

**Report of the High Level Committee on
the Status of Women in India**

Government of India
Ministry of Women and Child Development
New Delhi
June, 2015

Ms Maneka Gandhi,
Hon'ble Minister for Women & Child Development,
Government of India.

New Delhi
June 1, 2015

Dear Madam Maneka Gandhi,

Greetings! We have great pleasure in submitting to you the Report of the High Level Committee on the Status of Women in India (2013-15). We take the opportunity to thank you for the support extended to this Committee.

We have endeavoured to the best of our ability, with all the limitations on us, to cover the broad objectives of the Terms of Reference given to this Committee. The mandate of the Committee was massive, to assess the status of women in India in all aspects of their lives, keeping in mind the diversities (class, caste, religion, ethnicity, region, abilities, age groups etc.), complexities and paradoxes that prevail in our society.

The overall assessment of the Committee is: while there has been progress on certain fronts like education and political participation of women in local governance, notwithstanding the Constitutional guarantee of gender equality, a plethora of laws enacted, policies and programmes framed and implemented during the last sixty years, the status of a majority of women remains unequal and unaffected, especially when it comes to women from marginalized sections of our society.

Our detailed and extensive analysis presented in this report presents evidence of the same. We have also given recommendations that span immediate, medium and long term action that is possible and needed, apart from flagging certain recommendations where immediate action can be initiated. These, we believe, would be meaningful and impactful measures for addressing the unequal status of women and girls, and we are confident that these recommendations would be acted upon by your Ministry and the entire government.

We are fortunate that this report is being presented at a time when the Government of India, and the Ministry in particular, are pro-active in addressing the critical issues facing women of the country, and integrating them in the process of national development. The Beti Bachao Beti Padhao Andolan is a good example of an initiative that holds tremendous potential. More decisive and committed action will go a long way in improving the status of women (and girls), the recognition of their active citizenry and to secure for them all the rights that are due to them.

With kind regards,

Yours Sincerely,



Pam Rajput, Chairperson
Simrit Kaur, Member
Razia A R Patel, Member
Mridul Eapen, Member
Manira Pinto, Member
Kavitha Kuruganti, Member
Bindu Ananth, Member
Rita Sarin, Member
Ravi Verma, Member

1.6.15

Members of the Committee

Chairperson

Dr. Pam Rajput

Members

Dr. Simrit Kaur

Dr. Razia A.R. Patel

Dr. Mridul Eapen

Ms. Manira Pinto

Ms. Kavitha Kuruganti

Ms. Bindu Ananth

Ms. Rita Sarin

Dr. Ravi Verma

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List of Abbreviations:

S.No.	ACRONYM	DEFINITION
1	AA	Appropriate Authorities
2	AABY	Aam Aadi Bima Yojana
3	ABAD	Apni Beti Apna Dhan
4	ADC	Autonomous District Council
5	ADR	Alternate Dispute Resolution
6	AFSPA	Armed Forces Special Powers Act
7	AHS	Annual Health Survey
8	AISES	All India School Education Survey
9	AISHE	All India Survey On Higher Education
10	AMSY	Adivasi Mahila Sashaktikaran Yojana
11	ANBC	Adjusted Net Bank Credit
12	ARSH	Adolescent Reproductive Sexual Health
13	ART	Assisted Reproductive Technology Bill
14	ASCI	Advertising Standards Council Of India
15	ASDP	Ajeevika Skill Development Programme
16	ASER	Annual Status Of Education Report
17	ASI	Annual Survey Of Industries
18	AWH	Anganwadi Workers And Helpers
19	AWPS	All Women Police Stations
20	BBBP	Beti Bachao Beti Padhao
21	BCCC	Broadcasting Content Complaints Council
22	BEA	The Broadcast Editors' Association
23	BEP	Bihar Education Project
24	BPFA	Beijing Platform For Action
25	BPL	Below Poverty Line
26	BRIC	Brazil, Russia, India And China
27	BSUP	Basic Services For Urban Poor
28	CABE	Central Advisory Board Of Education Committee
29	CAG	Comptroller And Auditor General
30	CAGR	Compound Annual Growth Rate
31	CARA	Central Adoption Resource Agency
32	CBFC	Central Board Of Film Certification
33	CBGA	Center For Budget And Accountability
34	CBO	Community Based Organisation
35	CDS	Community Development Societies
36	CDTP	Community Development Through Polytechnics
37	CEDAW	Convention On Elimination Of All Forms Of Discrimination Against Women
38	CEGC	Central Employment Guarantee Council
39	CFAR	Centre For Advocacy And Research
40	CFR	Community Forest Resource
41	CGAP	Consultative Group To Assist The Poor
42	CLRA	Contract Labour Regulation And Abolition

43	CMPO	Child Marriage Prohibition Officers
44	CMSA	Community Managed Sustainable Agriculture
45	CPR	Common Property Resources
46	CrPC	Code Of Criminal Procedure
47	CSB	Central Supervisory Board
48	CSISAC	Central Sector Integrated Scheme On Agricultural Cooperation
49	CSPSA	Chhattisgarh Special Public Security Act
50	CSR	Child Sex Ratio
51	CSWB	Central Social Welfare Board
52	CURE	Centre For Urban And Regional Experience
53	CWD	Children With Disability
54	CWDS	Centre For Women Development Studies
55	CWSN	Children With Special Needs
56	DDA	Department Of Disability Affairs
57	DDRS	Deendayal Disabled Rehabilitation Scheme
58	DDS	Deccan Development Society
59	DEVAW	Declaration On Elimination Of Violence Against Women
60	DGET	Directorate General Of Employment & Training
61	DHR	Department Of Health Research
62	DPA	Dowry Prohibition Act
63	DPEP	District Primary Education Programme
64	DPOs	Dowry Prohibition Officers
65	DPSP	Directive Principles Of State Policies
66	DRWA	Directorate Of Research For Women In Agriculture
67	DWCD	Department Of Women And Child Development
68	DWCRA	Development Of Women And Children In Rural Areas
69	EAC	Economic Advisory Council
70	EAG	Empowered Action Group
71	EBBs	Educationally Backward Blocks
72	ECCE	Early Childhood Care And Education
73	ECD	Early Childhood Development
74	EFA	Education For All
75	EIA	Expenditure Incidence Analysis
76	EMRI	Emergency Management And Research Institute
77	ENSS	Ekal Nari Shakti Sanghatan
78	EPZ	Export Processing Zones
79	EWR	Elected Women Representatives
80	EWS	Economically Weaker Section
81	FAPC	Fiscal Policy Analysis Cell
82	FASS	Forum Against Sex Selection
83	FCC	Family Counselling Cells
84	FEM	Forum To Engage Men
85	FRA	Forest Rights Act
86	FSG	Food Security Groups
87	FTA	Free Trade Agreements
88	FWPR	Female Work Participations Rates

89	G&WA	Guardian And Wards Act
90	GAP	Gender Action Plans
91	GBC	Gender Budget Cells
92	GCC	Girijan Cooperative Corporations
93	GCDI	Gender Caste Development Index
94	GDP	Gross Domestic Product
95	GEMS	Gender Equity Movement In Schools
96	GER	Gross Enrolment Ratios
97	GM	Gestational Mothers
98	GOI	Government Of India
99	GPI	Gender Parity Index
100	GRB	Gender Responsive Budgeting
101	HAMA	Hindu Adoption And Maintenance Act
102	HEI	Higher Education Institution
103	HMA	Hindu Marriage Act
104	HMGA	Hindu Minority And Guardianship Act
105	HSAA	Hindu Succession Amendment Act
106	HUF	Hindu Undivided Family
107	IAS	Indian Academy Of Sciences
108	IAWRT	International Association Of Women In Radio And Television
109	IBM	Irretrievable Breakdown Of Marriage
110	ICC	Independent Complaints Committee
111	ICCPR	International Covenant On Civil And Political Rights
112	ICDS	Integrated Child Development Services
113	ICESCR	International Covenant On Economic, Social And Cultural Rights
114	ICF	International Classification Of Functioning
115	ICIDH	International Classification Of Impairments, Disabilities And Handicaps
116	ICMR	Indian Council Of Medical Research
117	ICPD	International Conference On Population And Development
118	ICPS	Integrated Child Protection Scheme
119	ICRW	International Center For Research On Women
120	ICSSCR	Indian Council Of Social Science Research
121	ICT	Information And Communication Technology
122	IDOP	International Day Of Older Persons
123	IECEI	Indian Early Childhood Education Impact
124	IEDC	Integrated Education For Disabled Children
125	IEDSS	Scheme Of Inclusive Education For Disabled At Secondary Stage
126	IFAD	International Fund For Agricultural Development
127	IGMSY	Indira Gandhi Matritva Sahyog Yojana
128	IGNOAPS	Indira Gandhi National Old Age Pension Scheme
129	IGNOU	Indira Gandhi National Open University
130	ILO	International Labour Organisation
131	IMA	Indian Medical Association
132	IMO	Intermediate Microfinance Organisation
133	IMR	Infant Mortality Rate

134	IMY	Indira Mahila Yojana
135	IPC	Indian Penal Code
136	IRWA	Indecent Representation Of Women
137	ISMWA	Inter-State Migrant Workmen's Act
138	ITES	IT-Enables Services
139	ITPA	Immoral Traffic Prevention Act
140	JLG	Joint Liability Group
141	JNNURM	Jawaharlal Nehru National Urban Renewal Mission
142	KCC	Kisan Credit Card
143	KGBV	Kasturba Gandhi Balika Vidyalaya
144	KMVS	Kutch Mahila Vikas Sangathan
145	KSSP	Kerala Shastra Sahitya Parishad
146	KV	Kendriya Vidyalaya
147	LFPR	Labour Force Participation Rates
148	LSAs	Legal Services Authorities
149	MAVA	Men Against Violence And Abuse
150	MDGs	Millennium Development Goals(MDGS)
151	MFP	Minor Forest Produce
152	MGNREGA	Mahatma Gandhi National Rural Employment Guarantee Act
153	MHRD	Ministry Of Human Resource Development
154	MKSP	Mahila Kisan Sashaktikaran Pariyojana
155	MMS	Multimedia Messaging Service
156	MPhil	Master Of Philosophy
157	MsDP	Multi-Sectoral Development Programme
158	MSF	Medicines Sans Frontieres
159	MSJE	The Ministry For Social Justice And Empowerment
160	MSKs	The Mahila Shikshan Kendras
161	MSP	Minimum Support Price
162	MSS	Mahila Suraksha Samitis
163	MTA	Mid Term Appraisal
164	MWCD	Ministry Of Women And Child Development
165	NABARD	National Bank For Agricultural And Rural Development
166	NACJW	National Authority On Custodial Justice To Women
167	NACP	National Aids Control Organisation
168	NALSAR	National Academy Of Legal Studies And Research
169	NAWO	National Alliance Of Women Organisations
170	NCDC	National Cooperative Development Corporation
171	NCERT	National Council Of Educational Research And Training
172	NCF	National Curriculum Framework
173	NCFTE	National Curriculum Framework For Teacher Education
174	NCM	National Commission For Minorities
175	NCPCR	National Commission For Protection Of Child Rights
176	NCRB	National Crime Records Bureau
177	NCTE	National Council For Teacher Education
178	NCW	National Commission Of Women
179	NDC	National Development Council

180	NFDW	National Federation Of Dalit Women
181	NFG	National Focus Group
182	NFHS	National Family Health Survey
183	NGOs	Non-Government Organizations
184	NIOS	National Institute Of Open Schooling
185	NKC	National Knowledge Commission
186	NLM	National Literacy Mission
187	NMEW	National Mission For Empowerment Of Women
188	NPE	National Policy Of Education
189	NPEGEL	National Programme For Education Of Girls At The Elementary Level
190	NPEW	National Policy For The Empowerment Of Women
191	NPFF	National Policy For Farmer
192	NPHCE	National Programme For The Health Care For The Elderly
193	NPP	National Perspective Plan for Women'
194	NRDWP	National Rural Drinking Water Programme
195	NRLM	National Rural Livelihoods Mission
196	NSS	National Service Scheme
197	NSSO	National Sample Survey Organisation
198	NTFP	Natural Timber Forest Produce
199	NUEPA	National University Of Educational Planning And Administration
200	NV	Navodaya Vidyalaya
201	OAE	Own Account Enterprise
202	OBC	Other Backward Classes
203	ODE	The Open And Distance Learning
204	PCMA	Prohibition Of Child Marriage Act
205	PCPNDT	Pre-Conception And Pre-Natal Diagnostic Techniques
206	PCR	Protection Of Civil Rights
207	PEO	Programme Evaluation Organisation
208	PESA	Panchayats Extension To Schedule Areas
209	PFRDA	Pension Funds Regulatory And Development Authority
210	PG	Post Graduate
211	PGD	Participatory Governance In Disability
212	PhD	Doctor Of Philosophy
213	PIED	Project Integrated Education
214	PMGKS	Priyadarshinee Mahila Grameen Kalyan Sanstha
215	POA	Programme Of Action
216	PWDS	Persons With Disabilities
217	PWDVA	Protection Of Women From Domestic Violence Act
218	RAY	Rajiv Awaas Yojana
219	RDA	Recommended Daily Allowance
220	RFAS	Rural Finance Access Survey
221	RFSTE	Research Foundation For Science, Technology And Ecology
222	RGNSC	Rajiv Gandhi National Creche Scheme For The Children Of Working Mothers
223	RGVVY	Rajiv Gandhi Vidyut Vikas Yojana

224	RME	Rural Micro Enterprise
225	RMK	Rashtriya Mahila Kosh
226	RMSA	Rashtriya Madhyamik Shiksha Abhiyan
227	RNI	Registrar Of Newspapers For India
228	RSBY	Rashtriya Swasthya Bima Yojana
229	RTE	Right To Education
230	RTI	Right To Information
231	SABLA	Rajiv Gandhi Scheme For Empowerment Of Adolescent Girls
232	SAP	Structural Adjustment Programmes
233	SC	Scheduled Caste
234	SCERT	The State Council Educational Research And Training
235	SCP	Special Component Plan
236	SDLC	Sub Divisional Level Committee
237	SEBI	Securities Exchange Board Of India
238	SERP	Society For Elimination Of Rural Poverty
239	SEWA	Self Employed Women's Association
240	SHPI	Self-Help Promoting Institutions
241	SHWA	Sexual Harassment Of Women At The Workplace
242	SIC	Sectoral Innovation Council
243	SIPDA	Scheme For Implementation Of Persons With Disabilities Act
244	SLL	Special Local Law
245	SMA	Special Marriage Act
246	SMC	School Management Committees
247	SNA	System Of National Accounts
248	SNP	Supplementary Nutrition Programme
249	SOPs	Special Operating Procedures
250	SoR	Schedule Of Rates
251	SPARC	Society For The Promotion Of Area Resource Centers
252	SPQEM	Scheme For Providing Quality Education In Madrasas
253	SPS	Sanitary And Phyto-Sanitary Measures
254	SR	Sex Ratio
255	SRB	Sex Ratio At Birth
256	SRM	Social Risk Management
257	SSA	Sarva Shiksha Abhiyan
258	SSB	State Supervisory Boards
259	SSH	Short Stay Home
260	ST	Scheduled Tribe
261	STEP	Support To Training And Employment Program
262	TDA	The Divorce Act
263	TIE	Technology Interventions For The Elderly
264	TLC	Total Literacy Campaign
265	TRAI	Telecom Regulatory Authority Of India
266	TRIFED	Tribal Cooperative Marketing Development Federation Of India
267	TRIPS	Trade Related Intellectual Property Rights
268	TSC	Total Sanitation Campaign
269	UAPA	Unlawful Activities

270	UDHR	Universal Declaration Of Human Rights
271	U-DISE	Unified District Information System For Education
272	UG	Under Graduate
273	UGC	University Grants Commission
274	UNCRPD	United Nations Convention On The Rights Of Persons With Disabilities
275	UN-DESA	United Nations Department Of Economic And Social Affairs
276	UNDP	United Nations Development Programme
277	UNESCO	The United Nations Educational, Scientific And Cultural Organization
278	UNFPA	United Nations Population Fund
279	UPSS	Usual Principal And Subsidiary Status
280	VAW	Violence Against Women
281	VCS	Victim Compensation Scheme
282	VHSNC	Village Health, Sanitation And Nutrition Committee
283	WASPS	Women Armed Special Protection Squad
284	WCP	Women Component Plan
285	WELP-MG	Women Empowerment And Livelihood Programme In Mid-Gangetic Plains
286	WEP	Welfare Extension Projects
287	WFPR	Work Force Participation Rates
288	GWLO	Working Group On Women's Land Ownership
289	WHO	World Health Organization
290	WHRD	Women Human Rights Defenders
291	WSHG	Women Self-Help Group
292	WWH	Working Women Hostel

Acknowledgements

The High Level Committee on the Status of Women in India (HLCSW) would like to place on record its appreciation and thanks to the Ministry of Women and Child Development, Government of India, for seeking to assess the status of women in contemporary India by setting up this Committee and for extending its support.

The HLCSW's work and the presentation of its final report would not have been possible without the active advice, contributions, and support extended by numerous organisations and individuals. We, all the members of the HLCSW, would like to express our deepest appreciation to everyone who contributed to this massive study that we undertook.

Women's organisations, activists and gender experts at the national, regional and local levels, enthusiastically came forward to participate in the various Consultations that the Committee organized, and provided valuable inputs by also sharing their manifold experiences.

We thank the Chair and the members of the Parliamentary Committee on Empowerment of Women, who spared their valuable time to interact with the Committee members. We would also like to acknowledge and deeply thank the women Judges of the Supreme Court, various High Courts, and District Courts; member of the Justice Verma Committee (Justice Leila Seth); former Chairpersons and Members of the National Commission for Women and the Minorities Commission for accepting the Committee's invitation and participating in the Consultations organised.

Upon this Committee's invitation, several resource persons made presentations and participated in detailed discussions on several complex issues affecting the lives of women in India. Officials from relevant departments and agencies also made presentations and answered queries raised by the members. Our sincerest thanks to all of them.

Members of the Task Forces, constituted under their respective domains, guided the Committee in laying down the contours of our study across different aspects of investigation. In order to provide fresh/updated data and analysis for the report, experts and researchers were taken on board, who assisted in developing background papers. Reviewers joined consultations, and went through our preliminary drafts and provided valuable feedback. It

enabled us to refine our report sharply. It is through such combined and dedicated inputs that the Committee has been able to do justice to its mandate. We are grateful to all of them.

Women's groups at the State level not only gave their inputs on various subjects owing to their own evolving perspectives, empirical and field level experiences, but also organised consultations with other women's groups during our State visits. These Consultations which were hosted by women's organisations further drew in activists, grassroots women leaders, academics and others, thereby enriching our discussions.

The HLCSW would like to take this opportunity to particularly thank the State Governments of Gujarat, Kerala, Nagaland, Odisha, Punjab, Tamil Nadu and Uttar Pradesh for hosting us during the State visits, and for their warm hospitality. During each of these visits to the States, senior officials cutting across various Departments took time to make presentations and submitted written reports to the Committee. The Committee also had the opportunity to interact with the Governors of Gujarat, Punjab, Tamil Nadu as well as the Chief Ministers of Gujarat and Kerala. The Committee is grateful for the same. During its visits, the Committee also held meetings with the State Commissions for Women, State Social Welfare Boards, and the Women's Development Corporations. Field trips organized during the State visits took us to villages in remote parts of the country, and gave us a first hand and latest picture of the ground realities.

We also thank all those many individuals and organisations from different parts of the country, who took efforts to make detailed submissions, and presented evidence to the Committee on various issues that this report has highlighted. We cannot overlook and not acknowledge the participation of the young university students in the essay competition on "A Glimpse into the Future: Status of Women in 2030". We thank, Ameeta M Wattal, Principal, Springdale's School, Pusa Road for organising the "Interactive Dialogue – Youth Vision on Women in 2030. This event was attended by around 150 students from different schools, public and private, in Delhi and adjoining areas.

The Committee would also like to recognize the UN agencies – UNDP, UN Women, UNFPA, UNICEF and UNESCO - for their continuous interactions and inputs to the Committee. In particular, we thank Rebecca Tavares (UN Women); Frederika Meijer and Ena Singh (UNFPA) and Huma Masood (UNESCO) for participating in our consultations and providing support. Our special thanks are due to UNDP for going an extra mile to support the

work of this Committee. We gratefully acknowledge the persistent support extended by Lise Grande, Alka Narang and Sushil Chaudhary.

We thank the entire Secretariat of the HLCSW for the cooperation extended to the Committee and its members. Particular mention must be made of all the researchers, interns and the consultant, Meera Khanna.

Lastly, we would like to thank Malika Basu for her assistance in editing the Report.

The Committee had the opportunity to interact with hundreds of women, men, boys and girls at the grass root level during their field visits. It was these interactions with women and elected leaders, SHG groups, survivors of violence, cultivators, agricultural labourers, forest gatherers, entrepreneurs, girls educating themselves in remote residential schools and others that provided us with rich insights into the reality of a complex kind of different women of the country. We are thankful to all these citizens who contributed to the Report.

EXECUTIVE SUMMARY

The Government of India (Ministry for Women and Child Development), based on the recommendation of the Committee of Governors constituted by the President of India, set up a High Level Committee on the Status of Women in India on 24th May 2013. The mandate of the Committee was to undertake a comprehensive study on the status of women since 1989 as well as to evolve appropriate policy interventions based on a contemporary assessment of women's needs.

The Committee took up extensive literature survey across different dimensions of empowerment that the Terms of Reference points to – economic, legal, political, education, health and socio-cultural. This situation analysis was developed both from quantitative and qualitative data available. Special care was taken to study the status and issues of the most marginalised women's groups, vis-à-vis men in their communities as well as other women. Background Papers were commissioned wherever needed, while Task Forces set up in some domains provided the broad contours of enquiry for certain chapters of this report. Policy and programmatic analysis accompanied the situation analysis. This picture was then enriched by numerous consultations organised by the Committee on specific themes and interface/dialogues with experts, invited resource persons and officials.

The Committee also organised a regional consultation and visited seven states of India. These state visits covered interactions with senior officials across 15-17 departments of each state, with State Social Welfare Board Chairpersons and Members, with State Commissions for Women and also field visits to villages covering several districts in these states. This Committee's visits helped in interactions with women at the grassroots – elected women representatives, SHG leaders, women running various enterprises, women survivors of violence, women running Nari Adalats etc.

Once preliminary versions of the different chapters were ready, we put these through peer-review processes by either sending the papers to reviewers or holding consultations where experts gave feedback to presentations made by the Committee.

[In the 23 months of its functioning, the Committee had 29 sittings of two to four days each, to take up its mandate and come up with a report, and used a participatory and democratic

process to the best of its abilities to not only analyse the current situation but also to capture voices from the ground.]

Structure of the Report

India is still a highly patriarchal society, in which the economic, political, religious, social and cultural institutions are largely controlled by men. Control over women, their livelihood choices and sexuality has developed and evolved over centuries through various social practices and institutions that are governed by patriarchy. The crux of the problem in gender relations lies in the fact that gender roles, rights and obligations are not just different but they are highly unequal. It's through a combination of family, caste, community, religion, among others, that patriarchal values and ideas get constantly reinforced and legitimized.

The preference for sons is a long standing cultural tradition in India, which pervades every section of society. Interestingly, it has not weakened over the years despite significant modernization and socioeconomic development. Persistent imbalance in India's sex ratio, especially declining child sex ratio, if not reversed, will have far reaching consequences; eroding gender justice, social cohesion and human development. The issue of 'missing' girls, also referred to as the daughter deficit - crosses the spectrum of India's regions, economic classes, and castes. What remains a matter of concern is the worsening child sex ratio which is at an all-time low of 914 as per census 2011. Thus, merely focusing on promoting the value or image of girls will not be enough to counter son-preference. Issues such as ensuring equal entitlements for girls/women in terms of property rights, employment and income generation, equal access to nutrition, health, and education have to take centre stage of discourse and planning on development.

Women and girls face wide range of violence that include but not limited to physical, emotional, sexual and economic, and various other non-physical yet life threatening ones. Entrenched in discriminatory structures, a woman may suffer from various manifestations of violence at every stage of her life. It has been argued that, action for change will have to go beyond the formulation of laws, to incorporate strategies, policies and programmes that are based on the experiences and perceptions of women. There is an urgent need to focus on both prevention of violence against women and girls, protection of their rights, as well as provision of quality, sensitive and adequate services to survivors of violence including speedy administration of justice. This chapter seeks to provide an overview of the magnitude

and the drivers of violence against women in varying contexts and at various stages of their life cycle. Further locating the question within the broader socio-economic struggles of the Indian women's movements since the 1980, this chapter has examined state and civil society responses.

Unequal economic, social and political status and position of women is an outcome of patriarchy and the deeply entrenched sociocultural stereotypes about women. This is sometimes perpetuated by laws, regulations and policies which do not sufficiently address the subordinate status of women. Improving the legal status of women, therefore, involves a multi-pronged approach that looks first and foremost at the legislative inadequacies and state policies and schemes, closely followed by, addressing the inadequate implementation of laws by the State, police and courts. Though there have been a number of legislative enactments, gender based violence and discrimination continue. There are, clearly, lacunae in the laws and also gaps in their implementation. This Chapter will address legislative reforms and changes to the position of women vis-à-vis the law, thus, attempting to arrive at a more holistic picture on the legal status of women.

In order to comprehensively assess the status of women in the Indian economy and identify emerging issues, the Chapter looks at various aspects including: the macro-economic environment over the past few decades particularly the implications of economic liberalization, the data and trends on women's work, livelihoods and earnings in the rural farm, rural non-farm, urban organised/formal, and urban un-organised/informal sectors. The Chapter will also look in detail at the data and trends on women and poverty. Finally, it will also evaluate some contemporary issues in terms of women and trade, sectoral experiences in manufacturing and services, women and migration, infrastructure and financial inclusion.

One of the most significant areas around which India's development has focused is education. Though, India has a large network of educational institutions spread across rural and urban areas, it continues to lag behind in the education of women and girls. Education is widely viewed as a pathway to empowerment of girls, empowerment meaning having the ability to have a voice and agency, to have control of and make critically and carefully informed choices. In this context, the present chapter focuses upon women's education at all stages, primary, secondary, higher education as well as vocational and skill education. It further elucidates the educational status of various groups of women, the impact of open schools upon women's educational status, the policies enunciated by the Government of India from

time to time, the barriers faced by women in accessing education and finally puts forth some recommendations to improve the access of women to quality education.

The transformative potential that media of all kinds holds towards gender equality is enormous. However, an un-engendered media, reflects current societal inequalities, reinforces them, and also, knowingly or unknowingly, perpetrates norms of discrimination against women, which then ends up having a negative effect on the status of women. This chapter attempts to understand various dimensions of media vis-à-vis its engagement with women and their issues, even as we explore issues of women in media and the status of regulatory affairs. It seeks to analyse the status of women in relation to the Indian media in the following broad contexts starting with presence and working conditions of women in media organisations, ^{and} portrayal and representation of women by media, women's (unequal) access to media, engendering of media spaces and regulatory frameworks existing in different sections of media and their effectiveness in upholding women's rights.

Women's well-being in India, especially rural India, is intimately tied to the state of environmental resources and services. Men and women use these environmental resources differently and they are also impacted in dissimilar ways when faced with environmental degradation. While women's dependence on environmental resources as well as their ability to conserve these resources is apparent and obvious, planners and policy-makers often think of only men as farmers, fisherfolk, foresters and livestock managers. The National Policy for Farmers 2007 and the National Environment Policy 2006 do seek to provide a significant role for women, and are forward-looking articulations when it comes to women and natural resources. While policy discourse is somewhat mixed as described above, in implementation, gender integration is quite weak, across Ministries, despite an overwhelming majority of female workers living off the primary sector. The absence of women in governance structures in municipalities and delivery agencies related to these environmental services is to be noted.

