The KSCW has failed to live up to the expectations of the Act. All women's organisations of the State prefer approaching independent lawyers or the KSHRC, as opposed to the KSCW. The KSCW, although has limited powers, it has failed to exercise the powers it has. The position of the Chairperson demands not merely a woman working in the field of women's rights, but someone who is a visionary armed with a thorough understanding of the feminist politics in India. Further, the work commenced by one Chairperson is rarely continued by the next appointee. Thus, the ad hoc removal or resignation of the Chair and its members further breaks the momentum of the work and impacts the effectiveness and the morale of the staff appointed.

Appointment and Composition

The composition of the Commission leaves much to be desired. The appointment of Chairpersons from the inception of the Commission has been political. The members appointed are not full time members and do not play any active role in the functioning of the Commission. None of the appointments from the Chairperson, Members and Secretary are based on skill and expertise of persons. All powers of appointments solely lie with the executive. Further, the qualifications that Members and Chairperson should possess to be appointed have not been indicated under the Act. The law fails to maintain plurality in its composition.

Limited Accessibility

International guidelines mandate that the location of the Commission should not be near military, government or upscale areas. This would limit the accessibility of the Commission. As the Commission has to be accessed by the disadvantaged group, the Commission office should be not intimidating and should be disabled friendly. The KSCW is located in the same area as other offices and is not disabled friendly.

Quasi-Jurisdictional Competence

The Commission does have the powers to hear complaints, grant reliefs and pass recommendations. However, the Commission does not have an investigation wing which would conduct inquiry into cases. The Commission though has powers to conduct inquiry, the Act does not have powers to appoint a person with the requisite skill nor does it have the powers to conduct a post-inquiry intervention. Although the Commission has power to take *suo motu* action, it has rarely intervened in court cases or filed cases in courts. It has failed to conduct an independent inquiry or suggest law

reform in the last decade. Nor does any of its recommendations have binding value which compel the State or any government authority to accept its recommendations within a certain time period.

Accountability

The annual report, special reports and any other information on the work of the Commission is not available to the general public. To ensure accountability annual reports with total monies received and spent should be clearly indicated and audited in the annual reports and available for public scrutiny.

Relationship with civil society

Its relationship with civil society is non-existent. International guidelines recommend that NGOs should play a role in the functioning of the Commissions; the new Chairperson has to ensure communication between the NGOs and the Commission, and greater involvement of NGOs in the work of the Commission.

Chapter IV: Comparative Review of the KSCW and the KSHRC

The KSHRC and KSCW are institutions that have been established by statute and yet very distinct in terms of their composition, structure, and powers. As is evident from Chapters I, II and III, these factors are critical and determine the independence of a human rights institution and subsequently the course they chart for themselves.

By the admission of most civil society organisations, the KSHRC is more independent than the KSCW and has been effective in the discharge of its functions. In contrast, the KSCW has been marred with political controversies and has failed to inspire any confidence or credibility.

A comparative analysis of the two Commissions and their constituting Acts will throw light on the character of the institutions, relative strengths and what changes need to be brought about to enhance their independence, efficacy, and accountability.

4.1. Constituting Authority

Under the PHR Act, while the State Government has been vested with the responsibility to constitute a SHRC, the appointing authority is the Governor. In contrast, the State Government is the constituting and appointing authority in the case of the KSCW. The process is thus entirely controlled by the Government and this can be attributed as one of the causes for the lack of stability in the KSCW. The composition of the Commission has undergone changes based on the change in political power. The Chairperson and Members do not serve their minimum tenure as they hold office “subject to the pleasure of the Government.”

4.2. Appointments Process

The Chairperson and Members of the SHRC are appointed through selection. The PHR Act specifies the composition of the Selection Committee which includes high powered members such as the Chief Minister, Speaker of the Legislative Assembly, Minister-in-charge of the Department of Home, Leader of the Opposition in the Legislative Assembly, Chairman of the Legislative Council (if any) and Leader of the Opposition of the Legislative Council (if any). The selection process is not as arbitrary as it is for the KSCW as under the KSCW Act, the executive has been given the leeway to nominate the Chairperson and Members.

Unlike in the case of the SHRC where the Selection Committee has the power to appoint qualified and credible Chairperson and members, the KSCW Act grants sole power to the ruling government to appoint members and Chairperson and Members. It fails to provide for a transparent process of appointment and leaves it to the arbitrary whims of the executive. This is an affront to the international benchmarks on human rights institutions which harp on the need for the executive to be kept away from the appointment process.

The implications of this have been severe as the membership of the KSCW has always been political thus undermining the independent character of a human rights institution.

4.3. Qualifications of Chairperson

The Chairperson of a SHRC should be a retired Chief Justice of a High Court while that of the KSCW should be a woman committed to cause of women.

The appointment of a former Chief Justice of High Court is what essentially makes the SHRCs a more accessible and autonomous body. The criterion for Chairperson of the KSCW is vague, subjective and does not stipulate knowledge, skill or number of years the Chair should have been active in the field of women's rights. She should be merely 'committed to the cause of women'. What entails 'commitment to women rights' is not defined. The Chairpersons appointed to SCWs and NCW have been politically affiliated to the ruling party.

How the Commission is perceived also depends on who is heading the body. A Chairperson from the judiciary commands much more authority and respect as compared to a Chairperson hailing from a non-judicial background. It could be explored as to whether or not the Women's Commission should be headed by a judge.

4.4. Qualification of Members

The SHRCs have two members – one who is or has been a High Court Judge or District Judge with a minimum of 7 years experience; and one who is to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights. What constitutes "knowledge of, or practical experience in" human rights has not been defined. It is observable that former bureaucrats have been appointed to SHRCs under this criterion. One of the Members of the KSHRC is a former IAS Officer. Due to the vagueness in the legislation, persons who have no proven work experience or commitment to human rights may be appointed to the Commission. Further, there is no guarantee of a pluralistic composition as the Act does not require consideration to be given to gender, ethnicity, or caste.

On the positive side, the appointments of former or sitting judges as members elevates the stature of the SHRCs. The judges comprehend the role and function of the SHRCs in defending human rights. It lends credibility to the institutions and secures its autonomy. Further, the judiciary in India is often critical of the executive and has played a prominent role in monitoring the State and thus members from a judicial background can be expected to challenge the government as and when required.

The KSCW Act provides for six members who must be nominated from "amongst persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry or organization committed to increasing the employment potential of women, women's voluntary organisations (including women activists), administration, economic development, health, education or social welfare;" In order to promote plurality, the Act requires that at least one member each should belong to Scheduled Castes and Scheduled Tribes. Further, majority of the members should be women. The SCW appointments are generic and require members with 'ability, integrity and experience' in trade unionism to management.

However, the KSCW Act transforms the character of the institution by including representatives of the executive in the Commission. It provides for three ex-officio members -the Secretary to Government in-charge of Women and Child Development, Director of Women and Child Development, and Director General of Police or his nominee not below the rank of Deputy Inspector General of Police. Their presence

completely whittles the independence of the Commission. Unlike the KSHRC, the Secretary of the Commission is also a part of the Commission.

Members in KSCW are member on paper and often do not play any role in the work of the Commission. For instance, in all our visits to KSCW members were never present. Although the Secretary insisted the Commission had members none of them were present nor do their names appear in the Commission's annual reports.

4.5. Term of Office

The Chairperson and Members of the SHRCs enjoy a defined tenure of five years or till they attain the age of seventy years. Only Members can be appointed for a second term. They can be removed only under stipulated grounds after an inquiry process.

The Chairperson and Members of the KSCW hold office subject to the pleasure of the government and for a maximum period of three years. Even though the KSCW Act stipulates grounds on the basis of which they can be removed, that provision is of little meaning in the face of the discretion available to the government to interfere with the term.

The term for Chairperson and Members should at least be five years for them to bring a logical completion to their work and ensure continuity and a complete handover to the new appointees. At present, KSCW appointments cease at three years. In most cases the Chairperson and Members resign in case of change in government during the period of three years, owing to their political connections. This seriously hampers continuity of the Commission work and affects the morale of the staff.

4.6. Administrative Heads

Both the Acts require the State Government to provide the Commissions with a Secretary to carry out the administrative affairs of the Commission. In the case of the KSHRC, the rank of the Secretary should be equivalent to that of Secretary to the State Government and for the KSCW to that of Joint Secretary to the State Government. The KSHRC has appointed a person from judicial services as the Secretary and has also pressed upon the government to consult with the Commission before appointing the Secretary so that there is greater cooperation and less friction. This has added more transparency and accessibility to the Commission.

Surprisingly, the KSCW Act vests the Secretary with the power to operate the grants of the Commission. The Secretary under the KSCW Act is selected by the Government and belongs to the government. By vesting financial powers of the Commission in the hands of the Secretary, the executive has been given the power to control the finances thus robbing the KSCW of its financial independence.

4.7. Prohibition on further government employment

The PHR Act places a prohibition on the Chairperson and Members from being further employed by the Central or State Government. This provision secures the independence of the body. The KSCW Act contains no such provision.

The restriction on members and Chairperson to be appointed under the Central and State government should be mandatory, so as to ensure distance between the monitoring body and the government.

4.8. Grounds of Removal

The Chairperson and Members of the KSHRC can be removed only by an order of the President on grounds of proved misbehaviour or incapacity after an inquiry by the Supreme Court. The President can by order remove the Chairperson or Member on certain stipulated grounds such as insolvency, engaging in paid employment outside duties of office, becoming unfit, unsoundness of mind, conviction and sentence to imprisonment for an offence which in the opinion of the President involves moral turpitude. The person should be given a reasonable opportunity of being heard in the matter.

The Chairperson and Members of the KSCW can be removed by the government on grounds of insolvency, refusing to act, unsoundness of mind, conviction and sentence to imprisonment for an offence which in the opinion of the Government involves moral turpitude, abusing office, or absenting from three consecutive meetings without leave. The person should be given a reasonable opportunity of being heard in the matter. However, they hold office subject to the pleasure of the Government.

The executive holds the sole power for removal of the Chairperson and Members of the KSCW. This threatens the effective functioning of the Commission and can be used by the government against any person critical of the State. The removal authority should be independent of the government.

