

Gender Violence and the Role of Human Rights Commissions: A Critical Analysis from Maharashtra.

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Abstract: *The Charter of the United Nations in Article 1, which deals with the purposes of the United Nations, clearly mentions its commitment to promote 'respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.' The Universal Declaration of Human Rights, 1948 (UDHR) and various instruments (Covenant and Treaties) emanating from it, provide ways and means for the implementation of gender equality. Both the International Covenant on Civil and Political Rights, 1966 (ICCPR) and International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) curb gender discrimination in civil, political, economic, social and cultural rights..*

India has acceded to and ratified these covenants and treaties. The promulgation of the Protection of Human Rights Act, 1993 (PHR Act), was an important milestone for human rights in India. It brought in simple procedures for redressal of human rights violations through the establishment of National Human Rights Institutes (NHRIs) called Human Rights Commissions (HRCs). These HRCs are governed by their statute and require adherence to norms set out in the Paris Principles.

The Maharashtra State Human Rights Commission (MSHRC) was established as per the provisions of subsection 21(1) of the PHR Act, in 2000. The functions of the HRCs have been spelt out in section 12 of the Act in 10 sub-sections. The implementation of these functions contributes to its efficacy in protection and promotion of human rights. One of its prominent roles has been to inquire into violations of human rights issues and make recommendations to the government. This academic research was a case study pertaining to a serious violation of human rights, where a differently-abled minor child was sexually violated in a public place (in a moving suburban train) in Mumbai. The handling of the case by the MSHRC has been analyzed to highlight the actions taken and their impact on the efficacy of the HRC. The case was taken up suo moto by the HRC and completed under 6 months, which is laudable. However, the HRC could not elucidate any specific commitment from the authorities for the prevention of such crimes, nor did the HRC make any specific recommendations to the government, as required by the provisions of the PHR Act and the procedure regulations.

The handling of the above case of gender violence by the MSHRC was not adequate, adversely affecting its efficacy!

KEY WORDS

Gender Violence Human Rights PHR Act Human Rights Commission Efficacy

Research Methodology: The case study method was adopted, making use of secondary data resources, to conduct documentary analysis.

Introduction: The international fraternity of nations has unequivocally proclaimed the guarantee of gender equality. The Charter of the United Nations in Article 1, which deals with the purposes of the United Nations, clearly mentions its commitment to promote 'respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.' The Charter in its preamble also says that it is determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.' The Charter further reiterates this commitment in Article 13 and Article 55, dealing with the mandate of the General Assembly and promotion of human rights, respectively. (Anon.2014. Women's Rights are Human Rights. United Nations Human Rights Office of the High Commissioner). The Universal Declaration of Human Rights (UDHR, 1948) and various instruments (Covenant and Treaties) emanating from it, provide ways and means for the implementation of gender equality. Both the International Covenant on Civil and Political Rights, 1966 (ICCPR) and International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) curb gender discrimination in civil and political, as well as economic, social and cultural rights. (Anon.1996. Fact Sheet No.2 (Rev.1): The International Bill of Human Rights, Office of the Commissioner of Human Rights)

National Human Rights Institutions (NHRIs): The NHRIs that have been established in their respective countries are tasked with the protection and promotion of human rights as envisaged in the United Nations Bill of Rights, which comprises the UDHR, ICCPR and ICESCR. It is mandatory for countries that have acceded to and ratified the conventions/treaties to honour the norms and regulations spelt out in these conventions/treaties. The promulgation of the Protection of Human Rights Act in 1993-94 was an important milestone

for human rights in India. It brought in simplified procedures for redressal of human rights violations through the establishment of NHRIs, called Human Rights Commissions, in India. These Human Rights Commissions are government institutions through their statute, and require adherence to norms set out in the Paris Principles. The Paris Principles are a set of guidelines and standards of the United Nations, which were prepared in consultation with participating country representatives in 1991, in Paris. They specify norms for competence, responsibilities, composition, procedures and functions of NHRIs. As decided in the World Conference that was held in Vienna in 1993, an NHRI's reliability and status depended on compliance with these principles. The Paris Principles contain sections 1 to 4, as given below:

1. **Competence and Responsibilities:** The NHRI should have the powers to promote and protect human rights, and its mandate should be as broad possible, based on universal norms of Human Rights.
2. **Composition and Guarantees of Independence and Pluralism.** It should be autonomous from the government in terms of resources and staff, its independence guaranteed by law, and it should exhibit pluralism through its membership or through cooperation with affected groups/civil society.
3. **Operational Methods** followed in the NHRI, and
4. **Additional Principles** that are required for Commissions which have quasi-judicial powers.

