ALTERNATIVE NGO REPORT ON CEDAW

Initial Submission to the CEDAW Committee

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INDIA

Co-ordinated by

THE NATIONAL ALLIANCE OF WOMEN (NAWO)
Co-ordinating organisation

THE NATIONAL ALLIANCE OF WOMEN (NAWO)

Communication details:
U-9, II Floor,
Green Park Extension,
New Delhi- 110016

Telephone: 26178622 / 26171446
Fax: 26178622
E-mail: nawo@del6.ndf.vsnl.in
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CEDAW Instils Hope

Two decades have passed since the Convention on Elimination of All forms of Discrimination against Women (CEDAW), also known as the Women’s Convention and the Women’s Bill of Rights, was adopted by the United Nations General Assembly on 18th December 1979. India ratified the Convention on 25th June 1993, although with two Declaratory statements on Article 16 (1) & 16 (2) and one reservation on Article 29 (1).

Women’s Convention is, by virtue of ratification, one of the most popular of all international treaties dealing with women’s human rights. The Fourth World Conference on Women in 1995 provided an impetus for more countries to ratify CEDAW and at present there are 165 member nations who are signatories to it. Not only does the Convention establish universal minimum standards of women’s human rights, by which all countries must abide, it also provides a mechanism through which the implementation of states parties (signatory members) obligations under the Convention can be monitored. The Convention demands that all inter related factors that can have a causal link to the denial of women’s rights, whether ideological, material or institutional, be identified and eradicated. By demanding the practical realization of rights, the Convention promotes the Substantive model of Equality: Equality of Opportunity, Equality of Access and Equality of Results.

In 1979, the preamble to the Women’s Convention acknowledged that despite years of commitment to the principle of equality between men and women, extensive discrimination against women continued to exist. Even as we stand on the verge of a new millennium, there can be no denying the fact, that experiences of women all over the world, cutting across class, caste, race or ethnicity clearly demonstrates that blatant discrimination against women continues to exist in modern societies.

The Women’s Convention framework for equality for women, clearly asserts the attainment not only of desire, but more significantly, of de facto equality for women. This is directed towards governments; to make it obligatory on them to institute, not only policy or legislative reforms but also appropriate actions to ensure that such changes in policies and laws translate into actual improvement in the lives of women.

Therefore, the Convention is an important international instrument for addressing women’s rights for redistributing justice and equality. This treaty is therefore a vital mechanism through which women can access their rights and fight for gender justice in their respective countries.

CEDAW Process at UN

The UN-CEDAW Committee (comprising of 23 members as of now) is an independent body made up of a group of experts on women’s human rights, who assess and review the implementation of the Convention by the States parties.
The Committee provides recommendations and guidelines on how states can further improve the situation of women in their country, in the form of concluding comments and general recommendations. The Committee’s pronouncements further define the terms ‘equality’, ‘non-discrimination’ and the extent of ‘state obligation’ under the Convention and essentially develop the international norms related to women’s human rights. Thus, the CEDAW Committee is an important body to address areas of women’s discrimination in policy, law, customs or any other sphere that affects women’s equality concerns.

**At the governmental level**

States Parties are required to submit periodic reports every 4 years to the CEDAW Committee, to indicate the measures they have adopted to give effect to the provisions of the Convention.

The Committee after examining the facts gives its concluding comments. These could be in the nature of ‘satisfaction’ at what has been done or asking States parties to further improve upon the situation under consideration.

India’s initial report on CEDAW fell due in 1994 but was not submitted. Now a combined report has been prepared for submission in January 2000 by the Department of Women and Child Development, Min. of HRD. The Government CEDAW report as you will observe is more descriptive than analytical, listing out as it does the several programmes of the Department of Women and Child Development and fails, in its commitment to the Convention, to spell out specific actions which are required for removing gender discriminations. It however leaves much to be desired specially where its interaction with women’s groups is concerned.

**At the NGO level**

At the UN there is also space for NGO inputs; groups desirous of presenting facts and figures on CEDAW and its implementation in their respective countries can do so through an informal interaction with the CEDAW Committee. This is done by submitting alternative or shadow reports to the Committee, simultaneous to the review process of the country reports. These alternative reports aid the CEDAW Committee in assessing the States parties performance. This enables the Committee to conduct a more incisive review and give recommendations and concluding comments that are more specific and constructive to the cause.

**The CEDAW process in India – Efforts of Women’s groups and organisations**

In India, information sharing processes and extensive discussions on CEDAW began during the pre-Beijing preparations (1992-1994), these meetings were facilitated by the Coordination Unit for Beijing and were conducted throughout the country As a result they created the necessary momentum and sharpened women’s concerns specifically on areas of discrimination in public and private spheres. The final consolidation of this concerted effort lead to the writing up of the Alternative NGO Report on CEDAW(1995), which served as a lobby and advocacy document for Indian women’s groups who participated at Beijing.
While this exercise drew in NGOs, activists, researchers and lawyers across the country to contribute to the report, it also facilitated the flow of information about the Convention to a large constituency. It thus became part of a larger process of creating and disseminating popular materials on human rights and women; it generated debates on adaptability of the Convention to meet the diverse needs of different groups of women in the country.

In the post Beijing phase several groups and organisations worked systematically in training women activists and lawyers on the CEDAW Convention.

It is important to record here some of the CEDAW related activities and achievements of the past five years within the country.

- In October 1994, WARLAW, (Women’s Action Research and Legal Action for Women), filed a writ petition in the Supreme Court requesting the government to explain what actions it had taken to promote the CEDAW Convention and what measures it had taken for removing discrimination against women in public and private spheres.

  The petition was heard for admission on 19th August 1996 and notices were issued to all three respondents. Subsequently an early hearing petition was filed in 1997 and 1998. The Union of India filed a vakalatnama and memo of appearance in March 1999 and the National Commission for Women in November 1999. The matter is due for hearing.

- On 11th–12th July, 1995, at Lucknow, Uttar Pradesh, a workshop was organised by Aali to familiarize women lawyers and others with the CEDAW Convention, its jurisprudence in enforcing women’s human rights. An immense interest on CEDAW was generated among women advocates and lawyers.

- In 1996 after the Beijing Conference, a Southern Regional Conference was organised by the National Alliance of Women and Asmita, a women’s resource centre at Hyderabad for post Beijing sharing. At this the CEDAW Convention was introduced to a large constituency of women, highlighting the element of substantive equality and the immense possibilities that this convention offered in seeking larger areas of equality for women.

- The Supreme Court of India, on 13th August 1997 pronounced a landmark judgment on the issue of ‘sexual harassment’ at workplace and the need to make workplaces safe for women workers. It was in 1992, that a petition was admitted in the Supreme Court of India under Visakha vs Union of India, on the issue of a gang rape of a woman social worker in a village in Rajasthan and the failure of the local officials to properly investigate the matter. The petitioners however asked the court to address the broader issue of ‘sexual harassment’ at workplace. Relying on the provisions of the Constitution of India and substantiating the same with the directives and recommendations of CEDAW, the Supreme Court ruling made judicious use of the Convention.

- In the North East a conference was organised by the North East Network on Women’s Rights as Human Rights in Shillong between 18th-22nd November 1997. An action plan focussed specifically on taking forward the CEDAW process in the region was drawn up.
In December 1997, at Chennai in Tamil Nadu, yet another lawyers consultation and orientation was held to propagate the CEDAW Convention. IWID a member of NAWO and an active gender training resource centre facilitated this workshop.

The First National Conference on post Beijing Review & Action was organised by National Alliance of Women between 17th -19th February 1997. A special session on CEDAW was taken by Ms. Shanthi Dairiam, Director IWRAW. Around 400 women representing almost all the states of the country participated and deliberated in the 3 day Conference which was held in Delhi.

A major workshop on CEDAW was again organised at Bangalore in December 1997 to promote women’s human rights under the auspices of NAWO. This meeting was largely attended by activists, lawyers and legislators; Ms. Rani Satish, MLC who was then Deputy Speaker of the Legislative Council of Karnataka chaired the workshop.

In collaboration with the British Council in New Delhi, a national workshop was conducted with Ms Shanthi Dairiam of IWRAW as the main resource person on 23rd-25th February, 1999. Young women advocates and activists from different parts of the country attended this useful orientation. Ms. Ruth Manorama and Ms. Madhu Mehra were also called in as resource persons for the training workshop. Eminent Supreme Court Advocate Ms Indira Jaising spoke on CEDAW and its scope and application.

At present IWRAW Asia Pacific in collaboration with national NGOs have started a project called “Facilitating the fulfillment of State Obligations Towards Women’s Equality”. The programme was envisaged with the objective of women NGOs taking up the role in creating the climate for policy changes and is disseminating information which can be used by governments, international treaty bodies and other NGOs to improve the condition of women. Project also emphasises the need for government and NGO interaction and collaboration.

This project has been implemented in India since 1998, with the formation of core groups in the country and the production of base line reports on selected themes. The core groups in India have produced three base line reports on women in situation of armed conflicts, political participation of women, rights of women in marriage. The findings of these base line reports will be used to advocate change towards non-discrimination and equality for women.

A National Conference on CEDAW has recently been organised at New Delhi on 13th to 15th November, 1999 with the active collaboration of NAWO, IWRAW- Asia Pacific and UNIFEM South Asia Regional Office. Around 65 women’s groups attended the conference and many more were party to the mandate of the alternative report. While the first day of the Conference was slated for dialogue and discussions with the Government, the subsequent two days were for NGO interaction and discussions on the Alternative CEDAW Report. Apart from this main exercise, there was widespread sharing of information on the CEDAW process of preparing an Alternative Report. Hundreds of women’s groups were reached through this process and despite time constraints information was sought from them on aspects of CEDAW articles.
The Indian Constitution, guarantees various fundamental rights and freedoms to all citizens of India, with special safeguards to ensure the protection of rights of disadvantaged groups. The framework of rights as enshrined in The Constitution is so broad and inclusive that there is an immense possibility to ensure the enforcement of rights and delivery of justice for all and specially for women through judicious interpretation of its different provisions.

While the legal battle for justice goes on, the women’s movement makes yet another milestone in forcing the delivery of justice both through collective mobilization as well as through the use of autonomous mechanisms set up by national and international bodies to enforce human rights accountability. The CEDAW process in India is one such collective effort.

We would be failing in our duty here, if we do not acknowledge the deep commitment of Ms. Shanthi Dairiam, a dedicated and energetic resource person working on CEDAW at the International Women’s Rights Action Watch - Asia Pacific (IWRAW-AP). Women’s groups in India and elsewhere have indeed benefited by her thorough knowledge and expertise on the issue.

We take courage in bringing to you this alternative report, the achievements, challenges, and problems which confront us and by doing so we attempt to both understand and overcome the inequalities that exist for women in our country.

In the end on behalf of all the core group members and myself we seek your indulgence in bearing up with limitations and inadequacies that may appear in this report. We worked under tremendous time constraint and also with difficulties in reaching out to women throughout the country. We feel positive that subsequent reports will improve upon this initial submission.

Ruth Manorama, Member
Core group on CEDAW Process in India.

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- Ms. Rachana Sharma, ADITI, Bihar.
- Ms. Ruth Manorama, National Alliance of Women, New Delhi.

Writers of Various Chapters (addressing Articles of CEDAW)


Article 6 - Suppression of all forms of Traffic and Exploitation of Prostitution of Women, Ms. Indrani Sinha, SANLAAP, Calcutta.

Article 7-8 - Participation in Political and Public life Dr. Shanta Mohan, Ms. Geethadevi M.P., Ms. Asha Ramesh

Article 10 - Education, Ms. Viji Srinivasan, Ms. Rachna Sharma, ADITI. Dr. N. Shantha Mohan, Ms. Asha Ramesh, Mr. Piush Antony and Dr. B.K. Anita

Article 11 - Employment Ms. Martha Pushparani, (IWID) & Ms. Anita Gurumurthy, (Indian Institute of Management, Bangalore)

Article 12 - Health Care, Ms. Gayathri Giri, (CHETNA), Ahmedabad

Article 16 - Rights within Marriage Ms. Tulika Shrivastava, and Ms. Rachna Sharma, ADITI.

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Main Features of the Women’s Convention - CEDAW

- The Convention is the most comprehensive bill of rights for women in existence.

- It obligates the state to protect women from discrimination and to be accountable for violations of women’s human rights.

- It is based on a principle of equality between women and men. Hence it extends the coverage of human rights to women.

- It mandates rights for women through the legislative process. This means that there is a clear avenue for drawing accountability for the guarantee of these rights.

- It recognizes that despite legal rights being granted for women in many countries, discrimination persists, and women’s access to legal rights are curtailed by denial of women’s rights to economic and social development. Hence it recognizes the importance of both de facto and de jure rights for women.

- It recognises that inequality between women and men is socially constructed and hence recognises the fact of discrimination against women. In this regard it recognises not only current discrimination but also past discrimination and introduces the concept of corrective measures to overcome the effect of past discrimination that leaves women disadvantaged vis-a-vis men.

- It bridges traditional divisions between civil and political rights and social and economic rights and makes a strong case for the indivisibility of these rights.

- It addresses the need to tackle power relationships between men and women at all levels, from family to community, market and state. In particular it discards divisions between the private and the public spheres, by recognizing violations of women in the “private sphere” i.e. within the home.

- Specifically addresses the role of culture and sex stereotyping and attitudes in shaping discrimination against women.
EXECUTIVE SUMMARY

This alternative report to CEDAW is the result of a long process of consultation and discussion between various women’s groups in India. We feel it is both important and necessary to produce such a report, particularly in light of the Indian Government’s Report to CEDAW which, in our view, has not followed the necessary process of consultation with the women NGOs. Thus, it does not reflect the views of women’s organizations who have been working in the field and who have considerable experience in addressing issues of concern to women.

It is our feeling too that over the years, the space for democratic protest and questioning has been shrinking and increasingly, groups are being subjected to harassment for raising issues of women’s human rights or even for simply demanding the rights that are guaranteed to them in the Indian Constitution.

We feel it is our right to both question and resist wherever we see violations of women’s human rights, regardless of whether such actions are seen as ‘political’ or not by others. As women’s groups we have a strong commitment too to constructive criticism and to making inputs into the process of reform and change for the betterment of women’s lives. It is in the light of this that we have produced this alternative report to CEDAW which reflects some of our concerns.

The Nobel Laureate and distinguished economist, Amartya Sen has often referred to the millions of missing women in his writings. He explains that women are “missing” from positive social indicators for basic health, nutrition and education. At the same time, they are highly visible in other areas, for example in maternal morbidity and mortality. The situation in India is further complicated by the fact that Indian society is marked by a number of paradoxes: it is a truism to say that Indians live simultaneously in many centuries, in differing and different stages of progress and lack of it. With its transformation into a market economy, India has acquired a host of new problems while older ones have been exacerbated.

At Beijing (1995) hopes were raised when the GOI committed to the following five actions:

1. Increase in the Education budget to 6 per cent of the GDP
2. Appointment of a Women’s Rights Commissioner to look into violations of women’s rights
3. Formulation of a National Policy on Women
4. Setting up of mechanisms to monitor the implementation of the Beijing Platform for Action
5. Improved health care schemes for women and children;

However most of them are unfulfilled till today.

At Beijing there was little recognition of the ominous implications of the declining female sex ratio. Since then, no attempt has been made to restructure the existing national machinery which has not succeeded in delivering gender equity. The Ninth Plan, which was to have been
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a Plan for Women’s Empowerment, was constantly delayed because political instability prevailed in the country. When it finally made its appearance, it turned out to be no more gender sensitive than its predecessor plans.

The Reality
The many gaps between intention and action can be listed as follows:

The Economy
The New Economic Policy was launched in 1991-92 and this led to an era of structural adjustment and economic reform, liberalization and the opening up of the economy to free trade and global capital. The Structural Adjustment policies that followed the post liberalization phase, affected women in particular ways:

- The process of globalization, in particular, has been especially painful to specific groups such as the poor and marginalised women, peasant women and women workers of the unorganized sector.
- Social sector expenditure and public investment have been slashed. Real per capita spending on the social sector infrastructure covering housing, health and sanitation has fallen sharply. Public capital formation has been drastically cut. The total development expenditure by the central government has plummeted from 12.5 per cent in 1985-96 to 8 per cent in 1995-96. Total public expenditure on the social sector has dropped from 7.5 per cent of GDP in 1989-90 to less than 6 per cent in 1995-96. The total expenditure on education by the central and state governments has fallen from 3.4 per cent of GDP in 1989-90 to 2.8 per cent in 1995-96. The budget for public health has also fallen from 1.26 per cent to 1.12 per cent of GDP for the same period.
- The consequences of the above on morbidity and mortality are well known. According to the National Family Health Survey the decline in Infant Mortality rate (IMR) has slowed down in the 90s. Dreaded killer diseases like malaria, tuberculosis, kala azar and diarrhoeal diseases, once under control, are now back with a vengeance. Yet health outlays have declined considerably.

Food Security
- Inflation in the post-reform period has averaged 10.6 per cent per annum. Food prices are rising steeply and are not indexed to inflation. This directly affects the lives of women.
- Despite the fact that poverty in India is largely concentrated in the rural sector (three fourths of the poor live in rural areas and female headed households register poverty levels that are far higher than the average), little attention has been paid to agriculture. Government expenditure for agriculture, rural development and irrigation under both Plan and non-Plan expenditure, has declined steadily from 2.0 per cent of the GDP in 1989-90 to 1.3 per cent in 1996-97.
- The shift towards agricultural exports and away from food crops to cash crops is a serious threat to food security. Per capita foodgrain availability has fallen from 510 gms in 1991 to 498 in 1996.
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- Rising food prices affect both the rural and urban poor who basically procure their food supply through the Public Distribution System (PDS). Yet the consumer subsidy on foodgrain supply through the PDS has been cut. From 1991 to 1995, PDS foodgrain prices rose by 75 per cent. People could not afford to buy as they did in the past. Since women are responsible for running home economics and providing food, their access to and share of foodstuffs has been directly threatened by such policies.

Employment

- A major failure of the New Economic Policy has been the inadequate generation of employment in the country. From 1991-1995, the total employment in the organized sector rose by a meagre 2.6 per cent while industrial output more than doubled.
- There has been an absolute reduction in rural non-agricultural employment since 1991, leading to distress among women displaced or marginalized by the agrarian process.
- In urban centres, declining male employment has led to an increase in casual employment. This makes for insecurity and reduced incomes.
- In many places the new “sunrise” industries (export oriented) and the rise of export processing zones has meant an increase in women’s employment. Much of this work, however, is contractual and strictly informal, with exploitative work conditions. No employment benefits accrue to these workers since their employment is unrecognized.

Education

- Half the Indian population is illiterate. Women make up two thirds of this number with female literacy being lower than male and being most adverse among Scheduled Caste and Scheduled Tribe people.
- Education is one sector which has faced consistent budgetary cuts. In 1995-1996 the budgetary allocation was Rs 44.8 billion but the amount actually spent was Rs 37.3 billion. The cuts covered projects for the poor and for disadvantaged children.
- Women constitute the largest group among the adult non-literate population in India. The magnitude of the problem of illiteracy can be gauged from the absolute number of non-literate women. According to the 1991 Census, there are 329 million non-literates in India of which women number 200 million.
- The problem of women’s lack of access to education is exacerbated because of low enrolment and high drop out rates among girls who enter formal schools. Societal attitudes and prejudices, as well as the drawing of girls and women into household work are in large measure responsible for this. The drop out rate is particularly high among women who live in rural areas, and becomes acute among the under-privileged sections.
- There is also a need to recruit more female teachers, to locate schools in areas where they can be accessible and to run specific and targeted training programmes for teachers.

