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INDIA: SECOND NGO SHADOW REPORT ON CEDAW

EXECUTIVE SUMMARY

INTRODUCTION

Despite the year 2001 being declared the Year for Empowerment of Women, the status of women in India causes concern, with socio-economic indicators showing a disturbing trend - a falling juvenile sex ratio, rising levels of poverty and unemployment, starvation deaths linked to the denial of right to life and livelihood and increased violence in all spheres. This trend cannot be viewed in isolation but needs to be seen in the light of globalization and rising caste and religious intolerance, which have given an impetus to increasing and varied forms of violence against women.

General Recommendation No. 19 of the CEDAW Committee clearly points to the fact that cultural practices/attitudes perpetuate widespread practices involving violence or coercion and that such prejudices and practices may justify gender-based violence. Yet India has ratified the CEDAW Convention with two Declaratory statements providing that in so far as Articles 5 and 16 are concerned, it shall abide by these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent.

EQUALITY, NON DISCRIMINATION, HUMAN RIGHTS & FUNDAMENTAL FREEDOMS, SPECIAL MEASURES

Articles 14 and 15 of the Constitution of India guarantee equality before the law and non-discrimination on the basis of sex. The Declaration of the GOI to the CEDAW Convention violates the spirit of the Constitution in so far they provide that discriminatory laws shall not be dealt with unless the community wants them to be amended. Such a declaration is unconstitutional and needs to be withdrawn.

The Constitution of India does not define 'discrimination against women' in the elaborate terms of Article 1 of CEDAW. No legislation reflects such a definition either. Further, the right to equality contained in fundamental guarantees does not cover discrimination by private parties. This constitutes a serious lacuna in the Indian legal system.

Further, guarantees in the Constitution themselves have not been given effect to. One glaring example is the women's reservation bill that provides for 33% reservation for women in Parliament to increase their political access and participation. Such a law has still not been enacted, despite constitutional backing.

Para 20 of the II and III Report of the Government of India in response to Paras 74-75 of the Concluding Comments of the CEDAW Committee, do not address the situation of caste discrimination on the ground at all. Most worrying is the failure of judiciary in various jurisdictions to bring justice to dalit survivors of atrocities, and the fact of the state itself being a violator of Article 17 and the law banning manual scavenging.

The Mid Term Appraisal of the 10th Five Year Plan by the Planning Commission suggests that the Ministry of Social Justice and Empowerment should hold itself accountable for the persistence of manual scavenging and present an action taken report before the 2005-06 Union Budget is approved. This is an issue that must be topmost on the priority of the government, since it contributes to the persistence of the problem.

The right against discrimination as the cornerstone to human rights and fundamental freedoms as embodied in Article 3 of CEDAW, with respect to persons with disabilities [of which, according to the official estimate, women constitute 9 million in India], must be brought within the purview of Articles 14 and 15 of the Indian Constitution.

All laws, especially relating to employment, which discriminate against or bar persons with disabilities must be repealed forthwith.

The prevalence of pervasive gender based violence has prevented the practical realization of the right to equality for most women across the country. The forms of gender-based violence prevalent in India include domestic violence, dowry linked violence, sexual assault, sexual harassment and sex-selective abortion, violence against dalit women, violence through the medium of the law on the persons on grounds of sexual orientation.

An analysis of the Government's performance would be incomplete without an in-depth evaluation of the legislative lacunae in the area of gender based violence and discrimination in different sectors **including the Armed Forces**.

Sexual orientation must be brought within the constitutional framework and Section 377, which criminalizes homosexuality must be repealed immediately, as a first step towards ending discrimination against queer people, in response to the demands of the queer rights movement in India and in tune with international trends in this area of human rights

The issue of starvation must be acknowledged officially and addressed through a convergence between different departments as well as initiatives in participative/deliberative democracy at the local level with respect to production and distribution of foodgrains as well as land distribution.

Despite the commitment made by the Government to the CEDAW Committee to empower the National Commission for Women (NCW), which is mandated to look into all cases of atrocities against women, gender discrimination, violation of provisions of the Constitution relating to rights of women, all aspects of employment of women and measures for elimination of discrimination and deprivation of women, review Constitutional provisions and laws affecting women, and recommends amendments providing remedies, the NCW suffers in the areas of resource allocation, and devolution of powers. The state women's commissions too need to be radically reconstituted.

SEX ROLE STEREOTYPING AND PREJUDICE

The persistent failure of laws to check the discrimination against women - in cases of sati, domestic violence, sexual harassment at the workplace, rape, sex determination and sex selective abortions and the criminalizing of sexual diversity to name a few - have to do in large measure the power of sexual stereotypes in conditioning the minds of functionaries in the criminal justice system and the medical profession. Doctors, police personnel, lawyers and judges believe in the subordination of women and the need to circumscribe their movements.

The absence of clear censor guidelines on sexual stereotypes results in the unhindered portrayal of the glorification of women's subordination. The absence of any regulations in television programmes results in a worse portrayal of women in serials. Studies have shown that women viewers oppose demeaning stereotypes in serials and commercials.

The resilience of textbooks to campaigns by women's groups on breaking stereotypes points to the fact that people formulating the syllabus themselves subscribe to these views.

TRAFFICKING AND PROSTITUTION

Trafficking in women and children for commercial sexual exploitation and other abusive purposes is rampant in India and its toll on human suffering is evident in urban and rural pockets throughout the country. The incidence of intra country trafficking is also very high. It is a difficult task to estimate the exact number of women and children trafficked to and from India, and within India. A study in the six metropolitan cities of India, suggests that 94% of trafficked women in India are from rural India and from the lower socio-economic strata. The study identifies Andhra Pradesh, Karnataka, Tamil Nadu and West Bengal as the highest supply states with 24%, 22%, 17% and 14% respectively.

All States should have a **specific monitoring mechanism** - a task force/core committee to look into the issue of trafficking and NGOs should necessarily be a part of this Committee. It should be made mandatory for the Panchayats - elected Local Self government to maintain a record of the people migrating from their respective villages for different reasons - marriage, higher education, employment etc. By involving different personnel from the administration and governance structures as well as from the NGOs and by creating awareness amongst the community, a networking system should be put in place to monitor the movement in women and children. Investigation of missing children needs to be done in the source areas by the Panchayat, which is the nearest formal body, which can identify trafficking. Integrated Child Development Services personnel (Anganwadi workers) should share with members of panchayat the responsibility of identifying and lodging complaints on missing girls with the police. The procedural aspects of these actions need to be put in place urgently. A databank has to be created at the national and the state levels giving details about missing persons and trafficked persons.

POLITICAL AND PUBLIC LIFE

There is concrete data to prove that women cannot enter mainstream politics in significant numbers without affirmative action. This has more to do with discrimination against women than with women's inhibitions. The solution lies in a multi tiered reservation system, where Political parties mandatorily field women candidates for one third of the seats they contest in each state and one third of seats in legislatures and both houses of parliament are reserved for women. This reservation must be a vertical reservation that is binding on the open and reserved constituencies.

Women in politics especially at the state and district levels find corruption, criminalization and communalization of politics impediments to their effective participation. This atmosphere also engenders violence against women contestants as a way of obstructing their entry into politics.

EDUCATION

Over the past few years the education sector has a number of new initiatives being introduced. While being appreciative of the increasing attention being paid to education there are several areas of concern that require addressing. We are concerned for instance, that the resource allocation for education continues to be below the 6% commitment and that there is a marked imbalance between the distribution of resources between different sectors¹ which militates against the right to literacy and higher education for women. Resources for education are being raised from the public through a 2 % education cess; however, there is no information on how these resources are being utilised. Moreover, a globalised environment and an increasing government focus on encouraging private sector involvement in education, has led to the State gradually withdrawing from the education sector. The Government, for example, instead of hiring regular teachers now hires 'para-teachers' in large numbers who are less qualified and trained and hired on a temporary basis. This naturally has an impact on the quality of education of government schools and programmes, but additionally many of the para-teachers are women with no job security. The rapid privatisation taking place in all sectors of education may increase the number of educational facilities but it is negatively impacting women and girls, the poor and socially disadvantaged. Studies show that it is girls and children from poor and marginalised communities that now predominantly access government schools, while boys and children from more privileged backgrounds are increasingly attending private schools, where it is believed that the quality of education is far better.² The cost of privatised higher education is prohibitive. The several alternative non-formal education programmes that have been initiated through the Sarv Shiksha Abhiyan (Education for All) to provide access to those outside the ambit of formal education has also contributed to setting up of a 'double-track system' (alternative

¹ In 2003-2003, Expenditure on education as a % of GDP was 3.97%. The sectoral allocations were: Elementary 1.93%, Secondary/Higher- 1.26%, Adult Education 0.02%, University & Higher Education 0.76%. (Ministry of Human Resources Development).

² A recent study by the National Institute of Education Planning and Administration shows that the National Gender Parity Index in Government schools is 0.91 and in private schools 0.71.

education for the disadvantaged and regular formal education for the privileged) within education. While many of these programmes are innovative and aim at mainstreaming there is as yet no data on how many remain in school after enrolling. NFE programmes cannot be a long-term alternative to a formal education system of good quality and based on equity principles.

EMPLOYMENT

In view of the critical role of women in the agriculture and allied sectors, as producers, concentrated efforts must be made to ensure that benefits of training, extension and various programmes will reach them in proportion to their numbers. The programmes for training women in soil conservation, social forestry, dairy development and other occupations allied to agriculture like horticulture, livestock, including small animal husbandry, poultry, fisheries etc., need to be expanded to benefit women workers in the agricultural sector.

The important role played by women in electronics, information technology and food processing and agro industry and textiles has been crucial to the development of these sectors. Yet they lack any support in terms of labour legislation, social security and other support services to participate in the industrial sector.

In order to substantially improve the economic status of poor women working in the informal sector of the economy, there is a need to devise concrete strategies which can help to enhance the ownership of and control over productive assets of these women.

Women in the unorganized and agriculture sector are being impoverished by economic and labour policies and need equitable wages and protection to their jobs and livelihoods. The speedy enactment of the Unorganized Workers Bill 2003 will protect labour/employment rights of women in the unorganized sector.

HEALTH

The need of the hour is a 100 percent availability of critical infrastructure, staff, equipment and supply inputs at all levels of public health facilities, especially in remote areas and prioritise provision of health care access to poor and marginalised communities. What is also necessary is an increase in allocation of resources for health and improved access to essential and emergency medical services.

It is obvious that the toxic gas released in December 1984 has had long term hormonal effects in women. Existing data must be reviewed, new research must be initiated, and health care for women restructured and made effective and available. The problems faced by gas and contamination affected women in Bhopal must be confronted not just with mainstream medicine but also alternative medical solutions. Furthermore, well-funded and carefully aimed public education programmes must be designed and implemented in Bhopal's gas and contamination affected neighborhoods.

The central government must set up a National Commission on Bhopal with the necessary authority and funds to thoroughly research health issues specific to gas and contamination affected women, provide appropriate treatment, and provide for public education about women's health issues in Bhopal's gas and contamination affected communities. The commission must have active participation of non-government doctors, scientists, and representatives of survivor's organizations.

The Government is responsible for enforcing the right to food. All measures necessary to reduce rural indebtedness, and eliminate hunger, malnutrition and starvation in the country need to be put in place with urgency give the crises people are coping with in rural areas. Particularly worrying in the spate of suicides by farmers in Andhra Pradesh and Maharashtra.

The Government must authorize credible institutions at the state level to ensure accurate reporting of maternal mortality for each state and district.

RURAL WOMEN

Privatisation in agriculture and health especially have increased the vulnerability of rural women. Spiralling costs of agricultural resources and the collapse of the public health system are major issues that confront them today.

Women's engagement in agriculture needs to be recognized adequately through the creation of real access to land and resources. In situations where displacement has already occurred, a consultative process must be put in place to ensure that women's voices with respect to rehabilitation are heard and taken into account.

The state must take responsibility for the spate of farmers' suicides and provide immediate relief to families that will ensure their survival in the long term, especially by pulling them out of the debt trap. Credit must be provided to women farmers for building assets. Food Security must be assured and the working of the Public Distribution System monitored constantly and reassessed. In terms of land distribution, two acres of land must be distributed to every landless adult woman belonging to poor, marginalised communities in rural areas.

EQUALITY BEFORE LAW, MARRIAGE AND FAMILY LIFE

First among unequal laws, is the system of personal laws. Provisions in the personal laws of the different communities permit differential and unequal treatment of women. Personal laws continue to be discriminatory in their legislative content. It was as late as 2003 when Christian women realised the right of divorce equal to men through an amendment to the Indian Divorce Act. However, change is few and far between. Women continue to be discriminated against through personal laws. Muslim personal law allows a man to practice polygamy and marry four times. A woman can, however, marry only once. The practice of triple talaq allows a man to unilaterally and unreasonably divorce his wife, without a semblance of fairness. Under Parsi and Hindu law, The range of grounds available to a woman for divorce or judicial

separation vary greatly. Chastity of the woman remains a precondition for the provision of maintenance to the woman.

The provision for the restitution of conjugal rights can be very heavily loaded against the woman. A woman, who wishes to stay apart from her husband for personal reasons, can be ordered by court to provide companionship to her spouse. This situation can be particularly dangerous and demeaning when she is a victim of domestic violence.

While the Gita Hariharan judgement was instrumental in recognizing the woman's right to guardianship under Hindu law, the law has not adequately recognized the woman's role as a guardian. Other issues that are important for women, but are so often neglected, include the right to residence, the right to property, mahr and stridhan, and custody of children.

WOMEN IN GUJARAT

Given the rise of religious fundamentalism and blatant attacks on minorities, especially minority women, it is necessary to establish special monitoring cells for religious minorities with judicial powers and separate from the executive. This is in view of the fact that in states like Gujarat, the government has been complicit in the derogation of the rights of entire communities. In Gujarat, the CEDAW committee must bring pressure on the Indian Government to push for the fair trial of the accused. The Muslims of Gujarat, despite being brutalized and destroyed physically, psychologically and materially are living like refugees and Internally Displaced Persons in most of the cities and districts that they belonged to, from where they fled to the camps in 2002. Over one and half lakh Muslim men, women, children and elderly lived as refugees in camps for 10 months across the state. The Government of Gujarat gave official recognition to the camps only for four months, forcing the camps to be closed even when the tensions and insecurity prevailed among the internally displaced families belonging to the Muslim Community.

After four years of violence, it is estimated that even presently 35,000 persons across the state are living displaced lives, coping on their own. This is besides 6,000 houses provided to the affected families as part of rehabilitative measures by various religious Organizations with the state government completely abdicating its role in rehabilitation and resettlement of the Internally Displaced Muslim families. The families that have been relocated and/or rehabilitated are forced to live in the outskirts of the main cities and villages or continue living in the same area amidst threats and insecurity.

TSUNAMI AND ITS IMPACT ON WOMEN

Women's livelihoods concerns have not been addressed in the Tsunami relief and rehabilitation process. Tsunami Marriages are on the increase. Young adolescent girls are married off to the widowers though they are mentally and physically not prepared for the marriage. This in turn deprives them of the opportunities for education and empowerment that come with it. Why do women have to undergo such treatment? Why are women not allowed to realize their potentials? Why should parents give way to the community pressures? These are some of the thought provoking questions asked

by a young woman from Karaikkal, underscoring the fact that the gender based roles and stereotyping have massively damaged women's interests in the wake of disaster.

WOMEN IN ARMED CONFLICT: NORTH EAST

The repeal the Armed Forces Special Powers Act has been long overdue. If the government's position is that there is no armed conflict in India as defined under International Humanitarian Law, government urgently needs to repeal the draconian Armed Forces Special Powers Act. This Act prevents the investigation and prosecution of security forces for act of violence against women in conflict areas, as suggested by the CEDAW Committee and Human Rights Committee. The CEDAW Committee in its last review of the India report raised this issue as cause of concern, but there has been no action on the part of the Indian government to take this issue on board and repeal the Act. This is cause for serious concern. The northeastern region needs specific focus in all aspects of civil and political life. Special attention needs to be paid to the impact of armed conflict on women.

DALIT WOMEN

The situation of Dalit women in India is unique to the category. Age-old discrimination and prejudices operate in multi-layered ways across class, regional and geographic boundaries and conspire to keep Dalit women in a position of always being at the mercy of political, social and economic forces, despite Constitutional guarantees of equality, and decades of targetted interventions by government.

Several legislations for their welfare including those banning Manual Scavenging, Prevention of Atrocities against SC/STs, the Abolition of the Devadasi system, and reservations in Government jobs have shown little progress in implementation. Allocated of funds for alternative training and employment of manual scavengers remains largely unutilized, and manual scavenging (basically undertaking sanitation work with minimal protective equipment, almost with bare hands, mainly undertaken by women) continues unabated in the government-run Railways and municipalities. Convictions under the PA Act continue to be around 1% for ALL crimes committed against SC/STs, including both men and women. Hence the rate of conviction for crimes against Dalit women falls below this rate.

Girl children face a real danger of abduction and rape on the way to school - almost always located some distance from the Dalit colony - which is the reason for the high level of drop-out rate of Dalit girls at middle-school, and the wide prevalence of under-age marriages of Dalit girls. Dalit children face both blatant and subtle forms of caste discrimination in the school system, especially from teachers. Even the mid-day meal scheme providing a hot lunch to school children is the site of caste discrimination, with dominant caste parents refusing to let their children eat food cooked by Dalit women, or in the company of Dalit children.

The lack of assets and indebtedness is another major problem Dalit women face. This leads either to large scale migration to urban areas or to the debt trap in rural areas.

SITUATION OF TRIBAL WOMEN IN INDIA

At the end of the United Nations Decade for the World's Indigenous Peoples (1995-2004), the approximately 67 million adivasi people who live in the country, suffer violence in its various *avatars*- dispossession through an alienation and exclusion from forests and land, neocolonization, displacement, assimilation and state repression - has assumed genocidal proportions over the past five decades. A recent study has delineated five aspects of gender-based violence against Adivasi women in India - physical assault, sexual exploitation, sexual harassment, forced sterilization and abuse of the girl child. Of the eight categories of perpetrators of physical and sexual assault in Tamil Nadu, it was found that forest officials ranked second. In cases where perpetrators were non-tribals, estate managers, private security on estates, etc., the fact of police complicity through non-registration of cases was very high. Over 300 women in over a quarter of the villages spread across seven districts in TN were forcibly sterilized. Apart from the systematic deployment of violence, adivasi women in "disturbed" areas are the target of state repression and often taken into custody in the absence of the husband and or for interrogation to police stations in brazen violation of procedural prescriptions. Discrimination in accessing employment, unequal pay for equal work not just between men and women but between non tribal and adivasi women, the absence of anything like maternity benefits, and dismal figures for female education in adivasi areas are practices of violence that are rooted in the structural discrimination against adivasi people, women in this instance as well being in far more vulnerable positions.

VIOLENCE AGAINST WOMEN ON THE BASIS OF SEXUAL ORIENTATION

State as well as civil society initiatives work within a framework based on the false assumption that heterosexuality is the only legitimate reality. The consequent violations of rights are wide ranging. As General Recommendation 19, number 23 notes, "family violence is one of the most insidious forms of violence against women." Some of the more overt manifestations of sexual orientation based violence against women within the home include verbal and physical abuse, in-house imprisonment and forced marriage. The denial of the choice with respect to whether or not, when and whom to marry clearly violates Article 16, parts a and b of the CEDAW convention. The lack of choice in relation to marriage has led many young women to take their own lives. In the case of same sex desiring women who have no choice but to marry, the sexual relationship with their husbands is often nothing short of marital rape. Families send women to mental health professionals to be 'cured' of their homosexuality. The treatment can include strong medication and aversion therapy, which involves the administering of electric shocks. The police actively colludes with families to use Section 377 of the Indian Penal Code (which criminalizes all forms of "carnal intercourse against the order of nature") to threaten women if they do not give up their same-sex relationships. While a petition to read down Section 377 so that it does not cover consensual adult same-sex relations is being reviewed in the Delhi High Court, the Government continuously evokes the idea of the preservation of public morality as an excuse for the continuation of this law. The very existence of section 377 militates against the State's obligation to respect, protect and fulfill all women's human rights with regard to human dignity, freedom of association, assembly and movement, privacy, non-discrimination, equality and the prohibition against torture.

WOMEN IN URBAN SETTLEMENTS

Poor women in slums experience enormous and unacceptable levels of violence in their daily lives in the family, community, work place and public place. The violence such as wife beating, battering, deserting, police harassment, dowry harassment, dowry deaths, suicides. The phenomenon of addiction to arrack [locally brewed liquor] is taking serious toll of families in urban slums. Women's wages are spent by their men on consuming alcohol causing tremendous stress and making women vulnerable to domestic violence. The government gives licenses for cheap liquor shops in and around slums because the industry generates enormous incomes through consumption by the poor.

The beginning of poverty eradication is the all round empowerment of the urban poor, especially poor woman at community level. The physical, financial and cultural supports of the central and state governments, local administration bodies, other developed agencies earmarked for poverty eradication should be made available to poor women at community level for their empowerment and self help. The economic empowerment of poor women is a precondition of effective poverty eradication.

There are hundreds of schemes and programmes in our country to alleviate poverty but the urban poverty is increasing. Since Independence various governments in this country at the centre and state level have made promises of better distribution of assets through land reforms, full employment, adequate health care facilities, education for all children with abolition of child labour. And yet, poor women continue to remain vulnerable and the poor are becoming poorer. What is the fate of the poor in future?

GENERAL RECOMMENDATION 19: VIOLENCE AGAINST WOMEN

Sexual Assault: Marital Rape Continues To Be Lawful

Violence, sexual violence in particular, is pervasive, normal and is a critical instrument in the subjugation of women and their confinement to private spaces. Even after prolonged discussions with the Law Commission of India, marital rape continues to be lawful in the country with the new Criminal Law Amendment Bill refusing to remove the exception of marital rape from the definition of rape in the IPC. The exception to Section 375 IPC which says "intercourse of a man with his wife, the wife not being less than 16 years does not come under the definition of rape" should be removed forthwith, especially since domestic violence has been recognised as a crime as also dowry death. The persistence of this exception is an anomaly in the government's stated recognition of violence women face in their marital homes.

The Killing Fields of Witch-Hunting

Witch-hunting, one of the least talked-about acts of violence in India also manifests itself in some form or the other in different parts of India with concentration in the areas (states/UTs) of Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan and West Bengal. It has been found that it is not superstition that is at the root of many of these accusations

of witchcraft but socio-economic factors- land grabbing, used against women who spurn the sexual advances of the powerful men in the community, etc. Further, low levels of education and poor medical facilities have been singled out as leading to a belief in witchcraft in parts of Assam, where many innocent people have been victims of witch-hunts. In the interiors of states like Bihar and West Bengal, 'witches' or '*dains*' and their children are still hunted and killed. Each year, an estimated 200 women are killed as witches in rural India. According to the National Crime Record Bureau during the year 2000-2001 there were 253 cases of Witch-hunting (126 cases in 2000 and 127 in the year 2001).

Sex Selective Abortions, Gender Cleansing or Crime Against Humanity?

There are clear correlations between the proliferation of sex determination tests, increase in sex selective abortions and decline in sex ratio with urban areas showing sharper drop in the sex ratio than rural areas. And not only do the numbers increase each year, but techniques for eliminating the birth of girl children proliferate. The most recent method of exterminating girls that is on offer is sex selective conception. Since the implementation of the PNDT Act, there have been 30 lakh female children missing, 90 lakh doctors accused, and one conviction. The PNDT Act needs to be implemented more stringently and cases booked against medical practitioners.

CONCLUSION

Each of the chapters in this Alternative Report point to the widespread practices of discrimination and social exclusion of women and provide evidence in the form of statistics and media reports on the prevalence of the problem. The contributory factors to this wide-ranging discrimination are several. While immediate factors have to do with the life crises that poor and disadvantaged sections face generally, these cannot be de-linked from the historical and systemic factors that easily accommodate structural violence against women and guarantee impunity despite the existence of legal safeguards.

The reason for the persistence of discrimination, we believe is because there has been no fundamental transformation in the body politic and the composition of institutions of governance - the legislature and the judiciary especially. These are the two institutions, which have ironically been most resistant to the implementation of the equality code of the constitution, especially with respect to gender equality and caste equality.

PART I: CEDAW ARTICLES

CHAPTER 1

INTRODUCTION CRITICAL ENGAGEMENTS ON CEDAW IN INDIA

In India, the debates around discrimination against women go back to the pre Beijing preparations, which witnessed a vibrant sharing of information, understanding and analyses in the context of CEDAW facilitated by the Coordination Unit for Beijing. This created the momentum and sharpened the articulation of women's concerns on areas of discrimination in public and private spheres. This concerted effort led to the drafting of the *NGO Report on CEDAW* (1995), which strengthened the advocacy and lobbying of Indian women's groups who participated at the Fourth UN World Conference on Women at Beijing (September 1995).

While this exercise drew in NGOs, activists, researchers and lawyers from across the country to contribute to the report, it also facilitated the flow of information about the Women's Convention to a large constituency. It thus became part of a larger process of creating and disseminating popular materials on human rights and women. More importantly it generated debates on the adaptability of the Convention to meet the diverse needs of different groups of women in the India.

The National Alliance of Women was in the forefront of the post Beijing phase when several groups and organisations systematically trained women activists and lawyers on the Women's Convention.

AN OUTLINE OF CRITICAL CONCERNS

Despite the year 2001 being declared the Year for Empowerment of Women, the status of women in India causes concern, with socio-economic indicators showing a disturbing trend - a falling juvenile sex ratio, rising levels of poverty and unemployment, starvation deaths linked to the denial of right to life and livelihood and increased violence in all spheres. Globalization, fundamentalism and rising caste and religious intolerance, have given an impetus to increasing and varied forms of violence against women.

We are concerned that despite the commitment made by the Government to the CEDAW Committee to empower the National Commission for Women (NCW), which is mandated to look into all cases of atrocities against women, gender discrimination, violation of provisions of the Constitution relating to rights of women, all aspects of employment of women and measures for elimination of discrimination and deprivation of women, review Constitutional provisions and laws affecting women, and recommend amendments providing remedies, the NCW suffers in the areas of resource allocation, and devolution of powers. We insist that NCW be given powers on par with the National Human Rights Commission. Committee should be constituted on the basis of competence and commitment rather than political affiliations.

