



# INDIA

4th AND 5th  
NGO ALTERNATIVE REPORT  
ON CEDAW

NATIONAL ALLIANCE OF WOMEN  
INDIA

JULY 2014





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This report has been coordinated by Dr. Ruth Manorama, President, The National Alliance of Women (NAWO) assisted by Lakshmi Vivek, CEDAW Programme Officer, NAWO and edited by Dr. Kalpana Kannabiran, Director, Council for Social Development, Hyderabad.

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# EXECUTIVE SUMMARY



## National Alliance of Women

### 1. INTRODUCTION

Economic optimism brought about the slogan “India Shining”. India averaged 8% annual GDP growth in the three years before the recent global financial crisis. Armed with a population of more than a billion people, India is now the 11th largest economy in the world. This growth story has done little to address the deep-rooted inequalities in the Indian society. The gulf of social inequalities on the lines of caste, class, tribe and minorities has only widened – challenging the very basis of the poverty reduction processes. The government's claim of inclusive growth has found little justification at the grassroots; the sustained investment in the citizens, primarily in the fields of health, education, employment, housing, energy and transportation, is far from satisfactory. Issues of corruption, bureaucratic red-tape and limited resources (the unfair distribution system notwithstanding) are some of the major stumbling blocks for India. Growing privatization, especially in the field of healthcare, has resulted in gross disparity in the share of basic services for the under-privileged and poor in rural and urban areas, alike. The growing neglect of primary health centers and the inability to establish 'compulsory licensing', particularly for essential and life saving drugs, is disturbing.

Notwithstanding the major advances made by women in India their professional lives, female literacy, labour force participation, life expectancy and maternal mortality remain adverse ranking much lower than even Bangladesh. The sex ratio remains one of the lowest in the world with only 940 women per thousand men; these “missing women” are largely victims of sex-selective abortion, and further compounded by poor investments in health and education for girls.

### 2. TOWARDS EQUALITY & NON DISCRIMINATION

The Indian Constitution guarantees fundamental freedoms to all its citizens, recognizing the Right to Non-discrimination and Equality for women by law. However, these fundamental rights, specifically in their enforcement, have constantly failed to provide even the basic protection to women, especially to Dalit, and marginalized women. The country seems to witness the surge in violence perpetrated against women, being voiced loud and clear in the media, in muted silence. Major protests had broken out across the country over the brutal rape of a 23-year-old medical student in New Delhi, commonly known as the Nirbhaya case. This forced the Indian government to look into these issues of deep rooted misogyny and come out with tangible solutions especially changes within the Criminal Law system and address it with a gender lens; these protests led to Amendments being made in the Criminal Laws of the Country, that were inadequate in effect – from the stand-point of law as well as bringing the guilty to book, with far greater number of stories making headlines with regard to cruelty of even greater barbarism.

The rape of a twenty year old tribal girl in full public view by thirteen villagers on the orders of the village

headman in Birbhum District of West Bengal just because she chose her life partner from a different community or the very recent aggravated sexual assault and brutal murder of two girls on May 28th 2014 in Badaun, Uttar Pradesh only reiterates that despite the Amendments that were brought about in the criminal Laws in 2013 which broadened the definition of sexual assault and recognized the gradation in seriousness in crimes of sexual assault, the resistance to the new laws and the continued subjugation of women through class, caste dominance is only getting stronger by the day though many of these cases may not always be caste based. With families of the survivors crippled and diminished by the loss and the callous nature of the government authorities underlines the fact that impunity remains the order of the day.

Article 1 of CEDAW sets out succinctly the reach of the principle of non-discrimination based on sex – encompassing every sphere of social life in both the public and private domains. Sexual assault, targeted violence against vulnerable groups, the negation of the rights of sexual minorities, the persistence of degrading forms of employment and conflict and displacement in tribal homelands are persistent issues that continue to truncate fundamental freedoms and human rights for women across the board despite significant legislative measures in the recent past.

While the Constitution of India prohibits discrimination based on caste, religion, sex, race and place of birth, and India has laws protecting dalits, adivasis (scheduled tribes), and women from discrimination, violence, atrocity and targeted assault, there is a vast gap between laws and their effective application to deliver protection to vulnerable groups. Two recent legislative interventions are the Criminal Law Amendment Act 2013 redefining sexual assault, which has retained the exception to marital rape even while broadening the definition of sexual assault itself; the second is the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance 2014, which broadens the definition of atrocity. However, religious minorities continue to remain extremely vulnerable to collective violence which has very specific gender implications as was witnessed in Gujarat in 2002, in Kandhamal, Odisha in 2008 and yet again in Muzaffarnagar, Uttar Pradesh in 2013.

The situation of sexual minorities has witnessed a rollback with the Supreme Court in 2013, overturning the historic Naz Foundation judgment<sup>1</sup> of the Delhi High Court decriminalizing consensual non-heterosexual relations. With the criminal provision, Section 377 Indian Penal Code back in place again, all sexual minorities are vulnerable to arbitrary state action, repression and vigilante violence.

New forms of violence continue to emerge, adding to the already full cup of woes for women, by means of sex discrimination tests (though banned by law), dowry related violence, poor treatment to women in prisons, atrocities during communal riots, violence in conflict areas of the Northeastern states and Jammu and Kashmir by armed forces personnel, to name a few. There has also been a sharp rise in violence against women due to development-induced risks such as displacement, economic vulnerability and migration. India is witnessing an increasing trend of migration, trafficking of children for labour and child marriage. Trafficking is often in the form of an organized crime that violates basic human rights; human trafficking, especially in women and children, has become a matter of great concern. Muslim, disabled and marginalized women are among the poorest, educationally backward, economically and politically vulnerable sections of Indian society.

The issue of lack of representation in the judiciary at all levels continues to be a hurdle to the realization of non-discrimination in public life. It is no argument that “the selection of the judges is done through a well-established system wherein there is no discrimination based on sex, religion etc.”<sup>2</sup> The absence of discrimination must be demonstrated through adequate representation, and the judiciary in India falls short of the standard set by CEDAW.

Although a High Level Committee has been set up by the Government of India in 2012 to provide a comprehensive assessment of the status of women in India, there are as yet no indications of the findings of this committee.



It has always been difficult for women to negotiate with dignity even while their labour has been indispensable to economies. Comprehensive protections for domestic workers are still not in place, although they are included within the purview of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, and the Unorganised Workers' Social Security Act, 2008. The devaluation of housework and care work continue to pose major hurdles in women's participation in the labour force on terms that are equitable, fair and just

The state has to ensure substantive equality for women to ensure effective participation and to build political leadership. However even initiatives and mechanisms designed to increase women's public and political participation have not yet been able to achieve parity between women and men's rates of participation.

Dalit women face impediments to their enjoyment of even basic entitlement and rights. Despite constitutional protections against discrimination based on sex and caste, and constitutional ban on untouchability, as well as special legislations like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Dalit women continue to face discrimination and the derogation of fundamental freedoms arising from the absence of due diligence by the state and the guarantee of impunity to state and non-state perpetrators of caste atrocities against women.

Social transformation and engineering for the betterment of society is only possible in a country where normative standards of equality before law, human dignity, and justice are held at high levels. In India, such norms do not exist. And, law enforcement agencies are ill-equipped and inept in discharging duties. Therefore, punitive legislations intended to force social reforms have failed. Judicial interpretation plays an extremely important role in addressing discrimination and violence against girls and women. Since judgments of the High Court and the Supreme Court set precedents which are followed by courts all over India, some positive judgements have advanced the law while negative judgements, particularly of the Supreme Court, have reinforced discrimination against women.

The situation of persons with disabilities, especially women with disabilities also remains vulnerable in the absence of a comprehensive legislation that states their rights in compliance with the UN Convention on the Rights of Persons with Disabilities. The absence of any discussion on women with disabilities within the framework of CEDAW at the national level disables any far-reaching articulation of women's rights and fundamental freedoms generally. The complexity inherent in the realization of rights for women can only be fully grasped if we place at the centre the question of the rights of women with disabilities to non-discrimination: to a world free from sexual assault and sexual control; to access to decision making and control over resources – at the family, community and national levels; to opportunities to employment in full acknowledgement of their capabilities; to the realization of the right to education on par with other children; and most importantly to a cultural and social environment that promotes an inclusive, diverse space devoid of stigmatizing stereotypes.

Women are less than equal under many personal laws in the country relating to inheritance and land rights. The sub group<sup>3</sup> on economic empowerment of women with focus on land rights, property rights and inheritance laws had pointed out that in India women own just 9.3% of the land.

A number of surveys and findings by governmental and non-governmental agencies reveal that Muslim women are placed at the bottom of the socio-economic pyramid and are educationally the most backward. This developmental deficit is contributed by widespread deprivation and marginalisation of Muslims in socio-economic and political arenas; the experience of sexual and mob violence during communal violence further alienates them, reflected in the increase in ghettoization of Muslim families in areas with extremely poor water sanitation, electricity, roads, health centers, schools and poor public transportation. Prostitution and trafficking among Muslim women is on the rise due to poverty and issues of unilateral divorce, abandonment, unemployment and migration of men for employment. The major issues of Muslim women have to be dealt with in spirit of equality and justice, within the framework of Indian Constitution and in consonance with requirements of Articles 1-4 of CEDAW.



Despite constitutional guarantees, earmarked budgets as well as policy initiatives for over six decades, tribal peoples in the constitutional era in India have faced chronic and escalating immiserisation and have been pushed to the margins of vulnerability. The position of women from tribal communities is tied to the position of tribal communities in India. India needs a national tribal policy – that will apply to the scheduled tribes and the de-notified tribes- that envisions the universalization of basic minimum needs among all tribal peoples in India, which include but are not restricted to elementary education, community health care, sustainable livelihood support, unhindered access to land and forest based livelihoods, including full access to the commons, public distribution system, food security, drinking water and sanitation, elimination of indebtedness and related effective infrastructure.

### **3. TRAFFICKING AND PROSTITUTION**

#### **A. HUMAN TRAFFICKING**

India is a source, destination and transit for both in-country and cross border trafficking. It also witnesses increase in forced/distress migration and trafficking of women and children for labour and child marriage, adoption and to work as domestic labour throughout the country. Though numerous laws have been enacted by the Government of India to curb trafficking, bonded labour etc, it does not have the adequate infrastructure to combat the issue of trafficking, when compared to the magnitude of the problem. The problem also lies in the failure of the State in complying with the minimum international standards for elimination of trafficking.

#### **B. RIGHTS OF PERSONS IN SEX WORK**

These women are extremely stigmatized and face multiple discriminations because of being in sex work. In addition to the extreme social marginalization, they are absent from the ambit of government welfare measures, unable to access justice and exposed to high levels of violence from State and non – State actors. General Recommendation 19 recognizes that people in sex work are especially vulnerable to violence because of their status, which may be unlawful and tends to marginalize them, specifically underlining the fact that people in sex work need equal protection of the laws against rape and other forms of violence. The Supreme Court of India in a recent judgment gave directives for the protection of women in sex work (conditions conducive for sex workers to live with dignity in accordance with the provisions of Article 21 of the Constitution of India). GR 19 also calls on governments to report the measures taken to protect women in sex work. However, the State continues to be silent on the status of people in sex work across India. Further, their status continues to be conflated with trafficked women and children; 'invisibilising' them, denying agency and access to equal protection of the law. They experience disproportionate levels of violence including police abuse, sexual assault, rape, harassment, extortion, abuse from clients and agents, intimate partners, local residents, and public authorities. Violence is an important factor affecting the vulnerability of sex workers to HIV, sexually transmitted infections.

The provisions of the Immoral Traffic Prevention Act, (ITPA); are used to detain/ arrest women for soliciting, 'rescue' and rehabilitate consenting adult women in sex work. Violent actions of street clean-up operations, police-led brothel closures or so-called rescue operations are carried out en masse by law enforcers. Police raids conducted under the ITPA are an exercise of abuse and violence against consenting sex workers rather than arresting individuals involved in trafficking. 'Rescue' of sex workers involves beating, dragging by the hair, abuse, looting by the law enforcement personnel conducting the raid. The principles of due diligence in preventing and investigating violence against women in sex work, as well as in prosecuting perpetrators and compensating survivors of violence is never applied. Sex workers find it difficult to access social schemes and welfare measures once their identities are revealed.

### **4. POLITICAL AND PUBLIC LIFE**

Women's limited public and political participation restricts progress towards non-discrimination and leads to further marginalization; it is of great concern that women's participation in governing bodies at

the local, state, and national levels remains low. Even initiatives and mechanisms designed to increase women's public and political participation have not yet been able to achieve closer parity between women and men's rates of participation.

The Women's Reservation Bill, which would reserve 33 percent of all seats in the national-level Lok Sabha and in state legislative assemblies for women, remains stuck in Parliament and has not been passed. The fourteen-year journey of the Women's Reservation Bill, beginning in 1996, is a dramatic one as it has hit roadblocks in each of its outings in Parliament, clearing the first legislative hurdle on 9th March, 2010 when it was passed in the Rajya Sabha, with the Lower House Lok Sabha yet to vote on the bill. Violence, corruption, and stereotypes continue to deter women from political participation, as do lack of access to higher education, adequate support and training in governance, and poor health conditions and sanitation facilities across the country. Barriers to women's participation in political and public life by the Two Child Norm tends to undermine the women's quota in the Panchayati Raj Institutions (PRIs). The norm does not allow women (and men) with more than two children to stand for elections. The State's where the norm is prevalent is Rajasthan, Andhra Pradesh, Odisha, Maharashtra and Gujarat.

### **5. EDUCATION**

Elementary education has undergone change in the past decade with the Sarva Siksha Abhiyan being implemented and the passing of the Right to Education Act in 2009. Elementary education does enjoy the status of being given priority in the backdrop of the Millennium Development Goals (MDGs) inching closer to their deadline of 2015. On the other hand there are several critical areas of concern.

The inadequate coverage of children in the 0-6 year age group and the number who receive pre-school education under ICDS services, a flagship scheme of government of India is a cause of concern. Many government run schools do not qualify the basic parameters under the Right to Education Act like safe drinking water and toilets.

National gender indices show that enrolments in schools of rural, urban poor, schedule tribes and Muslims is very low. The reasons for such low enrolment are accessibility, mobility, lack of provisions to introduce vocational training. There is a need to strengthen the component of non formal education.

Girls with disability and trans gender girls are either not entering the school system or drop out early due to hostile and insensitive environment. It is important to recognize here that due to gender biases, majority of girls with disability remain invisible even within families and society who are not seen worth anything and are hidden as shame by the family. Likewise trans gender girls are either dismissed as invalid or forced to follow the norm in the form of early and forced marriage. The school system ironically has not been able to reach out to majority of girls with disability and they fall of the radar of elementary education and subsequently to all forms of formal and structural learning spaces. The government need to take a serious step in this direction to strengthen and expand vocational/technical training opportunities for young population especially for girls with focus on girls with special needs.

Government has always termed education a "high priority", however the budgetary allocations raise questions about the gap in intended commitment and actual commitment.

### **6. EMPLOYMENT**

During the last decade the country has witnessed severe economic discrimination of women in the employment sector. Due to lack of access to resources and equal opportunities women are being pushed towards poverty, malnutrition and deprivation. The faces of discrimination are lack of employment, lowered wages, worsening conditions of work, continuous casualisation of women's work, exploitation of migrant women workers, lack of access to credit and lack of social security. According to statistics, from 2004 to 2009 employment of female workers has fallen by 7% in the urban areas and by 3% in rural areas unlike male workers. With globalization, female worker trends of unemployment and displacement

are being reinforced. New categories have been formed namely the 'working poor category' where the majority of them are women. Employment and poverty go hand in hand for women. India must take steps in ratifying the ILO Convention 189 of Decent Employment for Domestic Workers and enact comprehensive legislation

## 7. HEALTH

The steady decline in the country's maternal mortality ratio (MMR) over the last few years can be attributed to the manner the country has been addressing maternal health. The approach is not only fragmented but also merely focusing on promoting institutional deliveries. Several issues that affect maternal health - such as access to safe abortion services, access to choice of contraception, dignified childbirth, and nutrition remain blind spots in implementing policy and programmes. The health sector has also not paid any attention to the issue of early marriage which results in early pregnancy and related complications. 18.2% women are married by the age of 15 and maternal mortality is 230 maternal deaths per 100,000 births.

The child sex ratio according to the 2011 Census data is 914 girls for 1000 boys. The implementation of the PC&PNDT Act, the Sectoral Innovation Council (constituted by the Ministry of Women and Child Development) in its report pointed to the lack of regulation on the sale and purchase of the ultrasound machines, which are widespread - in urban, rural including remote areas. Sex selection and son preference continues to be widely prevalent in India and is a manifestation of social inequality and discrimination that has persisted for decades and must be examined in a larger socio-political economic context.

Adolescent health programmes and strategies continues to be perceived within the framework of maternal health and fertility control and their participation planning, designing and reviewing of such initiatives is completely absent. Their issues of sexual violence, mental disorders and anemia have gone unaddressed.

The ART industry with its potential for sex selection is unregulated in India the various attempts to regulate the ART industry till now have been ineffectual. The ICMR Guidelines 2005 are non-enforceable and virtually not adopted in practice.

The Draft ART (Regulation) Bill introduced in 2008 was revised in 2010 and has as yet not been tabled in the parliament resulting in a completely unregulated industry. However, the Draft ART (Regulation) Bill-2010 is fraught with several problematic clauses that reflect The Bill also turns a blind eye to the role of actors such as agents, medical tourism agencies and surrogacy hostels, a growing phenomenon in this transnational industry; with inadequate security against malpractice. Deaths due to unethical clinical trials conducted on vulnerable and marginalized populations of the country continue unabated due to lack of norms or guidelines.

Women with disabilities are often left out of the States action plans while addressing or removing health barriers. Steps must initiated towards developing an integrated and comprehensive action plan in consultation with relevant experts working towards understanding and removing such barriers. Participation of women in policy planning and monitoring processes to address their health. Health care needs and grievance redressal mechanisms particularly related to abuse must be put in place in health systems.

## 8. EQUALITY BEFORE LAW & MARRIAGE AND FAMILY LIFE

Marriage and Family life remains an arena that is extremely violative and discriminatory despite the Constitutional and legislative provisions. Due to inherent inequality within institutions of marriage and family, the lack of autonomy to make decisions within the relationship, Women continue to face domestic violence, marital rape, forced marriages, acid attacks and denial of reproductive and sexual rights.

It is imperative that the State recognizes the autonomy and informed choices that women make and uphold entering or leaving a marriage as a core fundamental right and support in exercise of this choice.

## CHILD MARRIAGE

Recently, the UN Human Rights Council mooted a proposal to include child and forced marriage in the post-2015 International Development agenda; the proposal also acknowledged the multi-faceted impact of early marriage on the "economic, legal, health and social status of women and girls" as well as "the development of the community as a whole". The refusal by India to sign the resolution, which has been supported by over 107 countries, statistically having a share of 40% of the total child marriages in the world, raises many questions regarding India's true intent with regard to the impact of child marriages on the girl child. Among the various states where child marriages are still prevalent, Bihar, Rajasthan, Jharkhand, Uttar Pradesh, West Bengal, Madhya Pradesh, Andhra Pradesh and Karnataka register significantly higher numbers. According to the provisions of the Prohibition of Child Marriages Act, 2006, the State governments are required to appoint Child Marriage Prohibition Officers and to frame rules. In the year 2012, 169 cases were reported under the Prohibition of Child Marriages Act, 2006, and only 9 were convicted; 474 cases were pending trial till the end of the year 2012. Child marriage endangers the survival and well-being of women and girls. It does not merely constitute a single instance of violation but a continuum of violence throughout the life of the girl child.

There are 766 cases of child marriages registered with the police during 2005–2012 violating the rights of children to education, health, life, freedom from violence and abuse. The Prevention of Child Marriages Act 2006 to prohibit child marriage is largely ineffective because it neither declares such marriage illegal nor is it backed by concerned and focused action.

## 9. SEXUAL VIOLENCE UNDER GENDER RECOMMENDATION 19

### A. VIOLENCE AGAINST WOMEN:

Despite the enactment of three laws between 2012 and 2013: the Protection of Children from Sexual Offences Act 2012 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, and the Criminal Law Amendment Act 2013. Sex-selective abortion, infanticide, denial of adequate nutrition, lack of access to education and health care to the girl child, child marriage, sexual harassment in public places and the workplace, sexual abuse, acid attacks, rape, domestic violence, dowry related murders, trafficking, violence due to sexual orientation, widowhood, old age, disability, and HIV infection, custodial violence (in jails, police stations, shelter homes, hospitals, etc.), 'honour killings' and sexual assault during communal and caste conflicts, are some of the varied kinds of violence that women in India face.

Crimes against women have increased by 48% in 2012. Spousal violence has increased by 70% and conviction rates for rape and domestic violence continue to be minuscule. The ambit of violence against women seems to find new frontiers and victims; domestic violence against intimate partners, elderly women, based non-conforming sexualities, acid attacks, cyber crimes, witch hunting, related to eviction are the latest to be added to the lexicon. Also, adding twists to the complexity are cases like the typical 1,500 plus 'Half Widows' of Jammu and Kashmir, (these are women whose husbands have disappeared but have not been declared deceased) - these women live a life of exploitation, economic and social exclusion with no legal protection and are unable to avail government schemes and compensation as they have no means to prove the death of their husbands and that links with militancy are absent.

The number of women deserted by NRI husbands, also called 'Holiday Wives', is around 30,000 according to the National Commission for Women, almost half of them from hailing from the state of Punjab; the conviction rates remain abysmally low.

The outrage against sexual violence has eclipsed concerns of urban homeless women and Dalit women who are at the other end of the spectrum. The debates surrounding aggravated rape were almost entirely confined to death penalty, harsh sentences and speedy trials – with no attention to prevention, discussion



on aggressive masculinity, misogyny, or normalised forms of sexual harassment is part of the continuum leading to rape. The discourse on State accountability for prevention, sexuality education, safer streets and public places – across regions, across classes, in rural as well as urban contexts, is missing the culture of stigma and victim blaming has entrenched de facto impunity for all forms of sexual offences against women.

There has been an increase in the occurrence of sexual violence and only a fraction of the number of cases are even registered as most cases of rape go unreported on account of stigma, fear of backlash, and amongst others, a hostile legal system. Legal vacuum itself is a primary barrier to redressal. Retribution and backlash towards exercise of sexual choice and autonomy has assumed brutal proportions when such choices transgress boundaries of caste and community. The use of the law enforcement machinery, and environment of moral policing and vigilantism against young persons in consensual (same and opposite sex) intimate relationships is not uncommon either.

## **B. SEXUAL HARASSMENT AT WORKPLACE**

Even as the Supreme Court laid down guidelines in the Vishakha case in 1996, for protection against sexual harassment at the workplace to plug a serious legislative vacuum,<sup>4</sup> the law was not enacted until 2013. The Supreme Court's guidelines recommending that workplaces constitute committees to address complaints was however not applicable to the informal sector where a vast majority of women are employed. Out of the total estimated female workforce of 148 million in India, 142 million, or nearly 96% are in the unorganized sector.<sup>5</sup> Additionally, there are around 4.2 million women working as domestic workers in India.<sup>6</sup> There was no provision to ensure that the organized sector complied with the guidelines, and many sectors including the judiciary, did not establish complaints mechanisms stipulated by the guidelines.

The state must put in place rigorous quantitative and qualitative systems to monitor and evaluate the implementation of laws, to build an evidence base on its impact and effectiveness. Resource allocation is necessary for establishing new mechanisms such as special courts, complaints committee, and support services available under the new laws in a time bound manner state's responsibility to prevent is as critical and important as its responsibility to protect, redress, investigate and compensate victims of sexual violence. This responsibility cannot be delegated to civil society organisations and NGOs or undertaken entirely with support of external donors and UN agencies.

## **10. WOMEN WITH DISABILITIES IN INDIA**

Women with disabilities face multiple forms of discrimination with the majority living in abject poverty. Isolation and confinement based on culture, tradition attitude and prejudice play havoc in their lives. They continue to remain far from achieving either de-facto or de-jure equality. Development and community programmes rarely include disabled women. 98% do not get the opportunity for education and infrastructural facilities are almost absent. The Persons with Disabilities Act, 1995, does not include a single right on legal capacity. The National Trust Act limits equality by providing guardianship arrangements for those with autism, mental retardation, cerebral palsy and multiple disabilities. The State has not recognized the specificity of the particular disability which in turn creates different needs and generates subtle differences.

The voices of the women with intellectual disabilities are often disregarded as not credible. The 'unsound mind' clause in the Constitution deprives men and women with certain disabilities such as psycho-social, intellectual and autism from voting rights. Such deprivation only breaks down the very tenets of the rights enshrined within the Indian constitution. Rights of women with psycho-social and intellectual (mental) disabilities have been completely ignored by the State.

The Supreme Court directions and interventions and the National Human Rights Commission's (NHRC) obligation to monitor mental health institutions and hospitals in the public and private sectors, sexual abuse of women, remains rampant. Forced sterilization, hysterectomies and abortion of women with intellectual

disabilities exists to enable menstrual management, and sexual exploitation.<sup>7</sup> Access to even basic healthcare puts Women with disabilities at an even greater loss with the government pulling out of the health sector.

There are several hurdles to girls with disabilities accessing and remaining in education. The dynamics within the family is the first barrier, accessible transport and safe commuting options and basic infrastructural facilities, such as accessible toilets are major causes for disabled girls from dropping out of school. Disabled women are systematically excluded from the mainstream workforce and are deceptively projected as incapable of productive work and a burden on the society.

### **11. MUSLIM WOMEN**

The CEDAW Committee through its Concluding Comments of 2007 and 2010 has taken into account both ends of the continuum and asked State Parties to “set benchmarks and to include adequate, appropriate and comparative statistical data and analysis disaggregated by sex caste, minority status and ethnicity and had asked India in its “next” report to provide a full picture of the implementations of all provisions of the convention and 'trends over time' in the practical realization of equality between women and men, with special emphasis on scheduled caste, schedule tribe and minority women in all sectors.<sup>8</sup> The committee recommended that the State Party provide, in its next periodic report comparable gender disaggregated data by sex, caste, minority states and ethnicity, on the enrolment and retention rates of girls and women at all levels of education and trends over time.<sup>9</sup> The Committee requested the State to provide action taken on the recommendations of the Sachar Committee Report.

The GAPS in the implementation of the Sachar committee findings that highlighted the multiple levels of Development Deficit faced by Muslim Minorities and aggravated for women, has not been matched in the responses that converted into the minimalist 15 point programme.

The 15 point programme has no single program focussing on Muslim girls and women to cover, Empowerment, Health, Political Participation or access to any other Equal Opportunity nor does it rid Muslim women of obstacles under Article 1, 2, 3, and 16 of CEDAW.

The CEDAW committee has asked to provide information on the status of the Communal Violence (Prevention, Control and Rehabilitation of victims) Bill 2005. This Bill has not been tabled the Parliament of India as yet.

Abject poverty has pushed Muslim women into the margins working in factories in vulnerable circumstances, with fear of law enforcement agency looming large on them.

Government Resolution requires Primary sub health Centre for a population of 30,000. Which are not available to Muslim population of over 1 lakh. Many areas infrastructure of MCH and Reproductive Health care are sparse or unavailable making pregnant vulnerable to home deliveries or on the way to far off hospitals. Poverty among Muslim women is making them resort to surrogacy and submitting to clinical tests to support family income. Anaemia and poor nutrition has increased.

In the state of Assam & North East in the framework of CEDAW educational institutions are used as camps by army and Para military forces for counter insurgency operations and hence creating obstacle in restoring normalcy and resumption of education Muslim women.

Affirmative action to advance socio-economic, Educational and political participation of Muslim women to attain at par equality with other women from diverse groups in the country is the way forward.

### **12. CHHATTISGARH**

The tribal women in the two districts of Dantewada and Bijapur in Chhattisgarh face Social, Economic, Cultural and Human Rights violations of the tribal people-women, at the hands of the state under the pretext of dealing with the Maoists and violation of the Constitution of India by the State and its

machinery in the counter- insurgency operations are epitomized in the case of tribal teacher Ms. Soni Sori – hounded by the State for taking a stand for the rights of women and the tribals.

Forced alienation from their land, their villages has left around 3,50,000 people from about 647 villages in South Bastar Districts to live as refugees in the so-called relief camps (more popularly known as SalwaJudum Camps) since 2005. There were 21 camps in 5 Blocks. Almost 2 lakhs of the village folks have fled to the neighbouring states of Andhra Pradesh, Orissa and Maharashtra. The total absence of food and security in the camps has resulted in disruption of community life, loss of livelihood, food insecurity and malnutrition with Dantewada district in Chhattisgarh having the largest number of malnourished children.

Rich in mineral wealth the Chhattisgarh Government has signed some 121 **Memorandum of Understandings** (MoUs) worth Rs. 1, 92,126 Crores for establishing new industries and expansion of existing units. (Chhattisgarh Government claims that it has later scrapped 16 of these projects). According to official estimate these would require 52,000 acres for industries alone. As per unofficial estimates, it would mean further displacement of some, 4, 16,000 people from their land and livelihood resources.

There are numerous incidences of violence against tribal women and girls in these conflict zones. CAVOW Report has documented many unreported deaths in this region as well. The threat of HIV/AIDS spreading in this conflict zone to epidemic proportions among the adivasi population of South Chhattisgarh (Dantewada, Bijapur, Bastar, Kanker) is a great reason for concern. In the name of dealing with the Maoist insurgency the state has usurped the right to education of the children by occupying the schools, ashrams, anganwadis and hostels by the security forces.

The Chhattisgarh State enacted an anti-constitutional and anti-democratic law in the name of Security called The Chhattisgarh Special Public Security Act 2005 (CSPSA). Under this law, several citizens have been illegally detained, which included tribals, farmers, women, social workers. In addition, the Unlawful Activities Prevention Act (UAPA), and the Sedition Law have been widely used to curb the democratic activities and muzzle the voices of dissent

Various Fact-Finding Teams & reports by journalists have expressed concern at the gagging of the press due to which the above brutalities of the State forces do not even impact on the consciousness of the citizens of Chhattisgarh or the country. State forces have been reported to extra-judicially execute citizens suspected of being Maoists and to label such executions as “encounter killings” or “encounters”, thereby implying that the deaths had occurred during armed encounters with the alleged Maoists. Salwa-Judum forces have been accused of extrajudicial killings during raids and evacuation of villages while looking for Maoist supporters and also during reprisal attacks on villagers who have been forcibly evacuated by them. The Salwa-Judum and the Maoists both have been reportedly recruiting Adivasi Children, both boys and girls, for military training. They are taken to the training camps where they are taught how to use weapons and deal with explosives. Trained children are then used as combatants and, very often than not, used as shields during operations. It has now been confirmed that the Government has been enrolling young boys and girls as Special Police Officers (SPOs) and using them in hostilities. This has been widely reported in various reports.<sup>10</sup>

### 13. KANDHAMAL VIOLENCE

The violence unleashed against the Christian minority community in the district of kandhamal was executed with substantial planning and preparation. A precursor to this violence was an attack, in December 2007, in the same district.<sup>11</sup> The National Commission for Minorities in its observation maintained that the violence was “undoubtedly communal in nature and people were attacked on the basis of their religion.”<sup>12</sup> The violence resulted in the looting and destruction of moveable and immovable property, destruction of personal and land-related documents. The pastors, priests and nuns faced targeted attacks as they were seen as the symbols of Christianity.



Women and girls faced a range of sexual and gender-based violence. These attacks were not isolated instances, but were widespread and systematic, intended at subjugating, shaming and instilling fear in the Christian community. The fear of sexual attacks was all-pervasive. In the relief camps, no relief materials were given to meet the specific needs of adolescent girls, pregnant women, young women with infants and middle-aged women. Adolescent girls' schooling was disrupted; many dropped out of schools or were forced into early marriages, due to fear of personal safety. Other girls faced a severe restriction of their mobility. Elderly women suffered greatly during the violence, as many were helplessly abandoned in their villages, and separated from their families subsequently.

The state failed in its responsibility at preventing the violence, protecting human life and property, upholding the dignity of human beings in relief camps and ensuring repatriation, resettlement and facilitate social re-integration. It also failed to set the criminal justice system in motion and conduct unbiased investigations, prosecute the accused and provide witness protection (before, during and after the trial) to victim-survivors and their family members who have been the key witnesses in the criminal trials. Hence justice and accountability remains elusive and remote.

India needs to enact a law on witness protection, with a substantial integration of gender concerns. The district and state administration failed to effectively address systematic sexual and gender-based violence that deliberately targets Christian women and girls, and women assisting the survivor community. The Indian government formulated the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill 2011, and modified it several times. However it has not been passed in the Houses of Legislature as yet NREGA has brought little reprieve for most of the women affected by the Kandhamal violence. Many women survivors applied for job cards but the same have not been issued to them. The issuance of a job card is a pre-requisite for allotment of jobs.

The absence of any standard/law/policy for respecting the rights of IDPs within the country, in conformity with the UN Guiding Principles, initiative towards repatriation, resettlement or social re-integration, as mandated by the Guiding Principles is negligible. It is important that the State incorporate the UN Guiding Principles on Internal Displacement into the national policy framework of India, which addresses aspects including the rights and specific needs of women IDPs, fulfill the reparative rights of women and girls affected by the violence, with due diligence, in order to enable them to rebuild their lives with dignity.

#### **14. DALIT WOMEN**

Dalit women continue to face discrimination at the hands of state and non-state perpetrators of caste atrocities against women. Continuing poor development indicators and disproportionate representation in decision making is a cause of concern. It is important that knowledge products are developed so that dalit women are able to engage with Indian policy and decision makers on addressing intersectional discrimination and violence. The marginalization of Dalit women is specifically compounded by the absence of quality education poor school infrastructure and restricted choice to continue education. Supportive infrastructure such as lack of connecting roads, long distances between home and school, girls being engaged in domestic work child labour, early marriage and child birth are some major areas of concern. In India, access to formal education has been a critical factor in the economic empowerment of marginalised communities.

Dalit women are vulnerable to specific forms of violence. These forms include stripping and parading naked, violence associated with allegations of practicing witchcraft, sexual exploitation, trafficking and prostitution, including ritualized prostitution under Devadasi/Jogini practices, and domestic violence within inter-caste marriages. Statistics show that over 2,500 women have been killed on the suspicion of practicing witchcraft in the past 15 years.

The recent manifestation of violence experienced by dalit women is while asserting their political participation. Women are coerced into acting as proxy representatives. Discrimination, sexual harassment and physical violence against SC women panchayat leaders trying to effectively discharge their role was widespread moreover, lower government officials often supported dominant caste harassment of these women representatives, therefore treating the women with disdain, neglect and apathy.

Dalit women's access to justice is often marred by fear of the perpetrators or the dishonor and stigma attaching to victim-survivors of sexual violence and ineffective policing in setting the wheel of criminal justice procedure in motion. Low levels of accountability and lack of legal recognition of the nature of violence committed against women based on the concepts of caste discrimination, lack of speedy trial and no knowledge of the laws pose a significant constraint on the victim's access to justice.

The Scheduled Caste Sub Plan related schemes should focus on dalit women in such a way that the schemes are designed to improve and encourage women leadership, ownership of land resources and capital assets.

## **15. RURAL WOMEN**

The neo-liberal era has posed new challenges to women and the fall out of a market driven economic paradigm was the commodification of women. Rural women account for a fair proportion of the agricultural labour force, especially in subsistence farming, and unpaid care jobs. Their rights and priorities remain insufficiently addressed as they continue to face severe poverty and have little access to key productive resources such as land, labour, water, financial services and infrastructure. Women's access to and control over land is a right that remains opposed traditionally. Malnutrition and food insecurity affect livelihoods, made more acute by the lack of access to formal and non-formal education. Rural women's economic empowerment and inclusion in local governance alone holds the key to holistic development.

The tribal communities have been deprived of their land, water, forests and many have been condemned to a dehumanized existence. Displacement due to development in the tribal areas has left the tribal's to face forced alienation from their land, their villages and disruption of community life, loss of livelihood, leading to food insecurity and malnutrition. Sexual exploitation of tribal children in some of the residential schools is rampant. The social, economic, cultural and human rights violations of the tribal people-women, at the hands of the state under the pretext of dealing with the maoists, has led to disruption of community life, loss of livelihood, leading to food insecurity and malnutrition. There is a growing tendency on the part of the State machinery to label many of the helpless women now in police custody and to charge them with murder, attempt to murder, etc., without any real basis. The court and jail records of several so-called "naxalite" women prisoners are indicative of brutalities of sexual violence. The case of Soni Sori is one such example.

## **16. EVALUATING THE NATIONAL COMMISSION FOR WOMEN**

The pressure from the women's movement in India led to the passing of the National Commission for Women Act, 1990 (NCW Act). Absence of reference to international standards and conventions in the NCW Act, the body of the Commission's work is not infused with the developments and debates in international human rights or assessment of compliance of Indian laws with international conventions, such as the CEDAW.

The Commission is mandated to examine, report, and investigate on all matters relating to constitutional and legislative safeguards for women,<sup>13</sup> to review existing laws affecting women, recommend amendments to address the lacunae in laws,<sup>14</sup> function as a body that monitors the progress and protection of women and advise the Government on measures to be adopted for protection or improvement of the condition of women.<sup>15</sup>

There are no guidelines laid down that the NCW can take upon completion of inquiry and in the absence

of a clear legal, definitional, and procedural framework it is unclear how these complaints were resolved. NCW spends a significant amount of time and energy on mediating marital conflicts and pushing for reconciliation even in cases of domestic violence or dowry harassment<sup>16</sup> and not on their role as a body that reviews laws and recommends reforms. The presence of officers of the State as member Secretaries within the commission and who participate in the processes of the Commission as Members is incongruous to the very notion of an independent human rights institution. The government even has the exclusive power to determine the composition of the commission thus making the very foundation of the Commission unstable.

The Commission lacks operational autonomy and is thus unable to impartially hold both the State and the non-state actors accountable in order to protect the rights of Indian women. It is important to safeguard the political autonomy of this nodal women's rights institution by replacing the current nomination system with a transparent, democratic and non-partisan selection process for members and Chairperson of the Commission. A comprehensive review of the performance of the Commission in terms of its role in addressing systemic gender-related social, economic and legal issues is long overdue.

### **17. GENERAL RECOMMENDATION 30: WOMEN IN CONFLICT PREVENTION, CONFLICT AND POST CONFLICT SITUATION**

The protracted nature of conflict in the country and the enormous costs to human lives and social harmony by the resultant violence continues to be a great cause for concern. The State has to honor its obligation to gender equality and women's human rights by conforming and addressing in letter and spirit the concerns highlighted in CEDAW General Recommendation 30 pertaining to women in conflict prevention, conflict and post conflict in the context of India.

The North Eastern States of India, Kashmir and the central Indian regions have been in the grip of protracted and violent conflicts. These have spanned over several decades, with over six decades in some of the North East states, over two decades in Kashmir and over a decade in central India. The Kashmir valley has very high levels of militarization and armed forces have a presence in all civilian areas particularly villages. In this highly militarized zone the life and liberty of people is jeopardized. The systematic denial of remedies and absence of accountability for these violations has given impunity a free rein in the region. India is second only to Iraq in the numbers of deaths<sup>17</sup> directly related to conflicts and is one of the thirty one countries in which extrajudicial executions take place most systematically.

Parts of conflict affected North East India and Chhattisgarh have rich deposits of mineral resources and huge bio diversity of other natural resources. Women's human rights defenders and civil society groups have expressed concern of large scale ravaging of these natural resources by corporations, private individuals and the security forces which could be the "trigger" for the next bout of conflict in those regions. The proliferation of small arms and the policy of allowing sections of surrendered armed groups in these regions to retain their arms for self protection is a cause of grave concern as pointed out by them. There is a need for a comprehensive analysis and action for conflict prevention and conflict transformation in the affected areas.

Special attention should to be paid to the needs of indigenous, rural, poor, differently abled, trafficked, religious, sexual minority women and young girls in conflict situations. Despite heightened international attention to sexual violence and the increased status of India as a responsible global player, within the country, Army atrocities as well as increased violations by non state actors continue against people taking the form of sexual assault in case of women in the different conflict areas. The CEDAW committee's stand was reinforced nationally by the Justice J. S. Verma Committee, set up in 2013 to suggest amendments to laws relating to crimes against women. It recommended review of the Armed Forces (Special Powers) Act (AFSPA) in the context of extending legal protection to women in conflict areas. Despite the recommendations of the Committee, as well as this national committee set up by the

government itself the Armed Forces Special Powers Act 1958 continues keeping an atmosphere of relentless aggression alive and resulting in gross violations of human rights particularly of women.

Although India has signed the International Convention for Protection of All Persons from Enforced Disappearances in 2007, it has failed to ratify the Convention. Only a fraction of the cases of disappearances have been investigated. The substantive and procedural laws, as well as the pervasive culture of impunity, have made judicial redress illusory. While the number of disappearances has reduced in the recent past, the struggle for justice continues.

Conflict induced displacement is a serious concern, with both long term and short term consequences. CEDAW's General Recommendation No. 28 calls for State parties to be responsible for IDPs, regardless of whether the affected persons are in their territory. Major ethnic conflicts which broke out in the state of Assam particularly during 1993, 1994, 1996, 1998, 2005, 2008, 2011 and 2012<sup>18</sup> led to relief camps being set up year after year. Distressing evidence of impact on health are results of scarce supply of water, absence of toilets, lack of bodily care and no clear gender sensitive guideline to address the displacement.

The State should include the concerns and the impact of conflict on the lives of women and their needs in the present 12th Year Plan after proper consultations with affected women, women human rights defenders and other stakeholders as it has been completely omitted. It is important for the State to honor its international commitment to women in conflict transformation and peace building under UN Security Council Resolutions 1325, 1820, 1888, 1889, 1960, 2106 and 2122.

## **18. CHALLENGES AND ISSUES FACED BY WOMEN LIVING WITH HIV IN INDIA**

Women face differential HIV risks as well as disproportionate impacts of the HIV epidemic. Discrimination towards women living with HIV, within the household and family and society has resulted in self imposed stigma as a way out to deal with their illness and move forward in their lives. These prejudiced attitudes towards PLHIV and assumptions about their lifestyles can be best seen within the health sectors. Those who need HIV testing do not access health services as there is a fear that healthcare workers will breach confidentiality. It is important that a non-discrimination legislation that would be based on Constitutional guarantees and applicable to both public and private actors in healthcare settings is enacted and within which grounds for non-discrimination of PLHIV should be included. The legislation should contain specific provisions that recognize the gendered experiences of women in health care situations with specific regard to abortion, sterilization and childbirth. Additional safeguards should be stipulated related to informed consent and confidentiality in cases concerning the reproductive rights of women, including key affected women and girls.<sup>19</sup>

An estimated 90 percent of HIV positive women in India are infected by their husbands or sexual partners.<sup>20</sup> In order to prevent the spread of HIV, and improve the quality of lives for WLHIV, including their reproductive lives, knowledge and understanding of sexual and reproductive health, sexually transmitted infections (STIs) and PMCTC is critical.

WLHIV in India face significant challenges when it comes to decisions related to having children. HIV positive women are often treated judgmentally when they become pregnant, and encouraged to give up the pregnancy. They are routinely advised to undergo sterilization procedures. This applies to women who have already had children, those who are pregnant as well as those who have no children. Ethical standards and codes of conduct relating to health care providers must be implemented stringently. There is also the requirement for strengthening the procedures for accountability and implementation mechanisms.

Access to justice is an impediment for women living with HIV. The State is required to look into such as non-accessibility of legal services and discriminatory practices. Redressal mechanisms should be made



WLHIV are often thrown out of the marital home, after the death of their husband. A UNDP study, in 2006, showed that 90 percent of HIV-affected widows were no longer living in their marital homes. As researchers have pointed out, “the loss of shelter and livelihood experienced by women can push them into a vortex of destitution and marginalisation, intensified vulnerability to HIV and AIDS, while enhancing intergenerational poverty.”<sup>21</sup> These women have been denied their right to property, there are reports of property grabbing, dispossession, or eviction of women after their husband's death or because they are HIV positive.

## **19. WITCH HUNTING AND OTHER FORMS VIOLENCE AGAINST WOMEN IN THE COMMUNITY**

Witch hunting is prevalent overwhelmingly as gender based targeting of women in India. Although widely viewed as stemming from superstition, studies show that witch hunting in India occurs within a set of complex causes and conditions. A combination of factors involving individual or collective conflict, tensions and jealousies together with weak governance, indifferent law enforcement machinery, poor development indicators (in terms of lack of formal education, health care and sanitation), create the underlying conditions and enable impunity for such victimisation.

Women between the age of 40-60 are predominantly targeted and labeled witches. The instigators of witch hunting are largely those who are proximate to the victims – either as part of the extended family, neighbour or immediate community. Many of the accusations/ causes that trigger 'witch' accusations may appear to be trivial but assume alarming proportions in contexts of structural neglect, deprivations that enable such accusations and victimisation, without fear of consequences. Illness, deaths and tragedies that cannot be explained, particularly in the context where education, health facilities, and sanitation are lacking, differences in religion, rituals, or extent of religiosity, in a context of close proximity tend to get rationalised through explanations of witch craft.

In three states, Jharkhand, Bihar and Chhattisgarh, special laws on witch craft practices exist that aim to prevent and provide redress at the preliminary stages of harassment and taunting. The police never uses the special law preemptively, but use them in conjunction with the Indian Penal Code when more serious offences occur. All appeal court cases connected with witch hunting pertain to murder and attempt to murder, reinforcing the finding that criminal prosecution is contingent upon a high threshold of violence. The current policy discourse favours more criminal responses, including through special laws to criminalise superstition and occult practices, which are unhelpful and inconsistent with the findings related to the reality of witch hunting and the legal responses.

The policy vacuum is not in respect of absence of criminal redress, but more in terms of prevention and restoration/ rehabilitation of the victim. The criminal law can offer little beyond investigation, prosecution and punishment. The vacuum exists in relation to preventive measures as well as restorative justice – both of which are crucial for addressing the root causes of witch hunting and for overcoming the long term consequences, respectively. Criminalising superstition is unhelpful as superstition is very widespread, but this triggers witch hunting in contexts where underlying structural conditions and police apathy enables witch hunting.

## **20. RECOMMENDATIONS**

### **A. ARTICLE 1-5**

- The Government of India must spearhead legislations and frame rules to ensure that women from socially vulnerable groups are not subjected to discrimination and denial of fundamental freedoms.
- Training of political representatives and members of the judiciary in the frameworks of constitutional and statutory interpretation is indispensable to effective legislative, governmental and judicial action.

- New cultural forms must proliferate through citizen initiatives supported by government to put in place a sense of collective responsibility for the treatment of all women with dignity, without falling into the trap of honour discourses that truncate women's right to liberty under the constitution.

## B. ARTICLE 6

- Trafficking is a criminal offense and should not be conflated with sex work. Trafficking of Adult Persons and Trafficking of Children should be dealt with under two separate laws to ensure that consenting adults are not infantilised and children are given justice.
- Convergence of all Government programmes which shall include education health, training and employment generation through local resource mobilization, & capacity building of all duty bearers.
- To adopt a comprehensive approach in realizing the human rights of sex workers. Interventions affecting sex workers be undertaken through consultation, participation and leadership of sex workers. Structural barriers and obstacles in accessing justice and achieving equality must be removed by addressing denials based on livelihood options, gender stereotyping and sexuality.
- Ensure delivery of legal services and/or referrals to existing legal services to ensure that sex workers have support to seek redress including appeal to higher courts. Ensure training to officers of the Legal services on vulnerable populations such as sex workers so that their specific conditions, marginalization are understood by the judicial / legal officers.

## C. ARTICLE 7 & 8

- The national government must pass the Women's Reservation Bill which has been pending in Parliament (Lok Sabha) since July 2010 with immediate effect reserving one-third of seats in Parliament and state legislatures for women.
- A national Judicial Services Commission must be set up immediately and one-third of the judiciary in each state and the Supreme Court must be women.
- The Two Child Norm tends to undermine the women's quota in the Panchayati Raj Institutions (PRIs). This is in violation of the Right of Political Participation under International Conventions.
- Gender Budgeting must be made mandatory for all departments and mechanisms should be put in place to ensure that at least 33% of the direct and indirect beneficiaries of all government schemes are women and girl children.

## D. ARTICLE 10

- For children in the 0-3 age group, ICDS should be institutionalized and universalized for effectively. The nutritional status of the children in this age-group has a bearing on their learning abilities and their timely entrance into the education system.
- Pre-school education should be integrated within Right to Free and Compulsory Education (2009). This will locate pre-school education within the realm of education (and not with nutrition).
- Recognizing the fact that children from marginalized communities are increasingly accessing schools, their learning levels needs to be given due attention. The National Literacy Mission should be adequately resourced. The Continuing Education (CE) component under Sakshar Bharat needs to be strengthened and shouldn't end at people receiving certificates at the end of the course.
- Guidelines for sexual harassment at all levels of educational institutions including schools (upper primary upwards should be put in place) and monitored.

### E. ARTICLE 11

- Comprehensive protections for domestic workers should be in place, although they are included within the purview of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, and the Unorganised Workers' Social Security Act, 2008.
- Gender-Auditing of Workplace must be made a protocol.
- The Persons with Disabilities Act, 1995 also fails to give due recognition to the working capabilities of all PwDs and has in place no special provisions for WwDs. Legislation is required for quotas in employment for LGBT community

### F. ARTICLE 12

- A comprehensive Right to Health Act which assures universal access to good quality and comprehensive health care for all the entire range of primary, secondary and tertiary services, and that makes denial or non-availability for reasons of access, affordability or quality a justiciable offence.
- Policies and programs need to go beyond quality health care during pregnancy, delivery and postpartum period to include nutrition, contraception, and access to safe abortion, freedom from violence, dignity during care and access to information and care, from adolescence throughout their life span.
- Recognize gender based violence as a public health issue and ensure access to comprehensive and quality health care (physical as well as psychosocial), screening, documentation, referrals, as well as coordinated, ethical medico-legal processes for survivors.
- Regulate Assisted Reproductive Technology and Surrogacy Industry including reproductive tourism.

### G. ARTICLE 15

- The State should ensure effective implementation and usage of laws concerning women and girls - the Protection of Women from Domestic Violence Act 2005, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, Protection of Children from Sexual Offences Act 2012, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, Prohibition of Child Marriage Act 2006.
- The State should decriminalize consensual intercourse between consenting adults under section 377 of the IPC

### H. ARTICLE 16

- The State must review the declaration to Article 16 (1) & (2) and withdraw it. It also must examine the impact of its declaration to Article 5 (a) and withdraw the same. The state must re-examine its self imposed limitation to complete and full compliance with the principles of CEDAW.
- Hindu Succession Act Amendment 2005 to be implemented

### I. MUSLIM WOMEN

- The Muslim community which is the largest socio-religious Minority needs a separate sub plan like there exists for Scheduled Casts and Scheduled Tribes to attain equity and equality.
- A non-discrimination legislation that would be based on constitutional guarantees and applicable to both public and private actors in healthcare settings. The legislation should specify grounds for non-discrimination and specifically include HIV status.



## J. KANDHAMAL

- A social audit on the impact of NREGA, and on the benefit of schemes on housing, food and nutrition, land and education initiated by the state and central government on women and girls affected by the Kandhamal violence.
- Application of the provisions of NREGA and other livelihood schemes of the government to women of the affected community, with no discrimination on the basis of caste, religion or gender.
- Incorporation of the UN Guiding Principles on Internal Displacement into the national policy framework of India, which addresses aspects including the rights and specific needs of women IDPs.

## K. CHHATTISGARH

- The different articles of the Constitution of India that ensure and guarantee the citizens a life of dignity and protect their livelihood bring peace be followed in letter and in spirit.
- Reports and recommendations of various human rights organisations and the Supreme Court of India be implemented in letter and spirit by the state and central Governments.

## L. WOMEN WITH DISABILITIES

- Review of policies on primary, secondary, vocational and non-formal education from the lens of the rights of girls/women with disabilities as mandated by the UNCRPD, CRC and CEDAW with a view to amending existing policies in order that they are responsive as well as inclusive of women and girls with disabilities including those in rural areas.
- Reasonable accommodation in infrastructure, working conditions, communication etc. to ensure accessibility of WwDs into the labour force. Specific mechanisms to address harassment faced at work by WwDs.
- States should be mandated to formulate special schemes for training and skill development and for self employment of WwDs. Vocational training linked up with employment opportunities may be provided exclusively catering to the need of the WwDs.
- Involuntary treatment, such as forced abortion, contraception, sterilization and incarceration shall not be permitted by law on WwDs. Remove from the PCPNDT Act the clauses on disability.

## M. DALIT WOMEN

- Passing of central legislation the SC/ST Sub-Plan should be given statutory status by passing central legislation in this regard, as in Andhra Pradesh ensuring that the amounts allocated in this sub-plan do not lapse or are misused. A separate authority should be set up at State level for its effective implementation.
- 50% of the Scheduled Caste / Sub Plan related schemes be focused on dalit women in such a way the schemes are designed to improve and encourage women leadership, ownership of land resources and capital assets. The state must distribute 5 acres of cultivable land in the name of dalits.
- The state must ensure as a rule no displacement is caused to SC/ST families from their land/habitations but in cases where displacements occurred a proper compensation in the form of land from the SC/SP fund.
- Inclusive budgeting for dalit women must be enhanced in education particularly in the programme of Kasturba Gandhi Balika Vidyalaya Scheme (KGBVS) – which is a special scheme for the marginalized community. Structural limitations that currently create impediments must be removed in order to achieve desired results.

## N. WOMEN LIVING WITH HIV/AIDS

- Enactment of non-discrimination legislation that would be based on Constitutional guarantees and applicable to both public and private actors in healthcare settings. The legislation should specify grounds for non-discrimination and specifically include HIV status.
- The legislation should contain specific provisions that recognize the gendered experiences of women in health care situations with specific regard to abortion, sterilization and childbirth. Additional safeguards should be stipulated related to informed consent and confidentiality in cases concerning the reproductive rights of women, including key affected women and girls.<sup>22</sup>
- Implementation of ethical standards and codes of conduct relating to health care providers more stringently

## O. NATIONAL COMMISSION OF WOMEN

- Evaluation of the NCW by an independent team that includes eminent women's rights activists, to assess the extent to which NCW is compliant with the Principles relating to the status of National Institutions for the promotion and protection of human rights, 1993, commonly referred to as the Paris Principles, and suggest ways of making the NCW more compliant with the Paris Principles.
- Safeguard the political autonomy of this nodal women's rights institution by replacing the current nomination system with a transparent, democratic and non-partisan selection process for members and Chairperson of the Commission. A comprehensive review of the performance of the Commission should be undertaken.

## P. GENERAL RECOMMENDATION 19

### i. Violence against Women

- Sufficient Budgetary Allocations for implementation of Laws must be made,
- Holistic, quality, sufficient, accessible, co-ordinated support services must be provided.
- The Criminal Law Amendment Act, 2013 to include 'threats of acid attack' as a crime.
- A 24 hour National helpline for Women that provides immediate response and refers women to the different stakeholders must be set up.

### ii. Sexual Violence

- The police in every state must have Standard Operating Procedures with detailed guidelines for each aspect of investigation and the role of the police during trial.
- The state must establish one-stop crisis centers for women which would be responsible for providing immediate access to quality and free medical attention, psychological counselling, legal aid and other support services as may be required by the victim.
- The State needs to re-consider the legal age of consent of 18 years stipulated under the law, and reduce it to 16 years to ensure the law serves best interests of the child through respect for the child's evolving capacities.

## Q. GENERAL RECOMMENDATION 30

- The State to honor its international commitment to women in conflict transformation and peace building under UN Security Council Resolutions 1325, 1820, 1888, 1889, 1960, 2106 and 2122
- Ratification of The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol.

- Immediate repeal of the Armed Forces (Special Powers) Act, 1958 and JK AFSPA 1990, Section 197 Criminal Procedure Code and the Chhattisgarh Special Public Security Act 2005.

## R. WITCH HUNTING AND OTHER FORMS VIOLENCE AGAINST WOMEN IN THE COMMUNITY

- The State must address structural deprivations that create the underlying conditions for witch hunting through positive interventions and through strict accountability for failures to deliver healthcare, formal education and sanitation in areas where witch hunting is reported. Preventive responses through public education to demystify superstitions are necessary, but must go beyond that to include accountability for structural failures and lapses.
- Accountability for police inaction must be introduced in the Indian Penal Code and the State responses must address the continuum of victimisation, particularly long term consequences, rather than being focused on violent episodes.

## 21. CONCLUSION

Each of the chapters in this Alternative Report point to the widespread practices of discrimination and social exclusion of women and provide evidence in the form of statistics and media reports on the prevalence of the problem. Deeply entrenched and pervasive patriarchal attitudes on the part of the judiciary and law enforcement only worsens the situation.

The State has failed on several occasions to commit to, and ensure the protection and promotion of women's human rights through the full implementation of human rights conventions and treaties and national laws and policies. Primary among human right obligations towards women is the state's obligation under the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). The way to a rights based equal legal system for women lies in the respect for and codification of the principles of CEDAW at the national level.

## ENDNOTES

<sup>1</sup>Naz Foundation and Others v Government of NCT of Delhi and Others, 2009 (160) DLT 277

<sup>2</sup>Para 12, p. 19/30, List of issues and questions in relation to the combined fourth and fifth periodic reports of India: Replies of India\*CEDAW/C/IND/Q/4-5/Add.1, 23 January 2014.

<sup>3</sup>GOI, *Report of the Sub Group on Economic empowerment of Women under Steering Committee on 'Women's Agency and Child Rights'* for the Twelfth five year plan 2007 -2012, Planning Commission

<sup>4</sup>Vishakha & Ors vs State of Rajasthan, AIR 1997 SC 3011

<sup>5</sup>National Sample Survey, 64<sup>th</sup> round, carried out by National Sample Survey Organization for the years 2007-08

[http://mospi.nic.in/Mospi\\_New/site/inner.aspx?status=4&menu\\_id=119](http://mospi.nic.in/Mospi_New/site/inner.aspx?status=4&menu_id=119)

<sup>6</sup>Ibid.

<sup>7</sup>In a strongly fought case with Supreme Court intervention, a High Court ruling of forceful termination of pregnancy of a girl with intellectual disability who had been raped in a State run Shelter was over turned and the girl allowed to have the baby. Suchita Srivastava v. Chandigarh Administration (2009) 14 SCR 989

<sup>8</sup>15 CEDAW / C/ IND / Co3

<sup>9</sup>Para 33 CEDAW /C/IND/CO/3

<sup>10</sup>Ref: ACHR, ICI, NHRC, All India Team, etc.

The National Commission for Minorities, in its report after a visit to Orissa on 6-8 January 2008, observed that during the attacks that took place between 24 and 27 December 2007 in various places in Kandhamal, Christian properties such as parish churches, village churches, convents, presbyteries, hostels, a vocational training centre, a leprosy centre, and scores of shops and houses were destroyed. The NCM further observed that Hindu-owned properties were also destroyed though the number is a fraction of the

losses sustained by Christians.

<sup>11</sup>Report of the visit of the Vice Chairperson, National Commission for Minorities, to Orissa, 21-24 April 2008 at page 2, para <sup>11</sup>

<sup>12</sup>Report on the visit of the Vice Chairperson, National Commission for Minorities, to Orissa, 11-13 September 2008, at para 2

<sup>13</sup>Section 10(1)(a), National Commission for Women Act, 1990

<sup>14</sup>Section 10(1)(d), National Commission for Women Act, 1990.

<sup>15</sup>Section 10(1)(c) , National Commission for Women Act, 1990.

<sup>16</sup>National Commission for Women, *Annual Report, 2009-10*, p.22,[http://ncw.nic.in/AnnualReports/200910/Annual\\_Report\\_2009-10\\_English\\_Full.pdf](http://ncw.nic.in/AnnualReports/200910/Annual_Report_2009-10_English_Full.pdf)

<sup>17</sup>Geneva Declaration, 2008, Global Burden of Armed Conflict p 22 (data for the period 2004-2008)

<sup>18</sup>The Economic Times, '*A distraught tribal: The genesis of Assam ethnic violence*', August 12, 2012

Outlook, '*A Bridge Too Far*', August 13, 2012 , <http://www.outlookindia.com/article.aspx?281840>

<sup>19</sup>According to UNAIDS terminology, Key HIV affected women and girls include i) women and girls living with HIV; ii) female sex workers iii) females spouses of male clients of sex workers iv) women who use drugs v) females spouses of men who inject drugs; vi) females spouses of men who have sex with men; and vii) women and girls from house holds impacts by HIV/AIDS

<sup>20</sup>UNDP, *Women's Empowerment, HIV and the MDGs: Hearing the Voices of HIV Positive Women-Assessment of India's Progress on MDG 3 and MDG 6*, December 2010

<sup>21</sup>HemaSwaminathan, Nandita Bhatla, and Swati Chakraborty, 'Women's Property Rights and HIV/AIDS: Evidence From India' at <http://www.hivaidsonline.in/index.php/HIV-Human-Rights/>

<sup>22</sup>According to UNAIDS terminology, Key HIV affected women and girls include i) women and girls living with HIV; ii) female sex workers iii) female spouses of male clients of sex workers iv) women who use drugs v) female spouses of men who inject drugs; vi) female spouses of men who have sex with men; and vii) women and girls from households impacts by HIV/AIDS





CRITICAL  
ENGAGEMENTS  
ON CEDAW  
IN INDIA

CHAPTER 1



INDIA

4th AND 5th  
NGO ALTERNATIVE REPORT  
ON CEDAW

# CRITICAL ENGAGEMENTS ON CEDAW IN INDIA



**Ruth Manorama**  
National Alliance of Women

National Alliance of Women (hereafter NAWO) is the single largest national alliance that has centrestaged critical issues of marginalized communities through a collective process and in particular, those of the Dalit, Adivasis and religious minorities. NAWO's contribution is best seen in its reporting on and to CEDAW and its participation in the UPR reporting process. For NAWO, the reporting process under CEDAW has emerged as a strategic lever to identify, educate, disseminate and to make public the gaps, lapses, violations of state bodies in all forms of discrimination against women and lobby for remedial measures. For the CEDAW reporting, NAWO adopts multi-level consultations (with NGOs, activists, and grassroots groups; use of reports of fact-finding missions and outcomes of judicial instruments such as PIL, RTI etc.) that embed dialogue, critical analysis and documentation. CEDAW reporting has taken on the colour of a systemic response.

The adoption of the Beijing Platform for Action marked the defining moment for the quest for gender equality and a gender just world with women's rights firmly established as human rights in the development discourse. NAWO has been part of the civil society engagement at Beijing+ 20 review process to look into the challenges and implementation of the Beijing Platform for Action and CSW 58, which focused on challenges and achievements in the implementation of the Millennium Development Goals for women and girls.

## **1. NAWO'S ENGAGEMENTS IN THE PREPARATION OF THE 4TH AND 5TH NGO ALTERNATE REPORT ON CEDAW**

The Constitution of India and CEDAW share the spirit of non-discrimination, substantive equality and state obligation as core values. Therefore CEDAW enables us to articulate the Constitution with specific reference to women. It was necessary to place the constitutional framework at the centre of the report writing exercise to demonstrate the continuities and overlaps between the Constitution and CEDAW, not just in terms of enumeration of articles in the Constitution but to exhibit how CEDAW is an affirmation of the spirit of the Constitution.

The Constitution provides a holistic framework for an understanding of fundamental rights; root causes of vulnerability, marginality and state responsibility for all vulnerable groups. Therefore the constitutional framework widens our scope to provide a multilayered perspective to address rights and state responsibilities with reference to women.

The international obligation under CEDAW and the justiciability of the constitutional framework have provided space for activism and many people's struggles have become part of our jurisprudence. Jurisprudence transforms peoples' struggles into acts of constitution making and that process should be addressed centrally. This has been drawn into the 4th and 5th NGO Alternative Report.



## CRITICAL ENGAGEMENTS ON CEDAW IN INDIA

We, at NAWO, had a series of consultation on CEDAW at the regional and state levels, which culminated with two national level consultations held in New Delhi and Bangalore between 2011 and 2013. These deliberations demonstrated a different way of engaging with the process of writing the Alternative Report -- looking at and interpreting international law and constitutionalism, not only with reference to women but also with respect to the Constitution, special legislations and the state. It was to be a model worthy of emulation by different disadvantaged groups.

Our efforts towards achieving a gender just and equitable society has been supported by agencies like UN Women, Christian Aid, Dan Church Aid, Bread for The World-EED, Ford Foundation, Action Aid, Oxfam and CARE India with resource facilitation. These partnerships have been critical to NAWO. The women's groups have played a critical role in providing inputs to the CEDAW Committee enabling us to address a range of issues concerning marginalized groups and not just women, thereby opening up the space for further activism.

For the 4 and 5th NGO Alternative Report, the groups focused on the intersections -- not only where the prevalence of problems was concerned, but also interconnections between different articles. A significant question of knitting CEDAW with other international conventions like United Nations Convention on the Rights of Persons with Disabilities, (UNCRPD), the Convention on the Elimination of Racial Discrimination (UNCERD) and the Convention against Corruption (UNAC) that also form the basis of our understanding of violence, vulnerability, marginality and discrimination was raised. While recognizing that this is a complex terrain, NAWO has worked through the linkages and intersections to present a multi-layered perspective which has enabled us to articulate and structure the demands of various groups like the state, courts, research and activism differently.

### **2. POPULARIZING CEDAW IN THE COUNTRY**

After the submission of the 2nd and 3rd NGO Alternative Report in January 2007 by NAWO, a National Consultation was held at New Delhi on the Implementation of Concluding Observations of CEDAW. The consultation aimed at examining and assessing the implementation focused on critical issues, priorities and state efforts in promoting the implementation of CEDAW and of the CEDAW Concluding Comments. The Joint Secretary, Ministry of Women and Child Development and the member of the Planning Commission were also present. A Plan of Action was formulated in order to create a wider impact of the CEDAW process through capacity building, dissemination of information, monitoring the effectiveness of law, policy, schemes, and projects.

NAWO in the year 2008-2009 held a National Training Programme for 180 women activists who have been working on housing rights of people living in coastal areas, addressing violence against women, dalit rights issues, trafficking and unorganized sector of labour on various international conventions like CERD, CEDAW. In a context where women human rights defenders have also been targeted, NAWO has distributed a Guidebook for Human Rights Defenders through its focal points.

NAWO has been raising the concerns over the working conditions of Domestic Workers and campaigning for the ratification of ILO 189 and a Bill for Domestic Workers at various forums. The organisation has been involved in information dissemination, strengthening capacities of domestic workers through consultations, workshops and formation of collectives for them. It has also kept in touch with the various State Women Commissions and the National Commission of Women to address issues of trafficking of girls as domestic help, illegal disappearances and ill treatment of domestic workers especially those belonging to tribal and other marginalized communities.

The National Alliance for Women (NAWO) undertook a unique, first of its kind initiative, of conducting an 'Alternate Parliament of Women' to create an alternate space with an alternate vision in 2009. As many as 500 democratically elected women from all over the country, from many parliamentary constituencies of India, women's groups from all over the country came together in New Delhi to participate.

The Alternate Women's Parliament which was conducted for three days raised several important issues during the Question Hour; the legislative process saw the passing of many important bills like the Right to Recall Bill where it was the right of the citizens to recall any elected representative who was not performing his/her duties to the desired standard of the electorate; Domestic Workers Registration, Social Security and Welfare Bill, 2009; Anti Trafficking Bill etc. The National Agricultural Policy was presented which sought to move away from chemical farming and towards organic farming. The Union Budget sought to promote the aspirations of women and the marginalized section of the country placed their belief in an economy that promoted happiness of people and not just material production.

With the country facing a surge in violence against women, major protests broke out across the country over the brutal rape of a 23-year-old medical student in New Delhi in 2013, commonly known as the Nirbhaya case. Appeals from NAWO and all other women's groups in the country forced the Indian government to look into these issues of deep rooted misogyny and come out with tangible solutions especially with changes within the Criminal Law system and address it with a gender lens.

A National Consultation on Women's Protection and Safety against Sexual Violence, Assault and Rape was held in New Delhi in 2013 which was attended by human rights activists, social activists, academicians, lawyers and members of civil society to discuss the possible changes in the criminal procedure and the amendments in the criminal laws. The recommendations that emerged from the consultation were submitted to the Justice Verma Committee by NAWO in the public hearing that was held by the committee in January 2013. Many of the changes suggested by NAWO and other women's groups have been incorporated in the report that was given by the Justice Verma Committee, which eventually led to the amendments in the criminal laws by way of The Criminal Law (Amendment) Act, 2013.

NAWO has been conducting training programmes on human rights conventions like the CEDAW, ICESCR, CERD, and ICCPR to increase awareness about these conventions that India has ratified so that inter-linkages can be made with the national laws and make it work within our constitutional framework. These training programmes in popularizing these conventions not only create awareness among women but they are also able to pressurize the government to be more accountable in their actions.

NAWO has been involved gender sensitization and capacity building of state and non-state actors. We undertake a comprehensive programme of training of the police force, prosecutors and the judiciary, particularly to ensure the implementation of the above-mentioned legal protections, including by fully implementing the recommendations of the Verma Commission and other relevant commissions. These engagements also subscribe to our overall goal and project objectives of 'Enhancing Women's Human Rights'.

### **3. LOBBYING STRATEGIES**

NAWO continues to follow up with the Department of Women and Child, Ministry of Human Resources Development, Government of India, with a view to monitoring the actions of the Government of India on CEDAW and the recommendations of the CEDAW Committee.

The impact of the NGO Alternative Report on CEDAW has been significant. It has been effective in addressing the status of women in India and place checks and balances on the government and makes it look into the institutional mechanisms to monitor the implementation of CEDAW in the country.

While NAWO national secretariat designs the critical interventions the NAWO Delhi secretariat is the resource base and provides assistance in disseminating information on CEDAW with the help and assistance of its thirteen focal points situated in the country and all other organizations.

### **4. NGO STRATEGIES**

NAWO lobbying strategy had been to put together Alternative Reports on CEDAW that would lay emphasis on equality, discrimination faced by women from marginalized groups, women with disabilities, health, employment, minorities and region specific issues.

## CRITICAL ENGAGEMENTS ON CEDAW IN INDIA

The 4th and 5th Alternative Report on CEDAW focuses not only on UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW) but looks at the complex interconnections between the UN Convention and the Constitution of India.

### 5. NAWO's AGENDA

- Training programmes on application of CEDAW for different women's groups and sensitize lawyers, college students on gender discrimination.
- Advocacy work with the government of India.
- Involving the youth in the rural areas to combat violence against women.
- Increasing capabilities and capacities of dalit and tribal women and enable them to articulate their concerns.
- Striving for greater political participation of women.

### ENDNOTES

<sup>1</sup>Five Regional consultations were held in the Southern, Central, Western and North–Eastern regions; three state level consultations held in West Bengal, Goa and Maharashtra.





**PART - I  
CEDAW ARTICLES**

ARTICLES 1-5  
NON-DISCRIMINATION,  
HUMAN RIGHTS,  
FUNDAMENTAL FREEDOMS,  
SPECIAL MEASURES  
AND ELIMINATION  
OF DISCRIMINATORY  
CULTURAL PRACTICES

**CHAPTER 2**

**INDIA**

4th AND 5th  
NGO ALTERNATIVE REPORT  
ON CEDAW

ARTICLES 1-5  
NON-DISCRIMINATION,  
HUMAN RIGHTS,  
FUNDAMENTAL FREEDOMS,  
SPECIAL MEASURES  
AND ELIMINATION OF  
DISCRIMINATORY  
CULTURAL PRACTICES



**Kalpna Kannabiran**

Council for Social Development & Asmita Collective

## 1. SITUATIONAL ANALYSIS

### Article 1 CEDAW

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 1 of CEDAW sets out succinctly the reach of the principle of non-discrimination based on sex – encompassing every sphere of social life in both the public and private domains. Sexual assault, targeted violence against vulnerable groups, the negation of the rights of sexual minorities, the persistence of degrading forms of employment and conflict and displacement in tribal homelands are persistent issues that continue to truncate fundamental freedoms and human rights for women across the board despite significant legislative measures in the recent past.

While the Constitution of India prohibits discrimination based on caste, religion, sex, race and place of birth, and India has laws protecting dalits, adivasis (scheduled tribes), and women from discrimination, violence, atrocity and targeted assault, there is a vast gap between laws and their effective application to deliver protection to vulnerable groups. Two recent legislative interventions are the Criminal Law Amendment Act 2013 redefining sexual assault, which has retained the exception to marital rape even while broadening the definition of sexual assault itself; the second is the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance 2014, which broadens the definition of atrocity. However, religious minorities continue to remain extremely vulnerable to collective violence which has very specific gender implications as was witnessed in Gujarat in 2002, in Kandhamal, Odisha in 2008 and yet again in Muzaffarnagar, Uttar Pradesh in 2013. The deliberations around a legislation that addresses communal violence have been infructuous and its future remains uncertain. The situation of sexual minorities has witnessed a rollback with the Supreme Court in 2013, overturning the historic Naz Foundation judgment<sup>1</sup> of the Delhi High Court decriminalizing consensual non-heterosexual relations. With the criminal provision, Section 377 Indian Penal Code back in place again, all sexual minorities are vulnerable to arbitrary state action, repression and vigilante violence. The issue of lack of representation in the judiciary at all levels continues to be a hurdle to the realization of non-discrimination in public life. It is no argument that “the selection of the judges is done through a well-established system wherein there is no discrimination based on sex, religion etc.”<sup>2</sup> The absence of discrimination must be demonstrated through adequate representation, and the judiciary in India falls short of the standard set by CEDAW.



Although a High Level Committee has been set up by the Government of India in 2012 to provide a comprehensive assessment of the status of women in India, there are as yet no indicators of the findings of this committee.

## **2. WOMEN WITH DISABILITIES**

The situation of persons with disabilities, especially women with disabilities also remains vulnerable in the absence of a comprehensive legislation that states their rights in compliance with the UN Convention on the Rights of Persons with Disabilities. While there has been a positive step in terms of the judgment in the case of *Suchita Srivastava v Chandigarh Administration*,<sup>3</sup> this judgment by itself cannot protect women with disabilities from the range of non-consensual, custodial and exclusionary situations that they are subjected to in private and public domains on an everyday basis.

The absence of any discussion on women with disabilities within the framework of CEDAW at the national level disables any far-reaching articulation of women's rights and fundamental freedoms generally. The complexity inherent in the realization of rights for women can only be fully grasped if we place at the centre the question of the rights of women with disabilities to non-discrimination: to a world free from sexual assault and sexual control; to access to decision making and control over resources – at the family, community and national levels; to opportunities to employment in full acknowledgement of their capabilities; to the realization of the right to education on par with other children; and most importantly to a cultural and social environment that promotes an inclusive, diverse space devoid of stigmatizing stereotypes. It is useful to read CEDAW in conjunction with the UNCRPD. Particularly relevant is Article 17 of the UNCRPD: “every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.”

## **3. WOMEN AND WORK**

The world of work has always been difficult for women to negotiate with dignity even while their labour has been indispensable to economies. Comprehensive protections for domestic workers are still not in place, although they are included within the purview of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, and the Unorganised Workers' Social Security Act, 2008. The devaluation of housework and care work continue to pose major hurdles in women's participation in the labour force on terms that are equitable, fair and just. The elimination of human labour in unclean occupations that are tied to caste status and are part of the practice of untouchability banned under Article 17 of the Constitution of India is a constitutional obligation. Manual Scavenging and similar occupations employ a workforce that is predominantly female and exclusively dalit. A recent survey conducted to present evidence to the Supreme Court of India in 2013 on the practice of unclean occupations (manual scavenging, cleaning of sewer lines, septic tanks and railway lines) in contemporary India documented practices in 150 districts out of 229 surveyed across the states of Uttar Pradesh, Bihar, Rajasthan, Uttarakhand, Jammu and Kashmir, Odisha, West Bengal, Himachal Pradesh, Assam, Punjab, Jharkhand, Maharashtra, Gujarat, Chhattisgarh, Madhya Pradesh, Nagaland, Karnataka and Haryana.<sup>4</sup> The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013, instead of guaranteeing eradication, focuses on rehabilitation, with Section 2(1)(g)(b) of the Act stating that “a person engaged or employed to clean excreta with the help of such devices and using such protective gear, as the Central Government may notify in this behalf, shall not be deemed to be a 'manual scavenger.’” The ways in which social exclusion embedded in the caste system locks women into degrading occupations is a matter of immediate concern especially in the context of discussions around fundamental freedoms and human rights for all women. Here as well, the ideology of the caste system and the cultures it supports strengthen the perpetuation of occupations that violate every standard of decent work, fair labour standards and the fundamental right to life with dignity guaranteed under Article 21 of the Indian Constitution.

## **4. COLLECTIVE VIOLENCE AGAINST MINORITIES: MUSLIMS IN MUZAFFAR NAGAR WITH SPECIFIC REFERENCE TO MUSLIM WOMEN**

The communal riots in Muzaffarnagar in August-September 2013 left several dead and 100,000 Muslims



displaced. There is to date no clear account of the numbers of people who have died, been internally displaced or of the numbers of women who have been subjected to sexual assault.

*“In camp after camp, survivors speak of missing persons. Mothers give tortured testimonies of having to leave behind children while fleeing their villages, for they say they could not run carrying all children, and they now wonder if the child left behind is dead or simply lost in the melee. One woman has lost her husband and children. One woman has three children with her, but has lost her husband and three other children. A young girl speaks of hearing her sister's screams as she was killed but no body was found. Families have lost aunts, uncles, nieces, nephews, parents, children, spouses, neighbours, and friends. One man, with trauma in his eyes, pulls out a salwar, fully caked with dry blood, from a plastic bag he carries around – and says, 'jebhuahamareasaath.' But he is unable to speak more. Testimony after testimony of missing persons, whose bodies have never been found, and with whom there is no contact. Are they dead or alive in other camps? The State authorities have not even considered preparing village-wise lists of missing persons, to seek to reunite families, if members are still alive. Indeed, State officials looked at us as if this was the first time they were hearing of the idea. 'No, no one is missing in this district', they declared to us in Shamli District. Even a humane, let alone a responsible administrative response, was not forthcoming.”<sup>5</sup>*

Although there have been efforts to put together a legislation that addresses communal violence, this has not yet been enacted – the absence of legislation glaring in the face of increased and renewed attacks on minorities. There is also considerable debate on the contents of the draft bill, which needs to be settled based on a close analysis of justice claims in recent incidents of communal violence.

## 5. ATROCITIES AGAINST DALIT AND ADIVASI WOMEN

Between September and October 2012, 21 rapes of Scheduled Caste women and girls were reported in just 45 days in the State of Haryana.<sup>6</sup> Between 16 December 2012 and 31 August 2013, a reported 98 cases of crimes against Dalit women and girls –kidnapping, sexual harassment, assaults, rapes, murders, attacks on alleged 'witches' domestic violence in inter-caste marriages, etc. made the English newspapers across the country. The National Family Health Survey 2005 -06 has noted that 41.7% of scheduled caste women reported having faced physical violence since the age of 15 years as compared to 39.3 % of ST women, 34.1% of other backward class women and 26.8 % of other women. Regarding sexual violence, 11.0% of Scheduled Caste women reported facing sexual violence since the age of 15 years, as compared to 10.2 % of ST women, 7.4 % of OBC women and 7.8 % of other women.

Taking the total of 1576 registered rapes of Scheduled Caste women in 2012, the average rate was four rapes per day. Moreover, the number of rapes of Scheduled Caste women has risen steadily over the years, from 1098 in 2003 to 1576 in 2012; that is, a 30.9% increase over the past decade. From 26,252 crimes against SCs in 2003 to 33, 655 crimes in 2012, representing a 22.0% increase in crimes 140,601 crimes against women in 2003 to 244, 270 crimes in 2012, representing a 42.4 % increase; and from 15,847 rapes of women in 2003 to 24,923 in 2012, represent a 36.4% increase.

Frequent forms of violence perpetrated against the majority of Dalit women and girls were verbal abuse that combines both casteist and sexualized abuse (62.4 % of total women), physical assault (54.8%) sexual harassment and assault (46.8%) domestic violence (43.0 %) and rape (23.2%). The remaining forms of violence –sexual exploitation, forced prostitution, kidnapping and abduction, forced incarceration, medical negligence, female feticide and infanticide, and child sexual abuse were faced by relatively fewer women and girls of the violence in the general community was faced from dominant caste men and women, including landlords, police officials, elected panchayat representatives, business people and doctors. This is compounded by violence within the family, mainly from husbands and in-laws.<sup>7</sup> A number of dominant caste landlords, government officials and local political leaders were perpetrators of the violence, a number of dominant caste men collude with Dalit men to perpetrate the violence in order to avoid the SC/ST (Prevention of atrocities) Act which applies only to non SC/ST persons.

Specific forms of violence which Dalit women are often subjected to include stripping and parading

naked<sup>8</sup>, violence associated with allegations of practicing witchcraft, sexual exploitation, trafficking and prostitution, including ritualized prostitution under Devadasi/Jogini practices, and domestic violence within inter-caste marriages. Studies indicate that over ninety percent of Devadasis/Joginis belong to scheduled castes and it is women belonging to scheduled castes and tribes who are disproportionately vulnerable to trafficking and prostitution. Statistics show that over 2,500 women have been killed on the suspicion of practicing witchcraft in the past 15 years. The common pattern is that the victims were always poor, mostly from marginalized communities such as Dalits, and own some property or have rejected the sexual advances of dominant men in the community.<sup>9</sup>

A legislative and policy approach will not bring about substantive change if it is not implemented within a holistic approach that simultaneously targets the empowerment of women, social transformation and the provision of remedies that ultimately address the continuum of discrimination and violence, and also the pervasive culture of impunity that sits at the heart of caste discrimination.<sup>10</sup> Cultural transformation must accompany legislative reform and positive steps must be taken to educate the dominant castes on the non-negotiability of non-discrimination based on caste (which includes affirmative action) as a universal standard.

#### A. IMPUNITY FOR THE VIOLENCE AGAINST DALIT WOMEN

In 40.2% of instances of violence, the women did not attempt to obtain legal or community remedies for the violence primarily out of fear of the perpetrators or social dishonour if (sexual) violence was revealed, or ignorance of the law, or the belief that they would not get justice.<sup>11</sup> In 2006, the official conviction rate for atrocities against Dalits was just 5.3%.<sup>12</sup> In 26.5% of the incidents, women attempted to obtain legal or community redress for the violence, but were prevented by the perpetrators and their supporters, and the community at large. In 17.4% of instances of violence, the women's attempts to access justice were blocked by the police themselves; less than 1% of instances of violence have ended in convictions.

In the face of continuing atrocities based on caste and the increasing ways in which caste discrimination perpetuates itself through violence, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014 was passed in March 2014. This ordinance broadens the definition of atrocity from 15 to 29 clauses defining “forest rights”, “economic boycott”, “social boycott”, “manual scavenging,” devadasi system and witch hunting within the purview of the ordinance. However, the effect of new laws on the commission of targeted crimes remains to be seen – and in all sectors, non-implementation of protective legislation continues to defeat the realization of fundamental freedoms for women, despite assertions to the contrary by the government of India.

### **6. RELIEF, REHABILITATION AND JUSTICE FOR SURVIVORS OF CONFLICT AND INTERNALLY DISPLACED PERSONS**

The government of India has set out the positive measures taken with respect to legal redress, compensation and rehabilitation of victims of communal violence in Gujarat in 2002.<sup>13</sup> Surveys at the ground level, however, show that the economic rehabilitation of survivors and their families has been halting despite public interest litigation to force governmental action.

#### A. GUJARAT

A five state survey on conflict induced displaced persons found that in Gujarat there are 3964 families consisting of 9825 males and 9611 who have been living away from their native land in 83 relief colonies across Gujarat who are not just affected by the violence but have not yet been allowed to return to their homes. These colonies were built from private funds and no effort was made by the government to resettle the survivors or help them return home.<sup>14</sup> Most of them are living in severe conditions in these colonies that are built by private funding. Their property that has been lost in their native land has not been recovered, no housing scheme has been devised; and there has been no support for repairing or rebuilding damaged houses. The loss of livelihood due to the shift hence has led to a lower standard of living, change of occupation, and importantly also drop in income.

Education and livelihood are two arenas that have been terribly hit, the survey indicates that 70% of the responded said that there was availability of schools nearby but most of the children had to drop out, as they need more hands to pitch in for survival. 66% persons had received compensation, but return to the original place still seemed a distant dream, 31% of the people tried to return to their homes but in vain, factors like fear, livelihood, housing were a problem as well.

Over the 12 years since 2002, there have been innumerable efforts like making appropriate representation to the National Human Rights Commission, National Commission for Minorities, local civic bodies, various government agencies, public hearings have been held by the civil society organizations, individuals and residents of these colonies but to no avail.

## B. ASSAM

Major ethnic conflicts which broke out in Assam particularly during 1993, 1994, 1996, 1998, 2005, 2008, 2011, 2012<sup>15</sup>, 2013, and 2014 had led to constant setting up of relief camps year after year.<sup>16</sup> Distressing evidence of post conflict trauma, unsafe and unhealthy living conditions add to the tension of return and resettlement for camp inmates.<sup>17</sup>

The Assam Relief Manual, 1976, which is in the process of revision, is limited to distribution of cheques and providing temporary shelters and food items. The Ministry of Home Affairs, (Disaster Management Division), Government of India, has guidelines for items and norms of assistance for State Disaster Response Fund and the National Disaster Response Fund for the period 2010-2015.

Neither the manual nor the funds allocated mention safety and security of women and other specific concerns for women. Also, it does not have any space for inducting women in the vigilance committees. After such major violence, district administration forms informal peace committees but none of these committees have women or women's issues in their priority lists.<sup>18</sup>

There is no clear gender sensitive guideline to address displacement or the displaced, which is the immediate offshoot of conflict. The Government of Assam does not have an official policy to address issues of IDPs.

## 7. NEED FOR A NATIONAL TRIBAL POLICY

Tribal peoples live in different states and union territories in India and constitute 8.2 percent of the Indian population. Tribal peoples include communities that are classified as scheduled tribes and communities that fall under the category of De-notified Tribes (some of whom are scheduled tribes). Their social, cultural, religious, political and economic conditions distinguish them from other communities; their customs, traditions and livelihoods may differ to varying degrees from other sections as well; the criteria for the identification of tribes, may include but are not restricted to: distinctive lifestyles, customs, livelihood practices and habitations, culture including language and dialect. Some tribes may also be engaged in pre-agricultural livelihoods and shun contact with other communities unlike them, preferring instead established patterns of social contact within the tribe. Because of their distance from communities unlike their own, such tribes are particularly vulnerable to exploitation and stereotyping in situations of contact with the world outside theirs. Their status, autonomy, rights and entitlements are affirmed by the Constitution of India, the Nehruvian Panchsheel and by special legislations.

Despite constitutional guarantees, earmarked budgets as well as policy initiatives for over six decades, tribal peoples in the constitutional era in India have faced chronic and escalating immiserisation and have been pushed to the margins of vulnerability. The position of women from tribal communities is tied to the position of tribal communities in India.

India needs a national tribal policy – that will apply to the scheduled tribes and the de-notified tribes -- that envisions the universalization of basic minimum needs among all tribal peoples in India, which include but are not restricted to elementary education, community health care, sustainable livelihood support, unhindered access to land and forest based livelihoods, including full access to the commons, public distribution system, food security, drinking water and sanitation, elimination of indebtedness and

related effective infrastructure. Equality of opportunity and outcomes in all dimensions of social and economic life especially to particularly vulnerable tribal communities while guaranteed by the constitution are way beyond the reach of tribal communities across the country. We need to envision a future where forests and homelands are restored to tribal peoples who continue to live there along with the full provision of basic amenities in the remotest villages; and a future where those tribal peoples who have been displaced are either restored or provided with compensation and relocation in cultivable land in a manner that enables a communitarian life with dignity. Finally, we need a program shift for transmitting the value of tribal cultures through the archiving of histories, languages, cultural forms, art, craft and tribal knowledge systems, in a manner that protects the right of the bearers of knowledge to determine the terms of transmission without exploitation or commodification.

Raising the status of women in general and that of women belonging to the Scheduled Tribes in particular is necessary and non-negotiable. Within the framework of a democratic polity, our laws, development policies, plans and programmes have aimed at women's advancement in different spheres. In recent years, the empowerment of women has been recognized as a central issue in determining the status of women.