Women in India are not a homogeneous group. They reflect the pluralistic society that India has – religion, class, caste, ethnicity, region etc., are all woven into the mosaic. In a society which practises discrimination based on class, religion, caste and ethnicity, women from particular classes, religions, castes and ethnic backgrounds are marginalized in multiple ways, given that patriarchy and gender based discrimination cuts across all these backgrounds. Using the concept of intersectionality, where these women experience overlapping and interconnected systems of oppression and discrimination, we examine the status of dalit

women, muslim women and adivasi women in addition to single women including widows, elderly women, differently-abled women, transgender persons and women in sex work in this chapter. It is very important to recognise that unless equality and justice issues of these marginalized women are not met squarely, the overall status of women is not likely to improve.

Since gender equality is a Constitutional commitment, it is obvious that when the State has to intervene on behalf of women to adhere to its constitutional obligations and to improve women's overall status on par with men, it is either in the form of policies or laws or schemes and programmes. Over the decades, there have been a slew of women-centric schemes with good intent and with objectives of transforming women's lives for the better. These span various dimensions related to women's lives like economic development, education and health. However, design and implementation-related matters with in-built equity and sustainability, resource allocations, delivery mechanisms and institutions, proper outreach, and monitoring and evaluation are all issues that plague these schemes and their potential impact. This chapter attempts to scan women-centric schemes and assess their impact mainly in three spheres of women's empowerment, which we consider as burning issues of importance: economic empowerment, removal of discrimination against the girl child and creating zero tolerance for violence against women.

It took almost 25 years for the first High Level Committee to be set up and thereafter now four decades later the current committee came into existence. This report is a culmination of two years of poring over data and reports, widespread consultations, intense and insightful meetings, independent research and more importantly many hours of listening to women in the field. However, with the rapidly changing situation of women with increasing vulnerabilities, there is an urgent need to periodically review the situation of women and suggest measures. We strongly believe that this kind of review should be an ongoing exercise.

Socio Cultural Context of Women in India

India is still a highly patriarchal society, in which the economic, political, religious, social and cultural institutions are largely controlled by men. Control over women, their livelihood choices and sexuality has developed and evolved over centuries through various discriminatory social practices and institutions. Combination of family, caste, community,

and religion reinforce and legitimize these patriarchal values: Stereotyping of women and their roles exists in all institutions, public or private. Media, with its huge potential to influence mindsets has not completely done so for women.

The paradoxical situation of women in India is alarming. On one hand they are worshipped as goddesses, while on the other burnt for dowry. Boys are seen as a big support for parents in old age – are considered necessary in order for the family lineage to continue. Girls, on the other, are unwanted yet embody the ‘honour’ of the family. It’s a double bind for girls/women as they not only have to preserve this ‘family honour’ in society, but also be silent when various atrocities such as abuse, violence, rape, early marriages happen. In the few cases in which they break their silence, the repercussions are immense. Nevertheless, it is important that this silence is broken, individually and collectively, as silence not only enables such atrocities to continue unabated, but also protects the offenders in the name of family honour, societal mind-sets and customary practices.

Deeply discriminatory practices such as dowry, child marriages, honour killing, witch hunting and gender biased sex selection indicate profound vulnerability of and inequality towards girls/ women in Indian society. Dowry is just not an economic transaction, it devalues the girl. Child marriage is just not a social norm but denial of childhood, with irreversible consequences, especially for girls. Witch hunting is not just a way of socially boycotting a women who is seen as a threat to society but a way to control a women who does not conform. Gender biased sex selection is just not about preference of boys over girls but practice that is eliminating girls from the families and societies, altering the social fabric and causing further vulnerability to abuse and violence for those alive. Honour killing is not just a way of punishing the one who has brought dishonour to the family, it is indeed a barbaric murder, usually of girls.

The Socio-cultural landscape today for women is a complex mixture of the new and the old; with numerous modern institutions resting on the traditional base. Industrialization, globalization, urbanization and modernization have led to some irreversible changes for women; some positive; some highly discriminatory. On one hand liberalized economy has contributed in providing better education, jobs, decision making powers and opportunities for women on the other it has made them the target of a strong backlash in terms of increased violence both within and outside the home, wage differential and their commodification in society. Migration, skewed sex ratio, environmental degradation have added to the

vulnerability of women. The paradox has become even more alarming; on one hand the earned freedom, opportunities and changes brought about after long struggles, on the other a huge repercussion for achieving those!

The government recognizes the intricate relationship of value of girls and several development concerns associated with it and therefore has addressed the issue through various national and state policies and programmes. Development programmes though introduced to bring gender equality, their procedures still remain unequal. In cases, where positive legislative changes have been brought about, the social, cultural and religious expectations have played a significant role in not allowing the realisation of such changes.

The need to change social norms and mindsets towards girls/women is fundamental. These changes need to start from the family and the community, however the role of State in providing the economic, social and cultural context for such change to thrive is equally important. The government can bring changes in the objective circumstances that perpetuate discrimination and neglect towards a girl child by strengthening and implementing its various economic, social policies for gender equality, which will further impact the subjective changes in perceptions and expectations towards girls/women. Change needs to happen at both macro and micro level. The power inequalities need to be addressed at the broader level and interventions to ensure equality at all levels. Development and growth cannot be lopsided, it has to equally take into account the needs and aspirations of other half of India's population, which is presently being discriminated.

Main Recommendations

The need to change discriminatory social norms against girls/women is fundamental. One recognises that development and wellbeing of a girl child and ensuring non-discrimination at family level is the primary responsibility of individual parents and families, however, on the other the role of society in providing the economic, social and cultural context in which families care for their children is equally important. Societal attitudes influence parenting and therefore, discriminatory practices such as gender biased sex selection, dowry are accepted by families because there is a social sanction to it. It is often seen that parents who marry their children early do not always recognize the harm they are doing to the children, especially when there is a culture of acceptance of the practice.

Social norms and practices regarding girl child need to change radically and intensely:

Changing social norms is a mammoth task which required both short term and long term interventions. Understanding of, and responses to various cultural and social practices are in part a product of public attitudes within the society. An understanding of this helps to build culturally sensitive interventions and policies to combat the issues in hand. However, this should not undermine individual differences between people who, though products of the same society manifest different perceptions and attitudes. Understanding individual differences and the uniqueness of cases are equally important, especially in the context to changing social norms. Therefore, the role of families, community and civil society is important.

However, the role of the State in bringing a radical change is even more important in practices which have strong cultural and social sanctions. The government can bring changes in the objective circumstances that perpetuate discrimination and neglect towards a girl child by strengthening and implementing its various economic, social policies for gender equality, which will further impact the subjective changes in perceptions and expectations towards girls/women. Therefore, paramount is the need for a **strong political will** to bring about such changes in policies, programmes, laws and ensure its effective implementation.

Small and big steps need to be taken at National, State, district and village level:

- ❖ A monitoring agency for data on gender like a gender atlas which comes out regularly nationally.
- ❖ A gender scorecard (details of which can be worked out with experts) of people in public life such as politicians and bureaucrats
- ❖ Rigorous implementation and monitoring of the laws and schemes is paramount. Strengthened enforcement of legislation that discriminate girl child/women (such as child marriage, sex determination before birth, domestic violence etc.) will act as a deterrent go a long way in bringing about long term shifts in harmful practices.
- ❖ Strong support services to women in terms of providing shelter, medical, legal aid and counselling services, witness/victim protection programs, and other support needed to sustain women in their struggle for justice and dignity.
- ❖ Ensuring gender friendly public spaces, which includes transport, street lighting, toilets etc.

- ❖ Increase access to quality education, especially of girls is one of the most important aspects to ensure that girls are provided equal opportunities as boys and seen as equally important for the progress and development of the family, community and nation
- ❖ Large scale sensitization and capacity building of all stakeholders (parliamentarians, police, judiciary, media, government functionaries, duty bearers, doctors' health workers (Ashas), Anganwadi workers, youth and various stakeholders).
- ❖ Investment in community based programmes and services to create public awareness and motivation to influence mind-sets at large
- ❖ Replication and scaling of best practices/good practices: It is vital that various initiatives at community, state and national level are reviewed and those that have potential for bringing about change highlighted and scaled-up, whenever possible.

Reforming institutions, public and private: Institutions are important domains for gender socialisation and formation of attitudes and beliefs and also source of persisting discrimination against girls/ women. Gender socialisation happens at various levels and is an ongoing phenomenon. Multiple institutions impact on gender formation: the school, the family, the workplace, peers, the mass media, and the new communication technologies are prominent in the present times. Institutions simultaneously shape and are shaped by individual agency, thus, the process is both dynamic and subject to change.

Stereotyping plagues the functioning of a number of social institutions. Professions like law, medicine, and politics are considered predominantly male professions and patriarchal structures in these areas remain largely unchallenged. Women's merit is repeatedly questioned with respect to handling responsibilities within these institutions. The need, as feminist activism has expressed before us, is to gender every sector in society and explore the ways that institutions discriminate and marginalise women. Institutions, like individual experiences, cannot be dominated on the basis of a perception of biological superiority; *this is simply sexism in practice*.

Schools for example, are major institutions in teaching and reinforcing cultural/social values and expectations, however also a space with considerable degrees of autonomy to produce new and progressive identities and beliefs. Investing and revamping the way education is imparted can have a considerable impact on the generations that go through this vital institution from a very tender age to the most formative years of one's life.

Education on gender for young men and adults will need to be distinct from education on gender for children. 'Gender' (and the associated idea of 'masculinity' and 'femininity') is a social (not biological) construct. By young adulthood perceptions of gender are more fixed.

Similarly other institutions play a critical role and need to be seen from a gender lens.

Role of professional social workers to be made more prominent and engaging: Social workers have different roles to play, from social and political change, to community development and to individual case work. The social workers' contribution to large scale social change should be valued. Social workers together with other professionals can organise to bring about changes in present situation. For example, a 'lobby' of social workers, like minded professionals, feminists and philanthropists can press for legislative changes, for planning of National and State campaigns which enable such changes to come. Community work is essential to bring changes at local level. Social workers have major role to play in this. This might require a partial replication of what is done at 'macro level' for example, planning educational programmes for parents and teachers, gender sensitisation in schools, but the efforts also have to be more localised. Communities have to be targeted for raising awareness. Community interventions and community-based programmes have more potential for making changes in the population, because the whole community is targeted for small but important and long term changes. There is considerable potential for social workers to work with families, by harnessing the support and the strength of the family to provide a safe environment for girls/women.

Social workers can work closely with organisations and systems. Even when formal procedures are lacking, where there is good will, agreements and trust at local level can be developed. However, this is more likely to happen when social work develops a stronger professional identity and for this wide recognition of social work as a profession.

Behaviour and social change communication: Identifying the networks and organizations that can support the implementation of Behaviour Change Communication initiatives at the national, state and local level and working towards large scale social mobilisation and communication that can lead to change in behaviour patterns bring about a considerable shift in attitudes of masses is the need of the hour. Training of frontline workers, community and social mobilization activities, awareness campaigns with various groups (self-help groups,

federations, mothers' clubs, religious leaders, priests, teachers and NGO etc.) need to be planned and implemented. Conducting studies where social norms are changing/have changed and it's sharing with various partners to foster consensus and collaboration will go a long way. Knowledge building and its sharing for evidence based advocacy and scaling up of initiatives is required.

Incorporating targeted interventions/dialogue for and with boys and men to engage them in the process of making change is equally important. Felicitating and acknowledging role models from the community as *positive deviants (both boys and girls, men and women)* who have challenged discriminative social norms and brought about a change will help more people to break the norms that are discriminatory against girls/women.

The role of mass media (print, electronic and social) need to be tapped in order to highlight positive stories from across the country, messaging to enhance the value of a girl child and the role women are playing in the development of the nation.

Developing effective communication tools to ensure families and communities have the knowledge they need to change their attitudes and stereotypes and awareness of various government initiatives has to reach to the masses.

Femicide: India's Missing Girls

India is one of the most dangerous place in the world for a girl child to be born. Persistent imbalance in India's sex ratio, especially declining child sex ratio if not reversed will have far reaching consequences; eroding gender justice, social cohesion and human development. Available literature, reiterated by this report, puts emphasis on a number of factors leading to girls being eliminated from the society, including gender biased sex selection, neglect and early discriminatory practices. The issue of 'missing' girls, also referred to as the daughter deficit - crosses the spectrum of India's regions, economic classes, and castes. An outcome of patriarchal "undervaluation of girls" and perceived "utility" of boys over girls; needs to change and for this, gender bias and deep rooted prejudices need to be tacked strongly and extensively.

Sex ratio in India has been historically unfavourable to women and still a matter of concern, even though it has shown an upward surge in the last two consecutive censuses from 934 in

2001 to 940 in 2011. What remains matter of even greater concern, in India is the worsening child sex ratio which is at an all-time low of 914 as per census 2011. Changes in **CSR at the district level** are more pronounced. Of the total 640 districts in the country, 429 districts have experienced decline in CSR. Census 2011 also points to the spread of this phenomenon from largely urban and prosperous areas to rural, remote and tribal pockets of the country. While in 2001, 120 tribal districts had CSR of 950 or more, in 2011 this number declined to 90 districts.

The preference for sons is a long standing cultural tradition in India, which pervades every section of society - rich and poor, less educated and highly educated, urban and rural. Interestingly, it has not weakened over the years despite significant modernization and socioeconomic development and it may have become even stronger with the decline in fertility. **Gender biased sex selection** is being used as a tool to eliminate girls; this is one of the most harmful practice in the Indian society with far reaching detrimental consequences. Micro level research and ethnographic studies have thrown light on the practice of **infanticide** to further eliminate girls. **Neglect, poor nutrition and higher under five mortality**; all contribute to the dramatically low child sex ratio. There is an appalling drop in the population of girls in the age group of 7-15 years as is indicated from the Census, 2011, which shows that sex ratio skew worsens with age.

The consequences of overall low sex ratio and extremely low child sex ratio are huge. It has far reaching impact on the overall status of women. Based on an extensive review of the literature Kaur (2013) concludes:

“The shortage of women may reinforce gendered female roles such as reproduction, domestic work, and care work. Women would have little agency of their own and could indeed suffer a deterioration in their equity prospects. It is equally possible that as female security gets compromised with an excess of men vying for them, parents may withdraw unmarried girls from school or higher education, or restrict them from taking up employment before marriage. As safeguarding the virginity of a woman before marriage remains important in India, early marriage may be seen as the solution. Thus many of the gains made by women in recent decades may be in danger of being reversed”.

The impact of gender biased sex selection in terms of loss to human capital and productivity, its effect on the status of women and girls, its links with various forms of gender biased

violence and its economic burden on the family and community have seldom been explored systematically.

The Pre Conception and Pre Natal Diagnostic Techniques Act (PCPNDT Act) regulates sex selection before or after conception. The law was first enacted in 1994 and amended in 2003. Its purpose is to prevent misuse of technologies such as ultrasound that enable sex determination. However, there are bottlenecks in its implementation and the convictions have been negligible. Several Girl Child Protection Schemes have been launched at central and state level. However, it is clear the initiatives have not yielded the desired outcomes. **Civil society** played a critical role not only in getting a legislation in place (PC&PNDT), but taking proactive measures to ensure its implementation and raise awareness on gender bias sex selection. Despite the efforts of the government, civil society organizations, NGOs, UN agencies and the media to keep the issue of gender bias sex selection and female feticide high on the public and policy agenda, little or no desired results have been forthcoming

Focusing merely on promoting the value or image of girls will not be enough to counter son-preference. Aversion to daughters has to be squarely confronted through policy measures that increase the economic, social and political worth of daughters. Issues such as ensuring equal entitlements for girls/women in terms of property rights, employment and income generation, equal access to nutrition, health, and education have to take center stage of discourse and planning on development.

Recommendations

Comprehensive National policy on Sex Ratio

The need of the hour is to have a gender sensitive policy within the rights based framework. Policies and programmes that directly or indirectly lead to gender bias need to be altered. India needs to do away with its two-child norm in its population policy given its correlation to missing girl children. This norm has continuing biases from the coercive population policies preceding it, stacked against women. The population policy obviously has to plan futuristically, given the many demographic, socio-cultural and economic implications of these skewed sex ratios. In doing so, it is also equally vital that the Reproductive Rights of women are safeguarded and they don't suffer further discrimination and challenges just because they are unable to make decisions that impact them due to policy glitches.

While formulating such a policy, it is very important to recognise the role played by women in development of the country and their potential economic contribution. Therefore, the need to study different aspects that have led to low sex ratio including invisibility of women/girls as drivers of growth and development of the nations. Understand the underlying factors and address each of these contributory factors in the policy should be a prerequisite. Over-emphasis on one aspect and ignoring the others would lead to unsuccessful reforms as seen in the past.

Rigorous implementation of the Acts that address discrimination against girl child/women

Effective enforcement of PC & PNDT Act is an imperative. Among other things, this can include mapping and monitoring of clinical, diagnostic facilities, medical audits and strengthening of the supervisory boards. Similarly, allied laws and policy, such as the Dowry Prohibition Act, Hindu Succession (Amendment) Act, 2005, Prevention of Child Marriage Act, Prevention of Sexual Harassment at Workplace etc. needs to be rigorously implemented and monitored.

Efforts should be made to engage and involve the community in combating gender biased sex selection. SHGs could be made key stakeholders/partners in implementation of the laws that protect women/girls from being discriminated.

Empowerment of girl/women through a life cycle approach

Evidence at different stages of a women's life clearly indicate that radical changes need to happen for promoting gender equality and ensuring respect and dignity at every stage of a woman's life. In order to create a welcoming, positive and enabling environment for women, both long term and short term initiatives need to be taken.

Some of the longer term interventions include girls' education, nutrition, health, protection, skill development, work participation, maternity protection, access to micro finance, credit, asset creation and ownership, support to most deprived groups, women's security, empowerment and their participation in governance and decision making at every level.

Gender sensitive socialisation in various institutions

Gender sensitization in childhood and adolescence for school and out-of-school boys and girls needs to be intensified along with sensitization of duty bearers. There is a need of reorientation and change in thinking towards girls and that has to be done at family level, community level and within formal and informal institutions.

Large scale awareness generation with multi-pronged approach

A national communication strategy is key to a national policy response. Awareness generation on the issue of CSR and valuing girl child should be promoted through special drives, campaigns involving various stakeholders at national, state and community level through various mediums of communication. Campaigns, positive image of girls and role models within the community need to be highlighted. It is also important to understand that behaviour change through communication is a specialized field whose expertise must be harnessed to bring about attitudinal and behavioral changes in the masses. Beti Bachao, Beti Padhao Campaign is a right step in this direction. This Committee looks forward to the committed implementation of the scheme; that the spirit apparent now behind the scheme should percolate all the way down till the village level functionaries.

Engagement of key stakeholders and creating community safety nets

There is a greater need to elicit participation of pro-active vigilant groups, social activists/NGOs with support and accountability in each local area in rural/urban settings. The "Women's SHG Movement" should be actively drawn into this. Community-based accountability framework (at each ward/ mohalla/ village) should be put in place with an administrative, social and community partnership. Various forums for discourse need to be promoted. Involvement of men and youth is vital. Counsellors, ANMs, ASHAs can be part of the safety nets at community level to ensure violations don't happen and if they happen, for them to be brought to notice.

Evaluation and concurrent monitoring of Schemes to incentivise and promote value of girl child

An effective mechanism of planning, monitoring and evaluation of the schemes should be developed. It is vital to evaluate if the schemes are achieving their intent and target. Also, the schemes that are currently being implemented at state and centre need to do an impact evaluation and also analysis of the beneficiary perspective.

Under the ICDS scheme, jointly along with NRHM, the government has introduced a Mother and Child Protection Card (MCPC) for monitoring the mother and children. In this age of digitization and IT, it would not be very difficult for the government to convert the data into electronic form for tracking girl children in a focused fashion, with extra parameters as well as higher frequency built into the girl child MCPC. Frontline workers as well as senior officials of both NRHM and ICDS should be made accountable for ensuring that the girl child survives through the vulnerable stages of infant stage, malnutrition and morbidity.

Political will and accountability Along with policy reforms, it is vital that political will to implement the policies, laws and schemes also sees a shift and this will be apparent if accountability mechanisms are put into place. There should be an inter-ministerial group (comprising of key line departments such as health, women and child, education etc.) to ensure effective implementation and monitoring of various policies and schemes relating to girls/women. Apart from this each MP, MLA, PRI/ULB member should take responsibility of their respective constituency/district/village. Rewards, recognition should be promoted for progress and detection, prosecution for negligence, inaction, and complicity should be ensured. For example, very recently Haryana and Himachal Pradesh governments has announced that they would incentivise villages that show an improved sex ratio with providing development grants.

Violence against Women and Girls in India: A Silent Epidemic

Conclusions and recommendations

This chapter has sought to provide an overview of the magnitude and the drivers of violence against women in varying contexts and at various stages of their life cycle. Further locating the question within the broader socio-economic struggles of the Indian women's movements since the 1980, this chapter has examined state and civil society responses. It has argued that action for change will have to go beyond the formulation of laws, to incorporate strategies, policies and programmes that are based on the experiences and perceptions of women. The recommendations, therefore, imply the need to look beyond the legal framework to tackle the problem at multiple levels.. The strategies to prevent violence against women and to meet the needs of the survivor can be effective only through state and civil society partnership. There is an urgent need to focus on both prevention of violence against women and girls, protection of their rights, as well as provision of quality, sensitive and adequate services to survivors of violence including speedy administration of justice. At the outset we also must

reiterate that government must fulfil its obligation to gender equality and women's human rights in line with the Beijing Platform for Action and commitments made to CEDAW Committee and that the Government must take cognizance of and implement the recommendations of the Justice Verma report as speedily as possible.

Our major recommendations are as follows:

The Recommendations:

A. Adopt a National Policy including a National Action Plan to End VAW

- National policy including a national action plan must commit to 'zero tolerance' to VAW and girls. There is an urgent need to break silence around violence and de-stigmatize women survivors. This can be done through the creation of supportive and enabling environment.
- The very first step to ensure a zero tolerance is to criminalize all forms of sexist language and expressions – verbal and non-verbal that demean women, and are used to compromise women's dignity and bodily integrity. These expressions must be considered punishable act by law. Through both mass awareness campaigns and educational programs also through a legal back up on the line of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, promote language of gender equality and respect and dignity for women.

Key Recommendations by HLC On VAW
Adopt a National Policy including a National Action Plan to End VAW
Criminalize sexist expressions demeaning woman and her bodily integrity
Generate High Quality and Regular Population based Representative Data on Various Forms of VAW and girls; Improve Quality of Crime Data and Assess Cost of Violence
Undertake Systematic and Evidence based Primary Violence Prevention Programs
Smart cities should be safe cities. Design, Implement and Evaluate Safe City Programs
Establish one stop centre per block
Strengthen Implementation of various Violence Prevention Laws and Policies through Allocation of adequate Resources, Coordination and Capacity Building of Implementing Agencies

B. Generate High Quality and Regular Population based Representative Data on Various Forms of

VAW and girls; Improve Quality of Crime Data and Assess Cost of Violence

- There is a complete lack of reliable and periodical data on VAW and girls, which leads to a situation of speculations and sensationalism; it also creates an atmosphere of fear and anxiety. This kind of situation can be extremely debilitating. Though the existing data is limited to violence faced by married women, there is a huge gap between what is reported on marital violence by the national surveys such as the National Family Health Survey (NFHS-3) and the figures from the police's National Crime Records Bureau (NCRB). *There are no nationally representative data on VAW and girls in open/public spaces, and work places.* Sexual harassment at the workplace remains the most under-reported form of violence despite legislative responses. A survey on child sexual abuse was done in 2005-06, which was a onetime activity that provided a lot of insights. NFHS produces high quality data but is limited to married women. Government must institute similar high quality data gathering exercise on a regular basis to provide the prevalence and incidence of violence in various settings – work places both from organized and unorganized sectors, public and open spaces, educational and health institutions and other important institutions like prison, shelter homes, and short-stay homes to inform policy and program responses.
- There is an urgent need to review the various data systems in place to record crimes and evaluate them for their quality and completeness.
- Undertake systematic and regular micro studies to assess the ground realities of VAW and girls in different contexts to inform programs. Gender research centres and Universities can be encouraged to undertake such studies under scholarship programs.
- There are no reliable estimates on the economic cost of VAW in India. Global estimates indicate huge economic cost of violence in different countries. For example, estimates of low productivity from domestic violence against women ranged from 1 - 2% of the GDP in Brazil and Tanzania to 2.0% in Chile and the annual cost of intimate partner violence was estimated to be \$5.8 billion in USA in 2003. Previous studies estimating the socio-economic costs of gender based violence have documented the drop in women's earnings due to lost productivity, job loss, due to sudden death and loss of tax revenues due to death and incarceration.

C. Undertake Systematic and Evidence based Primary Violence Prevention Programs

- Conduct sustained, large scale, national public education campaigns through national print and audio visual media geared towards changing mind sets of society to end gender inequalities and increase awareness of rights, current laws and policies.
- Introduce gender equality and violence prevention programs in schools and colleges on the lines of Gender Equality Movement in Schools (GEMS) with clear monitoring framework and accountability mechanism. Build gender equality agenda in the training of teachers, and build their capacities to engage with children on issues of violence at an early age and within the school system.
- Engage men and boys to dispel and redefine the traditional, harmful, and violent notions of manhood by supporting networking among men's groups like MASVAW, MAVA and evidence based programming like *Yari Dosti*. The programs to question and challenge traditional forms of masculinities and to create new norms must be systematically undertaken in various institutions, and by using innovative models of behaviour change.
- Encourage and promote primary prevention exercises on the line of "women friendly Grama Panchayat", in Kerala which undertook detailed crime-mapping exercise to prevent VAW. A detailed description of this program is presented in chapter on women centric program and schemes in India. Facilitated by women's collective Kudumbashree the gram panchayat reached out to women and girls to step forward to share their experiences of violence including so-called "eve-teasing" and identify safe and unsafe places of the panchayat. While a systematic evaluation is yet to be undertaken, all anecdotal evidence points to the fact that such processes themselves in addition to the numerous immediate, medium and long term interventions put into place in this Panchayat have been a major deterrent in terms of violence against women. It is apparent that such grassroots action is needed in all Panchayats of the country.
- Engage civil society and police to set up Mohalla Committees in urban areas on the lines of what civil society and Mumbai police carried out in Mumbai soon after 1992 riots. By all evidence the experiment was hugely successful to maintain, peace and curb overall
- Alcohol is a serious risk factor promoting violence against women. Studies have established the linkages as noted earlier. The structural perspective to address alcohol

and VAW however is missing. In other words, it is essential to look beyond individual drinking patterns and address how alcohol policies of selling, taxation, regulation etc. buoy alcohol consumption and how could these be revised to address VAW and other social harms needs to be at the core of discussion on these issues: Moreover there seems to be a minimal inter-sectoral dialogue between stakeholders that are directly affected by these issues, viz: alcohol policy makers and stakeholders, programmers and policy makers who address VAW.

D. Smart cities should be designed to be safe for women and girls

One of the key indicators of smart cities should be that they are safe cities for women. Improve access and safety for women in public spaces. This requires a multi-sectoral approach. An assessment is needed to identify vulnerable sections of the population to design effective solutions. For instance, displacement, poverty and ageing are risk factors for women. There is a need to harness strategies and resources from multiple sectors to improve the health and well-being of women living in urban areas. By mapping safety risks such as defective infrastructure, obscured walking routes, and deficient lighting and improving infrastructure including transportation services, the city can better protect the safety and well-being of its vulnerable population especially women and girls

E. Ensure effective implementation of violence prevention Acts and Legislations

- Though some States have allocated budget for the implementation of the PWDVA, there is need for assistance from the Central Government for effective implementation of the PWDV Act. The growing trend of allegations on women misusing various laws must be resisted and consciously countered. The Government has a responsibility to create proper perspective on VAW through public education and awareness programs.
- Ensure development of multi sector-response by effective coordination between the protection officers (PO), service providers, police and the legal services authority. Some suggestions in the regard include: a) Having a provision of Full time POs; b) preferably recruit senior women POs; c) Having someone with experience on the issue is an added advantage; d) Number of POs to be appointed must take into account the size and population of the area; also the degree of its accessibility; e) Providing for necessary office assistance such as infrastructure, support staff, communications facilities, etc. by the State Government; f) Gender sensitisation of

POs, police and service providers to be done periodically; and g) Family Counselling Centres to have full knowledge of the Act as well as the support they can accrue from POs.