These Principles spell out the **minimum basic responsibilities** of NHRIs as stated below:

- A) To advise any authority, like the government, on the following:
 - (i) The necessity for bringing or modifying of legislation, including procedures, so that these are within the standards of human rights;
 - (ii) A situation of violation of human rights in the area of jurisdiction;
 - (iii) To present write-ups on the overall human rights situation;
 - (iv) Apprise the government of some specific situations which could result in violation of human rights in society ;
- B) To bring to notice and facilitate adherence to norms of international instruments with the domestic laws and practices ;
- C) To convince the state to make ratification of various international human rights-related instruments, as well as keep checks on how these are being taken up by the state, where not taken up ;
- D) To contribute independently to reports on human rights matters that are sent by the government to the United Nations ;
- E) To collaborate with the United Nations bodies on all matters of human rights;
- F) To enhance literacy and education as well as facilitate research in human rights by networking with educational institutions and various professionals ;
- G) And to engage with the media to highlight human rights, and focus on issues of different types of discrimination, including racial discrimination. (Sidoti, Chris. May, 2015. A Manual on National Human Rights Institutions.)

The International Coordinating Committee of NHRIs (ICC/GANHRI)

The NHRIs formed the International Coordinating Committee of NHRIs (ICC) in Tunis during a conference in 1993. Accordingly, the procedures for their working were made. It was later renamed as the Global Association of National Human Rights Institutes (GANHRI).

In order to maintain standards and norms to conform to the Paris Principles, the ICC/ GANHRI, undertakes **accreditation** through its **Sub-Committee on Accreditation (SCA)**. This is done when the NHRI applies for accreditation initially, when the NHRI applies for re-accreditation after 5 years and if and when local circumstances change to affect the functioning of the NHRI. GANHRI consists of NHRIs elected from amongst its members from the 4 regions, along with support from OHCHR. It's GANHRI Bureau, which looks after the day to day functioning, consists of 16 members, 4 from each of the 4 regions. The SCA, which reviews accreditations, consists of one representative from each of the 4 regions. In addition, one from OHCHR and one from GANHRI are also present as observers. The observers can facilitate but not cast votes. The SCA considers information from the concerned NHRI, as well as other sources, like civil society, during the review. It submits its report to the GANHRI Bureau, which examines and issues the final report. Whereas the SCA was initially tasked with the NHRIs' compliance with the United Nations-mandated Paris Principles, it also looks at related issues that infringe on the NHRI's **credibility** and **independence**, and thus affect its efficacy. The SCA accreditation leads to the NHRI being called Status A (fully compliant to the Paris Principles) or Status B (not fully compliant). A 'Status A' NHRI is empowered to vote and hold governance positions within GANHRI. Further, it has speaking rights in the Human Rights Council of the United Nations. (Anon.2017. A Practical Guide to the Work of the Sub-Committee on Accreditation (SCA), Global Association of National Human Rights Institutions.)

The Constitution of India enshrines gender equality in its Preamble, Fundamental Rights, Fundamental Duties, and Directive Principles. Accordingly, the Government of India has enacted various laws to ensure gender equality.

The Protection of Human Rights Act, 1993 (PHR Act). The PHR Act provides for the establishment of the National Human Rights Commission (NHRC), State Human Rights Commissions (SHRCs) in States and Human Rights Courts (HRCs) in districts. The PHR Act has been promulgated **for better protection of people's human rights**, and their recommendations on issues of human rights have been deemed to override any other relevant rules or laws in force. The PHR Act has defined human rights in Section 2(d) as, **“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.”**

Section 12 of the PHR Act spells out the **functions** of the NHRC and SHRCs as, **all or any** of the following:

- A) Inquire into complaints of violations, abetment or negligence in human rights matters **by a Public Servant**;
- B) **Intervene in court** proceedings with the court's permission, where human rights matters are discernible;
- C) **Inspect** state-controlled institutions of detention, reformation and facilitation and provide recommendations accordingly;
- D) **Safeguard** laws pertaining to human rights, review the same and send recommendations to the authorities;
- E) **Review factors** that affect human rights, like acts of terrorism, and recommend corrections thereof;
- F) **Examine international instruments** on human rights and suggest measures for their proper implementation;
- G) **Promote research** in human rights;
- H) Promote human rights **education** and the safeguards available to common people;
- I) Facilitate **Civil Society and NGOs** working in matters pertaining to human rights;
- J) And **take any other suitable steps to promote human rights**.

The PHR Act also provides quasi-judicial powers to the Chairperson and Members of the Commissions, and they can inquire into complaints made by aggrieved persons or their representatives; they also have *suo-moto* powers. The Commissions are empowered to function as a civil court, and an independent Investigation wing assists them. However, as elucidated above, the Commissions have powers to inquire only into human rights violations/abetments/ neglect **involving public servants**. They have recommendatory powers which are made to the concerned government, which includes compensation under sub section 18 (a) (i), and initiation of proceedings for prosecution or other action under sub section 18 (a)(ii); they can also approach the Apex Court or High Courts under sub section 18(b) for directions, orders or writs. The NHRC and SHRCs have broad responsibilities for both human rights promotion and protection.