Health

- An alarming rise in incidences of female foeticide or sex determination testing to eliminate the female foetus as a discriminatory choice; preference being given to a male child.
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- Maternal morbidity and mortality in Indian women are among the highest in the world.

- The State recognizes women’s health issues only with the onset of pregnancy and even that is inadequate given the large number of maternal deaths due to difficult pregnancies, anaemia, the mother’s age, inadequate spacing of children born.

- About 15 per cent of all deaths of women in childbearing age are pregnancy-related. 30 per cent of female mortality in this age group is due to communicable diseases.

- A World Bank study found in 1996 that a very high percentage of maternal mortality was directly linked to anaemia. It is a truism that families give preference to male health problems rather than to women’s problems. Households routinely spend less on medical attention for ailing women than on men.

- Research studies have consistently shown how the girl child suffers discrimination in terms of nutrition, education and medical care. Early marriage and childbearing have an adverse effect on her health status.

- There are continuing biases in Government programmes and policies relating to women’s health. Several decades of concerted gender-unequal programming has led to some 99 per cent female sterilization as opposed to a merely one per cent of male sterilization. Similar biases show up in the lack of comprehensive, gender-sensitive perceptions on health, inadequate budgets, the lack of adequate health centres or transport in rural areas to provide access for women.

- The target free approach in programmes for contraceptive delivery and the Reproductive and Child Health programme introduced in 1997 have not helped because of weak linkages which are evident in the growing IMR and MMR all over India.

- There is no recognition that the health of Indian women is part of a development continuum which spans literacy and education, economic development, malnutrition, lack of access to referrals, lack of autonomy in decision making about choice of hospitals, doctors etc.

Violence against Women

- Gender violence is produced within the frameworks of class, caste and patriarchal social relations in which male power dominates.

- The abuse of women by their male partners is among the most common and dangerous forms of gender-based violence. Largely seen as located in the private realm of family relationships, domestic violence is not easily accepted as a human rights concern in the eyes of the law.

- It is said that every 7 minutes a crime is committed in India against a woman, every 26 minutes a woman is molested, every 56 minutes a rape takes place and a there is a dowry death every 102 minutes.

- In September 1998, an NGO working on problems of incest revealed that almost 76 per cent of Indian women have suffered some sort of sexual abuse and 40 per cent of them have suffered this at the hands of male members of the extended family.
An Institute of Mental Health in Delhi revealed at a Convention on Women and Mental Health that 60 per cent of women detained in psychiatric wards all over the country are not mad but are victims of ruthless husbands and in laws. The motives for violence are many and range far and wide.

In 1996, of the 1,95,436 persons charged in 3,38,387 cases of violence against women, only 32,362 were convicted.

**Trafficking of Women and Girls**

- Although very little data is available, it is widely accepted that trafficking for profit is on the rise within India and across borders in the South Asian region. Women are trafficked for prostitution, cheap labour, begging, smuggling, organ transplant, as well as to work in bars and massage parlors.

- Many victims of trafficking are young adolescents, or children. Diseases like HIV/AIDS leads to further victimization. The perception that AIDS is being spread by prostitutes prevents them from getting proper medical attention.

- Cross border policing and law enforcement is lax, with many of the enforcers being involved in procurement of women themselves.

- Attitudinal constraints in law enforcement agencies have been responsible for the arrests of more women than men, while pimps, procurers and clients go free.

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- As estimated 8000 children are prostituted in Calcutta (1992, Development Dialogue Study) all of whom are trafficked from Bangladesh, Nepal and different parts of West Bengal.

- In relation to 6 major cities in India, 40 percent of the population of sex workers are children forced into prostitution (1996 Central Social Welfare Board).

- Of the total cases reported of crimes against children in India in 1996, 66.7% of the girls trafficked and sold for prostitution in India were cases in West Bengal.

- Even after being banned, every year 5000 girls are initiated as Devadasis in Karnataka at the age of 8-10. They are then sold to highest bidder who use them for a while and send them to prostitution and most are found in Maharashtra.

- More than 3000 young girls are trafficked to Indian brothels from Sindhupalchok district alone in Nepal. Rising Nepal (daily) writes on 21.1.96 that during 1995, 2,889 girls were trafficked from Sindhupalchok district to Indian brothels, which was reported in a workshop organised by Amity Nepal.
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**Women in Armed Conflict**

In recent years there has been a considerable build up of weaponry, and an increase in militarisation. This has led to an increase in defence spending, cuts in development budgets, all of which have a direct impact on the lives of women.

- Ethnic strife, communal hatred, attacks on minorities, religious fundamentalism, caste conflict which have been on the increase in India have all had an adverse impact on the lives of women.

- Women’s attempts at making peace have not been recognized and nowhere have women been involved in negotiations to end conflict. The absence of women from almost all processes of conflict resolution is indeed a conspicuous failing.

- Women and children are increasingly the victims of conflict and the violence of conflict affects their lives in many ways.

- In many conflict situations more and more women are being drawn into the violence either through coercion or voluntarily. This impacts on their own lives, and the lives of their children.

- Situations of conflict make for increasing insecurity of women as they become pawns in the game between two sets of opponents.

- The rise of religious fundamentalism and conflicts associated with it have imposed further burdens on women in that because they are identified as bearers of the identity of the “community”, the uncertainty and insecurity created by conflict imposes on them the burden of carrying the “authentic” identity of the community. This often means a reinforcement of patriarchal norms about women’s place being inside the home and family.

**Political Participation**

- Despite vigorous campaigning by women’s groups, and despite the State’s commitment to increasing women’s political participation, all political parties have been more than reluctant to field women candidates.

- On an average, the past eleven Lok Sabhas in India have had only 30 or so women MPs (below 6 per cent). In the upper house, the Rajya Sabha, their share has been only marginally better at 9 per cent. The situation in the state assemblies is worse than these two, with the figure standing at an average of 4 per cent in the last half century.

- Despite the State’s commitment (and that of virtually all political parties) to the Women’s Reservation Bill which promises one third representation to women in parliament, the Bill has yet to be tabled for discussion and while parties have made a commitment on paper, most have done their best to resist the introduction of this Bill in reality.

**Caste Prejudice**

- The status of Dalit women in the country is a cause for shame as it tells a story of unmitigated oppression, prejudice and exploitation of the most dehumanised nature.

- As a result of this Dalit women are malnourished, overworked, suffer morbidity, and are
victimized by a number of forces. They lack access to resources, despite the fact that they form the backbone of the country’s agricultural workforce.

- Dalit women suffer a triple alienation: of class, of gender and of caste and patriarchy. They suffer widespread social ostracism by being branded as untouchables, which denies them access to natural resources such as drinking water, community land etc.

**Women’s Human Rights**

- Notwithstanding the increase in the number of laws, conventions (both national and international) the violation of women’s human rights continues unabated in India.

- Women’s rights as human rights received an impetus from the 1993 Vienna Conference on Human Rights. As a result the main discourse on Human Rights in India was compelled to recognise the concept & inclusion of women’s rights as human rights.

- Beijing gave the concept a sharp focus by reiterating the universality, objectivity and non-selectivity of the consideration of human rights issues.

- It is pertinent to emphasise here the need to widen the scope of women’s human rights and examine the violations that occur in relation to conflict – whether armed conflict, caste, class or communal.

- Women’s human rights vis-a-vis survival issues are equally crucial to addressing the human rights concerns centred around a) labour & employment rights (bonded labour) b) environment and c) sustainable livelihood concerns

- Nodal governmental bodies formed for the protection and monitoring of human rights like the National Human Rights Commission must as a rule (mandatory) include one women member on their commission. The rules governing such appointment need to be reviewed with a view to facilitating more women to qualify for the same: Restrictive rules can prevent the right member from being appointed and thereby reduce the rule of appointment of a woman member to mere ‘tokenism’.

- violations of human rights of women of specific groups like the dalit, indigenous (tribal) and minority have taken place and these should be seen and addressed as human rights violations and stringent action taken against the perpetrators.

- Laws require review and amendment and need to be framed with a view to securing, promoting and enforcing women’s human rights at all levels of public & private spheres.

**Globalization and Women’s Rights**

- The shift in thinking from development aid to market forces promoted by the World Bank and the IMF under the current trend of neo-liberal economics has brought in its wake a series of problems which include budget cuts, downsized operations, the shutting down of operations by multilateral and bilateral agencies.

- Globalization has meant a retreat by the State. Women are now forced to work in exploitative conditions where they do not have many of the rights and privileges they were able to claim earlier under the available labour laws.
EXECUTIVE SUMMARY

Looking Back, Looking Ahead

From the above accounts, it is clear that women continue to be discriminated against in India on the basis of their gender. Their potential as political entities and dynamic players is subsumed in their invisibility as victims of political oppression. Their enjoyment of human rights and fundamental freedoms is “likely to depend on the one cruel chromosome of gender” (UNICEF). When son-preference is associated with economic survival, deliberate neglect of daughters is a daily occurrence.

In India, women have had a history of being excluded from decision making. If these bastions of power and patriarchy are not stormed now by women demanding their rights in practice as well as on paper, they will continue to be forgotten as political beings, marginalized by their lack of bargaining power, and further oppressed by dominating neo-colonialist structures, such as international trade agreements, domestic economic policies, and the predominance of the global market economy.

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SCOPE AND VALIDITY OF INDIA’S DECLARATORY STATEMENTS

With the ratification of CEDAW the Government of India [referred to as GOI] has acknowledged that women are discriminated in both public and private spheres and has undertaken the obligation to eliminate this discrimination. In doing so, the State has transformed the notion of human rights in the domestic sphere by including women’s rights within it.

The ratification was made with declaration in relation to Article 16(1) and (2), the scope and validity of which is examined below:

Scope of Declaration to Article 16(1):
In India, religion-based personal laws, all of which in different ways and to a greater of lesser degree are discriminatory to women, govern marriage and family. Therefore it would be incorrect to say, that the personal laws which have been reformed, amended or codified in the last few decades, such as the Hindu, Christian and Parsi laws have entirely eliminated discrimination against women. In addition to religion-based laws, there is a non-religious civil law, the Special Marriage Act, 1954 which is available to all persons regardless of their religion, and further enables an inter-religious marriage without requiring either party to convert to the religion of the other.

The GOI declaration states that India “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”. Thus, while acknowledging that women are discriminated in religion based family laws, the State has adopted a position of non-intervention until the communities themselves propose changes bestowing equality to their women. This statement has been further qualified at para 9 at page 2 of GOI’s report, which restricts this policy to “not interfering with the personal laws of minority communities except with their initiative and with their consent”.

By inference then, the policy of non interference in the family laws is limited only to the laws of the minority communities. Therefore, GOI’s obligation to address discrimination under Art. 16(1) is retained in relation to the family laws for Hindus, since they are the majority community in India, and the civil law, i.e. the Special Marriage Act. This section examines the problems in relation to Hindu family law, the Special Marriage Act, and State responses to initiatives from minority communities to outline the State performance of its obligations within the framework of the Declaration.

I. Discrimination in Hindu Personal Law
Hindu law is both codified and uncodified. A large body of the Hindu law was codified in mid 1950s in an attempt to reform it. However, it continues to be discriminatory to women as does the uncodified law\(^1\). Referred to below are some areas of Hindu law where sex-based discrimination continues to exist, such as property rights in uncodified and codified Hindu law; guardianship and adoption rights in codified Hindu law.
The devolution of Hindu ancestral or joint family property is to this day, governed by uncodified Hindu law. Hindu law distinguishes between two kinds of property, prescribing different rules of inheritance for each. Property is categorized under Hindu law as “joint family” or “ancestral property”, and “self acquired” property. For Hindus, most property continues to be ancestral and held jointly or communally by the family. However, all family members do not have equal claim, right or title to this kind of property. The property is owned jointly/communally by the male members in the family, who together constitute the “coparcenary”. Women cannot be members of the coparcenary. Every male member born in the family who is not more than four generations removed from the last male head of the family, becomes a member of this coparcenary by birth; for example, the father, all his sons, and all his sons’ sons shall be coparcenors. The share in the title to this property is acquired immediately upon birth. As the coparcenary has strictly male membership, Hindu women are excluded from having any share in the ownership of the joint family property. The female members of the family can claim, at best, a right to maintenance and to marriage expenditure.

A nominal change in the rules governing the devolution of coparcenary property was introduced by Section 6 of the Hindu Succession Act, 1956, which provides that, if a male coparcenor dies leaving behind female heirs (such as the widow daughter and mother), then the share of the deceased in the coparcenary, will be divided equally between all the heirs, male and female. The provision allows female heirs to inherit a share of the coparcenary property, but it also provides male heirs to inherit a share in addition to their independent share in the coparcenary property. For example in a family consisting of a mother, father, two sons and two daughters, the father and the two sons would form the coparcenary, each having one third (equal) share in the joint family property. Prior to the enactment of the Hindu Succession Act 1956, the sons would have inherited the property on the father’s death, each inheriting a half share. With the operation of section 6, the one third share of the father in the property would be divided between the wife and all four children, each been entitled to a fifth of the said one third share of the deceased father. The sons would get this one fifth in addition to the one third share which they hold independently as coparcenors. The sons would consequently have one third plus the inherited one fifth share in the family property. In contrast, the mother and the daughters would have one fifth of the father’s one third each. By virtue of this legal provision, the female family members do get a marginal share; however until the property is held communally and not partitioned, this share means little to the female heirs. The female heirs are not entitled to ask for partition of the property.

Although the draft Hindu Code Bill of 1947 recommended abolition of the coparcenary, the Joint Select Committee of the Parliament chose to retain it. By excluding the application of the Hindu Succession Act 1956, to ancestral property the State chose not to interfere with, or curtail the privileges in relation to property rights accorded to the male Hindus. Section 6 of the Hindu Succession Act 1956, was the only marginal concession provided to female heirs on the demise of the male coparcenor. Until the concept of coparcenary an exclusive male membership club is totally abolished, inequality of women’s status and control over family resources/property will remain. The states of Andhra Pradesh, Tamil Nadu, Maharashtra and Kerala have amended the law by including women as members of the coparcenary. This has not resulted in any change since women are socialised and pressurised to not claim any share
in the property. In the given social context, a woman claiming such a share would stand to have all her ties severed with her family. Rather than allow women membership of the coparcenary, symbolic of privilege and inequality within the family, it is recommended that the concept be abolished.

The self acquired property by a Hindu male or female, acquired in his or her lifetime, devolves in accordance with the Hindu Succession Act, 1956. This Act does not apply to coparcenary properties (referred to above). Under this Act, all or a portion of self-acquired property can be bequeathed by a will. Such bequests particularly in relation to immovable property are usually in favour of the male heirs. In the absence of a will (intestate), the property devolves to the immediate heirs, both male and female in equal share. In practice, the female heirs usually relinquish their share in favour of the male heirs. Such relinquishment deeds signed by female heirs are commonly submitted in Court, by the male heirs to assert their claim as beneficiaries to the entire property, particularly immovable property.

Under the 1956 Act, female heirs are treated differently from male heirs in relation to the dwelling house. Under Section 23, if the intestate’s property includes a dwelling house, the female heirs have no right to partition it until the male heirs choose to divide their respective shares.

Devolution of a Hindu female’s property: If a Hindu female dies intestate, then her property is to devolve first of all to her children and husband, then to her husband’s heirs, then to her father’s heirs and finally to her mother’s heirs. These provisions are intended to keep her property within her husband’s lien. Section 15(2) provides that any property that the Hindu female inherits from her father or mother should devolve, in the absence of any children, to her father’s heirs (if she dies intestate). Any property that she inherits from her husband or father-in-law would devolve to her husband’s heirs.

Another area of discrimination in codified Hindu law relates to guardianship. The natural guardian of a legitimately born Hindu minor boy and unmarried minor daughter is the “father, and after him, the mother” by virtue of Section 6 of the Hindu Minority and Guardianship Act, 1956. The guardian of a married minor girl is her husband. Despite the prevalence of dowry [giving of wealth by the bride’s family upon and after marriage] and child marriages, this provision vests the husband with powers to make critical decisions about the minor bride’s property.

The mother is the guardian to the legitimately born minor son and unmarried daughter only in the event of the father’s death, or in the case of an illegitimate child. This provision was challenged in the Supreme Court in the case of Githa Hariharan v. Reserve Bank of India (AIR 1999 SC 1149) by two mothers, one a writer and the other a scientist, for violating the fundamental right to equality. In the case of one, the mother was refused the right to make investments with the Reserve Bank of India, the premier financial agency of GOI, and in the second, the right to make decisions for the child’s schooling.

Rather than quash the discriminatory provision, the Court re-interpreted “after” to mean in the
absence of the father, thus: “The word ‘after’ need not necessarily mean ‘after the lifetime’. In the context in which it appears in s.6 (a), it means ‘in the absence of’, the word ‘absence’ therein referring to the father’s absence from the care of the minor’s property or person for any reason whatever.” This was further explained as: “In all situations where the father is not in actual charge of the affairs of the minor either because of his indifference or because of an agreement between him and the mother …. and the minor is in the exclusive care and custody of the mother, … the mother can act as natural guardian of the minor and all her actions would be valid even during the life time of the father”.

The Court refrained from quashing the patently discriminatory provision and instead opted to bequeath mother’s limited guardianship rights through re-interpretation. The provision remains discriminatory as it still does not bestow joint guardianship to the father and the mother. In stead, the father remains the natural guardian; only in his actual or constructive absence, does the mother exercise guardianship rights. **It is recommended that the statute be amended to explicitly vest both parents with joint guardianship rights, and only in the event of the dispute, determine the rights in accordance with the principles of the best interest of the child.**

Although **adoption** is permitted under Hindu law, the *Hindu Adoption and Maintenance Act* 1956, discriminates between the type of women who can adopt. Single or widowed women can adopt children in their individual capacity, while a married women has the power to assent in her husband’s adoption. **It is recommended that the right to adopt be made available to all women regardless of their marital or religious status.**

**II. Discrimination in the civil law on marriage - The Special Marriage Act, 1954 [SMA]:**

The SMA was enacted to provide a civil option for marriage. It was enacted to provide a civil form of marriage to any person irrespective of their faith and for Indian nationals residing abroad. It enables inter-religious marriages without making it incumbent on either party to convert to the religion of the other, as is the case with the religion-based family laws. In the context of India, where law reinforces religious norms that explicitly and implicitly disadvantage and subordinate women, the SMA provides a valuable avenue for securing fundamental guarantees to women within marriage. However, this limited space is neither secular nor free of discrimination. The problems with the SMA are as under:

1. **Not Secular**

   In order to be clear of the contentious terrain of religion, this statute needs to be truly secular and premised on the constitutional rights and freedoms guaranteed to the individual. The SMA however contains characteristics of Hindu law, which limits its claim to being either secular or a guarantor of fundamental rights of the individual.