Tribal women, while being a disadvantaged and vulnerable group are, nevertheless, better placed, in many respects, than their counterparts in the general population and, in fact, in certain areas, exhibit better indicators than men from scheduled tribes and women from the general population. They generally do not suffer segregation or lower status.

Despite a sex ratio that is more favourable in the ST category than at national level, women from scheduled tribes fall behind in education, health, employment and general well being. While migration to urban areas is high for both men and women belonging to scheduled tribes, data points to higher frictional unemployment for ST women than for ST men. Tribal women and girls are also especially targeted for unregulated and harmful clinical trials with disastrous effect, as in the case of deaths resulting from the recent trials of HPV vaccine on girls from tribal communities in residential schools in Andhra Pradesh.

Witch-hunting, one of the least talked-about acts of violence in India also manifests itself in some form or the other in different parts of India with concentration in the areas (states/UTs) of Telangana, Assam, Bihar, Chhattisgarh, Gujarat, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan and West Bengal. Low levels of education and poor medical facilities have been singled out as leading to a belief in witchcraft in parts of Assam, where many innocent people have been victims of witch-hunts. In the interiors of states like Bihar and West Bengal, 'witches' or 'dains' and their children are hunted and killed with impunity. Each year, an estimated 200 women are killed as witches in rural India. We need concrete governmental action to eliminate certain pernicious practices, which result in the torture and oppression of women e.g. witch-hunting. Customary practices (of inheritance, ownership of property, etc.), which discriminate against women, must be examined with a view to bring about gender parity.

## 8. RECOMMENDATIONS

The Government of India must spearhead legislations and frame rules to ensure that women from socially vulnerable groups are not subjected to discrimination and denial of fundamental freedoms. Training of political representatives and members of the judiciary in the frameworks of constitutional and statutory interpretation is indispensable to effective legislative, governmental and judicial action. New cultural forms must proliferate through citizen initiatives supported by government to put in place a sense of collective responsibility for the treatment of all women with dignity, without falling into the trap of honour discourses that truncate women's right to liberty under the constitution.

Specifically,

- A legislation protecting people from communal violence is an urgent need.
- The law on the rights of persons with disabilities with specific delineation of the rights of



women with disabilities must be drafted in consultation with disability rights groups and enacted without further delay.

- Domestic workers must be protected by legislation that guarantees fair wages and sets out comprehensive labour standards and protections in unequivocal terms, which shall be justiciable in courts of law.
- Section 2(1)(g)(b) of the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013, shall be struck down as it is contradictory to the government's commitment to eliminate manual scavenging and similar unclean occupations, which have a predominantly female workforce.
- The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance 2014 shall be immediately passed by Parliament. Special attention shall be paid in its implementation to crimes against dalit women.
- A comprehensive policy at state and national levels must be formulated to address the entire range of issues confronting internally displaced peoples – whether they have been displaced because of conflict, development projects or environmental policy. The right of these communities to return to their homelands with the guarantee of security shall be prioritized in policy.
- A national tribal policy that foregrounds the rights of tribal communities to their right to residence, livelihoods, culture, language, dignity and freedom from persecution through violence stigmatizing stereotypes and conduct is an urgent need. The policy shall also map the mechanisms through which redress may be sought in cases of state inaction or derogation, and underscore the non-negotiability of budgetary allocations and close monitoring of human development index with reference to tribal communities.

## END NOTES

<sup>1</sup> *Naz Foundation and Others v Government of NCT of Delhi and Others*, 2009 (160) DLT 277

<sup>2</sup> Para 12, p. 19/30, List of issues and questions in relation to the combined fourth and fifth periodic reports of India: Replies of India\* CEDAW/C/IND/Q/4-5/Add.1, 23 January 2014.

<sup>3</sup> *Suchita Srivastava and anr v. Chandigarh Administration*, 2010 (1) CHN (SC) 96.

<sup>4</sup> Bhasha Singh, 2014. *Unseen: The Truth about India's Manual Scavengers*, New Delhi: Penguin.

<sup>5</sup> *A human tragedy unfolds, as the State watches! In the relief camps of Muzaffarnagar and Shamli Districts* [A Preliminary Citizens' Report] September 20, 2013. Aman Biradari, Action Aid and Islamic Relief India

<sup>6</sup> This section is based on a research note submitted by Lakshmi Vivek. States with high rates of violence against Dalits and women: Rajasthan is ranked second highest in terms of registered crimes against SCs and fourth highest in terms of registered crimes against women. Similarly, Madhya Pradesh is ranked fifth highest in terms of registered crimes against SCs and fifth highest in terms of registered crimes against women. More specifically in terms of the only official disaggregated data on violence against SC women, Madhya Pradesh ranks highest and Rajasthan third highest in terms of registered cases of rapes of SC women.

<sup>7</sup> Irudayam, Aloysius, Jayshree P. Mangubai and Joel G. Lee, 2011. *Dalit Women Speak Out: Caste, Class and gender Violence in India*. New Delhi: Zubaan

<sup>8</sup> Under SCs and STs (Prevention of Atrocities) Amendment Ordinance 2014 (No 1 of 2014) these acts are an offence

<sup>9</sup> Paul, Stella, 2012. "Witches of India: Women without Defense". <http://worldpulse.com>

<sup>10</sup> Special Rapporteur on violence against women, its causes and consequences, 2013. Press statement on finalizing country mission to India.

<sup>11</sup> Irudayam, A., Mangubhai, J.P. and Lee, J., 2006. *Dalit Women Speak Out: Violence against Dalit Women in India*. Chennai: National Campaign on Dalit Human Rights, National Federation of Dalit Women, and Institute of Development Education, Action and Studies.

<sup>12</sup> National Crimes Record Bureau, 2006. *Crimes in India 2006*. New Delhi: National Crimes Record Bureau

<sup>13</sup> Para 1, List of issues and questions in relation to the combined fourth and fifth periodic reports of India: Replies of India\* CEDAW/C/IND/Q/4-5/Add.1, 23 January 2014.

<sup>14</sup> "A Study On Internally Displaced persons Of India: Mapping And Citizenship Rights" was anchored in 2012 -2013 by Centre for Social Justice. This survey was conducted in Assam, Orissa, Andhra Pradesh, Kashmir and Gujarat.

<sup>15</sup> The Economic Times, 'A distraught tribal: The genesis of Assam ethnic violence', August 12, 2012.

<sup>16</sup> Outlook, 'A Bridge Too Far', August 13, 2012. <http://www.outlookindia.com/article.aspx?281840>

<sup>17</sup> Based on note submitted by the North East Network to National Alliance of Women for the 4<sup>th</sup> and 5<sup>th</sup> Alternative Report on CEDAW.

<sup>18</sup> North East Network fact finding report on Garo-Rabha conflict, Assam, 2012.



ARTICLE 6  
PROSTITUTION  
& TRAFFICKING

Section -A  
STATUS OF WOMEN  
IN SEX WORK, INDIA

Section -B  
HUMAN TRAFFICKING  
IN INDIA

CHAPTER 3



INDIA

4th AND 5th  
NGO ALTERNATIVE REPORT  
ON CEDAW

# ARTICLE 6 PROSTITUTION & TRAFFICKING



## SECTION - A STATUS OF WOMEN IN SEX WORK, INDIA, 2014

**Aarthi Pai,<sup>1</sup> Meena Seshu,<sup>2</sup>  
Manisha Gupte,<sup>3</sup> VAMP<sup>4</sup>**

Review the Immoral Traffic (Prevention) Act, 1956 that de facto criminalizes sex work and ensure that measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers.

Report of the Special Rapporteur on violence against women, its causes and Consequences, Mission to India, 1 April 2014

### 1. BACKGROUND

There are over 800,000 sex workers in India.<sup>5</sup> However unofficial figures place these numbers far higher. Organisations of sex workers, United Nations (UN) agencies and Commissions have understood and articulated sex work as a contractual arrangement where sexual services are negotiated between consenting adults.<sup>6</sup> Implicit in this consent is the act of agency; wherein sex work can be a realistic choice to sell sex.<sup>7</sup> Decriminalisation of sex work is a pre-requisite to ensure the physical and emotional inviolability of sex workers, their right to life, right to freedom of labour, health and reproductive and sexual rights.<sup>8</sup> Recent research with 3000 sex workers in 14 Indian states<sup>9</sup> also finds a substantial segment of women had prior experience of alternative work and opted for sex work for better income and livelihood opportunities.<sup>10</sup> The uncertain legal status attached to their work and identity further “invisibilises” them as citizens with associate rights and entitlements.

### 2. SHIFT IN GLOBAL UNDERSTANDING OF RIGHTS OF SEX WORKERS

There has been a shift in the understanding of sex worker rights precipitated in part by the global HIV epidemic.

- A. The Special Rapporteur (SR) on Violence Against Women has observed that “measures to address trafficking in persons should not overshadow the need for effective measures to protect the human rights of sex workers”. The SR has also called for a review of the Immoral Traffic Prevention Act, 1956 in India that criminalizes sex work.<sup>11</sup>
- B. UN Resolutions, International agencies and Commissions have stressed on a rights based response to sex work and the need to protect rights not just by decriminalising sex work, but by eliminating the unjust application of non - criminal laws and regulations against sex workers.
  - i. The UN Economic and Social Commission for Asia Pacific resolution calls on members to address legal barriers<sup>12</sup> to HIV responses including reviews<sup>13</sup> of national laws, policies with a view to eliminating discrimination against vulnerable populations.
  - ii. The Independent Commission on AIDS in Asia,<sup>14</sup> UN Special Rapporteur on Right to Health,<sup>15</sup> Global Commission on HIV and the Law<sup>16</sup> and UNDP Asia Pacific<sup>17</sup> have recommended the

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decriminalisation of sex work involving consenting adults. The latter two have also specifically recommended repeal of laws that prohibit consenting adults to buy or sell sex as well as laws that prohibit commercial sex (immoral earnings, living off the earnings' of prostitution, brothel-keeping.)

iii. National Human Rights Institutions have been called on to hold governments accountable for the protection of sex workers from discrimination, harassment, abuse and violence perpetrated by police or other government officers.<sup>18</sup>

- C. UN organisations, International agencies and Commissions call for recognition of Trafficking in persons for sexual exploitation and Sex Work as two different concepts to be understood and legislated accordingly.<sup>19</sup> The use of anti-trafficking laws against adults in consensual sex work needs to be reviewed. Sex Work organisations have also called for a review of laws that criminalise third parties who support sex workers to work within a safe environment.<sup>20</sup>
- D. The International Labour Organisation (ILO) and UNDP have emphasised on the need to provide sex workers with legally enforceable rights to occupational health and safety and right to participate in the process of developing workplace health and safety standards.<sup>21</sup>
- E. Sex workers have been recognised as an invaluable resource in the law and policy reform process with a view to developing non-judgmental and rights based laws, policies and programmes.<sup>22</sup>
- F. Elaborating the scope of Article 6 of CEDAW; General Recommendation 19 calls on States to recognise that their (sex worker's) unlawful status makes sex workers vulnerable to violence and hence need equal protection of laws against rape and other forms of violence.<sup>23</sup> States were asked to report on the measures to protect women in sex work and the effectiveness of these measures. The CEDAW Committee has recommended the need for measures<sup>24</sup> to prevent “discrimination against sex workers and ensure that legislation on their right to safe working conditions is guaranteed.”<sup>25</sup>
- G. The Supreme Court of India has observed that sex workers are entitled to a right to life and must be accorded the protection guaranteed to every citizen. It instructed the State to provide recommendations on the rehabilitation of sex workers who wish to leave sex work of their own volition and to provide conducive conditions for sex workers who wish to continue working as sex workers in accordance with Article 21 of the Constitution.<sup>26</sup> A Supreme Court panel recommended that Central government and Election Commission issue voter ID cards, relaxing verification requirements, and state governments and local institutions issue ration cards to sex workers.<sup>27</sup>

The emerging rights discourse at the global and national level argues that efforts to respect, protect, fulfil and promote the human rights of sex workers needs to be premised on ensuring their rights as citizens under the Constitution. The State needs to be accountable to ensure that such rights are appropriately protected and that sex workers have access to social and legal entitlements. An environment that criminalises activities of sex workers or seeks to forcibly rescue and rehabilitate them clearly violates their dignity and right to self - determination and free choice. Laws, policies and programmes devised in partnerships with sex workers are most likely to be effective. Despite these formulations and clear recommendations by international human rights instruments India has failed to recognise the marginalisation,<sup>28</sup> vulnerabilities and human rights of sex workers. Despite specific requests made by the CEDAW Committee in its list of issues to the Government of India in 2013,<sup>29</sup> the report submitted by India has not highlighted the status of sex workers, or specific measures taken to respect, protect, fulfil and promote their human rights.

### 3. LACK OF ACCESS TO JUSTICE FOR SEX WORKERS

Access to justice for women is constrained by social barriers ranging from lack of knowledge of their rights, dependence on male relative for assistance and resources and the threat of sanction; and lack of capacities in the justice systems to respond to the particular needs of women.<sup>30</sup> In the case of sex workers





in India, stigma and moral lens attached to sex work further accentuates barriers to accessing justice.

The Indian legal system continues to be adversely impacted by the patriarchal nature of law that places restrictive constructions of sexuality, with specific bias against sex workers. The moral lens permeates attitudes of judicial officers, resulting in discriminatory treatment of sex workers in the administration

of justice by law enforcement and courts and in the application of the law. Discrimination is evident when sex-workers are presented in courts either as victims of violence, raids and rescue, or as alleged offenders. They are forced to undergo hardships in attending court hearing over a long period of time; private lawyers demand high fees and even sexual favours for appearing on their behalf.<sup>31</sup> Their uncertain status in law results in judgments that often mark sex-workers as criminals and repeat offenders.

Despite Free Legal Aid being enshrined in the Indian Constitution and the Committee's recommendations<sup>32</sup> that the State Party ensure free legal services to poor and marginalised women, and monitor the quality and impact of such services, access to legal services for sex workers remains a pipe dream. The Supreme Court has also observed that the State and District Legal Services needs to play a role in publicising entitlement schemes available with the government.<sup>33</sup> The failure to receive legal assistance to pursue her is in essence, denial of the right to fair trial for women.<sup>34</sup>

It has been observed that women and trans-women in sex work are unable to access appeals. A preliminary analysis of cases in the twenty-two high courts between 2010 and 2013 pertaining to sex work/ prostitution and loitering or creating public nuisance under the penal code or police acts indicated only eight such cases.<sup>35</sup> This abysmally low figure indicates almost negligible access of sex workers to the higher judiciary and courts of appeal. It indicates denial of opportunity to sex workers for correction of errors made by lower courts, emerging from lack of understanding the specific circumstances of sex workers, having to barter sexual favours to lawyers, as well as bias and prejudice due to her identity.<sup>36</sup>

In instances where sex workers approach district courts, they report having to deal with bias from lawyers and court officials. They are advised to give up “illegal activities” (sex work) or, if they are appearing on a soliciting charge, they are advised to pay a fine and “not drag the case.”

Nothing illustrates this better than Anu Mokal's case, where a sex worker was beaten by the police when she was visiting a friend in hospital. She sustained injuries and was treated at a government hospital leading to an eventual miscarriage. She was arrested and appeared in court the next day to pay a fine for soliciting.<sup>37</sup> Not

A sex worker with speech and hearing impairment was detained in an observation home after a brothel raid and produced in court after four months. We were present at the court when she told the judge that she wished to return home and did not want to be kept in the observation home. To our shock the judge declared in an open court, “She has come from the gutter and wants to return to the gutter. She will not listen.” What justice can we expect from courts which treat us in such a demeaning manner?<sup>7</sup>

**VAMP Collective, Sangli, Maharashtra**

#### **Judicial dialogues with marginalized communities**

Since September 2013, Partner's For Law and Development, a legal resource group on women's rights, initiated a program to sensitise officers discharging diverse roles related to prosecuting sexual violence within the criminal justice system in Delhi. The programme aims at partnering with judicial officers, public prosecutors, senior police personnel and legal aid lawyers to make 'courtroom practices responsive towards victims of sexual violence'. The programme provides spaces to transgender people, sex workers, gay persons to share their experiences and highlight discrimination and how these get reinforced through the law. It provided an opportunity for those tasked with investigation, prosecution and justice delivery, to question stereotypes and prejudices that obstruct access to justice for stigmatised communities. The programme combines experts from women's rights, academia, medico forensic, police, with voices from the margins. The feedback indicates that participants have appreciated the opportunity provided by this programme to interact directly with marginal communities, with whom the justice system engages with as accused in the criminal trials. An overwhelming majority have stated that this is the most valuable part of the programme - which is likely to impact not just their work but their approach to these marginalized communities. Courtesy – *Partners for Law and development, May 2014*

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surprisingly, courts or legal aid centres are often the last option (or never an option) for sex workers.

### 4. STATUS OF SEX WORKERS IN INDIA

#### A. VIOLENCE

*Sex workers are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need equal protection of laws against rape and other forms of violence. General Recommendation 19, CEDAW*

Violence against sex-workers in India is linked to the perception of sex workers are criminals and not citizens. This has led to systemic, systematic and large scale violation of human and fundamental rights such as the right to life, dignity, equality, equal protection and due processes under the law. Several factors put sex workers at risk of violence. Stigma attached to sex work exposes them to violence in personal spaces from family members as well as from intimate partners. Violence is used as a mechanism of asserting sexual control; it is normalised as punishment for having sex with other men.<sup>38</sup>

Since there is little appreciation amongst police of the contexts and factors affecting sex workers lives,<sup>39</sup> they ignore complaints related to family and partner violence; instead offering advice to women about stopping sex work and settling domestic matters 'amicably'.<sup>40</sup> On their part, sex workers are unaware of provisions of the domestic violence act, which provide redress against partner violence. Police apathy to the plight of sex workers results in denial of access to provisions under the Protection of Women from Domestic Violence Act (hereafter PWDVA 2005).<sup>41</sup>

Sexual assault of sex workers are also high with little social or legal recognition. Myths surrounding the violence of rape against sex workers ensure that they are constantly on the fringes of access and redress to justice. These myths include "A sex worker cannot be raped" (i.e., if she has consented to multiple partners or commercial sex, she has given up the right to refuse other partners or other acts).<sup>42</sup>

#### B. CRIMINALISATION, STIGMA, SOCIAL EXCLUSION AND CLIMATE OF IMPUNITY

For sex workers, the State is an instrument of violence; feared, rather than seen as protectors of rights. People in positions of authority routinely demand sexual favours<sup>43</sup> from sex workers for speedy redress of grievance or accessing entitlements.<sup>44</sup> They regularly verbally abuse sex workers using specific sexual innuendo and language. Sex workers regard law enforcement is regarded by as the most repressive state agency. Police abuse sex workers, illegally detain,<sup>45</sup> sexually assault and torture them in custody.<sup>46</sup>

While India does not criminalise sex workers, a wide range of laws is used to create an atmosphere that criminalises sex work. These include laws public order and decency laws, tenancy laws that determine the nature and conditions of the brothel. Police disregard due process while arresting violating NHRC guidelines specified for arrest of women. Often police resort to arbitrary detention of sex workers and extortion of fines under threat of arrest and physical violence.

Sex workers report being arrested under public nuisance or obscene conduct provisions of the penal code. They are produced in court and released on the payment of fines. Most sex workers choose not to contest their arrest under these provisions since they find it easier to pay fines and be released.<sup>47</sup> The reasons can vary from being in sex work secretly, having children at home who are dependent on her, inability to cope with the legal system process of repeatedly appearing in court, and inability to find lawyers who are willing to fight her case. In the process they get marked as repeat offenders. The cycle of discrimination is perpetuated, setting into motion further marginalisation, stigma and violence.

Stigmatisation, which has its roots in standards set by

<b>EXPERIENCE OF POLICE VIOLENCE</b>		
Pan India Survey of 3000 sex workers		
Abusive Language	1431	50%
Beaten, Hair pulled, Beaten with belts	1011	35%
Threatened	1052	37%
Forced to bribe	569	20%



patriarchal morality, is a major factor preventing women from accessing their rights. This structural violence<sup>48</sup> further aggravates discrimination in the lives of women in sex work. It creates a fertile ground for social exclusion and denial of rights as was witnessed in the exhibition of impunity in **Nippani violence**, Maharashtra in 2002. As a result of law and social practice, sex workers face difficulties accessing health care, housing, and supplementary employment opportunities. They risk verbal, physical, and sexual abuse, arbitrary arrests, and harassment. Stigma decreases their ability to seek protection from the courts or the police when they suffer from violence and discrimination.

Social exclusion can be considered as the failure of society to provide certain individuals or groups with the rights and benefits that would be available to its members. People can be excluded from economic benefits, essential services such as health and education, from social, cultural or civil rights, from political participation, or from ownership of resources. Such exclusion is seen in the lived realities of sex workers.

### C. VIOLENCE FROM NON-STATE ACTORS

A direct correlation exists between the criminalised status of sex workers and the violence faced by them in their work. Sex workers are forced to work in highly volatile and risky settings where they are at constant risk of verbal and physical abuse. Criminal and punitive laws targeting sex work then provide a justification for the violence and rights violations. Sex workers can face violence from support staff, managers or clients in establishments where sex work takes place. Criminal elements, clients and third parties use the threat of criminal sanctions to exploit sex workers. Despite evidence<sup>49,50</sup> indicating a high incidence of violence these acts do not get legal recognition and police refuse to register FIRs or investigate the assaults. Sex workers hesitate to file complaints because of the fear of police retribution, or fear of being prosecuted for engaging in sex work. In many cases, sex workers who have gone to file complaints of violence have reported experiencing further violence and abuse from the police.

### D. CONFLATION OF TRAFFICKING AND MIGRATION, LEADING TO DENIAL OF LABOUR RIGHTS

There is an urgent need to distinguish between “trafficking”, “sex work” and “migration”. The Special Rapporteur on Violence Against Women observed there was a tendency to conflate sex work with trafficking in persons. She observed that when sex workers are identified as victims of trafficking the assistance that is provided to them is not targeted to their specific needs.<sup>51</sup>

Increasing evidence and global norms confirm a clear distinction between trafficking and sex work and describe the characteristics of trafficking. “Trafficking” refers to “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat of use of force or other forms of coercion, of abduction, or fraud, of deception, of the abuse of power ... or the giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”<sup>52</sup>

Though many sex workers have been deceived or lured by payments into sex work and might be said to be “trafficked”, there is a large number, who have not entered sex work due to any basis involving coercion or deceit. They have moved in search of a better life and livelihood. Though poverty and inequality are deplorable reasons for people to enter sex work and indicate inadequate “free choice”, it cannot be said that all people suffering from such conditions have been trafficked. They should benefit from human rights support, including social and economic choices.<sup>53</sup>

When trafficking is confused with women's voluntary migration (for the purpose of employment, residence, or escape from persecution by State or non-State actors) protectionist measures steeped in patriarchal control over women's mobility result in curbing female migration within and outside the borders of the country.<sup>54</sup> This limits women's access and opportunity to travel away from the family, kinship in search for a better life. Even though the lines between deceitful transport of a person and her will to travel may be blurred (with women facing either situation at different points in their lives), curbing women's mobility is not the answer.

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Gendered notions of women as companions of migrating men lead to a denial of her independent agency, whether in sex work or otherwise. This stereotype results in lack of access to labour entitlements due to biases against mobile women, secondary status accorded to women workers and their wages, and societal stigma against sex work. The problems are multiplied for women in sex work. Lack of support from family and exploitative relationships at the workplace (as well as from family members who would like the income to reach back home, but without the 'sullied' woman returning home) renders an older sex worker destitute and disenfranchised, even if she may have earned a considerable income during her working years.

### i. Conflation with Trafficking and Resulting Rights Violations

While sex work is not an offence in India, the Immoral Traffic (Prevention) Act 1956 (ITPA) consists of a range of provisions that criminalise almost every aspect relating to sex work. Provisions of ITPA have been used to arrest and harass sex workers, regardless of whether they are in sex work voluntarily or have been coerced. A report commissioned by the National Human Rights Commission found that the soliciting statute was the primary law used in ITPA and observed: "It is disturbing to note that out of almost 14,000 persons arrested every year under ITPA, approximately 90% are women."<sup>55</sup> A study in red light areas found that 66% cases registered in Mumbai and 56% in Delhi were under the soliciting statute.<sup>56</sup>

### ii. Raids - A Human Rights Violation of Sex Workers.

Raids are executed by the police for many reasons, including complaints lodged by NGOs who intend to rehabilitate sex workers and repatriate them, in an effort to abolish this work. The complaint is lodged under the ITPA to rescue minors and adult women believed to have been trafficked into sex work. The raid could also be undertaken to evict sex workers from a "red light area"<sup>57</sup> under ITPA and other public nuisance laws. Raids are often used to 'sweep the streets' of sex workers, and clients vagrancy laws, and soliciting under ITPA. Police conduct the raid and indulge in physical violence and extreme verbal abuse which is often sexual in nature, to intimidate sex workers.

### iii. Rescue and Rehabilitation

Perhaps the most widespread human rights abuse emerges from the rescue and rehabilitation provisions of ITPA. These interventions involve brothel raids by special police officers and NGO workers, where women are "rescued" and placed in rehabilitation facilities. Police raids, frequent in red light areas and under the pretext of rescuing minors, do not distinguish between minors and consenting adults. Despite extensive documentation that violence against sex workers occurs at the hands of the State, organisations employing a raid, rescue, and rehabilitation scheme rely on the police. In 2012, in perhaps one of the largest raids in recent times, an operation was carried out over 3-4 days in a red light area called **Simplex building** in Mumbai and over 200 women were "rescued and sent to correction homes".<sup>58</sup> Narratives of raid and rescue operations indicate the highly abusive and violent nature of these operations.

On 19th August 2013 at 11 am Police raided the sex workers community. Between 50-60 Police, and 5-6 police vans directly entered the community and started catching women. Since it was morning time, most of all the women in their homes; washing clothes, preparing food, poojas (worshipping) and bathing. Police came without any information or warning. They pulled hair, used abusive language and started throwing women into the van. Women did not even get a chance to wear saris, and were forced to sit in the van. Collated from the Narratives of Sayara Jamadar (42), Bilkis Inamdar (45) Sharda Yadav (45), Manda Chavan (42), Sangita Nikam (30), Surekha Rajmane (40). Raid on Domburwada community of sex workers, Kolhapur, 2014.

We were organising a community meeting in Gokul Nagar when two vehicles came. There were many more vehicles following this vehicle. The police and Greg Malstead came into our community without our permission and started pushing girls out of their homes. There were so many girls without clothing! They were forcefully pushed out! They pulled the women's hair. They pushed them and put them in the vehicle." Kamlabai, VAMP, Raid on Gokulnagar, Sangli, 2008.<sup>59</sup>

Consent of the adult women in sex work who are “rescued” is immaterial, and they are remanded to correction homes despite testifying that they were in sex work willingly.<sup>60</sup> These adult women are released into the care of parents or family members on the condition that they will give up sex work. Often the judgments handing over “custody” of the adult sex worker to the parent or family member are based on moral judgments.

Out of 38 women, 16 women released by court, and 12 women were sent home after they agreed that they would not remain in Kolhapur and would leave sex work. Rejecting the application for custody of one sex worker filed by the family, the order said that if “the family member had really taken care of the victim, she would not have suffered from HIV disease”. Collated from the Narratives of Sayara Jamadar (42), Bilkis Inamdar (45) Sharda Yadav (45), Manda Chavan (42), Sangita Nikam (30), Surekha Rajmane (40). Raid on Domburwada community of sex workers, Kolhapur, 2014

The final step in the rescue intervention is the (often) involuntary rehabilitation of women in sex work. Rehabilitation programmes are run either by non-governmental organisations or are part of government programmes. Sex workers are taken to rehabilitation programmes where they are kept in jail-like conditions; experience repeated sexual abuse;<sup>61</sup> and eventually released. Sex worker organisations have drawn attention to the health and safety concerns of women involuntarily removed from brothels. Rehabilitation programmes often undermine the very purpose of their existence, given the high rates of violence experienced by women in rehabilitation homes; the return of women to sex work; and, disrupting their everyday existence because of being detained for extended periods of time.<sup>62</sup>

The Special Rapporteur on Violence Against Women has reported that rehabilitation of sex workers in India is an issue for concern.<sup>63</sup> The Supreme Court of India has observed that rehabilitation training assistance for sex workers should not be made contingent on forcible stay in corrective homes, nor can sex workers be involuntarily incarcerated in corrective homes “which they consider a virtual prison”.<sup>64</sup> Despite these observations, forced rehabilitation continues to be the norm across the country.

#### iv) Eviction, Repatriation

Sex workers are often evicted from the premises and are unable to return to their residences.<sup>65</sup> In the case of the **Domburwada raid** in Kolhapur Maharashtra in 2013, over 200-250 women were residing in the 30-40 houses, and many had been resident for the past 30 years. Ever since the raid, the place has been locked and the sex workers are being prevented from entering their houses. The women have requested the district authorities to provide them with alternative residences, but the authorities have ignored them.

In 2004, the State Government of Goa launched an eviction operation against migrant communities including sex workers in Baina, using brutal police violence.<sup>66</sup> In the case of the Domburwada raids in Kolhapur, small lodges and hotels were warned by the police against giving rooms to the sex workers.

Thereafter women began to work on the streets in highly risky settings such as bathrooms or open spaces, facing the constant dangers of police and goon violence, gang rape and abuse. They also lose the power of negotiating safer sex practices.

In 2013, the Justice Verma Commission recommendations to the Criminal Law Amendments, inserted the Amended Section 370 to define the offence of Trafficking. In a clarification issued by the Verma Commission it stated that the Amended Section 370 was to protect women and children from being trafficked. The section did not include within its ambit, sex workers who practice of their own volition. It further clarified that the amended section should not be interpreted to permit law-enforcement agencies to harass sex workers who undertake activities of their own free will and their clients.<sup>67</sup>

Despite irrefutable evidence emerging from government, non-governmental organisations, research institutions and voices of numerous affected sex workers, the State has failed in its obligations to respect,

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protect and promote the rights of sex workers who are arbitrarily arrested and evicted. State inaction to assess and amend punitive laws that impact sex workers and their families has led to sex workers living in a criminal and stigmatised environment. By giving rehabilitation schemes as the only option to sex workers, the State has failed in its duty to protect the rights of sex workers.

### E. STIGMA IN HEALTH CARE

Sex workers experience debilitating stigma and discrimination that erodes their ability to protect their health and wellbeing. The government services are typically routed through primary and tertiary health care set up comprising the district hospitals, primary health care centres, sub-centres and community health centres. Due to the Government of India's emphasis on HIV prevention, the National AIDS Control Organisation and its partners set up STI and HIV prevention initiatives across the country for vulnerable communities including sex workers. These centres provided stigma-free STI and HIV related services to sex workers.

The National Commission for Women observed that accessing health care is a major concern for women in sex work.<sup>68</sup> While the 'immoral whore' image makes it difficult to get good medical treatment, illiteracy, ignorance and fear of the medical establishment renders them open to exploitation and extortion of money and resources.

Sex workers prefer not to reveal their occupation when seeking care at government or private hospitals due to their experience of being stigmatised and discriminated against. Female sex workers are humiliated and criticised, made to wait for inordinately long periods of time, not examined properly, forced to undergo HIV tests, overcharged for services at private hospitals, denied medical services and delivery care,<sup>69</sup> and their confidentiality violated.

### F. SOCIAL SECURITY AND SUPPORT

The committee recommends the speedy enactment of the Unorganized Sector Workers Social Security Bill. ...The Committee urges the State party to pay specific attention and adopt a comprehensive approach, to address the problems of poor women in the urban areas. Para 45, Concluding Comments, India, CEDAW Committee. 2 February 2007 [CEDAW/C/IND/CO/3]

The 12th Five Year Plan approach paper outlined the need for a pragmatic mix of policies and programmes combined with institutional and attitudinal to achieve inclusive development paying attention to the specific needs of excluded groups.<sup>71</sup> The demand for social security nets for the unorganised sector has emerged as a right to ensure social protection for marginalised and invisible sectors of the workforce in India. The Unorganised Workers Social Security Act, 2008, was enacted by the Indian Parliament as part of this effort. Social security of sex workers also needs to be placed within the concerns of unorganised workers.

Sex workers have voiced the need for inclusion into these social protection schemes and to participate in broader campaigns and forums demanding rights for the unorganised work force. However, income generation schemes at the district level are made conditional to sex workers giving up sex work, a clause that many sex workers reject.<sup>72</sup> Another factor that impedes participation in income generation schemes is that sex workers are required to be part of self-help groups within their village or areas. Many sex workers participating in such self-help groups have reported being discriminated and marginalised by other SHG members. Hence the demand for identity based self-help groups needs to be considered by the government as a specific relaxation for marginal communities. The Pension Parishad, a national movement to demand Universal Old Age Pension has included the concerns of old sex workers including relaxing the eligibility age to 45 years for highly vulnerable groups such as tribal groups, trans gender and women in sex work.<sup>73</sup>





## G. THE CHALLENGE OF DOCUMENTATION

Stigma related to their work and identity and the migratory nature of work prevents sex workers from accessing identification documents, essential to accessing entitlements. For instance in 2009 it was estimated that only 20 percent of over 5000 sex workers in Delhi had a voter's ID card.<sup>74</sup> Sex workers from the National Network of Sex Workers found that residence proof, father's name and caste, and the ration card were some documents required for getting their children registered in schools.<sup>75</sup> Sex workers applying for housing schemes narrated that they were asked for proof of residence and ration cards. The Public Distribution System (PDS) meant for people below the poverty line to access food items cheaply, needs supporting proof of sex workers being below poverty line.

The Special Rapporteur on Violence Against Women has observed that lack of identification cards or status of unregistered citizens contributes to the normalization of violence against women.<sup>76</sup>

While the Supreme Court's recommendation to the central and state government to relax verification criteria for obtaining identity cards and ration cards for sex workers needs to be implemented by the State, it is critical to engage with the barriers posed by the stigmatised identity of sex workers. Sex workers recount that they are asked to provide sexual favours in return for obtaining these documents,<sup>77</sup> humiliated<sup>78</sup> and commissions and sexual favours are sought to relax the verification criteria.<sup>79</sup> Landlords refuse to issue rent receipts or rental agreements.<sup>80</sup> The State needs to ensure that these documents are provided to the applicants in a time bound manner and the reasons for refusing the documents clearly provided in writing to the applicants.

## H. DENIAL OF SAFE ENVIRONMENT AND LABOUR PROTECTION

Sex work happens in informal settings and is an occasional form of income or a long-term occupation. Despite this, a safe working environment through standard labour protection measures continues to be denied to sex workers.<sup>81</sup> This includes access to benefits, legal redress for workplace grievances, adequate health and safety regulations. Detention of sex workers in rehabilitation centres without access to legal counsel or right to appeal are human rights infringements that need protection under adequate labour clauses.

## 5. STATE RESPONSE AND CONCERNS

There has been a duality in the State Response in meeting its obligations towards sex workers. The Ministry of Health, through its HIV/AIDS programme emphasised on community owned and community led HIV prevention services.<sup>82</sup> By 2009, this ambitious transition of HIV programmes to the community-based organisations (CBO) of sex workers had already begun happening across the country. Emphasis was placed on training sex workers from the collectives to manage and run programmes, including the design, monitoring and evaluation, and financial and administrative management of small grants, which were provided by the Department of Health of the State and Central Governments. Key to this intervention strategy was the affirmation of the principle of “voluntary entry and exit from sex work”<sup>83</sup> and the need to strengthen community ownership through collectivisation and strengthening the enabling environment.<sup>84</sup> Guidelines were evolved for a systemic approach to implementing a crisis response by engaging in police advocacy. By its own admission this strategy has enabled it to reach out to over 0.68 million sex workers across the country, covering an estimated 53% of the sex work population.<sup>85</sup>

The Ministry of Women and Child Development has focussed on a more protectionist approach of seeking to rehabilitate people in sex work. Its central focus has been the rescue, rehabilitation of “victims” through safe shelter, medical care and legal aid, vocational training and their eventual re-integration in society. Action plans have been suggested to include children of sex workers into welfare programmes designed for children including pre-school programme, day-night care centres and counselling centres for children.<sup>86</sup> The government has sought to address the stigma and marginalisation raised by sex worker collectives and networks through the rehabilitation and alternative livelihood discourse.



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The Police approach to complaints of violence has consisted of ensuring police reforms for a more sensitive approach towards policing and in dealing with vulnerable populations. In 2005, the Inspector General of Police in Karnataka state, in response to complaints of widespread police abuse against sex workers, issued instructions that strict disciplinary action would be initiated against police officials ill treating, abusing and extorting money from sex workers.<sup>87</sup> Similar guidelines were also issued in Andhra Pradesh and Tamil Nadu.

A cohesive approach that recognises the agency of consenting sex workers and people trafficked alike, and upholds a rights-based approach has to be the cornerstone of the state policy towards trafficking and sex work.

The Indian state needs to meet its obligation to respect, protect, fulfil and promote the rights of women in sex work (as well as their children). State actors as well as non-state actors continue to violate the rights of sex workers with impunity and there is lack of due diligence to address violence against sex workers. Were these acts of violence, humiliation and discrimination preventable? Were they adequately investigated? Were perpetrators prosecuted? Were victims/ survivors duly compensated? If the answer to these questions is 'no', then evidently the state has failed in its duty to protect and enhance the human rights of people within its jurisdiction. It is imperative that the state be reminded of the core Articles 1-4 of CEDAW, which define discrimination and emphasise state obligation in the removal of all forms of historical and current discriminations through active measures, including putting in place processes of substantive equality for sex workers and their children.

### 6. RECOMMENDATIONS

The over-arching recommendation to the Indian State is to address concerns of women (and trans-women) in sex work by not relegating their issues to Article 6 of CEDAW. Women in sex-work are entitled to rights in the economic, political, social, civil and cultural spheres of their lives. The rights to education; political participation (including representation at the national and international levels); citizenship; livelihood; health; equality before the law; freedom from gender stereotyped notions about women's chastity and roles and responsibilities within a hetero- normative and patriarchal family, can only be fully achieved if discrimination is eliminated from all spheres of sex workers' lives. We therefore urge India to adopt a comprehensive approach in realising the human rights of sex worker. We also recommend that interventions affecting sex workers be undertaken through consultation, participation and leadership of sex workers.

Structural barriers and obstacles in accessing justice and achieving equality must be removed by addressing denials based on livelihood options, gender stereotyping and sexuality. An intersectional approach that addresses class, caste, gender, sexual orientation, gender identity, disability, religion, ethnicity, health status, age, marital status and so on should be adopted so that all discriminations are removed. Further, progressive laws that protect women's rights in India must be equally enjoyed by sex-workers. Efforts must begin by challenging restrictive and moralistic views related to women's sexuality because these beliefs normalise violence against women who transgress moral codes of conduct.

To ensure accountability of the State in terms of respecting, protecting and fulfilling the rights of women in sex work, it is imperative to ask:<sup>88</sup> How will the person, department or mechanism responsible be held accountable? What will be the relief/remedies for the woman/women who have been affected by lack of implementation? How will the denial of the right be redressed? What would be the sanction for non-adherence to laws and policies and non-implementation? Addressing the accountability of the state for acts or omissions of state and non-state actors, instituting an independent monitoring system to hold the judiciary accountable in maintaining the checks and balance between state organs; is also crucial.<sup>89</sup>

#### 1. AVOID CONFLATION OF SEX WORK WITH TRAFFICKING

- a. Trafficking is a criminal offense and should not be conflated with sex work. Trafficking of Adult Persons and Trafficking of Children should be dealt with under two separate laws to ensure that consenting adults are not infantilised and children are given justice.



- b. Shut down compulsory detention or rehabilitation centres for people involved in sex work. Instead, provide sex workers with evidence-based, voluntary, community empowerment services.
- c. Ensure witness protection for sex workers testifying against traffickers and violators

## 2. DECRIMINALISE SEX WORK AND ALL RELATED ACTIVITIES

- a. Repeal laws that prohibit consenting adults to buy or sell sex, and laws that prohibit commercial sex, such as laws against "immoral" earnings, "living off the earnings" of prostitution and brothel-keeping.
- b. Ensure that existing civil and administrative offences such as "loitering without purpose", "public nuisance", and "public morality" are not used to penalise sex workers and administrative laws such as "move on" powers are not used to harass sex workers.

## 3. ENSURE PARTICIPATION OF SEX WORKERS IN POLICY MAKING

- a. Ensure participation of sex work organisations in drafting/ amending laws, policies and programs relevant to them and in its eventual implementation process.
- b. Sensitivity to issues faced by sex workers should be made a part of training for police personnel, public prosecutors and the judiciary in partnership with community organisations of sex workers.

## 4. DEVELOP MECHANISMS TO RECOGNISE AND ACT AGAINST VIOLENCE FACED BY WOMEN IN SEX WORK

- a. Take measures to stop police harassment and violence against sex workers. Register complaints of sex workers and take decisive action against law enforcement authorities who commit acts of violence against sex workers.
- b. Guard against arbitrary arrest and detention of sex workers, and investigate harassment, extortion and abuse by law enforcement staff
- c. Prohibit the mandatory HIV and STI testing of sex workers following arrest.
- d. Maintain confidentiality and respect the privacy of sex workers approaching law enforcement and judiciary for redress in cases of sexual assault, exploitation and violence. Ensure skills and sensitivity in dealing with women, persons who identify as women and trans gender women in sex work.

## 5. STRENGTHEN SEX WORKERS' ACCESS TO JUSTICE

- a. Strengthen National Human Rights Instruments (NHRI's) and increase their accountability to respond to complaints or initiate suo moto action reports of violence and rights violations by state and non – state actors against sex workers.
- b. Ensure that existing gender biases against women offenders are apprehended, because these stereotypical views are exacerbated when women in sex work interface with law enforcement.
- c. Ensure all women's access to information, with special attention being paid to those from subordinated or discriminated groups, as they are likely to be denied access to justice.
- d. Ensure Free Legal Services are available in rural areas for sex workers and offered by lawyers who have been trained in issues faced by sex workers.
- e. Ensure delivery of legal services and/or referrals to existing legal services to ensure that sex workers have support to seek redress including appeal to higher courts.
- f. Ensure training to officers of the Legal services on vulnerable populations such as sex workers so that their specific conditions, marginalization are understood by the judicial / legal officers.
- g. Ensure that caste panchayats, religious leaders and unconstitutional bodies do not violate the rights and entitlements of women in sex work.<sup>90</sup>

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### 6. IMPLEMENT SUPREME COURT RECOMMENDATIONS ON SOCIAL ENTITLEMENTS, IDENTIFICATION DOCUMENTS

- a. Ensure implementation of the Supreme Court recommendations to issue identity documents and ration cards to sex workers at the national, state, district and sub-district levels.
- b. Ensure the empowerment, active participation and leadership of sex work networks, federations and collectives in designing policies and processes for accessing social entitlements.
- c. De-link social protection schemes from compulsory exit from sex work. Do not project social protection schemes as options for rehabilitation, but give sex workers the agency to select such schemes as supportive options to sex work.

Specific questions to the Indian government for the consideration of the CEDAW Committee include:

1. Is discrimination faced by sex workers on a daily basis, not in violation to Article 1 of the CEDAW?
2. Since the State perpetuates violations and takes no cognisance of violence perpetrated by non-State actors, is India not violating its obligation to respect and protect the rights of women sex workers?
3. What measures has India taken to prevent violation, humiliation, dispossession and disenfranchisement of sex workers during raids and rescue missions? What measures have been taken to ensure that sex workers are not alienated from their children, homes, assets, livelihood options and health care services?
4. Why do raids lead to forcible detention of adult sex workers who do not wish to leave sex work?
5. What is India doing to stop trafficking of minors?
6. What measures has India taken to ensure women sex workers' access to justice?
7. What measures has India taken to ensure the principle of due diligence of prevention and investigation of discrimination, prosecution of perpetrators and compensation of victims / survivors?
8. What measures has India taken to address the impunity of State as well as non-State actors in instances of violence and discrimination against sex workers?
9. What measures is India taking to remove historical discriminations in terms of putting in measures of substantive equality?
10. Why has India reported only on Article 6 of the CEDAW, conflating trafficking with sex work, when it is known that trafficking occurs not only for sex work, and that all sex work is not trafficking?

Just as discrimination is an on-going process, so is achieving gender equality an on-going endeavour. Equality needs to be measured in terms of opportunity, access, benefit and result. Monitoring processes should necessarily include sex workers' collectives and those involved in strengthening the rights of women in sex work. Only the full participation and leadership of rights holders can ensure State obligations towards removal of all forms of discrimination and achieving substantive equality.

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### NOTE

All primary case studies cited in this chapter have been collected by the authors and members of the National Network of Sex Workers, India in 2013, for submission to the CEDAW Committee and are available on request as an annexure to this chapter. Names have been changed to protect the identity of sex workers at their request. Informed consent has been obtained by the sex work collective to share the narrative.

## END NOTES

<sup>1</sup>Centre for Advocacy on Stigma and Marginalisation, (CASAM), Sangli, Maharashtra

<sup>2</sup>SampadaGrameen Mahila Sanstha (SANGRAM), Sangli, Maharashtra

<sup>3</sup>Mahila Sarvangeen Utkarsh Mandal (MASUM), Pune, Maharashtra

<sup>4</sup>Veshya Anyay Mukti Parishad (VAMP), sex workers collective Sangli, Maharashtra.

<sup>5</sup>National AIDS Control Organisation, Phase 3 Program estimated between 831677 – 1242819 people in sex work in India

<sup>6</sup>UNAIDS (2002) Technical Update Sex Work and HIV/AIDS, p3. UNAIDS (2009) Guidance note on HIV and sex work, p 15.

<sup>7</sup>UNDP (2012). Risks, Rights and Health, Global Commission on HIV and the Law. New York, UNDP. p 39.

<sup>8</sup>See Shadow Report to the Third Periodic Report of Kyrgyzstan to the CEDAW Committee, NGO 'Tais Plus', Kyrgyz Republic 2008, and the Concluding Comments of the CEDAW Committee addressed to the Government of the Kyrgyz Republic.

<sup>9</sup>Rohini, Sahni and V Kalyan, Shankar, Sex work and its linkages with informal labor markets in India: Finding from the first Pan - India Survey of Female Sex Workers, Institute of Development Studies Working Paper, vol. 2013 no. 416, February 2013. <http://www.ids.ac.uk/publication/sex-work-and-its-linkages-with-informal-labour-markets-in-india>. Viewed on Dec-2013

<sup>10</sup>46.5% women had prior experience of labour markets. 77% women discontinued other forms of labour since entering sex work. 2/3rds of the mobile sex workers reported economic reasons for entering sex work. Saggurti N1, Verma RK, Halli SS, Swain SN, Singh R. Motivation for entry into sex work and HIV risk among mobile sex workers in India. *JBiosoc Sci.* 2011 Sep;43(5):535-54. <http://www.ncbi.nlm.nih.gov/pubmed/21729360>. Viewed on December 2013.

<sup>11</sup>UNHRC (2014) Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to India, p 19. A/HRC/26/Add.1

<sup>12</sup>UN Economic and Social Commission for Asia Pacific (ESCAP) Resolution 66-10, Regional call for action to achieve universal access to HIV prevention, treatment, care and support in Asia and the Pacific, 2010 (29 September 2011), available from [http://www.unescapsdd.org/files/documents/HIV\\_IGM1\\_INF4.pdf](http://www.unescapsdd.org/files/documents/HIV_IGM1_INF4.pdf)

<sup>13</sup>UN ESCAP Resolution 67-9, Asia Pacific regional review of progress in achieving declaration of commitment on HIV and political declaration on HIV/AIDS, 2011

<sup>14</sup>Commission on AIDS in Asia (2008), *Redefining AIDS in Asia, Crafting an effective response*, New Delhi: Oxford University Press.

<sup>15</sup>Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, A/HRC/14/20, 27 April 2010

<sup>16</sup>Global Commission on HIV and law (2012), *op. cit.*, p 43

<sup>17</sup>UNDP (2012), *Sex Work and the Law in Asia and the Pacific, HIV and human rights in the context of sex work.* p 34- 39

<sup>18</sup>*ibid.* p 39

<sup>19</sup>Global Commission on HIV and the law (2012), *op. cit.*, p 43; UNDP (2012), *op. cit.*, p 24; Human Rights Council (2010), *op. cit.*, p 15.

<sup>20</sup>Global network of sex work projects (2013), Third parties briefing paper. [http://www.nswp.org/sites/nswp.org/files/thirdparties3\\_0\\_0.pdf](http://www.nswp.org/sites/nswp.org/files/thirdparties3_0_0.pdf). Viewed on December 2013

<sup>21</sup>ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No 200), Geneva: ILO; UNDP (2012), *op. cit.*, p 35.

<sup>22</sup>WHO, UNFPA, UNAIDS, Global Network of sex Work Projects, The World Bank. *Implementing comprehensive HIV/STI programmes with sex workers: practical approaches from collaborative interventions.* Geneva, World Health Organisation, 2013. PXX

<sup>23</sup>UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendations Nos. 19, Article 6. Adopted at the Eleventh Session, 1992, available at: <http://www.refworld.org/docid/453882a422.html> [accessed 14 December 2013]

<sup>24</sup>*ibid.* Specific recommendations 24 (h)

<sup>25</sup>UN Committee on the Elimination of Discrimination against Women, Concluding Observations on the combined seventh and eight periodic reports: Hungary, 26 March 2013, CEDAW/C/HUN/CO/7-8

<sup>26</sup>BudhadevKarmaskar v. State of West Bengal (2011) 11 SCC 538

<sup>27</sup>Interim Orders, Sex Workers Rehabilitation Case, Supreme Court of India, 16 September 2011, Law Resource India. <http://indialawyers.wordpress.com/2011/09/16/sex-workers-rehabilitation-case>. [Accessed on 17 December 2013]

<sup>28</sup>Marginalisation is the process by which people are pushed to the edge of society, resulting in their physical exclusion as well as neglect of their needs and rights.

<sup>29</sup>The Committee seeks specific information on "whether prostitution is criminalized and on measures taken to guarantee the rights of women engaged in prostitution", Para 11, list of issues and questions in relation to the combined fourth and fifth reports of India, CEDAW/C/INC/Q/4-5



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<sup>30</sup>UN Women (2011), *In pursuit of Justice, Progress of the World's women, 2011-2012*.

Case study of Manisha Salunkhe, Sangli, Maharashtra, 2014.No.

<sup>32</sup>The Committee urges the State party to provide free legal services to poor and marginalized women in rural and tribal areas in addition to urban areas and to monitor the quality and impact of such services in regard to ensuring women's access to justice. It requests the State party to provide information about access of women, including scheduled caste, scheduled tribe, backward class and minority women, to free legal services and the scope and effectiveness of such services in its next periodic report.UN Committee on the Elimination of Discrimination against Women, *Concluding Observations: India, 2 February 2007*, CEDAW/C/IND/CO/3

<sup>33</sup>It also recommends that the Legal services "should publicise reliefs available under the provision (Victim Compensation provision of the Criminal Procedure Code), so that victims of any kind of crime or discrimination, may apply to the Legal Services Authority directly for immediate relief." *BudhadevKarmaskar v. State of West Bengal (2011)*. Interim order dated December 6, 2012.

<sup>34</sup>UNHRC (2014) Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to India, p1 6. Para 65 A/HRC/26/Addl.

<sup>35</sup>Analysis of High court cases in the context of sex work, RakeshShukla, Centre for Advocacy on Stigma and Marginalisation, 2014.

<sup>36</sup>Case studies of RekhaBidkar, 2012, ShantaJadhav, 2010, Sunitha, 2010.

<sup>37</sup>Case study of AnuMokal, Sangli, 2010.

<sup>38</sup>Case study of Prema, Kanyakumari, Tamil Nadu, 2012; Case study of Sunitha, Uttara Kannada, Karnataka.

<sup>39</sup>Case Study of Rathna, Mysore, Karnataka, 2012.

<sup>40</sup>Case study of Suchitra, Gadag, Karnataka, 2013; Case study of Anjuman (name changed), Gadag, Karnataka, 2012.

<sup>41</sup>The committee calls upon the state party to develop in consultation with women's groups, a coordinated and comprehensive plan to combat all forms of violence against women taking a life cycle approach. It urges the State party to take steps ...to implement and enforce the Domestic Violence Act and to ensure that all women ... are able to benefit from the legislative framework and support systems in place and that perpetrators are effectively prosecuted under the Penal Code. It recommends that public officials especially law enforcement officials, judiciary, health care providers and social workers are fully sensitized to all forms of violence against women. Para 21, *Concluding Comments, India, CEDAW Committee. 2 February 2007 [CEDAW/C/IND/CO/3]*

<sup>42</sup>Kinnel, Hillary (2008): *Violence and sex work in Britain*. Devon: Willan Publishing.

<sup>43</sup>Case study of Kalpana, Tirupathi, Andhra Pradesh, 2013. No. PHF#2 in Annexure 1

<sup>44</sup>Pan India Survey of Sex Workers, 2011, Sahani, R, Kalyan Shankar, Available at [http://www.sangram.org/resources/Pan\\_India\\_Survey\\_of\\_Sex\\_workers.pdf](http://www.sangram.org/resources/Pan_India_Survey_of_Sex_workers.pdf). retrieved on 1 March 2014

<sup>45</sup>Case study of Sumathi (name changed), Uttara Kannada, Karnataka, 2013.

<sup>46</sup>Case study of AnuMokal (2010), op.cit.Case studies of Uma, Leela, Jareen, Lakshmi, Shimoga, Karnataka, 2012.

<sup>47</sup>Case studies of Manisha Salunkhe, 2011; Rekha Bidkar 2012; Shanta Jadhav, 2010; Sunitha 2010 op.cit.

<sup>48</sup>Structural violence refers to the physical and psychological harm or disadvantage precipitated by systems of oppression and exploitation [See Galtung Johan. (1969). 'Violence, Peace, and Peace Research' Journal of Peace Research, Vol. 6, No. 3.pp 167-91]. This invisible violence embedded in structures of class, caste, heteronormative patriarchy, sexual mores and other structures of hegemony justifies overt violence in the lives of women in sex work on a daily basis.

<sup>49</sup>'Power to tackle violence: Avahan's experience with community led crisis response.' BMGF 2009. [www.gatesfoundation.org/avahan](http://www.gatesfoundation.org/avahan)

<sup>50</sup>Pan India Survey of Sex worker (2011) op. cit.

<sup>51</sup>UNHRC (2014) Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to India, p 6. A/HRC/26/Addl.1

<sup>52</sup>See, e.g., Palermo protocol at <http://untreaty.un.org/English/TreatyEvent2003/Texts/treaty2E.pdf>; Inter-Parliamentary Union, UNAIDS, UNDP (2007) *Taking Action Against HIV – Handbook for Parliamentarians*, at 191 (box 54). Available via <http://www.ipu.org/english/handbks.htm#aids07> or at [http://data.unaids.org/pub/Manual/2007/20071128\\_ipu\\_handbook\\_en.pdf](http://data.unaids.org/pub/Manual/2007/20071128_ipu_handbook_en.pdf).

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<sup>54</sup>'Trafficking'. WOREC, Nepal. <http://www.worecnepal.org/programs/trafficking> (downloaded on 14.04.2014)

<sup>55</sup>Nair P. (2004), *A report on trafficking in women and children in India 2002 - 2003*, New Delhi, NHRC, UNIFEM ISS, p. 363

<sup>56</sup>Grover A., Kukke A., Bhardwaj K. eds (2003), *Legislating an epidemic*, Delhi Lawyers Collective, p 125

<sup>57</sup>Case Study of Domburwada raid, Kolhapur, Maharashtra, 2013- 2014.

<sup>58</sup>Case study, Simplex building raid, Mumbai, Maharashtra 2012.

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- <sup>60</sup> Case Study of Domburwada raid, Kolhapur, Maharashtra, 2013- 2014.
- <sup>61</sup> Mankhurd State Shelter: Forced Detention of women sex workers, 2012.
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- <sup>63</sup> UNHRC (2014) Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to India, p 7 para 24. A/HRC/26/Addl.
- <sup>64</sup> *BudhadevKarmaskar v. State of West Bengal* (2011). Interim order dated August 24, 2011.
- <sup>65</sup> Domburwada raid, August 2013, op. cit
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- <sup>68</sup> National Commission for Women, “Societal violence against women and children in Prostitution,” NCW, New Delhi, 1997.
- <sup>69</sup> Case study of Valarmathi, Kanyakumari, Tamil Nadu, 2013; Bharati Kamble, Sangli, Maharashtra, 2004; Kiran Deshmukh, Sangli Maharashtra, 2010, Usha Kamble, Sangli Maharashtra, 2013.
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- <sup>72</sup> VAMP, the collective of sex workers approached the district officials in Maharashtra in 2012 to access income generation schemes advertised by the Department of Rural Development and Ministry of Women and Child. At the time of signing forms for registering, they noticed a clause on the forms requiring them to give up sex work. While the District officials in Sangli agreed to drop the condition, the officials in the other districts did not respond. VAMP sex workers, 2013.
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- <sup>78</sup> Case studies of Mohana, Bangalore rural, Karnataka, 2010. Sumalath, Kalahasti, Andhra Pradesh, 2013.
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- <sup>84</sup> Targeted Intervention, National AIDS Control Programme, Phase -III, India; Ministry of Health and Family Welfare, p. 24
- <sup>85</sup> Ibid. p. 28
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# ARTICLE 6 PROSTITUTION & TRAFFICKING



## SECTION - B HUMAN TRAFFICKING IN INDIA

**Indrani Sinha**  
Sanlaap

Human Trafficking is an organized crime that violates basic human rights. The problem of human trafficking, especially in women and children has become a matter of serious alarm in India. The country is going through an increasing trend of Migration and Trafficking of children for labour and child marriage throughout the State. Due to lack of socio-economic options young women and girl children are sent to far off lands where they are often targets of trafficking.

India is a source, destination and transit for both in-country and cross border trafficking. In India, a large number of individuals, especially women and children, are trafficked not only for the purpose of sex trade but also for other forms of non-sex based exploitation that includes servitude of various kinds- as domestic labour, agricultural labour, begging, organ trade and forced marriages particularly child and bonded labour used by factories and small industries in and around big cities of India.

Thousands of girls are also trafficked every year from Bangladesh and Nepal into India. NGOs estimate that 12,000 to 50,000 women and children are trafficked into the country annually from neighbouring countries into the sex trade. Indian women and children are trafficked within the country and to the Middle East for commercial sexual exploitation.

The National Commission for Protection of Child Rights reveals data of rampant use of Child Labour in Gujarat and Rajasthan working in the cotton fields and they come from Uttar Pradesh, Bihar and West Bengal. The latest findings are that of child labour going from Bihar and Orissa to Karnataka, especially to the city of Bangalore. These are new destination states in India. Children are also found in domestic work, working in jewellery units, dhabas (road side restaurants), small factories, garment factories etc. where they are vulnerable to abuse, trafficking and sex slavery.

The latest government data shows that 1.26 lakh cases of trafficking for child labour were registered during 2011-2012. Bihar, Uttar Pradesh, West Bengal, Jharkhand, Orissa, Madhya Pradesh, Assam and Chhattisgarh continue to remain source areas of trafficking, girl child marriage and child labour which include male children also. A total of 4,52,679 cases were reported since 2008-09, with the highest number of 1,33,266 such incidents taking place during 2009-10. In 2010-11, 95,289 cases were registered in the country. During 2011-12, the maximum number of 29,947 cases was reported from Uttar Pradesh, followed by 19,673 instances in Bihar. From the National Capital, 605 cases were registered.

Bihar, Uttar Pradesh, West Bengal, Jharkhand, Orissa, Madhya Pradesh, Assam and Chhattisgarh continued to remain major source areas for trafficking of children for labour & other immoral purposes.

A brief situational analysis of the dimensions of human trafficking in India is as follows:

- There is an increasing trend of trafficking in children, both boys and girls and young women who

are of the age group of 12 to 18 or just above, for the purpose of labour in different parts of the nation. These children are usually acquired from economically backward areas and are trafficked to the big cities for the purpose of cheap labour in industries. These children usually work under highly volatile conditions such as extremely long hours, very low wages, unsafe and unhygienic conditions etc.

- There has also been an increasing trend of children being trafficked for the purpose of domestic labour. Most of these children usually migrate from the states of Jharkhand, Chhattisgarh, Orissa, Assam, West Bengal and Madhya Pradesh. The trafficking of these children is facilitated by illegitimate placement agencies that mostly operate in New Delhi and other metros. These placement agencies are earning huge profits by bringing in children from the backward areas of India.
- Men from some states like Punjab and Haryana bring over girls from states of Jharkhand, Orissa, and West Bengal in the name of marriage, making 'human trafficking' a rewarding and ever increasing trade. Often projected as voluntary marriages, every year thousands of women and young girls are lured into the idea of a "happy marriage" with rich men in Punjab and Haryana. However most of these "purchased brides" are severely exploited, denied basic rights, ill-treated, sometimes coerced into prostitution and eventually deserted. They have no right to the property and assets of the so called husband's families. They are also resold in the same villages, to a poorer man and her so-called husband buys another bride. A recent study of 10,000 house-holds done by an NGO revealed that there were 9000 women who were brought from other states to be married and they live in worst conditions with no right to their husbands' property. This study was done in 92 villages of five districts in Haryana.
- Trafficking for prostitution is on the rise. Every year, thousands of women and young girls are trafficked and sold for the purpose of commercial sexual exploitation. According to a research on trafficking in India, Karnataka, Andhra Pradesh, Maharashtra, West Bengal and Tamil Nadu are considered "high supply zones" for women and children in prostitution. Trafficking from North Eastern states in children in the name of education is high but often over looked. In the last one year several cases of groups of 25 to 30 children being trafficked from North Eastern States to Southern Indian States have been thwarted by concerted action by NGOs and Police. Delhi, Goa and Mumbai are the major receiving zones for children and women in the name of labour and marriage. Much organised group placement agencies have been found bringing victims from the abovementioned States showing false identity cards and giving hopes of a better tomorrow.
- Bihar, Uttar Pradesh, West Bengal, Jharkhand, Orissa, Madhya Pradesh, Assam and Chhattisgarh continued to remain high source areas for trafficking of children for labour, prostitution, and marriage. Trafficking of children for cheap labour has been reported by the National Commission for Protection of Child Rights, in Gujarat and Rajasthan in the BT Cotton Fields in exploitative working conditions and against poor wage. While bringing these children in the name of labour they are exploited and abused sexually too.
- There has been a rise in trafficking of children for the purposes of adoption. As a consequence of sex selective abortion, a practice in the States like Haryana, Punjab, parts of Bihar and UP, which skews the sex ratio, trafficking happens for marriage, cheap and bonded labour and also adoption. The traffickers obtain children from poverty stricken families and arrange for adoptions in foreign countries. There are incidences of trafficking for adoption within the country also. These are done by organized crime rackets that engage in human trade with impunity.
- Districts bordering Maharashtra and Karnataka, known as the "devdasi belt", have trafficking structures functioning at different levels. Dedication of young women and girls from Dalit communities to temples and goddesses in Maharashtra, Karnataka and Andhra provide easy channels to prostitution. Though these traditions are illegal but families practice these in connivance with the priests of the temples where they are first dedicated before getting into



## ARTICLE 6: PROSTITUTION & TRAFFICKING

prostitution. Many girls from the lower economic strata in Karnataka are devdasis dedicated to prostitution in the name of Goddess Yellamma.

- Cases of organ trafficking is rampant in India. India is regarded as a goldmine of kidneys and is undisputedly one of the largest hubs of kidney transplants in the world. It has been recorded that the poverty stricken people are often compelled by circumstances to sell off their kidneys to pay off their debts. Many poor individuals are also lured and bribed into selling off their kidneys.

### 2. STATELESSNESS

India is signatory to many international conventions on human rights and these conventions endorse the Principle of Non-Refoulement. Though there have been attempts to read non-refoulement under Article 21 of the Indian Constitution, there is no specific legislation to deal with refugees or stateless people. As a result they are dealt by the Foreigners Act 1946 which is an archaic piece of legislation. India has not signed the international legal instruments primarily the 1951 Refugee Convention relating to refugees and has no national refugee policy. Refugees in India do not enjoy basic economic and social entitlements, which their counterparts in other parts of the world do. There is a need for India to accede to the 1951 Refugee Convention and enact a refugee law which is equitable, humanitarian and consistent with the international conventions.

Batregrach, one of the 51 enclaves in India along the Bangladesh border, has been stateless for more than 60 years now. Women undergo extreme hardship in these enclaves. The Indian enclave of Dosaichaura part of the district of Cooch Behar in the Indian state of West Bengal is one of the more than 100 enclaves inside Bangladesh. The Indian enclaves are like territorial islands which belong to India but surrounded by Bangladesh and the people are officially Indian citizens. These people have no papers to prove that they are Indian or Bangladeshi citizens. Women request their friends and relatives, especially men, to endorse themselves as their husbands to avail hospital facilities and to put their children through school. Many young girls are married at an early age to Indian men paying huge sums of dowry with a hope that they would get Indian citizenship, to avoid being abandoned by both countries and treated like illegal immigrants by India. In September 2011, the prime ministers of both India and Bangladesh signed an accord on border demarcation and exchange of adversely held enclaves. Under this agreement, the enclave residents may continue residing at their present location or move to the country of their choice. Indian and Bangladesh have signed such treaties twice earlier with no tangible results on ground. Census is being taken in these areas after the accord has been signed between the countries which at least acknowledges their existence - till some concrete steps are initiated as a result of this accord, the people in these enclaves remain stateless.

Being stateless means these women have no legal protection or right to participate in the political processes, access to health care and education, employment prospects, little opportunity to own property, they face) social exclusion, harassment, and violence. Women and children who are trafficked are affected excessively by the problems of Statelessness as those who have been forced into sex trade or forced labour are unable to prove their nationality because their papers are confiscated by the traffickers. The issue of statelessness also shows the unpredictable nature of the Indian citizenship laws and the deprivation of one's rights when there are no clear cut legal provisions to deal with statelessness.

India should hasten the process of resolving the issues of statelessness that surrounds the enclaves through concrete measures so that people who are citizens of India are not denied citizenship and the privileges that come with it. There is a need for India to accede to the 1951 Refugee Convention and enact a refugee law which is equitable, humanitarian and consistent with the international conventions. India also needs to abide by the guiding principles for internal displacement.

The Government of India till date does not have a central government agency to monitor or protect the internally displaced. There is lack of a national policy on resettlement and rehabilitation in accordance with the Guiding Principles of Internal Displacement<sup>1</sup>.



### **3. MEASURES UNDERTAKEN BY THE GOVERNMENT TO COMBAT TRAFFICKING**

Drawing strength from the Constitution of India where trafficking of human beings or persons is prevented under Article 23(1), the mandate for prevention and combating trafficking in persons has received significant attention from the Government. Alarmed at the rising number of cases pertaining to sexual abuse and human trafficking in the country, the Ministry of Women and Child Development (MWCD) has issued an advisory on measures that need to be taken by States and Union Territories to combat the issue of trafficking.

The Government of India forbids trafficking for commercial sexual exploitation through the Immoral Trafficking Prevention Act (ITPA), 1956 (ITPA is being amended now) India also prohibits bonded and forced labour through the Bonded Labour Abolition Act, 1976; Child Labour (Prohibition and Regulation) Act, 1986; and the Juvenile Justice (Care and Protection of Children) Act, 2000.

The other relevant Acts which address the issue of trafficking in India are the Karnataka Devdasi (Prohibition of Devdasi) Act, 1982; Andhra Pradesh Devdasi (Prohibiting Dedication) Act, 1989; Information Technology Act, 2000; and the Goa Children's Act, 2003. Besides these, there are other laws pertaining to trafficking as well. These are the Indian Evidence Act, 1872, The Prohibition of Child Marriage Act, 2006, Young Persons (Harmful Publications) Act, 1956; Bonded Labour System (Abolition) Act, 1976; Indecent Representation of Women (Prohibition) Act, 1986; The Transplantation of Human Organs Act, 1994.

The Indian Penal Code (IPC) lays down a number of provisions, which are related to trafficking. Some of these include:

- Section 370 / 370A Trafficking & Exploitation
- Kidnapping, abducting or inducing a woman to compel her for marriage etc. (Section 366).
- Selling minors for purposes of prostitution, etc. (Section 372).
- Buying minors for purposes of prostitution, etc. (Section 373).
- Wrongful restraint (Section 339).
- Wrongful confinement (Section 340).

But the challenge lies in implementation of the above mentioned legislations meant to protect the children and women and punish the predators.

#### **Ministry Of Women And Child Development**

The Ministry of Women and Child Development has formulated a National Plan of Action (NPA) to combat trafficking and commercial sexual exploitation of women and children in 1998, with the objective of main streaming and re-integrating women and child victims of commercial sexual exploitation in to the community.

The Government of India is implementing a number of programmes to protect vulnerable persons, especially women and children from trafficking and to provide them economic and social empowerment. Some of these schemes are discussed below:

#### **'UJJWALA'**

The Ministry of Women and Child Development implemented three pilot projects, to combat trafficking of women and children for commercial sexual exploitation under the sanction of tradition in source areas and in destination. 'Ujjwala' is a new "comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-integration of Victims of Trafficking and Commercial Sexual Exploitation."

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### ‘SWADHAR’ AND SHORT STAY HOMES CALLED SWADHAR GRUHA

The MWCD runs shelter based homes such as short stay homes and ‘Swadhar’ homes for women in difficult circumstances. These schemes also cater to trafficked women/girls who were rescued or had run away from brothels or other places.

### CHILD LINE SERVICES

Child Line, the toll free number 1908, is a 24 hr telephone service run under the aegis of MWCD, available to all children in distress or to adults on behalf of children in distress. The objectives of Child Line are to respond to the emergency needs of the children in difficulty and provide referral services, to sensitize medical personnel, police, municipal corporations etc. towards the needs of children, to ensure protection of rights of the child etc.

### Ministry Of Home Affairs

In August/September 2006, the Ministry of Home Affairs (MHA) set up a dedicated nodal Cell in the MHA for prevention of trafficking. The Cell is responsible for providing stake holders with the necessary research, studies and information. The main role of the Cell is to synchronize, network and provide feedback to the State Governments and other concerned agencies on a sustained and continuous basis so as to prohibit and battle trafficking in human beings. Anti-Human–Trafficking-Units based within the Police Departments specially trained and dedicated to rescue victims of trafficking were created under the purview of this project.

The MHA and the State Governments are trying to make significant efforts to combat trafficking. These institutions regularly conduct campaigns through their welfare departments and conduct police raids.

A project on “Strengthening the law enforcement response in India against trafficking in persons through training and capacity building” has been taken up by the Ministry of Home Affairs as a joint initiative of the Govt. of India and the United Nations office on Drugs and Crime. Over a three year period w.e.f. April 2006, through a series of training programmes, the project aimed at raising the awareness of law enforcement officers (i.e. police and prosecutors), on the problem of human trafficking and building their capacities to better investigation and prosecution techniques to facilitate punishment of offenders.

The project had very positive results in most of the States and the Anti- Human Trafficking Unit (AHTU) model was found to be extremely affective. The AHTUs were set up by the Ministry of Home Affairs (MHA) to monitor trafficking of the vulnerable groups. In many States UNODC and UNICEF along with the State and the NGOs are organising training of trainers within the Police Department to undertake activities in the AHTU. Different States within India have enacted separate legislations to combat trafficking.

The Border Security Force (BSF) has also been engaged by the Govt., to prevent trafficking at border areas. Mobile parties have been formed for checking the entry and exit points at important railway stations and bus stands for suspicious movements of women and children. The practice of “push back” of Bangladeshi women and girls by the Police and BSF has been totally stopped as previously it was found that during push back they become victims of abuse and exploitation.

### 4. ROLE OF THE PANCHAYAT IN COMBATING TRAFFICKING

The Panchayati Raj in India (the local self government elected by the people), have been playing an active role towards curbing human trafficking in the country. Several NGOs and Government agencies have realized that it is essential to network with the different Panchayati structures to prevent human trafficking. The village Panchayats are proving to be key instruments in battling trafficking and unsafe migration of women and children from the rural areas to the cities. The village panchayats have been striving to make serious efforts towards preventing trafficking by involving community vigilance groups (which includes women from different government programme) in prevention of trafficking and in

rehabilitation or reintegration of trafficked victims returning to their own village and ensuring that they are not re-trafficked and/or stigmatised.

## **5. GAPS IN GOVERNMENT POLICIES AND GOVERNMENT INITIATIVES**

However, the Government of India do not have adequate infrastructure to combat trafficking, when compared to the magnitude of the problem.

The Government of India does not fully comply with the minimum international standards for elimination of trafficking. The Indian Government also does not fully work towards ensuring that National Legislations prohibit and punish all forms of human trafficking. Enforcement of trafficking laws, particularly labour trafficking laws remains a challenge for the government.

Gender sensitivity is absent; even though there are laws for women. Ironically, those are not implemented. There are stipulations in the ITPA, which reprimand the victim for instance. Trafficking is also often not seen as an organized crime, and provisions relevant to organized crime are not used in trafficking cases. There is also no uniform definition of who is a child/minor in terms of age. It varies in different statutes; both civil, e.g. marriage or labour and criminal e.g. trafficking.

Co-operation mechanisms are almost non-existent as far as cross border trafficking is concerned, especially concerning legal assistance, providing information, transfer of sentenced persons, joint investigations etc. the MHA is working on a Bilateral Agreement looking at Repatriation issues, with Bangladesh which might change situations slightly. Moreover, there is sometimes no sufficient line drawn between the trafficker and the victims, e.g. in the case of prostitution or in case of unsafe migration without documents. Financial support for existing programs is often insufficient and sporadic.

A favourable ambience to make it safe for victims to testify is not created. There is also no witness protection programme in action as a result of which many witnesses turn hostile. The lengthy proceedings and delays also add to this. Special courts or separate courts for the victims of trafficking are the need of the day.

Despite the Government's efforts, many of the factors contributing to trafficking are aggravated by national and local level political apathy and lack of law enforcement mechanisms.

## **6. PREVENTION OF TRAFFICKING**

Trafficking is a complex problem that requires a multi-faceted approach. Prevention of trafficking in women and children requires examining the factors that contribute to the problem as well as providing education to potential victims. Also more far reaching programs that address gender inequalities in the labour market are needed to combat human trafficking.

Protecting human rights' and workers' rights is crucial to fight exploitation and trafficking of women and children. Local laws should be implemented and strengthened in concurrence with ratified human rights provisions and agreements. Such laws need to be applied through inter-agency mechanisms, including law enforcement, social welfare and civil society departments.

The Government also needs to address those factors that make trafficking possible such as poverty, instability, calamities and most importantly traditions, inequality and vulnerability. There need to be a regional database for criminals associated with trafficking and a stronger geographical border policy.

It is important for the state to organise education and awareness campaigns that could help women and girl children and their families understand their rights and how to avoid the threat of traffickers. This education and awareness should also be extended to men.

Organized brothels which are the base for sex trafficking should be closed but there are two different opinions among the NGOs and some International Institutions promote the issue of legalisation of prostitution.



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After a person is rescued from trafficking, the State should be responsible to help this person to get back to safety and sustainable existence that includes job training, going back home counseling etc. the best solution for the women and children especially if there are cases where parents had sold their children. The victims of trafficking should be assisted to relocate to places where they would not be at risk again. It is understood that institutions are important for the rehabilitation but it is obvious that these should not be the only options for the women and girls.

Budgetary provisions of the government has gone up and platforms like Child Line, Swadhar, Ujjawala, ICPS, NCPCR, & various other government programmes have been initiated in the source areas of the vulnerable districts for the empowerment of women and girls to prevent trafficking.

Amendments in existing legislations like the Child Labour Act where children under 18 cannot be engaged in hazardous occupations had been done to include more children under the purview of the Act. Prevention of Sexual Offences Against Children Act had been enacted to prevent sexual violence against children (under 18), which shall indirectly address trafficking for commercial sexual exploitation.

Child Labour and Child Marriage have to be stopped and the State has to take enough social and legal action.

As per the National Crimes Record Bureau Data 1, 77,660 children were reported missing during 2009 to 2011. Some 55740 children among them remain missing and from among them 64% are girl children. Illegal Recruitment Agencies are a big part of this racket, who are responsible for trafficking.

The best addition to the National Programmes is The National Commission for Protection of Child Rights (NCPCR). This Commission is making a lot of difference in the whole State and have drafted an Action Plan with orders from High Court in Delhi and also The Supreme Court of India. NCPCR has not only committed to establish programmes in the districts but also play a very important monitoring role also. Some of the States in India are proactive but all of them have to be AP, Maharashtra, Delhi and West Bengal have created websites to identify and rescue missing and trafficked children and have also created a database of traffickers.

### 7. RECOMMENDATIONS

- Involvement of more civil society organizations which shall include academic institutions with an aim to mainstream trafficking and its ill effects through research, documentation and formal studies.
- Convergence of all Government programmes which shall include education health, training and employment generation through local resource mobilization, & capacity building of all duty bearers.
- Bridging the gap between the objectives of social security schemes and the rights obtained by un-enfranchised beneficiaries.
- Effective disaster management, mitigation and preparedness in disaster prone areas which are vulnerable to trafficking.
- Mainstreaming of residents of areas where there is prevalence of insurgency through consistent socio-economic and political engagement.
- While institutional care can never be an alternative to a family, however, minimum standards of Institutions accommodating women and children temporarily should be ensured with adequate budgetary provisions, regular monitoring and evaluation.
- The gender imbalance in the society needs to be addressed through effective implementation of gender sensitive legislations (PCPNDT Act, PDVW Act, Prevention of Child Marriage Act).
- More awareness raising and capacity building programmes to be done by the States for the Police, Prosecutors, Border Security Forces, Railway Police and members of the Panchayati Raj Institutions.

- Stop child labour and end child marriage. Implement anti child labour laws to punish traffickers.
- Implementation of the guidelines of the Supreme Court of India on prevention and protection.
- Convergence of programmes for Prevention, Protection and reintegration across the country.

#### ENDNOTES

<sup>1</sup>The Guiding Principles on Internal Displacement explicitly call on governments to provide protection for women and girls. Provisions regarding displaced women and girls are guided by two core concerns: to safeguard them from gender-specific violence and to uphold their rights to equal access to services and participation in assistance programmes. <http://www.internal-displacement.org> (accessed on 18th August 2012)

ARTICLE 7 & 8  
POLITICAL &  
PUBLIC LIFE

CHAPTER 4



INDIA

4th AND 5th  
NGO ALTERNATIVE REPORT  
ON CEDAW



# ARTICLE 7 & 8 POLITICAL & PUBLIC LIFE



**Bimla Chandrasekhar**

EKTA

**Veda Bharadwaja**

The Hunger Project

**North East Network**

## 1. OVERVIEW

### A. WOMEN'S RESERVATION IN ELECTED BODIES

The state has to ensure substantive equality for women to ensure effective participation and to build political leadership. The number of women participating decision and policy making have increased considerably in the last few years. Panchayats of many villages in India are headed by women and we have at present three chief ministers of states who are women. Additionally, the Speaker of the 15th Lok Sabha (2009-2014), Smt. Miera Kumar, was the first woman Dalit Speaker of Parliament. However, even initiatives and mechanisms designed to increase women's public and political participation have not yet been able to achieve parity between women and men's rates of participation. The notional value attached to the idea of representation needs to be altered. The state needs to take effective measures need to build an enabling environment for women to access the political space, including temporary measures.

Although data is still being configured on the most recent general elections in April-May 2014, it is clear that, despite comprising 49% of the population and 47% of voters, women will again be under represented in the 16th Lok Sabha. Out of a total number of 8,163 candidates, 636 women contested elections across the country (7.7%). Of the 543 elected MPs, only 61 – a little more than 11% – are women. This is a negligible increase over 2009, when 556 (6.9%) women candidates contested out of a total of 8,070, and 59 women candidates (10.8%) were elected. Prejudices and barriers against women clearly persist within the higher echelons of both political representation (and the public services). The state has thus far been unable to guarantee a non-discriminatory or conducive environment for women to participate.

### B. WOMEN'S RESERVATION BILL

The Women's Reservation Bill, which would reserve 33% of all seats in the Lok Sabha (Lower House of Parliament) and in state legislative assemblies for women, remains stuck in Parliament and has not been passed. The fourteen-year journey of the Women's Reservation Bill, beginning in 1996, is a dramatic one as it has hit roadblocks in each of its outings in Parliament. Although the historic measure cleared the first legislative hurdle on 9th March, 2010 when it was passed in the Rajya Sabha (Upper House of Parliament), as of May 2014 the Lok Sabha has yet to vote on the bill.

Without the passage of the Women's Reservation Bill to help women overcome structural and social barriers, women's presence in Parliament remains low and has only marginally increased in the last decade. As of January 2014, women made up 11.4% (62 out of 543) of the Lok Sabha (Lower House) and 11.4% (28 out of 245) of the Rajya Sabha (Upper House). This is a small increase over the past decade from January 2004, when women comprised 8.8% (48 out of 543) of representatives in the Lok Sabha and 10.3% (25 out of 242) in the Rajya Sabha.



### C. WOMEN IN LOCAL GOVERNANCE

The 73rd amendment of the Constitution has brought about more than 1.3 million elected women representatives in local governance through a not less than one-third reservation. Women have entered the political process in greater numbers and are effectively participating in bringing about necessary development for their respective communities.

We welcome the passage and implementation of the 110th Constitutional Amendment,<sup>1</sup> which enhances reservation for women in panchayats to 50% and would, according to estimates, increase the number of women panchayat representatives to more than 1.4 million. Some states – such as Bihar, Rajasthan and Odisha<sup>2</sup> – have already introduced 50% reservation of seats in Panchayati Raj Institutions (PRIs) for women. In fact, in these states, women often comprise more than 50% of the elected panchayat representatives in these states.

556 women candidates contested the 2009 general elections from the various states and union territories, out of which 59 candidates (10.8%) were elected. Nagaland is a sixth schedule state, and 33% of the seats in the municipal councils or corporations are reserved for women. As civic-body elections not been conducted for a while, Naga women have not been able to occupy their seats. A petition has been filed in the Guwahati High Court demanding regular elections. Dadra & Nagar Haveli, Daman & Diu, Lakshadweep, Pondicherry and Sikkim have no representation of women while in Goa, Himachal Pradesh, Manipur, Meghalaya, Tripura, Andaman and Nicobar Islands, Chandigarh and Jammu & Kashmir the representation was negligible.<sup>3</sup> As on 2010, less than 8% of the 4,030 legislators in state assemblies across India are women. The 28 state assemblies have only 311 women legislators.

### D. THE JUDICIARY

Appointment of judges to the Supreme Court and High Courts is made under Article 124 and 217 of the Constitution of India, respectively, which do not provide for reservation for any caste or class of persons.<sup>4</sup>

In 2009, there were no women as judges in the Supreme Court. As on April 2014, out of the 30 sitting judges on the Supreme Court, only two are women.<sup>5</sup> The representation of women judges is similarly abysmal in the various High Courts across the country. Only four Chief Justices are women. Out of the 630 High Court Judges (Permanent and Additional) in the country, only 59 are women (about 9.4%). Five of the country's 21 High Courts—Chhattisgarh, Himachal Pradesh, Jammu and Kashmir, Sikkim and Uttarakhand—have no women judges at all. The number of judges only declines in the various subordinate courts.

Table 2: Number of Women Judges in 21 High Courts (permanent and Additional)

(As on April 2014, Source: Department of Justice<sup>6</sup>)

Name of the High Court	Number of Women	Number of Men	Total
1. Allahabad	5	85	90
2. Andhra Pradesh	2	23	25
3. Bombay	8	58	66
4. Calcutta	4	38	42
5. Chhattisgarh	0	13	13
6. Delhi*	9 (1 Chief Justice)	31	40
7. Gauhati	1	14	15
8. Gujarat	3	28	31
9. Himachal Pradesh	0	0	6
10. Jammu & Kashmir	0	0	10

11. Jharkhand	1 (1Chief Justice)	10	11
12. Karnataka	3	33	36
13. Kerala*	1 (1 Chief Justice)	32	33
14. Madhya Pradesh	2	30	32
15. Madras	7	39	46
16. Orissa	1	16	17
17. Patna*	2 (1 Chief Justice)	30	32
18 .Punjab& Haryana	7	40	47
19. Rajasthan	3	26	29
20. Sikkim	0	2	2
21. Uttarakhand	0	7	7
Total	5	571	630

Gender bias also appears to persist against women lawyers in the bar, thus restricting their participation in the court process. The problem of gender discrimination has to be addressed.

Former Supreme Court judge Ruma Pal said the only obstacle faced by woman judges is the attitude of society towards them. “It is assumed that a man is competent; whereas a woman has to prove herself before she is expected to be competent.”<sup>7</sup>

## E. THE EXECUTIVE

The rate of acceptance of women to the Indian Administrative Service (IAS), the Indian Police Service (IPS), the Indian Foreign Service (IFS), and other Central Services remains low, although it has been increasing. In the last five years (as of 2012), there has been a 22% increase in the number of women in the Indian Administrative service. In 2012, 195 women (out of 910 candidates) were recommended for appointment in Central Service agencies (21.4%). Women filled the first two positions on the civil service exams, although they comprised only 24% of the top 25 candidates, and only 21% of the top 100 candidates. However, the representation of women in the Indian Police Service is extremely low with only 21 new women Indian Police Service officers in 2011, despite increasing crime rates against women during 2006-10 from 164,765 registered cases in 2006 to 213,585 cases in 2010.<sup>8</sup>

There has to be an increase in the representation of women in the police and administrative forces. There is also a definite need to address the failure of the criminal justice system to guarantee investigation in crimes of violence against women.

## 2. CONCERNS

### A. WOMEN IN LOCAL SELF-GOVERNMENT

With affirmative action taken by the government through reservations for women in the Panchayati Raj Institutions, the representation of women is higher than the mandated 33%. Increased political participation by women has resulted in addressing issues essential to development and has resulted in more inclusive governance. Despite this, women continue to face economic, social and institutional barriers in entering the PRIs and are many times unable to translate their presence into meaningful political participation after being elected due to bias and discrimination. Many women sarpanchs have had to face extreme violence for challenging existing societal power centers. Even if were to pitch from preventing/ a prerequisite for preventing VAW, Paragraph 19 of the recently concluded Committee on the Status of Women, 57th session states that, “The realization of gender equality and the empowerment of women, including women’s economic empowerment and full and equal access to resources and their full integration into the formal economy, in particular in economic decision making as well as their full

and equal participation in public and political life is essential for addressing structural and underlying cause of violence against women’.

The lack of financial autonomy, too much bureaucratic influence, lack of education, proxy politics, power brokering, gender discrimination, violence in the private sphere and the fact that local level politics are often dictated by caste, class and religion are some impediments to political participation. The other tool in the hands of these power centers which they use against the women sarpanch is the motion of no confidence.

The Constitution (One Hundred and Tenth Amendment) Bill, 2009, Article 243D, which calls for reservation across three tiers to be increased to 50%, is still pending in the parliament. Meanwhile, some states like Kerala, Bihar, and Karnataka have already increased reservation within local governance institutions (PRIs) to 50%.

Chhavi Rajawat (incidentally a young, female MBA graduate) is sarpanch of Soda village, 60 kilometers from Jaipur, in backward Rajasthan. Rajawat participated in a panel discussion at the two-day meet at the UN on March 24 and 25 on how civil society can implement its actions and spoke on the role of civil society in fighting poverty and promoting development. She told the delegates of the international conference.

“If India continues to make progress at the same pace as it has for the past 65 years since independence, it just won’t be good enough. We’ll be failing people who dream about having water, electricity, toilets, schools and jobs. I am convinced we can do it differently and do it faster. In the past year alone, I and the villagers in Soda have brought about a radical change in the village purely through our own efforts. We have had no outside support - no NGO help, no public, nor private sector help.”<sup>9</sup>

## B. ADIVASI AND DALIT WOMEN IN PANCHAYATS

The representation of the marginalized sections of the society in Panchayati Raj Institutions enhances the ability to articulate and promotes inclusive growth.

The status of the Dalit women representative is the same as it was earlier. There is a need to work collectively for the empowerment of Dalit women and to have a multi-sectoral approach for development and proper implementation of policies. Dalit women are not allowed to hold positions in the Panchayat Raj Institutions and even when they do, they face caste-based discrimination, atrocities and violence faced by Dalit elected representatives in the hands of the upper castes. Many elected representatives complain that the police and the administration do not support them.