In India, there is one National Human Rights Commission (NHRC), which was established in New Delhi on 12 October 1993, and 25 State Human Rights Commissions (SHRCs) in the states, established from time to time. The NHRC has been accredited by GANHRI with Status A in 1999, 2006, 2011, and 2017. However, the current accreditation for NHRC has been deferred during the SCA review in 2023 and 2024. None of the SHRCs has undergone accreditation through the SCA. The Maharashtra State Human Rights Commission (MSHRC) was established in 2000 under section 21(1) of the PHR Act 1993, and became functional from March 2001. (Anon. 2024. Protection of Human Rights Act, 1993(10 of 1994). Professional Book Publishers, Delhi.)

The MSHRC's Case of Physical and Sexual Abuse of a Minor Girl in a Public Place (in a moving local train), in Mumbai

Case No: *Suo Motu* Case 12/2002

Complainant: Nil, as it was taken *suo moto*

Date of Complaint: From The Times of India, Mumbai edition of 18th August, 2002

Date of Final Recommendation: 03 February 2003.

Background and reports:

This case pertained to the rape of a minor, mentally challenged girl, inside a local train on the night of 14th August, 2002. The incident evoked deep anguish and outrage concerning the safety of women, especially as it occurred in a public place.

A mentally challenged girl, alleged to be dumb, aged about 13 to 14 years, was travelling in a second-class compartment of suburban train no. 909 Down from Churchgate to Borivali on 14/08/2002. In between the Malad and Kandivali local suburban stations at about 01.55 Hours, a man aged about 28 years, a resident of Damu Nagar Slums, Kandivali (East), Mumbai, raped the girl inside the coach. Passengers tried to stop the violence, but they were threatened and they backed out. However, on the arrival of the train at Borivali, a crowd gathered, overpowered the culprit and handed him over to the GRP. He was arrested by the Senior Police Inspector, GRP, Borivali and a FIR was lodged vide ACR Number 153/2002 under Sections 376 and 504 of the IPC dated 14/08/2002.

The Constitution of India, in its seventh schedule, defines and specifies the allocation of powers and functions between the Union and States. It contains three lists: (1) Union List, (2) State List and (3) Concurrent List. Accordingly, Railways comes in the Union List and its issues need to be taken up by the NHRC rather than the MSHRC. However, as has been brought out lucidly in the case order, the law and order matters about the Railways are a State List subject and hence are under the purview of the MSHRC.

The Railways, in their report dated 04/09/2002, had clearly stated that the law and order being a State subject necessitated the case to be taken up by the State Police. However, the Government Railway Protection Force (RPF), which works under the central government and which are deployed at various railway stations, have been tasked to assist the State Police.

On the other hand, the Railways maintain close coordination with the RPF. The Railway's report goes on to say that the RPF assists TTEs during checks for ticketless travel. Also, special drives had been made by a Surakshini (comprising of lady constables and TC), Suraksha Squads and Special Drives by RPF. The report informed that Surakshini had detected 722 cases and realized Rs 43,197/- during the 14 day period from 21/08/2002 to 30/09/2002. In addition, 436 beggars, 305 urchins, 1536 school children, 60 drug addicts and 18 eunuchs were removed from the "Ladies' compartment and platforms". It further went on to say that 5 male checkers were also deployed during the night from 2200 to 0600 Hours. They also recovered fines worth Rs. 38415/- and removed 156 beggars, 45 urchins and 16 drug addicts. The Railways also informed that besides the above, a Special Drive was launched during day and night with 104 officers and 236 RPF staff during the above 14-day period. The special drive also detected cases and removed beggars, urchins, school children, drug addicts and eunuchs from the ladies' compartment.

The reports dated 07/09/2002 and 21/02/2002 from the Commissioner of Police informed that preference had been given for the safety of women commuters and necessary arrangements were made to prevent their assault from hawkers, beggars, children, male commuters, etc. In long-distance trains, the police inspected the trains, especially the ladies' compartment at the nearest shunting track, as well as on the platform. In case of suburban trains, for the last 3 months, police guards had been deployed during night from 8 p.m. to 8 a.m. in the women's compartments. Moreover, announcements were made at all stations to inform the women travelers, about the police duty.

The report also went on to say that about 65 lakh passengers travel by suburban railway, and the police were required to protect life, property, and maintain law and order, apart from protecting people from violent acts. It mentioned that, along with assistance from the railway administration, different cases had been detected and fines recovered. It also said that the police phone numbers had been displayed in the ladies' compartment and the police would take immediate steps in case they received any information from the mobiles of lady commuters. Lastly the police report informed that the victim (name mentioned but withheld by the author) was given custody of St. Catherine's Home, Andheri on 08/10/2002.