As the government's position is that there is no armed conflict in India as defined under International Humanitarian Law, we urge the government to repeal the draconian Armed Forces Special Powers Act which prevents the investigation and prosecution of security forces for act of violence against women in conflict areas, as suggested by the CEDAW Committee and Human Rights Committee. The government must take affirmative measures to pass the proposed bill to reserve not less than 33.3 percent seats in State Legislatures and Parliament for women.

We are concerned about the resource allocation to education in the Tenth Five-year Plan (2002-2007), and within this the marked imbalance between elementary education and higher education, which mitigates against the right to education of girls and women. This also comes in the way of the government fulfilling its commitments to CEDAW and the Beijing Platform for Action.

Women in the unorganized and agriculture sector are being impoverished by the economic and labour policies and need protection to their jobs, livelihoods and equitable wages. Government to ensure application of labour legislation in the unorganized sector, the speedy passing of the Unorganized Workers Bill 2003 and protect labour/employment rights of women in the unorganized sector.

India has ratified the CEDAW Convention with two Declaratory statements providing that in so far as Article and 16 (1) are concerned, it shall abide by these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent. General Recommendation No. 19 of the CEDAW Committee clearly points to the fact that rational and cultural practices/attitudes perpetuate widespread practices involving violence or coercion and that such prejudices and practices may justify gender-based violence. The CEDAW committee recognizes the importance of culture and tradition in shaping the thinking of men and women and the significant part they play in restricting the exercise of basic rights by women. The Committee noted with alarm the number of State parties which have entered reservations to the whole or part of Article 16 and exhorts the state parties to gradually progress to a stage where by its resolute discouragement of the nations of inequality of women in the home each country will withdraw its reservations, in particular to Articles 9-15 and 16. Article 28 of the CEDAW Convention prohibits any reservation incompatible with the object and purpose of the convention. Further the Committee considers Articles 2 and 16 as the core provisions of the Convention and any reservation with respect to the Core Commitments under the CEDAW need to be withdrawn.

Article 14 and 15 of the Constitution of India guarantees equality before the law and non-discrimination on the basis of sex. All laws that are discriminatory against women need to be repealed to achieve the promise of equality guaranteed by the Constitution of the country. The declaration of GOI that discriminatory laws shall not be amended without the consent of community violates the spirit of the Constitution.

Article 2 (e) to the CEDAW Convention exhorts the State Parties to undertake all appropriate measures to eliminate discrimination against women by any person, organization and enterprise. *General Recommendation No.19* of the CEDAW Committee clearly provides that the definition of discrimination given in Article 1 of

the Convention includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. India has failed to honor Article 2 (e) and General Recommendation No. 19 in letter and spirit. Recent mass violence in Gujarat against women by non-State actors such as political organizations and fundamentalist groups is a gross violation of CEDAW, General Recommendation No.19 and the Constitution of India. State inaction in this regard amount to its complicity in the violence.

THE NGO ALTERNATIVE CEDAW REPORT, 2000: LOBBYING STRATEGIES

NAWO has since 2000 maintained a close follow up with the Department of Women and Child, Ministry of Human Resources Development, Government of India, with a view to monitoring the follow up actions of the Government of India on CEDAW.

The impact of the NGO Alternative CEDAW Report was significant, as it put pressure on the government and the National Commission for Women to arrange for several dialogues on the CEDAW submissions by the Government of India at the UN. This has been a positive change in the government's attitude in contrast to its earlier practice of the veil of secrecy prior to 2000.

The NGO Alternative CEDAW Report generated awareness and education on the Women's Convention and its scope in effectively addressing discrimination against women. NAWO submissions set the tone of shadow reporting on the ground realities of the status of women in India. The NGO submission generated sufficient pressure on the government to look into the institutional mechanisms to monitor CEDAW commitments.

We, at NAWO have been greatly encouraged by the positive impact of the NGO CEDAW submission and have resolved to take forward awareness building and education on CEDAW to a larger constituency in the country. In these efforts IWRAW- Asia Pacific (Malaysia) has been our lead partner, others such as Asia Foundation, Bangladesh and UNIFEM-SARO have also supported us with resource facilitation. These partnerships and facilitation, have been critical to NAWO.

In brief, we highlight these and also share our future plans in popularizing the Women's Convention in our country.

After the NGO Alternative Report submission in Jan 2000 by NAWO, we have been in close consultation with the Department of Women and Child Development, Government of India for monitoring the implementation of CEDAW. The consultation has been cordial and yielded positive results. NAWO is now officially recognized as the lead network that has been working nationwide on CEDAW at the NGO level. A major achievement was that the government called for a national level CEDAW Consultation on 27th January 2003. This was the result of several sittings with the Secretary, and Joint Secretary of the Department of Women and Child, Ministry of Human Resources Development.

This National Consultation was in preparation for India's Second Implementation Report. Government officials were called to interact with NGOs. The list had 40 NGO

invitees, 12 secretaries of different state departments of women, 7 chairpersons/secretaries of state commissions for women and 34 secretaries of different central government departments whose ministries /departments are recipients of the budgetary allocation of the *Women's Component Plan* (WCP). The list also included the Secretary General of the National Human Rights Commission. The Department of Statistics and Programme Implementation presented the indicators developed by them for NGO feedback for *Women and Men in India - 2002*.

The NGO- National Consultation on CEDAW Monitoring and Implementation of CEDAW Committee's Concluding Comments/Observations on India's Initial Report, was held two days prior to GOI consultation of 27th February 2003. Called by NAWO on 25th & 26th February 2003, the consultation had 67 participants from all over India. The participants belonged to groups that participated in the drafting of the first Alternative CEDAW Report and others interested in contributing to the second NGO Alternative Report. **At this National Consultation of NGOs, NAWO received mandate to coordinate the Second Alternative Report on CEDAW.**

This achievement was very gratifying in comparison with the phase of the initial GOI report on CEDAW between 1998-2000, where little was achieved in terms of government co operation. NAWO's mandate of 'policy intervention' to engender national level planning is strengthened by this.

The NAWO national secretariat designs critical interventions. A CEDAW resource base has been set up at New Delhi to facilitate wider dissemination on CEDAW.

RECOMMENDATIONS TO THE GOVERNMENT

- Implementation of laws and institutional mechanisms with special reference to the National Commission on Women and the NHRC. Transparency and clarity in the appointments and mandate of the State Women's Commissions. Nonpartisan approaches and strategies to ensure participation of NGO women representatives on the committees, which decide resource allocation extremely important. Fast track courts to bring justice to women. With reference to paras 29-32 of the concluding comments, it is important to point out that legislative reform has been a continuous process and to specify actually completed reforms. Reform of the justice delivery/law enforcement system is most critical and the need is to promote new thinking and strategies. Inadequate implementation of the law as well as gaps in the legal framework are a serious impediment to the realization of women's human rights. The GOI to amend existing laws to bring them in conformity with the Convention:
 - Dowry Laws,
 - Customary practices viz. *sati, devadasi system etc.*
 - Caste based discrimination
 - Laws on trafficking and sexual exploitation
 - Bonded labour
 - Inheritance laws
 - Access of rural women to land and credit.

- Mandatory representation for women at all levels in politics, judiciary and employment.
- Legal awareness/training on CEDAW at all levels of political, legal, and administrative machinery inviting the participation of experienced persons from NAWO. The Karnataka experience of training the MLAs in CEDAW provisions showed that legislators, once sensitized, were able to take up the issues with the government.
- Demand that the Government remove its reservations to CEDAW.
- Repeal the Armed Forces Special Powers Act, especially the provision that human rights groups cannot investigate human rights violations in areas where the Act applied.
- Compulsory Registration of Marriages to decrease vulnerability to trafficking and to check incidence of child marriage. GOI should withdraw the reservation to compulsory registration of marriage, given the availability of institutional and human resources necessary for putting in place a system in this regard.
- In case of trafficking, there should be special safety measures for those working against it: the victim's wishes about where she wants to go or what she wants to do should be taken into account. There should be clear policy on rescue and rehabilitation at the state level, more trained workers, and shelter homes need to be set up by the government.
- Derogatory portrayal of women in film and electronic media calls for better regulation of standards by the government but also for popularizing alternative depictions that show women in more positive light.
- The northeastern region needs specific focus in all aspects of civil and political life. Special attention needs to be paid to the impact of armed conflict on women.
- Complicated procedures of nomination for candidature in local governance bodies are difficult to follow for village women and need to be simplified.
- The National Health Policy has no substantive provisions for women. Furthermore, commercialization of health services puts medical facilities out of reach for poor women.
- Establishment of special monitoring cells for religious minorities, similar to those already existing for Scheduled Castes/Scheduled Tribes.
- Textbooks at all levels must be revised to include greater sensitivity to women's concerns.
- Demand that the Optional Protocol under CEDAW be ratified.

- Demand that the Protocol on Transnational Crime be ratified.
- Demand a CEDAW monitoring cell with 50 percent NGO participation with regional representation. Women with proven record of work on issues outlined in CEDAW actually and actively working on CEDAW issues may be identified through a transparent process. Women should have the right of recall in case these representatives did not represent their concerns adequately.
- India's strengths in quantitative analysis and imaginative use of indicators should be used to help prioritize specific groups who require immediate attention.

NGO STRATEGIES

- Work out a plan for putting together a shadow report on CEDAW with emphasis on violence, health, education and employment issues. Groups to come forward to work on address specific articles from regions and states.
- Disseminate the outcome of the GOI Consultation as widely as possible.

NAWO'S AGENDA

- 1) To do systematic follow up and active advocacy work with GOI for removal of reservation and simultaneously nationwide campaigns on educating civil society groups on optional protocol and reservations on CEDAW.
- 2) To prepare simplified booklets on CEDAW, in at least six regional languages for state level groups with the purpose of regional trainings, for the next 3 years.
- 3) To develop a comprehensive (illustrated) manual in English for in house NAWO trainers of CEDAW.
- 4) To create posters in all the 13 Indian official languages for advocacy on "Registration of all marriages" under the national campaign of NAWO on the same issue.
- 5) To hold NAWO workshops on CEDAW with at least 6 law schools/ universities in the next 3 years to sensitise law students to gender discrimination.
- 6) To hold seminars and workshops throughout India in at least 30 women's colleges to orient young women on knowledge of CEDAW its application.
- 7) To take forward with different women's groups both within the NAWO network and outside it the national campaign around Article 5 and 16(2).
- 8) To call a small consultative group of experts and NAWO and GOI on Optional Protocol and Reservation.

- 9) To explore, the possibility of calling for discussions and consultations with different community leaders of minority communities influencing the reservations

CHAPTER 2

ARTICLES 1 - 4: EQUALITY, NON DISCRIMINATION, HUMAN RIGHTS & FUNDAMENTAL FREEDOMS, SPECIAL MEASURES

2.1. THE PREVALENCE OF THE PROBLEM

The Indian Constitution grants fundamental freedoms to all its citizens, and recognizes the right to non-discrimination and equality for women as justiciable. However there are critical ways in which these fundamental rights, in their enforcement, fail to provide protections to women, especially to dalit, adivasi and minority women. While the Government of India report makes a mention of the protection offered by constitutional guarantees contained in fundamental rights, it does not mention that **such protection does not extend to situations of discrimination by private parties.** Fundamental rights may not be availed against private parties and non-State actors, and this remains a fundamental limitation. The second part of the problem is that although protections are provided against state actors, in practice, since the women whose rights are derogated, belong in large part to the most vulnerable and marginalised sections of citizens, **justiciable rights are rarely enforced on the ground.**

A third limitation is the non-recognition of the intersectional nature of discrimination, compounded by the non-inclusion of crucial measures that sharpen discrimination against women. Courts do not address **indirect discrimination** as it has often been held that mere classification cannot be interpreted as discrimination.

2.1. 1. Discrimination in Employment

A. *Military Nursing Service*

In 1994 it was reported that there were 200 women in the armed forces. Barring a couple in combat positions, all the rest were in the Military Nursing Service.³ The fact that the Service is entirely female is masked by the use of the word "person" and "officer." The Military Nursing Service had evolved rules that in the interests of the efficiency of the service, after marriage a person could remain in service only if she justified her continuance by showing extra efficiency in the years preceding her marriage. In 1988, Indira Kumari Kartiayoni a Lt. Nursing Officer in the Military Nursing Service got married after obtaining requisite permission. However subsequent to the marriage her service was discontinued, the justification being her "comparatively poor performance." In the ordinary course however, it was admitted that this performance level would not have interfered with her continuation in service or her promotion to the next grade. What she had failed to demonstrate was "extra efficiency" for two years prior to marriage. The Supreme Court ruled that the appellants be given the opportunity to prove her efficiency in the two

³ In 2002 the Indian Army had 980,000 active troops, along with an Army Reserve of 800,000.

years subsequent to marriage and then be discontinued if found inefficient.⁴ For the women in the corps, however, it is not marriage that is the issue but sexual harassment and too little meaningful, engaging work.⁵ There is no doubt that the court was aware that it was dealing with a “woman’s problem”. But most important of all, an unjust rule is upheld and also the setting of different standards for women that work to their disadvantage as a class. The decision itself gives immediate temporary reprieve without disrupting the arbitrariness of the rule in any manner whatsoever.

- What is the measure of that extra efficiency?
- How can performance be adequate if marriage is not contemplated, inadequate if marriage is contemplated?
- Is it not arbitrary to assume that all women will perform badly at work after marriage?
- **The problem of sexual harassment of women and gender-based discrimination in the Armed Forces remains unaddressed, and closed to public scrutiny.**

B. Indian Air Force

In January 2005, Flying Officer Anjali Gupta, the only woman officer in the command at the Aircraft and Systems Testing Establishment ASTE, Bangalore, charged her senior officers of harassing her sexually and mentally and threatened to expose corruption, that she alleged they engaged in. The IAF protocol demands that all complaints and grievances be routed through the commanding officer. Anjali’s grievance was against the ASTE commanding officer. She first filed a case against them at a local police station in February. And when the police failed to act, she went to the Karnataka High Court and asked for a CBI inquiry. Anjali has also approached the Karnataka State Commission for Women for support.

In a twist, in December 2005, Anjali Gupta was cashiered from service after being the only woman to be court martialled on charges of embezzlement [of Rs 1087, which is roughly equal to 25 USD], indiscipline and insubordination. The Chief of Air Staff later reduced this to dismissal from service. Criticising lack of gender specific guidelines regarding the conditions of women employment in the Air Force, the All India Democratic Women’s Association (AIDWA), in a letter signed by its national leaders reminded the Air Chief Marshal of the Supreme Court 1997 Visakha judgment which issued very specific guidelines on how complaints of sexual harassment at the work place are to be dealt with. Anjali Gupta was put under ‘close arrest’ for over a week in February so that the Air Force could collect evidence against her. Again she has been put under “close arrest” since April 12th. The letter states: “It is incomprehensible why this young woman should be kept in solitary confinement on such minor charges. The plea taken by the authorities that it is because she may commit suicide is laughable... Every conversation she has on the telephone

⁴ *Lt. (Mrs.) Indira Kumari Kartiayoni vs. The Maha Nideshak, Raksha Mantralaya, Shastra Sena Chikitsa Seva, New Delhi and Others.* AIR 1991 SC 416.

⁵ Goel DS, Kumari R, Saldanha D, Kaushik A, Gupta L, Deptt of Psychiatry, Base Hospital, Delhi Cantt-10, “Attitudinal profile of military nursing service officers,” *Medical Journal Armed Forces India.* 2000 Apr; 56(2): 140-2.

is being monitored. Every action of the Air Force in this case is further causing trauma to this young woman." The letter further stated, "Her 'close arrest' and the manner in which the Court Martial proceedings and the inquiry into the sexual harassment are being carried out are inhuman, anti-women and denial of her basic Constitutional and legal rights and are contrary to the direction given by the Supreme Court in the Vishaka judgement. The fact that these rights are being denied to Anjali Gupta during peacetime is a matter, which requires serious consideration. Thus, the rules of natural justice are also not being followed."

2.1. 2. Caste Discrimination and Women

Practices of untouchability have compounded the vulnerability of dalit women that spreads from a devaluation of their labour to the systematic derogation of their bodily integrity. The **Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes** has recently noted "women belonging to these [Scheduled] Castes and [Scheduled] Tribes bore a double burden. They were exploited by caste and gender, and were vulnerable to and powerless against sexual exploitation."⁶ Similarly, the National Commission for Scheduled Castes and Scheduled Tribes has stated that while the annual average of reported crimes against Dalit communities has stayed at 25,000 per year, there is a substantial increase in the 'heinous crimes of rape and murder' committed on the members of the scheduled castes.⁷ The same Commission has also noted "it is of great concern and regret that in our society, its weakest and vulnerable segments continue to suffer from discrimination, exploitation and atrocities. **Despite provisions for removal of disabilities and discrimination against SCs [Scheduled Castes] and STs [Scheduled Tribes] provided in the Constitution of India, incidents of atrocities on members of SCs and STs continue to be reported from all parts of the country in differing numbers.**"⁸

The *SC/ST Prevention of Atrocities Act* has fifteen parameters for the definition of the term atrocity. Two of these are specifically applicable to women, both dealing with sexual assault. While men belonging to the Scheduled Castes and Scheduled Tribes experience aggravated forms of assault along with the range of discriminations in employment, all of these derogations happen with women *in addition* to the fact that they bear the brunt of aggravated sexual assault. The experience of sexual assault cannot be separated from the range of derogations that are systematically practiced with reference to members of the Scheduled Castes and Scheduled Tribes in the country. Dalit women 'face targeted violence from state actors and powerful members of dominant castes and community especially in the case of rape, mutilation and death; they face discrimination in the payment of unequal wages and gender

⁶ Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes, *Fourth Report on Ministry of Home Affairs, Ministry of Social Justice and Empowerment and Ministry of Tribal Affairs: Atrocities on Scheduled Castes and Scheduled Tribes and Pattern of Social Crimes towards Them*, Government of India, 2004-2005, para. 1.4.

⁷ National Commission for Scheduled Castes and Scheduled Tribes, *7th Annual Report 2001-02*, New Delhi, 2002.

⁸ National Commission for Scheduled Castes and Scheduled Tribes, *Vol. 1, National SC/ST Commission 4th Report 1996-97 & 1997-98*, New Delhi, 1998, p.231.

violence at the workplace that includes fields [as agricultural labourers], on the streets [as manual scavengers and garbage pickers], in homes [as domestic workers], and through religious custom...'⁹

Dalit women are 'dalit among the dalits', because they are thrice alienated - on the basis of caste, class and gender. The oppression of Dalit women echoes issues of state violence, denial of land rights, social and legal discrimination, infringement of civil liberties, inferior status, dehumanizing living and working conditions, total impoverishment, malnutrition, poor health conditions, the adverse effect of various contraceptives and new family planning devices, social ostracism and untouchability.¹⁰

"Despite the law prohibiting manual scavenging, dry latrines still exist in many parts of the country. SC women, working as manual scavengers, are the worst sufferers. They are not provided protective gear and carry the night soil as head-loads, thus getting exposed to the risk of infectious diseases. Though the malaise is visible, the corrective measures are not."¹¹

Manual Scavenging or conservancy work is a predominantly female occupation that is completely unprotected by any labour legislations violative of Articles 14 and 15 of the Indian Constitution. It is tied to practices of untouchability banned under Article 17 of the Constitution and it is a degrading form of labour that expresses social exclusion under ILO norms. Manual scavenging was itself constitutionally banned in 1993 by **The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act**. The National Commission of Safai Karamcharis was constituted in 1994 and the National Safai Karamchari Finance and Development Corporation was formed in 1997, and the National Human Rights Commission took note of the problem in its Annual Report of 2000-2001. The conditions of scavengers and sweepers have been reviewed over the course of five decades by at least three committees set up by the government: the Barve Committee in 1949, the Malkani Committee in 1966 and the Salappa Committee in 1975. We have since 1993 the National Commission for Safai Karmacharis Act, and the work of the commission itself, yet the work, degrading as it is, persists. Yet, the Ministry of Social Justice and Empowerment, Government of India released statistics for 2002-2003, which show that there are 676000 people employed in manual scavenging [the unofficial estimate is 1300,000 people] over twenty one states and union territories, working at 9600000 dry latrines in the country. Over 98 percent of these people, predominantly women, belong to dalit communities. The National Commission for Safai Karamcharis noted in its report in 2000 that the major employers were the Military Engineering Services, Army, Public Sector Undertakings and Railways. There have been cases where dry latrines have been found in the premises of district courts and used by village panchayats as well. Delhi, Shimla,

⁹ National Federation of Dalit Women, NGO Declaration on Gender and Racism, Racial Discrimination, Xenophobia and Related Intolerance, World Conference Against Racism, 28 August to 7 September 2001, Durban, South Africa. National Federation of Dalit Women, Reading Materials prepared for the National Consultation on Gender and Racial Discrimination, New Delhi, February 2001.

¹⁰ *Transforming Pain into Power: The Manifesto of the National Federation of Dalit Women*, nd.

¹¹ Planning Commission, Mid Term Appraisal of the Tenth Five Year Plan, Part II, Chapter 4.

Mathura, Agra, Bhopal, Jaipur and Indore have the highest concentrations of dry toilets.¹²

Till 2003, Nandikotkur, in Kurnool District, AP, had nearly a thousand dry toilets, all serviced by the permanent employees of the village panchayat. The Panchayat collected Rs. 15 [0.33 USD] once in three months from house owners. There are presently eighteen permanent employees [eleven women, seven men] and twenty six temporary employees [12 women, 14 men]. All of them belonged to the Scheduled Castes. Efforts at demolition of dry latrines by the Safai Karamchari Andolan [the movement of persons engaged in manual scavenging] in 2003, were stopped by the Collector in response to a representation by the then MLA on behalf of the residents.

2.1. 3. Discrimination Against Religious Minorities

Muslim women of Gujarat were victims of a horrific one-sided carnage in 2002 when they were brutalized and destroyed physically, psychologically and materially. They are now living like refugees and Internally Displaced Persons in most of the cities and districts that they belonged to, from where they fled to the camps in 2002. Over one and half lakh Muslim men, women, children and elderly lived as refugees in camps for 10 months across the state. The Government of Gujarat gave official recognition to the camps only for four months, forcing the camps to be closed even when the tensions and insecurity prevailed among the internally displaced families belonging to the Muslim Community.

After four years, it is estimated that even presently 35,000 persons across the state are living displaced lives, coping on their own.

Within the state of Gujarat the Muslim Women are facing large scale violence, discrimination and denial for being belonging to a particular minority community rather than being a women within her own community. The issues of human security, personal threats, forced poverty, inaccessibility to education, health and livelihood options due to majority communalism and the partisan State being central to her life in today's context. These situations on other hand limit her capacities to struggle for reforms in favour of women within her own community and religion.

It is with this context that one has to look at the violations faced by Muslim Women within Gujarat in framework of CEDAW.

2.1. 4. The Right to Food and Housing

Closely related to the question of discrimination and social exclusion is the question of survival. **The right to food, work and survival** is one that is as crucial to women as to men, if not more. In the context of the widespread **starvation deaths** in the country and the case in the Supreme Court on the Right to Food, Rajasthan provides a telling case. Even in ordinary years, hunger and under nutrition are widespread in Rajasthan. According to the National Family Health Survey (1998-99), for instance, more than half

¹² Gita Ramaswamy, *India Stinking: Manual Scavengers in Andhra Pradesh and their Work*, Pondicherry, Navayana Publishing, 2005.

of all children below 3 years are undernourished and about half of all adult women suffer from anemia. According to the Government of India figures, out of thirty-six crore people living below the poverty line, there are more than five crore people who have been victims of starvation. In sheer terms of magnitude then, the right against starvation, which is an intrinsic part of the Right to Life and Livelihood is a critical issue for women, an issue that is a product of the era of globalisation.

Sixty percent of India's forestlands lie in the 187 adivasi (tribal) districts, which in turn comprise 33 percent of the country's geographical area.¹³ A significant proportion of forest communities are scheduled tribes, who have a special status in the Constitution. Recognising the importance of protecting their habitat from incursions, the 5th and 6th Schedules of the Constitution provide for a different dispensation in the administration of scheduled areas. Despite these constitutional protections, there has been a widespread negation of communal tenures and the consequent eviction of entire communities from forests, through the blanket application of conservation laws in adivasi areas.

The **Right to Housing** is a major concern in international law. The Committee on Economic, Social and Cultural Rights observed that "Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced evictions".¹⁴ The description of adivasis [63 percent of whom are either landless or own less than 1 ha of land], as encroachers on forest land and their eviction and displacement by the state violates their fundamental right to life and livelihood, women are a major section of those affected.

2.1. 5. Discrimination on Grounds of Disabilities

Disability Rights have not entered the constitutional framework in any significant way. The current trend on disability within government as set out in paras 117 - 120 of the II and III Report of the Government of India still indicates a welfarist approach, not one based on entitlements. Discrimination based on disability in the government report comes within the meaning of Article 41, which speaks of "public assistance in cases of unemployment, old age, sickness or disablement" to be provided by the state "within limits of its economic capacity and development." There is at the present time a bar on persons with disabilities entering the judicial services, clearly in contravention of all international human rights norms. The following provision has been used to bar persons with disabilities from being appointed, the first affected candidate from Andhra Pradesh is a visually challenged advocate Chandra Supriya, who was barred in 2004.

¹³ Forest Survey of India, *State of Forests Report*, 2001, cf. Campaign for Survival and Dignity, *Endangered Symbiosis: Evictions and India's Forest Communities*, Report of the Jan Sunwai (Public Hearing) July 19-20, 2003.

¹⁴ Committee on Economic, Social and Cultural Rights, General Comment 7, paragraph 11, cf. Campaign for Survival and Dignity, *Endangered Symbiosis: Evictions and India's Forest Communities*, Report of the Jan Sunwai (Public Hearing) July 19-20, 2003.