When Nortri Bai, sarpanch of Harmara in Rajasthan, refused to give in to the demands of upper caste men in her village, her daughter-in-law Ram Peari was branded a “witch.” The villagers called for Peari’s “social boycott” and excommunication.

In Alwar district in the State of Rajasthan, Sunita Bairwa of Bahedakhah was assaulted because the upper castes were unhappy about a Dalit being elevated to sarpanch. On 15th August when the Dalit women sarpanch wanted to raise the flag, she was not allowed to do so by the other members.

Nauroti, a stone cutter in Puharu village, is today the dalit sarpanch of Rajasthan’s Harmada gram Panchayat, who has waged an unrelenting battle for empowering the marginalized and against the liquor mafia, despite stiff resistance from many quarters.

The Panchayat (Extension of the Scheduled Areas) Act, 1996 (PESA) has been tailored to extend the scope of the Panchayat Raj legislation to cover the tribal areas in the 9 states, Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan. Under PESA, the Gram Sabhas are deemed competent to safeguard and preserve the traditions of their people, community resources and customary mode of dispute resolution. PESA was

integral part of the 73rd Amendment having binding status of the constitutional provisions but that has not been possible as many state governments have passed laws which are not in conformity with the central law. The PESA which is one of the progressive legislations for tribal welfare has been unable to negotiate development and democratization in the manner envisaged by it due to lack of political will.

### Success stories

Janakamma represents 26 haadis and villages, covering 530 families. Hailing from a community that was displaced from the forests surrounding Periyapatna, she is the second time president of Abbalati Gram Panchayat in Periyapatnataluk. Janakamma, from a tribal community called KaaduKuruba, can barely write her name. Reading involves an effort, but she manages with some help. Yet, the never-say-die spirit of this 54-years old has taken her on a stupendous journey. From being a homeless, landless and right-less tribal, Janakamma has gone on to fight for the rights of her people and has managed to get a residential school upto class seven for the children of Abbalati. She plans to get a hospital and a high school sanctioned for her village. She has never used the 'ST' or 'woman' reservation tag to win the seat, either during her tenure as a Sangha member or as a GP member. She contested from the general category on both occasions. That has been a bigger victory for her because she fought against male candidates hailing from communities that have enjoyed greater social acceptance.<sup>10</sup>

Madam Sarpanch AmasoBai is a familiar name in Tinsai and its surrounding villages. The village of Tinsai is about 60 km away from Chindwara district in Madhya Pradesh. At the time of filling of the nomination form, Amaso Bai was non literate. Being a non literate Sarpanch was not acceptable to Amaso and hence three days prior to the election, she put all her efforts and learnt to sign her name. She signed the nomination form and won the election. Amaso Bai is still unable to read or write, but her political acumen and her management and planning skills are at par with any CEO. The probity and sanctity of functioning is on such a high pedestal that the money collected from fines imposed is deposited in the bank account of the panchayat. Supporting her in this entire campaign, Sajid a social worker, informs that so far nearly five thousand rupees have been collected. Some of this money has been utilized as reward money for informers; the rest has been used for development work in the panchayat.<sup>11</sup>

ShantubenJitiya (45) has made history by becoming the first dalit woman sarpanch in this village, which has only two Dalit families in the 2,000-odd population. All members of her executive committee are women, a first in Hajipar.<sup>12</sup>

## C. WOMEN'S PARTICIPATION IN PEACE PROCESSES

Peace-making and peace-building are ongoing processes in situations of conflict where recurrence of violence is a constant phenomenon. Peace Committees formed aftermath any major violence resulting in conflict-induced displacement are seen as inconspicuous structures without any composition and guideline. Participation of women or representation of women's issues seems to be of lesser known interest thereby leading to a major drawback, which veils any gendered approach to the peace building processes entrusted to these committees.<sup>1</sup>

Ongoing formal peace negotiations in NER have undermined the gender agenda and also lack inclusion of women at all levels of negotiations.

## 3. WOMEN'S REPRESENTATION IN NAGALAND'S POLITICAL PROCESSES

Women of India are guaranteed a 1/3 reservation of seats under Part IX A (74th Amendment) of the Indian Constitution. In the state of Nagaland too, this was reiterated in the 'Amended Nagaland

<sup>1</sup>Evidences from NEN's fact-finding visit during Garo-Rabha conflict in 2011 & BTAD conflict in 2012, 2014



Municipal and Town Council Act 2006', under the special provisions for empowerment of women in urban decision-making.

In clear denial of women's constitutional rights, sixty legislators of Nagaland, both of the ruling as well as the opposition, passed a Resolution, in September 2012 exempting the 74th Amendment citing contravention of Article 371 A to restrict women to participate in the Municipal bodies. The Article, in context, pertains to the Naga customary laws which cannot be tampered with, by any act of the Parliament unless the Nagaland Legislative Assembly, by a resolution, so decides....'otherwise. Customary practices and special constitutional provisions guaranteed under Schedule 5 of the Constitution is evoked by powerful sections of society cutting across political parties to deny women equal opportunities and access. This has brought in serious denial of women's rights in which the violations identified under CEDAW are that of Article 1; Article 2 b, c, d, e, f; Article 4.1; Article 5a and Article 7a.

Regarding the court proceedings of 33% reservation in Municipal and Town Councils, Supreme Court of India in 2012 has admitted the Special Leave Petition (SLP) of Naga women's organisations challenging the verdict of the Division Bench of the Gauhati High Court, which had, earlier, rejected the women groups' contest against the Nagaland government's decision to defer the municipal and town elections in the State as well as not implementing the 33% reservation of seats for women in the municipal institutions. The court has directed the Speaker, Nagaland Legislative Assembly to file his response to the petition challenging the assembly resolution in 2014. The verdict is awaited.

#### 4. RECOMMENDATIONS

1. The national government must pass the Women's Reservation Bill which has been pending in Parliament (Lok Sabha) since July 2010 with immediate effect reserving one-third of seats in Parliament and state legislatures for women.
  - a. The national government should also undertake awareness-raising about the importance of women's participation in decision-making for society as a whole. Further reservation in itself cannot be the only mechanism to have a substantive and effective participation of women in politics.
2. There must be a multi-tiered reservation system in place:
  - a. Political parties must mandatorily field women candidates for one-third of the seats they contest in each state
  - b. One-third of seats in legislatures and both houses of parliament must be reserved for women.
  - c. This reservation must be a vertical reservation that is binding on the reserved constituencies as well.
  - d. Strategic initiatives should be taken to increase the percentage of women in higher legislative, administrative and judicial positions within a fixed time frame.
  - e. Reservations should be made not only in governments system, but also within private and corporate institutions.
3. A national Judicial Services Commission must be set up immediately and one-third of the judiciary in each state and the Supreme Court must be women. Retired women judges from the Supreme Court must be given an equal chance to head statutory bodies like the National Human Rights commission with affirmative action the norm is all sectors of public life, it must be made mandatory for the judiciary to reflect this norm.
4. Active measures must be taken to make the civil service agencies more representative. The Police and Armed Forces tend to present very hostile environments for women. Mandatory Procedures need to be specified with respect to offering women in the Armed Forces protection against discrimination. There is need for mainstreaming gender sensitization within the government system and propagating

the same for an enabling environment for women's participation in political and public life.

5. The State should take adequate measures to build an enabling and secure environment for women to access and participate effectively in political and public roles.
  - a. Capacity building and gender sensitization trainings should be developed and provided on a continuous basis for women representatives to strengthen their capacity to function as independent and effective leaders, and also for elected men to support their women colleagues. There should be adequate budget allocation for this.
  - b. A mechanism to prevent men (husbands, fathers, brothers, sons, colleagues, etc.) from controlling or unjustly influencing the women's participation in the political process should be instituted at all levels.
  - c. A special fund should be created for women to support them in contesting elections.
  - d. Although a beginning has been made by the Election Commission with respect to monitoring election expenditures, there must be far reaching long term measures that are put into place to ensure transparent and fair elections.
  - e. To enforce stringent ceiling of expenses incurred for election campaign, provide financial support to women candidates, particularly those from Dalit and marginalized communities.
  - f. Stringent measures should be taken to check the occurrence of caste- and gender-based violence in the election process. Any such incidents should be immediately addressed by the authorities. The safety and security of women candidates should be ensured.
  - g. Questions of women's leadership and participation in public and political life are not negotiated out in the interest of political expediency during different ongoing peace talks in the NER.
  - h. State should have a formal composition of local peace committees in difficult circumstances in conflict areas for a sustained period of time. The Committees must be capacitated to prevent violence and promote peace. We recommend a bottom-up approach to forming peace committees from block to district to state level. It must be inclusive of different sections of the community including women. The objective the Committee is to dialogue, build trust and offer constructive, inclusive solutions to pre-empt and prevent violence.
  - i. Women's inclusion in post-conflict transition and reconstruction process. This must be necessitated without which the State will not be able to evolve constructive and gender centric strategies to rebuild normalcy and peace amongst communities. Women's role in the peace process in the NER both at formal and informal levels must be recognised and conform to UNSCR 1325.
6. The General Recommendations No 23 (16th session, 1997) on Article 7 states the following on Temporary Special Measures:
  - a. 'While removal of de jure barriers is necessary, it is not sufficient. Under Article 4, the convention encourages the use of temporary special measures in order to give full effect to Articles 7 and 8. The formal removal of barriers and the introduction of temporary special measures to encourage the equal participation of both men and women in the public life of their societies are essential pre requisites to true equality to political life. State parties have an obligation to ensure that temporary special measures are clearly designed to support the principle of equality and therefore comply with Constitutional principles which guarantee equality to all citizens'.
  - b. The State party must take sustained measures, including temporary special measures contemplated since the 9th five-year plan, to increase the number of women in government service, including in higher political, administrative and judicial posts, and to establish concrete goals and timetables towards meeting this goal.

7. The Two Child Norm tends to undermine the women's quota in the Panchayati Raj Institutions (PRIs). It is enacted by some states as part of the conformity legislations. The norm does not allow women (and men) with more than two children to stand for elections. The states where the norm is prevalent are Rajasthan, Andhra Pradesh, Odisha, Maharashtra and Gujarat. (The Norm was originally implemented in 9 states, then in 2000-2005 revoked in 4: Madhya Pradesh, Chattisgarh, Haryana, and Himachal Pradesh).<sup>14</sup>
  - a. This is in violation of the Right of Political Participation under International Conventions.
  - b. India is a signatory to the Universal Declaration of Human Rights. With the imposition of two child norm, India is in violation of Article 21 of Universal Declaration of Human Rights: Right 21(1)-(2) (right to take part in public service, and in government directly or through representatives).
  - c. The Two Child Norm violates Article 25 of the International Covenant on Civil and Political Rights which states: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions.
  - d. Violation of International Conference on Population and Development: India is a signatory to ICPD's Program of Action which states 'the aim of the family planning programmes must be to enable couples and individuals to decide freely and responsibly the number and spacing of their children and have information and means to do so'.
8. In order to protect the interest of Scheduled Castes / Scheduled Tribes women and Other Backward Classes (OBCs) from social injustice and exploitation, the state should ensure the constitution of Social Justice Committees (SJs) in all levels of Panchayati Raj Institutions.
9. All panchayats headed by scheduled caste women representatives should be given special grants by the union ministry. In addition, provisions for a no-confidence motion should be suitably amended so that they are not misused.
10. There should be efforts to remove the glass ceiling and give women important profiles rather than allocating soft profiles.
11. Gender Budgeting must be made mandatory for all departments and mechanisms should be put in place to ensure that at least 33% of the direct and indirect beneficiaries of all government schemes are women and girl children.

#### END NOTES

<sup>1</sup>The Constitution (One Hundred and Tenth Amendment) Bill, 2009

<sup>2</sup> seeks to amend Article 243 D of the Constitution by proposing that the reservation of women in the Panchayats in the total number of seats, offices of Chairpersons and in the seats reserved for the Scheduled Castes and Scheduled Tribes across three tiers should be raised from 'not less than one-third' to 'not less than one-half' and also proposing similar reservation for women belonging to the Scheduled Caste and Scheduled Tribe categories in the offices of Chairpersons in the Panchayats at each level upto 'not less than one-half'.

<sup>3</sup>The states to have implemented 50% reservation for women in the Panchayati Raj Institutions are Andhra Pradesh, Bihar, Chhattisgarh, Himachal Pradesh, Jharkhand, Kerala, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tripura and Uttarakhand.

<sup>4</sup><http://pib.nic.in> (last accessed on 30th August 2012)

<sup>5</sup><http://indiancourts.nic.in/sitesmain.htm> (accessed on 7th August 2012)

<sup>6</sup>[http://articles.timesofindia.indiatimes.com/2009-08-03/india/28198811\\_1\\_woman-judge-women-judges-highcourts](http://articles.timesofindia.indiatimes.com/2009-08-03/india/28198811_1_woman-judge-women-judges-highcourts) (accessed on 7th August 2012)

<sup>7</sup>Judges of the Supreme Court of India and the High Courts

<sup>8</sup><http://doj.gov.in/sites/default/files/userfiles/SHJ14.pdf> (accessed on 19th May 2014)

<sup>7</sup> Divided views on women's quota in India's higher judiciary Malathi Nayak 29 December 2008 southasia.oneworld.net (accessed on 7th August 2012)

<sup>8</sup> [http://mha.nic.in/pdfs/AR\(E\)1112.pdf](http://mha.nic.in/pdfs/AR(E)1112.pdf)

<sup>9</sup> Chhavi Rajawat, an MBA graduate, is India's youngest sarpanch Press Trust of India | Updated: March 28, 2011

<sup>10</sup> From Homeless Tribal to GP Chief By Preethi Nagaraj Deccan Herald July 13, 2010

The 10th Sarojini Naidu Prize for Best Reporting on Women and Panchayati Raj

<sup>11</sup> Beware, here lives Amaso Bai.... By Rumni Ghosh Dainik Bhaskar, 8 March 2010

The 10th Sarojini Naidu Prize for Best Reporting on Women and Panchayati Raj

<sup>12</sup> Die is cast: Villages elect first dalit woman as sarpanch Vijaysinh Parmar, TNN April 14, 2012.



ARTICLE 10  
EDUCATION

CHAPTER 5



INDIA

4th AND 5th  
NGO ALTERNATIVE REPORT  
ON CEDAW

# ARTICLE 10 EDUCATION



**Nirantar**

## **1. EARLY CHILD CARE AND EDUCATION (ECCE)**

The role of early childhood care and pre-primary education is well established in preventing poor performance and early dropouts amongst children, especially girls. It assumes more significance in context of gender as a good quality ECCE will go a long way in helping young girls attend primary and elementary education.

### **A. INADEQUATE COVERAGE**

India has 158.7 million children in the 0-6 years age group (Census 2011) out of which only 68.8<sup>1</sup> million (as on September 2009) received supplementary nutritional services and only 33.2 million received pre-school education under ICDS services, a flagship scheme of the government of India.<sup>2</sup> The programme is comprehensive in its approach and targets the poor population (both rural and urban). However the coverage and quality of services is grossly inadequate given the huge gap of nearly 82.2 million children who are not covered under the scheme. The coverage is uneven across different regions, especially in most populated and economically poor states like Uttar Pradesh, Bihar, Jharkhand, Madhya Pradesh and Chhattisgarh.

### **B. POOR QUALITY OF PRE-SCHOOL EDUCATION**

Studies done by premium institutions of the Government of India like NCERT and NEUPA<sup>3</sup> have pointed out that the services of pre-school education by ICDS are either nonexistent or of very poor quality. The lack of well-qualified and trained facilitators in ICDS centers is one of the significant contributors to the poor quality of pre-school education within ICDS.

The long standing demand of including pre-school education with elementary education has been ignored by the government by keeping it out of Right to Education Act 2009 and thus is left to be dealt by untrained and unskilled ICDS workers.

## **2. ELEMENTARY EDUCATION**

### **A. RIGHT TO EDUCATION AND THE WAY FORWARD**

Elementary education has undergone change in the past decade with the SSA being implemented and the passing of the Right to Education Act in 2009. The impact has been seen and measured in different fields like enrolment, dropout and retention rates as well as the impact on quality of education being accessed by different socio-economic classes in the country. In addition, elementary education does enjoy the status of being given priority in the backdrop of the Millennium Development Goals (MDGs) inching closer to their deadline of 2015.

The objectives and targets envisioned under RTE (excluding teacher training) were to be achieved by the end of March 2013.

RTE norms to be attained at the end of March 2013:

1. All children (in the age-group of 6-14 years) to be provided free elementary education in a neighbourhood school.
2. All non- admitted children to be given admission in an age appropriate class.
3. Appropriate PTR, building and infrastructure as well as norms of school- working days and teacher- working hours to be achieved.

The deadline has passed and yet even basic quality parameters like safe drinking water and toilets in all schools is not being achieved universally. Additionally the government has not come up with another deadline for its self to achieve all the targets set under RTE Act 2009.

## B. ISSUES OF ENROLLMENT AND RETENTION

Some recent statistics throw light on the achievements as well as the gaps within this sector that need to be addressed. In 2010-11, GPI<sup>4</sup> (for primary school) of several states was quite close to a perfect score. For e.g. high performing states include Meghalaya (1.02), Manipur (0.99), Uttar Pradesh (0.98) and West Bengal (0.98), whereas states like Delhi (0.88), Punjab (0.80) and Gujarat (0.86) need to improve to a large extent.<sup>5</sup>

- Between 2003-04 to 2011-12, the percentage of overall female enrolment in primary classes increased from 47.47 to 48.35 and for upper- primary from 45.02 to 48.63.
- The percentage of SC enrolment in 2011-12 to total enrolment in primary school is 20.09 and that for ST enrolment is 11.40.
- The percentage of SC enrolment in 2011-12 to total enrolment in upper- primary school is 19.14 and that for ST enrolment is 9.86.
- The percentage of Muslim enrolment to total enrolment in primary school is 13.31 and for upper- primary school 11.65 in 2011-12.<sup>6</sup>

The dropout rates for boys and girls has fallen to 40.6% and 41% as of 2010-11 (MOSPI, 2013); a positive development since the implementation of the RTE. However, 41% and 40% dropout rates for girls and boys respectively is an unacceptable high number and more concerted efforts are required to reduce and gradually diminish these figures.

A major hurdle to be tackled is the large number of out-of-school- children (OOSC). DISE 2010-11 states that 1 out of 5 children will not be able to complete class V. A large proportion of OOSC come from the marginalized communities. The highest percentage of OOSC are from UP, Bihar, Rajasthan and West Bengal with the total coming to 72% of the total OOSC. Between 2000-01 and 2008-09, the national drop-out rate fell from 40.3% to 25.4% for primary school and from 54.5% to 46% for upper-primary school.<sup>7</sup>

## C. QUALITY OF SCHOOL INFRASTRUCTURE

ASER 2012 revealed that 95.2% of the schools did not match up to the standards laid down under RTE. Only 4.8% of government schools have all nine facilities stipulated under the RTE Act. 11.41% have eight of the nine facilities. These nine facilities include basic provisions that need to be provided in all elementary schools: (i) school building, (ii) One classroom per teacher, (iii) Separate toilets for boys and girls, (iv) Drinking water, (v) kitchen to cook MDM, (vi) Boundary wall, (vii) Playground, (viii) Barrier-free access, and (ix) One office- cum- store- cum head teacher's room.

Approximately 1/3rd of the schools have up to seven facilities and about 30% schools do not even have five. The study<sup>8</sup> observed that almost 4% of habitations (including hilly terrains in Himachal Pradesh, Uttarakhand, tribal belts of Chhattisgarh, Odisha etc.) do not have primary schools within walking distance. This almost immediately excludes several children from accessing education as they cannot travel long distances to attend school.



A high pupil- teacher ratio means that the teacher has to take charge of a large class and is unable to give individual attention to students. Students with low learning levels generally suffer because of this as the teachers are not able to help them with their specific problems and they can't get extra teaching time in addition to the daily lectures.

#### D. MID- DAY MEAL (MDM) SCHEME

A study was conducted by the Planning Commission to assess the performance and coverage of the scheme in 17 states.<sup>9</sup> States like Andhra Pradesh and Madhya Pradesh had managed full coverage of the scheme. Barring Kerala and Tamil Nadu, majority of the sample schools in different States had poorly functioning kitchen sheds. The poor and inadequate quality of food continues to be a big concern and raises a crucial question on the government's efforts to improve the educational status at elementary level. The issues of toxic food and stale food also keep coming from various parts of the country including freak accidents due to careless handling of MDM.<sup>10</sup> Issues of discrimination faced by Dalit cooks are also rampant. A social audit conducted of around 100 schools (in Lalitpur, UP) by Nirantar (as part of an NCPCR initiative) revealed that in many schools Dalit women who are supposed to be employed to cook meals are made to clean the school instead and the food is cooked by 'upper- caste' women instead. This is gross violation of human rights as well the constitutional rights mentioned in RTE which has laid down clear norms about who can be employed to cook MDMs.

While there are reports and opportunities of children mixing together due to eating together, there is evidence of the reverse being experienced as well. Nirantar had as part of the social auditing of schools in Lalitpur discovered instances of discrimination connected to the MDM. Children from Dalit and Tribal communities were made to sit separately and sometimes utensils were not kept in schools for 'fear' of them being used by children of 'lower' castes.

However there is enough evidence to show that MDM has lead to an increase in enrolment and out of total beneficiary children under MDM, 40% were from the OBC, 23% from the SC and 12% from the ST category.

#### E. TEACHERS: RECRUITMENT AND TRAINING ISSUES

The core issues facing the quality of schooling accessed by poor children and especially girls is lack of availability of required number of teachers as per the norms under RTE 2009. The most glaring indicator of the paucity of teachers is the appallingly high Pupil Teacher Ratios. As in 2011, according to an estimate nearly 6, 89,268 sanctioned teacher posts are vacant resulting in more than 12%<sup>11</sup> schools remaining single- teacher schools.

In the period 2009-10 and 2010-11, there was a massive recruitment of para-teachers in a number of states. According to 12th Joint Review Mission,<sup>12</sup> the government admitted that the number of teachers requiring training exceeds current capacity of recognized teacher training institutes. States like UP, Bihar, Jharkhand, Madhya Pradesh, Chhattisgarh, Andhra Pradesh, West Bengal and Odisha suffer from the largest backlog in terms of recruitment of teachers qualified as per RTE norms.

The quality of available teachers is another disappointing fact as only 7% of the 7.85 lakh applicants for the national Teacher Eligibility Test (TET) conducted by the Central Board of Secondary Education (CBSE) actually cleared the exam!

The State needs to immediately put in place a mechanism for improving the qualifications of teachers. DIETs have to be capacitated to train teachers as they're working beyond their resource capacities as of now. More importantly teachers need to be trained to interact with and teach children of various socio-economic backgrounds and varying learning abilities. DISE 2011<sup>13</sup> states that 1 in 10 teachers is employed on a contractual basis. This is a direct result of the government provision for recruiting individuals with fewer qualifications in case the State is unable to find teachers that match the RTE norms.

Despite strict guidelines under RTE Act, teachers have lot of non- teaching activities pertaining to



internal administrative requirements as well as other responsibilities like polio drops campaign or census data collection. In an already teacher deficit system, additional non teaching responsibilities have serious consequences on the amount and quality of teaching in government run schools.

#### F. GIRLS WITH DIFFERENT NEEDS

Girls with disability and trans gender are either not entering the school system or drop out early due to hostile and insensitive environment. It is important to recognize here that due to gender biases, majority of girls with disability remain invisible even within families and society who are not seen worth anything and are hidden as shame by the family. Likewise trans gender are either dismissed as invalid or forced to follow the norm in the form of early and forced marriage. The school system ironically has not been able to reach out to majority of girls with disability and they fall of the radar of elementary education and subsequently to all forms of formal and structural learning spaces.

#### G. KASTURBA GANDHI BALIKA VIDYALAYA (KGBV): PROGRESS AND POTENTIAL

The KGBV scheme has been functioning since 2004 in 27 states. They provide residential schooling facilities to those girls who have dropped out in primary school and help them complete the elementary-level of education via bridge courses and tutorials. It exclusively caters to girls from the SC, ST, OBC, religious minorities' groups as well as those living under the poverty line. At present there are 1, 90, 404 girls studying in a total of 2578 KGBVs.<sup>14</sup>

The KGBVs are a very important and innovative scheme for young girls but there are gaps that need to be addressed to further fortify it. The financial allocation to this program falls short of the generous funds allocated to schemes like Navodaya Vidyalayas. The fact that several KGBVs are functioning with 3-5 toilets for 80-100 girls is appalling. The teachers appointed in KGBVs get minimal training. However it is an important institutional mechanism to mainstream young girls in education as it also impacts early marriage of girls. Given the success rate of KGBVs It is important that the program should be expanded to classes 10th and 12th(Kumar & Gupta, 2008).

The National Curriculum Framework (NCF) hasn't been implemented in all states which automatically means that the current curriculum taught in many schools has not included the relevant social- gender equity recommendations made by NCF'05. The same curriculum is being used in KGBVs meaning that it does not address gendered realities and issues faced by the girls.

A Constitutional mandate can be successfully achieved if there is a proper mechanism of monitoring put in place. The initiative started by NCPCR to conduct social audits of schools was an effective one as several hidden issues were revealed and at the same time it also created space for community monitoring of schools. However this process was a pilot and was discontinued within two years. Such processes need to be continued and institutionalised as well. The NCPCR has poor capacity to monitor and fix problems in implementation of RTE. Several states have yet to set up SCPCRs. Issues of poor infrastructure, lack of teachers, social and gender- based exclusion etc. cannot be solved without there being an agent to monitor and keep tabs on the quality of education being meted out in the elementary school system.

#### H. ISSUES OF GENDER AND REPRESENTATION

The apex body<sup>15</sup> responsible for making curriculum and teachers training came out with a progressive National Curriculum Framework (NCF 2005) which also attempted to bring gender as an important area of engagement in the realm of school education and its content. There have been some efforts at the national level to revise or rewrite some textbooks in light of NCF 2005, without much success at the state level curriculum and textbooks. Thus the reach of NCF 2005 has become limited as majority of students and textbooks are under state boards and national curriculum does not influence them. NCF 2005, not only brought up issues' of content but also the pedagogy which needed to be reflected and integrated in teachers' training and orientation. Due to lack of effective coordination between NCERT and SSA (responsible for funding and capacity building of teachers) even that has not been achieved effectively

and there are wide gaps in the way new curriculum is designed and the way teachers' training is designed.

## I. TEACHERS TRAINING AND CLASSROOM PRACTICES

There are some efforts made to include gender in training and capacity building programmes,<sup>16</sup> which not only remain at superfluous level but also detached from other parts of the training curricula that is considered more important. Despite many efforts by civil society organizations, the gender component still remains an add-on in curricula and teachers training.

Likewise the classroom practices also remain aloof from gender and equality perspective as teachers continue to engage with students in stereotypical ways and practice orthodox teaching learning methods. There are many studies in India now available to give anecdotal examples of how girls in general and girls from SC/ST and Muslim community in particular are either written off as serious learners or treated with bias and preconceived notions of gender and community.

## 3. ADOLESCENT GIRLS' EDUCATION

Adolescence as a category with specific needs has got greater attention in the last decade both within government and civil society organizations. As per census of India 2001, the size of young female population is 203 million and it is expected to increase over the coming years as per the available trends.

### A. SECONDARY EDUCATION

The last two decades (1984-2005) have seen an upward growth in enrollment in secondary education (SE) and 60% of total secondary enrollment is absorbed by government schools. The gross attendance rate at the secondary level has increased to 67% with wide variations across states, with Kerala as high as 116.4% and Bihar dipping to 49.4%<sup>17</sup>. In addition to this, rural-urban differentials bring out the rural disadvantage with Net Attendance Ratio (NAR) in rural areas close to 50% in contrast to NAR of more than 70% in urban areas. With the Rashtriya Madhyamik Shiksha Abhiyan (RMSA)<sup>18</sup>, a dedicated programme for secondary education is being implemented by the Centre, and growing demand for SE, there is prediction of improvement in access and retention rates at secondary level. However RMSA is not implemented in all the states which need to be done sooner than later.

### B. HIGH DROPOUT RATE AT SECONDARY LEVEL

A significant section of learners drop out prior to completing upper primary level of schooling. The figure is as high as 24% for Muslim children, 23% for STs, 18% SCs and 16% overall for girls. Majority of boys who drop out before entering SE or during SE, go into the labour market, but for girls, it is either domestication or marriage which are the largest contributors as reasons for their drop out. Nearly 41% in urban areas and 36.8% in rural areas take up domestic work after leaving school.

Thus for adolescent girls their primary concern about withdrawal from school is the limitation on their mobility and of being tied to domestic chores.

The adolescent girls with disability completely fall out of the ambit of secondary education. While girls in general are invisibilised by the community, girls with disability are not even recognized as valid and are therefore never able to access system. Moreover there are policy levels guidelines to cater to the needs of girls with disability but there are no mechanisms to identify them and bring them in to the education system. Thus there is need to recognize the gender bias against disabled girls in order to plan and execute policies to effectively bring them in the purview of programmes and policies.

Absence of female teachers in SE is an important contributor to drop out rates of adolescent girls from secondary schools. However the ratio of female teachers continues to be between 61-65 per 100 male teachers. State with higher dropout rate than national average like Bihar, Uttar Pradesh, Orissa, and West Bengal have less than 30 female teachers per 100 male teachers.

### C. LACK OF VOCATIONAL TRAINING

In the 15 to 19 age group, close to 30% of rural girls opt for self employment and move out of school and another 28% move into casual labour. While this clearly establishes the need to develop skills, there is a very limited availability and access to skill and vocational education to the young population especially for girls. They are either seen as future homemakers and mothers, so no attention is paid to reach out to them or due to limited mobility are not able to reach to the limited opportunities of skill development. Government has made some scattered efforts of providing vocational training to the youth but it has been grossly insufficient to cater to the large section of young population, more specifically to rural young girls, from marginalized communities like SC, ST and Muslims. According to an estimate they also form approximately 90% of total unorganized workforce, where a large percentage is of girls and women.

Moreover existing livelihoods programmes for young women promote stereo-typical activities, for instance, embroidery, stitching and jewellery making, which require women to remain within conventional gender roles. Government programmes also do not address the challenges that young women need to negotiate, in particular those related to gender, sexuality, caste and religion, between the acquisition of skills and translating these into enhanced livelihoods. Information and Communication Technology (ICT) should be explored further as a viable vocational programme for women. ICT can be used by those with very little formal education, since media literacy has a language of its own, which can be mastered by those with minimal skills of reading and writing. For young women who have always seen media content by and about people other than them, it is extremely transformative to be able to put themselves and their stories at the centre of media, a public domain from which they have thus far been excluded.

### D. LIMITED FRAMEWORK

The focus on young adolescent girls as a category has been limited to either secondary education (with negligible attention to vocational training) reproductive health related issues including population control and safe motherhood. All this reflects an instrumentalist approach to adolescent girls and does not look at them in a framework of citizenship, which will bring focus on their rights through the lens of youth and their diverse contexts.

Given the enormous diversity across India and socio-economic divide both in rural and urban India, the mechanism set to reach out adolescent girls, especially those who either never enter schools or dropout very early (before completing primary school) are too few and too narrow. There are no policy or programme level interventions or initiatives except a few institutional schooling options (like KGBVs) for young girls to opt for.

Another important area which has either been totally ignored or seen only in context of reproductive health is sexuality and empowerment. Sexuality just cannot be seen in limited sense of either reproductive health or violence but needs to become a lens through which the needs and aspirations of young people specially girls should be understood. This is very important in Indian context given very limited or no access to sex and sexuality education that girls have both within and outside education system. The lack of sexuality education with space for positive and healthy discussions on desire and choice has deep connections with violence against young girls especially by young boys. The anxiety and taboos around sex and sexuality comes out in violent forms as all other forms of expression are either prohibited or young girls and boys lack enough knowledge and information to exercise choices.

## 4. WOMEN'S LITERACY AND EDUCATION

As per population census of India 2011 the literacy rate of India has gone up to 74.4% from 65.3% in 2001, an increase of 9 percent in the last 10 years.

### A. LITERACY GAPS

However, the overall picture of literacy is very different from the regional and communal literacy data

that exists due to multifold marginalizations. Disparities of gender and social categories like SC and STs rural and urban are still a big concern.

- The gap between male (82.1%) and female (65.4%) literacy rate is 18%
- Out of total non-literate population 138.97 million in India, 86.16 million are women.
- According to NSS 66th round (2009 – 2010) the gender gap in the literacy rate for SC was 21% (male 73%, female 52.1%) and 17% for STs (male 71.1% and female 54.4%).-

Regional and state level disparities is something which requires closer attention as Bihar, M.P., Jharkhand, Rajasthan, Odisha, Chhattisgarh, Dadar and Nagar Haveli and Jammu and Kashmir (J&K) continue to be lowest achieving literacy rates and gender disparity is also above national average in all these states.

## B. SAKSHAR BHARAT PROGRAMME

Sakshar Bharat is the flagship programme of the government of India and it has been implemented in 365 districts which are the low literacy districts in India. While it has achieved impressive targets in some states and districts, low levels of performance and achievement in other districts is an area of grave concern. According to Ministry of Human Resource Development (MHRD), 8 states have performed below average (not being able to achieve set targets) and majority of these are with lower literacy rates and greater gender disparity.

Government is addressing the issue of illiteracy through Sakshar Bharat, but the focus is only on certifying adults as literate with no strategy or plans for continuing education to ensure that neo-literate do not regress into illiteracy. The funds allocated for Sakshar Bharat caters only towards the certification and there is no provision for post literacy follow up.

The skills and capacities along with remuneration of facilitators is a big question mark, as the programme has not moved from the past assumption that adult literacy can be done by anybody. The meager remuneration offered to facilitators (Preraks) to do adult literacy is a recipe for non performance and lack of sufficient time and dedication for this work. Additionally there are no institutional mechanisms or structures that exist to make adult education a sustainable and lifelong phenomenon rather than one time investment, in its present framework. It is important to recognize that literacy is not just reading and writing as people who have been left out of mainstream education are also the people who lack access to various other services and structures required for development. Thus it is important to provide linkages and opportunities through literacy on a sustainable basis to make literacy more meaningful for them.

## C. EDUCATION FOR WOMEN'S EMPOWERMENT – MAHILASAMAKHYA (MS)

Mahila Samakhya (Education for Women's Equality) an effective process – oriented towards women's education and empowerment programme targeting poor, socially disadvantaged women is operational in 9 states across 89 districts. The programme works through women's collectives and addresses several gender issues including violence against women. In some states MS is playing a crucial and pivotal role in running KGBVs as well. In addition it also runs a number of innovative non formal education programmes for women and adolescent girls. Given its impact and innovativeness to address gender based issues, MS needs to be expanded to more states with more resources to deepen their work at the community level.

## D. DISPARITIES IN HIGHER EDUCATION

Gross Enrolment Ratio (GER) in Higher Education in India is 19.4, where GER for male population is 20.8 as compared to females at 17.9. Scheduled Caste students constitute 11.1% and Scheduled Tribe students 4.4% of the total enrolment<sup>19</sup>. The enrolment percentage is 3.8% among Muslim students.

While enrollment in Arts and Humanities streams is almost equal among males and females, the enrolment in technical streams like engineering is heavily skewed in favour of males with more than 70% enrollment. According to All India Survey on Higher Education (2010-11), presences of female students



in other professional courses tell a different story.

BTech – 70.75% males, 29.25% females

LLB – 69.72% males, 31.3% females

MBA – 60.8% males, 39.1% females

MTech – 75% males, 25% females

It is clearly evident from the above data that presence of girls and women in professional courses is very low. This is partially due to less importance accorded to women's career but also clubbed with lack of facilities and security for girls as most of these professional courses are offered by colleges located at far off places and girls with restricted mobility find it difficult to pursue professional courses.

Additionally most (70%) of professional courses are run by private colleges with high tuitions and maintenance fee. The parents' preference to invest in their sons' careers first restricts their ability to invest high in their daughters' professional development. Unless professional education is subsidized for girls, their presence will continue to be meager in higher technical and professional sector given the patriarchal social system and low priority of on girls' higher education fraught with high priority for marriage.

## 5. VIOLENCE AGAINST WOMEN AND EDUCATION

### A. SEXUAL HARASSMENT AND EDUCATIONAL INSTITUTIONS

As demonstrated in previous sections, the country is moving towards achieving gender parity in education systems, especially in school enrollment. However, these increased enrollment rates of girls in education does not go hand in hand with measures to address the widespread yet under reported phenomenon of sexual harassment and violence against girls and young women within educational institutions. There is also no data to determine the extent of this problem. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 makes it mandatory for universities and educational institutions to formulate guidelines and set up committees to deal with sexual harassment complaints. Many universities have formulated guidelines and established mechanisms to deal with sexual harassment, but many educational institutions have either failed to implement the guidelines or lack willingness to do so. This has also been noted that often the committees set up under guidelines, are gender-blind, moralistic and partisan. It is also been observed that measures to make educational institutions safer for girls and women often lead to greater policing and restrictions on their mobility and sexuality.

One often overlooked fact is how the larger issue of violence is being addressed in the education system. The rate of crime committed against women was 41.7 in 2012. The crime against women during the year 2012 has increased by 6.8% over the year 2011 and by 24.7% over the year 2008<sup>20</sup>. With increased rates of gender-based violence being reported all over the country, it is evident that educational institutions are still not addressing violence. In the groundbreaking report that came out after the December 16th case, the Justice Verma Committee states, "Correction of the societal mind set of its gender bias depends more on social norms, and not merely on legal sanction. The deficiency in this behalf has to be overcome by the leaders in the society aided by the necessary systemic changes in education and societal behaviour."<sup>21</sup>

Educational institutions are particularly well-placed to address issues of violence because schools/colleges are primary sites of social conditioning where important social norms of gender, sexuality, masculinity and femininity are knowingly or unknowingly taught to young people. The school/college, as a place where young people spend significant amounts of time, can be a powerful and effective medium to address gender issues and provide alternative ideologies and models of femininity and masculinity.

### B. IMPACT OF CONFLICT AND COMMUNAL VIOLENCE ON EDUCATION

In the incidents of communal violence that the country has witnessed in recent past, there's been a

specific intent to target the Muslim communities where the women are attacked and sexually violated. Such incidents have left community members with a sense and feeling of fear and high level of distrust. The feeling of constant fear, distrust and insecurity impacts the mobility of the women, often leading to situations where young girls and women are pulled out from school.

In the conflict zones, like Kashmir, Chhattisgarh, Jharkhand and parts of North East India which have a history of land and political power struggles, there have been frequent incidences of violence and the State imposing indefinite curfews. In situations like these, where there are panic disorders, the control is exercised over young girls and women, as the first recourse. Erratic functioning of schools is observed and the quality of education is poor. There have been no policy guidelines by the state on how to address the loss of education in violence-hit areas.

The violence, which broke out in Assam between two ethnic communities, Bengali Muslims and Bodos, in July- August 2012 and communal violence in Uttar Pradesh (Muzaffarnagar) in September 2013 resulted in mass displacement of Muslim families from their native villages to relief camps. The conditions in the relief camps are such that the only priority is survival. Education of children especially girls is hit badly and while majority of young boys go back to school after a gap, majority of girls either drop out permanently from school and/or get married.

In addition to this various fact-finding teams<sup>22</sup> who visited during the Garo-Rabha conflict of 2011 and the BTAD violence of 2012 found that schools were being used as relief camps for the riot- hit victims. What made matters worse was that the survivors of the riots were afraid to go back to their villages as they had been burned down and the government could not re-build houses within a short span of time. This resulted in families staying on for longer in these schools and classes being cancelled for long periods of time.

There is no policy or law to address such situations in a comprehensive manner. Despite many efforts by civil society and citizen activists, the Prevention of Communal and Targeted Violence (Access to Justice & Reparations) Bill, 2011 is not yet tabled and cleared by the government of India. In absence of any guidelines and set procedures, women who are marginalized within the marginalized community are worst sufferers of targeted violence and their education is the most dispensable right and service that community and state ignore constantly.

## **6. CRITICAL AREAS OF CONCERNS**

### **A. INADEQUATE BUDGETARY ALLOCATIONS**

Government has always termed education a “high priority” and expressed commitment to universalize education (till elementary at least), however the budgetary allocations raise questions about the gap in intended commitment and actual commitment. The budget allocated for year 2013 – 14 was Rs. 65,867 crore for education against Rs. 61,427- crore in 2012-13 - only 17% increase from the current fiscal estimate against 18% hike in budget spending – a decrease of 1%.

SSA- the flagship programme of government to universalize elementary education got an increase of 15.74% with an allocation of Rs. 27, 258crore which is a dip from last year (2012 – 13) which saw an increase of 21.7% and previous to that year, SSA had got an increase of 40%. These figures clearly indicate that even with RTE deadline and demand from the school system, the budgetary allocations are actually reducing. This also highlights the gap between what government does as lip service and what it actually does to improve the status and quality of education. These budget allocations are way short of 6% of GDP that is being calculated and asked for since 1986 the first comprehensive education policy that estimated the investment to bring all school at par for quality and equality.

With allocation of Rs. 683 crore, adult education received 1% of total outlay for education. This has been grossly inadequate keeping in view the number of non literate people and their location. The majority of non-literates reside in rural and far flung areas which require more resources to reach out and

skilled people to impart literacy. Both these aspects are grossly under addressed as far as adult education is concerned. The meager budget allocations are an important indicator of lack of political will to provide quality adult education options to 138 million populations, majority of who are rural poor women.

In India only about 5% youth (majority of who are males) have access to any vocational training as compared to about 60% in developed countries. The outlays for vocational and skill training courses are both under budgeted and under spent. The government needs to take a serious step in this direction to strengthen and expand vocational / technical training opportunities for young population especially for girls with focus on girls with special needs.

## B. FUND FLOWS AND UTILIZATION

Delays in fund release both at the level of centre and state are reported by district level administration which leads to jerky development and weakens the programme. An uninterrupted and regular flow of funds is essential to ensure smooth and timely delivery of services at all levels. The regularity of fund is also closely tied to the quality and equality aspects as it is always the far flung areas (mostly inhabited by SC & ST populations) are the ones which are left out when limited resources get prioritized. However in education not just low budgetary allocations but low utilization (subsequently leading to cut in budgets) is a big concern and challenge. While low utilization of funds is an indicator of low capacity to use funds, it also depicts lack of regular supervision and monitoring leading to unspent sums not tracked and used in time. Many a times low utilization is also used as an excuse to cut down already meager budgets without looking into the reasons which are often due to either delay in receiving funds or lack of capacities to absorb the funds.

However there is no mechanism to track fund utilization in time and often funds are used for purpose other than what they were allocated for. There is lack of transparency also in some areas of budget utilization. Collection and utilization of the education cess is still not clear. Moreover the amount collected under education cess should supplement the education budget and not overall education budget.

## C. WITHDRAWAL OF THE STATE IN ALL SECTORS OF EDUCATION

Public Private Partnership (PPP) is the mantra that government is following and pushing in education sector especially in elementary, secondary and higher education. The PPP models are set up and promoted in various forms both in rural and urban areas and that too in the name of improving quality.

Reports indicate that the private schools are in demand because of poor quality of government schools which negatively impacts girls, and the poor and socially disadvantaged sections. In the elementary education sector there is growing evidence that it is girls, and children from poor and socially disadvantaged communities who are accessing government school while boys, especially those belonging to richer and upper-caste sections are moving to private schools.<sup>22</sup> Moreover, in several states the policy thrust has been towards downsizing the formal stream through the introduction of para-teachers who are less qualified, less trained and hired on a temporary basis.<sup>23</sup>

The thrust towards privatization is quite direct in the case of higher education.<sup>24</sup> Privatization has meant that market-oriented subjects are increasingly being made available while Social Sciences and Women's Studies are being marginalized.<sup>25</sup> Charging fees at market prices has resulted in a fee structure that makes higher education unaffordable to a vast majority of the population. Given that the practice of dowry is still widespread, high investments in girls' education will be seen as 'negative dowry' resulting in the decline in the enrolment of girls in higher education, which is already low. While private players are entering the education sector rapidly there are hardly any quality control checks or affirmative action policies in place. All these are cause for concern.

## 7. CONSTITUTIONAL GUARANTEES AND GOVERNMENT INITIATIVES

Government of India is applauded for making elementary education a constitutional right. However as mentioned earlier, the 0-6 and 14-18 years are still left from the ambit of the rights-based framework, which

will have crucial impact on universalization of education for all. Sakshar Bharat is a highly acclaimed programme but its emphasis and reach to women learners is something that needs to be strengthened.

With lot of good intentions and some policies the lack of financial commitment comes in the way. Despite a constitutional commitment, the GOI has not been able to fulfill some of the basic educational rights including elementary education as it is still far away from quality education for all committed goals and targets under RTE 2009.

## 8. RECOMMENDATIONS

1. For children in the 0-3 age group, ICDS should be institutionalized and universalized for effectively. The nutritional status of the children in this age-group has a bearing on their learning abilities and their timely entrance into the education system. Point to be noted is that girls in this age group are more malnutrition than boys and need special attention.
2. Pre-school education should be integrated within Right to Free and Compulsory Education (2009). This will locate pre-school education within the realm of education (and not with nutrition). By bringing pre-school education within elementary education will also lead to school as space for these children to access, which is much better developed as compared to ICDS centre and availability of trained pre-school teachers, who are nonexistent now within ICDS scheme.
3. The original time period within which the objectives laid under RTE were to be achieved has long passed. A new time line needs to be put in place immediately so that the goals do not lapse and efforts and resources are invested for a fixed period of time. The educational policy framework and programme emphasis should be holistic and the specific educational requirements of each sector should be addressed and backed by resources.
4. Given the negative impact of privatization on women and girls and socially disadvantaged sections in all sectors the State should arrest its withdrawal from the education sector. The formal education structure should be strengthened and not downsized. Greater resources for Higher Education and Women's Studies should be committed. Greater quality control mechanisms of private educational institutions should be put in place. In addition all private aided and unaided schools should follow the same quality levels prescribed under the RTE for government schools.
5. Recognizing the fact that children from marginalized communities are increasingly accessing schools, their learning levels needs to be given due attention. Most of these children are first generation learners in their families. The different reasons behind why children from low socio-economic backgrounds drop out needs to be looked in that is missing from government data collection as absence of understanding of these reasons lead to unsatisfactory and ineffective interventions.
6. The National Literacy Mission should be adequately resourced. The Continuing Education (CE) component under Sakshar Bharat needs to be strengthened and shouldn't end at people receiving certificates at the end of the course. There needs to be a mechanism put in place that looks at the status of the learners' education post completion of the programme. There should be an independent evaluation of the implementation and impact of the Sakshar Bharat programme. The evaluation should take into account the original objectives of the programme. An independent agency/ an expert in the area of women's literacy and empowerment should be involved in designing and conducting the evaluation.
7. Adolescents must be recognized as a distinct group with specific requirement and not subsumed within Elementary Education and Adult Literacy. While recognizing the importance of these issues, the policy and programme framework needs to be expanded beyond reproductive and sexual health and population issues to

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<sup>1</sup> The North-East Network (NEN) was part of these fact-finding teams and provided information about how schools were being used as relief camps.



include issues of rights and citizenship. Lessons learnt from innovative programmes need to be mainstreamed into the formal system of education, literacy programmes and other national level programmes.

8. To increase enrolment of adolescent girls (with a special emphasis on socially disadvantaged groups and girls with special needs) there is an urgent need to expand the outreach of secondary and higher secondary schools. The Rashtriya Madhyamik Shiksha Abhiyan (RMSA), a programme initiated for secondary education, needs to be uniformly implemented across all states. Studies have shown that presence of women teachers increases the enrollment and retention of female students in schools. This needs to be implemented and hiring of women teachers especially from marginalized communities needs to be increased.
9. Gender needs to be looked at not as an add-on but integrated in all subjects and should be an important organizing principle of national and state curricula and textbooks. Issues of sexuality needs to be addressed to provide children with information, enable them to make informed choices, make them aware of the diversity of expressions of sexuality and gender and to equip them to deal with violations. A new curriculum based on NCF'05 for the accelerated learning programmes needs to be developed, especially at the state- level.
10. Guidelines for sexual harassment at all levels of educational institutions including schools (upper primary upwards should be put in place) and monitored. Teachers training programmes should include awareness on sexual and other forms of violence against girls and women. Issues of gender and sexuality should be sensitively covered in the school curriculum. Educational institutions should be made responsible for spreading awareness about these issues.
11. At present there are no policy measures in place that addresses the particular educational needs emerging from different situations of conflict. Specific programmes and policy guidelines to address these concerns should be designed specifically to restore confidence, address feelings of fear and insecurity and alienation from the mainstream specifically keeping in mind the needs of women and girls in such situations.

## END NOTES

<sup>1</sup>Data provided on Govt. of India site, Ministry of Women and Child Development, 2013.

<sup>2</sup> Integrated Child Development Services provides supplementary nutrition (for children and pregnant and lactating women) immunization, health checkups referral services nutrition, education and preschool activities for 0-6 age group.

<sup>3</sup>Govinda R and Madhumita Bandhopadhyay (2008) access to elementary education in India: Country Analytical review New Delhi / Brighton: NEUPA and University of Sussex. NCERT (National Council of Educational Research and Training) (2005) Seventh All India Education Survey.

<sup>4</sup>The Gender Parity Index measures the relative access to education by females and males with the worst score being 0 and the best being 1

<sup>5</sup>Source: <http://www.dise.in/Downloads/Thematic%20Maps%20Based%20on%20DISE%20Data.pdf>

<sup>6</sup>Source: <http://www.dise.in/Downloads/DISE%20Graphic%20Presentation-2011-12.pdf>

<sup>7</sup>Source: <http://www.dise.in/Downloads/Use%20of%20Dise%20Data/Dipa%20Mukherjee.pdf> (Last accessed: 8th Nov.'13)

<sup>8</sup>Status of Implementation of the Right of Children to Free and Compulsory Education Act 2009: Year two (2011-12), RTE Forum

<sup>9</sup>Source: [http://planningcommission.gov.in/reports/peoreport/peoevalu/peo\\_cmdm0106.pdf](http://planningcommission.gov.in/reports/peoreport/peoevalu/peo_cmdm0106.pdf)

<sup>10</sup> Recently over 20 children died after consuming food laced with poison in Bihar. Two children died in Tamil Nadu by falling in the boiling Sambhar in school

<sup>11</sup> ASER 2012

<sup>12</sup>committee set up by ministry of HRD to review the implementation of SSA against the achievable targets under the scheme

<sup>13</sup>Source: <http://www.dise.in/publications.htm>

<sup>14</sup>Source: <http://ssa.nic.in/girls-education/kasturba-gandhi-balika-vidyalaya/kgbv-scheme>

<sup>15</sup> National Council of Educational Research and Training (NCERT)

<sup>16</sup> Life skill training (15 days) skill enhancement training subject specific (3-5 days)

<sup>17</sup> Secondary Education MIS 2011-12



<sup>18</sup> RMSA is centrally sponsored scheme for secondary education on the tune of SSA to improve the status of secondary education in India.

<sup>19</sup> All India Survey on Higher Education (2010-11) Ministry of Human Resource Development Dept. of Higher Education, Govt. of India.

<sup>20</sup> Source: Pg.81, Chapter 5, Crimes Against Women, Crime in India 2012, National Crime Records Bureau

<sup>21</sup> Source: Justice Verma Committee Report, preface, pg iii

<sup>22</sup> The North-East Network (NEN) was part of these fact-finding teams and provided information about how schools were being used as relief camps.

<sup>23</sup> Gender and Social Equity in Primary Education. Study coordinated by Vimla Ramchandran.

<sup>24</sup> While para-teachers are being hired in large numbers in these states there has been a moratorium on hiring primary school teachers in Government schools.

<sup>25</sup> A report by leading industrialists (A Policy Framework for Reforms in Education” by Ambani and Birla, April 2000) recommends that the Government should focus on primary and secondary education and leave higher and professional education to the private sector.

<sup>26</sup> In Andhra Pradesh, in 2000 there was an attempt to scrap the Social Science and Humanities Departments and bring in subjects like tourism more in keeping with the requirements of the market. Large-scale opposition to this move resulted in the plan being dropped.

**Table 1: Wages of Regular/Salaried Employees**

	Rural Male Rural female		Urban Male	Urban Female	Rural +Urban Male	Rural +Urban male
Propreitary and Partnership	142.12	107.04	203.38	155.59	182.83	139.44
Employer's Household	133.89	58.75	150.66	73.98	146.65	70.27

**Table 2: Wages of Casual Labourers**

	Rural Male Rural female		Urban Male	Urban Female	Rural +Urban Male	Rural +Urban male
Propreitary and Partnership	118.33	81.94	125.22	70.66	120.37	78.52
Employer's Household	82.48	65.76	82.81	57.87	82.55	61.13
All	115.18	80.88	125.67	70.99	118.22	77.8

ARTICLE 11  
EMPLOYMENT

CHAPTER 6



INDIA

4th AND 5th  
NGO ALTERNATIVE REPORT  
ON CEDAW



# ARTICLE 11 EMPLOYMENT



**Ishita Mukhopadhyay**  
Calcutta University

## 1. SITUATIONAL ANALYSIS

India experienced a severe economic discrimination of women in employment during the last decade. This discrimination is felt in employment, wages and the economic condition of women. Women are deprived of employment, earnings and as such economic empowerment in general. The employment crisis for women has become a subject of concern after publication of NSSO Report, 2009-10 and 2011-12. The crisis is felt in both rural and urban areas. Together with fall in employment the fall in earnings also is a matter of concern. This is coupled with lack of access to resources like banking facilities, and other opportunities. Women in India are gradually becoming more and more vulnerable to poverty, malnutrition and deprivation from other amenities of life.

## 2. COUNTRY PROFILE

According to NSSO 66th round, 2009-10 Employment and Unemployment data, 70% of the households in India belonged to rural areas and accounted for 73% of the total population. The country is being badly hit by an agrarian crisis during the last few years. The country registered a low growth in agriculture, fall in peasant's incomes, and farmer's suicides. The farmer's suicides have hit the women in these agricultural families as worst hit, where we have a number of villages inhabited only by women. About 12% of households in both rural and urban areas have become female headed households. This increased to 24.8% in 2011-12. This has happened due to either male suicides or male migration. Female headed households do not mean empowerment for the women. This means that women are left in more vulnerable position. The population in the age group 15-59 years comprises about 59 per cent of the rural males and 61 per cent rural females. In the urban areas, about 66 per cent each of the males and females belonged to this age group. This also means that due to demographic changes women seeking employment in this country is also very high in the current period and feeling of deprivation is also high. The situation remained adversely worse with the publication of NSSO Report 2011-12 Employment and Unemployment tables. At an all-India level female labour force participation rate was estimated to be 25.4% as compared to 77.4% in the male category. The discrimination between males and females in terms of data is pronounced. Although India government does not discriminate on the ground of sex in public employment, the figures do not speak of equal right to employment.

### A. WOMEN EMPLOYMENT

The following facts have been noted in women's participation in the workforce in official statistics, which need explanation on behalf of government.

- During the period 2004-05 to 2009-10, the Labour Force Participation Rates according to usual status remained almost the same for rural males but decreased by about 6 percentage points for



rural females. During that period, Labour Force Participation rates according to usual status decreased by about 1 percentage point for the urban males and decreased by about 3 percentage points for the urban females. This discrimination became more pronounced in 2011-12. The discrimination between males and females are pronounced as far as this data shows. The employment possibility of females has become more and more bleak.

- ii. Among the usually employed (ps+ss), about 54 per cent of the rural males and 56 per cent of rural females were self-employed in 2009-10. In 2011-12 we have 55 per cent of rural males and 59 per cent of rural females were self employed. In the urban areas, corresponding proportions were 41 per cent for both males and females. In 2009-10. In 2011-12 the corresponding figures are 42 and 43. In the rural areas the proportion of self-employed of females is more than the males, but self-employed never means a more favored position for the females. Self-employed on the other hand means more economic discrimination, as the females have to take responsibility of their own jobs.
- iii. Between 2004-05 and 2009-10, in the rural areas, WPR in the usual status approach remained almost the same for the males and decreased by about 7 percentage points for the females. In the urban areas, the rates decreased by about 1 percentage point for the males and 3 percentage points for the females.
- iv. In rural India, the proportion of usually employed (ps+ss) male workers engaged in the agricultural activities declined gradually from 81 per cent in 1977-78 to 63 per cent in 2009-10 whereas for the female workers, the decline was less – from 88 per cent to 79 per cent during the same period.

There is a clear fall in female employment from 1993-94 to 2011-12 barring the year 2004-05. This stands at the lowest ebb in 2009-10. The downturn is particularly true for rural females.

Female share in agriculture is still dominant, but females registered a displacement from agriculture also. More than 20 million women were displaced from agricultural workforce (usual status) between 2004-05 and 2009-10. This is to be compared to addition of 5 million men to agricultural workforce during the same period. Female share of non-agricultural workforce has not being able to compensate for this loss. It is amazing to see that in spite of the thesis of feminisation of labour force under neoliberal era, there female share of workforce has actually shrunk. There has been more casualisation and informalisation of female labour force in the country. It is also to be noted that the female share of informal employment fell from 22% in 1993-94 to 18% in 2009-10. Proportion of women in even urban home-based work fell from 26% of total urban female employment in 2004-05 to 9% in 2009-10.

Recorded unemployment in the same year was 57 for urban females, 28 for urban males and 16 for both males and females in the rural areas. This means that women seeking work are less likely to be employed. Even when women are employed, a number of them are not employed in decent work. Hazardous work environment is eating into the quality of lives of the working females. With each passing day they have entered the poor of working poor in the country, who work from morning till night, with less or no remuneration and remain poor.

## B. CONDITIONS OF WORK

An ILO study in 2010 indicated that ...

“81% of women agricultural workers are from Scheduled Castes, Scheduled Tribes and other Backward Classes and 83% from landless, marginal or small farm households and that more than half the women workers in agriculture are employed as unpaid family workers. Thus, while economic development creates more jobs in the industrial and service sectors it is the men who move away and avail of these while the women who are left behind are compelled to become

the prime agriculturists without the benefits of having the title to the land, the necessary resources and access to credit, seeds, fertilizers, extension services etc.- required for enhancing production and household Income....”

NSSO report for 2009-10 also reports lack of social security to female laborers. In the country according to this report the female-headed households in the rural areas per thousand households is 118, and in urban areas is 116.

This clearly violates the conditions of decent work done by women.

#### Unorganised Workers' Social Security Act, 2008

The rules under the Act have been framed and the national security board constituted in 2009. This covers Rashtriya Swasthya Bima (RSBY), Janasree Bima Yojana and old age pension to certain categories of unorganized workers. Janani Suraksha Yojana takes care of mother and child care, institutional delivery. This scheme is also applicable to unorganized sector workers. An insurance scheme was also introduced. However none of these schemes are specific to women working in the unorganized sector who face vulnerability with respect to work in the workplace. What still remain is right to be protected from hazardous work in the unorganised sector.

#### C. DOMESTIC WORKERS

The country hosts a vast number of female domestic workers working mainly in urban areas. According to an ILO estimate the number is 4.2 million, although NSSO estimates it as 2.52 million. Media reports claim that the number is 90 million. They are underpaid and in most of the states not covered by Minimum Wages Legislation. The relation between employer and employee most often represents the feudal bondage. In 2010 National Commission of Women drafted The Domestic Workers Welfare and Social Security Act to look into the conditions of domestic workers – a draft that has to date not been enacted. Incidence of abuse and right to minimum wages therefore could not be combated in the process.

#### D. WAGES AND EARNINGS

In 2009-10 report a clear discrimination was visible in terms of wages and earnings of regular/salaried employees and even casual employees. Fig 3 & 4 bring out the discrimination

Figure 3: Average wages and salaries in Regular employed in Proprietary and Partnership enterprises and Household enterprises

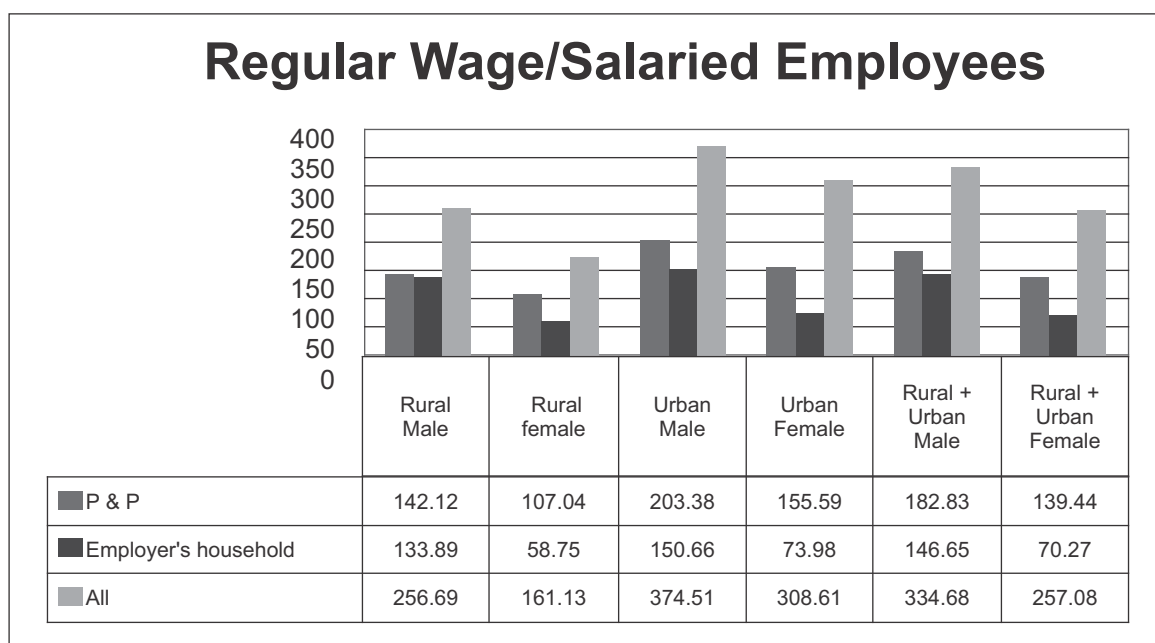
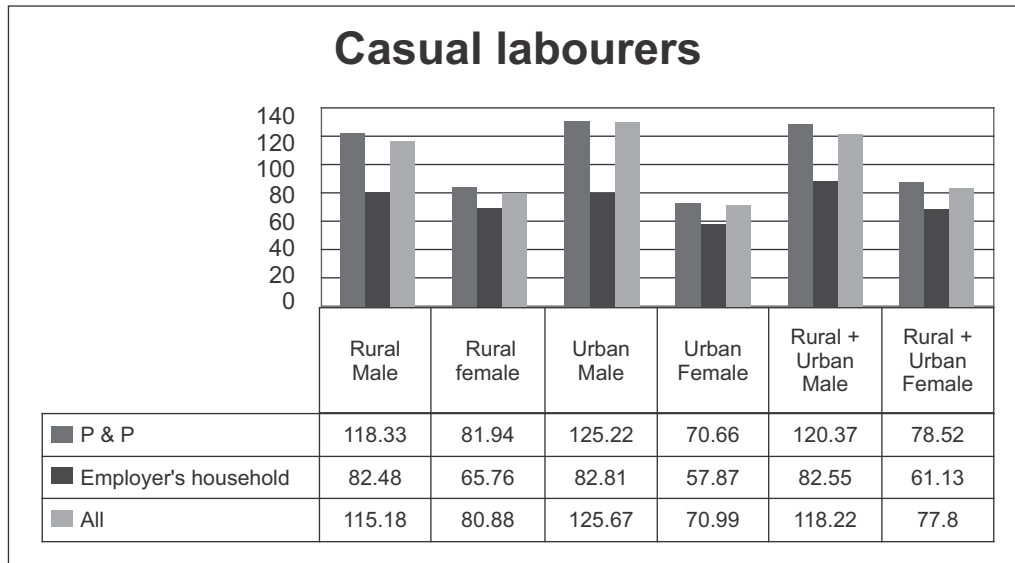


Figure 4: Average wages and salaries in casually employed in Proprietary and Partnership enterprises and Household enterprises



It is observed that the male regular wage/salaried employees earned higher wages than females irrespective of the type of enterprises they worked. For regular wage/salaried employees in the rural areas the female-male wage ratio was 0.75 in the informal sector enterprises, which was higher than the corresponding ratio (0.63) for “all” types of enterprises. In the urban areas the corresponding ratios are 0.77 and 0.82. Male casual labourers in urban areas earned a little higher wages than in rural areas, while a reverse situation happens with respect to females. In the case of casual labourers in the informal sector the female-male wage ratio was 0.69 in the rural areas and 0.56 in the urban areas. For “all” enterprises the gaps are correspondingly 0.70 and 0.56 respectively. The ratio is significantly alarming in all cases.

In casual labour in MGNREGA public works wage rate per day for rural males had been R. 90.93 and for rural females R. 87.20. In casual labour in other public works wage rate per day for rural males is R. 98.33 and for rural females is R. 86.11.

Discrimination in earnings and wages still cannot be explained by economic factors, but only by the prevailing social discrimination in the country and a strengthened patriarchy getting more strong by the forces of neoliberalism.

Mahatma Gandhi National Rural Employment Guarantee Scheme

The scheme guarantees 100 days per household per year of unskilled work on public work projects in rural areas. It is mandatory to allocate 33 % of resources under this scheme to women. Although the country reports 53% of women workforce in 2013, women person days have been falling from 2009-10 onwards in the scheme which need to be looked into. Reported wage discrimination also has been there.

National Rural Livelihood Mission

In 2011, Government of India set up the scheme to address households below poverty line (BPL) and is a modification of the individual based Self Help Group programme. Mahila Kisan Sashaktikaran Pariyojana (MKSP) was introduced targeting women in Agriculture and Allied Sectors under NRLM. The target is to address 60 lakh SHGs in the country.

However this has not eliminated the menace of the high interest rates and unregulated Micro Finance Institutions who are completely exploitative as far as women borrowers are concerned. There is need to regulate the activities of these institutions by Reserve Bank of India.

## E. MIGRATION

The plight of migrant women workers in India is hard to tell. Although the figures of migration tell us that the majority of female migration is migration through marriage and not for labour or anything else, a large part of labour migration occurs in the guise of marriage migration. Even in 2005 NSSO data it was clear that throughout the country inter-district female migration constitutes the major part of migration. However a major part of the female migrants are single and unmarried, which implies labour migration. These migrant women are discriminated with respect to wages, sexually exploited and often kept as bonded labour in the various work-sites.

## F. DISCRIMINATION IN ACCESS TO AMENITIES

Women remain inadequately covered by the banking system, as they own only 20.8 percent of the total deposit accounts in scheduled commercial banks and 11.3 percent of the total deposits. The situation is equally bad when one looks at the credit scenario. Women had access to only 19.8 percent of the small borrowable accounts of scheduled banks with an outstanding credit share of 16.8 percent (RBI, Basic Statistical Returns, 2010). This speaks of clear lack of economic freedom and capability failure. Women become more tied to patriarchy and semi-feudal bondages of moneylenders and informal credit system.

An important strategy of financial inclusion in India, particularly for women, has been Micro finance. The model encourages access of SHGs to banks both as a means of savings and providers of loan services. By the end of March 2010, 69.53 lakh SHGs had been covered under NABARD's SHG-Bank linkage programme including those formed under SGSY. Of these 76 % are exclusively women SHGs, accounting for 72.5 % of the savings and 82% of the outstanding loans (NABARD, 2009- 2010). However, micro-finance remains a minuscule proportion of total bank credit in the country. In 2010, outstanding loan to women's SHGs constituted less than one per cent of the total outstanding credit from scheduled commercial banks.

However there have been threats to this system by the Micro-finance Bill and emerging private micro-finance institutions, which have taken the stage of informal moneylenders in the society. Women are now indebted to these institutions and there is the threat of a debt tying in this process causing greater vulnerability to women.

## 3. RECOMMENDATIONS

1. State action to increase female participation in labour force. Some protocols need to be there to avoid discrimination on employment on the basis of gender.
2. Male-female wage discrimination is to be immediately addressed.
3. In the view of increasing casualisation of labour force there is a need to increase wages for casual work, particularly for females.
4. Special provisions need to be there to decrease vulnerability from sexual assaults on female migrant workers.
5. Financial inclusion of women in the public sector banking system is to be increased.
6. Gender-Auditing of Workplace must be made a protocol.
7. Legislation is required for quotas in employment for LGBT community.
8. Exploitation of government scheme workers who are predominantly female and underpaid must end with the minimum wage legislation being effective.
9. Legal provision of women disabled workers should be there.
10. Creche facilities still awaits to be introduced in all types of employment. This is particularly true for casual and informal employment.
11. Regulation of Micro finance Institutions by Reserve Bank of India should be there.



ARTICLE 12  
HEALTH

# CHAPTER 7



INDIA

4th AND 5th  
NGO ALTERNATIVE REPORT  
ON CEDAW

# ARTICLE 12 HEALTH



## Sama Resource Group for Women and Health

The CEDAW Article 12 with General Recommendation 24 encourages states parties to address the issue of women's (including girls and adolescents), health through her life span elaborate the measures to be taken by the State Parties "to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning". The Article directs States Parties to "ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation".

### 1. THE HEALTH CONTEXT IN INDIA -SITUATION ANALYSIS

The public health system in India is challenged by low resources, poor infrastructure, inadequate human resources, unavailability of medicines, diagnostics, etc., corruption, increasing privatisation and corporatisation of health care, absence of regulation, narrow range and poor quality of public health services, and others. One of the lowest GDP expenditure on health is in India coupled with high out of pocket expenditure, which has catastrophic consequences for economy of poor households, with household expenditure on health being a leading cause of poverty. India's public health expenditure is only 29 percent of total health expenditure, a paltry Rs. 600 per capita whereas any reasonable expectation of health care would require at least Rs. 3000 per capita (JSA Policy Brief 2014).<sup>1</sup> Consumer expenditure survey estimates by the National Sample Survey Organisation (NSSO) indicate that every year around 55 million people are pushed to poverty due to expenses on healthcare. Paradoxically, this situation exists in a context of availability of adequate resources, knowledge and skills for genuine change, for betterment and improvement of peoples' health as well as the healthcare system. More than two third of the expenditure for health care is borne from out of pocket. It accounts for an average increase in poverty by 3.6 and 2.9 percents for rural and urban India respectively. Cost of medicines accounts between 40-70% of out of pocket expenditure if bought individually from retail pharmacies. A single hospitalisation pushed 35% of patient families below the poverty line from 1999-2004 in India. Over 27% sick persons never access health care predominantly because of financial barrier.<sup>2</sup>

Less than a third of the total number of public health workforce that is required, based on the Indian Public Health Standards, is in place. Women play a prominent role in the health workforce, formally as nurses, doctors, and allied health professionals and informally as health workers, and care-givers. Their conditions of work – with poor safety, transportation, housing, sanitation, hygiene, and inadequate social security - often render them vulnerable to violence and ill-health (JSA Policy Brief 2014).<sup>3</sup> The state has also been actively promoting the private health sector through tax rebates, outsourcing, public private partnerships, insurance, etc.

The implications of the current ills of the public health system are evidently disproportionately



experienced by women and girls, with access to health and health care. As per NFHS 3 (2005-06), merely 17.3% of women have come in any contact with a health worker. Only 17.9% of the Primary Health Centres (PHCs) in the country have the services of a lady doctor.<sup>4</sup>

Apart from this, existing health policies and programs fail to inadequately address socio-economic disparities among women and marginalization on the basis of caste, class, disability, sexual identity, region, religion, etc. Compared to the richest quintile of urban women in India, the poorest urban quintile is 4.8 times more likely to be undernourished, and the poorest rural quintile, 5.6 times more likely. Nearly half (47%) of mothers aged 15-19 years are undernourished.<sup>5</sup>

Women's health is predicated on access to indivisible rights - freedom from discrimination and violence the right to water, food, shelter, education, social security, right to affordable, accessible and quality healthcare; rights which are not typically considered in our highly bio-medicalized health encounters. And addressing the various determinants of health is necessary to ensure the right to health (JSA Policy Brief 2014).<sup>6</sup>

Over 620 million Indians defecate in the open, and one in ten of them live in an urban area. When a patient is sick, she is not asked about hygiene and food habits or where she lives, much less what she does for a living, each of which can explain so much of her morbidity. Efforts have been ad hoc, fragmented, and exceptions to a system that typically ignores the social determinants of women's health (JSA Policy Brief 2014).<sup>7</sup>

## 2. DISCRIMINATION IN HEALTH

The existing situation in the country, however, highlights the prevalent discriminations against women based on gender, sexuality, caste, class, religion, age, geography, ability / disability, and their intersections that result in denial of the right to health and healthcare for a substantial number of girls, adolescents and women in India.

From the perspective of health, well-being and dignity, social discrimination can be construed as one of the prime drivers of ill-health. The embodiment of social discrimination can be exemplified by the life-experiences of women, tribals, dalits, religious minorities who live in fear including sex workers and disabled who face violence almost every day and the sexual minorities who are perpetually harassed. Not only that social discrimination creates barriers to a life of dignity, in itself it is a social barrier to enjoy good health and access health care (Pinto and Gupte 2014).<sup>8</sup> Embedded in the unjust social arrangements of the societal structures, it perpetuates the cycle of discrimination – marginalization and ill-health (Pinto and Gupte 2014).<sup>9</sup> The interface between the health system and women, particularly from marginalised communities, indicates the social discriminations that results in biased health policies and their operation. The undignified treatment of women, especially those from marginalized communities face physical and verbal abuse, particularly the use of derogatory, sexually explicit language. This makes them reluctant to use public health facilities thus impacting access (CommonHealth 2013).<sup>10</sup>

### A. MATERNAL HEALTH AND MATERNAL MORTALITY IN INDIA

India has been reporting a steady decline in the country's maternal mortality ratio (MMR) over the last few years. According to the latest reports, the MMR has fallen from 254 per 1, 00,000 live births in 2004-06 to 212 in 2007-09 to the latest figures of 178 per 1, 00,000 live births in 2010-12. However, this is far behind the fifth Millennium Development Goal target of 109 per 1, 00,000 live births by 2015 ref. It is now fairly certain that India will fail to meet MDG 5.<sup>11</sup> Since the last decade, and especially since the launch of the National Rural Health Mission (NRHM)<sup>1</sup> in 2005, the Government of India (GOI) has put in significant efforts to reduce the maternal mortality in the country. Still maternal mortality continues to be an unjustifiably significant problem in India despite attention and focus of policy and programme by the Government of India and international bodies.<sup>12</sup> The approach to address maternal health in India is fragmented and focussed on promoting institutional deliveries alone. Janani Suraksha Yojan (JSY) that provides conditional cash incentives to women to deliver in health facilities has been implemented since 2005 to increase institutional delivery. Later in 2012, Janani Sishu Suraksha Karyakram (JSSK) was launched with promise of free drugs and consumables, free diet up to 3 days during normal delivery and up

to 7 days for C-section, free diagnostics, and free blood wherever required. Several issues that affect maternal health - such as access to safe abortion services, access to choice of contraception, dignified childbirth, , nutrition remain blind spots in implementing policy and programmes. The health sector has also not paid any attention to the issue of early marriage which results in early pregnancy and related complications.

One of the mechanisms to explore systemic and social reasons for maternal deaths is maternal death review. The World Health Organization (WHO) has published guidelines for verbal autopsy of maternal deaths and this has been used in several countries across the globe. Maternal Death Reviews are mandatory in India since 2010. However, they have not been institutionalized in many districts across various states, and are not being carried out in several communities in rural areas, especially those that occur outside hospital settings.<sup>13</sup> Further, there is no public disclosure of the analysis of maternal deaths, or of the measures planned to address the causes of maternal deaths.<sup>14</sup>

## B. ADOLESCENT HEALTH

India has about 243 million adolescents in the age group 10-19 years, constituting 22 percent of India's population (census 2011) with a range of social and health issues. According to National Family Health Survey (NFHS)-3, 47 percent of the currently married women, aged 20-24, were married on or before 18 years of age. In the age group of 15-19 years, among those who have ever had sexual intercourse, 10.5 percent of the girls and 10.8 percent of the boys reported having sexually transmitted infections (STIs) or symptoms of STIs in the 12 months prior to the survey and 0.07 percent of the girls and 0.01 percent of the boys in this age group were found to be HIV positive. Nearly half the young girls (15-24 years) and 16 percent of the boys said that they had never received any information on sexual matters from any source. Findings from a nationally representative survey conducted by the Registrar General of India (RGI) shows that 13 percent of suicide deaths in the country occur in the age group of 15-29 years (Patel et al. 2012). According to the Youth in India study (2006-07), almost 14 percent of young men and women reported symptoms or behaviours indicative of mental health disorders. NFHS-3 indicates that as many as 56 percent of girls and 30 percent of boys in the 15-19 age group are anaemic. Sexual violence is also extremely prevalent amongst this age group.<sup>15</sup>

However, adolescents have been perceived as a discrete group with specific needs and concerns more recently in India. In the health sector, it's the Adolescent Reproductive and Sexual Health Strategy (ARSH) as part of the National Rural Health Mission and the more recently launched (January 2014) Rashtriya Kishor Swasthya Karyakram (RKSK) or the National Adolescent Health Programme are two such initiatives that are being implemented to the public health sector. However, the implementation of the ARSH strategy which is largely clinic based services and was launched in 2006 has been marked by delay. The RKSK mandates a paradigm shift and envisages preventive as well as promotive services through provision of information, commodities and services at the community level and linking them to the public health system through referrals. Even within these strategies and programmes, adolescents' health continues to be perceived largely in the frame of maternal health and fertility control. Participation of adolescents in planning, designing and reviewing of such initiatives is completely absent.

## C. HEALTH CARE RESPONSE TO GENDER BASED VIOLENCE

The pervasive nature of gender based violence (GBV) is well recorded and it is believed that available data in this regard is a fraction, given the prevalent gendered social norms that also limit access to services. During the year 2012, in India, a total of 2, 44,270 incidents of crimes against women [both, under Indian Penal Code (IPC) and Special and Local Laws (SLL)] were reported.<sup>16</sup> Another source recorded that 35 percent of women in the age group of 15-49 years have experienced physical or sexual violence; this proportion is 40 percent for 'ever-married women' and 17 percent for 'never married women (NFHS3).<sup>17</sup>

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The National Rural Health Mission was launched in 2005 by the Ministry of Health and Family Welfare, India with the goal to improve the availability of and access to quality health care by people, especially for those residing in rural areas.



The consequent health impact - both in the short and long term, physical and psychological - are well established as serious health concerns. However, the linkages between gender, sexuality, violence and health and the role of the health system in particular, in prevention of and responding to survivors of violence, are still very nascent in India. While some efforts have been initiated by the central government as well as by some of the states, the health sector's role in provision of health care including psychosocial response and other relevant services to survivors of violence, remain abysmal. Initiatives for primary prevention of gender based violence must be implemented through inter-sectoral coordinated programmes towards prevention of GBV as well as towards therapeutic care and support. The State has very recently formulated the Guidelines and Protocols: Medico-legal care for survivors/victims of sexual violence, which is a welcoming step towards enhanced response by the health system. These guidelines and protocols must be urgently implemented and similar guidelines for the health system to respond to other forms of GBV such as domestic violence, must be developed

#### D. COMMUNAL VIOLENCE, CONFLICT AND HEALTH

Conflict and communal violence have serious implications for health with girls and women experiencing the impact of conflict and communal violence disproportionately. Situations of conflict and mass violence invariably restrict access to health determinants – such as food, nutrition, housing, education as well as to health care. Violence based on caste, religious conflicts affected the lives and health of people, particularly women across different states in the country – Orissa, Assam, Uttar Pradesh, as well as Kashmir, Chhattisgarh, North Eastern States, where conflict continued unabated.

Violence in Kandhamal, Orissa State Kandhamal, situated about 200km from Bhubaneswar, witnessed widespread anti Christian violence of 2007 and again in August 2008. The violence was perpetrated against those from the most marginalised communities - dalit and tribal Christians. Between 75 and 123 people were killed in the violence – though the government had confirmed only 54 deaths in all. Majority of those killed were Christian dalits and adivasis. Close to 5000 houses belonging to Christians were destroyed partially or fully, and at least 264 churches and prayer halls were fully or partially desecrated and demolished. Valuables were looted, crops and cattle stolen, and hundreds of philanthropic institutions such as schools, orphanages, old age homes, leprosy homes, dispensaries, tuberculosis sanatoriums and NGO establishments were also looted, razed to the ground or burnt down. In Kandhamal district alone, approximately 25,000 – 40,000 people became displaced and started living in 25 relief camps (Grover 2010).<sup>18</sup>

In 2011, the Women's Initiative<sup>19</sup> documented continued lack of access to health care and inadequate diet and unabated mental tensions among survivors. The lack of food and the deep anxiety caused by being violently uprooted from their environment had aggravated many illnesses and brought in new problems. The health, sanitation, personal hygiene and nutritional needs of women were largely ignored in the relief camps, leading to further health complications. The mental distress and trauma caused by the violence and its aftermath was palpable – inability to sleep well at night, fear of crowds, loud sounds. Feelings of isolation, loneliness depression were prevalent. Aspects of women's health that needed attention included the impact on women's health (physical and psychological) during the violence and its aftermath; health status of women survivors, against the backdrop of extreme poverty, vulnerability and state apathy; response of the public health system to women's health issues in relation to the violence; response from the state to meet the health needs of women survivors.<sup>20</sup>

Women's Health situation in the Camps In September 2013, Muzaffarnagar and Shamli districts in western Uttar Pradesh state experienced communal violence. Following the violence, fact finding<sup>21</sup> and relief teams documented the situation on the ground to be traumatic for thousands of terrified, vulnerable, desperate people living in relief camps organized by the local communities with the barest minimum of facilities; the lack of State support and provision of services has been telling by its absence. The majority of those who were in the camps were poor Muslims from nearby villages where homes, mosques were burnt and destroyed.

Government negligence in terms of health services, health care delivery system, sanitation, food and water supply was apparent. A range of health problems – physiological and psychological – were documented / examined in the camps, including: diarrhoea, amoebiasis, cold and cough, viral fever, conjunctivitis, scabies, dermatitis, infected small wounds and ear infections. Many children and young girls and boys were observed with scabies and dermatitis and there was a possibility of spreading the infection to others in such crowded camps (among children); headache, body ache, anaemia, backache, chronic bronchitis, constipation, dermatitis, conjunctivitis, loss of appetite, amoebic dysentery, acidity and stomatitis, (suspected) tuberculosis. Serious injuries, wounds were also observed and mental health issues including depression, anxiety, fear, post trauma stress disorder (PTSD) were also observed (among adults).

In the context of maternal and child health, the poor living conditions, lack of proper nutrition, care, quality health services and referrals, caused their health to deteriorate. Most of the pregnant women were anaemic and weak. No health check-ups or monitoring for ante natal, delivery and post natal periods was carried out. No mechanism to address the trauma and sexual assault experienced by women.

The National Human Rights Commission (NHRC) following visits to the relief camps directed the state to register names, parentage and addresses of all the displaced persons staying in the relief camps for proper computation and distribution of relief material in a transparent manner. In the context of health and sanitation, the NHRC asked the state to provide drinking water on priority basis and improve sanitation to prevent outbreak of vector borne diseases, carry out anti-mosquito spray and fogging on regular basis and upgrade medical facilities; make adequate arrangements for clothes, blankets, etc. in view of the approaching winter season, etc.

#### E. GENDER BIASED SELECTION AND DECLINING CHILD SEX RATIO

The 2011 Census data reveals that the child sex ratio has been steadily declining from 971 in 1981 to 945 in 1991. The ratio further declined from 927 in 2001 to 914 in 2011. In 2011, there were around 7.1 million fewer girls in comparison to boys (in age group of 0-6 years). Gender biased selection continues to be widely prevalent in India and is a manifestation of social inequality and discrimination that has persisted for decades, and must be examined in a larger socio-political economic context that includes honour killings, property rights, state policies like the two child norm and others. Further, existing and ‘newer’ technologies such as Assisted Reproductive Technologies (ARTs) and Pre-implantation Genetic Diagnosis (PGD) and the global nature of this industry have only expanded possibilities of gender biased selection as well as selection of other characteristics. Currently, the ART industry with its potential for sex selection is unregulated in India. Although expected to have a strong impact, the PC&PNDT Act has not been able to measure up because of its continued poor implementation.

Reviewing the implementation of the PC&PNDT Act, the Sectoral Innovation Council<sup>22</sup> (constituted by the Ministry of Women and Child Development) in its report pointed to the lack of regulation on the sale and purchase of the ultrasound machines, which are widespread - in urban, rural including remote areas. The report implying the vested interests of the medical fraternity in using the diagnostic techniques for sex selection, pointed to the low conviction rate of medical practitioners indulging in illegal practices. The two child norm that continues to be implemented through incentives and disincentives as part of varied programmes and schemes exacerbates sex biased selection and should be revoked.

#### F. ACCESS TO SAFE AND QUALITY ABORTION

India is among the small number of countries, where induced abortion is legal for a wide range of indications. More than three decades after the Medical Termination of Pregnancy Act (1971), eight per cent of all maternal deaths in India are from abortions (Ravindran and Khanna 2012).<sup>23</sup> Girls and women in India are faced with stigma and discrimination, along with unskilled health providers and insufficient

and quality infrastructure in accessing safe and quality abortion services, driving a large number of them to access unsafe abortions. However, there is no accurate data on unsafe abortions in India. Unsafe abortions result in the death of 15,000-20,000 young women in India each year, and causes ill health in thousands of others (Ravindran and Khanna 2012).<sup>24</sup>

There is a large unmet need for safe abortion services. Only about half the women who desire to terminate a pregnancy may actually succeed in having an induced abortion, whether in a safe and legal facility or elsewhere. A study from rural Madhya Pradesh found that 40 percent of women interviewed had ever wanted to terminate a pregnancy but only 23 percent succeeded in doing so. Poverty and gender-inequality, an unresponsive health system and an unfavourable policy environment are perceived major barriers to access to safe abortion (Ravindran and Khanna 2012).<sup>25</sup>

Studies in India have also indicated the lack of information about the legal status of abortion in India as well the period during which abortion may be sought legally. However, even when such information was available, availability of services and easy access remained a challenge. Laws and policies that restrict access to safe abortion services must be reviewed and revised. For example, access to abortion particularly for young girls has become more challenging due to provisions of the recent Protection of Children from Sexual Offences (POCSO) Act, 2012. This Act criminalises sex below the age of 18 years even if it is consensual and makes it mandatory to report if for example, any girl below 18 years accesses abortion services, creating barriers for hospitals and others in providing services as well as for those seeking them.

#### G. TWO CHILD NORM AND GENDER IMPLICATIONS OF STERILISATIONS

Sufficient evidence exists that indicates that the two child norm, a target oriented and population control norm is discriminatory, violative of human rights especially of girls, women and persons from marginalized communities. However, the two-child norm continues to be implemented through different schemes by the centre and by different states. For example, the Indira Gandhi Matritva Sahyog Yojana (IGMSY) a conditional cash transfer scheme under which pregnant and lactating women 19 years of age and above are provided some compensation for wage-loss during childbirth and childcare and through which conditions for safe delivery and good nutrition and feeding practices are also to be provided. However, only the first two live births are entitled for benefits under the scheme. The two child norm continues despite India's commitment to various international treaties like Programme of Action (POA) in Vienna (1993), International Conference on Population and Development (ICPD) in Cairo (1994), Fourth World Conference on Women (FWCW) in Beijing (1995) and UN Millennium Declaration (2000).

That the ratio of vasectomies to tubectomies is lop-sided in India is a significant aspect of permanent sterilizations. The proportion of tubectomy operations to total sterilizations was 95.6 percent in 2010-11, according to government records.<sup>26</sup> Vasectomy is the least sought option, even when a couple is voluntarily using a method of contraception. The power relations in a patriarchal society that lead to least resources-food, medical expenses and otherwise, being allocated to the woman in the family is the also the cause of more women being made to undergo tubectomy despite a simpler procedure available for men to undergo permanent sterilization. The misconceptions about the effect of sterilization on a man's virility and manhood also contribute to this.