4.9. Functions

The KSHRC and the KSCW have largely similar functions. They can inquire into complaints of human rights violations and women's rights violations, respectively. They can visit custodial institutions, review safeguards, and undertake research. The KSHRC can only entertain complaints if they have been filed within one year since the alleged violation took place and if relate to a violation by a public servant. No such limitation has been placed on the KSCW.

Importantly, the KSHRC can intervene in proceedings involving allegations of human rights violations before the court. It can also study international treaties and make recommendations for their implementation. It has also been entrusted with the task of encouraging the effort of NGOs working on human rights.

While the KSCW cannot intervene in court, it can fund litigation involving a cause affecting a large group of women. It can also assist women in matrimonial disputes in family courts. The KSCW has, however, not funded any litigation so far.

A review of the implementation of functions indicates that both the KSCW and KSHRC are yet to exercise their full mandate.

4.10. Regulation of Procedure

Both Commissions have the power to regulate their own procedure. However, KSCW has done little in this front. The KSHRC has framed regulations that govern the complaints process.

4.11. Mandate of Complaints

The KSHRC can only inquire into human rights violations by public servants. “Human rights” have been defined to mean “the 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.”

Further, the KSHRC can inquire into violations only in respect of matters relating to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution. However, if the matter is already being inquired into by the NHRC or any other Commission, the State Commission cannot inquire into the matter.

The mandate of KSCW is to inquire into violation of women’s rights. The term “women’s rights” has not been defined. Their mandate is not confined to violations by public servants. The Commission cannot entertain complaints pending before the NCW.

The SCW mandate with respect to any violation to women’s rights by the State or private persons is broad and expansive in its scope, as opposed to SHRCs. However, what includes ‘women’s rights’ needs to be further defined. At present, cases with respect to tenant and landlord are being entertained by KSCW, if the complainant is a woman. Conflicts of a civil nature should not be entertained by the Commission. There should be clarity on the import of women’s rights and the jurisdiction of the Commission.

Although, the both SHRCs and SCWs jurisdiction ceases when NHRC and NCW intervenes, all SHRC and NCW reports should be shared with respective state Commissions. For instance, in the Mangalore pub attack case, the NCW intervened and conducted an inquiry. The KSCW does not have the copy of this report nor is it aware of any post-inquiry interventions by NCW.

4.12. Consultations on policy matters

The KSCW Act places an obligation on the State Government to consult the Commission on major policy matters affecting women. No such obligation has been placed on the government to consult the KSHRC.

In our interviews with the KSCW, the Government seems to have rarely consulted them. Further, in absence of a Chair and no political will to appoint a Chair until now, clearly indicates rights of women is low on the agenda of the Government.

4.13. Powers & Investigation

Both the KSHRC and the KSCW have the powers available to a civil court trying a civil suit while dealing with complaints. However, the KSHRC has certain additional powers which make it a stronger institution as compared to the KSCW. The KSHRC enjoys the power of search and seizure and can also utilize the services of any officer or investigating agency of the Central or State Government for investigation.

The KSCW does not have the power to appoint an officer or investigating agency for the purpose of investigation. Nor does the Act specifically empower the Commission to select an person with investigation skills. Further, the SHRC Act empowers the Commission to call for information or report from the government and if such report is not received in time, power to proceed with the inquiry on its own. It has post-inquiry powers which permit the Commission to direct the Government to take necessary action.

4.14. Judicial Proceedings

The proceedings before the KSHRC are deemed to be judicial proceedings within the meaning of Sections 198 (punishment for false evidence) and 228 (Intentional insult or interruption to public servant sitting in judicial proceeding) of the Indian Penal Code and for the purpose of Section 196 (Using evidence known to be false).

Further, the Commission is deemed to be a civil court for the purpose of Section 195 (Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence) and Chapter XXVI (Provisions As To Offences Affecting The Administration Of Justice) of the Code of Criminal Procedure, 1973

The proceedings before the KSCW are not judicial proceedings and therefore none of the relevant provisions of the Indian Penal Code pertaining to furnishing of false evidence or interrupting the proceedings can be invoked.

4.15. Steps after Inquiry

The KSHRC can take the following steps during and after inquiry into complaints of human rights violations. If the inquiry discloses a violation has been committed or that the public servant has been negligent in preventing the violation, the KSHRC can recommend to the government to pay compensation or damages, to initiate proceedings for prosecution or to take further action. It can also approach the Supreme Court or High Court for directions, orders or writs and recommend the grant of interim relief during the pendency of the inquiry.

The Commission should send its inquiry report and recommendations to the concerned government or authority who should forward its comments and action taken on the report within a month. A copy of the inquiry report should be given to the petitioner. The Commissions should publish its inquiry report along with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

Distressingly, the KSCW Act fails to stipulate the action that can be taken by the KSCW upon the conclusion of inquiry. The KSCW can make recommendations but the nature of these recommendations is not specified. Unlike the KSHRC, it does not have the option to approach the courts for the implementation of its recommendations. The SCW Act needs to be amended to include provisions which specify steps to be taken by the Commission post-inquiry and grant power to the Commission to approach Courts to ensure implementation of its direction and recommendations.

4.16. Budget, Accounts and Audit

The KSHRC's and KSCW's budget is appropriated by the Legislature. They then receive grants from the State Government based on what the government thinks fit for utilization. The Commissions have the power to spend to discharge its functions. The accounts of the KSHRC are audited by the Comptroller and Auditor General while the government appoints an auditor for the KSCW.

Both the Commissions lack financial independence as they have to depend on the government for disbursement of funds. This is contrary to what the international standards stipulate and has considerably hampered the effective functioning of the Commissions. The KSHRC has been granted only a fraction of its budget and is operating under great constraints.

4.17. Appointment of Staff

The KSHRC enjoys limited operational autonomy as it can appoint administrative, technical and scientific staff subject to the rules made by the State Government. The KSCW has no such power.

4.18. Interaction with the Commissions.

In our interaction with the KSCW and KSHRC, we found that KSHRC was more approachable, willing to share information and understood its function as a public body. The KSCW on the other hand acted under a garb of secrecy and made access to any KSCW data very difficult.

Prior to starting the study, we had contacted both KSHRC and KSCW by email. Within a week of the email the Secretary of the KSHRC contacted us and invited us to their office for a meeting. As for KSCW, access to KSCW data was granted after many personal visits. We were granted access to all KSHRC data and this study has benefited from long meetings with the KSHRC members and staff. On the other hand, any meetings with KSCW staff were often surreptitious. The primary reason for such stark difference in their functioning is the constituting Act and the composition of the bodies. Based on the above comparison, it is evident that the KSHRC functions more effectively than the KSCW.

CHAPTER V. RECOMMENDATIONS

5.1. Achieving Compliance with Recommendations

The common refrain among civil society representatives and the Commissions has been that their recommendations are not binding and therefore no obligation is cast on the government to comply with them. The compliance with recommendations largely depends on the responsiveness of the concerned State Government. The Commissions can only appeal and persuade the government to take action but cannot direct them to do so. If the government is obdurate and considers human rights issues to be marginal, there is no concrete recourse available to the human rights commission to secure compliance with its orders. In the absence of action taken reports, there is no information on the extent to which the recommendations made by the KSHRC and the KSCW have been complied with.

Whether or not the Commission's recommendations should be binding has elicited different responses from the KSHRC and the NHRC. Mr. Raddi, Member KSHRC expressed his frustration over the government's resistance to the Commission's recommendations. He said that the "Commission is not doing any charity, but performing its duty under a statute. The Act should be amended to make the recommendations binding. Otherwise this whole exercise of having a Commission is rendered meaningless."¹ This was also echoed by Mr. Shivmurthy, Deputy Superintendent of Police, Investigation Division of KSHRC, who felt that "the government should compulsorily implement the recommendations of the Commission even though it is not a judgment."

However, Mr. A.K. Parashar, Joint Registrar NHRC, disagrees. He is of the view that recommendations should not be binding "as it is against the law of natural justice." He warns that if they are made binding, the right to appeal will be compromised a "even if it can be challenged before the High Court, the way the commissions are constituted, it will result in the case going from a past judge to a present judge of the same High Court. This is not desirable and has wide implications."²

The Paris Principles state that the NHRIs should be able to bring about an "amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality". The PHR Act and the KSCW Act do not envisage such a role for the Commissions. They have not been empowered to play a conciliatory role or to pass binding decisions. The South Africa Human Rights Commissions has been empowered to resolve disputes by mediation, conciliation or negotiation.³ The Uganda Human Rights Commission has been empowered to order the "release of a detained or restricted person, payment of compensation or any other legal remedy or redress".⁴ Its orders can be appealed before the High Court.⁵

¹ Interview with R.H.Raddi, Member of KSHRC on 16.12.2010

² Interview with Mr. A.K.Parashar, Joint Registrar NHRC on 13.10.10 (On file with Daksh)

³ Section 8 of the Human Rights Commission Act, 1994 (South Africa) reads: The Commission may, by mediation, conciliation or negotiation endeavour-
(a) to resolve any dispute; or
(b) to rectify any act or omission, emanating from or constituting a violation of or threat to any fundamental right.

⁴ Article 53(2), Constitution of Uganda,

The advantageous features of a NHRI are that their complaints mechanisms are not as procedurally rigorous as that followed by courts. Complaints can be filed by any person and in any form. Further, rules of evidence are not strictly adhered to and the process is not overly formal. This flexible and informal mechanism is less time consuming, inexpensive, and not as daunting as the process before a court of law thus making it more accessible to disadvantaged groups.⁶ The PHR Act clearly demarcates the role of the NHRC/SHRC from that of a court as it provides for the establishment of Human Rights Courts which will exclusively deal with offences of human rights violations. Empowering the NHRC and SHRCs to pass orders like a court will blur the distinction between the Commission and the Court. At the same time, non-compliance with the recommendations is a serious problem.