Rule 12 of the AP Judicial Services Rules states that:

“Rule 12: General Qualifications: No person shall be eligible for appointment to the service unless -
(iii) He is of sound health and active habits and free from any bodily defect or infirmity making him unfit for such appointment.”

2.1. 6. Discrimination on Grounds of Sexual Orientation

Sexual Orientation is an axis on which grave discrimination occurs that is also legally sanctioned. The queer community in India, on account of criminalisation by Section 377 of the IPC, are a socially disadvantaged group, who are unable to approach the court directly for fear of being identified and being subject to discrimination, harassment and violence by the police and society. The Supreme Court, in a number of decisions, has held that when a person, or a class of persons to whom legal injury is caused due to a violation of a fundamental right is unable to approach the court for legal redress, the matter can be brought before the court through a Public Interest Litigation (PIL). While on the one hand the government, through the National AIDS Control Organisation (NACO) and the various state AIDS Control Organisations encourages diverse sexual practices within a safe-sex, HIV/AIDS prevention framework, it still believes that Section 377 is necessary.¹⁵

Disability and Sexual Orientation are two such axes along which discrimination occurs, and where women’s experience of discrimination remains unarticulated in the public domain. **In fact these are two major areas of discrimination that do not find mention in CEDAW either.** We would like to draw the attention of the Committee to Section 9 of the **South African Constitution**, which explicitly includes both these classes within the meaning of equality.

2.1. 7. HIV/AIDS and Discrimination Against Positive Women

The **AIDS pandemic** far from being purely a health concern, is inextricably linked to other fundamental human rights. Where there is a cultural and systemic discrimination against women, this increases their susceptibility to infections and increases their vulnerability to violence both in the family and community consequent on infection. According to the National AIDS Control Organisation (NACO), Ministry of Health and Family Welfare, Government of India, 3.5 million people are living with HIV/AIDS in India. In South Asia, women constitute upto 35 percent of persons living with HIV/AIDS. Statistics put out by the NACO show that although there is “no significant upsurge in new infections”, there is a spread of HIV in India, with each year showing an increase in persons living with HIV/AIDS over the previous year.

Studies have shown that HIV epidemics in India are, in fact, very diverse. There were about 5.1 million HIV+ persons in India in 2003. Serious epidemics are underway in several states. In Tamil Nadu, HIV prevalence of 50 per cent has been found among sex workers, while in Andhra Pradesh, Karnataka, Maharashtra and Nagaland, HIV prevalence has cross the 1 per cent mark among pregnant women. In Manipur,

¹⁵ Siddharth Narrain, “The Queer Case of Section 377”, *Sarai Reader 2005: Bare Acts*, pp. 466-469.

meanwhile, an epidemic driven by injecting drug use has been in full swing for more than a decade and has acquired a firm presence in the wider population. HIV prevalence measured at antenatal clinics in Manipur cities of Imphal and Churachand has risen from below 1 per cent to over 5 per cent, with many women testing positive appearing to be sexual partners of male drug injectors.¹⁶

There is a direct linkage between marital violence and women's ability to protect themselves from HIV/AIDS. Violence has been shown to increase women's risk to HIV/STDs through three main routes: increased sexual risk-taking in women with a history of sexual abuse in childhood or adolescence; forced sex with an infected partner; and women's inability to negotiate condom use.¹⁷

2.2. CONSTITUTIONAL GUARANTEES AND GOVERNMENT INITIATIVES

The Constitution of India contains guarantees of Non-Discrimination expressed in terms of

- (A) Guaranteeing equality
- (B) Guaranteeing life and liberty with dignity of which an important part is the proscription of practices that are derogatory to human dignity.
- (C) Guaranteeing the Right to the Freedom of Religion and Protections to Religious Minorities

2.2. 1. Equality

The Fundamental Right to **Equality**, contained in Article 14 of the Indian Constitution guarantees citizens '*equality before the law*' and '*equal protection of the laws*'.

The Constitution of India also makes particular mention of the principle of non-discrimination based on sex. Article 15(1) protects citizens from unequal treatment and injuncts the State from discriminating against any citizen on grounds of *only* sex, among other grounds. Article 16(2) of the Constitution of India prohibits discrimination on grounds of sex in matters of employment or office under the State.

The Constitution is also aimed at eliminating historical disadvantage of women through the principle of substantive equality. Article 15(3) enjoins the State to take special measures, legislative and otherwise, to secure the advancement of women.

¹⁶ AIDS Epidemic Update, UNAIDS, World Health Organisation, December 2004

¹⁷ Vivian F Go, Johnson Sethulakshmi, Margaret E Bentley et al., "When HIV-Prevention Messages and Gender Norms Clash: The Impact of Domestic Violence on Women's HIV Risk in Slums of Chennai, India", Department of Epidemiology, Johns Hopkins University, Maryland, USA; Y R Gaitonde Centre for AIDS Research and Education, Chennai, India; and Carolina; September 2003.

2.2.2. The Right To Life

The Right to Life with dignity and more explicitly, the right against practices derogatory to human dignity are enshrined in Articles 15, 17, 21, 23 & 24. Article 15 (2) and Article 17 embody the spirit of the Indian Constitution, and give life to the Preamble. This aspect of non discrimination merits serious consideration because entrenched practices of caste based discrimination and untouchability intersect with gender based discrimination such that one index cannot be priced apart from the other. Article 15(2)(a)&(b) prohibit any discrimination with regard to (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. Article 17 of the Constitution reads, "Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance to the law." Articles 23 and 24 -- the right against forced labour, exploitation and child labour.

2.2.3. The Right to the Freedom of Religion

The Right to the Freedom of Religion is guaranteed under Articles 25-30, besides being an intrinsic part of the Preamble and the Equality Code of the Constitution. The significance of this cluster of fundamental rights needs to be underscored, especially in view of the **Gujarat carnage** and the continuing oppression of religious minorities in the secular democratic republic of India.

2.2. 4. Enactment of Special Legislations

In consonance with constitutional safeguards, the Government has enacted various laws. The discriminatory provisions of law are being progressively reviewed. The National Commission for Women, the Department of Women and Child Development and the Parliamentary Committee on Empowerment of Women have reviewed various laws and recommended amendments to many of the laws with the objective of promoting equality and to amend discriminatory provisions. The right to property under Hindu Law now confers on women the right to inherit property; the Protection of Civil Rights Act, 1955 and the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1989 protect Dalit and Adivasi people from caste discrimination and violence by private actors; The Domestic Violence Act, 2005, is a civil legislation that offers a range of protection for victim-survivors of domestic violence; child labour and bonded labour are abolished by special legislations.

2.3. CRITICAL AREAS OF CONCERN

- Para 20 of the II and III Report of the Government of India in response to Paras 74-75 of the Concluding Comments of the CEDAW Committee, do not address the situation of caste discrimination on the ground at all. Most worrying is the failure of judiciary in various jurisdictions to bring justice to dalit survivors of

atrocities, and the fact of the state being a violator of Article 17 and the law banning manual scavenging.

- While justice for the Muslim people of Gujarat continues to be a mirage, the conviction of Zahira Sheikh for contempt of court by the Supreme Court and the rejection by the Hon'ble President of the clemency petition for Zahira, a witness-survivor of the gruesome Best Bakery massacre in Baroda, Gujarat, in 2002 causes concern about the access of minority women to justice. Even though Zahira had repeatedly changed her statements, it must not be forgotten that she is a survivor first and foremost and her "hostility" to the prosecution is a product of surviving in a highly hostile and insecure environment, particularly in the absence of a witness protection programme or rehabilitation.
- The Right to Food petition in the Supreme Court underscores the magnitude of the crisis with respect to starvation. Skewed development policies are directly responsible for this situation and schemes like the Food for Work programme only address the symptoms without going to the root of the malaise.
- Displacement consequent on 'development' continues to pose a major crisis to the survival of rural and adivasi people. Related as it is to issues of wildlife conservation, and development programmes and projects, the critical concern of human security, survival and the right of citizens to residence and livelihood have to take precedence over all other concerns that the government might have. Specifically with reference to adivasi areas, the protections guaranteed to Scheduled areas must not be eroded through judicial interpretation or state impunity.
- The prohibition on performance of degrading forms of labour must be enforced forthwith. There can be no negotiation or time frame especially in cases where the state is the violator, as in the case of manual scavenging.
- In India, the right to equality for women has been primarily interpreted through case law, resulting in varying interpretations and sometimes unfavourable interpretations for the rights of women. The judiciary has also been reluctant to examine the controversial area of personal laws and hold provisions violative of the right to equality.
- The prevalence of pervasive gender based violence has prevented the practical realization of the right to equality for most women across the country. The forms of gender-based violence prevalent in India include domestic violence, dowry linked violence, sexual assault, sexual harassment and sex-selective abortion, violence against dalit women, violence through the medium of the law on the persons on grounds of sexual orientation.

2.4. RECOMMENDATIONS

- The Constitution of India does not define 'discrimination against women' in the elaborate terms of Article 1 of CEDAW. No legislation reflects such a definition either. Further, the right to equality contained in fundamental guarantees does not cover discrimination by private parties. This constitutes a serious lacuna in the Indian legal system.
- Further, guarantees in the Constitution themselves have not been given effect to. One glaring example is the women's reservation bill that provides for 33% reservation for women in Parliament to increase their political access and participation. Such a law has still not been enacted, despite constitutional backing.
- The right against discrimination as the cornerstone to human rights and fundamental freedoms as embodied in Article 3 of CEDAW, with respect to persons with disabilities [of which, according to the official estimate, women constitute 9 million in India], must be brought within the purview of Articles 14 and 15 of the Indian Constitution.
- The Mid Term Appraisal of the 10th Five Year Plan by the Planning Commission suggests that the Ministry of Social Justice and Empowerment should hold itself accountable for the persistence of manual scavenging and present an action taken report before the 2005-06 Union Budget is approved. This is an issue that must be topmost on the priority of the government, since it contributes to the persistence of the problem.
- The issue of starvation must be acknowledged officially and addressed through a convergence between different departments as well as initiatives in participative/deliberative democracy at the local level with respect to production and distribution of foodgrains as well as land distribution.
- Disability Rights must be brought within the constitutional framework, and all laws, especially relating to employment, which discriminate against or bar persons with disabilities must be repealed forthwith.
- Sexual orientation must be brought within the constitutional framework and Section 377, which criminalizes homosexuality must be repealed immediately, as a first step towards ending discrimination against queer people, in response to the demands of the queer rights movement in India and in tune with international trends in this area of human rights.

An analysis of the Government's performance would be incomplete without an in-depth evaluation of the legislative lacunae in the area of gender based violence and discrimination in different sectors **including the Armed Forces.**

CHAPTER 3

ARTICLE 5: SEX ROLE STEREOTYPING AND PREJUDICE

3.1. PREVALENCE OF THE PROBLEM

The constitutional right to equality between men and women and the right to equality before the law are far from realized. The reasons for the persistence of gender inequality despite the various legislations that have been enacted to bring about equality are to be found primarily in cultures and traditions that perpetuate prejudices and sexual stereotypes and the rituals and practices that stem from them. These stereotypes are reinforced by the media and education system as well.

3.1.1. Culture and Tradition

Women, as members of the community, embody culture in deeply gendered ways and nurture traditions and practices that perpetuate stereotypes. The patriarchal construction that the honour of nations, communities and families rests on women, serves to control women. The ideal woman is one who is the voice of the community - and this definition keeps shifting and getting redefined constantly. In this process, women become victims of extreme violence.

Will Someone Speak for Imrana?[♀]

Syeda Hameed

Member, Planning Commission; founder of the Muslim Women's Forum; and former member of the National Commission for Women.

A woman is raped by her father-in-law. She raises alarm. The village *panchayat*, which includes a local *Maulvi*, decrees that she is no longer 'pure' for the husband and so must marry her father-in-law. It also decrees that the marriage now stands annulled and her five children will remain the responsibility of her husband, Noor Ilahi. This village verdict is supported by a well-known seminary, Darul Uloom, Deoband.

This, in a nutshell, is the story of Imrana Bibi of Chhartawal village in district Muzaffarnagar, Uttar Pradesh. Muslim Women's Forum team members - Naheed Taban and Kishwar Saleem, who visited Chhartawal and Kookra (Imrana's native village) on June 21, 2005 - confirm the sequence of events.

If one could rip aside the veil that shrouds domestic spaces, one would find an Imrana, a Mohammad Ali and a Noor Ilahi in many households, regardless of religion, caste, class and community. But the silence that gags daughters and daughters-in-law kills and buries such cases within household spaces. Imrana, having broken this silence, is not forgiven.

Within days, seminarians of Deoband and some venerable members of the Muslim Personal Law Board endorse this obscure verdict. Imrana - initially determined to stick to her husband despite the strictures of Maulvis and the

biraadari (community) - capitulates, saying, "I will do what is required by the *Shariah*."

The issue is not whether Mohammad Ali wants to marry Imrana, but that he raped her. Mohammad Ali committed the crime of *zina bil jabr*, meaning forced sexual intercourse. The entire spirit underlying the Quran holds him guilty of the worst *gunah* (crime) and places him on the list of worst offenders. And what does this rape have to do with marriage?

In the past, reformist scholars and maulanas - such as 19th Century intellectuals like Maulana Asraf Ali Thanvi and Maulana Altaf Husain Hali - had warned the community against allowing its anti-gender attitudes to become identified with Islam. When will modern-day obscurantist religious leaders begin to heed their call and learn to respect gender?

Norms that decree that **women's place is in the home**, that marriage is inevitable and that they have no identity apart from their husbands dictate women's lives in most of Indian society.

The judiciary in different jurisdictions supports the view that men accused of rape can be given reprieve if they offer to marry the victim-survivor. There have been cases in Delhi and Mumbai where this question has been deliberated on with the active participation of the judge. Several participant officers in a series of judges' symposia in Andhra Pradesh in 2005 asserted that this was the only way ultimate justice in the long term could be assured to victims and their societal reputations.

As a result of their identity being totally merged with their husbands, women constantly devalue themselves and have a very low sense of self worth. Traditions constantly reiterate that women's bodies and their personhood have no value. Cultures perpetuate the view of women as objects that are there for men's use. This is the reason why women are trapped in violent homes and abusive relationships and being killed - dowry and polygamy are examples.

Girls similarly devalued, are being killed either immediately after birth or in the womb. "**Raising a female child is like watering your neighbour's plant**" is a popular proverb still doing the rounds in the Indian State of Tamil Nadu's Salem district. 'Saheli,' a Delhi based NGO, has reported that between 1978-82, nearly 78,000 female foetuses were aborted after sex determination tests in the country. Between 1986-87, 30,000 to 50,000 female foetuses had been aborted. Between 1982-92, the number of sex determination clinics multiplied manifold and nearly 13,000 sex determination tests were estimated to have been done in seven Delhi clinics themselves.¹⁸ Meetings with various chapters of the Indian Medical Association in different parts of the country have shown that doctors, while being conscious of the legislation, still offer abortion of female fetuses, both for commercial gain, but also because they too subscribe to ideas of son preference. This, by several accounts is also their way of protecting their patients from domestic violence and harassment.

Since widowhood in this culture is irreversible, women are either condemned to a life of widowhood or being killed as *sati maatas*. The immolation of Roop Kanwar followed by the acquittal of all the accused and the use of the Fundamental Right to Freedom

¹⁸ Madhu Gurung, "Female Foeticide, *Forums*, 1999.

of Religion by perpetrators to secure impunity demonstrate this subordination of women.¹⁹

Redressal mechanisms are often constrained by the very stereotypes they try to remedy. Women who take husbands to court on charges of cruelty are told that they are educated and hence unwilling to adjust to a reasonable man.²⁰ In February 2004, the Delhi Police advertised 'Dos and Don'ts for Women' in leading newspapers. Women were advised to avoid dark and lonely spots; not talk back if somebody passed lurid comments; and to make sure their parents/spouse have their mobile phone number. This well-meaning advice is fraught with patriarchal values. Women have to go out, and have every right to do so. They cannot always choose their routes or timings. It is for the police and civic authorities to ensure that there are no dark and lonely spots in public areas. They cannot shift the onus for protection on to the victims.²¹

Even at the workplace, the fact that women are not seen as workers or colleagues, but in sexual terms, results in sexual violence against women in the workplace. The Vishakha judgement is of course a landmark in proactive statutory interpretation. However this decision does not in fact offer protection to the large number of informal sector women workers. Women workers in an export processing zone in Tamil Nadu, for instance spoke of the ways in which they were harassed by employers every day because they were women. They spoke of the constant and humiliating verbal and physical abuse that they suffered at the hands of the male supervisors and sometimes at the hands of the owners of the units that they worked in. Younger, relatively better-looking and better-dressed women were able to wrangle several favours from their supervisors such as choosing the batches they preferred to work, promotions etc. The day-to-day operation of such discrimination at the worksite inhibited the emergence of any solidarity among the women workers.²²

Cultural norms that dictate that girls and women should not leave their homes and go out to work render working women and women students to sexual violence.

On February 17, 2005, the principal of a government school in north Delhi raped a Class 10 student of the school. The principal, who was also the girl's private tutor, took the girl to three of his friends. The four eminently respectable men - a school principal, a vice-principal and two businessmen - gang raped the 16-year old girl during the night. The next morning they sent her back to her parents.

¹⁹ Susan Abraham, "The Deorala Judgement Glorifying Sati", *The Lawyers Collective*. 12(6); June, 1997. p.4-12.

²⁰ Sareetha case.

²¹ Deepthi Priya Mehrotra, Beyond Violence and Silence, India Together by arrangement with Womens Feature Service, March 2004.

²² Padmini Swaminathan, "The Trauma of 'Wage Employment' and the 'Burden of Work' for Women in India: Evidence and Experiences", in Kalpana Kannabiran, ed. *The Violence of Normal Times: Essays on Women's Lived Realities*, New Delhi: Women Unlimited, 2005.

In recent months, several instances in which school teachers and principals have sexually abused girl students, have come to light. Will male students learn that rape is legitimate?²³

This violence takes on the added angle of caste in the case of dalit women. Because religious identities rest on women, communal violence often involves sexual violence against women, as we have seen with Gujarat.

What is the reason for the persistence of stereotypes despite the existence of protective legislation?

3.1.2. The Media

Media portrayals of women in subordinate positions are largely responsible for the perpetuation of cultural stereotypes. Mass media reinforces the image of women/girls as commodities, men as decision makers.

Women appear as faces on the television, or as bodies, but only rarely as persons with ideas, skills, and expertise. They are employed as presenters, hostesses, scorers, actors, dancers, and singers; they also form part of the audience shown in some programmes; yet they are rarely called upon to voice their opinion on serious matters such as political currents, or economic policy unless the programmes concerned themselves are on women's issues. In fact, most women experts complain that they are rarely asked to give opinion unless it is on a woman-centred issue.²⁴

Cinema, television, popular literature, children's literature and textbooks show women in traditional roles.

A. Print Media

Indian Print Media includes 46000 newspapers and periodicals, among them 5000 dailies, nearly 17000 weeklies, 13000 monthlies, 6000 fortnightly and 3000 quarterly publications. These are published in 101 languages. Studies have found that the prejudices against women in the print media is reflected not just in the manner and volume of reporting but also in the scant numbers of women found employed by Newspaper publishers and the absence of a clear gender policy in most newspapers.²⁵

A report that discussed a meeting of women sarpanches under the aegis of the Hunger Project, the headline was "Kitty Party with a Difference". *The Hindu*, 02 October 2004.

²³ Deepti Priya Mehrotra, "Are Girl Students Safe?" 30 April 2005, Women's Feature Service.

²⁴ Usha V.T., "Gender, Value, and Signification: Women and television in Kerala," Discussion Paper No. 67, Kerala Research Programme on Local Level Development, Centre for Development Studies, Thiruvananthapuram, 2004, p.9.

²⁵ Reinuka Dagar, "Gender and Media: Indian Perspective" Paper presented in SAFMA Regional Workshop on Gender and Media in South Asia, Kathmandu, Nepal, June 26-27, 2004.

There is also the condonation of extreme forms of sexual violence and battery in the mass media that has troubling implications for practices of violence in contemporary Indian society.

The cover title for the 4 May 2003 issue of *The Week* national magazine read as "Rape Racket", and the cover story exclusive entitled "Rewards of Rape" and several other articles sought to portray Dalit women as filing numerous false cases under the *Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act 1989* in order to receive monetary compensation and exact revenge on others. Reading through the articles, however, revealed a different view of open caste manipulations by dominant caste villagers, coercing Dalit women who are socially or economically dependent on them into filing these complaints.²⁶

Stereotyping in the media also foregrounds the image of the able bodied dominant Hindu woman as the norm and constructing relationship only along lines of heterosexuality, both of which invisibilise the predicament of caste, religious and sexual minorities in the country, as well as women with disabilities, rendering them more vulnerable to discrimination.

B. Mainstream Cinema

The power of cinema as a visual medium and its grip over people can scarcely be understated. Violence against women is an essential ingredient of hindi films. Women are largely confined to the roles of mother, whore, wife, mother-in-law, their function being to subserve male interests and service the needs of men. The most popular way of keeping women in place is through the routine use of violence.

Films depict women entering new fields of work in very poor light. Women bus conductors, policewomen and women jailors for instance are either shown as comic relief or for sexual titillation. The film *Suryavamsam* [Telugu, Tamil] for instance shows a woman conductor as a sexual object, someone who in the course of her duty provides titillation to male passengers. Similarly working class women - street vendors, domestic workers, municipal labourers - are always portrayed as "immoral" women.

While there are some instances of individual women being portrayed as resisting patriarchal domination, violence or injustice, the mainstream visual media has consistently caricatured women collectives and their struggles against structural violence, especially struggles against sexual and domestic violence. Women's groups are portrayed as consisting of affluent women with little else to do but to break homes and create marital discord.

C. Television

The following observations about television viewing in Kerala are true of a large part of the country as well:

²⁶ Jayashree Mangubhai and Aloysius Irudayam, S.J., "Building a Subaltern Women's Perspective", in *Essays on Criminology in India*, edited by Kalpana Kannabiran and Ranbir Singh, forthcoming.

Television has entered the Kerala household in a big way and its influence on the Malayali psyche has assumed great proportions. A large majority of Malayali households possess televisions sets or have access to them. Age, gender, class, caste or educational status is no hindrance to television-viewing. The practice of watching TV, talking about its various programmes, and often imagining its world to be real, has become almost a way of life. Lifestyles and work schedules are adjusted to accommodate TV viewing, particularly, viewing of favourite programmes. Patterns of socialising time schedules for religious practices and prayers and for shopping and business transactions - all have undergone among Keralites - men, women, and children. In fact, social visits, religious rituals, and even study timetables are decided after consulting the programme schedules of the favourite television channels. The daily timetables for students prescribed by the school authorities allot a specific timeslot daily for television viewing. Cinematic dance, dress parades and such other entertainments, clearly influenced by the television, are now part of the stage performances of every school or educational institution. The television programmes often extend beyond their professed domain and occupy not only leisure time but encroach into study time and vitiate working environment. Television serials and their story lines, news coverage, and presentation styles (including the personality and make-up of the presentations) are discussed, not only in the home, but also at the work place. Official duties and responsibilities often yield place to discussion of the story lines of the serials viewed the previous evening. The Malayali penchant for television causes her/him health hazards too. That continuous TV watching is injurious to the eye is well known. Besides, sitting before a TV for hours together causes other health problems too. This is particularly true for women who seek entertainment at home in preference to other leisure time engagements, which would give physical exercise and mental relaxation, may be outside home.²⁷

The idea that marriage is ultimate goal for women is reinforced in many different ways. Single women are portrayed as people whose main aim in life is to disturb families. This stereotyping extends to children's programmes as well. There is an increasing trend in the portrayal of women as villains in television serials. Educated women who go out to work are inevitably shown as being arrogant. Inequalities between girls and boys are completely normalized and glorified. Doordarshan has the possibility of regulating the portrayal of women and of putting in place a different norm. Instead, women's programmes in DD push women back into those same stereotypes. There is no discussion in regional television networks on CEDAW, the Beijing Platform for Action and other human rights instruments. Visual campaigns on critical issues like female feticide are unimaginative and monotonous. Women's programmes are largely confined to cookery, beauty, good housekeeping and at the most family planning. Ministers and political leaders, when they speak on television, stress women's role as homemakers and wives and actively discourage women from entering the public arena.

Tamil TV serials portray one half of the women characters as dependants and sufferers who often cry thus enforcing the age-old stereotypical view that women are generally weak and can't do anything on their own. They perpetuate the view that it is always good for women to be patient and accept

²⁷ Usha V.T., "Gender, Value, and Signification: Women and television in Kerala," Discussion Paper No. 67, Kerala Research Programme on Local Level Development, Centre for Development Studies, Thiruvananthapuram, 2004, p.9.

any mistreatment that she may be subjected to by her husband and his family and sometimes even by the society. The remaining women are typecast as outright evil, plotting and abusive characters and go to any extent (even hiring goons) to settle personal scores. It is also not uncommon that one woman in each serial is shown as the super-woman who is like a saint and will achieve anything through her unimaginably perfect characteristics.²⁸

A study conducted by the Indian Science Monitor (ISM) found that 70 percent of those who watched these serials were opposed to the negative characterisation of women. Further women viewers the study found find this kind of portrayal dangerous to the social fabric.

After a concerted campaign by women's groups against the portrayal of women in television serials, the PC Joshi Committee was set up in the 1980s to form guidelines on the depiction of women. According to these guidelines, portrayals of women had to take note of all facets of their lives as workers, as contributors to the well-being and survival of the family and the national economy. Care ought to be taken that women's dimensions form an integral part of all programmes and not merely confined to women's programmes. This report was never formally tabled in Parliament by the government and officially accepted.

"What worries me is that so many women are coming into television as directors and writers and there is still no change (in the stereotyping of women in popular television serials)"
- Shabana Azmi²⁹

An even more worrying trend is the use of television shows to conduct media trials on current issues. While the discussion of an issue and audience response can be a way of generating interest, the reality show has become a nightmare for women after the Gudiya episode.