Many recent studies still (Devika Biswas et al)<sup>27</sup> show that poor quality of services at the sterilization camps and large-scale flouting of the Government of India's guidelines on female sterilization Surgical sterilizations being performed in school buildings, not in the prescribed operating theatre (OT) facilities, resulting in women bleeding profusely. A study by Centre for Health and Social Justice, of 749 women who had undergone sterilization in Bundi district of Rajasthan found that 88 percent of participants were not told about failures or complications and 27 percent received no advice about post-sterilization care. Violations included conducting only three of the 11 mandatory physical examinations before the surgery.

Almost all the women were discharged within four hours of the operation, which involves cutting or blocking the fallopian tubes, although 7.6 percent of them were still unconscious. This too apparently violates the nation's health standards that say a patient can be discharged four hours after the tubal ligation surgery only if her vital signs are stable, she is fully awake, has passed urine and can walk.<sup>28</sup>

Despite Family Planning Insurance Scheme (FPIS) the coverage in case of medical complications and/or deaths occurring due to sterilization procedures is not functioning. (Sama 2012)<sup>29</sup>

#### H. ASSISTED REPRODUCTIVE TECHNOLOGIES (ARTS) AND COMMERCIAL SURROGACY

Services for infertility care, including basic screening facilities, are conspicuous by their absence in the public health system, including health infrastructure to address preventive and secondary causes of infertility at a preliminary stage (Sama 2010).<sup>30</sup>

Over the past few years, India has seen an explosion of fertility services that promise a cure for the allegedly increasing infertility today. Assisted Reproductive Technologies (ARTs) a group of technologies that assist in conception, including surrogacy are a recent addition to the list of services that India is selling to the world, thus making cheap and hi-tech 'reproductive tourism' to India a new form of contemporary, commercial medical activity.

India's rapidly growing commercial surrogacy industry is worth US \$ 445 million per year<sup>31</sup>. Commercial surrogacy is often portrayed as a 'win-win situation', seen to give 'desperate and infertile' parents the child they want, and poor surrogate women the money they need. Surrogacy is boosted by both domestic and international demand, In the Indian context, factors such as lack of regulation, comparatively lower cost with regard to many of the other developed countries for instance Canada, UK, USA, less waiting time, possibility of close monitoring of the surrogates by the commissioning couples, availability of a large pool of women willing to be surrogates, infrastructure and medical expertise comparable to international standards, have together created a conducive environment for the expansion of the industry.

The various attempts to regulate the ART industry till now have been ineffectual. The ICMR Guidelines 2005 (3) are non-enforceable and virtually not adopted in practice. The Draft ART (Regulation) Bill introduced in 2008 (4) was revised in 2010 (5) and has as yet not been tabled in the parliament resulting in a completely unregulated industry that has grown exponentially in the recent years in an international climate of significantly varying laws across countries. However, the Draft ART (Regulation) Bill-2010 is fraught with several problematic clauses that reflect a strong patriarchal bias in addressing the challenges that these technologies have posed to how we look at reproduction, the changing contours of family The provisions regarding anonymity, relinquishment and payment to the surrogate point towards an imbalance in the favour of commissioning parents. The Bill also turns a blind eye to the role of actors such as agents, medical tourism agencies and surrogacy hostels, a growing phenomenon in this transnational industry; with inadequate security against malpractice.

#### I. HYSTERECTOMIES AND CAESARIAN SECTIONS

Privatization has also adversely affected the health of women, leading to commodification of health care and spike in expensive medical procedures including hysterectomies and Caesarian sections. In part, this increase is associated with state-sponsored insurance schemes (Arogyasri, Rashtriya Swasthya Bima Yojana, Tamil nadu Chief Minister Kalaingar Insurance) doctors peddle these procedures aggressively and women, failed by the larger health system, see this as a way of avoiding future morbidity.

#### J. CLINICAL TRIALS AND PROTECTION OF VULNERABLE GROUPS

Recently there are many reports pointed to various serious deficiencies and violations in the conduct and regulation of clinical trials in India on vulnerable and marginalized populations without following any ethical norms and guidelines. The unequal social context in which such trials are being conducted is enabling easy access of drug companies to such populations, indicating how conditions of inequality are



facilitating a global proliferation of drug trials. There is an urgent need to safeguard the vulnerable populations from such clinical trials, which may not have any specific benefits for them.

Vulnerable adolescent girls subjected to unethical clinical trials. The 72nd Parliamentary Standing Committee on Health and Family Welfare on “Alleged Irregularities in the Conduct of Studies using Human Papilloma Virus (HPV) Vaccine” marks a strong indictment of the unethical manner in which clinical trials are being conducted in India on 23000 girls in the age group of 10-14 years in tribal dominated districts Khammam in Andhra Pradesh and Vadodara in Gujarat. The report acknowledges the unethical nature of HPV Vaccine ‘demonstration’ project conducted in the country in 2009 by PATH (Programme for Appropriate Technology in Health), a US based NGO, in collaboration with the Andhra Pradesh and Gujarat state governments, technical support provided by the Indian Council of Medical Research (ICMR). Eventually, in 2010, the trials (conducted) were suspended after their unethical design and conduct were exposed. Gross violations marked the process of recruitment of trial participants. In Andhra Pradesh, consent was neither taken from the girls nor from their parents nor guardians. Mostly, the Wardens of hostels where the many girls resided signed up to give consent for hundreds of girls in their charge. Source: 72nd Parliamentary Standing Committee on Health and Family Welfare on “Alleged Irregularities in the Conduct of Studies using Human Papilloma Virus (HPV) Vaccine” 2013

#### K. COMMUNICABLE DISEASES AND HIV AND AIDS

India is experiencing a resurgence of various communicable diseases including Tuberculosis, Malaria, Chikungunya, Dengue, Encephalitis, Kala Azar and Leptospirosis, in spite of one of the goals of National Health Policy 2002 to reduce deaths from TB, malaria and other vector and water borne diseases 50 % by the year 2010. Poverty predisposes women to poor living conditions and poor nutrition, and makes them disproportionately vulnerable to disease and infection. A comprehensive program that addresses the socio-economic and political determinants of women’s health is the need of the hour.

Women’s vulnerability to HIV and AIDS is integrally connected with discrimination and unequal rights, involving property, right to work, right to dignified living and non-discrimination, right to privacy and even funeral rights. There are numerous ways and forms of discrimination and stigmatization including by the health system. The other key issues that have direct links to women’s access to health care include non-availability of HIV testing and treatment at government facilities lack of preparedness of the health system to provide health services to HIV infected women.

#### L. WOMEN WITH DISABILITIES

“Women with disabilities, of all ages, often have difficulty with physical access to health services. Women with mental disabilities are particularly vulnerable, while there is limited understanding, in general, of the broad range of risks to mental health to which women are disproportionately susceptible as a result of gender discrimination, violence, poverty, armed conflict, dislocation and other forms of social deprivation” (Committee on the Elimination of Discrimination against Women General Recommendation 24 Women and Health, in relation to the CEDAW (Article 12) (Twentieth session, 1999, paragraph 25).

India also ratified the UN Convention on the Rights of Persons with Disabilities (Disability Rights Convention) in October 2007. This Convention marks a formal shift from the archaic medical model to the social model, and promotes the rights of people living with disabilities.<sup>32</sup> Article 1 encapsulates the overall objective of the Convention, which is “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”

Yet, discrimination exists at all fronts subjecting them to inhuman or degrading environment women particularly experience violation and abuse and exploitation. Access to health care for women with disabilities in India is near absent or merely tokenistic. Further, the health system's lack of understanding, skills, and attitudes towards women with disabilities needs urgent transformation. Towards provisioning of health care for persons with disabilities the State must initiate immediate steps towards developing an integrated and comprehensive action plan in consultation with relevant experts working towards understanding and removing barriers to health care for women with different forms of disabilities.

#### M. WOMEN IN SEX WORK

Women in sex work face discrimination both at the public and private health care system in India while accessing health services. The discriminatory treatment by the health professionals often blames sex workers without addressing their sexual and reproductive health needs and providing services.

#### N. SEXUAL ORIENTATION AND ACCESS TO HEALTH

Women and trans gender communities on the basis of their sexual orientation experience violations and discrimination at all levels including health service providers. Due to stigmatization and discrimination they face by the health providers makes it difficult for lesbian and trans gender communities to find comprehensive medical and mental health services. Very often the health care providers are insensitive and do not understand or recognize the health needs. Even if they recognize that too only in the context of HIV transmission and other health needs are completely neglected. Moreover, trans gender who have undergone sex reassignment surgery need careful follow up for potential oncologic problems.<sup>33</sup>

#### O. MENTAL HEALTH

Women suffer more from mental health problems not only during their reproductive lives but also due to difficult circumstances in which many of them have to live. They are often prescribed the wrong drugs, treated with outdated treatment techniques such as ECT and not provided the support, counseling and rehabilitation required. Most often they are subjected to neglect, ridicule and stigma. The Mental Health Care Bill, 2012, recently released by the government has an attempt to address the issues, which were completely undermined historically. However, there was a critique that the bill represents the 'over medicalization' of mental health.

#### P. PARTICIPATION OF WOMEN IN POLICY PLANNING AND MONITORING PROCESSES TO ADDRESS THEIR HEALTH AND HEALTH CARE NEEDS

The participation of women in health planning at community level needs to go beyond tokenistic membership, for example in village health sanitation and nutrition committees (VHSNCs), the women's health committees or mahila arogya samitis, which have been ineffective and lacking diverse participation of women particularly from marginalised communities.

- o Processes to ensure wider and effective participation by women in decentralised processes of planning and monitoring must be strengthened through building of capacities and support.
- o The participation of women in health planning at community level needs to go beyond tokenistic majority membership in village health sanitation and nutrition committees which have not delivered due to lack of capacity building and support.

### 3. POLICY AND PROGRAMS INTERVENTIONS IN HEALTH

The flagship programme of the government the National Rural Health Mission (NRHM 2005 onwards) along with the recently launched National Urban Health Mission (NUHM 2013) that focuses on urban health issues have been merged and will be implemented as the National Health Mission. The NUHM's objectives is provision of healthcare in urban areas, with particular focus on the urban poor and marginalised communities through strengthening the existing health care service delivery system and

converging with various schemes relating to wider determinants of health like drinking water, sanitation, school education, etc. NUHM also mandates formation of women's health committees towards facilitating community level planning. To address the out of pocket expenditure a more comprehensive scheme called Janani Swasthya Suraksha Karyakram (JSSK) which promises free services - child birth at hospital, diagnostics, treatment to the mother and the newborn, referral, food and drop back service was introduced, However, the provision of free services is only in the context of delivery and ignores health care for other conditions, for which user fees continue to be charged.

Apart from these, the The Rashtriya Kishor Swasthya Karyakram (RKSK) or the National Adolescent Health Strategy was launched by the Ministry of Health and Family Welfare (MoHFW) in January 2014 and envisages a paradigm shift in addressing adolescent health in the country. The strategy moves away from the existing [since 2006 as part of the National Rural Health Mission (NRHM)] largely clinic-based Adolescent Reproductive and Sexual Health (ARSH) Strategy to a more comprehensive one, to include "community-based health promotion and preventive care along with a strengthening of preventive, diagnostic and curative services across levels of health facilities".

The Clinical Establishments (Registration and Regulation) Act (CEA ACT), 2010 for registration and regulation of all clinical establishments in the country was enacted by the Central Government to prescribe minimum standards of facilities and services. The NUHM, RKSK, CEA are recent programmes with implications for women's adolescent health as well as for improving health system. However, their implementation and impact remain to be seen.

#### A. RESPONSE BY THE STATE (INDIA)

The State's response to the Concluding Observations is a listing of the following public health programmes and schemes:

- National Urban Health Mission: Services offered under the mission
- Nutrition: National Nutrition council, ICDS strengthening and Nutrition Improvement Project (ISSNIP) and National Food security Act 2013
- Maternity Benefits: Indira Gandhi Matritva Sahyog Yojana (IGMSY)
- Anaemia: National Rural Health Mission: IFA tablets and WIFS for adolescents, VHND, and LLIN, ITBNs etc for prevention of Malaria induced anaemia
- Safe abortion services under NRHM
- Declining Sex Ratio: National Plan of Action (NPoA) for improving the Child Sex Ratio (CSR) in 100 gender critical districts and implementation of PCPNDT

The response by the State is a mere listing of initiatives rather than a comprehensive response to address steps taken by the State towards enhancing their access to the determinants of health and health care. Ad hoc measures and vertical programmes focused on addressing maternal mortality and control of fertility continue to be the prevalent focus of programmes. While the listed initiatives contribute to addressing some of the key aspects of women's health, there is need for comprehensive response to women's and girls' health needs and other health concerns. Further, given that any attempt to address women's health is located within the larger health system and determined by it, the State's interventions have been fraught with gaps and poor implementation. For example, an important activity of maternal death review (MDR) is not carried out in most of the areas which can provide valuable insights into the causes of maternal deaths for future prevention.

#### 4. RECOMMENDATIONS

The following are recommendations towards ensuring non discrimination and access to comprehensive, quality, accessible health care, including social determinants.

## A. HEALTH POLICY AND HEALTH SYSTEM RELATED

- Take immediate and effective steps to stop all forms of discrimination, which is one of the most important social determinants of ill health. In the health care sector, special measures to promote priority access to discriminated sections of society.
- Guarantee comprehensive, quality, accessible, adolescent-friendly health care, including for their reproductive and sexual health needs, through provision of health information, services must be ensured. Ensure involvement of adolescents in planning and reviewing initiatives for their health and urgent implementation of the health programmes for adolescents.
- Increase Public Expenditure on Health: All public health expenditure to be tax financed. Public health spending to be increased to 5% of GDP in medium term.
- Enact a comprehensive Right to Health Act which assures universal access to good quality and comprehensive health care for all the entire range of primary, secondary and tertiary services, and that makes denial or non-availability for reasons of access, affordability or quality a justiciable offence.
- Create well Governed, Adequate Public Health Workforce: Create adequate posts and ensure requisite training for the entire range of health personnel in the public health system. Regularize contractual employees and provide ASHAs, ANMs and all levels of public health system staff with adequate skills, salaries, and decent working conditions. The health and safety of workers, particularly of women to be assured.
- Participatory Planning, Community Participation and Community Based Monitoring of health services to ensure accountability and responsiveness of services. Community Based Monitoring and Planning must ensure participation of women, from diverse communities particularly the marginalised, adolescents, etc.
- Ensure quality and assured availability of health care: Quality of care to be ensured in all health facilities, which would mean health care that is effective, safe and non-exploitative, provided with due dignity and respect to patient rights, and which aims at patients' comfort and satisfaction. Guarantee a range of health care services, including for mental health services, free of user fees, to be provided directly by government run facilities and not through Public Private Partnerships (PPPs).
- Improve access to the Social Determinants of Health to women: Promote food security by universalisation and expansion of the Public Distribution System (to also provide local cereals, pulses and oil); a national policy on nutrition and universalisation of ICDS with expansion of staff and services to effectively cover under-3 children; ensure universal availability of safe water in each village and habitation; and universal access to safe hygienic toilets in all habitations. Ensure that procurement and distribution through the PDS is local and decentralized and no cash transfers are part of the PDS and other food programmes.

## B. MATERNAL HEALTH AND MATERNAL MORTALITY RELATED

- Policies and programmes must respond to women's needs need to be more nuanced and tailored to the needs of women in different situations.
- Policies and programs need to go beyond quality health care during pregnancy, delivery and postpartum period to include nutrition, contraception, and access to safe abortion, freedom from violence, dignity during care and access to information and care, from adolescence throughout their life span.

### Strengthening Health system

- Fully functioning CemOC and BEmOC center should be strengthened and increased in



numbers particularly in unserved and under served areas

- Ensure that CHCs and FRUs have infrastructure and human resource for C section and emergency care
- Ensure provision and monitoring of safe abortion services
- Ensure availability of Blood facilities
- Ensure rational deployment of human resource
- Capacity building of human resource engaged in deliveries
- Identifying skilled dais and build their capacities in handling normal deliveries and identifying complication in the difficult area
- The quality of the services should be closely monitored, observance of standard protocols for active management of third stage of labour etc
- Monitor malnutrition closely to prevent acute malnutrition and monitor provision of special nutritional support for pregnant women
- Safety of deliveries should be ensured both in case of home as well as institutional delivery.

#### Monitoring and Accountability

Grievance redress mechanisms particularly related to abuse must be put in place in health systems. Verbal and physical abuse by health care providers, during labour in public health facilities must be stopped and action taken against health care providers who indulge in it.

Continuity of care should be provided during transit between facilities during referrals and it should be ensured that referral does not become synonymous with denial of care.

While the Janani Sishu Suraksha Karyakram (JSSK) is a step towards better Maternity Care, the service provision promised in this scheme should be monitored rigorously both from within the system and through communities to ensure that no out of pocket expenditures are being incurred.

#### Non Obstetric causes

Services for non-obstetric causes which are becoming an important contributor to maternal deaths such as tuberculosis, malaria and rheumatic heart disease during pregnancy must be strengthened

#### Deliveries in private sector

Quality of care in the private sector needs to be monitored and regulated. And maternal deaths occurring in the private sector must be included in maternal death reviews (MDRs).

#### Maternal Death Review

- Review of all the maternal deaths should be ensured.
- Maternal Death Reviews should be made transparent
- Strengthen reporting of maternal deaths including reporting from persons outside the health system and broaden district and state MDR committees to include civil society representatives, PRIs and independent technical experts.
- Consolidated reports of MDRs should be made public with details of actions recommended and taken.

#### C. HEALTH SYSTEM RESPONSE TO VIOLENCE AGAINST WOMEN

- Recognize gender based violence as a public health issue and ensure access to comprehensive

and quality health care (physical as well as psychosocial), screening, documentation, referrals, as well as coordinated, ethical medico-legal processes for survivors. Ensure orientation for health officials and providers on the issue through continued education and incorporation in medical curriculum. Discriminatory, unethical and violative practices such as the finger test in the medico-legal process must be discontinued.

- All necessary support to integrate medical care, provision of security and legal investigation, grievance redressal towards justice and rehabilitation must be assured in all conflict situations and in situations of mass violence; the repeal the Armed Forces Special Powers Act as suggested by the CEDAW Committee and Human Rights Committee, must be done.
- Address the Gender dimensions of Health: Guarantee comprehensive, accessible, quality health services for all women and trans gender persons for all their health needs which includes but is not limited to maternal care.

#### D. OTHER RECOMMENDATIONS

- Safeguard girls and women's access to safe and quality abortion services, which must be provided regardless of their marital status.
- Address malnutrition and anaemia in girls and women through coordinated policy actions across sectors.
- Prevent sex biased selection - Strengthen implementation of existing PC&PNDT Act as well as legislation towards regulation of ART clinics in the context of gender biased selection must be urgently acted upon. Simultaneously promotion of the rights of women and girls to property, education, health, and against violence, forced marriages, etc. must also be ensured.
- Regulate Assisted Reproductive Technology and Surrogacy Industry including reproductive tourism; public dissemination and consultation on the Draft ART Bill 2013 to ensure that the provisions protect the rights of surrogates, egg donors and those who access ARTs. Provision of services in the public health sector for primary and secondary infertility must be improved.
- Women and young girls with disabilities should receive the highest attainable standard of health care without any discrimination and abuse.
- Ensure access to treatment and care of persons with mental illness (PWMI) through integration of the revised District Mental Health Program with the National Health Mission. The rights of PWMI need to be protected by adoption of a comprehensive mental health policy.
- Stop all coercive family planning practices and provide information and quality services about safe contraceptive methods along with the provision of reproductive and sexual health education
- Health care providers should be sensitive to stigmatization and understand the barriers to access to health care of sex workers, women with disability, HIV positive, and lesbian and trans gender communities and provide services in a non- discriminatory and sensitive manner.
- The state should recognize the special health care needs of LGBTQ communities beyond HIV transmission and include sexual transmitted infections, cancers (breast, cervical and other) and other health morbidities and depression related to stigmatization and discrimination.
- In the regulatory framework specific provisions have to be made to protect the rights of clinical trial participants, particularly those that are from marginalized and vulnerable sections. Issues of consent, ethical review, monitoring of adverse events etc. need to be specifically spelt out and detailed in any such law.
- Develop Charters of rights of patients and clinical trial participants need to be prepared to ensure, protect and safeguard the rights of the patients and clinical trial participants.

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ARTICLE 15  
EQUALITY  
BEFORE LAW

CHAPTER 8



INDIA

4th AND 5th  
NGO ALTERNATIVE REPORT  
ON CEDAW

# ARTICLE 15 EQUALITY BEFORE LAW



## Association for Advocacy and Legal Initiatives (AALI)

### 1. SITUATIONAL ANALYSIS

Elimination of discrimination against all women is the core principle enshrined in Convention on Elimination of all forms of Discrimination against (hereinafter referred to as CEDAW). Article 1 of CEDAW defines the term “discrimination against women”. It means and includes any distinction, exclusion or restriction made on the basis of sex which impairs or nullifies the exercise of human rights and fundamental freedom by women on par with men. Article 2 of CEDAW establishes that the States must undertake to eliminate discrimination against women. Article 15 asserts the full equality of women in civil and business matters, demanding that all instruments directed at restricting women’s legal capacity “shall be deemed null and void”. Article 15 elaborates that- “State parties shall accord to women equality with men before the law. State Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals. State Parties agree that all contracts and all other private instruments of any kind with a legal effect, which is directed at restricting the legal capacity of women shall be deemed null and void. State Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.”

The concept of equality is traditionally understood to mean “the right to be equal to men.” This becomes problematic when it is extended to the understanding that women must be treated exactly like men if they are to gain equality with men. It implies that women must be treated according to male standards, obscuring the ways in which women are different from men and how they will be disadvantaged because of these differences. CEDAW promotes the substantive equality model and consolidates two central approaches to equality:

- Equality of opportunity in terms and access to the resources of a country, to be secured by a framework of laws and policies, and supported by institutions and mechanisms for their operation.
- Equality of results upon access and opportunity, toward achieving real change for women.

State parties to CEDAW have a responsibility to ensure the practical realization of rights, and are thus obliged to show results.<sup>1</sup>

The principle of equality before law is also enshrined under part III of the Indian Constitution in the form of fundamental rights in Articles 14, 15 and 16. Article 14 states that the State shall not deny to any person equality before law or the equal protection of the laws within the territory of India. Article 15 prohibits discrimination on the basis of religion, race, caste, sex, place of birth, or any of them. It further

gives the power to the State to make special provisions for socially and educationally backward classes of citizen including women and children and for the Scheduled Castes and Scheduled Tribes. Article 16 provides for equality of opportunity in matters of public employment. The constitutional dream of equality is far from reality. Fundamental rights cannot be availed against private parties and non-State actors, and this remains a fundamental limitation. Women in India have faced worst forms of violence both within and outside their homes. Gender based violence cuts across every class, caste, religion, region, etc. The existence of gender based violence and the poor legal framework that fails to tackle such violence is a major source of discrimination against women. The State has enacted several legislations to address this issue- Protection of Women from Domestic Violence Act 2005, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, The Prohibition of Child Marriage Act 2006 to name a few. These legislations have been enacted but there is more to be desired because of non-implementation of these legislations. They have not been able to successfully address the issue of inequality faced by women.

Certain existing laws are the outcome of a patriarchal and protectionist mind set, which is gender biased around the issue of a women's sexuality. Adultery covered under Section 497<sup>2</sup> of the Indian Penal Code, 1860 makes a man culpable for the offence of adultery, with regard to having sexual intercourse with a married woman, without the consent of her husband. Adultery becomes an offence when it is committed with a married woman. The question of whether the woman had consented to sexual intercourse is irrelevant; further reinforcing that a wife's body is the property of her husband, undermining and negating her right to sexual autonomy and integrity. Section 198<sup>3</sup> of the Criminal Procedure Code, 1973 further allows the husband, who is called the 'aggrieved person', to prosecute the man who has had adulterous sexual intercourse with his wife. It gives the husband power of delegation; any relative on his behalf can file a complaint. The control of men over women is embodied in the laws related to abduction, kidnapping. Such laws and mind set regard women as gullible, easily swayed and incapable of taking proper decisions. The anxiety of the courts in allowing adult women to marry out of choice or choose their sexual partners is seen in various judgments. Lower judiciary often orders adult women who have left the natal families to marry someone of their choice, to be sent to government run shelter homes. This order of detention is made to "protect" the woman but leads to negating the choice and autonomy of women. The law in India recognizes women as equal citizens and grants them all the rights and freedoms guaranteed by the Constitution.

In the recent landmark judgment, National Legal Services Authority Vs. Union of India and Ors.<sup>4</sup>, by the Supreme Court, trans gender has been recognized as the third gender, providing for an important step for equal representation and equal treatment before the law. The next hurdle before the State is now to ensure that this step forward towards equality is substantive and does not expose trans gender people to discrimination and violations.

The duality in approach of the law can also be seen in Section 377<sup>5</sup> of the Indian Penal Code, 1860, which criminalises "carnal intercourse against the order of nature" between two consenting adults. The provisions of this Section expose sexual minorities including LBT women to discrimination and violence on the basis of their sexual orientation and treat them as unequal citizens in the eyes of the law. The Supreme Court of India in a recent judgment<sup>6</sup> upheld the validity of Section 377 by pronouncing the said section to suffer from no Constitutional infirmity.

This chapter will examine the status of women within the ambit of law, the duality in approach, and then go on to highlight the gaps followed by a set of recommendations.

## 2. CASTE BASED VIOLENCE

In terms of equality before law there is a need to focus on enjoyment of substantive equality, as Dalit women face impediments to their enjoyment of even basic entitlement and rights. Despite constitutional



protections against discrimination based on sex and caste, and constitutional ban on untouchability, as well as special legislations like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Dalit women continue to face discrimination and the derogation of fundamental freedoms arising from the absence of due diligence by the state and the guarantee of impunity to state and non-state perpetrators of caste atrocities against women. According to National Crime Records Bureau, a total of 1,557 cases of Rape of women belonging to Scheduled Castes were reported in the country during the year 2011 as compared to 1,349 cases in the year 2010, thereby reporting an increase of 15.4%. Uttar Pradesh reported 397 cases accounting for 25.5% of the total 1,557 cases reported in the country followed by Madhya Pradesh 21.0% (327 out of 1,557 cases).

The police often refuse to register the FIR based on caste, class, gender identity, profession, of the survivor. The extreme violence including rape, stripping in public and public parade faced by Dalit women during caste conflict caused by the continued existence of the caste system goes almost entirely unredressed as evidenced by the poor record of the implementation of the SC/ST Prevention Act 1989. The lower judiciary trying cases under the Act often comes with a mindset that most of the cases registered under the Act are false and are filed for monetary gains as the Act provides for payment of compensation to the victim and tend to be more sympathetic towards the accused who is allegedly falsely prosecuted.

### **3. SEXUAL ASSAULT**

The Criminal Law Amendment Act, 2013 brought about amendments in the Indian Penal Code 1860, Indian Evidence Act 1872 and Criminal Procedure Code 1973 with respect to sexual offences. The definition of Rape was expanded to not only include peno-vaginal penetration but also applying mouth, fingering, penetration by objects and other parts of the body. The amendment included acid attack, stalking, voyeurism, disrobing as offences in the Indian Penal Code. The term consent was defined for the first time. New legislation addressing sexual offences against children- Protection of Children from Sexual Offences Act, 2012 was passed. The age of consent was increased from 16 years to 18 years making consensual sexual acts amongst young adults unlawful. This increases the possibilities of retribution by parents and society through legal process against young people. Marital rape is recognised as an offence only during separation and in the case of wife being below age of 15 years. This is reflective of the patriarchal approach of the existing laws criminalizing sexual assault. The wife is viewed as the property of the husband, and thereby sexual violence perpetrated on the woman within marriage is ignored. The law treats the offence of marital rape or forced sex as an issue located within private sphere and outside its reach, but on the other hand, it criminalizes consensual sexual act under section 377 IPC. Consent of sexual act is considered relevant in Section 376 but it is not considered relevant in section 377 IPC.

The National Crime Records Bureau data shows that of the 101032 rape trials in India in the year of 2012, only 11% (11,153) ended in conviction; in 2011, only 4.2% (4023) of the 95065 rape trials resulted in conviction. Rape is considered to be a violation of honour and chastity of a victim rather than being viewed as a crime of power and violation of bodily integrity of a woman. This patriarchal attitude very often results in shift in focus from the accused to victim who is blamed for the offence being committed on her. Most cases of rape go unreported on account of stigma and a hostile and insensitive legal system. It is a common practice amongst police to refuse registration of First Information Report (FIR) and the police have also been instrumental in facilitating compromises between the perpetrator and victim to avoid lodging the complaint and maintain a low crime rate of their respective police stations. Re-victimisation of the victim happens with the use of the draconian two finger test to ascertain elasticity of the vagina of the victim to comment on her sexual activity, which is then used by the defence in the trial to question the character of the victim. The Supreme Court directed that the two finger test in rape cases be done away with and asked the government to provide better medical procedures to confirm sexual assault but this practice remains essential part of medico legal practice.



The draconian Armed Forces (Special Powers) Act, 1958 has not yet been repealed despite the call for it by the Jeevan Reddy Review Committee on AFSPA in 2004 and several International Human Rights Committees, including comments number 8, 9 of CEDAW Committee in 2007. There is lack of political will and refusal to acknowledge that 'armed conflict' exists in India. After the Criminal Law Amendment Act, 2013 the prior sanction of the government is not required to prosecute public servants for rape, but still required to prosecute members of the armed forces

#### **4. SEXUAL HARASSMENT AT WORKPLACE**

The Supreme Court laid down guidelines in the Vishakha case in 1996, for protection against sexual harassment at the workplace. It was not until 2013 when the Parliament enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013. The Supreme Court guidelines only addressed the sexual harassment within the formal sector and did not cover the sexual harassment faced by women in the informal/ unorganized sector. It not only protects employees, but also clients, customers, apprentices and daily wage workers and applies to private organizations, trusts, societies, educational institutions and NGOs. This legislation requires any organization, which employs more than ten people to set up an Internal Complaints Committee, with a penalty of Rs. 50,000 for not doing so. It requires the state to establish Local Complaints Committees and District Complaints Committees for all other workplaces, including the informal/unorganized sector. However, there is no time line set for establishing new mechanisms at the local and the district levels for implementation of the law; neither is there an allocation of resources to make this possible. The legislation contains a provision, which penalizes a woman for making false and malicious complaint under the Act which is a severe blow to the very purpose of the Act.

#### **5. DOMESTIC VIOLENCE**

Domestic violence is one of the most common forms of violence and while it continued to take the lives of countless females in India, it remained unacknowledged for longest period of time. The provision under criminal law that addresses this issue is covered under Section 498-A of Indian Penal Code, 1860. Until 2005 there was no civil law dealing domestic violence with focus on the victim and providing immediate relief. It was only in the year 2005 when the Protection of Women from Domestic Violence Act was enacted which also expanded the definition of domestic violence. However, budgetary allocation for ensuring implementation of laws is minimal and highly insufficient. Hence, although the laws provide for certain services for women, in actual practice women have little access to them as they remain mainly on paper. Over a period of eight years, 2005-2012, torture of married women by their husband and his relatives increased by a whopping 83%. However, conviction rates for this stood at a mere 15% in 2012, even lower than the 19.2% in 2011. In 2012, 106,527 married women were tortured by their husbands and his relatives<sup>7</sup>. Domestic Violence is so normalized that about 44% of women interviewed during the National Family Health Survey, 2005-6, said that their husband had the right to beat them. In States of Uttar Pradesh, Delhi, Maharashtra and others section 498A has been made a bailable offence. In Uttar Pradesh and Delhi, there is a police order that reads that when a woman wishes to lodge a criminal case under 498A of the IPC, the police must not do so immediately. Instead, they must send the woman to a mediation centre for 'reconciliation'. Most of the times, a mediation is facilitated without giving due consideration to the interests of the survivor. The survivor is encouraged to return to the abusive domestic relationship. Only when after repeated attempts of compromise fail do the police lodge a First Information Report.

#### **6. RIGHT TO PROPERTY AND RESIDENCE**

There are different rights of inheritance under different personal laws. Tenancy laws exclude women and negate their land rights but have been upheld by the courts. Women have no right to property acquired during the marriage, which usually stands in the name of the husband even if the wife has contributed

towards its purchase. Despite Hindu Succession (Amendment) Act 2005, Hindu daughters are still unable to claim/demand their share of property from natal family.

The Marriage Law (Amendment) Bill, 2013, having already been passed by the upper house of the Parliament, entails two critical issues i.e. irretrievable breakdown of a marriage and division of property at the time of divorce. But given the ambiguity and non-transparency around such a crucial legal reform, it becomes critical that the bill is discussed and debated amongst key stakeholders including legal experts, academicians, women rights and legal activists.

The Special Marriages Act, 1954 in its Section 19<sup>8</sup> talks about the effect of marriage on member of undivided Hindu family and establishes their severance from such family property. This provision leads to unequal treatment of Hindu women who marry or register their marriage under the SMA, at the hands of the law, when it comes to claiming their right of inheritance.

## 7. RIGHTS WITHIN POLITICAL SPHERE

The state has to ensure substantive equality for women to ensure effective participation and to build political leadership. However even initiatives and mechanisms designed to increase women's public and political participation have not yet been able to achieve parity between women and men's rates of participation. The presence of women in the parliament is only 10.86% and 10.33% in the Rajya Sabha. There is a marginal increase from where the proportion of women in the Lok Sabha (the Lower House of Parliament) in 2004 was 8.16 % (44 out of 539 elected members) and in the Rajya Sabha (the Upper House of Parliament) the percentage of women is 11.42 % (28 out of 245 members).

The Women's Reservation Bill, which would reserve 33 percent of all seats in the national-level Lok Sabha and in state legislative assemblies for women, remains stuck in Parliament and has not been passed. The Women's Reservation Bill has been a political raw nerve for nearly a decade now. It has always triggered heated debates in Parliament and outside. The proposed legislation is to reserve 33.3 percent seats in Parliament. The Bill was introduced in the Lok Sabha on September 12, 1996. Though it has been introduced in Parliament several times since then, the Bill could not be passed because of lack of political consensus. The bill talks about reservation for women at each level of legislative decision making, starting with the Lok Sabha, down to state and local legislatures. If the Bill is passed, one-third of the total available seats would be reserved for women in national, state, or local governments. It was passed in the Upper House-Rajya Sabha in May 2013 but the Lower House- Lok Sabha has not yet voted on the bill.

## 8. RECOMMENDATIONS

- The State should ensure effective implementation and usage of laws concerning women and girls - the Protection of Women from Domestic Violence Act 2005, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, Protection of Children from Sexual Offences Act 2012, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, Prohibition of Child Marriage Act 2006.
- The State should ensure the implementation of the Supreme Court judgment on the declaration of trans gender as the third gender. The State must take proactive measures for the substantive equality and equal treatment of those who identify as transgender.
- The State should ensure regular monitoring and evaluation of the implementation of special laws and procedures enacted for woman and children. There must be sufficient budgetary allocations to meet the provision.
- The State should recognize the offence of marital rape in its laws, irrespective of the age of the wife, taking into consideration her sexual autonomy.
- The Marriage Law (Amendment) Bill, 2013 should be reviewed and discussed in a larger public

forum. The Bill with its current provisions stands to create confusion and even greater acrimony in divorce proceedings, they also lack clarity on the division of property leaving the women in a vulnerable position.

- The State should re-consider the legal age of consent from 18 years and reduce it to 16 years to ensure the law serves best interests of young adults willing to explore their sexuality.
- The State should re-consider and remove the provision penalizing women for false and malicious complaints under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013).
- The State should amend the provisions of the Armed Forces (Special Powers) Act 1958 to bring them in consonance with the obligations of the government towards protection of Human Rights.
- The State must pass the Women's Reservation Bill which has been pending in Parliament (Rajya Sabha) since July 2010 with immediate effect reserving one-third of seats in Parliament and state legislatures for women.
- Section 497 of the Indian Penal Code, which criminalizes sexual intercourse with a married woman without the consent of her husband, must be repealed as it involves a control of the husband over the sexuality of his wife.
- The State should decriminalize consensual intercourse between consenting adults under section 377 of the IPC.
- The State governments must ensure the strict implementation of the Supreme Court guidelines in the two landmark cases on right to choice.

In the case *Arumugam Servai vs State Of Tamil Nadu*<sup>9</sup>, the Court directed:

The state government should immediately suspend the collector/ District Magistrate and other officials like SSP/SP of the concerned district, and order the preparation of charge sheets against them- the officials are unable to prevent such incidents even with prior intimation then the government should initiate departmental action against them.

In *Lata Singh versus State of UP*<sup>10</sup>

the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.

## END NOTES

<sup>1</sup> Available at <http://www.ivraw-ap.org/convention/equality.htm>

<sup>2</sup>Section 497 Adultery.—Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

<sup>3</sup>Section 198 Prosecution for offences against marriage.—(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence.

(2) For the purpose of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code:

Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf.

<sup>4</sup>Writ Petition(Civil) No. 400 of 2012 / Writ Petition(Civil) No. 604 of 2013

<sup>5</sup>**Section 377** Unnatural offences.—Whoever voluntarily has carnal inter course against the order of nature with any man, woman or animal, shall be punished with 1 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

<sup>6</sup>Suresh Kumar Koushal and Ors. Vs. NAZ Foundation and Ors. AIR2014SC563

<sup>7</sup>National Crime Records Bureau, NCRB 2005- 2012

<sup>8</sup>Section 19 - Effect of marriage on member of undivided family.—The marriage solemnized under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religions shall be deemed to effect his severance from such family. 19. Effect of marriage on member of undivided family. —The marriage solemnized under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religions shall be deemed to effect his severance from such family.”

<sup>9</sup>AIR 2011 SC 1859

<sup>10</sup>2006 (6) SCALE



ARTICLE 16  
EQUALITY IN  
MARRIAGE AND  
FAMILY LIFE

CHAPTER 9



INDIA

4th AND 5th  
NGO ALTERNATIVE REPORT  
ON CEDAW

# ARTICLE 16 EQUALITY IN MARRIAGE AND FAMILY LIFE



## Association for Advocacy and Legal Initiatives (AALI)

### 1. SITUATIONAL ANALYSIS

Article 16 of the Convention elaborates that 'States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. Evidently, given the feudalistic and patriarchal socio-cultural framework of family and society, 'marriage and family' remains an arena that is extremely violative and discriminatory despite the constitutional and legislative provisions. In fact with regards to women's human rights within marriage and family, the State takes a contentious position by expressing inability to be accountable for the violations in the personal sphere.

Women are denied the right to decide the kind of life they want to lead, and they face violence for a wide range of decisions such as wanting to study further, taking up employment, refusing to marry someone of the family's choice; choosing their sexual partners; marrying outside the community, deciding what to do with her earnings; rejecting the advances of a man; wanting to exit from an intimate relationship or marriage.

A woman exercising her right to enter, remain or exit from a sexual relationship, including marriage also faces violence as it is seen as a threat to honour and tradition as women's bodies are seen as the repository of "honour" of family and community. The constant refrain is that women are not capable of making the right choice/decision, and it is in their best interests to be protected through control.

It is the exercise of choice and autonomy by women, which is central to the nature and cause of violations of the right to marry/not to marry, as the exercise is itself seen as a challenge to patriarchal authority and control of female sexuality. Due to inherent inequality within institutions of marriage and family and lack of autonomy to make decisions within a relationship women continue to face domestic violence, marital rape, forced marriages, acid attacks, and denial of reproductive and sexual rights. Such kind of violence against women is prevalent in all parts of the country, ranging from the feudal parts of North India- notorious for violence against women; to Karnataka and Kerala, where the socio-economic status of women is higher than the rest of India. This cuts across all class and caste barriers, as well as the rural urban divide.

### 2. WOMEN'S RIGHT TO FREELY CHOOSE A SPOUSE AND TO ENTER INTO MARRIAGE ONLY WITH THEIR FREE CONSENT

In India there are separate laws of marriage, divorce and inheritance for each religion and a secular law, The Special Marriage Act, 1954. Consent of the parties to a marriage is the prerequisite of a valid marriage among all the Personal Laws, as well as the Special Marriage Act (SMA). However, despite the legal provisions, young couples marrying across caste, class and religious divide continue to face adversities.

Women who exercise their right to choice face a wide range of violence including forced marriage, early marriage, wrongful confinement, restriction on mobility, false criminal cases against their partners/husbands

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and other family members- including themselves; physical abuse, disfigurement and even murder. The repercussion of this exercise of choice is even graver for Dalit women and those from other minority communities owing to their already vulnerable position in the social dynamics.

According to print - media scanning undertaken by AALI (covering 10 local daily newspapers), between January, 2011 to December, 2012, a total of 84 cases of 'honour' killing and 31 cases of suicide by couples due to harassment were reported in Uttar Pradesh. Data for the period 2010-2013 reveals that 377 women, who wanted to marry as per their choice, lost their lives.

A recent Law Commission sponsored study revealed that over a period of four years out of the 560 couples who were threatened and sought state protection, 121 individuals were killed.<sup>1</sup>

The Special Marriage Act, 1954, which allows for a civil marriage ceremony between any man and woman, was enacted to facilitate the exercise of the individual right to choice and decision making in relation to marriage, however, due to its complex procedural and inbuilt loopholes, it continues to pose difficulties for the consenting adults as a minimum waiting period of one month is required before they can marry. The Act also fails to ensure equality for women in marriage and its dissolution by not giving women equal rights to property accumulated during marriage.

Similarly, there are sections under Penal Code that were initially framed to protect women's sexual autonomy but are being used to curtail the same. For instance when a woman marries without parental consent, her family immediately files a criminal case against the man in question and his family. In majority of cases the man gets charged under section 366<sup>2</sup> and 368<sup>3</sup> IPC for kidnapping or abducting women to compel her into marriage.

In many cases of kidnapping and abduction the police, despite having clear proof of marriage and age, refuse to consider these on the ground that elopement is against the prevailing custom and tradition of the society. They disregard the statement of the woman, if it is in favour of the man/woman with whom she exercised her right to choice.

Data from National Crime Records Bureau highlights the said trend – as per NCRB data in 2012 more than four times number of females (38,667) were kidnapped compared to the numbers of males (9,552) accounting for 80.2% during the year. 'Marriage' was the main cause of kidnapping & abduction of females accounting for 63.2% (24,456 out of 38,667 persons) of the total females kidnapped & abducted. Experience from the field further reveals that complaints of kidnapping by family members are registered far more easily by the police in comparison to those filed by the couples who seek protection.<sup>4</sup>

There have been cases of forced marriages of lesbian women where families, despite being aware of the sexual orientation of their daughters, have forced them into heterosexual relationships which lead them into situations where they face constant harassment, abuse and even marital rape. There have been reports of lesbian suicides from different parts of India. Several cases across India suffer absence of any active support from state to victims of forced marriage and also reaffirming denial of choice marriages, which works affirmatively for violators of the right to marry. Instances of non-intervention by the police in providing protection to young couples continue to occur with impunity.

The law in India recognizes women as equal citizens and grants them all the rights and freedoms guaranteed by the Constitution. The higher judiciary has by and large upheld women's right of decision making and autonomy in intimate relationships. While addressing the issue of women marrying out of choice the Supreme Court has been categorical in that the Constitution guarantees women this freedom and it is the duty of the State to protect them from violence or harassment they face, which is a direct violation of their right to personal liberty, as well as freedom to form associations, guaranteed by Article 19 of the Constitution. In *Lata Singh Vs State of UP and others*,<sup>5</sup> the Supreme Court laid down guidelines as to how these cases should be dealt with. The Court said:

“This is a free and democratic country, and once a person becomes a major he or she can marry



whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage.

We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.”

The Allahabad High Court has also taken affirmative step towards protecting the right to women to be in an intimate relationship outside marriage. In the case, Payal Sharma @ Kamla Sharma Vs. Superintendent, Nari Niketan, Agra and others,<sup>6</sup> the Court said,

“In our opinion a man and a woman, even without getting married can live together if they wish. This may be regarded immoral by society but it is not illegal. There is a difference between law and morality.”

In another case the Allahabad High Court in the case, Sartaj s/o Mohd Hussain and anr. Vs. State of UP Thru Secy.<sup>7</sup> Home, granted a woman who had married against her parent's wishes and kept in police station for 14 days (on the pretext of getting her medical examination done) INR 25,000/- as compensation for violation of her personal liberty. The parents had filed a case against her husband saying she was a minor. The Court directed that no witness male or female will be detained at the police station for getting a medical examination.

However, it is to note here that the Hon'ble court also directed that for conducting a medical examination a person could be kept for a maximum of 3 days in a hospital, primary health centre or statutory home or shelter and provided police protection if necessary. The Court did not consider that these directions may be used to detain adult women who have left home out of choice in hospitals without their consent with the police having control over them and that a medical examination cannot be conducted without the consent of the woman.

In recent years, there has been a disturbing trend towards undermining women's right to choice. These may be only a few cases but for the judiciary to adjudicate on sentiments rather than uphold the Constitution and law of the land is not encouraging. Especially since the higher judiciary is seen as the last bastion for protection of women's equality and autonomy in decision-making.

The anxiety of the courts in allowing adult women to marry out of choice or choose their sexual partners is seen in the judgments of the Rajasthan, Karnataka and Kerala High Court.

The Rajasthan High Court in Budha Ram Meena Vs. State of Rajasthan,<sup>8</sup> wherein a habeas corpus writ petition filed by a 34 year old man for the production of his 18 year old wife with whom he had undergone a Hindu form of marriage under AryaSamaj,<sup>9</sup> directed that the Arya Samaj Rules framed for conducting marriages must be followed. These rules required that notice should be sent to the parents asking for their permission for the marriage and an announcement of the marriage should be put up on the notice board. The Court issued directions to the District Magistrate and Collector to ensure that these rules are obeyed, even though they were not statutory rules and to develop a format for putting up a notice and that notice to the parents be sent through the nearest Police Station. These directions are completely unmindful of the fact that under the Hindu Marriage Act or the Special Marriage Act, a girl of 18 years of age does not require the consent of her parents to marry.

The Karnataka High Court<sup>10</sup> in a habeas corpus writ petition filed by a man who claimed to be the husband of a minor girl, made observations and suggestions which showed their bias against “love



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marriages” and stated that girls below 21 years of age are incapable of taking decisions. The Court said,

“In our opinion the girls below the age of 21 years are not capable of forming a rational judgment as to the suitability of the boy they are in love with. It is relevant to mention that those girls, who are suffering from hormonal imbalance, easily fall prey to the boys and fall in love, marry and repent at leisure. The parents of the girl are interested in selecting a suitable boy and see that the girl leads a happy married life. Since the Hindu Marriage Act does not deal with love marriages, in our view it is high time Parliament shall take sufferings and turmoil of such girls and their parents and amend the law suitably. . . . We suggest in case of a love affair of a girl who is below the age of 21 years , the parents of the girl should approve the marriage , otherwise such marriages will be declared void and voidable.”

The above order bypasses the relevant statute (the Hindu Marriage Act), that permits marriages between girl of 18 years with 21 years old boy. Also the order also surfaces the insidious gender bias within the institution that undermines capability and agency of an adult woman.

A habeas corpus petition was filed in the Kerala High Court by parents of two adult girls who had left home willing with fellow male, Muslim students. The Court persuaded the girls to return to the parents, even though on production they had said they did not want to go to their parents. The two boys filed a bail application before another bench of the Kerala High Court.<sup>11</sup> The Court order referred to the girls as Hindu girl and Christian girl on the pretext of concealing their identity. The Court believed that there were alarming instances of Muslim boys pretending to love girls of other religion, to convert them to Islam and lots of money was available for executing the project. The Court before disposing of the bail application directed the Director General of Police to enquire if there was a movement called “Love Jihad”, or “Romeo Jihad”<sup>12</sup> working in Kerala to convert girls to Islam, and if it existed at an all India level and to file a report before the Court. Even after the DIG reported that no such movement had been identified so far, the Court went into great detail about concept of Love Jihad and referred to unauthenticated sources which claimed that in the last 4 years 3000-4000 conversions after love affairs has taken place in Kerala. The Court was convinced that concerted effort was being made to convert girls of a particular religion to another religion and felt that the government should be concerned. While concluding the court observed,

“If a boy or girl believes that a marital union is not possible without the other party to love converting to his or her religion, it is his or her faith. But in such cases, it is not love that is prominent, but religion. Forcible, compulsive or deceitful conversion takes place in such cases. Nobody would say that it is a healthy trend. Love is divine. It has no barriers of religion, caste or creed”

As stated above in recent times courts have been giving both progressive and regressive orders in matters of choice. Positive trend is visible more at the High Court and at the Supreme Court level. However, the access to the higher court of the land is not easy and visibly the situation worsens when it comes to primary courts where the protectionist and partisan role is much more visible.

### 3. WOMEN'S RIGHT TO EXIT A SEXUAL RELATIONSHIP

Women's status on dissolution of marriage remains disadvantageous. The maintenance and alimony given to women is minimal and unenforceable and has multifold impact of socio-economic status of women seeking to exit marriage. There is a trend to push the aggrieved women for compromise to `save the family' no matter how violative the relationship has been for her. Trial courts play a partisan role in divorce cases advocating for compromise and adjustment which makes aggrieved women's position even more vulnerable to further violence and insecurity, increasing their dependency on negotiations with the violator.

The Supreme Court in *Petition(s) for Special Leave to Appeal (Crl) 2009 CRL. MP.NO(s). 18899* observed that a woman who deserted her husband and the matrimonial home and refused to return despite repeated requests was not entitled to maintenance. The Supreme Court bench said:

“You left the matrimonial home on your own, and now you want maintenance. Is this the law of the country? What is the justification for your staying separately?”

In another case of *Vinny Parmar v Paramveer Parmar* (CIVIL APPEAL NOs. 5831-5833 OF 2011 (Arising out of SLP (C) Nos. 20518-20520 of 2009) the Supreme court ruled that in divorce cases, the courts must factor in the wife's status and lifestyle while fixing alimony to ensure that she lives in reasonable comfort but should not grant an amount that would be repressive for the husband, the Supreme Court has ruled.

“The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life she was used to when she lived with her husband...the amount so fixed cannot be excessive or affect the living condition of the other party.”

As discussed above the orders get regressive in lower courts where role of judiciary has been protectionist and patriarchal.

While the law normatively recognizes woman's right to marry a man of her choice, given our social situation, right not to marry has never been acknowledged. The fact that girls will marry is a fore gone conclusion. Sexual choices are socially impermissible, and legally, not addressed. There are women being forced into sexual relationship and those who face violence on denial of entering into forced relationships. There has been increased in number of cases where women have faced acid attacks when then rejected the advances or marriage proposal of a man. Survivors of acid attacks not only go through physical and psychological trauma but they also face economic hardships as the treatment is very expensive.

According to NCRB data there have been 225 reported cases of acid attacks on women from 2010 to 2012. As reported by Aljazeera women help-line set up in the national capital, New Delhi, received 56 complaints of acid attacks in the first quarter of 2013.<sup>13</sup>

With the Criminal Law Amendment Act 2013, new sections have been added in IPC readdressing acid attacks and attempt to acid attack. However no concrete steps have been taken by the State to regulate open sale of acid and other corrosive substance, despite Supreme Court guidelines.

#### **4. WOMEN'S RIGHT TO LIFE FREE OF VIOLENCE WITHIN DOMESTIC RELATIONSHIP**

Domestic violence is one of the most common forms of violence and while it continued to take the lives of countless females in India, it remained unacknowledged for longest period of time. After three decades of hard work of many women's groups and movements struggling against domestic violence, it was in 2005 when the Protection of Women from Domestic Violence Act was enacted which also expanded the definition of domestic violence. However, as in the case of many other laws and policies, the poor implementation of PWDVA remains a critical concern including budgetary utilization, operational and monitoring mechanism etc.

Analysis of data from third National Family Health Survey (NFHS-3) and NCRB indicates that for the most part, instances of domestic violence reported by women in national surveys never make it to the police or the courts. Nationally, 8% of married women have been subject to sexual violence, such as forced sex, 31% of married women have been physically abused in a way defined as 'less severe', such as slapping or punching, while 10% have suffered 'severe domestic violence', such as burning or attack with a weapon. Also, 12% of those who report being physically abused also report at least one of the following injuries as a result of the violence: bruises, injury, sprains, dislocation or burns, wounds, broken bones or broken teeth and/or severe burns. With regard to emotional abuse, 14% of Indian women will have experienced this at some point in their live<sup>14</sup>

Though the violation of Right of choice in a relationship is included within the ambit of the Act, the interconnectedness of forced marriage with domestic violence remains unspoken.

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Rape within marriage is not a criminal offense under IPC.<sup>16</sup> PWDVA offers a civil remedy for marital rape.

### 5. OTHER AREAS OF CONCERN

#### A. PREVALENCE OF CHILD MARRIAGES/EARLY MARRIAGE

The Prohibition of Child Marriage Act, 2006, applies to all communities, it punishes those who perform child marriage, but a child marriage is a valid marriage. Child marriage under this law is defined as marriage wherein the girl is 18 years old or the boy is 21 years old. The age of consent for sex is 18 years under the Protection of Children from Sexual Offences Act, 2012 and the Indian Penal Code, 1860.

Regardless of law, Child Marriages are still being practiced. As per the NFHS-3 data more than half of women are married before the legal minimum age of 18. Among women age 20-49, the median age at first marriage is 17.2 years. According to UNICEF even though the Country has made progress on indicators related to education, health, employment opportunities the percentage of women married before the legal age of 18 still remains very high.

Early marriage negates free and informed choice of partner and reinforces inequality. The age of the bride is also the determining factor in controlling her sexuality and fertility. The uninformed choices lead to poor (almost non-existent) decision making or negotiation powers in the relationship – which in turn get reflected in various aspects of their lives – more prominently in form of their poor reproductive and sexual health status. They also result in more children and shows on the health of the woman. The law still has contradictions to the Child Marriage Restraint Act, 1929 in that the exception to marital rape is that the woman is the wife. So also under the Hindu Marriage Act, 1955 the minor husband is considered the guardian of his minor wife, which again is an exception to the disqualification and legal capacity of a minor.

#### B. RIGHT TO PROPERTY

There are different rights of inheritance under different personal laws. Tenancy laws exclude women and negate their land rights but have been upheld by the courts. Women have no right to property acquired during the marriage, which usually stands in the name of the husband even if the wife has contributed towards its purchase.

Despite Hindu Succession Act Amendment 2005, Hindu daughters are still unable to claim/demand their share of property from natal family.

The Marriage Law (Amendment) Bill, 2013, having already been passed by the upper house of the Parliament, entails two critical issues i.e. irretrievable breakdown of a marriage and division of property at the time of divorce. But given the ambiguity and non-transparency around such a crucial legal reform, it becomes critical that the bill is discussed and debated amongst key stakeholders including legal experts, academicians, women rights and legal activists.

### 6. CRITICAL GAPS/HURDLES TO WOMEN'S RIGHT TO EQUALITY WITHIN MARRIAGE AND FAMILY RELATIONS

#### A. LACK OF SAFE SPACES FOR WOMEN TO SEEK REFUGE OR GUIDANCE

Women who apprehend violence from their families or who want to leave their home whether to enter or exit a relationship do not have a place to go for support, guidance or shelter. The remedy provided by the state for women in such distress is protection/ shelter homes. While these, which are referred to as a 'neutral space' meant for allowing women to reflect upon her situation/decision. However, the 'neutrality' of these homes has been critiques widely and detention of women in these homes has been challenged in courts. Since the detention in home gets used by natal families as a strategy to get the woman back in the control of natal families, its gets difficult for women exercises her right to choice, as there is a complete absence of any state support to survivor of forced marriage and those who had been denied her right to choice in a sexual relationship.

The support systems put in place by the State are difficult to access and even more so for women with disabilities who face violence and discrimination within the institutions of marriage and family. The neutral spaces are not equipped to cater to the special needs.

**B. PROBLEMS REGARDING PROVISION AND IN THE IMPLEMENTATION OF THE SPECIAL MARRIAGE ACT, 1954, COMPELLING WOMEN TO MARRY UNDER THE RELIGIOUS MARRIAGE LAWS AND EVEN CONVERT TO MARRY**

Women are compelled to marry under religious laws such as the Hindu Marriage Act or have a nikah, or convert to marry if they belong to different religions, as the procedure under the Special Marriage Act, the secular law is cumbersome. The bias of the administration is seen in many instances where officials have outright refused to accept a couple's application for marriage, when they belong to different castes or religion. They often enquire if the parents have consented to the marriage, which is not a requirement of the law.

In most states with the exception of Delhi, a notice of marriage is sent to the permanent address of the parties, by which parents and the extended family get information about the pending marriage. In many cases on receiving the notice the parents use all means even force to prevent the woman from getting married. There have been instances of a law and order problem being created as the entire community has gathered to stop the marriage. The Delhi High Court<sup>16</sup> has disallowed the practice of sending notices to parents of the parties who marry under the Special Marriage Act, on the grounds that the law does not require any notice to be sent.

The Act also fails to ensure equality for women in marriage and its dissolution by not giving women equal rights to property accumulated during marriage.

**C. CRIMINAL CASES ARE FILED AGAINST THE WOMAN'S PARTNER**

Cases of kidnapping, abduction for forced marriage and rape are routinely filed by the woman's family against her partner and his family. This not only causes mental stress but also a lot of time and money is spent to pursue these cases. These cases lead to physical and mental harassment of the woman, her partner and his family. Even when a marriage certificate and age proof is given, the woman is usually detained in the police station and her partner arrested.

**D. PROBLEMS IN RECORDING THE WOMAN'S STATEMENT (AS A WITNESS) BEFORE THE JUDICIAL MAGISTRATE<sup>17</sup> WHEN CRIMINAL CASES ARE FILED AGAINST THE WOMAN'S PARTNER**

Recording the woman's statement before the judicial magistrate u/s 164 CrPC, becomes crucial when a criminal case is filed against her partner or his family to enable the partner to get bail or prevent him from getting arrested or to close the case. The statement must be recorded in the same jurisdiction as the FIR is registered, which is usually where her family resides. This is a security threat for the woman as she has to go to the place from where she has run away and where her family has influence and contacts. There have been numerous instances of families using force to take away the girl from the court premises or using influence to manipulate her statement in their favour.

Moreover, the practice adopted is that only the police can produce a witness to record her statement before the judicial magistrate u/s 164 CrPC. At this stage, the woman is most vulnerable. She is under the control of the police, who allow the family to have access to her. The police and the family mentally and physically harass blackmail and pressurize her to make a statement against her partner. In case she resists the police even delay recording the statement.

There exists no provision in law to ensure that the magistrate records her statement promptly and without delay. Nor is there any provision to facilitate her statement to be recorded by a magistrate in another jurisdiction if the woman fears for her safety.



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### E. ILLEGAL DETENTION OF WOMEN AT THE POLICE STATION

Routinely women are detained in police station for 3-4 days and even up to a week, either on the pretext of recording their statement u/s 164 CrPC or to conduct a medical examination. This is so widespread and common, that the police do not consider this illegal. They get indignant and cannot understand what the fuss is about when objections are raised to keeping the woman in the police station. Their responses, that law was followed by keeping the woman in the Mahila Thana or women police were present. A woman is treated like an accused for asserting her right to choice. Even an accused can only be detained after he is duly arrested and his arrest recorded.

### F. PROTECTIVE CUSTODY

Lower judiciary often orders adult women who have left the natal families to marry someone of their choice, to be sent to government run shelter homes. The woman's consent is not considered before passing such an order. This order of detention is made to "protect" the woman and remove her from the influence of her partner, who has made her go against her parent's wishes. Such orders betray a mind-set which regards women as gullible, easily swayed and incapable of taking proper decisions.

### G. INSISTENCE ON CONDUCTING MEDICAL EXAMINATION TO DETERMINE AGE OF THE WOMAN WHEN DOCUMENTS EXIST TO PROVE HER AGE.

There is confusion amongst the police and judiciary as to what are the relevant documents to determine whether the woman is an adult or not. Is it the birth certificate or school leaving certificate, etc. Under the Juvenile Justice (Care and Protection of Children), Act 2000 a list of documents is given in order of preference to establish juvenility. This does not seem to be followed in cases of right to choice. The courts often order for a medical examination to determine age, when, even when it has been held not to be conclusive proof of age as there is a margin of error of 2 years.

### H. HARASSMENT OF WOMEN'S RIGHTS AND OTHER CIVIL SOCIETY GROUPS BY STATE AGENCIES AND THE COMMUNITY FOR SUPPORTING A WOMAN'S RIGHT TO CHOICE.

Women's rights groups and Human Rights Defenders are maligned and looked upon suspiciously when they intervene in support of a woman in cases of right to choice.

There have been growing incidences where such organizations have been attacked under the pretext of being called 'immoral' organization that help girls run away with their boyfriends or traffics woman by the police and family members. Besides wastage of time and energy being spent in countering these allegations and placing facts on record, such human rights defenders face a looming threat of their and organization's security.

### I. APATHETIC / NEGATIVE ATTITUDE STATE (INCLUDING LOWER JUDICIARY AND POLICE) TOWARDS VIOLATION OF WOMEN'S RIGHTS IN PERSONAL SPHERE

When women decide to assert their right to choice in intimate relationships, they anticipate a reaction and even violence from their families and the community. In such situations they often turn to state agencies for protection and safety. The indifference, hostility and open enmity of these agencies is what renders these women entirely vulnerable to violations. The participation of the state agencies such as the police in committing the violence against these women under the guise of fulfillment of "police procedures" not only silences them, but also makes the difference between life and death.

Perspective and attitude of lower judicial and police functionaries is extremely patriarchal, archaic and protectionist. They in turn become a complicit partner in all the violations committed. The police are clearly very powerful players, and being steeped in the values of the social milieu, are committed to ensuring them. They have a strong ally in the primary courts, who are significantly empathetic to the concerns of the family and the "law and order" situation that can be instigated due to the elopement. The system it has created to support decision-making and autonomy, to ensure free, independent, consent, is inherently fractured in a way to ensure the exact opposite.

In fact, Govt. of India's declaration to Article 5(a) and 16(1)<sup>18</sup> and Article 16(2)<sup>19</sup> of the Convention, demonstrates amply the state's duplicity in approach towards the private/public divide to deny women's rights including her right to life, inheritance, maintenance, alimony, custody and guardianship of children etc.

Thus, despite of the constitutional guarantees and the entitlements recognized in the realm of civil law, the state agencies support family and/or the community to deny choices of women within marriage and family relations. In the name of non-interference in personal sphere or prevalent cultural practices/traditions the state not only supports but provides impunity to violations of women's right to choice.

#### J. LACK OF POLITICAL AND ADMINISTRATIVE WILL FOR EFFECTIVE IMPLEMENTATION AND USAGE OF RELEVANT LAWS.

Non/poor implementation/translation of legislative provisions and laws on the ground highlight the critical gap between de-jure and de-facto realities on the ground wherein despite the constitutional guarantees, entitlements and legal provisions/amendments recognizing, upholding and protecting women's rights, women continue to face routine denial of their basic human rights within marriage and family.

### 7. RECOMMENDATIONS

1. The State must provide shelter homes and counseling centers where women who are apprehending or facing violence can get help and refuge. Shelter homes set up under the Protection of Women from Domestic Violence Act, 2005 (PWDVA) must provide their services to women in such circumstances. The State should establish more such homes and ensure that they are adequate and accessible to women from all diversities, for a violence free life with dignity.

Neutral safe spaces should be ensured for women who ask for it, to enable recording of their statement in an environment of support and confidentiality. Here neutral spaces should not be understood to be state run shelter homes. These could be state funded and protected but not state run (e.g. couple homes like Haryana)

Funding be made available for short-term security spaces for women that (a) do not function like jails, i.e. women have access to telephone, internet, visitors whom they want to see, and (b) here NGOs have oversight on their statement.

The State should also ensure that the shelter homes and safe spaces have such provisions which meet the requirements of women with special needs disabilities and

2. The Police and the protection officers appointed under the PWDVA, 2005 must be provided training on issues around violence against women including the right of women to choose their partners.
3. A protocol must be prepared for the police on how to handle cases of right to choice to ensure that there is no harassment of the woman and her partner.
4. The State governments must ensure the strict implementation of the Supreme Court guidelines in the two landmark cases on right to choice.

In the case Arumugam Servai vs State of Tamil Nadu,<sup>20</sup> the Court directed:

The state government should immediately suspend the collector/ District Magistrate and other officials like SSP/SP of the concerned district, and order the preparation of charge sheets against them. - the officials are unable to prevent such incidents even with prior intimation then the government should initiate departmental action against them.

In Lata Singh vs State of Up<sup>21</sup>

The administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man

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who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.

5. In cases where a woman fears for her safety, provision must be made to allow recording of her statement u/s 164 CrPC in another jurisdiction wherever the woman is present and other modes of modes of communication/information technology can also be used for recording. (w.r.t. amendment to the India Evidence Act, 1872).
6. Amendment of the Special Marriage Act, 1954 to the effect that (a) 30 day notice under the Special Marriage Act should no longer be a condition of marriage and letter (notice) should not be sent to the parents and (b) the Act stipulate giving women equal rights to property accumulated during the marriage.

The Central Government must hold a consultation with women's groups across the country to discuss the problems in the implementation of the Act, and propose amendments to the law based on these discussions.

7. The State Judicial Academies must include the issue violence against women for exercising their right to choice in intimate relationships in their curriculum.
8. Legal work in relation to family law should be reformed to realize the spirit of the Family Court Act, 1987, supporting the resolution of differences amongst families, through a non-adversarial format of legal practice.
9. Other States can implement the guidelines laid down by the Punjab and Haryana High Court<sup>22</sup> in dealing with cases of right to choice, wherein the Court has directed that shelter and security should be provided to the couple and family members must be counseled so that refrain from harassing and inflicting violence on the couple.
10. To ensure all possible legal measures to protect to choice of all persons across sex and same sex relationships and to provide protection from family, society and the state in such cases.
11. In conjunction with the recent amendments in IPC and guidelines issued by the Supreme Court, strong measures should be taken by the State to ensure prevention of acid attacks including regulation of sale of acid.
12. National Human Rights Commission should pro-actively taken on cases in which the State actors have played a violative role in denying individuals their right to choice, using their unique mandate to investigate the violations, and also award compensation to the survivors of the violation.
13. Human rights Institutions should join hands in issuing guidelines to the State executives, to take steps to ensure safe exercise of choice, ensuring oversight through their State chapters.

The State must recognize and uphold the right to autonomy and decision- making in entering and leaving a marriage as a core fundamental human rights issue. The State must recognize the violations being committed against women to control their choice and decision-making in relation to entry into marriage, by families, communities and the State actors themselves.
14. The Marriage Law (Amendment) Bill, 2013 should be reviewed and discussed in a larger public forum. The Bill with its current provisions stands to create confusions and even greater acrimony in divorce proceedings, they also lack clarity on the division of property leaving the women at a vulnerable position.
15. The State must make institutional provisions and adequate resource investments (human, technical and financial) to ensure effectiveness of laws and programmatic intervention to support and uphold women's rights to autonomy and decision-making and to support women in the safe exercise of their choice.

The State must ensure effective implementation and usage of laws concerning women and marriage viz. the PWDVA 2005 , The Prohibition of Child Marriage Act, 2006, SMA 1954, Family Court Act 1987 and other legal provisions related to marriage, dissolution of marriage, property, maintenance, custody of children, adoption.

16. The State must make every effort to ensure respect for women's right to sexual autonomy and decision-making with various communities, by ensuring legal support, through reform, policy-efforts and programmatic interventions, through media and all other means.

17. The State must, in keeping with the spirit of equality and non-discrimination enshrined in the constitution, amend all laws, which undermine the agenda for gender equality within the private sphere.

18. The State must review the declaration to Art. 16(1) & (2) and withdraw it. It also must examine the impact of its declaration to Article 5 (a) and withdraw the same. The state must re-examine its self imposed limitation to complete and full compliance with the principles of CEDAW.

## END NOTES

<sup>1</sup>Reference: Rape and Honour Crimes: The NCRB Report 2012

<sup>2</sup>Section 366: Kidnapping, abducting or inducing woman to compel her marriage, etc. – Whoever kidnaps or abducts any woman with intention that she may be compelled, or knowing it to be likely that she will be forced or seduced to illicit intercourse shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine; and whoever by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punished as aforesaid.

<sup>3</sup>Section 368: Wrongfully concealing or keeping in confinement, kidnapped or abducted person: Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

<sup>4</sup>Reference :Rape and Honour Crimes: The NCRB Report 2012

<sup>5</sup>2006 (5) SCC 475

<sup>6</sup>AIR2001All254

<sup>7</sup>HABEAS CORPUS No. - 383 of 2010 Allahabad High Court, Lucknow Bench 14July,2010

<sup>8</sup>DB Habeas Corpus Petition No 151/2011 Rajasthan High Court, Jaipur Bench.

<sup>9</sup>AryaSamaj was a Hindu reform movement and historically propagated inter caste marriages. The rules framed by this body are not statutory rules.

<sup>10</sup>Avinash Vs. State of Karnataka and others, WP (HC) 67 /11 dt. 12.5.2011

<sup>11</sup>Shahanshah&AnrVs St. of Kerala , 2010 (1) ILR 296

<sup>12</sup>Jihad is an Islamic term for struggle - commonly used for struggle against non-believers

<sup>13</sup>Source :Acid attacks: A scar on India, Aljazeera, 24 January 2014

<sup>14</sup>Reference :Violence against married women in India—can the data tell us anything?,livemint, Wall Street Journal, 11th February 2013

<sup>15</sup>Section 375 of the IPC considers the forced sex in marriages as a crime only when the wife is below 15 years of age

<sup>16</sup>Pawan Kumar Mishra &Anr Vs. Govt. of NCT of Delhi &Anr, WP 748 /2009 Delhi High Court. Dated 8.4.2009

<sup>17</sup>Under Section164 of the Criminal Procedure Code, 1973 (CrPC)

<sup>18</sup> Govt. of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent.

<sup>19</sup> The Govt. of India declares though in principle it supports the principle of compulsory registration of marriages, it is not practical in a vast country like India, with its variety of customs, religions and level of literacy.

<sup>20</sup>AIR 2011 SC 1859

<sup>21</sup>2006 (6) SCALE 583

<sup>22</sup>KaurAnr Vs. State of Punjab and ors. Misc M-3694 of 2011 P&H High Court. Dt. 16.3.2011



**PART II  
CEDAW  
GENERAL  
RECOMMENDATIONS**

**GENERAL  
RECOMMENDATION 19  
VIOLENCE AGAINST  
WOMEN**

**Section - A  
VIOLENCE AGAINST  
WOMEN**

**Section - B  
SEXUAL VIOLENCE**

**CHAPTER 10**

**INDIA**

4th AND 5th  
NGO ALTERNATIVE REPORT  
ON CEDAW

# GENERAL RECOMMENDATION -19 VIOLENCE AGAINST WOMEN



## SECTION - A VIOLENCE AGAINST WOMEN

Swayam et.al

### 1. INTRODUCTION

CEDAW Articles 1, 2, 2(f), 3, 5, 10(c), 12, 14, 16

Women in India have suffered and continue to suffer the worst forms of violence, inequality, exploitation, oppression, and injustice, both within their homes and outside, before they are born until the time they die. Sex selective abortion, infanticide, denial of adequate nutrition and access to education and health care to the girl child, child marriage, sexual harassment in public places and the workplace, sexual abuse, acid attacks, rape, domestic violence, dowry related murders, trafficking, violence due to sexual orientation, being single, widowhood, old age, disability, and HIV infection, custodial violence (in jails, police stations, shelter homes, hospitals, etc.), 'honour killing' and rape during communal and caste conflicts are among some of the varied kinds of violence that women face. Women live with the threat or fear of violence throughout their lives.

Violence against women is an all-pervasive phenomenon and occurs among the rich, the poor and the middle class and cuts across every nationality, religion, caste, age, sexual orientation and race. It takes different forms including physical, sexual, psychological or emotional abuse and economic deprivation. Gender-based violence violates women's human rights and represents one of the greatest obstacles to their accessing and realising their fundamental rights as citizens, namely their right to dignity, right to equality, right to freedom, right to security, right to bodily integrity, right to education, right to livelihood, and their right to life.

Within and outside the family structure, women have unequal access to resources, opportunities and property and face violence when they try to challenge gender stereotypes, assert their individuality and choose to exercise their political, social or economic rights as individuals/citizens. The routine violation of these rights that women suffer in their homes, offices, in public places and State institutions, by their fathers, husbands, sons, relatives, friends, employers and state representatives are not recognised as human rights violations by the family, society or the state. In fact, these violations are viewed as personal problems that have to be sorted out at an individual level. The state adopts a welfare approach to violence against women rather than viewing it as a violation of women's rights and a public health issue that needs management.

According to the National Crime Records Bureau, between 2005-2012, crimes against women have risen at almost double the rate of crimes in general, whereas conviction rates for crimes against women are almost half that of total cognizable crimes. Between 2005-2012, the total cognisable crimes<sup>1</sup> under the Indian Penal Code (IPC) increased by 30%<sup>2</sup> whereas reported cases of crimes against women increased

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by 57%.<sup>3</sup> Similarly, conviction rates for crimes against women were only 21.3% as compared to 38.5% for total cognizable crimes (See Table 1). These figures clearly point to the fact that crimes against women are acceptable and treated with less importance than general crimes in our country.

**Table 1: Number/Percentage increase in violence against women compared to total cognizable ( IPC) Crimes in India and conviction rates in 2012**

Year	2005	2012	Percentage Increase in crimes against women between 2005-2012	Conviction rate in 2012
Total crimes against women	155,553	244,270	57%	21.3%
Total cognizable crimes under IPC	1822,602	2387,188	31%	38.5%

While there was a slight increase in conviction rates in some crimes against women between 2005-2008, conviction rates declined steadily from 2009-2012. See table 1A.<sup>4</sup>

**Table 1A: Percentage Conviction rates for year 2005-2012**

CRIMES AND YEAR	2005	2006	2007	2008	2009	2010	2011	2012	Percentage Reduction in conviction rates from 2008-2012
Cruelty by husband and relatives	19.2	21.9	20.9	22.4	19.8	19.1	20.2	15	7.4
Molestation	30.0	30.7	29.0	31.7	29.0	29.7	27.7	24	7.7
Sexual harassment	53.5	51.8	49.9	50.5	49.2	52.0	45.8	36.9	13.6
Rape	25.5	27.2	26.4	26.6	26.9	26.6	26.4	24.2	2.4
Dowry deaths	33.4	33.7	33.0	33.4	33.4	33.6	35.8	32.3	1.1

## 2. CRITICAL AREAS OF CONCERN

### A. DOMESTIC VIOLENCE

It seems like there is a war against women in their homes. Domestic Violence (DV) is widespread with over 35%<sup>5</sup> of all married and unmarried women between the ages of 15-49 experiencing it. Despite widespread violence against women in their homes, the Government of India has retained an exception to Article 5 and Article 16(1) of CEDAW because family and married life are still viewed as private despite laws to the contrary.

#### I. Violence against Married Women

Domestic Violence is increasing every year. Over a period of eight years, 2005-2012, torture of married women by their husband and his relatives increased by a whopping 83%. However, conviction rates for this stood at a mere 15% in 2012, even lower than the 19.2% in 2011. In 2012, 106,527 married women were tortured by their husband and his relatives.<sup>6</sup> (See Table 2)



Further, the percentage of married women murdered due to dowry (including dowry death, murder and culpable homicide due to dowry violence) increased by 24%.<sup>7</sup> (see table 2).

Table 2: Number/Percentage increase in Domestic Violence and Wife Murder between 2005-2012 and Conviction rates in 2012

Sl No	Crime Head	2005	2012	Percentage Increase between 2005-2012	Conviction rate in 2012
1	Torture by husband & his family members Sec 498A	58,319	106,527	83%	15%
2	Dowry Death (Murder) (u/s 304 B IPC)	6,787	8,233	21%	32.3%
3	Murder (u/s 302B) (due to Dowry)	1038	1458	40%	
4	Culpable Homicide (u/s 304/308) Motive Dowry	33	68	106	
	Total number of women murdered for dowry (2+3+4)	7858	9759	24%	

Apart from this, in 2012, 1894 women committed suicide due to dowry demands.<sup>8</sup> That women are most unsafe in their marital homes is clear from the fact that Domestic Violence against married women accounted for **48.3%**<sup>9</sup> of all crimes against women in 2012, ie almost half the crimes against women. Dowry related violence resulted in the murder/death of 11653<sup>10</sup> women in 2012, i.e. about 32 women were murdered or committed suicide due to dowry every day. This includes Dowry Death as well as other hidden statistics within Murder and Culpable Homicide and Suicide due to dowry demands. (see Table 3)

Table 3: Married women facing domestic violence as a percentage of total crimes against women in India

YEAR		2012	2012
Total crimes against women (IPC+SLL)			2,44,270
Domestic Violence against married women			
Torture by husband and relatives u/s Sec 498A		106527	
Dowry Death u/s 304B	8233		
Murder of wife due to dowry u/s 302	1458		
Culpable Homicide due to Dowry u/s 304/308	68		
Suicides due to dowry u/s 306	1894		
Total women murdered or dead due to dowry		11,653	
Total number of married women facing domestic violence			1,18,180
Percentage of married women facing domestic violence to all crimes against women			48.3%



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If we look at overall figures of murder and compare them with murder of wives due to dowry, we find that while murders have increased only by 4.08%, murder of wives has increased by 40.46% during the same time period,<sup>11</sup> almost 10 times higher than general murder. (See Table 4)

Table 4: General Murders compared to Murder of Wives.

YEAR	2005	2012	% increase between 2005-2012
Total Murders u/s 302	32719	34434	5.24%
Wife Murder (u/s 302) due to dowry	1038	1458	40.46%
Murders (Exclusive of Wife Murder u/s 302)	31681	32976	4.08%

The above represent reported cases of Marital violence only. However, the extent of violence is much larger as can be seen by the National Family Health Survey 3 (NFHS 3) conducted in 2005-06, which showed that 40% of married Indian women face violence of any form, physical, mental or sexual. It also showed that Marital Violence is so normalised that about 44% of women interviewed for the survey said that their husband had the right to beat them.

All these figures point to the fact that despite enactment of laws, both civil and criminal, to deal with violence against women in their homes, it continues with impunity since it is condoned by the family, society, police, judiciary and the state. Domestic violence occurs within the four walls of the home and is difficult to prove due to lack of witnesses, shoddy investigation, delay in courts and weak implementation of laws. Women are unable to leave violent situations due to lack of options, lack of quality services including legal services, shelter and livelihood options. The economic and social costs of domestic violence are very high and children remain the hidden victims of domestic violence.

The internalization of existing norms related to gender and sexuality, including the importance of the institution of marriage, impact how women are treated when they report cases of domestic violence. The attitude of State institutions towards the issue of domestic violence is one of supporting reconciliation so that the 'family' does not fall apart.

There is a widespread myth that women misuse these laws when the reality is that very few women approach the police/courts for redress. National Family Health Survey III indicates that while 35% of all women face violence, only 2% of them seek institutional intervention that includes local NGO's, women's organisations, family counselling centres, the police and the courts. This means that at present only a tiny percentage of women take recourse to laws let alone misuse them. Apart from lack of knowledge about laws, lack of family support, fear of harming family honour, and the inordinate time, harassment and physical and emotional stress, the expense involved in the court process is a great deterrent for women going to court.

### **ii. Violence by family and state when adult women choose their partners**

A significant manifestation of domestic violence is the curtailment of women's right to choice including the right to marry or not to marry. Often these cases involve violations inflicted by the family and community in the name of 'honour'.

“In many parts of India, couples continue to be murdered, tortured, hanged, nailed, humiliated or ostracised for defying parental authority and social norms and daring to undergo inter-caste and inter-religious marriages or relationships. Violence against couples is not restricted to a particular caste, to North India, or to rural communities alone, and cuts across different religious communities be they Hindu, Muslim or Sikh, and also across different classes in Indian society. What differs significantly is the degree of resistance, violence and criminality with which families react to these "love marriages" and relationships.

In 2006, the Supreme Court had ruled that there is no bar on inter-caste marriage under the Hindu

Marriage Act or any other law; and that anyone who harasses, threatens couples in inter-caste or inter-religious marriages will be prosecuted. But criminalisation of such behaviour does not seem to have much deterrence value. From the 2009 media reports on Uttar Pradesh, the Lucknow-based Association for Advocacy of Legal Initiatives (AALI) has found 70 incidents of 'honour killing' and 64 incidents of 'honour-related crimes' in this state alone. In Haryana, on an average there are 8-10 'honour crimes' or deaths reported every month in the media. It is perhaps the absence of statistical data together with the invisibility and lack of recognition of this specific type of violence that makes intervention difficult.

Ironically, criminal law, intended to protect women from forced marriages, is used against consenting couples. The natal family in consultation with the police and lawyers invoke laws on rape, abduction and kidnapping to criminalise love and frame the boy. According to the chief counsellor, National Commission for Women, almost half of the “kidnapping and abduction” charges filed by parents in “love cases” are false.

The assumption of the police and parents is that an adult woman is incapable of choosing her own partner — even though she can vote and decide the future of the country — and must therefore be coaxed, coerced or emotionally blackmailed to do her father's bidding. The police actively participate in maintaining orthodox beliefs in the name of upholding culture”.<sup>12</sup>

“The views of the authorities at various levels on the question of "honour" are not very different from that of the community. The State administrations are indifferent and partisan and the record of acquittals in such cases is very high. In fact, the only agency to have taken a serious view of the role that caste panchayats play has been the Rajasthan State Human Rights Commission, which has strongly advocated a control on all decisions of caste panchayats, especially those that go against constitutional rights.

But the rule has been that the dominant political parties in States where such tendencies are most prevalent have failed to challenge the unconstitutional dictates of caste panchayats. Even where couples attempted marriage under the Special Marriage Act, often it is seen that the number of registrations accepted are negligible. For instance, in Muzaffarnagar district, where the largest number of honour killings were reported, while 32 people had applied for registration of their marriage under the Act in 2003, only one was accepted. The rest were rejected on grounds of non-completion of procedure.

Those intervening in cases of gender based violence at present often do not have a sufficient understanding of attitudes of the family and community. Nor is there an understanding of the challenges of a situation that might compel the woman to become party to such a case, when in fact it is her right to choice that is being denied. One of the consequences is the limited ability on the part of those implementing the law, including NGOs, to distinguish cases of consent from non consent/violence. False cases of violence against women, that are filed by family members because they are protecting the 'honour' of the family and community, are often taken at face value. It is a sad irony that, as stated above, in cases of genuine non consent members of the police and judiciary are often unwilling to believe the woman”.<sup>13</sup>

### iii. Child Marriage

According United Nations Population Fund (UNFPA<sup>14</sup>) 47 per cent of women in India are married before the legal age of 18. Despite child marriage being illegal in India, the social acceptance of this practice is obvious from the fact that only 766 cases of such marriages were registered with the police during 2005–2012.<sup>15</sup>

Child marriage is a widespread practice in all the states of India with varying degrees of intensity, and approximately twenty-three million girls in India face this reality. An east-west corridor spanning six States—including Rajasthan, Madhya Pradesh, Uttar Pradesh, Bihar, Jharkhand and West Bengal—have the highest incidence of child marriage ranging from 51.9% to 68.2%. In each of these States, at least one in two currently married women in age group 20-24 years happens to be a child bride. While the country is growing at an average of eight per cent a year, child marriage is decreasing at less than one percentage point a year.<sup>16</sup>

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The major reason behind child marriage turning into a custom is the prevailing pressure of patriarchal values and institutions. This becomes clear from the fact that more than 90 per cent of the fathers, mothers, and elders consider 'marriage as essential for girls'. Such a concern is also related to reasons like 'fear about elopement' or 'concern for social security of girls'. Among other factors of child marriage, poverty, illiteracy, and lack of awareness are most important.<sup>17</sup>

Child marriage is more likely to occur among excluded/disadvantaged groups, in poor families, in rural and urban areas and among girls. Poverty and the fear of girls becoming sexually active before marriage thus bringing 'shame on the honour of the family', are the most common reasons for giving the girl child in marriage.

Child marriage violates the rights of children to education, health, life, freedom from violence and abuse. Child brides typically have to abandon their education after marriage and become pregnant. Maternal and child mortality is higher for girls aged 15–19 worldwide, and they are more at risk of facing domestic violence, sexual abuse and exploitation. Child marriage also negatively impacts the physical and mental health and development of girls.

Child marriage is a complex issue to deal with since it is multi-dimensional, rooted in gender inequality and has widespread social acceptance. Tackling child marriage requires addressing multiple issues at the same time including poverty, promoting attitudes that place value on the girl child, education (including sexuality education) and empowerment of girls.

“Achieving this goal requires structural changes at every level, including framing appropriate laws and establishing mechanisms to monitor and enforce them. The new law to prohibit child marriage is largely ineffective because it neither declares such marriage illegal nor is it backed by concerned and focussed action. In the Indian context, child marriage cannot be prevented through legal actions after the marriage. Consequently, any successful strategy of child marriage prevention must, therefore, utilise the social capital and engage the key stakeholders in the community to evolve an alternative strategy through a combination of prevention and protection”.<sup>18</sup>

### **iv. Violence against women on the basis of non-conforming sexuality**

While it is difficult to provide statistical data in this area as women or girls in same sex relationships often remain invisible to the public and media, violence against women in same sex relationships has increased. Support groups/organisations for women in same sex relationships are getting more and more requests for intervention from aggrieved persons. Same sex loving women, especially after 2009, 2nd July, are coming out with their choice giving themselves more opportunity to live a fulfilling life but they become more vulnerable as target of violence as well due to increased visibility.

Suicides of women in lesbian relationships are being reported members committed suicide and some case studies are given below:

#### **CASE STUDY: 1**

A young girl, lost both her parents at 3, was living with her uncle's family along with her own elder brother. At 17 she fell in love with another girl and as expected her cousin brother and her own brother both came to know about it. How disgraceful, they thought. They decided to teach her a lesson, actually many lessons, as they both raped her repeatedly just to purify her soul and bring her back to the sacred path of heterosexuality. But the girl got their intention all wrong and plunged into severe depression; she was practically an orphan, yet to complete her studies, dependant on the uncle and her own brother, who happened to be the only family left to her. Her girlfriend was as young as she was and not particularly equipped to handle the complexities of this situation. She decided to marry, she may have thought that marrying a man would give her the stability, peace (?) and family honour. Her family was happy, her girl friend was sad. We do not know how she exactly felt as we never met her after her marriage. She died within four months of marriage, supposedly by hanging herself, a young girl of 23.

## CASE STUDY: 2

S/he consumed enough sleeping pills to make sure that s/he won't have to wake up again to face this world! Her/his world meant the family, the neighbourhood friends and the girlfriend, all of whom participated in the violence in some way or other. A Female to Male trans person who transgressed gender norms and threatened the neighbourhood boys by 'winning' the most beautiful belle in the locality, had too much life still left to survive emotional blackmailing, public humiliation, relational trauma, mob violence and overdose of sleeping pills. S/he gave us a detailed account of how her/his widowed mother begged her to dress and act like a woman, how the neighbourhood pals started perceiving him as a threat, how her/his girlfriend's family members gathered local goons to 'teach the pervert a lesson', how s/he felt lost, dejected, frustrated, purposeless and thought of suicide as the only answer to all her/his questions. It was after this incident s/he decided to join a support group in 2005.

## CASE STUDY: 3

The girl was forced to go to a temple and recite hymns to get rid of her evil same-sex partner. After some days when her family members realized that worshipping could avail nothing, they stopped financial support for her education and sent their daughter to her maternal uncle's house, far away from the city of Kolkata where her maternal uncle attempted to rape her. She requested her father to take her back home but was refused. Probably her father thought that it was a cock and bull story made up by her to come back to her same-sex lover. After all, the person was her maternal uncle, therefore, a respectable man! She then fled from her maternal uncle's house, collecting her passage money by selling her used clothes and came back just to know that she was disowned by her family. Her address then became a women's shelter 'Home' where she fell ill severely. When she was taken to the hospital the 'Home' authority informed her parents, who refused to come to even see her. The family completely abandoned their sick child because of her sexual orientation; a lost daughter was more acceptable than a lesbian one.

Women/girls in same sex relationship are not recognised by the Government as a special gender-sexual category. Violence against women is considered in three broad categories, natal family violence, marital family violence and societal violence. And every act of violence can have physical and/or psychological implications. Same sex loving women has access to justice to the gendered face of violence happening in the natal, marital (some women are married in this category) and societal violence as women. As women they have space, but in State understanding all women are heterosexual. Therefore every law and violence redressal system is developed and functioning keeping a heterosexual woman in mind.