   **[a] ‘Prohibited Relationships’**: Marriages between a wide range of relationships, defined by blood and adoption, are prohibited by virtue of Section 2[a] of SMA. The range of relationships covered are particular to the Hindu community and identical to the “sapinda” relationships within which marriage is prohibited under the Hindu Marriage Act [HMA]. The prohibition of marriage within “sapinda” relationships is different and in conflict with the rules of other religious laws such as the Muslim, the Christian and the Parsi where marriages between maternal cousins are allowed and infact quite common. As a result, this provision deterred
intra religious marriages of non Hindus under the civil law. For example, Christians and Parsis marrying their maternal cousins would not be able to marry under SMA.

This barrier to intra religious marriage was partially addressed by a 1963 amendment which allowed marriage within the prohibited relationships only if a customary practice endorsing that could be established by either party to the marriage. It also required that the ‘custom’ invoked be one that is notified in the official gazette as applicable to that particular tribe, community, group or family. Such notifications are allowed only for customs that are deemed “not unreasonable or opposed to public policy” and where it “has been continuously and uniformly observed for a long time”.

By virtue of this amendment, the SMA now allows marriages of persons within “prohibited relationships” if their religion or custom prescribes so. This entirely precludes individual liberty and freedom to found a family of one’s choice based on universal human rights norms. The amendment clears the way for intra-religious marriages for individuals from minority communities, as for example between Muslim cousins. However, Hindu persons wanting to marry from choice within the “prohibited relationships” are barred from marrying under this law since this is contrary to their religious law, while a similarly placed Muslim couple would not be barred.

Religion has once again been accorded overriding right and primacy in the civil arena governing marriage - the most serious casualty of which has been the fundamental right to individual liberty and freedom to found a family of one’s choice based on equal footing with the rest of the community. It has opened the limited secular space to potentially contentious religion based debates, which have historically been damaging to women’s equality issues.

[b] Severance from Hindu Undivided Family: Section 20 of SMA protects property rights of those who renounce religion or are excommunicated by virtue of marriage under the civil law. It prohibits forfeiture of property and proprietary rights of “apostates” under Hindu and Muslim law. However, contrary to this principle, Section 19 allows severance of the rights of Hindus from the ‘Hindu Undivided Family’ [the HUF is a concept that pertains to ownership and devolution of ancestral wealth, property, wealth and income]. This disability cast on Hindu men contracting a civil marriage flows regardless of the religion of the bride [Hindu or non-Hindu] and thereby penalises Hindu men from making secular personal choices in relation to marriage. Clearly, the security extended by Sec. 20 to persons exercising a secular option, is exempt for Hindu men.

2. Discrimination Against Women

Although a secular law, the SMA contains within it a provision on ‘Restitution of Conjugal Rights’ under Sec. 22 [similar to the religion based family laws] which though ‘gender neutral’ has in practice used against errant wives who have left the husband’s residence without “reasonable cause”.

Similarly, the grant of alimony and maintenance due to a separated or divorced wife under the SMA can be rescinded by virtue of Section 37(3) if the wife has remarried or is not leading a ‘chaste’ life. The premise of alimony and maintenance in civil law is not based on rights
accruing to compensate a woman for her contribution within matrimonial home. The law views it as largesse that is conditional upon a continuation of sexual fidelity by the woman to her husband even after separation/divorce - reinforcing the notion of patriarchal control of women's sexuality by the man who maintains her.

The **grounds of divorce** too are identical to the Hindu Marriage Act allowing contested divorces on 'fault' grounds or with mutual consent. It does not allow 'irretrievable breakdown of marriage' to either party as ground for divorce. Being a secular law that recognizes marriage as a contract, and given the context that divorces are long, protracted and difficult in India, it is time for the State to consider introducing 'irretrievable breakdown' as a ground for dissolution of marriage.

The above examples indicate that the advancement of fundamental rights, particularly women's equality, have not been the basis for the civil law. It is an area for the state to implement its obligations under CEDAW, and is exempt from the scope of its Declaratory Statement.

### III. State Response to Initiative and Consent of a Community to Reform Law - The Status of Efforts to Change Christian Personal Law:

The position of GOI on discrimination against women in personal laws of minority communities has been that law reform can be undertaken by the State only with the sanction of the community.

However the Government has acknowledged that the community can consist of the women in the community. In the Jakarta Declaration for the Advancement of Women in Asia and the Pacific, Second Asian and Pacific Ministerial Conference on “Women in Development “, (June 7-14, 1994) held by ECOSOC in preparation towards the Beijing conference, the Government of India agreed that “Family law should be reformed towards a common civil code upholding the dignity of women as equal partners with men in the family, including gender inequity in matters of divorce, custody and property rights, preferably where the initiative comes from the women in the concerned community.” (under part IV, Goals, Strategies Objectives and Action to be Taken, at D entitled “Supporting Equal Access of Women to Power and Decision Making” under which gender bias in the law has been listed as one area of action to be taken at sub-clause xi at p.35)

The following facts in relation to the Christian Personal Laws however belie the commitment to addressing sex discrimination in personal laws, even when the initiative comes from the community. The sustained lobbying for law reform from the Indian Christian community, Church leadership, women’s groups and expert legal bodies since the late 1960s has been repeatedly ignored by the Government.

The Christian personal laws are governed by the Indian Christian Marriage Act, 1872, the Indian Divorce Act, 1869 (based on the British Matrimonial Causes Act, 1857), and the Indian Succession Act 1925. Except for a few State level amendments, these laws have not been
amended for over a century by the Indian Parliament and are severely discriminatory to women, particularly in relation to succession and divorce.

Section 10 of the Indian Divorce Act, 1869 has been one of the most contentious areas of debates on law reform. It prescribes different grounds of divorce for men and women. While the husband is entitled to claim divorce on proof of adultery alone, the law requires the wife to prove two grounds of divorce, that is a ground in addition to adultery. The grounds stipulated in addition to adultery are incest, bigamy, cruelty, or desertion. Women married under Christian Personal Law therefore have little option in law to break free from a marriage that has irretrievably broken down because of any one ground: adultery, desertion, cruelty and so on. Men however are entitled in law to claim divorce on one ground alone - adultery. The difference in treatment has been justified on grounds that the consequences of such an act, specifically in terms of pregnancy, are different for both.

Another area of discrimination is section 34 of the Indian Divorce Act, 1869, which provides for damages to be claimed against a third party in adultery. This allows a husband to claim damages from his wife’s lover, and this right is available only to the husband and not the wife. Although this provision for damages has rarely been used in post independent India, its continued existence on the face of the law is highly discriminatory and ought to be repealed.

The need to reform and consolidate the vast body of Christian personal law, in particular the difficult and unequal divorce provisions has been articulated and demanded on several occasions. In the early 1980s the ‘Joint Women’s Programme’ (JWP), a national level women’s organisation initiated an exercise of reviewing the Christian personal law with a view to drafting and recommending a reformed consolidated family law for the Christian community. Having identified the areas requiring reform (through a wide consultative process), the JWP engaged Mr. P.M.Baxi, the then Chairperson of the Law Commission of India, to draft a comprehensive Bill incorporating their recommendations.

On preliminary discussions with the GOI on the draft Bill, the JWP was informed that it should enlist the support of the Church leadership as proof of the Christian community’s support for the Bill to enable the Government of India to act upon it. Accordingly a long consultative process began with the different Church groups in India, leading to the creation of the ‘Ecumenical Committee for changes in Christian Personal Law’, with the JWP as its convenor. The membership included all the Churches namely; the National Council of Churches, consisting of 27 denominations, the Catholic Bishops Conference of India (CBCI), the All India Catholic Union (AICU), and other independent Churches. Ultimately a consensus draft titled, “The Christian Marriage and Matrimonial Causes Bill, 1994” (CMMCB,1994) was produced.

The Government sought advice of the Minorities Commission in relation to the proposed CMMB (1994), to ascertain if the necessary consensus on it in fact existed. The CMMCB (1994) has been submitted to the GOI from time to time since 1994. Memoranda and petitions have been sent to all relevant government departments and offices, including that of the President and the Prime Minister of India, but no response has been forthcoming.

The Law Commission of India, in its capacity of a research body (constituted under the Law
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Ministry) empowered to inter-alia, make recommendations for law reform, has recommended reform of the Christian personal law on the following 3 occasions:

1. The 15th Report of the Law Commission recommended comprehensive amendments to the Indian Divorce Act, 1869 and presented a Bill entitled The Christian Marriage and Matrimonial Bill, 1960, to the government for consideration. This bill was however returned by the government and the Commission was asked to ascertain public opinion in relation to the proposed Bill.

2. The 22nd Report of the Law Commission reiterated the need for the above proposed Bill, affirming that public support was in favour of the Bill. Thereafter, the Bill was introduced in Parliament but lapsed upon the dissolution of the Parliament. It has been not raised for Parliament debate since.

3. In 1983, Justice K.K Mathew, the then Chairperson of the Law Commission, made a suo moto recommendation in its 90th Report, for the need to reform discriminatory divorce provisions in Christian Personal law

The judiciary has also pointed out the pressing need to reform the Christian personal law to address the severely restricted rights of women under it on several occasions. In the case of Ammini E.J vs Union of India (AIR 1995 Kerala 252), when the government, despite repeated directions of the Kerala High Court, failed to present its decision on reform of Christian personal laws, the court summed up the State’s attitude in the following words:

“…….the totally intransigent attitude adopted by the Central Government in the matter of taking a final decision regarding the amendment of the law on the point which was recommended by successive Law Commissions of India at least from 1961 onwards and the various directions including the positive direction in this case, that we have decided to consider the matter on merits and to grant the relief prayed for, assuming the role of the reformer to the extent legally permissible as an attempt to bridge the gap between the personal laws.” (para 48 at 274, 275)

In its limited role of the reformer, the Court struck down the divorce provisions (Section 10 of the Indian Divorce Act, 1869) as sex discriminatory, denying women equality before the law (Article 14 and 15 of the Constitution ), arbitrary and violative of the right to life and liberty (Article 21 of the Constitution). However, as noted by the Court, this has been only a “limited attempt” to address discrimination against women in one specific provision in the vast body of Christian personal law. The real need for comprehensive reform still awaits legislative intervention after more than three decades of sustained efforts fore-fronting public/community opinion around it.

**Status and Position under Article 16(2):**

The GOI Declaration states it “agrees to the principle of compulsory registration of marriages. However, failure to get the marriage registered, will not invalidate the marriage particularly in India with its variety of customs, religions, and level of literacy”.

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SCOPE AND VALIDITY OF INDIA’S DECLARATORY STATEMENTS

**Status and Effect of Non Registration:** The Declaratory Statement embodies a genuine concern that in the Indian context it is not possible to invalidate unregistered marriages. The effect of invalidation of such marriages would divest women of the few claims afforded to them by law within marriage and the social status it bestows. However, the State must be equally responsive to the difficulties resulting from non registration for women asserting legal claims, and the particular disadvantage for Hindu women.

All claims in relation to marriage by women in the courts are maintainable only if valid marriage is proved. Particularly, claims made by deserted wives for maintenance or prosecution for bigamy cannot succeed where the respondent husband denies the fact of marriage [a frequently used defence]. In cases of unregistered marriages, it becomes extremely difficult for a wife to establish her locus for asserting a valid claim under law. Therefore, the effect of non-registration hits women adversely in asserting the meagre entitlements under marriage laws, and for prosecuting her husband for matrimonial offences under the penal code.

Despite low literacy levels, Muslim and Christian marriages do get registered. Christian marriages are registered in Church and Muslim marriages by the Kazi [officiating priest] who also records the terms of the marriage in a nikhanama. The Hindu marriages however, only require the performance of a ceremony recognized by law, or customary practice and the officiating priest maintains no register of the same. No document containing signature or thumb impression of the parties is obtained to secure their consent to the marriage. Hence the Hindu women are most adversely affected by the lack of registration of marriages.

**Recommendation:** It is incumbent upon the State to plan and initiate measures to eliminate discrimination in its own particular context. It is recommended that the government make a plan to decentralize and simplify the registration of marriages to make it available in a phased and gradual manner at all levels and for all contexts. The manner of registration and simplification can be designed to correspond to the context, rather than adopting the present position which assumes the context of low literacy, and multiplicity of religions is inherently incompatible with registration. There must be a time frame within which the Government plans to operationalize registration [particularly for Hindus] and also promote literacy and awareness around the need for registration at all levels in the urban and rural areas. Further, the National Commission on Women, the statutory body assigned with the task of examining and making recommendations on women’s rights, has strongly recommended registration of marriages in its annual reports.

**Validity of the Declaratory Statements:**

Declarations and reservations must be viewed as enabling devices that facilitate State endorsement of normative standards on women’s human rights whilst postponing complete accountability until the State is better equipped to meet the entire range of obligations. The Vienna Convention on the Law of Treaties [1969] governing reservations permits only those reservations that are:

- consistent with the object and purpose of the treaty in question
- the reservation is required to be specific and not vague, and
- be made in good faith by the state party.
SCOPE AND VALIDITY OF INDIA’S DECLARATORY STATEMENTS

The following conclusions regarding the validity of Indian Declarations can be drawn on examining them against the Vienna rules.

1. The declarations to Article 16 have been left unqualified, to the extent that both do not indicate the steps to be undertaken or the time period within which the State hope to fulfil the obligations under the Article.

2. The policy of ‘absolute and unqualified’ reservation is impermissible since CEDAW mandates the state to be pro-active in relation to eliminating discrimination against women. The nature of its actions and initiatives can be designed to correspond to the context/s of the country - but a complete disclaimer is impermissible since it would reflect both inconsistency with the spirit of CEDAW and be in bad faith. Hence, in relation to Article 16, both declarations need to reflect pro-active efforts by the State to fulfil its obligations, in a manner appropriate to its special context.

3. The policy of “non-interference” as presently worded in the Declaration to Art. 16(1), is struck by the Vienna rules regulating reservations for the following reasons:
   
   - Since the effect of the Declaratory Statement is to limit the obligations of the GOI in relation to Art. 16 (1) of CEDAW, it amounts to ‘reservation’ and would consequently be covered by the rules regulating reservations under the Vienna Law of Treaties.
   
   - The ratification of CEDAW implies an acknowledgement of the existence of discrimination against women in public and private spheres, and also amounts to an undertaking to eliminate such discrimination and violation of women’s human rights. The Declaration places the whole responsibility of addressing personal laws within the private sphere on the ‘minority communities’, it amounts to transferring the responsibility from the State to the private actors, i.e the communities. This would be inconsistent with the object and purpose of CEDAW, thus untenable by Vienna standards.
   
   - The Declaration does not qualify or limit its scope in relation to the civil law on marriage, the SMA [discussed above] which is not governed by religious norms.
   
   - Granting primacy to religion as interpreted by the conservative male leadership [rather than progressive members and women of the community], to justify state derogation from its human rights obligations in relation to women in the private sphere, is problematic. This view treats discrimination against women as an issue for the community to resolve autonomously. The ‘absolute and unqualified’ retreat from such responsibility must be viewed as the State condoning and re-affirming of patriarchal control of communities over their women.
   
   - This position continues to sustain and re-construct the false dichotomies of public and private that CEDAW challenges and attempts to erode.

It is therefore recommended that:

1. In relation to Art. 16(1), the State address discrimination under Special Marriage Act, i.e. the civil law, the Hindu law and respond immediately to the law reform proposals of the Christian Community.
2. In relation to the religious laws of minority communities under Art. 16(1), the State should commit to initiating a dialogue of prominent progressive members and women activists from those communities to discuss appropriate reforms within those laws. Similarly, discussion and dialogue with grassroots women should be initiated on this subject through NGOs and State women’s development programmes. In addition, the State should commit to promoting awareness through mass information campaigns on equality for women in the family and community and at the grassroots levels. Special support should be extended to government programmes and NGOs that provide legal aid along with other services to poor women to enable them claim and enforce their rights.

3. In relation to Art. 16(2), to consult with women’s groups on ways of introducing registration of marriage, propose simplified ways of registration of Hindu and customary marriages and make these subject to public discussion, raise awareness and set a time frame for implementation. The scheme should not in any way penalise unregistered marriages nor invalidate them, but should focus on promoting registration.

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1 Parts taken from Report on Discrimination against Women under the ICCPR, R Kapur and M Mehra[CFLR,Delhi1997]
2 [ Tahir Mahmood,Religious Elements in a Secular Marriage Law: ( Indian Law Institute ) ]
### ARTICLES 1-4 AND 15

**CEDAW**

**Article 1**

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 2**

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realizations of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

**Article 3**

States Parties take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

**Article 4**

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

**Article 15**

1. States Parties shall accord to women equality with men before the law.

2. States 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.

3. States 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.

4. States 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.
ARTICLES 1-4 AND 15

Part I: CONSTITUTIONAL FRAMEWORK AND APPROACH

References to equality between men and women in the Constitution are to be found in the following:

- Part III of the Constitution which guarantees the fundamental rights of men and women. In particular, Articles 14, 15 and 16 guarantee rights to equality.
- Part IV of the Constitution, the Directive Principles of State Policy which are guiding principles for governance, although not enforceable in a court of law. This contains a statement on the need to have equality between men and women in employment opportunities, wages and control over material resources. The section on Fundamental Duties states that it shall be the duty of every citizen of India; (e) to renounce practices derogatory to the dignity of women.
- Article 325 which guarantees that all shall have the right to vote irrespective of sex.
- The 73rd Constitutional Amendment also provides for the reservation of one-third seats in all tiers of local government for women.

This chapter covers only the Constitutional norms that are enforceable in Court, i.e. the Fundamental Rights. The Indian Constitution guarantees the right to equality under Article 14. This states that no person shall be denied equality before law or equal protection of the law. Sex discrimination is prohibited by Articles 15 and 16. Article 15(1) prohibits discrimination on the ground of religion, race, caste, sex and place of birth. Articles 15(3) allows for special measures in relation to women and children. Article 16 provides that all citizens shall be given equal opportunity in matters relating to employment or appointment to any office under the State.

Articles 14, 15 and 16 together represent the framework within which the State operates in relation to gender equality in India. Viewed alongside the definition of discrimination provided by the Convention, the Constitutional framework appears to mirror the concerns of the Convention. The Convention emphasizes the importance of taking into account historical disadvantage in assessing the position of women, thus taking differences between men and women beyond the limiting parameters of sex to a more comprehensive concept of gender. The Convention stresses the need to take into account distinctions between men and women, and looks upon law, policy, programmatic and temporary special measures to correct historical disadvantage.

The Constitution does not define ‘discrimination’ and nor is there a special anti-discrimination law. The test for identifying discrimination has developed through the framework of equality, as evolved through case law. Equality has been interpreted to mean similarity of treatment and not identical treatment - the right to equal treatment among those similarly situated, in terms of privileges conferred or liabilities imposed. It does not mean universal
ARTICLES 1-4 AND 15

application of law to different classes of persons. Differential treatment does not ‘per se’ constitute discrimination, but would in the case of different treatment without reasonable basis for the differentiation.

Constitutional interpretations reflect conflicting approaches to equality. The approach to caste-based discrimination has often been substantive in nature, as reflected in the observation that it is “necessary to take into account de facto inequalities which exists in the society … to bring about real equality”. [AIR 1997 SC 2366, at para 13].

