



## COMMENTS ON THE DRAFT NATIONAL POLICY FOR WOMEN PARTNERS FOR LAW IN DEVELOPMENT

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PLD is a non-profit legal resource organization founded in 1998, working in the field of social justice and women's rights in India. We work towards advancing women's rights in contexts of sexuality, culture, caste, conflict, poverty and development, through three primary strategies- capacity development, knowledge production and policy advocacy.

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### PRELIMINARY/ OVERARCHING COMMENTS

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1. The tone of the Policy should be active and affirming to reflect the binding obligation of the State to realize the fundamental rights of women under the Constitution, as well as those guaranteed by the CEDAW and the CRC. Affirmative action, as provided for under Article 15(3) of the Constitution, is the key mechanism by which equality for women can be actualized.
2. The sections on objective or mission, must indicate how this policy seeks to relate to existing schemes, programmes, laws that are already in force, and those that will be initiative in the future. We recommend that it be used to read into, expand the meaning of all ongoing initiatives and serve to shape future ones.
3. In addition to affirming women's equality, the Policy must affirm fundamental freedoms enshrined in the Constitution, with respect to women and girls.
4. If terms like 'gender rights' are used in the policy these must be defined. In any case, the policy must expand on how it responds to this very heterogeneous category of 'women'. To meaningfully respond to women, the policy must recognize generally, and through its particular provisions, the disadvantages, discrimination and inequalities particular to marginalized women.

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### RECOGNIZE STRUCTURAL INEQUALITIES

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Inequalities and disparities in society is not shaped by patriarchy alone. Other systems of inequality based on caste, class, abelism and heteronormativity also determine privilege and disadvantage; access and barriers to opportunities and resources. The Policy must therefore recognize that women face multiple marginalization based not only on their gender, but also by their status, location or attribute - such as *Dalit*, religious minority, disabled, lesbian, bisexual, gender variant/ trans, amongst others. The social, cultural and economic realities impact access to resources, opportunities and rights differently for women experiencing intersectional discrimination, which calls for the recognition of marginalized women in the policy. Enjoyment of rights at an equal footing for all women requires targeted focus on structural inequalities, particularly for marginalized women.

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### VIOLENCE AGAINST WOMEN

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#### **1. Victim compensation**

Pursuant to the amendments to criminal laws in 2008 and 2013, compensation is now a legal right for victims of sexual violence and acid attacks. This is intended to compensate victims for the injury caused to them, rather than being an aspect of punishment to the perpetrator upon conviction. For this reason, the law also provides for interim compensation, even when a

perpetrator is unidentifiable/ not found/ or not convicted. The interim compensation is to be paid at the time of cognizance by the magistrate. There is hardly any evidence of the interim compensation being made available despite this provision. Apart from not being aware of this right, victims are often unable to access it from the National or State Legal Services Authorities, who are burdened with several other responsibilities as well. Based on the recommendations of the Supreme Court, it is important to establish independent Criminal Injuries Compensation Boards to enable victims to access their legal right.

## **2. Sexual harassment at the workplace**

The Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redress) Act was introduced in 2012. The mechanisms under the Act for prevention and redress, such as the Local Complaints Committees and appellate bodies, have not been instituted yet across most districts in India. As a result, unorganized sector women workers (including domestic workers for whom the draft national policy has specific provisions), which constitute the largest workforce in India, have no recourse to remedies under this law. The State monitoring of private sector as mandated by the Act has also not yet commenced.

## **3. Comprehensive sexuality education**

Comprehensive sexuality education includes age-appropriate, medically accurate information on a broad set of topics related to sexuality, which enables adolescents and young adults to make informed decisions about their relationships and bodies. Human rights based instruction on bodily autonomy and consent is crucial to preventing sexual violence. Authoritative studies show that comprehensive sexuality education helps children protect themselves better and are necessary for developing their evolving capacities.

## **4. Child Sex Ratio**

Initiatives on awareness and sensitization regarding the girl child must be complemented by further measures that address male privilege and entitlement, including discriminatory legislations and policies that through privilege men, incentivize son preference. There is a need to address structural inequality of women, in terms of social, cultural and economic disparities on the grounds of sex, to ensure remove the root causes of male privilege and sex selection.

## **5. Adequate budgetary allocations to establish and sustain mechanisms for implementation of laws**

Despite legislative advances to address domestic violence, sexual violence and sexual harassment at the workplace, there is shrinkage in resources available for establishing and capacitating mechanisms to support the victims. There are still not enough Protection Officers appointed (with single charge) or adequately trained for making remedies available for domestic violence easily accessible. There has been a significant budgetary cuts in ICDS and for the One Stop Crisis Centres, which have now been reduced to a handful instead of the earlier target of one per district. The Policy must set out how it intends to reverse this trend of budgetary cuts for women and girls. Concerns about not constituting Local Complaints Committees by governments for implementing the sexual harassment at the workplace is already mentioned above.