Violence based on sexual orientation, specially meted out to women in same sex relationships, is not addressed by any State Policy. There is no special law protecting such violence and no redressal system. Violence within same sex relationship is another completely ignored space, since the couple-dom does not have any positive or negative legal connotation. By contrast, MSM (men having sex with men) has a space for HIV/AIDS intervention, trans-women (male to female trans persons) are recognised as a category and are therefore protected by Government intervention plans. Women and girls' same sex orientation, however, is considered to be just a behavioural pattern, which in the State Policies has no special implications.<sup>19</sup>

## B. ACID ATTACKS

Acid violence is a form of gender-based violence as defined by the Convention on Elimination of Discrimination against Women (CEDAW) and has been on the increase in India.

The Indian Crime Bureau does not maintain any separate statistics on acid attacks as there has been no law to deal with these attacks. Only recently, the Criminal Law Amendment Act passed in 2013 has added sections to deal with acid related violence. While the law has brought in sections to deal with attempted/actual acid attacks, it does not deal with threats of such attacks.

A Cornell Law School's Avon Center for Women & Justice study which examined a database of



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newspapers from January 2002 to December 2010 cited 153 acid attack cases during the time period. In 2004 while there were 10 attacks reported by newspapers, in 2010 there were 27. This suggests that the number of attacks is increasing, but it may also be that there are more attacks being reported.

Reasons behind acid attacks can vary, but in India, the major motive for attacks is tied to the notion that women are possessions - once a man has decided that a woman is his but she rejects his marriage or sex proposal, the man disfigures her to prevent her from being with anyone else.

For victims, finding adequate medical care and the expenses related to it pose a major challenge. Acid violence has devastating health consequences for victims, including immense physical pain, blindness and other loss of physical functioning, loss of facial features and severe mental suffering. A case study is given below.

### Case study: Shanti (Mysore, India)

Shanti married her husband when she was 14 years old. Her husband abused her and continuously harassed her and her family for additional dowry, even though she provided income for the family and gave birth to two children. After 14 years of her husband's abuse, she and her children moved out of the marital home. Her husband apologized for his behaviour, promised to change, and persuaded her to return to him. When she returned, however, her husband began harassing her for dowry again. Shanti felt that her husband was “troubled” by the fact that she had been living independently of him. On the morning of October 10, 2001, when Shanti brought her husband his morning cup of coffee, he threw acid at her, covering her face and neck.

First, Shanti was taken to a local government hospital. The hospital refused to treat Shanti because her injuries were related to a “police case” and the hospital did not want to get involved in a legal matter. She then went to another hospital where she stayed for 19 days and received only minimal “treatment”—medical staff rubbed ointments on her burn wounds that caused further damage. Only after a private hospital admitted her did a surgeon remove the burned skin. In order to finance her treatment at the private hospital, Shanti had to sell many pieces of her jewelry. As a consequence of the attack, Shanti lost vision in one eye. Acid also dissolved one of her earlobes, seeped into her inner ears, and left her completely deaf in one ear.

The police came to speak to Shanti one week after the attack; however, her trial began three years later. The authorities charged her husband under Section 326 of the Indian Penal Code for “voluntarily causing grievous hurt by dangerous weapons or means.” When Shanti appeared in court, the judge told her to cover her face because he could not bear to look at her. The court ultimately convicted her husband and sentenced him to 6 years in prison and a Rs. 8,000 (\$177 USD) fine.

The attack drastically altered the socio-economic standing of Shanti's family. Shanti could no longer rent a home in a middle-class neighbourhood. She applied for government subsidized housing but did not receive an answer from the government. Although she received government compensation of Rs. 2 lakhs (Rs. 200,000 or \$4,522 USD), she remains deeply in debt, and her monthly medical expenses continue to exceed Rs. 1,000 (\$22 USD). She has had trouble maintaining steady employment.

### C. STATE VIOLENCE IN REPRESSION OF DISSENT/EVICTION/DISPLACEMENT

- During the last five years eviction has become one of the burning problems in the country and thousands of people have been evicted from cities and rural areas. Evictions cause immense sufferings to all those who are evicted, but the women suffer most from eviction.
- The immediate impact of eviction on women's health is that they are thrown out of their shelter and are forced to live in the open. Consequently they are exposed to sun, rain and all sorts of infections. Moreover, they are forced into a situation where they lose their privacy and have to bathe, urinate and defecate in the open. This condition also exposes them to sexual harassment.

- Because they lose their shelters, so the evictees are forced to look for new shelters. They can get new shelters only by paying higher rents than the earlier ones. This forces them to cut their expenses. The first item that gets the axe is the food of the women and children. As a result the women's health is seriously affected.
- Eviction results in loss of property, loss of jobs, loss of workdays
- After eviction even those women who have just become mothers are forced to live in the open with their newborn infants. Consequently both the mothers and their newborn infants are exposed to infections. There are number of instances when either the mother or the newborn baby has died immediately after an eviction.
- Due to stress, trauma, and tension of forced eviction the women of evicted settlement suffer from the problems of premature delivery, early labour and miscarriages
- A large number of women of these settlements are deserted single women living with their children. These marginalized women are being further marginalized by the eviction process.<sup>20</sup>

## D. CONSTITUTIONAL GUARANTEES, LEGAL PROTECTION AND GOVERNMENT INITIATIVES

### i. Constitutional guarantees

The principle of gender equality is firmly embodied in The Constitution of India, which provides not only for no discrimination on grounds of sex and equality between the sexes, but also empowers the state to take affirmative action in favour of women and children. Article 14 of the Constitution of India provides for equality before law and equal protection under the law, Article 15 prohibits discrimination on the grounds of sex, religion, caste, race, place of birth and Art 15 (3) empowers the State to make special provisions for women and children to combat the systemic inequality and subordination that they have faced traditionally. Art 21 provides for Protection of life and personal liberty, Art 51 provides for renouncing practices that are derogatory to the dignity of women. In theory therefore, equality and freedom from discrimination and violence is the right of every woman in our country.

### ii. Legal protections and Government initiatives

The government has passed many laws to protect women's rights in response to the demands and struggles of the women's movement.

The Dowry Prohibition Act, 1961 was introduced to prohibit the giving and taking of dowry. Section 304B was introduced into the Indian Penal Code to address murders of recently married women and Section 498A was added to deal with the cruelty they faced by their husband and his relatives. Further, the Protection of Women from Domestic Violence Act, (PWDVA, 2005) a Civil Law to deal with Domestic Violence was passed in 2005. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2012 was passed to address sexual harassment of women at the workplace and The Criminal Law Amendment Act 2013 has recently been passed to address lacunae in the laws and procedures related to rape and other forms of sexual violence and includes other forms of violence like acid attacks and stripping. The Prohibition of Child Marriages Act, 2006 has been introduced to prevent child marriages. A Bill on Marital Property Rights has been passed by the Rajya Sabha but needs debate and discussion.

### iii. CEDAW COMMITTEE CONCLUDING COMMENTS AND STATE RESPONSE

The CEDAW Committee in its concluding comments to India's second and third periodic reports (2007) had highlighted some of these issues and urged the State Party as follows:

- “to withdraw its reservations to article 5 (a) and 16 (1) of the Convention, which stand in contradiction not only to the overall spirit and aim of the Convention, but also to the State party's existing constitutional guarantees of equality and non-discrimination.”

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The Government of India has not yet withdrawn its reservations to the above articles. These stand in the way of preventing discrimination, inequality and violence against women, particularly in the domestic sphere. These reservations must be withdrawn.

ii) . . ., the Committee recommends that the State party create formal links between the National Commission for Women and the various State Commissions for Women.

The National and State Commissions for Women have been ineffective in addressing violence against women. Members are drawn from political parties and many of them have no understanding or experience of working on women's issues. They also do not have non partisan civil society or women's groups participation. These commissions have been given lesser powers than the Human Rights Commissions and only have the power to make recommendations. There are also no formal links between the National and State Commissions for Women. In many states they are defunct or non functional. Hence requisite reforms must be carried out to empower these commissions.

iii) . . . urges the State party to provide free legal services to poor and marginalized women in rural and tribal areas in addition to urban areas and to monitor the quality and impact of such services in regard to ensuring women's access to justice.

Although there are provisions for free legal aid services for women through the State Legal Aid Services Authorities, there are many problems related to this which are enumerated below:

1. Poor quality of legal aid services provided by legal aid lawyers. Legal aid lawyers are mostly those who do not get any other work, incompetent or disinterested in ensuring rights of their clients. They are poorly paid by the State and demand payment from women to make up for it. Hence women do not get the representation they deserve.
2. The State and District Legal Services Authority set up to provide legal services to the poor and marginalised, pretty much stick to operating within the city, its outskirts and the big district towns. Our experience shows they are reluctant to make inroads into less accessible and more marginal rural and tribal areas. Beside sit is very difficult to make them accountable for their acts.

Thus Legal Services Authorities across the country must be made accessible, effective and accountable to provide quality free legal aid for women facing violence. Competent lawyers, who are well paid must represent women and legal aid lawyers must be made accountable for their actions.

iv) . . . calls upon the State party to develop, in consultation with women's groups, a coordinated and comprehensive plan to combat all forms of violence against women taking a life cycle approach.

Although the Government holds consultations with some women's groups and organizations on the ground prior to formulating the laws and policies, they ultimately do not reflect the concerns of the women's groups as their recommendations are incorporated selectively, thus weakening the laws and policies and leaving many loopholes. There is no comprehensive prevention plan with sufficient financial and human resources to prevent violence against women. This plan should be made in consultation with all stakeholders and sufficient resources put aside for it.

v) It urges the State party to take steps in partnership with states and union territories to fully and consistently implement and enforce the Domestic Violence Act and to ensure that all women victims of domestic violence, including scheduled caste, scheduled tribe, backward class and minority women, are able to benefit from the legislative framework and support systems in place and that perpetrators are effectively prosecuted under the Penal Code and adequately punished.

The Protection of Women from Domestic Violence Act, 2005 (PWDVA, 2005) is quite comprehensive, but the problem lies with its implementation. While it seeks to provide immediate relief to women in cases of domestic violence, this does not translate into reality. There is a wide gap between the law on paper and in practice. The problems with the Act and our recommendations are given below.



## Problems with the Protection of Women from Domestic Violence Act, 2005 (PWDVA, 2005)

### **1. Lack of State Commitment to Implement Act – No Budgetary Allocation made**

Our State has shown good intention by passing laws but totally lacks in commitment to implement the laws. This is clear from the fact that the Protection of Women from Domestic Violence Act, 2005, was passed without any budgetary allocation for its implementation. Budgetary allocation is key to successful implementation of any law and shows the priority the State gives to the issue. Apart from a couple of States, most states have allocated very small sums for the implementation of the Act. Paltry resource allocations have resulted in the very core of the Act being affected since the very few services envisaged under the Act being made available to women.

### **2. Lack of sufficient and independent Protection Officers**

Due to lack of resources, in most states, no independent protection officers (PO's) are appointed and existing social welfare officers have been given the job of Protection Officers along with their already existing portfolios. A majority have no clue how to carry out the function of the PO and are too overburdened to be able to do so anyway. In a few States, a handful of independent PO's were appointed under the Act but were not provided with any infrastructure, funds, support staff or training to help them carry out their duties. There is a lack of awareness amongst stakeholders and general public as to who the PO is and how to reach them.

### **3. Delay in providing relief to women**

The Act was supposed to provide quick relief to women in abusive situations and provided for cases to be disposed off within 2 months. However, despite providing for time bound trials and orders, interim orders take over a year to be passed. Final orders can take close to three to four years. Delays are due to vacant and overburdened courts, lawyers who repeatedly delay proceedings and judges who are insensitive and do not understand the spirit of the law. Implementation of orders is also a major problem. Due to the lack of clarity and sensitivity amongst judges about the spirit and purpose of the Act, there is no commonality in the way cases are being handled by different courts. As a result, the outcome of the case depends totally on the view of the magistrate,

### **4. Lack of quality, effective and efficient Legal Aid Services**

Under the Act, Free Legal Aid Services are supposed to be provided to every woman who needs it through the National Legal Services Authority or State Legal Services Authority. However, most legal aid lawyers are incompetent, unaware of PWDVA, 2005, disinclined to use it and continue to use older laws as they are more comfortable with them. This results in women having to file numerous cases which increase the time and money they spend in court.

### **5. Lack of awareness of Police, Shelter homes, Health Care providers, Legal Aid Services, Service Providers about their role under PWDVA, 2005**

There is also lack of clarity amongst all stakeholders including PO's, Police, Service Providers, Health Care Provides, Shelter homes about the purpose and content of the Act and their roles under the Act. For instance, the police see this as a Civil Act where they do not have a role to play and are reluctant to help women, the PO's or the service providers. The health services do not even know that they are service providers under the Act.

### **6. Lack of public awareness about Act**

The State has not made much effort to publicise the Act and as a result women in general are unaware of Act.

### **7. Lack of co-ordination between stakeholders**

There is no coordination between them because no mechanism has been set up between the stakeholders to ensure coordination between them. Magistrates are not aware who the service providers or the counsellors are and hence there is little referral to them. PO's also do not refer women to service providers. Service providers often work independent of PO's.



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### 8. No monitoring body set up by State

The law provides for multi-agency bodies including representatives from Law Ministry, WCD, Social Welfare Dept, police, judges, lawyers, service providers required to monitor the progress of the Act. These bodies have not yet been set up

### 9. No special provisions for women with disability

The law does not have any separate provisions to help women with disability to access and get the benefit of the law.

As a result of these problems, women are not getting the full benefit of the law and the whole purpose of coordinated and holistic services for women is lost. It is therefore important that the Indian State takes immediate and urgent steps ensure that all legislations to address domestic violence are effectively implemented.

#### Recommendations to ensure effective implementation of PWDVA, 2005

1. The State must provide sufficient funds for implementation of PWDVA, 2005. Women's groups and National Commission of Women had proposed a budget of 1158 crores a year for the implementation of the Act. The Government provided for only Rs 20 crores in 12-13 in the budget of the Ministry of Women and Child. The funds must ensure provision of sufficient number of Protection officers, Service Providers as well as all the services including shelter, medical treatment and other services provided under the Act.
2. The State must organise compulsory regular trainings about the purpose and content of the law, role of stakeholders under the law as well as sensitization trainings on gender, violence against women, disability, and human rights for central /state government officers, police, judiciary, Protection officers, Service providers, lawyers, security forces and medical professionals. Special modules for training each stakeholder should be developed by the State in collaboration with women and human rights groups. The trainings should be for a minimum of 5 days with regular refresher trainings.
3. A multi-agency coordination mechanism must be formed to ensure effective co-ordination between all the agencies/stakeholders providing services to women so that women get the best possible support and there is convergence of services and schemes.
4. Service Providers (SP's) - The State must lay down clear cut guidelines on selection of and expectations from SP's, monetary payment for their services and monitor of their work regularly.
5. The State must ensure wide publicity of the Act on television, radio, print media at regular intervals so that women know about their rights under the Act and how to access PO's and other stakeholders
6. Protocols for the various ministries/stakeholders concerned with the delivery of services to women under this Act including the courts must be prepared and put in place.
7. A Government funded monitoring mechanism must be set up to monitor the implementation of the Act at the District, State and national levels.
8. Special Provisions must be made so that women with disability are able to access and get the benefit of the law.

(vi) It recommends that public officials, especially law enforcement officials, the judiciary, health-care providers and social workers, are fully sensitized to all forms of violence against women, including domestic violence.

Patriarchal attitudes of the police, lawyers and judges remain a major obstacle in women's access to justice. Disbelief, judgmental and moralistic attitudes related to women's mobility and autonomy, 'family honour', gender and sexuality, prioritization of the integrity of marriage and the family rather than the interests and rights of the woman continue to impede access the law and justice.

(vii) . . . recommends that the State party amend the Special Marriage Act, in the light of article 16 of the Convention and the Committee's general recommendation 21 on equality in marriage and family

relations, to give women equal rights to property accumulated during marriage.

Under Section 19 of The Special Marriages Act, 1954 a member of an undivided Hindu family who marries under this act has to forgo her right to family property. This provision leads to unequal treatment of Hindu women who marry or register their marriage under the SMA, at the hands of the law, when it comes to claiming their right of inheritance. This section has not yet been amended.

At present, women in India no right to property acquired during the marriage, which usually stands in the name of the husband even if the wife has contributed towards its purchase. This results in women being denied any security in case the marriage breaks up particularly after a long time.

The Marriage Law (Amendment) Bill, 2013, which has already been passed by the upper house of the Parliament, entails two critical issues i.e. irretrievable breakdown of a marriage and division of property at the time of divorce. However it was formulated without widespread discussions and debates amongst key stakeholders including legal experts, academicians, women rights and legal activists. Given the ambiguity and non-transparency around such a crucial legal reform, it becomes critical that the bill is discussed at a wider level before being passed.

Despite the Hindu Succession (Amendment) Act 2005, Hindu daughters are still unable to claim/demand their share of property from their natal family due to family and social pressures and the fear of breaking family ties.

Marital rape is not recognised as a crime and despite demands for recognition of marital rape as a crime. The State needs to amend the law to include marital rape.

Although the Dowry Prohibition Act has been passed, it is ineffective since both the giver and taker of dowry are penalised – hence no one reports. Besides, there is no awareness about who is the Dowry Prohibition officer under this Act and usually this is an added responsibility for a person who already has a full time position.

#### **4. CHALLENGES AND GAPS IN WOMEN'S ACCESS TO JUSTICE**

While laws and policies to address violence against women have been passed the biggest problem lies with their formulation and implementation on the ground. There are insufficient resources, infrastructure, awareness, sensitisation and access, all of which prevent women from realising their rights. In the light of the above concluding comments, we would like to highlight the obstacles faced by women in accessing justice.

##### **A. LACK OF RESOURCES, LACK OF ACCESS TO RIGHTS AND BACKLASH**

###### **i. Lack of resources for implementation of laws**

Budgetary allocation for ensuring implementation of laws and compensation schemes is minimal and highly insufficient. Hence, although the laws provide for certain services for women, in actual practice women have little access to them as they remain mainly on paper.

###### **ii. Lack of women's access to information about their rights**

Women lack of access to information on their rights and protections from violence under the law as State does not take enough initiative to create widespread public awareness about them.

Similarly, police officers, lawyers, judges and staff at the sub-division and block levels are often not aware of the new laws related to violence against women including the Protection of Women from Domestic Violence Act, 2005, The Criminal law Amendment Act 2013 amongst others. The same applies to panchayat pradhans, ICDS supervisors and health workers - all of them are very important links between the Government and women at the margins.

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### **iii. Dilution of criminal laws related to domestic violence - Backlash**

A backlash has also begun with men's groups and the Government trying to roll back on some of the laws. For instance, some states like Uttar Pradesh, Delhi, Maharashtra and others have diluted the criminal section 498A dealing with Domestic Violence. Others have made it a bailable offence. In Delhi and UP, there is a police order that says that when a woman wishes to lodge a criminal case under 498A of the IPC, the police must not do so immediately. Instead, they must send the woman to a mediation centre for 'reconciliation', often without adequate consideration being given to her interests. This usually means encouraging the survivor of violence to return to the abusive husband. Only when the case fails to compromise do the police lodge a criminal case. Similarly, despite Section 498A being a serious cognizable offence, the Mumbai Police are given directions to not immediately file an FIR (criminal case) but to intervene and investigate before doing so. Hence the state itself is trying to mediate violence against women.

### **B. POLICE**

#### **i. Patriarchal attitudes, women blamed for violence, encouraged to adjust.**

The police play a vital role in determining the outcome of cases of violence against women. The outcome is dependent on the attitudes of individual officers with regard to crimes against women. By and large, complaints by women are not taken seriously by police officers and crimes against women are viewed as less important than other crimes. Women are disbelieved and blamed for the violence they face. A majority of them consider domestic violence a 'family problem', which should be sorted at home or as a matter of shame that should not be brought to light. Women are discouraged from lodging complaints and are encouraged to put up with violence and try and sort the matter 'amicably'. This attitude is reflected in the way cases are handled and more often than not, women do not get justice.

#### **ii. Refusal to register complaints, questioning women's character**

Further, women who report violence to the police also face the following obstacles: reluctance or refusal to register complaints; questioning woman's character no follow up of General Diaries; reluctance to register criminal cases especially if there are no "serious physical injuries;" delay in framing charges resulting in the acquittal of the accused; reluctance to arrest the accused even where a warrant has been issued; and lack of expertise, motivation and interest in collecting evidence, examining witnesses and collecting proof while following up a case.

#### **iii. Court related issues**

- a. Getting Justice – a Lengthy and Expensive process- The process of getting justice through the legal system is extremely lengthy and very expensive for women. It takes years before an order is issued. Even after the order is issued, women spend years trying to get the order implemented.
- b. Bribery and corruption are rampant in the judicial system. Women have to pay to get any information on their cases and are often mistreated taken advantage by their lawyers and court officials.
- c. Lawyers and court personnel are by and large insensitive to women's needs and lawyers most often neither explain the progress of the case to women, nor give them copies of their petitions. Hence women are mostly unaware of the progress of their case and have to rely totally on their lawyers.
- d. Attitudes of judges are also patriarchal and women are encouraged to forgive and forget especially in cases of domestic violence. Family court counselors and judges subscribe to the view that the family must be saved at all costs. The Family Court Act also states this and women are pressured to go back to violent situations and homes.
- e. In criminal cases against women, the Public Prosecutors (PP) are not interested in the case in the way that the defence lawyers are. They are paid very poorly and in most cases do not take any interest in fighting the case. Defence lawyers on the other hand are very highly paid. Although a

de facto lawyer can be appointed he/she is not allowed to fight the case on the woman's behalf. He/she can only assist the PP. If the PP is biased then he/she cannot do much. Further it seems as though PP's are not accountable to anyone for their actions.

- f. Lack of courts at the sub-division level makes it extremely difficult for women from remote areas in taking recourse to law. For a woman below the poverty line or marginally above it, from a geographically and economically isolated place, it becomes impossible to travel four-five hours by land and water to reach the district Court for every single filing of petitions and hearings. A sub-divisional court at would make it possible for them to seek justice in cases of violence.

#### **iv. Health Sector - the weakest link in the Response chain**

Violence against women is still not recognized as a public health issue in India. Despite the fact that often the first place a woman subjected to violence will access is the closest health centre or hospital, the health services response is probably the weakest link in the chain of services to women. There is no attempt to find out if the injuries or complications a woman is facing is due to violence or not. Health professionals are also not trained to properly record the medical history of a woman facing violence. In our experience, they are even reluctant to take the dying declaration of women with burn injuries.

The health impact of violence against women - both in the short and long term, physical and psychological - are well established as serious health concerns. However, the linkages between gender, sexuality, violence and health and the role of the health system in particular, in prevention of and responding to survivors of violence, are still very nascent in India. Given this, not all those experiencing violence directly seek health care; nevertheless, the health care system, is often amongst the first points of contact providing an opportunity away from the abuse and violence, to access health care and other necessary support.

The recognition of the role of the health care system in GBV prevention and provision of therapeutic care, psychosocial support and medico-legal response continues to be largely restricted to non partner sexual violence. The State has very recently formulated guidelines and protocols for medico-legal care for survivors / victims of sexual violence, which is a welcoming step towards enhanced response by the health system. Commitment of resources must be made to operationalise these protocols.

The Protection of Women from Domestic Violence Act (PWDVA) includes the health sector in provision of health care and services to survivors of violence. Consequently all government hospitals are supposed to provide free services to domestic violence survivors. However, most of them are unaware of their role under the Act and do not implement the provisions under the Act.

#### **v. Government Family Counselling Centres prioritise family over women -encourage women to go back to abusive situations**

Government Family Counselling Centres have been set up to provide counselling services to women. However, these mostly run on the understanding that the family comes first and the effort is to try and arrange a compromise despite the woman undergoing violence. In many instances, women feel pressured to go back to abusive situations, with no precautions to ensure their safety and security.

#### **vi. Lack of sufficient and quality Shelter homes**

Women remain trapped in violent situations because finding shelter is a major obstacle. Shelter homes are also few and far between and the quality of services provided by these homes leave much to be desired. As a result many women choose not to go to the homes.

Furthermore, numerous government policies make it nearly impossible for certain women to take shelter. These include: government rules prohibiting married women from staying in working women's hostels; rules prohibiting women from keeping their children with them; prohibitions in short stay



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homes preventing women from working; government policies of informing husbands that their wives are residing in shelter homes, creating a major security problem for women. Furthermore, single women in crisis situations, whether unmarried, separated, widowed or divorced with or without children find it impossible to rent accommodation. Additionally, these homes are not accessible making it impossible for women with disability to use them.

While shelter homes are supposed to help women become economically independent, most of them provide vocational training which does not translate into jobs or businesses which can sustain women. Hence it becomes difficult for them to move out and live independently.

There are presently 631 shelter homes for the entire country and many of them do not exist except on paper. There is no monitoring of these homes and some have been in the news for the sexual exploitation of women within the home. In 2012, a mentally ill woman was raped and murdered inside a government-funded shelter home in West Bengal. She was not the only one as the police found the bodies of two other women, who had been missing from the same home from another district. See report below:

West Bengal: Woman raped, buried in shelter home

Priyanka Gupta, CNN-IBN | Updated Jul 19, 2012 at 08:42pm IST

Kolkata: In a shocking incident, a mentally ill woman has been allegedly raped and murdered inside a government-funded shelter home in West Bengal. The state CID has taken over the probe and is unearthing remains of more bodies of girls which have been illegally disposed. As many as 10 people have been arrested in the case.

The body of Gudiya, the 32-year-old mentally ill woman, was found buried inside the shelter in Hoogly. She was allegedly raped and murdered.

But what's more shocking is that Gudiya is not the only one. The police have also found the bodies of two other women, who had been missing since May, from Burdwan.

The women say they used to live worse than animals with no food, no clothes and no medical treatment. "We would starve most of the times. They wouldn't even give us proper clothes. We were going through hell," said inmate Deepa Das.

Even after being rescued, they have had no relief. The women, who need treatment, have now been housed with destitute.

The home of horrors of the NGO was also funded by the Ministry of Social Justice and Empowerment. The big question is why the authorities didn't do adequate follow ups to see where the funds are going and check what is happening to the defenceless mentally ill women who needed their protection most.

The Ministry of Women and Child is proposing a new scheme whereby one shelter home will be set up in each district. These homes will accommodate women in need of shelter due to a variety of reasons. This scheme has a lot of problems including insufficient resources to provide quality food and services to women and allowing women facing domestic violence to stay only for a year. Further, women between the ages of 25-35 and their children will be entitled only to accommodation after six months and will have to provide for their own expenses through their own resources. This is very problematic as it takes time for women to become skilled and financially independent, and six months to a year is highly unrealistic.

### **vii. Lack of Coordination between Government agencies**

Women subjected to violence need a coordinated set of services to help them regain control over their lives. These include counselling, police intervention, legal support, health services, shelter, vocational/entrepreneurship training and employment. However, there is no coordination between these services and women lack information and access to them.

All these clearly show the reluctance of the government to create a holistic and unequivocal legal framework for prosecution, redress and compensation for violence against women.

## 5. RECOMMENDATIONS

### A. SUFFICIENT BUDGETARY ALLOCATIONS FOR IMPLEMENTATION OF LAWS MUST BE MADE

Every law that the State has passed must be accompanied by a budgetary provision to ensure that infrastructure required under the provisions of the law is set up. Besides, sufficient resources both human and financial must be allocated to provide sufficient and quality support services to women.

### B. REGULAR TRAININGS ON GENDER SENSITIZATION, DISABILITY, SEXUALITY AND HUMAN RIGHTS TRAINING AND PROTOCOLS FOR BEHAVIOUR MUST BE PROVIDED FOR ALL STATE OFFICIALS AND STAKEHOLDERS

- i) The State must provide for regular and extensive gender sensitization, disability, sexuality and human rights training to state officials including police, health practitioners, judges, lawyers, public prosecutors, court officials, protection officers and service providers at all levels.
- ii) The state must also provide training on protocols set for all stakeholders particularly the police, health professionals, judges, and service providers.
- iii) The trainings must be designed in consultation with experts and women's organisations working on these issues, and other stakeholders. The duration of these trainings should be a minimum of five days with follow up refresher trainings.

### C. HOLISTIC, QUALITY, SUFFICIENT, ACCESSIBLE, CO-ORDINATED SUPPORT SERVICES MUST BE PROVIDED

The state must ensure sufficient and quality support services for women including counselling, legal aid, police intervention, shelter, vocational/entrepreneurship training, employment and ensure coordination between all the stakeholders involved. A convergence of all government services must be ensured. A wider range of choices based on women's needs and interests offered to the survivor of violence (other than reconciliation).

### D. WOMEN'S ACCESS TO JUSTICE MUST BE ENHANCED THROUGH PUBLIC CAMPAIGNS HIGHLIGHTING WOMEN'S RIGHTS UNDER LAWS AND SCHEMES

The State must make conscious efforts to make more women aware not only of their rights but also different laws, government policies, schemes and programmes so that they can enjoy benefits of the same.

It must ensure greater access to justice for all survivors of violence, including those who are currently excluded because they are perceived breaking existing norms related to gender and sexuality.

The approach to addressing violence against women which is currently being informed by a particular social framework that has a focus on the family and marriage must be altered towards a greater focus on rights, democratization of the institution of the family.

### E. PREVENTION OF VAW THROUGH PUBLIC EDUCATION CAMPAIGNS AND THROUGH THE EDUCATIONAL SYSTEM

The government must focus on prevention of violence against women through

- 1) Widespread Public Education Campaigns through the print, electronic media and other audio-visual media to promote gender equality amongst the general public and extensive awareness of existing laws related to violence against women.
- 2) Addressing Gender Equality through the Educational system, ensuring textbooks promote gender equality and any textbooks that stereotype or undermine women are revised.

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### F. POLICE REFORMS MUST BE INSTITUTED

1. Standard operating protocols for the police when dealing with cases of violence against women must be outlined including
  - i) Behavioural protocols
  - ii) Recording/Investigation/Medical protocols
2. There must be a Penalty for officers not following protocol. Sec 166A of the Criminal Law Amendment Act 2013, must be extended to include Sec 498A whereby police officers are liable to punishment for not recording cases of DV.
3. Regular gender sensitization, disability and human rights training must be provided to police officers at all level to help them understand the realities and problems of women survivors of violence.
4. Officers must be motivated and trained properly to investigate and follow-up cases.
5. Law and order duties of police officers should be separated from investigation. A special cadre of police officers who are trained in investigation and forensics must be created for crimes against women to ensure evidence is collected properly, charge-sheets are effective so that convictions can be made.
6. A 24 hour National help-line for Women that provides immediate response and refers women to the different stakeholders under the Act must be set up.

### G. LEGAL INTERVENTIONS

1. The State must ensure all vacant court positions are filled.
2. The number of courts must be increased particularly at sub divisional levels to reduce delays and increase access so that women are able to get speedy justice.
3. Time bound trials must be ensured. Courts must give quick dates and restrict the number of times the other party can ask for a date.
4. Victim Witness protection programmes must be initiated
5. A forum should be formed both at District and High Courts to make Public Prosecutors and Lawyers (both legal aid and private lawyers) accountable for their performance.
6. The state must take action to ensure that orders passed by courts are actually executed.
7. We suggest that especially in the case of monetary relief granted by the court, the State pays women from a State Fund set up for the purpose and takes responsibility to recover it from the respondent/accused.
8. Courts must be made disability friendly and accessible to enable women with disability to access their rights.

### H. HEALTH SECTOR

- 1) Violence against women must be recognised as a public health issue and access to comprehensive health care (physical as well as psychosocial) must be ensured along with other requisite services for survivors.
- 2) Free medical treatment must be provided for women survivors of violence
- 3) Psychosocial counselling and referrals to other support services must be made available to women survivors of violence
- 4) Orientation for health care providers through medical curriculum as well as continued medical education must be ensured.
- 5) The Medical curriculum for all health professionals must include information and training on
  - i) how to screen women patients for incidence of violence

- ii) how to document the history of domestic violence, molestation, sexual assault, burns
  - iii) the role of medical facilities and health professionals under the PWDVA, 2005
- 5) Initiatives for primary prevention of violence against women must be implemented through inter-sectoral coordinated programmes as well as towards therapeutic care and support.
  - 6) Medico legal guidelines and protocols by the MoHFW for health care system to survivors of sexual violence must be implemented and similar guidelines for other forms of violence against women such as domestic violence must be formulated.
  - 7) Discriminatory, unethical and violative practices such as the finger test in the medico-legal process must be discontinued.

#### I. QUALITY SERVICES AND SUFFICIENT NUMBER OF SHELTER HOMES

- 1) Safe, adequate, disability accessible shelter homes, with quality services and regular monitoring involving local area residents and state officials must be set up.
- 2) Funding for these homes must increase and be disbursed regularly.
- 3) Women must be allowed to stay with their children and be provided with food and other services until such time as the home is able to make them economically self sufficient.
- 4) There must be convergence with other government schemes which benefit women particularly those related to livelihoods.
- 5) A list of all shelter homes should be provided to all police stations, courts, government departments, women's organisations for referrals to be made.
- 6) The number of working women's hostels must be increased so women have an option to move out once they are able to find employment.
- 7) We need to move beyond the welfare approach to looking at provision of homes as the right of women to have shelter. We need to look at independent housing for women, especially when they have children. There are working women's hostels for young women, but women with children cannot access them. The state must make long term subsidized housing facilities that women can move into with their children from shelter homes, where they can live as independent adult women.

#### J. AGENCIES TO MONITOR IMPLEMENTATION OF LAWS AND SERVICES MUST BE SET UP:

The government should have monitoring agencies (of which civil societies should be part of) in place to address the gaps in proper implementation of the existing laws and services related to violence against women as well as the role of media in the manner they report and disclose details of survivors of violence.

### **SPECIAL RECOMMENDATIONS**

#### A. VIOLENCE BY FAMILY AND STATE WHEN ADULT WOMEN CHOOSE THEIR PARTNERS

- i) commitment by political parties to uphold the right to choose one's own spouse
- ii) ban caste panchayats whose decisions militate against constitutional rights.
- iii) Simplification of the procedures specified in the Special Marriage Act,
- iv) magisterial inquiries into the deaths of all women and girls who were victims of "honour killings",
- v) relevant changes in the laws to help courts take suo motu notice of such incidents were some of the other demands made in the resolution.
- vi) recognise and strengthen the rights of young couples for own-choice marriages<sup>21</sup>
- vii) Hold the District Magistrate/Collector/Superintendent of police responsible if they fail to prevent an honour killing when they have prior information of the threat to the couple.



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### B. CHILD MARRIAGE

The state must take action to

- (I) address poverty which is one of the main causes of child marriage
- (ii) conduct mass awareness programmes to promote attitudes and behaviour that places value on the girl child and encourage community intervention to prevent child marriage
- (iii) encourage and ensure education of young girls and introduce sexuality education in schools
- (iv) introduce measures to enhance employment opportunities for young girls
- (v) focus on measures to develop capacities and facilitate empowerment of young girls
- (vi) ensure legal and administrative interventions to prevent child marriage.

### C. VIOLENCE AGAINST WOMEN AND GIRLS IN SAME SEX RELATIONSHIPS

- (I) Women should be considered as a gender-sexual category
- (ii) Women's same sex relation should have a special legal acceptance
- (iii) State should set up violence/trauma addressing centres in the community to help women suffering from violence and discrimination based on their sexual orientation
- (iv) State should consider women's sexuality and sexual orientations beyond reproduction and hetero-normativity in a pluralistic way.
- (v) Homosexuality is not only about act of sex between same-sex persons, neither it is a breeding room of diseases, State should open up to homo-relational-realities and form policies, laws and systems for its same sex loving citizen's especially women.
- (vi) Special interest of women in same sex relationships should be reflected in:
  - a. State health policies
  - b. State educational policies
  - c. State legal policies
  - d. State developmental policies

### D. ACID ATTACKS

- 1) The State has included section 326A and 326B in the Criminal Law Amendment Act, 2013 to deal with the offence of acid attack and the attempt to throw acid. However, it has not included the threat of throwing acid as a crime and must amend the Criminal Law Amendment Act, 2013 to include 'threats of acid attack' as a crime.
- 2) The State has also issued an advisory on 'Measures to be taken to prevent acid attacks on people and for treatment under the Rehabilitation of survivors' to all States/UT's 'with the objective of regulating the sale of acid and minimize the easy availability of acid'.

However, just an advisory is insufficient to tackle the problem of sale and availability of acid. The State must enact criminal laws that specifically and effectively regulate the production, distribution, use, sale, and handling of acid. The State must require licensing and safe handling procedures by producers, distributors and other businesses that use acid; require labels cautioning users about the dangers of acid and about penalties for misuse; and ban household use of concentrated forms of acid.

- 3) Besides, the treatment of acid survivors is an extremely expensive and long drawn out process. It usually requires the survivor and her family to leave their home and access a hospital which is capable of giving the survivor the necessary medical treatment and surgery. Hence the cost of rehabilitation also includes travel to and from the hospital, stay in a hotel for the woman and her career, as well as cost of treatment, medicines and surgery. However, the rehabilitation package provided by the State is totally insufficient to cover even a small part of these expenses. Although a fine to be paid by the accused is prescribed in the act it is clear that



the accused will most likely not be in a position to give it, since the healthcare costs are high.

Therefore the State must care of all the healthcare costs of the victim and her family resulting from the attack as well as other expenses like boarding, lodging, travel whilst undergoing treatment.

## NOTES

Compiled and written by Anuradha Kapoor, Swayam with contributions from

1. Sarmistha Dutta Gupta, Ebong Alap
2. Manisha Gupte, Masum
3. Suneeta Dhar, Nilanju, Jagori
4. Prathana Mishra, Humsafar Support Centre
5. Akanksha, Sappho for Equality
6. Renu, Aali
7. Rituparna, Nirantar Resource Center
8. Shalini Singh, Crea
9. Shishir Chandra, Sahayog
10. Preethi M. Pinto, Sneha
11. N.B. Sarojini, Sama
12. Dolon Ganguly, Jeevika
13. Kuhu Das, Ass. for Women with Disabilities
14. Shampa Sengupta, Sruti Disability Rights Centre
15. Sital Kalantry, Clinical Law Professor at Cornell Law School.
16. Krishna Roy, Activist

## END NOTES

<sup>1</sup> National Crime Records Bureau, NCRB 2005- 2012, See Table 1

<sup>2</sup> National Crime Records Bureau, NCRB 2005- 2012, See Table 1

<sup>3</sup> National Crime Records Bureau, NCRB 2005- 2012, See Table 1

<sup>4</sup> National Crime records Bureau 2005-2012

<sup>5</sup> National Family Health Survey 2005-6

<sup>6</sup> National Crime Records Bureau, NCRB 2005- 2012, See Table 2

<sup>7</sup> National Crime Records Bureau, NCRB 2005- 2012, See Table 2

<sup>8</sup> National Crime Records Bureau, NCRB 2012

<sup>9</sup> National Crime Records Bureau, NCRB 2012, see Table 3

<sup>10</sup> National Crime Records Bureau, NCRB 2012, see Table 3

<sup>11</sup> National Crime Records Bureau, NCRB 2005, 2012, see Table 4

<sup>12</sup> Rajashree Dasgupta- National Colloquium on Safe Exercise of Right to Choice and Decision Making in Relationship, 25th - 27th June 2011, Lucknow, organised by AALI & Institute of Judicial Training and Research (IJTR), Uttar Pradesh

<sup>13</sup> Murder for Honour- T K Rajalaskhmi

<sup>14</sup> Source: United Nations Population Fund (UNFPA) database using household surveys (DHS and MIS) complete during the period 2000-2011.

<sup>15</sup> National Crime Records Bureau, NCRB, 2005-2012

<sup>16</sup> Source: Child Marriage in India. An Analysis of available data (2012)

<sup>17</sup> Child Marriage, Society and the Law: A Study in a Rural Context in West Bengal, India- Biswajit Ghosh

<sup>18</sup> Child Marriage, Society and the Law: A Study in a Rural Context in West Bengal, India- Biswajit Ghosh

<sup>19</sup> Sappho for Equality, Kolkata

<sup>20</sup> Krishna Roy, women's rights activist

<sup>21</sup> Murder for Honour- T K Rajalaskhmi

# GENERAL RECOMMENDATION - 19 VIOLENCE AGAINST WOMEN



## SECTION - B SEXUAL VIOLENCE

## Partners for Law in Development

Decades of legislative lethargy on sexual violence combined with a culture of stigma and victim blaming has entrenched de facto impunity for all forms of sexual offences against women. The law, as it stood until the beginning of February 2013,<sup>1</sup> provided little recognition to any form of sexual violence other than rape (defined narrowly). Decades of advocacy and agitation by the women's movement finally led to the enactment of three laws between 2012 and 2013: the Protection of Children from Sexual Offences Act 2012 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, and the Criminal Law Amendment Act 2013. Against the backdrop of the national outrage against impunity for sexual violence in the months following December 16, 2012,<sup>2</sup> and a new legal regime on sexual violence, India stands at a historic yet challenging juncture. Despite the legislative reform, longstanding concerns relating to implementation, prevention, attitudinal change loom large. A severely inadequate victim support system and the absence of clear and adequate resource allocations hamper possibilities of change. This chapter is divided into three parts – with the first providing situational analysis; the second outlining recommendations by CEDAW, the UPR and the government appointed high level committee to recommend changes to address sexual violence; the third section provides an overview of the government's initiatives in this arena; and the fourth lists recommendations for change.

### 1. SITUATIONAL ANALYSIS

This section will deal with the deeply entrenched nature of sexual violence, in respect of women and girls.

#### A. PREVALENCE, PATTERNS, TRENDS IN SEXUAL VIOLENCE

Sexual violence is a manifestation of power, control and oppression that is predominantly perpetrated by men against women and children / girls. From harassment to rape, sexual violence covers a spectrum of acts that involve words, gestures, use of force, assault and penetrative sexual assault in public and private places. The grim data from the National Crime Records Bureau (NCRB) shows a sharp rise in reported cases of rape from 2009 to 2012. From 2009 to 2010, there was a jump of 3.6% in reported rape cases throughout the country. The jump from 2010 to 2011 was 9.2%, followed by a 3% rise from 2011 to 2012.<sup>3</sup> Following the national outrage in the period following December 2012, the reporting of incidents of rape saw a sharp increase. In Mumbai, RTI<sup>4</sup> queries have revealed that the number of reported rape cases have increased drastically from 128 in 2002 to 231 in 2012. In 2013, till the month of March alone 89 rape cases were reported in Mumbai, indicating an even sharper increase in reported rape cases following the December 16th gang rape.<sup>5</sup>

This data is however, as most data on rape goes is far from the reality. It is indeed, only a fraction of the number of cases as most cases of rape go unreported on account of stigma, fear of backlash, and amongst others, a hostile legal system. Cases of rape followed by murder are recorded in the NCRB

under a single category, the primary offence of murder only, thus reducing the recorded figures of rape. Sexual violence and rape during communal violence are typically not reported, and the few reported cases in recent years show how easily these tend to get closed after preliminary investigation.<sup>6</sup>

The NCRB figures do not reflect the scale, prevalence or indeed, the range of acts that constitute sexual violence in India. Until February 2013, the Indian Penal Code did not recognise any serious sexual crime other than rape. A trivial offence of 'outraging the modesty' of a woman (sec. 354 IPC), served as the generic provision for booking all forms of sexual violence other than rape, regardless of the gravity. So for instance, forcible disrobing and parading of women in public – a common way of sexually and socially humiliating women, would be typically booked under this provision. Other offences such as non-consensual recording/circulation of a woman's image in undress/ in sexual acts (voyeurism), stalking, disfiguring her face with acid or any other substance, were until recently not recognised as distinct offences.

This routinised sexual violence during 'normal or peace' times, assumes a higher intensity and scale during conflict, or as part of communal and caste violence, against minorities and the Dalits respectively. Despite such high degree of sexual violence and targeting of women and children, the State has not undertaken studies to inquire into the causes, specific manifestations and consequences of sexual violence against women in peace or indeed, in conflict situations; as caste atrocities or in contexts of communal violence. While there has been a growing law and order discourse on rape at the official level, with a strong focus on high sentencing, castration and death penalty, there is little effort to undertake documentation and analysis to understand, or indeed to prevent, the old or the new forms of sexual violence.<sup>7</sup> In the absence of evidence based analysis, the debates are dominated by rhetoric of morality, western influences vs Indian culture, accompanied by populist calls for retribution to tide over public outrage.

## B. GAPS IN LEGISLATIVE FRAMEWORK PRIOR TO 2012-13

Until the recent legislative enactments in 2013, which are discussed in this chapter under governmental initiatives, the legal vacuum was itself a primary barrier to redress. A brief account of the limitations relating to three areas of sexual violence prior to the new enactments are discussed here – a) sexual offences against adult women, b) against children, and c) at the workplace. Even as the statutory framework has transformed with the new laws in force, the problems relating to implementation, medico legal procedures, legal culture and attitudes remain.

- a) Prior to February 2013, the penal law recognized rape as the only serious cognizable sexual offence, narrowly defined to mean penile-vaginal penetration. The spectrum of sexual offences, of which rape is merely one form, were not recognized, except as generic and trivial offence of 'outraging the modesty of woman.'<sup>8</sup>
- b) Prior to the enactment of the Protection of Children from Sexual Offences Act in 2012, there was no special law to respond to child sexual offences. Without an appropriate legal framework in place, sexual offences against children were tried as 'outraging the modesty of woman' (sec. 354 IPC) and as 'sexual offences against the order of nature' (sec. 377 amongst other things criminalized homosexuality).
- c) Prior to 2013, when the Sexual Harassment at the Workplace Act was passed, the 1996 guidelines of the Supreme Court were operational as set out in the Vishakha case.<sup>9</sup> There was little compliance with the requirement that the organized sector establish internal committees to redress complaints; besides, these guidelines were not applicable to the informal sector where a vast majority of women are employed.

## C. RESPONSE OF THE CRIMINAL JUSTICE SYSTEM

The increase in reported cases of sexual violence when contrasted against continuously high acquittal rates says something about the criminal justice system. It alludes to serious concerns relating to some or



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all of the pieces that comprise the system - the quality of investigation, evidence collection, medico forensic procedures, apathy of the public prosecutors, delays and judicial attitudes – all of which contribute towards high acquittals. The NCRB figures show that of the 101032 rape trials in India in the year of 2012, a mere 11% (11,153) ended in conviction; in 2011, it was even worse with only 4.2% (4023) of the 95065 rape trials ending in conviction. Recently, the Supreme Court, while hearing a rape victim's petition, decried the fact that around 90% of all rape cases end in acquittals.<sup>10</sup>

A large part of limitations within the criminal justice system arise from the problematic premise that rape is a violation of honour and chastity of a victim. Despite the definition of rape focussing on sexual intercourse that is 'against the will' or 'without the consent' of the woman, much of the medical, forensic and investigative efforts go towards assessing the victim's chastity; likewise, the cross examination/ defence arguments, the judicial appreciation of evidence for conviction, sentencing and acquittal are largely based on subjective inferences of the victim's chastity and conduct. Some of these challenges that remain within the criminal justice system despite legislative changes are outlined below:

- There is strong evidence of institutional bias and sexism in the police force. Populated largely by men, the police stations are the victim's first point of contact with the system. Defined by aggressive masculinity, political influence and corruption, the police stations are hostile places for women. The lack of police reforms to address institutional weakness, absence of 'special operating procedures' for responding to sexual crimes, the lack of training and serious initiatives at gender sensitization, exacerbates the hostility women experience. A widely reported problem is the refusal by the police to register a complaint, the First Information Report (FIR) relating to sexual violence, as well as other cases that they deem trivial, in order to minimize crime figures. Studies and reports show the police predominantly view most cases of rape as false, dismissing these as 'extortion' or 'sex deals gone wrong,' and believe that good women would in fact never report rape on account of shame;<sup>11</sup> the police are also instrumental in facilitating 'compromises' between the victim and the accused to close rape cases.<sup>12</sup> These problems are institutional in nature and impact the prosecution adversely - poor investigation, evidence collection, production of witnesses, culminating in unsuccessful prosecution, and acquittal.
- Medico forensic procedures for gathering evidence of rape, typically involves a two- finger test to ascertain the elasticity of the vagina, for purposes of concluding whether or not the woman is 'habituated to sex'. Medical examination reports focus on old and new hymen tears, vagina elasticity, that are humiliating, traumatic to the victim besides being unscientific for determining rape.<sup>13</sup> Subjective conclusions about the victim's sexual history are commonly drawn from medical examination in the reports, which only serve to make the victim's sexual conduct central to the trial. While the courts have on occasion called for an end of this practice, and more recently the Supreme Court directed that the two finger test in rape cases be done away with and asked the government to provide better medical procedures to confirm sexual assault,<sup>14</sup> this practice remains integral part of medico legal text books, education and practice.<sup>15</sup>
- The public prosecutors (PP) lack gender sensitivity or any particular training in handling rape cases, or dealing with victims. Comprising largely of men, their appointments are widely critiqued as not being merit-based. The PPs therefore are unable to defend the legal interests of the rape victims from humiliating tactics of the defence lawyers, or orient the victim to the requirement of the trial. The court- room experience is therefore a long drawn demeaning experience for victims, who often not surprisingly, drop out of the legal process before its conclusion.

### D. JUDICIAL ATTITUDES

Ideologically, the criminal justice system is embedded in the framework of gender stereotypes, and its binary of good and bad woman. This stereotyping is a serious impediment to legal redress, and has

persisted despite a 2003 amendment to the Indian Evidence Act which expressly forbids the questioning of a victim's sexual history or character in a rape trial.<sup>16</sup> The “immoral character” clause was deleted from Sec 155 as well. However, in spite of these changes, the character and life style of the victim/prosecutrix continues to be a factor in determining her legitimacy as a 'victim', and determination of the offence. The legal discourse is in fact replete with gendered stereotypes - with young offenders treated leniently for being unable to control their lust, while young women are faulted for failing to fulfil standards of chastity.<sup>17</sup> Likewise, large physical stature and older age amongst women have been cited as reasons for rejecting that rape could have occurred.

Observations such as these are illustrative. In 2010, the Supreme Court observed that the victim appeared to be a “lady used to sexual intercourse and a dissolute lady. She had no objection in mixing up and having free movement with any of her known person, for enjoyment.” Thus, “she appeared to be a woman of easy virtues.”<sup>18</sup> In 2011, the Guwahati High Court, while citing special reasons for modifying charges from statutory rape (a serious offence under Sec. 376) to 'outraging the modesty' (the trivial offence under Sec. 354), in the case of rape of a 14 year old school girl by a 18 year old boy. Here, the court observed that the accused was “18 years old boy, and a young boy of such age is normally prone to sexual adventure which he might have undertaken because of natural and similar urge from the maiden victim,” as the evidence led suggested that the 14 years old victim was used to sexual intercourse.<sup>19</sup>

## E. PUBLIC DISCOURSE

The public discourse on sexual violence is replete with victim blaming, holding women responsible for provoking sexual violence, or as liars who allege rape for gain or for covering up sexual promiscuity. The rhetoric that women commonly file false cases is widespread both within and outside legal institutions, and two of the three new laws prescribe penalties for false/ malicious cases. Public debates and statements by politicians, public figures and community leaders following the rape cases that received attention of the national media in recent years have blamed rape on - women being out late, women wearing jeans, western lifestyle, and use of mobile phones by young women and so on. The response of the State, community, educational institutions following a rape cases lean towards tighter curfews for women, stricter dress codes and even calls to ban mobile phones. Public figures and political leaders<sup>20</sup> make statements blaming women for being adventurous or wearing improper clothes.<sup>21</sup> In contrast, aggressive masculinity and misogyny are not critiqued, nor women's rights to safe and equal access to public places asserted.

In the vast majority of rape cases, according to the NCRB data, the offender is known to the victim. He may be a neighbour, a friend, or a family member. In 2011, 94.2% of the cases involved an offender who was known to the victim; in 2012, it was 98.2%. Despite this reality, the public discourse and state attention tends to be focussed on stranger gang rape, and aggravated rape, particularly inter-class urban rape, involving middle class/ professionally aspirational women and urban poor/ migrants.<sup>22</sup> It is noteworthy in this context, that the 3 member high level Committee headed by Justice Verma, were appointed by the government in the end of December 2012, with a narrow terms of reference, seeking recommendations for speedy justice and punishment for aggravated rape; it is another matter however, that the committee opted to expand its terms of reference to address prevention, protection and redress for all sexual offences. What may appear in the Indian media as public outrage against sexual violence – is increasingly a limited outrage against aggravated rape, mostly inter-class - that has eclipsed concern for routinised targeting of urban homeless women, Dalit women, and indeed towards the spectrum of sexual violence. The debates surrounding aggravated rape almost entirely confined to death penalty, harsh sentences and speedy trials – with no attention to prevention, discussion on aggressive masculinity, mysogyny, or normalised forms of sexual harassment is part of the continuum leading to rape. The discourse on State accountability for prevention, sexuality education, safer streets and public places – across regions, across classes, in rural as well as urban contexts, is missing.

## 2. RECOMMENDATIONS OF CEDAW, THE UPR AND THE JUSTICE VERMA COMMITTEE

The Committee on the Elimination of Discrimination against Women in its Concluding Comments to India's second and third periodic reports (2007) had urged the state party to *“widen the definition of rape in its Penal Code to reflect the realities of sexual abuse experienced by women and to remove the exception for marital rape from the definition of rape. It also calls upon the State party to criminalize all other forms of sexual abuse, including child sexual abuse.”*<sup>23</sup>

The Committee, in its Concluding Comments to India's periodic report in 2000, recommended a review of the Armed Forces Special Powers Act of 1958, to make sure that the special protection given to security forces does not prevent the investigation and prosecution of acts of violence against women in conflict areas and during detention and arrest.<sup>24</sup> The Committee reiterated its concerns regarding the Armed Forces Special Powers Act again in its Concluding Comments to India's second and third periodic report in 2007. In its Concluding Comments to India's periodic report in 2007,<sup>25</sup> the Committee also expressed its concern that the proposed Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill of 2005 did not include sexual and gender based crimes against women perpetrated during communal violence.<sup>26</sup> The UN Human Rights Council, in its recommendations to the Universal Periodic Review of India, 2012, reiterated the recommendations of CEDAW, and urged the government to, *'Enact comprehensive reforms to address sexual violence and all acts of violence against women, including “honour” crimes, child marriage, female feticide and female infanticide, and to remedy limitations in the definition of rape and the medico forensic procedures adopted for rape cases.'*<sup>27</sup>

The recommendations that emerged from the Justice Verma Committee report,<sup>28</sup> constituted in the wake of the December 2012 gang rape stressed that a need for paradigm shift in the way state obligation was conceptualised in law and in policy in relation to sexual violence. They recommended the strong need for state response to be premised upon respect and protection of sexual autonomy and bodily integrity of women, as facets of India's Constitutional democracy, instead of the existing framework of chastity and honour. Apart from comprehensive penal law reform, the Justice Verma Committee included recommendations for electoral reform to de-bar politicians implicated in sexual crimes, public education and prevention.

## 3. RECENT LEGISLATIVE ENACTMENTS

From 2012 to 2013, three important legislative enactments pertaining to sexual violence against women and children have been passed, filling a longstanding legislative vacuum on many aspects of sexual violence. These three laws are discussed briefly to highlight their strengths as well as the areas of concern that remain/ or indeed, emanate from these laws, which merit serious attention. What however remains to be tackled are the grave systemic barriers to justice that remain – in respect of implementation, quality of investigation and evidence gathering, medico forensic examination procedures, and institutional perspectives and attitudes that are embedded in social norms and stereotypes that are discriminatory towards women. There is a need for tracking implementation of the new laws to identify obstacles, old and new, for continuing the reform agenda.

### A. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

In May 2012, the Protection of Children from Sexual Offences Act was enacted. This Act conceives of child sexual abuse as a gradation of offences, ranging from sexual assault – penetrative and non-penetrative; aggravated and non-aggravated – to sexual harassment and the use of children for pornographic purposes. It provides for child friendly procedures for recording of evidence and trial, and special courts for trying such offences.

Although the title of the Act begins with the word 'protection', the Act conceives of protection only in terms of criminalizing certain sexual acts. There is no mention of preventive measures to be taken by schools, hostels or juvenile detention homes. Nor is there any provision for age-appropriate sexuality

education so that children are made aware of issues pertaining to their bodies, their rights or issues of safety.<sup>29</sup> The 'protection' that the Act talks about, in fact expresses itself in a 'protectionist' manner. The Act criminalizes all sexual contact with and between children below the age of 18, even if such acts are consensual, disregarding the evolving capacities of children in respect of sexuality. In child rights discourse, it is accepted internationally that childhood and adulthood are not water tight categories; rather that the interest of the child requires the law to recognise and protect the evolving capacity of children to give consent and decide for themselves.<sup>30</sup> In keeping with such an understanding, a window period between the ages of 16 and 18 must be considered where the law recognises consent to sex between peers, who are no more than 4-5 years apart in age. Given the contemporary trends of violent policing of inter-caste/ inter-community relationships in India, the increase in legal age of consent to 18 years will only increase the possibility of false complaints by disapproving third parties and family members.

Additionally, the Act casts a duty of mandatory reporting by any person who has an "apprehension" that an offence is likely to be committed or knows that an offence has been committed.<sup>31</sup> The mandatory reporting clause, backed by penalties, places a huge burden on parents, teachers, social workers and counsellors, dealing with victims of sexual abuse, who are mandated to report even on the basis of an apprehension or likelihood of an offence. If they fail to report, then they are liable to be prosecuted and punished for culpable intention. This puts at risk the privileged exchange and trust based relationships between teachers, doctors, counsellors and children. It may not always be in the best interest of the child to opt for the criminal justice system which despite the new child sensitive procedures, are hostile given the challenges of implementation in India. The Act also penalizes false complaint of sexual abuse by any person other than the child.<sup>32</sup> Though this clause is meant for discouraging false complaints filed "solely with the intention to humiliate, extort, or threaten of defame" a person, it is ill-conceived as it leaves the informant vulnerable to harassment later.

## B. THE CRIMINAL AMENDMENT ACT 2013

This Act was passed under immense public outrage, following which a specially constituted Committee, headed by retired Justice Verma Committee recommended that the law be reformed urgently. The Criminal Law Amendment Act 2013, which was enacted on March 21, 2013. Some of the positive aspects of the new law are:

- An expanded definition of rape going beyond penile-vaginal penetration
- Consent, which is a crucial and contested ingredient in rape, has been clearly defined to mean an unequivocal agreement to consent to the sexual act in question and further that, physical resistance by the victim is immaterial to the determination of consent.
- Marital rape within during de-facto or de-jure separation recognized.
- Acts such as forced disrobing, stalking, and voyeurism and acid attacks have been named as distinct offences and criminalized.
- Free and immediate treatment to be given to the victims of sexual violence and acid attack, by all healthcare facilities, with penalties for refusal to provide such treatment.
- While there is a provision on compensation, including interim compensation to victims of acid attack and rape, it is contingent upon establishment of schemes by the states and allocation of resources.
- Strengthened penal accountability of public servants for disobeying the law to the detriment of the victim; and for refusal to register an FIR for rape. Prior sanction of the government will not be required for prosecuting public servants of sexual offences.
- Provisions for interpreters or special educators, for assisting victims with disability during registration of complaints/ FIR and during the trial.



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- While the amendment does not prohibit the demeaning and invasive medical procedure known as the two finger test used to determine the past sexual history of the victim, strictures against such procedures were passed by the Supreme Court of India.<sup>33</sup> In 2014, the Ministry of Health and Family Welfare issued guidelines to sensitize health professionals about medico legal procedure in cases of sexual violence.<sup>34</sup>

Despite ushering necessary reforms, there are some concerns relating to the amendment, particularly those that relate to criminalising sexual expression amongst young persons, barriers to prosecuting the armed forces, reversal of burden of proof in all aggravated rape categories and proportionality in sentencing. For instance, the prior sanction of the government is not required to prosecute public servants for rape, but still required to prosecute members of the armed forces. Also, the age of legal consent has been increased from 16 to 18, criminalising consensual sexual expression among young persons. The amendment provide for disproportionately high sentences for rape with no provision for judicial discretion in reducing the sentence. Further, the amendment also provides for death sentence in case of repeat offender, and defines life term as the remainder of the natural life.

### C. THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT 2013

The Act was passed on 23rd April, 2013, and it came into force when the rules were notified on 9th December 2013. The Act defines what constitutes sexual harassment and extends to female workers in the organised as well as the informal sector, including domestic workers. The law requires any organization, which employs more than ten people to set up an Internal Complaints Committee, with a penalty of Rs. 50,000 for not doing so. Additionally, it not only protects employees, but also clients, customers, apprentices and daily wage workers and applies to private organizations, trusts, societies, educational institutions and NGOs. It requires the state to establish Local Complaints Committees for all other workplaces, including the informal/ unorganised sector. However, there is no time line set for establishing new mechanisms at the local and the district levels for implementation of the law; and neither is there an allocation of resources to make this possible. With the poor record of establishing special mechanisms constituted under the Protection of Women from Domestic Violence Act, 2005, and the allocation of inadequate resources, the fear that the sexual harassment law will suffer the same fate, or worse, is a real one. Considering that out of the total estimated female workforce of 148 million in India, 142 million, or nearly 96% are in the unorganized sector and an additional 4.2 million women are working as domestic workers, there is urgency that the Local Complaints Committees be constituted and operationalised without delay. Preventive mechanisms necessary to alter the de facto reality of impunity with which sexual harassment takes place in workplaces need to be designed and implemented seriously, and experience with previous laws shows that prevention is not a priority. In spite of the law, redressal through the internal mechanisms is the best the law can hope to achieve.

## 4. RECOMMENDATIONS

The recommendations focus on creating and strengthening the mechanisms through which prevention, protection, prosecution, redressal and recovery will become possible. India has a poor record of implementation of the law, making this an important area of attention. The focus is equally on prevention, tracking and monitoring of the new laws, with recommendations also pertaining to addressing concerns that mar the new laws.

I) Police Reforms - The police station is often the first port of call for victims of sexual violence. Experience however shows that filing a complaint is an uphill task as the police are reluctant to take complaints of sexual violence seriously. Similarly a large number of cases of sexual violence fail to convict the wrong doer owing to shoddy investigation by the police. The police in every state must have Standard Operating Procedures with detailed guidelines for each aspect of investigation and the role of

the police during trial. Additionally, individual accountability must be strictly attached for non-observance of the Standard Operating Procedures. Finally, police reforms are imperative to depoliticise the police force, and to make it independent, functional and accountable.

ii) One-stop crisis centres - The state must establish one-stop crisis centers for women which would be responsible for providing immediate access to quality and free medical attention, psychological counseling, legal aid and other support services as may be required by the victim. These centers should be uniformly available and accessible in urban and rural areas, in zones of peace and conflict. These centers must provide 24-hour service, including access to interpreters for disabled victims, access to translators for victims who do not speak the local language, transport facilities, access to information about legal aid, compensation schemes and so on. The same has been recommended by the Working Group on Women's Agency and Empowerment under the XII Five Year Plan of the Government of India.<sup>37</sup>

iii) Intensive Training Programmes – Gender trainings have been ongoing for the police and the judiciary for more than a decade now. Training programmes and training institutions are well established and functional. However, studies show that the attitudes and stereotypes with which the police and the judiciary function are not just insensitive to the majority of women, the bias is compounded against those who are marginalised by caste, class, minority status, disability. There is a need for a radical change in the approach towards professional development and capacity enhancement within the justice sector actors, including police, judiciary, lawyer's associations, public prosecutors, and medical staff. This calls for moving away from token sessions on gender equality, adopting instead, gender and sexuality training, that incorporates impact of caste, class and other inequalities, as integral to legal training and professional development.

(iv) Victim centred, holistic justice to be the focus – resource allocation for compensation schemes to become functional as well as monitoring of access to medical treatment until full recovery is necessary part of holistic justice. While the legal provisions for compensation to victims of rape and acid violence are commendable steps towards reparative justice (sec. 357A Cr PC and the Financial Assistance scheme for victims of rape), there is need to constitute schemes, mechanisms and for allocation of core funds to make these implementable at the earliest. The sums of compensation, at interim and final stages, must not be arbitrary, tokenistic but realistically cover costs of full recovery for the victim.

Holistic justice also includes provisioning of quality counselling, education, skill acquisition where necessary, to empower women and restore them to a position of strength. It would also include shelter to respond to the varying needs of victims, particularly in situations where victims/ with or without their families are forced to leave their hometown on account of stigma and shame.

(v) Tracking implementation of new laws – the state must put in place rigorous quantitative and qualitative systems to monitor and evaluate the implementation of the three laws, to build an evidence base on its impact and effectiveness. Preliminary findings, if any, must be presented to the Committee in India's 5th periodic review.

vi) Resource allocation– substantial and immediate resource allocation is necessary for establishing new mechanisms such as special courts, complaints committee, and support services available under the new laws in a time bound manner.

vii) Amending the Protection of Children from Sexual Offences Act- Firstly the State needs to reconsider the legal age of consent of 18 years stipulated under the law, and reduce it to 16 years to ensure the law serves best interests of the child through respect for the child's evolving capacities. The state must ensure that the law criminalises only non-consensual sexual acts and not consensual acts, particularly in the context of the growing trend of moral policing and so called 'honour' crimes against couples who defy social boundaries of caste, community and sexual orientation. The state must be vigilant against the use of law and the law enforcement agencies to intimidate and harm couples and young adults; and indeed, take severe action against state functionaries who aid and abet such moral policing.

## GENERAL RECOMMENDATION -19: VIOLENCE AGAINST WOMEN

Secondly, there is need to re-consider the provision of mandatory reporting backed by penalties for failure to report in the Protection of Children from Sexual Offences Act 2012, to make appropriate exceptions to safeguard professional ethics and confidentiality that counsellors and doctors, and similarly placed professionals are bound by.

x) Prevention – The state's responsibility to prevent is as critical and important as its responsibility to protect, redress, investigate and compensate victims of sexual violence. This responsibility cannot be delegated to civil society organisations and NGOs or undertaken entirely with support of external donors and UN agencies. The state must bear the majority of the burden through initiatives that involve public education, sexuality education that goes beyond sex and biology focussed information to understand how gender inequalities and social norms shape sexualities, and its relationship of these concepts with gender based violence. The state must ensure safe public spaces and public transport is the primary responsibility of the state; including through provision of adequate public toilets for women, policing, and street lights. That preventive measures need to be carried out across regions, rural and urban contexts and not just be located in select parts of a few metros.

xi) Creating an evidence base - There is need to invest in and support studies to understand causes, manifestations/ trends and consequences of sexual violence in India across regions, contexts, to identify particularities and common patterns; and to gauge the extent so as to create an evidence base for informing state action.

### END NOTES

<sup>1</sup>The law comprised of three statutes: the Indian Penal Code 1860 containing the substantive offences with punishments; the Code of Criminal Procedure and the Indian Evidence Act that set out the rules of procedure and evidence respectively.

<sup>2</sup>The homicidal gang rape of a paramedic student in Delhi became a tipping point that unleashed intense public outrage from a wide cross section of society in Delhi and elsewhere, leading to state action and finally, the passage of long delayed amendments relating to sexual offences.

<sup>3</sup>2010 recorded 22172 cases; 24206 reported in 2011; 2012 was 24923.

<sup>4</sup>RTI stands for application seeking information under the Right to Information Act.

<sup>5</sup>Hafeez.M (2013, August 23). 'Rape cases increasing in Mumbai', The Times of India. Retrieved from <http://timesofindia.indiatimes.com/>

<sup>6</sup>There is a glaring discrepancy between survivor accounts of sexual violence in communal riots and the reported cases, with virtually no cases being registered. The only successful prosecution ever is that of Bilkees Bano (perpetrated during the Gujarat carnage in 2002) which was closed by the state police on two occasions on the ground that no case was made out; this was subsequently registered after directions by the Supreme Court that the investigation be transferred to the central investigating agency, CBI, and the trial be transferred outside Gujarat to Mumbai. Notably, the court indicted members of the state police and the medical officers for destruction of evidence.

<sup>7</sup>The Law Commission of India periodically provides recommendations for law reform that do not in routine course, within a reasonable time frame, lead to law making. These are not socio-legal analysis of causes, manifestations and consequences that may inform holistic policy framework necessary to eliminate the concern; but limited to penal responses.

<sup>8</sup>Section 354 and 509 of the Indian Penal Code criminalize acts that outrage the modesty of a woman, through use of physical force and word/ gesture, respectively.

<sup>9</sup>Vishakha & Ors vs State of Rajasthan, AIR 1997 SC 3011

<sup>10</sup>The Supreme Court's observation in a writ petition filed by a rape victim's father (Dharampal v State of Haryana (W.P (Cri) No. 138 of 2013) )

<sup>11</sup>Bhalla, Abhishek and Vishnu G, 'The Rapes will go on' (2012, December 20), Tehelka. Retrieved from <http://www.tehelka.com/the-rapes-will-go-on/>

<sup>12</sup>Baxi, Pratiksha, 'We must resist the cunning of judicial reform' (2012, December 29). Retrieved from <http://kafila.org/>

<sup>13</sup>Bhate-Deosthali, Padma, 'Moving from evidence to care: Ethical responsibility of health professionals in responding to sexual assault', Indian Journal of Medical Ethics, Vol X No1 (2013, January, March)

<sup>14</sup>Nipun Saxena & Anr Vs Union of India & Ors, WP [C] 565 of 2012

<sup>15</sup>Modi, Jaising, 'Medical Jurisprudence and Toxicology', 1957

<sup>16</sup>Section 146 of the Indian Evidence Act was amended to prohibit questioning the character of a prosecutrix during cross examination in a rape trial.

<sup>17</sup>Satish, Mrinal, 'Chastity, Virginity, Marriage ability and Rape Sentencing' (2013, January 4). Retrieved from <http://lawandotherthings.blogspot.in/>

<sup>18</sup>AIR 2010 SC 3813

<sup>19</sup>(2011) 1 GLR 502

<sup>20</sup>Several leaders have been quoted making statements blaming victims. For eg-Geeta Bhukkal, Education Minister, Haryana "Rapes are a conspiracy against Haryana government"(2012, October 12, Hindustan Times; retrieved from <http://www.hindustantimes.com/>). Mamata Banerjee, Chief Minister, West Bengal- "Medical report does not confirm rape. The lady has conceded that her husband is a CPM supporter. The entire thing is staged" (2012, February 28, The Telegraph; retrieved from <http://www.telegraphindia.com/>).

<sup>21</sup>Soumya Murder: Sheila in dock over remarks', (2008, 2nd October), The Indian Express. Retrieved from <http://www.indianexpress.com/>

<sup>22</sup>The public outrage following the two gang rapes in Delhi, December 2012 and Mumbai, August 2013, which both involved migrant/underclass perpetrators, has focussed on 'other-ing' the rapist as the urban migrant stranger, living in the peripheries of the metropolis.

<sup>23</sup>No 23, Concluding Comments, CEDAW (2007)

<sup>24</sup>No 72, Concluding Comments, CEDAW(2000)

<sup>25</sup>No 9, Concluding Comments, CEDAW (2007)

<sup>26</sup>No 24, Concluding Comments, CEDAW (2007)

<sup>27</sup>No 138.41, Recommendations, UPR (2012), [A/HRC/WG.6/13/L.8]

<sup>28</sup>The Justice Verma Committee was a 3 member committee set up after the December 16th gangrape. Its report is available at <http://www.ncte-india.org/Commission.asp>

<sup>29</sup>Debolina Dutta and Oishik Sircar, Criminalisation is not enough, Info-change, June 2012, Available at <http://infochangeindia.org/children/analysis/criminalisation-is-not-enough.html> (Last visited on April 2, 2013)

<sup>30</sup>Geeta Ramaseshan, Law and the age of innocence, The Hindu, June 19, 2012. Available at <http://www.thehindu.com/opinion/op-ed/law-and-the-age-of-innocence/article3543940.ece> (Last visited on April 2, 2013)

<sup>31</sup>Section 19

<sup>32</sup>Section 22

<sup>33</sup>Lillu@Rajesh & Anr vs State of Haryana, Criminal Appeal No. 1226 of 2011

<sup>34</sup>The guidelines can be accessed here: <http://mohfw.nic.in/>

<sup>37</sup>Available at [http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wcd/wgrep\\_women.pdf](http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wcd/wgrep_women.pdf) (Last accessed on April 4, 2013)



GENERAL  
RECOMMENDATION 30  
WOMEN IN  
CONFLICT PREVENTION,  
CONFLICT AND POST  
CONFLICT SITUATION

CHAPTER 11



INDIA

4th AND 5th  
NGO ALTERNATIVE REPORT  
ON CEDAW

# GENERAL RECOMMENDATION 30: WOMEN IN CONFLICT PREVENTION, CONFLICT AND POST CONFLICT SITUATION



**Anurita P. Hazarika, Seno Tsuhah,  
Sheetal Sharma, Monisha Behal,**

(North East Network)

**Bondita Acharya**

(Purva Bharati Educational Trust  
and Women in Governance (WinG))

**Anjuman Ara Begum**

(Asian Legal Resource Centre and  
Women in Governance (WinG))

**Babloo Loitongbam**

(Human Rights Alert)

**Vrinda Grover** (Supreme Court Advocate)

**Parveena Ahangar**

(Association of Parents of  
Disappeared Persons (APDP))

**Anuradha Bhasin** (Journalist)

**Parijata Bharadwaj, Isha Khandelwal**

(Chhattisgarh PUCL and  
Jagdarpur Legal Aid Group)

**Roshmi Goswami**

(Independent Researcher and Advisor,  
North East Network)

## 1. INTRODUCTION

The CEDAW Committee has repeatedly expressed concern about the gendered impact of conflict and women's exclusion from conflict prevention efforts, post conflict transition and reconstruction processes. The adoption of General Recommendation 30 in October 2013 is indeed a landmark victory in the struggle for women's human rights in situations of conflict and indicative of the Committee's deep commitment to protecting women's human rights at all times, advancing substantive equality before, during and after conflict and ensuring that women's diverse experiences are fully integrated into all peace building, peace making and reconstruction processes. GR 30 provides authoritative guidance to State parties for legislative, policies and all other appropriate measures to ensure full compliance of their obligation. In addition to recognizing diverse conflicts, it spells out and expands the definition of conflict, specifies the different categories of women impacted by conflict, their specific vulnerabilities and broadens the scope of state obligation including the obligation of non state actors.

## 2. PREVALENCE OF THE PROBLEM

The North Eastern States of India, Kashmir and the central Indian regions have been in the grip of protracted and violent armed and unarmed conflicts. These have spanned over several decades, with over six decades in some of the North East states, over two decades in Kashmir and over a decade in central India. These diverse sub national conflicts ranging from political and civil struggles for self determination or groups contending for a greater share of power or stake in the system, to inter ethnic conflicts over scarce resources, or contestations over control and use of natural resources of land, water, minerals and fractured identities or state sponsored low intensity warfare have deeply affected the social fabric of life in these regions. The adoption of neo liberal economic policies has led to occasional growth in certain sectors and for a few, but its downside has been further marginalization and dispossession of tribal communities and impoverishment of other vulnerable communities, and has precipitated more conflict. The impact of all of this on women and girls have been especially devastating, debilitating and



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far reaching. Sexual violence, displacement and loss of support bases, disappearances and extra judicial killings of family members, lack of all forms of human security and constant sense of fear and dread are some of the more obvious fallout, while the culture of impunity and corruption that has seeped into the very fabric of their existence, undermines the basic dignity of women and girls and impedes gender equality and gender justice. The conflicts in these regions have gone on for so long that the consequences have got institutionalized in structures and processes. Despite overwhelming evidence of the impact and the fact that at the moment there are several government initiated peace negotiations underway in NE India, the Government of India (GOI) continues to term the situation a “law and order” problem or a “civil unrest” and a militaristic approach is the hallmark of the State's approach in addressing the problem.

The Kashmir valley has very high levels of militarization and armed forces have a presence in all civilian areas particularly villages. In this highly militarized zone the life and liberty of people is jeopardized. This has led to widespread and grave violations of non-derogable and constitutionally guaranteed human rights that are identified as crimes under international law, including rape, torture, extra judicial killings, and enforced disappearances. The systematic denial of remedies and absence of accountability for these violations has given impunity a free rein in the region.

### 3. WOMEN IN CONFLICT SITUATION

Numerous reports from women's human rights and peace advocates in the last decades have presented overwhelming evidence of the gendered nature of the impact of armed conflict, expressly articulating that while all civilians are affected, women and girls suffer disproportionately because of their sex and pervasive gender inequality and discrimination. The Committee however rightly recognizes that women are not a homogenous group and their experiences of conflict and specific needs in post conflict are diverse and the State is obligated to address the specific discriminations of the diverse categories of women. The role that women human rights defenders play through the different stages of conflict is particularly crucial as they raise issues of human rights violations both by state and non state actors and constantly call for gender justice. The Committee recognizes this critical role and calls for special attention and protection of women human rights defenders. In the context of conflict in India this is a huge lacunae and needs special attention. In addition while new vulnerabilities arise because of conflict, the conditions of women from communities that are already vulnerable get particularly exacerbated. Thus the lives of indigenous, poor, disabled, ethnic minority and rural women become extremely precarious. And areas in India in which much of the conflict exists today are states where the development indices are dismal despite huge natural resources and are peopled by large numbers of indigenous and religious minority communities residing mostly in rural or semi rural areas with little or no access to basic infrastructure.

Women living in highly militarized environment, as in the Kashmir valley, live in a state of siege. They are under constant gaze and surveillance whether in their homes, streets, fields or markets. This gaze combines the might and the masculinity of state power. It is debilitating and restrictive and severely curtails the movement of women both physically and mentally, instilling a sense of fear and insecurity. Heavy deployment of State armed forces in the state of Chhattisgarh, ostensibly to counter the left wing insurgents (commonly called Naxalites) has led to widespread repression of local populations, and severe restrictions in the free movement of people especially women. Women mention that tasks like collecting fire-wood from the forests guarded by the forces have now become dangerous with the increased chances of assault at the hands of the forces. Additionally studies suggest that the presence of security forces in educational premises is one of the causes of female school drop-outs. Available data on security personnel occupying educational buildings as camps in Tripura, a North East state where government claims to have succeeded in countering insurgency is alarming. There are 21 school buildings and 14 other institutions are occupied by the security forces as their temporary camps as of November, 2010.<sup>1</sup>

The following are some of the most severe impact on women in the protracted conflicts of NE India, Kashmir and Chhattisgarh.

## A. SEXUAL VIOLENCE

Sexual Violence has a devastating, grievous and corrosive effect on society intimidating and terrorizing not just the victim, but families and the entire community. During conflict it is an act of domination grounded in a complex web of gendered cultural preconceptions. It is deployed to torture, humiliate people or to punish and humiliate an enemy group or community. Sexual Violence has grave health implications both physical and psychological as well as socio-economic consequences for survivors who are often stigmatized by family and society.

### Case 1: Case of Deobari Basumatary

“Deobari Basumatary a 35 year old deaf and dumb woman belonging to the indigenous Bodo community and resident of a distant village on the Indo Bhutan border was gang raped by a battalion of men dressed in SSB fatigues. On 10/9/11 at around 11.30 the men entered the premises of Deobari and her physically challenged husband Amal Basumatary, beat up the husband and took him out of the house. While two men stood guard one raped her inside the hut and then she was dragged to the surrounding bushes and subsequently raped by two others. The husband managed to escape and sought help from his uncle Balen Basumatary who resides about 300 meters away in no 2 Sonapur villages. Both of them rushed towards the spot and some time later found the naked and injured Deobari. The next day the case was reported to the office in charge of the SSB battalion by the village headman. Officers visited the spot and found marks of boots in the courtyard and suggested the family file a complaint at the local police outpost at Bismuri. Thereafter a FIR was filed at the outpost and then transferred to the Kokrajhar Police Station. While the family was busy filing the complaint, a vehicle carrying SSB Jawans revisited the spot and cleared the boot markings that were covered by a plastic sheet. This was witnessed by Lephe Basumatary, a villager who informed the family.

The case waited for justice endlessly till women under All Bodo Women's Welfare Federation together with the All Bodo Students Union organized a protest rally at Saralpara and sent a letter to Hon'ble Chief Justice of the Guwahati High Court. The Hon'ble Court ordered the case to be reopened and proposed judicial enquiry. The Identification parade was completed and the victim was able to identify the accused. The case is presently under trial at the Kokrajhar Court.

(Source: WinG documentation)

### Case 2: Case of Manek Gayari

Manek Gayari belonging to the indigenous Bodo community and mother of a 3 year old boy was gang raped by Army men from the 15 Dogra Regiment in Tharaibari village of Kokrajhar district on April 20, 2011. The Army comes quite regularly to the village on “search operations”. One evening at around 7.30 when Manek was alone in the house somebody knocked at the door asking for rice and then 6 army men in civil dress entered her house, attacked her in the eyes, kicked her in the stomach, gagged her, took her to the back of the house and took turns in raping her most brutally. She recognized the men as they came regularly to the village and she saw their faces in the lamp light. She managed to call out for help from her neighbor upon which the men fled. The husband reported the case to the police as well as to the local people and the village head. A demonstration was held by civil society organizations upon which the case was registered and medical examination confirmed rape. The experience with the law enforcement agencies further traumatized the victim as she was interrogated for several hours and her injuries were checked by a male police. Under pressure from women's organizations a CID inquiry was ordered by the Director General of Police but no results yet.

(Source-WinG documentation)

Internationally in the last decade there has been an increased focus on addressing sexual violence and



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evolving strategies for its prevention. UNSCR 1820 adopted in 2008 called for an end to the use of sexual violence as a tactic of war and an end of impunity for perpetrators, followed by UNSCR 2106 adopted in 2013 which is aimed to strengthen accountability by investigating and prosecuting those subject to their jurisdiction who are responsible for such crimes and thereby fight impunity for sexual violence in contexts of conflict. But despite the heightened international attention to sexual violence and the increased status of India as a responsible global player, within the country, Army atrocities as well as increased violations by non state actors continue against people taking the form of sexual assault in case of women in the different conflict areas. Sexual assault cases are reported even from areas returning to normalcy such as Kokrajhar in Assam as the two cases below illustrate:

A compilation of cases of sexual violence by security forces over the past decade, and a research study<sup>2</sup> on sexual violence by state agencies in Assam, show that:

- In several cases, it is alleged by the victims/survivors that filing of FIR against armed forces was very difficult. Rape is a cognizable offense but police refuse to register FIR or registration of FIR was carried only after protests by local community. This resulted in delayed process of investigation and medical examination which is often conducted after statutory period of 24 hours and minimizing chances of conviction.
- In certain cases, allegations of rape, the legal proceedings were blocked by politician on promise of job and compensation to the survivor. When all these promises were not fulfilled the survivor has had to pay the price. In many instances the survivor faced high levels of domestic violence as the spouse would release his frustration over her through physical violence.
- In many instances willful negligence of duty or intentional delaying or obstructing investigation by the authorities concerned has resulted in immunity and protection to the accused.
- Monetary compensation failed to restore the life enjoyed by the survivor prior to sexual violence. Hence adequacy of compensation must be taken seriously.

### Case 3: Mass rape in Kunan & Poshpor

Women of the neighbouring villages of Kunan and Poshpara, in Kashmir, claim that on the intervening night of 23rd/24th February 1991, during a search and cordon operation, personnel of the 4 Rajputana Rifle of the Indian Army sexually assaulted and raped many women, with numbers of victims ranging between 23-50 women. Majority of the women survivors stated that they did not cry out as they had been threatened at gunpoint by the Army personnel and then raped and tortured. The villagers contend the army continued the cordon of the villages for three days after the incident and did not allow them to approach the local administration.

In March 1991, the Divisional Commissioner of the area submitted a report stating that “the allegation of mass rape cannot be sustained”.<sup>3</sup> In July 1991, the Chairperson of the Press Council of India in a Report, titled 'Crisis and Credibility', stated that “...the Kunan story stands totally unproven and completely untrue, a dirty trick to frame the army...”

Around 39 victims file complaints before the State Human Rights Commission (SHRC). In October 2011 the SHRC recommended monetary relief for the rape victims and criminal prosecution of accused and State officials responsible for the cover up.

March 2013 the police file a closure report before the Kupwara Sessions Court. Unwilling to accept this official obfuscation, in April 2013 a Public Interest Litigation was filed by a group of Kashmiri women before the Jammu and Kashmir High Court, seeking reinvestigation into the Kunan Poshpora mass rape case; compensation and other reliefs. The High Court however

rejected the PIL as "premature". The Sessions court rejected the closure report of the Police filed in March 2013, 22 years after the incident. 2 rape survivors file a Protest Petition before the Kupwara Sessions court. The Kupwara Court directed the Police to further investigate the case within 3 months. This 3-month period was extended by the Court, as the Police failed to record victim statements. During this period the media reported that attempts were made to intimidate and bribe the victims to persuade them to not testify. Meanwhile the Army has filed a Revision Petition before the Kupwara Sessions court challenging its order of further investigation. In early 2014, the then Kupwara Deputy Commissioner said that he had been threatened and offered promotions to change his report on the alleged mass rapes in Konan Poshpora in February 1991.<sup>4</sup>

The mockery of justice when cases of sexual violence are tried through Court martial is exemplified by Case 4.

Case 4: Rape, Stripping naked and sexual assault of Mother and minor daughter by Major of Army

On the intervening night of 6/7 November 2004, army personnel from 30 Rashtriya Rifles from the Army Camp at Langate, Kupwara, stormed into the house of Mr. Abdul Rashid Dar. Major Rehman Hussain, interrogated, physically assaulted and tortured his 8 year old son, after that Major Hussain threatened the minor boy to "hand over his mother to him", otherwise he would continue to torture him. In FIR dated 7th November 2004, lodged at Police Station Kralgund, Handwara, District Kupwara, it was reported that the Major dragged Shri Dar's wife into a room and raped her. Thereafter the Major took Mr. Dar's nine year old daughter stripped her naked, and committed sexual assault on the minor girl.<sup>5</sup> The Army exercised its discretionary power and the Major was sent for Court Martial and not for prosecution before the ordinary criminal court. The General Court Martial (GCM) held the major not guilty of the charges of rape, of the mother and daughter. The GCM held the Major guilty only of outraging the modesty of a woman on account of removing the clothes of Mr. Dar's 9 year old daughter; using criminal force against Mr. Dar's minor son by beating him; and acting prejudicial to military discipline by conducting a search in contravention of Para 13 of "Dos and Don'ts for soldiers operating under the AFSPA-90 issued as Appendix 'B' to Headquarters Northern Command letter Number 13987 legal protection GS (Ops Air) dated 25 February 2002. By its order dated 31 January 2005, the GCM dismissed the Major from service. However on 31st December 2007, the Confirming Authority reinstated the Major with loss of five years of seniority from promotion and pension. The Armed Forces Tribunal, in an appeal filed by the Major, took a compassionate view and holding the sentence imposed on the Major as harsh, further reduced it to loss of two years of seniority for promotion only, by its Order dated 8 November 2012.<sup>6</sup> Pertinently the Armed Forces Tribunal held that the testimonies of the witnesses, including of members of the Quick Reaction Team, established that the Major had spent 15-30 minutes alone with the minor daughter and he had forcibly removed her clothes, thereby outraging her modesty. The Tribunal however held that there was no proof of rape.

The case studies below bring out the ramifications of sexual violence in Chhattisgarh.

Case 5: The case of Ledha Bai

Ledha Bai is a tribal woman who hails from the village of Tarangava in the Sarguja District in North Chhattisgarh. In 2007 the police started threatening her that if she did not get her husband Ramesh, a Naxalite, to surrender, they would kill him. Accordingly, she and her husband willingly went to Shankargarh police to record the latter's surrender. Contrary to the procedures laid down in case of surrenders the police first mercilessly beat Ramesh and then while he was sitting with Ledha in the Gram Secretaries office, the Assistant Platoon Commander Brijesh Tiwari of the Special Armed Forces entered the room and shot Ramesh point blank. After this a shocked Ledha was released after being threatened of the dire consequences if she narrated the incident to anyone.