Kalpna Sharma, Remember Gudiya?, *The Hindu*, Sunday, 19 November 2006

Gudiya's case was actually tried live on a television channel. ..Gudiya is the young woman from Mundali village in Meerut district, Uttar Pradesh. She thought her soldier husband Arif, who she had known for barely two weeks after her marriage, had died when he disappeared during the 1999 Kargil conflict. He was presumed to be dead or a deserter as his body was not found. In 2004, after four years, Arif came back to India as part of an exchange of prisoners between India and Pakistan. During his absence, Gudiya remarried. She was expecting a child from her new husband Taufiq when Arif returned.

The making of a media spectacle

²⁸ The [Petition against the Portrayal of Women in Tamil TV-Serials](#) Petition to The Producers of Tamil TV Serials in various Tamil TV channels in Tamil Nadu and the respective regulatory agencies in the Tamil Nadu Govt. and the Govt. of India. was created by Women's Alliance for Rationality (WAR), USA. and written by Muthuvel Chelliah (mmchelliah@yahoo.com).

²⁹ Cf. Reinuka Dagar, "Gender and Media: Indian Perspective" Paper presented in SAFMA Regional Workshop on Gender and Media in South Asia, Kathmandu, Nepal, June 26-27, 2004.

What should Gudiya do? Go back to Arif or stay with Taufiq? And what about the child? An intensely personal dilemma was first made the subject of debate in the village *panchayat* where 1,500 people ruled that Gudiya must return to her soldier husband. And shortly after that it was turned into a live television spectacle as all kinds of "wise" people and experts discussed what Gudiya should do. The anchor insisted that she should decide then and there, while the programme was still on the air. A confused and overwhelmed Gudiya said she would go back to Arif. Later she said, "It was everybody's wish. Who knows what will happen to me? I may die or the child may die. No one can say anything."

The child did not die but Gudiya did, within a year of giving birth. And just last month, both Arif – who continues to take care of her child, a boy called Mateen – and Taufiq have remarried. Thus Gudiya's case is closed. But is it? Does it not still pose questions about her right to decide the course of her life and whether the media should have turned her dilemma into a media spectacle?³⁰

D. Advertising

Advertisements in India increasingly tend to commoditise the female body in the most derogatory ways: Kitchen sinks hanging from women's belly buttons; magic creams transforming the dark-skinned, neglected woman to a fair-skinned desired one; the choice of the right detergent becoming the mark of woman's intelligence; nail enamel, and moisturising cream becoming the turning point in women's liberation; women's inner wear motivating them to assault men.

There is also a redefinition of relationship with desire for commodities determining the strength or weakness of relationships: a nine-year-old boy is the desired husband because of the brand of paint used to paint his father's house; the car is the reason why a woman leaves her husband for another man; molestation and harassment of women becomes the normal way in which young adult men entertain themselves; why not a son instead of a dark daughter? Parental responsibility is about saving up for the son's education and the daughter's wedding; husbands wish they could exchange old wives for new like the watch that is on offer; husbands get served by two wives, like the toothpaste that says, "buy one, get one free." "Woman is woman's worst enemy" – so the cliché goes. In the world of advertising, this cliché becomes the truth. Envy is the emotion through which women relate to their peers. need to struggle and shout against various discriminatory social practices and structures.³¹

In her study on Women and Television in Kerala, V.T. Usha observes:

"Most women viewers whom we interviewed asserted that they did not make purchases under the influence of such demeaning advertisements. The only advertisements they admitted that they enjoyed viewing were the ones, which featured children or happy family situations."

³⁰ Gudiya died in January 2006 of septicaemia after months of frequent illness following the birth of her stillborn child. See, "The Times and Choices of Gudiya", *Indian Express*, January 09, 2006.

³¹ Manjeet Rathi, The Portrayal Of Women In Advertisements, *Voice Of Working Woman*, January 2006.

3.1. 3. Textbooks and Classrooms

There are very minimal changes in school curriculum to make a dent in stereotypic attitudes and mind-set. Especially in rural areas, discrimination and stereotyping are prevalent in schools. Girls face more restrictions. There is little opportunity for girls in the field of Sports where one can develop confidence and actualize her potentials.

Gender biases continue to exist in many school textbooks, for instance those brought out by the Bihar State Textbook Publishing Corporation, Rajasthan State Textbook Committee and UP Textbook Department for Basic Education. A recent study of these textbooks shows that they depict stereotypical behaviour: men active (carrying sticks, playing games, digging, leading his family while his wife walks behind him) and women relatively passive (doing household work, playing with dolls, docile). The stories have predominantly male characters, particularly stories of leaders, heroes and warriors. Biased textbooks are bound to have a very powerful negative impact upon children - reinforcing social messages about the superiority of males and the inferiority of females. At an even deeper level, language is inherently gender biased, and if used unselfconsciously, this sexism is perpetuated.³²

Amongst the findings of a survey report by Friends for Education, a forum for the uplift of education, culture and civic sense, it was found that the average length of a primary textbook in India is about 115-130 pages with every text having an average of 80-100 illustrations with 52 per cent depicting men and boys, 28 per cent neutral objects, 14 per cent mixed and only 6 per cent portrayed women and girl - children. In these depictions Men man spaces that are conventionally and socially seen as public and outdoor assignments that project them in stronger roles like policemen, engineers, lawyers, professors, pilots, mechanics etc. Even today the textbooks of the primary children by NCERT show gender bias as most of the really adventurous and enterprising roles like that of astronauts, soldiers and sportspersons, are men.

The stereotypes in textbooks find their way into classrooms as well. Schools purvey gender stereotypes, hardly different from the rest of society. Girls huddle separately within the classroom in co-educational schools. In some schools, they are denied facilities to play or use the science lab - which boys have access to. Many teachers talk exclusively to boys, paying no attention to the girls, and only (some) boys answer or are active in class. Despite education being touted as a tool for empowerment, recent and old research clearly indicate that schooling is not an empowering experience for most girls. Most schools have next to no notion of girls' or women's rights. Textbooks are suffused with gender bias (far more stories centre around boys than girls, far more pictures of boys and men, and far more boys and men in stereotypical active roles, girls and women in passive roles). This serves to reinforce, in the minds of children, that gender is 'natural'.³³

Gender stereotypes are reinforced through curricular and extra-curricular means, such as home science being offered exclusively to girls, and sports to boys. Teachers compound gender discrimination by asking girls to make tea, wash cups and sweep

³² Deepti Priya Mehrotra, "Textbooks for Change," 5 October 2006, Women's Feature Service.

³³ Deepti Priya Mehrotra, "Girls Without Power", OPIF220, Women's Feature Service.

floors in the classroom, as well as taunting them with statements like, "Why do you study? Anyway you will be sweeping floors and cleaning dishes!" Thus in our schools there is a 'hidden curriculum' perpetuating gendered stereotypes of 'strong, competitive male wage-earners' and 'docile, homely girls' (data from discussions with Bachelor of Elementary Education students, Lady Shri Ram College, 2004-05).³⁴

As long as the visual and print media continue to portray women in a derogatory manner, the perpetuation of subordination on the ground will not change, because of the power that media exercises over people.

3.1.4. Breaking Stereotypes

Village Karauli, Rajasthan. A woman, Basanti, reported that she was raped. The Panchayat was convened. The Panchayat heard Basanti and everyone was convinced that her modesty was outraged by one Mahesh. In the meeting of the Panchayat the 25 year old mother of a child, the victim, was the only woman. This congregation delivered its judgement: Basanti's husband Raja was directed to do with Mahesh's wife Urmila what Mahesh had done to Raja's wife! Basanti did not accept the verdict. She said that the crime was committed by Mahesh. Why should his wife be punished? To cut a long narrative short, now Urmila also barged into the Panchayat meeting. Both Basanti and Urmila hugged each other. Other village women also trickled in slowly! This was unheard of. Women in Panchayat! The male Panchayat walked out. Urmila went and occupied the seat. She said that her judgement was that her husband Mahesh should visit every family in the village and beg pardon of the women there, and then he should leave the village for one month. She knew, she said, that this judgement would be unacceptable. Now I deliver the part of the judgement that would be acceptable. I am not going to live with a rapist.³⁵

Ambujam Anantharaman, Women on Track

The Tribune, Online Edition, Sunday, June 18, 2006, Chandigarh, India

Behind every successful and safe train journey is the hard work and care of thousands of gangmen and gangwomen, who inspect and maintain the railway track. Gangmen and gangwomen work as guards on the railway tracks, ensuring that the 10,000 trains of the Indian Railways can ferry millions of passengers and tonnes of freight safely across the country.

Prior to 1980, the Railways hired only men for gang duty, mainly due to the arduous nature of the work.

Today, there are over 3,000 gangwomen with the Railways, and around 500 are posted with the Southern Railway. The numbers are likely to increase as selections are now being done through the Railway Recruitment Boards (RRBs). The selection involves running 400 metres, lifting weights and clearing a written test that examines the candidates' general knowledge and arithmetic skills. "Strangely, most of the women who apply are literate," says Priyamvada Viswanathan, Member Secretary, RRB, Chennai.

³⁴ Deepti Priya Mehrotra, "Are Girl Students Safe?" 30 April 2005, Women's Feature Service.

³⁵ Y.P. Chhibbar, Imrana, Jyotsna, Raju, Basanti..... *PUCL Bulletin*, August 2005, based on a narration by journalist, Manimala.

In recognition of their service and dedication, the gangwomen of Chennai Division were conferred the Divisional Railway Managers Award during the Railway Week in April last year.

The Chief Track Engineer, Southern Railway, S K Gupta, says gang women have become an integral part of the railways. Acknowledging that women work better in a gang when they have other women with them, the Railways has also formed all-women gangs. In other gangs too, rarely is there a single woman among many men.

Kumudha says her work has equipped her to send her daughter to an engineering college to study information technology. The high point of her career was when she saved a young woman from committing suicide on the tracks.

3.2. CRITICAL AREAS OF CONCERN

- The persistent failure of laws to check the discrimination against women - in cases of sati, domestic violence, sexual harassment at the workplace, rape, sex determination and sex selective abortions and the criminalizing of sexual diversity to name a few - have to do in large measure the power of sexual stereotypes in conditioning the minds of functionaries in the criminal justice system and the medical profession. Doctors, police personnel, lawyers and judges believe in the subordination of women and the need to circumscribe their movements.
- The absence of clear censor guidelines on sexual stereotypes results in the unhindered portrayal of the glorification of women's subordination.
- The absence of any regulations in television programmes results in a worse portrayal of women in serials. Studies have shown that women viewers oppose demeaning stereotypes in serials and commercials.
- The resilience of textbooks to campaigns by women's groups on breaking stereotypes points to the fact that people formulating the syllabus themselves subscribe to these views.

3.3. CONSTITUTIONAL GUARANTEES AND GOVERNMENT INITIATIVES

The Constitution of India in Articles 14, 15 and 21 assure to every Indian citizen, the right to equality and equal protection of the laws, the right against discrimination and the right to life with dignity. In addition to these, and in tune with these constitutional provisions, there are a number of special legislations with respect to property rights, against domestic violence, against sexual assault, prohibiting sex determination tests that have been enacted with the objective of bringing about gender based equality in a deeply unequal society. There are also laws that prohibit indecent representation and obscenity in the media. The Press Council of India has a complaints and monitoring mechanism that acts as a check on the print media.

Article 51 (A)(e) of the Constitution, which enjoins on every citizen of India, the duty "to renounce practices derogatory to the dignity of women." Although this is not a legally enforceable provision, it should be read as a limitation on the Right to the Freedom of Expression under Article 19(1).

Article 19(1)(a) guarantees the right of citizens to the freedom of speech and expression. Article 19 of the Universal Declaration of Human Rights grants to everyone liberty and the right to freedom of opinion and expression. Article 19 of the International Covenant on Civil and Political Rights, 1966, to which India is a signatory and had ratified provides "everyone shall have the right to the freedom of expression, to receive and impart information and ideas of all kinds", but clause (3) thereof imposes corresponding duty on the exercise of rights and responsibilities.

In re D.C. Saxena the Supreme Court held that

" It is doubtless that freedom of speech and expression guaranteed by Article 19(1) (a) is one of the most precious liberties in our secular, socialist republic... This liberty may be regarded as an autonomous and fundamental good and its value gets support from the need to develop our evolving society from unequal past to a vigorous, homogenous, egalitarian order in which each gets quality of status and of opportunity; social, economic and political justice with *dignity of person...*" (emphasis added. In re D.C. Saxena, AIR 1996 SC 2492)

To this end it is the responsibility of the State

"to secure to the citizens freedom to develop his faculties, freedom to think as he will, to speak as he thinks and to read as *indispensable tools to the discovery of truth and realization of human knowledge and human rights...* The purpose of the freedom of speech is to understand political issues so as to protect the citizens and enable them to participate effectively in the working of a democracy in a representative form of Government.

If maintenance of democracy is the foundation for the speech, society equally is entitled to regulate freedom of speech or expression by democratic action. The reason is obvious, viz., that society accepts free speech and expression and also puts limits on the right of the majority. Interest of the people involved in the acts of expression should be looked at not only from the perspective of the speaker but also the place at which he speaks, the scenario, the audience, the reaction of the publication, the purpose of the speech and the place and the forum in which the citizen exercises his freedom of speech and expression. The state has legitimate interest therefore, to regulate the freedom of speech and expression which liberty represents the limits of the duty of restraint on speech or expression not to utter defamatory or libelous speech or expression. *There is a co-relative and duty not to interfere with the liberty of others. Each is entitled to dignity of person and of reputation. Nobody has a right to denigrate others' right to person or reputation.* Therefore, freedom of speech and expression is tolerated so long as it is not malicious or libelous so that all attempts to foster and ensure orderly and peaceful public discussion or public good should result from free speech in the market place. *If such speech or expression was untrue and so reckless as to its truth, the speaker or the author does not get protection of the constitutional right.*" (Emphasis added. In re D.C. Saxena, AIR, 1996, SC 2492-2493)

Since a precondition of the enforcement of individual rights is that the corresponding rights of other persons be safeguarded, the freedom of expression cannot be exercised in a manner that undermines that rights or dignity of any individual or class of individuals. This limitation, arising out of the 'due recognition and respect for the rights and freedoms of others', is stated in Article 29(3) of the Universal Declaration of Human Rights, 1948.

Article 118 of the Beijing Platform for Action adopted at the Fourth UN World Conference on Women held at Beijing in 1995, defines Violence Against Women as a

"manifestation of the 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 women's full advancement. Violence against women throughout the life cycle derives essentially from cultural patterns, in particular the harmful effects of certain traditional or customary practices and all acts of extremism linked to race, sex, language or religion that perpetuate the lower status accorded to women in the family, the workplace, the community and society...Images in the media of violence against women, in particular those that depict rape or sexual slavery as well as the use of women and girls as sex objects ... are factors contributing to the continued prevalence of such violence, adversely influencing the community at large, in particular children and young people."

Since the media is an important and powerful tool of public and- political discourse, demeaning and stereotypical representations militate against notions of democratic rights and equal citizenship for women, by reinforcing patriarchal stereotypes of women as chattel to be exchanged between men. 'Humour' is used to normalize discrimination against women in the popular consciousness.

Article 236 of the Beijing Platform for Action:

"The continued projection of negative and degrading images of women in media communications-electronic, print, visual and audio - must be changed. Print and electronic media in most countries do not provide a balance picture of women's diverse lives and contributions to society in a changing world. In addition, violent and degrading or pornographic media products are also negatively affecting women and their participation in society. Programming that reinforces women's traditional roles can be equally limiting. The world-wide trend towards consumerism has created a climate in which advertisements and commercial messages often portray women primarily as consumers and targets girls and women of all ages inappropriately".

Article 244 of the Beijing Platform for Action adopted at the Fourth UN World Conference on Women which specified measures to be taken by the mass media and advertising organizations:

(a) Develop, consistent with freedom of expression, professional guidelines and code of conduct and other forms of self-regulation to promote the presentation of non-stereotyped images of women;

(b) Establish, consistent with freedom of expression, professional guidelines and codes of conduct that address violence, degrading or pornographic materials concerning women in the media, including advertising.

The Beijing Platform for Action states as its Strategic Objective J1, the establishment of media watch groups by non governmental organizations as well as professional media associations.

The Beijing Platform for Action states as its Strategic Objective J.2: "Promotion of a balanced and non-stereotyped portrayal of women in the media."

Article 243(d) (e) &(f) detail the Actions to be taken to achieve this objective by Governments and international organizations, *to the extent consistent wit freedom of expression*:

(d) *Encourage the media to refrain from presenting women as inferior beings* and exploiting them as sexual objects and commodities, rather than presenting them as creative human being, key actors and contributors to and beneficiaries of the process of development

(e) Promote the concept that the sexist stereotypes displayed in the media are gender discriminatory, degrading in nature and offensive

(f) Take effective measures or institute such measures, including appropriate legislation against pornography and the projection of violence against women and children in the media.

3.4. RECOMMENDATIONS

- Gender sensitive guidelines and mechanisms have to be evolved in order for the media to reflect gender rights in a sustained manner.
- Norms for reporting and discussing issues/cases in the media must be set out carefully, with a view to prevent trials by the media which derogate women's rights to privacy and choice.
- Cultural diversity brings with it multiple forms of gender differentiation and discrimination. The media must reflect this diversity in order to be able to report on socio-cultural practices in an unbiased manner.
- There has to be a concerted plan of action drawn up by the government in close consultation with women's groups, human rights groups, progressive media persons and film makers - that involves not just training but also the production of short films and imaginative audio visual material that is presented in the mass media at prime time to counter resilient stereotypes.

- There is need to develop censor guidelines. The situation will improve if the Censor Board consists of persons who are familiar with cinema and visual media as well as persons who have worked with women's groups.
- The PC Joshi Committee findings should be put in place immediately, in tune with women's demands, and these norms should be binding on commercial advertising as well.
- In deciding the composition of syllabus committees, alongside expertise in the subject, proven gender sensitivity should also be a qualification. It is only then that the content of textbooks will change.
- Best practices and efforts to break stereotypes must be disseminated through the electronic and print media, but must also simultaneously be reflected in the school curricula.

CHAPTER 4

ARTICLE 6: TRAFFICKING AND PROSTITUTION

4.1. PREVALENCE OF THE PROBLEM

Trafficking, which is a form of abusive and irregular migration for commercial sexual exploitation and other illegal purposes³⁶ has reached alarming proportions in the past two decades globally; and more so within the South-Asian Region. Across this region, human beings, especially women and children are trafficked within their own countries and across international borders against their will in what is essentially a clandestine slave trade.

A study³⁷ in the six metropolitan cities of India, suggests that 94% of trafficked women in India are from rural India and from the lower socio-economic strata. The report identifies Andhra Pradesh, Karnataka, Tamil Nadu and West Bengal as the highest supply states with 24%, 22%, 17% and 14% respectively.

According to the latest research on Trafficking in Women and Children (2002-2003) in India by the Institute of Social Sciences, girls and women are being trafficked into Delhi from Andhra Pradesh, Karnataka, Tamil Nadu, West Bengal, Jharkhand, Rajasthan, Madhya Pradesh, Maharashtra, Gujarat, Goa, Assam, Arunachal Pradesh, Uttar Pradesh, Uttaranchal, Bihar, Bangladesh and Nepal. While a considerable number of victims are kept back in Delhi, others are re-trafficked to Haryana, Maharashtra, Uttar Pradesh and Bihar.

In a number of cases it has been found that minors from West Bengal were transported to Haryana via Delhi to be sold for the sole purpose of marriage with men double their age, a recent case involving abduction of a 12-year-old girl from Jehangirpuri in North-West Delhi five years ago brought to light a crude reality -- that the trafficked girls are being administered hormonal injections for hasty physical growth so that they could be pushed into the flesh trade quickly. The case also revealed that organised gangs of human traffickers were operating in Delhi.³⁸

The root causes include extreme disparities of wealth, continuing and pervasive inequality due to class, caste and most importantly gender biases throughout the region, erosion of traditional family systems and values, iniquitous social conventions, lack of transparency in regulations governing labour migration (both domestic and cross border), poor enforcement of internationally agreed-upon human rights standards, and enormous profits ensured by the trafficking business to the traffickers.

Needless to say, the **conditions of work** in these contexts are extremely exploitative involve slavery like practices and prison like environments. The working hours are long with no time for rest or recreation. With low wages, employers often withhold the

³⁶ Like begging, forced domestic labour, organ transplant, camel jockey, etc.

³⁷ The Study was supported by Central Social Welfare Board (Government of India) in 1996

³⁸ Devesh Pandey, " 'Missing Link' in Trafficking", *The Hindu*, October 02, 2004.

earnings of the women and thus they are rendered without any access to their own remuneration. The health risks and costs that women bear are hardly ever assessed in ways beneficial to them - the risk and high prevalence of HIV/AIDS, no access to reasonable and safe medical facilities, and no assessment of the impact of humiliation, isolation and social ostracism on their mental health.

4.1.1. Causes for Prostitution and Trafficking in India

There are several factors, which leads the women and children to be trafficked.

A. Poverty and Unemployment

This is the major reason, which makes the majority of women and children vulnerable - the sale of women and children and their dispossession through erosion of traditional livelihoods consequent on globalisation being major manifestations of poverty in trafficking realities.

B. Disasters and Conflict

Political unrest and natural disasters aggravate the vulnerability of women and children. Displacement caused by these factors and poor rehabilitation tend to push women into the spirals of trafficking for livelihood and survival.

C. Discrimination

Many women who opt out of an abusive situation at home or escape often find themselves vulnerable to prostitution, sex work and trafficking. Offering to marry without **dowry** and then pushing these women into prostitution has become a common method of trafficking in Uttar Pradesh, Bihar and other states. The social stigma associated with **single women** -- divorced, unmarried, or widowed, and the exclusion of survivors of sexual abuse is a major contributing factor. With no support system to provide them security, they fall a prey to the traffickers. **Female Infanticide and Sex Selective Abortion** has resulted in interstate trafficking of girls in the name of marriage in some states like Punjab and Haryana.

D. Traditional Prostitution

In Bedia, Nat, Kanjar and other such communities, practices of traditional prostitution along with the dedication of girls to temples and goddesses in Maharashtra, Karnataka and Andhra provide easy channels into prostitution and trafficking.

E. Tourism

Development policies and patterns of development promoting **TOURISM**, has enhanced the demand for commercial sex and ensured a viable proposition for the traffickers, given the *economics of the trafficking business*, by providing them the market and the infrastructure to sell minors and women for Commercial Sexual Exploitation.

4.1.2. Rescue

Trafficking is a facet of migration. There is a great need for awareness generation at all levels and community policing to reduce the vulnerability of women and children and ensure safe migration. As it was planned under the commission special police officers needs to be designated to look into trafficking cases specifically under all police stations.

Rescue operation of minors, in prostitution or any kind of Commercial sexual exploitation or illegal purposes, is primarily the State's responsibility. NGOs however have done a much better job by themselves throughout the country. More rescues have to be handled professionally by the special police officers designated to look into trafficking cases.

Rescued children usually live in State Remand Homes and often are in a situation where their minimum Human Rights are denied. Red-tapism, slack investigation and long judicial processes leads to the children spending a majority of their childhood in an unhealthy situation of the Government Homes.

Children rescued from prostitution often go into "Post-traumatic Stress Disorder" which manifests into other behavioural disturbances, characteristic of children who have been subjected to prolonged and sustained violence. In addition they suffer from a loss of trust, lack of self-esteem due to isolation, which results in maladjustment in children. However, both the infrastructure and the personnel in the govt. remand homes are ill-equipped to handle and cater to the different requirements of these children.

Govt. remand homes have no infrastructure to deal with pre or post test counselling for **HIV positive minors and women** - they often do not have sensitised and trained counsellors /personnel and pre/post-test counselling centres. The state hospitals in most cases refuse to take HIV patients. If they ever do so their infrastructure is hardly enough to cope with the problem. Therefore when a girl gets to know that she is HIV positive she has to deal with the trauma on her own. That leads to dire consequences in some cases.

4.1.3. Rehabilitation

The rehabilitation that is being done for these rescued women and children are all results of NGOs' initiatives. But it has been observed that the rehabilitation is always difficult.

Restoration of the woman or the young girl in her native village without providing her the means to ensure her livelihood would only place the girl in a more vulnerable position and enhance the chances of her being re-trafficked.

Also in cases where the girl was trafficked with the consent of her parents, restoring her back to her family makes the girl susceptible to more exploitation and violence.

Though it gives restoration orders, the Govt. does not have any infrastructure in place to provide for women and girls who are not accepted back by their families. NGOs, however, on their own through various means are trying to reach out to these girls and create opportunities for their economic independence and a better life.

4.1.4. Legal Hurdles

A. Cumbersome and inefficient investigation

A victim may be detained in a remand home until and unless her case is resolved. But the accused (traffickers or madams) get bail immediately before or after 90 days. There is a lack of initiative in submission of charge sheet and conducting in depth investigation into the individual circumstances of victims by the police- often resulting in handing victims over to traffickers who in many cases may be adoptive parents as well. Most of the arrests that are done are done during the rescue operations and raids that are conducted by the Police. The trafficker is rarely present on the scene and rarely gets arrested. The **absence of Women's Police Stations** or women's cells in police stations, results in the immediate release of women traffickers.

B. No De Facto Protections for children

There are an inadequate number of Juvenile Courts and Juvenile officers in police stations. In April 2000, the **Juvenile Justice (Care and Protection) Act** was amended but not implemented. Thus the children are not benefiting from the Child Welfare Committee, or the National Plan of Action. We have **Child Marriage Restraint Act and Child Labour Abolition Act** - none of which are implemented. Under Section 366B IPC, children are victims and not accused, but the police rarely abide by this section.

C. Repatriation

It is a fact that India is receiving girls from Bangladesh and Nepal for Commercial Sexual Exploitation. The foreign women and children who are trafficked face a number of problems. The unilateral application of Section 14 of the Foreigners' Act to all adults from Bangladesh **transforms all victims of trafficking into "Accused", for illegal immigration**. Women and children from Nepal are sent back to their points of origin where they become vulnerable once again. The **Pushback system** maximizes the vulnerability of women and children. This process always happens after 7.00 p.m. and in darkness. Many people involved get lost while trying to go back to their homes. They also face Sexual abuse by people who are supposed to help them in this process. Moreover, they have a strong possibility of being re-trafficked. When an entire family sells their land and comes to India hoping to get a new life and gets arrested, the adults are sent to jail and children to remand homes. But even after the adults are released the younger children may still be at the home. Sometimes it has been observed that the victims of trafficking are detained at homes for years.