In the wake of the incident on 14/08/2002 the General Manager, Western Railway and Director General, RPF, New Delhi, along with Director General, Maharashtra, Commissioner of Police, Mumbai and other officers had a meeting on 19th and 20th August, 2002, to discuss ways and means to prevent rape and molestation over suburban train sections in Mumbai and restore the confidence of women commuters in the security system as was available at that time. Accordingly, the aforementioned steps were taken as a special drive.

It was also stated that a programme for providing new safety initiatives had been prepared, such as the installation of better train devices, vigilance control and ancillary warning systems.

These 'special' measures taken by the railways were:

1. Safety alerts in the ladies' compartments.
2. Telephone hotline facility in suburban trains.
3. Mobile security guards deployed for patrolling, especially in the women's compartments.
4. Emergency alarm chains in suburban trains (as already provided in long-distance trains).
5. A train management system showing details of trains on screens.
6. A mobile communication system between the control centre and suburban train guards.
7. Three pairs of ladies specials running daily.
8. The location of ladies' compartments was fixed - 2 coaches in 9 rake trains and 4 coaches in 12 rake trains.
9. One lady's coach was next to the motorman/guard so that help was available readily.
10. Lady vendors had a separate earmarked luggage compartment from 0300 to 1300 Hours.
11. Ticket checking in the ladies' compartment was done by lady ticket checkers.
12. A special compartment for the differently abled was also provided.
13. In long-distance trains, a separate second-class compartment was earmarked for ladies.

Recommendations of MSHRC

The MSHRC recommendations in the case were of eight typed pages. It mentioned that a comprehensive review of railway security was required, given the history of violence, concerning a better understanding of terrorist tactics, targets, and techniques of wrongdoers. In that context, terrorist attacks or civil wars or guerrilla wars needed to be taken into consideration, since combatants brought their violence to the capital cities to obtain international attention. It then discussed expenditures and the use of technology, surmising that good security could displace the risk of pushing culprits to less lucrative targets where their actions would likely cause fewer casualties.

The recommendations then said that wrongdoers could find a vulnerable place – they could attack anything, anywhere, anytime; it was difficult to protect everything, everywhere, at all times. It then said that security tended to be reactive – security was increased after an attack to plug any gaps made in anticipation of further possible similar attacks, and to reassure the public. It suggested that the added security measures could be suspended when the threat had reduced. The report then suggested that crisis management planning was essential.

Thereafter, the recommendations said that the recent event had highlighted the vulnerability to crime. For this, the railways should enhance the security system to ensure the safety of commuters. It recommended a security survey centred around:

- 1) The concerns of citizens regarding public transit in and around their neighbourhood.
- 2) Evaluation of concerns in relation to designs for livable communities.

The Commission said that the aforementioned points would help in meeting the transportation needs of diverse communities.

It also stated that a ‘situational approach’ was necessary to prevent crime in different transportation methods, which could then be made applicable to a wide range of crimes and a variety of transportation systems and settings. It suggested that vulnerable location points were to be identified near railway stations, where coordination of the Railway Protection Force and the local police could be done. Thereafter, it quoted the newspaper ‘The Hindu’ – online edition dated 18th June, 2001 on the unfortunate state of such crimes. The recommendations also highlighted that commuters travelling outside rush hours witnessed disturbing events like drunkenness, disorder, assault and indecency. It suggested for proper lighting in the station premises. There was also advice about the removal of sexist and racist graffiti that could encourage violence. Further, it said that visible uniformed staff should be adequately placed to discourage potential trouble-shooters.

Thereafter, the recommendations said that wherever a crime took place, there must be means of getting help. Station staff should have radios to call for help, but they should not be alone for their own safety, and the police should be able to come instantly. ‘Help Points’ were to be set up at some stations and mirrors placed at the corners.

The security units should have plain clothes, and police squads should be present in or outside the railway transit.

Finally the recommendations provided over two pages of what was called desirable exhibits for the commuters, which were of 17 points in all. Out of these, 10 points covered both women’s safety and security issues. The other 7 points were of a general nature. There were no specific points about women’s safety alone.

The recommendations ended with the information that the points brought out were ways of reducing risks, ‘where nothing further could be done to improve the basic design of the station.’ At the end was a message which read, ‘Safe night time as well as day time transport was essential if women were to take part in educational, social, cultural and political life.’

It ended with a ‘hope that the authorities would give serious thought to what had been suggested above.’

The MSHRC took up the case in **August 2002**, and the case was closed in **February, 2003, in less than six months.**

The case in the Trial Court

The trial court that took up the case, awarded a total of 12 years rigorous imprisonment to the offender, 10 years for committing rape and 2 years for outraging the modesty of a woman The Protection of Children from Sexual Offences Act (POSCO), with more stringent punishment for such crimes against minors, came into force later, in 2012. The POSCO-related punishment could be either 20 years RI, imprisonment for life (remainder of life) or death. (Anon. 2002. Case file of case 12/2002. Maharashtra State Human Rights Commission, Mumbai).