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For around 10 days, Ledha kept quiet but eventually she met her lawyer who drafted a complaint regarding the entire incident to the Chief Minister. Subsequently, she was picked up by the police along with her young daughter and taken to the Shankargarh police station where her parents were also kept. In the police station the then Superintendent of Police, SRP Kalluri, first slapped her and then ordered her to strip. Despite her protests she was sent to the interrogation room in the nude, where Kalluri raped her and ordered his subordinates to insert green chillies into her vagina. Subsequently, on the orders of Kalluri, Ledha was kept in the police station for 10 days wherein she was repeatedly raped by the forces in the presence of her 2 year old daughter.

Refusing to let her perpetrators get away she decided to fight the State. She filed a case against Kalluri, and narrated her harrowing story to a Magistrate despite being followed and constantly threatened by the police. Her trauma is evident from the affidavit, in which the Magistrate makes specific mention of how she broke down while giving her evidence. Her parents also recorded their statements in the Court. However, before the case could go any further, Ledha and her parents were picked up by the police again, and forced to retract their statements. The situation worsened to the extent that her lawyer who had helped her in the fight was also implicated in a number of false cases of assisting the Naxalites. Furthermore, the perpetrator and accused SRPKalluri, was subsequently promoted to the rank of Senior Superintendent of Police, and then, the Deputy Inspector General (Naxal Operations), and decorated with the President's Medal for Meritorious Service. [Based on the affidavit of Ledha Bai<sup>7</sup> and an independent Fact Finding Report<sup>8</sup>]

### Case 6: The Case of Soni Sori

Soni Sori, a 39 year old tribal woman, from the district of Dantewada in Chattisgarh has been the victim of extreme sexual brutality. Soni's nephew Lingaram Kodopi was targeted and subsequently arrested by the Police in September 2011 for unmasking the brutality of the state sponsored vigilante group Salwa Judum. Soni decided to go to Delhi to seek help for her nephew as well as herself since she had already been falsely implicated in 6 cases. The State finally caught up with her and arrested her in October 2011, and brought her back to Chhattisgarh and was kept in Dantewada police station for two nights where she was sexually tortured.

Soni Sori recalls being woken up in the middle of the night and taken to the room where the Superintendent of Police Ankit Garg was present. He verbally abused her and tried to pressurise her to sign some documents implicating prominent human rights defenders, which she refused. On her refusal she was given electric shocks and Ankit Garg said, ““I will send you back only after punishing you. You will be so ashamed of yourself; you will beat your head against the walls of the jail and die of shame. You are an educated woman; you will not be able to live with this shame.””After this she was given repeated electric shocks and stripped naked. S.P. Garg then ordered his subordinates to sexually assault her and in the process various items including stones were brutally shoved into her private parts. Not being able to bear the pain Soni lost consciousness. For several days after the assault Soni was not able to even stand due to the unbearable pain and subsequently admitted to the Dantewada District Hospital in an unconscious state, from where she was referred to the district hospital in Jagdalpur, and then, to a better-equipped hospital in Raipur. By this time the media got wind of the story and State took pains to underplay the assault to the extent that the Raipur hospital accused Soni of feigning her injuries. However, the truth came to light when an independent medical examination at Kolkata revealed the presence of stones in her private parts.

Despite this Soni languished in jail and Courts in Chhattisgarh rejected her bail. She finally got bail from the Supreme Court in 2014. While her complaint of torture against Ankit Garg received no redress despite complaints made to the National Human Rights Commission and the National Commission of Women. S.P., Ankit Garg was awarded the President's Police medal for Gallantry.<sup>9</sup>

## B. EXTRAJUDICIAL KILLINGS

A recent report brings out a harsh reality: “Morgues in the state of Manipur have become bustling places of activity. Women come here to find their murdered husbands and leave as young widows”.<sup>10</sup> India is second only to Iraq in the numbers of death<sup>11</sup> directly related to conflicts and is one of the thirty one countries in which extrajudicial executions take place most systematically.<sup>12</sup> In Manipur and in Kashmir “fake encounters” are a daily fact of life, for instance, Human Rights Alert has documented 1528 cases of extrajudicial killings in Manipur since 1979. For the young widows left behind, after the initial shock of having their husbands killed, often learning about it through news flashed on a television screen, the real struggle to live a life of human dignity and freedom begin. It is a long struggle of fights - the fight for their children's future, fight against stigma associated with being the wife of a “suspect”, fight against poverty as these women are not entitled to any compensation, fight against inner fears and trauma, fear of the everyday sight of uniformed men, fight against the justice system and fight to establish their husband's innocence.

As concerns of national security provide the rationale for the high levels of militarization in Kashmir valley, the same also supplies the alibi for extrajudicial killings. “Encounter killings”, the term used in India, is a euphemism for extra-judicial killings. In some instances the armed forces use ikhwansto inveigle them with promises of employment after which such persons are disappeared only to surface later as victims of “encounter killings”. Another reason for security forces to engage in encounter killings is the promise of handsome cash awards, promotions and other employment benefits for eliminating militants. These 'incentives', coupled with the lack of legal accountability, has led to a spate of extrajudicial killings over the last two decades in the Kashmir.

### Case 7: Pathribal

On 25th March 2000, a FIR was registered by the 7 Rashtriya Rifles, Indian Army, stating that they had killed 5 unidentified militants in an encounter at Pathribal-Panchalthan who were responsible for the Chhitingpora massacre of 35 Sikhs.<sup>13</sup> The army claimed they had recovered arms from the 5 alleged terrorists whose bodies were buried in a common grave after having been burnt beyond recognition. The Indian Government praised the security forces for killing the “foreign militants” and even announced cash awards to the officers responsible.<sup>14</sup> Around the same time 5 young men of the area had gone missing. Protests by the villagers compelled the authorities to exhume the bodies of the “militants”. Subsequent DNA tests confirmed that the 5 men killed in the encounter were not militants of a terrorist organization but rather the innocent young villagers who had gone missing.<sup>15</sup> Subsequently a FIR was registered.<sup>16</sup> In May 2003 the State Government transferred the investigation to the CBI, which after 3 years, in early 2006 concluded that five innocent men had been murdered in a fake encounter by 7 Rashtriya Rifles of the Army, and filed a charge sheet in the Court of the Chief Judicial Magistrate, Srinagar, against 4 army officers and others for criminal conspiracy and murder.<sup>17</sup>

Relying on Section 7 JKAFSPA, the General Officer Commanding (GOC) and the accused Army personnel objected that no prosecution could be instituted against them except with the previous sanction of the Central Government. This contention of the Army was disallowed by the lower courts and the Jammu and Kashmir High Court. Challenging the same the Army filed a Special Leave Petition before the Indian Supreme Court and in September 2007 further proceedings before the trial court were stayed.<sup>18</sup>

Twelve years after the extrajudicial killing of 5 innocent men, the Army in September 2012, announced that they had in exercise of their power under the Army Act,<sup>19</sup> decided to try the case in their own Court of Inquiry and that they had commenced court martial proceedings in the Army Headquarter case.<sup>20</sup> On 24th January 2014, the GOC declared the matter was “closed” and that he had dismissed the charges against the accused persons, in accordance with Army rule 24 (1) (c). The Court martial concluded, “There is no evidence on record which in any way



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connects any of the five accused persons...with the murder, wrongful confinement, abduction/causing disappearance etc. of the five deceased persons. The evidence on record does not in any way establish a prima facie case against any of the aforesaid accused persons on any of the charges which were taken over from the honorable CJM Srinagar for which summary of evidence was recorded against them.” Despite the investigation of the CBI concluding that it was a fake encounter, no one has been prosecuted or punished for the cold blooded murder of 5 innocent villagers.

### Case 8: Meena Xalxo's killing

Meena Xalxo was a 16 year old divasi girl who succumbed to her bullet injuries and died in Balrampur Hospital in Chhattisgarh State. It was alleged by the police that she was part of a Naxal outfit and was wounded at Village Karcha during an encounter in the night of 5th July between the Naxals and the local Chando Police of Balrampur, District Sarguja. Her body was handed over by the police at 4 pm the next day to her father along with Rs. 10,000.

Fearing a possible challenge to the veracity of the encounter on the morning of 7th July the local police engaged in an elaborate cover up operation in village, where Meena was killed. They did not allow the people to come out of their houses and the entire area was cordoned off. The villagers were forcibly made to sign seizure documents and back the police claim that about 50-60 rounds had been fired on the night of the 5th, instead of the 3 bullets which had been shot in reality.

Meena's father and the villagers refused to submit to the threats and soon started challenging the authenticity of the encounter. They submitted a detailed complaint to the Superintendent of Police, Balrampur, refuting the police claim that Meena was a Naxalite. The credibility of the police story about the encounter was again shattered when doctor, Mr. R. S. Markam who did the postmortem said that the death of the girl was caused by 2 shots fired from very close range, and there was sperm on the body of the deceased girl indicating that more than one person had sexual intercourse with her. The father of the deceased stated in his complaint that when his daughter left home she was wearing a two-piece (skirt and blouse) and when the police brought her for treatment to Balrampur, she was wearing a saree, hence the police were also guilty of destroying evidence.

Despite the furor created by the case, even a routine F.I.R has not been registered till date, and the Magisterial Inquiry is stalled. The state further sought to silence the family by awarding a compensation of 2 lakhs to the family and subsequently providing a job in a local school to Meena Xalxo's brother. The question arises, “If Meena was a Naxal and was killed in an encounter, how and why has the family been awarded compensation?” [Based on the Preliminary Report of the Chhattisgarh Bachao Andolan on the Killing of Meena Xalxo by the Chhattisgarh Police and Armed Forces].

Enumerating the systemic challenges to impunity for extrajudicial killings, Christ of Heyns, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, after his official visit to India in March 2012, concluded that, “the statutory provisions of requirement of prior sanction, for a Court to take cognizance of offenses committed by public servants, including the police and armed forces, while discharging official duty, coupled with the presumption of good faith for acts done, effectively renders them immune from criminal prosecution.”<sup>21</sup> While making special reference to Sec. 197 Cr.P.C. and the statutory immunity provision under AFSPA, Heyns concluded, that, “Impunity for extrajudicial executions is the central problem”, and recommended that, “The obstacles to accountability that are in place—in particular the need for prior sanction for prosecution should be removed.”<sup>22</sup>

### C. ENFORCED DISAPPEARANCES

According to the Government of Jammu and Kashmir almost 4,000 people have disappeared since the onset of armed conflict across the state, in 1989. Different political parties have quoted varied figures on the floor of the J&K Assembly for the number of persons who have suffered enforced disappearances in

the course of the conflict. However the scale and gravity of the crime of enforced disappearances is severely underplayed. The Association of Parents of Disappeared Persons (APDP), a victims group engaged in documentation and justice for families of disappeared persons, place the figure much higher to about 8,000 cases of enforced disappearances in Kashmir since 1989.<sup>23</sup> Since then the APDP organizes a monthly public protest in Srinagar, and ask the State, “If they are dead tell us.”

The majority of those disappeared are young men, including minor, but people of all ages, professions and backgrounds have been victims, many of whom have no connection with the armed opposition groups operating in Kashmir. Enforced disappearances are in many ways a consequence of the intense militarization in Kashmir. Other than the Indian Army and the Central Armed Police Forces, disappearances are also attributed to armed counter insurgency renegades (Ikwani), deployed by security forces in the region.

Although India has signed the International Convention for Protection of All Persons from Enforced Disappearances in 2007, it has failed to ratify the Convention. Only a fraction of the cases of disappearances have been investigated. The substantive and procedural laws, as well as the pervasive culture of impunity, have made judicial redress illusory. While the number of disappearances has reduced in the recent past, the struggle for justice continues.

There are clear ethnic, religious and gender dimensions to enforced disappearances in Kashmir which is designed to intimidate and silence the dissenting community. The gendered impact of disappearances is especially significant. It is men, who are mostly targeted and 'disappeared', while women, whether mothers, wives or daughters, spend the rest of their lives, desperately and relentlessly, searching for their loved ones.

Women whose husbands have disappeared and whose whereabouts are unknown are referred to as 'half-widows', in Kashmir. The plight of the half-widows is manifold, compounded by uncertainty of their status. The personal law governing their lives stipulates that 7 years must lapse, since the husband goes 'missing for the law to recognize that the wife has been deserted. Personal law has no answers for these women and they are left with little choice, remedy or hope. The women search for their family members, moving from one military camp to another, one jail to another, often for years on end. The near impossibility to secure reliable and actionable information about the whereabouts of disappeared persons causes tremendous distress and trauma to the women as they continue to live in “stressful hope”, unable to mourn and find closure. In addition these women are severely hampered by issues of access, distance, monetary resources, lack of skills, delay and language.

The disappearances of their husbands make them vulnerable to threats, molestation, exploitation and extortion from unscrupulous elements, often feigning as informants. Even police and government officials demand money and sexual favours in exchange for information about their husbands. Apprehensions of stigmatization and ostracization deter women from reporting sexual violence. Further, once a family reports a disappearance, they are regarded with suspicion by the authorities and accused of being associated with militant groups. This has a direct impact on matters pertaining to their livelihood, particularly career prospects and community life. A large number of victim families have not taken recourse to the law as the legal process is convoluted, long drawn out, inaccessible and uncertain. “Enforced disappearance” is not codified as a crime under the domestic law and the sheer power and authority exercised by the armed forces renders the ordinary legal process redundant. Civil society organizations have been in the forefront in documenting and calling for state action as the case below from Assam shows.

#### Case 9: Majoni's disappearance

Majoni Das, D/O of Mr. Dimeswar Das, aged 30 years, woman activist, teacher, and writer from Sibsagar has been missing since February 8, 2013. She is a victim of enforced disappearance on suspicion of having links with a rebel group. Her brother disappeared several years ago and was subsequently killed and Majoni and her family has had to face constant harassment from the

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authorities around her brother's case where the truth never came to light. Majoni Das, was an active member of Nari Adhikar Suraksha Samiti (NASS), a women's rights organization and also involved with fortnightly news paper namely AMI. Additionally she also worked as a warden of a hostel run by the Purva Bharati Educational Trust, Jorhat for On 6th February 2013 she went to her parent's home located in another town to attend a family function. When she reached home she received summons from the local police to present herself at the office of the Superintendent of Police. She was very worried and informed her colleagues about the calls.

Subsequently two police officers arrived at her home and not finding her in left orders for her to report at the police station the next day. Majoni left home on 10th February after informing her neighbors that was going to the police station and has been missing since. FIRs were filed by her colleague's as well family members and several visits made to the police office to request to trace Majoni. The police responded by saying Majoni has joined the armed group United Liberation Front of Assam and that the family should look for her in the neighboring state of Nagaland. A petition was made to the National Human Rights Commission and in response to the NHRC's inquiry the Superintendent of Police submitted a report. The Asian Human Rights Centre refuted the report and called for a fresh inquiry on the grounds that:

1. The Superintendent of Police cannot be the judge and investigator at the same time.
2. The facts of the case show beyond reasonable doubt that the disappearance was pre planned by the Police.
3. Special independent inquiry required until Majoni's disappearance is cleared.

### D. DISPLACEMENT

Conflict induced displacement is a serious concern, with both long term and short term consequences. CEDAW's General Recommendation No. 28 calls for State parties to be responsible for IDPs, regardless of whether the affected persons are in their territory.<sup>24</sup>

Statistics released by the Norwegian-based Internal Displacement Monitoring Centre (2011) on those that have been displaced as a result of the conflict in the North East region are striking: over 450,000 people have been said to be displaced as a result of the conflicts, with the greatest number in Assam. About 170,000 people in Assam who had been displaced by ethnic violence were living in camps in deplorable conditions. In 2009 and 2010, new violence in Assam displaced more than 16,000 Dimasas and Zeme Nagas and 4,000 Nepali-speakers. In 2012, about 450 lakhs people were displaced in BTAD area of western Assam after an ethnic conflict between Bodos and Muslims. Till date 6000 people are in makeshift camps. 30,000 Brus displaced from Mizoram state in 1997 and living in difficult conditions in camps in Tripura state have not been able to return, and new Mizo-Bru violence in November 2009 displaced another 5,000 Brus. In Manipur state, 1,500 to 2,500 people had to flee their homes in May 2009 due to counterinsurgency operations by security forces. In May 2010, clashes between security forces and Naga protesters displaced 500 Nagas from Manipur state to Nagaland state.<sup>25</sup> Displacement affects women enormously and causes insecurity both physical and economical. It has been well reported that displacement increases trafficking as women look for income and financial security.

Major ethnic conflicts which broke out in the state of Assam particularly during 1993, 1994, 1996, 1998, 2005, 2008, 2011 and 2012<sup>26</sup> led to relief camps being set up year after year. Distressing evidences of health are results of scarce supply of water, absence of toilets, lack of bodily care and no clear gender sensitive guideline to address the displacement.

The 'Relief Camp Management Manual of Government of Assam highlights the issue of safety and security of women but it does not effectively address violence against women in the camps as no vigilance committees constituting women, as mentioned in the manual, were in practice when the camps were

visited.<sup>27</sup> Inside and outside the camps, women are extremely vulnerable to sexual harassment and a continued sense of fear, dread and mistrust. The commitment made by the government to manage conflict in the NE region is yet to be honored,<sup>28</sup> women are conspicuous by their absence in the Peace Committees set up to restore peace thereby and a gendered approach to the peace building processes is non-existent.<sup>29</sup>

## Experiences of IDP women

### Case 9: Case of a young mother

I am 19 years old and became a mother for the first time. I don't wish to remember the day of my first motherhood. All I remember is that I was running away. I felt the labour pain. I was so nervous that I don't remember how all these happened. My sister in law knows the incident. It was around 4 pm when I was preparing food when I was instructed to run away along with my husband and other family members. Later the child was born while crossing Champariver. Then I stayed that night in a school house. After a day I was shifted to the present camp. I had nothing to eat after giving birth to my child.<sup>30</sup>

### Case 10: experience of an inmate in relief camp.

“We fled on the day of the attack. It was mainly fear and increased insecurity. We all want to go back to our villages. But there are rumours that the fight is still on. There should be peace dialogues with members representing various communities. Fixed security pickets are required for our safe return in the riot hit vulnerable pockets. For young girls life in the camp is difficult. When we fled we did not bring with us anything. Some of us have just two pairs of clothes and some just one. We wear wet clothes for hours and during our monthly periods we use whatever cloth we can find as sanitary napkins. There is complete lack of privacy to bathe, change clothes, sleep and even to dry our clothes”. (Source: NEN field visit to a relief camp in Odalguri district in 2008).<sup>31</sup>

Where meeting the basic needs of women in the camps is in disarray the issue of their safety remains a distant agenda of the government. To keep family honour intact and protect girls from any kind of sexual harassment/violence, often young girls are married off when they are in the relief camps, prevented from pursuing their education and thereby ensuring a life of dependency and disempowerment.

When the insurgency erupted in Jammu and Kashmir in 1989, over 1,00,000 1,50,000 Kashmiri Pandits left the valley, suggesting that the community suffered enough intimidation to abandon their homes. Indian state claiming inability to protect them when in Kashmir, rather facilitated their exodus, and then failed to rehabilitate them after their forced departure. While the exact numbers and the cause of the exodus is disputed the fact remains that thousands continue to live in camps in Jammu, Delhi and other parts of India in atrocious conditions of deprivation. The numbers of displaced people continue to grow as in more recent times people have fled out of fear from the security forces or the militants. In some cases only part of the family has moved away looking for opportunities elsewhere while women has been left behind to look after the homes and fields.

Women have been the worst sufferers of the exodus. Lack of privacy in the camps, mental illnesses such as depression, paranoia and extreme insecurity is very high amongst the women. For many of them the experience of living in an alien land is humiliating and the sense of humiliation is often fed by surrounding communities who do not welcome them seeing them as competitors for the political, social and economic resources of the state. Even for those who have managed to recover from the economic losses of migration, there is the sense of loss that comes from fear of losing their specific cultural identity, language, regionally specific religious traditions.

Other concerns include access to healthcare especially reproductive health, quality education for the children, limited employment opportunities being confined to the camp. Sanitation remains a major



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problem in camps. It has its gendered dimension as it makes women vulnerable to physical and sexual harassment both by camp and non-camp males. Psychological problems due to loss of employment and property and lifestyles by men have also resulted in increased violence against women.

In 2005, the state government of Chhattisgarh along with the support of the Home Ministry, sponsored a vigilante group called the “SalwaJudum,” which in reality was a massive and brutal ground clearing operation –leading to the most widespread displacement anywhere in the country.<sup>32</sup> All the Special Police Officers (SPO's) were given weapons training by the security forces as part of an official plan to create a civil vigilante structure parallel to that of the Naxalites, and while their ostensible purpose was to combat the left-wing insurgency, the real task was to clear the mineral rich land of Bastar for exploitation by the State and corporations. The exact figures of displacement are not known, but in the 4-5 years that the SalwaJudum was active, it is believed to have displaced more than 300,000 Adivasis from the 644 villages, killed, raped, looted and burnt down entire villages. People were forcibly herded into relief camps, where they faced acute shortage of water, food, and other basic amenities. Several thousands were forced to migrate to neighboring states and districts. The vigilante army of Salwa Judum was declared unconstitutional by Supreme Court in 2011 and disbanded, but its victims have not yet received any compensation or relief.

### 4. WOMEN IN POST CONFLICT SITUATION

There is increased realization that a window of opportunity exists for societies emerging from conflict to develop and institutionalize legislative, policy and other measures that fully protect and advance women's human rights. A post-conflict context therefore can provide strategic opportunities for transformation in women's lives. Because of the protracted nature of conflict in North East India and notwithstanding several peace negotiations that are underway it is difficult to clearly characterize any area as “post conflict” and the analysis that conflicts are not linear progressions but a continuum is aptly applicable to the conflicts in India and more particularly to the North East region. Nonetheless there are important issues emerging at this point which need to be addressed and opportunities leveraged to advance women's rights. The specificity of experiences of diverse groups of women and the special role that women human rights defenders play in a post conflict situation is especially crucial.

#### A. WOMEN EX-COMBATANTS AND WOMEN MEMBERS OF ARMED GROUPS:

Recognizing that women are both victims and agents in situations of conflict CEDAW GR 30 states:

“While women often take on leadership roles during conflict as heads of households, peacemakers, political leaders and combatants, the Committee has repeatedly expressed concern that their voices are silenced and marginalized in post-conflict and transition periods and recovery processes”.<sup>33</sup>

Though no estimates are available women figure prominently in the armed movements of North East India especially the Naga and the Assam movements as well as in the Naxal movements of Central India. Despite this, the debate on integration/rehabilitation of the militant groups does not have a gendered dimension and the voices and perspectives of women ex combatants are missing in reintegration plans and programmes. The general perception is that these women need to be satisfied with whatever “state largess” is extended to them. What is overlooked is that gender-based inequalities in society at large often result in creating the conditions which may force women and girls to choose to participate in armed combat, and/or make them more vulnerable to being forcibly recruited. These are not being factored in the post conflict reconstruction and reparations.

The entry into armed groups by different women differ and range from breaking away from the shackles of gender oppressive societies, extreme poverty, human rights violations of close family members, sexual assault by state actors, coerced or forced recruitment, ideology driven, or notions of freedom. Not only are the point of entry different but the roles, relative power positions and experiences for different women are different and determine their conditions in the post conflict scenario. In many instances women come back to the same adverse conditions that they tried to get away from two decades or so back plus the stigma

associated with a woman having transgressed societal norms. Women ex combatants and women members of armed groups can play a critical role in ensuring durable peace in communities where peace negotiations are underway as for instance in the state of Assam in NE India. There are important issues however that need urgent attention with these women many of whom are in designated camps within the state. Some of these are gender just reintegration efforts which include alternative livelihood options which are realistic, gender sensitive and do not attempt to fit the women back into stereotypical gendered roles but recognizing the causes of their entry and the roles in the armed struggle periods create opportunities that are innovative and aimed at empowerment and complete reintegration. Women ex combatants are deeply traumatized having experienced and seen violence and killings at very close quarters and in need of long term psychosocial counseling which is hardly available in the state. Many of the women interviewed<sup>34</sup> talked about the difficulties of reintegrating back into society, the sense of hopelessness and anxiety about the future that they feel as they await for a positive conclusion of the peace talks. Others outside the camps talk about the deep stigmatization they face in the communities where they are being reintegrated. Again a section of these women members, despite a High Court order in their favor have been unable to get information about their husbands who went missing during the combined Indian and Bhutanese army operations in 2003. The women seek closure to begin to start life afresh for as one woman puts it:

“I only want to know formally in public about my husband's status. I have also put forward the same plea to the government of Assam. Even if he is not alive, I will be happy if the information is provided and I can live in peace.”<sup>35</sup>

## B. WOMEN IN PEACE BUILDING

In North East India, where there is a tradition of women's collective activism, women at the local level have been playing significant roles in peace building from mediating between conflicting sides, protecting their communities against reprisal attacks, demanding justice and repeal of emergency laws (like the Armed Forces Special Powers Act (AFSPA), and building community wide support for peace and reconciliation. In Manipur the protest against human rights violations and silent appeal for peace by the Iron lady Irom Sharmila which has entered its 14th year is unprecedented worldwide while the Meira Paibis (torch bearers) naked protest following outrage at the likely rape, torture and killing of Manorma Devi by the paramilitary forces drew international attention.

The Naga Mothers Association and the Naga Women's Union of Manipur in particular stand out in this tapestry of women's agency in conflict situations, because of their capacity to translate their local peace building activism into formal authority. In the 1997 cease fire agreement of the Naga Peace process, the concerns were only with the security of the two armed parties, the NSCN and the Government of India (GOI), and overlooked concerns about civilian security. In 2001 civil society groups, including the aforementioned women's groups managed to get the two parties to redefine the cease fire agreement to include civilian security issues and accept the need for a monitoring mechanism that had independent non-partisan observers. In the state of Assam various women's groups like Assam Pradeshik Mahila Samiti, the Kasturba Trust, Matri Manch, Sajagota Samities, Mahila Santi Sena (MSS) and Bodo Women Justice Forum have played important roles in peace building.

Despite these contributions and the post UNSRC 1325 international awareness and commitments being made to bring in women's experiences and leadership into peace building efforts, in India, women's roles continue to be seen in an instrumentalist way both by the government agencies and the non-state actors and women have been marginalized in formal peace processes. Women do not have a formal place at the table of the GOI - Naga peace talks. In Assam, the feminist writer Indira Raisom Goswami's individual efforts to broker peace between the government and the militant group, ULFA, (2005-6), floundered over the reluctance of the Home Ministry officials to take civil society's intervention seriously. A significant departure however has been the appointment of well known academician Radha Kumar as one of the interlocutor in the Kashmir peace initiative.

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### C. WOMEN IN DECISION MAKING ROLES IN INDIGENOUS COMMUNITIES

Women of India are guaranteed a 1/3 reservation of seats under Part IX A (74th Amendment) of the Indian Constitution. Amongst the indigenous communities of North East India that come under the sixth Schedule taking recourse to customary laws and practices has been the way to put innumerable obstacles against women's participation in political decision making. In the state of Nagaland the 74th Amendment was cited and reiterated in the 'Amended Nagaland Municipal and Town Council Act 2006', under the special provisions for empowerment of women in urban decision making. But in clear denial of women's constitutional rights, sixty legislators of Nagaland, both of the ruling as well as the opposition, passed a Resolution, in September 2012 exempting the 74th Amendment citing contravention of Article 371 A to restrict women to participate in the Municipal bodies.

The Article, in context, pertains to the Naga customary laws which cannot be tampered with, by any act of the Parliament unless the Nagaland Legislative Assembly, by a resolution, so decides. ....'otherwise. This has brought in serious denial of women's rights in which the violations identified under CEDAW are that of Article 1; Article 2 b, c, d, e, f; Article 4.1; Article 5a and Article 7a. This is especially significant as the Naga Peace process is underway and a new order is being negotiated. It is extremely important that Naga women's interests and promotion of gender equality, through representation, for instance, are not bartered away in the interest of political expediency. The state's position that peace talks are of utmost concern while the issue of women's representation will be dealt with later is extremely problematic. For sustainable peace and genuine social transformation women's full participation at all levels of decision making is imperative.

### 5. WOMEN IN CONFLICT PREVENTION

“Obligations under the Convention require States parties to focus on the prevention of conflict and all forms of violence. Such conflict prevention includes effective early warning systems to collect and analyse open-source information, preventive diplomacy and mediation, and prevention efforts that tackle the root causes of conflict. It also includes robust and effective regulation of the arms trade, in addition to appropriate control over the circulation of existing and often illicit conventional arms, including small arms, to prevent their use to commit or facilitate serious acts of gender-based violence. There is a correlation between the increased prevalence of gender-based violence and discrimination and the outbreak of conflict. For example, rapid increases in the prevalence of sexual violence can serve as an early warning of conflict. Accordingly, efforts to eliminate gender-based violations also contribute in the long term to preventing conflict, its escalation and the recurrence of violence in the post-conflict phase.”<sup>36</sup>

While it is important to address the fallout of active conflict on the lives of women and of continuous and systematic attention to these issues in a post conflict scenario, in situations of protracted conflict as in North East India, it is even more important to tackle the root causes of conflict - the “triggers” that keeps the cyclical continuum of conflict and recognize the role women play and can play in conflict prevention. Impunity for gender based violence under the various repressive legislations operational in the regions is a high trigger point for recurring conflict. In the various central governments funded research and strategic studies institutions that have come up this “trigger” finds rare mention. There is no attempt either to take in the understanding of women of these “triggers” and women's perception of “early warnings” in the communities that they come from nor of the very important local level strategic work that women are involved in preventing conflict. In parts of conflict affected North East India and Chhattisgarh which have rich deposits of mineral resources and huge bio diversity of other natural resources, women's human rights defenders and civil society groups have expressed concern of large scale ravaging of these natural resources by corporations, private individuals and the security forces pointing out that the possibility of this being the “trigger” for the next bout of conflict in those regions is extremely high. The proliferation of small arms and the policy of allowing sections of surrendered armed groups in these regions to retain their arms for self protection is another grave concern repeatedly pointed out by the women.

## 6. GOVERNMENT INITIATIVES

The few initiatives that focus on the needs of conflict affected women are state specific but some general initiatives by the Government of India pertaining to women can be relevant and used to address and advance women's rights in conflict and post conflict situations. These include Legal Services Authority of India, Ujjawala (A Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-Integration of Victims of Trafficking for Commercial Sexual Exploitation) and Swadhar (home based scheme for women in difficult circumstances). In addition the Ministry of Home Affairs (MHA) has a scheme for Surrender-cum-Rehabilitation of militants in North East which started in 1998 and revised in 2005. Women combatants however do not receive appropriate services in comparison to the men as they are not recognized explicitly as “combatants.” Other initiatives of some significance are:

### A. NMEW

The National Mission for Empowerment of Women (2010-15) (NMEW) which was launched in March 2010 aims to use convergence of schemes/programmes of different Ministries and Departments in securing women's social, economic and educational empowerment, along with monitoring them and reviewing gender budgeting in the country.

### B. 11th FIVE YEAR PLAN

The Eleventh Five Year Plan (2007-2012), had expressed great concern of multiple forms of sexual VAW in conflict zones and in communal or sectarian violence. Hence a commitment was made in the Eleventh Plan period to set up a National Task Force on VAW in Zones of Conflict under the National Commission for Women (NCW). (Volume II, Social Sector, Point 6.50 Pg 194). This was to be supported with adequate budgetary allocations to make it effective in monitoring VAW in conflict zones and facilitating relief and access to justice for affected women. Unfortunately the commitment never got fulfilled and in the 12th Five Year Plan this provision and mention of VAW in conflict zones was intentionally removed.

### C. SUPPORT SERVICES & SCHEMES

A survey on support services<sup>37</sup>, both formal and non formal show a quantitative increase but accessibility to the same by women is limited. For instance in the state of Assam some districts affected by decades of political turmoil lack urgently needed shelter homes and trauma counseling centers. Secondly, much of these services including the staff require professional training and greater gender sensitivity to handle VAW. Some of the best services are limited in number, are overwhelmed by increasing demands and do not address and or redress critical needs of women in conflict and post conflict situations. The Assam Relief Manual, 1976 which is in the process being updated totally lacks a blue print to provide livelihood support to conflict affected women or families.

### D. BUDGETS

In the 2006-2007, state government of Assam set up a Terrorist Victims Welfare Board and also proposed that two rehabilitation homes be set up for widows, widows of militant leaders and orphans affected by armed conflict which would include facilities for counseling, education and employment.<sup>38</sup> Under the 2013-14 budgets the Assam Victim Compensation Scheme, 2012 was notified. Other measures include setting up 14 Anti Human Trafficking Units and operationalizing women's cells in 30 Police Stations in 2012-13 with 30 more to be functional next year, besides raising the Veerangana Company of Women Police. Assam Govt. proposes to provide a mechanism for free legal aid to the victims and establishment of Fast Track courts to try cases of VAW. For rehabilitation of the victims of such violence against women and children, there is a proposal to set up a special fund in the next financial year with an initial corpus of Rs. 5 crore. Social Welfare Department will be the nodal department for this.

### E. JUSTICE VERMA COMMITTEE 2012-2013

In response to the nationwide protest against the rape and subsequent death of a young woman in Delhi



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the government of India appointed Justice Verma to set up a committee to look into law reforms on sexual assault. The Committee called for submissions from across the nation and was particularly attentive to submissions made from the conflict affected regions and made strong recommendations. Criminal laws related to sexual violence was amended however majority of the recommendations were however rejected by the Government of India.

However, the government included an explanation under section 197 of the Criminal Procedure Code that abolished the requirement of mandatory 'prior sanction' in cases of custodial sexual violence as per Criminal Law Amendment Act 2013.

### **7. CIVIL SOCIETY INITIATIVES AND ACTIVISM**

The demands of women's groups are not limited to redressal of specific cases, but extend to a radical change in the approach of the state to democratic movements. A democratic, constitutional political establishment must not deploy the army or the Central Armed Police Forces (CAPF) against its own people, but address the grievances and demands of all citizens of this country through democratic processes and institutions.

Women's rights organizations like the North East Network and WinG in North East India, the Association of Disappeared Persons in Kashmir plus some key human rights organizations like Human Rights Alert and Extrajudicial Execution Victim Family Association in Manipur and the People's Union for Civil Liberties (PUCL) in Chhattisgarh have continuously articulated the multiple impact and disadvantages women face in conflict and post conflict areas. These organizations have systematically documented women's human rights violations through studies and fact findings; built capacities of women's organizations, government stakeholders, human rights defenders, lawyers and other critical partners towards applying normative human rights standards to claim rights in domestic spheres through feminists training and interactive workshops; initiated activism and advocacy towards policy change at regional and national and international levels by monitoring due diligence/government policies & programmes and by using international treaty body reporting mechanisms such as the CEDAW, UNSRV, UNSCR and ICESCR.

### **8. BARRIERS AND CONTRIBUTING FACTORS**

Despite concerted advocacy efforts by women's human rights organizations and defenders there are several contributing factors to the protracted conflict which remain unaddressed and several barriers that prevent women from access to justice and adequate reparation. The major ones of concern are:

#### **A. EXISTING LEGISLATION, IMPUNITY AND INDIA'S OBLIGATIONS UNDER INTERNATIONAL LAW:**

In its concluding comments to the Government of India's initial report, the CEDAW Committee states:

“The Committee recommends a review of prevention of terrorism legislation and the Armed Forces Special Provisions Act, in consultation with the Human Rights Commission, the National Commission of Women and civil society, so that special powers given to the security forces do not prevent the investigation and prosecution of acts of violence against women in conflict areas, and during detention and arrest. The Committee recommends that women be given an opportunity to make their contribution to peaceful conflict resolutions.”

Then again in the concluding comment by the Committee in 2007 after the combined second and third periodic report of the Government of India:

“The Committee reiterates the concerns and recommendations in the concluding comments adopted in 2000 and urges the State party to proceed without delay with their implementation. The Committee requests the State party to provide information on the steps being taken to abolish or reform the Armed Forces Special Powers Act and to ensure that investigation and prosecution of acts of violence against women by the military in disturbed areas and during detention or arrest is not impeded”.

The CEDAW committee's stand was reinforced nationally by the Justice J. S. Verma Committee, set up in 2013 to suggest amendments to laws relating to crimes against women. Justice Verma Committee voiced the concern that “systematic or isolated sexual violence, in the process of Internal Security duties, is being legitimized by the Armed Forces Special Powers Act, which is in force in large parts of our country” and recommends wide-ranging measures to address this reality. It recommended review of the continuance of the Armed Forces (Special Powers) Act (AFSPA) in the context of extending legal protection to women in conflict areas. Stressing that women in conflict areas were entitled to all the security and dignity that was afforded to citizens in any other part of the country, the committee recommended bringing sexual violence against women by members of the armed forces or uniformed personnel under the purview of ordinary criminal law; taking special care to ensure the safety of women who are complainants and witnesses in cases of sexual assault by the armed forces; and setting up special commissioners for women's safety and security in all areas of conflict in the country.

In addition, both civil society and human rights activists of the region, as well as international human rights commissions have consistently called for the repeal and review of the Act. The Human Rights Committee in its concluding comments to the GOI's report on the Covenant of Civil And Political Rights (UN 1997) has said: “The Committee regrets that some parts of India have remained subject to declaration as disturbed areas over many years - for example the Armed Forces (Special Powers) Act has been applied throughout Manipur since 1980 and in some areas of that state for much longer - and that, in these areas, the State party is in effect using emergency powers without resorting to article 4, paragraph 3, of the Covenant. Therefore: The Committee recommends that the application of these emergency powers be closely monitored so as to ensure its strict compliance with the provisions of the Covenant.”

In November 2004 in the wake of widespread protests and lock-outs in Manipur following human rights violations including Manorama Devi's killing by the army, the Prime Minister set up a Committee to review the AFSPA. Despite the recommendations of the Committee, as well as this national committee set up by the government itself the Armed Forces Special Powers Act 1958 continues keeping an atmosphere of relentless aggression alive and resulting in gross violations of human rights particularly of women.

Security forces operating in 'disturbed areas are empowered to detain any person without warrant and may even shoot to kill anyone on mere suspicions as per the provisions of AFSPA. In 2012, the Supreme Court of India constituted an enquiry commission while hearing a writ petition filed by the family members of victims of extrajudicial execution. The Commission of Inquiry, constituted by the Supreme Court of India, in Writ Petition filed its report to the Court on 30 March 2013. The Commission enquired into six cases of extrajudicial killings including the killing of a 12 year old child and found that the killings were arbitrary. The final verdict in the case is still pending.

Along with the extraordinary powers and the immunity provided under the Armed Forces Special Power's Act and section 197 of Criminal Procedure Code and the Army Act 1950 which regulates the security forces provides additional immunity as it places criminal acts perpetrated by army men while on active duty, including rape, outside the jurisdiction of the ordinary criminal justice system. The prior right of the army and Central Armed Police Forces (CAPF) to seek custody of accused personnel under their respective Acts, for prosecution through court martial, and not before the ordinary criminal court, is a complete violation of the victim's right to remedy and justice. Court martial trials adjudicated by officers belonging to the same security force as the accused personnel do not pass the test of a trial by an impartial and independent court. These laws allow the security forces to be Judge, Jury and Prosecutor, encouraging impunity.

A 2009 investigation by human rights organization- Jammu and Kashmir Coalition of Civil Society, documented the existence of 2,700 unknown, unmarked, and mass graves, containing 2,943+ bodies, across 55 villages.<sup>39</sup> Of these 2,373 were unidentified and unnamed grave across districts of north Kashmir. An investigation by the State Human Rights Commission of Jammu and Kashmir (SHRC), in April 2012 confirmed finding of 2,156 unidentified bodies at 38 burial sites in north Kashmir, of which 574 were identified

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as those of local residents. The government has not initiated any investigation or probe into the matter.<sup>40</sup>

India signed the International Convention for Protection of All Persons from Enforced Disappearances in February 2007, but has yet to ratify the Convention. During the Universal Periodic Review from the Working Group of the Human Rights Council, both in the first (2008) and second (2012) cycle, recommendations were made to the Indian government to ratify the Convention. Accepting the Recommendation in 2008 the Indian Govt. stated that the ratification process was underway.<sup>41</sup> However India returned to the Human Rights Council in 2012 without making any progress on the issue.<sup>42</sup> Curiously in 2012, India declined to accept the Recommendation pertaining to ratification of the Convention against enforced disappearances.<sup>43</sup>

A number of factors encourage impunity for enforced disappearances, extrajudicial killings, rape and other human rights violations by security forces. The matrix of special laws operating in Kashmir, including Jammu and Kashmir Armed Forces Special Powers Act, 1990 (JKAFSPA), Jammu and Kashmir Disturbed Areas Act, 1992 and Jammu and Kashmir Public Safety Act, 1978 (JKPSA), sanction the arbitrary use of excessive force by the armed forces, including the right to shoot to kill, as principles of reasonableness and proportionality in the use of force are diluted or abandoned. The law further allows for detention and arrest without warrant; search without warrant; destruction of property, all based on mere suspicion. The same is aggravated by the statutory immunities embedded in the law, which make it virtually impossible to hold security personnel accountable under regular criminal law. This institutional impunity has systematically obstructed and denied the people of Kashmir the right to justice.

An analysis of the use of AFSPA clearly indicates that AFSPA is essentially the lawless use of excessive force and has created a legal regime that has spawned impunity for the armed forces allowing them the use of any strategy or tactic without the constraints of legal principles or constitutional safeguards. This entrenched impunity can be sourced not just to the extraordinary laws, but to the subversion of democratic institutions and practices. In the 'disturbed areas', where the armed forces operate, structures and processes tend to be overawed by the authority and power of the army. Special laws like AFSPA<sup>44</sup> and the general law,<sup>45</sup> shield security forces from arrest and criminal prosecution through provisions of statutory immunity that require the concerned Executive authority to grant prior sanction for prosecution. The legal provisions for 'prior sanction, have proved to be an insurmountable obstacle for families seeking redress for disappearances. In all cases of enforced disappearances in Kashmir such sanction for prosecution has been routinely denied.

The Chhattisgarh Special Public Security Act passed in the year 2005 is another draconian legislation which confers unjust and arbitrary power on the State to infringe upon the fundamental rights of the people. The Act uses vague and ill-defined terms, such as "membership" of an unlawful assembly, and "terrorist acts," without defining them, which in effect, confers untrammelled power to the State to implement its whims under the garb of legal sanction. The Chhattisgarh High Court has in April 2014, upheld the constitutional validity of the Chhattisgarh Special Public Security Act.

### B. APATHY AND NON-FUNCTIONING OF THE MACHINERY FOR REDRESS

Even without the operation of the Armed Forces (Special Powers) Act, redress for victims of violence and sexual assault are an almost impossible task in an area of conflict due to the non-functioning or apathy of the redress machinery. The problems include the following:

- Refusal or general apathy of police in registering cases, especially when the victim belongs to a disaffected community and the accused belongs to the security forces.
- Lack or loss of evidence in rape cases. In situations of conflict, where there is general panic and fear, retaining evidence is even more difficult.
- Non-availability of police stations or outposts to lodge complaints.



- Long-drawn, complicated complaints and legal procedures, and inability to meet expenses.
- Lack of neutrality of the Human Rights Commissions due to the appointment of members of the police forces to the Chair of State Human Rights Commissions.
- Apathy of the judiciary and indifference of police personnel towards the rule of law.
- Culture of Impunity that assures the statutory agencies that there are no administrative or punitive sanctions for dereliction of duty, negligence or partisanship in discharge of statutory functions.

### C. LACK OF SUPPORT SERVICES

Mental health suffers most in armed conflict situation. Women go through added psychological and physical trauma during conflict. Therefore the need for psychological and other support services for women living under conflict is extremely important. However, in North East India, Kashmir and the central Indian states these services are almost non-existing and whatever meager services available are not of quality. The role of State is abysmal in providing these services.

In addition the State's refusal to acknowledge the existence of conflict under the International Humanitarian Law has deprived conflict affected people from enjoying certain rights especially with regard to basic medical care, displacement and fair trial which apply as per the various protocols and Common Article 3 of the Geneva Convention. The insistence that conflicts in the country are "internal disturbances" and not an armed conflict meant that the International Committees for the Red Cross (ICRC) which was the only healthcare provider in large tracts of the conflict zone in Chhattisgarh was forced to withdraw its service.

Another area of concern is that there has been no effort to ascertain the extent of mental and physical trauma the conflict has caused the people of the affected regions and special vulnerabilities of women. This lack of overt acknowledgement of the health and other fallouts of conflict impacts the kind of services and budgets planned for the region. Almost all the efforts in documenting impact of conflict have been by the civil society groups. Conflict has further heightened women's vulnerability to HIV and AIDS, trafficking and drug abuse.

## 9. RECOMMENDATIONS

We strongly call upon the State to honor its obligation to gender equality and women's human rights by conforming and addressing in letter and spirit the concerns highlighted in CEDAW General Recommendation 30 pertaining to women in conflict prevention, conflict and post conflict in the context of India.

We are deeply concerned about the protracted nature of conflict in the country and the enormous costs to human lives and social harmony by the resultant violence. Despite the continuum of conflict there has been no people centric analysis of the structural causes by the State. We call for comprehensive analysis and action for conflict prevention and conflict transformation in the affected areas. We especially call for protection of land rights and natural resources in areas peopled by indigenous communities affected by conflict as these have been major "triggers" for the continuum of conflict.

We reiterate the Committee's position that women are not a homogenous group and their experiences of conflict and specific needs in post conflict are diverse and we therefore call upon the State to address the specific discriminations of the diverse categories of women.

We, in particular are concerned about the safety and security of women human rights defenders and call for due recognition of their contribution to gender justice and protection by the State. In addition we also call for special attention to be paid to the needs of indigenous, rural, poor, differently abled, trafficked, religious and sexual minority women and young girls in conflict situations.

We are deeply concerned about the total omission of the impact of conflict on the lives of women and their needs in the present 12th Year Plan and call for the State to rectify this in the next 13th Year Plan and include the concerns and needs after proper consultations with affected women, women human rights defenders and other stakeholders.



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We further urge the State to honor its international commitment to women in conflict transformation and peace building under UN Security Council Resolutions 1325, 1820, 1888, 1889, 1960, 2106 and 2122.

Specifically, we also draw attention to the following:

### A. SEXUAL VIOLENCE AND THE STATE

Recognizing that victims of sexual violence are largely civilians,

We are deeply concerned that the Army is allowed to have jurisdiction in matters of investigating sexual violence committed by its personnel while on active service and that the Army in many instances has challenged the jurisdiction of the state government to institute Enquiry Commissions.

We therefore call for:

Immediate ratification of

- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol;
- The International Convention for the Protection of All Persons from Enforced Disappearance.
- The two Optional Protocols to the ICCPR; the Optional Protocol to CEDAW;
- The Rome Statute of the International Criminal Court; and the two Optional Protocols to the Geneva Conventions.
- Immediate repeal of the Armed Forces (Special Powers) Act, 1958 and JK AFSPA 1990, Section 197 Criminal Procedure Code and the Chhattisgarh Special Public Security Act 2005
- Codification of Enforced disappearances as a distinct crime under the Indian Penal Code
- Review Section 197 of the Criminal Procedure Code in order to remove any legal barriers for the criminal prosecution of a public servant, including the need for prior sanction from the government before cognizance can be taken of any offense by a public servant for criminal prosecution.
- Immediate enactment of the Prevention of Torture Bill ensuring its compliance with Convention against Torture.
- Review Section 46 of the Criminal Procedure Code and legislation in all states regarding use of force, including the exceptional use of lethal force, by all security officers to ensure compliance with international human rights law principles of proportionality and necessity.
- Take urgent steps towards de militarization and initiate a political dialogue in which women are included in the deliberations and decisions making.
- Abolish immunity given to the army and other Central Armed Police Forces under Army Act and other laws, from prosecution before ordinary criminal court. Court Martial infringes upon the victims' right to justice. All cases of sexual assault must be tried and prosecuted before the ordinary criminal court.
- Disband state-supported private militias and vigilante groups, like the Salwa Judum, in the conflict areas of Central India, Northeast India and Kashmir. Take actions against the member of these groups accused of sexual violence and other human rights violations.
- Stop intimidation and restrictions on movements of women's groups and other democratic rights groups, to conduct fact-finding of incidents of sexual and other forms violence in conflict areas, have to stop.
- End arbitrary and proxy arrests and illegal detention of women and children during search operation.
- It is observed that the members of the armed forces do not cooperate and brazenly refuse to attend the court. An analysis of the efficacy of this constitutional remedy in Kashmir concluded that the

most striking feature of the habeas corpus proceedings is the powerlessness of the High Court.<sup>46</sup> It was observed that the pace, the manner in which the case would proceed and the outcome of the case was controlled entirely by the Central and State Governments.<sup>47</sup> Ensure that measures are put in place to remedy this trend.

- Ensure strict adherence to the required procedures and safeguards (such as the DK Basu guidelines) for arrest, interrogation and detention by the district level administration and judiciary
- More proactive, speedy, diligent and independent functioning of the institutions such as the National Human Rights Commissions (NHRC), the National Women Commissions (NCW) and the corresponding state commissions, created for safeguarded human rights and protection of vulnerable groups.
- Expand the scope of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 to include custodial violence, torture, abetting such violence and any form of sexual violence, verbal or physical humiliation of Dalit and Tribal women.

#### **We further call for:**

- Defining custodial violence: to include any incident of sexual assault by security forces/police/SPOs accompanying them, irrespective of where it occurs, since the perpetrators exercise power and control over the people of that area owing to their position of authority.
- Special Guidelines: to be issued along the lines of the NHRC guidelines for encounter killings, as it cannot be expected that an aggrieved person/family who has been violated by personnel of the police station of her/their area, will go back to report the violation to that very same police station.
- Registering cases: of all victims, even when the perpetrators are from the army, paramilitary or other security forces; no refuge under impunity provided under unjust laws such as the AFSPA.
- Investigation and prosecution: Investigation into all complaints of sexual assault by security forces must be conducted by the police in accordance with the law, and supervised by a senior police officer. Immediate arrest of the accused and suspension of all accused from their posts once the FIR is registered.
- Immunity from Prosecution: the requirement of sanction for prosecution under different security laws
- Command responsibility: Higher ranking officials -SP the Collector or any other senior officer in the chain of command of Army or the Central Armed Police Forces or Police should be held criminally liable for crimes committed by their subordinates or under their command or within their effective control or authority. The senior officer must be held criminally liable for crimes committed by their subordinates if he knew or in these circumstances should have known about the commission of crimes and failed to take necessary measures to prevent or repress or prosecute the commission of the crimes by the subordinate forces.
- Non-registration of FIR: We call for providing correcting and remedial measures for police refusing to register complaints against armed forces when the complainant is a woman.
- Judicial delay: We strongly urge to prevent judicial delay in cases of sexual violence

#### **B. DISPLACEMENT**

- CEDAW's General Recommendation No. 28 calls for State parties to be responsible for IDPs, regardless of whether the affected persons are in their territory.<sup>48</sup>
- We call for this provision to be adhered to as this is greatly relevant to the NE region of India, which borders several countries and has a migrant population, often affected by ethnic violence.
- The Committee's concluding observations of 2007 reiterates the issue of IDP. In the absence of a national law on displacement, we urge that the state governments must adhere to international

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standards set out in 'Guiding principles on Internally Displaced Persons in planning and implementing rehabilitation packages and programmes.

- We urge the state to set up an independent committee (for a period of 1-2 years) to monitor the progress of rehabilitation schemes and implementation. This committee must consist of non-partisan members who are committed to human rights and work towards a gender balanced perspective.
  - Ensure psychological recovery and social reintegration of survivors of violence
  - Make available gender sensitive healthcare and sanitary facilities, proper water supply and trauma management in relief camps.
  - Ensure security and safety of women in relief camps.
  - The UN guiding Principles for IDPs to be adopted and made the basis of policies and programs
4. Reparative Justice for Women survivors of sexual violence.
- Develop methods of calculating compensation to commensurate with loss concerned.
  - Provide for gender sensitive livelihood options for affected women to ensure full economic recovery and stabilization of their lives.
  - We are deeply concerned with development induced displacement of indigenous women in the resource rich areas affected by conflict and call for an independent assessment of this displacement and dispossession of land rights of indigenous and rural women to be led by a group of credible and gender sensitive experts

### C. WOMEN AND PEACE BUILDING

- Following CEDAW Committee's pre working session of the 37th Session in 2007, question No. 2 talks of the implementation of UNSC Resolution 1325 in India. We strongly urge the Indian state to initiate domestic policies for facilitating the four pillars of the Resolution and use this progressive UN provision towards the well being of women.
- We strongly call for women's inclusion in post-conflict transition and reconstruction process. This must be necessitated without which the State will be unable to evolve constructive and gender centric strategies to rebuild normalcy and peace amongst communities. Women's role in the peace process in the region both at formal and informal levels must be recognized and conform to UNSCR 1325
- Ensure women's representation in the peace committees formed to mitigate conflict in the district.
- Build a response mechanism with the purpose of strengthening data and developing policy or programmes to prevent the emergence of new conflict, protect the human rights of women and address human rights violations of all communities in the conflict region.

### Women combatants, missing persons

- Recognize the extreme vulnerability of women ex combatants or women family members of ex combatants and urge the State to design and adopt gender sensitive reintegration packages for these women with a special focus on their socio-economic needs.
- We further call for the State to provide immediate account and details of “disappeared” and “missing” people to ensure trust and sustainable peace and support provide for wives, parents and immediate family members of people “missing” after operations by security forces.
- In particular we are deeply concerned about the plight of “half widows” in Kashmir and call for immediate attention by the State and gender responsive support for economic recovery and self sufficiency.

## D. WOMEN'S REPRESENTATION

- The State has an obligation to uphold women's access to political representation and decision making in relation to CEDAW Article 7a & b. It is therefore imperative that the Indian State removes reservation on CEDAW Article 5 and take strong position on practices of customary laws in indigenous communities that obstruct the above.
- It must be ensured that there is no derogation on international standards in the context of customary laws that have strong underlying patriarchal content.
- We are deeply concerned and strongly urge that questions of women's leadership and participation in public and political life are not negotiated out in the interest of political expediency during different ongoing peace talks in the region.

## END NOTES

<sup>1</sup>Reply of Home Department of Tripura to MLA Bijoy Hrangkhawl on Date of reply 1-11-2010, assembly admitted starred question no. 30.

<sup>2</sup>"Sexual Violence and Impunity in the Conflict Zones of Assam", researched by Anjuman Ara Begum, research scholar and member of WinG-Assam, WinG publication 2012.

<sup>3</sup>"Konan Poshpora mass rape: 22 years on, state still out to scuttle probe" Indian Express, 24th February, 2014 Available at - <http://archive.indianexpress.com/news/konan-poshpora-mass-rape-22-years-on-state-still-out-to-scuttle-probe/1140570/0>. Accessed on 9th April 2014.

<sup>4</sup>"Probe Official Speaks up, says was threatened" 24th February, 2014. Available at <http://indianexpress.com/article/india/india-others/konan-poshpora-probe-official-speaks-up-says-was-threatened/>. Accessed on 9th April 2014.

<sup>5</sup> As told by the mother and daughter survivors of sexual violence to APDP, in April 2014

<sup>6</sup>IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI, TA No.361/2010 ,CWP No.4726 of 2007, Ex Major Rehman Hussain Versus Union of India & Ors. CORAM: HON'BLE MR. JUSTICE N. P. GUPTA, JUDICIAL MEMBER, HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER. ORDER dated 08.11.2012

<sup>7</sup>Ledha Bai's statement against SRP Kalluri, viewed at <http://iadhri.wordpress.com/2013/01/25/ledha-bais-statement-against-srp-kalluri/> posted on 25th January 2013 and accessed on 8th April 2014 at 17:15 hrs

<sup>8</sup>INDIA: Scourge of Rape and Encounter Killings in Chhattisgarh, viewed at <http://www.hrsolidarity.net/mainfile.php/2006vol16no02/2491/> posted on 4th December 2007 and accessed on 8th April 2014 at 18:00 hrs

<sup>9</sup> Based on the report "The State and Sexual Violence: Challenging Impunity and Demanding Justice" by the Women Against Sexual Violence and State Repression, 2012e, viewed at [http://wssnet.files.wordpress.com/2013/11/wss\\_report\\_10dec2012.pdf](http://wssnet.files.wordpress.com/2013/11/wss_report_10dec2012.pdf) posted on 10th December 2012 and viewed on 7th April 2014 at 15:20 hrs

<sup>10</sup> Frank van Lierde - "We the Widows of the Gun", published by Cordaid, The Hague 2011\_

<sup>11</sup> Geneva Declaration, 2008, Global Burden of Armed Conflict p 22 (data for the period 2004-2008)

<sup>12</sup>Ibid p 139

<sup>13</sup>FIR No.15/2000 under Section. 307 of the Ranbir Penal Code and Section.25 of the Arms Act was registered at the Achhabal Police Station

<sup>14</sup>This is not zero tolerance, Mr. Prime Minister, Siddharth Varadarajan, June 4 2010, The HINDU at <http://www.thehindu.com/opinion/columns/siddharth-varadarajan/this-is-not-zero-tolerance-mr-prime-minister/article445820.ece>. Accessed on- 10th April 2014

<sup>15</sup>"Chhattisingpora: 2 Pak Nationals Acquitted" 10th August 2011, available at - <http://news.outlookindia.com/items.aspx?artid=730858> accessed on 10th April 2014.

<sup>16</sup> FIR No. 98/2000 under Sections 364, 302, 201 and 120B, Ranbir Penal Code (RPC) was registered at the Anantnag Police Station.

<sup>17</sup>A.G.Noorani, "What Pathribal means for India" 26th July 2013, available at- <http://www.thehindu.com/opinion/lead/what-pathribal-means-for-india/article4953373.ece> accessed on 10th April 2014.

<sup>18</sup>Army Headquarters v. CBI, (2012) 6 SCC 228



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<sup>19</sup> Refer to Sec 70 and Sec 125 Army Act, 1950.

<sup>20</sup> 'Court Martial Begins in Pathribal Encounter Case', The Hindu, 22 September 2012. Available at- <http://www.thehindu.com/todays-paper/tp-national/court-martial-begins-in-pathribal-encounter-case/article3924714.ece>. Accessed on 10th April, 2014.

<sup>21</sup> Press Statement - Country Mission to India of Christ of Heyns, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions 19 –30 March 2012, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12029&LangID=E>

<sup>22</sup> Ibid

<sup>23</sup> <http://www.disappearancesinkashmir.org/about.html> as accessed on 10th April, 2014

<sup>24</sup> CEDAW, General Recommendation No. 28, para. 12.

<sup>25</sup> IPAC Newsletter, October 2010

<sup>26</sup> The Economic Times, 'A distraught tribal: The genesis of Assam ethnic violence', August 12, 2012

Outlook, 'A Bridge Too Far', August 13, 2012, <http://www.outlookindia.com/article.aspx?281840>

<sup>27</sup> Evidence from NEN's field visit to Kokrajha r& Dhubri District after the ethnic violence of July 2012

<sup>28</sup> The 11th Five Year Plan document of 2007-2012, had mentioned that a National Task Force on VAW in Zones of Conflict will be set up under the National Commission for Women (NCW) with adequate budgetary allocations to make it effective in monitoring VAW in conflict zones and facilitating relief and access to justice for affected women.

<sup>29</sup> Evidence from NEN's field visit in July 2012 in Goalpara district of Assam which witnessed major ethnic conflict in January 2011 that left more than 18,000 Garo and Rabhatribals displaced from their homes in Assam and Meghalaya.

<sup>30</sup> Interview with the woman by Anjuman Ara Begum on August 30, 2012.

<sup>31</sup> The group clashes between October 3-5, 2008 between Muslims (immigrants) and non-Muslims (Bodo) in Udalguri and Darrang districts led to a communally volatile situation. The violence had serious implications. It led to about 57 deaths, 500 houses were burnt and 20 villages were attacked by armed mobs. One and half lakh people were forced to leave their villages and take shelter in relief camps. 93 relief camps were set up by district administration.

<sup>32</sup> SudhaBhardwaj, 'Gravest displacement, Bravest resistance: The struggle of adivasis of Bastar, Chhattisgarh against imperialist corporate land grab, Sanhati' available at <http://sanhati.com/excerpted/1545/> posted on 1st June 2009 viewed on 9th April 2014 at 10:42 hrs

<sup>33</sup> CEDAW GR p. 11

<sup>34</sup> Interviews by North East Network, 2013.

<sup>35</sup> NEN interview 2013.

<sup>36</sup> CEDAW Gr p.8 IV.A Women in Conflict Prevention.

<sup>37</sup> Survey by North East Network

<sup>38</sup> <http://assamgovt.nic.in/achievements.asp>

<sup>39</sup> BURIED EVIDENCE: Unknown, Unmarked, and Mass Graves in Indian-Administered Kashmir, December 2nd 2009, International People's Tribunal on Human Rights and Justice in Kashmir (IPTK), available at <http://www.kashmirprocess.org/reports/graves/toc.html>

<sup>40</sup> <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-112-2011> as accessed on 10th April 2014.

<sup>41</sup> See Recommendations to India by Human Rights Council during the Universal Periodic Review in A/HRC/8/26 dated 28 May 2008 at para80, available at

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/inession1.aspx> as accessed on 10th April 2014.

<sup>42</sup> See report of the Working Group on the Universal Periodic Review: India, A/HRC/21/10 dated 9 July 2012, at paras 138.1, 138.5, 138.9, 138.11, 138.13, 138.18, 138.20 and 138.24; available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/151/08/PDF/G1215108.pdf?OpenElement> as accessed on 10th April 2014.

<sup>43</sup> See India's 2nd UPR: Recommendations accepted by the Govt. of India (Sep 2012) Recommendations accepted by the Govt. of India (Sep 2012) available at

[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.10.Add.1\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.10.Add.1_en.pdf) as accessed on 10th April 2014.

<sup>44</sup> Sec 7 JK AFSPA, 1990.

<sup>45</sup> Sec. 197 Code of Criminal Procedure, 1973

<sup>46</sup>For an analysis of the writ of Habeas Corpus Petitions in Jammu and Kashmir High Court between 1994 and 2004, and the insurmountable problems faced in securing justice see, In search of Vanished Blood, Ashok Agrawal , South Asia Forum for Human Rights, Kathmandu, 2008

<sup>47</sup>Ibid.

<sup>48</sup>CEDAW, General Recommendation No. 28, para. 12.

**PART III  
SPECIAL CONCERNS**

**WOMEN WITH  
DISABILITIES  
IN INDIA**

**CHAPTER 12**



**INDIA**

4th AND 5th  
NGO ALTERNATIVE REPORT  
ON CEDAW

# WOMEN WITH DISABILITIES IN INDIA



**WwD India Network<sup>1</sup>**

## **1. INTRODUCTION**

We write this report to address the urgent needs for the inclusion of issues of concern to Women with Disabilities (WwD). India has signed and ratified both CEDAW and the United Nations Convention on the Rights of Persons with Disabilities (CRPD). As these two intersect and reinforce each other in the context of rights of women and girls with disabilities, effort will be made to create the necessary synchrony and synergy by referring to both.

Erasure as individuals and Invisibility as a group: that is the fate of women with disabilities (WwDs). Teased, taunted, looked down upon, and spoken about instead of spoken to, WwDs experience the combined disadvantages associated with gender and disability. They live an invisible existence on the fringes of society; exclusion, stigma and prejudice are a routine aspect of their lives. Autonomy, respect, dignity and equality of personhood are denied to them. WwD form a heterogeneous group, since disability and gender also intersect with other categories like type of disability, class, caste, ethnicity, and rural-urban residence. There is a lack of information and awareness about the rights of WwD and therefore a lack of monitoring process.

## **2. LEGAL FRAMEWORK: PROGRESS AND IMPLEMENTATION**

Article 41 of the Constitution of India which forms part of the Directive Principles of State Policy explicitly mentions “disablement” as a condition for which the State is to strive, to provide assistance in certain matters including education, work, etc. The existing legal regime however, systematically marginalises WwDs in India. Interestingly, existing disability legislation in the country like the Mental Health Act of 1987, The Rehabilitation Council of India Act 1992 and the Persons with Disabilities Act 1995, does not provide a gender component. Only the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, recognises WwDs as a 'vulnerable' group amongst PwDs. Although disability does not figure as a prohibited ground of discrimination under Article 15 on Fundamental Rights in the Indian Constitution, the Supreme Court has recognised persons with disabilities (PwDs) as being a vulnerable group to whom the principles of equality and non-discrimination apply equally.

Keeping in mind that in reality multiple forms of discrimination intersect, including gender and disability, we strongly believe that WwDs ought to get covered under the prohibited ground of sex in Article 15 of the Indian Constitution. This provision covers women and allows the Indian Government to make legal provisions for them. However, WwDs are left out of the reach of this provision, except for the recent focus placed on their specific needs in the Criminal Law (Amendment) Act, 2013. Arguably, any law dealing with temporary special measures provisions, rights and obligations of the State towards women should cover WwDs. However, being invisible within the system and in the societal cycle of life,



without specific mention within the provisions of law, WwDs are left out of consideration both during interpretation and implementation of the letter of the law.

### 3. KEY ISSUES

#### A. LACK OF DATA (CEDAW GR 9 SESSION 8, 1989 AND CRPD 3)

Data, both from governmental and non-governmental sources are silent on both disability and gender. Disability does not figure in the routine macro-data collection endeavours of the state, such as the Sample Registration System (SRS), the National Crime Records Bureau (NCRB) and the National Family Health Surveys (NFHS). The macro-level data available on disability in the public domain (Census of 2001 and the NSSO 2002) are dated, and offer only a limited understanding of the extent of prevalence of the problem of disability and its gender implications. As per the latest World Bank/ WHO Report 15% of the global population has a disability with female prevalence at 19.2% (World Health Organization and World Bank, 2011: 261). The lack of data is important to the understanding of the situation of WwD's.

#### B. DISCRIMINATION (CEDAW ARTICLE 2 AND CRPD ARTICLE 3 & 6)<sup>2</sup>

The experience of being disabled exposes WwDs to multiple discriminations in the domains of culture, society, politics and the economy, the specificity of the particular disability creates different needs, generates subtle differences which go unrecognized. The complex issues affecting WwDs must be understood in relation to the distinct difference within various disabilities, men with disabilities and persons without disabilities, placed in the matrix of the CEDAW and the CRPD.

In its widest sense the removal of barriers form the core guiding principles of the UNCRPD. The CRPD also adds the concept of reasonable accommodation. Ensuring accessibility to persons with disabilities, through the removal of social and political barriers, including attitudinal and communication barriers should be the overarching goal of public policy. Under Article 4 of CEDAW temporary special measures such as quotas, support and reasonable accommodation are to be used in articles on political participation and public life (also employment and education) As to WwDs political there are no special measure in the 33% reservation for women in local governance (Panchayats and Municipalities).

At the level of policy, WwDs continue to be neglected both in disability specific and gender specific programmes and policies. In the 3 per cent reservation for persons with disabilities in education and employment, there is no provision for WwDs. Even though the Persons with Disabilities Act mandates 3 per cent allocation for persons with disabilities in all poverty alleviation programmes, there is no allocation for WwDs. There is no segment of WwDs in the planning process.

Even though strong stereotypes of asexuality and hyper-sexuality configure the disabled identity, the complexity of disabled sexuality is lost in public policy because there is no component on WwDs for instance in the sexual and reproductive programmes. Again in the flagship schemes like Right to Education (RTE) and the National Rural Employment Guarantee Scheme (MNREGA), WwDs are absent. Gender budgeting policy has not been applied for WwDs even in the disability-specific policies and schemes WwDs seem to be falling between the stools of gender specific and disability laws, schemes and programmes making it necessary to highlight their needs and concerns as a separate constituency for strategic intervention. There are no specific regulations that would protect and empower WwD.

#### C. EQUALITY BEFORE LAW (CEDAW ARTICLE 15 AND CRPD ARTICLE 12)

WwDs continue to remain far from achieving either de-facto or de-jure equality. A legal interpretation of equal recognition before the law has been covered in various Conventions, ratified by India. The two crucial components legal capacity and access to justice are found in CEDAW (Art. 15) and CRPD (Art 12 & 13). In India, The Persons with Disabilities Act, 1995, does not contain a single right on legal capacity. The National Trust Act limits equality by providing guardianship arrangements for those with autism, mental retardation, cerebral palsy and multiple disabilities.

The Government is also obligated under CEDAW, to deem 'null and void' any existing contracts and private instruments having an effect of restricting the legal capacity of women. Despite the provision of legal capacity there is a failure to recognize it by the State. It has been well known that many laws bar persons “of un-sound mind” from full legal capacity in many walks of life, including marriage, contracting, political life, holding a job, voting, etc (Dhanda 2000). A quick overview of national laws shows overwhelming discrimination against all persons with disabilities on grounds of legal incapacity in over 150 laws.

A large part of the family laws are about people of unsound mind. Family laws deny capacity to be married, stay married, adopt, inherit, terminate a pregnancy, choose a pregnancy, etc. Some of these laws have guardianship provisions. Conditions are placed on the capacity of persons with disabilities in making a will. A person who is blind or “deaf and dumb” can make a will provided they can understand what they are doing. A “lunatic” cannot probate or administer a will (Davar, 2012)

According to the Representation of People's Act 1950, a person shall be disqualified for registration in an electoral roll if he is 'of unsound mind' and stands so declared by a competent court. So the basic right of franchise is denied to a person with psychosocial disability.

One of the most obvious barriers to equality before law is women's access to the justice system. Physical access to the justice system is lacking for example the family courts for instance in Chennai which women complained was inaccessible as are many others around the country. The failure to provide reasonable accommodation is the lack of sign language interpreters and materials in alternative formats for women with visual disability. If women cannot access the justice system they are excluded from rights. Their testimonies are not recorded or discounted or there is a tendency to 'infantlize' them, especially women with intellectual disabilities or not take it as credible if they have a psycho-social disability.

The State needs to take appropriate measures to provide access to the support they may require in exercising legal capacity. The laws that enables the removal of legal capacity and substituting it with guardianship should be removed and replace the system with supportive decision making.

#### D. POLITICAL ISSUES (CEDAW ART 7 AND CRPD ARTICLE 29)

The 'unsound mind’ clause in the Constitution deprives men and women with certain disabilities such as psycho-social, intellectual and autism from voting rights. The Representation of People's Act 1950 disqualifies them from electoral roles and standing from elections. No attempt has been made to remove the discrimination under the Act 1950<sup>3</sup>. There are barely any WwDs in the local governments which ensure 50% of seats for women.

#### E. EDUCATION (CEDAW ARTICLE 10 AND CRPD ARTICLE 12)

Women and girls with disabilities fare less well in the Indian educational arena than either their male counter parts or other women without disabilities. In the Population Census (2001), majority of persons with disabilities were found to be illiterate. Only a little more than one third (37%) were reported to be literate. In India's flagship programme on education the Sarva Shiksha Abhiyan,<sup>4</sup> 30% of the out of school girls are those with disabilities. The gender gap continues at all levels of education and among different disabilities. For instance lowest educational enrolment and attainment are found among persons with multiple disabilities, intellectual disabilities, speech and hearing disabilities primarily due to communication barriers and the absence of a congenial learning environment; and among these marginal categories within the disability spectrum, figures for WwDs were consistently found to be lower than for men with disabilities among the PWDs. The statistics on the enrolment of children in school education completely misses the data on children with disabilities and the gender disaggregation of data.<sup>5</sup> The All India Survey on Higher Education conducted by the Ministry of Human Resource Development also finds no mention on the coverage of students with Disabilities.<sup>6</sup> The DICE does not have any disability disaggregated information.

## WOMEN WITH DISABILITIES IN INDIA

There are several hurdles to girls with disabilities accessing and remaining in education. Firstly, it is within families that decisions may be taken whereby it is considered necessary to invest in the education for a disabled girl with the available resources being used for the education of other siblings. Secondly, accessible transport and safe commuting options may not be available to reach school. Factors within schools like absence of special teachers: and basic infra-structural facilities, such as accessible toilets are major barriers to education of disabled girls. Schools with ramps under the SarvSikshaAbhiyan<sup>7</sup> claim to be fully accessible though approach to these ramps, right gradient of the ramp, classrooms, library, canteen, toilets, water drinking area and study material, etc are yet not made barrier free.

Absence of other infrastructure such as residential facilities and specialized equipment designed to address the need of the WwDs act as an added deterrent to education. Girls with hearing impairments suffer due to non-provision of sign language interpreters in educational institutions, work places both government and private and public places especially when sexual abuse is to be reported; Instruction in alternative forms of communication is not adequately guaranteed. In the inclusive education system adopted teachers are not adequately trained. There is no concrete evidence that progress for girls with disabilities has been made under the Right to Education. Schemes for instance such as Sabla and Ladli instituted by Delhi Government<sup>8</sup> do not have a special provision for girl children with disability.

### F. WORK AND EMPLOYMENT (CEDAW ARTICLE 11 AND CRPD ARTICLE 27)

Economic independence of WwDs is instrumental to their empowerment in the true sense. However, they are systematically excluded from the mainstream workforce misleadingly being projected as incapable of productive work and a burden on the society. Stereotypes frame WwDs as being unfit either in the traditional role of homemaker or the newer role of wage earners (contravenes Article 5 CEDAW) additionally, stereotyping as asexual and lacking intelligence further hampers opportunity and growth in the work market.

According to the Population Census, 2001<sup>9</sup> more than one third (thirty six percent) men with disabilities and nearly two- third (sixty eight percent) of WwDs between the age group of 15 and fifty nine years were found to be non-workers vis-a-vis only nineteen percent of males and sixty percent of females as non-workers among general population. The employment rate of PWD men and women compared to non-PWD is low; Women tend to be seriously under-represented in vocational training (World Bank, 2009: 104).

The Persons with Disabilities Act, 1995 also fails to give due recognition to the working capabilities of all PwDs and has in place no special provisions for WwDs. Furthermore, none of the schemes cover the fast growing private employment sector. The problems faced PwDs, and particularly WwDs preventing them from participating in the labour force and acquiring a modicum of economic self-reliance include lack of requisite skills (linked to inadequate and inappropriate vocational and skill development programmes) discrimination and doubts about their working capacity by employers, lack of accessibility, absence of representation of PwDs and WwDs in decision making positions, absence of monitoring of reservation policy in the government sector and non-implementation of affirmative action programmes in the private sector.

Most cases of complaint to the Ombudsman (National and State Commissioners for Disability) are related to the unfulfilment of the special provision on quota for disabled (even here WwD are not specifically mentioned), promotions, appointments etc. (Office of the Chief Commissioner for Persons with Disabilities Vol 1-3).

### G. HEALTH (CEDAW ARTICLE 12 AND CRPD ARTICLE 25)

Article 12 of CEDAW requires supplement from Article 25 of CRPD which provides for informed and free consent, reproductive rights, non-discriminatory healthcare, equal access to public health programmes, health insurance and health related rehabilitation,. In policy thinking in India, disability itself becomes the central and only health concern for PwDs, given the dominance of the medical model. For PwDs general health concerns (immunisation, nutrition) are as important as the disability specific health issues. Then, the neglect of, reproductive and child health needs of WwDs has to be addressed. With the government slowly

pulling out of the health sector and the iniquitous distribution of resources even within families, gaps in access to even basic healthcare puts WwDs at even greater loss, as they figure amongst the poorest of the poor. Discrimination in health services for WwDs is a reality that needs to be looked into.

Even within the disability sector, the gender gap in access to and utilisation of health related services is stark. Access to treatment services and distribution of aids & appliances is another robust indicator of the extent of gender gap. For instance, data from the Artificial Limbs Manufacturing Corporation of India (ALIMCO), Bhubaneswar reveals a 2:1 ratio among the male and the female users. Likewise, the data from Vishakhapatnam shows a break up of 1253 males and 458 WwDs having received appliances.<sup>10</sup> Without access to assistive devices women's mobility and inclusion in education and work is affected adversely. A recent PIL in Delhi High Court<sup>11</sup> on public toilets highlighted that there are more than 3000 public toilets for men and less than 400 for women. Lack of accessible amenities in such toilets pose health and safety threats for WwDs, and many suffer from urinary/ kidney disorders; there is a higher rates of widowhood for disabled women (around 4 times that of non-disabled women)<sup>12</sup> which is a reflection of lack of health care.

Condemn and take action to prevent violence against women and girls in health care settings, including sexual harassment, humiliation and forced medical procedures, or those conducted without informed consent, and which may be irreversible, such as forced hysterectomy, forced caesarean section, forced sterilization, forced abortion, and forced use of contraceptives, especially for particularly vulnerable and disadvantaged women and girls, such as those living with HIV, women and girls with disabilities, indigenous and afro-descendent women and girls, pregnant adolescents and young mothers, older women, and women and girls from national or ethnic minorities

### **i. Forced Detention and Treatment**

More women than men are found in mental hospitals/asylums, while men are admitted for treatment in early stages, women are dumped only after their illness becomes chronic. Women are rarely taken back home after treatment. A Study of 20 reception orders for committal or continuation of detention in a mental health facility revealed the mundane matter of fact way in which they are passed. It is also apparent that the person being committed is not presented before the court and has no say in a matter, which leads to the deprivation of his/her liberty and legal capacity (Davar, 2013)<sup>13</sup>. Besides fraudulent confinement, the misuse of shock treatment through Electro-Convulsive Therapy (ECT) continues despite its ill effects

### **ii. Forced Sterilization, Abortions and Euthanasia**

A flagged realm of concern is rights of women with psycho-social and intellectual (mental) disabilities within health as they are most vulnerable in the system and subjected to forced treatment and institutionalization on the grounds of care and protection regimes. Even with the Supreme Court directions and interventions and the National Human Rights Commission's (NHRC) obligation to monitor mental health institutions and hospitals in the public and private sectors, abuse, particularly sexual abuse of women, remains rampant.

Forced sterilization within institutions and by family is common though it is a human rights violation (Phadke, 1994)<sup>14</sup>. Despite GR.No. 24 of 1999 there is no legal provision that prohibits non-consensual sterilization WwD must be able to access contraception's as per their choice. In recent years the availability of sterilization methods using certain drugs is being tried out on a large scale instead of teaching the women to manage menstrual hygiene and protecting them from rape.<sup>15</sup>

The CRPD under Art 23 and the CEDAW General Recommendations No. 19 (11th session, 1992) and General Recommendation No. 21 (13th session, 1994) recognized the existence of forced sterilization. Forced sterilization, hysterectomies and abortion of women with intellectual disabilities exists to enable menstrual management, and sexual exploitation.<sup>16</sup>

WwD rarely are involved in family planning services related to pregnancy and post natal care. Non-



consensual use of these deprives WwD of legal capacity and violates their right over their bodies. A marked preference for male child with link to increased diagnosis of the sex of the unborn child has resulted in discrimination. While the PCPNDT Act (1994) prohibits sex selection, it allows a sanction of selection on the basis of disability which is socially unacceptable. Women in patriarchal societies rarely have free choice and will also result in other characteristics such as appearances (Ghai and Johri, 2011). This hierarchy based on normal and abnormal which takes away women's choice requires a change in the law.

### H. VIOLENCE AND TORTURE (CEDAW ARTICLE 15 AND CRPD ARTICLES 15 & 16)

Violence in all its facets remains a serious area of concern for WwDs, both as an individual experience and a structural reality that systematically oppresses them in all areas of life. Adding to the greater vulnerability of becoming victims are a multiplicity of other factors, such as severity of the disability, dependence on the abuser, communication limitations (for instance, women with speech and hearing disabilities, intellectual disabilities, psychosocial disabilities), easy access to inmates in institutional setups, low or non-credibility to complaints of harassment and abuse by WwDs (particularly women with psychosocial and intellectual disabilities), myths around sexuality (WwDs are asexual or hyper-sexual) and the whole range socio-economic and cultural factors that configure the lives of non-disabled women in patriarchal society.

Once abuse has been experienced and acknowledged, there are many barriers to accessing justice, including complicated mechanisms for complaints and redressal, absence of accountability of both state and private actors and insensitivity of personnel in the police and judicial systems. This has already been highlighted above. A prime example of total neglect of WwDs in the criminal justice system is that there is no disaggregation on the basis of disability in the crime against women statistics generated by the government.

CRPD recognises the issue of violence and provides for protection from torture, ill-treatment, exploitation, abuse and violence under Articles 15 and 16. These provision when read along-with the broad principles of equality and non-discrimination and the specific provisions of elimination of prejudice under Article 5(1) and legal capacity in civil matters in Article 15 of CEDAW, would address India's responsibility to ensure for the provision of a more responsive legal framework, a stricter mechanism of monitoring, accountability and punitive action.

The critical areas of concern on the issue of violence are found both in institutes and at home:

#### **i. Violence within Institutions**

Institutions in relation to women and girls with disabilities includes mental health facilities, care-homes, residential hostels, halfway homes, homes for the destitute, juvenile homes for children with special needs and religious places. Within these places, violence can range from chaining, filthy living conditions, common bathing, and non-provision of clothes especially during menstruation, physical abuse and sexual violence often repetitive in nature. However, there is no response to the problem of systemic violence of this sort.

Additionally, provisions for monitoring remain almost unimplemented. For example, as per the Mental Health Act of 1987, the only penalty for private run institutions is revocation of license, which can be renewed after payment of fine and improvements suggested by the authority. Thus, state responsibility and accountability of personnel becomes even less in institutions run by private entities and non-existent in case of religious places, where it is very common to take women with psychosocial disabilities for treatment through prayer and black magic. Sexual violence within mental hospitals still is a largely unaddressed area apart from the other forms of mental and physical violence that is experienced by the women housed therein. Moreover, the insensitivity of officials, staff of institutions and carers towards issues of abuse only compounds the problem. The below given chart is an illustrative examples of cases of violence and sexual assaults within mental institutions in the State of West Bengal.<sup>17</sup>

In recent years there has been increased reporting of violence against WwDs in shelter homes, training institutes and schools.<sup>18</sup>

Sl. No.	Date	Name of the health facility	Brief description of the case	Action taken by the State	Action taken by Anjali
1	31.03.2007	Pavlov Mental Hospital	A female resident commits suicide within the ward. The resident had broken her hand two weeks before but had received minimum treatment like plaster because of the negligence of the hospital authorities		Media advocacy
2	01.07.2007	Baharampur Mental Hospital	A female patient dies at the hospital with complaint of piles.		Media advocacy
3	28.07.2007	Baharampur Mental Hospital	A female patient was confined in a small room with no help as she was suffering from TB.		Media advocacy
4	24.08.2007	Baharampur Mental Hospital	A female resident was hit by a Group D staff and broke her elbow. Distribution of sanitary napkins to female residents has been stopped at all Mental hospitals.		Media advocacy
5	10.03.2008	Pavlov Mental Hospital	Women nude within the ward. When a consulting doctor questioned the Group D and Nursing staff regarding this inhuman treatment. A section of the Group D staff complaint against the doctor and asked for immediate apology.		
6	03.11.2008	Baharampur Mental Hospital	A female patient choked to death by another female patient		Media advocacy
7	06.04.2011	Pavlov Mental Hospital	Attempt to sexual assault of a female resident by a Group D staff.	The Group D staff was suspended. An enquiry committee was formed. No reports were shared	Media advocacy & detailed fact finding
8	12.04.2011	Baharampur Mental hospital	Women residents brought out of the hospital to the main office at night on the pretext of getting them to talk to their family members and would be abused by the hospital Group D staff and contractor	An enquiry committee was formed. No reports were shared.	Media advocacy
9	23.04.2012	Pavlov Mental Hospital	Sexual assault of a female resident by kitchen staff.		Media advocacy & detailed fact finding
10	17.09.2012	Lumbini Park Mental Hospital	A female patient was sexually assaulted by a male Group D staff.	The Group D staff was suspended. An enquiry committee was formed. No reports were shared.	Media advocacy & detailed fact finding

## ii. Violence within Homes

Although the Domestic Violence Act, 2005 is being implemented to address issues of violence and abuse in the domestic setting for all women, WwDs continue to face serious abuses at the hands of relatives. These include the deliberate acts of seclusion, denial of basic amenities, chaining, mental abuse, emotional deprivation and abandonment. For WwDs abandonment happens at two levels, one due to their disability and the other when they are discovered to have been victims of sexual violence, especially in instances where they have conceived as a result of the abuse. In both cases, their vulnerability increases to more sexual abuse in the society by their unprotected and homeless state of being. Unfortunately, railway stations are a convenient place for such acts of abandonment. From the point of view of disability, there are two striking shortcomings in addressing violence and abuse in the home setting, as the law only deals with situations where the perpetrator is a male member with whom the woman is living in a household relationship and does not cover female perpetrators and carers. Incest is a common phenomenon (Malyala Manoram, 2011). Although abuse and violence within families for gaining control of property (immovable and movable) left for the benefit and care of a PwD family member is common, WwDs caught in such scenarios are worse off than their counterpart men with disabilities due to the added dimension of gender.

## iii. Violence in Conflict Regions

For WwDs living in conflict areas, all these factors get further exacerbated in the conflict environment, making them easy targets for abuse and violence. Besides disability due to shooting and landmines, high Post Traumatic Stress Disorder has been found among WwD. Women in these situations suffer more than WwD elsewhere.<sup>19</sup>

### I. FAMILY LIFE AND MOTHERHOOD (CEDAW ARTICLES 5, 12, 16 AND CRPD ARTICLE 22)

Many WwD especially those with intellectual disability are denied family life and motherhood. Stereotypical views of WwDs results in their staying outside family life. To overcome this instead of providing rehabilitation and other facilities many States have started coercion into marriage. A shockingly unethical scheme is in operation contributing to increasing violence on WwDs in the guise of enhancing their matrimonial opportunities. States like Maharashtra, Chhattisgarh, Himachal Pradesh etc are running schemes of paying financial benefits ranging from 5,000 up-to 50,000 rupees to non-disabled persons to marry PwDs.<sup>20</sup> WwDs are highly prone to being used as a means to access this incentive money. Many WwDs are married to as second wives, with no legal standing to claim any matrimonial benefits or protections, thus getting entrapped in marriages where they are exploited, abused and violated with no system of checks.<sup>21</sup>

WwD with children find their children being forcefully removed from their care. Divorces are very high as many marriages are conducted for reasons of dowry. Women lost custody of children after divorce and called unfit mothers.

### J. RURAL WOMEN (CEDAW ARTICLE 14 AND CRPD ARTICLES 9, 25, 26)

75.03% of women with disabilities live in rural areas. Most of them are left out of health care and literacy levels are lower. Most women work in agriculture related activities but orthotics and prosthetics are not made for these activities. Though India has many schemes related to rural development disability is not a focus area. Accessibility to self help groups has 3% reservation but no data is available to know if women access it. Lack of toilets is a major problem in rural areas leading to women being raped.<sup>22</sup> Rural women from hilly terrains such as Jammu and Kashmir and Manipur were found not to be able to access medical care as communication is difficult.<sup>23</sup>

### K. ACCESSIBILITY (CRPD ARTICLE 9)

Article 9 of CRPD recognizes accessibility as a basic right, which not only includes physical and infrastructural accessibility but also access to appropriate information, communication and services.

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 section 44-46 stipulates non-discrimination in the built and transport environment. Although the government is trying to bring about physical/ environment accessibility, lack of adequate planning and shoddy implementation lead to more obstacles than solutions. In none of the initiatives undertaken, is the gender perspective incorporated in the design and planning.

When Articles 6 (WwDs) and 9 (Accessibility) of the CRPD are read in tandem, the gap in the CEDAW with regard to gender, disability and accessibility are covered, but require further specificity.

PWDs cannot access education, health, employment / livelihood opportunities, leisure and recreation, tourism, etc. in the absence of accessible and safe infrastructure- built, transit and external environments. Police stations remain inaccessible and out of reach as does the judicial system. Recent rapes in Delhi had occurred due to poor illumination levels in pedestrian infrastructure, dark spots and high (dead) boundary walls of buildings. Streets are not active- “no eyes on street” due to inadequate planning of hawkers. Red light free zones and flyover connectivity lead to the serious incidents like 16th Dec. 2012 gang rape even with the non-disabled woman. For WwDs, such inaccessible infrastructures and barrier pose serious threats to their mobility and physical security. There is also rarely any support of either government or civil society in general including the women's movement, this was observed in a case of a blind girl raped, tortured and killed (the same as Delhi but no organization highlighted it except this network).