4.2. CONSTITUTIONAL GUARANTEES AND GOVERNMENT INITIATIVES

Article 23 of the Constitution prohibits traffic in human beings and forced labour. Apart from this guarantee, there are various provisions in criminal law, both in the Indian Penal Code and in special legislations like the Immoral Traffic (Prevention) Act, 1956 (ITPA), amended in 1976 and 1986, that are aimed at preventing trafficking in persons. At the international level, India has been part of a series of deliberations aimed at tackling with radical measures, the problem of trafficking and prostitution.

- The Prevention of Immoral Trafficking and the Rehabilitation of Prostituted Person's Bill (1993) recognizes the rights of prostitutes and initiates the investigation in these matters.
- The Govt. of India has formulated a **National Plan of Action** to combat trafficking and commercial sexual exploitation of children and minors, in 1998.
- In the year 2003, the **State government of Andhra Pradesh** has passed a **Government order** to address the issue of trafficking. An Anti - trafficking campaign was organised across the state and it was decided to form Core committees at the district level comprising the District Magistrate, the Superintendent of Police, the Project Director (Dist. Agency of Women Development and Child Welfare) and representatives of NGOs to monitor the situation in the district, formulate and implement necessary initiatives to tackle the issue.
- **SWADHAR** programme has been introduced by the Govt. of India to combat trafficking of women and children. This scheme was the first to include the **prosecution** of trafficking and **repatriation** if possible and asserted on the **rehabilitation** of trafficked victims. Funds have been allocated to different NGOs in different states to work on the Swadhar project.
- **Short stay scheme** - the State Govt. has included counselling programme for the traumatized children.
- The Last SAARC Convention was held at Kathmandu where trafficking and child sexual exploitation were highlighted as a major problem.
- The Supreme Court Judgment of using video conference systems for witnesses of trafficking facilitated by PRAJWALA has saved the victim from the trouble of travelling a long distance on each date and more so to testify in an uninhibited manner.
- Sarva Shiksha Yojana, the "education for all" policy will be beneficial to these groups of vulnerable people.

4.3. RECOMMENDATIONS

- The Central and State Government needs to lay more stress on **employment and income generation** schemes for vulnerable families, along with vocational training and education in the source areas of trafficking (which have already been identified by the NGOs). Programmes like Support to Training and Employment Programme (STEP) needs to be started with immediate effect in the vulnerable areas of the country, especially the rural pockets. Ensure economic survival mechanisms of women in the rural areas.
- All States should have a **specific monitoring mechanism** - a task force/core committee to look into the issue of trafficking and NGOs should necessarily be a part of this Committee. It should be made mandatory for the Panchayats to maintain a record of the people migrating from their respective villages for different reasons - marriage, higher education, employment etc. By involving different personnel from the administration and governance structures as well as from the NGOs and by creating awareness amongst the community, a networking system should be put in place to monitor the movement in women and children. Investigation of missing children needs to be done in the source areas by the Panchayat, which is the nearest formal body, which can identify trafficking. Integrated Child Development Services personnel (Anganwadi workers) should share with members of panchayat the responsibility of identifying and lodging complaints on missing girls with the police. The procedural aspects of these actions need to be put in place urgently. A databank has to be created at the national and the state levels giving details about missing persons and trafficked persons.
- All the concerned government personnel need to be trained to implement and monitor the National Plan of Action, which includes the effective implementation of protective and punitive legislation. SAARC Convention should be translated in action and the Indian government needs to have bilateral agreements with other countries in order to facilitate safer repatriation processes.
- Juvenile Boards and Committees under the Juvenile Justice (Care and Protection) Act, 2000 need to be formed across all districts in each of the states in the country.
- More workingwomen's hostels and shelter homes should be established in districts all over the country with the vulnerable districts getting the top priority. Existing Government Homes should have proper shelter, medical and psychological support, skill training support for the rehabilitation of victims of trafficking.
- Counselling and vocational training centres should be increased for proper reintegration of the victims of trafficking. Pre test and Post test counselling (under WHO and NACO guidelines) of suspected HIV positive victims should be made mandatory in all Government and NGO Homes.

- Marriage registration should be made compulsory and specific responsibility of proper follow up should be given to a particular department. All customary marriage laws have to be amended to ensure uniform age of marriage. Women should not be retrenched because they marry. The right to family benefits to be assured to the women. Buying and selling of minors, fake marriages and forced prostitution (372, 373, 366A) should be heavily punished. Sometimes parents or nearest kin are involved in the crime and they should be punished too.
- Alternative opportunities for aged prostitutes should be introduced. It has been experienced, often that those who can no longer attract customers by themselves, in order to ensure their incomes, turn into traffickers or brothel madams. Thus those who had been the victims of violence become the perpetrators of exploitation. This vicious circle needs to be broken.
- More Swadhar projects should be given to NGOs. The procedures of funding for these projects should be expedited. Periodic monitoring and reviews should be religiously conducted and facilitating systems should be put in place. NGOs running Swadhar project should be empowered to work with the Government in carrying out rescue and rehabilitation operations of the victims of trafficking.
- There is a need to set up a Nodal Agency on the lines of 'Narcotics Bureau'.
- The Push back system should be abolished and new laws for repatriation need to be implemented so that the Bangladesh and Nepal Nationals (women and children) may go back to their country safely. Children should not be charged under 14 Foreigners Act. Instead, they could be produced before the Child Welfare Committee (CWC).
- There should be speedy recovery of cases: trafficking and all others. Fast track court has been established but we need separate court to deal with cases of trafficking. Members of the Judiciary should be sensitised on laws and various landmark judgments passed by the Supreme Court on the issue of trafficking. Positive interaction should be there while working with these cases with the NGOs.
- A Special Cell To Deal With Trafficking Cases Should Be Formed Immediately.
- In all the states, special police officers have to be recruited and notified under ITPA. They must be trained and equipped with all the relevant information on laws and various landmark judgments passed by the Supreme Court on the issue of trafficking. They should also be more sensitive in handling cases of women and young girl children in trafficking.

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CHAPTER 5

ARTICLE 7: POLITICAL AND PUBLIC LIFE

5.1. PREVALENCE OF THE PROBLEM

5.1.1. Discrimination in Politics and Public Life

Discrimination against Women in the Political Process and Public Life needs to be examined with reference to political leadership, public employment with specific reference to the civil services and the judiciary. Representing the legislature, the executive and the judiciary, these are the three areas critical to governance and areas vested with the power to break down stereotypes and open up spaces of governance to women. Although as the Government Report states, "there are historical and cultural disadvantages coupled with several socio-economic obstacles faced by women impede their participation in decision-making," (para 182), the exclusion of women from the legislative, administrative and judicial process cannot be put down to these stereotypes, because it is not women who are reluctant to step forward, but women who step forward find themselves blocked from these decision making spheres. These are the three arenas of political and public life in which the duty is on the state to ensure substantive equality for women.

A. Political Leadership

Immediately after the enactment of the 73rd and 74th Constitutional Amendments, 800,000 women entered the political process in rural and urban areas through the panchayat system and local bodies in 1993-94 through a single election.

In the State Legislatures and Parliament on the other hand the percentage of elected women representatives is very low. The percentage increase in women representatives in Parliament from the tenure of the First Parliament in 1950 is only 0.9 percent. Latest figures indicate that the proportion of women in the Lok Sabha [the Lower House of Parliament] in 2004 was 8.16 % (44 out of 539 elected members) and in the Rajya Sabha [the Upper House of Parliament] the percentage of women is 11.42 % (28 out of 245 members). The situation in the State Legislatures is not much better. According to the report of the Government of India, Delhi (12.86 percent) has the highest proportion of women members followed by Andhra Pradesh (9.52 percent) and Kerala (9.29 percent). Mizoram and Nagaland have no representation of woman while it is negligible in Manipur, Arunachal Pradesh, Gujarat, Jammu and Kashmir and Karnataka.

From the records available of the past 50 years, since independence, it is seen that the strength of women in the political field as reflected in State legislatures remained at an average of 3 percent to 5 percent of those elected. At the level of Parliament, the position of women members has varied between 5 and 8 percent. What is even more cause for concern is the sharp decline in the percentage of women who are successful in elections at the national level. While statistics show that there is an

increase in women contesting elections at the national level from 51 seats in 1952 to 307 seats in 1991, the percentage of successful women candidates has gone down from 45 percent in 1952 to 10.75 percent in 1991. This is a clear indication that the problem does not lie in women's willingness to participate in politics.

The gross imbalance between women leaders in local bodies on the one hand and women in state legislatures on the other hand points to the fact that the responsibility for the "missing women" in politics cannot be completely accounted for by recourse to cultural stereotypes, but rather the responsibility lies in the abject failure of the state to create enabling conditions for women to enter the political field in any meaningful way. If it were true that stereotypes impede entry, we would not have 800,000 women entering the panchayat system and urban local bodies.

B. The Judiciary

The Indian Supreme Court has no sitting woman judge. The total number of women judges in the Supreme Court in the past 56 years has been 3 - Hon'ble Justice Fathima Beevi, Hon'ble Justice Sujatha Manohar and Hon'ble Justice Ruma Pal. Addressing the "All-India Meeting of Chief Justices of High Courts on Women's Empowerment vis-à-vis Legislation and Judicial Decisions," organised by the National Commission for Women (NCW), December 10, 2004, Mr. Justice Lahoti, the then Chief Justice of India said that encouraging women into the judiciary and promoting them as judges was necessary, though he could not do it officially. Addressing the problem of gender discrimination in the Bar, which leads to their absence in the judiciary, he said, "Be on the look-out for brilliant women lawyers who have the potential for delivering good justice, though they may not have enough experience...The female members of the Bar may be encouraged in the profession, may be given assignments as Court Commissioners for inspections and recording statements of witnesses. Preference may be given to female lawyers in the matter of assigning legal aid work or *amicus curiae* briefs so that they have more and more effective appearances in courts,"³⁹

There is an abysmally low representation of women in the judiciary in different jurisdictions - the proportion declining as one moved from district level, which presents the highest figures to High Court (25 out of 514, ie 4.86%) and then to the Supreme Court, which presents the lowest figures at 0. This needs to be viewed in light of the resilience of violence against women in every sector and the failure of women despite the existence of protective legislation to secure substantive justice.

C. The Executive

The number of women in the Indian Foreign Service is the highest, with 11.4 % in 1999, followed by the Indian Administrative Service where their numbers have increased from 512 (10.22%) in 1997 to 535 (10.42%) in 2000. The representation of women in the Indian Police Service remains extremely low at 3.83 per cent in 2002.

These figures again, especially the profile of the police force must be read against the failure of the criminal justice system to ensure a fair investigation in crimes of violence against women.

³⁹ *The Hindu*, 11 December 2004. Emphasis added.

D. The Armed Forces

The Armed Forces present very low figures of recruitment of women. While this could in great measure reflect the choices women make, the low presence necessitates safeguards for the small number of women who are in the services. We have evidence of the complete lack of transparency and adherence to minimal standards of the rule of law, both with respect to the Military Nursing Service and the case of the Air Force discussed in Chapter 2 of this report.

5.1.2. Women in Politics

Women have entered politics at the national, state and district levels. It is useful to look at the issues elected women representatives face at these different levels and the ways in which they have addressed these issues. It is also possible then to formulate mechanisms through which these obstacles can be circumvented.

A. Women in Parliament

Elected women in the Indian Parliament are predominantly from educated, elite backgrounds with a history of political leadership in the family. None of the women in Parliament have been part of the movement for women's rights in the country. Once elected, there is a tendency to give women in ministerial positions "soft portfolios" and women are rarely found in leadership positions in their parties. In theory, most women MPs support the Women's Reservation Bill [although none of them have entered politics through quotas], but will not disobey the party whip to vote in favour of quotas. Women's issues are generally discussed in the "Ladies Room" in the Parliament. Clearly these women also do not wield enough authority in their parties to influence the party position on this issue. For women in politics without the backing of a political family, domestic responsibilities, lack of financial clout, rising criminalization of politics and the threat of character assassination are making it increasingly difficult for women to be part of the political framework. Where women do contest an election, "women candidates are usually fielded from 'losing' constituencies where the party does not want to 'waste' a male candidate".⁴⁰ There is a complex process through which any effective advocacy on women's issues is disabled in political spaces at the national level.

B. Women in Local Self Government

"Assam is more than just tea gardens. We have problems of villages being washed away by floods and people being displaced. What we are hoping is to get these villages back on their feet and rehabilitate the villagers. My vision is to build a panchayat that is

⁴⁰ This section is based on Shirin Rai, *Class, Caste and Gender - Women in Parliament in India* International IDEA, 2002, Women in Parliament, Stockholm (<http://www.idea.int>) (This is an update of the case study which was originally published in International IDEA's Handbook: *Women in Parliament: Beyond Numbers*, Stockholm, International IDEA, 1998).

self-sufficient and does not depend on `government funds," Hem Kumari, a sarpanch from Assam.⁴¹

And hoping to create a new life and community for displaced people is Bhagwan Devi, from Bihar: "I am more popular than the `mukhiya' and do more work than him. The police are not allowed to enter my panchayat and most of the disputes are resolved at the panchayat level... I hope to provide a pucca house for everyone in my ward, health for all and also work towards eradicating poverty."⁴²

Women in local self-government have had diverse experiences - all necessary for the development of political consciousness.

Some women have been put up as puppet candidates, have never visited their office and have signed or put a thumb impression where the village leader has ordered them to: "Our men come with the papers and we merely put our thumb impressions on them. We sit apart away covering our faces and feel shy saying anything..."⁴³

There are several who have entered this way, but have undergone training by different agencies and taken charge. Women sarpanches who underwent training under the *gramsat* programme in Karnataka were taken to visit the state legislature - the Vidhan Soudha. Later, in meetings in their panchayats, this became the validation of their authority: "They often ended an argument, especially with men, with "What do you know? Have you seen the Vidhana Soudha? I have!"⁴⁴

In Haryana, women sarpanches have struggled to get grazing lands back for the village, they have had liquor vends closed down, where school teachers have been recalcitrant, they have taken the matter up with the school principals, recognizing women's reproductive health needs, they have made sure that midwives are accessible at all times in the village - a concern which would rarely occur to a male sarpanch.⁴⁵

5.1.3. Dalit and Adivasi Women Leaders in Panchayats

Women belonging to the Scheduled Castes and Scheduled tribes however, face enormous hurdles in the course of performance of work.

The widespread discrimination based on caste can take overt forms -where women are physically obstructed from performing their duties and assaulted if they persist - as

⁴¹ "A Roundtable of Women Sarpanches", *The Hindu*, October 02, 2004.

⁴² "A Roundtable of Women Sarpanches", *The Hindu*, October 02, 2004.

⁴³ Kiran Bedi, "Women sarpanches as rubber stamps," *The Tribune*, Online Edition, Sunday, November 23, 2003.

⁴⁴ Poornima Vyasulu, Vinod Vyasulu, " Women in Panchayati Raj: Grass Roots Democracy in Malgudi, *Economic and Political Weekly*, December 25, 1999.

⁴⁵ Rahul Das, "Women Sarpanches asserting their Authority," *The Tribune*, November 28, 2003.

was the case with Dubbaka Manjula in Andhra who was stripped and paraded in the village by dominant caste men; this discrimination can take covert forms where non dalit members of the panchayat abstain from meetings and do not let a quorum gather, thus rendering the panchayat ineffective.

In Madhya Pradesh, out of 22,029 gram Panchayats 7,384 are reserved for women, out of which 3,514 are for Dalits. But Dalit women Sarpanches have rarely been allowed into the decision making area. "They have the double disadvantage of caste and gender factors."⁴⁶

But there is light...

"Woman Sarpanch Durga Devi, can be seen sweeping the streets of her village every day. Even after having been elected as a Sarpanch, she has not given up her traditional vocation. She says, "Why should I feel ashamed of my work? Had I given it up, people would have said that I have stopped it because I have become a leader". Durga is the Sarpanch of Sarbadi village in Sikar district. She is a 'mehtar' by caste. She believes that untouchability is more prevalent in villages as compared to cities. Bansidhar Sharma, the deputy-Sarpanch is of the opinion that no one in his Panchayat has a problem working with a dalit Sarpanch. No scams have been reported during the two and a half-year term of Durga Devi. There have been no accusations of favoritism. Her dream is to ensure the overall development of her village."⁴⁷

5.1.4. Initiatives by NGOS, Women's Organizations

The women's movement and a wide spread network of non government organizations which have strong grassroots presence and deep insight into women's concerns have contributed in inspiring initiatives for the empowerment of women. The mobilization of women during pre- Beijing period got consolidated in post Beijing, with the platform for action.

Identifying women leaders and providing training and exposure for capacity building has been one of the priorities at the grass roots level.

Women's groups have been engaged in creating public opinion and mobilizing women and supportive men to campaign for 1/3 reservation for women in the parliament and state assemblies. The National Alliance of Women (NAWO) spearheaded the campaign for Reservation Bill and also prepared a 'women's manifesto' which was presented to the political parties.

NGOs have played a signified role in initiating the process of gender sensitization at various levels.

⁴⁶ Deepak Tiwari "Electric Chair: Dalit Woman Sarpanches are Abused" *The Week* June 9, 2002. Winning article for the 2002 Sarojini Naidu Prize

⁴⁷ Mamta Jaitley Don't think of us as Puppets *Vividha Features*. Winning article for the 2002 Sarojini Naidu Prize.

5.2. CRITICAL AREAS OF CONCERN

- There is concrete data to prove that women cannot enter mainstream politics in significant numbers without affirmative action. This has more to do with discrimination against women than with women's inhibitions.
- Women in politics especially at the state and district levels find corruption, criminalization and communalization of politics impediments to their effective participation. This atmosphere also engenders violence against women contestants as a way of obstructing their entry into politics.

5.3. CONSTITUTIONAL GUARANTEES AND GOVERNMENT INITIATIVES

On 26 January 1950, the Constituent Assembly, which drafted the Indian Constitution, became the First Parliament of India, a provisional Parliament that stayed in place till the first general elections under the new Constitution in 1952. At its foundational moment, this first Indian Parliament had 15 women (including one dalit, one Muslim, and one Christian woman representative) out of 207 members, ie, 7.3 percent.

The Indian Constitution, in Articles 14 and 15, guarantees women the right to equality and the right against discrimination. Article 38 guarantees a just social order in which inequalities between individuals and groups is minimised. The 73rd and 74th Constitutional Amendments in India, which came into force on 20th April 1993 provided reservations for women, scheduled castes and scheduled tribes in panchayats in rural areas and local bodies in urban areas. Article 16 guarantees women the right to equality in public employment. There is a duty cast on the state by the constitution to ensure substantive equality through affirmative action in education, employment and politics.

5.4. RECOMMENDATIONS

- There must be a multi tiered reservation system that is put in place. Political parties must mandatorily field women candidates for one third of the seats they contest in each state. One third of seats in legislatures and both houses of parliament must be reserved for women. This reservation must be a vertical reservation that is binding on the reserved constituencies as well.
- Although a beginning has been made by the Election Commission with respect to Election expenditure, there must be far reaching long term measures that are put into place.
- To enforce stringent ceiling of expenses incurred for election campaigns, provide financial support to women candidates particularly those who are from Dalit and marginalized communities.

- A National Judicial Services Commission must be set up immediately and one third of the judiciary in each state and the Supreme Court must be women. Retired women judges from the Supreme Court must be given an equal chance to head statutory bodies like the National Human Rights Commission. With affirmative action the norm in all sectors of public life, it must be made mandatory for the judiciary to reflect this norm.
- Active measures must be taken to make the civil services more representative.
- The Police and Armed Forces tend to present very hostile environments for women. Mandatory Procedures need to be specified with respect to offering women in the Armed Forces protection against discrimination. There is need for mainstreaming gender sensitization within the government system and propagating the same for an enabling environment for women's participation in political and public life.

Table 1: Participation of women in national elections

Election Year	Voting % of men	Voting % of women	Total seats contested by women	Seats won by women	% seats won of contested seats	Total seats	% of women members
1952	53.00	37.10	51	23	45.09	499	4.40
1957	56.00	38.77	70	27	38.57	500	5.40
1962	62.10	46.63	68	35	51.47	503	6.70
1967	66.70	55.48	66	31	48.43	523	5.90
1971	69.70	49.15	86	22	27.50	521	4.20
1977	65.62	54.96	70	19	25.70	544	3.40
1980	57.69	51.22	142	28	19.70	544	5.14
1984	63.61	68.17	421	159	28.30	544	7.90
1989	70.90	43.90	189	28	14.80	525	5.30
1991	52.56	47.42	307	33	10.75	503	6.60

Source: PIB, Government of India, 1998.

Table2: State-wise Profile of Women in Elections to Parliament in 1998

State/Union Territory	Candidates	Winners
Uttar Pradesh	56	9
Madhya Pradesh	28	4
West Bengal	21	5
Bihar	21	4
Rajasthan	20	3
Maharashtra	20	2
Andhra Pradesh	18	2
Tamil Nadu	13	1
Delhi	10	2
Orissa	10	2
Kerala	10	1
Karnataka	10	0
Punjab	9	1
Gujarat	7	4
Haryana	6	1
Assam	3	1
Meghalaya	2	0
Chandigarh	2	0
Tripura	1	0
Goa	1	0
Jammu & Kashmir	1	0
Manipur	1	1
Daman & Diu	1	0
Arunachal Pradesh	0	0
Mizoram	0	0
Nagaland	0	0
Sikkim	0	0
Andaman & Nicobar	0	0
Dadra & Nagar Haveli	0	0
Lakshadweep	0	0
Pondicherry	0	0
Himachal Pradesh	0	0
Total	271	43

Source : Election Commission Of India, 1998.

Table 3: Profile of Women in Government

At All Levels	Ministerial Levels	Sub Ministerial Levels
5.8 %	3.2 %	6.2 %

Source : Election Commission of India, 1998.

Source

Table 4: Women in the Rajya Sabha (Upper House)

Year	Total	No. of Women	Percentage
1952	219	16	7.3
1957	237	18	7.6
1962	238	18	7.6
1967	240	20	8.3
1971	243	17	7.0
1977	244	25	10.2
1980	244	24	9.8
1985	244	28	11.4
1990	245	24	9.7
1991	245	38	15.5
1992	245	17	6.9
1994	245	20	8.1
1996	245	18	7.3
1997	245	18	7.3
1998	245	18	7.3

Source : Statistical Abstracts, 1998.

Table 5: Women's representation in selected state legislatures

State	Year	Total	Women
Assam	1996	122	6
Haryana	1999	90	4
J & K	1996	87	2
Himachal Pradesh	1998	68	6
Gujarat	1998	182	4
Kerala	1996	140	13
Meghalaya	1998	60	3
Punjab	1997	117	7
Pondicherry	1996	30	1
NCT Delhi	1998	70	9
Nagaland	1998	60	0
Madhya Pradesh	1998	320	26
Tamil Nadu	1996	234	9
Tripura	1998	60	2
Uttar Pradesh	1996	424	20
West Bengal	1996	294	20
Bihar	1999	324	19
Maharashtra	1995	288	11
Arunachal Pradesh	1995	60	1
Manipur	1999	60	1
Orissa	1999	147	13
Rajasthan	1998	200	14

Source : Election Commission of India

Table 6: Number of urban local bodies and local elected representatives

State/Union Territory	Municipal Corporation			Municipal Council			Nagar Panchayat			Total			
	No. of bodies	No. of men	No. of women	No. of bodies	No. of men	No. of women	No. of bodies	No. of men	No. of women	No. of bodies	No. of men	No. of women	Total
Andhra Pradesh	07	264	131	07	1902	951	15	210	104	116	2376	1186	3542*
Assam	01			01	236	117	42	136	68	68	372	185	557
Bihar	06			06			93			169			
Goa	-		-	-	104	51	-			13	104	51	155
Gujarat	06	312	156	06	1830	915	60	840	420	152	2982	1491	4473
Haryana	01			01			32			53			1359
Himachal Pradesh	01	17	8	01	122	61	29	148	73	49	287	142	429
Karnataka	06	274	136	06	2131	1065	89	904	451	214	3309	1652	4961
Kerala	05	199	99	05	1065	532	-			58	1264	631	1895
Madhya Pradesh	02	712	355	02	1685	842	283	3025	1512	409	5422	2709	8131
Maharashtra	15	945	472	15	3268	1633	-			243	4213	2105	6318
Manipur	-		-	-			20			27			
Orissa	02	47	23	02	374	186	72	704	352	103	1125	561	1686
Punjab	03			03			34			134			1699
Rajasthan	03			03			169			183			4412
Tamil Nadu	06	320	160	06	2330	1164	611	6530	3264	719	9180	4588	13768
Tripura			-				12			13			
Uttar Pradesh	11	561	280	11	3980	1990	444	3679	1839	681	8220	4109	12329
West Bengal	06			06			4			122			2706
A & N Islands	-		-	-			-			01			
Chandigarh	01			01			-			01			
Delhi	01			01			-			02			134
Pondicherry	-		-	-			-			05			
Daman & Diu	-		-	-			-			02			
Total	101*	3651	83	1430	19027	9501	2009	16176	8083	3540*	38854	19410	68554*

**the minor discrepancy in the total figure[20] is because of unavailability of data from some areas*

Source: S.A. Palnitkar, Country Report on the State of Women in Urban Local Government, UNESCAP, 2001

CHAPTER 6

ARTICLE 10: EDUCATION

6. 1. PREVALENCE OF THE PROBLEM

The following section provides a brief description of the ground level situation in certain key areas.

6.1.1. Early Childhood Care and Education (ECCE)

Even though the positive linkages between ECCE and the empowerment of women and improving girls' participation in schooling are well established, ECCE receives inadequate attention.