Comments on the Case as dealt by the MSHRC

This was a very serious case of sexual violence against a minor and a differently abled girl child. And it had occurred in a public place. The fact that the case was taken *suo moto* by the MSHRC was laudable. It was also laudable that the police found a women's shelter for the victim.

However, while dealing with the case, the MSHRC **could not elucidate a specific commitment** from the General Manager, Western Railways and the GRP headed by a senior police officer, **regarding any new measures**, after this despicable incident. The Railways reported that there was a high-level meeting of senior Railways and Police officers 5 days after the incident. However, what was the fallout of the meeting, and what proposals were prepared as a consequence of the ghastly event, were not presented/ recorded in the MSHRC order. Rather, statements about the difficulties in providing safety in the railway system, along with a list of steps/measures that the railways had taken for the safety of women passengers and others, were made. The report from the railways, came short of actually spelling out future steps to protect the vulnerable in public spaces. Their report also did not mention strategic planning for dealing with such heinous crimes, allowing the matter to rest and perhaps, slowly going away from public memory.

The MSHRC dwelt in commonly spoken maxims; this would not enhance the cause of women's human rights. It was an opportunity for MSHRC to bring key players in women's safety (like the state government departments dealing with the subjects/issues, the Railways, renowned Institutions and NGOs) and work out a strategic and viable plan of operation, in both the short term as well as in the long term, for recommending to the authorities. The Commission's duties as per subsection 12(e) of the PHR Act, 1993, clearly spell out that they are required to review factors that inhibit human rights and recommend appropriate measures on the factors that curb human rights. Further, the MSHRC should have reviewed the safeguards under the relevant laws and recommended measures for their effective implementation, as envisaged in sub-section 12(d) of the PHR Act.

It was also required that an officer of the MSHRC visit the women's shelter where the victim was being rehabilitated and cared for. Another notable omission was the lack of any compensation to the victim of this serious human rights violation.

Apart from the Constitution of India and the PHR Act, 1993, various international and national laws and norms for the protection against gender inequality and gender violence are briefly stated below:

A) UN/International Laws and Policies to Protect Women from Violence***1. The Universal Declaration of Human Rights (UDHR)***

In the Preamble to the UDHR, the UN has stressed human rights, exemplified by the dignity of people and the equal rights of both women and men.

Article 2 – All persons have the rights and freedoms of the UDHR without any discrimination.

Article 3 – All persons have the right to life, and to live with personal freedoms and safety.

Article 5 – No person should face torture or humiliating treatment.

Article 12 – No person should face attacks upon his/her reputation and honour. People should be protected by law from such wrong treatment.

Article 25 – 1. It says that there should be food and shelter for everybody as a human right, which should include food, health care, and social security, where it is necessary for the needy; in the above case study, disability was a special circumstance for the victim to be provided with social security.

2. This calls for special care of social protection for childhood and motherhood for the needy.

Article 28 – there should be proper order so that everyone can enjoy the freedoms and rights of the UDHR in one's country as well as abroad.

2. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The UN General Assembly adopted CEDAW in 1979 and it was instituted on 03rd September, 1981. Frequently described as an International Bill of rights for women, it consists of a preamble and 30 Articles. Women's discrimination has been defined and a plan of action spelt out for ending discrimination. The 30 Articles are divided into Part I to Part VI .CEDAW has been ratified or accepted by 189 countries. Over 50 countries have ratified citing conditions (38 countries had reservations on Article 29 meant for disputes regarding interpretations in the Convention). (Anon.1979. Convention on the Elimination of All Forms of Discrimination against Women). India signed the convention in July, 1980 and ratified it on 09th July, 1993, citing some reservations.

3. *United Nations Declaration on Elimination of Violence against Women (DEVAW)*

The DEVAW was adopted by the UN General Assembly on 20th December, 1993. It touches upon women's equality, dignity, security, liberty and integrity. The most widely used definition of gender violence is stated in its Article 1 and 2. Article 3 echoes the UDHR by saying that women should have equal human rights and fundamental freedoms in the civil, economic, political, social, cultural spheres. Article 4 states that in matters of gender violence, governments should not take recourse to any religious, tradition and customs to justify exemption.

India signed the DEVAW on 30th July 1980 and ratified it on 09th July 1993. However, India has stated that it accepted some of the Articles with reservations since the government did not interfere in personal practices/laws of some communities without their consent and initiative.

India also stated that it supported the need for mandatory registration of all marriages, but it was not possible with the diversity in the country. (Anon.1993. United Nations Declaration on Elimination of Violence against Women).