Wheel-chair and /or tri-cycle are required by women with locomotor disabilities, especially in absence of accessible public transport system. Yet, the Aids and Appliances (ADIP) scheme by Ministry of Social Justice and Empowerment, Government of India does not have specific dimension, standards and customized options for WwDs.

#### **4. AGENCY**

Women with disabilities are victims but are also agents of change. The four hundred women who contributed to this report have been leaders in their own right. From academics, to rural SHG leaders, to NGO heads to indigenous women their contribution to women's cause cannot be denied.

#### **5. CONCLUSION**

It is submitted that any comprehensive plan for transforming the status of women in the country must be both gender and disability-sensitive. This can be enabled by using the existing Concluding Comments and General Recommendations made by the CEDAW Committee.

In para 26 of the Concluding Comments to India's II & III period report, the Committee has acknowledged the issue of witch-hunting of women, which is also a concern for many WwDs who fall victim to such practices. Therefore, any initiative taken by the Government of India to address this issue would require a disability sensitive approach as well.

The fact that WwDs concerns while making measures for protection of women from violence does not figure is clear from the missing disability component in the National Policy for the Empowerment of Women, 2001 and the Indian government's responses to the Committees comments in para 15 and 16 of its II & III period report to CEDAW, where none of its statistics reflect crime against WwDs. Furthermore, in para 20 of the II & III period report where a response is being made to violence based on caste, the component of WwDs from the ST/SC communities is missing though WwDs are present in all cross sections of society and disability becomes a multiplying that than just an additive factor from an inter-sectional perspective.

In the Government of India II & III period report in para 357, it is noted that the government is working to strengthen existing legislation and developing institutional machinery to address the violence against women and also running programmes to support vulnerable women who stay in short stay homes, hostels etc. However, there is no mention of any special provisions for addressing the issue of violence faced by WwDs in various government run and privately owned institutions, homes and hostels.



The reality of the greater vulnerability of WwDs has been accepted by the Government of India, in para 295 of its draft IV & V report to CEDAW, wherein it clearly states that a study conducted in 2010-11 by the Indian Institute of Technology, Kharagpur on “Disability and Victimization: A Study of Vulnerability of Disabled Women and Protection Strategies”, for the Ministry of Social Justice and Empowerment indicate that, “...Women have accepted the fact of victimisation at home and outside due to their disability; and access to legal assistance and remedy is a major roadblock for the women with disabilities.”

### 6. CEDAW COMMITTEE

The recent committees have started to take cognizance of them. The CEDAW monitoring committee covered women with disabilities under the broader term of 'underprivileged women in its Concluding Observations at the 54th session,<sup>24</sup> 'these covered social, economic and cultural rights such as education, employment, social security. The committee has noted the multiple discrimination and harmful stereotyping of vulnerable women, including women with disabilities. Civil political rights including legal capacity have not come up in the concluding observations in the context of women with disabilities.

### 7. RECOMMENDATIONS

Among the recommendations to the Committee to take up with the Government are:

#### A. HIGHEST PRIORITY

- i. A Policy on Women with Disabilities
- ii. Disaggregated Data based on gender and disability
- iii. Removal of discriminatory Laws such as MHA which affect women
- iv. Stringently implement monitoring mechanisms in institutions of care and protection covering public and privately run institutions be implemented with immediate effect
- v. Repeal of all State level policies such as those offering financial benefits to non-disabled individuals for marrying PwDs;
- vi. Ensure that involuntary treatment, such as forced abortion, contraception, sterilization and incarceration are not permitted by law on WwDs.
- vii. Remove from the PCPNDT Act the clauses on disability
- viii. Guidelines and laws for monitoring of religious institutions (shrines, temples, dargahs) purporting to cure certain disabilities.
- ix. Ensure that no direct Electro-Convulsive Therapy (ECT) is given to anybody and under any circumstance. Ensure that the penal laws are amended to punish those who violate this requirement.
- x. Awareness creation and sensitization on a national level to remove discrimination against WwDs.

#### B. GENERAL

- xi. A National Policy for WwD, with Strategies and Plan of Action
- xii. Ensure participation of WwD in decision/policy making, implementation women's policies.
- xiii. Need for India to pass its draft law on torture to realise its obligation under CAT, with a disability and gender specific approach.
- xiv. Inclusion in the gender budgeting process and provision of adequate funding

#### C. SPECIFIC RECOMMENDATIONS

##### 1. Education

- i. Initiate review of policies on primary, secondary, vocational and non-formal education from the

lens of the rights of girls/women with disabilities as mandated by the UNCRPD, CRC and CEDAW with a view to amending existing policies in order that they are responsive as well as inclusive of women and girls with disabilities including those in rural areas.

- ii. Initiating schemes and providing support services for girls and women with disabilities in order that their personal care is taken care of while in educational institutions.
- iii. Providing special allowance to families to meet the educational expenses, allowance covering transport costs, scholarships, etc. may be encouraged. They serve as effective incentives by reducing financial costs of the families and check drop out.

## 2. Work and Employment

- i. Reasonable accommodation in infrastructure, working conditions, communication etc. to ensure accessibility of WwDs to the labour force.
- ii. Specific mechanisms to address harassment faced at work by WwDs.
- iii. States should be mandated to formulate special schemes for training and skill development and for self employment of WwDs.
- iv. Vocational training linked up with employment opportunities may be provided exclusively catering to the need of the WwDs.

## 3. Violence

- i. Review all legislation, policies and programmes related to violence against women from a disability sensitive perspective;
- ii. Put in place guidelines on the issue of identifying, addressing, redressing and rehabilitation in case of abuse of WwDs, especially in institutional settings;
- iii. Special measures are taken for generating awareness regarding the Domestic Violence Act, 2005 amongst WwDs;
- iv. Training on women and disability issues and concerns in relation to violence is provided to all law enforcement and judicial agencies, so that functional mechanisms of redress can be established;
- v. Place accountability on State officials overseeing the functioning of privately run institutions where WwDs are housed in case of a report of violence against a WwD resident;

## 4. Health

- i. Ensure that accessible health care services based on the dignity and integrity of WwDs are provided.
- ii. Sensitization of medical professionals, staff & carers on how to behave & interact with WwDs.
- iii. Sexual and reproductive health services are not denied to WwDs and they are provided taking the free and informed consent of the individual.
- iv. Institution and implementation of punitive measures for medical and para-medical personnel who engage in malpractices, discrimination and wrongful treatment of WwDs.
- v. Amendment to the provisions of the RCI Act and its rules dealing with disciplinary action against a professional in case of misconduct.

## 5. Accessibility

- i. Involvement of WwDs in planning and designing of all infrastructure facilities and services (public buildings, transit system and social & virtual environment), so that they are not left out of the loop.

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## END NOTES

<sup>1</sup> The report is the product of the Women with Disabilities (WwDs) India Network’ formed in October 2012 to deliberate upon and advocate for the rights of WwDs. Its major work has been to produce this report for the CEDAW Committee to understand the issues related to WwDs. Fifteen consultations were organized across India with more than 500 WwD participating. The Report has been written by a group of women with disabilities Renu Addlakha (lead writer), Anjali Agarwal (Coordinator) Meenakshi B. Rajiv Rajan (Work and Education), and Reena Mohanty (Administrator). Seema Baquer provided the Legal Framework. Specific case material was provided by Bhargavi Davar, Shampa Sen Gupta, Ratnaboli Ray and more than 400 women with disabilities across India. The consultation meetings were coordinated by Shanta Memorial Rehabilitation Centre Bhubaneswar and organized with support of AADI in New Delhi, Babu Trust in Pune, DLU South/Vidya Sagar in Chennai, Mitra Jyoti and South Asia CBR Network Bangalore, Rehabilitation Council Jammu and Kashmir, Swadhikar, Commitments and NPDPO in Hyderabad; Samarthyam New Delhi, Integrated Women and Children Development Centre Imphal. The consultations were supported by the Disability Rights Fund

<sup>2</sup> Article 6 of CRPD recognizes the multiple discrimination WwD are subjected to and in this regard asks States to the full and equal rights of women.

<sup>3</sup> Section 16 subsection 1; Section 102 sub section 1 and Section 191 subsection 1 are the articles of exclusion. Other Acts which entrench the exclusion are the MHA 1987, RCI Act 1992 and National Trust Act 1999.

<sup>4</sup> SarvaShikshaAbhiyan (SSA) programme is aimed at Universal Elementary Education. It was launched in January 2001 in order to provide useful and relevant education for all children in the age group of 6-14 years by 2010. It is an attempt to provide an opportunity for improving human capabilities to all children, with special focus on bridging social, regional and gender gaps, through the active participation of the community in the management of schools.

<sup>5</sup> [http://mhrd.gov.in/sites/upload\\_files/mhrd/files/SES-School\\_201011\\_0.pdf](http://mhrd.gov.in/sites/upload_files/mhrd/files/SES-School_201011_0.pdf)

<sup>6</sup> [http://mhrd.gov.in/sites/upload\\_files/mhrd/files/All%20India%20Survey201011Book\\_2.pdf](http://mhrd.gov.in/sites/upload_files/mhrd/files/All%20India%20Survey201011Book_2.pdf)

<sup>7</sup> Education for All, Ministry of Human Resource Development, Government of India

<sup>8</sup> Under the Sabla and Ladli scheme, the Delhi Government has declared Rs. 1 lakh incentive on the birth of a girl child

<sup>9</sup> Visit <http://www.censusindia.gov.in>

<sup>10</sup> Office of the Controller of Vagrancy And Govt. of Andhra Pradesh. 2006 Disabled Welfare Visakhapatnam. Govt. of Orissa, Dept. of Women and Child. 2006 in A Multi State Socio Economic Study of WwDs in India (UNDP, Govt. of India and SMRC), 2007

<sup>11</sup> Ashok Agarwal Vs Govt. of Delhi, 2013

<sup>12</sup> Data from NSSO 2002. There is no disability after this report

<sup>13</sup> A RO is an involuntary admission made under the MHA, by bringing a person before a court for certifying as mentally ill and adjudicating right to liberty, to further admit that person in the asylum. A total of 20 Reception Orders were looked at of 2010, from the court of the Chief Magistrate, Pune district court, Pune: 0402030/2010, 2555/2010, 2575/2010, 2592/2010, 2593/2010, 2629/2010, 2890/2010, 2857/2010, 2841/2010, 2828/2010, 2812/2010, 2763/2010, 2857/2010, 2755/2010, 2737/2010, 2703/2010, 2685/2010, 2673/2010

<sup>14</sup> This was a major point of discussion at the Regional Meeting of the WwD India Network organized in Hyderabad on 23-24th February 2013

<sup>15</sup> WwD India network meeting in Bangalore on 4th February 2012. information by local NGO using the methods.

<sup>16</sup> In a strongly fought case with Supreme Court intervention, a High Court ruling of forceful termination of pregnancy of a girl with intellectual disability who had been raped in a State run Shelter was overturned and the girl allowed to have the baby. Suchita Srivastava v. Chandigarh Administration(2009) 14 SCR 989

<sup>17</sup> The chart has been prepared by Anjali Organisation in Kolkata on the basis of information gathered by them.

<sup>18</sup> In VRC for Handicapped on 8th August 2013 a woman trainee was raped by an instructor

<sup>19</sup> WwD India Network meetings in Imphal (Manipur), Srinagar and Anantnag (Jammu and Kashmir)

<sup>20</sup> Shivani Gupta's initial report started a process of protests <http://accessability-india.blogspot.in/2010/10/50k-incentive-by-state-to-marry.html>

<sup>21</sup> This was raised as a serious area of concern by WwDs at the consultations held on the issues of WwDs by the WwDs India Network in October 2012 and June 2013.

<sup>22</sup> High Court of Orissa W.P (Cri) No 1127 of 2013 filed against State of Orissa by Sashiprava Bindani on behalf of SMRC.

<sup>23</sup> WwD India Network Consultancy on CEDAW in Srinagar on 12th May 2013.

<sup>24</sup> The CEDAW Committee Concluding Observations, 54th session, <http://www2.ohchr.org/english/bodies/cedaw/cedaws54.htm> & [http://www2.ohchr.org/english/bodies/cedaw/docs/comments/CEDAW-C-52-WP-1\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/comments/CEDAW-C-52-WP-1_en.pdf)



WOMEN FROM  
MINORITY COMMUNITIES

Section - A  
MUSLIM WOMEN

Section - B  
STATUS OF  
WOMEN SURVIVORS OF  
COMMUNAL VIOLENCE  
IN KHANDHAMAL, ODISHA

Section - C  
VIOLENCE AGAINST  
MUSLIM WOMEN  
IN MUZAFFARNAGAR, UP

CHAPTER 13

INDIA

4th AND 5th  
NGO ALTERNATIVE REPORT  
ON CEDAW

# WOMEN FROM MINORITY COMMUNITIES



## SECTION - A MUSLIM WOMEN

**Sahr Waru:**  
Women's Action and Resource Unit

Muslim women in India are in a process of dynamic change. The pendulum swings from extreme poverty, segregation, exclusion, insecurity, violence, ghettoization to a determined and persistent struggle to reach aspirations of Higher Education, Professional Trainings for career building. They seek increased access to opportunities for socio-economic upward mobility, cultural rights, citizenship entitlements, political participation and the political will to be accepted and integrated in the national mainstream as well as live as equal citizens in a plural, equal civil society.

The CEDAW Committee through its Concluding Comments of 2007 and 2010 has taken into account both ends of the continuum and asked State Parties to “set benchmarks and to include adequate, appropriate and comparative statistical data and analysis disaggregated by sex caste, minority status and ethnicity and had asked India in its “next” report to provide a full picture of the implementations of all provisions of the convention and 'trends over time' in the practical realization of Equality between Women and Men. With special emphasis on scheduled caste, schedule tribe and minority women in all sectors (15 CEDAW / C/IND / CO3). The committee recommended that the State Party provide, in its next periodic report comparable Gender disaggregated data by sex, caste, minority states and ethnicity, on the enrolment and retention rates of Girls and women at all levels of Education and trends over time ( Para 33 CEDAW /C/IND/CO/3). It request State party to provide action taken on the recommendations of the Sachar Committee Report with regard to Education of Muslim women and girls. It urged state party to increase efforts to enable Schedule Caste, Schedule Tribe and Muslim Women's to access higher education. The committee urged the State to monitor achievements of such benchmarks and provide information on budgetary, allocations. This was part of Concluding Comments October 15, 2010 in its 960th meeting.

Since the combined 4th – 5th report of State parties India (23rd October 2012) did not reflect actions taken on this count, it prompted the committee to ask India (State Party) to indicate Actions taken to implement the recommendations of the High level committee for the preparation of a Report on the Social, Economic and Educational status of the Muslim community of India. (Sachar Committee) with regard to access to Education by Muslim Girls (CEDAW /C/IND/3/ para 33). Again in the list of issues and questions in relation to the combined 4th and 5th periodic reports of India (CEDAW /C/IND/Q/4-5) also it has asked to indicate measures envisaged or in place to ensure secondary and higher education for Muslim Girls and Girls belonging to the Scheduled Castes and Scheduled Tribes.

The GAPS in the implementation of the Sachar committee findings that highlighted the multiple levels of Development Deficit faced by Muslim Minorities and aggravated for women, has not been matched in the responses that converted into the minimalist 15 point programme, of which the visible intervention has been the pre-matriculate and matriculate support provided to Muslim girls and the Schemes for Quality Education in Madras as and Schemes for infrastructure Development a private aided/un aided Minority institutions.



## WOMEN FROM MINORITY COMMUNITIES

Low Budgetary Allocations and inadequate mechanisms and scale has hindered the practical realization of efforts to minimize the inequality between Muslims based on Gender and in relation to other comparable socially disadvantaged groups such as Schedule Castes and Tribes. Muslim Settlements continue to have few Government Schools and hostels for Girls; close too or in the areas Muslims live to encourage Girls Higher Education. The Scholarship amount support is modest Rs. 1000/- for pre-matriculate (Class 1 to 7) and Rs. 2200/- (Class 8 to 12) for matriculate once in a year. Systems of monitoring collecting and Community wise disaggregated data with an integrated gender perspective on enrolment, dropouts, hostels, sanitation access to vocational trainings, universities available to Muslims girls are not on a comparative parameter with other disadvantaged groups. The Budget outlays do not match the population of Muslim children (including girls up to Adolescence.)

The 15 point programme (2006) has no single program focussing on Muslim girls and women to cover, Empowerment, Health, Political Participation or access to any other Equal Opportunity nor does it rid Muslim women of obstacles under Article 1, 2, 3, and 16. (30 % of pre matriculate scholarship is earmarked for girls. The parents or guardians income should not exceed Rs. 1 lakh per year and students who have succeed not less than 50 % are the criteria from class I to X). The criteria for selection (BPL) to many of the inadequate programmes and outlay of funds still further exclude Muslim community from overcoming the Development Deficits that stare in their faces.

Item 4 Modernizing Madrassa Education and Item 6 of the 15 point program for minorities, endeavours to improve educational infrastructure through the Maulana Azad Education foundation. It gives emphasis to Madrassa as key areas of enhance educational status of the muslim Community where as 3.5 % Muslim children go to Madrassa as according to the Sachar Report. The other 96.50% has no well drawn out programmes except the Scholarship support.

For e.g. In 2002 in Gujarat 200 registered Muslim Educational Trusts were running Schools with Gujarat State Board Curriculum in 2013; 769 Muslim Educational Trusts are running schools, all non-aided. Since the State Government has abandoned their responsibility to educate the community; the community has taken upon itself the role. It is said that an affidavit has to be undertaken by Minority run institutions that they will not apply for Grants with the State Government.

A public interest litigation was filed by a Muslim social activist and Congress party leader Adam Chaki for the non implementation of the premature minority scholarship scheme. The Gujarat High Court gave an order to confirm the constitutional validity of the scheme. The State Government consequently moved the Apex court challenging the High court's order. The Apex Court on May 6th, 2013; admitted the appeal and refused to stay the order on May 22nd 2013, Government of Gujarat finally announced its intention to implement the Scheme through advertisements in Gujarat papers. Finally, the amounts have been distributed in Gujarat in April 2014.

Juhapura a Muslim concentrated area of Ahmedabad with a population of 4 lakhs, have 30 schools out of which there is only one Primary Government School and one Secondary Govt. School. Others are all run by Muslim Educational Trusts. Bombay Hotel another Muslim ghetto in Ahmedabad Gujarat has only one Government school from class 1 to 7 (Urdu/Gujarati medium) co-education and here; and due to a Bus Depot/workshop the school Building was demolished and relocated to a further distance (Narol) surrounded by factories and a petrol pump next to it and it is a temporary structure.

Under the other items like 7 of the 15 point program for minorities, self employment and wage-employment for the poor; the Swarjayanti Gram Swarojgar Yojna (SGSY) primary self employment programme for rural areas, to being then above poverty lines with the help of Bank credit and Government subsidies do not reach muslims and they experience discrimination for e.g. In the Village "Chapadia Sabarkanta district of Gujarat where the Bank of India was approached for a Loan. They were told "Muslim don't their repay loans, so they cannot get loans, and your area is considered as negative area". This is the same for many other Muslim concentrated areas. No Comparable data amongst socially

disadvantaged groups and general categories is available of access to credit and Government subsidies for employment and trade as an attempt to bridge social-economic gaps over a period of time to attain quality and equality. The below Poverty line could (BPL) holders, are refused the RSBY (Rashtriya Bima Sahay Yojana) (2 lakhs Medical Insurance) (to be renewed every year) saying they would require to show their Ration card to get the benefit of this scheme. To make a Ration Card one need proof of residence, electricity bill receipts of Tax and many other details generally not available with most poor Muslim women and families.

Muslim children do not get admission in General School they face discrimination (Wadali Sabarkanta, Ahmedabad).

Under other items under the 15 point programme for minorities; 12 is for the Improvement in conditions of slums inhabited by Minorities (JNNURM).

To the contrary, a lot of evictions and displacement is the reality to build roads, Gardens, Shopping mall, over- bridges. A sizeable population of Muslims live in urban areas.

The CEDAW committee has asked to provide information on the status of the Communal Violence (prevention, control and Rehabilitation of victims Bill 2005.) which is also a commitment of the 15 point programme, under item 13. Prevention of communal incidents, and 14 prosecution of communal offenses. Item 15, of the 15 point program for minorities is for Rehabilitation of victims of communal violence. This Bill has not been tabled the Parliament of India as yet.

Illegal Detentions of Muslim youth is a common practise based on petty crimes like theft or cow slaughter or closing down of shops after 11 pm. Making Muslim women run from pillar to post and paying huge amounts of bribe incurring debts for the release of their men folk.

Abject poverty has pushed Muslim women into prostitution, working in factories in vulnerable circumstances, with fear of law enforcement agency looming large on them. A lot of informers and plainclothes police have in Muslim concentrated slums of cities like Ahmedabad even at night. There is trafficking to Muslim countries on 2 years contract, agents keep passports for the contract periods with them.

#### INADEQUATE FOLLOW UP TO THE EXCEPTIONAL REPORT-STATUS OF RELIEF COLONIES GUJARAT IN 2014:

- Arsh colony, Faisal Park, Ektanagar (flats), Vatva, Ahmedabad. Victims from Naroda Patia and other areas live here. Arsh colony has 50 houses, Ektanagar 112 Houses, Faisal park 135 houses all built by Muslim Organizations (State's Government in 2014) survivors are from the Violence (most of the affected areas of Naroda Patiya, Chamanpura, Sabarmati, Navapura, and Vatva).

Availability of Electricity for the internally displaced of the 2002 anti Muslim violence in Gujarat has improved considerably over the last five years. Street lights are there in some areas and not there in other relief colonies. No Health (sub) centres are available, roads, no public transport, no schools within 3kms radius of when the riot-victims supervisors live. No measures to instil security for school going girls. The Health Centre and Schools are close to the Hindu Majority communities. As Muslims says "Only Police Stations are close to where we live."

- Citizen Nagar and Mehtabnagar (130 houses and 12 houses) again built by Muslim organization and 30 houses by TATA Dorabji's) this area of Citizen nagar is situated next to a huge waste disposal ground on one side and chemical factory on the other side. Both Citizen nagar and Mehtab Colony (12 houses) are part of one of the largest Muslim Ghettos called Bombay Hotel area housing 1 lakh population with no water-sanitation facilities, hardly any roads, street lights no schools no hospitals or health care centre. Only Anganwadis (Child crèches) "Gyan shala" (informal education 1st to 7th) are run in these area and a few private schools exist.



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There are a lot health problems, respiratory infections, skin diseases, kidney related problems. Drinking water comes in tankers twice or thrice in a week. This area is prone to crimes, lack security for women and girls and lot of Violence against women.

- In the 5 colonies of Al fala, Rashidabad, alliance Nagar, Sheikulunnagar, Millatnagar 550 houses have been built by Jamat-e-Ulema-e-Hind in which IDPs from the affected areas of Millatnagar, Modasa Sabarkanta district. (74 killed in the 2002 violence from these areas.)

These 5 colonies do not have water and sanitation, no road or sparsely situated streetlights schools / Health centres are at a distance.

- Dipada Darwaja, Visnagar Mehsana District. 28 killed.
- IRC Colony near Kaman Village (15-20 houses) 85 accused 21 got life sentence and rest were acquitted. The accused who are free continue to threaten the survivors / witnesses. Here also no basic amenities are available yet.
- Ode - Anand

Faize-e-Abrar colony, Mogri siva and town c colony; having 80 houses in all. 70 accused in this case. No basic amenities yet, lack of security and unemployment prevails.

- Balol village: (Nadiad Taluka) Jamat Ulema has given 90 houses. A Tar factory has come next to this relief colony causing health problems. 3 Women have died of Cancer in this in colony. No facilities there are survivors of the Ghodasar Violence where 14 were killed (1 woman and 13 men) there is a lot of fear in this colony.
- Rehmatnagar Colony also is inhabited by persons displaced from Ghodasar (112 houses). No road, no Government Schemes and there are no BPL card holders, the school is near Hindu locality.

The Budget for Road and Bore well was approved but not build by the local governance body. Because the "Sarpanch" from the Gram Panchayat did not built the road; and bore well got built due to RTI. Women and Girls are not feeling safe as they have to walk 4 kms reach main road. No bus services are available. Muslim Girls don't study beyond the 7th standard in these far flung areas.

1.8 % is the conviction rate for the 2002 Communal Violence of Gujarat while average of conviction rate is 18.5 % in all other communal violence in India (Recent study by Stanford University).

- Panchmahal/Dahod areas of Gujarat.

A large number of families who lost their livelihoods in 2002 - in terms of Garages, shops, space for selling vegetables/ fruits etc. have been struggling to find space for themselves, as their spaces occupied by others, shops burnt and not having papers to prove it have been given to others, Muslim women who used to sell vegetables and fruits, have lost their space.

Some of them who have been able to access some space for their livelihood activities such as for garages or shops - are the rental places, rented out to them by the Hindus, both because of the good relations with them and or due to the higher rent amount, they will get from a Muslim as compared to someone else. Now the issues, which are coming up specially from women, is the constant insecurity and fear in the family as the place of such shops or garages are far from the village they live in and they would not be able to own that place, or buy a house or land. So they could be thrown out anytime, in-case of unfavourable situation.

Young Muslim girls and women are facing restriction from the families to go out for study or jobs as the words go around (promoted by the Right wing party) that, Hindu boys are trained to attract these girls and are supposed to 'use their bodies'.

The Muslim boys had been forced to become supporters of Right wing party, if they want to retain their jobs or get jobs.

There are few cases identified where -on the land encroached for setting up of Paan or other grocery shops by Muslims and Hindus/ Adivasis, where both the communities used to have electricity connections with meters. Now Nagar Palikas (Santrampur) has disconnected the same only from the Muslim shops. Number of Muslim women who used to share the responsibility on the shop, are now refraining from doing so, specially after dark.

Gujarat Muslims feel have been displaced there due to the 2002 anti Muslim violence, they due to the River front Development scheme along Sabarmati River Ahmedabad. Which mainly were in habited by Muslims and due to Development of the walled city of Ahmedabad that has rendered 1000 of Muslims unemployed. Most feel discriminated in jobs and don't get Government jobs (Railway Service, Central Reserve Police, and Bank etc.) and also do not get private jobs easily. Mostly they are self employed or in skilled based trades (embroidery etc) the feel more harassed by police. There is a lot of unemployment. Either they are rickshaw drivers or vendors women are further enburdened due to this economic deprivation.

This is compounded by discrimination in access and poor availability of social security schemes for Muslims, eg. reducing number of Muslim and already shrinking below poverty line list across the states of India.

Terminology and nomenclature of most of the schemes are not reflective of an inclusive and plural culture and also promote patriarchal norms.(Podupu Laxmi (Andra Pradesh), Kanyadan Yojana, Ladli Laxmi Yojana (Madhya Pradesh), Kuwarbai numameru (Gujarat), Bhagyalakshmi Scheme (Karnataka), Annapurna (West Bengal and Andhra Pradesh)

While some Muslims benefits from these schemes, India being a secular and plural democracy it is desirable to have named that names that reflect this Pluralism and Gender Equality.

In the arena of Political Participation and Public Life, there is minimum representation of Muslim women in all bodies of decision making and governance across states.

The two child norm clause for elected representatives in local governance has affected Muslim women, and they have been removed from their post (limited to some states like Bihar, Gujarat Rajasthan) \*\*

It is again a barrier for women who are already under represented in political and public life. The policy of the government to control population growth under the family planning program (Article 12) has affected women, impacted political participation of Muslim women (Article 7)

Political Parties obstruct the involvement and growth of women and are discriminatory against women in giving them seats and positions

There is also sexual harassment of women in Public and Political life and also work related harassment and discrimination and exclusion against Muslim women in public and political life.

There are no Muslim elected members in the Lower house of the parliament from Gujarat since 1984.

Representations of Muslims in politics and decision making bodies at higher levels are steadily diminishing.

#### IN THE AREA OF EMPLOYMENT

- State public services discriminatory towards recruitment of Muslims in higher positions of administrative and executive services
- Recruitment process is non-transparent and discriminatory towards Muslims in public and private sectors.
- MNREGA programme should have employment that is apt to the abilities and skills of Muslim women.

#### HEALTH ISSUES FOR THE MUSLIM COMMUNITY

Government Resolution requires Primary sub health Centre for a population of 30,000. Which are not available to Muslim population of over 1 lakh also. Many areas infrastructure of MCH and Reproductive

## WOMEN FROM MINORITY COMMUNITIES

Health care are sparse or unavailable making pregnant vulnerable to home deliveries or on the way to far off hospitals. Medical officers are rarely available at sub centres in slums. Anganwadi Child Crèches under the ICDS programmes are poorly run in all rural urban poor areas.

- Health service providers show bias towards Muslim women in some states like Jharkhand, Uttar Pradesh, and Bihar.
- In the states like Madhya Pradesh even where there is a population of above 5 lacks there are no PHCs within 5 kms radius Indore Khajrana area.
- Attitudes towards Muslim women in reproductive and maternal health care services is very stereo typed
- Poverty in Muslim women is making them resort to surrogacy and submitting to clinical testing's to support family income
- Premarital counselling centres for Muslim girls and boys is a need for the community
- Anaemia and poor nutrition has increased. Special attention for Muslim women is required in these areas.
- Sensitization and monitoring and accountability of hospital staff who indulge in highly discriminatory behaviour and mistreatment in government hospitals towards pregnant Muslim women and women in labour.

### ISSUES AND GAPS IN THE STATE OF ASSAM & NORTH EAST IN THE FRAMEWORK OF CEDAW AND IMPACT ON MUSLIM WOMEN

Educational institutions are used as camps by army and Para military forces for counter insurgency operations and hence creating obstacle in restoring normalcy and resumption of education Muslim women.

Denial of citizenship rights for Muslims in the name of illegal immigrant from foreign neighbouring countries, e.g. –Doubtful voters (D-voters). D-voters are denied electoral rights and their children are too denied of domicile certificates

No assessment of people displaced due to river erosion, ethnic conflict and Muslims affected

Discrimination in relief and rehabilitation in terms of distribution and repatriation aftermath of ethnic conflicts and since women and children are the major number of victims in such conflicts, their basic entitlements are denied.

Young Widows due to extra judicial executions of young men in fake encounter insurgency operation, In Manipur about 12000 women are widowed in this way and rehabilitation schemes for such women are non-existent

- Security and life: police atrocities and torture
- Exploitation of Muslim labours
- Access to justice and impunity
- Discrimination in terms of development of infrastructure
- Employment : non implementation of Law on employment on demographic representation in 3rd and 4th grade jobs, 1994
- Lack of information on family planning and reproductive health

### ISSUES AND GAPS IN THE STATE OF J & K IN THE FRAMEWORK OF CEDAW

#### **Jammu and Kashmir:**

1. Violence Against Women: is perpetrated in the background of Militarization, and special legislation for armed forces

2. Culture of impunity has been strengthened by these special legislations (like Armed Forces Special Powers Act, supported by the Disturbed Areas Act) due to which women are widowed, killed, abducted, victims of grave forms of sexual violence, and economically and socially deprived of their fundamental rights.
3. In cases of sexual violence and trafficking of adolescent girls exposed in 2006 June, those found guilty has been exonerated and investigations are incomplete and there has been no reparations for these.
4. The Domestic Violence Act is not ratified by the state of Jammu and Kashmir whereas domestic violence is rampant in the state.
5. The statutory bodies like the state Human Rights Commission and State Women's Commission are not functioning effectively.

## **CONCLUSION**

Affirmative action to advance socio-economic, educational and political participation of Muslim women to attain at par equality with other Indian women from diverse groups in the country is the way forward. The Muslim community which is the largest socio-religious minority needs a separate sub plan like there exists for Scheduled Castes and Scheduled Tribes to attain equity and equality; well within their constitutional rights to overcome the development deficit that the Sachar report stated as the predicament for the largest minority.



## WOMEN FROM MINORITY COMMUNITIES

Sr.no.	NAME	ORGANIZATION
1	Ms. Qamar Fatima	Samvedna, Madhya Pradesh
2	Dr. Syed Tanveer Nasreen	Associate Professor, West Bengal
3	Ms. C.K. Zeenath	Advocate, Kerala
4	Ms. Mehanaz Khan	Sakhi Kendra, Uttar Pradesh
5	Ms. Shakilabano	Speak India, Andhra Pradesh
6	Ms. Shaikh Shajaha Begum	PEER Counsellor - REAPS , Andhra Pradesh
7	Ms. Qurat_ul_Ain	Lecturer, Kashmir
8	Ms. Hameeda Nayeem	Professor, Dept of English, Kashmir University
9	Ms. Parvez Pathan	Sarvoday Mahila Jagruti Seva Trust
10	Ms. Rehana Pathan	Teacher, Jamnagar, Gujarat
11	Ms. Rafatbano	Champanagar, Bhagalpur, Bihar
12	Dr. Reshma Siddiqui	Assistant Professor, Govt. Girls College, Durg, Chhattisgarh
13	Ms. Shakeela Khan	President, Rehbar Mahila Mandal, Indore
14	Dr. Nasrin Jamal	Co-Ordinator, Jharkhand
15	Ms. Shabana Afrin	Co-Ordinator
16	Ms. Rahima Khatun	Secretary NARI-O-SISHU KALYAN KENDRA, West Bengal
17	Ms. Akhtari Begum	Secretary, IZAD, Bihar
18	Ms. Mohib Ahmed	Counsellor and President, Dharohar, Bhopal
19	Ms. Anjuman Ara Begum	Researcher Member, Women in hovenancee, Assam
20	Ms. Savana Parvin	Counsellor and Co-ordinator
21	Ms. Shahedabano Tanzeem	Counsellor – VIMOCHANA, Bangalore
22	Ms. Shagufta Khan	Gharib Nawaz Mahila Avam Bal Kalyan Samiti, Rajasthan
23	Ms. Shabnam Khan	Chairperson, Women's Cell, Mewat Development Society
24	Ms. Ayesha Khatun	Program Director, Mohammad Bazar Backward Classes Development Society, West Bengal
25	Ms. Jameela Nishat	Chief Functionary, Shaheen Women Resource & Welfare Association, Hyderabad
26	Ms. Nafisa Barot	Utthan, Gujarat
27	Ms. Gulnar Pathan	Sarvoday Mahila Pragati Mandal, Gujarat
28	Ms. Sheba George	SAHR WARU: WOMEN'S ACTION AND RESOURCE UNIT
29	Ms. Mehmudaben Patel	– Do --
30	Ms. Mehjabin Pathan	– Do --
31	Ms. Rafiya Mansuri	– Do --

## SECTION - B STATUS OF WOMEN SURVIVORS OF COMMUNAL VIOLENCE IN KANDHAMAL, ODISHA

**Saumya Uma and  
NAWO- Odisha**

### 1. OVERVIEW

On 23 August 2008, Swami Lakshmananda Saraswati – a Hindu religious leader - and his four disciples, including a woman, were killed in his ashram at Jalaspeta, Kandhamal district in the state of Odisha. The following day onwards, an unprecedented and gruesome violence was unleashed against the Christian minority community in the district. The attacks were widespread, across several blocks and villages in the district of Kandhamal, and were executed with substantial planning and preparation, as indicated by the meetings held by the perpetrators prior to the violence, the financial and other forms of assistance secured months prior to the violence.<sup>1</sup> The violence was targeted mainly at Christians belonging to scheduled castes and scheduled tribes (commonly known as adivasis), and persons who supported or worked with the community.<sup>2</sup> A precursor to this violence was an attack, albeit of a smaller scale, in December 2007, in the same district.<sup>3</sup> The National Commission for Minorities was unequivocal in its observation that the violence was “undoubtedly communal in nature and people were attacked on the basis of their religion.”<sup>4</sup>

According to government figures during the violence from August to December 2008, in Kandhamal district, a total of 39 persons were killed, including 2 police personnel and 3 rioters.<sup>5</sup> Human rights groups estimate that around 100 people were killed, including disabled and elderly persons, children, men and women.<sup>6</sup> More than 600 villages were ransacked;<sup>7</sup> at least 5600 houses were looted and burnt; at least 54000 people were left homeless;<sup>8</sup> 295 churches and other places of worship, big and small, were destroyed; 13 schools, colleges, philanthropic institutions including leprosy homes, tuberculosis sanatoriums, and offices of several non-profit organizations were looted, damaged or burnt.<sup>9</sup> About 30,000 people were uprooted and lived in relief camps and continue to be displaced. During this period about 2,000 people were forced to renounce their Christian faith. More than 10,000 children had their education severely disrupted due to displacement and fear.<sup>10</sup> There has been no official estimate of those who suffered severe physical injuries (not leading to death) and mental trauma.

### 2. GENDERED IMPACT OF THE VIOLENCE

During the violence, women and girls fled into the forests, and strived to survive, without food or water. Elderly women, pregnant women and women with infants underwent tremendous difficulties surviving in the forests. Women witnessed the violent mobs from the forests; they were able to vividly describe the size of mobs, names of some persons in the mobs, the slogans they shouted, their appearance and their destructive acts. Many have witnessed attacks on women. Most women said that the mobs consisted of some persons from their own village, along with many more from outside. The role of the 'insiders' was to identify Christian houses and property. Destruction was undertaken in a systematic manner, using kerosene / petrol or gas cylinders. The mobs attacked some villages more than once, in order to ensure

complete destruction. The looting of moveable property, destruction of immovable property coupled with the deliberate destruction of educational certificates and land-related documents deeply crippled the financial well-being of the victim-survivor community. The pastors, priests and nuns faced targeted attacks as they were seen as the symbols of Christianity.

Women and girls faced a range of sexual and gender-based violence, including gang rape, rape, attempt to rape, forced nudity, molestation, sexual harassment, threat of rape, sexual mutilation and threat of such mutilation. Nuns and wives of pastors were specifically targeted for such attacks. Many witnessed attacks on other women and girls. These attacks were not isolated instances, but were widespread and systematic, intended at subjugating, shaming and instilling fear in the Christian community. The fear of sexual attacks was all-pervasive. A few incidents of sexual and gender-based assaults on men were also reported.

In the relief camps, no relief materials were given to meet the specific needs of adolescent girls, pregnant women, young women with infants and middle-aged women. Adolescent girls' schooling was disrupted; many dropped out of schools or were forced into early marriages, due to fear of personal safety. Other girls faced a severe restriction of their mobility. Elderly women suffered greatly during the violence, as many were helplessly abandoned in their villages, and separated from their families subsequently.

### **3. STATUS OF AFFECTED WOMEN AND GIRLS SIX YEARS AFTER THE VIOLENCE**

- Personal safety for women and girls continues to be a major concern;
- Many women and girls who had testified in court, including against influential perpetrators, continue to be in hiding, as they have been threatened with sexual assault and death;
- The violence has had an adverse impact on physical and mental health of women and girls, including on single women, elderly women and adolescent girls;
- Many women have lost complete access to land due to fleeing from their villages at the time of the violence. For those women who have returned to their villages and are in possession of their lands, face continuous threat from members of the Hindu community;
- Many women lost their savings made through the self help groups (SHGs);
- Women have few options for livelihood, both at rehabilitation sites as well as in slums away from Kandhamal. Those who have returned to their villages face economic boycott of differing degrees;
- The much touted National Rural Employment Guarantee Act (NREGA) has brought no reprieve for Christian women who have been affected by the violence. Many issues related to implementation of the same were highlighted, elaborated below.
- Women are heavily dependent on Below Poverty Line (BPL) cards for provision of rice, sugar and pulses. However many have not been issued the BPL card; a temporary ration card that was issued by the government soon after the violence has now been discontinued, with the presumption that the situation has returned to normalcy;
- Housing is a major concern for women. Women who fled to the slums of Bhubaneswar after the violence, have prioritized personal safety over financial issues, and are stretching beyond their means to continue living there. In rehabilitation sites, women feel insecure and vulnerable to attacks. Many women who have returned to Kandhamal face immense threats in rebuilding their houses in their villages, and many are forced to live in rented houses in larger towns. In the towns, women face further difficulty as Hindus are reluctant to rent their houses to Christians.
- Education of adolescent girls has suffered greatly, stemming from a fear of personal safety of the girls. Due to fear of personal security, many girls continue to drop out from school or are married off at a young age. Those who pursue education do so with a varying degree of risk to their personal security.

- Peace initiatives of the district administration have been successful only in some villages. In villages that were hard-hit by the violence, there is a continuing need for confidence-building measures. Peace initiatives have largely excluded women and have failed to implement the letter and spirit of Security Council resolution 1325 and other related standards.

At present, although there are no overt acts of violence, the peace appears to be fragile and superficial, with an underlying layer of potent fear and helplessness to possible recurrence of violence.

#### **4. FAILURE TO FULFIL STATE OBLIGATIONS**

Abdication of state responsibility is at several levels, and includes failure to

- a) prevent the violence;
- b) protect human lives, property, educational, religious and philanthropic institutions during the violence;
- c) uphold dignity of human beings in relief camps by providing them essentials such as adequate and nutritious food, appropriate clothing, shelter, gender appropriate physical and mental health facilities, and educational facilities for children and adolescents;
- d) protect the lands and property of the victim-survivors of the violence when they fled their villages, and to return the same to them upon the end of the violence;
- e) ensure repatriation, resettlement and facilitate social re-integration;
- f) protect the dignity and bodily autonomy of women and girls before, during and after the violence;
- g) protect, prevent the violation of and promote socio-economic and cultural rights of the affected women and girls, including right to livelihood, housing, physical and mental health, food and nutrition, and education;
- h) ensure the efficient working of the criminal justice system, by promptly registering criminal complaints, arresting offenders, conducting efficient and unbiased investigations, prosecuting accused persons, and providing witness protection (before, during and after the trial) to victim-survivors and their family members who have been the key witnesses in the criminal trials; and
- i) fulfil the reparative rights of women and girls affected by the violence, with due diligence, in order to enable them to rebuild their lives with dignity.

#### **5. INADEQUACIES AND GAPS IN LAWS AND POLICIES, AND THEIR IMPLEMENTATION**

##### **A. VIOLATION OF THE U.N. GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT**

The approach of the district administration in failing to consider the challenges, threats and fear experienced by the victim-survivors of the violence violates the letter and spirit of the U.N. Guiding Principles on Internal Displacement.<sup>11</sup> The Guiding Principles emphasize the right of internally displaced persons (IDPs) to voluntarily return to their places of habitual residence, or to re-settle voluntarily in another part of the country. The state authorities have a corresponding duty to establish conditions for such a voluntary return, fully respecting the safety and dignity of the IDPs.<sup>12</sup> The state authorities have a further responsibility to assist returned and / or resettled IDPs to recover, to the extent possible, their properties and possessions which they left behind at the time of displacement, and where such a recovery is not possible, to provide adequate compensation or another form of just reparation.<sup>13</sup> There has been no visible effort on the part of the district administration to facilitate a return of houses and lands left behind by the victim-survivors, when they fled from their villages out of fear for their personal safety. In fact, the District Collector opines that except for a small number of families living in



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rehabilitation sites (such as in Nandagiri), all those who migrated out of Kandhamal have done so by choice, in search of better options for livelihood. On the basis of this unsubstantiated claim, the district administration has taken little initiative towards repatriation, resettlement or social re-integration, as mandated by the Guiding Principles. At present, there is an absence of any standard / law / policy for respecting the rights of IDPs within the country, in conformity with the UN Guiding Principles.

### B. VIOLATION OF STATE OBLIGATION TO ADDRESS AND REDRESS SEXUAL AND GENDER-BASED VIOLENCE WITH DUE DILIGENCE

Several unreported incidents of sexual and gender-based violence (SGBV) against women and girls during the violence, came to light during the course of a study of the status of women survivors of Kandhamal violence in 2013. These have been documented and compiled in Annexure III of the report titled 'Breaking the Shackled Silence', which is attached with the fourth and fifth alternative report. The study documents at least 38 incidents of SGBV, as against 2 registered by the police. While this is only the tip of the iceberg and not comprehensive, the compilation indicates that SGBV and threats of SGBV against women and girls were not "occasional aberrations" but were used systematically by the perpetrators in order to shame, terrorize and subjugate the Christian community, as well as to scuttle processes of justice. Many women who participated in this study continue to be in hiding and perceive a threat to their bodily integrity.

The attacks and threat of sexual and gender-based attacks on women and girls violate constitutional guarantees of life and liberty, equality and non-discrimination on the ground of sex; and other international standards, including the UN Convention on Elimination of Violence Against Women (CEDAW). It further violates UN Security Council resolution 1820 which condemns the use of sexual violence as a tool of war, and declares that rape and other forms of sexual violence can constitute war crimes, crimes against humanity or a constitutive act with respect to genocide.<sup>14</sup> The UN Declaration on the Elimination of Violence Against Women (DEVAW) also calls upon the state to "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons" (Art. 4c). The district and state administration have failed to effectively address systematic sexual and gender-based violence that deliberately targets Christian women and girls, and women assisting the survivor community, thereby violating such international standards.

### C. FAILURE OF THE CRIMINAL JUSTICE SYSTEM

The jury of the National People's Tribunal on Kandhamal observed, with deep concern, that the criminal justice system has been rendered ineffective in protecting victim-survivors and witnesses, providing justice and ensuring accountability for the crimes perpetrated.<sup>15</sup> Intentional sabotage of processes of justice and accountability by public officials by refusal to register / faulty or delayed registration of FIRs, shoddy and biased investigations, diluted charge sheets, failure to appreciate the available evidence in the context of realities on the ground, and a rampant intimidation of victims and witnesses, has created a situation where justice and accountability through the criminal justice system appears remote and illusive.<sup>16</sup> Out of the two cases of sexual assault registered by the police, one case is pending six years later; in the other (gang rape of a nun – Sister Meena), the trial court gave its judgment only after concerned persons petitioned the Supreme Court, which in turn, directed the trial court to complete the trial within three months hence.<sup>17</sup> Thereafter, the trial court in Cuttack convicted three persons and acquitted six accused of raping the nun in 2008, in March 2014. Ten persons had been accused in the case, out of which nine were arrested after considerable delay, and one continues to be absconding. Eight of the nine people arrested were out on bail, while the victim-survivor had to take a false identity, and remain in hiding all these years in fear for her life.

### D. ABSENCE OF A LAW ON WITNESS PROTECTION, AND FAILURE TO IMPLEMENT WITNESS PROTECTION MEASURES

The report of the National People's Tribunal on Kandhamal, headed by Justice A.P. Shah – former Chief Justice of the Delhi High Court - observed as follows:

*“Victims and witnesses who have dared to lodge complaints and courageously given evidence in court have been threatened and intimidated and are unable to return to their homes. There is no guarantee of safe passage to and from the courts. Guidelines on witness protection, issued by the Supreme Court and various High Courts, are not followed by the Fast Track courts. Women witnesses face the additional danger of sexual violence against themselves and their daughters.”<sup>18</sup>*

Despite a rampant threat to witnesses, particularly women, at the investigative, trial and post-trial phases, the Superintendent of Police, Kandhamal, was unable to share any specific efforts taken by the police to protect witnesses in this regard. He was not aware if any witnesses were given protection at the investigative stage. At least one woman spoke of making a complaint to the police for threat to her as a witness; two other women said that the judge at the Fast Track court in Phulbani had orally directed the police to give protection to them, as they faced threats for testifying in court. According to the women, no concerted action has been taken by the police. It is imperative for India to enact a law on witness protection, which addresses the need for the same during peace times and in conflict situations, with a substantial integration of gender concerns. Additionally, there is a dire need for having accountability mechanisms in place for police officials who fail to discharge their duty to protect civilians, including women, with due diligence, in accordance with Supreme Court and High Court guidelines for witness protection.

#### E. FAILURE TO ADDRESS RESTORATION OF WOMEN'S LIVELIHOODS THROUGH THE NATIONAL RURAL EMPLOYMENT GUARANTEE ACT (NREGA)

Despite Kandhamal being projected as a success story in relation to NREGA, the job entitlement through NREGA has brought little reprieve for most of the women affected by the Kandhamal violence. Many women survivors had repeatedly applied for job cards but were not issued the same. The issuance of a job card is a pre-requisite for allotment of jobs. Many others did not know how to go to the government office to apply for the same, or were too poor to make repeated trips to follow up on its issuance. Some were forced to give bribes to get the job card issued. Many who have job cards under the law, have received only 10 days – 30 days of work in a year, while the entitlement is for 100 days of work a year. Some reported that the contractors and middlemen, who were Hindus, did not allow members of the survivor community (Christians) to work at the job sites. Many of those who worked reportedly were paid wages up to 6 months after the completion of work, which caused immense financial hardship. Most of the jobs allotted under NREGA involve labour-intensive, manual work, which is unsuitable for pregnant, old and sick women. The District Collector of Kandhamal claims that out of a population of 7,00,000 in Kandhamal, 1,60,000 have been issued job cards. He was unable to show statistics indicating the number of SC and ST Christian women who had availed of their right to work under NREGA. Additionally, the patriarchal approach of providing a man (seen as the head of the family / breadwinner) with a job is grossly misplaced in addressing the livelihood concerns of women affected by the violence in Kandhamal.

#### F. POOR IMPLEMENTATION OF GOVERNMENT SCHEMES FOR EDUCATION, HOUSING, FOOD AND NUTRITION

Poor implementation of government schemes such as the Targeted Public Distribution Scheme (TPDS), Annapoorna Yojana<sup>19</sup> and Antyodaya Anna Yojana<sup>20</sup> and the concerted application of these schemes to victim-survivors and their families has resulted in a lack of nutritional food among women, and health concerns stemming from the same. The right to housing is as much an entitlement for the woman as for the man. The allotment of houses in rehabilitation sites in the names of male members of the family is an abhorrent practice, and contravenes the constitutional guarantee of equality and non-discrimination on the ground of sex, as well as the provisions of CEDAW. Schemes such as the Indira Awaas Yojana,<sup>21</sup> despite their stated priority to “women in difficult circumstances, including widows, those divorced or deserted, women victims of atrocities and those whose husbands are missing for at least three years, and, women headed families”,<sup>22</sup> have not positively impacted the women affected by Kandhamal violence. Similarly, government schemes such as the Kasturba Gandhi Balika Vidyalaya<sup>23</sup> are crucial for furthering the access to education of girls from SC and ST communities through the provision of residential

schools, and the SABLA<sup>24</sup> scheme among adolescent girls of families affected by the violence could ensure that their nutritional and health status is addressed, while simultaneously upgrading their home skills, life skills and vocational skills. There is no visible implementation of such schemes with regard to girls from the victim-survivor community.

### G. NON-CONFORMITY WITH STANDARDS ON REPARATIONS

The gender-blindness, with which relief packages were distributed soon after the violence, was matched by the dismal conditions in the government-run relief camps, where medical assistance to pregnant and just-delivered women was clearly absent. These are clearly indicative of the indifference of the State government to the plight of women victim-survivors. Such acts are violative of the right of victim-survivors to a life with dignity and equality, as guaranteed by Articles 14, 19 and 21 of the Indian Constitution, provisions of the CEDAW, and the right of all IDPs to an adequate standard of living, as recognized UN Guiding Principles on Internal Displacement, 1998.

Compensation amount paid to the women and their families by the government (for damage to their houses and for the death of family members) has been unjust, arbitrarily determined, ad hoc and grossly inadequate. There can be no justification whatsoever for the government to exclude moveable property or injuries not resulting in death, including sexual assault, from the purview of compensation. Similarly, loss of savings of members of the self-help groups (SHGs) was also not compensated, causing further financial hardships to women. The callous manner in which compensation amounts have been doled out and their denial to many women, including those who were subjected to sexual assault, defeat the very purpose of compensation – to repair the harm and loss caused to victim-survivors. Failure to recognize sexual assault as a ground for compensation has led to women's and girls' experiences of such attacks being disregarded and rendered invisible. The compensation amounts have certainly done very little to restore women affected by the violence to a life with dignity, safety and security. As observed by the jury of the National People's Tribunal on Kandhamal, the absence of a comprehensive rehabilitation package has prevented the victim-survivors from being restored to a life of dignity.<sup>25</sup> Under established standards of international law, all victims and survivors have a right to reparations. The government has done little to fulfil the reparative rights of women affected by the violence, and has failed to discharge, with due diligence, its responsibilities in this regard.

### H. ABSENCE OF A LAW ON COMMUNAL VIOLENCE

At present, India has no specific law to deal with situations of mass crimes such as communal and other forms of targeted violence. While offences committed during episodes of communal violence may constitute offences under the Indian Penal Code, they do not reflect the gravity of the context or the intent with which such crimes take place. They do not show the complicity of state institutions and functionaries either. This poses a major limitation for the prosecution of such crimes and the court's approach to the trial. Indian criminal law is not equipped to address and redress crimes of communal violence / mass crimes and to make the perpetrators criminally liable. It is largely geared towards crimes against individuals rather than collectives. The Indian government formulated the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill 2011, and modified it several times. However it has not been passed in the Houses of Legislature as yet, due to a lack of support from other political parties. It is imperative for the government to ensure that necessary steps are taken towards formulating and passing an effective law on communal and targeted violence.

## 6. OBSTACLES TO WOMEN'S REALIZATION OF THEIR RIGHTS

- \* Apathy of government officials and abdication of state responsibility
- \* Discriminatory / partisan / poor implementation of laws, policies and schemes
- \* Corruption



- \* Poverty, illiteracy, lack of know-how
- \* Socio-economic boycott and ostracisation by the Hindus
- \* Social stigma (in the case of sexual assaults)
- \* Refusal of police to register criminal complaints, conduct proper investigations
- \* Absence of a uniform standard (as in the case of reparations), leading to doling out benefits to the victim-survivors in an adhoc manner.
- \* Inability to make public officials accountable for acts of commission/omission

## 7. RECOMMENDATIONS

The CEDAW Committee is requested to direct the Indian government to:

- a) Assist women in the recovery and return of the lands that women and their families had abandoned at the time of violence;
- b) Apply the provisions of NREGA and other livelihood schemes of the government to women of the affected community, with no discrimination on the basis of caste, religion or gender. Act against those engaging in such discrimination; identify and allot jobs under NREGA that are better-suited to women, particularly those who are pregnant, physically ill, weak or elderly;
- c) Conduct a social audit on the impact of NREGA, and on the benefit of schemes on housing, food and nutrition, land and education initiated by the state and central government on women and girls affected by the Kandhamal violence;
- d) Arrange camps for free health check-up, and free / subsidized supply of medicines to women in the villages, rehabilitation and resettlement sites;
- e) Issue a special health card for riot-affected victims to all women affected by the violence, which would entitle them to free or subsidized medical services at government hospitals;
- f) Distribute nutritious food at subsidized cost to survivors of the violence, including women and girls;
- g) Take a concerted effort to include and facilitate participation of women in peace committees and peace-building initiatives at the village, block and district level;
- h) Create accountability mechanisms for government officials who fail to discharge their duties with due diligence, including in promptly responding to and protecting women and girls, registration of their complaints related to sexual and gender-based violence and other crimes, investigation and prosecution thereof and in providing reparations in contexts of communal violence;
- i) Formulate and implement policies to provide reparations to women affected by communal violence, including but not limited to sexual and gender-based attacks. Such policies could include compensation, restitution and rehabilitation as well as guarantees of non-repetition of the violence and public acknowledgment of the harm they have suffered;
- j) Formulate and enact a law on communal and targeted violence that integrates gender concerns;
- k) Formulate and enact a law on witness protection with an integration of gender concerns; and
- l) Incorporate the UN Guiding Principles on Internal Displacement into the national policy framework of India, which addresses aspects including the rights and specific needs of women IDPs.

## END NOTES

<sup>1</sup>As observed by the National People's Tribunal on Kandhamal. For more details, see National Solidarity Forum, Waiting for Justice -



## WOMEN FROM MINORITY COMMUNITIES

Report of the National People's Tribunal on Kandhamal (New Delhi: 2011), p. 172 (hereinafter referred to as the NPT report)

<sup>2</sup>Ibid

<sup>3</sup>The National Commission for Minorities, in its report after a visit to Orissa on 6-8 January 2008, observed that during the attacks that took place between 24 and 27 December 2007 in various places in Kandhamal, Christian properties such as parish churches, village churches, convents, presbyteries, hostels, a vocational training centre, a leprosy centre, and scores of shops and houses were destroyed. The NCM further observed that Hindu-owned properties were also destroyed though the number is a fraction of the losses sustained by Christians.

<sup>4</sup> Report of the visit of the Vice Chairperson, National Commission for Minorities, to Orissa, 21-24 April 2008 at page 2, para 2; Report on the visit of the Vice Chairperson, National Commission for Minorities, to Orissa, 11-13 September 2008, at para 2

<sup>5</sup>Statistics cited to the author by Mr. Jai Narayan Pankaj - the Superintendent of Police, Kandhamal District - on 26 June 2013

<sup>6</sup> A list of 75 persons killed during the violence was submitted to the Supreme Court by Archbishop Raphael Cheenath of Bhubaneswar in February 2009, the details of which can be found in Anto Akkara, *Kandhamal: A Blot on Indian Secularism* (2009), Delhi: Media House at pp. 29-31. The Archbishop stated that the total killings would be approximately 100, but a compilation of the complete list was impossible as many villages were very sensitive, hostile and inaccessible.

<sup>7</sup>NPT report, Prologue

<sup>8</sup>Ibid

<sup>9</sup>Ibid

<sup>10</sup> Ibid

<sup>11</sup> The Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, dated 11 February 1998. These have been drafted by a Special Representative of the UN Secretary-General. These guidelines are not part of any international convention that requires ratification by countries. While the Guiding Principles on Internal Displacement do not constitute a binding legal document, they reflect and are consistent with international human rights law and international humanitarian law and have become widely accepted at the international, regional and state levels.

<sup>12</sup> Principle 28(1) of the Guiding Principles, *ibid*

<sup>13</sup> Principle 29(2) of the Guiding Principles

<sup>14</sup> UN Security Council resolution 1820, dated 19 June 2008.

<sup>15</sup>NPT report, page 176, para 20

<sup>16</sup> *ibid*

<sup>17</sup>Sister Meena Lalitha Baruwavs State of Orissa and Others, judgment dated 5 December 2013 by Surinder Singh Nijjar and Fakkir Mohamed Kalifulla, JJ, of the Supreme Court, in Criminal Appeal No. 2044 of 2013

<sup>18</sup> NPT report, page 176, para 23

<sup>19</sup> It is a government scheme for destitutes above 65 years of age, who are not covered in state or central social security pension scheme. They are issued special green ration cards, and entitled to 10 kgs food grains per month, free of cost.

<sup>20</sup>It is a government scheme targetting the poorest of the poor in rural and urban areas, to whom a yellow ration card is issued. They are entitled to 25 kgs food grains per month per family, at the rate of Rs. 2 per kg of wheat / Rs. 3 per kg of rice.

<sup>21</sup>A flagship scheme of the Ministry of Rural Development, and aims at providing assistance to BPL families who are either houseless or have inadequate housing facilities for constructing a safe and durable shelter.

<sup>22</sup>Indira Awaas Yojana, Guidelines dated June 2013, available at <http://iay.nic.in/netiay/IAY%20revised%20guidelines%20july%202013.pdf>, accessed on 11 July 2013

<sup>23</sup> The scheme was introduced by the central government in 2004 and subsequently integrated in the Sarva Shiksha Abhiyan programme to provide educational facilities for girls belonging to SC, ST, OBCs, minority communities and families below the poverty line in Educationally Backward Blocks.

<sup>24</sup>Rajiv Gandhi Scheme for Empowerment of Adolescent Girls (RGSEAG) is also known as SABLA, and is initiated by the Union Ministry of Women and Child Development.

<sup>25</sup> National Solidarity Forum, *Waiting for Justice - Report of the National People's Tribunal on Kandhamal* (New Delhi: 2011), p. 178, Para 27

# WOMEN FROM MINORITY COMMUNITIES



## SECTION - C VIOLENCE AGAINST MUSLIM WOMEN IN MUZAFFARNAGAR, UP

**Vrinda Grover**  
Advocate

In early September 2013 communal violence broke out in Muzaffarnagar and Shamli Districts of Western Uttar Pradesh, triggered and stoked by a Mahapanchayat held by the Jat community to 'save' Jat women from men from other communities<sup>1</sup> where several BJP leaders made incendiary speeches,<sup>2</sup> and rumours of Hindu's being attacked by Muslims spread by prominent politicians using social media.<sup>3</sup> While stray instances of Jat Hindus being attacked by members of the Muslim community did occur,<sup>4</sup> the Muslim community suffered disproportionate harm in terms of fatalities, injuries, destruction of properties and homes, loss of livelihood, displacement, destitution and sexual violence.<sup>5</sup> In the face of mounting criticism by late September the Uttar Pradesh State government constituted a Special Investigation Team to investigate cases related to the communal attacks.<sup>6</sup>

Muslim women were targeted and sexualised violence inflicted upon them by the dominant Jat community. Sexual violence committed upon Muslim women by Hindu Jat men in the house of the village headman, where the women had taken refuge from the communal attacks has been documented in media reports.<sup>7</sup> Similar instances of sexual violence committed upon Muslim women as they were fleeing from their villages in search of safety and rapes committed upon young girls who are still missing have been documented through fact-finding reports conducted by civil society bodies.<sup>8</sup> A fact-finding report of the National Commission for Minorities (NCM) after an initial visit to the violence affected areas concluded that “there were allegations of rape and kidnapping of women, but no names were received, nor had such complaints been made in the villages and camps visited”<sup>9</sup> A report by a fact-finding visit conducted by the NCM in December 2013 acknowledges that while the issue of justice for victims of rape had begun to be taken up, most of the people they met with did not seem to believe that progress on this front was going to be easy.<sup>10</sup>

A Writ Petition on behalf of seven Muslim women survivors of gang rape, six from a village in Muzaffarnagar and one from Shamli district, was filed in the Supreme Court on the grounds that their right to life as protected by Article 21 of the Constitution had been violated by the State due to its failure to protect them from sexual violence and its subsequent failure to enable their access to legal, medical and rehabilitative redressal.<sup>11</sup> The women survivors and their family members who had refrained from reporting the incidents initially due to the hostile and indifferent treatment meted out to them by the law enforcement authorities, later mustered courage and filed First Information Reports (FIR's) They named the men who raped them, as they belonged to the same village. The women were subjected to threats and pressure from the Jat community, as well as the local police administration, to withdraw their complaints.

The Supreme Court on 26th March 2014 delivered a common judgment in *Petitioners and 6 Others v. Union of India* and 10 other Writ Petitions filed on behalf of those affected by communal attacks.<sup>12</sup> With regard to the seven cases of gang rape of Muslim women, the Supreme Court directed the State of UP to

arrest all the accused; to provide security to the victims until completion of trial; to record the statement of the victims before a lady Magistrate as opposed to a male magistrate as done by the police; to pay them a compensation amount of Rs. 5 lakhs within 4 weeks from the date of judgment, and to register the FIR of one of the gang rape survivors, whose FIR had not been registered by the Police despite her having submitted a complaint in October 2013.<sup>13</sup>

As a result of these directions of the Supreme Court - 6 out of the 7 women have been provided with security cover; 5 of the 7 women survivors have received the compensation amount of Rs. 5 lakhs; in the case of the other 2 the administration and police were refusing to comply with the order of the Supreme Court.

Significantly even 7 months after the incidents of gang rape only 2 out of the 26 accused named in the FIR's have been arrested. The accused men continue to roam free and threaten the women, with the police expressing inability to trace and arrest them. Further, despite the recent amendments in criminal law, through the Criminal Law Amendment Act 2013, the Police has knowingly and with mala-fide intent refused to register the FIR of the gang – rapes committed during the communal violence under Section 376(2)(g) of the Indian Penal Code, which codifies the specific crime of *rape committed during communal or sectarian violence*.<sup>14</sup> This is a deliberate move on the part of the police to dilute and weaken the case of the gang rape survivors. For under the new law, for the crime under Section 376(2)(g) IPC, the burden of proof shifts upon the accused as stipulated under the amended Section 114 A of the Indian Evidence Act.<sup>15</sup>

Case of Petitioner No.4 Gang rape survivor: The experience of Petitioner No.4 illustrates the extent to which the administration and police were colluding with and shielding the accused men from the dominant community. Petitioner No.4 filed an FIR for gang rape against 4 men soon after she was gang-raped on 8th September. In December 2013 her case was closed by the Police on the grounds that in her statement before the male Judicial Magistrate she had stated that nothing untoward had happened. Petitioner No.4's case was only re-opened after she moved the Supreme Court stating that she given the aforesaid statement under duress and threats to her and her ten year old son's life. As no security was provided to her she was unable to speak the truth fearlessly before the judicial Magistrate. After numerous applications and efforts, the investigation into her case has been initiated. However Petitioner No.4 is constantly facing harassment and intimidation from the woman police Inspector in charge of the investigation of her case, who is pressurizing her to withdraw her complaint and reach a 'settlement' with the accused. Petitioner No.4 has still not received the compensation amount due to her nor has she been provided security guards by the State. She and her family continue to receive grave threats from the men who raped her and face harassment from police officials investigating her case.

### DISPLACEMENT AND REHABILITATION

Unofficial sources suggest that upto 100,000 Muslims had been displaced from their homes,<sup>16</sup> while government figures estimate the number of displaced person at 50,955.<sup>17</sup>

Shortly after the attacks, a total of 58 relief camps in Muzaffarnagar and adjoining districts had been set up.<sup>18</sup> A lot of these camps had been established and run by Muslim organisations. The conditions in the relief camps run by the government were dismal resulting in more than 50 deaths of children and the elderly due to the cold weather conditions.<sup>19</sup> By December 2013 all the government run relief camps were shut down and their inhabitants forcibly evicted, owing to the State government's compensation scheme which stipulates that displaces families and person who have received compensation cannot continue to live in their camps.<sup>20</sup>

The compensation scheme announced by the Uttar Pradesh State government is as follows: For loss of life, Rs. 10 lakhs from the state government and Rs. 2 lakhs from the central government + a government job to a family member; for loss of house / land in village, Rs. 5 lakhs per family; for injuries sustained, Rs. 50,000.<sup>21</sup>

Fact-finding visits conducted by independent persons have opined that such rehabilitation schemes apart from being woefully insufficient for a family to rebuild its home and livelihood, are also resulting in the

ghettoization of Muslims in specific villages and localities.<sup>22</sup> Currently most displaced Muslim families are living in relative's homes or in tents on plots of land that they have purchased with the compensation amount that they have received from the State government in the few Muslim dominated villages of Muzaffarnagar District. Once again we see that the concept of reparative justice is whittled down to monetary compensation and the State abdicates all other obligations in this regard.

This communal violence in rural Uttar Pradesh is likely to have serious long term repercussions as it has led to polarization and ghettoization in the villages, rupturing the traditional social and economic relations between the two communities. The Muslim women survivors of sexual violence are waging a very difficult struggle for justice, with the police and administration being brazenly partisan and obstructive.

## END NOTES

<sup>1</sup>The mahapanchayat in muzaffarnagar held on 7th September 2013 in violation of prohibitory orders, is variously reported as Beti Bachao Bahu Bachaomaha panchayat or Beti BahuIzzat Bachaomaha panchayat. See Farah Naqvi, 'The chilling familiarity of Muzaffarnagar' 18th September 2013, available at: <http://www.thehindu.com/todays-paper/tp-opinion/the-chilling-familiarity-of-muzaffarnagar/article5139664.ece> (last accessed 20th May 2014)

<sup>2</sup>Dipankar Ghose, '2 in Muzaffarnagar riot FIR's get BJP tickets, one says have to deliver for Modi' 20th March 2014, available at: <http://indianexpress.com/article/india/politics/2-in-muzaffarnagar-riot-firs-get-bjp-tickets-one-says-have-to-deliver-for-modi/> (last accessed 20th May 2014)

<sup>3</sup>'Who is 'viral video' uploader Sangeet Som?', First Post, 13th September 2013, available at: <http://www.firstpost.com/politics/muzaffarnagar-riots-who-is-viral-video-uploader-sangeet-singh-som-1106081.html> (last accessed 20th May 2014)

<sup>4</sup> Prof. Mohan Rao, Prof. Ish Mishra, Pragya Singh and Dr. Vikas Bajpai, 'Communalism and the Role of the State: An investigation into the Communal Violence in Muzaffarnagar and it's aftermath' December 2013, available at: [http://www.epw.in/system/files/Muzaffarnagar%20Report%20-%20Final%20\(1\).pdf](http://www.epw.in/system/files/Muzaffarnagar%20Report%20-%20Final%20(1).pdf) (last accessed on 20th May 2014)

<sup>5</sup> Preliminary Citizen's Report 'A human tragedy unfolds as the State watches, In the relieve camps of Muzaffarnagar and Shamli Districts' 20th September 2013. Available at: <http://kafila.org/2013/09/24/in-the-relief-camps-of-muzaffarnagar-and-shamli/> (last accessed on 20th May 2014)

<sup>6</sup>'Muzaffanagar Violence: Special Cell Begins Probe in Riot Cases' 17th September 2013, available at: <http://www.teharka.com/muzaffarnagar-violence-special-cell-begins-probe-in-riot-cases/> (last accessed on 20th May 2014)

<sup>7</sup>Neha Dixit, Thread Bared, 30th December 2013, OUTLOOK Magazine, available at: <http://www.outlookindia.com/article.aspx?288907> (last accessed on 20th May 2014)

<sup>8</sup>Anhad, 'Evil Stalks the Land: Fact Finding Report into the Riots of Muzaffarnagar' 22nd-23rd December 2013. Available at: [http://www.anhadin.net/IMG/pdf/evil\\_stalks\\_the\\_land\\_final.pdf](http://www.anhadin.net/IMG/pdf/evil_stalks_the_land_final.pdf) (last accessed on 20th May 2014)

<sup>9</sup> Mr. Wajahat Habibulla, Mr. Keki Daruwalla, Mr. Ajaib Singh and Mr. Tsering Namgyal Shanoo on behalf of the National Commission for Minorities, 'NCM's Visit to Muzaffarnagar (19th September 2013)', available at: <http://ncm.nic.in/pdf/tour%20reports/Shri%20wajahat/NCM's%20visit%20to.pdf> (last accessed on 20th May 2014)

<sup>10</sup> Professor Farida Abdullah Khan member NCM, 'Visit to Muzaffarnagar (U.P) – 26/12/2013' available at: <http://ncm.nic.in/pdf/tour%20reports/Farida/NCM%20Muzaffarnagar%20visit%2026%20Dec%202013.pdf> (last accessed on 20th May 2014)

<sup>11</sup>Petitioners and 6 Others v. Union of India Writ Petition (Criminal) No. 11/2014 filed in the Supreme Court of India.

<sup>12</sup>Judgment in Mohd. Haroon v. Union of India W.P. (Crl) No. 155/2013, Petitioners and 6 Others v. Union of India W.P.(Crl) No. 11/2014 and others. Dated 26th March 2014. Available at: <http://judis.nic.in/supremecourt/imgs1.aspx?filename=41339> (last accessed on 20th May 2014)

<sup>13</sup> Para 90, Mohd. Haroon v. Union of India, 26th March 2014 available at: <http://judis.nic.in/supremecourt/imgs1.aspx?filename=41339> (last accessed on 20th May 2014)

<sup>14</sup> Section 376(2)(g) of the Indian Penal code, 1860: "Whoever... (g) Commits rape during communal or sectarian violence... shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that persons natural life and shall also be liable to fine."

<sup>15</sup> Section 114 A of the Indian Evidence Act, 1872: "In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent



## WOMEN FROM MINORITY COMMUNITIES

of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.”

<sup>16</sup> Mohan Rao et al, ‘Communalism and the Role of the State: An investigation into the Communal Violence in Muzaffarnagar and it’s aftermath’ December 2013, available at: [http://www.epw.in/system/files/Muzaffarnagar%20Report%20-%20Final%20\(1\).pdf](http://www.epw.in/system/files/Muzaffarnagar%20Report%20-%20Final%20(1).pdf) (last accessed on 20th May 2014)

<sup>17</sup> ‘Muzaffarnagar riots: 10,000 still living in relief camps’, 13th November 2013, available at: <http://timesofindia.indiatimes.com/india/Muzaffarnagar-riots-10000-still-living-in-relief-camps/movie-review/25711988.cms> (last accessed 20th May 2014)

<sup>18</sup> Manish Sahu, ‘Muzaffarnagar: 50 deaths post-riots-at relief camps, in hospitals’ Indian Express, 21st January 2014. Available at: <http://indianexpress.com/article/cities/lucknow/50-deaths-post-riots-at-relief-camps-in-hospitals/> (last accessed on 20th May 2014)

<sup>19</sup> Hasina Khan and Saumya Uma, ‘Battered and Betrayed: A report of visit to Muzaffarnagar 19-20 January 2014’, 31st January 2014, available at: [http://www.sacw.net/IMG/pdf/BATTERED\\_AND\\_BETRAYED.pdf](http://www.sacw.net/IMG/pdf/BATTERED_AND_BETRAYED.pdf) (lasted accessed 20th May 2014)

<sup>20</sup> PrithaChatterjee, ‘Muzaffarnagar riots: For Rs. 5 lakh, 900 families give up their right to return home’ 19th November 2013, available at: <http://archive.indianexpress.com/news/muzaffarnagar-riots-for-rs-5-lakh-900-families-give-up-their-right-to-return-home/1196714/> (last accessed on 20th May 2014)

<sup>21</sup> Mohd. Haroon v. Union of India W.P (Crl) No. 155/2013, date of judgment 26th March 2014.

<sup>22</sup> Hasina Khan and Saumya Uma, ‘Battered and Betrayed: A report of visit to Muzaffarnagar 19-20 January 2014’, 31st January 2014, available at: [http://www.sacw.net/IMG/pdf/BATTERED\\_AND\\_BETRAYED.pdf](http://www.sacw.net/IMG/pdf/BATTERED_AND_BETRAYED.pdf) (lasted accessed 20th May 2014)



DALIT WOMEN

CHAPTER 14



INDIA

4th AND 5th  
NGO ALTERNATIVE REPORT  
ON CEDAW

**Ruth Manorama**  
National Alliance of Women

## 1. PREVALENCE OF THE PROBLEM

“Dalit Women and girls are particularly vulnerable and exposed to multiple forms of discrimination and violence, including sexual violence, on the basis of gender and caste.”<sup>1</sup>

Dalit women and other marginalised women's organizations feel the necessity to recognise these women's experience of exclusion, discrimination and violence that stem from their specific location within intersecting structures of caste, class and gender. The complex interaction of multiple structural factors, shape different women's lives differently. In the case of Dalit women this requires an analysis of how caste, class and gender intersect to manifest into targeted violence towards them and their communities. The planning Commission, since the Eleventh Five Year Plan, has also recognized the issues of Dalit women. The Justice Verma Committee recommendations for amendments to the Criminal Law regarding sexual violence are to be noted.<sup>2</sup>

UN agencies, governments, non-governmental organizations and experts agree that women's social, political and economic empowerment is key to ending violence against women and the culture of impunity for such violence. The Working Group on Women's Agency and Empowerment for the 12th Five Year Plan observed that special focus is required on the empowerment of SC women, who face multiple disadvantages due to community identity, gender and poverty.

## 2. CRITICAL AREAS OF CONCERN

- a. Continuing low development indicators and disproportionate representation in decision-making and as survivors of violence dalit women requires specific attention. Developing knowledge products in order to engage with Indian policy and decision makers on addressing inter-sectional discrimination and violence is also essential.
- b. The marginalization of Dalit women is specifically compounded by the absence of quality education and supportive infrastructure such as lack of connecting roads and long distances between home poor school infrastructure and restricted choice to continue education<sup>3</sup> are causes for high rate of dropouts among dalit girls. High incidence of domestic work and child labour, early marriage and child birth is also a contributing factor. Quality education has for long been regarded as a vehicle for achieving dignity and confidence for vulnerable groups. It is a medium that enables accumulation of cultural capital that can then be converted into secure employment for a raise in social and economic standing (Jeffry et al. 2004). In India, access to formal education has been a critical factor in the economic empowerment of marginalised communities and the absence of adequate good quality residential schools for dalit girls continues to be a major hurdle for the realization of their right to education.



### 3. DALIT WOMEN'S MULTIPLE VULNERABILITIES

- a. Violence is perpetrated against a majority of Dalit women and girls in forms of verbal abuse which is both casteist and sexualized. The incidences of rapes of Schedule caste women has risen steadily over the past decade.
- b. Dalit women are vulnerable to specific forms of violence. These forms include stripping and parading naked, violence associated with allegations of practicing witchcraft, sexual exploitation, trafficking and prostitution, including ritualized prostitution under Devadasi /Jogini practices, and domestic violence within inter-caste marriages. Studies over 90% of Devadasi/Joginis are SC women. SC women constitute 8.08% of the Indian population,<sup>4</sup> they form the majority (around 50 %) along with the ST women of those in prostitution.<sup>5</sup> Statistics show that over 2,500 women have been killed on the suspicion of practicing witchcraft in the past 15 years. The common pattern is that the victims were always poor, mostly from marginalized communities such as Dalits, and own some property or have rejected the sexual advances of dominant men in the community.<sup>6</sup>
- c. Violence experienced by dalit women while asserting their political participation: Women are coerced into acting as proxy representatives for primarily dominant caste men in the panchayats, and around 90% faced both caste and gender-based discrimination in the panchayats. Discrimination, sexual harassment and physical violence against SC women panchayat leaders trying to effectively discharge their role is widespread. Lower government officials often support the dominant caste leader. Harassment of these women representatives and treating them with 'disdain, neglect and apathy continue.
- d. Little Access to Justice and low levels of Accountability: Only 40.2% women have access to legal remedies for a number of reasons, including fear of the perpetrators or the dishonor and stigma attaching to victim-survivors of sexual violence. 26.5% of the incidents, women attempted to obtain legal or community redress for the violence, but were prevented by the perpetrators and their supporters, and the community at large. 17.4% of instances of violence, the women's attempt to access justice were blocked by the police themselves less than 1 % of instances of violence's had ended in convictions. Penalties inscribed in the various state laws against witchcraft killing, exist in the states of Rajasthan, Chhattisgarh, Jharkhand, Bihar and West Bengal. In 2011, Rajasthan Women (Prevention and Protection from Atrocities) Bill was promulgated a comprehensive law to deal with violence against women, which prescribes stringent punishments. Till date it remains a bill. In the case of the Devadasi Prohibition Acts remains merely on paper, the absence of comprehensive Rules to put down various protective and rehabilitation provisions.

The CEDAW Committee has noted its concern over the poor implementation of protective laws. About the ongoing atrocities committed against Dalit women and the culture of impunity for perpetrators of such atrocities, the CEDAW Committee recommends that the (Indian) state put in place a mechanism to monitor effective enforcement of the SC/ST (Prevention of atrocities) Act in order to ensure accountability and impunity for crimes committed against Dalit women. It calls upon the State party to increase Dalit women's legal literacy and improve their access to justice in bringing claims of discrimination and violation of rights.<sup>7</sup>

The Special Rapporteur on Violence against Woman has stated: "In India women from Dalit, Adivasi minorities are often victims of multiplicity of forms of discrimination and violence. Despite protective legislative and affirmative action laws and policies their reality is one where they exist at the bottom of the political, economic and social system and they experience some of the worst forms of discrimination and oppression- thereby perpetuating their socio-economic vulnerability across generations ... I would like to encourage the government of India to ensure specificity in addressing multiple and intersecting inequalities and incrimination that women face.... Linkages should be made between violence against women and other systems of oppression and discrimination prevalent within societies."<sup>8</sup>

There are several lacunas in under legal protections for Dalit women. First is the lack of legal recognition of the nature of violence committed against women based on the concepts of caste discrimination and humiliation against SC women. Second is the number of caste-based crimes against SC women that currently are not captured within the SC/ST (Prevention of Atrocities) Act. Third the need to add in the Indian Penal Code the offence of Aggravated Sexual Assault as recommended by the Justice Verma Committee. Fourth is the lack of any law to punish crimes in the name of 'honour'. Fifth is the need to enact specific laws to ensure victim and witness rights in criminal cases, including complete protection throughout the criminal justice process. Sixth the trial of atrocity cases should be completed within two months in order to ensure justice to the victims.

#### 4. THE POLICE

As the first point of contact following acts of violence, Police action is crucial to starting the criminal justice process. However, the common responses of the police is reportedly to doubt the veracity of women's allegation, delay in filing FIRs, delays in investigation such complaints, or to side the perpetrators of violence. These responses are confirmed by a report commissioned by the National Commission for women on violence against Dalit women in the state.<sup>9</sup>

The low utilisation of the SC/ST (Prevention of Atrocities) Act to register cases of atrocities against SCs including SC women is a great cause of concern. A Special public Prosecutor noted that either the Act is not applied, or the incorrect sections of the Act are applied by the police in the First Information Reports and charge sheets.

#### 5. THE JUDICIAL SYSTEM

- a. The survivors of violence have little preparation to face the trial process. The police often do not inform the victims about the process and that they will be represented by a Public Prosecutor whom the police are acquainted with. This heightens the possibility of victims and witnesses being intimidated by the defense attorney into giving statements in court that differ from those given to the police and thus weakening their cases.
- b. Justice delayed is justice denied. The trial pendency rates of over 80% each year. Without adequate courts, personnel and procedures put in place, the purpose of these courts are often defeated. The tendency to compromise because of economic fallouts in such cases, the victims change their statements during prosecution evidence. What is termed turning hostile witness-in order to end the case. The issue of compromises is linked to the issue of the lack of witness protection laws and a witness protection system in the country.

The technical interpretation of the law often precludes any account being taken of the prevailing unequal power relations that translate into the targeting of specific marginalized groups of women like Dalit women for violence.

- c. Most Dalit women have little or no knowledge about the laws in place to protect their rights. They also were not aware of the legal procedures that police, district officials and public prosecutors should follow. These lacunas mean that they often do not know how to deal with and overcome any obstacles that they may face during the criminal justice process. Despite a number of government actions to raise legal awareness through the Legal Service Authorities established to provide legal aid in the states, the lack of access to information continues to pose a significant constraint on the victim's access to justice.
- d. Deprivation and denial of land rights: Dalits have been denied permanent right over any land or territory only compounded by the fact that they were completely dependent on those who controlled means and production and livelihood. They also continue to suffer displacement from land. The land occupied by them had always been seized on baseless grounds, forcibly or through

economic strangle. The eviction of slums in urban areas is well known and most of the occupants are the dalits and the most backward classes. Displacement from homelands invariably means uprooting and dislocation of life.

The dalit women rarely own any land and most of them work as a daily wage labourers in agriculture. The unemployment rate among the dalit women is higher than the unemployment rate of non-SC/ST women. A large number of dalit women are engaged in unclean occupation. Lower standard of living and hard labour work among dalit women also factors into the poor health status. The negative impacts of the new economic reforms measures are already visible on dalit women and they constitute the bulk of the poor and unemployed due to their concentration in the unskilled labour force.

- e. Weakening of monitoring mechanisms: Monitoring mechanisms to ensure the proper implementation of laws which specifically look into either gender-based violence or caste-based violence are very weak. They often neglect to take account of violence at the intersections of caste and gender.

There are adequate constitutional and legal provisions, executive policies and welfare and developmental programmes in place to prevent and eliminate caste based discrimination and violence. Government records and reports, independent and credible research institutes present a different picture of the situation of the people. Ineffective implementation has rendered these provisions notional.

## 6. RECOMMENDATIONS

- All programmes dealing with inclusion and exclusion of any social group, including women should explicitly incorporate an inter-sectional lens. This ensures direct focus on gender as it intersects with all other structural factors to exacerbate vulnerabilities to violence and other human rights violations.
- Disaggregated data needs to be made available on caste and gender, in order to facilitate planning and creation of appropriate schemes for these women.
- Monitoring mechanisms to ensure the proper implementation of laws appear to very weak. Moreover, the mechanisms, which exist specifically, look into either gender-based violence or caste-based violence, they often neglect to take account of violence at the intersections of caste and gender.
- The core challenge for the government is to move beyond a legal technical approach to a more holistic rights based approach that addresses the structural causes of the violence. The state must adhere to core elements such as prevention and elimination of all forms of violence against women and girls which can be achieved through
  1. Prevention and response to violence against women and girls;
  2. Changes to perceptions, attitudes and behaviours that condone and justify violence against women and girls.
  3. Ensuring security, supportive services and justice for women and girls. There has been an explicit acknowledgement that certain groups of women who face multiple forms of discrimination are particularly exposed to the risk of violence.
- Passing of central legislation the SC/ST Sub-Plan should be given statutory status by passing central legislation in this regard, as in Andhra Pradesh ensuring that the amounts allocated in this sub-plan do not lapse or are misused. A separate authority should be set up at State level for its effective implementation.
- 50% of the Schedule Caste / Sub Plan related schemes be focused on dalit women in such a way the schemes are designed to improve and encourage women leadership, ownership of land

resources and capital assets. The state must distribute 5 acres of cultivable land in the name of dalits.

- The state must ensure as a rule no displacement is caused to SC/ST families from their land / habitations but in cases where displacements have occurred a proper compensation in the form of land from the SC/SP fund.
- Inclusive budgeting for dalit women must be enhanced in education particularly in the programme of Kasturba Gandhi Balika Vidyalaya scheme (KGBVS) – which is a special scheme for the marginalized community and structural limitations that currently create impediments must be removed in order to achieve desired results.

## END NOTES

<sup>1</sup> Joint statement of seven UN Special Rapporteurs and independent Experts, 2013, 'UN experts call for Strengthened protection for more than 260 million victims of caste-based Discrimination', UN News Centre.

<sup>2</sup> Justice Verma et al., 2013. Report of the Committee on Amendments to the criminal Law. New Delhi: Government of India ,Paras 34 & 46.

<sup>3</sup> Unni, J (2009) Gender differentials in education; Exploring the capabilities approach. Economic and Political Weekly, volume 44, No.9

<sup>4</sup> 2011 census

<sup>5</sup> P.M. Nair, 2004. A report on trafficking in Women and Children in India 2002-03. National Human Rights Commission, Institute for Social studies & UNIFEM

<sup>6</sup> Paul, Stella, 2012. "Witches of India: Women without Defense". <http://worldpulse.com>

<sup>7</sup> CEDAW, 2007. Concluding Observation on India report. UN Doc. CEDAW/C/IND/CO/3, paras 28-29.

<sup>8</sup> Special Rapporteur on Violence against Women, 2013 (1 May). 'Special Rapporteur on Violence against Women ,its Causes and Consequences finalizes Country Mission to India', OHCHR News. [www.ohchr.org](http://www.ohchr.org)

<sup>9</sup> Varma, Sudhir, ©2007. Violence against Dalit Women in Rajasthan. New Delhi: National Commission for Women



CHHATTISGARH

CHAPTER 15



INDIA

4th AND 5th  
NGO ALTERNATIVE REPORT  
ON CEDAW

**Sashi Sail**

National Alliance of Women

With focus on the situation of tribal women, in the two districts of Dantewada and Bijapur in Chhattisgarh

## 1. INTRODUCTION

- In July 2005 Chhattisgarh Director General of Police Mr. O. P. Rathore said, “*that more than 40000 square miles spread over 10 out of 16 districts of the state was the operational sphere of the Naxalites.*”<sup>1</sup> An analysis of Maoist influence in the State through 2011 indicates that 14 out of a total of 19 Districts<sup>2</sup> now fall into the Maoist affected categories.
- The Social, Economic, Cultural and Human Rights violations of the tribal people-women, at the hands of the state under the pretext of dealing with the Maoists and violation of the Constitution of India by the State and its machinery in the counter- insurgency operations are epitomized in the case of tribal teacher Ms. Soni Sori – hounded by the State for taking a stand for the rights of women and the tribals.

It is Maoists, who the government has singled out to label as being the biggest threat. 'Operation Green Hunt', a war against the Maoist rebels is headquartered in the jungles of Central India (with Chhattisgarh at its epicenter). The government, in the name of dealing with the Maoists, has deployed Central Reserve Police Force (CRPF), the Border Security Force (BSF), the Naga Battalion, etc. Along with this, the government supports and arms the Salwa Judum<sup>3</sup>, the 'people's militia'.