There is no clarity however on what the approach to gender equality should be, with the result that Constitutional guarantees are often used to reinforce protective measures in favour of women, rather than correcting norms and assumptions that underpin women’s inequality. This tends to treat ‘gender’ differences as being natural and incapable of change and therefore deserving of protection through special treatment. The three dominant trends are as follows:

♦ Limited and unsatisfactory relief, on account of ‘sex’ alone being the basis of discrimination. This approach helps correct only surface discrimination allowing no space for a deeper and more complex inquiry into why ‘sex’ difference for women becomes the basis for restriction or denial of equal rights and opportunities. It does not take into account socio-economic factors that produce a further set of differences between men and women, thereby compounding the disadvantage and inequality caused. Hence the need to produce a husband’s no-objection certificate for employment, or the requirement for female employees in foreign service to take permission from the Government before marrying have been struck down as discriminatory. However, this approach has also upheld the restriction of access of menstruating women between 10 years to 50 years of age in a temple on the ground that it only affects women of a particular age group and not as a class, and consequently is not discriminatory on grounds of sex alone⁴.

♦ Protectionism: The protectionist approach, regardless of any positive relief rendered, has been damaging because it reinforces the gender stereotypes instead of problematizing them, and treats women as a ‘vulnerable’ category often denying them any choice or agency in opting for or rejecting the protection imposed upon them. Hence, it has been possible to succeed in quashing the requirement that nurses must obtain their husbands’ permission for applying⁵ - but on the basis that a woman may have been forced to work because of the situation created by her husband rather than on the principle that it undermined equal employment opportunities for women. This reinforces the assumption that women take up employment to supplement the household income when the husband fails his duty as a primary breadwinner. Similarly, where a man entered into a false marriage with a woman and forced her to undergo abortion on each pregnancy, it was held that this violated the woman’s right to life and liberty “to live the roles assigned to them by Nature so that society may flourish” - the natural roles ascribed to women were that of mother, daughter, sister and wife⁶.

Protectionist approaches operate within a patriarchal framework and as a result denies relief to women undeserving of protection. Hence, the right of daughters to reside in the
natal dwelling house under Section 23 of the Hindu Succession Act extends only to unmarried, deserted, or widowed daughters. This has been interpreted to exclude daughters who desert or separate from their husbands on the ground that it will defeat the object of the provision and “encourage married daughter to desert her husband and live separately”.

- **Fundamental rights are only enforceable** in the public and not the private sphere, against the State and its agencies. An application of the right to life and equality in the home were rejected on the ground that the “introduction of Constitutional law in the home is like introducing a bull in a china shop… in the privacy of the home and married life, neither Article 21 nor Article 14 of the Constitutional have a place. In a sensitive sphere which is at once most intimate and delicate the introduction of the cold principles of constitutional law will have the effect of weakening the marriage bond”.

Although, piecemeal discriminatory legal provisions of family law have sometimes been declared unconstitutional or interpreted progressively, by and large the courts have been disinclined to test the Constitutional validity of family law provisions. A public interest petition for scrapping of gender discriminatory family laws was dismissed on the ground that these were issues of State policy and the remedy lay with the legislature and not the courts.

It is recommended that the substantive approach to equality be followed. In this gender difference is recognized as the basis for ‘reasonable classification’ to determine the extent of disadvantage caused to women or the class of women in question, by taking into account the existing social norms and the historical disadvantage operating against the women. This is the basis for determining the extent of discrimination and for devising corrective measures to enable women to overcome that disadvantage. This analysis lends itself to affirmative action under Article 15(3), without either ignoring or reinforcing gender stereotypes.

**Part II : RECOMMENDATIONS**

**II [a]: Recommendations in Relation to the following Protectionist laws that disadvantage and reinforce discrimination against Women.**

**A. Discrimination under Criminal law**

Women’s bodily integrity and sexual rights are contingent upon their marital status under the Indian Penal Code, 1860. Although enacted by the colonial State in the last century, the modern Indian State has continued to retain these provisions.

A married woman’s sexuality is viewed as part of a husband’s proprietary right, over which the woman herself has little control, as evidenced by the non-recognition of marital rape and the provision on adultery. Further, the language of all sexual offences comprises of protectionist and moralistic terms like chastity, ravishment, modesty, that makes relief conditional upon the value system underpinning these terms. This restricts the unqualified right of all women, irrespective of their marital status, to their bodily integrity.

**RAPE** - There are three significant limitations of the existing rape law:

1. It is only concerned with the penalizing rape that occurs outside of matrimony.
ARTICLES 1-4 AND 15

2. It is based on a very narrow definition that excludes a majority of women's experiences of sexual abuse / assault; and

3. The evidentiary law that allows a woman's previous sexual history to have a bearing on the case is harmful to most victims who testify.

Marital rape is not recognized under the current legal definition of rape. Section 375 of the Indian Penal Code, 1860 states specifically that, “Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.” The Law Commission recommendation to recognize marital rape was ignored in the amendments made in 1983. Instead the amendment to 376A included only rape of a woman by her judicially separated husband as punishable with up to two years imprisonment. (as opposed to a mandatory minimum of seven when the assailant is not her judicially separated husband.) Hence, a hierarchy of rape was created, whereby a man’s status as a judicially separated husband was deemed to be a sufficient explanation for reducing the harshness of the criminal law.

The second problem with the law is that it is based on a very narrow definition of non-consensual penetration by the penis of the vagina. The women's movement has campaigned for a broader definition of rape so as to include penetration of any orifice by the penis or any other object, and are along the lines proposed or adopted in many other Commonwealth countries. Recommendations have been submitted to the Law Commission, National Human Rights Commission, and the National Commission of Women.

A particularly discriminatory provision is that of section 155(4) of the Indian Evidence Act 1872, which allows the defense to introduce evidence to demonstrate that the raped women is of “generally immoral character.” The objective of this provision is to discredit the testimony of the witness on the assumption that she is an unchaste women not to be believed, at least not when it comes to matters of sex. Not only are sexually active women not to be believed, they are also penalized under the laws governing vagrancy and prostitution. It is recommended that this provision be abolished.

It is recommended that the above problems be removed. At present, the Ministry of Home Affairs has been debating on reform of rape law but has not consulted women’s groups on the matter. They propose to enhance the punishment to introduce mandatory death sentence for rapists. Women’s groups and the NCW are opposed to this populist short-sighted measure that is most likely to greatly reduce convictions in rape cases while superficially seeming to treat it as a serious crime. A similar attempt was made early this year to introduce ‘rape insurance’ scheme within the national insurance policy. This was withdrawn after widespread criticism by women’s groups.

ADULTERY: Section 497 of the Indian Penal Code 1860, makes adultery committed by a man against a married woman an offense. Section 198 of the Code of Criminal Procedure, 1973, allows only the husband of the ‘adulteress’ to prosecute the man with whom she committed adultery, but does not allow the wife of the man to prosecute him.

The adultery laws are based on the following assumptions:

a. Retribution against any man who violates the lawful property without his consent, in this
case the wife of another man. The provision legally validates the wife’s status as her husband’s chattel.

b. The husband’s lack of consent is material for the act to constitute adultery. Clearly, the woman’s choice and control over her sexuality are immaterial. Women are perceived as passive victims of aggressive male sexuality, incapable of agency in sexual relations. Adultery is seen as the crime by one man against another man; a woman is a hapless victim and not to be prosecuted.

The criminal law provisions dealing with adultery have been challenged in courts from time to time as being violative of women’s equality rights. (see Abdul Aziz v Bombay A 1954 SC 321, Aamgir vs. State of Bihar, AIR 1959 SC 436, Soumithri Vishnu v Union of India, A 1985 SC 1618 ; Revathi v Union of India A 1988 SC 835 ). The law has been upheld each time for reasons that it results in “deprivation to the husband of the custody and control over his wife”, or that the provision is of benefit to women as they are not ‘penalised’ but protected, and/or because the provision punish the “outsider” to the matrimonial unit who violates the sanctity of marital tie by developing an illicit relationship with the wife.

It is recommended that adultery be repealed from the purview of criminal law altogether.

B. Family Courts Act, 1984 was passed in response to the demand for laws and procedures, which would ensure woman’s economic rights within marriage and make matrimonial litigation less time consuming and traumatic for women. Any significant change of matrimonial laws and procedures demanded a conceptual understanding of the unequal power relations between men and women within marriage. But sadly the Family courts Act, 1984, was more in the nature of a protectionist law, and failed to tilt the balance in favour of the weaker partner in the marriage because of the following inherent flaws in the Act:

- The aim of the Act is “preservation” of the family, and stipulates the appointment of only persons committed to protect and preserve the institution of family should be appointed as judges. This stipulation disqualified women activists and lawyers from being appointed as judges or counsellors, their ideology being labeled as anti-family for having questioned the anti-women social norms.

- The Act is based on conciliation and not enforcement of legal and economic rights of women. Since the Act does not question the traditional notions regarding women’s rights and status in the family, facilitating reconciliation often means reaffirming the old anti-women values.

- The Act passed in 1984 delegates to the state governments the task of enacting procedural rules and to institute the Courts. Instead of simplifying the rules as originally intended, the state governments have merely reproduced the Civil Procedure Code, 1908, with its legal technicalities and complexities. Thus the Act has neither offered simple accessible procedures for a gender just environment for women.
II(b): Specific Recommendations for Enactment of Special Laws to Address Some Forms of Gender Discrimination -

Sexual Harassment:

Sexual harassment has been an invisible barrier impeding women’s equal opportunities, participation and promotion in the workplace. The only legal avenue for redress is in the Penal Code which contains provisions of rape [s. 375], use force to outrage the modesty of a woman [s. 354] or use of word or gesture to insult the modesty of a woman [s. 509].

In the workplace, such cases are difficult to prove since it requires corroborative evidence which a subordinate woman employee is not likely to get and pursuing such a course of action would possibly result in termination of her job. Besides, lesser forms of harassment [not amounting to criminal conduct] are not recognized as a form of either sex discrimination or part of the labour rules to ensure safe and healthy workplace. In 1997 the Supreme Court took a lead on this issue in a case of gang rape of a worker in the government’s rural development project. It cited CEDAW to take into account the State obligation to enact gender specific laws and drafted guidelines amounting to law [until the enactment of a specific legislation] which correspond to the General Recommendation 19 of CEDAW. However, despite urging the State to promptly enact the law and set in place mechanisms for redress, little has been done since the passing of this judgement in 1997. Apart from issuing circulars amongst some of the government departments in a few states, no steps have been taken to concretize the mechanisms as per the court guidelines.

It is recommended that a special comprehensive law be enacted in terms of the guidelines laid by the Supreme Court and mechanisms set in place in all State and non State agencies of employment.

Child Sexual Abuse [CSA]

The findings of a 1997 study of urban women in India show 76% of the women had been sexually abused in their childhood. Of these, 36% were abused by a family member and 46% by a known person.

There is no law on CSA in India, and it remains an invisible crime shrouded in myths and silence. Organizations working with women and children have begun to uncover the extent of occurrence and break the silence on the issue and often face strong resistance from the community. This resistance and silence is reinforced by the absence of the recognition of CSA in law, and consequent denial of any redress. The law at present can respond to CSA only if it amounts to rape [as defined in the Penal Code], or under the provisions of “outraging the modesty of a woman” or as “unnatural offences”. The procedures of evidence and trial remain the same for a child as for the adult. Given that sexual abuse of children, particularly girls, is often such that the required evidence cannot be obtained, the crime remains virtually unaddressed by law.

In 1993 an ad hoc sub committee constituted under the National Commission on Women [NCW] under Jayanti Patnaik was constituted to look into the problem of CSA and the
The weaknesses of rape law. The Committee produced a draft bill in consultation with NGOs on sexual assault, covering all forms of sexual assault including rape as well as CSA. This bill was however shelved by the NCW. However, recently the NCW has once again come to be involved with CSA, because of a case in Karvi, in rural Uttar Pradesh. In this case the NGO supporting the mother and the children have been threatened and false cases of kidnapping, theft, etc have been lodged against the social workers to further harass them. This led the NCW to undertake a fact finding visit on 21.9.99. In their report they have strongly recommended as follows: “The NCW reiterates the recommendations it has made several times over the last 5 years, that the GOI recognize the urgent need for a legislation [on CSA] to protect the girl child [and] immediately enact the same”14.

It is recommended that a debate on the comprehensive bill on sexual assault [including CSA] be revived and enacted after consulting with the NGOs and women’s rights advocates.

Conclusion:

The above account pertains to the written law and its interpretation in the superior courts of the country. It needs to be qualified however, that despite the shortcomings of the judicial approaches to equality, the courts have in recent times been the only State institution that has responded to women’s discrimination issues from time to time in an ad hoc manner. Although some of these responses have affirmed equality and endorsed women’s rights claims, this is not the pattern generally. A large number of cases that succeed, fall within the protectionist approach.

Even as promoting a substantive equality approach in statutory as well as judge made law is an important issue, it must be stated that the status in law does not reflect de facto reality of women in India. The law remains inaccessible to a vast majority of Indian women, who socially and economically have little means to be acquainted with their rights, or have the means to access the legal system. When they do, the barriers within the legal system, such as the cumbersome complaints procedures, the law enforcement machinery, the forensic and medical establishment, the lack of effective legal aid or support services, and the long trial period, the gender blind and apathetic prosecution, all combine to work against women. Even as this reality stares us in the face, it is important to set substantive norms affirming women’s equality, as in the areas pointed out above. However, the State must also back this with mandatory programmes of gender sensitization and anti discrimination at all levels, along with other measures that enable this goal. This would require modelling its women’s development programmes on rights rather than welfare, that is currently the model. Further, it would require stronger support for NGO initiatives, and taking action on the many recommendations made by State-appointed committees and expert bodies on women. At present there seems little indication of support in view of the following:

- The non implementation of the National Policy on Women and the Women’s Rights Defenders, both of which were commitments made at the Beijing Conference.
- Lack of action on the various recommendations of the NCW made from time to time since its inception.
ARTICLES 1-4 AND 15

- Lack of consultation with women’s groups in proposing reforms to rape law, as in the case of the rape insurance scheme and the present proposal to introduce death sentence. A serious attempt should be made on such issues to get the recommendations of the women’s groups and the NCW which have expertise on these issues.

It is recommended that the State recognize the above as barriers to enabling women’s equality and make a commitment to remedying them.

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3 ‘Discrimination Against Women in India’ R. Subramanium, from the Indian NGOs Report on Cedaw [Coordination Unit, Delhi, 1995]
4 S. Mahendran v Secy. Travancore Devaswom Board [AIR 1993 Ker 42].
5 Maya v State of Maharashtra [1986 Lab IC 793]
6 Bodhisattwa Gautam v Subhra Chakraborty [AIR 1996 SC 922]
7 Kalamma v Veeramma [ILR 1992 Kar 300]
8 Harvinder Kaur v Hamander Singh [AIR 1984 Del 66]
9 AWAG and Ors v UOI (JT 1997(3) SC 171)
10 The sections on rape and adultery law upon the Report on Discrimination Against Women under the ICCPR, R.Kapur and M. Mehra [CFLR, Delhi, 1997].
12 ‘Voices From the Silent Zone: Women’s Experience of Incest and Childhood Sexual Abuse’, RAHI [Delhi, 1997]
13 When confronted with the procedure for recording the statement of the child, the High Court observed that “it is time we in India give the subject a fresh look and evolve some principles which while protecting the child, do not harm the defence”. Sudesh Jhaku v K.C.J and Ors [1996 III AD (Del) 749]
14 Inquiry Committee Report in respect of Child Sexual Abuse and Targetting of NGOs in Karvi, Chitrakoot Dist, Uttar Pradesh [NCW, November, 1999]
ARTICLE 6: TRAFFICKING OF WOMEN AND CHILDREN

Article 6 specifies: States Parties shall take all appropriate measures including legislation to suppress all forms of traffic in women and exploitation of women in prostitution.

Prevalence of the Problem
The trafficking, sale and prostitution of women and girl children have become major problems. Hundreds of girls and women travel on a regular basis, and they are trapped into trouble by traffickers from organized crime syndicates. India is a receiving, sending and transit country for sex trafficking. It receives women and girl children from Bangladesh and Nepal and sends those as well as its own women and girls to countries of the Middle East for prostitution, marriage and cheap labour. It also trafficks boys and girls for begging, as child labour and camel jockeys. An added problem is that it is very difficult to assess the exact number of girls and women who are trafficked to and from or within India. Such research has been difficult to undertake as trafficking is a well organized crime which exists in most countries of the region, and trafficked persons are constantly on the move, making it difficult to pin them down.

One of the major reasons for the prevalence and increase in trafficking is poverty which makes women particularly vulnerable. While many are tricked into prostitution, there are others who take it up as a way of bettering their status. When children get into prostitution or are trafficked, it has been found that many come from homes where they have had to face abuse or where there has been violence and tension.

Although legal provisions exist and the Constitution of India prohibits the trafficking of human beings, there are many loopholes and weaknesses which make it difficult to implement Government provisions. For example, the law suggests medical examination of all women and girls recovered from brothel areas but this is not done because medical assistance is sporadic and “rescued” women and girls are often kept in Government or NGO shelters where conditions are not exactly the best, while traffickers, pimps and brothel madams are never arrested or are allowed to move around freely on bail.

In addition, there is no speedy recovery and reintegration of rescued girls and women (either in India or in their country of origin). When returned to their homes, they are often not accepted by their families or sent back into prostitution.

While trafficked women and children are often found in prostitution, many are also found in other kinds of bonded labour and servitude. Either way, they are subjected to a great deal of suffering, and have a number of health problems as well. The use of trafficked children in pornography or by paedophiles is also a growing problem. Court cases are long-drawn out and hold out little hope for the victims.
ARTICLE 6 : TRAFFICKING OF WOMEN AND CHILDREN

Government Initiatives

- The Government of India has drafted a Platform of Action on the question of prostitution and child trafficking in India in 1998.

- A Committee has been formed to look into the problems of trafficking of women and children and of forced prostitution in Indian brothels. This Committee has brought together NGOs and forums working on the issue of trafficking.

- Funds have been collected and the Government has begun to approach NGOs to work together on this problem and to help in the rescue of women and children.

- Two regional initiatives of UNESCAP (1998) and SAARC have drawn a platform of action in accordance with the World Congress on Commercial Sexual Exploitation of Women and Children, CEDAW and the Universal Declaration of Human Rights. The focus is on standard rules of treatment of victims including medical help for physical and mental trauma, repatriation and reintegration, information and legal rights.

- As a result of the joint efforts of women’s groups of the SAARC region, the SAARC countries included in their ‘Male Declaration’ (declaration made at the Ninth SAARC Summit in Male, Maldives-1997) a paragraph of concern and commitment on the issue of trafficking in Women & Children. The SAARC nations agreed to establish a regional convention on combating the Crime of Trafficking in Women & Children for Prostitution.

- A draft is being finalised and is to be circulated for review & scrutiny by the SAARC countries. The GOI drafted the Convention with inputs from other member nations. In the expert committee two NGO members also took part.

Recommendations

- The Government needs to lay more stress on employment and income-generation programmes for vulnerable families, along with education.

- Training and counselling centres need to be set up for trafficked women.

- There should be better health services for vulnerable groups.