3. *Special Rapporteur on Violence against Women*

In March 1994, the UN Commission on Human Rights appointed a Special Rapporteur on violence against women. The rapporteur reports all such matters regarding gender violence to the Human Rights Council. The present Rapporteur is Ms Reem Alsalem from Jordan. (Anon.2022. Special Rapporteur on violence against women. UN Human Rights Special Procedure. U N Commission on Human Rights)

4. *The Beijing Platform for Action*

At the end of the 1995 World Conference on Women held in Beijing, the 'Beijing Platform for Action' was drawn which promulgated various principles for gender equality. It also identified actions in 12 critical areas for governments to address

Apart from the organizations and Special Procedure above, some other international establishments are the "Working Group on laws against women", and "Special Rapporteur" for looking into trafficking of persons, especially women and children. (Anon.2014. Beijing +20. Human Rights of Women. Office of High Commissioner for Human Rights.)

B) Laws in India Important laws in India which address gender issues are:

1) **The Indian Penal Code:**

Crimes under Indian Penal Code (IPC) are:

Section 363-373 IPC dealing with women's abduction and kidnapping.

Section 302, 304B IPC and Dowry Prohibition Act, 1961 addressing deaths due to dowry.

Section 498-A IPC dealing with torture by husband and relatives.

Section 354 IPC dealing with women's molestation.

Section 509 IPC dealing with sexual harassment.

Section 366 – B IPC dealing with importation of girls.

Section 313/314 IPC dealing with causing miscarriage and death, without the women's consent for abortion.

Section 326 A/326 B IPC dealing with acid attacks

Section 354 A IPC dealing with sexual harassment.

Section 354 B IPC addressing attempt to disrobe women.

Section 354 C IPC dealing with voyeurism.

Section 354 D IPC dealing with stalking of women.

Section 366 IPC dealing with abduction, kidnapping, or persuading women to force for marriage.

Section 366 A IPC dealing with procurement of girls who are minors.

Section 366 B IPC dealing with importation of girls from abroad.

Section 370 IPC dealing with trafficking of person.

Section 370 A IPC dealing with exploitation of trafficked person.

Section 373 IPC dealing with buying minors for purpose of prostitution, etc.

Section 375 IPC dealing with rape.

Section 376 IPC dealing with punishment for rape.

Section 376 A IPC dealing with punishment for causing death or persistent vegetative state of victim.

Section 376 AB IPC dealing with punishment of rape of woman under 12 years.

Section 376 B IPC dealing with sexual act on wife by husband, post separation.

Section 376 C IPC dealing with sexual act by one in a position of authority.

Section 376 D IPC dealing with gang rape.

Section 376 DA IPC addressing punishment for gang rape of woman under 16 years of age.

Section 376 DB IPC addressing punishment for gang rape of woman under 12 years of age.

Section 376 E IPC addressing punishment for offenders who repeat the crime.

Section 493 IPC dealing with cohabitation by man on false belief of lawful marriage.

Section 494 IPC dealing with marrying again during lifetime of husband or wife.

Section 495 IPC dealing with same offence with concealment of former marriage from person married to later on.

Section 496 IPC dealing with marriage ceremony fraudulently gone through without lawful marriage. **[NOTE: The IPC was replaced by the Bhartiya Nyaya Sanhita (BNS) with effect from 1 July, 2024. The BNS has 358 sections, compared to 511 of the IPC.]**

2) Immoral Traffic (Prevention) Act, 1956 (as amended up to 1986)

3) Dowry Prohibition Act, 1961

4) Indecent Representations of Women (Prohibition) Act, 1986

5) Sati Prevention Act, 1987.

6) Protection of Women from Domestic Violence Act, 2005.

7) Protection of Women against Sexual Harassment at Workplace Act, 2013.

8) Information Technology Act, 2000 makes some offences against women punishable : sending offensive messages, such as false information, hatred, criminal intimidation through communication service (i.e., electronic mail), punishment for violation of privacy and for spreading obscene and sexually explicit materials electronically, including exploitation of children.'

9) "The Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994".

The PCPNDT Act is to control the usage of diagnostic procedures for prenatal examination, in order to reduce the chances of selective abortion caused by prenatal sex determination.

10) Muslim Women (Protection of Rights on Marriage) Act, 2019.

In August, 2017 the Supreme Court declared triple talaq, which enabled Muslim men to instantly divorce their wives, to be unconstitutional. This new law of 2019 makes any form of talaq illegal, attracting 3 years jail and fine. Muslim women could also seek maintenance, which was to be decided by a Magistrate. (Eeravathi, Shirisha.2020.Criminal Law and Women. Vikaspedia, Government of India.)

11) Protection of Children from Sexual Offences Act, 2012 (POSCO).

Although this is gender neutral but the Act came in the wake of sexual violation of minor girls, consequent to a sudden rise in cases of child rape, especially on the attack on a 8 year old girl in Jammu & Kashmir; the Government of India approved an amendment for capital punishment for rape of girls below 12 years, completion of trial within two months after arrest and an increase in minimum jail sentence for convicted rapists. (Anon.2013. Victims of Sexual Abuse and Trafficking and Their Rehabilitation. Committee on Empowerment of Women, 2012-13.)