Under the Protection of Human Rights Act, 1993, the only direct action that can be taken by the NHRC and SHRCs is to approach the Supreme Court or the High Court for directions, orders or writs. The NHRC and State Human Rights Commissions of Tamil Nadu, Madhya Pradesh, and others have utilised this power to approach courts in several significant matters. The KSHRC is yet to exercise this option. In contrast, such an option is not even available to the KSCW. Its role is confined to making recommendations and submitting it to the government. If an authority fails to act on its recommendations, it can report this to the Government. The Commonwealth Secretariat suggests that wherever appropriate, decisions of NHRIs should be enforced through courts.⁷ This may not be a practical approach for seeking compliance with every order of the Commission and will have to be reserved mostly for cases involving broader concerns of human rights violations.

Further, under Section 12(b) of the PHR Act the KSHRC can intervene in court proceedings involving allegations of violation of human rights with the approval of the court. This provision gives the Commission an opportunity to participate in legal proceedings to bolster the protection and promotion of human rights. Amnesty International has recommended that NHRIs should act as *amicus curiae* on human rights cases in an independent capacity. Mr. Ravi Nair, Executive Director of the South Asia Human Rights Documentation Centre has also endorsed this as one of the ways in which the Commission can ensure that human rights safeguards are protected.⁸

On its part, the KSHRC is urging for an amendment to Section 18(e) of the PHR Act such that if the government does not forward its comments on the recommendations made by the Commission within one month, then “the recommendations shall be deemed to have been accepted, and the concerned Government or authority shall implement whatever recommendation that has been made by the Commission in the inquiry report.”⁹ Mr. Ravi Nair also suggests that the State Government should also issue

http://www.uhrc.org/index.php?option=com_content&view=article&id=162&Itemid=26

⁵ Article 53(3), Constitution of Uganda.

⁶ Birgit Lindsnaes & Lone Lindholt, “National Human Rights Institutions – Standard Setting and Achievements”, p.26 in Birgit Lindsnaes, et.al., ed., *National Human Rights Institutions – Articles and Working Papers*, The Danish Centre for Human Rights, 2001.

⁷ Commonwealth Secretariat, *Best Practices*, p.25

⁸ Interview with Mr. Ravi Nair, Executive Director of South Asia Human Rights Documentation Centre, New Delhi on 01.10.2010. (On file with Daksh)

⁹ Amendments suggested by the Karnataka State Human Rights Commission to the Protection of Human Rights Act, 1993. (On file with Daksh). The Commission has recommended that the following proviso be added to Section 18(e) of the PHR Act: “Provided that if the concerned Government or

relevant orders to all government departments that “unless there is substantive contestation of the determination made by the state institutions concerned on legal grounds” they should comply with the order of the Commission within 90 days.”¹⁰ Legal reform is a long drawn process and until such an amendment is effected, the KSHRC should fully utilise the options available under the Act such as the power to approach the courts for directions and to intervene in court proceedings.

With respect to the KSCW, the legislative framework requires a complete overhaul so as to enable the Commission to carve its own independent identity. Presently, it functions like a subordinate unit of the Department of Women and Child and there has been little occasion to confront the government. Ms. C. Manjula, the newly appointed Chairperson should start by asserting her independence by questioning the government’s seriousness on issues concerning women in the State.

5.2. Need for legislative reform

5.2.1 Amendments to the Protection of Human Rights Act, 1993

In order to secure the autonomy of the NHRC and SHRCs and empower them to function as independent human rights institutions, the PHR Act will have to be amended. The need for revision has been repeatedly voiced by the NHRC and several SHRCs including the KSHRC. Bothered by the gaps in the PHR Act, in 1998, the NHRC constituted an advisory Committee headed by Justice A.M. Ahmadi, former Chief Justice to the Supreme Court to undertake a review of the legislation and suggest amendments.¹¹ Majority of the recommendations made by the Committee and endorsed by the Commission pertained to the limits on the mandate of the Commission placed by the Act such as the prohibition on inquiring into complaints against para-military forces, complaints that have been filed one year after the date of its occurrence, and complaints that are before other Commissions.¹² The Commission also pressed for the recommendation that it should be empowered to pay interim compensation even if the inquiry was pending and that the reports of the NHRC and SHRCs should be placed before the Parliament and State Legislature within three months and that the reports can be made public after the said time period even if they are not placed before the legislature.¹³

While the Protection of Human Rights (Amendment) Act, 2006, brought in a few changes in the statute, it did little to enhance the independence of the Commission.

We believe that the following provisions must be revised so as to empower the Human Rights Commissions to act independently and to ensure that core minimum international standards are met:

authority do not forwards its comments on the report, including the action take on proposed to be taken thereon, within a period of one month, or such further time as the Commission may allow, the recommendations of the Commission shall be deemed to have been accepted, and the concerned government or authority shall implement whatever recommendation that has been made by the Commission in the inquiry report.”

¹⁰ Interview with Mr. Ravi Nair, Executive Director of South Asia Human Rights Documentation Centre, New Delhi on 01.10.2010. (On file with Daksh)

¹¹ National Human Rights Commission, *Annual Report 1998-1999*, Para 4.3, http://www.nhrc.nic.in/ar98_99.htm

¹² National Human Rights Commission, *Annual Report 1999-2000*, Para 4.5, <http://www.nhrc.nic.in/>

¹³ National Human Rights Commission, *Annual Report 1999-2000*, Para 4.5, <http://www.nhrc.nic.in/>

Protection of Human Rights Act, 1993	Proposed Amendment	Rationale
<p>3. Constitution of a National Human Rights Commission.- (2) The Commission shall consist of: (a) a Chairperson who has been a Chief Justice of the Supreme Court; (b) one Member who is or has been, a Judge of the Supreme Court; (c) one Member who is, or has been, the Chief Justice of a High Court; (d) two Members to be appointed from amongst persons <u>having knowledge of, or practical experience in, matters relating to human rights.</u></p>	<p>3. Constitution of a National Human Rights Commission.- (2) The Commission shall consist of: (a) a Chairperson who has been a Chief Justice of the Supreme Court; (b) one Member who is or has been, a Judge of the Supreme Court; (c) one Member who is, or has been, the Chief Justice of a High Court; (d) two Members to be appointed from amongst persons <u>having knowledge of, or practical experience of at least ten years in, matters relating to human rights.</u> <u>(e) Of the two members, at least one shall be a woman or belong to Scheduled Castes or Scheduled Tribes.</u> <u>(f) The Chairperson or Members shall not be a Member of Parliament or be a member of Legislature of any State or shall not hold any office of trust or profit (other than his office as Chairperson or Member) or be connected with any political party or carry on any business or practice any profession.</u></p>	<p>Section 3 which prescribes the composition of the NHRC does not assure plurality. Therefore, it should be amended to ensure that the Commission is more plural in character. Further, in order to insulate the Commission from political and other influences, MPs, MLAs or those holding an office of trust or profit should be expressly prohibited from holding the office of Chairperson or Member.</p> <p>Members appointed to the Commission should have a minimum of ten years experience in the field of human rights to ensure that they have the necessary knowledge and understanding to execute their statutory functions.</p>
<p>4. Appointment of Chairperson and other Members (1) The Chairperson and the Members shall be appointed by the President by warrant under his hand and seal; Provided that every appointment under this sub-</p>	<p>4. Appointment of Chairperson and other Members (1) The Chairperson and the Members shall be appointed by the President by warrant under his hand and seal; Provided that every</p>	

Protection of Human Rights Act, 1993

Proposed Amendment

Rationale

<p>section shall be made after obtaining the recommendations of a Committee consisting of—</p> <p>(a) The Prime Minister — Chairperson</p> <p>(b) Speaker of the House of the People — Member</p> <p>(c) <u>Minister in-charge of the Ministry of Home Affairs in the Government of India — Member</u></p> <p>(d) Leader of the Opposition in the House of the People — Member</p> <p>(e) Leader of the Opposition in the Council of States — Member</p> <p>(f) Deputy Chairman of the Council of States — Member</p> <p>Provided further that no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.</p>	<p>appointment under this sub-section shall be made after obtaining the recommendations of a Committee consisting of—</p> <p>(a) The Prime Minister — Chairperson</p> <p>(b) Speaker of the House of the People — Member</p> <p>(c) <u>Chief Justice of the Supreme Court of India - Member</u></p> <p>(d) Leader of the Opposition in the House of the People — Member</p> <p>(e) Leader of the Opposition in the Council of States — Member</p> <p>(f) Deputy Chairman of the Council of States — Member</p> <p><u>(g) An eminent person who has done outstanding work in the field of human rights or social work —Member:</u></p> <p>Provided further that no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.</p> <p><u>(3) In recommending and appointing persons as Chairperson or Members, the Committee and the President shall have regard to —</u></p> <p>(a) <u>the _____ State's geographical, political, social and economic</u></p>	<p>The SHRCs receive substantial complaints against the police. It is inappropriate for the Minister in charge of the Department of Home to be involved in the selection process. Further, the composition of the selection committee should also include a representative from civil society.</p> <p>This provision will place an express obligation upon the Committee and the President to ensure that regard is had to factors that will help achieve a plural composition.</p>
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Protection of Human Rights Act, 1993 **Proposed Amendment** **Rationale**

	<p><u>diversity; and</u> (b) <u>the principle of gender equity.</u>¹⁴</p> <p><u>(4) The names of the persons recommended by the Committee shall be placed in the public domain for thirty days to invite objections in writing.</u></p> <p><u>(5) All objections should be considered by the Committee and the President before the recommendations and appointments are finalized.</u></p>	<p>The appointment process should be transparent and an opportunity should be available to civil society and others to participate by exercising their option to file objections.</p>
<p>11. Officers and other staff of the Commission (1) The Central Government shall make available to the Commission: (a) an officer of the rank of the Secretary to the Government of India who shall be the Secretary-General of the Commission; and (b) such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.</p>	<p>11. Officers and other staff of the Commission (1) The Central Government shall <u>with the concurrence of the Commission</u> make available to the Commission- (a) an officer of the rank of the Secretary to the Government of India <u>from the judicial services</u> who shall be the Secretary-General of the Commission; and (b) such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.</p> <p style="text-align: center;">OR</p> <p><u>The Commission shall</u></p>	<p>The Commissions should be consulted before a Secretary-General, investigative staff and other staff is appointed. This will facilitate smooth operations and minimise frictions between the employees and the Commission.</p> <p>OR</p> <p>In keeping with the Paris Principles and other international standards for NHRIs, the Commission should have the autonomy to appoint its own staff. The Secretary of the Commission should be drawn from the judicial services so as to ensure cohesion between the administrative and functional wings of the Commission.</p>

¹⁴ This provision has been derived from Section 6(8) of the Kenya National Commission on Human Rights Act, 2002.