- Allocate sufficient resources for One Stop Centres to be established one per block; and ensure adequate staff to run them with access to medical attention, psychological counselling, legal aid, shelters, and other support services.
- In a time bound manner, ensure resource allocations for the establishment of special courts, complaints procedures and support services that come under the legislations of VAW.
- Ensure speedy implementation of relief orders. Judiciary also needs to be sensitized to domestic violence issues.
- Ensure that all laws, policies and services are accessible, and take into account the needs of women and girls who face multiple discriminations due to class, caste, religion, disabilities, sexual orientations, and other marginalisation.
- Ensure reparative justice and gender sensitive interventions at all stages of the displacement cycle for women and girls displaced due to ethnic violence and conflict, paying special attention to reproductive health, psychological, legal and socioeconomic needs.

Ensure effective implementation of various violence prevention schemes, improve adequacy, quality and effectiveness of support services including inter-agency coordination

- Chapter on women centric programs and schemes presents a detailed analysis of various schemes and what need to be done to improve them. We shall not repeat them here. However broadly we recommend that government should provide holistic, accessible, quality, sensitive, sufficient and coordinated support services for women and girl survivors of violence including legal, police and medical support, counselling, shelter, employment and compensation
- Adopt a Standard Operating Procedure for making the police force accountable and sensitive as they deal with incidences of violence against women. Gender-sensitive investigations must be enforced, starting with the filing of the FIR (First Information Reports). This way cases can be better reported and conviction of perpetrators assured.

- There must be a well-coordinated interface between different departments and those institutions dealing with the sexually abused and support services for ensuring comprehensive care to survivors of sexual violence. For example, Legal Services Authority, Women's Commission and Child Welfare Committees including hospitals that deal with SOP Management of Sexual Assault - their convergence is needed because a lot of sexually abused women are victims of trafficking, internally displaced, abducted, whose cases could be referred to the Commissions and the like.

Undertake appropriate legislative changes, repeals and changes in customary laws

- Enact special measures for punishing perpetrators of acid attacks, and strictly regulate the sale and distribution of acid.
- Take efforts towards eliminating any criminalisation of same sex
- Repeal the Armed Forces Special Powers Act (AFSPA), which gives unbridled powers to security forces in areas where the Act is imposed.
- Bring out a mechanism for dealing with cases of extra judicial killings and arbitrary detention of women by state actors and security forces; currently there is no mechanism to look into problems of arbitrary detention.
- Practices of the customary laws that obstruct women's participation in decision making both in conflict and post conflict reconstruction must be checked and banned. It must be ensured that there is no derogation on international standards in the context of customary laws that have strong underlying patriarchal content.

Women and the Law

Summary

Unequal economic, social and political status and position of women is an outcome of patriarchy and the deeply entrenched sociocultural stereotypes about women. This is sometimes perpetuated by laws, regulations and policies which do not sufficiently address the subordinate status of women. Improving the legal status of women, therefore, involves a multi-pronged approach that looks first and foremost at the legislative inadequacies and state policies and schemes, closely followed by, addressing the inadequate implementation of laws by the State, police and courts.

The past two decades have seen a number of enactments for the upliftment and empowerment of women, both in the public and private sphere. This Chapter will address post-1974 legislative reforms and changes to the position of women vis-à-vis the law, thus, attempting to arrive at a more holistic picture on the legal status of women. It begins by outlining these achievements as evidence of positive change in the legal status of women in India. However, despite these laws, gender based violence and discrimination against women continue to be a pervasive feature of our society. There are, clearly, lacunae in the laws and also gaps in their implementation. This Chapter thus seeks to present these deficiencies by looking at Government policies, laws and locating the woman within the legal system.

This Chapter is broadly divided into four sections. In the first section we attempt to analyse laws that impact the socio-economic status of women, that is, personal laws on marriage, divorce, inheritance and others. This is followed by an analysis of criminal laws where we delve into gender-based crimes and laws on dowry, rape, sexual harassment, trafficking and honour killing. The third section deals with labour laws with particular reference to those impacting rights and working conditions of women and in the final section, we attempt to, address issues of access to justice and others, including police reforms, prison reforms viz-a-viz women.

The Indian Constitution guarantees equality before the law, equal protection of laws under Article 14 and prohibits discrimination on grounds of sex under Article 15. A unique feature of the Indian Constitution is Article 15(3), which empowers the State to take special measures for women and children. India ratified the Convention on Elimination of all forms of Discrimination against Women (CEDAW) in 1993. It places an obligation upon State parties in Article 11(1) to:

“take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure on the basis of equality of men and women the same rights in particular (a) the right to work as an inalienable right of all human beings; (b) the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction”

In India, divorce, marriage, and inheritance have been the subjects of personal laws. The Constitution of India under the Directive Principles directs the State to “endeavour to secure for the citizens a uniform civil code throughout the territory of India”, but the post-colonial

Indian legal system remains pluralist as a result of religious personal laws. Personal Laws come under a specific domain of civil law and should imbibe the goals as propounded by the makers of our Constitution through provisions enumerated in the Directive Principles of State Policy.

The main concern regarding personal laws is that they are said to contain provisions that are discriminatory towards women and seek to undermine their position in the social strata of society. Under Hindu law, while women's rights to ancestral property stand on far better footing now, inheritance under this Act still remains patrilineal. Social norms deprive women of their due as wills often exclude women and properties are captured by brothers where the parents die intestate. Similar is the situation in cases regarding maintenance, guardianship, divorce and succession where most personal laws tend to favour men. Further, till date there is no law regarding women's rights in marital property. This severely compromises women's fundamental right to live with freedom and dignity under Article 21 upon the breakdown of marriage. Through this section the report seeks to examine rights of women in marriage, divorce, inheritance, succession, custody and guardianship under the broad framework of Hindu, Muslim, Christian and Parsi Laws. Further, it also analyses legislations such as the Special Marriage Act, 1954, the Foreign Marriage Act, 1969 and issues such as age at marriage, registration of marriage and NRI marriages

Violence against women has been acknowledged as *one of the crucial social mechanisms by which women are forced into a subordinate position compared with men*" and therefore a violation of women's equality rights. Women face violence due to their position of inequality, their vulnerability to violence being exacerbated due to their positions of dependency as well as prevailing patriarchal attitudes. According to the National Crime Records Bureau, 2013 data, a total of 3,09,546 incidents of crime against women were reported in the country during the year 2013 as compared to 2,44,270 in the year 2012 recording an increase of 26.7% during the year 2013.

Over the years, the State has enacted special laws in addition to gender specific provisions in general criminal laws to counter harmful practices against women. Significant gains in terms of legislative reforms have been made recently through the enactment of the Criminal Laws (Amendment) Act, 2013, the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the Protection of Women from Domestic Violence Act, 2005. However, many issues still remain unaddressed.

Under the provisions relating to rape, issues such as age of consent, scientific investigation and marital rape is still a matter of concern. Though, acid attack has been criminalized under the recent Criminal Law Amendment Act, 2013, the entire issues around regulating sale and use of acid is yet to be addressed. Further, though the enactment of the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a landmark step, the infrastructure required under it, in the form of Internal and Local Complaints Committee is yet to be set up. This is closely followed by the concern around how the law will address issue of sexual harassment in the diverse unorganized sector.

Cases being filed under Section 498A have been on a steep rise and so is the backlash around its misuse. The Protection of Women from Domestic Violence Act, 2005 which was supposed to provide immediate relief to women who did not want to get into criminal litigation also seems to have let down many women. Issues regarding over-burdening of protection officers, lack of budgetary allocation, delay in getting reliefs, non-enforcement of orders and narrow interpretation of its provisions defeats the purpose of this legislation. The practice of dowry is increasing and spreading all across society. The Dowry Prohibition Act seems to have failed in its objective. Honour killings and witch hunting which are crimes from specific regions or states seem to have increased and so is the need for immediate intervention and rehabilitative schemes. The implementation of AFSPA and similar laws in the Jammu and Kashmir and the northeastern states of India which has led to a host of abuses by the army including violence against women needs to be reviewed.

Passing legislation, however, does not indicate judicial or executive sensitivity to women's rights. Faithful implementation of the laws is thus the essence for good governance. The CEDAW Committee in its concluding comments on the recent 4th and 5th Country Report has recommended that the State put in place an effective system to monitor and evaluate the implementation, effectiveness and impact of legislation to combat sexual violence and allocate sufficient resources for the immediate enforcement of legislation on violence against women and for the establishment of special courts, complaints procedures and support services envisaged under that legislation in a time bound manner.

According to the Census 2011, the total number of female workers in India is 149.8 million. Though, most Indian women make an economic contribution in one form or another, much of their work is not documented. Owing to cultural restrictions and family responsibility, women participation in the formal economy is limited. In the formal economy they tend to

face issues of gender discrimination, quantum of payment, safety at work place, working hours and conditions of employment that are sensitive to cultural and religious bondages as well as family responsibilities.

A number of legislations and policies have been put in place to safeguard labour rights. The set of first labour laws, including the Factories Act, the Mines Act, etc, were passed to protect workers in the period between 1928 and 1960. The 1960s and 1970s saw a number of legislative attempts such as the Interstate Migrant Act and the Bonded Labour Act. These legislations primarily relate to regulation of employment in dangerous occupations/employments, prohibition of night work, restriction on carriage of heavy loads, wages, health, gratuity, maternity relief, equal pay for equal work, social security, provision of crèches and other welfare facilities etc. However, the opening of the market and the growing privatisation has made it difficult to apply the law to a large per cent of the workforce due to the casual nature of employer-employee relationship and in order to evade the labour laws many employers disguise the employment relationship in a variety of ways.

Further, casualization of women's work has increased with the downturn in the global economy. There is evidence to show that women in the unorganised sector suffered a decline in number of work days available, poorer payment for piece work, deterioration in employment status, conversion to casual or temporary status, etc. What is generic to the condition of women workers as a whole is their double burden of work.

Access to justice has been recognized as a fundamental right by the 189th Report of the Law Commission of India as the inability to access ones rights or address their contravention makes the rights accorded nugatory. It is, however, clear that the structure of judicial remedies is still insufficient to serve the needs of women, particularly poor and marginalized women, in accessing justice.

Assuring women access to justice in the Indian context can only be achieved through a multi-pronged approach. The first prong includes reforming 'the justice chain', which refers to a series of steps that a woman has to take to access the formal justice system or to claim her rights, to eliminate judicial delays and threshold barriers that women face when seeking redressal of wrongs by any means. This must be coupled with an attempt to remove substantive barriers to justice, including incomplete or unjust laws, biased policies, and oppressive judicial views. The second approach must be initiatives to educate and inform the

public at large in order to enable those from marginalized communities, including women; to seek and demand legal service and justice. Finally, the gender imbalance and lack of gender sensitivity in the judiciary prevents the dispensation of meaningful justice for women, as a gender perspective is lost in a traditional and patriarchal bench.

Police is a critical peg in the implementation of existing laws and must be educated on the rights and entitlements of women. In addition to their efficiency, the attitude and response of the Police can also have a significant impact on ensuing developments, including the prevention of future violent acts and the protection of victims. In spite of the rising number of crime against women, the police response to violence against women continues to be grossly inadequate and inappropriate. Gender sensitivity training should be mandatory and must form a part of the curricula at judicial and police academies. Critical to both an appropriate and effective police response to cases of violence against women is the presence of standard operating procedures. These SOPs help in prevention of future and escalating incidents. Further, police reforms should also include larger representation of women in police, allocation of better infrastructure to women police stations and mandatory women desks in all police stations.

Although women constitute only about 4.4% of the total population in custodial establishments, they face some of the most aggravated forms of deprivation, violations and disabilities. Issues regarding women in prisons range from overcrowding, mal-nutrition, lack of medical care, educational, vocational and legal facilities in almost all the jails. Jail overcrowding makes everything difficult - in terms of resource allocation, management, and security arrangements, living conditions. This situation is further worsened by the large number of under trials languishing in jails.

Low levels of education and poor legal awareness makes women more likely to serve longer sentences in prison. A majority of the women prisoners belong to the lower socio-economic strata, a few to the lower middle class. The stigma of a jail term sometimes ruins a woman's life because her family would refuse to take her back even after her release.

Recommendations

Section I - Women and Family Laws

I. Marriage and Divorce

Hindu Law

- The provision relating to restitution of conjugal rights under various statutes should be deleted.
- Amendment to the archaic provision of Section 497 of the Indian Penal Code, 1860 relating to adultery should be carried out.
- "Irretrievable breakdown of marriage" (IBM) should not be a ground for divorce at present.

Muslim Law

- There should be a complete ban on the oral, unilateral and triple divorce (talaq) as it render wives extremely vulnerable and insecure regarding their marital status.

Christian law

- In order to ensure consistency amongst all laws relating to marriage and divorce the period of two years prescribed for mutual consent divorce under the Divorce Act, 1869 should be amended to one year.

The Special Marriage Act, 1954

- The requirement under the Special Marriage Act, 1954 for the notice of intended marriage to be displayed at some conspicuous place in the registrar's office should be deleted and the notice period must be reduced to 7 days.

Age at Marriage

- There should be a move towards bringing uniformity in laws regarding age at marriage.

Registration of Marriages

- A Central enactment for registration of marriages should be passed which is applicable to all religious groups.

The Foreign Marriage Act, 1969

- The Foreign Marriage Act, 1969 should encompass a wider range of marriages within its fold, and also provide for greater access to marital and familial remedies.

II. Economic rights of women in Marriage: Maintenance and common marital property

Maintenance

- **Hindu Marriage Act, 1955 ✓**

- A Section should be inserted making it clear that an order of maintenance granted under Section 24 or 25 should be given from such date, not earlier than the date of the application.

- **Section 125, Code of Criminal Procedure ✓**

- There must be a time frame for the execution of the interim maintenance u/s 125 Cr.P.C.
- Section 125 should be amended to include maintenance for women in live-in relationships which are in the nature of marriage and for unmarried dependent daughters.

- **Common Matrimonial Property**

- A Community of Property regime must be discussed and any proposal on Community of Property should be separate from personal laws and be applicable to women from all communities.

III. Custody and Guardianship

The Hindu Minority and Guardianship Act, 1956 ✓

- Section 7 of the HMGA should be amended to state that the guardianship of adopted children irrespective of the gender of the child should be given to both adoptive mother and father.

Muslim Law

- Both the mother and father both should be declared as natural guardians of the child while deciding its custody.

IV. Inheritance and Succession

Hindu Law ✓

- Appropriate changes should be made under Section 15 and Section 16 of the Hindu Succession Act to ensure that in absence of her husband and children, the property of the women would go to her parents.

Muslim Law ✓

- Both in Shia and Sunni, a woman is given half the share of the man, there is a need to address such a discriminatory practice.

Property rights for Christian and Parsi women

- The Committee recommends that necessary amendments may be carried out in the Indian Succession Act to ensure that rights of a widow does not get effected by the presence of such remote kinders.

Section II - Women and Criminal Laws

I. Rape and Sexual Assault

- Marital Rape should be made an offence irrespective of the age of the wife and the relationship between the perpetrator and the victim should be irrelevant in evaluating consent.
- The age of consent should be revised to 16 and there should be a close-in-age exception for young people in consensual sexual relationships where the two are above 16.
- Rape by armed personnel in the area that they are deployed in or during the discharge of their duty must be specifically penalized.
- Compensation schemes should be called and viewed as Schemes for Rehabilitation and Reparation.

II. Acid attack

- Sale of acid and similar corrosive substances should be regulated immediately.
- There should be immediate and effective disbursement of funds/monetary relief to the victim or family of acid attack.

III. Sexual Harassment of Women at Workplace

- Section 14(1) of the SHWA is prone to misuse and may act as a deterrent against lodging a complaint. The said provision should be deleted.
- The Act must clearly address measures for women who work in smaller offices or in the unorganized sector or as domestic workers.

IV. Domestic Violence and Dowry

- Protection of Women from Domestic Violence Act (PWDVA)
 - Allocating sufficient resources to ensure that an adequate number of protection officers are employed.
- Cruelty in Marriage
 - The definition of “cruelty” under Sec 498A should be reviewed to include the varied forms of violence against women within the home, and ensure that it is in line with the definition of “domestic violence” given under the Protection of Women from Domestic Violence Act, 2005.
- Dowry
 - Widen the definition of dowry.
 - Provide lesser penalty for the giver of dowry.

V. Child Sex ratio *

- Add a provision to regulate the sale of machines used in pre-natal diagnosis as proportional to the number of registered clinics in operation.
- Adopt a holistic approach to sex selection, which acknowledges the negative impact of social and legal discrimination against women and girls.

VI. Trafficking

- Need to develop a protocol for verifying the age of the survivors as it leads to the exploitation of loopholes in the ITPA and Juvenile Justice Act.

VII. Choice in marriage

- Honour crimes
 - Introduce a separate legislation, as recommended by the NCW, and other women’s organizations, to address Honour Crimes.

- Make police and legal protection mandatory for couples/women/children/families who approach any institution with the apprehension of harm at the hands of their family member(s) or community.
- Criminal consequences must arise from Khap decisions that lead to an honour killing or violent crime that address all the players, not merely the perpetrators.
- Child Marriage
- The minimum age of marriage for boys and girls should be the same.

VIII. Witch-hunting

- Need for strict and immediate action from the police to prevent such form of violence.
- Need to develop schemes for proper counselling, rehabilitation and compensation for such women.

IX. Women in Conflict

- There is an imminent need to review the continuance of AFSPA and AFSPA-like legal protocols in internal conflict areas.
- Jurisdictional issues must be resolved immediately and simple procedural protocols should be put in place to avoid situations where police refuse or refrain from registering cases against paramilitary personnel.

X. Surrogacy

- The issue of the amount of compensation should not be left to the private contract between the surrogate and the commissioning parents – two unequal parties.
- The contract should include strict provisions for legal support to the surrogate mother in getting a fair contract.

Section III - Women and Labour laws

I. The Equal Remuneration Act, 1976

- Within the existing government machinery for implementation of the ERA, special cells should be formed to monitor discrimination against women workers in wages, categorization and promotion.
- Make provisions for greater representation of women as “Labor Officers”.

II. The Maternity Benefit Act, 1961

- Universal availability of maternity benefits and childcare facilities to all women workers across the organized and unorganized sectors.
- Amending the Act to make it illegal to preferentially employ based on marital status and pregnancy, including warnings against becoming pregnant.
- Make it mandatory for workers to inform their female employees of their rights and benefits, in addition to having it displayed at the work place.

III. The Factories Act, 1948

- Under Section 47, clearly mention adequate, suitable and separate shelters or rest-rooms for male and female workers.

IV. Minimum Wages Act, 1948

- Minimum Wages Act should apply to all employments including those which are not amongst the scheduled employments.
- Penalty for non-payment of minimum wage on the employer is only Rs. 500 or imprisonment upto 6 months. The penalty must be increased.

V. Workmen's Compensation Act, 1923

- Ensure that the medical examination of female workers be carried out by female medical professionals.
- Ensure that women are assisted in the process of claiming compensation under this Act.

VI. Unorganized Worker's Social Security Act, 2008

- Need for specific provisions regarding women workers especially about equal remuneration, decent work conditions and protection from sexual harassment at the workplace.

VII. Domestic Workers

- Draft a comprehensive umbrella legislation for domestic workers that defines domestic work and workers broadly and accounts for their security and fair work conditions, including applicability of provisions in other legislations.

VIII. Contract Labour (Regulation and Abolition) Act, 1970

- Adequate representation of women in the State and Central Advisory Board under the Contract Labor Act.
- Provisions for separate rest rooms for men and women and crèches should be provided.

Section IV - Access to Justice and others issues

I. Reforming the Justice Chain

- **Remove substantive barriers to justice**
 - Marital Rape should be made an offence.
 - The age of consent should be revised.
 - Discriminatory laws relating to marriage, divorce, inheritance and other similar aspects need to be amended.
- **Re engineer procedural laws**
 - Ensure that independent protection officers and dowry prohibition officers are appointed under the PWDVA and the DPA and adequate budget is allocated.
 - Monitoring constitution of Internal and Local Complaints Committee in every workplace and ensure timely disposal of complaints of sexual harassment.
 - Fast Track procedures must be evolved to deal with the cases earmarked as causing bottlenecks.
- **Legal Aid**
 - Transparent system for receiving applications for empanelment of lawyers.
 - Lawyers with proven track record of commitment to social justice must be given preference.
 - New panel to be constituted every three years, with existing panel continuing till replaced by new one.
- **Legal Literacy and awareness generation**
 - Topics for the legal awareness camp should be decided in consultation with the local community and sessions should be structured systematically.
 - In order to avoid duplication, a body should be identified at a national level whose primary function shall be to carry out awareness generation.
 - Awareness generation should be a component in all the women related schemes and programmes.

- **Women in Judiciary**

- Transparent appointment and promotion procedure is necessary to ensure representation of women including marginalized, minority women.
- Courts and legal offices must develop support services for women. These include bathrooms and sanitation facilities, crèche and daycare for children, medical benefits, maternity and childcare leave, counselling and mental well-being, an informal mentoring/buddy system for new entrants in the judiciary to ease their way.

II. Alternate Dispute Resolution (ADR)

- Implement alternative methods through which justice may be accessed such as nari adalats and family courts.
- Implement educational and awareness schemes to demystify the law for the common man, including those who are illiterate.
- Doing away with court fees for women who file cases seeking maintenance under the laws such as HAMA.

III. Family Courts

- Develop a monitoring mechanisms to review the functioning and outcome of the cases related to women in the family courts.
- The marriage counsellors should not be frequently changed as it causes hardship to a women who has to explain her problems afresh to the new counsellors each time.
- The family courts committed to simplification of procedures must omit the provisions relating to Court Fees Act.

IV. Prison Reforms

- Implement the recommendations made by the Krishna Iyer Committee.
- Sophisticated gender sensitive training in human rights and human handling skills need to be imparted to jail officials urgently and continuously.
- A well-laid policy for rehabilitation during the post-release period for women should be developed.
- Satisfactory facilities for appropriate vocational training, elementary education, medical care, free legal aid, etc are lacking and suitable corrective measures need to be taken.
- Counselling by psychologists and psychiatrists must be provided for inmates.

- The jail visitors committee should comprise members of the judiciary, social workers, journalists and others. One-third of the members of the jail visitors Committee should be women.

V. Police Reforms

- Every police station must have a Women and Child Protection Desk, staffed, as far as possible, by women police personnel.
- The number of women in police should be increased.
- A gender specific training policy covering all ranks and categories of police personnel should be formulated.
- Complete implementation of the directions as issued by the Supreme Court in the Prakash Singh judgment.
- Implement the recommendations of the Verma Committee report including enactment of the Police Act which should be consistent with the Model Police Act, 2006 proposed by the Sorabjee Drafting Committee.

VI. Bill of Rights

- The State should commission the drafting of a Bill of Rights for women in keeping with the Bill formulated by the Verma Committee. This Bill should be given the status of a superseding legislation.

Women in the Indian Economy

In order to comprehensively assess the status of women in the Indian economy and identify emerging issues, the HLCW looked at various aspects including: the macro-economic environment over the past few decades particularly the implications of economic liberalization, the data and trends on women's work, livelihoods and earnings in the rural farm, rural non-farm, urban organised/formal, and urban un-organised/informal sectors. The Committee looked in detail at data and trends on women and poverty. Finally, the Committee also evaluated some contemporary issues in terms of women and trade, sectoral experiences in manufacturing and services, women and migration, infrastructure and financial inclusion.

A snapshot of **women's status in the workforce** looks as follows:

- Only 25% of Indian women are working, less than half a percent are seeking work and total labour force is thus a mere 25.3%. This is showing a declining trend over the decade and places India worse than several sub-Saharan countries on this count. Within this, specific segments such as Muslim women exhibit participation rates of less than 10%.
- The urban picture on labour force participation is relatively worse than the rural one. Only 15.5% of women in urban India are in the labour force compared to 30% of women in rural India.
- In rural India, agriculture dominates other sectors and accounts for nearly 80% of women's employment, followed by manufacturing at 7.5% and construction at 5.2%. Of these, construction has shown a marked increase accounting for less than 1% in 1993-'94.
- In urban India, 42.8% of women are self-employed, 42.8% are in regular employment and 14.3% are casual labour. The growth in regular employment is in service and tertiary sectors and not in manufacturing. Self-employment in urban India is tantamount to informal employment, with over 95% accounted for by informal sector jobs.
- Only 4% of total women employed in India are in the organised sector and with prospects of enjoying formal job security and benefits. Public sector remains one of the largest employers of women in the organised sector although the share of private sector has been growing. Nevertheless, this is a negligible fraction of the female workforce of the country.
- The gender wage gap persists across both rural and urban, agricultural and non-agricultural jobs, regular and casual employment.
- While 'social' and 'regional' pockets of poverty exist and are identifiable, it is difficult to assess the incidence of poverty by gender estimates of which are made on a household basis.
- Migration of women for employment has increased in recent years and evidence shows that compulsion is a substantial factor that is pushing women to migrate for work.

Some of the **key areas of concern** emerging from this section are as follows:

- a. Workforce participation of women in India is low and declining. This belies the hope that the pursuit of growth oriented policies would usher in larger numbers of formal jobs and “crowd in” more women into decent jobs. At 25% workforce participation of women, the country’s aspirations for inclusive growth are severely challenged.
- b. Women are caught in the eye of an acute agrarian crisis, given the low level of land holdings and the growing insecurity associated with farming. the latest round of NSSO (70th round) shows that for an overwhelming majority of agricultural households (>6 crores), monthly incomes are less than their monthly expenditure while indebtedness is high. Farm suicides continue unabated, even as climate change is increasing the riskiness in farming. Rural land ownership has declined while landlessness has increased, and landholdings are getting smaller. Various trends in agriculture like shifts in land use, cropping patterns and technological choices leave their impacts on women farmers. On the other hand, women agricultural labourers too face many disadvantages and inequalities. Apart from lack of ownership of land, women here face discrimination in the type of agricultural work they are expected to do, longer hours of work without any reduction in their care and reproductive roles and differential wages.
- c. Concerns around unpaid work by women remain un-addressed. The proportion of women attending domestic duties and engaged in free collection of goods for household use is increasing steadily.
- d. There is a growing phenomenon of “informalisation” and “casualization” across both rural and urban work opportunities for women. When viewed in combination with weak to non-existent social safety nets, this portends growing vulnerability for women.
- e. Problems of portability of entitlements for women (and men) moving from place to place in search of work is an issue of serious concern Safety and security of women in receiving states needs utmost attention coupled with the need to regulate contractors and principal employers of inter-state migrants, who seem to violate most of the stipulated conditions for recruiting migrant workers.of policy makers

Taking into account the current status and an analysis of root causes, the key recommendations of the HLCW are highlighted under the following sections:

Recommendations

Work, Livelihoods, Earnings and Poverty

1. There is an urgent need to rethink macroeconomic policy and integrate it with social policy. Foregrounding women's unpaid work is critical to this need which has to be *recognized, reduced and redistributed*. Include social infrastructure in infrastructure budgets and plans in cities and rural areas--community centers with child care, water, fuel and sanitation facilities which would relieve women from fetching food, fuel and fodder for household use including sanitation. The challenge is to shift resources into these sectors.
2. Recognise women's work: Within labour markets (underpaid/undervalued) and at home/farm, including unpaid work by the women from marginalised and vulnerable groups—viz. women with disabilities are hardly recognized.
3. The low levels (partly due to non recognition) and declining trend in Female Work Participation Rates cannot be denied and hence a major challenge and recommendation is to generate much higher levels of 'quality' employment for women with higher output levels and better remuneration. This would have to be two pronged, one a massive increase in non-agricultural employment in urban and rural areas, and the other, enhancing livelihood options within agriculture (which, like all over the world, will have to be subsidized to be viable) including traditional industries which continue to absorb a large proportion of rural women workers.
4. Since women lag far behind men in skills and productivity, special programmes need to be designed for improving their skills, so as to enable them to access better opportunities in the labour market, creating opportunities for them to diversify their work. In order to promote diversification of the work women do within and outside the primary sectors, it is necessary to design special programs to enable women to enter new sectors as wage earners as well as entrepreneurs. Special efforts are needed to improve women's access to credit, skills, marketing, and other infrastructure facilities.
5. Upscale manufacturing activities women are undertaking at present. Primarily these are micro units run by SHGs – for example garment making or food processing which are included in the 25 thrust industries for job creation and skill enhancement. These

micro units could be upgraded with innovative ways of linking up and imparting knowledge on modern designs and products.