A. Inadequate coverage

The Government of India's flagship programme - Integrated Child Development Services (ICDS)- provides supplementary nutrition (for children and pregnant and lactating women), immunization, health check-ups, referral services, nutrition education and pre-school activities for 0-6 age group. The programme is important because it targets poor children, many of whom are girls. However it has several problems with regard to coverage and programme quality. The total number of ICDS centres required for universal coverage is 17 lakhs, as against the existing 6 lakhs.⁴⁸ Moreover, the coverage is uneven across different regions. For example, the coverage in Bihar and Uttar Pradesh is less than 10%.⁴⁹

B. Poor quality of preschool education

Several studies point out that the **quality of the educational component of ICDS is poor**. The training of Anganwadi workers (who manage the centres) for the educational component is also weak. Poor quality has serious implications in terms of retention, socialization processes and school performance of girls, particularly from poor and socially disadvantaged communities.

6.1. 2. Elementary Education

A. Important schemes to increase access

⁴⁸ Figures based on notes of deliberation of the National Advisory Council, August 28, 2004.

⁴⁹ Developments since Dakar, India Country paper, Ministry of Human Resources Development, August 2001.

Elementary education has emerged as the key policy and programmatic concern of the Indian Government. A large-umbrella programme - the **Sarv Shiksha Abhiyan (SSA) or Education for All** with very ambitious goals was launched in 2001.⁵⁰ Specific programmes within SSA (National Programme for Education of Girls at Elementary Level (NPEGEL) and Kasturba Gandhi Balika Vidyalaya) focus exclusively on girls in educationally backward districts. Many of these SSA goalposts are already being shifted.

Another landmark scheme - commonly called the **Midday Meal Programme**- has been introduced after the Supreme Court in response to a public interest litigation filed in 2001 by the People's Union of Civil Liberties (Rajasthan) ordered all state governments to introduce cooked meals in schools. The scheme has been welcomed as it **positively impacts nutritional levels and school participation of children belonging to poor and marginalized sections**. There are reports of problems - **logistical problems of organizing the cooking** (and allegations that it cuts into teaching time), **poor quality of food being served, corruption, and caste based discrimination**. The programme requires to be **closely monitored to ensure its success**.

B. Issues related to enrolment and retention

The government from the 90's has focused on **improving enrolment at the primary level**. There has been a 14.18 percent increase in the number of primary schools, 50.65% increase in the number of upper primary schools and 38.43% increase in the number of secondary schools between 1993 and 2003 (NCERT, 6th and 7th Educational Survey). Measures have resulted in **improved enrolment rates**- from 97.4 million (40.40 girls, 57 boys) in 1990-91 to 122.40 million (57.3 girls and 65.1 boys) in 2002-03 (Select Educational Statistics, 2003).

C. Despite the improvements several gaps persist.

- **The Gross Enrolment Ratio (GER) of girls dropped sharply** from 93.07 at primary level to 56.22 at middle school (classes VI to VIII) in 2002-03. In rural areas is dropped even further to 47.35.
- **The situation of girls (and boys) of Schedule Castes (SC) and Schedule Tribes (ST) communities is far worse than the general category**. GER for SC students is 95.61 (89.35 girls) at the primary level and 56.28 (48.64 girls) at the middle school level. GER for ST students is 98.67 (92.25 girls) at the primary level and 48.19 (40.78 girls) at the middle school level. (Select Education Statistics, GOI 2003).
- **While the gender gap has narrowed dropout rates are unacceptably high, especially for girls of SC and ST communities**. In 2003-04 the dropout rate at the elementary level for all girls was 52.9 while the corresponding rates for SC and ST girls were 36.2 and 48.7 respectively. At the secondary level the rates are as 64.92 (all girls), 75.5 (SC girls) and 81.2 (ST girls).

⁵⁰ The programme has ambitious goals - coverage of 192 million children in 1.1 million habitats across the country; ensuring all children to complete 5 of primary school by 2007 and 8 years of schooling by 2010; bridging all gender and social gaps of primary stage by 2007 and elementary stage by 2010; universal retention by 2010; involvement of local governance structures and civil society organizations.

- There are sharp inter-state and regional differences as well. There were as many girls outside school as there are inside in the 6-14 age group and not even 4 out of 10 girls in Uttar Pradesh in the 6-14 age group are in primary schools.⁵¹
- Recent studies indicate that educational situation of Muslim children, especially girls and those belonging to 'lower' castes, are worse than SC/STs.⁵² Whereas the aggregate figure for enrolment of Muslim children is 50.7 per cent as compared to 67.3 per cent for SC and ST 59.8 per cent, the enrolment for lower caste Muslim children falls to as low as 36 per cent. The lower caste Muslim children also record the highest percentage (32.6%) in the "never enrolled category". While over 70 per cent ST and 55 per cent SC girls among those enrolled attend school regularly, this figure falls off to around 35 per cent for Muslim girls. Over 1 in 3 lower caste Muslims girls never go to school. (SRI Report, 2005). However, reliable estimates of the educational status of Muslim girls are not readily available.

6.1.3. Adolescent Girls Education

It is clear from the section above that girls fall out of the education net as they move up from the primary level. The availability of upper-primary and secondary schools are still not within easy walking distance and as they are fewer in number, are invariably overcrowded and frequent dropouts results. Therefore the move to extend the SSA scheme to the secondary level should be urgently considered.

A. Limited frameworks

Adolescence as a category with specific needs (they either get subsumed within the category of children or are seen as adults) is gradually getting greater attention. The Approach Paper for youth/ adolescents for the Tenth Five Year Plan stresses this but focuses on awareness building around issues of safe motherhood and population related issues. The focus on reproductive health and related issues reflects an instrumentalist approach to adolescent girls, and does not really look at adolescents within the framework of citizenship or a subject of rights.

Outside the school system, educational opportunities for adolescent girls are provided through innovative programmes like the Mahila Samakhya Programme, Lok Jumbish in Rajasthan and by NGOs. Many of the NFE efforts for adolescents have been successful in understanding the needs of adolescents; designing innovative programmes and developing contextualized curricula. However, these efforts are often limited in outreach and the lessons learnt from these different programmes have not been mainstreamed.

⁵¹ *India Education Report*, Ed. R Govida, NIEPA, 2000.

⁵² Jyotsna Jha and Dhir Jhingran: *Elementary Education for the Poorest and Other Deprived Groups - the Real Challenge of Universalisation*, Manohar, New Delhi 2005

6.1. 4. Women's Literacy and Education

The 2001 Census recorded a **significant increase in literacy rates** (from 52 % in 1991 to 65 % in 2001), particularly female literacy rates, which increased by 14.8 % in 2001 as compared to 11.7 % in 1991). For the first time the absolute numbers of illiterates declined.⁵³

A. Literacy Gaps

However, despite the literacy gains, **disparities in terms of gender, other social categories (like schedule caste and tribes), rural/urban situation continue to be glaring.**

- The gap between male (75.8 %) and female (54.1%) literacy rates is 22 %.
- In 2001, illiterates numbered close to **296 million** of which **190 million** were *women*. **34.6% of the world's non-literate population** resided in India in 2003-04.
- The female literacy rate is **below 50% in 253 districts**.
- In 2001, the gender gap in the literacy rate for SC was 19 % (male and female were 66% and 47.1% respectively) and for STs (male and female literacy rates were 59.2 % and 34.8 % respectively).

The Status of Muslim Women's literacy ... A Big Divide

The 2001 Census for the first time gives detailed educational data across religious groups. And the picture reveals a huge gap between Muslims and non-Muslims across the board.

- The literacy rate for Muslims is 59%. (6% below the national average of 65%) and for Muslim women 50%.
- The all India literacy levels (as a % of their population) shows that **40.6% of the country's 67 million Muslim females were literate versus 46% of India's 430 million non-Muslim women.**
- It is important to note that the **urban difference is more marked**. The literacy rate of Urban Muslim women is 52.8% where as for the non-Muslim women is 65.5%.
- At a basic level of being literate Muslim women were **11% worse off than non-Muslims. The difference widened to 19% at the middle school level, 35 % at Class X; 45 % at Class XII and 63% for graduates and above.**

The data emerging calls for an urgent refocusing of policies and programmes to redress the situation.

B. Lack of political commitment

The momentum generated around literacy till the mid- 90's was impressive and resulted in improvements in literacy rates. Despite this and the fact that the Literacy Campaigns mobilized large numbers of women, the **political commitment to adult**

⁵³ The quality of the literacy data is not considered to be reliable. Census figures are based on self-reporting, usually by the head of the household and the data from the literacy campaigns (which have focussed on declaring districts 100% literate) have been critiqued for being unreliable as reports from the ground suggest otherwise.

literacy and education has reduced drastically. The National Literacy Mission is now largely ineffective and literacy programmes under-resourced. For the most part the Continuing Education programme has failed to take off leading to women relapsing into illiteracy. It is very likely that India will not be able to meet the EFA and MDG goals pertaining to literacy (as was pointed out in the Unesco Global Monitoring Report 2006). The present lacklustre situation means that **critical literacy inputs that are required to sustain processes empowerment of women's collectives, including self-help groups are not being provided.**⁵⁴

C. Education for women's empowerment - Mahila Samakhya

Mahila Samakhya, (Education for Women's Equality), an effective process-oriented women's education and empowerment programme targeting poor, socially disadvantaged women is now operational in 9 states. The programmes women's collectives address several gender issues, including violence against women. It runs a number of innovative non-formal education programmes women and adolescent girls. **The innovative approaches adopted by MS need to be mainstreamed.**

D. Disparities in Higher education

With regard to higher education the percentage of women accessing higher education and professional courses is very low. Moreover, the differentials with regard to disadvantaged communities are very pronounced.

For example, % of women pursuing -

- **BA courses** - 3.39 % (Schedule caste), 1.38% (Schedule tribe), 40 % (non-dalit women).
- At the levels of Graduation and above Muslim women are 48 % worse-off compared to Muslim men and 33% worse-off than Non-Muslim Women.
- **science courses** - 2.8 % (dalit women), 0.58% (Schedule tribe), 34 % (non-dalit women).
- **post-graduate and doctoral levels.** 38% (MA) and 34% (MSc) for non-dalit women, the percentages for dalit women are 3.8% and 2.9%. For ST women the figure is even lower - 1.3% and 0.48% respectively.
- In **professional fields** like medicine 2.9 % dalit women and 1.1% ST women compared to 34 % non-dalit women. In BEd courses, the figure for dalit women is 4.4 % and ST women 1.4 % and non-dalit women is 40 %.⁵⁵

⁵⁴ A recent study conducted by Nirantar, examining the linkages between literacy, leadership and capacity building within self-help groups found a high-correlation between literacy levels and leadership opportunities. And since socio-economic status and education are correlated leadership tends to get concentrated in the hands of the better-off members. Most of the capacity building inputs have been availed by members with literacy skills.

⁵⁵ Selected Educational Statistics 1999-2000, Ministry of Human Resources Development, GOI.

6.1. 5. Content and Quality of Education

A. Issues of gender and representation

Though the content of education and classroom pedagogy are critical to altering gender and other social relations it has not been paid the attention it deserves. Efforts to make curricula gender-sensitive have been undertaken but can be considered initial attempts as they have remained largely at the level of removing stereotypes or increasing visibility and not have looked at gender in terms of social relations. Problems related to the representation of marginalized communities continue to exist and contribute to the deep sense of alienation of these communities from the mainstream education system and a reason for children dropping out. Sexuality is addressed in a problematic manner in educational materials. It is either related to population or reproductive health or seen as a problem associated with promiscuity and shame.

B. Classroom practices and teacher training

Classrooms need to be transformed into spaces that can help girls think critically. Discriminatory practices based on identity based prejudices need to be monitored and stopped. Corporal punishment, which is wide spread, needs to be checked. The role of the teacher is naturally crucial in this context. The present strategy of gender orientation sessions has proved to be ad hoc and ineffective. There is a need to incorporate gender and social equity concerns within the regular in-service and pre-service curriculum teachers.

C. Politicization of Curricula and textbook development processes

The debates and counter-debates that have ensued since National Curriculum Framework (2000)⁵⁶ have led to curriculum development and textbook writing becoming highly political and contentious. Steps have been taken by the Congress led UPA government since it came to power in May 2004 to alter the situation and a new curriculum framework has been drafted through a consultative process. The NCERT has recently embarked on a process to produce new textbooks with civil society involvement. It is important to ensure that adequate steps are taken to prevent education from becoming a battleground for scoring political points.

⁵⁶ NCF (2000) was produced by the NCERT and introduced by the Bharatiya Janata Party led NDA government (which was in power between 1999 and 2004) was a blatant attempt at promoting a right-wing Hindu nationalist perspective. Textbooks written from this perspective, in for example Gujarat, has contributed over the years to the development of culture of divisiveness between communities & amongst school children, as was evidenced during the communal violence in March 2002. From a gender perspective, the NCF 2000 was problematic because it sought highlight stereotypic distinctions between the roles of boys and girls and by located education within a tradition-bound religious framework that makes girls vulnerable to culturally and religiously sanctioned prejudices.

6.1.6. Violence Against Women and Education

A. Sexual Harassment in Educational Institutions

Sexual harassment and violence against girls and young women within educational institutions is widespread but under-reported. There is however no data (or systematic mechanisms to gather data) that indicate the extent of the problem. The Supreme Court Guidelines (Vishakha vs. State of Rajasthan) on Sexual Harassment in the Workplace makes it mandatory for universities and educational institutions to formulate guidelines and set up committees to deal with sexual harassment complaints. While many universities have formulated guidelines and established mechanisms to deal with sexual harassment many educational institutions still do not have policies. Women's organizations and forums working with the guidelines have encountered several problems. For example, setting up of genuinely gender-sensitive non-partisan committees is difficult, often no action is taken against the accused, the petitioner is often harassed, lack of commitment to creating awareness about SH on campuses. Measures to make educational institutions safer for girls and women often leads to greater policing and restrictions on their mobility and sexuality. **Though technically the guidelines should cover schools no efforts have been made to implement the guidelines in schools, where sexual harassment is fairly common but is rarely reported.** One only has the media to rely on for such information.

B. Impact of conflict and communal violence on education

Violence and conflict on severely impacts opportunities for girls and women's education (communal violence in the case of Gujarat and prolonged conflict situations like the North East and Kashmir).

Communal violence, like the targeted violence against the Muslim community in the state of Gujarat between February 28 and March 2, 2002⁵⁷ and the subsequent lack of redressal and other forms of continuing discrimination have had far reaching consequences, both immediate and long-term, on education in general, and girls and women's education in particular. The situation even four years later is very volatile. In such contexts girls are kept away from schools making their educational experience irregular and precarious. There has been **large-scale displacement** within the affected Muslim community. Several families have not been able to return to their original homes and are now living in resettlement colonies. Most of these colonies, usually outside the main town, **lack basic facilities and accessing schools is a problem.** Many of the riot-affected are living lives of migrants, shuttling between their original homes and the resettlement colony. There is little regularity in the lives of children and very little parental supervision or support is possible. Economic insecurity still persists and education, especially of girls has been a casualty. Ghettoisation, even in education, leads to further distance and mistrust between communities.

In parts of India, like the North East and Kashmir, that have been experiencing violence for several years the ground level situation reveals that **prolonged violence has negatively impacted the education systems there and the education**

⁵⁷ Details of the Gujarat carnage and its impact are provided in separate section in Shadow Report and in a previous submission to the Committee.

opportunities for women and girls in various ways. Dropout rate of girls in areas experiencing conflict is high because of fear, extreme insecurity, restricted mobility, displacement, migration or economic compulsions. Schooling is an irregular experience⁵⁸ and its quality is poor. In such areas migration of teachers is also a problem. In several instances both in the North East and in Kashmir, people have been forced to live in relief camps, often for several years. The facilities at such camps are very basic and educational facilities are often non-existent. In areas experiencing prolonged conflict, employment opportunities are limited and livelihood options often destroyed. People's abilities to spend on education are reduced and it becomes a low priority. This trend is detrimental to women and girls, as parents prefer to invest on their son's education. School participation and quality of education for girls is impacted by measures to control women's sexuality and mobility, like diktats imposing a dress code, by religious bodies, militants or separatist groups are not uncommon. The failure to abide by these is often met with violent reprisals like acid attacks, physical assault, threats etc. There is an increased segregation of female and male students. There are alarming increases in panic disorders arising out stress and trauma among young school and college going women in the group of 14-18 years.

No systematic efforts have been made to understand and monitor the impact of conflict on education, especially women and girls. There are no policy guidelines on how to respond to the impact of violence and conflict. There are no mandated special provisions to deal with the particular problems arising out of such situations. Education provisioning from gender perspective, should find a place in any policy on internal displacement and relief and rehabilitation that are formulated.

6.2. CRITICAL AREAS OF CONCERN

A. Inadequate budgetary allocation

The budgetary allocation for education has hardly increased (from 3.49% 1997-98 to 3.97% in 2002-03) over the past five years and is still way below the 6% of GDP commitment. Within the overall education budget the greatest priority has been given to elementary education (1.93% in 2002-03) and the least to adult education (0.02%).⁵⁹ This low allocation to the sector whose main target group is poor, rural, socially disadvantaged women raises concerns. Women's studies is also under-budgeted and resourced.

⁵⁸ Schools often close down because of strikes, demonstrations, imposition of curfew, militant attacks and tension with the security forces. Often school buildings and other educational institutions are taken over resulting in discontinuation of classes. Disruptions have meant that examinations are not held, the syllabus is not completed.

⁵⁹ Selected Educational Statistics 2002-03.

B. Fund flows and utilization

Delays in fund release are frequently reported and weaken programmes. An uninterrupted and assured flow of funds is critical for the success of programmes. One of the major problems of the post TLC phase has been delay in the release of funds from the NLM. Several districts that had run successful campaigns have suffered due to this.

Low utilization, which reflects low capacities to use funds, is also a problem. The launching of ambitious schemes and innovative programmes is however not matched by corresponding capacity building efforts to absorb funds. Low utilization is later used to justify budget cuts.

There is need for greater transparency in fund utilization. Recent reports of the SSA indicate that funds are often used for purposes other than what they were allocated for. The UPA Government has introduced an education cess however there is no information on how the funds for the education cess are being utilized. The concept of gender budgeting has been introduced by the Ministry of Women and Child but needs to be operationalised and strengthened within different departments. At present the links between policy level situational analyses and the interventions and budgets being proposed are not always clear. Systematic tracking of funds allocated to girls and women's education - both at the expenditure and programme level needs to be introduced.

C. Withdrawal of the State in all sectors of education

As globalization has got more entrenched there are clear indications that the Indian State is withdrawing from the education sector. Privatization in all sectors (primary, secondary and higher) of education is taking place at a rapid pace. Reports indicate that this trend negatively impacts women, and the poor and socially disadvantaged sections. In the elementary education sector there is growing evidence that it is girls, and children from poor and socially disadvantaged communities who are accessing government schools (which are believed to be of poor quality) while boys, especially those belonging to richer and upper-caste sections are moving to private schools.⁶⁰ Moreover, in several states the policy thrust has been towards downsizing the formal stream through the introduction of various non-formal education schemes (like the Education Guarantee Scheme) that are implemented through para-teachers who are less qualified, less trained and hired on a temporary basis.⁶¹ Initiated to provide access to those outside the ambit of education, such schemes are however institutionalizing a hierarchical 'double track approach' within the education system.

The thrust towards privatization is quite direct in the case of higher education.⁶²

⁶⁰ Gender and Social Equity in Primary Education. Study coordinated by Vimla Ramchandran.

⁶¹ While para-teachers are being hired in large numbers in these states there has been a moratorium on hiring primary school teachers in Government schools.

⁶² A report by leading industrialists (A Policy Framework for Reforms in Education" by Ambani and Birla, April 2000) recommends that the Government should focus on primary and secondary education and leave higher and professional education to the private sector.

Privatization has meant that market-oriented subjects are increasingly being made available while Social Sciences and Women's Studies are being marginalized.⁶³ Charging fees at market prices has resulted in a fee structure that makes higher education unaffordable to a vast majority of the population. Given that the practice of dowry is still widespread, high investments in girls' education will be seen as 'negative dowry' resulting in the decline in the enrolment of girls in higher education, which is already low. While private players are entering the education sector rapidly there are hardly any quality control checks or affirmative action policies in place. All these are cause for concern.

D. Limits of the Universalization of Elementary education mantra

The 86th Constitutional Amendment came into force after a long campaign by civil society organizations. While it has generally been welcomed, the amendment has been critiqued for excluding the under six-age group. By this action the State has rolled back on the constitutional commitment as stated in Article 45 of the Directive Principle, which clearly states free and compulsory education *upto* the age of 14. **A pressing concern is that four years later, the Amendment is yet to be made operational. No resource allocations have been made.** The draft Bill initially circulated was withdrawn after criticism from several quarters. The Centre has now sent a draft Bill to the States, asking the states to take action. **No timeframe has been set.**

The overwhelming thrust of policy efforts has been on universalizing elementary education. **As a result other sectors like pre-primary (0-6 age group), adolescents and adults have been neglected.** While undoubtedly primary and elementary education are critical, the fact that retention rates in school are still low and that non-literate adults still constitute 40% of the adult population, and a majority of them are poor women, this sector cannot afford to be neglected. Moreover, each of these sectors has specific concerns that require addressing. If education is to lead to women's empowerment it is critical to look at issues pertaining to gender and education holistically as there are several continuities and interlinkages between the needs and barriers faced by girls and women at different points in their life cycle.

The rhetoric of universalization tends to prioritize issues of access over quality, even though the poor quality of education provided in schools and various discriminatory classroom practices are important reasons for children dropping out.⁶⁴ By and large the discourse on gender has not moved beyond formal notions of parity (enrolment, dropout etc.).

E. Tokenistic approach to addressing problems of marginalised communities

The gender differentials in terms of access and participation, especially with regard to socially disadvantaged groups are marked across all the education sectors. The language of universalization has led to 'targeting' different marginalized groups

⁶³ In Andhra Pradesh, in 2000 there was an attempt to scrap the Social Science and Humanities Departments and bring in subjects like tourism more in keeping with the requirements of the market. Large-scale opposition to this move resulted in the plan being dropped.

⁶⁴ Probe report, other refs.

(which often reads like a long checklist) though their needs are not addressed in a substantive manner, in terms of systemic or curricula reforms. For example, children from marginalized groups (like children with disabilities, migrant children, children of sex workers or those affected by HIV⁶⁵) do not enjoy equal access to educational institutions and when they are able to enter schools they are discriminated against. The issue of disabilities either gets left out from policy discussions or is addressed in a tokenistic manner. The concerns of SC/ST are clubbed together in most education policy documents though the realities and problems of these communities are very different. Similarly, though the 'educational backwardness' of Muslim community is lamented there are no specific programmes or measures to address their needs within the mainstream system programmes.

F. Fragmented policy and institutional framework

The policy and institutional framework is often fragmented which impacts programme effectiveness. For example, the Ministry of Women and Child Development administers the ICDS programme with no links to the education department, though the ICDS programme has an education component. The Approach Paper for Adolescents (Tenth Plan) calls for convergence between Ministries like Social Justice and Health and not the Education department. Even if convergence is advocated in the programme design or at the policy level it is not operationalised.

6.3. CONSTITUTIONAL GUARANTEES AND GOVERNMENT INITIATIVES

Education is a subject on the Concurrent list of the Indian Constitution - that is both the Centre and State can make laws and policies pertaining to Education. Cultural and educational rights of minority groups are ensured through the right of minorities to establish educational institutions articulated in the Fundamental Rights. The Right to Equality can also secure education rights.

The 86th Constitutional Amendment Act, 2002 makes free and compulsory education a justiciable Fundamental Right for all children in the 6-14 age group.

6.4. RECOMMENDATIONS

i. Notwithstanding the importance of elementary education and keeping in mind the role of education in bringing about and strengthening women's empowerment the **educational policy framework and programme emphasis should be holistic and the specific educational requirements of each sector should be addressed and backed by resources.**

ii. **Given the negative impact of privatization on women and girls and socially disadvantaged sections in all sectors the State should arrest its withdrawal from the education sector.** The formal education structure should be strengthened and not downsized. Greater resources for Higher Education and Women's Studies should be

⁶⁵ Several media reports have highlighted how HIV positive children are discriminated against in school.

committed. Greater quality control mechanisms of private educational institutions should be put in place.

iii. **ICDS should be institutionalized and universalized. The education component of the ICDS programme must be strengthened** and adequate training provided to anganwadi workers. There should be convergence between the Department of Women and Child (under which is the ICDS programme) and the Department of Education.

iv. **Specific programming and systemic changes** should be brought about to address the needs of socially disadvantaged groups that have clearly not been reached by education policies and programmes so far. **Educational data should be gender disaggregated but should also be collected in terms of other social groupings.** Systematic mapping of social groups should be undertaken and programmes designed accordingly.

v. **In order to improve the educational status of Muslim Girls and Women and to bring them into the mainstream, policy measures and specific programmes backed by resource allocation needs to be put in place.**

vi. Given the important role it plays in sustaining women's empowerment, women's collectives (including self-help groups) and its criticality in reaching EFA targets the **commitment to adult literacy and education should be re-articulated and backed by adequate resources.** The National Literacy Mission should be adequately resourced and revitalised. The CE programme should be revamped and innovative programmes designed with the participation of women's groups and other civil society organizations. Lessons from the Mahila Samakhya Programme should be taken on board.

vii. Adolescents must be recognized as a distinct group with specific requirement and not subsumed within Elementary Education and Adult Literacy. While recognizing the importance of these issues, the **policy and programme framework needs to be expanded beyond reproductive and sexual health and population issues to include issues of rights and citizenship.** Lessons learnt from innovative programmes need to be mainstreamed into the formal system of education, literacy programmes and other national level programmes.

viii. To increase enrolment of girls (with a special emphasis on socially disadvantaged groups) there is an urgent need to expand the outreach of upper primary and secondary schools. **The SSA programme needs to be extended to the Secondary level. The number of women teachers, especially from marginalized communities needs to be increased.**

ix. Textbook reform processes with the involvement of academics and practitioners should be undertaken. **Gender needs to be looked at not as an add-on but integrated in all subjects and should be an important organizing principle of national and state curricula and textbooks.** Issues of sexuality needs to be addressed to provide children with information, enable them to make informed choices, make them aware of the diversity of expressions of sexuality and gender and to equip them to deal with violations. **A new curriculum for the accelerated learning programmes needs to be developed.**

x. Curriculum for Teacher training and training of student teachers (DIETS) should include a substantive module on gender issues. Gender should become a subject within the regular in and pre service training programmes.

xi. Mechanisms to monitor the quality of classroom interactions and teaching-learning interactions, like classroom protocols should be put in place.

xii. Women of schedule caste (SC), tribes (ST) and Muslims categories have less access to higher education. The present efforts should be reviewed and a comprehensive strategy formulated to increase the participation of these groups in higher and professional education.

xiii. Guidelines for sexual harassment at all levels of educational institutions including schools (upper primary upwards should be put in place) and monitored. Teachers training programmes should include awareness on sexual and other forms of violence against girls and women. The issue should be sensitively covered in the school curriculum. Educational institutions should be made responsible for spreading awareness about these issues.

xiv. At present there are no policy measures in place that addresses the particular educational needs emerging from different situations of conflict. Specific programmes and policy guidelines to address these concerns should be designed specifically to restore confidence, address feelings of fear and insecurity and alienation from the mainstream specifically keeping in mind the needs of women and girls in such situations.

xv. An assessment should be made of present educational situation of the children, especially girls affected during the communal violence in Gujarat and appropriate measures adopted. Educational facilities in the newly formed resettlement colonies should be provided. Educational and skill building needs of the riot affect women should be ascertained and appropriate programmes designed.