- The Government needs to have bilateral talks with other countries to give full legal status and dignified treatment to victims of trafficking and illegal migration.

- Trafficked victims should be provided with compensation and should not simply be deported as if they have no rights.

- There should be speedy recovery of cases and action taken on them.

- There should be more stringent punishment for traffickers in human beings (women).

- All cases should be decided speedily – preferably by fixing a time limit for decisions.

- Pre and post-test counselling and human rights for victims, especially for HIV/AIDS infected girls and women is a must. Discrimination against such women should be stopped.

- It is the responsibility of the Government to use the media to provide information to people on the issue.
SAARC Women NGOs that met at a workshop in New Delhi (29th July-1st Aug 1998), while strongly supporting the SAARC Draft Convention on ‘Preventing and Combating the Trafficking in Women and Children for Prostitution’ **expressed certain reservations on the following aspects** of certain underlying assumptions of the draft.

we quote –

a) the convention needs to broaden the scope and notion of trafficking. Trafficking takes place for a range of ultimate purposes, prostitution is one among them.

b) The Convention must ensure that political, and social human rights of women are not infringed/overlooked or by passed. The convention must recognise that by not giving them any voice, any choice or agency, they are being victimized twice.

c) The Convention must realize the need to shift the focus to ‘traffickers’.

d) Reintegrate the trafficked person - socially, politically and economically without compromising on her right to self determination.

e) The convention should not become an instrument to restrict or police women’s (voluntary) movement from one country to another.

f) The Convention and Member States must recognise that trafficking in women and children is a product of global patriarchies, economic liberalisation and the media invasion, which further objectifies women’s bodies as commodities.

g) SAARC NGOs lastly reiterated that the trafficking issue needs to be seen in the context of free mobility of capital, technology, expertise, and sex tourism and only a reversal of these trends could bring about fundamental changes in the present situation of trafficked women.

**References**

3. Robert I. Freidman, “India’s Shame: Sexual Slavery and political corruption are leading to an AIDS Catastrophe,” The Nations, 8th April 1996.
6. CATW – Asia Pacific, Trafficking in women and prostitution in Asia Pacific.
10. Film, “The Selling of Innocents” 1997
CEDAW

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.
ARTICLE 7: POLITICAL PARTICIPATION

Prevalence of the Problem
The Constitution of India, adopted more than five decades ago, is based on the principles of equality and equal opportunities for men and women. However, the de jure equality guaranteed by the Constitution has not translated into de facto equality. Women are thus denied social, economic and political rights in many spheres.

They are not treated as political entities in their own right; instead, they have been treated by political parties and other power groups as a means to further their own interests and gains, or they are merely seen as serving a decorative purpose.

Despite the fact that all political parties have made commitments to increasing the number of women candidates in elections, their number has actually been declining.

Similarly, although the female electorate in India numbers some 282 million, the last two decades show a decline in the participation of women voters in elections.

Large numbers of women are unable to exercise their voter choice as voting patterns are often determined by caste, community, political affiliations, village elites and the family – control in all these institutions lies with the men.

When political parties do support women, it is often done with the intention of accommodating sectional or caste interests.

Over the years, the political arena has grown increasingly criminalized, which acts as a barrier to women’s entry.

The venues of political meetings, particularly in rural India, are often too far away for women to feel safe travelling to them. Similarly, meetings are often set at times that are inconvenient for women. This impedes their entry and participation in politics.

Because women have seldom had access to any decision-making arenas (e.g. less than ten – out of a total of 4981 – women in the Indian Administrative Services have made it to the Secretary level nationally. There are four women Vice Chancellor’s out of 410 in universities in the country).

Women often lack knowledge and information about electoral processes, the working of political and other institutions, or the availability of funds etc.

There are inadequate infrastructural facilities to support and encourage women’s political participation. Nor do the rights mechanisms exist to protect women in political participation – for example there is not enough sensitization of male elected members.
ARTICLE 7: POLITICAL PARTICIPATION

The effectiveness of women’s participation continues to be evaluated on the basis of indicators that have been defined by the male dominant perspective and through a non-gendered lens.

Those women who do get into power often feel they are more accountable to those who have been instrumental in their rise than to their constituencies.

Women often lack the money to participate in elections etc.

Caste has compounded the predicament of women aspiring to participate in the political process. Social divisions of caste/class often limit the potential for gender solidarity between women, thereby thwarting attempts at developing a common political agenda.

Within politics women have to deal with deeply embedded patriarchal attitudes and with sexual harassment/molestation.

Government Initiatives

- The Indian Constitution encompasses the principles of equality and social justice. Under it, all Indian citizens are treated equally before the law. Articles 14, 15, 16, 19 (g) and 21 provide for equality and prohibit discrimination. Articles 15(3) and 16 (4) provide for positive discrimination in favour of women. Article 51A renounces (rejects?) practices that are derogatory to the dignity and status of women. Further, under the Constitution the following specific rights are guaranteed to women:
  - political equality and the right to vote (Article 326); Article 325 prohibits exclusion from the electoral rolls of the country on the basis of sex, religion, caste etc.
  - the right to contest elections (Articles 14,15,16,19, and the Representation of People Act, 1951 provide for equal participation of women in political processes.
  - the right to form associations or unions (Article 9 (1c)).
  - reservation for women: Article 243 (D) and 243 (T) provides for 33 per cent reservation for women in panchayats (village level governance) and municipalities. The 73rd Constitutional Amendment provided for the increased participation of women in political institutions at the village, taluka and district levels, and the 74th Amendment provided for increased participation in municipalities and nagarpalikas in cities.

Weaknesses

- Although the Indian Constitution guarantees equality to its citizens, the concept of equality is understood as “sameness”. This approach therefore does not take in the many social and economic disadvantages that produce a set of differences between men and women.

- While the Constitution upholds equality, it does not provide any guidelines for its interpretation – this task is left to the judiciary. Thus there are often conflicting understandings of the term “equality”.

- The Constitution guarantees many rights, but effective and concerted efforts to translate de jure rights into de facto rights is lacking.
ARTICLE 7 : POLITICAL PARTICIPATION

- The Directive Principles of State Policy do not in themselves bestow any rights or suggest any remedies. They are meant to be directives only, and are not justiceable or time-bound. While the broad principles of governance are contained in the Constitution, their implementation is left to the State.

- The Constitutional guarantees of equality are all too often rendered ineffective by the inequitable social customs and the structures of family and society that work against the interests of women.

- The State has failed to ensure an enabling environment for women’s entry and participation in politics.

- The State has failed to pass the legislation ensuring 33 per cent reservation for women in the legislature and in parliament.

- No attempt has been made to give women control over resources, to provide them with leadership skills and education, in order to enable their participation in politics. Equally, the attempts to sensitize state administration personnel have been negligible.

Recommendations

**Short-term**

- To enact the 84th Constitutional Amendment Bill pending in parliament providing for 33 per cent representation of women in state legislatures and in parliament.

- To ensure that panchayati raj elections are conducted in those states where they have not been held.

- To enforce stringent ceiling on election expenditure.

- To enforce measures to stop corruption, criminalization, and communalization of politics.

- To introduce special mechanisms to induct women at all levels of decision-making to ensure that they form a critical mass and contribute to policy planning and implementation.

- To make it mandatory for all elected representatives to attend trainings so that women are not denied this opportunity.

- To have regular gender sensitization programmes to sensitize local, state and national level administrative personnel, as well as members of political parties and functionaries of enforcement agencies.

- To fulfil the commitments made by the Government of India at the Fourth World Conference on Women.

**Long-term**

- To disseminate information on the 84th Constitutional Amendment and to create awareness of the importance and need for women to enter politics.

- To introduce electoral reforms so that
ARTICLE 7: POLITICAL PARTICIPATION

- parties ensure a minimum 33 per cent reservation for women;
- special funding assistance is earmarked so that women are able to contest elections;
- training facilities are made available to elected women representatives;
- to create awareness about the importance of local self government, and of the need for such governance to be transparent and accountable;
- to educate women about their right to vote and to ensure an environment in which women feel free and safe in exercising this right;
- to check the growing violence, fundamentalism in and criminalization of politics;
- to enable the formation of women’s associations, and to set in place supportive mechanisms which can enable the entry and participation of women in politics.

<table>
<thead>
<tr>
<th>Years</th>
<th>Women Members in the Rajya Sabha</th>
<th>Women Members in Lok Sabha</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>Number of Seats</td>
<td>Number of Women</td>
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<tr>
<td>1952-57</td>
<td>219</td>
<td>16</td>
</tr>
<tr>
<td>1957-62</td>
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<td>1962-67</td>
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<tr>
<td>1999</td>
<td>245</td>
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Table 5. Higher Education

<table>
<thead>
<tr>
<th>Level</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Universities</td>
<td>210</td>
<td>8</td>
<td>218</td>
</tr>
<tr>
<td>Vice Chancellors</td>
<td>215</td>
<td>3</td>
<td>218</td>
</tr>
<tr>
<td>Registrars</td>
<td>1708</td>
<td>58</td>
<td>1766</td>
</tr>
</tbody>
</table>

Table 6. Gender breakdown of Judges in the Supreme Court and High Court in 2000.

<table>
<thead>
<tr>
<th>Level</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court</td>
<td>21</td>
<td>0</td>
<td>21</td>
</tr>
<tr>
<td>High Court</td>
<td>419</td>
<td>4</td>
<td>423</td>
</tr>
</tbody>
</table>
Article 10

States parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in preschool, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women.

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.
Prevalence of the Problem

In India, education has historically been available only to the elite. Because power has traditionally been in the hands of men, education too has remained male dominated, leaving out women. After Independence greater attention was paid to a more egalitarian education, and the Indian Constitution brought in free and compulsory education for all Indians up to the age of 14 under the Directive Principles of State policy. Since then, education has also been an important part of India’s Five-Year Plans. The goal of free and compulsory education however, was an ambitious one and practical measures taken to implement it fell far short of what was required. More recently, the Government of India has declared its intention to make education a fundamental human right.

In the first four decades of independent India, educational policies have been more or less gender blind. With the exception of special incentives to girl children, and emphasis on female teachers, educational strategies were essentially indifferent to caste, gender, community and the special problems of first generation learners. They did not cater to the special needs of women in accessing education by addressing socio-cultural factors which are significant in enabling women’s access to education.

The National Policy on Education (1986) declared that all children would be provided free and compulsory education until 14 years of age but did not specify how this would happen. It was therefore not surprising that the success wished for did not materialise. Shortly after this, in 1988, the National Adult Education Programme of 1979 was withdrawn and a shift was made to literacy in place of education. The experience of the literacy campaign showed that the response from women was much more enthusiastic than that from men.

For almost four decades the Government of India and dominant nationalist public opinion was not in favour of accepting external assistance for primary education. The argument put forward was that resources were not a constraint. However, this began to change after the National Policy on Education in 1986 when a number of projects were initiated with foreign assistance. By 1992 the World Bank had emerged as a major player in the educational field. In 1992, when the New Education Policy was revised, it added little to the priorities of the old document, and did as little to implement them.

Women constitute the largest group among the adult non-literate population in India. The magnitude of the problem of illiteracy can be gauged from the absolute number of non-literate women: 200 million out of a total figure of 329 million according to the 1991 Census. Trends in national literacy levels show that the gap between male and female literacy rates persists and is almost a constant. These gaps are further increased in the case of marginalised sections such as scheduled caste and tribal women.

The problem of female illiteracy is exacerbated because of low enrolment and high drop out
rates among women. In large measure this is because of societal attitudes and prejudices about girls and women. On an average, a little more than a third of the number of girls enrolling at the primary stage drop out before completing their primary level education. For these and other reasons the statistics relating to women’s literacy and education are a major cause for concern:

- The literacy rate for women is 39.29 per cent which is almost half that for men (64.13) percent.
- According to the Sixth Annual Survey, the number of children enrolled in primary classes in 1993, was 977.41 lakhs of which girls comprised only 41.3 per cent. The gross enrolment ratio at the primary level (the number of children enrolled in primary schools against the total number of children in the relevant age group) shows that the figure for boys is 100 per cent while for girls it is only 78 per cent.
- The mean years of schooling are only 1.2 for women while the figure for men is 3.5.
- The gross enrolment rate for secondary level shows that for every single girl in secondary schools, there are three boys. It is also striking that less than one fourth of girls enrolled in primary schools actually go to secondary schools. Girls’ access to secondary education is also very poor. Provisional figures of the Department of Education for 1993 show that there are only 55 girls per 100 boys who have enrolled at the secondary level.
- School retention is another serious problem for girl children. On an average a little more than one third of the number of girls enrolling at primary stage drop out before completing primary level, and more than half, (57 per cent) drop out before completing upper primary levels. Of the remaining 43 per cent who reach the higher secondary stage, another 10 per cent drop out before the end of school.

**Government Initiatives**

- The Directive Principles of State Policy of the Indian Constitution (Article 45) urges the State to provide free and compulsory education up to the age of 14. The deadline set for this is long past.
- The National Policy on Education 1986, reiterated this commitment.
- The revised National Policy on Education, 1992, stressed that it was important for the Government to formulate and implement a new Education Policy for the country. The Programme of Action (1992) underlines the need to promote women’s education by focusing on the existing gender disparity in education, particularly the literacy rates and enrolment rates at the elementary level. It articulates the need for ‘education for women’s empowerment’.

**Weaknesses**

- Despite its commitment to free and compulsory education to all children upto 14 years of age, the National Policy on Education gives no concrete guidelines for practical steps to be taken to achieve this goal by the desired deadline, i.e. the year 2000.
- Similarly, although the revised policy and programme of action use the language of the
feminist movement, the strategies outlined in these documents do not reflect the women's agenda. The same lacunae exist in matters related to the critical issues of regional, caste and class disparities.

- Despite the Government's commitment to facilitating the processes of changing the social construction of gender, efforts towards this aim remain grossly inadequate.
- While the Government has been quick to make policies, it has not looked beyond these at discriminatory attitudes leading to low access to schooling etc.

**Recommendations**

- The State must make comprehensive and substantial interventions on all fronts – legislative, administrative, economic, social – to fight the evils of female foeticide and infanticide and atrocities against women.
- The State must launch a vigorous campaign and organise regular gender sensitisation programmes among the politicians, panchayat leaders, the bureaucracy, the police, teachers and others, with the help of the media and NGOs, so as to create a favourable climate for the education of the girl child.
- The State must introduce positive gender discrimination policies in favour of women, such as reservation of jobs for women, so as to encourage female education.
- The State must include the provision of appropriate facilities for the security and special needs of girl children and female teachers as a necessary component of the school system.
- The State must address social evils such as female infanticide and foeticide, child marriage and domestic violence as well as the discrimination experienced by girls in food, health and education. This needs to be done proactively and the State must not hide behind the alibi of personal choice.
- The education curriculum must be region and culture-specific rather than generic. For instance, the science curriculum in rural schools can be constructed from the point of view of livelihoods rather than academic knowledge. The teaching of political science can include cooperative management, panchayati raj and so on.
- There must be localized recruitment of teachers, as well as intensive training inputs for multi-grade teaching.
- The budgetary allocation for education must be increased and the management of resources decentralized.

**References :**

Recurring policy recommendations to enhance girls’ access to education
(from Bridging the Gap Between Intention and Action: The Indian Experience)

- Schools within walking distance, closer to the place of habitation, if necessary, satellite schools for remote hamlets;
- provide child care facilities/creche within school premises;
- escort for girls, if school is at a distance from the village or hamlet;
- introduce flexible school timings and region-specific school calendar;
- provide alternative modes/forms, combine formal with non-formal, condensed courses for dropouts, residential schools (ashram shalas) for special focus groups like nomadic tribes etc.
- more women teachers in rural areas, with residential accommodation;
- expand the pool of women a teachers by lowering qualifications, intensive training (near the place of habitation), provide regular educational support, organize special condensed courses for dropouts who can be trained to work as teachers, provide secure accommodation for outstation teachers etc.
- make curriculum relevant to the lives of poor women who are engaged in a struggle for survival;
- recognize the problem of working children and provide special facilities for them;
- introduce facilities for ‘bridge programmes’ to enable dropout to re-enter the school system;
- provide incentives like uniforms, textbooks, exercise books, attendance scholarships, free bus passes etc.
- involve the community in managing the school through advocacy, mobilization and formation of village education committees with at least 50 per cent women members;
- improve the quality of education, motivate teachers to make learning a pleasurable experience;
- decentralize educational planning and administration, and bring it closer to people so that it reflects the special needs and aspirations of the community;
- address management issues that inhibit the implementation of government policy, such as grievance redressal, administrators’ and teachers unions resistance to flexible timings, school calendar, recruitment of women with lower qualifications from rural areas, recruitment of local youth in remote areas where teacher absenteeism is rampant, appointment of teachers to a specific school, etc.
- mobilize public opinion for primary education and universal literacy in general, and women’s education in particular, advocate for greater political will and administrative commitment. Make it a national mission with time-bound ‘targets’ akin to the National Literacy Mission (NLM) and National Elementary Education Mission (NLEM).
CEDAW Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

   (a) The right to work as an inalienable right of all human beings;

   (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

   (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeship, advanced vocational training and recurrent training;

   (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

   (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

   (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

   (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

   (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

   (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

   (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.
ARTICLE 11: EMPLOYMENT

Prevalence of the Problem
The question of equality in employment cannot be discussed by merely focusing on the workplace. Instead, it is important to step beyond in order to examine the systems and politics that determine and define work, and the division of labour. If this is done, it is possible to examine the right to equality in employment as a body of rights which is indivisible from and interconnected with other basic rights. It is in this context that the following remarks are made.

India adopted its New Economic Policy (NEP) in 1991 and consequently liberalized its economy. In the early stages, there was little substantial evidence to support the hypothesis that this would lead to increased impoverishment of the socially disadvantaged, although a large number of NGOs and women’s groups pointed to this as a certainty. Less than a decade later, there is considerable research evidence to show how women are having to bear increased workloads, the effects this and exploitative work conditions have had on their health, and the increasing precariousness of their livelihoods. The increase in subsidies for cultivation of exportable cash crops has had serious implications for food security and women’s livelihoods. Wastelands are being taken over by the private sector, and women are being deprived of access to common property resources. The public sector, which had grown considerably in the era of a mixed economy (prior to liberalization) is now phasing out. All these developments have implications for workers in general and women workers in particular.

Official claims of benefits to women through policy changes seen as accruing from ‘the spin-offs of liberalisation’ need to be viewed with caution. We need to ask:

- who has benefited?
- what has happened to those without permanent jobs, those who are insecure by virtue of the fact that they are earning less than the minimum wage and have no benefits, have policy changes resulted in pushing women to vulnerable positions leading to destitution?
- have economic policies enhanced the status of women, their safety, their control over income and assets, and their overall health and well being?
- have government interventions done away with systemic inequalities?

Despite some positive changes, gender transformation is a painfully slow process. Women seldom enjoy autonomy to work or otherwise. Decisions about employment, the nature of work, acquiring skills, pursuing education and about marriage and reproduction, both of which have repercussions on female work participation, are mediated for most women by the household and the community.

Some of the specific problems faced by women are:

- Forced eviction and internal displacement as a result of official development priorities and
consequent loss of livelihood. The impoverishment is not material alone but relates also to a loss of skills and precious knowledge.