6. Facilitate women's entry into the 'Make in India' programme through special programmes to train them and impart necessary skills. More broadly, increasing the share and quality of women's employment in the manufacturing sector must be a policy priority.
7. Improve housing. Provide work sheds for home based workers. Include low income workers in city and rural development planning.
8. Pay regular wages to "volunteers" and regularize their employment—this includes Asha, Anganvadi teachers and helpers, cooks for mid day meals and other such services.
9. We strongly recommend that just as for Government employees, a Pay Commission is appointed at regular interval, a similar Commission/Committee be appointed with a Woman Chairperson, to examine the situation of these workers in public service; fix a fair wage they can be paid as workers and social security entitlements, and not dependents of a family.
10. As far as the corporate sector is concerned, in a very positive move that will strongly encourage women's participation in shaping governance of corporate India, the Securities Exchange Board of India (SEBI) had issued guidelines in February 2014 asking companies to appoint at least one woman director on their boards by October 1, 2014 which was later relaxed to April 1, 2015. While the single woman Director on all Company Boards is a good start, the HLC recommends that the objective be to take women's participation to one-thirds of the total Board size.
11. Regulate and Monitor Conditions of work for workers in growing sectors of women's employment like Domestic Services and Construction as also stricter monitoring of sub contracted home based work. Government of India should ratify the ILO Convention Concerning Decent Work for Domestic Workers (Domestic Workers Convention, No. 189) adopted on June 16, 2011(ILO 2013).
12. Improve working conditions for women. Mandate investments in childcare facilities and toilets for women at all workplaces. Investments in housing for the urban poor and mass transit systems that are women-friendly will also go a long way in boosting economic participation.

13. Sensitisation on issues such as Sexual division of labour and care within the home: through large scale media advertising on slogans such as *Ghar aur dekhbhaal ka kaam sabka kaam, isme koi sharm nahin*
14. There are no estimates regarding the number of women and girls who are in poverty.
d. Since the household is the sampling unit in household consumption expenditure surveys, sex-disaggregated household consumption data is not captured. Hence, the poverty head count ratio is not available separately for men and women or boys and girls or older men and women. Alternatives such as pilot surveys that canvas questions to both men and women must be explored in order to understand intra-household differentials in well being.
15. A large proportion of those who are poor in India are stuck in poverty and may pass their poverty on to their children. Among the many factors that cause persistence of poverty are landlessness, lack of assets and dependence on casual labour based wages for survival. As wage data presented by the Labour Bureau shows, women are worse affected, often paid less than the minimum wage and far less than men for equivalent work in both agricultural and non-agricultural occupations. Exploitation of casual labour and discrimination against women need to be addressed, through implementation of minimum wage laws, creation of employment opportunities, mobilisation of women in collectives, transfer of skills and access to assets.
16. Ensuring that girls and boys get quality education and skills that can enable them to get decent work is critical for achieving the goal of eliminating poverty. Recognition of the fact that ill health is a major factor that causes impoverishment and that women and girls face barriers in accessing health care is extremely critical in the context of understanding the lived reality of their poverty. Additionally, women provide care to family members who are ill as well as to those who are old or suffer disability. Hence, allocation of adequate resources to enable universal access to high quality public health care facilities and support for women care givers are extremely important and gender sensitive poverty elimination measures.

Farm and Non-Farm Livelihoods

1. For strengthening women's farm livelihoods, it is important to secure and uphold their ownership rights over basic productive resources like land, forests, seeds etc. For ensuring land rights, it is important that accountability mechanisms on revenue

department officials are tightened, even as incentives are created for voluntary transfer of land titles in the name of women. It is also important to take up large scale legal literacy and gender sensitization efforts, in addition to motivation efforts, both at the community level, as well as with the frontline officials. As an immediate step, gender disaggregated data on land ownership should be ensured by including a column on the sex of the land owner in all basic land records – today, this is missing in India. There is a need to create equal rights to property across all social groups of women. Apart from ensuring private land ownership through inheritance rights being actualized, there is a need to set up land purchase schemes, especially for dalit women. Fresh efforts at public land distribution should be taken up, including the many proposals contained in the draft Land Reforms Policy of 2013, to ensure that land is assigned to women who are landless. Commons should be controlled by women's collectives. There should also be special efforts to secure de-facto rights on land for women's collectives including through land lease. Forest Rights Act should be implemented in its true spirit, even as overall land alienation and grabbing from rural India minimized. Lease rights over inland water bodies should be given to women's collectives, in the fisheries sector.

2. For securing recognition and support due to women farmers, the government has to make special efforts to de-link its support to farmers with land ownership. Credit, insurance and marketing support should accrue to women farmers in their own right. Land development, participatory varietal development, diversity-based crop planning, low external input agro-ecological approaches, reduction of drudgery through appropriate tools and implements further supported by village level tool banks are all important interventions that should reach all women farmers. Engendering agricultural research as well as extension is important in a visible, tangible and ambitious manner, to empower women farmers. Women's forest-based, livestock-based and fisheries-based livelihoods should be supported with marketing support. Forest-gathering roles of women should be strengthened in a non-monetised fashion too, for both practical and strategic needs to be met.
3. Governance of all institutions that are meant for supporting and improving farm livelihoods should have representation of women farmers whereby their needs can be prioritized and addressed.

4. All line departments and other agencies that are related with women's farm livelihoods should have more women recruited at all levels, in addition to systematic orientation and sensitization towards women farmers and their empowerment.
5. MGNREGS' full potential to empower women in the farm as well as non-farm sector should be utilized fully and there should be an enhancement of the quota for women's employment to 50%. Further, the works chosen should be based on women's needs and priorities. Priority can also be accorded to works on women's land as well as other enterprises.
6. In the Rural Non Farm Sector, it is important to invest on appropriate skill building, accompanied by right choice of skills for employability, as well as by stipend support. Employment in RNFS should be regulated to provide benefits of job security, maternity benefits, insurance, leave provisions etc. The scale at which women's RNFS enterprises run should be optimized and increased, by relying on women's collectives and their federations.
7. Programmes like NRLM which are undertaking massive collectivization of rural women should be used for creation of an asset base for women, in addition to ensuring that such collectives are forged not in an instrumental fashion but with feminist approaches that make use of 'power with', 'power within' and 'power to' of women.

Financial Inclusion

8. Universal access to bank accounts and ease of payments access is vital for women to benefit from various Direct Benefits and Transfer schemes as well as under special schemes for women like the Janani Suraksha Yojana (JSY). Currently there are too many delays in accessing these payments. This needs an immediate focus on universalisation of bank accounts to all Indian residents and the creation of a large network of transaction points in rural India where beneficiaries can transact with ease and without the fear of discrimination. Conditional on possessing valid KYC, citizens must not be denied a bank account. In this context, the Prime Minister's Jan Dhan Yojana (PMJDY) is a welcome initiative and beyond account opening, success of this initiative in terms of account usage by citizens, including to access Government payments needs to be monitored. A very large number of distribution points within easy walking distance of every household (urban and rural) and every woman are

required for ease of access to payments. The RBI's proposal to license Payment Banks has the potential to make an important contribution here. Technology has the potential to be a great leveller with respect to women's access to financial services and must be fully embraced by all schemes.

9. Currently, RBI's Basic Statistical Returns throws light on access to credit (number of accounts and value outstanding) by gender. It is important that all financial inclusion schemes including the PMJDY systematically track and periodically publish gender-disaggregated data on access and usage.
10. All Government schemes for financial inclusion must remove reference to "head of the household" and make sure that insurance and pension benefits are available to all adult members of the household. This will serve to overcome some of the intra-household control issues extensively noted by researchers.
11. Policy biases against consumption finance must systematically be eliminated given their vital link to women's wellbeing in low-income households. An example of this is placing policy restrictions on the extent and magnitude of consumption finance that is permissible for MFIs. When faced with an income shock, consumption needs of women tend to get threatened first. Therefore, the ability of women to access resources to smooth their consumption is of paramount importance.
12. There needs to be an emphasis on universal healthcare with health insurance as an integrated mechanism and sufficient focus on primary health so that private expenses and indebtedness on account of health and hospitalisation can be eliminated. A lot of borrowings by low-income households is to cope with shocks such as ill-health or accidents. Access to credit is not a good alternative for effective social security and may act as a trigger for indebtedness. There must be a minimum social security package available to all citizens that includes life insurance, disability insurance, health insurance, and pensions offered through multiple distribution channels.
13. A strong customer protection framework for financial services needs to be legislated so that as there is growth in outreach of financial services, welfare of low-income and women customers are not at risk in any manner. The Financial Sector Legislative Reforms Committee chaired by Justice Srikrishna has made important recommendations in this regard that may be evaluated. The responsibility of financial service providers to follow processes that ensure access to suitable products and services is emphasised in this context.

Engendering Macro-Policy: Gender Mainstreaming Through Gender Responsive Budgeting

The dissatisfaction with earlier policy approaches to narrowing gender gaps and the persistence of poor development results for women across the globe, shifted feminist scrutiny increasingly to macro-economic policy and the urgent need to engender it for bringing about a transformatory outcome for women. Women's movements in the global south developed a critique of development models and institutions, arguing that the answer lay, not in greater participation of women in an unjust and unsustainable development process; there was need to rethink structures and practices that perpetuate inequalities of all kinds. This led to the emergence of gender mainstreaming as a strategy for promoting gender equality endorsed globally in the Beijing Platform for Action, 1995 and later enshrined in international agreements and commitments.

Gender Mainstreaming emerged as a strategy that makes it imperative on the State (amongst other actors) to assess the differential implications on men and women of any public policy action and intervention (including legislations and programmes) in all areas, at all levels, so that it brings about an equitable focus on women's empowerment and development needs. There could be many approaches that could be used to introduce a gender perspective in all activities. One of the most important areas of macroeconomic policy *and a point of entry* which has gained widespread acceptance is introducing a gender perspective in government budgets. Gender Responsive Budgeting (or Gender Budgeting / Gender Sensitive Budgeting) contributes to gender mainstreaming by focusing on the gender dimensions of the Budget, both the expenditure and revenue sides. These budgetary initiatives are therefore a crucial means by which governments finance gender equality and women's empowerment.

Since the early 80s (early 90s for India) the focus is on a different *approach* to development based on a market-oriented economic reforms package reflecting greater global economic integration. The latter is usually associated with greater economic liberalization, nationally and on the external front, the components of which include trade and financial liberalization, fiscal restraint and deflationary macroeconomic policies, privatization of public sector enterprises, labour market liberalization and (very importantly) applying the market principle into public management and provisioning of public services. That such policies have, inter alia, shifted the burden of social reproduction onto households within which women bear a disproportionate share of the unpaid care and household work necessary to maintain

households, has been well documented. Macro policy takes the “social reproduction economy” for granted assuming that it can continue to function adequately no matter how much its relation to the “economic production economy” is disrupted. The government will step in when the market fails, that is the residual approach to social policy. The residual approach originated from the earlier period of the fifties but the much higher social dislocation caused in the era of market led economic reforms since the 80s and 90s prompted a new interest into examining macroeconomic policy.

It is the disjuncture between the social (the unpaid household economy) and the economic (the commodity production economy) caused by three biases identified by feminist scholars-- a deflationary bias, male breadwinner bias and the commodification bias-- which drives macropolicy in gender insensitive directions. A Gender Responsive Budget is not a separate budget for women but one in which gender has been mainstreamed, keeping in mind the need to integrate the ‘social’ and ‘economic’ policies. It is a strategy for changing budgetary processes and policies so that expenditures and revenues reflect the differences and inequalities between women and men in incomes, assets, decision-making power, service needs and social responsibilities for care.

In the Indian context, the deflationary macro policies (fiscal and monetary) followed ushered in a process of maintaining low fiscal deficit while simultaneously keeping taxes low, essentially by compressing the government’s own expenditures. Union budget expenditure as a proportion of GDP has been declining, in particular the expenditures on the social sectors which have a direct bearing on women’s lives. Low level of public spending on social sectors has had an adverse effect on both the quality as well as the coverage of public provisioning of essential services in the country. Aggravation of systemic weaknesses in the functioning of many social sector programmes is also largely due to the low levels of public spending on the same. India’s public spending on both Health and Education as a proportion of the GDP, is way below that of others (in 2010).

This Chapter reviews the attempts of Government of India to gender sensitise the Budget initially through the Women’s Component Plan (by state governments also) and then more intensively with Gender Responsive Budgeting institutionalized through the Gender Budget Statement brought out every year since 2005-06 together with the Union Budget (for some states also). The Gender Budget Statement presented at the Union Level every year, highlights the budgetary allocations for 100% women specific programmes (Part A) and

those programmes in which at least 30% flows to women (Part B) in the annual expenditure budget.

The process of Gender Budgeting, accompanied by Gender-based Outcome Budgets and Gender Audits is indeed a powerful strategy and tool to get all Ministries/Departments to incorporate gender concerns and objectives in their plans, implementation and reviews. By issuing a Charter for Gender Budget Cells (composition and functions), setting up GBCs in increasing numbers of departments and ministries over the years, by evolving guidelines for preparation of Outcome Budgets, and by initiating and running a scheme on Gender Budgeting for capacity building and research, some broad institutional matters with regard to operationalising Gender Budgeting have been addressed.

Over the years, the number of Ministries/Departments joining this process is undoubtedly growing and this is a positive sign. To that extent, there is progress, unlike in the case of the Women's Component Plan. It is indeed heartening to note that certain Ministries and Departments which have traditionally considered themselves gender-neutral have also set up GBCs, realizing that all departments and ministries are after all women-related, in some way or the other. The Ministry of Coal, Chemicals and Petrochemicals, Civil Aviation, Heavy Industry, Petroleum, Steel, Defence etc. are all part of the list of 56 Departments/Ministries that have set up GBCs.

Despite the fact that 30 departments/ministries including the ones that have a more or less direct impact on women's condition and position in India (including Women and Child Development, Health and Family Welfare, School Education and Literacy, Higher Education, Rural Development, Agriculture, Food and Public Distribution, Labour, Panchayati Raj, Social Justice and Empowerment) have reflected allocations that are "women-specific" (100% for women) and "pro-women" (at least 30% provision for women) in Statement 20, it is worthwhile noting that this is still a meager 5.8% of the overall Budget.

The whole exercise turned out to be an ex-post one of estimating the flow of resources to women from the Budget, not linking it to planning and getting bogged down into a number crunching futile effort. Several anomalies were found in apportioning funds for women in Part A and B and a process of rationalizing the inclusion or non-inclusion of specific Demands in the Gender Statement is important. Very often whose responsibility is GRB has not been made clear. Most importantly a thorough gender analysis of a sector and lack of adequate

gender disaggregated data turned out as big roadblocks. A review of GRB in India and other regions across the globe, revealed a certain 'fatigue' and the fact that the GRB exercise has not been undertaken in the manner envisaged. However these very limitations in the processes also pointed to ways of strengthening it so that the potential is not lost. Some critical recommendations are:

1. Gender Budgeting has to be integrated with the Planning process and therefore needs to be an ex-ante exercise. It should engage with overall macroeconomic policy and influence the planning process, moving beyond mere 'gender reporting' to actual 'gender planning' that seeks to ensure linking of gender issues to designing/implementing interventions that address those issues.

2. A clear institutional (more precisely Government) commitment to gender mainstreaming stated as part of overall macro policy by the Government and reflected in the Plan and Budget documents.

(a) A nodal agency/team to coordinate the activities of GB consisting of the Planning, Finance and Women and Child Development Ministries/Departments which would hold consultative dialogues with sectoral ministries at the time of the budget-formulation process in order to ensure that gender issues are adequately operationalized in the budget.

(b) The format and the methodology of the Gender Budget Statement needs to be reviewed; has already been revised by a Task Force set up by MWCD and needs to be acted upon. . .

(c) More 'inclusive' budgeting focusing on vulnerable / marginalized groups like dalits, tribals and others needs to be undertaken.

3. Strengthen capacities of officials to improve gender integration in the budget formulation process.

Capacity building by each Ministry/Department has to be taken seriously :Trainees sent to GB capacity-building do not always partake in the gender budgeting process, after all. Trained officials need to be retained in the Department/Ministry for a cycle of at least 3 years.

4. Data has to be strengthened on a gender disaggregated basis.

5. Need for a Gender Audit and a constant monitoring of programmes for women in the field. Existing accountability mechanisms can be used. A gender disaggregated expenditure incidence analysis is very essential, beginning with a few large women centric programmes.

6. Need for GRB at decentralized levels: In a federal country like India, the Union government's attempts to engender budgets alone would not result in tangible gains unless complemented by similar efforts at state level which incur huge "developmental expenditure"—expenditure on social services such as education, health, nutrition, water and sanitation, and economic services such as agriculture, irrigation, rural development and transport.

Women and Education in India

One of the most significant areas around which India's development has focused is education. India has a large network of educational institutions spread across rural and urban areas. Yet it continues to lag behind in the education of women and girls, 35 per cent of whom continue to be illiterate, constituting probably the largest number of illiterate women and girls across the world in any one nation.

In this context, the present chapter focuses upon women's education at all stages, primary, secondary, higher education as well as vocational and skill education. It further elucidates the educational status of various groups of women, the impact of open schools upon women's educational status, the policies enunciated by the Government of India from time to time, the barriers faced by women in accessing education and finally puts forth some recommendations to improve the access of women to quality education.

Today women in India have come a long way from the 9 per cent literacy rate of 1951 and 2 out of three women can at least read and write. Yet the gender gap in literacy rates continues to be high at 16.7 per cent. Further, there is a wide gap in the female literacy rates of different states with Kerala having 91.9 per cent female literacy rate and Rajasthan at the other end of the scale with 52.6 per cent female literacy rate. The gender gap in literacy of the different states reveals substantial variations with Meghalaya having the lowest of 3.4 per cent and Rajasthan again having the highest at 27.8 per cent.

Different types of schools: government schools, private schools, aided schools. Single sex schools, co-ed schools. Non-formal schools. Significantly the number of schools at primary level is higher with the number decreasing at every step along the way. Does this imply that the number of children progressing from one stage to the next would decline? What are its gender implications?

The performance of the public sector in schools leaves much to be desired. Moreover, the current commodification leads to a greater demand for private schools. Yet these schools are expensive and the same family may put boys in private schools and girls in government schools as the education in the latter is free of cost. Furthermore, the excessive privatization of education has led to the charge of schools being regarded as commercial ventures.

An analysis of the enrolment and dropout rates reveals highly gendered phenomenon of enrolment levels for girls decreasing with the level of education. Girls dropout of schools for any number of reasons which include distance of school from home, care of siblings, need to take up a paying job, the very insignificance of education for girls, increasing violence against women, withdrawal of schemes for girls such as free transport and so on. On the positive side the enrolment levels of girls have increased substantially from 39 per 100 boys at primary stage and 16 per 100 at upper primary stage to 92 and 82 respectively in 2011.

From primary education to secondary education should be one more step up the ladder in educational status, but statistics reveal that there are more leakages from the pipeline along the way and a lot more girls go missing from school. *It is of vital importance to take initiatives and negotiate gender specific issues of quality, accessibility and affordability when it comes to girls.*

Thus, the enrollment of girls in schools follows a pyramid like structure with almost 100 per cent enrollment at the primary stage and declining with each stage thereafter. Even more significant is the fact that there is strict gender stereotyping so far as subject choice is concerned with a majority of the girls going in for Arts and Humanities.

A few issues need to be flagged here in relation to school education of girls. First is the gender role socialization. Schools are not assisting in breaking the gender role stereotypes but are actively perpetuating these. Schooling and Gender based violence is particularly significant in the context of the recent spate of rapes in schools of small children by teachers

and other workers. Bangalore itself in the last year has had more than three such incidents. Bullying may or may not be gender specific, but has severe impact on children. What does have specific gender dimensions is cyber-bullying. The debate on Single sex and Co-educational schools continues. Distance between home and school is another issue of importance for girls and has been brought up again and again at the time of policy formulation and programme implementation. It is one of the major barriers in access to education.

Coming to higher education, one sees a large gap between men and women, whether it be in enrolment or in subject choice. Globalisation has led to the entry of private sector into higher education in a big way. The GER for all categories is 19.4, that is 20.8 for men and 17.9 for women. If we look at the latest statistics the percentage of women enrolled at the UG and PG level is the same (45per cent vis-a vis 55 per cent of men) but it is reduced to 38per cent at the research level thereby increasing the gap with men students. *This indicates a 'leaky pipeline' and deserves to be investigated. Further, the proportion of women at the research level is almost constant from the nineties onwards even though their proportions at both UG and PG levels have gone up.* Although the situation is changing and women are enrolling in what are perceived as masculine subjects yet the gap between women and men remains.

The gendered impact of social, cultural and economic disparities across states (Chanana 1988) have been referred to, time and again, by the official committees and commissions as well as by the social scientists. These trends are continuing and the enrolment of women varies from province to province.

In spite of the fact that higher education was almost free during the first four decades (till 1991) since it was publicly funded women have not achieved equal access. It has also been either denied to or almost impossible for the women from the disadvantaged groups to access because of social and economic reasons. There is a critical need to deconstruct the rhetoric surrounding globalisation and economic liberalisation and their inequitable impact.

Some of the critical gaps in higher education are: privatisation of public universities, distance education, and changing subject choices of women and women in science. . The gendered impact of these requires attention if the goal of social change and gender equity has to be achieved.

In the Indian context, there has been a rise in the numbers of women entering science at the undergraduate level (from almost nil in 1951 to close to 62 percent in 2010-11) Yet there is a steady attrition of women from the post-graduate and PhD level.

Another issue which needs attention is Early Childhood Care and Education (ECCE), which may be defined as an enabling environment for all children from birth to eight years of age, which ensures care, nutrition and health provisions, and play based learning opportunities, which promote their holistic development and early learning. It is also often referred to as Early Childhood Development (ECD).

In terms of access, the main providers for ECCE in India are the ICDS and the private preschools. The major public provision in ECCE is the ICDS, with some states and Municipal Corporations having traditionally supported preschool sections in government schools. The shift in ownership of ECCE and impact of the policy discouraging duplication of facilities has resulted in a steady decline in ECE provisions in the public school system from 2006 onwards.

A big gap is the absence of gender disaggregated data. This is important since the disaggregation will enable analysis of estimates of gender equity and extent of gender based discrimination in the field of early education. It will also facilitate evidence based planning for older girls' education by evaluating impact of ECCE with regard to its objective of providing surrogate care to young children and thereby releasing older girls for primary education and women for work.

If literacy is essential for women, then for adult women, those who never had the chance for schooling, it is an imperative. In this context, various policies have emphasized upon the significance of adult education. Yet we have failed to achieve the goal.

While gender gap in enrolment has decreased slightly, it is nowhere nearing closing especially for girls from the marginalised sections which includes Scheduled Castes, Tribes, minorities, physically and mentally challenged.

Another significant issue with momentous gender dimensions is the curriculum content which is gender insensitive and perpetuates gender stereotypes. The textbooks, notwithstanding the rigorous checking by NCERT continue with various gender stereotypes and the teachers are

not sensitized to gender issues. Thus classroom teaching is impacted in several ways. First, curriculum content points to the significance of males and the insignificance of females in society. Second, the teachers, not having been sensitized, continue to regard girls' education as secondary and girls continue to be prepared for particular kinds of roles. Such attitudes also result in dissuading girls from taking up what are perceived to be 'masculine' fields.

Education is widely viewed as a pathway to empowerment of girls. Much depends on what we mean by empowerment. If by empowerment we mean the ability to have voice and agency, to have control of and make critically and carefully informed choices, then both the nature of education provided and the stage to which this is provided become vital. There have been several instrumental interpretations of empowerment-educate the girls and she will educate the family, educate girls till primary stage and she will have less children; she will educate her own child. These interpretations have been vigorously contested from both gendered and rights standpoints. It can generally be submitted that education as a liberating force has widened the choice for women.

The linkages of gender, and education with labour market are direct and indirect. There are several studies to confirm the connection between the level of education and employability along with earnings. The education of women in particular is seen as providing as a tool for intergenerational and social change. The participation of girls at different levels of education should steeply rise so that it has a ripple effect on labour participation rates also thereby enhancing their productivity at an early stage.

One significant development with the greatest transformative potential is the emergence of women's studies. Women's studies provides a critical analysis of the numerous processes and patterns (social, economic, political) which both construct and reinforce women's subordination. Women's studies does not merely inquiry into the causes of women's oppression; but seeks to transform social mores, psyche and mindsets through an interrogation and recasting of dominant ideologies.

However, women's studies continues to face numerous challenges. Ortage of permanent faculty, trivilaising the concerns of women and so on.

Girls' education continues to be beset by various problems. These include: Patriarchal socio-cultural ethos, negative attitudes towards education of daughters, gendered curriculum, child

marriage, female seclusion, daughter discrimination, distance between school and home, violence against women, lack of facilities in schools, particularly sanitation facilities, gender socialisation, lack of sensitisation of teachers, lack of women teachers, inherent inequalities in the social structure and the intersectionality of caste, class, religion, language, disability and so on. These create multiple deprivations which adversely impact access to education. Liberalization and globalisation have further increased the educational deprivations of girls, particularly by promoting corporatisation of education.

Thus even while India has come a long way in the matter of education of women and girls, yet 'we have miles to go' and for this we need to cross multifarious barriers, which not only hamper the education of girls, but actually threaten the very basis of the development of India. In this context, the Government of India has from time to time enunciated various policies for promoting girls education.

Thus, in spite of a careful articulation of education for equality for women which is reflected in the educational policy discourse in post-independence India it may be noted that empowerment on the ground is not expected from girls' education even though it may be incorporated in the policy documents. Ultimately they are denied agency because the goals of familial socialisation and schooling as processes have to converge. Thus, girls and women continue to remain the objects, not the subjects, of social policy as will be substantiated later.

Recommendations

NS ✓ Provision of Infrastructural facilities such as sanitation, clean drinking water, hostels, crèches.

- Gender Sensitive teachers, especially women teachers
- **Elimination of gender stereotypes by gender sensitization, encouraging female participation in unconventional courses, inclusion of women in decision-making**
- **Collect gender segregated data.**
- undertake gender audit
- Elimination of negative cultural practices such as child marriage, segregation of girls, female exclusion.
- Addressing Gender Concerns in Textbooks
- **Addressing needs of different sections**

- **Monitoring of Private Schools**
- **Quality Management of Government Schools:**
- **Implementation of RTE**
- **Make special provisions for Safety and Security of Girls**
- Make special provisions for Counselling and Guidance:
- Developing Gender-sensitive policies
- Promote positive role of **Mass Media:**
- Promoting women in Science:
- **Change Socialisation Patterns**
- **Promote Co-educational schools**
- *Strengthen Sakshar Bharat*
- *Strengthening linkages with civil society groups*
- **Vocational and skill Development courses:**
- Incentives, such as fee waiver, should be given to girls especially those from other disadvantaged sections, who take admission in open school programmes.
- There should be no standalone primary or middle schools in the country up to the elementary level .
- Change the distance norms.
- Schemes and schooling need to be expanded and universalised so that every child especially a girl who enters Class 1 has a genuine opportunity to complete Class XII.

These strategies, programmatic and infrastructural provisions and structural changes are critical, if not a necessary precondition, for bridging the gender gap in education at all levels and for making educational policy of the future pro gender and gender inclusive.