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## **ACCESS TO JUSTICE**

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### **1. Independent specialized agency to provide comprehensive support services to victims**

A gender-sensitive process of holistic justice necessarily involves measures that enable victims to access judicial remedies, but also support services for restorative justice outside the court processes. A large proportion of victims that access the legal system for prosecuting violence belong to disadvantaged backgrounds, with low literacy, lack of resources and mobility. They lack information pertaining to the legal processes involved and the role of different actors. They are unaware of their rights to compensation and to have a companion present with them during their deposition, and have their concerns and queries about the process unaddressed. Currently, no entity exists to provide comprehensive support to victims before, during and after trial processes to enable her to access redress and overall justice.

There is an urgent need to institute specialized bodies, comprising lawyers as well as counselors and medical professionals to enable victims to access the legal remedies and avail entitlements to them under the law. Support services are necessary for the following:

- Assistance in registering the FIR and procuring a copy of the FIR
- Assistance through the medical examination, in obtaining information on the processes and their relevance, accessing free medical treatment and counseling
- Applying for and availing compensation under the state victim compensation scheme
- Liaising with the Investigating Officer to track the status of investigation, and status of bail of the accused
- Legal advice and support, information on her rights, and orientation on the trial processes
- Liaising with the prosecuting agency to arrange meetings with the victim, to present her account of the incident, orient her to the deposition processes, and also inform of pressures from the accused and his companions, or her own family, to compromise
- Monitoring the progress of the trial and update the victim on each stage
- Providing counseling to the victim and also her family in the aftermath of the incident to mitigate the psycho social impact of the incident, and the on the victim
- To offer support to victim against recurring violence, re-location needs and other pressures, on a case to case basis
- Providing access to shelter/alternative accommodation

## **2. Duration of trial**

While it is necessary to ensure that trials are completed within a reasonable period of time, this cannot be ensured only by monitoring enforcement agencies. Delays occur for multiple reasons, which include late receipt of FSL reports, as well as systemic factors like increase in case-load, vacancies in the judiciary etc.

## **3. Victim-blaming**

Blaming victims for violence, and the increasing backlash against women accessing remedies for violations within the home, vitiates the atmosphere within which they can access justice. It is important to address this through public platforms, awareness raising, and socio-legal studies to show the endemic nature of violence against women.

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## **EDUCATION & VIOLENCE AGAINST WOMEN**

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One of the most outstanding government supported programmes at the intersection of education, access to justice and combating violence against women for the most marginalized women has been the Mahila Samakhya (MS) programme. Launched in 1988 with the objective

of imparting education and empowerment of socially and economically marginalized women in rural areas, the MS has played an exemplary role in bringing about lasting and sustainable transformation in women's lives. The findings of independent evaluations conducted by the IIM (Ahmadabad and Bangalore) affirm this. The programme has successfully collectivized women across 126 to 130 districts of 10 States of Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Jharkhand, Karnataka, Kerala, Uttar Pradesh and Uttarakhand and 679 blocks/mandals in the country, to empower marginalized women at the grassroots level.

Despite being evidence of being an exemplary programme, the Central government has discontinued funding it as of early 2015, recommending that it be brought under the aegis of the National Rural Livelihood Mission, whose goals are not the same. All interventions for women and girls rely upon the grassroots cadre of ASHA and Anganwadi workers, insufficient and fragile in comparison to the enormity of the social change agenda to be achieved. In this context, the closure of MS (and its transfer to NRLM), significantly sets back grassroots and marginalized women's agenda that this Policy aspires to fulfill. It is important to recognize its closure as a setback in the gender architecture at the grassroots level. It is not clear in the current draft how the Policy views this rollback and intends to fill the resulting gap.

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### REGISTRATION OF MARRIAGES

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Legislation on registration of marriages should clarify that non-registration of marriages will not hinder access to legal rights and remedies for women. This is because most women continue to have low rates of literacy and awareness of their legal rights and remedies.

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### RIGHTS IN NON-MARITAL CONJUGAL RELATIONSHIPS

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The Protection from of Women from Domestic Violence Act extends protection to women in 'relationships in the nature of marriage'. Subsequent judicial decisions have significantly narrowed down the scope of relationships within which women are protected from domestic violence. By way of legislation, it should be clarified that women in all non-marital conjugal relationships also enjoy legal protection from domestic violence.

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### INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

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The declarations/ reservations to the CEDAW must be withdrawn and India must ratify its optional protocol, to fully realise the rights of women to equality and non-discrimination.