- Studies have shown that there is a loss of employment opportunities coupled with hardship at the household level, which particularly affects women.

- National Sample Study Organization data suggest that there is a stagnation in the case of principal workers and an increase in the number of women subsidiary workers in rural areas, indicating the gap between those looking for work and those finding it.

- In urban areas, new jobs that have become available offer no security, the new policies of many companies such as moving to tax lucrative or export processing areas, have often meant retrenchment for women workers, many have been forced to join the ranks of the flexible labour force, and they have had little support from male-dominated unions.

- Feminization of some jobs and industries has served as a route to the violation of worker rights of women and of the gender-specific rights that women have.

- Work conditions have become increasingly abusive with women not being allowed to take breaks to use the toilet, or being refused recruitment if they are married or pregnant.

- Studies in many parts of the country show that as a result of men moving out of household activities such as weaving to take up jobs, the burden of these activities is falling on women, and adds to their responsibilities without giving them any corresponding access to markets or control over income.

- Studies have noted that given the essential instability of employment and the irregularity of income, it is unlikely that such conditions will create any firm ground for women to truly challenge prevailing inequalities within the family order as their life energies are mainly engaged in sheer survival.

- The absence of employment and income security affects women’s position both within the home and in the workplace. It also affects women’s food security.

- The globalized context, poverty, inflation and a high rate of unemployment, have forced women into low-paid jobs, long work hours, a great deal of physical drudgery and mental trauma, no security and no time to hope and organize. Their wages are often the only steady income for the family, and are sometimes barely enough for a hand-to-mouth existence.

- National and micro-level data have suggested a gap between women looking for work and finding it; at the same time, research focussing on linkages between health and work also demonstrates how many women drop out of the job market because of poor nutrition and health.

**Government Initiatives**

- There are a number of employment generating schemes such as the Integrated Rural Development Programme (IRDP) and the Jawahar Rojgar Yojana (JRY) which are intended to reach women through a stipulated quota for women beneficiaries.
The Government runs a number of micro-credit programmes for self-employment which are funded heavily by international agencies.

Schemes such as the Development of Women and Children for Rural Areas (DWCRA) and the Development of Women and Children in Urban Areas (DWCUA) are meant to create employment.

The Government has a stated commitment to review ‘protective’ legislation that govern women’s employment.

There are legislations such as the Minimum Wages Act and the Maternity Benefit Act which are meant to safeguard the interests of women.

Weaknesses

Although legislation exists, it is discriminatory in many ways.

The Minimum Wages Act defines what men and women can do and places greater value on men’s work. Similarly the provisions of the Maternity Benefit Act do not apply to women agricultural labourers.

The coverage under employment-generating schemes such as the IRDP and JRY has increasingly been falling short of achieving the quantitative targets that have been set. The schemes are implemented without a qualitative perspective that seeks to address more fundamental issues of women’s control over income. Access of families (that migrate for work) to foodgrains meant for their consumption, through the Public Distribution System is almost absent.

Studies have found that a very small percentage of people benefit from anti-poverty programmes of the Government and very few are even aware of them. This lack of awareness is said to be due to programme non-performance and a near total absense of dissemination of information of these schemes.

The success of schemes like DWCRA depends almost entirely on sympathetic bureaucrats–on its part the Government seems to show a singular lack of interest in making such programmes work.

Often the Government does not recognize women as workers, as was evident in the Women’s Development Programme in Rajasthan when women who worked more than eight hours a day were given less than the minimum wage and were given the status of voluntary workers.

Recommendations

There is an urgent need for a blanket all-sector policy that can confer worker rights to women along with maternity benefits, creche facilities, and old age pension.

The Government must implement the ILO Declaration on Fundamental Principles and Rights at Work. Laws guaranteeing all worker rights must be enforced, without discrepancy between states, and also in the export promotion/processing zones.
ARTICLE 11: EMPLOYMENT

- Women must enjoy equal property and inheritance rights. Patrilineal norms that underscore inheritance and the assetlessness of women not only make women vulnerable and dependent but deny them the leverage that they could use for access to and participation in public life, including as workers in the non-household economy.

- The Government should appoint autonomous review teams to research and document progress on the commitments made at Beijing and at the Social Summit.

- A review of the Minimum Wages Act is necessary to reformulate wage structures for various tasks and industries so as to ensure a living wage that corresponds to inflation and the cost of living.

- Social audits of export processing zones, and export oriented industries need to be legally instituted and commissioned by the Ministry of Labour to individuals with a proven history of commitment to gender equality and labour rights. Such audits need to be mandatory for all industries, including high foreign exchange earners, and should be used for assessing the status of all categories of workers. Mechanisms for workers to be able to meet without management being present should be put in place during such audits in order to avoid victimization of any worker. Correctional programmes based on the findings should be worked out jointly with the management and should follow such audits.

- Schemes for women’s empowerment have to address livelihood issues. For example, when programmes like micro enterprise projects are implemented specifically for women, they often end up reinforcing women’s subordinate position within their households and communities. Micro-enterprise training for women in marketing and other better-paid skills is a necessity.

- Schemes for promoting women’s savings through self-help groups have to be rethought. Micro credit is meaningless if it cannot help in real wage increase.

- There is a need to make information about Government interventions for the poor more transparent and to put mechanisms in place for the dissemination of such information.

- It is necessary to enact legislation that protects the rights of home-based workers and of women workers in the unorganized sector. A revision of minimum wages for the unorganized sector should be immediately put in place. The Government must also pass both the Construction Workers’ Bill and the Agricultural Workers’ Bills.

- The Government must examine the impact of ecologically unsound economic policies. There needs to be an awareness that the policy thrust to exploit natural resources for foreign exchange is causing considerable damage to ecology and livelihoods in some parts of the country (eg Tamil Nadu, Andhra where shrimp cultivation continues despite a Supreme Court order banning it in 1995).

- The Government must increase social spending so that quality changes can be made in the health delivery system, particularly to help relieve the pressure on poor women, and to provide care for the aged, for children and for the ailing.

- The Labour Department must ensure that employers fulfil their responsibility for creating awareness about occupational health, compensation for ailments contracted due to particular types of work, or for accidents at the workplace.
The State must take the responsibility to protect local livelihoods and the environment from abuse of land and forests.

The State must find innovative ways to deliver effective child-care facilities that can address the needs of rural and urban women.

There is a need to evolve policies to eliminate child labour and bonded labour. To this end, research studies need to be encouraged so that some reliable data can be collected.

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There is a need to evolve policies to eliminate child labour and bonded labour. To this end, research studies need to be encouraged so that some reliable data can be collected.

There needs to be an overall reorientation of development strategies so that they can be more sustainable and viable, and the movement of capital needs to be controlled and regulated.

References:

2. Assessment of the impact of SAPs, undertaken by Aastha, an NGO in Rajasthan, Published in April 1998. risks and struggles of women industrial workers in five industries from two cities.
4. Research in the Construction Sector, By Arup Mitra and Swapna Mukhopadyay.
6. Draft paper on Women and Poverty by Martha Pushparani, IWID and NAWO, 1999 for an encapsulation of women's experiences, their lives and work across various industries.
7. Study by Padmini Swaminathan and Jeyarajan in Amabattur Industrial Estate.
11. The National Institute of Nutrition Hyderabad has been involved in a study to explore the linkages between work and health in Hyderabad. On going work at the Centre for Enquiry into Health and Allied Themes (CEHAT) in Tamil Nadu and Maharashtra also focuses on similar linkages.
13. The work of SEWA, Working Women's Forum and Annapurana with home-based workers is extremely well-known. The National Centre for Labour has also been very vocal in demanding that the Construction Worker's Bill and the Agricultural Workers Bill be passed in Parliament.
Article 12

1. 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.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall 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.
ARTICLE 12 : HEALTH

Prevalence of the Problem
The World Health Organisation defines health as “a state of complete physical, mental and social well being and not merely the absence of disease or infirmity”.

In the predominantly patriarchal set up in India, women continue to be in a vulnerable and marginalized state. They get a lesser share in the household distribution of goods and services as compared to men & boys. In terms of distribution of labour, women get a major share of economic, reproductive and family responsibilities. Competing demands on their time and energy and the socialization pattern, women often neglect their own health. As a result, low nutritional status & ill health is common amongst most women in India.

The Human Development Report 1999 ranks India at position number 132 , under the medium human development section. Similarly the Gender development index for India also stands at 132 amongst 174 nations with the GDI ranking at 112. (1997).

Inverse sex ratio and maternal mortality continue to be a cause of concern. Health Policies have not been able to take cognizance of the socio-economic and political root causes of the poor health of women in India.

Major causes of maternal mortality in India are anaemia – related and due to lack of rational management of high risk mothers and those requiring emergency obstetric care. Governmental health care systems are ill equipped; primary health care centres are unable to provide services in rural areas. Access to even these bare minimum services at times is difficult. Further social discriminatory practices like caste factors tend to further marginalise the poor even where health care in concerned.

Serious attention is also required on the issue of women’s mental health which is to be put on par with her physical well being. Mental depression, disorders related to socio-economic, cultural factors like childlessness , physical, sexual & mental abuse, widowhood, desertion, conflicting demands on domestic roles, work pressures and trauma related disorders require immediate attention of the government.

A women’s health therefore needs a holistic approach in an inter-related manner. It should cover the whole life cycle needs of women in differing and diverse situations, requiring specialized inputs.

On the population control and family planning aspect, it has to be noted with consternation that policies are all geared towards targeting women. Contraceptive experimentation targets women at large eg. older generation oral contraceptives, IUCD, laproscopy, new ones like Depo provera, Net En and even those that are still under research like Quinacrine, RU 486 , Norplant and other anti fertility vaccines.
ARTICLE : 12 HEALTH

These policies have reinforced the unequal power relations that exist in our country and once again have discriminated and pushed back women into positions where they lack power and have no choices. The concern for reproductive rights for women needs to be critically examined and set in the right perspective; making gender equity and equality the main consideration. Another disturbing trend that is spreading fast in rural and urban centres is the high rate of ‘female foeticide’. An estimate made by NGOs working on health puts it at 2 million annually; the Indian Medical Association however estimates it much higher.

These discriminatory practices over basic right to be born is going to further tilt the sex ratio and create a demographic fundamentalism that could imbalance the natural population patterns.

Government Initiatives

- The Government of India is signatory to the Alma Ata Declaration of 1973 and thus committed to the target of achieving ‘Health for all by 2000 AD’.

- At the ICPD (1994 Cairo), India was committed to the goals of achieving health for all by 2000 AD & affirmative policy/actions in that direction.

- In 1983, the GOI released the National Health Policy reiterating its earlier resolve for Health for All by 2000 (till this point there was no formal Health Policy).

- The policy set out laudable intentions of establishing stronger primary health infrastructure for primary health care in the country. Other priority areas were a) close co-ordination of health-related services b) nutrition, drinking water & sanitation active participation of voluntary / NGO sector c) provisions of essential drugs & vaccines d) qualitative improvement of health & family planning services e) adequate training of health personnel f) medical research aimed at common health problems.

- Five Year Plans had varied focus on the health sector
  a) First Five Year Plan 1956-61 focussed on family plans women’s health & welfare too received attention.

  b) Second five year plan (1956-61) delineated linkage between population and economic development. Sterilization services were enhanced & 100% central assistance offered. Mahila Mandal (women’s groups) were formed at grassroots level to ensure implementation at village level.

  c) Third Five Year Plan (1961-66) in this period a new department on family planning was created under the Health Ministry. Target approach to family planning was emphasized and mother & child health programmes suffered adversely.

  d) Fourth Five Year Plan (1969-74) Mother and Child Health services were put on the right track & improvement measures indicated. The Medical Termination of Pregnancy Act 1971 was passed to reduce maternal deaths due to unsafe abortions.
e) Fifth Five Year Plan (1974-79) saw the recognition that development is the best contraceptive and despite the coercive acts of sterilization during the 'emergency' period in the country, the shift from welfare to 'development' received a fillip.

f) Sixth Five Year Plan (1980-85)
Target of primary health centres was actively pursued (1 PCH for 30,000 population, 1 sub center for 5000 population; 1 for 3000 tribal & hilly populations) Multidisciplinary approach was adopted and the thrust was to link health, education and employment.

g) Seventh Five Year Plan (1985-90).
Universal immunization was introduced, beneficiary oriented programmes were introduced, and women's development programmes continued.

h) Eighth Five Year Plan (1992-97)
Target approach to FP continued, safe motherhood and child survival brought under one umbrella. After 1996 the target approach was abandoned and implementation of ICPD (1994) Reproductive & Child Health programmes initiated around 1997. A shift vis-à-vis 'women'; government geared its programmes towards empowerment of women.

i) Ninth Five Year Plan (1997-2000), reduction in population growth was a top priority, factors requiring attention were 1) reproduction age group 2) high fertility due to unmet contraceptive needs.

Sixteen years after the 1983 National Health Policy was made, a Draft Health Policy has been drawn up in 1999 by the Ministry of Health & Family Welfare, GOI.

It focuses on eighteen areas as requiring attention under its purview.

- Health care Infrastructure
- Environmental Health and Sanitation.
- Communicable Diseases.
- Control and Prevention of Non Communicable Diseases and Emphasis on Occupational Health.
- Drug Policy and Prescription Practice.
- Prevention of Food Adulteration.
- Trauma and Emergency Services.
- Inter sectoral co-ordination.
- Health care for special groups.
- System support for Health Services.
- Private Health Sector.
ARTICLE : 12 HEALTH

- Medical Education
- Health Insurance
- Medical Industry
- Medical Research
- Priorities for Health Promotion in the 21st Century.
- Policy on Indian systems of Medicine and Homeopathy.
- Short and Medium Term Goals under the Health Policy 1999.

Weaknesses

- The target for establishing primary health care centres have statedly been achieved as per Sixth & Seventh Five Year Plans. Studies reveal that these infrastructures are under utilized due to poor hospital facilities, inadequate supplies of necessary medicines, poor facility in terms of equipments, personnel.

- There is no community participation or involvement under the Information, Education and Communication (IEC) strategy, which were geared towards quality of life issues responsible parenthood and dissemination of other useful health related information.

- The mainstreaming of practitioners of indigenous systems of medicine has not taken place fully.

- Health priorities are still not directed by ground realities but are subject to factors extraneous to the prevailing health coverage of the people.

- Globalisation & its accompanying Structural Adjustment Programmes have affected health priorities in the country. The trend needs to be reversed and review & assessment made to reset our health priorities of the people.

- The State recognises women’s health issues only with the onset of pregnancy and even that is inadequate given the large number of maternal deaths due to difficult pregnancies, anaemia, the mother’s age, births occurring too soon, and too close to each other.

- About 30 per cent of female mortality in the reproductive age group is due to communicable diseases.

- A World Bank study found in 1996 that a very high percentage of maternal mortality was directly linked to anaemia. It is a truism that families give preference to male health problems rather than to women’s health problems. Households routinely spend less on medical attention for ailing women than on men.

- Research studies have consistently shown how the girl child suffers discrimination in terms of nutrition, education and medical care. Early marriage and child bearing have an adverse effect on her health status.

- There are continuing biases in Government programmes and policies relating to women’s health. Several decades of concerted gender-unequal programming has led to some 99 percent female sterilization as opposed to a merely one percent of male sterilization. Similar
biases show up in the lack of comprehensive, gender-sensitive perceptions on health, inadequate budgets, the lack of adequate health centres or transport in rural areas to provide access for women.

- The target free approach in programmes for contraceptive delivery and the Reproductive and child Health programme introduced in 1997 have not helped because of weak linkages which are evident in the growing Infant Mortality Rates and Maternal Mortality Rates all over India.
- There is no recognition that the health of Indian women is part of a development continuum which spans literacy and education, economic development, malnutrition, lack of access to referrals, lack of autonomy in decision making about choice of hospitals, doctors etc.
- The Indian health care system is dominated by a larger private sector concentrating on curative health care. Families in poverty tend to opt for private health care services in the place of public health to ensure they get quality services.

**Recommendations**

- Gender sensitization training for health workers.
- The Bhore committee has emphasized the need for holistic and integrated approach to health services. This has not been done at the policy implementation level.
- Enhanced and decentralized drugs and other medical supplies to be made available at taluka (district & panchayat level).
- Involvement of panchyats at village level into health services in PHC.
- The policy fails to look at the grave implication on women’s health vis-à-vis occupational health hazard especially where they relate/affect reproductive health of women.
- 1999 Draft Health Policy recognises that nervous disorders constitute the highest burden of disease and they affect women predominantly.
- A sharply focussed social and medical audit needs to be done to ascertain why women are victims of mental disorders & psychological depression on such a large scale. Preventive care here should be as important as curative remedies.
- Under ‘Health Care for special groups’, the governmental appears oblivious of the large scale illegal abortions being conducted to eliminate female foetus. A review needs to be made of the pre-matal Diagnostic Techniques (PNDT) Act 1994 and its implementation by medical practitioners. Decline in female sex ratio needs to checked.
- Larger resource allocation in the health budget needs to be made for investment on women’s health.
- The 1999 Draft Health Policy under its chapter II makes a laudable mention of seeking voluntary sector interaction on policy implementation in order to take note of mid-term correctives. This needs to be seriously taken forward & systematically translated into action.
ARTICLE : 12 HEALTH

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CEDAW

Article 16

States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations in particular and shall ensure on a basis of equality of men and women:

(i) the equal rights to enter into marriage

(j) the equal right to freely choose a spouse and to enter into this marriage only with their free and full consent.

(k) The equal rights and responsibilities during marriage and its dissolution.

(l) The equal rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children, in all cases the interests of the children will be paramount.

(m) The equal rights to decide freely and responsibly on the number and the spacing of their children, and to have access to the information, education and means to be able to exercise these rights.

(n) The equal rights and responsibilities with regard to guardianship, wardship, trusteeship, and adoption of children, or similar institutions where these concepts exist in national legislation, in all cases the interests of the children will be paramount.

(o) The equal personal rights as husband and wife, including the right to choose a family name, a profession and an occupation.

(p) The equal rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect and all necessary action, including legislation shall be taken to specify a minimum age of marriage and to make the registration of marriages compulsory.
ARTICLE 16 : MARRIAGE and FAMILY RELATIONS

Prevalence of the Problem
Theoretically, Indian women are guaranteed equality at par with men in the Constitution of the country. In 1955 a number of laws were enacted which guaranteed certain rights to Hindu women. These were:
- the Hindu Succession Act 1955
- the Hindu Minority and Maintenance Act
- the Hindu Adoption and Maintenance Act
- the Hindu Marriage Act

While not ending gender discrimination, these acts did succeed in granting some rights to Hindu women. Other communities, however, were left out of this process of reform. For example, the State used the argument that it was too early to reform Muslim law because the Muslims were still recovering from the Partition of the country.

Currently, India follows a plural system of laws. Some are religion-based while others are based on customary practices and usage, according to Article 13 of the Constitution, the four major communities follow their religion-based laws, with some regional disparities. The four major systems are:
- the Hindu Code
- the Muslim Personal Law (this is the only uncodified law for the time being in force, in addition to various customary laws)
- Christian law, as codified by the government from time to time
- Parsi law, as codified by the government from time to time.