In sum, there have been overall improvements in access to education, especially elementary education, in school enrolment, literacy rates, in plugging the dropout rates as well as in making gender aspects a policy concern. Yet a large number of issues remain to be addressed. These include the issue of women in higher education, overcoming the numerous barriers faced by women in access to education, in particular the increasing violence, whereby even a five year old child is subjected to violence, promoting women in vocational and technical education and making education an effective agency for overall empowerment of women and not merely an agent for perpetuation of gender role stereotypes. Women must not be treated

as a homogeneous entity for it is essential to recognize the intersectionality of gender with concerns of socially disadvantaged groups. Thus, there is a need to address issues of exclusion and focus on rights. The system has to be held accountable for failure to deliver, for failure to provide access, for failure to overcome barriers. Thus there is an urgent need for systemic change.

Investment in women's education is the singular means to achieve sustainable human development and India today stands at a crossroads where failure to invest in women's education would take it backwards from its proclaimed stance as a leader of the developing world and put paid to any hopes which India has of becoming a future power to contend with. We conclude with a quote from Malcolm X, "Education is our passport to the future, for tomorrow belongs to the people who prepare for it today."

Women's Health in India: AN OVERVIEW OF THE CURRENT SITUATION, RESPONSES AND THE WAY FORWARD

Summary

The recent draft National Health Policy, 2015 has proposed a target of raising public health expenditure to 2.5 % from the present 1.2% of GDP. It also notes that 40% of this would need to come from central expenditure. The policy is to focus on critical healthcare issues and it is also told that the government may pass the health rights bills to ensure health as a fundamental right. The National Health Policy however makes no commitment to Universal Health Coverage nor the Twelfth Plan document. The policy framework lacks clearly identified goals and the National Human Rights Commission's core group on health has observed that rights perspective is missing from the draft National Health Policy, 2015. While commendable, we think it is opportune time to prioritize women's issues in health sector. Before we make some of the specific health related recommends based on the review of current situations we think health programs should be guided by the following overarching principles and actions:

1. Increase public spending on health and improve health system: While the new Draft Health Policy has indicated an increase, clearly that is not adequate. The public health spending should be increased to 4.5% of GDP. Low public spending on health not

only impacts women adversely, the impact on older persons is devastating as women in older ages have very little care services from the public health system. An important step to improve health system is to streamline procurement, supply and management of medicines/ essential drugs in public health system. In this regard, the initiative taken by the Tamil Nadu Government to launch a government company, Tamil Nadu Medical Service Corporation (TNMSC) to streamline procurement, supply and management of medicines/ essential drugs in public health system is worth examining and scaling up.

2. Reduce reliance on private sector to provide health services to women from poor and marginalized population. Increasing incidences of hysterectomies and C-section deliveries and infertility treatments by the private sectors are concerning and demonstrate why private sector can't be trusted to provide women sensitive services respecting her bodily integrity. The profit motives run high and ruthlessly. Government must be proactive to check the unscrupulous services by the private sectors and prepare the public health system to step into provide these services especially to women from marginalized and poor communities.
3. Develop and implement a gender transformative health strategy: There is a need to draw up a gender transformative health strategy with a clear and stated vision to recognize women's reproductive rights as a driving and central principle in the design, execution and evaluation of the health system. A gender approach in health, while not excluding biological factors, considers the critical roles that social and cultural factors and power relations between women and men play in promoting and protecting or impeding health. Besides examining differences in health needs based on sex difference, it includes looking at differences between women and men in risk factors and determinants, severity and duration, differences in perceptions of illness, in access to and utilisation of health services, and in health outcomes based on gender differences. It therefore follows that gender is an important social determinant of health
4. Create a holistic framework to address the negative consequences for both women and men of an unbalanced sex ratio. The health sector must work in close alliance with the education and other sectors to create norms that place a higher value on the girl child.

Health specific recommendations

1. **Improve situations of malnutrition and Anaemia:** One of the worst health situations that Indian women and girls face relates to their nutritional status. While it equally affects rural, urban, literate and illiterate women, it is highest among rural and illiterate women as well as those belonging to the lowest wealth quintile. Almost 70 percent of women in Assam, Jharkhand and Bihar and between 55 and 58 percent of women in Chhattisgarh, Madhya Pradesh, Rajasthan and Uttarakhand are anemic. Incidentally, these very states also have high IMR thereby indicating a high causal relationship between maternal health and infant survival. It is recommended to
 - a. Review nutritional programs to ensure they have greater reach to the poor and socially and economically excluded communities and women especially women from Adivasi and Dalit communities
 - b. Break the cycle of malnutrition by reaching out to young mothers and bring greater emphasis on adolescent unmarried girls.
 - c. Public Distribution System (PDS) should include nutritious food items like millets/pulses and oils as part of the Food Security Scheme and school based food programs should include nutritious meal programs on the line of Tamil Nadu diet program. The Tamil Nadu mid-day meal program provides not only nutritious but varied food items as part of a comprehensive packaging of food – including almost 54 items – to keep the children’s interest also enhance their levels of nutrition.
 - d. Enforce child marriage prevention programs. If married early, which is likely in a large number of cases, a malnourished girl is likely to suffer from severe maternal health problems if becomes pregnant early.
2. **Review and strengthen maternal health Services:** A high incidence of maternal deaths is a reflection of both poor maternal health and poor quality of maternal health services. Women die during pregnancy, childbirth, and soon after, due to multiple factors related to health care systems that include poor outreach and inadequate referrals. It is recommended to
 - a. Improve outreach and implementation. It has been repeatedly pointed out by researchers and program evaluators that poor quality of services including non-availability of doctors/providers and lack of trust in providers are important deterrents.

- b. Build capacity of the health system to address underlying socio-economic and cultural causes of maternal deaths as part of the implementation; Women belonging to Dalit and tribal communities and those from low social and economic status are more likely to deliver at home, less likely to utilize ANC services, and less likely to receive post-natal care.. Most maternal deaths can be prevented if deliveries are attended by skilled birth professionals. There have been several innovative schemes like the Chiranjeevi Scheme. Emphasis should be on safe delivery in institutional set ups, improved post natal care, and screening of nutritional status of women. There is a need to improve perinatal and neonatal care and to curb malnutrition in children
 - c. expanded the role of staff nurses to qualify as skilled birth attendants and develop competency in providing life saving measures.
 - d. Strengthen programs to delaying age at marriage and integrate these programs with enhanced educational and livelihood opportunities and skills. This can provide greater control and autonomy to a woman to take reproductive decisions and other crucial aspects of her life options. Early marriage and early pregnancy are closely interlinked
 - e. Build strong evidence base to inform strategies to reduce MMR. For example evidence needs to be generated on the effectiveness of skilled based attendance or referral and Emergency Obstretic Services and evidence should be generated on the effectiveness of public-private partnerships.
3. Shift focus of family planning away from exclusive female sterilization to bring in wider choices and men's participation. Unfortunately women have to disproportionately bear the responsibility for family planning and yet they have very little choice in the methods they use and the timing of their use. The family planning program is dominated by a single method - female sterilization. It is recommended that program should focus to
- a. Ensure that the selection and use of a contraceptive is a woman-led choice
 - b. Improve the conditions under which surgical operations on women are carried out as they are appalling and in many instances dehumanizing in many camp situations, to say the least.
 - c. Assess the community needs while implementing the family lanning programs rather than the targets that are set from the top and women treated as 'cases' to

fulfill the targets. This situation needs to change through closely-monitored implementation of community needs assessment strategy and through the communitization of the program as originally envisaged in the National Rural Health Mission.

- d. Improve quality of care and better infrastructure with emphasis on quality information and counseling to help the women and couples to make informed decisions.
4. Pay special attention to the health of elderly women. National Policy for Older People (NPOP) was announced by the Government of India in 1999. NPOP acknowledges the concerns of older women in India and clearly states that there is a need for expansion of social and community services for older persons, particularly women. The Ministry of Health & Family Welfare had launched National Programme for the Health Care of Elderly (NPHCE) during its 11th Plan period in order to address the health-related issues of the elderly. The programme was launched on the basis of recommendations made in the National Policy on Older Persons and State's obligation under the Maintenance & Welfare of Parents & Senior Citizens Act 2007. Main components of NPHCE were- establishing 30 bedded Department of Geriatric in 8 identified Regional Medical Institutions (Regional Geriatric Centres) in different parts of the country. Another component was providing dedicated health care facilities in District Hospitals, CHCs, PHCs and Sub Centres in 100 identified districts of 21 States. Initially, 100 districts were selected from 21 states for this programme.
- a. It is strongly recommended to implement the recommendation of setting up the geriatric care services as envisaged in the NPHCE and allocate resources for the purposes.
 - b. It has been argued that the best way to ensure improved conditions both social and health wise of widows and elderly women is to recognize and enable them to contribute significantly to the household economy besides protecting their property rights.
5. There is a need to improve mental health services or women: Studies have also shown that women are at greater risk of mental disorders, including in low and middle income countries; a review of the possible explanations for this found no evidence to support a hormonal or biological mechanism. A study in India shows that gender disadvantage and exposure to intimate-partner violence are key risk factors for common mental disorder in women. India has recently announced a National Mental

Health Policy. This is a welcome development. However, the policy document clearly fails to recognize gender and violence against women as cross-cutting issues determining and impacting women's and girls well-being and mental health. There is an urgent need to

- a. Situate women's issues and mental health problems in the center-stage of this policy document and subsequent programmatic efforts.
6. Enhance health systems capacity to address violence against women: public health sector takes cognizance of, and action on VAW, not only because of its huge effect on women's health and health services, but also because of the significant contributions that can and should be made by public health workers in reducing its consequences. it is recommended to
- a. Upscale models like DILASA and BHUMIKA under the NHM in all mega cities and other urban hospitals.
 - b. Train Social workers in hospitals, and the community health workers under the national health mission to provide VAW-related services and that the training on GBV must be included in the ANM and other nurse's teaching courses.
 - c. Implement national protocols and guidelines for responding to sexual violence that have been formulated by the MoHFW in all hospitals and other such centres set up under NHM
7. Address stigma, discrimination and violence against HIV-positive women and female sex-workers. Stigma and discrimination against HIV infected persons is huge in India. Women are vulnerable to multiple layers of stigma, discrimination and violence and this is more so if they happen to be in sex-work. Studies have also shown that women acquiring infections in monogamous relationships from their partners are more likely to be 'blamed' and stigmatized for the infection than the man. It is recommended that
- a. HIV programs must incorporate and address gender-related components especially VAW prevention strategies in its HIV prevention and treatment programs.
 - b. HIV programs must specifically address violence against sex workers especially from police and other stakeholders. In fact there is need to sensitize the health system to provide full range of care to female sex-workers and also ensure their entitlement as a citizen.

8. Address infertility problems in public health sector: Infertility problems have been a source of major concern in India lately and studies suggest that infertility is rising at an alarming pace. It is recommended that
- a. Infertility treatment should be made available in the public health sector.
 - b. Assisted Reproductive Technologies should be reviewed for their implications to increase women's choices and also reduce vulnerabilities. Of these ARTs, surrogacy seems to have gained much greater momentum in recent years with severely negative social and health implications for women. A draft legislation on surrogacy prepared by ICMR should be reviewed and brought forward.
9. Improve cancer diagnosis, prevention and treatment services: According to data from population based registries under the National Cancer Registry Program, more than half of reported cancers in Indian women are related to the breast, cervix, uterus and ovaries. According to some reports, the incidence of breast cancer is rising among both young and elderly women rapidly and cervical cancer remains the most common form of the cancer among women. It is recommended to
- a. Promote systematic screening,
 - b. Enhance awareness
 - c. Increases access to affordable health services
10. Address health problems of women in informal sector: India's women workers in the informal sector face serious and hazardous health conditions. There is an urgent need to understand and address the occupational health issues for women in the informal economy. It is recommended to
- a. Carry out extensive studies to highlight the health plights of women in hazardous sectors and solutions should be found in appropriate policy responses. Solutions should also be found through collaborations between women and organizations that can offer technological and other safety measures to women.
 - b. Ensure the registration of families in RSBY from BPL families and improve the system of distributing smart cards in particular to women from the most marginalized groups and extreme poor communities.
 - c. Increase the awareness about the RSBY scheme among poor families;
 - d. Improve the quality of RSBY services in the private hospitals and their sensitivities to poor,
 - e. Provide primary health care as part of the RSBY scheme; and;

- f. Reach out to women workers in the informal sectors.

11. Improve water and sanitation situation for women: There are significant health impacts of the poor water and sanitation situation in India. Women and children bear the brunt of this. While recently launched Swachh Bharat Mission is a right step in this direction, it is recommended to

- a. Promote home-based toilets where spaces are available or encourage neighbours to share toilets.
- b. Promote community toilets with women's involvement in the design, implementation and monitoring of water and sanitation services. Taking advantage of Swachh Bharat Abhiyan, Tamil Nadu government has recently launched women SHGs led community toilets in vast rural areas. The significant feature is that they also pay maintenance charges per toilet. It is important to encourage scaling of this kind of initiatives in other states too.

12. Address health needs of adolescent girls as part of comprehensive programs: Data and research studies suggest that while there are programs addressing the sexual and reproductive health (SRHR) and nutrition needs of adolescent girls, their status with respect to SRHR parameters continue to remain poor. It is recommended that

- a. Adolescent girls' programs should focus on protecting girls from early and unwanted childbearing, but also address their needs comprehensively in creating alternative identities apart from their roles as current or future wives and mothers.
- b. Major efforts are required to address violence against adolescent girls both in public and domestic spaces.
- c. Health providers must be sensitized and integrated to larger violence prevention strategies.
- d. Adolescent girls' empowerment programs should be evolved using 'safe space' concept underscoring the importance of physical places where girls can find opportunities to interact with each other and build network among friends, find mentors to seek help and guidance and access skills, and gain information and appropriate attitudes to deal with day to day challenges comprehensively.

13. Prepare a policy framework for clear public-private partnership: In the absence of clear policy guidelines on public-private partnerships, most strategies and public-

private arrangements that we see on the ground are at best ad hoc, unregulated and unevaluated. The envisaged outcomes of PPP should be to;

- a. Improve efficiency and quality;
- b. Improve access and reach;
- c. Improved quality by reducing out of pocket expenditure;
- d. Regulate services & accountability and opportunity to pool in and augment resources.

Women in Power and Decision-Making

The Indian national movement for independence saw the participation of women in large numbers, be it in the Mahatma Gandhi inspired peaceful satyagrahas or the women's movements demand for women's suffrage. Nor were they left behind in revolutionary activities. This generated an expectation that they would become equal partners in the democratic processes of India, however, such expectations were soon belied. Post-Independence period did not see an increased participation of women in politics. Today, politics continues to remain a male dominated sphere, despite the fact that Indian women were granted political rights without much struggle with the dawn of independence.

The Constitution created a base for equal participation of women. Even so, women have not been very active in politics. Gradually the recognition has dawned that the marginalization and invisibility of women in governance and decision-making has been the root-cause of their subordinate status in the family and society. This realization, coupled with the fact that the skewed nature of the political institutions resulted in lop-sided development, has led to concentrated efforts to include women in the political process.

Accordingly, Feminists have also started challenging the legitimacy of existing governance structures and institutions and their functioning in ways that perpetuate gender based discrimination. It is asserted that bringing in a critical mass of women can facilitate Good Governance, which is also based on participatory, consensus oriented approach, wherein the government is accountable, transparent, responsive, effective, efficient, equitable and inclusive. In short, women's qualitative and quantitative participation at all levels of governance structures is emphasized not only for their own empowerment but also for the overall sustainable development of the society. Moreover, bringing women into power is not only a matter of equity or of correcting an unrepresentative system, but a means of addressing

wider social issues of poverty, illiteracy, unemployment, health, conflict situations, violence against women etc.

Women's political representation in India has seen substantial gains over the decades, yet, this has not been adequately reflected in the representation of women in positions of power. There is still a wide gap between the Constitutional guarantees and actual representation. Women's representation has always been very low in the Parliament and in the State Assemblies, the picture is all the more dismal.

It has also been found that there is no relationship between the higher voter turnout among women voters and their gender interest. - voter participation therefore does not lead to empowerment of women - on the contrary it does become a tool in the hands of community leaders in their caste/community interests .

There is an inverted relationship between the levels of political participation and the extent of women's participation - higher the level of participation lower the number of women - the number of women at the highest levels of participation - The number becomes lowest where decision making, holding of power and positions are involved. In the pyramid of political participation, lowest level is that of voting and that is followed by the level of party identification; campaigning; party membership; party activities and holding lower positions within the party; party leadership; contestants in elections; legislative membership - as panches, sarpanches, as MLAs, as MPs; members of various committees of legislature; holding positions of power as ministers. As the history of the political participation among women shows, there is a huge gap between men and women in political activities beyond voting. Some visibility of women as campaigners is present but very few women became contestants. The proportion of women who contest as compared to that of men continues to be quite low - women are generally not seen as having winnability and therefore are denied tickets. However, as the data shows the winnability among women candidates is much higher as compare to the male candidates.

It is also found that the absence of critical mass of women in the state and national legislatures make them ineffective and they are not able to work in their gender interest. It is seen in general that even the elected women representatives do not represent the gender constituency. Their politics is appropriated by the caste and community leaders.

Alternatively, their politics remains gender-neutral. Even when women hold positions of power, they are not inclined towards gender politics.

Political parties that can play crucial role in mobilising women and encouraging them to participate are in their own bogged down by the patriarchal norms. Women do not form a politically important constituency and hence rarely women are wooed as women during the electoral process. Every political party has a woman wing but this wing is more of token rather than any significant presence. It is at the lowest level of party politics where women are involved. They are given soft roles, and are asked during election to campaign among women voters. Beyond a point, women within the political parties find it difficult to rise within the party hierarchies. The decision making positions of the parties have negligible presence of women. Even senior women with large experience are sidelined when it comes to allocating positions of responsibility within the parties. This is true of all the parties including the parties with progressive agenda - like the left parties. Lack of exposure to women within the party makes it difficult for women to qualify as the party candidates. Hence, the number of female candidates compared to male candidates remains quite low and in many cases women are assigned weak constituencies.

The only way to rise in politics for women is through the family connections. Most of the women who are visible in politics and have made a mark, have entered through a family connection. There are very few women who have risen in politics on their own without any male or family connection. Family connection makes it easy for women to overcome the social and cultural barriers that obstruct women's entry into politics. The formal politics still is governed by the public-private divide of patriarchal nature. Even while crossing the boundaries of this divide, women are essentially defined with reference to the private familial roles and politics being in 'public' domain provides various challenges to women. Women therefore either are not oriented towards the career in politics or if oriented towards it, find it difficult to pursue. Hence, the familial route becomes easier for women to enter into politics. There are not many models of women representatives outside the family connection. But there are such models in the non-formal politics of social movements. Women like Aruna Roy identified with the right to information movement and Medha Patekar, leader of the Narmada Bachao Andolan (NBA), Sharmila Irom, reflect another reality of women's politics and also raises questions about the space that women have within the formal politics, and especially within the political parties.

Until the time the reservation for women in the leadership position is not legally provided, there should be emphasis on political parties allocating at least one third of the tickets to women and gradually increasing the number to fifty percent.

On the whole, sustainable and holistic development is impossible in the absence of women in decision-making, for only the entry of women into decision-making processes would bring in women's perspectives and raise issues of significance to the entire nation. This necessitates concerted efforts for which a few recommendations may be made:

Reservation of Seats at all Levels: ensure at least fifty per cent reservation for women in the Local bodies, State Legislative Assemblies, Parliament, Ministerial levels as well as all decision-making bodies of the government.

More women could be included in the nominated members of Rajya Sabha.

Improving quality of Women's Representation through structural changes: We need to look into the structural context of women's lives and work, including the informal sources of power and decision-making.

Capacity Building: Capacity building programmes need to be launched on a large scale. The content must be carefully decided to include gender sensitization as well as awareness of all aspects of decision-making so as to ensure effective and sensitive responses to crucial women's issues such as violence and domestic violence.

Changing Criterion for nomination: Where there is nomination to any political body, the governing criterion should not be political loyalty but proven record in protection and promotion of women's rights.

Changing Role and Obligations of Political Parties: Political parties need to focus on women's concerns, give tickets to women candidates; take strict action against those accused of gender violence or discrimination; include women at all levels of party hierarchy

Role of Election Commission: The Election Commission of India too can play a pivotal role by holding parties accountable for their stated rules and promises in their Constitutions and manifestos.

Role of Women's Studies Centres: Women's Studies Centres in each region should be identified on the basis of expertise as a Nodal Centre to cater as a regional Leadership Development Training Centre for the elected representatives as well as for the interested or would be emerging women leaders so that we can have trained women leaders.

Electoral Reforms: state funding of elections, change in electoral system, can think about proportional representation.

Combating Criminalisation of Politics: Effective efforts must be made to combat criminalization of politics in general and elections in particular.

Consciousness Raising: Concerted efforts must be made to raise consciousness regarding increasing gender inequality and the ways in which stereotypical gender roles create both formal and informal barriers in the way of active and effective political participation of women.

Addressing the Five 'P's; The key barriers that restrict women's proactive participation in the electoral process need to be addressed on a priority basis.

Ensuring women's participation in household decision-making: A key strategy would be to encourage women's participation in household decision-making for only when women have space for themselves in the household will they be able to acquire a space in political arena.

Strengthen capacity of State to deliver: We need reforms that break the culture of bureaucracy and build an administrative system that privileges local autonomy over centralized control and rewards leadership and innovation over rules and guidelines.

Research: There are researchers who are engaged in studying women's political participation, identifying factors that impede or promote women's active participation in electoral politics. Hence there is a need for all these efforts to converge.

Mahila Gram Sabha: Mahila Gram Sabha's as set out in the Maharashtra Act would provide women with the playing field for garnering political experience and would also help raise women's issues. These must not only be made compulsory, but steps should be taken to ensure that they are made functional.

Marginalised Women and Women in Difficult Circumstances

Women in India are not a homogeneous group. They reflect the pluralistic society that India has – religion, class, caste, ethnicity, region etc., are all woven into the mosaic. In a society which practises discrimination based on class, religion, caste and ethnicity, women from particular classes, religions, castes and ethnic backgrounds are marginalized in multiple ways, given that patriarchy and gender based discrimination cuts across all these backgrounds. Using the concept of intersectionality, where these women experience overlapping and interconnected systems of oppression and discrimination, we examine the status of dalit women, muslim women and adivasi women in addition to single women including widows, elderly women, differently abled women, transgender persons and women in sex work in this chapter. Despite the understanding of this “intersectionality” approach gaining traction in discourse and understanding, it is seen that when it comes to implementation of many policies, laws and schemes, the approach is still piecemeal. It is not only in the state interventions that these most marginalized women fall through the cracks, but sometimes also in the civil society work. It is very important to recognise that unless equality and justice issues of these marginalized women are not met squarely, the overall status of women is not likely to improve. We note that the Committee on the Status of Women’s “Towards Equality” report (1974) did not pay detailed attention to these marginalized groups of women. This HLC notes that these marginalized women can no longer be ignored if women have to achieve equality and there has to be an equitable investment on empowering them.

There are issues of marginalization, discrimination and impoverishment that these social groups in their entirety are facing. Survival and identity issues of the communities subsume the interests of women in the communities. It is apparent that interventions at the community level are as important as specifically supporting women in these communities to realise their rights.

It is important to note that together, these women constitute substantial numbers. The discrimination, marginalization and social exclusion that women (and girls) from these social groups and communities experience effectively means that the overall status of women in India also gets pulled down substantially. More importantly, it is unconscionable that the basic rights and entitlements of a large chunk of Indian women are violated in a routine manner; a full picture of the magnitude of marginalization of these women is unclear given

that no disaggregated data systems exist on several issues pertaining their lives. While this summary attempts to present a broad stroke picture of these marginalized and vulnerable women, in the main chapter, detailed analysis of the various aspects of these women's lives is presented.

Large Numbers of Women are Marginalised Amongst the Marginalised: Dalit women are 100 million in number (Census 2011), Muslim women more than 67 million (Census 2001), and ST women are around 52 millions (Census 2011): *out of 586.5 million females in India, these three groups of women add up to 219 million.* It is estimated that there are 58.6 million single women in 2011, with widows constituting about 86% of all single women. Overlapping quite a bit with this group of widows is a larger than 50 million population of Elderly Women in India (out of a total of 100 million elderly persons in the country by 2011). These single women and elderly women are obviously from all socio-economic groups. Census 2011's count of transgender persons at 4.9 lakh citizens is thought to be an under-estimation. 9.3 million of India's women are counted as differently-abled, as per Census 2011. These women are seen to be mostly from a poorer class, with the relationship between disability and poverty, and vice versa, well-established. In terms of the numbers of women in sex work, it is estimated to range from 8.68 lakhs to 12.63 lakh women. Very often, as these groups of women point out, 'they fall through the cracks of their intersectionality': their issues of marginalization and injustice are not placed in the forefront either by the women's movement or their community's movements, while the state does not always focus on the most marginalised. The lives of these women run in vicious cycles. It is seen that dalit, muslim, adivasi, elderly and differently abled women have very low educational attainment. Further, while Adivasi and dalit women have a relatively large workforce share, Muslim women have the lowest work participation levels. Still, poverty levels are high for all these groups. Financial services hardly reach them. While sex ratio amongst Dalit, Adivasi and Muslim communities is better than the total population's, it is a matter of concern that even in these communities, there has been a decline between 2001 and 2011 Censuses in child sex ratio. These are communities that are acquiring some negative influences from the 'mainstream' society. The health and nutrition status of these women is a matter of great concern and healthcare services and facilities are not easily accessible to them – this applies to all these groups of women. In terms of violence, all these women are seen to experience high levels of violence at home and outside. Additionally, these women are also considered as embodiments of their community's identity/honour and are therefore subjected to a great

degree of violence. When it comes to customary practices and personal laws, Adivasi, muslim and dalit women are far from being equal to their male counterparts and these laws and practices are in fact actively used against them by the community's men.

Dalit Women: Dalit women are particularly marginalized because of continuing practise of untouchability and other forms of discrimination and segregation. There is much evidence to show that they experience discrimination in accessing various services, are even barred from many occupations, receive lower pay and face high levels of violence. While dalit women as a whole have made remarkable strides in terms of literacy, dalit girls still constitute a large proportion of girl children drop-outs. In the economic sphere, dalit women's opportunities are limited given the caste biases and stereotypes that are perpetrated – they are into menial and underpaid jobs and large majority are into agricultural labour. Caste-based discrimination is faced even in urban India. The work participation for rural SC women is on a decline. Financial inclusion is meagre. It is seen that there are stark disparities between dalit men and women, as well as dalit women and other women. In various schemes and services, discrimination practiced against dalit women has been documented – this is in the case of drinking water, mid-day meal scheme, ICDS, health services, PDS etc. In terms of political participation, at the PRI level, it has been recorded in various studies that dalit women, despite tremendous odds pitted against them in terms of effective functioning, dalit women are working well, including for their own community's benefit; there has also been backlash from upper castes. A matter of utmost concern is the violence and abuse that dalit women are subjected to. Caste based violence is perpetrated against them all over the country which includes rapes, parading women naked, shaving of their heads etc., wherein the woman also becomes the embodiment of her caste, and she is used to teach a lesson to the dalits by the upper castes.