### What the Tribals Face Today?

- Forced alienation from their land, their villages. About 3,50,000 people from about 647 villages in South Bastar Districts of Chhattisgarh have been forced to leave and live as refugees in the so-called relief camps (more popularly known as Salwa Judum Camps) since 2005. There were 21 camps in 5 Blocks. Almost 2 lakhs of the village folks have fled to the neighbouring states of Andhra Pradesh, Orissa and Maharashtra.
- Massive dislocation of population. The total absence of food and security in the camps. Disruption of community life, loss of livelihood, leading to food insecurity and malnutrition. The recent National Family Health Report, mentions Chhattisgarh amongst the 9 states with more than 25 per cent of the children being malnourished. In Chhattisgarh, Dantewada district has largest number of malnourished children.
- Tribals caught in the cross fire between the Salwa Judum and the Maoists. People are forced to take sides either with the Maoists or with the Salwa Judum in complete violation of their right to peaceful existence, right to livelihood, and other human rights.

## 2. SOCIO-ECONOMIC SCENARIO

The state of Chhattisgarh was carved out by giving sixteen districts of Madhya Pradesh statehood on 1st November 2000. It is the 10th largest state of India in geographical area. Chhattisgarh housed 2.11 per cent population of the country and the population of the decade old state has touched 2.55 crore with 71.04 per cent as literates, as per the Census 2011 (Provisional Report). On the literacy front, 71.04 per cent of the population is literate against the national average of 74.04 per cent. The literacy rate was 64.66 per cent during last census.

The Scheduled Tribe (ST) population of Chhattisgarh State is 6,616,596 constituting 1.8 percent of the total population of the State. The State has a total of forty two (42) Scheduled Tribes and all have been enumerated at 2001 census.

Chhattisgarh is one of the richest states in India in terms of mineral wealth, producing 28 major minerals. The key minerals are coal and iron ore. Around 16 per cent of India's coal is in Chhattisgarh; it also holds 10 per cent of the country's iron ore, five per cent of its limestone, five per cent of its bauxite and 88 per cent of its tin. The state accounts for almost one third of the diamond reserves of the country as well.

Under the Liberalization, Privatization and Globalization (LPG), in Chhattisgarh Government has signed some 121 Memorandum of Understandings (MoUs) worth Rs. 1, 92,126 Crores for establishing new industries and expansion of existing units. (Chhattisgarh Government claims that it has later scrapped 16 of these projects). According to official estimate these would require 52,000 acres for industries alone. As per unofficial estimates, it would mean further displacement of some, 4, 16,000 people from their land and livelihood resources.

## 3. SITUATION OF TRIBAL WOMEN & GIRLS IN CONFLICT ZONE

### A. VIOLENCE ON WOMEN IN DANTEWADA

“Complete breakdown of livelihoods that has taken place. Women in the camps have been reduced to selling their bodies for rates as low as Rs. 30/-. The close presence of the camps of armed personnel (State Police, CRPF, Naga and Mizo IRB) creates a classic situation in which these impoverished and distressed women are forced to provide 'comfort' to the troops.”

#### i) Rape of Minors

“Many of the Kanya Ashrams run by the education department have been centres of sexual abuse and humiliation for the girls. The Salwa-Judum has accentuated these tendencies, and legitimized sexual violence against women”<sup>3</sup>.

#### ii) Threat of HIV/AIDS

“Yet another serious dimension of this situation is the growing threat of HIV/AIDS spreading in the recent sexual vulnerability of women in this conflict zone resulting in an explosive epidemic among the adivasi population of South Chhattisgarh (Dantewada, Bijapur, Bastar, Kanker).

#### iii) Unreported Deaths

“A number of incidents of unreported deaths have been documented. The CAVOW Report refers to “an elderly widow at the Baangapal camp described how her eldest son had been abducted by the police from the Geedam Bazaar and Murdered in the Bodli thana, she was not even shown the body. An adivasi youth working with a voluntary organization has seen two women who he says were shot dead by the Naga battalion.”<sup>4</sup>

#### iv) False Cases Against Women:

There is a growing tendency on the part of the State machinery to label many of the helpless



women now in police custody and to charge them with murder, attempt to murder, etc., without any real basis. The court and jail records of several so-called “Naxalite” women prisoners are indicative of brutalities of sexual violence.

## B. DISPLACEMENT AND DISLOCATION OF POPULATION

The Salwa-Judum has led to a massive displacement and dislocation of the Adivasi population of Dantewada. The large Salwa-Judum rallies that took place during the second half of 2005 were followed by the forced evacuation of the villages by the Salwa-Judum mobs, assisted by the police and para-military forces. In all almost 3, 50,000 people from about 647 villages in South Bastar Districts of Chhattisgarh have been forced to leave and live in camps since 2005. There were 21 camps in 5 Blocks. Almost 2 lakhs of the village folks have fled to the neighbouring states of Andhra Pradesh, Orissa and Maharashtra.

### i) Life in the Camps

“Living conditions in the camps are abysmal. Thousands of villagers who are in these camps were largely forced to abandon their homes, hearths and fields. Few could bring any of their personal belongings. As a result, most have lost their entire livestock (cattle, pigs, hens, etc.), stock of grain and forest produce. There has been a massive dislocation of population as well as livelihood in the course of the Salwa-Judum. The total absence of food and livelihood security in the camps was striking.....”

### ii) Women's Lives and Livelihoods : (Loss of livelihood, food insecurity and malnutrition)

“Complete loss of livelihood options is a major problem in the camps. People in the camps are actively prevented by the SPOs and the paramilitary forces from returning to their villages and carrying on with their agriculture. Besides, the atmosphere of terror, uncertainty and suspicion that has been created is such that it makes this an unsafe venture even in their own perception. As a result a large part of the district's population has had no access to their land in the last year. As it is, even in normal times, agricultural activity is limited to the short monsoon fed season and food security depends on free access to the forest as well as land. ....Loss of livelihood no doubt is also the major reason why people have been abandoning the camps and running away.”

## C. GAGGING OF MEDIA

The unresponsiveness of the media to these cases of violence against women is also part and parcel of the un-democratic and un-constitutional acts of the State, which uses repressive measures to gag the press. Various Fact-Finding Teams & reports by journalists have expressed concern at the gagging of the press due to which the above brutalities of the State forces do not even impact on the consciousness of the citizens of Chhattisgarh or the country.

## D. HUMAN RIGHTS VIOLATION

### I) Security Laws – Chhattisgarh Special Public Security Act 2005

The Chhattisgarh State enacted an anti-constitutional and anti-democratic law in the name of Security called The Chhattisgarh Special Public Security Act 2005 (CSPSA). Under this law, several citizens have been illegally detained, which included tribal's, farmers, women, social workers. In addition, the Unlawful Activities Prevention Act (UAPA), and the Sedition Law have been widely used to curb the democratic activities and muzzle the voices of dissent, as has been evidenced in the case of Dr. Binayak Sen, Human Rights defender.

Several Human Rights organisations and people's organisations, including the political parties, have been demanding the repeal of the Law. The People's Union for Civil Liberties (PUCL) filed a writ petition in April 2009 at the Chhattisgarh High Court at Bilaspur, challenging the constitutionality of the law, but the matter is still pending in the Court.



The PUCL has collected information about a number of persons/ organizations who have been implicated under the impugned Act of 2005. Select Cases of detainees under CSPSA, 2005 are enlisted below. Out of these persons two are doctors, two are journalists/media persons and one lawyer.

## ii) Encounters/Extra-Judicial Killings

In Chhattisgarh, the police, paramilitary and Salwa-Judum have all been responsible for extra-judicial killings. State forces have been reported to extra-judicially execute citizens suspected of being Maoists and to label such executions as “encounter killings” or “encounters”, thereby implying that the deaths had occurred during armed encounters with the alleged Maoists. Salwa-Judum forces have been accused of extrajudicial killings during raids and evacuation of villages while looking for Maoist supporters and also during reprisal attacks on villagers who have been forcibly evacuated by them.

Various such fake encounters have been documented in detail in the reports of the National Human Rights Commission and media.<sup>5</sup>

## E. HEALTH SITUATION OF THE PEOPLE

Undernourishment and malnourishment is a common feature of the residents of both the old and new camps. It was obvious that their economic and nutritional status had deteriorated substantially.

“Extrapolated for the entire state, the malaria death toll would easily cross 5,000 a year. Dr Jain<sup>6</sup> told us that while Chhattisgarh makes up 2 percent of India’s population, it accounts for 14 percent of the country’s falciparum malaria cases. But the state doggedly refuses to acknowledge this.”<sup>7</sup>

According to the National Family and Health Survey – III, in a wide swath of nine states in India, where nearly half of the country’s population lives, about a quarter of the children born in 2010-11 were underweight, that is, less than 2.5 kgs at the time of birth. Chhattisgarh is one amongst these nine states. According to the survey, in Chhattisgarh 53 percent children between the age group of 5 and 6 are suffering from acute malnourishment; that 59 out of 1000 children die before attaining the age of one year. Dantewada district has the largest number of malnourished children.”

### i) Lack of adequate health services

Health is a major concern in both the camps and the villages for different reasons. In the camps, there is no health infrastructure, the anganwadis and health centres that have been transplanted are poorly equipped, and the staff is poorly motivated.

Malnutrition, a serious problem in Chhattisgarh, afflicts 65% of children under five, and causes over 50% of all deaths in this age-group.

The condition of health particularly from the point of view of women and children is very poor in Chhattisgarh. The IMR is 63 which are almost the same as 64 national average. The death rate of children below 5 years is as high as 45 per 1000 in Chhattisgarh. In Chhattisgarh, the proportion of malnourished children below 5 years of age is as high as 52%. The female sex ratio has also fallen from 945 in 1951 to 920 in the year 2001. The Maternal Mortality rate of Chhattisgarh is 379.

### ii) Hunger & Starvation in Dantewada

#### Starvation Deaths in Morpalli, Dantewada

In mid-March, 2011 security forces burnt down 300 tribal houses in Tadmetla, Morpalli and Timapuram villages.

Following this, some newspapers published reports of starvation deaths from Morpalli, which in turn prompted the Supreme Court of India on March 29, 2011 to direct food commissioners Mr.

Harsh Mander and Mr. NC Saxena to visit the village and submit a report.

Accordingly, Harsh Mander visited village Morpalli in Dantewada on 6 April, 2011. In his report submitted to the Apex Court, Mr. Harsh Mander has in Main Findings noted that:

“6. I did not find evidence in my visit of confirmed starvation deaths in the village. But I found conditions of people living with starvation, in conditions of great penury and destitution. This is aggravated by the conflict. We were informed that this is the second time their houses were destroyed and their few belongings destroyed or looted. Their conditions are aggravated further by the virtual abandonment of the local people by the entire state government machinery, except the security forces”<sup>8</sup>

#### **Hunger Deaths in Dantewada, 2004**

Hunger & Starvation are not new to Dantewada district. A team from People's Union for Civil Liberties (PUCL) - Chhattisgarh visited villages Burgum in Kauakopnda Block and Hirpal in Geedam Block of Dantewada district following newspaper reports of hunger deaths in south Bastar during March 2004.<sup>9</sup>

#### **F. CHILD SOLDIERS**

The Salwa-Judum and the Maoists both have been reportedly recruiting Adivasi Children, both boys and girls, for military training. They are taken to the training camps where they are taught how to use weapons and deal with explosives.

Trained children are then used as combatants and, very often than not, used as shields during operations. It has now been confirmed that the Government has been enrolling young boys and girls as Special Police Officers (SPOs) and using them in hostilities. This has been widely reported in various reports.<sup>10</sup>

The Operational Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which was ratified by the government of India on 30 November 2005, urges the State parties to ensure that persons who have not attained the age of 18 years are not into their armed forces. It is clear that the State government of Chhattisgarh has been “recruiting or using” persons below 18 years of age in hostilities”.

The Supreme Court Order dated 5.7.2011 in the Nandini Sundar & Ors Vs. State of Chhattisgarh -- WP (Civil) No (s) 250 of 2007 clearly holds the State of Chhattisgarh responsible, when in its para 60 it states that “In light of the above, we hold that both Article 21 and Article 14 of the Constitution of India have been violated, and will continue to be violated, by the appointment of tribal youth, with very little education, as SPOs engaged in counter-insurgency activities”.

#### **G. TERROR TACTICS: ARSON AND LOOT**

Hundreds of homes in villages have been burnt or destroyed. People have been forced to flee their villages in fear. Any investigation into the loot and arson by civil society was thwarted by the state machinery.<sup>11</sup>

#### **4. ROLE OF THE STATE & CIVIL SOCIETY**

“The failure of the state to draw the right conclusions from the so-called Maoist insurgency. It is critical for the Government to recognize that dissent, or expression of dissatisfaction is a positive feature of democracy and cannot be treated merely as a law and order problem. Peace, harmony and social progress is possible only when there is equity, justice and dignity for everyone. The root cause of Maoist insurgency has to be understood / as having a direct co-relation with extreme poverty of the people and the failure of the state in addressing it. On the contrary, state has supported and promoted predatory forms of capitalism, in direct contravention of constitutional norms and values.”<sup>12</sup>

“Our Constitution charges the various organs of the state affirmative responsibilities of protecting the interests of the welfare of and the security of the nation.....”<sup>13</sup>

While in the name of dealing with the Maoist insurgency the state has usurped the right to education of the children by occupying the schools, ashrams, anganwadis and hostels by the security forces.

A Contempt of Court Petition has been again filed by the Petitioners in this case, which clearly states that the State was in utter violation of the orders of the Apex Court.<sup>14</sup>

## 5. VIOLATIONS OF CEDAW

We need to point out that this situation that we have shared is in complete violation of the concerns raised by the CEDAW Committee in the Concluding Observations of the Committee at its 22nd Session, January 17 to 4 February 2000 as given below:

The Committee is concerned that women are exposed to the risk of high levels of violence, rape, sexual harassment, humiliation and torture in areas where there are armed insurrections.

The Committee recommends the introduction of gender sensitization and human rights programmes for the police, the security forces and medical professionals, in addition to programmes already undertaken.

## 6. RECOMMENDATIONS

1. Above all, the state government must urgently restore its development and welfare presence in this and all 644 'affected villages'. As a minimum, the essential services should be restored within 3 months.
2. The different articles of the Constitution of India that ensure and guarantee the citizens a life of dignity, protect their livelihood bring peace be followed in letter and in spirit.
3. Adivasis living in camps be allowed to go back to their village. Their lands be restored to them to enable them to earn their livelihood based on land and forests.
4. All Forms of Violence on Women should be stopped.
5. All false cases registered against women to be withdrawn.
6. Registration of FIRs that have not been done so far, need to be complied with.
7. Reports & Recommendations of various Human Rights Organisations and the Supreme Court of India be implemented in letter and spirit by the State & Central Governments.

## REFERENCES

“Salwa-Judum and Violence on Women in Dantewada, Chhattisgarh”. Committee Against Violence on Women (CAVOW), December 2006.

“War in the Heart of India” (An enquiry in to the ground situation in Dantewada District, Chhattisgarh), Independent Citizens Initiative, 20th July 2006.

“Where the State makes War on its Own People” (A report on violations of people's' rights during the Salwa-Judum Campaign in Dantewada, Chhattisgarh), April 2006.

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Just a Little Collateral Damage.....? (Report of an All India Fact Finding Team into incidents of

encounters in the month of October 2010 in Chhattisgarh) by PUCL (C.G.)

Preliminary Report of The Chhattisgarh Bachao Andolan on the Killing of Meena Xalxo by the Chhattisgarh Police and the Armed Forces July 2011.

## ENDNOTES

<sup>1</sup> Ref: Asian Center for Human Rights Report 2006 : Page No.13.

<sup>2</sup> In 1998, the seven districts that made up Chhattisgarh were reorganized to form 16 districts. On November 1, 2000, these 16 districts were split from Madhya Pradesh to form the new state of Chhattisgarh. Two new districts are added afterwards. Presently, Chhattisgarh state consists of 27 districts.

<sup>3</sup> Salwa Judum: literally meaning 'purification hunt' in Gondi language, but declared as a Campaign for Peace. Officially described as a spontaneous peoples' uprising against Maoist violence, Salwa Judum is an officially sponsored combined militant project of the State Government, with the backing of the Bharatiya Janata Party (BJP), the leader of the opposition in the State Assembly, sections of the Congress Party, State police and Central forces, etc.

<sup>3</sup> Pages 32-34 CAVOW Report

<sup>4</sup> Pages 16–17, CAVOW Report

<sup>5</sup> Asian Centre for Human Rights Report: "The Adivasis of Chhattisgarh – Victims of Naxalite Movement & Salwa Judum Campaign; pages 34-36)

<sup>6</sup> Dr. Yogesh Jain runs a non-profit health centre – Jan Swasthya Sahyog (JSS) – at Bilaspur

<sup>7</sup> TAHALKA Cover Story dated 24.9.2012. Vol. 9. Issue 38

<sup>8</sup> Ref: Special Commissioner Harsh Mander's report in the Writ Petition (C) No.196 of 2011, PUCL Vs. Union of India, after visiting one of the affected villages Morpalli on 6 April, 2011.

<sup>9</sup> PUCLCG Report

<sup>10</sup> Ref: ACHR, ICI, NHRC, All India Team, etc.

<sup>11</sup> (i) War in the Heart of India pages 29–31 (ii) NHRC Report pages 18-39 (iii) War in the Heart of India pages 27-33

<sup>12</sup> Ibid

<sup>13</sup> Ibid

<sup>14</sup> Contempt Petition (Civil) No. \_\_\_\_ of 2012 in W.P. (Civil) No. 250/2007 (Nandini Sundar and Ors Versus State of Chhattisgarh, dated March 2012.



EVALUATING  
THE NATIONAL  
COMMISSION  
FOR WOMEN

CHAPTER 16



INDIA

4th AND 5th  
NGO ALTERNATIVE REPORT  
ON CEDAW

# EVALUATING THE NATIONAL COMMISSION FOR WOMEN



## Partners for Law in Development

India has seven national human rights institutions known as Commissions with varying structures, powers, and mandates that have been established with a view to promote and protect human rights, women's rights, children's rights, rights of minorities, rights of manual scavengers, and rights of persons belonging to scheduled castes and scheduled tribes.<sup>1</sup> Except the National Commission for Scheduled Castes (NCSC) and the National Commission for Scheduled Tribes (NCST), which have been provided for under the Constitution, all other human rights institutions at the national level have been established by way of legislation.<sup>2</sup>

The pressure from the women's movement in India led to the passing of the National Commission for Women Act, 1990 (NCW Act). It was also due to the strong insistence by the movement that the Commission be a statutory body that the government had to abandon its attempt at establishing it through an executive decree.<sup>3</sup> The NCW was established in January 1992 with the specific mandate of reviewing constitutional and legal standards for women, recommending remedial legislative measures, facilitating grievance redressal, and advising the government on all policy matters affecting women.<sup>4</sup> Albeit, the National Human Rights Commission (NHRC) has a broad mandate of protecting and promoting human rights, it is the NCW which has the exclusive mandate to review and monitor the state of women's rights in India and it is the primary responsibility of the NCW to demonstrate leadership on women's issues and respond to violations relating to women.

Despite the interventions made by women's organisations at the time of the constitution of the Commission, the then government finally constituted a weak Commission.<sup>5</sup> The functioning of the Commission over the last twenty years indicates that this institution lacks foundational, functional, operational, political and financial autonomy as also understanding and familiarity with the political and transformational aspects of gender ideology. Contrary to international standards,<sup>6</sup> the composition of the Commission is exclusively determined by the Central Government.<sup>7</sup> This has resulted in politicized appointments to the Commission.

### 1. STATUTORY FRAMEWORK

Since the NCW Act predates the World Conference on Human Rights, 1993 and the Principles relating to the status of National Institutions for the promotion and protection of human rights, 1993, commonly referred to as the Paris Principles, its provisions do not refer to the international conventions on human rights, or the core values and standards that national human rights institutions must adhere to. Interestingly, legislations pertaining to human rights institutions passed after 1993 expressly refer to international human rights instruments and the need for compliance with the provisions contained therein.<sup>8</sup> In the absence of reference to international standards and conventions in the NCW Act, the content of NCW's work is not infused with the developments and debates in international human rights or assessment of compliance of Indian laws with international conventions, such as the CEDAW. The NCW also does not make any submissions to the CEDAW Committee or participate adequately in any other CEDAW processes.



## EVALUATING THE NATIONAL COMMISSION FOR WOMEN

### MANDATE AND FUNCTIONS

The NCW has a broad mandate, and unlike the NHRC, can inquire into violations by State actors as well as private individuals or entities. The NHRC can inquire into violation of human rights by public servants.<sup>9</sup> The Commission is mandated to examine, report, and investigate on all matters relating to constitutional and legislative safeguards for women.<sup>10</sup> Their role is to review existing laws affecting women and to recommend amendments to address the lacunae in laws.<sup>11</sup> In addition to functioning as a body that monitors the progress and protection of women, should also advise the Government on measures to be adopted for protection or improvement of the condition of women.<sup>12</sup> Such measures could include, investigating or reporting on condition or atrocities against women in the country, or bringing to attention non-implementation of laws. The Commission has the power to accept complaints as well as take *suomotu* notice of deprivation of women's rights, non-implementation of laws, and non-compliance with policy decisions or guidelines for protection and promotion of women's rights.<sup>13</sup> Additionally, the Commission has the powers to inspect the condition of women in places of custody, remand homes, jails, and women's institutions.<sup>14</sup> It can also fund litigation involving issues affecting a large body of women.<sup>15</sup> It can also undertake educational research so as to suggest ways of ensuring fair representation of women in all spheres and also participate and advice in the planning process of socio-economic development of women.<sup>16</sup>

A key gap in the Act is the absence of specifications of steps that the NCW can take upon completion of inquiry. For instance, the National Commission for Protection of Child Rights or the National Human Rights Commission have been expressly authorised to make recommendations to the appropriate authorities, to approach courts for writs, and to recommend interim relief. Absence of guidance in the Act has led the NCW to provide legal aid and counseling services to women who file complaints before them. The Commission has a clear Complaints Registration System. The 'instruction' states – *'The Complaints and Counseling Cell of the commission processes all the complaints whether received orally, written or suo moto under Section 10 of the NCW Act... The complaints received relate to domestic violence, harassment, dowry, torture, desertion, bigamy, rape, refusal to register FIR, cruelty by husband, deprivation, gender discrimination and sexual harassment at work place...'* In 2008 the NCW received 13,190 complaints (reference taken from NCW website) In the absence of a clear legal, definitional, and procedural framework it is unclear how these complaints were resolved, or how they pushed the agenda for social, institutional, and legal reform towards women's rights. A significant amount of energy of the NCW appears to be spent in mediating marital conflicts and pushing for reconciliation even in cases of domestic violence or dowry harassment.<sup>17</sup> In comparison, their role as a body that reviews laws and recommends reform has received scant attention.

### COMPOSITION AND APPOINTMENTS

The Chairperson of the NCW must be a person "committed to the cause of women" and five members 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."<sup>18</sup> At least one member each should belong to SC and ST.<sup>19</sup> As per the Paris Principles, if the institution comprises of representatives of government departments, they should act only in an advisory capacity.<sup>20</sup> The International Council on Human Rights Policy 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.<sup>21</sup> The NCW Act provides for a Member-Secretary to be nominated by the government who can either be an expert in the field of management, organisational structure or sociological movement, or a civil servant.<sup>22</sup> Since inception, all 13 Member-Secretaries of the NCW have been drawn from the Indian Administrative Service.<sup>23</sup> The presence of officers of the State who participate in the processes of the Commission as Members is incongruous to the very notion of an independent human rights institution.

The Act does attempt to promote pluralism in composition. But, the Central Government is vested with the exclusive power to determine the composition.<sup>24</sup> In the absence of a clearly laid down selection

process, appointments are made in an ad hoc manner.<sup>25</sup> The criteria of being "committed to the cause of women" has led to appointments of women who may have little or no experience or knowledge of women's rights. For instance, Ms. Mamta Sharma, the current Chairperson of the NCW has been an elected member of a State Assembly and has even held the position of General Secretary of the Rajasthan Pradesh Congress Committee.<sup>26</sup> Previous Chairpersons such as Dr. Girija Vyas<sup>27</sup> and Jayanti Patnaik<sup>28</sup> had active political careers and were members of the national party that was at the Centre. Dr. Vyas was in fact a sitting Member of Parliament when she held the position of Chairperson. Such appointments have led to a loss in credibility of the NCW and it has come to be perceived as a subordinate department of the government.

Indeed, the procedure of appointments to the Commission, in and of itself disempowers Commission members, who may be unable or unwilling to hold accountable the very same State Executive which appoints them.

#### TERM OF OFFICE AND REMOVAL

The Chairperson and Members of the NCW can hold office for a maximum period of three years. However, the political nature of appointments combined with the power of the Central Government to remove members has impacted the stability of the Commission.<sup>29</sup> In 2005, a change in government at the Centre resulted in the arbitrary dismissal of Members appointed by the previous government without being given an opportunity for hearing or prior intimation of such dismissal.<sup>30</sup> This in turn affects the morale of the staff and the workings of the Commission.

#### OPERATIONAL AUTONOMY

The Commission lacks operational autonomy as it is entirely dependent on the government for staff and infrastructure.<sup>31</sup> While it does have powers of inquiry available to a civil court while inquiring into violations of women's rights,<sup>32</sup> it does not have any independent powers of investigation. It depends on the police and other investigating agencies of the State, thus, making it impossible to undertake an independent determination of a violation.

#### FINANCIAL AUTONOMY

The NCW receives an appropriation from the Parliament which is then routed through the government by way of grants and made available to it.<sup>33</sup> While the Commission can spend the money as it thinks fit for the purpose of discharging its functions, the purse strings are usually held by the government. To NCW does not enjoy financial independence to the extent envisage under the Paris Principles which state that a National Human Rights Institution 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."<sup>34</sup>

## 2. PERFORMANCE

Violations of women's rights take place by both State and non-State actors. It must fall to a nodal human rights body like the NCW to steadfastly and impartially hold both sets of actors accountable in order to protect the rights of Indian women. The NCW has repeatedly failed in this duty - to protect those in whose name it was created.

The following points illustrate the reactions and responses of the NCW to recent violations that are of concern:

- a. There was overwhelming evidence of mass sexual violence against minority women in Gujarat in 2002, but the NCW's fact finding found that no particular community was targeted, in complete contrast to the reports of the National Human Rights Commission (NHRC) and subsequent observations by the Supreme Court.<sup>35</sup> Even as the NHRC moved the courts to seek justice, the NCW failed to pursue a single case of sexual violence to bring justice to a single woman whose life was destroyed by this carnage.



## EVALUATING THE NATIONAL COMMISSION FOR WOMEN

- b. On 24 January 2009, when about 40 men belonging to Sri Ram Sena, a Hindu group, attacked a group of young women in a pub in Mangalore, Karnataka, Nirmala Venkatesh, a Commission member who carried out a fact finding, noted that the women's clothes were a major provocation for the attack. Venkatesh spoke only to the management of the pub and the accused and made no attempts to contact the victims. 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.<sup>36</sup> Upon her removal from the NCW, she claimed that she had been pressurized to give an “anti-Karnataka government” report and then went on to join the BJP party that was in power in Karnataka.<sup>37</sup>
- c. On 10 July 2012, a girl was molested outside a bar by a crowd of men in Guwahati. The molestation was captured by a cameraman of a TV news channel. The NCW did not highlight the failure of the criminal law in addressing sexual assault against women effectively or suggesting law reform. The NCW instead entrusted the inquiry into the incident to Alka Lamba, a woman politician from the ruling party with little or no experience in the matter. Lamba held a press conference and revealed the victim's identity on national television.<sup>38</sup> Mamta Sharma, the Chairperson blamed such instances of molestation on the way women dress.<sup>39</sup>
- d. Over the last several years it has fallen to women's rights groups to repeatedly push for law reform, to prepare and submit draft amendments to the law, to address these grave lacunae, rather than this being a priority of the NCW. In 1994 the Supreme Court laid down guidelines directing state to provide financial compensation to rape victims. The NCW took more than a decade to finalise a scheme promising rape victims compensation. Likewise, it is a widely reported fact that rape trials are often compromised because women are pressured into withdrawing complaints. But little attention has been paid in raising awareness or law reform in this area.<sup>40</sup> In December 2012 after the brutal gang rape of a 23 year old woman in a moving bus, there was a demand by women activists to reform rape laws. The inability of the NCW to intervene or respond to the violation came under heavy criticism by women rights' activists.<sup>41</sup> The campaign for a new law and the subsequent reform emerged from women rights' activists and protests.<sup>42</sup>
- e. In the last many years, the women organizations have taken up the issue of increasing sexual violation of women in situations of caste and communal violence and by state agencies in conflict areas. Women's groups have raised the issue of state complicity and/or sanction of violence against women, either through direct involvement (grant of special powers through laws like AFSPA) or through inaction results in empowering state agencies and communities to legitimately use violence by granting them immunity in the name of national security or community in danger. Such situations make redress almost impossible. These situations specially call for the interventions of autonomous institutions like the NCW to investigate the conduct of state agencies and strengthen the redressal mechanisms by putting pressure on the governments in power. The record of NCW in these situations has been disappointing as the Commission has failed miserably in its role as an autonomous and independent institution to raise the issue of arbitrary and excessive use of powers by the state and demand the accountability of the state in these matters.
- f. NCW has frequently denied reports of sexual violence by security forces in several parts of the country, instead of seeking to investigate and end impunity for such crimes. In October 2012, due to protests by women's groups over its silence on the matter, the NCW was compelled to reopen the case of custodial torture of Soni Sori, an adivasi school warden from Dantewada, Chhattisgarh who had been arrested for alleged Maoists links. Probes by the women's movement revealed that the file had been closed based on the report received from the Chhattisgarh police without even forwarding the report to the complainant for her comments.<sup>43</sup> It took about one

year for women's organisations to pressurise the Commission to send a Team to visit Raipur jail where Soni Sori was lodged and was being meted out inhuman treatment at the hands of Jail authorities. It is three months since the visit happened but the Commission has not released its report of the visit. Women's groups were told that the report is not a public document.

This conduct of the Commission over successive years has thus obscured systemic injustices to women, trivialized their violations, reduced the dignity of the institution and revealed an institutional collapse of this nodal body.

### **3. RECOMMENDATIONS**

We urge you to take the lead in recommending that the government, in consultation with women's rights groups, undertakes a comprehensive review of the NCW to achieve the following objectives:

1. Conduct an evaluation of the NCW by an independent team that includes eminent women's rights activists, to assess the extent to which NCW is compliant with the Principles relating to the status of National Institutions for the promotion and protection of human rights, 1993, commonly referred to as the Paris Principles, and suggest ways of making the NCW more compliant with the Paris Principles.
2. Safeguard the political autonomy of this nodal women's rights institution by replacing the current nomination system with a transparent, democratic and non-partisan selection process for members and Chairperson of the Commission. The current nomination process is entirely contrary to international standards, which clearly state that the State Executive should not solely determine the composition of human rights bodies, such as the NCW. Only a transparent selection process, determined by GOI in consultation with women's rights groups, can ensure that the NCW's members and Chairperson are women with both the necessary expertise and sensitivity to uphold women's rights. The eligibility criteria for membership to the Commission must be more objective. Persons being considered for membership should have a minimum of 10 years experience in specified areas. The Act must expressly bar Members of Parliament or State Legislatures or persons connected with political parties from being appointed as Chairperson or Member.
3. The Commission must also be empowered to undertake independent investigations into violations of women's rights. They must also be vested with the autonomy to appoint their own staff and consultants. There is an urgent need to re-haul the NCW Act in order to infuse autonomy, transparency and independence into the foundation and functioning of the NCW.
4. Undertake a comprehensive review of the performance of the Commission in terms of - its role in addressing systemic gender-related social, economic and legal issues (including law reform and police reform); its ability to pin accountability for violations of women's rights; its ability to further the cause of justice for women – with a view to proposing institutional reform of this nodal body.

### **NOTE**

This chapter has been prepared with inputs from Swagata Raha, Sonal Makhija, Madhu Mehra, Sadhana Arya, Farah Naqvi.

### **END NOTES**

<sup>1</sup> These are as follows: National Commission for Women, National Human Rights Commission, National Commission for Minorities, National Commission for Scheduled Castes, National Commission for Scheduled Tribes, National Commission for Protection of Child Rights, and the National Commission for Safai Karmacharis.

<sup>2</sup> The National Human Rights Commission has been constituted under the Protection of Human Rights Act, 1993; the National Commission for Women has been constituted under the National Commission for Women Act, 1990, the National Commission for

## EVALUATING THE NATIONAL COMMISSION FOR WOMEN

Protection of Child Rights has been constituted under the Commissions for Protection of Child Rights Act, 2005, and the National Commission for Safai Karmacharis has been constituted under the National Commission for Safai Karmacharis Act, 1993.

<sup>3</sup> The demand for the establishment of an independent human rights institution to monitor the implementation of women's rights and to ensure that women's perspectives are taken into account in by policy-makers and planners essentially was made in 1974. See, Sadhna Arya, "The National Commission for Women: Assessing Performance", p.8, <http://www.cwds.ac.in/OCPaper/NCWsadhnaArya.pdf>

<sup>4</sup> National Commission for Women, About us, <http://ncw.nic.in/frmAboutUS.aspx>

<sup>5</sup> Sadhna Arya, "The National Commission for Women: Assessing Performance", p.8, <http://www.cwds.ac.in/OCPaper/NCWsadhnaArya.pdf>

<sup>6</sup> The Commonwealth Secretariat, the ICHRP, and Amnesty International emphatically state that the executive should not solely decide on the composition of the Commission. (Commonwealth Secretariat, National Human Rights Institutions Best Practice, London: Commonwealth Secretariat, 2001, p.15; International Council on Human Rights Policy, Assessing the Effectiveness of National Human Rights Institutions, Switzerland: ICHRP, 2005, p.14 available at <http://www.ohchr.org/Documents/Publications/NHRIen.pdf>; National Human Rights Institutions - Amnesty International's Recommendations on Effective Protection and Promotion of Human Rights, 2001, p.5 available at <http://www.amnesty.org/en/library/asset/IOR40/007/2001/en/3c676e38-d8e3-11dd-ad8cf3d4445c118e/ior400072001en.html>)

<sup>7</sup> Section 3, National Commission for Women Act, 1990.

<sup>8</sup> The Statement of Objects and Reasons to the Protection of Human Rights Act, 1993, refers to India's obligations under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It also refers to the "growing concern in the country and abroad about issues relating to human rights. The Preamble to the Commissions for Protection of Child Rights, 2005 refers to India's obligations under the Convention on the Rights of the Child, 1989 as well as International Declarations and meetings.

<sup>9</sup> Section 12(a), Protection of Human Rights Act, 1993.

<sup>10</sup> Section 10(1)(a), National Commission for Women Act, 1990.

<sup>11</sup> Section 10(1)(d), National Commission for Women Act, 1990.

<sup>12</sup> Section 10(1)(c), National Commission for Women Act, 1990.

<sup>13</sup> Section 10(1)(f), National Commission for Women Act, 1990.

<sup>14</sup> Section 10(1)(k), National Commission for Women Act, 1990.

<sup>15</sup> Section 10(1)(l), National Commission for Women Act, 1990.

<sup>16</sup> Section 10(1)(h & i), National Commission for Women Act, 1990.

<sup>17</sup> National Commission for Women, Annual Report, 2009-10, p.22, [http://ncw.nic.in/AnnualReports/200910/Annual\\_Report\\_2009-10\\_English\\_Full.pdf](http://ncw.nic.in/AnnualReports/200910/Annual_Report_2009-10_English_Full.pdf)

<sup>18</sup> Section 3(2), National Commission for Women Act, 1990.

<sup>19</sup> Proviso to Section 3(2), National Commission for Women Act, 1990.

<sup>20</sup> Paris Principles, National institutions for the promotion and protection of human rights, A/RES/48/134, 85th Plenary Meeting, 20 December 1993, para 4.

<sup>21</sup> International Council on Human Rights Policy, Assessing the Effectiveness of National Human Rights Institutions, Switzerland: ICHRP, 2005, p.14 available at <http://www.ohchr.org/Documents/Publications/NHRIen.pdf>

<sup>22</sup> Section 3(2)(c), National Commission for Women Act, 1990.

<sup>23</sup> List of Members Secretaries of the Commission since its inception, <http://ncw.nic.in/frmListMS.aspx>

<sup>24</sup> Section 3, National Commission for Women Act, 1990.

<sup>25</sup> The Chairperson and Members of the NHRC are appointed based on the recommendations of a high powered Selection Committee comprising the Prime Minister, Speaker of the House of the People, Minister in-charge of the Ministry of Home Affairs, Leader of the Opposition in the House of the People, Leader of the Opposition in the Council of States, and Deputy Chairman of the Council of States. The Chairperson of the National Commission for Protection of Child Rights has to be appointed on the basis of recommendations by a three member Selection Committee chaired by the Minister of Women and Child Development.

<sup>26</sup> <http://ncw.nic.in/frmChairperson.aspx>

<sup>27</sup> <http://164.100.47.132/LssNew/Members/Biography.aspx?mpsno=517>

<sup>28</sup> <http://www.parliamentofindia.nic.in/ls/lok12/biodata/12OR11.htm>

<sup>29</sup> Section 4(3), National Commission for Women Act, 1990.

<sup>30</sup> Anon, “Expulsion of NCW members degrading and unconstitutional”, Deccan Herald, 29 May 2005; Anon, “UPA axe falls on three NCW members”, The New Indian Express, 21 May 2005, .

<sup>31</sup> Section 5(1), National Commission for Women Act, 1990.

<sup>32</sup> Section 10(4), National Commission for Women Act, 1990.

<sup>33</sup> Section 11(1), National Commission for Women Act, 1990.

<sup>34</sup> Supra note 9, Para 2.2.

<sup>35</sup> Report of the Committee Constituted by the National Commission for Women to Assess the Status and Situation of Women and Girl Children in Gujarat in the wake of the Communal Disturbance - A Letter from Saheli Women’s Resource Centre - New Delhi, <http://www.onlinevolunteers.org/gujarat/women/saheli-ltr.htm> Anon, “NCW faces flak for riot report,” Times of India, 26 April 2002, at [http://articles.timesofindia.indiatimes.com/2002-04-26/ahmedabad/27114492\\_1\\_ncw-cases-of-sexual-assault-women-and-children](http://articles.timesofindia.indiatimes.com/2002-04-26/ahmedabad/27114492_1_ncw-cases-of-sexual-assault-women-and-children), Anahita Mukherji, “National panel for women politicians”, The Times of India, 21 July 2012, <http://www.timescrest.com/society/national-panel-for-women-politicians-8348>, Anon, “NCW accused of presenting mild report on Gujarat”, The Milli Gazette, <http://www.milligazette.com/Archives/15052002/1505200271.htm>

<sup>36</sup> Aarti Dhar, “Nirmala Venkatesh removed from NCW”, The Hindu, 28.02.09, at <http://www.hindu.com/2009/02/28/stories/2009022854781200.htm>

<sup>37</sup> Makhija & Raha, A Review of the Working of the Karnataka State Human Rights Commission and the Karnataka State Commission for Women, Daksh & accountability Initiative, April 2011, p.75, [http://www.accountabilityindia.in/sites/default/files/daksh\\_kshrc\\_kscw\\_apr\\_2011.pdf](http://www.accountabilityindia.in/sites/default/files/daksh_kshrc_kscw_apr_2011.pdf); 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/>

<sup>38</sup> <http://ibnlive.in.com/news/guwahati-shame-ncw-needs-to-reinvent-itself/272023-3.html>

<sup>39</sup> <http://indiatoday.intoday.in/story/guwahati-molestation-ncw-chief-mamta-sharma-advises-women-to-dress-carefully/1/208869.html>

<sup>40</sup> <http://criticallegalthinking.com/2013/01/09/we-must-resist-the-cunning-of-judicial-reform/>

<sup>41</sup> <http://kafila.org/2012/12/24/statement-by-womens-and-progressive-groups-and-individuals-condemning-sexual-violence-and-opposing-death-penalty/>

<sup>42</sup> [http://articles.timesofindia.indiatimes.com/2012-12-20/india/35933153\\_1\\_ncw-female-feticide-capital-punishment](http://articles.timesofindia.indiatimes.com/2012-12-20/india/35933153_1_ncw-female-feticide-capital-punishment)

<sup>43</sup> Bindu Shajan Perappadan, “NCW reopens Soni Sori case”, The Hindu, 12 October 2012, at <http://www.thehindu.com/todays-paper/tp-national/ncw-reopens-soni-sori-case/article3989714.ece>



CHALLENGES  
AND ISSUES  
FACED BY WOMEN  
LIVING WITH HIV  
IN INDIA

CHAPTER 17



INDIA

4th AND 5th  
NGO ALTERNATIVE REPORT  
ON CEDAW

# CHALLENGES AND ISSUES FACED BY WOMEN LIVING WITH HIV IN INDIA



WLHIV

## 1. BACKGROUND: INDIA AND REPORTING TO CEDAW

India signed CEDAW in 1980 and ratified the Convention in 1993. In 2014, The Government of India is due to submit its 4th and 5th report to the CEDAW Committee. It submitted its combined 3rd and 4th report in 2005. Para 259-261 of the State Report covered HIV, and stated that the protection of women living with HIV (WLHIV) and support to Positive Women's Networks (PWN) is included in the AIDS Policy. The most recent report does not include any mention of the specific concerns and challenges faced by women living with HIV (WLHIV).

The NGO Shadow Report, 2006, noted the significant stigma and discrimination faced by WLHIV and the Oral Presentation highlighted that, “[T]he impact of HIV/AIDS on women continues to cause grave concern. Sexual violence and rape place women particularly at risk of infection. Fear of stigma and victimization obstructs positive women from accessing any kind of health care.”<sup>1</sup>

The concluding observations of the CEDAW committee in 2007 highlighted the need for enacting a sex discrimination act and also raised concerns regarding the status of women's health including HIV, and HIV related morbidity and mortality as well as the lack of reliable data on women's health including on HIV infections.<sup>2</sup> In paragraph 41, the committee recommended that India:

“pay increased attention to female health throughout the life cycle, including in key areas of pregnancy and non-pregnancy-related morbidity and mortality, in light of general recommendations 24 and 25 . It calls upon the State party to strengthen food security, primary health care and adequate sanitation, especially in rural areas; establish mechanisms to monitor women's access to health care and health delivery systems; and increase the allocation of resources to health care. The Committee urges the State party to prioritize decreasing maternal mortality rates by establishing adequate obstetric delivery services and ensuring women access to health services, including safe abortion and gender-sensitive comprehensive contraceptive services. It recommends that the State party provide detailed information in its next periodic report about the impact, and trends over time, of programmes to improve women's access to health care and decrease maternal mortality. It calls upon the State party to balance the roles of public and private health providers in order to maximize resources and the reach of health services. It calls upon the State party to monitor the privatization of health care and its impact on the health of poor women and provide such information in its next periodic report.”

The concern with women's health was also noted in the preceding cycle in 2000,<sup>3</sup> wherein the committee recommended “the adoption of a holistic approach to women's health throughout the life cycle in the country's health programme” and “urged the Government to allocate resources from a “women's right to health” perspective, following the guidelines of the Committee's general recommendation 24.”<sup>4</sup> The concluding



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observations also expressed concern with regard to HIV vulnerability among sex workers and women who have been trafficked and noted existing legislation, which “encourages mandatory testing and isolation.”

In a recent statement on the ICPD review, the CEDAW Committee stressed the importance of attention to sexual and reproductive health and rights, stating “The right to health, which includes the right to bodily autonomy, and encompasses sexual and reproductive freedom, is often violated.” The Committee also found that “The provision of, inter alia... timely diagnosis and treatment of sexually transmitted diseases (including HIV), breast and reproductive cancers, and infertility; as well as access to accurate and comprehensive information about sexuality and reproduction, are all part of the right to sexual and reproductive health.”<sup>5</sup>

### 2. KEY CONCERNS AFFECTING WLHIV IN INDIA

It is widely acknowledged that women face differential HIV risks as well as disproportionate impacts of the HIV epidemic. This is true not only in terms of their vulnerability to infection and constrained access to services but also the higher burden of household responsibility and care that they face.<sup>6</sup>

#### A. STIGMA AND DISCRIMINATION

Several Indian studies have found that where both husband and wife are diagnosed with HIV, it is invariably the woman who is denied shelter, access to household property, and access to the children. She is usually blamed for the husband's HIV status, the rationale being that even if he did visit sex workers it was because she could not keep him 'under control'.<sup>7</sup> A recent study amongst 68 women living with HIV in 2 villages in India found that over 80 percent of the women were told not to share food or utensils and not to touch or care for children and 75 percent were forced to leave their homes by family members.<sup>8</sup> Researchers note that a recurrent theme in the discrimination against HIV positive women in the household is the unwillingness of the family to expend money towards the daughter-in-law's treatment. Mothers with HIV face additional challenges related to inheritance, access to education for their children and custody issues.<sup>9</sup>

Participants from the focus group discussion (FGD)<sup>10</sup> described their experiences in this regard including being blamed for infecting their husbands by in laws. One participant described how the hospital staff actually intervened on her behalf after she tested positive and was being blamed by the husband's family, telling them “don't blame her-you have given the disease to your wife”.

Another participant described a situation that illustrates how the shame and silence around HIV can compound the problem within the family for years. She only discovered her husband had AIDS when he died after being sick for many months. Despite this knowledge, the in laws pleaded with her to marry the younger brother, even though she had not been tested. When she tried to talk about the disease and persuade him to use condoms during sex he refused and beat her. She had two children, one of whom died at two months, having been HIV positive. Her second husband also died. She is HIV positive and so is her remaining daughter and her in laws have abandoned them both and do not care for them.

The prevalence of stigma and discrimination and the very tangible ways in which women are treated differently upon disclosure of being HIV positive results in them developing very negative perceptions about themselves. Internalised or self-stigma plays an important part in determining how women deal with their illness and move forward in their lives. The above mentioned study found that more than two-thirds of the women surveyed felt disgusting with their HIV status and believed they were paying for sins committed in a previous life. In addition, “slightly less than two-thirds thought they should avoid feeding children (62%) or holding a new infant (60%). Over half thought they had brought shame to their families and that they should avoid cooking for others. Slightly less than half (49%) avoided visiting people...”<sup>11</sup> This self-stigma has been shown to be correlated with lower social support, lower knowledge and understanding of AIDS and lower ART adherence.



## B. CHALLENGES RELATED TO HEALTHCARE

“States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.” (Article 12, CEDAW)

### I. Discrimination and Denial of Treatment

Discrimination towards women living with HIV, within the household and family and society at large is mirrored in healthcare settings.<sup>12</sup> One aspect of this is prejudicial attitudes towards PLHIV and assumptions about their lifestyles. One study found that, 68 percent of 884 hospital staff across three large hospitals in Delhi, the capital city, agreed to the statement that 'HIV spreads due to immoral behaviour' and that across staff levels (doctors, nurses and ward staff) attitudes towards positive patients were unfavourable.<sup>13</sup>

The above-mentioned Indian study on rural women living with HIV noted that 70% of the respondents reported that healthcare workers were afraid to touch them.<sup>14</sup> In addition, two-thirds reported that they had been denied medical/hospital care and had been mistreated by hospital workers.<sup>15</sup> Respondents also reported fear of disclosing status, even in healthcare settings, due to insensitive questions asked about their 'morality'.<sup>16</sup>

FGD participants had all experienced discriminatory treatment in healthcare settings. One participant described nurses and doctors staying as far away from them as possible, even when they needed to give injections, causing severe discomfort to her. Another participant described being asked many inappropriate questions by doctors in a private hospital and stated that no member of staff would touch her. Yet another stated that when seeking treatment she would always disclose her status to doctors and advise them to wear gloves but usually they would 'run'.

Evidence suggests that HIV-related discrimination may be exacerbated for HIV positive women who are sex workers, trans gender or who use drugs. For instance, trans gender women report various forms of humiliation and verbal harassment by hospital staff, including deliberate use of male pronouns in addressing Hijras<sup>17</sup> as well as registering them as 'males', admitting them in male wards and forcing them to stand in the male queue.<sup>18</sup> Similar accounts were given by trans gender women during a regional consultation,<sup>19</sup> in 2011, on legal barriers to accessing HIV prevention, treatment and care services in India. One woman described approaching a hospital with a serious infection that was causing her extreme pain, only to have several doctors gathering around her and asking humiliating questions about how she had sex rather than treating her for her condition.<sup>20</sup>

Similarly, research has shown that female sex workers (FSWs) in India are “treated callously in hospitals and clinics, made to wait longer periods to be seen if providers knew that they were sex workers and refused treatment until they agreed to undergo HIV testing.”<sup>21</sup> Legal activists have pointed out that State health controls, “through measures purportedly serving a public health purpose, are a frequent source of violations of sex workers' rights: mandatory testing for STIs and HIV; routine infringements of confidentiality regarding HIV test results and other medical information.”<sup>22</sup>

### ii. Consent and Confidentiality

Ensuring informed consent to testing and confidentiality within the healthcare system is critical to a human rights approach to public health. For those who need HIV testing, lack of procedures that ensure informed consent and the fear that healthcare workers will breach confidentiality is a serious deterrent to accessing health services.

A study<sup>23</sup> conducted in 2007 found:

Of 884 health care workers interviewed, half felt that the need for consent prior to testing was exaggerated



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Only 39% agreed that patients' blood should never be tested for HIV without their consent. 86 percent of respondents were supportive of mandatory testing of all patients before surgery 79 percent said all pregnant women should be mandatorily tested.

In terms of confidentiality, Nurses interviewed for this study stated that “Everybody (doctors, nurses, sweepers and ward boys) who works with patients knows the status of the patient” and “if the result is positive, then the doctor tells the patient as well as . . . relatives.”<sup>24</sup>

Many women interviewed for the six country study stated that their test results were disclosed to their in-laws and husband rather than to them, leading to serious problems within the family and leaving women vulnerable to violence, abandonment and destitution.<sup>25</sup>

As already noted, this discriminatory treatment is heightened for women from key affected populations. The PLHIV stigma index study for India shows that despite a large number of all respondents (75 percent) saying they had been tested for HIV voluntarily, this did not hold for FSWs. Of the 98 FSWs in the study, 41 percent had been coerced into being tested. The provision of counseling related to HIV testing is also problematic. The PLHIV stigma index reported that 25 percent of the 593 women and 41 percent of the 98 female sex workers were not provided any pre-test counseling.

Participants in the FGD agreed that the issues of consent, confidentiality and counseling are key concerns for them. None of them had received pre-test counseling. In many cases the women had no idea what a diagnosis of 'HIV positive' implied and their status was revealed carelessly and in very frightening ways. For instance, one woman reported that the doctor said she had AIDS (not HIV) and told her “no doctor can cure you” and sent her to the Government hospital where she was also told she was going to die.

FGD participants also discussed confidentiality. In some cases, results were given to the husband or a family member and the woman was left without any explanation of what was going on. For instance a participant who was tested during her pregnancy in 1999 was not asked for consent to testing or given any information about HIV. Her husband was told her results and did not disclose her status to her until much later. In another case the results were disclosed to parents before the woman was told and she was left to deal with having to comfort them before she had been able to comprehend or come to terms with the diagnosis herself. Another participant described being hospitalized when she was critically ill and having an HIV positive label put on headboard of her bed.

One woman described how the technician with her lab report declared to others in the waiting room, “this one is gone”. Another woman described how when she took her positive reports to a government hospital, the reports were thrown at her with the admonition, “you will infect all of us.”

The overwhelming consensus from the FGD was that women were usually tested without having any information about HIV or its implications and, upon being diagnosed as positive were given poor information and advice-usually along the lines of the fact that they were going to die shortly and not much could be done for them.

### **iii. Sexual and Reproductive Health and Rights**

It has been estimated that more than 90 percent of HIV positive women in India are infected by their husbands or sexual partners.<sup>26</sup> Therefore in terms of preventing the spread of HIV, and improving the quality of lives for WLHIV, including their reproductive lives, knowledge and understanding of sexual and reproductive health including condom use, Sexually transmitted infections (STIs) and PMCTC is critical. This is also very relevant for adolescent girls who may be particularly vulnerable in sexual relationships having less negotiating power and less access to information. Knowledge around SRH issues is severely lacking among women and girls. In 2006, it was estimated that in India, only 30% of

women with no formal educational background between the ages of 15-49 had heard of HIV/AIDS.<sup>27</sup>

According to India's UNGASS progress report, 2010, under the Adolescence Education Programme (AEP), 288,000 teachers were trained in counseling for HIV and 47,000 schools were designated to implement training, knowledge and skills to their students during 2009-10. One study, aimed at assessing India's progress towards MDG 3 and 6, from the perspective of WLHIV conducted six focus groups around the country with WLHIV.<sup>28</sup> A majority of the participants observed that in most states, the sex education programme, which catered to students between grade eight and ten was discontinued three years ago. None of the FGD participants, their relatives or children had received life skills education in schools. Participants from North-East unanimously stated that schools in their region did not provide sex education.

The same study found that even women who were aware of condoms and how to procure them, were not necessarily willing to use them. None of the women had ever procured a condom expressing that condoms are a man's prerogative and that they were too shy to publicly access condoms. In addition, married women consider condoms "dirty" and perceive them as something only sex workers use. One woman from the Kerala Network shared, 'If women insist on condom usage, they are accused of carrying some virus or disease'.<sup>29</sup>

#### iv. Forced or coerced abortion

People Living with HIV Stigma Index Report, India<sup>30</sup>

\*4 percent of the 593 women interviewed reported being coerced into an abortion.

\*7 percent of the 98 female sex workers interviewed reported being coerced into an abortion.

WLHIV in India face significant challenges when it comes to decisions related to having children. In a study conducted among 757 WLHIV, in six Asian countries including India, HIV positive women reported being treated judgmentally when they do become pregnant, told how irresponsible they are and encouraged to give up the pregnancy.<sup>31</sup> Doctors provided a range of reasons for why they should terminate the pregnancy including the fact that a baby may be born positive, the baby may be orphaned, the woman's health may be weakened or the woman is poor.<sup>32</sup> In another study, *"a point which came up strongly was that in both government and private hospitals, positive women are advised to abort the pregnancy even if the pregnancy is in the second trimester."*<sup>33</sup>

During the FGD, one participant described being told by a doctor at the Integrated Counseling and testing Centre (ICTC) that he would only treat her after she had an abortion. When she was trying to get advice four doctors sat around discussing it in front of her with no regard for her privacy, or indeed the trauma that she was going through. "The counselor was sitting in a relaxed way and asked me to abort the child. They asked me for INR 15,000 for an abortion. When I asked why it was so expensive they said because they need to throw everything out once it had been used on me. It was the worst experience of my life, they treated me like rubbish not even providing a pad for my use after the abortion. And I lost my baby and that is my biggest loss. Now I cannot imagine ever trying to have a baby again

-I can never go through that experience again-that time is over for me."

#### v. Forced or coerced sterilization

People Living with HIV Stigma Index Report, India

12 percent of all respondents<sup>34</sup> were advised not to have children. 4 percent stated that they had been coerced into having sterilization.

Research shows that WLHIV are routinely advised that they must not have children and in fact that they should undergo sterilization procedures. This applies to women who have already had children, those

who are pregnant as well as those who have no children. In the above-mentioned multi-country study, of 192 Indian WLHIV surveyed, 39 percent said they had been asked or encouraged to have a sterilization procedure and 58.2 percent felt that they could decline.<sup>35</sup> Another important point is that women do not always know what they are consenting to. Similar to the lack of prior understanding on HIV testing, many Indian women interviewed for this study stated that they did not understand what sterilization was when they agreed to it with some thinking it meant a more sterile mode of delivery, to which families happily consented. In cases where the choice to be sterilized during delivery was available women did not feel they could consent to it without agreement from husband and in laws and even if they did the hospital required spousal consent. Some very poor women reported that whilst they were told the choice was theirs they were offered incentives to undergo the sterilization such as free formula for other children, which they did not feel they could pass up.<sup>36</sup>

#### vi. Prevention of Mother to Child Transmission (PMTCT)

People living with HIV Stigma Index report, India

28 percent of the 593 females who participated and 69% of the 98 female sex workers (FSWs) were not aware that PMTCT existed.

One study explored the role of HIV-associated stigma as a barrier to accessing Prevention of Parent To Child Transmission (PPTCT) services in one area of Karnataka, one of the six high HIV prevalence states of India. Women participating in the programme reported logistical barriers to accessing services such as transport and financial problems but they also consistently reported stigma as an obstacle for them. This included stigma from the community, self stigma and stigma from healthcare workers. This study points out that women's fear of being treated as an 'untouchable' by members of her community may prevent them disclosing their status. With regard to healthcare workers women experienced refusal of treatment, moral judgments, abusive behaviour and breaches of confidentiality from health care staff.<sup>37</sup>

#### vii. Degrading Treatment During Delivery

Studies have also specifically noted insensitive treatment by health care professionals in maternity wards and during delivery. A study among 60 HIV positive mothers in Chennai, living with one or more children, showed that fifty percent of the women respondents feared seeking care due to bad experiences at a maternity hospital including breaches of confidentiality, being refused treatment and humiliating statements made by health care staff.<sup>38</sup> 97 percent of these women reported discriminatory treatment including doctors treating them differently, refusing to touch them, sitting far away from them during consultations and even wearing masks while communicating with them.

One participant in the FGD, who found out that she was HIV positive whilst she was pregnant, was refused any further treatment by her obstetrician, who stated that other people would stop coming, to the clinic, if they knew that HIV positive women were being treated.

Another participant who tested positive in 1999 also described how she had to go to several different hospitals before one would agree to deliver her baby by C-section. She sold all her jewelry to pay for the procedure and was told that they would have to close the theatre for three days after her procedure. No one would touch her and they discharged her as quickly as possible.

Serious delays in service provisions were also reported including waiting for surgeries such as sterilizations and always being the last person to be scheduled for procedures. They also reported doctors asking embarrassing and insensitive questions once positive status was confirmed. In one case of a woman with an HIV positive little girl, "the doctors accused my husband saying he must have been drunk and sexually abused my child."<sup>39</sup> The judgments passed and assumptions made by those who are supposed to have the requisite scientific knowledge to confer neutrality and professionalism is a consistent deterrent to pregnant WLHIV as well as those who are already mothers, in need of healthcare.

## Testimony

“In the hospital, there are different wards given to women infected with HIV. When I had my labor pains, I screamed and shouted with no assistance from anybody. Finally, the baby came out and my mother pleaded for help. Then finally a doctor came to my side. The ayah told my mother to clean up the blood and refused to touch it for fear of being infected.”<sup>40</sup> (WLHIV, Chennai)

“During the delivery, there were two nurses and they did not even touch me during delivery even when I was suffering from pain... Even when I was bleeding they did not come to my help. They scolded my grandmother to wipe the blood, and they even did not touch my child.”<sup>41</sup> (WLHIV, Karnataka)

Many of these women expressed that they just wanted “caring healthcare providers” and that this would encourage them to seek care.<sup>42</sup> Indeed, 65 percent of mothers in this study “requested compassionate care for themselves and their children, and for quality care to be delivered with respect and concern.”<sup>43</sup>

All participants agreed that although some of the experiences they spoke of had happened many years ago these issues were still highly relevant for WLHIV in 2014.<sup>44</sup> Although it is now possible to get assistance and treatment at specific district hospitals where the Government's HIV program is being implemented, WLHIV are still being denied treatment at many other hospitals as shown by the desk review findings. This results in cases wherein WLHIV deliver their babies on the way to hospitals because they are denied care at those which may be more accessible to them when they are in labour. Other surgical procedures are also denied. In addition despite the fact that the PMTCT programme was launched in 2000 and is available at district hospitals, participants reported that WLHIV continue to be told by healthcare practitioners not to have children.

These findings have implications for programme development in terms of developing interventions for healthcare services that encourage key affected women and girls to seek testing and WLHIV to seek care and treatment including treatment that can prevent transmission of HIV to their unborn children.

### 3. PROPERTY RIGHTS

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property. (CEDAW, Article 16 (h))

Evidence shows that WLHIV are often thrown out of the marital home, after the death of their husband. A UNDP study, in 2006, showed that 90 percent of HIV-affected widows were no longer living in their marital homes. As researchers have pointed out, “the loss of shelter and livelihood experienced by women can push them into a vortex of destitution and marginalisation, intensified vulnerability to HIV and AIDS, while enhancing inter-generational poverty.”<sup>45</sup>

Soudamini, an NGO which provides support to over 300 women who have been denied their right to property, report that property grabbing, dispossession, or eviction of women after their husband's death or because they are HIV positive are being reported in large numbers from various parts of Maharashtra. As one advocate puts it, “*Property, as articulated by women, goes beyond land and housing. It is linked to one's livelihood and economic security. It includes all that she receives from her family at the time of marriage, and all that she is entitled to as a wife, including jewelry, dowry, furniture, insurance, pensions, bank accounts, fixed deposits and land/ house or any other asset acquired by her husband. As per the law, a woman is entitled to all these as the wife of a deceased man irrespective of her HIV positive status.*”<sup>46</sup> Unfortunately, thanks to the stigma attached to being HIV positive, women are reluctant to exercise these rights and go to court. A recent ruling by the Mumbai High Court is trying to address this problem by allowing pseudonyms to be used when filing cases relating to HIV and by allowing 'in camera' hearing of trials to better protect people's privacy and confidentiality.



## CHALLENGES AND ISSUES FACED BY WOMEN LIVING WITH HIV IN INDIA

One FGD participant explained that after her alcoholic husband died of AIDS she faced serious harassment in her marital home, they would not let her have access to money, they refused to look after her and they tried to chuck her out. No one within the family or community would speak to her and she reported the family to the police. She was able to find an alternative place to live and a job with the help of a local positive network and has now filed a case against the family so that she is granted a share in her marital property, which they refuse to give her.

Another participant described that the most important issue relating to property for women is the fact that their names are never included on the proper documentation, which makes it difficult to claim their rights in court. One participant noted how her husband, upon discovering his positive status, transferred all his property to his mother's name so that his wife could not be linked to his property by marriage. A participant from the North East explained that an issue in her region is that many marriages remain unregistered so the woman does not even have a certificate in her name to prove she is married to her husband.

WLHIV also face challenges related to inheritance of property from their parents. Indeed findings from a recent survey show that this is an issue for all women in India and the stigma and shame around HIV likely exacerbates an already deeply

inequitable situation. The study showed that despite the passage of the 2005 Hindu Succession Act (Amendment), which gave women the right to inherit land from their parents, “women across three Indian states (Andhra Pradesh, Bihar, and Madhya Pradesh) report that they are unaware of their right to inherit land and sometimes barred from exercising that right.”<sup>47</sup> Indeed only 13 percent of women surveyed, whose parents own land, said they have inherited land or expect to inherit land from their parents and 69 percent of the women interviewed stated that they had not heard of even one case wherein women had inherited land from their parents. The issue of women being unaware of their rights to parental property and of parents being unwilling to bequeath land to daughters also arose during the focus group discussions.

Several participants explained that even when women get to the stage of filing an FIR, they may withdraw it due to tremendous pressure faced by family members. This includes family from the natal home who may be ashamed and want, above all, to ensure that their daughter's status as HIV positive does not become public. One participant suggested that women lack awareness of their property rights, for instance, they do not know that the law says a girl is entitled to an equal share of parental property, and parents often prefer to keep it this way.

Other constraints such as lack of finances also hinder women's access to hearings. In order for WLHIV to access the relevant legal mechanisms, they must overcome considerable barriers, including social, cultural and logistical ones and filing a report is only the first step to ensuring equitable outcomes.

### 4. RECOMMENDATIONS

#### Non-discrimination legislation

- Enact non-discrimination legislation that would be based on Constitutional guarantees and applicable to both public and private actors in healthcare settings. The legislation should specify grounds for non-discrimination and specifically include HIV status.
- The legislation should contain specific provisions that recognize the gendered experiences of women in health care situations with specific regard to abortion, sterilization and childbirth. Additional safeguards should be stipulated related to informed consent and confidentiality in cases concerning the reproductive rights of women, including key affected women and girls.<sup>48</sup>
- Create detailed protocols related to these procedures must be which must be followed in all

health care institutions, with accompanying penalties for non-observance.

- Implement ethical standards and codes of conduct relating to health care providers more stringently.<sup>49</sup> This requires strengthening of the accountability and implementation mechanisms that currently exist. It also requires research on the cases that have been dealt with and are pending under medical regulatory boards focusing on effective redressal of cases, obstacles to access and duration until remedy is granted.

### Access to justice

National or State level programmes, including those carried out by state bodies should deal with structural issues such as non-accessibility of legal services and discriminatory practices so that where laws exist to protect women, they have access to justice. This would involve:

- Training of the judiciary and legal bodies such as the Law Commission of India<sup>50</sup> in issues related to WLHIV.
- Training and supporting NGOs including positive women's networks and women's rights advocates to implement programmes promoting increased awareness of laws and mechanisms for redress, effective documentation of rights violations and assistance in approaching available legal aid bodies as well as other mechanisms such as the National Human Rights Commission (NHRC).
- Ensuring information on rights related to HIV and sexual and reproductive health RH as well as on complaints and redressal mechanisms are available to women in community health centres, district hospitals and local level legal aid centres.

### ENDNOTES

<sup>1</sup> National Alliance of Women, India Second and Third NGO Alternative Report on CEDAW, 2006.

<sup>2</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), UN Committee on the Elimination of Discrimination against Women: Concluding Comments, India, 2 February 2007, CEDAW/C/IND/CO/3, available at: <http://www.refworld.org/docid/45f90a982.html>

<sup>3</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), UN Committee on the Elimination of Discrimination against Women: Concluding Comments, India, 2000.

<sup>4</sup> General Recommendation 24 specifically addresses issues related to WLHIV, asking states parties to report on how they have addressed preventable illnesses that affect women, including HIV and AIDS. In particular, the Committee acknowledges that women and adolescent girls lack adequate access to information and services necessary to ensure sexual health, including HIV/AIDS prevention and treatment. The Committee also acknowledges the role that unequal gender power relations play in making women and girls more vulnerable than males to contracting HIV/AIDS and other STIs.

<sup>5</sup> <http://sexualrightsinitiative.com/2014/hrc22/cedaw-statement-on-sexual-and-reproductive-health-and-rights/>

<sup>6</sup> UNDP, The Socio-Economic Impact Of HIV At The Household Level In Asia: A Regional Analysis Of The Impact On Women And Girls, 2011

<sup>7</sup> Adeline Nyamathi, Maria Ekstrand, Jessica Zolt-Gilburne, Kalyan Ganguly, Sanjeev Sinha, Padma Ramakrishnan, P. Suresh, Mary Marfisee, and Barbara Leake 'Correlates of Stigma among Rural Indian Women Living with HIV/AIDS', in *Aids Behaviour*, 2013 January.

<sup>8</sup> Ibid.

<sup>9</sup> Nyamathi A, Thomas B, Greengold B, Swaminathan S., Perceptions and health care needs of HIV-Positive mothers in India in *Prog Community Health Partnersh*. 2009 Summer; 3(2):99-108.

<sup>10</sup> The focus group discussion was used in addition to the desk review as part of the methodology for the research for this report. It was attended by 10 WLHIV in Delhi, and lasted for two and a half hours. The women represented different positive networks from different States including Shillong, Gujarat, Madhya Pradesh, Rajasthan and Andhra Pradesh.

<sup>11</sup> Nyamathi et al, 2013, Pg 6.

<sup>12</sup> Some of the data in this section is a reflection of data used in a recent report by the same author-UNDP, SAARCLAW and WAP+, 'Protecting the rights of key HIV-affected women and girls in health care settings: A legal scan. Regional Report, Bangladesh, Indian, Nepal and Pakistan.' 2013.

<sup>13</sup> Mahendra, V, Gilborn, L., Bharat, S., Mudoi, R., Gupta, I., George, B., Samson, L., Daly, C., Pulervitz, J. Understanding and measuring

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AIDS-related stigma in health care settings: A developing country perspective. *Journal of Social Aspects of HIV/AIDS*, 4 (2), 2007, 616-625

<sup>14</sup>Nyamathi et al, 2013.

<sup>15</sup>Ibid.

<sup>16</sup>Ibid.

<sup>17</sup> A culturally-specific trans gender community found in India, Pakistan and Bangladesh, many of whom identify as being neither male nor female, but as hijra.

<sup>18</sup>UNDP, TG Issue Brief, 2010 at [www.undp.org.in/sites/default/files/reports\\_publication/TG-issue-brief.pdf](http://www.undp.org.in/sites/default/files/reports_publication/TG-issue-brief.pdf)

<sup>19</sup> Regional Consultations were part of a joint UNDP, SAARCLAW and TSF South Asia Project on Legal Barriers to Accessing HIV Prevention Care and Treatment Services.

<sup>20</sup> Ayesha Mago, Draft Report, 'Scan of Laws that Impede Effective HIV Responses in India', UNDP, SAARCLAW and TSF South Asia, 2012

<sup>21</sup>WHO, Violence Against Women and HIV/AIDS: Critical Intersections, 'Violence Against Sex Workers and HIV Prevention', Information Bulletin Series Number 3, 2005 (Pg 2)

<sup>22</sup>Bhardwaj K., Divan V. (2011), Sexual health and human rights - A legal and jurisprudential review of select countries in the SEARO region: Bangladesh, India, Indonesia, Nepal, Sri Lanka and Thailand, International Council on Human Rights Policy.

<sup>23</sup>Mahendra, V., Gilborn, L., Bharat, S., Mudoi, R., Gupta, I., George, B., Samson, L., Daly, C., Pulervitz, J. Understanding and measuring AIDS-related stigma in health care settings: A developing country perspective. *Journal of Social Aspects of HIV/AIDS*, 4 (2), 2007, 616-625

<sup>24</sup> Ibid. Pg. 620

<sup>25</sup>Positive and Pregnant, Pg.15.

<sup>26</sup> UNDP, Women's Empowerment, HIV and the MDGs: Hearing the Voices of HIV Positive Women-Assessment of India's Progress on MDG 3 and MDG 6, December 2010

<sup>27</sup> National Family Health Survey, Key Indicators for India from NFHS-3, <http://www.nfhsindia.org/pdf/India.pdf>, 2006

<sup>28</sup> UNDP, Women's Empowerment, HIV and the MDGs: Hearing the Voices of HIV Positive Women-Assessment of India's Progress on MDG 3 and MDG 6, December 2010.

<sup>29</sup> Ibid.

<sup>30</sup> Family Planning Association of India, 'PLHIV Stigma Index Report, India', 2012 at <http://www.aidsdatahub.org/en/reference-librarycols2/stigma-and-discrimination>

<sup>31</sup>Positive and Pregnant, Pg.21.

<sup>32</sup> Ibid. pg.21.

<sup>33</sup>UNDP, 2010. Pg.17.

<sup>34</sup> Men, women, female sex workers and injecting drug users-total of

<sup>35</sup>Positive and Pregnant.

<sup>36</sup>Positive and Pregnant, Pg.29.

<sup>37</sup>Rahagdale L, B. P., Sreenivas A, Turan JM, Washington R, Cohen CR. (2010). Stigma as experienced by women accessing prevention of parent-to-child transmission of HIV services in Karnataka, India. *AIDS Care*. 2010 Jul;22(7):836-42.

<sup>38</sup> Thomas B, Nyamathi A, Swaminathan S. Impact of HIV/AIDS on mothers in southern India: A qualitative study. *AIDS Behav*. 2009; 13(5):989-96

<sup>39</sup> Ibid.

<sup>40</sup> Thomas B, Nyamathi A, Swaminathan S. Impact of HIV/AIDS on mothers in southern India: A qualitative study. *AIDS Behav*. 2009; 13(5):989-96

<sup>41</sup>Rahagdale et al.

<sup>42</sup>Nyamathi A, Thomas B, Greengold B, Swaminathan S., Perceptions and health care needs of HIV-Positive mothers in India in *Progress in Community Health Partnerships*. 2009 Summer;3(2):99-108.

<sup>43</sup> Ibid, pg.

<sup>44</sup> The participants in the FGD were all active members of positive women's networks in their state or town and have significant experience in terms of understanding the issues faced by WLHIV in their communities including those recently diagnosed.

<sup>45</sup>HemaSwaminathan, Nandita Bhatla, and Swati Chakraborty, 'Women's Property Rights and HIV/AIDS: Evidence From India' at <http://www.hivaidsonline.in/index.php/HIV-Human-Rights/>

<sup>46</sup><http://aidssupport.aarogya.com/news-and-events/year-2010/551-hiv-widows-often-denied-right-to-property-say-experts.html>

<sup>47</sup>Landesa and UN Women, *The Formal and Informal Barriers in the Implementation of the Hindu Succession (Amendment) Act 2005*, 2013.

<sup>48</sup> According to UNAIDS terminology, Key HIV affected women and girls include i) women and girls living with HIV; ii) female sex workers iii) female spouses of male clients of sex workers iv) women who use drugs v) female spouses of men who inject drugs; vi) female spouses of men who have sex with men; and vii) women and girls from households impacted by HIV/AIDS

<sup>49</sup>For instance, Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.

<sup>50</sup> The Law Commission of India is an executive body established by an order of the Government of India. Its major function is to work for legal reform.



WITCH HUNTING  
AND OTHER  
FORMS OF VIOLENCE  
AGAINST WOMEN IN  
THE COMMUNITY

CHAPTER 18



INDIA

4th AND 5th  
NGO ALTERNATIVE REPORT  
ON CEDAW

# WITCH HUNTING AND OTHER FORMS OF VIOLENCE AGAINST WOMEN IN THE COMMUNITY



**Partners for Law in Development**

## 1. SITUATIONAL ANALYSIS

Accusations of 'witch', stigma accompanied by violence against women has lasting consequences, that often include forced evicted, dislocated, loss of livelihoods, that consign the victims and their families to impoverishment and social exclusion. Witch hunting is one such form of violence, prevalent in many parts of the country. Each year an estimated 200 women are killed as witches in different regions in rural India. According to the National Crime Record Bureau during the year 2000-2001 there were 253 cases of Witch-hunting (126 cases in 2000 and 127 cases in 2001). Between 2008 and 2012, more than 768 persons were murdered in connection with witch hunting.<sup>1</sup> News reports from these regions suggest that there are many more cases of witch hunting than what is reflected in the crimes data.

While accusations of 'witch' are followed by victimisation that often involve taunts, social and economic boycott, public humiliation, brutal violence and sometimes murder, such victimisation is not exclusive to 'witch hunting'. Transgressions of sexual, moral, caste or religious norms often involve similar consequences, where the instigator is able to rally support of the wider community in targeting the victim. It is for this reason that the victimisation rather than the motive for victimisation must be the focus of legal protection and redress, so as to eliminate impunity for such victimisation, regardless of the motive. Witch hunting is prevalent overwhelmingly as gender based targeting of women in India, although there are a few cases where men too have been accused of being witch. More frequently however, men become 'secondary victims' while defending their wives when they get targeted as 'witch'.

Although widely viewed as stemming from superstition, studies show that witch hunting in India occurs within a set of complex causes and conditions. A combination of factors involving individual or collective conflict, tensions and jealousies together with weak governance, indifferent law enforcement machinery, poor development indicators (in terms of lack of formal education, health care and sanitation), create the underlying conditions and enable impunity for such victimisation. Recommendations for state responses must be rooted in the contextual reality of witch hunting, rather than in global narratives that classify vastly different practices across regions as one - such as human sacrifices and black magic with motivated targeting where superstition plays a partial role. The term is widely used to refer to witch craft/ black magic as well witch hunting – both vastly different, with the former involving practices of occult, and the latter involving accusations of witch against persons who deny being so. It must be emphasised that practices across regions that are termed as 'witch hunting' may not have sufficient commonality to warrant similar responses.

Over the last few years, efforts towards creating evidence on witch hunting practices have been undertaken for informing policy interventions. Partners for Law in Development, a women's rights group, has undertaken several initiatives involving socio-legal research, literature review, regional



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consultations, many of which involved collaborations with several state level organisations.<sup>2</sup> A body of findings, although statistically small, are significant for the purposes of highlighting the social economic contours of witch hunting and its interface with the law.<sup>3</sup>

The wide scale prevalence of witch hunting in several areas in Assam is cause for concern. Government statistics reveal that between 2005 and May 2013, altogether 66 women have been killed in the name of witch hunting in Assam. The Assam State Commission for Women has additionally registered 12 cases of witch hunting during 2012-13. North East Network

The findings show that women are predominantly targeted, with those between 40-60 years as the most likely targets. A large majority of the victims are married women, and members of the nuclear family, especially the husband also suffer devastating consequences of violence, impoverishment, stigma and often displacement. While the economic condition of the victim varies, it appears that the development indicators of the regions where witch-hunting is reported are more consistent, suggesting that the structural conditions have a more decisive bearing on creating vulnerability. The areas reporting witch hunting suffer from acute neglect and dismal administration that manifests in poor health care, sanitation, education, with large sections of the population being below poverty level. The linkage between near lack of formal education of the victims, high casualty on account of routine illnesses, blaming of illnesses and deaths on witch craft, appear to be a consequence of this neglect.

The instigators of witch hunting are largely those who are proximate to the victims – either as part of the extended family, neighbour or immediate community. Many of the accusations/ causes that trigger 'witch' accusations may appear to be trivial but assume alarming proportions in contexts of structural neglect, deprivations that enable such accusations and victimisation, without fear of consequences. Illness, deaths and tragedies that cannot be explained, particularly in the context where education, health facilities, and sanitation are lacking, tend to get rationalised through explanations of witch craft. Inter-personal jealousies, conflicts and tensions also tend to get resolved through accusations that in one stroke, dehumanises the victim in the eyes of others and allows extreme humiliation and violence to be perpetrated without protest. Likewise, differences in religion, rituals, or extent of religiosity, in a context of close proximity, also invoke suspicion of witchcraft. This data predominantly pertains to intra community targeting, although this does not exclude the possibility of witch hunting in inter-community/ caste contexts. While superstition and traditional healers play a role, the findings indicate more complex counter narratives, in which victims and their supporters rebut superstition, offering instead accounts of material gain, jealousies and inter-personal conflict. Witch hunting in its contemporary form, cannot be attributed to superstition or traditional healers alone, but must be located within a larger context of administrative apathy, governance failure that create the underlying conditions that enable conflicts and tensions to be resolved in this way.

The findings show that even as the nuclear family is most protective (as a result also victimised), the extended family's role varies – from being primary instigators to supporters. The neighbours appear to be hostile, either as instigators themselves, or as supportive of instigators, and as passive onlookers in a few cases. The apathy in many cases is on account of fear of reprisal from vested interest groups. The local women's groups, where they exist, stand out as the main lifeline for the victim's protection, redress and restoration of dignity. They deploy dialogue, negotiation, legal action, drawing in multiple actors to address the ostracism, expulsion and victimisation, to safeguard the victim's interests.

### **2. STATE RESPONSES**

The spectrum of victimisation reported includes a combination of some or all of these - verbal taunts and slurs, through local terms denoting 'witch' as well as other abuses aimed at demonising and isolating the victim and her family; accompanied often by minor to serious physical violence, public humiliation, trespass and vandalism, with only a small fraction of cases resulting in murder. The long term consequences for the victim (and often her nuclear family) many a times involve forced displacement/

expulsion from their homes and village, and those who stay on, face isolation, limited or no access to common resources of the village. Impoverishment is certain.

The Indian Penal Code is the generic criminal law available to respond some of these violations – especially those involving intimidation, threat, simple and grievous injury, breach of peace, trespass, physical restraint and murder/ attempt to murder. Specific remedies for gender specific violence such as forced disrobing of women and parading them, outraging the modesty and rape are available under this law. In three states, Jharkhand, Bihar and Chhattisgarh, special laws on witch craft practices exist that aim to prevent and provide redress at the preliminary stages of harassment and taunting. Studies show that the police almost never uses the special law pre-emptively, but use them in conjunction with the Indian Penal Code when more serious offences occur. All appeal court cases connected with witch hunting pertain to murder and attempt to murder, reinforcing the finding that criminal prosecution is contingent upon a high threshold of violence. The current policy discourse favours more criminal responses, including through special laws to criminalise superstition and occult practices, which are unhelpful and inconsistent with the findings related to the reality of witch hunting and the legal responses. Greater reliance on the police is unnecessary, when in fact, the evidence indicate that much of the impunity stems from police inaction and non-implementation of the existing penal law.

Further, the policy vacuum is not in respect of absence of criminal redress, but more in terms of prevention and restoration/rehabilitation of the victim. The criminal law can offer little beyond investigation, prosecution and punishment. The vacuum exists in relation to preventive measures as well as restorative justice – both of which are crucial for addressing the root causes of witch hunting and for overcoming the long term consequences, respectively. Criminalising superstition is unhelpful as superstition is very widespread, but this triggers witch hunting in contexts where underlying structural conditions and police apathy enables witch hunting.

### 3. RECOMMENDATIONS

The policy recommendations outlined here are based on evidence and findings in relation to contemporary trends in witch hunting and an examination of the law.

- State responses must address structural deprivations that create the underlying conditions for witch hunting through positive interventions and through strict accountability for failures to deliver healthcare, formal education and sanitation in areas where witch hunting is reported. Preventive responses through public education to demystify superstitions are necessary, but must go beyond that to include accountability for structural failures and lapses.
- The Indian Penal Code must be implemented for pre-emptive remedies, as much as it is for protection and redress. It is adequate, and where necessary, a few additional provisions may be introduced by amendment to address as much of the victimisation as possible, regardless of the motive triggering the victimisation. Special laws on witch hunting are merely symbolic, as they make redressals contingent upon the existence of a particular motive, while excluding protection to similar victimisation that is unconnected with witch hunting. An exclusivist protection allows impunity for similar victimisation when perpetrated on other grounds.
- Criminal remedies can only be one part of the state responses to witch hunting – not only because the police is the weakest agency for prevention and protection (despite being explicitly mandated to do so), but also because criminal law remedies cannot adequately or comprehensively address prevention or respond to long term consequences of victimisation. Accountability for police inaction must be introduced in the Indian Penal Code.
- The responses must address the continuum of victimisation, particularly long term consequences, rather than being focussed on violent episodes. To eliminate long term consequences, state policy must mandate a role for women's groups and local authorities in



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addition to the police. The value of social processes, particularly those led by women's groups, are significant for sustaining dialogue with the community towards restoration and rehabilitation. The local governing bodies (panchayat) that can be mobilised as well, through a combination of rewards and penalties – that hold them accountable for witch hunting in their jurisdiction. Schemes and programmes, that mandate local administration and governing bodies with the responsibility towards restoring the victim's socio-economic status in her village, including through compensation, or where that is not possible, to help her re-build her life, family, and livelihood elsewhere. The lasting consequences of witch hunting, including the impoverishment, must be integral part of state responsibility and its policy.

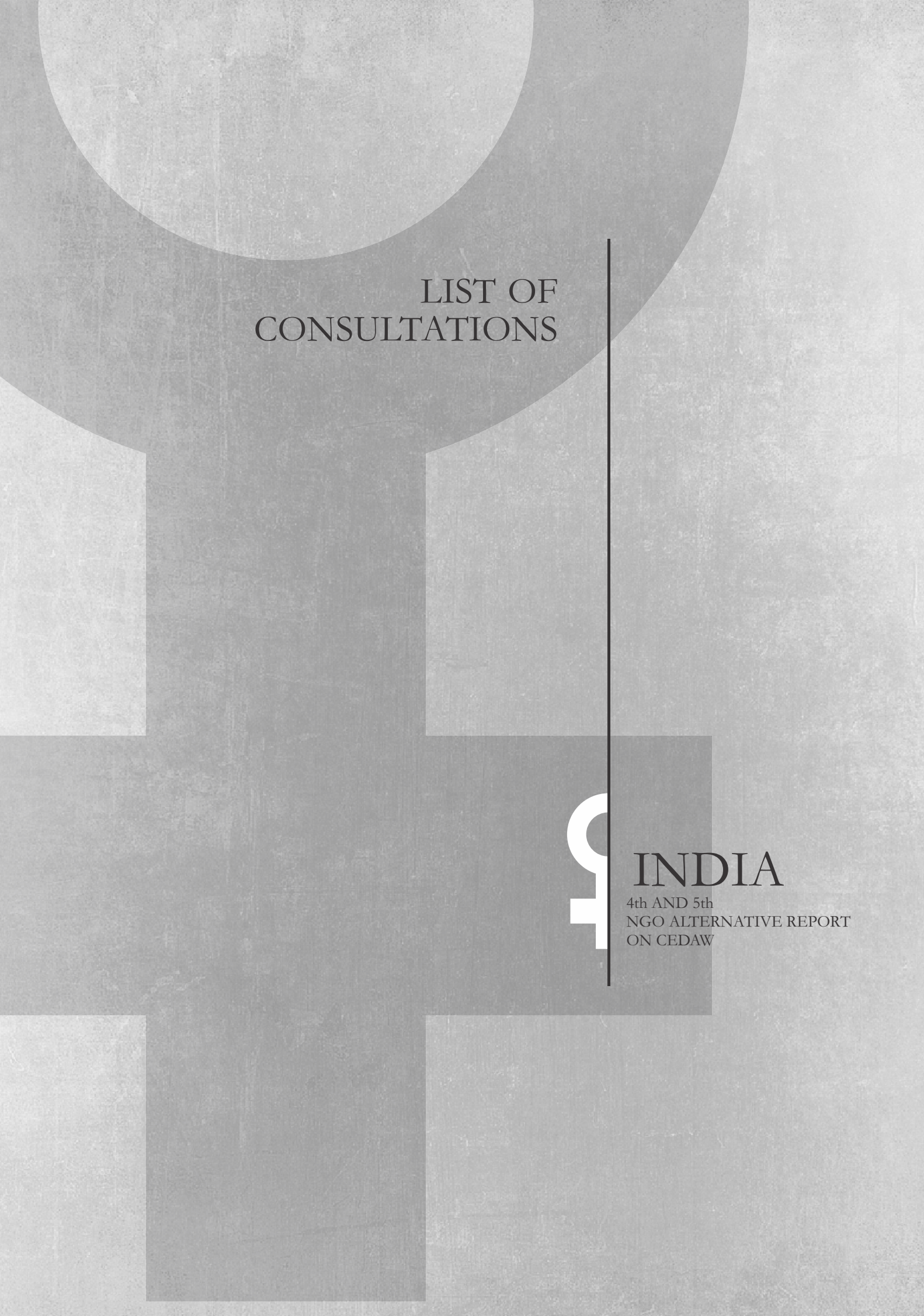
### END NOTES

<sup>1</sup>National Crime Records Bureau(2011). <http://ncrb.nic.in/>

<sup>2</sup>Partners for Law in Development have worked with the Mahila Samakhya in Bihar; with the Chotanagpur Sanskritik Sangh and the Pyara Kirketta Foundation in Jharkhand; with the Centre for Social Justice and the Social Institute for Research Study and Action in Chhattisgarh; with the North East Network and Assam Mahila Samata Society in Assam.

<sup>3</sup>See, the multi state report on Bihar, Jharkhand and Chhattisgarh titled, Contemporary practices of witch-hunting: A report on social trends and the interface with law (2014). Also see, Piecing together perspectives of witch-hunting(PLD, 2013); Targeting of women as witches: Trends, prevalence and the law in the northern, western, eastern and North eastern regions of India (PLD, 2012); and a report on witch hunting in Assam (forthcoming, 2014).





LIST OF  
CONSULTATIONS



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## LIST OF CONSULTATIONS:

### NATIONAL CONSULTATIONS

#### NAWO

4 - 5 January 2012, UTC, Bangalore

#### NAWO

2 - 3 October 2012, New Delhi

### REGIONAL CONSULTATIONS

#### **Southern Region**

Asmita Resource Centre for Women and Council for Social Development  
12- 13 July 2011

#### **Central Region**

NAWO Chhattisgarh  
13 - 14 October 2011

#### **Eastern Region**

24 - 25 September, 2012  
NAWO, Odisha Chapter

#### **Western Region**

Nawo & Punjab University, Chandigarh  
28th - 29th September 2012

#### **North East Region**

NAWO at NIRD Guwahati  
23 - 24 October 2012

### STATE CONSULTATIONS

#### **West Bengal**

NAWO West Bengal & Women's Studies Research Centre,  
University of Calcutta  
13 - 14 March 2012

#### **Goa**

27 - 28 July 2013, at CARITAS Panjim,

#### **Maharashtra**

NAWO, Stree Mukti Sanghatana, Mahila Rajyasatta  
Andolan, Sakhi Kendra  
9 - 10 September 2012





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**National Alliance of Women**

B4/206, Safdarjung Enclave, New Delhi - 110029

Ph: 011-26171446

Email: [nawo.india@gmail.com](mailto:nawo.india@gmail.com)

[www.nawoindia.org](http://www.nawoindia.org)