Protection of Human Rights Act, 1993

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<p>(2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.</p> <p>(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed.</p>	<p><u>appoint:</u> (a) an officer of the rank of the Secretary to the Government of India <u>from the judicial services</u> who shall be the Secretary-General of the Commission; and (b) such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.</p> <p>(2) <u>The State Commission may appoint such other administrative, technical and scientific staff as it may consider necessary. The appointments should be fair, transparent and based on merit.</u></p> <p>(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed <u>by the Commission.</u></p>	<p>The Commissions should have the operational autonomy to appoint staff it requires to carry out its mandate. This is in keeping with the Paris Principles and other international standards for NHRIs.</p> <p>In furtherance of its operational independence, the Commission should determine the terms and conditions of the staff it appoints.</p>
<p>12. Functions of the Commission.- The Commission shall perform all or any of the following functions, namely:-</p> <p>(b) intervene in <u>any</u> proceedings involving any allegation of violation of human rights pending before a court with the approval of such court;</p>	<p>12. Functions of the Commission.- The Commission shall perform all or any of the following functions, namely:-</p> <p>(b) intervene as <u>amicus curiae</u> in proceedings involving any allegation of violation of human rights <u>or which may affect the human rights of persons not parties to the proceedings pending before a court</u> with the</p>	<p>The Commission should intervene in all cases of human rights violations as <i>amicus curiae</i> and also in cases which may impact the rights of vulnerable or disadvantaged groups who may not be directly involved in the litigation.</p>

Protection of Human Rights Act, 1993	Proposed Amendment	Rationale
<p>18. Steps during and after inquiry.- The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act namely:-</p> <p>(e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;</p>	<p>approval of such court;</p> <p>18. Steps during and after inquiry.- The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act namely:-</p> <p>(e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;</p> <p><u>Provided that if the concerned Government or authority does not forward its comments on the report, including the action take on proposed to be taken thereon, within a period of one month, or such further time as the Commission may allow, the recommendations of the Commission shall be deemed to have been accepted, and the concerned government or authority shall implement whatever recommendation that has been made by the Commission in the inquiry report.</u></p>	<p>We endorse the recommendation made by the KSHRC to add a proviso to Section 18(e) which will have the effect of placing the obligation on the government to implement the recommendations of the Commission if it fails to submit its comments thereon within one month. It will also take care of the delayed responses from the government as a result of which most of the recommendations become irrelevant or remain unimplemented.</p>
<p>Section 21. Constitution of State Human Rights Commission.-</p>	<p>Section 21. Constitution of State Human Rights Commission.-</p>	<p>Section 21(2) of the PHR Act, 1993, which prescribes the composition of the</p>

Protection of Human Rights Act, 1993

Proposed Amendment

Rationale

<p>(2) The State Commission shall, with effect from such date as the State Government may by notification specify, consist of-</p> <p>(a) a Chairperson who has been a Chief Justice of a High Court;</p> <p>(b) one Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years experience as District Judge;</p> <p>(c) one Member to be appointed from among persons <u>having knowledge of or practical experience in matters relating to human rights.</u></p>	<p>(2) The State Commission shall, with effect from such date as the State Government may by notification specify, consist of-</p> <p>(a) a Chairperson who has been a Chief Justice of a High Court;</p> <p>(b) one Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years experience as District Judge;</p> <p>(c) one Member to be appointed from among persons <u>having knowledge of or practical experience of at least ten years in matters relating to human rights.</u></p> <p>(d) <u>Of the two members, at least one shall be a woman or belong to Scheduled Castes or Scheduled Tribes.</u></p> <p>(e) <u>The Chairperson of the State Commission for Minorities, the State Commission for Women, and the State Commission for Protection of Child Rights shall be deemed to be members of the State Commission for the discharge of functions specified in clauses (b) to (i) of section 12.</u></p> <p>(f) <u>The Chairperson or Members shall not be a Member of Parliament or be a member of Legislature of any State or shall not hold any office of trust or profit (other than his office</u></p>	<p>Commission, does not assure plurality. Therefore, it should be amended to ensure that the Commission is more plural in character. Further, in order to insulate the Commission from political and other influences, MPs, MLAs or those holding an office of trust or profit should be expressly prohibited from holding the office of Chairperson or Member.</p> <p>Members appointed to the Commission should have a minimum of ten years experience in the field of human rights to ensure that they have the necessary knowledge and understanding to execute their statutory functions.</p>
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Protection of Human Rights Act, 1993 **Proposed Amendment** **Rationale**

	<p><u>as Chairperson or Member) or be connected with any political party or carry on any business or practice any profession.</u></p>	
<p>22. Appointment of Chairperson and Members of State Commission.- (1) The Chairperson and Members shall be appointed by the Governor by warrant under his hand and seal:</p> <p>Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of –</p> <ul style="list-style-type: none"> (a) the Chief Minister – Chairperson; (b) Speaker of the Legislative Assembly- Member; (c) <u>Minister-in-charge of the Department of Home in that State – Member;</u> (d) Leader of the Opposition in the Legislative Assembly – Member: <p>Provided further that where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee:</p> <p>Provided also that no sitting judge of a High Court or a sitting district judge shall be appointed except after consultation with the Chief Justice of the High Court of</p>	<p>22. Appointment of Chairperson and Members of State Commission.- (1) The Chairperson and Members shall be appointed by the Governor by warrant under his hand and seal:</p> <p>Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of –</p> <ul style="list-style-type: none"> (a) the Chief Minister – Chairperson; (b) Speaker of the Legislative Assembly- Member; (c) <u>Chief Justice of the High Court- Member;</u> (d) Leader of the Opposition in the Legislative Assembly – Member; (e) <u>An eminent person who has done outstanding work in the field of human rights or social work –Member;</u> <p>Provided further that where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee:</p>	<p>The SHRCs receive substantial complaints against the police. It is inappropriate for the Minister in charge of the Department of Home to be involved in the selection process. Further, the composition of the selection committee should also include a representative from civil society.</p>

Protection of Human Rights Act, 1993	Proposed Amendment	Rationale
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<p>the concerned State.</p>	<p>Provided also that no sitting judge of a High Court or a sitting district judge shall be appointed except after consultation with the Chief Justice of the High Court of the concerned State.</p> <p><u>(3) In recommending and appointing persons as Chairperson or Members, the Committee and the Governor shall have regard to –</u></p> <p>(c) <u>the _____ State’s geographical, cultural, political, social and economic diversity; and</u></p> <p>(d) <u>the principle of gender equity.</u>¹⁵</p> <p><u>(4) The names of the persons recommended by the Committee shall be placed in the public domain for thirty days to invite objections in writing.</u></p> <p><u>(5) All objections should be considered by the Committee and the Governor before the recommendations and appointments are finalized.</u></p>	<p>This provision will place an express obligation upon the Committee and the Governor to ensure that regard is had to factors that will help achieve a plural composition.</p> <p>The appointment process should be transparent and an opportunity should be available to civil society and others to participate by exercising their option to file objections.</p>
<p>26. Terms and conditions of service of Chairperson and Members of State Commissions.- The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed by the</p>	<p>26. Terms and conditions of service of Chairperson and Members of State Commissions.- The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed by the</p>	<p>The salaries and other terms and conditions of the office-holders should not be determined by the very government whose human rights commitment it is expected to monitor. It is more appropriate for the legislature to prescribe these conditions and this</p>

¹⁵ This provision has been derived from Section 6(8) of the Kenya National Commission on Human Rights Act, 2002.

Protection of Human Rights Act, 1993 **Proposed Amendment** **Rationale**

<p>State <u>Government</u>:</p>	<p>State <u>Legislature</u>:</p>	<p>will also promote the independence of the Commission. A precedent for this can be found in Article 55 of the Constitution of Uganda.</p>
<p>27. Officers and other staff of the State Commission.- The Government shall make available to the Commission-</p> <p>(a) an officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission; and</p> <p>(b) such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the State Commission.</p> <p>(2) <u>Subject to such rules as may be made by the State Government in this behalf,</u> the State Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.</p> <p>(3) The salaries, allowances and conditions of service of</p>	<p>27. Officers and other staff of the State Commission.- The Government shall <u>with the concurrence of the Commission</u> make available to the Commission-</p> <p style="text-align: center;">OR</p> <p><u>The Commission shall appoint:</u></p> <p>(a) an officer not below the rank of a Secretary to the State Government <u>from the judicial services</u> who shall be the Secretary of the State Commission; and</p> <p>(b) such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the State Commission.</p> <p>(2) <u>The State Commission may appoint such other administrative, technical and scientific staff as it may consider necessary. The appointments should be fair, transparent and based on merit.</u></p> <p>(3) The salaries, allowances and conditions of service of the officers and other staff</p>	<p>The Commissions should be consulted before a Secretary, investigative staff and other staff is appointed. This will facilitate smooth operations and minimise frictions between the employees and the Commission.</p> <p>OR</p> <p>In keeping with the Paris Principles and other international standards for NHRIs, the Commission should have the autonomy to appoint its own staff.</p> <p>The Secretary of the Commission should be drawn from the judicial services so as to ensure cohesion between the administrative and functional wings of the Commission.</p> <p>The Commissions should have the operational autonomy to appoint staff it requires to carry out its mandate. This is in keeping with the Paris Principles and other international standards for NHRIs.</p> <p>In furtherance of its operational independence, the Commission should</p>