Muslim Women: Though the Constitution of India has provided its citizens with equality of status and opportunity, and justice to all in its Preamble, it is seen that Muslim women – being part of Muslim community - are lagging behind in almost all key socio-economic indicators of development. Further, issues of Muslim women have been at the center of debate since independence and apart from their own perspective, the debates have often assumed sensitive legal, social and political perspective from time to time. The Shah Bano case in 1986 has impacted the Indian polity to a great extent, and accordingly various aspects of Muslim women's issues have been under discussion. Muslims are 13.4% of population as

per census 2001, and 6.68 crores of Muslim women constitute an important part of our population. It can be seen from the details provided in this chapter that Muslim women suffer from economic marginalization, educational marginalization, social status, and suffer from domestic as well as communal violence spurred by identity politics. Muslim women are second lowest on WPR and lowest on labour force participation rate. They fare lowest in employment parameters as compared with other religious communities. In terms of financial inclusion too, their status is low. Further, Muslim women are lowest in literacy amongst all religious groups (50.1%) and only 11.2% reach the matriculation level. There are large dropouts at primary level and several women have put up their testimonies of hard struggle to get some education. It is also seen that Muslim women lack in health parameters partly due to lack of existing schemes reaching to them, and partly due to the limited mobility on account of ghettoization, which has been created after riots and communal violence. Muslim women have also been suffering in conflicts and riots, and are required to take shelter in rehabilitation camps. This has created security concerns for Muslim women, which are overriding their other issues. The above analysis which is detailed out in the chapter, clearly indicates the status of Muslim women as marginalized within marginalized. Further, Muslim women are also big sufferers of male-centric legal provisions of triple oral talaq (divorce), polygamy, customs such as Halala and lack of maintenance. Victims of these practices are further pushed into poverty, and many organizations have been demanding reforms in such laws. As surveyed by some researchers, Muslim women themselves are aspiring for education for themselves and their girls; in spite of all odds, they want their daughters to become Police officers, Doctors, IAS officers etc. and it is a big challenge in front of our education system to improve in terms of quality and accessibility. As expressed by many Muslim women, they seek education which can provide Hisab, Hunar and Himmat (Numeric ability, skills and empowerment) to their daughters, and Shiksha, Suraksha, Rozgar aur Kanoon (Education, Security, Employment and Law) as their major demands.

Adivasi Women: It is noted that Adivasi communities in many places are waging a struggle for survival and dignity. There is dispossession, displacement, poverty and malnutrition noted, and women are worst-affected. At one level, Adivasi women, amongst various social groups, are seen to have relatively greater parity and autonomy in several ways, when compared to women from other communities, vis-à-vis their men. This is in terms of mobility, household decision-making processes, employment, wage gaps, choices of life partner, divorce/separation etc. One of the primary manifestations of this is the relatively

good sex ratio that exists in this community. Although this situation is changing, this is mainly correlated with the fact that their dependence has been mainly on commons (especially, the rural, forest-dependent adivasis), equally controlled and accessible to them as to their men, unlike for other communities where private ownership of resources is in the hands of men. On the other hand, gender gap in literacy rate increased for STs while it declined for the total population, between 2001 and 2011. Severe malnourishment amongst Adivasi women and children is a matter of urgent concern. Maternal and Reproductive health care for women has not been extended to cover Adivasi women fully, and it is seen in grassroots studies that there are tribal villages where women have never received any antenatal care. Health insurance coverage is the lowest. Drinking water facilities and toilet facilities are in the worst shape when it comes to adivasis. Poverty was the highest amongst adivasis. While work participation rates of Adivasi women are higher, and on the decline in rural and urban India; wage rates are lower, and landlessness of rural Adivasi households is increasing. NREGA's days of employment for STs, in a worrying trend, is showing a decline. Adivasi women's land ownership is determined by customary laws that are pitted against them. On the other hand, FRA implementation is slow and somewhat antithetical to the spirit of the law. The pro-women provisions are weakened in implementation. Minor Forest Produce related schemes are not running strongly at this point of time, and are inadequate in supporting forest based livelihoods. While the situation of livelihoods is a matter of urgent concern, displacement, conflict and militarisation, migration and trafficking are issues confronting Adivasi women, who are disproportionately burdened, and made vulnerable. Violence against ST women is very high, including spousal violence – rapes are on the rise, conviction rates low. Customary practices like witch-hunting and ostracisation are ways by which Adivasi community keeps the women subordinate and under control. Political empowerment of Adivasi women in fifth schedule areas is underway, whereas they are kept out of governance in the sixth schedule areas. Adivasi women, like the entire community are currently in a struggle against forces that threaten tribal identity and challenge their survival.

Single Women: Moving on to single women, it is seen that incidence of singleness is much higher for women than men, and numerous socio-cultural, psychological and economic factors make them vulnerable and marginalized, and this relative. Within single women, it is seen that divorced/separated women have greater stigma attached and unmarried women and their status has not been much-researched. Widows are the largest category of single women (86%), and face high levels of deprivation, social taboos, limited freedom to remarry,

insecure property rights, social restrictions on living arrangements, restricted employment opportunities, emotional and other forms of violence and lack of social support. However, widows are still relatively better off than other single women (divorced, separated, abandoned etc.). This appears to be connected to inheritance laws and the fact that some proportion of widowed women do manage to secure land and property in their names. It is also seen that a relatively better situation of widowed women is also a function of their age and duration spent in marriage. The number of divorced/separated women is increasing for all ages in India, and their numbers compared to men are increasing too. Currently 0.6 per cent of all women in India are either divorced or separated compared to less than 0.3 per cent men. A high proportion of these women are divorced or separated legally at a young age in rural India too as per a recent study (65% before reaching 25 years of age). This implies that a majority of divorced and separated women would suffer from abuse and violence for a very long time, given their unique vulnerabilities after getting divorced and separately, particularly if they were poor, illiterate and had no asset on their name. Evidence shows that almost half of these women do not ask for maintenance after divorce. Evidence also shows that these women are subjected to high levels of violence, including from the marital family even after the divorce. "Half Widows" are another category of single women who face unique challenges when their husbands go missing for a long time. Unmarried or never married women is the last category of single women, where society blames them for remaining single, and they live with constant fear of insecurity with advancing age. Health remains one of the most neglected area for all these categories of single women, apart from access to property rights and violence.

Elderly Women: The issues of elderly women are to be taken cognizance of since India will have 20% of its total population becoming elderly by 2050, and most of them would be women who have attained 60 years of age (noted as feminization of ageing in India). These women face neglect, isolation and destitution, with a large chunk of them living on their own. Many also face abuse, including physical abuse, even as reporting of such violence is low for a variety of reasons. Their health needs are neglected and poor nutrition and food intake makes them more vulnerable. Elderly women are more likely to be widowed, illiterate and without active economic participation, when compared with elderly men. Social exclusion takes several forms like lack of participation and integration into families, spatial segregation at home and lack of inclusive care and support. As a country, India is losing the opportunities

of facilitating for active ageing, and not tapping into the potential contribution that these elderly can make in all spheres of life.

Transgender Citizens: In India, transgender people face numerous forms of discrimination and injustice, exclusion from effective participation in social and cultural life, education, economic sphere, political and decision-making processes. Examples include barriers to marriage with a person of their desired gender, child adoption, inheritance, association as a trust, employment, access to health services etc. The landmark Supreme Court judgement of April 2014, giving them the status and recognition of the Third Gender holds great hope for ensuring their basic rights. An Expert Committee of the MoSJE in its report of January 2015 recommended that the transgender person must have the choice to declare oneself as man, woman or transgender, independent of surgery or any other medical intervention. The criminalization of transgender persons is objectionable, as is their exclusion from various spheres of life. Lack of livelihood options and coverage under healthcare services, in addition to violence and abuse that they face, are major areas of concern here.

Differently Abled Women: Apart from the gender based injustice, women who are differently abled also face invisibility, social exclusion, vulnerability and injustice due to their disability. Pity, segregation and stigmatization usually accompany the disabled in India. Girls and women are left neglected and are often considered a burden. A majority live in poverty and are highly vulnerable to violence. Employment levels are quite low, especially for particular kinds of disabilities. Disabled girls are less likely to attend schools than disabled boys and have limited access to skill building trainings to suit their abilities. Health services, especially as related to sexual and reproductive health, are often seen to be denied to disabled women. Sexual abuse is quite common especially among women with mental disabilities. Women are also put through forced sterilization. The prospect of marriage is usually beyond the realms of possibility. In terms of political participation, apart from not being able to be EWRs, these women's rights as voters are also violated when voter cards are not made available or voting centres are not barrier-free etc.

Women in Sex Work: We add this group of women into this chapter given the high levels of criminalization that they face from the state, even though they are victims of illegal trafficking in most cases. These women, like the other women discussed in this chapter face discrimination, social exclusion and stigmatization and basic services and support systems are denied to them. Healthcare services, proper housing, livelihood opportunities, protection from

violence etc., are not accessible to them. In the name of rescue and protection, women are confined to protective homes as well as corrective institutions of 're-education' and 'correcting'. There is a moralistic approach taken to sex work by the regulatory authorities, even as inadequate support is available for checking trafficking in the first instance.

Our Recommendations

Dalit Women:

- For economic empowerment of women, it is important to take up committed land distribution and purchase efforts, wherein landlessness is firmly tackled by giving land to dalit women. Enterprise efforts of dalit women and their collectives have to receive higher allocations, even as financial inclusion should have ambitious targets set to cover all dalit women. Relief from caste based occupations is important, and the government has to invest on rehabilitation of manual scavengers, devadasis and others. Decent employment, through public works and self-employment should be provided. The government should provide optimum loans, infrastructure and market facilities for Dalit women cooperatives and groups, and guarantee marketing of their products.
- When it comes to Violence against dalit women, there has to be decisive action in curbing it. Recruiting dalit women into all levels of the police force is a needed step. Amendments suggested by dalit groups to the PoA Act should be brought about. Swift disposal of legal cases will lend confidence to the women about justice and redressal mechanisms, and will propel them to seek such justice pro-actively.
- Regulation has to be visualized and brought in against caste based discrimination in PRIs, public health institutions, in various schemes etc., apart from pro-active prioritized investments for equality of dalit women.
- Special targets have to be set and met for improving access to maternal healthcare and girl child nutrition in the case of dalits. Proactive selection of Dalit women as service providers/health-link workers, trained and deployed to administer schemes and programs that are meant to reach out to dalit women, would help in ensuring effective outreach of such schemes.
- Training (including introduction to basic technologies) and awareness programmes for Dalit women representatives in the Panchayati Raj institutions will go a long way in making them self-reliant and effective. It is seen that any adoption of norms like the 2-

child norm that restrict political participation usually impact dalit women more adversely and should not be adopted.

- Education has to be made the central force of empowerment - to ensure inclusion and equality of dalit women with others, more pro-active measures for improving enrolment and retention at every level of education is needed, especially encouraging enrolment in higher education. Lateral entry of dalit women into various streams of education and skill development, without the baggage of younger years' disadvantages coming in the way, is important.
- There has to be a fixed, 50% allocation of funds for dalit women within the SCP.
- It is also important to ensure that disaggregated data systems are maintained at all levels so that the situation of dalit women specifically is readily available in all domains even as impact of interventions also gets measured through such disaggregated data systems.

Muslim Women: The major recommendations include –

- The appointment of a special commission on status mapping and recommending actions on issues of Muslim women; this is necessary considering lack of detailed data available so far
- Further, to improve economic participation of Muslim women, considering the nature of work in which Muslim women are engaged, it is recommended that the ministry review the current schemes for Muslim women and assess effectiveness in terms of social indicators, and to include schemes for support to new skill-based vocations. It is important to have special schemes in association with Mahila Bank and Nationalized banks for availability of credit to Muslim women, which is observed to be a big constraint now. As regards their employability, it is often put up by the women that they face discrimination, which is a general issue with Muslim community; Justice Sachhar Committee had recommended an equal opportunity commission which has been announced but needs to be made effective from Muslim women's perspective.
- To improve educational status and literacy, measures are recommended to improve accessibility such as availability of girls' schools, hostels, and implementing RTE provisions in letter and spirit in favor of Muslim girls and parents. It is also recommended that in order to improve quality of education from parents' perspective, review the curriculum to add latest vocational life skills and make it more friendly and flexible for

migratory communities like Muslims. It is recommended that measures should be taken to increase participation of Muslim women in mainstream educational institutes.

- The healthcare schemes should be monitored for Muslim women's participation and a social audit needs to be done to assess inclusiveness of such schemes.
- It is further recommended that programs like Mahila Samakhya be taken in Muslim intensive areas and made accessible to Muslim women, and be used for leadership development and socialization of Muslim women.
- Security has become a major agenda for Muslim women post riots in the last decade. Many Muslim women continue to live in rehabilitation camps at riot-hit areas. It is essential to have a speedy rehabilitation of women in relief camps, along with delivering speedy justice as an immediate objective. There should also be long term measures to prevent communal conflicts and to create a peaceful environment.
- It is also seen that while implementing various schemes, the authorities need to be properly sensitized so that the community gets empathetic support.
- As regards issues of Muslim women and personal laws, it is recommended that a panel of experts, individuals and representative organizations be constituted with a mandate to propose reforms in personal law in favor of women and create a consensus around same.
- It is also recommended that there should be an immediate ban on practice such as Fatwas which are mostly against the interests of women.
- Muslim women are seen to be preferring court of law for justice and it is recommended that justice through courts should be made accessible and fast, so that she is not required to go to unconstitutional arbitration courts.
- In spite of their political awareness as seen from surveys, the dismal representation of Muslim women in Parliament and state assemblies is a major concern and it is recommended that the schemes for leadership development of Muslim Girls and women be redrafted, building upon existing schemes like Nai Roshni.
- It is also recommended that Muslim women from Muslim OBC's and NT/DNT castes are further at lower ladder of development, government needs to institutionalize special schemes for them.

Adivasi Women:

- (Attention and interventions have to focus on effective implementation of Fifth and Sixth schedule provisions, laws to prevent alienation of tribal land and restoration of alienated lands, PESA and FRA 2006, to ensure that deprivation, poverty, poor health and

educational status, exploitation by outsiders, degradation of livelihood resources and so on can be squarely addressed by Adivasi communities. There is a need for prevention and where absolutely needed, minimisation of resource alienation from the adivasis, that too with prior informed consent of the gram sabhas. It is these conditions that will facilitate the autonomy and equal status of Adivasi women within their communities.

- On the economic front, sustainable natural resource management should be the focus to improve the livelihood base of the communities. This includes forest conservation, ecological agriculture, restoration of water bodies etc. Investments should be on MFP-based collective enterprises including processing and value addition, ensuring MSP for forest produce, taking up organic farming collectively and supporting marketing initiatives of the same, and conservation of forests with full involvement of the community with women partaking equally in the governance of the forests.
- (NREGS outlays should be enhanced in Adivasi areas) with greater focus on works that empower women in direct and indirect ways, and this cannot be allowed to be diluted. These works should have an eco-restoration focus for further enhancement of NRM-based livelihoods.
- Implementation of FRA in letter and spirit is important, to ensure that the provisions of securing rights of adivasis as well as affirmative provisions for empowering women are not diluted or violated; this should also include making sure that women are a part of all the institutions set up under the statute.
- On the nutrition and health front, immediate steps are needed to ensure that Adivasi women have access to basic amenities including equitable maternal healthcare services. This includes emergency healthcare services, better coverage of ICDS programme including with flexibility in norms for mothers, children as well as adolescent girls and a specific focus on recasting the public distribution system efforts to include millets, pulses and oils also. There should also be an increased focus on the role of uncultivated forest foods in the nutrition security of women and children. This then should also recognise and respect the traditional knowledge systems of Adivasi women as a key element to secure their right to health and well being.
- There is a need to cover all Adivasi households for potable drinking water and toilets.
- A distinct Action Plan Against Violence & Crimes Against Adivasi Women has to be put in place by the Ministry of Women and Child Development along with other related Ministries including Ministry of Tribal Affairs and Home Ministry to ensure that there is

greater awareness about various laws with Adivasi women, that various departments are sensitised and oriented properly in the discharge of their duties towards these women, that the official records across departments are maintained in a gender-disaggregated data for more focused interventions, that there are helplines and one stop protection and restorative justice centres set up in an accessible fashion and in adequate numbers with appropriate medical, legal and counselling services attached, that rehabilitation component is strongly embedded etc.

- De-militarisation, peace-building and repeal of AFSPA should be an integral part of this.
- There is an urgent need to ensure safe migration, and prevent trafficking – for this, effective implementation of the inter-state migration act and trafficking laws is essential. There should be accountability on police forces with regard to inability to check trafficking. In all these aspects, more participation from the communities themselves can be ensured including women's SHGs by incentivising such groups which take up community level monitoring for the sake of their sisters. There is a need to enact a legislation to uphold the rights of domestic workers which is long due.
- Special efforts should be made to ensure the political participation of Adivasi EWRs even as 50% reservation is brought in in the local councils in the sixth schedule areas.
- Customary laws and practices that discriminate against, and violate constitutional guarantees to Adivasi women have to be changed to ensure that Adivasi women are treated on par with their men in all matters. Practices like witch hunting have to be curbed effectively by prompt and deterrent punitive action against culprits.

Single Women: Much more research is needed to understand the situation of single women according to typologies and how they cope with hardship of life as well as what could be done to ameliorate their situations.

- Ensuring the realization of property rights of different kinds of single women should be a priority in terms of interventions; here, any customary laws that deny equal rights to women should be changed and brought on par with the constitutional guarantees to all women in India – this requires awareness building both within the government machinery and the women and their communities. Registration of property including land jointly in the name of wife and husband at the time of marriage itself should be made mandatory (as in the Goan law). The Marriage Laws Amendment Bill 2013 which needs to be brought to the Lok Sabha should be used for providing for division of matrimonial property which

rightfully recognizes the home-maker role of an overwhelmingly large number of women in India, in cases of divorce.

- Empowerment programs for women to help them address issue of violence from all sources including their own families, by their collectivization would be a way forward.
- Commendable work done by activists to mobilise single women must be recognized and the government must support through resources groups like Ekal Nari Shakti Sanghatan.
- Any schemes formulated for single women, like the widow pension scheme for instance, should be designed in a way that a dignified living is ensured for the women – right now, the monthly pension per person in the pension schemes is too low and the procedures quite tedious. Such social security support should also be expanded to all single women and universalised.
- It is abundantly clear that there is a need to come down heavily on dowry, as women seldom recover their dowry and *sthree dhan* through the law.
- Activists point out that it is vital to have a policy on widows that acts as a guideline for all projects and programs mandated to empower widows. The policy should ensure, and attend to the needs of the economically and socially weaker sections of widows, including from the minority communities. Such a policy should have a component of encouraging widow remarriage amongst many other proactive measures.
- An action plan is required to end cruel, dehumanizing, repugnant and discriminatory cultural and religious practices which demean widows.
- Within 50% reservation that has to be created in all governance/legislative bodies for women, there should be a reservation of at least 8% for widows, in order to ensure that their concerns are raised effectively.
- In the context of conflict areas and the situation of widows and half-widows there, there is a need to review any human-rights-violating laws like the Armed Forces Special Powers Act and Public Safety Act and repeal such Acts and clauses that give excessive powers to the state that lead to human rights violations.
- In all livelihood interventions, including ones which are into skill-building, there is a need to amend the upper age limit, and reduce the minimum educational qualification, so that many uneducated widows can obtain training and skill upgradation.
- Instead of household as a unit, an individual has to be made into a unit in various schemes and programmes so that women can avail of such schemes.

Elderly Women:

- Adopting the National Policy for Senior Citizens, setting aside adequate financial resources for the same, along with building appropriate institutional mechanisms, will go a long way in ensuring that India's elderly women have an active and dignified life. This has to be done immediately given that the draft policy has been ready since 2011. This policy should be based on the fact that there is feminization of ageing.
- The schemes available for elderly women need monitoring in their implementation, to be made more easily accessible to the women. They should also be put through social audits by the women beneficiaries. The current pension schemes are very low in their quantum of support and the same has to be enhanced immediately to accord a life of dignity, with all basic needs met in a decent fashion, for all elderly. To ensure that there are no errors of exclusion in targeted schemes, universalization of such social security is an imperative. Access to such schemes has to be hassle free, and there has to be a pro-active approach from the State to cover all eligible. Food security schemes should apply uniformly to all elderly women without exception.
- To make concepts like 'rights-based approach', 'active ageing' and 'ageing in place' a reality, there is a need to promote changes in social attitudes, including in the attitudes and expectations of older persons themselves, as well as others – this then requires campaigns and sensitization efforts. This also requires providing elderly women (and men) with all opportunities for contributing productively to the family, community and society, including through skill-building where possible and needed. On the other hand, it should also be recognized that elderly women are repositories of much knowledge and skills in several areas of life, including in agriculture, food processing, traditional healthcare etc.
- Barrier free physical infrastructure and assistive technologies are important to be put in place to facilitate mobility and access, including for accessing employment opportunities.
- Loans and micro-finance alternatives for elderly women should be strengthened to provide them with socio-economic security. Self-help-groups of elderly women who wish to work should be sponsored and supported by the government. Given that MGNREGS articulates the commitment to support elderly women, the same should be planned for diligently in all Panchayats and executed. There should be subsidies and tax incentives furnished to companies that employ a certain minimum percentage of older women.

- There is a need to strengthen health research to understand the needs and problems of elderly women. Existing healthcare system should be made elderly-friendly, by establishing new infrastructure wherever required. The healthcare system should be made affordable, easily accessible and sensitive to the elderly, especially elderly women. Right to Health includes a number of services that include preventive geriatric care, home health service, group healthcare insurance products, long term care and palliative care. *One Stop Centres* can be created for elderly women to cater to all their health needs (consultation/counseling/pathological examinations etc in addition to addressing any abuse/violence issues) under one roof.
- The state has to support adequately the promotion and establishment of senior citizens' associations, especially amongst women.

Transgender Persons:

- Following Argentina's lead, India can choose to adopt the Yogyakarta Principles – that is, adopt a model of gender recognition that does not rely on a diagnosis of gender dysphoria by medical professionals, but a self-determination model. This must allow individuals to self-identify their own gender, without any requirement for gender reassignment surgery, divorce, or sterilisation in order to change one's information on ID documents. Sexual reassignment surgery and hormone therapy should be defined as a public health right that is made freely available at hospitals across India. As part of this mandate, resources must be provided to equip medical service providers with adequate technology and skills to undertake these highly complex surgeries. Tamil Nadu already provides free surgery facilities. The government should empanel and develop a network of health (incl. mental health) providers/ organisations who are competent in dealing with all aspects of TG community's problems, including identifying and educating the service providers in the community, and developing linkages and referrals to resources. There is a need to develop programs that will increase knowledge and use of services on high-need or stigmatized issues by transgender people, including mental health, sexual health, gynaecology, HIV testing and treatment, safe sex education, and intimate or family abuse. This will then ensure that transgender citizens have the requisite knowledge and access to various services.
- Discrimination against, and social exclusion of transgender people in India is a fact of life - this is certainly not going to disappear in the near future unless large scale sensitisation

campaigns are taken up. Using the examples of transgender persons who have managed to step out of the stigma trap, it would be useful to motivate other transgender persons to try out newer avenues and opportunities in life, even as such role models can be used to sensitise the general public. More emphasis is needed on a visibility campaign to increase realistic portrayals of role models within the transgender community and important issues confronted by them thus initiating self-advocacy and media relations. It entails more focused work at the community level in cultivating these relationships and in fostering a citizenry more open about all forms of sexuality and gender identities. Here, Social Welfare/Defence departments can develop working relationships with religious and community leaders to de-stigmatize and support transgender people. There is also a need to develop programs to support and work with families, friends and allies of transgender individuals, including social support, workshops on addressing issues of changing times and norms.

- It is important to replicate the model adopted by Tamil Nadu to ensure social protection for transgender persons in terms of identity, housing, food security, employment/economic empowerment, healthcare services, insurance etc., in addition to collectivisation of transgender people.

Differently Abled Women: Proper implementation of the PWD Act requires better and proactive identification and assessment of differently abled women, with the help of community participation (PRI institutions/local bodies, women's SHGs etc.). All benefits, concessions and support services that a differently abled citizen is entitled to, must be reached to them. Pension amounts have to be increased in a manner that differently abled women are not seen as a burden by their family and can have a decent living assured. All outlays for the differently abled should have specific allocations for women put aside. Proactive planning for interventions should include organisations and collectives of the disabled and such interventions can also have mandatory social audits put in. There is an urgent need for large scale sensitisation of the general public and families to the issues of differently abled women, even as approaches of collectivisation to the largest extent possible should be adopted with the women themselves. More intense and expansive work is needed towards creating awareness for prevention of disabilities and early detection. Special efforts, including special schemes are needed to improve the educational and employment prospects of disabled women. This also calls for a barrier-free environment to be ensured as a priority. Special provisions in schemes like NGNREGS have to be activated to make sure that

employment opportunities are available for differently abled women. More systematic research, gender-disaggregated as well as detailed in terms of types of disabilities, regions, social groups etc., has to be taken up by concerned departments and agencies (multi-disciplinary teams are obviously required for this), for planning focused interventions to empower disabled women. Data gathering should be disaggregated in terms of gender, age, social group, economic status, region and type of disability. Healthcare systems have to be geared towards pro-actively reaching out to differently abled women, including for upholding their sexual and reproductive rights. Institutional abuse and violence of any kind against differently abled women should be dealt with extremely strictly, with zero tolerance. This requires a pro-active vigilant attitude from different agencies including the police. An action plan for ending violence against women should have a specific plan for ensuring that differently abled women are safe from violence. Rights of political participation should be ensured in a de-facto fashion, and good practices related to active participation of the disabled in governance should be replicated on a large scale.

Women in Sex Work: There is a need to re-conceptualise our approach to sex work. Trafficking is a criminal offense and should not be conflated with sex work. This applies to all stakeholders, including policy makers and law makers as well as law and order machinery. An immediate measure to be ushered in is to decriminalize women in sex work. Whether it is a woman who has been illegally trafficked and forced into sex work in which case she is a victim of such trafficking, or whether it is a woman opting for sex work willingly, it is apparent that the woman in sex work cannot be criminalised. Section 8 of ITPA should be deleted immediately. Further, all clauses that take an archaic and moralistic view on reforming and disciplining a woman in sex work should be deleted. This includes forcible detention in corrective institutions as well as protective homes. The advisories put out by the Home Ministry and several state DIGs to the police not to invoke Section 8 should be implemented in all its spirit with immediate effect even as a deletion amendment is taken up. It should be ensured that IPC sections 268 (public nuisance) and 294 (obscene acts) are also not used to criminalise these women. Similarly, Section 20 that empowers a magistrate to remove a prostitute from any place should be repealed. Violence, especially by and in state institutions, should be dealt with strictly. To protect the woman in question, it is seen that the existing rape laws in India are sufficient, if the enforcement agencies have the correct spirit and will of application of this provision. Ensure participation of sex work organisations in drafting/amending laws, policies and programs relevant to them and in its eventual

implementation process. Strengthen National Human Rights Instruments (NHRIs) and increase their accountability to respond to complaints or initiate *suo moto* action reports of violence and rights violations by state and non-state actors against sex workers. Where the woman so wishes, it is the responsibility of the government to ensure that comprehensive shelter, rehabilitation and restorative justice services are provided, and therefore put into place adequately. Schemes like Ujjwala should be expanded and strengthened in their implementation to prevent trafficking. Special provision should be made for children to have access to education, nutrition and healthcare. In the current scenario where sex work is underground and criminalises the women in question, it is important to have numerous support services expressly for women in sex work, especially through accredited organisations that will facilitate access to food security schemes, healthcare facilities and services, access to good education and employment opportunities, skill-building and credit facilities etc.

Women and Environment

Women's well-being in India, especially rural India, is intimately tied to the state of environmental resources and services – this is related not just to their practical needs but also their strategic needs, especially when it comes to control over, and access to common property resources.

Men and women use these environmental resources differently and they are also impacted in dissimilar ways when faced with environmental degradation. Similar is the differential impact and recovery from natural disasters. It is given this intimate relationship between these resources and women, that women have often been active participants and leaders in struggles for environment conservation, and against resource alienation. With support from civil society organisations, women at the grassroots have also taken up numerous initiatives, including replicable innovative models, to conserve land, water, forest and other commons, biodiversity, sustainable crop eco-systems etc. The skillset and knowledge of women in relation to environmental resources has also been amply demonstrated for centuries.

While women's dependence on environmental resources as well as their ability to conserve these resources is apparent and obvious, planners and policy-makers often think of only men as farmers, fisherfolk, foresters and livestock managers. Planning and implementation of interventions both in the Environment Conservation machinery of the country as well as the

Women's Empowerment machinery do not integrate the reality of women's well-being and their relationship with environmental resources, unfortunately.

The National Policy for Farmers 2007 and the National Environment Policy 2006 do seek to provide a significant role for women, and are forward-looking articulations when it comes to women and natural resources. The National Policy on Disaster Management 2009 includes women's interests in rescue, relief as well as recovery phases of a disaster. It is seen however that NAPCC and SAPCCs are not integrating women's concerns strongly enough. The National Policy for Empowerment of Women 2001 also does not address environmental concerns for women's empowerment in any decisive or strong fashion.