The National Crime Records Bureau (NCRB) Annual Reports

In India, the National Crime Records Bureau (NCRB) is the central government nodal agency for the compiling and evaluation of crime data as per the Indian Penal Code (IPC) and Special and Local Laws (SLL). The NCRB has classified crime against women in the categories murder with rape/ gang rape (sec 376 IPC), dowry deaths(sec 304B IPC), abetment to suicide of women(sec 305/306 IPC), miscarriage (sec 313/314 IPC), acid attack(sec 326B IPC), husband or his relatives cruelty(sec498A IPC), abduction and kidnapping of women of different types(as per sec 363, 364,364A, 366 IPC), procurement of minor girls/ girls from foreign destinations/other forms of kidnappings(sec 366A, 366B, 363A, 365, 367, 368, 369 IPC), human trafficking/selling or buying minor girls(sec 370,370A,372,373 IPC), rape (sec 376 IPC) in two categories of above and below 18 year victims, attempt to commit rape(sec 376 and 511 IPC), assault with the purpose to violate modesty (sec 354 IPC) and insult to modesty of women (sec 509 IPC).

The 2023 Annual Report of NCRB revealed that reported crimes against women were 445256 cases in 2022. The numbers of cases were 428278 in 2021, showing a **4% increase**. During 2022 the major crimes reported were **cruelty by relatives and husband (31.4%), abduction and kidnapping (19.2%), assault with purpose to violate modesty (18.7%), and rape (7.1%)**. NCRB also reported that over 90% of rape cases were committed by persons known to the victim. (Anon.2024.Annual Report of NCRB, 2023. Government of India.)

The Central Government Advisory on Crimes against Women

The Government of India had sent a comprehensive set of advice to all states and union territories for dealing with crimes against women as per a Ministry of Home Affairs (Centre-State Division) letter dated 12 May 2015. The communication refers to affirmative action like ease of registration of crimes, increase of women in the police force to 33%, desirable measures in sensitive localities and at night time, increase in patrolling and beats in vulnerable places, better gender sensitivity in the police force, to put in place specialized investigative units for crimes against women, to maintain database of criminals with history of sexual crimes, strengthening of prosecution wing with fast track courts, and an increase in forensic labs.(Anon.2015.Advisory on Comprehensive Approach Towards Crimes Against Women, Government of India)

Global Gender Gap

The World Economic Forum's Global Gender Report 2024 provides gender related standards based on economic, political, health and educational criteria. India was ranked 129 out of 146 countries in 2024. This is a fall in two places from 2023, ascribed to matters pertaining to education and political empowerment. In the 2025 report, India has fallen to 131st out of 148 countries. (Anon.2025.India slips to 131st position in Global Gender Gap Index 2025. The Hindu, June 12, 2025). However, the **Government of India has refuted the procedures and norms** for the computation of the above gender gap reports.

Violence against Women in India

Various reports have documented concern over the number of cases of gender violence in India. The UN Special Rapporteur, Human Rights Council, visited India from 22 April to 1st May 2013 to study violence against women. Her report (Rashida Manjoo, 2014) stated that such violence was systemic and was reported in both public and private domains. She also received information that gender violence was accentuated by such social parameters as class, caste, traditions, personal abilities and sexual orientation. She emphasized that abuse of women in the private domain was by close family members, and the family setting is influenced by deeply entrenched, cultural and social norms, which, together with the socioeconomic dependence on male members, reinforce intimidation and challenges. (Anon.2013. Special Rapporteur on Violence against Women submits report on India based on her country mission in 2013.CEDAW South Asia.)

Himabindu et al (2014) stated that some senior politicians and public figures have gone on record in blaming the victims of gender violence on such attributes as provocative dresses, being out late and behaving in 'suggestive' ways, which showed a lack of sensitivity to the problem. The authors also blamed the cinemas in India for portraying women as weak, subservient and dependent on men. (Himabindu B. L., Arora R. and Prashanth N S . 2014)

Noble laureate, Dr Amartya Sen (2003) analyzed that prenatal sex selection had offset the improved mortality rate in girls. He found that the challenge was independent of various group and socioeconomic factors, but dependent on geography _ analysis showed that most northern and western states were affected, but most of the eastern and southern states were less affected.(Sen , Amartya . 2003)

A report by Policy Circle believed that violence against women represented many human rights violations in India. Unfortunately, these could be traced to the gender power imbalance between women and men. Such violence has been noticed irrespective of vertical social strata and economic position. The report stated that these gender inequalities triggered health issues in women, adversely affecting their ability to fulfil their social role. (Anon.2022.Crimes against women: What causes the rise in gender-based violence?)

A Critical Analysis of the Case Handling by MSHRC

This was a very unfortunate case of gender violence of severe proportions. The MSHRC took up the case *suo moto*, which was a good way of complying with one of its quasi-judicial mandates. The case was completed in under six months, supporting the laudable premise that Commissions can complete cases quickly.