Protection of Human Rights Act, 1993	Proposed Amendment	Rationale
<p>the officers and other staff appointed under sub-section (2) shall be such as may be prescribed by the State <u>Government</u>.</p>	<p>appointed under sub-section (2) shall be such as may be prescribed by the State <u>Commission</u>.</p>	<p>determine the terms and conditions of the staff it appoints. This recommendation has also been made by the KSHRC.</p>
<p>33. Grants by the State Government.- (1) <u>The State Government shall, after due appropriation made by Legislature by law in this behalf, pay to the State Commission by way of grants such sums of money as the State Government may think fit for being utilised for the purposes of this At.</u></p> <p>(2) The State Commission may spend such sums as it thinks fit for performing the functions under Chapter V, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).</p>	<p>33. Funds of the Commission.- (1) <u>The commission shall be self-accounting and all the administrative expenses of the commission, including salaries, allowances and pensions payable to persons serving with the commission, shall be charged on the Consolidated Fund.</u></p> <p>(2) The State Commission may spend such sums as it thinks fit for performing the functions under Chapter V, and such sums shall be treated as expenditure payable out of the <u>appropriation made by the Legislature</u>.</p>	<p>It is absolutely essential to safeguard the financial autonomy of the Commission in order for it to discharge its functions effectively. The State Government should not hold the reign on grants as this will interfere with the working of the Commission. Allowing the State Government to decide what sum is fit for utilization will pave the way for political domination. The revised Section 33(2) has been replicated from Article 55 of the Constitution of Uganda pertaining to the Uganda Human Rights Commission.</p>
<p>36. Matters not subject to jurisdiction of the Commission.-</p> <p>(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.</p>	<p>36. Matters not subject to jurisdiction of the Commission.-</p> <p>(2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.</p> <p><u>Provided that the Commission or State Commission may, for reasons to be recorded in writing, condone the delay and inquire into any matter after the expiry of one year.</u></p>	<p>An absolute time bar is not reasonable. This provision should be revised to vest the Commission with the discretion to look into grave complaints of human rights violations even if they were brought to their attention a year after the incident allegedly took place.</p>

Further, the PHR Act should be amended to include the following provision:

Independence and Impartiality

(1) The Chairperson, member of the Commission or staff of the Commission shall serve impartially and independently and exercise or perform his or her powers, duties and functions in good faith and without fear, favour, bias or prejudice and subject only to the Constitution and the law.

(2) The Commission shall be independent and shall not, in the performance of its duties, be subject to the direction or control of any person or authority.

(2) No organ of state and no member or employee of an organ of state nor any other person shall interfere with, hinder or obstruct the Commission, any member thereof or a person appointed under section 11 and section 27 in the exercise or performance of its, his or her powers, duties and functions.

(3) All organs of state shall afford the Commission such assistance as may be reasonably required for the protection of the independence, impartiality and dignity of the Commission.

The above provision has been replicated from Section 4 of the Human Rights Commission Act, 1994 (South Africa) and Article 54 of the Constitution of Uganda. It is necessary to have an express provision to guarantee the independence of the NHRC and SHRCs as it will also ensure that the executive does not exercise undue control over the Commission.

5.2.2. Amendments to the Karnataka State Commission for Women Act, 1995

Women's groups have often expressed their reservations with regard to the independence and autonomy of SCWs, especially during episodic break outs of violence against women. For instance, during the Gujarat carnage, both the SHRC and SCW in Gujarat failed to intervene, respond or take any *suo motu* action against the sexual violence that minority Muslim women suffered. Subsequent to the carnage, the civil society working in Gujarat raised questions on the independence of Commissions and their ability to conduct an impartial inquiry and ensure justice, as they were seen as another organ of the State. Many civil society organisations post-the Gujarat carnage not only questioned the role and character of the Commissions, but recommended an amendment to the constitution of the Commissions and the role of the Government in constituting quasi-judicial bodies which are to monitor the work of the State. Similarly, the Mangalore pub attack and the violence against Christian women in Karnataka in 2009 were not taken up by the KSCW or the KSHRC.

In our interviews with civil society organisations in Bangalore, the response with regard to the independence and autonomy of KSCW was often negative and the institution inspired little faith.

Therefore, we feel there is a definite need to recast the KSCW Act, 1995, so as to address the executive's excessive control over the composition, functioning, and finances of the Commission. At present the nature of appointments and the powers vested with the KSCW seriously impedes the autonomy and independence of the Commission. The criterion for appointing the Chairperson, Secretary and members of the KSCW is

primarily subjective, and less to do with experience or skills. It fails to ensure appointment of skilled staff who have the requisite knowledge and experience on the subject at hand.

Based on our study on the Commission and the evaluation of the Act, we believe that the following provisions must be revised so as to empower the KSCW to act independently and to restore the faith of the general public in the institution.

KSCW Act, 1993	Proposed Amendment	Rationale
<p>Section 3. Constitution of the Commission.- (2)The Commission shall consist of the following members, namely:- (a) <u>a Chairperson who shall be a woman committed to the cause of women to be nominated by the Government;</u> (b) <u>six members to be nominated by the Government from amongst persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry or organisation committed to increasing the employment potential of women, women's voluntary organisations including</u></p>	<p>Section 3. Constitution of the Commission.- (2)The Commission shall consist of the following members, namely:- (a) a Chairperson who shall be a woman <u>with ten years of proven expertise, knowledge and experience in the promotion and protection of women's rights;</u> (b) six members <u>with proven expertise, knowledge and experience in the rights of women and/or human rights.</u></p>	<p>The criteria for appointing members to the KSCW need to ensure members appointed have the necessary skill and expertise to fulfill their duties effectively. The present Act the criteria of appointment is subjective and vague. The criterion of appointment needs to be defined to ensure persons with knowledge and skill are appointed to the posts.</p>

KSCW Act, 1993	Proposed Amendment	Rationale
<p>women activists administration, economic development, health, education or social welfare :</p> <p>Provided that at least one member each shall be from amongst persons belonging to Scheduled Castes and Scheduled Tribes respectively:</p> <p>Provided further that majority of the members <u>nominated</u> under this clause shall be women;</p> <p><u>(c) The Secretary to Government incharge of Women and Child Development - ex-officio member;</u></p> <p><u>(d) Director of Women and Child Development- ex-officio member;</u></p> <p><u>(e) Director General of Police or his nominee not below the rank of Deputy Inspector General of Police, preferably a women - ex-officio member;</u></p> <p><u>(f) Secretary of the Commission, who shall be the member - Secretary.</u></p>	<p>Provided that at least one member each shall be from amongst persons belonging to Scheduled Castes and Scheduled Tribes respectively:</p> <p>Provided further that majority of the members <u>appointed</u> under this clause shall be women;</p> <p><u>(c) – (f) Deleted</u></p> <p><u>(g) The Chairperson or Members shall not be a Member of Parliament or be a member of Legislature of any State or shall not hold any office of trust or profit (other than his office as Chairperson or Member) or be connected with any political party or carry on any business or practice any profession.</u></p> <p><u>(3) The State Government shall in consultation with the Commission make available to the Commission an officer not below the rank of a Secretary to the State Government who shall be</u></p>	<p>The presence of representatives of the executive and the police will grossly undermine the independence of a human rights institution and the membership of the KSCW should be revised accordingly. Also, the Secretary performs only an administrative role and should therefore not be included as being a part of the Commission.</p> <p>In order to insulate the Commission from political and other influences, MPs, MLAs or those holding an office of trust or profit should be expressly prohibited from holding the office of Chairperson or Member.</p>

KSCW Act, 1993	Proposed Amendment	Rationale
	<p><u>the Secretary of the Commission.</u></p> <p><u>(5) The Chairperson and Members shall be appointed by the Governor by warrant under his hand and seal:</u></p> <p><u>Provided that every appointment under this subsection shall be made after obtaining the recommendation of a Committee consisting of –</u></p> <ul style="list-style-type: none"> <u>(f) the Chief Minister – Chairperson;</u> <u>(g) Speaker of the Legislative Assembly- Member;</u> <u>(h) Chief Justice of the High Court- Member;</u> <u>(i) Leader of the Opposition in the Legislative Assembly – Member;</u> <u>(j) An eminent person who has done outstanding work in the field of human rights, women’s rights or social work –Member;</u> <p><u>Provided further that where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee:</u></p> <p><u>(6) In recommending and appointing persons as Chairperson or Members, the Committee and the Governor shall have regard to –</u></p> <ul style="list-style-type: none"> <u>(e) the State’s geographical, cultural, political,</u> 	<p>The KSCW Act fails to outline a process for appointments to the Commission. Nomination by the executive is unacceptable. The revised provision has been drawn from the PHR Act and international standards on human rights institutions. Further, the appointment should be made by an authority independent of the government such as the Governor.</p> <p>This provision will place an express obligation upon the Committee and the</p>

KSCW Act, 1993	Proposed Amendment	Rationale
	<p><u>social and economic diversity; and</u></p> <p>(f) <u>the principle of gender equity.</u>¹⁶</p> <p>(7) <u>The names of the persons recommended by the Committee shall be placed in the public domain for thirty days to invite objections in writing.</u></p> <p>(8) <u>All objections should be considered by the Committee and the Governor before the recommendations and appointments are finalized.</u></p>	<p>Governor to ensure that regard is had to factors that will help achieve a plural composition.</p> <p>The appointment process should be transparent and an opportunity should be available to civil society and others to participate by exercising their option to file objections.</p>
<p>4. Term of office and conditions of service of Chairperson and Members.- (1) <u>Subject to the pleasure of the Government, the Chairperson and every member shall hold office for such period not exceeding three years, as may be specified by the Government.</u></p> <p>(2) The Chairperson or a member other than the ex-officio member may, resign the office of Chairperson or the member, as the case may be, by writing addressed to the Government.</p> <p>(3) The <u>Government</u> shall remove a person from the office of Chairperson or a member referred to in subsection (1) if that person,-</p> <p>(a) becomes an undischarged</p>	<p>4. Term of office and conditions of service of Chairperson and Members.- (1) <u>The Chairperson and every member shall hold office for a period of five years.</u></p> <p>(2) The Chairperson or a member other than the ex-officio member may, resign the office of Chairperson or the member, as the case may be, by writing addressed to the <u>Governor.</u></p> <p>(3) The <u>Governor</u> may, by order remove from office the Chairperson or any Member referred to in subsection (1) if that person,-</p> <p>(a) becomes an undischarged insolvent; or</p>	<p>The terms and conditions of members of a human rights institution should be clearly stipulated in the statute and should not be subject to the discretion of the government. Section 4(1) of the KSCW Act is in gross ignorance of the international standards for human rights institutions and should be revised to provide for a fixed tenure. Like the NHRC and SHRC, the KSCW should also have fixed terms of five years as three years is too short a duration to discharge functions and achieve results.</p> <p>The Governor and not the Government should be the authority having the power to remove the Chairperson or Member.</p>

¹⁶ This provision has been derived from Section 6(8) of the Kenya National Commission on Human Rights Act, 2002.