While policy discourse is somewhat mixed as described above, in implementation, gender integration is quite weak, across Ministries, despite an overwhelming majority of female workers living off the primary sector. The Agriculture Ministry has moved ahead with some mechanisms like the National Gender Resource Centre for Agriculture (NGRCA). However, unless the mindset around equating farmers with land owners, and therefore, predominantly men, does not change, and unless all interventions de-link land ownership and actively reach out to women, even as women's land rights are assured for their strategic empowerment, things will not change in reality for women farmers. This is applicable to women across a gamut of farming occupations – cultivation, agricultural labour, forest-gathering, fishing, livestock rearing etc. Ownership and control over resources are critical for women's empowerment; meanwhile, it is also important to recognize their enormous contribution even without such ownership rights vesting with them, and provide them with all support services that men get as 'owners'.

(The importance of village commons for a rural woman's life, that too from marginalized communities, cannot be over-emphasised.) However, the area and quality of commons is rapidly declining and this has a direct bearing on women's livelihoods and even autonomy. The Draft National Land Reforms Policy of 2013 has some progressive perspectives and plans included – however, this has not witnessed progress in adoption.

(It is noted that Time Use Surveys are particularly useful in capturing the relation between women and natural resources,) and are even a barometer on the status of natural resources as well as women's productive and reproductive roles in a household and community. However,

the national statistical systems have not incorporated Time Use Surveys as an important source of valuable information for planning interventions.

When it comes to Governance of natural resources, many new institutions have been created through laws and guidelines accompanying large programmes –biodiversity management committees (BMCs under the Biological Diversity Act), forest rights committees (FRCs under the Forest Rights Act), water user associations, joint forest management committees, watershed management committees etc. are examples of these institutions. Spaces for women's presence and participation in governance have been laid down in these institutions. It has also been empirically proven that women's presence in these bodies makes a difference to the NRM mandate of these bodies in a positive manner. However, in reality, numerous hurdles exist wherein mandatory presence is also not fulfilled even as effective participation is challenging. Participation of the most marginalized women, whose dependence on environmental resources is higher, is a moot point. From various micro-studies, it appears that women's enabled participation in these institutions requires facilitation and handholding by civil society organisations and this is not always built into the programmes.

At another level, environmental governance and regulation related to Environmental Planning, Environmental Impact Assessments as well as Biosafety Assessments at present do not integrate women's interests at present. During an EIA, for instance, the gender impact assessment of any project should be mandatorily studied. Needs assessment and assessment of alternatives should precede or be integrated into such impact an assessment. Similarly, given women's additional vulnerability to environmental toxins, biosafety assessments should include a component of specifically assessing for women's health impact assessment.

It is important to note that women's vulnerability to climate change and at times of other disasters is more than that of men. However, disaster preparedness as well as relief and rehabilitation don't build in a gender perspective adequately enough. This is a matter of concern given how India is prone to numerous disasters, and given that women are mostly in the primary sector and climate change has a direct bearing on their livelihoods.

Other than disasters, women are also vulnerable to environmental health abuse through pollution and unregulated contamination from environmental toxins because of various physiological and social reasons. However, environmental regulation does not lend any primacy to this.

Another area of immediate concern is the severe shortfall in provision of environmental services in India like drinking water, toilets, cooking fuel, safe waste disposal beginning with less waste generation etc., which impact women directly. Amongst marginalized women, this problem is more severe. The absence of women in governance structures in municipalities and delivery agencies related to these environmental services is to be noted. While the state of environmental resources degrades for various reasons, and while resource alienation is underway from marginalized communities in various ways, lack of provision of basic amenities and environmental services will only burden women in numerous ways. This will also lead to a further degradation of resources setting off a vicious cycle. Climate Change will compound the problem.

The key recommendations to reconcile environment and development with a special focus on women include:

1. Adopting an environment-centred growth model is an imperative: Environment-friendly growth tends to be employment intensive. Therefore, there is a need for 'green growth', and the building of a truly 'green economy' especially in rural India, by greening the primary sector. In fact, large scale employment can be generated through proper land, water and biodiversity conservation measures and agro-ecological farming technologies; this in turn will mean more incomes for the small and marginal producers and forest-gatherers where most of our women find their livelihood opportunities. Such a growth can also reduce the instability or year-to-year fluctuations in incomes, which, in turn, can reduce the poverty and indebtedness of the agrarian population. Rural Non-Farm Sector, including construction and manufacturing, needs to be greened too, by adopting eco-friendly technologies wherever such technologies and practices are available or through investing on green technology development.

2. There is an urgent need to integrate the discourse as well as practice on women's empowerment with the sustainable development and climate change debates at the national and sub-national level. This requires consensus and convergence between different ministries - Ministry for Women and Child Development the Ministry of Environment, Forests and Climate Change, Ministry of Agriculture, Ministry of Rural Development, Ministry of Panchayat Raj etc. The National Rural Livelihoods Mission has a specific focus on involving women's collectives into NRM-based livelihood interventions; the MGNREGS also has enormous potential for ecological regeneration. Given all of this, a joint mechanism

in the form of an **'Inter-Ministerial Coordination Council for Engendering Environment Management'** has to be evolved for all these ministries to work together, to put in place an Environment-centred, Women-led model of sustainable development and climate change mitigation and adaptation, with the help of all Ministries concerned.

3. **The need for equitable ownership, control and use of natural resources is critical to secure the asset base of poor and marginalised women and enable them to deal with sustainable NRM and to counter weather shocks and poverty.** It is necessary for government programmes to enable women to own, control and access a variety of economically productive assets including land, livestock, forests, leases on common land and water bodies, as also enterprises based on food processing, production of low-input farm inputs, production of decentralized renewable energy and forest based produce.

5. **Women need to occupy at least 50% seats in all rural and urban (NRM) governance institutions – at decision-making, regulatory and implementation levels, with requisite budgets.** In sectors where women shoulder larger gender-based responsibilities, as in livestock management, collection of non-timber forest produce, water supply and sanitation and domestic energy, women must occupy a higher proportion of seats in governance structures with proportional gender-based budgets. The government should therefore make it mandatory that all institutions using environmental resources should have 50% membership as well as 50% governance roles to women.

6. **Promotion of Ecological Agriculture:** There should be reduced dependence on industrial and chemical (intensive, high-external-input) agriculture, which depends on fossil fuels, subsidies and targeted infrastructure such as irrigation. Chemical agriculture has increased pesticide and fertilizer residues in land, water and food chain leading to environmental degradation as well as environmental health problems like foetal loss, fertility loss and low health status of the children that are borne. This also has a direct relation to women's reproductive rights. The thrust of Indian agricultural policy should shift to organic farming, which is also more employment intensive and which has larger role for women than industrial agriculture.

7. To empower individual women farmers, the **agriculture and related ministries need to revise their approach to 'mainstreaming gender.'** The current approach to gender mainstreaming - lowering of training costs, enhancing subsidies, earmarking (usually 10%, at

best 30%) seats in training programmes and talking of 'small and marginal farmers, *including* women farmers' in the same breath, all reflect the 'add and stir' approach. What is required is genuine decentralization of decision-making and control over productive resources, so that women can participate directly in planning and implementation.

8. Conservation of forest resources: The beneficial impact of women's presence in conservation outcomes has been attributed to their contribution to improved forest protection, rule compliance, more opportunity to women to use their knowledge of plant species and methods of product extraction as well as greater cooperation amongst women. It has been seen that the nature of (forest governance) rules and the processes by which they are formulated (who participates) critically impact sustainability, equity and conservation outcomes and this has been studied specifically in the context of women's participation. Forests have to be promoted as food producing habitats so that it creates a win-win situation for women/child nutrition as well as forest conservation. FRA needs to be implemented in letter and spirit.

9. Universal Provision of Environmental Services: Provision of safe drinking water within premises and toilets for all households in the country should be top priority. There is also a need to supply clean energy for basic needs of households including cooking, and ensuring that indoor pollution is not being one of the major environmental health issues, specially affecting women, in the country.

10. Water Resources: Water resources for domestic use must be made available to all households in rural and urban areas so that it would reduce women's and girls' drudgery in collecting it. This will improve women's health and will increase girl students' participation in education. If land-water management is improved, rain water is harvested through small water harvesting structures, groundwater is recharged with such suitable small localised schemes; it will improve the asset base of a large number of smallholders – a majority of women cultivators are also concentrated in this category.

11. Climate Change Mitigation and Adaptation: The UNFCCC acknowledges the centrality of women in climate change action. Women must be central to all climate solutions because they have a higher interface with natural resources. The government, and specifically the NAPCC and the State Action Plans on Climate Change (SAPCCs), must map gender-based

vulnerabilities and capacities for climate solutions to succeed. Adaptive interventions, as explained elsewhere, also put additional workload on women and this needs to be addressed through better policy interventions.

12. Mitigating environmental pollution by adopting correct environmental governance principles: Industrial and other pollution, including hazardous wastes and agricultural technologies, have severe health impacts and more so for women and children. Hence, the principles of 'precautionary approach' and 'polluter pays' needs to be put in practice at all levels including as core principles in regulating hazardous technologies and industries. There are a slew of environmental laws, many of which are weakly implemented, without liability and redressal in actual implementation. The affected populations are forced to fall back on constitutional provisions to seek legal recourse due to damage to their lives on account of pollution. These legislations need to be strengthened.

13. Mitigation and Management of Natural disasters: Improved environmental status will also reduce risks to natural hazards, similar to that happened in Uttarakhand. Impact of Climate Change on women is disproportionately higher than on men, given their existing vulnerabilities and disadvantages on numerous fronts. India's climate change mitigation and adaptation plans should have a gendered framework adopted. At all stages in a disaster situation (disaster management beginning with prevention), there should be special policy and programmes for women.

14. Environmental Impact Assessments and Biosafety Assessments: Environmental planning and impact assessments should integrate gender issues. Gender Impact Assessment should therefore be part of EIAs. Biosafety assessments, whether it be related to agro-chemicals or genetically modified organisms should also have specific gender analysis and assessment built in (socio-economic considerations are part of the impact assessment framework of the Cartagena Biosafety Protocol ratified by India). Environmental health assessment, specifically with regard to health impacts on women, should also be part of safety assessments in the regulatory regime. Needs Assessment and Alternatives Assessment should be integrated into such impact assessment, from a gender lens, as part of appraisal of any project.

15. The deployment of large scale **Time Use Surveys** on a regular, periodic basis to capture the relationship between women and environment. This would be a reflection of the state of environment resources, as well as women's wellbeing.

Women & Media

The transformative potential that media of all kinds holds towards gender equality is enormous. However, an un-engendered media, if it reflects current societal inequalities and reinforces them and also perpetrates norms of discrimination against women knowingly or unknowingly, it also ends up having the potential to make things worse for women of the country.

This chapter attempted to understand various dimensions of media vis-à-vis its engagement with women and their issues, even as we explore issues of women in media (employment levels, work conditions etc.) and the status of regulatory affairs. It seeks to analyze the status of women in relation to the Indian media in the following broad contexts — (i) Presence, and working conditions of women in media organisations; (ii) Portrayal and Representation of women by media; (iii) Women's (unequal) access to media; (iv) Engendering of media spaces: alternative/mainstream/feminist media and (v) regulatory frameworks existing in different sections of media and their effectiveness in upholding women's rights. We begin by seeking to capture some rapidly changing trends over the decades.

In India, the media has seen many metamorphoses over the quarter century since the National Perspective Plan for Women called for a "conscious strategic change" in the national media. Some of the changes have been positive, others less so. The new era came wrapped in the promise of globalised prosperity, connectivity and empowerment but the reality was far more complex. Ownership of all major media by big industry houses with diversified business interests is the reality. Innovative marketing strategies that undermined the normative framework of an earlier era now came to mark the functioning of media entities. Conventions which respected distinctions between the editorial and marketing functions of a media house, between audiences and consumers, began to get increasingly undermined. A marriage between corporate and editorial became the norm rather than the exception, thereby irrevocably changing the media ground rules. There was a massive media boom during this period of globalisation and privatisation, and citizens were subjected to media content of all kinds and formats, from different media.

It stands true that an unprecedented number of women are now media professionals and media organizations across the country have women on their staff. While that is the case with absolute numbers, women are present in disproportionately low numbers, more so in the vernacular and district level media. Not only that, as a function of this low levels of presence probably, not many women are in the top echelons of decision making strata in the media. This is the uniform situation across print and electronic media, the advertising world and feature films as well as with new media. The emphasis on the number of women present in media houses, that too at the top decision-making levels, is because the representation and portrayal of women and their issues in media content generated by these institutions is certainly a function of women's presence *in* media institutions.

The working conditions of women in media pose concern – it is seen that women form a major part of the freelance work force in the media, which adds another level of professional vulnerability in matters of negotiating and receiving payments or dealing with sexual harassment cases. While rôles within media institutions used to be gendered, the glass ceilings around this are being broken constantly. Women now work as sports correspondents, conflict zone reporters, camera-persons, finance and business correspondents etc. Sexual harassment is reported in various reports and it appears that media houses are not addressing this matter seriously enough.

Gender justice and equality have hardly been the dominant themes for Indian media's content, and therefore, developmental needs of women, that too the most marginalized women, get grossly neglected. To begin with, women and their issues rarely get their due share of space in media content; and where they do, portrayal and treatment is not empowering, and is mostly sensationalised. Women are not shown as experts and authority on various subjects in the news media. It is mostly men who dominate this space.

Women's issues are largely limited to those of violence in news media. Women as a 'social issue' have been present in popular Indian cinema but the concern has been largely superficial. Women's lives are central to a large majority of television serial plots and women are also the target audiences of television – however, this portrayal is located in the Indian family set up, with her life portrayed in this familial setting and mostly in domestic roles. In the cinema and advertising world, portrayal of women continues to be stereotyped and derogatory, and also commodified. Globalisation brought in consumerism, where women are treated as consumers as well as objects to promote consumerism. There is an increasing

consensus that the debate around portrayal and representation of women in the media need not be with a moralistic lens, but should be upholding her human rights and dignity. More importantly, there is a great need for creating spaces for women's issues in an empowering fashion.

New Media as the latest entrant led to the rise of near-instant communication. The promise of the internet as a democratic space has been realised to certain extent, at the same time opened a new Pandora's box of new-age controversies, exploitations, privacy invasion and related problems. While women need not be subjects anymore, but creators of content who can also control the media, the balance between democratic rights of speech and expression, and the need to respect privacy of a citizen, as well as ensuring norms of upholding dignity and human rights has to be struck.

Women are not a homogeneous category. They are marked by regional, ethnic, religious, caste and language divides and characterized by differences in income levels, age and sexual orientation. While it can be said that the globalised media had impacted to some degree all Indian women, not all Indian women are equally impacted, given the complexities of their location and agency. Women's access to different kinds of media remains unequal when compared to men, and once again, this spans all media, whether it is of readership or mobile phone subscription or internet usage. Due to the big gender gap in terms of access to technology, women in India are not shaping the environment of media as men do. Such asymmetries of access and presence in media coverage have undermined the ability of women to participate as equal citizens in the public spheres. Consequently, their ability to gain information, to make informed choices, to express themselves and to uphold their own rights – each aspect crucial for democratic functioning and advancement – stands compromised.

However, there are promising initiatives, mainly spurred by individual action, and sometimes in organized civil society space of parallel, new media and community media taking on the mandate of using the potential of media to empower women. These initiatives span various media like print, documentary films, feature films, radio, internet etc. India has several such instances of parallel, gender-centric media platforms and successful initiatives from across the country. One can also find few examples of efforts for creating gender-just spaces in the mainstream media and towards engendering media spaces. There are, fortunately, examples of regular columns on women and gender-centric content, some of which are of a

significantly high quality and; also mostly by women journalists. However, the promises of various Plans to engender media spaces in a big way remain unfulfilled.

Coming to regulation, India has different approaches to regulation in different media (for cinema, print, broadcast, advertising etc.). There are several regulatory issues that pose a great deal of challenge when it comes to the need for meaningful portrayal and representation of women, even as freedom of speech and expression are upheld within reasonable limits, with sensitivity towards the pluralistic nature of Indian society. India continues to grapple with these issues, and different media are at different levels of dealing with this need. The consensus is moving towards self regulation in certain spheres, but with the Code of Standards laid down after involving gender experts and wide consultations. Even in the case of self-regulation, there is a need for activating the regulators by 'watchdogs', and importantly, there is an urgent need for deterrent action where it is seen that transgression has happened. Otherwise, regulation will be meaningless and ineffective.

The Indian government, being one of the signatories to the Beijing Platform for Action negotiated in 1995, had pledged to review its media policies with a view to integrate a gender perspective; to encourage media to increase the number of programmes for and by women; to create and disseminate multicultural media; and to create appropriate legislation against the projection of violence against women and children in the media. In terms of how far has it been able to achieve these goals, the picture is clearly a very mixed one, both in terms of the presence of women in the media, the portrayal of women in media content as well as the effectiveness of regulation. It appears that massive steps are needed to consciously and creatively engender media spaces, including by investing on large number of community media initiatives that are women-controlled and gender-sensitive. Given that large media is driven by big capital and market forces, these investments should come from the State as a pro-active measure to secure gender justice.

Interventions Needed

- 1. Investing on engendering media spaces: supporting women-specific, women-controlled media and integrating gender perspectives and spaces into mainstream media**

1.1. The promise of the NPPW (National Policy Plan for Women) to create a policy for engendering the media in India is more relevant today than ever before. Such a policy should be formulated urgently with wide consultations with women's activists, women media professionals and other stakeholders.

1.2. Government's role as a grant-provider should be activated for the following:

- i. There should be a new scheme evolved by the Ministry of Women and Child Development and Information & Broadcasting jointly, for encouraging and supporting community media, owned and controlled by women's collectives, across different media (radio, print, websites, mobile phone-based communication initiatives as well as television channels). This scheme should also support independent initiatives like Women's Feature Service with generous grants for generating relevant and meaningful content for women's empowerment, to be placed in mainstream media. This applies to documentary film making, internet based work as well as feature films.
- ii. An independent Women's Media Resource Centre must be set up, for constant research, watchdog mechanism and activation of regulatory action for deterrence, as well as capacity building on gender justice issues, for all stakeholders including regulators and senior management of media houses. This Resource Centre should also administer fellowships and grants for media professionals, especially women, to explore issues related to gender justice, and sensitive portrayal of the same across various forms of communication. This Centre must also take up rating of media, using the UNESCO-developed Gender Sensitive Indicators for Media.
- iii. At least in the state-controlled media institutions, substantial space and time to be allocated for women's issues, with sensitive portrayal emerging out of sensitization efforts of employees and guidelines issued for the same.
- iv. Where needed, using market mechanisms of sponsorship, to ensure that media content on popular channels is engendered. Incentivising certain films to encourage greater variety is necessary. Tax cuts, based on model developed by Karnataka government, would be helpful.
- v. Institute high profile awards for women-centric content and initiatives to be recognized and appreciated.
- vi. State support could be needed to strengthen women's media networks and collectives in order to improve working conditions.

2. Creating gender-sensitive media creators and audiences (education including media pedagogy)

2.1. In the long term, the potential of media to transform society in a gender-just way lies in investing on the future generations also. In schools, universities and colleges, the government can bring in compulsory gender sensitization courses (like environmental education is now mandatory at a certain level).

2.2. Media education should begin right from school, for children learn to process images early on; teaching them how to look at images will help them understand the world they live. NFDC has been working over the last few years on building an institutionalised film clubs mechanism where NFDC collaborates with schools. Such efforts should be replicated and supported.

2.3. MWCD, MHRD AND MI&B can establish collaborations and enter into partnerships to work through organisations like CBSE which has already put emphasis on various arts and media-related elective subjects. Gender sensitisation could be introduced to become part of day-to-day classroom interaction.

2.4. Mandatory gender sensitization course in all communication and journalism degree courses, with a view to ensure that the next generation of reporters in the country are trained to report on Gender, also with an understanding of intersectionality of caste, religion, ethnicity and class.

3. SELF-REGULATION MATTERS

3.1. A Code of Standards should be developed to guide the portrayal of women in various forms of media so that their demeaning portrayal is stopped within a self-regulation mode, in addition to laying down an affirmative space/time meant for raising women's issues. Such a code should be evolved in consultation with gender experts and women media professionals. The government should facilitate democratic processes for formulation of such a Code. Media organizations should mandatorily devote an allocated percentage of space for social development issues, including women-related ones, in such a Code.

3.2. Media houses to consider setting the gold standard in gender parity, committing themselves to filling 50% vacancies with women.

3.3. Gender Sensitive Indicators for Media that UNESCO had developed provide a tool for media houses to evaluate themselves in terms of content and human resources.

3.4. Regulatory bodies across media must ensure rulings have a potential for deterrence. Harsher fines must be imposed on offenders because apology scrolls are not enough.

4. MEDIA HOUSES MUST IMPROVE WORK CONDITIONS AND COMPLY WITH LAWS

4.1. Media houses must have affirmative policies for recruitment of women in large numbers. Such an affirmative policy should be adopted at the governance and senior management levels too.

4.2. Poor working conditions of women media professionals must be addressed: guidelines to be issued to all media houses to make the work place more women-friendly. Some important benefits for improving women's working conditions in a media house include maternity leave, crèche facilities, flexible working hours, ensuring safety while on work and separate toilets.

4.3. Bringing in structural/policy change in wages and job security is necessary. Address sexual harassment issues with all sincerity and in compliance with law. Fellowships and grants for women journalists, particularly from marginalised communities, to report on gender related issues have to be instituted, in addition to more women employees including from marginalized communities at all levels of the media institution. Across media houses, with contribution from all organisations, introduce forum for independent women journalists to take their professional complaints and protect their rights as workers. Women reporting from conflict zones and other dangerous settings should be provided with extra support and protection in whichever form required. Specifically address issues of women employees in the district level bureaus upto the stringer level.

5. Other State Interventions That Are An Imperative: Regulation, Incentivisation, Oversight On Compliance

5.1. Adequate representation of women has to be brought into the composition of *all* regulatory bodies immediately. Unless that happens, the discussion around safeguarding women's rights and concerns will not translate into reality on the ground.

5.2. Put out findings of a carefully evolved Media Gender Sensitivity Index, after conducting reviews of portrayal of women in entertainment avenues, advertisements and in cinema via empirical studies.

5.3. Speedy implementation of Justice Mudgal Committee recommendations by bringing into force amended Cinematographic Act will help handle current issues/problems being faced by CBFC.

5.4. In the context of digital technologies' vulnerability of falling prey to misogyny and sexism, regulation of online spaces does become important. However, such regulation has to balance the right to privacy with the right of freedom of expression.

5.5. Issue press cards to freelance journalists, remove professional vulnerability in matters of obtaining commissions and negotiating and receiving payments.

5.6. The government must allocate a dedicated theatre for screening independent films and support other 'alternate' media spaces for marginalised communities such as tribals, Dalits, the differently-abled, LGBTQ and other communities on the periphery.

6. Indecent Representation of Women Act and Amendments Proposed

There is an urgent need to analyse through deliberative democratic processes, the amendments proposed for the Indecent Representation of Women Act. There is a need for a greater discussion on the proposed amendments given that it is proposed to extend the scope to the Internet. The proposed amendments, relating to obscenity, indecency and outraging modesty, appear to attempt to pigeonhole the issue of representation into boxes. There is a need to look at larger issues relating to misogyny and the kind of expressions this hatred assumes instead. An informed public debate will facilitate the evolution of the right kind of regulatory statute.

Programmes and Schemes For Improving Overall Status Of Women

Development efforts of the state are in theory supposed to lead towards gender equality, since "development" is also about gender equity and equality. It is well-established by now that *gender equality investments have a causal relationship with realization of other development goals* (including economic growth), even as it is understood that *gender equality does not need economic justification*. Gender equality is a Constitutional commitment and women's

rights towards equality and in the framework of human rights are to be upheld for their own sake). More and more, the thrust is on gender-responsive budgeting and mainstreaming gender equality issues in all development work (not just the 'soft, social' issues) of the state.

It is obvious that when the State has to intervene on behalf of women to adhere to its constitutional obligations and to improve women's overall status on par with men, it is either in the form of (a) policies, or (b) laws, or (c) schemes and programmes. It is also apparent that in implementation, policies and legislations have to be backed up by schemes and programmes for certain objectives to be actualised.

Over the decades, there have been a slew of women-centric schemes with good intent and with objectives of transforming women's lives for the better. These span various dimensions related to women's lives like economic development, education and health. Entire institutions have been built for facilitating implementation of interventions – Central Social Welfare Board is an example. However, design and implementation-related matters with in-built equity and sustainability, resource allocations, delivery mechanisms and institutions, proper outreach, and monitoring and evaluation are all issues that plague these schemes and their potential impact. While some women-centric schemes like Hostels for Working Women have been running for decades, there are yet other schemes which have been introduced in the recent past, like the One Stop Centres. While the discourse has progressed, especially as seen in the Five Year Plan Documents, the practice is often lagging behind. A rights-based approach is yet to be adopted across all schemes and programmes.

In a life-cycle approach, it is seen that specific large scale interventions for elderly women are missing; in a thematic approach, specific substantial interventions for political empowerment of women as well as legal empowerment are found to be wanting. Further, there are some interventions in areas like infrastructure-building that continue to be gender neutral or gender blind even though gender-mainstreaming has gained traction in discourse.

The allocations in gender budgets continue to hover around a meagre 6% of overall budget. Eleventh Plan allocations for women-specific and pro-women schemes and programmes show that maximum investments are going into employment, enterprise and income generation activities (34%); followed by allocations education (26%) and then health and nutrition (25%). Largest allocations are from Ministry of Rural Development, followed by Department of School Education and Literacy, MHRD. The other major allocation was under

Integrated Child Development Scheme (ICDS) of the Ministry of Women and Child Development. The Mid Term Appraisal of the 11th Plan noted that many important schemes that were suggested in the Plan document have not taken off. It is also seen that even the monitorable targets of the Eleventh Plan have not been met.

The HLC put in efforts to scan women-centric schemes and assess their impact mainly in three spheres of women's empowerment, which we consider as burning issues of importance: *economic empowerment, removal of discrimination against the girl child and creating zero tolerance for violence against women.*

Economic Empowerment Schemes: Several major schemes exist from the MWCD as well as other Ministries on this front. However, it is seen that the scale at which the schemes are operating is much lower than the scale needed. While most schemes use an SHG approach to support women's self-employment/enterprise, it is seen that SHGs are not seen as holistic transformative platforms but are only instrumentalities for income generation etc. It is also noted that uniform approaches are often adopted in many schemes despite the vulnerabilities of intersectionality in the case of many women. The multiple marginalisations of some groups of women are therefore not being addressed adequately. Schemes that have a household as a unit to be targeted ignore the intra-household gender dynamics. Most schemes have not exhibited the capacity to improve incomes in any substantial way. Marketing support and capacity building do not always receive adequate focus, creating sub-optimal results. Impact assessments have found lack of focus on the most marginalized and increases in income have been of a very low magnitude in several projects/schemes (Rs. 300/- to Rs. 1500/- per month), in addition to the fact that schemes themselves have very inadequate coverage of beneficiaries. Concentration in certain states is noticed with some schemes, which may not be the needy places. When it comes to women's economic empowerment, the performance of large schemes like SGSY and MGNREGS in states with high incidence of poverty is unsatisfactory. Incidentally, these are also states that score low on gender empowerment dimensions too. There is a need for greater conceptual clarity governing the design of employment and enterprise schemes for women. Expanding the livelihoods discourse to include dignity, security and freedom from violence; to women's control over resources and access to social protection entitlements; to recognize, reduce and redistribute women's unpaid work burden and access to high quality public services; to strengthening their agency as economic actors etc., is critical for future since it is apparent that narrow

economic empowerment frameworks focused on households alone will not yield the required transformation in favor of women and uphold their rights.

NRLM, and livelihoods work happening through Kudumbashree and SERP hold great promise and require replication.