CHAPTER 7

ARTICLES 11 & 13: EMPLOYMENT

7.1. PREVALENCE OF THE PROBLEM

The existence of constitutional protections to workers however, is no indication at all of the actual situation in which workers in general, in particular women workers find themselves in India today. Although women make up half the country's population, they constitute the largest group, which is excluded from the benefits of development. The stratified structure of society, the sexual division of labour, control over women's sexuality and active practices of discrimination have combined to invisibilise and devalue women's contribution to the economy. The twin problems of invisibility (of poor women) and insensitivity (of bureaucracy at all levels) have been tellingly brought out by the National Commission of Self Employed Women and Women in the Informal Sector.

7.1.1. Vulnerability of Women Workers

The Mid Term Appraisal of the 10th Plan recognizes the vulnerability of women workers: "the feminisation of poverty and the exploitation of women in low paid, hazardous and insecure jobs in the unorganised sector and in the export processing or special economic zones. According to the NSS 55th Round (1999-2000), women casual workers in urban areas are more vulnerable to poverty compared to not just their male counterparts but also to workers, both female and male in other employment categories."⁶⁶

The concerns and issues of women workers have yet to figure seriously in debates, on the programmes and policies of the Government. This is despite the fact that the cumulative effect of three decades of a resurgent and ever expanding women's movement has ensured that any government seeking social legitimacy, be compelled to incorporate policies directly addressed to women.

Yet, women still encounter greater difficulties than men in access to employment. Women form a minority in decision-making and managerial positions. They continue to have inadequate access to productive resources. Gender discriminatory attitudes and an unequal sexual division of labour in production as well as in sharing of family responsibility are still prevalent. There are some categories of women who are even more disadvantaged such as disabled, migrant, dalit, urban informal and rural sector workers.

Majority of women -- 87 per cent -- are employed as agricultural labourers and cultivators. Among the women workers in urban areas about 80 per cent are employed in the unorganised sectors like garment industry, petty trades, service sectors, building constructions, domestic work, anganwadis, nursing in private hospitals,

⁶⁶ Planning Commission, Mid Term Appraisal of Tenth Plan, Part II, Chapter 4, para 4.6

teaching in private institutions, home-based work (house hold manufacture sector) etc.

The condition is worst for the home-based workers who account for 30 million workers in India and 50 million in South Asia. A home-based worker is defined as a person who carries out work in his or her own home, or premises near the home which is not under the control of an employer or contractor and which results in a product or service for sale or remuneration. The home-based worker may be self-employed or may be working for an employer or contractor.

7.1.2. The Impact of Structural Adjustment

Women's share in organised sector employment is only 17 per cent and most of it is located in the lower rung of the employment hierarchy. The highest share of women in organised sector is in Kerala (38.6 per cent), and the lowest is in Bihar (6.7 per cent). The Mid Term Appraisal of the Tenth Five Year Plan by the Planning Commission has found that there has been a decline in organized sector employment in the last three years.

The opening up of the economy, particularly agriculture to international trade in the 1990s has impacted farmers in many ways. While new technologies and liberalized export favour rich farmers, privatization of natural resources including water, intellectual property restrictions, lack of access to new markets, unaffordability of technology to the small farmer and the depression of prices of foodgrain through cheap imports impoverish the small and marginal farmer. Globalisation has meant the withdrawal of subsidies in the agricultural sector and the sharp reduction of investment on agriculture and rural development.⁶⁷ The neo-liberal economic policy trajectory whose relentless pursuit has led to a combination of unutilised capacity, unsold food stocks side by side with wide spread hunger, and increased unemployment. Survival for the rural poor under such conditions has become increasingly precarious. That such repercussions have disproportionately burdened women is widely recognised.

In the era of economic reforms there has been a decline and in some cases closure of employment opportunities for large numbers of women. This is evidenced in the fall in work participation rates for women, from 444 per thousand in 1993-1994 to 419 in 1999-2000 across rural India, and from 154 per thousand to 139 in urban India in the same period.

Further, there has been a visible decline in women's share of employment in agriculture, manufacturing and mining and the sum total of services, adding up to an overall decline in women's employment share from 33 per cent in 1993-1994 to 31 per cent in 1999-2000.

There has been a decline in the growth rate of employment in India, alongside deterioration in the quality of employment. Most of the jobs are created in the low

⁶⁷ Maithreyi Krishnaraj, Divya Pandey, Aruna Kanchi, "Does EGS Require Restructuring for Poverty Alleviation and Gender Equality? II - Gender Concerns and Issues for Restructuring," *Economic and Political Weekly*, April 24, 2004.

paid informal sector where a large number of workers struggle for long hours without minimum wages, overtime pay, sick leave and even maternity leave for women workers.

The *Approach Paper for the Eleventh Five Year Plan*, put out by the Planning Commission of India, in a trend that is cause for concern, advocates labour flexibility as a desirable method of “enabling” Indian workers to compete in the rapidly changing global labour market. India is among the countries that have the lowest salary and wage levels in the world, making it one of the most desired sweatshops for the countries of the North, that may be easily exploited, because even the Planning Commission sees the capacity to depress wages as a “labour cost advantage”.⁶⁸

7.1.3. Undermining Workers’ Rights in the New Economy

The shift of ideology of the state from welfarism to neo-liberalism that calls for labour flexibility is pushing labour reforms through legislative, executive and judicial action.

The forces unleashed by technology, liberalisation and globalisation have adversely affected the rights of workers and their bargaining capacity vis-a-vis employers. While trade unions have weakened, the militancy of the employers is on the rise. The weakening of the workers bargaining capacity and rise in militancy of employers are manifest in the significant increase in the incidence of lockouts and decline in the incidence of strikes.

Pending legislative action because of the constraints of parliamentary democracy, the State has resorted to executive actions and counter productive judicial activism towards limiting legal rights of workers.

7.2. CONSTITUTIONAL GUARANTEES AND GOVERNMENT INITIATIVES

The Constitution of India guarantees equality, equal protection of the law and the right against discrimination to all citizens. A central part of the Equality Code of the Constitution is Article 16, which guarantees equality in public employment to all citizens. Along with the fundamental rights, the Directive principles of State Policy have guided the enactment of special protective legislations to workers in different sectors, which is also in keeping with norms laid down by the International Labour Organisation from time to time.

Article 38 (2) is important: “The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.” This is a particularly important constitutional provision for workers in the informal sector, the export processing zones

⁶⁸ Planning Commission, *Approach Paper to the Eleventh Five Year Plan*. See, Amiya Kumar Bagchi, Debdas Banerjee and Achin Chakraborty, A Critique Of The Approach To The Eleventh Five Year Plan - II, *People's Democracy*, Vol XXX, NO 35, August 27, 2006.

and those engaged in hazardous occupations, or occupations that have a long term negative impact on health.

Article 39 forms the basis of labour legislation, but is particularly striking in the expansive way in which it articulates state responsibility. It also lays a firm foundation for eliminating discrimination against women in the workplace and eliminating the exploitation of children:

The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Articles 41, 42, 43 and 43A provide for the right to work, the right to just and humane conditions of work, the right of workers to a living wage and worker participation in management.

Apart from laying down norms that set the standard for the treatment of workers, the Constitution also explicitly prohibits untouchability (Article 17), child labour (Article 24) and forced labour and traffic in human beings in consonance with ILO standards against social exclusion and the performance of degrading forms of labour.

There are a number of welfare schemes that have been put out by the government and detailed in the 2nd and 3rd periodic report of the Government of India - for the upgradation of skills, enhanced access to resources, insurance, day care facilities and maternity benefits. However, the impact of these schemes is negligible.

The National Commission on Rural Labour had made several recommendations for improving the work participation rate of women and their income but the recommendations have not been acted upon.

The Government of India has recently introduced the National Maternity Scheme. Under this Scheme maternity benefit is provided as lump sum cash assistance to

women of household below the poverty line. It is subject to a numerical ceiling of about 46 lakhs and a financial ceiling of Rs.138 crores. While the amounts released to the states for implementation of the scheme were Rs.68 crores in 1996-97 and Rs.50 crores in 1997-98, the amounts utilised by the states were Rs.52 crores in 1996-97 and Rs.40 crores in 1997-98. National Family Benefit Scheme is another Central government measure for the benefit of women who have lost their husbands. The financial ceiling is Rs.251 crores, while the amount released in 1996-97 was only Rs.92 crores. *This points to the underutilization of funds earmarked for the benefit of poor women in insecure family and employment situations.*

A. The Employment Guarantee Act

The National Rural Employment Guarantee Act, provides for the enhancement of livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work

This legislation is the result of a long political struggle, aims at protecting the rural population from hunger and destitution; contributing to social objectives, including the creation of durable assets, the protection of the environment, the empowerment of women; and the slowdown of rural-urban migration.

It also anticipates strong multiplier effects, which would have a positive effect upon rural livelihoods. This impact would be much larger than the actual expenditure, which has been estimated to be between 0.7 to 1.4 percent of the GDP. Scholars like Jean Dreze suggest that the Employment Act has the scope of reducing rural poverty by 70 per cent.

The implementation of such an Act is critical to human survival especially in a situation where neo-liberal economic policies have resulted in falling employment growth. The Act is a recognition that the State cannot retreat from pro-poor development and is responsible to ensure livelihood security and employment. The loss of control over common property and natural resources for wide sections of the population as an outcome of globalisation, makes decentralised planning, and land and water management by the people the prerequisites for an effective EGA.⁶⁹

Studies in several parts of the country have shown that while women's work participation rates are comparable to men's in rural areas, there is a large concentration of women working as casual, unskilled labour in back breaking work sites. With the Employment Guarantee Act, therefore, it can be safely assumed that women will be the primary beneficiaries.

⁶⁹ Report of the Convention on the Employment Guarantee Act, *People's Democracy*, XXVIII: 43, 24 October 2004. Paraphrasing the views of Medha Patkar, Aruna Roy, Jean Dreze, Jayati Ghosh, Brinda Karat, Sukhadeo Thorat.

7.3. SOCIAL SECURITY FOR WOMEN IN THE UNORGANISED SECTOR

Social security means

- (1) ensuring protection and promotion of livelihood together with developing safe and secure work conditions.
- (2) Providing health, maternity, childcare and pension benefits for the elderly.

Social Security is a saving when one is in employment and it is an income when not in employment. Social Security includes all measures, which should be promoted, productive and is free from deprivation and protect the income of the worker due to the loss arising out of any contingency. Social Security should be covered to every person in the country. Forty percent of Gross Domestic Product (GDP), of other countries is earmarked as social security schemes for its citizens. But in India only 1.5 per cent of GDP is earmarked for social security for its citizens.

India has a total workforce of around 400 millions, out of this 92 per cent of labour i.e. 368 millions is in unorganised sector. Fifty percent unorganised labour i.e. 184 millions are women workers involved in the agriculture, construction, vending, self-employment, domestic work, anganwadi, forest work, fisheries, agarbathi [incense sticks] and beedi [thin hand rolled cigars] rolling etc.

Even though unorganised labour contributes 65 per cent to the national income, they are not covered under any social security schemes nor provided with welfare.

The primary objective of social security is to ensure livelihood to those who are deprived of the same for any reason, temporary or chronic, as the case may be. The Universal Declaration of Human Rights (UDHR), has included the right to social security as a basic human right.

The Indian Constitution lays emphasis on the need to promote worker's welfare. Article 39 of the Constitution requires the state to provide with the means to an adequate livelihood, promote fair distribution of wealth, ensure equal pay for equal work and protect child and female labour from exploitation.

There is no working and consistent social security programme for workers in India that covers all workers in all sectors of employment.

For the betterment of women unorganised workers the following schemes are a must:

- i) Medical care
- ii) Sickness benefit
- iii) Employment injury benefit
- iv) Invalidity benefit
- v) Maternity benefit including pre and postnatal care with nutritious food supplement
- vi) Day care center for the children
- vii) Old age benefit including pension
- viii) Family benefit
- xi) Survivor's benefit
- x) Integrated insurance scheme - this insurance scheme should include

7.4. RECOMMENDATIONS

7.4.1. Addressing Women's Needs

- Macro economic policies and poverty eradication programmes to specifically address the needs and problems of women who comprise the majority of the population below the poverty line and are very often in situations of extreme poverty.
- The flow of benefits to women in the 3 core sectors of Education, Health and Employment need to be monitored as they together could contribute a great deal towards mainstreaming women into national developmental process.
- Strategies should be designed to empower the women to meet the negative social and economic impacts, which may flow from the process of globalisation and at the same time enhance their capacity so that they can utilise the opportunities opened by this process.
- In view of the critical role of women in the agriculture and allied sectors, as producers, concentrated efforts must be made to ensure that benefits of training, extension and various programmes will reach them in proportion to their numbers. The programmes for training women in soil conservation, social forestry, dairy development and other occupations allied to agriculture like horticulture, livestock, including small animal husbandry, poultry, fisheries etc., need to be expanded to benefit women workers in the agricultural sector.
- The important role played by women in electronics, information technology and food processing and agro industry and textiles has been crucial to the development of these sectors. They should be given comprehensive support in terms of labour legislation, social security and other support services to participate in the industrial sector.
- In order to substantially improve the economic status of poor women working in the informal sector of the economy, there is a need to devise concrete strategies which can help to enhance the ownership of and control over productive assets of these women. Some of the assets that women can be given are a plot of land, housing, tree pattas, joint ownership of all assets transferred by the state to the family, live stock license, bank accounts, membership of organisations and identity cards.
- Employment and income generation activities including self employment along with necessary training for skill upgradation must constitute the most important intervention for raising the status of women.
- New micro-credit institutions can be established and existing institutions strengthened to enhance women's access to credit for consumption and production.
- Women's contribution in the informal sectors (including home-based workers) must be recognised by way of reinterpretation and redefinition of conventional

concepts of work wherever necessary and this should include Census records, preparation of satellite and national accounts etc.

- The statutory schemes under ESI and the Maternity Benefit Act are applicable to limited classes of establishments specified thereon. It is therefore necessary to take steps to extend the scope of the statutory scheme on the one side and the national scheme on the other.
- Even with the limited coverage the benefits of the schemes are not being fully utilised. This could be due to ignorance, cumbersome procedures and other reasons. It is therefore necessary to simplify the procedures and to create greater awareness among the beneficiaries.

7.4.2. The Employment Guarantee Act⁷⁰

The National Rural Employment Guarantee Act is a new legislation that has just been put in place. It is important to anticipate problems that might arise based on the experiences on hand. The Employment Guarantee Scheme in Maharashtra is the oldest and largest public works programme in the developing world, and has been in place since the early 1970s. The concerns that arise from this programme serve as a ready reckoner in the assessing the progress of the National legislation.

- Defining work and household under the Act is critical. The definition of a household is fraught with difficulties especially in a context in which the absence of homesteads often means that a number of families share the same roof and kitchen.
- To begin with women should be made aware of how EGS works and informed of their rights and entitlements. Women already have representation in panchayat. With some training, this should give opportunities to women members and women sarpanches to take an active part in articulating their needs of work at village level, participate in the (EGS) budget process at the local level as well as monitor work execution. They could also be trained to be part of vigilance committees. Such practices have been successful for instance in monitoring PDS.
- Reasons why the administration has been unable to award any of the mandated entitlements to women have to be examined and appropriate modifications made.
- Enriching their private capabilities by according skills/training to women in agriculture and related activities. Exploration and research in identifying marketable and location-specific skills for women is required.

⁷⁰ This section is extracted from Maithreyi Krishnaraj, Divya Pandey, Aruna Kanchi, "Does EGS Require Restructuring for Poverty Alleviation and Gender Equality? II - Gender Concerns and Issues for Restructuring," *Economic and Political Weekly*, April 24, 2004.

- Creating community asset under EGS that answer women's needs and devising ways to award the ownership of community assets created under EGS to women's groups. There are many existing models available where wasteland development is rewarded by women's collective ownership of land reclaimed or ownership of trees if they develop nurseries. There is great scope for this in social forestry and watershed development. In cases of joint private land ownership, mentioned in some sections of EGS work, it is possible to build in women's collective ownership.
- Other existing government programmes such as health, literacy, education, child care, etc, could take advantage of the presence of large number of women on EGS sites to focus these services on women. What is needed is to create a synergy of services where EGS sites provide an ideal site for health, literacy and awareness programmes. EGS sites also offer opportunities for Social Action.
- At present EGS perpetuates existing social and gender inequalities. The costs and benefits of such practices to different sections must be highlighted through research and investigation.
- There has to be a clearer perception among officials at lower levels on what is meant by gender sensitivity - understanding how programmes affect women; what their disadvantages are; traditional conceptions on gender roles and how they generate unequal burdens between men and women, unequal entitlements and lower participation in public sphere and how EGS should guard against perpetuating these. Migrant women EGS workers face special problems that need special attention.
- Social Action Groups can play a valuable role in mobilisation and of women. This used to be so in the past and could be revived. Women's collective strength could be encouraged to bring about changes in gender relations. EGS has been instrumental in bringing together large numbers of women at work sites - an experience that has been positive for women. In areas where social action groups have played a dominant role as in Jawhar, illiterate tribal women are very assertive and demand work.
- EGS would contribute much to the cause of women by simply fulfilling its original agenda: soil and water conservation, conservation of forests and other natural resources which feed into women's special requirement of water, fodder, fuel besides enhancing productivity in agriculture.

7.4.3. UMBRELLA LEGISLATION TO PROVIDE MINIMUM SOCIAL SECURITY FOR UNORGANISED LABOUR IN INDIA.

Government constituted Second National Commission on Labour 15th October 1999 to review existing labour laws and suggest umbrella legislation for the unorganised sector.

For the first time, special focus was given to the unorganised sector to recommend measures, which would contribute to improvement of working conditions and safety in places of work and security. The Commission was expected to radically review the forty existing laws and procedures and determine the kind of system and legislation that would help the economy, industry and labour. This was necessitated by the impact of globalisation on the labour market.

Analysing the Bill, workers organisations identified the following limitations:

- a) The dominant characteristic of employment in the unorganised sector is its discontinuity. The most important need of the workers is security of employment. This can be met only by means of appropriate decasualisation measures. But the Bill is silent about security of employment or job security. Without employment security a worker cannot get any other benefit under the proposed Bill and most of the workers in the sector may be excluded from the coverage.
- b) Regulation of employment is not reflected in the umbrella legislation which is an important aspect to the working class.
- c) The Bill has failed to create an enforceable right to work, in which the obligation to provide employment will be on the state.
- d) There are provisions in the Bill providing for formulation and implementation of welfare schemes. There is no provision in the Bill, which seeks to create individual entitlement to benefits flowing from such schemes.
- e) The Bill does not provide for the system of accountability and the schemes are implemented through executive fiat.
- f) There are provisions in the bill to ensure livelihood but this are vague and fails to create legal entitlements. For example: what kind of remedies available to a worker who is out of employment during monsoon and how long is such a worker entitled to assistance and what are the remedies available to such person when s/he cannot secure the benefit.

Workers organisations proposed the following suggestions to overcome the limitations in the Bill.

- a) Every citizen shall have the right to work or employment.
- b) State shall make provision for compensation to workers against unemployment, under employment and loss of employment.

- c) Every eligible worker shall be entitled to the benefits arising out of unorganised sector workers' welfare schemes.
- d) There shall be provision for judicial enforcement of the entitlements created by the schemes.
- e) There should be specific methods of mobilising resources by way of collecting "cess".
- f) The provisions concerning the functioning of the board must be reexamined to create legal entitlements for the worker.

References:

- 1) Labour and employment, T.S.Papola (President, Indian Society of Labour Economics) and Alakh N Sharma (Editor, Indian Journal of Labour Economics).
- 2) Rights of the working women, Dr. Ruth Manorama (President, Bangalore Gruha Karmikara Sangha, President, National Alliance of Women (NAWO)).
- 3) Mere lip service to women not acceptable, Indrani Majumdar (women activist and associated with Centre for Women's Development Studies (CWDS)).
- 4) Social protection schemes for women, R.K.A.Subramanya (Secretary General, Social Security Association of India).
- 5) Unorganised workers and regulation of employment, I.Sharath Babu (Post-Graduate Department of Studies in Law, Karnataka University).
- 6) SEWA'S experience and suggestions on the issues of Home-based Workers, Manali Shah, Vice-President, SEWA.

CHAPTER 8

ARTICLE 12: HEALTH

8.1. PREVALENCE OF THE PROBLEM

8.1.1. Women and the Public Health System

It is important to locate the issue of women's health within the larger debate on the public health system. A close look at statistics reveals a correlation between poverty and poor access to basic health care, with mortality and morbidity rates being far higher for dalit and adivasi people than for other sections. Child mortality is also higher among these groups both in rural and urban areas. Diseases like Japanese encephalitis, Kala Azar, malaria [*plasmodium falciparum* most recently] and dengue have reached epidemic proportions and have affected socially marginalised and vulnerable groups disproportionately. Given the costs involved, the worst affected people cannot access private health care and public health care in these areas is virtually absent.

The third National Family Health Survey conducted in 2005-2006 in all 29 states shows that the percentage of children in the age group 6-35 months who are anaemic is as high as 80 per cent or more in Chhattisgarh, Gujarat and Punjab. It is only slightly lower - around 72-74 per cent - in Orissa and Maharashtra. For adults, while anaemia is high among both sexes, it is very high among women, with the prevalence of anaemia among women more than double that among men in all states.⁷¹

During the mid-90s there was an outbreak of gastroenteritis in the Adilabad district of Andhra Pradesh...[A] report revealed that the tribal population in this district had no access to livelihood for several months before the outbreak, as a result of which they were unable to even fulfil the basic caloric requirements. The public distribution system was practically nonexistent and due to severe drought the forests could not be tapped for food sources. This was further compounded by lack of safe water supply. When the outbreak occurred the people resorted to private practitioners since the public health services were neither available nor responsive. It is only when the suffering and death caused by the epidemic was reported in the vernacular newspapers that the government sent a team to investigate the outbreak.⁷²

The reasons for the collapse of public health systems are deep rooted. The commercialization of health care has meant not just the increase in private facilities but the devaluation of the public system as well, witnessed most starkly in the exodus of trained medical professionals from the public health system into corporate health

⁷¹ Jayati Ghosh, Nutrition Concerns, Sep 11th 2006, http://www.macrosan.com/cur/sep06/cur110906Nutrition_Concerns.htm

⁷² Rama Baru, "Abdicating Responsibility", *Seminar*, No 537, May 2004.

care. There has in the course of this shift been a conflation of costs with quality, which puts the poor in a very vulnerable situation.⁷³

8.1.2. Maternal Health and Morbidity

The reality in India shows up an existing disparity in health outcomes for women who become pregnant: India has a maternal mortality ratio (MMR) of 540 deaths per 100,000 live births. In actual numbers this means that 130,000 women die each year due to preventable causes related to maternal health, or one woman dying every five minutes. Uttar Pradesh state (707 MMR) alone accounts for close to forty thousand maternal deaths per year: all due to preventable causes. According to estimates, maternal morbidity is also unacceptably high: between 4 and 5 million women suffer ill health due to childbearing complications (Jejeebhoy 2000:134).

- This is a grave violation of women's right to life and health because these deaths are preventable given the current state of resources and technology in India
- The burden of ill health is being disproportionately borne by women
- The state has failed to provide women with the system of health protection that enables them to go through pregnancy and childbirth with safe and healthy outcomes.

Reproductive Tourism

Reproductive tourism has emerged as an effective mode of sharing and outsourcing surrogate motherhood. The market for womb space is the new capitalistic enterprise that is recommended to poor states and ICMR estimates that it could earn \$ 6 billion in a few years⁷⁴

8.1.3. Women and Mental Health

There is a relation between poverty and common mental disorders. There are of course also specific factors like harassment - in conjugal homes, at workplaces, in communities - and adverse reproductive experiences, which have been found to have a strong impact on women's mental health. One recent study has found that while even the poorest communities have internalized the ideologies of family planning propagated by the state, this did not lead to informed and planned reproductive choice, but led instead to the use of abortions and terminal contraceptive methods which impacted adversely on mental health.

It has also been suggested that unplanned urbanization and the dispersion of the extended family results in a breakdown of social support which puts enormous pressure especially on migrant labour.⁷⁵ Similarly, the shouldering of the entire

⁷³ Rama Baru, "Abdicating Responsibility", *Seminar*, No 537, May 2004.

⁷⁴ Jayati Ghosh, Rent a Womb: And Indian Expert, *Deccan Chronicle*, 11 November 2006.