KSCW Act, 1993	Proposed Amendment	Rationale
<p>insolvent; or (b) gets convicted and sentenced to imprisonment for an offence which in the opinion of the <u>Government</u> involves moral turpitude; or (c) becomes of unsound mind and stands so declared by a competent court; or (d) refuses to act or becomes incapable of acting; or (e) is, without obtaining leave of absence from the Commission, absents from three consecutive meetings of the Commission; or (f) in the opinion of the <u>Government</u>, has so abused the position of the Chairperson or member so as to render that person's continuance in office is detrimental to the public interest: Provided that no person shall be removed under this clause until that person has been given a reasonable opportunity of being heard in the matter.</p> <p>(4) The <u>Government</u> shall fill vacancies, arising out of resignation or removal within three months of such resignation or removal, by fresh <u>nomination</u>.</p> <p>(5) <u>The salary and allowances of the Chairperson and allowance payable to the member, if any, shall be such, as may be</u></p>	<p>(b) gets convicted and sentenced to imprisonment for an offence which in the opinion of the <u>Governor</u> involves moral turpitude; or (c) becomes of unsound mind and stands so declared by a competent court; or (d) refuses to act or becomes incapable of acting; or (e) is, without obtaining leave of absence from the Commission, absents from three consecutive meetings of the Commission; or (f) in the opinion of the <u>Governor</u>, has so abused the position of the Chairperson or member so as to render that person's continuance in office is detrimental to the public interest: <u>(g) engages during his term of office in any paid employment outside the duties of his office; or</u></p> <p>Provided that no person shall be removed under this clause until that person has been given a reasonable opportunity of being heard in the matter.</p> <p>(4)The <u>Governor</u> shall fill vacancies, arising out of resignation or removal within three months of such resignation or removal, by fresh <u>applications</u>.</p> <p>(5) <u>The Chairperson shall be paid salary equivalent to the salary of the Chief Secretary to the State Government and every other Member shall be paid salary equivalent to that of a</u></p>	<p>The mandate of the KSCW is quite broad and the Commission should therefore function as a full time body. The Chairperson and Members should devote their full attention to the Commission and should not undertake any paid work outside of their duties. This will also secure the independence of the office-bearers.</p> <p>The KSCW is as statutory institution and the Chairperson and Members of such a body should be accorded an appropriate status. How the Commission</p>

KSCW Act, 1993	Proposed Amendment	Rationale
<p><u>prescribed.</u></p>	<p><u>Secretary to the State Government</u></p>	<p>is perceived by the government plays a deciding role in whether or not it will be taken seriously.</p>
<p>5. Secretary.- (1) The Secretary of the Commission shall be an officer not below the rank of <u>Joint Secretary</u> to Government appointed by the Government.</p> <p>(2) The Secretary shall receive such salary and other allowances as the Government may determine from time to time.</p> <p>(3) The <u>Government</u> may grant from time to time leave of absence to the Secretary.</p> <p>(4) The Secretary shall be Chief Executive of the Commission and shall,-</p> <p>(a) <u>operate the grants of the Commission;</u></p> <p>(b) cause to be maintained accounts of the Commission;</p> <p>(c) discharge such other functions conferred on him by or under this Act or any other law for the time being in force.</p>	<p>5. Secretary.- (1) The Secretary of the Commission shall be an officer not below the rank of <u>Secretary</u> to Government appointed by the Government in consultation <u>with Commission.</u></p> <p>(2) The Secretary shall receive such salary and other allowances as the Government may determine from time to time.</p> <p>(3) The <u>Chairperson</u> may grant from time to time leave of absence to the Secretary.</p> <p>(4) The Secretary shall be Chief Executive of the Commission and shall,-</p> <p>(a) <u>Deleted;</u></p> <p>(b) cause to be maintained accounts of the Commission;</p> <p>(c) discharge such other functions conferred on him by or under this Act or any other law for the time being in force.</p> <p>(d) be responsible for the proper administration of the affairs of the Commission and its day-to-day management.</p>	<p>The Secretary should be someone who is interested in the rights of women and is committed to the cause of women.</p> <p>The Government cannot exercise any control over the Secretary who is a functionary of the Commission. The Chairperson should have the authority to grant leave to the Secretary.</p> <p>The financial powers of the Commission should be vested only in the hands of the Chairperson and not the Secretary. This provision is untenable. The Secretary is expected to perform only an administrative role. This should be expressly stated in the Act to avoid confusion on the powers and functions of the Secretary.</p>

KSCW Act, 1993	Proposed Amendment	Rationale
	<u>(5) The Secretary shall be a person with proven knowledge, experience and skill on human rights and rights of women.</u>	
<p>6. Staff of the Commission.- (1) <u>The Government shall provide such staff to the Commission, as may be required for the efficient functioning of the Commission.</u></p> <p>(2) <u>The administrative expenses of the Commission including the salaries, allowances and pension payable to the Secretary and other officers and staff of the Commission shall be paid out of the grants referred to in sub-section (2) of section 12.</u></p>	<p>6. Staff of the Commission.- <u>(1) The Government shall with the concurrence of the Commission make available to the Commission- such staff as may be required for the efficient functioning of the Commission. The appointments should be fair, transparent and based on merit.</u></p> <p style="text-align: center;">OR</p> <p><u>The Commission shall appoint such staff as may be required for the efficient functioning of the Commission. The appointments should be fair, transparent and based on merit.</u></p> <p>(2) <u>The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed by the State Commission.</u></p>	<p>The Commissions should be consulted before staff is appointed. This will facilitate smooth operations and minimise frictions between the employees and the Commission.</p> <p>OR</p> <p>In keeping with the Paris Principles and other international standards for NHRI, the Commission should have the autonomy to appoint its own staff.</p> <p>In furtherance of its operational independence, the Commission should determine the terms and conditions of the staff it appoints.</p>
<p>9. Functions of the Commission.-</p> <p>(2) <u>If authorities referred to in clause (e) of sub-section (1), fails to take any action on the suggestions or recommendations made by the Commission, it may</u></p>	<p>9. Functions of the Commission.-</p> <p>(2).<u>If authorities referred to in clause (e) of sub-section (1), fails to take any action on the suggestions or recommendations made by the Commission, within one</u></p>	<p>The Government should respond to the recommendations within a certain time period to ensure efficacy of the recommendations and implementation of human rights norms. At present the Act does not specify any</p>

KSCW Act, 1993	Proposed Amendment	Rationale
<p><u>report the same to the Government which shall take necessary action.</u></p> <p>(3) The Government shall cause the recommendations of the Commission to be laid before each House of the State Legislature along with the memorandum explaining the action taken or proposed to be taken on the recommendations and the reasons for non-acceptance, if any, of any such recommendations.</p>	<p><u>month of such recommendations,</u> it may report the same to the Government which shall take necessary action.</p> <p>(3) The Government shall cause the recommendations of the Commission to be laid before each House of the State Legislature along with the memorandum explaining the action taken or proposed to be taken on the recommendations and the reasons for non-acceptance <u>within a period of one month of receipt recommendations.</u></p> <p><u>Provided that if the concerned Government fails to cause the recommendations of the Commission to be laid before each House of the State Legislature along with the memorandum explaining the action taken or proposed to be taken on the recommendations and the reasons for non-acceptance, within a period of one month, or such further time as the Commission may allow, the recommendations of the Commission shall be deemed to have been accepted, and the concerned Government or authority shall implement whatever recommendation that has been made by the Commission in the inquiry report.</u></p>	<p>time period within which the Government has to mandatorily respond.</p> <p>Further, as indicated the ATRs are not available to general public. We in our interaction found that none of the staff at KSCW is aware of what an ATR is and we seriously doubt whether the State has prepared an ATR at least in the last three years.</p> <p>Further, the Act should also specify that in the absence of response from the government, the recommendations shall be deemed to have been accepted.</p>
<p>12. Budget of the Commission and grants by the Government.-</p>	<p><u>12. Budget of the Commission:-</u></p> <p>(1) The Commission shall</p>	<p>It is absolutely essential to safeguard the financial autonomy of the Commission in order for it</p>

KSCW Act, 1993	Proposed Amendment	Rationale
<p>(1) The Commission shall prepare every year before such date and in such form, as may be prescribed a budget estimate of its income and expenditure for the financial year to commence on the first day of April next following and shall forward it to the Government.</p> <p>(2) The Government shall, after due appropriation made by the State Legislature by law in this behalf, pay to the Commission by way of grants, such sums of money as it may think fit for being utilised for the purpose of this Act.</p>	<p>prepare every year before such date and in such form, as may be prescribed a budget estimate of its income and expenditure for the financial year to commence on the first day of April next following and shall forward it to the Government.</p> <p>(2) <u>The Commission shall be self-accounting and all the administrative expenses of the commission, including salaries, allowances and pensions payable to persons serving with the commission, shall be charged on the Consolidated Fund.</u></p> <p>(3) <u>The Commission may spend such sums as it thinks fit for performing the functions, and such sums shall be treated as expenditure payable out of the appropriation made by the Legislature.</u></p>	<p>to discharge its functions effectively. The State Government should not hold the reign on grants as this will interfere with the working of the Commission. Allowing the State Government to decide what sum is fit for utilization will pave the way for political domination. The revised Section 33(2) has been replicated from Article 55 of the Constitution of Uganda pertaining to the Uganda Human Rights Commission.</p>
<p>13. Accounts and audit.- (1) Accounts of the income and expenditure of the Commission shall be kept in such form <u>as may be prescribed.</u></p> <p>(2) The Commission shall prepare an annual statement of accounts in such form <u>as may be prescribed.</u></p> <p>(3) The Accounts of the Commission shall be audited annually by such auditor as the <u>Government</u> may appoint in this behalf.</p>	<p>13. Accounts and audit.- (1) Accounts of the income and expenditure of the Commission shall be kept in such form as may be prescribed by the State <u>Legislature.</u></p> <p>(2) The Commission shall prepare an annual statement of accounts in such form as may be prescribed <u>by the State Legislature.</u></p> <p>(3) The Accounts of the Commission shall be audited annually by <u>the Comptroller and Auditor General</u> at such</p>	<p>The grants to the Commission should not be decided by the Government. This would control and impede the functioning of the Commission.</p> <p>The Comptroller and Auditor General has been vested with the audit of all other statutory human rights institution in India. The</p>