Some of the problems that attach to this system are as follows:
- Laws that secure rights on the basis of religious identity cannot claim to be guided by a normative standard of human rights. This is especially significant for women because certain critical rights for women, for example the right to leave an abusive relationship, the right to own property, etc., all fall within the ambit of personal law.
- The State is thus clearly unwilling to engage in law reform and to create enabling conditions in which women may demand rights because in order to do this it would have to engage with the cultural and traditional practices of its people.
- The argument of “non-interference” in the personal domain is used in a very ambivalent way and it is women who suffer as a result.
- Currently, all the recommendations of the National Commission on Women on the subject of domestic violence, matrimonial property etc have been rejected by the Government on the basis that all such reform must wait until the formulation of a Uniform Civil Code.
ARTICLE 16: MARRIAGE

• This pegging of all reform on the creation of a Uniform Civil Code clearly negates the possibility of ensuring women’s rights as the issue of identity is not limited to the minority communities alone.

• The Reform Bill for the Indian Divorce Act has been pending with the Minority Commission for a considerable period of time. There have been various petitions challenging the discriminatory provisions of the Indian Divorce Act.

• Several of these actions show that the State does not have the political commitment to address these problems else it would not hide behind the banner of non-interference, especially as it has “interfered” in personal affairs on numerous occasions.

• It is not compulsory in India to register marriages. The lack of registration leads to a situation in which it is difficult to prove the marriage and decide the rights flowing from it. The State’s inability to bring in registration on the plea that there are multitudes of people and many are not literate show once again its lack of political will in this regard.

• The Child Marriage Restraint Act of 1976 criminalises the marriage of any woman before the age of 18 to any man before the age of 21. However, the punishment is minor and the marriage itself is not void ab initio, but can be annulled if it has not been consummated, and if it has, the girl retains the right to annul it within a year of having attained majority.

• The law against rape is similarly ambivalent especially in the matter of rape of minors.

• Until 1983 there was no law on domestic violence. The anti dowry act was amended and the definition of dowry broadened in 1986. Later, in pursuance of the Act, two major amendments were introduced to the Indian Penal Code. These are Section 498A and Section 340B. With the introduction of 498A, inter-spousal abuse and violence against married women by their in-laws was brought under the purview of criminal law. However, a negative fallout of the attention on dowry has been a refusal to respond to domestic violence which is not related to dowry demands. This makes for major gaps in information on the situation of domestic violence.

• In general, although the crime of dowry is a cognisable offence, and is non-bailable, the system of investigation and the structures of reporting leave a great deal to be desired.

• Where custody is concerned, the law still accords legal guardianship to the father and this applies to all people. Women’s right to custody also varies according to the community to which they belong. While legal adoption of children is only available to the Hindu community, other communities have the right to become guardians of their children.

• Few women have the freedom to assert their reproductive rights and there is no law that grants or protects these rights.

• Under Section 125 of the Criminal Procedure Code, women have the right to maintenance maintained. Muslim women, however, no longer come under its purview, as a result of the enacting of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

• Family Courts, set up to deal with problems of home and family, tend to focus on saving the family and not on ensuring the rights of women. Most often, reconciliation attempts initiated by family courts are negotiations for a better fiscal bargain.
Government Initiatives

- In 1985 the government created the Department for Women and Child Development within the Ministry of Human Resource Development. The Department’s mandate is to formulate plans and policies, to enact and amend legislation, to guide and coordinate the efforts of Government and non-governmental organizations who work with women and children.

- By the National Commission of Women Act of 1990 the Government set up a National Commission for Women whose mandate is to safeguard the rights and interests of women, and to do so by running legal awareness programmes, looking into complaints regarding the violation of women’s rights, examining the non-implementation of laws as well as the non-compliance of policy guidelines, providing relief to women by taking up their concerns with the appropriate authorities, conducting research, undertaking investigations etc.

- The National Commission for Women also has the powers of a civil court when investigating any case provided for in the Act.

- In 1953 the Government had set up the Central Social Welfare Board whose mandate is to run welfare activities for women and to focus on areas such as empowerment of women through education, as well as their social and economic empowerment. Apart from the Central Social Welfare Board, the National Institute of Public Cooperation and Child Development (NIPPCD), an autonomous body, works under the aegis of the DWCD, with the objective of looking at social and child development.

- The Lok Sabha (the lower house of Parliament) constituted a Committee on the Empowerment of Women in March 1997. Thus far, this Committee has met twice to take oral evidence from the Secretary, Women and Child Development, on the subject of development schemes for rural women.

- Apart from the above, there are a number of state-level schemes and initiatives as well.

Weaknesses

- Many State initiatives do not address women’s issues while purporting to do so. Many policies are put in place without consultation with women.

- The training programmes put in place by the State are both inadequate and badly thought out and need to be looked at again to bring them in line with what women need.

- The beneficiary approach of the State is not in tune with reality. Instead of following the approach of human rights, the State has continued to look at women as beneficiaries of State largesse.

- Various structures that have been put in place, ostensibly to help women, such as the Legal Aid Boards, or Family Courts, do not have the interests of women at heart and the counselling they offer may often worsen situations. Even in cases where there is serious domestic violence involved, women are mostly counselled to compromise and return for the sake of their children, or because they will have a hard time surviving without the help of a man.

- There is no transparency in the functioning of the State.
Many of the laws need reform or rethinking and the State’s argument that it cannot take action without the sanction or initiative of the community has been proved to be false.

**Recommendations**

- There is a critical need for the State to listen to women’s experiences and to learn what needs to be put in place to address women’s issues. The State’s training initiatives, for example, are ad hoc and not based on the felt needs of women.
- The State needs to examine the approach it takes in providing for women. The beneficiary approach is no longer valid or sufficient.
- The State needs to assess certain structures which have been created to assist marginalized groups in accessing justice (e.g. the Legal Aid Board).
- The State must make its functioning transparent and allow free and easy access to information, without which it becomes difficult for the public to monitor rights violations. In the current scenario it becomes impossible for people to access their rights when they have no knowledge of them.
- The State must undertake a media campaign against child marriage.
- There must be an enforcement mechanism for compulsory registration of marriages within a specified period.
- The Government must remove its declaration to Article 16(1) and (2).
- There must be transparent and effective implementation of the Commission of Sati Prevention Act of 1987.
- There must be a simplification of procedures under the Special Marriages Act which can facilitate inter-caste and community marriages.
- The State must upgrade primary health centres to take medico-legal cases of domestic violence and establish a basic screening protocol.
- There must be strong and unambiguous legislation on domestic violence.
- The State must implement its laws such as the Commission of Sati Prevention Act.
DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN  
United Nations General Assembly Resolution 48/104, 20 December 1993

The General Assembly,

Recognizing the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings.

Recognizing that effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women would contribute to the elimination of violence against women and that the Declaration on the Elimination of Violence against Women, set forth in the present resolution, will strengthen and complement that process.

Concerned that violence against women is an obstacle to the achievement of equality, development and peace, as recognized in the Nairobi Forward-looking Strategies for the Advancement of Women, in which a set of measures to combat violence against women was recommended, and to the full implementation of the Convention on the Elimination of All Forms of Discrimination against Women.

Affirming that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women.

Recognizing that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.

Concerned that some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict, are especially vulnerable to violence.

Article 1
For the purposes of this Declaration, the term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Article 2
Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Article 3
Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.
GENERAL RECOMMENDATION 19 (ELEVENTH SESSION, 1992) : VIOLENCE AGAINST WOMEN

Background
1. Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.

2. In 1989, the Committee recommended that States should include in their reports information on violence and on measures introduced to deal with it (General recommendation 12, eighth session).

3. At its tenth session in 1991, it was decided to allocate part of the eleventh session to a discussion and study on article 6 and other articles of the Convention relating to violence towards women and the sexual harassment and exploitation of women. That subject was chosen in anticipation of the 1993 World Conference on Human Rights, convened by the General Assembly by its resolution 45/155 of 18 December 1990.

4. The Committee concluded that not all the reports of States parties adequately reflected the close connection between discrimination against women, gender-based violence, and violations of human rights and fundamental freedoms. The full implementation of the Convention required States to take positive measures to eliminate all forms of violence against women.
A. Violence against Women

According to recorded data relating to crimes against women, the reported incidences of violence reveal "soaring crimes against women... from 68,317 in 1990 to 106,723 in 1996 registering an increase of 56.2 per cent or an annual growth of 7.7 per cent." This is only the tip of the iceberg as the majority of cases go unreported. People, especially women, are reluctant to report cases because of fear of police inaction, or threats on the part of the offenders, scepticism about court proceedings and so on. In recent years, women activists taking up cases have also increasingly been threatened with violence and several have actually had to face it as well. In all these instances, the police have remained indifferent, or have actively colluded with the offenders. Some of the areas in which violence has been increasing are:

- **Sexual harassment:** According to recorded data from the National Crime Records Bureau, cases of sexual harassment are increasing with an annual growth of 5.9 per cent. Sexual harassment ranges from teasing and molestation to violent sexual abuse. In many areas powerful and upper caste groups often target poor Dalit women. Sexual abuse and other forms of violence are often used to inflict political 'lessons' and to crush dissent. Criminal law does not use the term sexual harassment but speaks instead of outraging the 'modesty of a woman'. Recently the Supreme Court has laid down certain guidelines as preventive measures against sexual harassment and has directed employers to put certain mechanisms in place.

- **Rape:** The annual growth rate of cases of reported rapes is 4.8 per cent. There has been a steep increase in rape cases by 33 per cent from 9518 to 12,661 between 1990 and 1996. Of all the criminal offences, rape has the least rate of conviction. Women are often threatened with dire consequences if they decide to complain about rape. In addition, the police remain apathetic, and often the woman's own family does not support her if she wishes to report. Fear of the stigma attached to rape also keeps many women from reporting. Within the law, the existing definition of rape is narrow and needs to be looked at again. Marital rape is excluded from the definition except when it is committed on a girl below 12 years of age. In addition, although the law prohibits evidence on the antecedents of the accused, it applies a different yardstick for women when such antecedents are often brought in to prove cases against the woman. Rape is punishable under law with a minimum period of seven years but courts have the power to reduce sentences which they usually do.

- **Dowry and Dowry deaths:** The practice of dowry continues to have social sanction and is increasing with consumerism. It has percolated to all levels of society and it is now an unfortunate truth that most communities in India, irrespective of caste or religion, practice dowry in some form or the other. While dowry is linked to the economic rights of women, it is treated as a crime and there is a special legislation to deal with it. There is a great deal that is lacking in this legislation. According to the National Crime Records Bureau, while
the proportion of dowry deaths in relation to the total number of crimes has declined from 7.2 per cent to 4.9 per cent over the period 1990-1996, the number of dowry deaths has increased from 4836 to 5817 in 1993. Since then a declining trend has set in and the annual growth rate of 1.3 per cent in case of dowry deaths is the least among all crimes against women. This is perhaps due to a greater awareness generated by women's groups, although in dowry cases, as in cases of rape and sexual harassment, the police and courts continue to remain indifferent.

- **Domestic violence:** It is a truism to say that a large number of women in families are subjected to domestic violence. There is no separate legislation that relates to domestic violence. Everyday violence is not taken note of in the law. Where domestic violence is concerned the same constraints work against women as do in cases of rape and dowry, but more so. Because the problems relate to the home women are more than ever reluctant to report these. In most cases they use the law only as a very last resort. Women caught up in violent family situations often have no place to go. There is no law that protects her right to stay in the matrimonial home or offer her shelter. Courts do not give restraining orders against violent spouses even in situations where the wife is the owner of the matrimonial home. The general attitude is that the family must be protected at all costs. Domestic violence against women seems to be increasing with cruelty by husbands recording the highest number of cases accounting for 28.6 per cent of total crimes in 1996. These have been rising at an alarmingly high rate of 14.6 per cent per annum.

- The following recommendation emerging from extensive research to address domestic violence in rural areas.
  a) gender sensitive education directed at males.
  b) Formation of women’s groups to minimise isolation of women and increase their power individually / collectively.
  c) Mass media to promote gender equity and project women in the right perspective.

- Other comprehensive measures to tackle domestic violence would be
  a) a comprehensive law on domestic violence (several draft bills by women’s groups/NCW/legal organisations) are under debate / discussion.
  b) Improve women’s economic capacity.
  c) Gender sensitisation programmes to be enhanced and expanded.
  d) Counselling strategies to address the batterer as important as addressing victim.

- **Female infanticide and foeticide:** Female infanticide is considered to be prevalent in ten states and was formally acknowledged by the Government of Tamil Nadu in 1992. The causes vary from poor economic status to the practice of dowry but the underlying feature is the preference of sons over daughters. A major area for concern is the adverse and still-declining sex ratio. Female Foeticide is a new facet of the old problem. Amniocentesis and sonography are often used to determine the sex of the unborn child. The information obtained is extensively misused to do away with female foetuses. Considerable agitation against this led to the enacting of the Prenatal Diagnostic Techniques Regulation and Prevention of Misuse Act in 1994 which prohibits clinics from revealing the sex of the foetus.
• By a rough estimation non-governmental agencies/organisations put. The figure (annually) of female foeticide in India at 20 lakhs (2 million), the Indian Medical Association puts the figure at 50 lakhs, statistics however are difficult to estimate due to the clandestine & unreacorded nature of the modus operandi of the issue.

• Sex ratio of females have seen a downward decline.

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<tr>
<th>Sex ratio-1991 (females per 1000 males in population)</th>
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<tr>
<td>Total : 927</td>
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<tr>
<td>Rural : 941</td>
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<tr>
<td>Urban : 893</td>
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<th>Steady decline in sex ratio noted over a century in India.</th>
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<th>States /UTs with low sex ratio (less than 900): 1991 census</th>
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<td>Chandigarh 793 UP 882</td>
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<td>Andaman &amp; Nicobar 820 Punjab 888</td>
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<td>Delhi 830 Sikkim 888</td>
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<td>Arunachal Pradesh 861 Nagaland 89</td>
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<td>Harayana 874</td>
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UNICEF study highlighted that only in 5 states in India, no cases of either female foeticide or female infanticide have been reported (1994-1996). They are as follows: Sikkim, Nagaland, Meghalaya, Mizoram and Jammu & Kashmir

WHAT DOES IT MEAN TO BE BORN A GIRL CHILD IN INDIA ?

• 32.8 million ‘missing girls’ in 1991 census alone.

• UNDP Report says India has 10 percent fewer women than would be expected in demographic terms.

• Despite being biologically stronger than boys, almost 3,00,000 more girls die every year.

• Every sixth female death in India is specifically due to gender discrimination.

• Of the over 12 million girls born in our country every year, 25 percent do not survive to see their 15th birthday.

• Child mortality in 0-4 age group is 43 percent higher for females (at 42 per 1000) than for males (29 per 1000).
The 1991 (last population census in India) shows the ratio decline at 927 females per 1000 males.

- There is a law that exists on norms of conducting pre-natal sex determination (PNDT).
  
  Pre natal Diagnostic Techniques Act 1994 (PNDT). Stringent action by law enforcing bodies is called for to put a check on the ever increasing incidences of female foeticide.

- Strict monitoring of PNDT by a regulatory medical authority which should be set up at all state levels.

- Female foeticide is the worst form of discrimination against the female gender and is deeply souted in social/cultural notions of preferences for a male child.

- Addressing this requires concerted efforts of the government and the NGO sector and a direct link up with the broader women’s movement against all kinds of discrimination against women.

- ** Trafficking of women:** The Prevention of Immoral Trafficking Act confuses the issues of trafficking and prostitution. The legislation does not take note of routes, of the criminal nexus and how this can be addressed. Trafficking is part of a well organized criminal network that can, at times, also include family members. It has cross-border implications with many women from neighbouring countries being smuggled into the country and being forced to work in brothels.

- **Institutionalization of women:** A large number of women are being kept in prisons, protective homes, corrective homes and hospitals under court orders. Custody in the case of women is punitive, and protective, or curative. As law functionaries are essentially conservative, they use the concept of protective custody against the interests of women. Rape victims often find themselves in protective custody ostensibly for ‘their own safety’. A sensitive approach is needed in this regard.

- **Sati:** There have been two recorded cases of Sati according to the National Crime Records Bureau. Even though the crime of Sati was outlawed in the last century it seems to have acquired considerable public sanction the present this time. In 1987 the Government enacted a law against Sati called the Sati Prevention Act, which sought to punish the woman for her intention to commit suicide.
Conclusion: Violence against women cannot only be dealt with by resorting to criminal law. It has to be seen in the context of denial of rights to women in all spheres. While the Indian Constitution and certain laws are based on models of substantive equality, the actual implementation of the laws leaves much to be desired. In what follows we look in detail at four particular areas of violence against women: caste based violence, the violence of armed and political conflict, violence within marriage and the violence of trafficking.

B. Caste based violence on Women

Prevalence of the Problem

The caste system in India is probably the largest surviving social hierarchical system in existence. The worst victims of this racist notion of purity of castes are the dalits- the untouchables. Dalit communities in India have long experienced discrimination and violence based on their status in the caste hierarchy. In our opinion the caste system is the other side of the coin of racial discrimination. The country has around 260 million dalits who are living on the periphery of our society because they are treated as “untouchables” and impure by birth.

Dalit women who constitute 16.3% of the total female population in India are particularly disenfranchised because of the discrimination they suffer on the basis of caste, class, and gender. Thrice alienated in this manner from the mainstream of public life, they are further marginalised by poverty, lack of education, lack of political participation and lack of any control over land resources. This is despite the fact that 85% of the total work force in the rural labour sector consists of dalit women.

The misery of their existence is further compounded when any move made by the dalit community and more specifically by dalit women to challenge their inequality is met with physical violence of the worst order - their houses and villages are burnt down, their women are paraded naked, their crops are burnt down and ruined, and wilful damage to their property is done so that they may never again raise their voices.

In a recent case in south India (on 27.9.1999), a dalit woman by name Shanthi was dragged and pinned down by a group of 15 men around midnight and both her hands were chopped off in front of her family members. This was done because she had refused to bed with a man of the upper caste in her village.

Hundreds of similar atrocities on dalit women are part of their daily life. This goes to establish the fact that “sexual abuse” and subjugation of dalit women has a specificity of its own; it has acquired an institutionalised form. by which subjugation can be perpetrated. Physical violation of dalit women is done in a manner that it shames and breaks the honour of their men and community. Sexual abuse and assault is a political weapon that is used to retain the status quo of the caste system.

Violence against Dalits has been on the rise: between 1981 and 1991 crimes against scheduled castes went up by 23-24 per cent; in just two years (1994-96) the number of registered cases of crimes against scheduled castes (as Dalits are known in government parlance) was as high as 93,349. 28,114 of these were cases of rape.
Demographically Dalit women constitute 16.3% of the total female population in the country. The sex ratio stands at 922 dalit females per 1000 dalit male population. Whereas in the general female population the sex ratio is 944 females to every 1000 male population. (Country report –UNDP, 1997).

Dalit women are further placed low on the intake of nutrient diet and suffer from poor health standards due to the hard labour that they are subjected to which only adds to their deteriorating health conditions. Majority of dalit women enter the labour market at a very young age – almost 100% enter when they are under 20 years of age. Most of them are employed in the unorganised sector and therefore not protected by any labour law that is enforceable.