⁷⁵ Ranendra Kumar Das and Veena Das, The interface between mental health and reproductive health of women among the urban poor in Delhi, Trivandrum, Achutha Menon Centre for Health Science Studies, Sree Chitra Tirunal Institute for Medical Sciences and Technology, 2005.

responsibility of family, where men have migrated out in search of work, coupled with very scarce survival and livelihood options has a negative impact on women's physical and mental health as well.

Childhood sexual abuse, female infanticide, repeated abortions consequent on sex determination tests, the resulting homelessness and psychological trauma inflicted by dowry demands on newly married women, rape and sexual assault of women in situations of armed conflict and communal violence; and the constant fear of aggravated assault especially in the case of dalit and adivasi communities, but also increasingly in the case of young women students, result in increased emotional morbidity. This is aggravated by low levels of education, lack of autonomy in decision making, economic dependence and most importantly institutional spaces that are structured in ways that do not provide space for security or adequate redress for women.

The Schizophrenia Research Foundation at Chennai, India carried out an ethnographic, qualitative study of 75 mentally ill women who were separated or divorced. It was found that all but eight of these separated women lived in their parental homes with the onus of care being borne by the aging parents. Legal separation had occurred only in 16 cases, all of them being educated women. None of them remarried, while 34 of the husbands had done so. The fathers looked after only six of the 26 children.⁷⁶

8.1.4. Armed Conflict and Women's Health: Kashmir⁷⁷

Armed Conflict impacts on the general health of the region. An independent survey of the Government Mental Hospital in Srinagar found that post traumatic stress cases increased from 1,700 in 1990 to 17,000 in 1993 and to 30,000 in 1998.⁷⁸

Although Kashmir has a total of 1,169 government hospitals or sponsored health care clinics, there has been an exodus of qualified medical professionals out of the state, rendering the government facilities completely inadequate for meeting the basic health needs of people in the valley. The doctors who remained in Kashmir preferred to be based in the cities, leading to a complete collapse of the health care system in the villages.

The crisis for people was aggravated at night -- the "terror of the night"-- given the insecurity created by armed presence especially after dark. Even where facilities existed, the lack of basic medical supplies made them largely ineffective in meeting basic health needs. All this has led to an increased dependence on local doctors and traditional faith healers.

⁷⁶ Cf. R.Thara and V.Patel *Women's Mental Health: A Public Health Concern*, Regional Health Forum WHO South-East Asia Region(Volume 5, Number 1)

⁷⁷ Zamrooda Khanday; *Negotiating reproductive health needs in a conflict situation in the Kashmir Valley*, Trivandrum, Achutha Menon Centre for Health Science Studies, Sree Chitra Tirunal Institute for Medical Sciences and Technology, 2005.

⁷⁸ Prabal Mahato, cf. Zamrooda Khanday; *Negotiating reproductive health needs in a conflict situation in the Kashmir Valley*

“The peripheral medical infrastructure in Kashmir was disrupted by the conflict. Absent staff, lack of supplies, and the inaccessibility of the facilities became problems. When health needs forced people to seek medical aid, their first preference was to consult the unqualified local doctors in and around the villages.”

In this situation, the restrictions on women’s mobility, the ban on contraception, the increased incidence of rape and abductions and the complete absence of infrastructure to deal with women’s reproductive health needs worsens the situation of women in Kashmir.

8.1.5. The Bhopal Gas Disaster and Impact on Women’s Health⁷⁹

According to government estimates, 250,000 people were initially poisoned by the 1984 gas leak in Bhopal. In the twenty-two years since, countless more have been poisoned and successive generations continue to bear the scars of the gas contamination. But health care and health education for women has been far from adequate in Bhopal.

In February 1985, it was found that pregnant women suffered spontaneous abortions, still births, diminished foetal movements, and menstrual disturbances. Hospital and clinic statistics at that time revealed high frequency of pelvic inflammatory disease, endocervicitis, menorrhagia, and suppression of lactation.

The Sambhavna clinic has examined thousands of gas and contamination affected women since 1996, finding high rates of gynecological problems such as leucorrhea (white discharge from vagina), menstrual irregularities, amenorrhea, and sterility. Sambhavna records also indicate that in some neighborhoods near the Union Carbide factory, the average age of menarche is 13.75, more than a year later than the national average for India.

8.1.6. Rural Access to Health and Witch Hunting⁸⁰

In Tensar village, situated 20 Kms off Rourkela City in the state of Orissa one tribal woman Nevni Ikka had gone to visit her neighbour Sukhi Ikka and as soon as she entered her house then Sukhi’s daughter fell seriously ill. She lost her senses. This made the family members of Sukhi aghast and within moments Nevni was no longer their lovable neighbour she was a Witch. The villagers were informed immediately and they gathered in Nevni’s house loaded with latthis. She was beaten mercilessly and was forced to parade naked for hours together in the village in front of her children.

(Source: “Dainik Bhaskar”, May30, 2004)

A majority of the adivasi people of Jharkhand have a firm belief in witches and witchcraft. They believe that diseases, unnatural deaths (eg. death due to cholera, small pox, drowning, fall from the thunder and lightening), ill health, destruction of

⁷⁹ Extracted from online factsheet of Bhopal Gas Peedit Mahila Stationery Karmachari Sangh, Bhopal Gas Peedit Mahila Purush Sangharsh Morcha, www.bhopal.net/march.

⁸⁰ Extracted from paper by Shashi Sail, “Witch Hunting in India,” written for the Second Shadow Report on CEDAW.

domestic animals and crops are the result of witchcraft. So witches are considered dangerous and are socially boycotted, fines are imposed by the Panchayat and people suspected of being witches are killed. Villagers rarely report these incidents to the police. They support the killer. Killing a witch is not only considered non-culpable, but also desirable and justified.

One of the factors responsible for the persistence and increase in witch hunting is the large-scale, aggressive privatisation policy being followed by the governments. As a result, there has been a collapse of the public health system. Hundreds and thousands of families have lost members, mainly children, due to the increased costs of medicines and health care. The sections worst affected have been the tribal-dominated areas in remote and inaccessible parts of the country. Epidemics of malaria, diarrhoea, encephalitis and other preventable diseases have taken a heavy toll. In the absence of any medical support systems, tribal communities rely on the local *ojha*, *baiga* or *gunia* for magic spells to cure the sick, and thereby the power of these people over the community increases. Thus there is a direct inverse relation between the increasing ill health of India's poor and the increase in superstitions and dependence on the traditional healers and practitioners of witchcraft. This is one of the major reasons why it is so difficult to break their hold over community belief.

8.1.7. Laws, policy and institutional provisions in practice

If we examine how policies and laws on this issue are interpreted, enforced and implemented, there appears to be overall lack of political will to implement the CEDAW Committee's Concluding Comments. There are ambitious programmes but inadequate services and insufficient trained personnel, idealistic goals but lowering of resource allocation, poor monitoring and law enforcement.

Women have not been part of planning, implementing, monitoring and evaluating any policies, plans or programmes. There has been no attempt to understand what women really want.

Despite the promise of a comprehensive range of services within the reproductive and Child Health programme (1997), the maternal health services actually provided under RCH continue to be focused on antenatal care. Provision of delivery care and provision of emergency obstetric care (EOC) are being neglected (Mavlankar, 2001). Primary Health Centres are not designated to provide EOC services. Access to blood transfusion in rural areas is almost nil.⁸¹

There is no legal requirement in the existing system on accountability for quality care nor binding standards for various levels of health facilities. The majority of the rural population (and a significant population in urban areas) is not aware of their right to question the quality of clinical care. Many are even afraid to raise issues on the quality of clinic care because of the perceived consequences resulting from such actions (Mavlankar, Ramani, and Shaw, 2003).

⁸¹ For example, all the First Referral Units (FRUs) in Madhya Pradesh and 118 FRUs in Uttar Pradesh lacked blood transfusion facilities Report of the Comptroller and Auditor General, Govt. of India, 2001

8.1.8. Personnel

The government is unable to ensure that doctors and nurses reside in the Primary Health Centres or Sub-Centres or in the same village, and is unable to provide accommodation for all of them. Only 38% PHCs have adequate staff in position⁸²

Village Tikkar in Halvad Taluka of Surendranagar district (Gujarat), is very well connected by transport, it has a high school, the community is very cooperative. Three single women community workers of the NGO are staying alone in the village. Personal safety is not an issue. There is a quarter for the ANM, but she still does not live there. The Tikkar PHC has a new building and is well equipped, but not a single delivery takes place in this PHC.⁸³

The RCH programme has had since October 2000 a scheme of training of traditional birth attendants (TBAs) or dais in 142 districts of India. An evaluation of the programme in the Dangs district (Gujarat) however showed that none received a certificate and identification card after being evaluated, and neither did they receive any follow up support by the ANM or doctor.⁸⁴

8.1.9. Resource Allocation

The government expenditure on health is 7.5% of the GDP⁸⁵. However, in some states, Gujarat for example, over the last five years the allocation of resources to the health and medical sector that outlay has declined from 4.81 percent to 2.87 percent. The Tenth Five Year Plan in terms of Health and Gender sets the target of reducing Maternal Mortality Ratio from 5.4 per 1000 live births (in 1999) to 2 per 1000 live births in 2007 and 1 per 1000 live births in 2012 (in Das 2002:221).

Plan and Non -Plan outlays of the Government of Gujarat over the last 5 years

Item	Unit	1999-2000	2000-2001	2001-02	2002-03	2003-04
Total State Annual Plan & Non Plan Outlay	CrORE	20673.57	24670.98	37792.84	31054.02	31998.03
Plan & Non Plan Outlay for Medical and Public Health (PM&PH)	CrORE	995.40	973.08	953.83	948.74	919.41
% of PM & PH to Total Outlay	%	4.81	3.94	2.52	3.06	2.87

PM&PH = Plan for Medical & Public Health

NPM&PH = Non-Plan for Medical & Public Health

Source: <http://www.gujhealth.gov.in/basicstatistics/index.htm>

⁸² RCH II *Plans of Implementation*, 2003, p.17.

⁸³ Source: Deepak Charitable Trust

⁸⁴ Das, Dey, Bhatt and Patel, no date.

⁸⁵ UNFPA State of the World Population 2003

8.2. THE RIGHT TO FOOD

Different parts of the country have witnessed the spiraling of starvation deaths over the past five years, particularly acute in rural and forest areas. Mahabubnagar District in Andhra Pradesh, Kashipur in Orissa and Wyanad in Kerala are but a few instances. The reasons for chronic malnutrition, hunger and starvation are closely tied to the breakdown of traditional livelihoods because of trade liberalization policies, landlessness, the decline in real agricultural wages and the curtailment of adivasi communities' access to forests.⁸⁶ Caught in the trap of debt bondage, surveys have found that in the best situations, families "rotate" hunger, with one person going hungry each day. Children drop out of school in order to find work that will feed them.

The pressure on women in rural households becomes more acute in this situation:

"The time and energy they spend in fetching water, firewood and fodder shoots up. But their food intake goes down. The women eat last, after feeding the rest of the family. They then have to worry about feeding the livestock. That mix of rising exertion and falling nutrition will devastate many."⁸⁷

The Right to Food is recognized as a basic human right by the Universal Declaration of Human Rights of the United Nations in 1948 (UDHR), the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights (ICESCR), Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The right to food as an enforceable claim to a minimum quantity of food of a certain quality carries with it correlated duties on the part of others, particularly the state. These comprise the duty to avoid loss of means of subsistence, to protect against deprivation of the means of subsistence, and to provide for the subsistence of those unable to provide for their own. Recognition of these duties may (1) help channel food aid more effectively; (2) enable governments to do the things that they should by providing a solid foundation for development programmes/ policies, and to build a consensus in their favour; and (3) sharpen the focus of civil society organisations (CSOs) as active agents in a public strategy to eliminate hunger, malnutrition and famines.⁸⁸

8.3. IMPACT OF HIV/ AIDS ON WOMEN

While the growing figures of HIV Aids infected population is reason for grave concerns, it is even more critical for women since women have been identified as a high risk group. Of the total estimated number of 12,4995 people suffering from the disease according to NACO, 10,6669 have been infected due to sexual contacts. This figure is telling. Women are at particular risk due to sexual contacts.

⁸⁶ Editorial, *Economic and Political Weekly*, August 24, 2002.

⁸⁷ P. Sainath, Clouds of despair: The poor and the permanent 'drought' *The Hindu*, Sunday, Aug 11, 2002.

⁸⁸ Raghav Gaiha, "Does the Right to Food Matter?" *Economic and Political Weekly*, October 4, 2003.

Gender-based violence is psychological, physical or sexual violence that is rooted in the power differential between men and women. Gender-based and sexual violence has significant implications for the spread of HIV/AIDS and for HIV prevention. Sexual violence and rape place women particularly at risk of infection particularly in high prevalence settings. Violence and the fear of violence acts as a significant barrier to women negotiating condom use or fidelity with their partners or choosing to leave risky relationships. As the Positive Women's Network says, 'Being diagnosed with HIV/AIDS rewrites women's lives. Fear of rejection, stigma, discrimination and harassment prevents them from disclosing their status.' Multiple fallouts take place simultaneously. She may be driven away and in situations where the husband is dead from the same disease, she is deprived of her share in the property. Livelihood and security concerns further places her in a more vulnerable position thus perpetuating the state of affairs. Particularly disturbing is the scenario for women sex workers.

Women living with HIV/AIDS have the same rights as others to education, employment, health, travel, marriage, procreation, privacy, social security, scientific benefits, asylum, etc.

Rethinking strategies to address the issues fueling the epidemic becomes increasingly important. The onus is on governments to ensure that enough resources are allocated to AIDS prevention and care programmes, that all individuals and groups in society have access to these programmes, and that laws, policies and practices do not discriminate against people living with HIV/AIDS.

8.4. CONSTITUTIONAL GUARANTEES AND GOVERNMENT INITIATIVES

8.4.1. Recognition of Health as a Right

There has been recognition of the role of the state regarding people's health in the Constitutional guarantee: "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties..." (Article 47, Constitution of India). It has also been articulated by Supreme Court case law that reads the right to health into the right to life under Article 21 of the Constitution⁸⁹.

8.4.2. Existence or Formulation of Laws and Policies:

Since the last report to the CEDAW Committee, India has formulated a number of policies including the National Population Policy (NPP, 2000), the National Health Policy (NHP, 2002) and has reviewed the Medical Termination of Pregnancy Act (MTP, 2003). Apart from that there is also a National Maternity Benefit Act of 1961, and a Child Marriage Restraint Act (1929 amended 1978).

The right to abortion is currently not recognised under law⁹⁰. However, the state permits abortion through its Medical Termination of Pregnancy -MTP Act (1971, amended 2003). The MTP Act permits abortion if "the continuance of the pregnancy

⁸⁹ Source- Lawyers Collective, 2004

⁹⁰ *ibid*

would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health” and any woman above 18 years can freely seek abortion services without any other person’s consent. The state also promotes safe abortion through the same Act, which specifies that abortion may only be performed at government or ‘approved’ hospitals. The Indian Penal Code (Art. 314) specifies punishment for “miscarriage” that leads to a woman’s death. Forced sex-selective abortions are declared illegal in the Pre-Natal Diagnostic Techniques Act (1994). Forced “miscarriages” are also criminal (Indian Penal Code, Art. 313).

8.4.3. The Gender Analysis In The Documents: Recognition Of The Problem

Women have not been consulted in a specific manner in the process of policy formulation but have been informed along with other stakeholders like NGOs. There has been no specific incorporation of women’s experiences in the policies.

While the National Health Policy (NHP 2002) states that “Social, cultural and economic factors continue to inhibit women from gaining adequate access even to the existing public health facilities” and yet goes on to take an instrumentalist approach to women. Rather than recognizing women’s right to health care on its own merit, it addresses women only as catalysts for improving the health standards of the community. There is neither a gendered analysis of women’s different needs nor recognition of disadvantages women face in seeking healthcare.

The National Youth Policy (2003) acknowledges (para 5.2) that “prevailing gender bias (is) the main factor responsible for the poor status of health ... of women in our society.”

The National Maternity Benefit Act, 1961, which provides for 12 weeks’ maternity leave for working women recognizes that women are entitled to leave with pay when they go through childbirth. However, male partners are not granted paternity leave to support the women in child rearing. Moreover the Act specifies that only working women with a continuous employment record qualify for this paid leave, which does not recognize that most women are compelled for gendered reasons to work in the unorganized sector where they do not get continuous employment. Under the National Maternity Benefit Scheme, maternity benefit in the form of one-time cash assistance is provided to women of households below the poverty line. Only pregnant women for up to the first two live births provided they are of 19 years of age and above are eligible. Thus, young married girls who have to prove their fertility and become mothers at an early age are excluded.

The National Population Policy 2000 (NPP) recognizes the existing gendered disadvantage of women’s access to health. The government does explicitly recognize women’s biological needs, but does not clearly enumerate how current discrimination by various institutions creates material and ideological barriers for women. (para 17)

8.4.4. Policy Solutions

The National Population Policy 2000 lays out its long term, medium term and immediate objectives as stabilizing population by 2045, bringing the Total Fertility Rate (TFR) to replacement levels for contraception, while providing integrated services for basic reproductive and child health care, respectively. The Policy states fourteen National Socio Demographic goals to be achieved by 2010, among which it has set the goal of reducing Maternal Mortality to below 100 per 100,000 live births by 2010⁹¹. This seems to be rather ambitious considering only 6 years are left for the target period and the MMR continues to be as high as over 400 per 100,000 live births. (See *Recording of Maternal Mortality* below).

The NPP also mentions several Strategic Themes. The second strategic theme on Convergence of Service Delivery at Village levels had several positive features. Integrated and coordinated service delivery through a one-stop basic health care facility may fulfil the demand of women's groups for a safe place in the village where they can deliver their babies, be examined and so on.

The section on Funding promises 'adequate funding', 'continuing of subsidies' for preventive and promotive services and priority allocation of funds to improve infrastructure. The NPP calls for a doubling of the annual budget of the Department of Family Welfare. At the same time, the NPP appears to state that although the annual budget has been consistently increasing, improvements in quality of care and outreach of services have not been affected. In this case, the doubling of the annual budget may not prove to be the only solution. There are no specific directions for an optimal and need-based use of budgetary allocation.

The policy highlights the increasing role of the private health sector in secondary and tertiary level care and speaks of the need for statutory licensing, regulation and monitoring to ensure minimum but adequate standards of diagnostic centers. However, it is silent on the role of the private sector itself in causing adverse health impacts for women by pollutants, poor working conditions and so forth.

The National Policy for the Empowerment of Women (2001) reiterates that women should have access to comprehensive, affordable and quality health care (NPEW, Para 6.2). The National Health Policy 2002 sets a goal of bringing down the Maternal Mortality Ratio to 100 by 2010.

The National Youth Policy (2003) (para 5.2) enunciates that:

(b) Women will have access to adequate health services (including reproductive health programmes) and will have full say in defining the size of the family.

(e) Young men, particularly the male adolescents shall be properly oriented, through education and counseling to respect the status and rights of women.

⁹¹ Other goals include the promotion of marriage at a lower age for girls, and compulsory and free education for all up to age 14; complete registration of all births, deaths, marriages, and pregnancies; and prevention of communicable diseases (NPP 2000:3)

8.4.5. Implementation of Services

The data collected from three states of Uttar Pradesh, Maharashtra and Gujarat indicates that although services are reaching some women for prophylactic ante-natal care, state services for delivery, post-partum care and safe abortion are poor. For example, according to the NFHS II (1998-99), in Gujarat (MMR of around 400) the percent of births whose mothers received antenatal check-up from a health professional was 86%, but the extent of health services reduces during childbirth and after. In 54% of the births, women have a delivery attended by a trained health professional, but a majority of these births take place in the private medical sector. Only 10% of non- institutional deliveries were followed by a postpartum check-up within 2 days.⁹²

The low nutritional status, cost of delivery services, the over-emphasis on family planning services, denial of services are serious issues affecting maternal health in Maharashtra. The implications of gender based violence figures nowhere.

Unsafe abortion is one of the most important reasons for maternal deaths. UP has the highest estimated rate of abortion in the country. Over 20 lakh abortions take place in the state of Uttar Pradesh every year of which about 60% are induced. Complications from abortion are responsible for 15 - 30% of all maternal deaths in the state. Serious complications of unsafe abortion include infection, bleeding, and injuries to the reproductive tract⁹³.

8.4.6. Supreme Court Orders on the Right to Food

The People's Union for Civil Liberties (PUCL), jointly with other NGOs, brought a complaint against the ministry of consumer affairs and public distribution, Food Corporation of India(FCI) and six state governments.

They held the federal institutions and the state governments responsible for mass malnutrition, and demanded that the country's huge foodgrain stocks be used to prevent hunger and starvation.

On November 28, 2001, the Supreme Court passed a significant interim order. This has three components: (1) it converts the benefits of nutrition-related programmes into legal entitlements; (2) it directs all state and central governments to ensure public awareness and transparency of these programmes; and (3) it directs all state governments to introduce cooked mid-day meals in primary schools within six months.

Progress, however, has been slow and uneven. The Supreme Court also warned in a recent statement: "(For) any state which does not comply with the directions to implement the mid-day meal scheme, there will be no transfer of central funds" (*The Times of India*, September 4, 2002). So even though gains have been limited in terms of greater access of the poor and hungry to surplus food, the likely gains from

⁹²IIPS & ORC Macro, 2001

⁹³ Study report of Johns Hopkins University - www.jhpiego.org/pubs/TR/tr516sum.htm

conversion of benefits of nutritional programmes into legally enforceable entitlements would be substantial.⁹⁴

8.5. CRITICAL AREAS OF CONCERN

- The virtual collapse of the public health system and the inaccessibility of basic health care to the majority of people in the country.
- The lack of treatment and concerted action in the case of epidemics especially in remote areas and the serious paucity of medical supplies and personnel.
- The denial of basic redress especially in terms of access to adequate treatment and health care over the long term to survivors of the largest chemical genocide in the country by the Union Carbide in Bhopal.
- The widespread prevalence of hunger and malnutrition and the rise in starvation deaths in the country.
- The inability of systems for tracking maternal deaths to gather adequate or accurate information.
- Policy mindsets seem to be focused on population control and not on reducing maternal mortality on a war footing.
- The State is not fulfilling its obligation to ensure universal access to essential and emergency medical services. Neither are women and their families provided with comprehensive information and services for routine care.
- The quality of care for these services is a problem and there are no legal mechanisms to regulate minimum medical standards.
- There are no feedback mechanisms within the state health system for detecting the absence of quality services or malpractice. Women survivors or families are unable to seek redressal and justice.
- Private sector health care, which the women have to resort to, goes unregulated. This constitutes inaction by the State parties towards addressing non-state actors.

8.6. RECOMMENDATIONS

- The Government should aim for 100 percent availability of critical infrastructure, staff, equipment and supply inputs at all levels of public health facilities, especially in remote areas and prioritise provision of health care access to poor and marginalised communities.
- Increase allocation of resources for health.
- Improve access to essential and emergency medical services.
- It is obvious that the toxic gas released in December 1984 has had long term hormonal effects in women. Existing data must be reviewed, new research must be

⁹⁴ This section extracted from Raghav Gaiha, "Does the Right to Food Matter?" *Economic and Political Weekly*, October 4, 2003.

initiated, and health care for women restructured and made effective and available. The problems faced by gas and contamination affected women in Bhopal must be confronted not just with mainstream medicine but also alternative medical solutions. Furthermore, well-funded and carefully aimed public education programmes must be designed and implemented in Bhopal's gas and contamination affected neighborhoods.

- The central government must set up a National Commission on Bhopal with the necessary authority and funds to thoroughly research health issues specific to gas and contamination affected women, provide appropriate treatment, and provide for public education about women's health issues in Bhopal's gas and contamination affected communities. The commission must have active participation of non-government doctors, scientists, and representatives of survivor's organizations.
- The Government must authorize credible institutions at the state level to ensure accurate reporting of maternal mortality for each state and district.
- The Government is responsible for enforcing the right to food. It must take all measures necessary to reduce rural indebtedness, and eliminate hunger, malnutrition and starvation in the country.

CHAPTER 9

ARTICLE 14: RURAL WOMEN

In what is a predominantly rural economy, rural women in India contribute roughly 55 to 66 percent of the total labour in overall farm production. There are areas where their share is even higher. According to an FAO fact sheet:

“In the Indian Himalayas a pair of bullocks works 1064 hours, a man 1212 hours and a woman 3485 hours in a year on a one-hectare farm, a figure which illustrates women's significant contribution to agricultural production.”

Women's participation in agricultural labour ranges from preparing the land to post harvest operations, with a concentration in seed selection, storage, transplanting, weeding, harvesting, post harvest operations in most areas. Management of livestock and dairying are also areas with a large participation of women, accounting for 93% of total employment in dairy production and performing a range of tasks from collecting fodder, collecting, processing and composting dung, and carrying it to the fields. Women also prepare cooking fuel. In forest areas, although there are variations between tribal and non tribal communities, one fairly common form that the division of labour takes is in the collection of non timber forest produce and timber, with non timber forest produce, like tendu leaves and sal providing livelihood to communities. And this is work that women are responsible for.⁹⁵

In one estimate, women account for 90 per cent of all those engaged in transplantation. They also make up 76 per cent of those sowing seeds and 82 per cent of people transporting crops from field to home. They are a third of the work force that prepares the land for cultivation. And between 70 and 90 per cent of those involved in dairying.⁹⁶

9.1. PREVALENCE OF THE PROBLEM

Although roughly one fifth of all rural households in India is female headed, few women hold titles to land. Even in land-owning households, they do most of the work on the farm, but are not seen as farmers.⁹⁷

Given women's contribution to the agrarian economy, the major issues confronting them today is the lack of titles to land, the lack of access to credit, and the lack of access to decision making in rural economies. Each of these issues is aggravated by the fact of vulnerability arising from social exclusion - especially for dalit and adivasi women - practices of violence and the impact of structural adjustment on the rural

⁹⁵ Asia's women in agriculture, environment and rural production: INDIA, SD Dimensions, Sustainable Development Division, Food and Agriculture Organisation, nd.

⁹⁶ P. Sainath, “How the Better Half Dies”, *India Together*, August 2004.

⁹⁷ P. Sainath, “How the Better Half Dies”, *India Together*, August 2004.