KSCW Act, 1993	Proposed Amendment	Rationale
<p>(4) <u>The auditor shall for the purposes of the audit, have access to all the accounts and other records of the Commission.</u></p> <p>(5) <u>The Commission shall pay out of the grants such charges for the audit, as may be prescribed.</u></p> <p>(6) <u>As soon as may be, after the receipt of the report of the auditor, the Commission shall send a copy of the annual statement of accounts together with a copy of the report of the auditor to the Government and shall cause to be published the annual statement of account in such manner as may be prescribed.</u></p> <p>(7) <u>The Government may, after perusal of the report of the auditor give such directions, as it thinks fit, to the Commission and the Commission shall comply</u></p>	<p>intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General..</p> <p><u>(4) The Comptroller and Auditor-General or any person appointed by him in connection with the audit of the accounts of the State Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Commission.</u></p> <p><u>(5) The accounts of the State Commission, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the State Government by the State Commission and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature..</u></p>	<p>KSCW should be no exception.</p>

KSCW Act, 1993	Proposed Amendment	Rationale
<u>with such directions.</u>		
<p>15. Annual report and audit report to be laid before the State Legislature.- The Government shall cause the annual report together with a memorandum of action taken on the recommendations contained therein, in so far as they relate to the Government, and the reasons for the non-acceptance, if any, of any of such recommendations to be laid, as soon as may be after the reports are received before each House of the State Legislature.</p>	<p>15. Annual report and audit report to be laid before the State Legislature.- (1) The Government shall cause the annual report together with a memorandum of action taken on the recommendations contained therein, in so far as they relate to the Government, and the reasons for the non-acceptance, if any, of any of such recommendations to be laid, as soon as may be after the reports are received before each House of the State Legislature.</p> <p><u>(2) The Commission shall make its annual report and/or any special reports, Action Taken Report publicly available on its website and in its office.</u></p>	<p>To increase transparency and credibility of the KSCW, annual reports, ATRs and special reports made by the KSCW should be publicly available.</p>

Further, the KSCW Act should be amended to include the following provisions:

a. Vacation of office by Chairperson or Member.-

(1) In the event of the occurrence of any vacancy in the office of the Chairperson or Member by reason of his death, resignation or otherwise, the Governor may, by notification, authorise one of the Members to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, such one of the Members as the Governor may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties

In order to ensure that the position of the Chairpersons does not lie vacant, the Selection Committee should to appoint a temporary Chairperson to run the affairs of the Commission until the fresh appointments are made.

b. Inquiry into Complaints

The Commission while inquiring into the complaints of violations of women's rights may- (i) call for information or report from the State Government or any other authority or organisation subordinate thereto within such time as may be specified by it:-

Provided that–

- (a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;
- (b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;
- (ii) without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

c. Steps during and after inquiry

The Commission may take any of the following steps during or upon the completion of an inquiry held under this Act, namely:-

(a) where the inquiry discloses the commission of violation of rights of women or negligence in the prevention of violation of rights of women or abetment thereof by a public servant, it may recommend to the concerned Government or authority –

- (i) to make payment of compensation or damages to the complainant or to the victim or the members of his family as the Commission may consider necessary;
- (ii) to initiate proceedings or such other suitable action as the Commission may deem fit against the concerned person or persons;
- (iii) to take such further action as it may think fit;

(b) approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

(c) recommend to the concerned Government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

(d) subject to the provisions of clause (e), provide a copy of the inquiry report to the petitioner or his representative;

(e) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned Government or authority shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

Provided that if the concerned Government or authority does not forward its comments on the report, including the action take on proposed to be taken thereon, within a period of one month, or such further time as the Commission may allow, the recommendations of the Commission shall be deemed to have been accepted, and the concerned government or authority shall implement whatever recommendation that has been made by the Commission in the inquiry report.

(f) the Commission shall publish its inquiry report together with the comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

Despite numerous media reports the KSCW failed to take any suo motu action or conduct any inquiry into violence against women of Christian community in Karnataka which took place from 2007-2009. The complicity of the State and the police in the minority violence was not questioned by the KSCW or the KSHRC. Similarly, it is the NCW which intervened in the Mangalore pub attack against women, as opposed to the KSCW. The KSCW Act fails to provide any provisions on inquiry or investigation and post-inquiry interventions.

d. Independence and Impartiality

(1) The Chairperson, member of the Commission or staff of the Commission shall serve impartially and independently and exercise or perform his or her powers, duties and functions in good faith and without fear, favour, bias or prejudice and subject only to the Constitution and the law.

(2) The Commission shall be independent and shall not, in the performance of its duties, be subject to the direction or control of any person or authority.

(3) No organ of state and no member or employee of an organ of state nor any other person shall interfere with, hinder or obstruct the Commission, any member thereof or a person appointed under the Act in the exercise or performance of its, his or her powers, duties and functions.

(4) All organs of State shall afford the Commission such assistance as may be reasonably required for the protection of the independence, impartiality and dignity of the Commission.¹⁷

At present the KSCW functions as a department of the DWCD. KSCW needs to function independently without any control from the DWCD or political parties.

5.3. Recommendations for the KSHRC

5.3.1. Appoint Special Rapporteurs to undertake action research

The KSHRC cannot afford to delay the review of safeguards and the assessment of the state of human rights protection in the State. So far, the Commission has primarily devoted its energies to inquiring into complaints.

Section 27(2) of the PHR Act, 1993, empowers the Commission to appoint necessary administrative, technical, and scientific staff. The KSHRC should fully utilise this provision and appoint Special Rapporteurs or Consultants who can undertake thematic action research on manual scavenging, rehabilitation for displaced persons, rights of minorities, and several other issues. Instead of depending on the government to provide them with the staff and infrastructure, the Commission should consider commissioning

¹⁷ The above provision has been replicated from Section 4 of the Human Rights Commission Act, 1994 (South Africa) and Article 54 of the Constitution of Uganda. It is necessary to have an express provision to guarantee the independence of the NHRC and SHRCs as it will also ensure that the executive does not exercise undue control over the Commission.

studies by NGOs working in the State. These Special Rapporteurs and Consultants can operate from their own offices till such time as the State provides the Commission with the necessary space.

5.3.2. Approach courts for enforcement of their recommendations

One way in which the Commission can seek compliance with its recommendations is by approaching the High Court for directions, orders or writs. The Commission is yet to invoke this power. This is a potent tool available to the Commission to compel the State to protect human rights safeguards and fulfill its obligations.

5.3.3. Intervene in court proceedings

The Commission is statutorily expected to intervene in proceedings involving human rights violations with the approval of the court. However, it has not yet exercised this function. The Commission should proactively involve itself in ongoing matters before the Karnataka High Court.

5.3.4. Appoint staff for the Investigation Division

Instead of depending on the State Government to provide the Commission with staff for the investigation division, the Commission should rely on Section 27(2) to appoint staff for this division. It should explore the option of appointing lawyers and civil society activists as investigation officers. Training should be organised for the appointees to enable them to discharge their duties ably.

5.3.5. Develop networks in the districts

The Commission needs to devise concrete ways of reaching out to people living in the districts to inform them about its existence, legal safeguards, and the way in which the Commission can help. It should consider identifying credible NGOs working in the district, training them, and using their services to gather data on human rights violations in the districts. It should also utilise its powers under Section 27(2) to appoint representatives in each of the District who will periodically report to the Commission. This will enhance the accessibility of the Commission and help ensure that its impact is not confined only to urban areas.

5.3.6. Organise training programmes for the staff

The Commission should conduct training on thematic issues for the staff so that they are abreast with the latest developments in domestic and international human rights law.

5.3.7. Launch an official website

The Commission should without any further delay launch its website. Information relating to status of cases, annual reports, legal literacy material, and audits should be placed on the website. The Commission should also develop an online complaints mechanism to facilitate the easy filing of complaints and expanding its outreach.

5.3.8. Develop working relationships with NGOs

Presently, the Commission does not have a very strong working relationship with civil society organisations working in the State. Given the fact that the Commission does not have district offices, it should capitalise on NGOs working in the various districts and gather information from them on the status of human rights protection in those areas. It should also invite experts in the field to address the staff of the Commission. The Commission should also highlight areas and issues on which they could work together.

5.3.9. Coordinate with other human rights institutions within the State

There are several other human rights institutions operating within the State such as the KSCW, Karnataka State Commission for Minorities, the Karnataka State Commission for Backward Classes, and the Karnataka State Commission for Protection of Child Rights. Presently, there is little interaction between these Commissions and considerable overlap in terms of the issues they address. The Commissions should come together to formulate a collective response to the condition of human rights in the State. They should also join forces to tackle complex issues that affect women, children, and minorities.

5.3.10. Provide detailed information on the budget and expenditure in the Annual Report

The Annual Reports need to carry detailed information on the budget-heads and the manner in which the funds have been utilised. This will promote greater transparency and will highlight the areas which require attention. The Annual Reports should also carry statistics on compliance with the recommendations of the Commission.

5.3.11. Strengthen relationship with NHRC and other SHRCs

There is a definite need for greater cooperation between the NHRC and the SHRCs. The KSHRC should take the lead and engage with the NHRC and other SHRCs with a view to share best practices, interventions, and challenges.