However, in between, the MSHRC could not perform some of its duties as per its statutory mandate. The MSHRC did summon the senior officers of the railways, but no specific strategic plan was reported, nor could the MSHRC spell out any such plan.

MSHRC also did not provide any financial compensation under subsection 18(a) (i) of the PHR Act to the victim or her family, although this was an extreme type of human rights violation, nor did it specify any inquiry for lapses to the government authority under subsection 18(a) (ii).

The MSHRC took up this serious case of sexual violence against a poor, hapless, differently-abled girl in a public transport..... and at the end, recommendations were not spelt out clearly. Surely the aspect of negligence in preventing such a violation could have been highlighted, as envisaged in sub-section 12 (a) (ii) of the PHR Act.

As elucidated in the case details, the victim was placed in a rehabilitation home on the 8th of October, in Andheri, Mumbai. It was expected that, as per provisions of subsection 12 (c) of the PHR Act, a team from the SHRC should have been sent to this institution to check on the victim, as well as assess the living conditions there.

It was also open to MSHRC to intervene in the trial court case, as per provisions of sub-section 12 (b), for compensation. Further, the MSHRC should have reviewed the safeguards under the law and recommended measures for their effective implementation, as envisaged in sub-section 12(d) of the PHR Act.

To prepare a workable strategic plan to safeguard women in public places, the MSHRC was required to act in tune with subsection 12 (e) of the PHR Act, whereby the Commission should **‘review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures.’** Accordingly, the MSHRC should have brought together different stakeholders, e.g. government departments, institutions working on the subject, NGOs working on the issues and women’s organizations, to prepare a strategic plan in both the short-term and the long-term, and include it in the recommendations to be made to the government under subsection 18 (e) of the PHR Act. This mandate under subsection 12 (e) was one of the most critical in the present case, for it could have put in place various measures of a preventive nature for women’s safety in public places.

Similarly the case handling of MSHRC in the above case was in contravention of the international norms for NHRI as elucidated in the Paris Principles. The principles that were not complied with or appeared to have been ignored were:

1. Cases of critical and wide social impact need broader consultation and research, with periodic monitoring.
2. Certain thematic areas of human rights violations require special inquiry, and assessment against targets and standards. Issues like gender violence need special scrutiny and should be entrusted to advisory committees for comprehensive examination.
3. NHRI intervention needs to be done in court cases when the human rights perspective needs to be addressed.
4. Complaint handling NHRIs need to have staff that are trained in human rights and its associated aspects.
5. Wherever there are systemic patterns of human rights, the NHRI should undertake a larger inquiry (called ‘national inquiry’ , which in case of MSHRC, would mean its jurisdictional limits), with participation of public for recording evidence and accepting written documents.(Sidoti, Chris .May 2015 [updated May 2018])

As has been brought out above, the Maharashtra State Human Rights Commission’s complaint handling and recommendations in the above case of gender violence were inadequate.

A summary of the PHR Act - mandated functions that MSHRC ignored were:

1. The aspect of negligence in the prevention of human rights violations was not mentioned by MSHRC, as per provisions of subsection 12 (a) (ii).
2. MSHRC did not inquire into the case with its Investigation Wing as per the provisions of section 17 of the PHR Act.
3. MSHRC did not recommend monetary compensation as admissible under subsection 18(a) (i) of the PHR Act to the victim or her family. Nor did the MSHRC intervene in the trial court for compensation under subsection 12 (b).
4. MSHRC did not recommend any inquiry to the government authority against public servants under subsection 18(a) (ii) of the PHR Act.
5. Considering the wide social impact/ applicability of the human rights violation, MSHRC should have spelt out a strategic plan, preferably by assigning to a team of stakeholders under its supervision, to review the factors that constrain human rights, and recommend a set of mitigation measures, as required by subsection 12 (e) of the PHR Act.

6. It was also expected that the safeguards under the law should have been reviewed and a set of measures for effective implementation recommended to the government, as envisaged in sub-section 12(d) of the PHR Act.

Conclusion

The safety of people in public places is a pivotal obligation of the government, especially for women, children, the differently abled, and senior citizens. The PHR Act mandates that the state establish NHRIs / Human Rights Commissions to protect and promote human rights. The present case was taken up *suo moto* by one of the established Human Rights Commissions, the Maharashtra State Human Rights Commission, which was laudable, but the lack of any specific set of recommendations was a matter of concern. Further, there was no effort by the Commission to call stakeholders in order to put up a set of recommendations for the safety of women in public places. The MSHRC also did not recommend compensation to the victims, nor did it recommend an inquiry against the public servants concerned. This academic research has also pointed out some other omissions by MSHRC.

The findings of this research calls for comprehensive orientation and training for decision makers and officials, so that such statutory organizations like the MSHRC can function efficaciously.

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