The incidence of poverty among Dalits is high at 44.7 per cent. Dalit children lack opportunities for education. As many as 77 per cent Dalits work in the primary agricultural sector of the economy. Despite this, they own only 10.4 per cent of the land in the country. Their representation in class I and II in central government services is a mere 2.81 per cent (in 1994).

Many Dalits work as bonded labour in slave-like conditions in order to pay off debts which are impossible to pay off because of the punitive interest rates; often they are forced to sell women into prostitution to earn money to pay off such debts.

**Government Initiatives**

- Article 17 of the Indian Constitution forbids the practice of untouchability.

- Article 38 (1) of the Directive Principles of State Policy enjoins the State to promote a social order wherein social justice shall inform all institutions of national life. Article 46 obligates the State to particularly protect Scheduled Castes and Scheduled Tribes from injustice.

- The State has enacted two legislations: the Untouchability (Offences) Act, 1955 (renotified as the Protection of Civil Rights Act, 1955) and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

- At the international level, the International Convention on the Elimination of All Forms of Racial Discrimination, 1965, is applicable to India. Article 6 of this Convention provides that State parties shall “assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other state institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.”

**Weaknesses**

- Although theoretically untouchability has been abolished, in practice it continues to persist because of the social sanction given to it, and because of a lack of education.

- The State’s performance in protecting the rights of Dalits has been dismal resulting in Dalits being targets of violence and attack by upper castes and classes.
• While the State may have enacted different kinds of legislation, it has largely remained on paper and has not filtered down to the executive arms of the State such as the police, lawyers, the judiciary.

• Apart from the legislations in place, there are a number of commissions, special courts, special departments and programmes in place but all of these lack enforcement mechanisms and most people within them lack the will and interest to put such enforcement mechanisms in place. Sometimes this seems like wilful neglect.

Recommendations

The conditions of the lives of Dalit women are an urgent indication that they need to be made the special focus of attention. The following recommendations are therefore specifically geared to this:

• Dalit women must be recognised as a distinct social group rather than being subsumed under the general category of women.

• The State must make specific data on Dalit women available in Census reports, status reports as well as in progress and impact reports.

• There must be special and distinct provisions for Dalit women in planning and programming, in the allocation of finances, and in the distribution of reservation facilities in education and employment.

• There should be a national perspective plan for the development and mainstreaming of Dalit women for equality and justice.

• There should be a national labour policy for the unorganised sector, a large percentage of whom are Dalit women.

• The National Commission for Women, the National Human Rights Commission, the Scheduled Caste and Scheduled Tribes Commission, the Safai Karamchari Commission must be mandated to look specifically at Dalit women's issues.

• A statutory body should be constituted at the national and state levels to monitor atrocities against Dalit women.

• A White Paper must be presented periodically in Parliament and in state assemblies on the status of Dalit women.

• Police officials must be held responsible for crimes and atrocities committed against Dalit women and effective steps must be taken against them for dereliction of duty.

• The right to live with dignity and equality. Dalit women should have the right to live with dignity and this need must be recognized as an integral and productive part of society.

• The freedom of religion. Because they are classified as scheduled castes, Dalit women come under the fold of the Hindu religion. There have been times when, in order to escape discrimination and the low status attached to being an untouchable, Dalit women have opted to convert to Christianity or Islam or other religions. The policy to suspend all protectionism and welfare provisions once someone converts to Christianity or Islam
undercuts the principle of religious freedom, and can sometimes also lead to an identity crisis. The right to practice whichever religion they believe in, or to convert to another, should be a basic right for everyone, and especially for Dalits.

- The right to literacy and livelihood skills. Dalit women particularly need to have livelihood and marketable skills and access to free and compulsory education.

- The right to land and access to resources. Implementation of land reforms and land distribution is crucial to lay a base for protection and promotion of Dalit women’s rights and concerns. Five acres of cultivable land must be distributed to each Dalit household and this should be registered in the name of Dalit women.

- Representation and leadership. Dalit women must have representation in statutory bodies and in social movements. It is incumbent on statutory bodies, NGOs and government to provide this.

- Enforcement mechanisms must be put in place to make State instruments and legislation effective. In addition the State must take steps to promote the culture of human rights, to educate its functionaries and people in general about the human rights of Dalits and particularly of Dalit women. Legal education and legal clinics should be put in place in order to safeguard the rights of Dalit women.

- India must accede to the fact that the state of schedule castes in India falls within the scope of racial discrimination as defined in the Convention on The Elimination of Racial Discrimination and that reporting needs to be done at the earliest since the previous report was made 10 years back and it does not provide concrete information.

### Dalit Women in Selected Government Services (1987)

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</table>

**NA = Data Not Available**

Sources: Respective Ministries and Departments, quoted from Chauhan S. Poonam, ‘Lenghtening Shadows - Status of Women in India’, Manak Publications, Delhi, p.118,1996
C. Women In Armed Conflict Situations

The text of CEDAW does not have a specific article on women in armed conflict but the entire spirit and context of the Convention in effect, addresses the structural causes of violence and looks at discrimination in different spheres of women’s lives. Articles 1, 2, 3, 4(1), 5(a&b), 7 (a,b,c), 8, 12(1&2), 14(1&2), 15 (1,2,3) and 16 (1) f& g of the Convention and General Recommendations 12 and 19 are applicable to the situation.

Prevalence of the Problem

Situations of armed conflict are an issue of increasing concern in India. It is no longer confined to the international borders of the country but has taken different forms internally as well, ranging from ethnic strife, communal hatred, attacks on marginalized communities and minorities, religious fundamentalism, extremism, class and caste conflict and State repression. In the North East region, comprising of seven states, a ‘low intensity war’ which includes various forms of unrest, upheaval, conflict and violence has continued for decades.

Although conflict takes different forms in different parts of the country, one of the predominant forms it has taken is that of confrontation between the State and the community or representatives of a community, especially those fighting for the right to self determination. One such example is the state of Jammu and Kashmir. Another form of armed conflict is when communities or marginalized groups are pitted against each other, fighting to claim land rights and ethnic identities that are already under some kind of threat. Both the above forms can be found in the North East region of India. Through the decades, the conflict in the NE region has become extremely complex and today there is in addition to the original grievances, the power politics and mercenary gains of vested interest groups, both state and non state, who are not open to any kind of conflict resolution.

Worldwide today there is evidence of the increasing impact on civilians from armed conflict. Entire communities have been targeted and women and children form the major part of these nameless numbers. Killings, disappearances, clashes, displacement, refugeeism, loss of home and livelihood, forced migration have become commonplace as a result of such ongoing conflict. While both men and women are affected by conflict, the impact on women is often especially complex.

Because of their marginalized status and their sex, women become particular kinds of targets in times of conflict. They are subjected to particular sorts of violence, especially rape and forced impregnation and this takes place from within and outside the communities. They are often forced to become sexual slaves; their children are taken away from them; often women pull children, particularly girls, out of school for fear of their lives. Throughout this and other kinds of violence, the State and men of the community often remain apathetic. The State often targets women and uses violence against them as a means of suppression; the community is generally apathetic to the problems faced by women.

Women suffer in such conflict situations not only because of their own status as women but also because they are (a) relatives of armed activists, a role which pushes them to take initiatives they might not otherwise take; (b) relatives of armed and security forces of the State; (c) themselves militants or combatants (d) victims of sexual and physical
abuse; (e) as shelter providers, a role they might assume voluntarily or be coerced into and (f) as peace negotiators, a role they are seldom allowed or asked to perform, but one they do perform with competence and which makes them particularly vulnerable to all kinds of suspicions and attacks from both sides.

The disparities suffered by women as a result of the increase in armed conflicts, are several. Women of all age groups, face increasing violence-physical, sexual and psychological, both within and outside the home. Often their families too are subjected to violence. Survivors of violence have to cope with the various fall outs of violence and psychological trauma almost without any kind of support. Women’s rights in situations of conflict are especially marginalised. With much of the conflict linked to the whole question of ethnic, religious and cultural identities and focussing thereby on ethnic resurgence. Patriarchal controls over women are reinforced. Women are expected to be the ‘torch bearers’ of cultural identities and yet remain in a subordinate position. Women are excluded from both decision making and peace processes. While these effects are apparent, there are deeper psychological effects which may not be immediately evident but which affect women in the long run. Conflict has no frontiers and often enters not only individual lives but also community life, creating breakdowns which can lead to drug addiction, prostitution, starvation and psychosomatic disorders.

Because India is not seen as a country of endemic violence and the Indian State does not perceive itself as such, it is often the case that there is little support for victims of violence. Sexual violation of women in times of conflict is often looked upon as an act of dishonour, rather than a violation of their human rights. It is women who are inevitably burdened with keeping the honour of the community, something which imposes restrictions on their mobility.

Women are also burdened with additional social and economic responsibilities in times of conflict. Often, with the deaths of their men, they are left to run households and are forced to grapple with problems of providing for the family when means of livelihood have been lost and food security threatened. The implications for their health are also serious, particularly for those women who are in need of reproductive health support services.

In areas of conflict there is also large scale migration of rural women to urban centres where they are extremely vulnerable to further violence and exploitation, being cut off from the traditional kith-kin-community support bases. This is especially true in the conflict areas of Assam in North East India.

Despite the enormous impact of armed conflict on women, they are not seen as an important enough constituency to be involved in conflict resolution both by the State and non-State agencies. Patriarchal values are reinforced by both the armed forces and by militant groups. The continuing presence of conflict also has the result of pushing many women into conflict and violence – they either take up arms themselves or they become couriers and helpers to whichever side they are sympathetic to. Thus levels of violence in women’s lives also go up.

In addition to the above, in certain parts of the country the State is attempting to resolve conflicts by appointing special negotiators and inviting groups involved in
conflict for across-the-table discussions, here too there is absence of women from all concerned processes of conflict resolution.

Government Initiatives

- The National Human Rights Commission (NHRC) which was established under the Protection of Human Rights Act in 1993 plays a significant role in monitoring and investigating human rights violations in the country. The Commission also advises the Government on human rights issues and in furthering human rights awareness.

- In the light of considerable criticism about the functioning of the Commission, an Advisory Committee was set up in 1998 to review its functioning.

- State Human Rights Commissions have been set up to voice and represent victims of violence and to make inquiries into violations of human rights and fundamental freedoms.

- In 1992 the State set up a National Commission for Women, a statutory body with the objective of achieving equity, equality and justice. Later, the national machinery was expanded to take in 14 State Commissions. Some of the key functions of the National and State Commissions are:
  - to investigate matters relating to the safeguards provided to women under the Indian Constitution and the laws of India;
  - to review, from time to time, the existing provisions of the Constitution and other laws relating to women;
  - to look into and take suo moto notice of complaints in matters relating to the deprivation of women’s rights, non-implementation of laws, non-compliance of policy decisions, guidelines or instructions ensuring welfare and providing relief to women;
  - to pursue gender justice through intervention in cases of violation of equality in laws, denial of opportunity and deprivation of women’s rights.

In addition to the above, in certain parts of the country the State is attempting to resolve conflicts by appointing special negotiators and inviting groups involved in conflict for across-the-table discussions.

Weaknesses

- Although there are adequate provisions in the Indian Constitution for safeguarding the rights of women, and the Constitution contains similar principles to the Women’s Convention, the thrust has been de jure and not de facto realization of rights.

- In addition, existing social and cultural values and beliefs which reinforce women’s subordination have remained unchanged. Thus, although equal rights are guaranteed to both men and women, family structures, social and cultural norms and the ‘values’ assigned to women ultimately determine how and whether women in fact are able to exercise these rights.

- Further, the possibility of claiming rights in a situation of armed conflict becomes particularly difficult despite constitutional provisions because there is much to be done on the ground.
**GENERAL RECOMMENDATIONS 19 : VIOLENCE AGAINST WOMEN**

- In places where the Armed Forces Special Powers Act is in operation (as in the North East) section 19 of the Protection of Human Rights Act (PHRA) acquires special significance. This section restricts the mandate of the NHRC and specifies that it is not empowered to investigate allegations of human rights violations by the armed forces. If such violations are reported to the NHRC, it can only seek a report from the Central Government and does not have powers of investigation. If a report is forthcoming the NHRC’s powers then extend to either dropping the case or merely making recommendations and the Central Government is obliged to inform the Commission of action taken within three months. The Commission is thus effectively unable to tackle the immunity provided for the armed forces under the Armed Forces Special Powers Act.

**Recommendations**

It is important to acknowledge that so far there has been little understanding of the impact of armed conflict on women; because of their unequal status in society, they are especially vulnerable and discriminated against in situations of conflict. To mitigate some of the consequences of conflict on women the following issues must be immediately addressed.

- The Indian Government must immediately repeal the Armed Forces Special Powers Act.

- An all out effort must be made to find political solutions to armed conflict. A special body/task force which does not get dissolved with the dissolution of parliament and which consists of creditable and mutually acceptable citizens needs to be set up to look into this. Women representatives of militant groups should be heard separately during such negotiations.

- There is an urgent need to set up special courts to deal with rape in areas of conflict. There is also a need for speedy settlement of cases and a need to redefine rape laws to take in the kinds of traumas women undergo during times of conflict.

- The Army Act of 1950 must be amended to bring transparency in all cases of court martial pertaining to sexual harassment and assault for often (even if accused military men) are actually convicted there is no information about this among civilians and this increases distrust.

- Section 19 of the Protection of Human Rights Act 1993 must be immediately amended to make the verdict of the Human Rights Commissions more binding and to remove the restriction on the Commission regarding its jurisdiction over the armed forces.

- Special resource allocation must be made to set up State Human Rights Commissions and Women’s Commissions in all states where they do not exist, without curtailing the number of members of the commissions in states with less economic resources. The policy of political appointees to these Commissions must be reviewed and members brought in from the women’s and human rights movements to make the Commissions more functional and effective.

- Special resource allocations need to be made to support documentation of violence against women and the total impact of armed conflict on women to understand and address the full range of women’s needs in such situations.
• The Government must financially support and facilitate periodic documentation of violence against women and the total impact of armed conflict on women to understand and address the women’s needs in such situations.

• Financial support and facilitation should also be made available to run courses for police and armed forces which help to sensitize them to issues of gender justice. These can involve human rights activists and gender experts.

• Help lines need to be set up to handle psychological needs arising from trauma related to sexual abuse, violence, loss of family members and violation of women’s rights. Rehabilitation centres need to be set up and run by professionals. These should be supported with adequate financial assistance.

• Women’s special needs must be prioritized while working out economic packages for the areas affected by conflict. Women should be involved in consultations of all such governmental policy making bodies trying to create economic packages for the community.

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A. Violence against Women
2. In the name of justice, Women law in Society edited by Swapna Mukhopadhyay.

List of Participants of CEDAW Conference - Nov 1999

1. Initiatives Women In Development, Tamil Nadu.
2. JAN JAGRITI KENDRA, Madhya Pradesh.
3. SAMBHAV, Madhya Pradesh.
4. NARI GUNJAN, Patna, Bihar.
7. Action Research & Training Institute, Himachal Pradesh.
8. WOLD, Tamil Nadu.
10. Friends Association for Rural Reconstruction, Orissa.
11. CHETNA, Gujarat.
12. OKD Institute of Social Change and Development, Guwahati.
13. JAGRITI, Kerala.
14. VANANGANA, Uttar Pradesh.
15. UNIFEM, New Delhi.
16. Indo German Social Service Society, New Delhi.
17. Association for Advocacy and Legal Initiative (AALI-WAMA), Lucknow, Uttar Pradesh.
18. SANLAAP, West Bengal.
19. Naga Women’s Union Manipur, Manipur.
21. YWCA, New Delhi.
22. Stree Aadhar Kendra, Maharashtra.
23. SPANDANA, New Delhi.
24. KrantiKari Mahila Sangathan, Maharashtra.
25. VEDIKA, Andhra Pradesh.
26. PRAJWALA, Chittoor, Andhra Pradesh.
27. All India Women’s Conference, New Delhi.
29. Adithi, Patna, Bihar.
30. Stree Multi Sangathan, Maharashtra.
31. OLAKH, Feminist Documentation Resource Centre, Gujarat.
32. SAKHI-Women’s Resource Centre, Tamil Nadu.
34. PILSARC, New Delhi.
35. Lawyers Collective, New Delhi.
37. SANCHETANA, Ahmedabad, Gujarat.
38. Vikas Adhyayan Kendra, Ahmedabad, Gujarat.
39. CADAM, New Delhi.
40. NIRANTAR, New Delhi.
41. BAILANCHO SAAD, Goa.
42. Dalit Writes Forum, New Delhi.
43. Institute of Social Studies Trust, New Delhi.
44. Human Rights Law Network, New Delhi.
45. NORTH EAST NETWORK, Shillong, Meghalaya.
46. Women’s Feature Service, New Delhi.
47. SOCH – Social Organisation for Change, New Delhi.
48. JAGRITI – (Women In Law), Kerala.
49. Ms. Salma Khan, Expert CEDAW, Bangladesh.
50. Dr. Hanna Beate, Expert CEDAW, Germany.
51. Ms. Sangeeta Thapa, UNIFEM, Nepal
52. Institute of Social Change & Development, Guwahati, Assam.
54. Dept. of S & T, GOI, New Delhi.
55. All India Women’s Conference, New Delhi.
56. Ms. Sarojini Thakar, Govt. Secretary, Dept of Women & Child Development, New Delhi.
57. Ms. Geeta Ramaseshan, Advocate, Chennai.
58. Centre for Women’s Development Studies, New Delhi.
59. WARLAW, New Delhi.
60. Ms. Bharati Giri, ARR Gender Unit, Nepal.
62. Women’s Voice, Bangalore.
63. National Alliance of Women (12 focal points covering all the states in the country)
64. Ms. Savithri Goonasekere CEDAW Expert, Sri Lanka.
67. Mr. J. Backianathan, NFDW, Bangalore.
70. Ms. Audery Lee, IWRAW, Malaysia.
71. Ms. Shanti Dairiam, Director, IWRAW.
72. Ms. Lalitha Missal, NAWO Orissa.
73. Ms. Shumita Ghosh, Activist.
74. Ms. Elca, UNIFEM.
75. Mr. S K Guha, National Officer UNIFEM.
76. Ms. Ashima Bhatia, Freelance Journalist.
PREAMBLE

For the first time in the history of the women’s movement in India, an alternative CEDAW report is being submitted to the UN Committee on CEDAW. The alternative report shadows the Government of India CEDAW Report which is to be reviewed by the UN Committee in January 2000.

The purpose of the alternative report is to record the de facto situation of women in relation to the standards of equality and non discrimination as enunciated in the Convention.

The juxtapositioning of the NGO assessment with the viewpoint of the government generates a creative tension which we believe is healthy for a constructive dialogue on the problematic areas requiring state action.

At this point of time when we enter the next millenium, we need more than ever before to reiterate the principles of democracy which must jointly be promoted by both civil society groups and the state at large. We are experiencing new forms of democratic functioning and political alliance building and a new political ethos is emerging to meet the demands of a changing world order.

In the restructuring of our economies we are pitched against the hard choices of globalization. Women have been at the receiving end of its impact and it is now well established that feminisation of poverty has pushed us further back. Despite these socio-economic and political predicaments,

we women, have consolidated our strengths and are making a political demand that we be given equal rights and choices to grow, develop and participate meaningfully in the life of our country and of our world.