5.4. Recommendations for the KSCW

Upon assuming office, the new Chairperson should undertake the following steps to enhance the accessibility and effectiveness of the Commission:

5.4.1. Conduct orientation for the staff and employees

The staff and employees of the Commission will benefit from an orientation on women's rights and on conduct themselves in a manner so as to enhance the accessibility of the Commission. Presently, a culture of transparency and approachability is lacking in the way in which in the Commission has been conducting itself. This should be immediately addressed if the Commission is to function effectively. In our interviews with some of the staff, we found that the staff were lacking in morale and were disappointed with the working of the KSCW. Motivation of the staff with adequate financial remuneration is essential for the staff to work effectively and stay committed.

5.4.2. Ensure Members are appointed

At present the Commission does not have any of the six members mandated by the Act. The Chairperson should ensure that the government is pressurized into appointing full-time active members so as to ensure smooth functioning of the Commission.

5.4.3 Fearlessly Monitor the Government's performance

As indicated, the political nature of the appointments in the KSCW hinders the independence and efficiency of the KSCW. The KSCW should rise above political considerations and not shy away from being critical of the government if the need arises. It should review the State's performance with regard to rights of women and share the review and recommendations with the general public.

5.4.4. Disseminate information on women's rights and the KSCW

Awareness on the work and function of the KSCW is crucial for it to be accessible to women. Such information can be disseminated through media, civil society and trainings in colleges and through KSCW website.

5.4.5. Launch an official website

The Chairperson should without any further delay launch the KSCW website. The website should have information relating to status of cases, landmark decisions, annual reports, legal literacy material, online complaint mechanism procedure and contact details of the Commission, including emergency numbers. It should provide the current and past Chairpersons and members names and contact details. Many SCWs in others states already have an updated website with all aforementioned information.

5.4.6 Forge strong relationships with other human rights institutions

The KSCW has little interaction or contact with other human rights institutions in the State. Given the nature of its work, the KSCW should forge relationships and share information with at least KSHRC and the Karnataka State Commission for Protection of Child Rights, where there is overlap. Both KSHRC and the KSCPR deal with complaints concerning girl child and women.

5.4.7. Develop working relationship with civil society organisations working on women's rights

In our interviews with civil society, most NGOs reiterated that they had no contact with the KSCW. With the appointment of the Chairperson, one of the tasks should be organising a consultation with NGOs working on women's rights and sharing information on the annual work plan with them. Increased interaction with NGOs would restore civil society faith in the quasi-judicial body and enhance transparency. Further, NGOs would increase the outreach of the Commissions and help build networks in district areas.

5.4.8. Promote greater transparency in the functioning of the Commission

In our interaction with KSCW staff we found most of them were not well-informed about the function or the character of the KSCW as a public body. KSCW staff have to be trained so as to encourage them to be open, communicative and approachable to the

general public. At present the KSCW office functions like any other bureaucratic department of the government.

Further, all documents of the KSCW should be available on the website and be shared with civil society.

5.4.9. Develop a documentation system to ensure that complaint files are accessible

Documentation of the work of KSCW is either not maintained or not accessible to general public. All files of the Commission should be preserved for posterity. Further, the KSCW should maintain electronic and non-electronic documentation of its work. The KSCW to ensure and encourage documentation should devise internal guidelines to be compulsorily followed for documentation of the KSCW work by all concerned KSCW staff.

5.4.10. Counselling Rooms

There is a need for appropriate counselling centres/rooms in the KSCW which provide privacy to the complainant. The newly inducted Chair should ensure that all conversations between the complainant/respondent take place in a private room and only before the case workers and concerned staff working on the matter.

5.4.11. Assist women in court proceedings

The Commission has the powers to assist women in court proceedings. However, it has not yet exercised this function. The Commission should proactively involve itself in ongoing matters before the Karnataka High Court which as per them would impact all women.

5.4.12. Recommend amendments to laws or enactment of laws

The instances of acid attacks in the State have been on an increase in Karnataka. There is a growing need for regulating the easy availability of acid and enacting a law for the said purpose. However, the Commission has done little in the area except for dispensing compensation. Commission should propose a law for the said purpose and conduct joint trainings with NGOs for medical practitioners and police.

5.4.13. Strengthen relationship with NCW

The relationship between the KSCW and NCW is necessary. NCW should be aware of the work and status of women in different states. In the present scenario, the NCW is occupied by Congress party workers and the KSCW by BJP. The internal conflicts between the parties make it difficult to have a relationship between two. There must be more interaction and cooperation between the national and state SCWS. There should be regular monitoring of the work, complaints received, reliefs granted, meetings held by the NCW of all SCWs. Additionally, there should be a random survey with the complainants to see if they were satisfied with the reliefs granted by SCWs.

The KSCW should take the initiative to engage with the NCW and other State Commissions to share best practices, interventions, challenges and to discuss how duplication of complaints can be avoided.

5.5. Recommendations for the State Government

5.5.1. Constitute a Selection Committee to appoint Members of the KSCW

The State Government has taken the first step towards reviving the KSCW by appointing Ms. Manjula.C as Chairperson of the Commission. Like all previous appointments which were political in nature, this appointment is no exception. There is a definite need to rebuild the Commission and appoint suitable and qualified Members in a transparent manner. If the KSCW is to inspire any confidence and credibility, the appointments should not be political.

In order to demonstrate its commitment to democratic processes and its effort to preserve and promote human rights institutions, the State Government should redress the situation by constituting a Selection Committee. The Chairperson and members appointed should not have any political affiliations to any political party or be a member of any political party.

The Members should have experience in human rights and women's rights and should not be selected or rejected because of their political affiliations.

5.5.2. Appointment of Necessary Staff

Both the KSHRC and the KSCW are severely short staffed. It is strongly recommended that the State Government take steps to provide the Commission with at least 210 additional staff in the investigation division and 176 staff across the other departments.

For KSCW, members who are available and committed to the cause of women need to be appointed immediately.

5.5.3. Consult with the Commission before appointing Staff

The State Government should consult with the KSCW and the KSHRC to understand their requirements before appointing staff. It is imperative that the views of the Commissions' be considered and given due weight before the Secretary and other staff are appointed.

5.5.4. Provide adequate infrastructure and space

The location of the KSHRC and the KSCW in the same building or campus as other government offices is condemnable and in complete abrogation of international standards that recommend distance, physical and otherwise, between the Commission and the government. The KSHRC has been urging for permanent accommodation at Park House and its annex building. Its present accommodation is woefully inadequate and is preventing it from appointing more staff to deal with the increasing workload. It is exigent that this request be heeded to without further delay. The State Government should also take steps to relocate the KSCW.

5.5.5. Approve budgets without slashes

The KSHRC is authorized to spend such sums in order to discharge its functions. By slashing its budget by over 82%, the State Government has interfered with the working of an independent statutory institution. The State Government should submit the budget of the Commission for the approval of the State Legislature. It should not play any direct role in the approval of the budget as under the PHR Act this is the prerogative of the Legislature.

5.5.6. Respond in a timely manner to the recommendations made by the Commission

The delay in the government's response to the recommendations made by the Commission has the effect of robbing them of their efficacy. The State Government does not appear to be taking its constitutional and statutory obligations of promoting and protecting human rights seriously. It is strongly recommended that action taken reports are filed within the statutory limits prescribed.

Annexure 1. Information available on websites of State Commissions for Women

Pondicherry

- Name of Chair and members with contact details
- Role, power and function of SCW

Provided on the Department of women and child development

Maharashtra

Basic Information

- Provides names of Chair and Members and contact details on setting of the SCW, role and contact details.
- The website also provides reports publications of the Commission and the relevant Acts pertaining
- It also highlights the areas of concerns, and orders passed by the Courts which are not in conjunction with rights of women to women It indicates the work done in collaboration with NGOs
- Provides details of Family Courts and Special Courts for women in Maharashtra and the kind of reliefs that can be sought
- Provides the work of the SCW on Domestic Violence, female infanticide and dowry
- Links to various women and child departments and government residential homes for women

Manipur

- Provides basic information like contact details and the setting up of the Commission.
- Provides information regarding all SCW staff. Three personnel profiles are given but do not indicate their position. The names of Chairperson and Members not indicated
- Provides for an online complaint submission. Also, one can check the status of the complaint online
- Annual report of 2007-2008 is available

Haryana

- Provides information on the Constitution of the Commission, setting up and role
- Provides budget and cases received and disposed off
- Provides Acts, laws pertaining to women and the various scheme/initiatives by the Comm.
- No information on the members and the Chair

West Bengal

- Provides basic information on setting up, role of the Commission and laws pertaining to women of the SCW Act.

- Provides contact details of the stakeholders under the PWDVA and panel of lawyers available in the SCW office
- Details of cases from 1999-2004
- Provides recommendations given to the Govt.
- Other services such as counselling and Lok Adalat details
- Details of members given and contact details as well

Delhi

- Provides the composition, setting up of the Commission and the Act and rules
- Details of shelter homes, Crime Against Women Cell contact details in Delhi, Courts and Legal Service Authority details are given
- Acts pertaining to women given and schemes issued by the Commission

Kerala

- Details of the structure, function and composition of the Commission given with names and contacts details of the Chair and Members
- Details on the work done by the Commission, schemes, publications on status of women, workshops held etc
- Acts, rules and regulations of the Commission given

Assam

- Provides details of the Chair and Members, and the role of the Commission on the Govt. of Assam website.
- Members are a mix of bureaucrats, social workers and lawyer. The Chair is an ex MLA.

Meghalaya

- Provides names and contacts details of the Members and Chair
- Roles of the SCW
- Public hearings conducted and visit and inspections
- List of recommendations given to the Govt. and seminars/workshops
- Details of the budget received
- Annual reports from 2004-2007

Punjab

- Provides the Act
- Provides minutes of meetings of the Commission from 2007-2009
- Names and contact details of the Chair and Members
- Provides details of complaints received, disposed off and referred to other authority
- All laws pertaining to women and the RTI Act, including the role and powers of the SCW
- Details of plans/projects by showing the budget allocation

Tripura

- Provides the composition with names and term. Most members are social workers or lawyers
- Provides activities of the Commission, including statistical information
- Highlights of activities, success stories and publications
- Recommendations given to Govt, such as implementation of the PWDVA, sensitisation programs on the Act to stakeholders
- Online complaint registration procedure
- Contact details with email and numbers

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