Schemes in the context of Violence Against Women: The schemes that address violence against women can be broadly categorized under the theme of “Prevention of Violence Against Women” and “Provision of Support Services to Women Survivors”. While prevention of violence requires numerous immediate, medium and long term interventions including large scale campaigns to sensitise and educate men and women on VAW which is lacking in any comprehensive or substantial way at present, support services to women in distress are provided today mainly through the Swadhar Greh scheme and the Ujjwala scheme in the case of trafficking. At the state level, variants of Short Stay Home scheme exist. Most schemes are very much dependent on putting up of proposals by civil society groups. These are not necessarily need-based and there are no plans apparent to scale up schemes to all blocks or districts, except for the recent announcements initially with the new NDA government towards setting up Nirbhaya Centres in all districts of the country, which was subsequently scaled down drastically in FY 2015-16, unfortunately. This then means very small outreach, compared to the need. It is also seen that some schemes have never taken off, despite a dire need for such schemes (this includes the proposed helpline, for example; or work with adolescent boys in the form of Saksham scheme). Like in the case of other aspects related to women’s empowerment, schemes here undergo frequent changes. There are also not enough schemes or campaigns to prevent violence; similarly, not enough work is apparent in restorative justice and rehabilitation, especially compared to the magnitude of the problem. The interventions in the name of counseling are not always professional, and it is noted that counseling is often equated with reconciliation efforts on the ground. Shelter services are mostly in a pathetic state, as seen in this HLC’s field visits. There are many implementation- and cost-norms-related problems for the implementing organizations. This also includes nutritious food supply to the inmates of shelter homes, which is not possible with the current cost norms. In many cases, it is seen that support services schemes are run without the involvement of various local organizations, including community based women’s organisations. Most importantly, convergence and coordination are glaringly lacking. The Committee did not come across any (micro-)studies that have noted any impact of these schemes in preventing violence or trafficking.

A crime-mapping exercise on the issue of VAW taken up in Mararikulam Panchayat in Kerala, in addition to mechanisms like WASPS squad in Jalandhar and SHE teams in Telangana are some good examples of preventive steps when it comes to VAW. One Stop Crisis Centres tied closely to the healthcare system and law and order system, supported by various services and a network of other organisations, as seen in Ernakulam in Kerala need to be replicated in all districts of the country. The current interventions on the issue of VAW are too unambitious and unfortunately, reflect a lack of political will.

Schemes related to Girl Child Protection and Development: While declining sex ratio (especially Child Sex Ratio) and son preference are reflections of very deep-seated socio-cultural discrimination against girls, and therefore, require multi-pronged approaches in dealing with the issues involved, there have been a few schemes that attempted to address the issue and ensure 'girl child protection'. The Government has recently launched a much-needed initiative around protection and development of the girl child through Beti Bachao Beti Padhao campaign. While this is a more comprehensive approach towards tackling son preference and girl child discrimination, the usual response from the state has been to run schemes which involve conditional cash transfers to deal with individual girl children, case by case. It is noted that there are no specific schemes for implementation of the PCPNDT Act more effectively. While Dhanalakshmi used to be the MWCD's scheme, there are many state-level variations of Girl Child Protection Schemes. Some campaigns as against female infanticide in Tamil Nadu are recorded to have had a lasting positive impact. However, in the case of conditional cash transfer schemes, there are mixed results reported. Some schemes are seen to have components that are not in line with women's empowerment; in terms of design some schemes unwittingly promote son preference with their conditions. Targeting issues and procedural hassles plague several of these schemes; further, it is noted that the incentives that will accrue after the daughter attains 18 years of age (in a relatively distant future) may not outweigh the perceived disadvantage of having a girl child. Lack of coordination, problems with financial institutions and corruption have been recorded in different schemes. CAG reports across states point to the schemes being deficient in various ways, and also not reaching the intended beneficiaries. Importantly, in these girl protection schemes, there are no MIS or tracking systems put in place to monitor the development of the girl child. Activists have been critical of "cradle baby" schemes that run in a few states, and the latest developments of girl baby trafficking from institutions that run such schemes is a matter of serious concern. An impact assessment study from Haryana found that a 'conspiracy of

silence' is at play, with passive implementation of such a programme. Other schemes like Sabla are not running to their full potential, with under-utilisation of funds and physical targets not being met, even with resources allocated. Like in other schemes, the low coverage of these schemes is noted.

Large campaigns like Beti Bachao Beti Padhao hold tremendous potential for giving the girl child her full share of opportunities to survive and develop.

Despite various schemes and programmes being run to improve the status of women, it appears that these have fallen short of the large need for empowering women on various fronts. This is both in terms of their outlays, outreach as well as the visible impact. We believe that a broad statement can be made that certain facets of empowerment of women are on the downslide despite some schemes/programmes - this in itself is a statement either on lack of appropriate schemes, or on the lack of efficacy of some schemes, or that the potential positive impact of some schemes is being 'cancelled out' by other forces unleashed in our 'development' pathways and through deeply embedded patriarchal values/norms/practices.

Other Issues and Recommendations:

1. Streamlining maintenance of data on schemes and programmes of WCD Ministry:

The HLC, when it attempted to put together a picture of allocations, sanctions, releases and utilization of funds under various schemes as well as the actual coverage achieved found that there is no ready and consistent data that is used to monitor these various schemes. Inconsistencies in data became apparent. Whether these are genuine mistakes or time delays that cause such gaps and variances in data, it only underscores the need for more real-time data collection and analysis for better monitoring and evaluation of various schemes. Coming to monitoring and evaluation, it is important to evolve and adopt feminist principles of evaluation which may not always be present.

RECOMMENDATION: The Ministry should put into place mechanisms for real time, accurate data collection and analysis for better monitoring and evaluation of schemes. Evaluation frameworks should have feminist principles adopted.

2. Need to increase gender equality investments: The outlay for the Ministry of Women and Child Development for 2015-16 is approximately only 50% of the earlier year 2014-15

(down from around 21000 crores rupees in 2014-15 to around 10,287 crore rupees). Only 678 crores is meant for women's development schemes in 2015-16, as against 9527 crores for child development schemes. However, the current outlays are not commensurate with the need to empower women on all fronts in India, to ensure an equal status with men.

RECOMMENDATION: There should be a significant increase in gender equality investments in India, across Ministries and Departments. A comprehensive need mapping, district upwards, could be the basis for planning for future. A life cycle approach, social equity approach and an approach that covers all dimensions of empowerment should be used so that no group of women are left out, and no aspect of a woman's life.

Within the MWCD budgets also, there should be increased investments on women's empowerment, even as the Ministry strengthens its capacities to plan, design and implement schemes more effectively. Rigorous impact evaluation of schemes can be taken up before increasing budgetary allocations, and the learnings published. Similarly, ranking state governments in terms of quality of implementation and impact created should be taken up. The government can also think of consortium projects with the CSR fund of corporations to enhance outlays under the government schemes.

3. Improving on the utilization of funds allocated: In 2014-15, the budgetary allocation for women's development schemes was 909 crores, while the Revised Estimates put it at 507.8 crores and the actual expenditure being around 453 crore rupees. 2013-14 was no different. The BE was 1184 crore rupees for women's schemes, with RE pegged down to 504 crore rupees and expenditure being only 414 crore rupees. It has been seen consistently in the past that the allocation for child-related schemes not only gets enhanced at the RE stage, but there is excess utilization, whereas for women-related schemes, not only is there a reduction in allocation by the RE stage, but utilization is even lesser. In the 11th Plan period (2007-12), the BE for women-related schemes was Rs. 1295.10 crores, the RE was Rs. 968.45 crores and ultimately, the expenditure was only Rs. 620.07 crores. Such under-utilisation also implies under-achievement of physical targets. For instance, under IGMSY, targets were under-achieved in 2013-14 and 2014-15, by half or even less.

RECOMMENDATIONS: Review of procedural formalities should be taken up so that unnecessary bottlenecks can be eliminated and the approval process for a new scheme expedited; Creation of flexible designs for the schemes, depending on local needs and region-

specific issues – this should further bring down under utilization and delays; More pro-active processes in publicizing the schemes, facilitating the process of applications, rapid appraisals and processing of applications for schemes so that fund utilization is full. Internal audit systems should be in place and active in the Ministry.

4. Improving on the outreach in schemes: The very small outreach of schemes like Swadhar and Working Women's Hostels has been noted by other committees, like the Parliamentary Committee on Empowerment of Women. The number of shelter homes set up are also very few, not even one per district in the country, when the need for at least one such home per block is expressed time and again by various groups working on the ground. It is apparent that lack of funds alone cannot be blamed for this, given the very low utilization of allocated funds, and the downscaling of allocations at the RE stage year after year. The procedural issues as well as design of schemes appear to be the main reason for this situation. It is indeed an imperative that schemes' outreach has to match the scale of the need for women's empowerment.

RECOMMENDATION: Each scheme has to be scaled up to its optimal size (one stop centres have to be taken to the district and block level, after the state level pilots, for instance); further, publicizing the scheme and increasing awareness about the existence and access to schemes is important. There is a need to re-look at the design of schemes and incorporate all necessary flexibilities. In schemes meant for livelihood enhancement for women, budget components for inclusive and holistic empowerment of women should be attempted to prevent lost opportunities and ineffective outcomes.

5. Reducing Frequent Changes in Schemes: It is also felt that there are frequent changes in some schemes over the years. While some schemes have been initiated as time-bound projects with external assistance of bilateral and other agencies and can therefore be expected to be terminated, several others have been started and stopped very quickly, based on evaluation reports and suggestions therein. Some schemes never take off despite announced plans.

RECOMMENDATION: The change in schemes, in trying to make them more comprehensive and attempting to remove duplication of efforts under different schemes, have to be accompanied by wide pro-active publicizing of the scheme for effective utilization of

the same. Further, if the schemes are initiated after a good deal of planning, these changes may be avoided.

6. Removing problems with design in schemes: It is found that some of these schemes come with inherent design-related problems. For instance, shelter schemes for women in distress prescribing a minimum number of inmates – this is unrealistic and even a few women who need such shelter services deserve that right to be fulfilled. NGOs expected to bring about convergence across departments and schemes, while running such Shelters may not be realistic in the absence of express directions/guidance for related departments for such convergence. As another example, release of funds in a particular installment pattern built into several schemes is apparently causing cash flow problems for implementing organizations, jeopardizing the scheme implementation. Cost norms in various schemes are very unrealistic and the quality of services will obviously depend on these norms being revised upwards. Timely release of funds is also an important requirement. In schemes that are meant for economic empowerment, if the design of the scheme including its objectives do not appreciate comprehensive and inclusive empowerment of women, and budget components related to all aspects of empowerment not included, this might result in lost opportunities and ineffective results. Piecemeal approach to schemes is an ineffective use of public finances. Most importantly, schemes that make the household as a unit to be targeted, rather than the woman, ignore the intra-household inequities and dynamics at play.

RECOMMENDATION: There is a need to revisit the design and assumptions behind various schemes, even as evaluation frameworks are also changed. Cost norms have to be realistic, which will provide women beneficiaries a fair and decent opportunity at empowering themselves. Further, schemes have to be grounded in a statutory framework so that they become entitlements of women, even as every statute has to be backed up by a scheme for ensuring implementation on the ground. It is apparent that one of the prerequisites of good implementation of women's laws is legal literacy and awareness and pro-active efforts for this will need schematic outlays.

8. Equity/Need-based Vs. Efficiency/First-come-first-served based schemes: Schemes run through NGOs have the inherent disadvantage of having to wait for proposals to be submitted by interested organizations. It is clear that several schemes of the Ministry are concentrated in states where the civil society organizations have been active in accessing such schemes and not necessarily in states and regions where they are needed. For instance, 71.6% of Short Stay

Homes located in just 8 states; out of 188 Swadhar homes, 7 states have 75% of total homes across the country. It is also seen that the quality of implementation depends very much on the implementing organisation's commitment to the cause, whereby some organizations mobilize additional resources if required to fulfill the objectives. Implementation further rests on the capabilities and focus of the PIA. It is also often stated that state governments are not fulfilling their role completely in the implementation of central schemes, when questioned about under-utilisation or unsatisfactory performance. However, this needs to be addressed more systemically, by better coordination between the Centre and States.

RECOMMENDATION: While there is no denying that partnering women's and other non-governmental organizations has immense advantages in terms of intense ground level work, (including for setting up of community institutions for preventive aspects related to various issues), the Ministry has to create better awareness about schemes, systems of more rapid appraisals and processing for applications for schemes, flexible designs for the schemes depending on the local needs and region-specific issues and hassle-free procedures for processes of accessing and implementing schemes. This will require the Ministry to reach out state governments and the women's movement in India in pro-active ways.

Further, an in-depth study by the Ministry is necessary to earmark region-wise budgetary allocations, based on specific needs and issues. The findings should dictate the need and the positioning of projects. Pro-active publicisation of schemes in needy areas is important, so also creation of simple, local language materials to explain to the intended beneficiaries the full details and ways of accessing various schemes. It is also important that better coordination mechanisms be created to ensure that no scheme suffers due to Centre-State dynamics or lack of coordination. Greater devolution of schemes will ensure that women will be able to participate more directly in different schemes. Further, all schemes should have specific norms laid down for orientation towards and targeting the most marginalized women (minorities, dalits, adivasis, differently abled, single women and others). These schemes should also be audited specially for their focus on the marginalized, through social impact assessment.

9. Women centric schemes should stop perpetrating gender stereotypes: As discussed in the section on Gender Budgets as reflected in Statements 20 of Indian Budget, it is clear that women-centric schemes do not necessarily imply gender sensitivity. For example, Contraception directed at women. Girl children in Sabla scheme being prepared for "home

skills” (this is admittedly in addition to vocational and life skills being imparted), or some shelter services provided in a moralistic/disciplinarian approach in the case of trafficked women.

RECOMMENDATION: It is important to ensure that so-called ‘women-centric’ schemes have the right approach towards gender justice and equality and are shorn of gender biases that are embedded everywhere.

10. Investing on ‘soft interventions’: It is seen that very often, schemes are not created to have a component of prevention, when it comes to discriminatory practices or violence against women (the notable exception to this is Ujjwala scheme and the life skills education under Sabla scheme, which includes awareness building amongst adolescent girls on various laws, or the Mahila Samakhya programme). This country had witnessed large scale awareness-driven transformation processes when it comes to polio vaccination, for instance. Similarly, the drive for cleanliness in the form of Swachh Bharat as a recent initiative is receiving great attention and support from the highest quarters in the country. It is for the first time that a campaign like Beti Bachao, Beti Padhao has been initiated by the Government of India when it comes to women and girls. This is welcome.

RECOMMENDATION: Large scale awareness campaigns on discriminatory practices against women or violence against women, or to publicise the legal rights of women, have to be taken up by the government in a massive fashion. The HLC believes that such “soft interventions” are as important as schemes that deliver services and products. Further, all opportunities across schemes, including those for collectivizing women for livelihoods, have to have a component of gender sensitization and legal literacy included.

11. SHGs’ potential to address position of women (not just condition) to be optimally utilized: Numerous micro-studies show that the creation of women’s grassroots institutions in the form of Self Help Groups and their federations has not always been utilized for empowering women, and to improve their position, even though these interventions have been used to improve their condition. It is seen that gender relations have not been an area of intervention, even as household income levels were improved and women’s groups were made the medium for implementation of projects. Even the National Rural Livelihoods Mission, which is embarking on this ambitious mission of universal inclusion of all poor women in the country into SHGs and building their institutions speaks about building this

social capital in an instrumental fashion – it is only in the recent past that the Mission is expressly talking about women’s empowerment being key to sustainable livelihoods.

In the XI Five Year Plan, there is a clear acknowledgement of the need to look at SHGs from a different perspective. However, the promised High Level Committee to conduct a review of SHG related policies and programmes did not materialize. It is important that feminist concepts around ‘power within’ and ‘power to’ have to be explored at work in various schemes, even as ‘power with’ is the basis for SHG-based work.

RECOMMENDATION: While feminist organizing of women based on a needed “entry point” that local women themselves prioritise (it could be enterprise, health, childcare, pension, housing, insurance and so on as different civil society experiences show, not just a thrift and credit centred strategy) is what the women’s movement wants for the creation of SHGs in the country, it is apparent that the following concerns need to be expressly addressed, whatever the form of organizing of women in various livelihood interventions:

- Look at an individual woman as a unit. The women need to be empowered for themselves and not just as a way to reaching the household.
- Inclusion of the poorest, most vulnerable and marginalized - the micro-finance centred organizing creating self-exclusion processes which keep out such women.
- Creation of asset base for women and securing of ownership over resources for women;
- Improve scope for capacity building – very often, it is found that capacity building is not adequately invested upon. It neither builds on women’s existing skills, nor gives them skills for better employment or enterprises and also does not utilize the opportunity of building the social capital for building legal literacy for empowering women.
- Using the women’s collectives for better convergence of a variety of schemes, for development planning becomes important.

It is seen that the State itself can very often be a big ready market to begin with for women’s enterprises. However, in several economic empowerment schemes, it is seen that market linkages are not created. On the other hand, it is poor SHGs and their members who become ready targets for marketing of products that might not be needed by these women. It is also seen that self-employment is stressed upon, rather than some enterprise that works at a group level, which provides more employment to others too. There is a real need for the State to invest on the resources that are required to collectivise and organize women in a variety of

ways and it would be ideal to set up proposal screening processes at the district level to allow civil society groups, in partnership with resource agencies specializing in gender issues, to access such fund and collectivise women at a pace and shape that is suitable to the women themselves.

12. Increase thrust on ensuring Convergence and Coordination: Lack of convergence and coordination seems to be an affliction plaguing the implementation of several schemes. It is in this context that the National Mission for Empowerment of Women (NMEW)'s focus on convergence appeared to be an important and hitherto-neglected strategy. However, it appears that the government is revisiting the very need for NMEW.

RECOMMENDATION: This Committee feels that it is indeed very important to have professional services supporting the Ministry and various other line departments in implementing gender equality and gender justice related schemes. Further, such support services should also focus on better convergence and coordination for better impact.

14. Improve capabilities at all levels: Evaluations, especially around economic empowerment schemes have shown that enterprises are selected based on the implementing agencies' existing capacities, rather than the possibilities and opportunities that exist for women's enterprises or employment. It is further seen that appropriate gender orientation and sensitization that has to be a pre-requisite in all schemes with implementing organisations and others at all levels, is also often missing. In terms of counseling services, whether independently run or placed in police stations, it is often seen that professionalism is missing and that counseling is often equated with reconciliation efforts (for instance, across states and schemes, whether it is Nari Adalats or police-station based counseling or even SCW counseling, it is seen that feminist perspectives do not always govern the resolution of cases; further, professionalism in counseling services is missing).

RECOMMENDATION: This requires suitable partnerships with Gender Resource Centres that are being set up in various states, in addition to tying up with other gender experts/organisations. This also requires feminization of institutions and departments by fixing minimum quotas for women to be employed.

15. Bottom up planning and Equitable Allocations: In cases where participants of a scheme were not consulted and involved in planning, it has been seen that they could find

ways of subverting a scheme to suit their purposes, in addition to the fact that the scheme might not turn out to be need-based and participatory (and therefore, the intervention being sustainable). It is important to take up bottom up planning so that unsuitable, one-size-fits-all approaches are not taken.

RECOMMENDATION: Ideally, schemes should evolve at the local level, based on district level planning at least, after mapping out the issues and needs related to women in a particular district. This would allow for more direct participation of affected women. Further, this must also involve elected representatives including Parliamentarians, legislators as well as elected women representatives in PRIs. At this level, convergence with MPLADS/MLALADS is also possible, who can set aside 50% of these funds for women-centric interventions. SHG involvement is also possible. CEDAW and Constitutional commitments can be the frameworks within which such schemes are evolved. Further, it is also important to make sure that equitable investments on the most marginalized women, including single, differently abled, dalit, Adivasi and Muslim women are given a priority.

16. The Planning Commission has proposed an assessment of gender concerns/impacts on the same lines as is mandated for environmental clearance, for all proposals submitted for any new policy, legislation, programme or scheme. The HLC emphasizes the need to show progress on the actualization of such a proposal, in the new institutional framework of NITI AYOJ. In the past few Plan periods, participatory, insightful processes around gender mainstreaming have resulted in progressive articulations in the Plan documents and NITI Ayog should carry forward the commitments made.

17. As in the case of other interventions by State like enabling legislations, it is important that implementation of all schemes and programmes have an in-built accountability mechanism on the nodal department and agency with concurrent reviews and monitoring, and personnel responsible for lack of effective implementation held responsible for the same. Each scheme should have built-in mechanisms for monitoring and evaluation which is not always the case now.

18. At this point of time, the One Stop Centres, Beti Bachao Beti Padhao Andolan, SABLA, NRLM and MGNREGS hold a great deal of promise, especially if convergence is made a thrust at all levels. Similarly, social security schemes are essential and should be enhanced as

well as universalized. The HLC hopes for a serious and committed implementation of these initiatives, including with adequate financial allocations.

Institutional Mechanisms

Institutional Mechanisms/ National Machineries are imperative for the advancement of women. This chapter examines the National Scenario with respect to various Institutional Mechanisms in place for the advancement of women. An analysis of the functioning of some of the institutions calls for changes in both its structural and operational terms. The chapter thus focuses on the mechanisms that have been set since 1985 and reflect on the experiences of the functioning of the national machinery since the time the Department of Women and Child came into being. It is also making an attempt to analyse the extent national machineries and policy initiatives have effectively been able to address the issues for which they had been created and to what extent are they able to bring in changes in the culture and practices of bureaucratic structures of the country.

The Ministry of Women and Child Development is identified as the nodal Ministry for the advancement of women in India. The Ministry has been upgraded from the level of a department to a full-fledged Ministry, over the years and has been given a Cabinet rank Minister in 2014. Based on its mandate, holistic development of Women and Children, the Ministry formulates plans, policies & programmes; enacts/ amends legislations and guides & coordinates the efforts of both Governmental and non-governmental organisations working in the field of Women and Child Development.

The Ministry continues to be under-staffed and under-resourced. This clearly demonstrates the fact that 'Advancement of Women' has perpetually remained a low priority area, from the very beginning of the planning and budgetary processes of the country till date. Even the budgetary allocation to the Ministry has gone half, from the previous year's budget to the current budget. The situation is not much different at the state level, where the departments are constrained by inadequacy of financial and human resources.

The National Commission for Women was set up as a statutory body under the National Commission for Women Act, 1990 In January 1992. It is the Ombudsman institution for the Rights of Women in India. However, the issue that the Commission (National and State) merely remains as a recommendatory body as it doesn't have the powers of a Civil Court.

Recently, in order to give teeth to the Commission and make it at par with the National Human Rights Commission (NHRC), the Ministry of Women and Child Development had proposed amendments to the NCW Act. Another functional limitation is related to its processes, functioning and the appointment of the Chair and Members and the lack of coordination and communication between the State Women's Commissions and the National Commission for Women.

The National Commission for Women, as an apex body is responsible for and answerable to 50% of the Indian population. In keeping with this, the selection of the Chair and other Members must be made through a transparent & institutionalised process. A High powered Search Panel comprising experts and practitioners of women's issues must be given the task of identifying and recommending such members who are professionals or are from the women's movement and have track of proven expertise of women's issues or movement.

National Mission for Empowerment of Women is a Centrally Sponsored Scheme, launched in 2010. The mandate of the mission is to strengthen the inter-sector convergence and facilitate the process of coordinating all the women's welfare and socio-economic development programmes across ministries and departments. Its aim was to provide a single window service for all programmes run by the Government for Women under aegis of various Central Ministries. Apart from taking up Purna Shakti Kendras as pilots for achieving this convergence, NMEW got involved in implementation of various other projects and the day to day work of the Ministry. Even today NMEW is struggling to find its position and remains as an under-utilised opportunity.

An important monitoring machinery set up in March 1997 by the Parliament in India, to oversee women's empowerment, is the **Parliamentary Committee on the Empowerment of Women**. The Committee consists of 30 members from both Lok Sabha and Rajya Sabha. The Committee has been primarily mandated with the task of reviewing and monitoring the measures taken by the Union Government in the direction of securing equality, status and dignity of women in all matters. Despite the fact that the Ministry is now a full-fledged Ministry, the Committee on Empowerment of Women is not being visualised as a department-related standing committee for MWCD. As this a very important mechanism, the PCEW must examine the gender implications of all proposed legislations, through a gender lens.

The Central Social Welfare Board is the apex structure at the national level and acts as an umbrella organisation networking through State Social Welfare Boards and thousands of voluntary organisations through them. However, this institution, which was a major tool for administering various interventions related to women's development over six decades, is said to have become insignificant and almost irrelevant now. There is thus a crucial need to revamp and restructure this body so as to ensure its utmost effectiveness. **NIPCCD** is another apex body that assists the Ministry of WCD in the areas of training and research and development and promotion of voluntary action in social development through training & capacity building.

The National Policy on Empowerment of Women was constituted in 2001. This is the first and last policy on women, as of date. National and State Councils were to be set up, under the NPEW, to oversee the operationalisation of the policy on a regular basis. However, neither the policy got operationalised nor the Councils were set up.

The issues of gender mainstreaming and gender budgeting have been addressed at length in the Chapter on 'Gendering Macro Policy: Gender Mainstreaming through Gender Responsive Budgeting'. It is important that the Ministry of Finance plays a lead role along with the Ministry of Women and Child Development in GRB and that there is coordination between the two drivers.

Recommendations

When it comes to institutional mechanisms for women, concerted efforts and innovative long term/integrated approaches to strengthen women's machineries are crucial. A review of the existing institutional mechanisms could be carried out at the following four levels with the goal of making it more effective:

- Overall role , mandate and functioning
- Review of financial and human resource and infrastructure
- Institutional capacity for mainstreaming gender across government agencies/mechanisms.
- Partnerships/linkages with other stakeholders including civil society and women's organisations.

- In the **Ministry of Women and Child Development** large amount of resources continue to be directed towards child development. Increased allocation of resources would enable prioritization of gender concerns as well.
- Assessment of the status of women should be a regular feature. There should be a mechanism for continuous examination and assessment of the status of women and reporting back publically to the nation and women of India on a bi-annual basis.
- The Prime Minister should select the Chairperson of the **National Commission for Women** and in a similar way, the Chairpersons of State Commissions to be appointed by the respective Chief Ministers.
- A High powered Search Panel comprising experts and practitioners of women's issues must be given the task of identifying and recommending such members who are professionals or are from the women's movement and have track of proven expertise of women's issues or movement.
- A minimum number of 11 members should be there in the National Commission of Women.
- The NCW should have power and status of that of the Civil Court and its jurisdiction should also cover Jammu and Kashmir.
- There should be regular interaction between the National and State Women's Commission. The State Commissions should be mandated to report to the National Commission on a periodic basis.
- The performance assessment of the NCW may be done by the Government/Parliamentary Committee on an yearly basis.
- NMEW, through its convergence mission, is very well geared towards playing a critical interventionist role in reaching the schemes across the last mile to the intended participants and therefore, this mechanism has to be used fully.
- The mission should be the face of the Ministry and link with other Ministries to work towards achieving convergence on all women related issues and should work towards developing a pool of experts (full/part time) and a repository of knowledge products on various women related themes so that their/its services could be utilized.
- Its inter-ministerial Coordination Committee is generally constituted sporadically; this should be institutionalized and should be made mandatory for them to have regular and periodic meetings.

- The **Parliamentary Committee on Empowerment of Women** must examine the gender implications of all proposed legislations, policies and programmes and the Committee should also *suo moto* take up issues relevant for the development of women and children and take a proactive role in giving inputs towards policies and programmes through a gender lens.
- The Committee needs to meet more often (periodically on a regular basis), and its meetings should be open to civil society groups as observers
- There is a need to revamp and restructure the **Central Social Welfare Board** to ensure that it works more effectively on its mandate.
- **NIPCCD** could be identified and developed into an apex body to carry out all the trainings & capacity building activities, including the awareness generation programmes, on issues related to women and children.
- It should work towards developing a pool of expert trainers (full/part time) and training kits/manuals on various women related themes.
- The reach and efficiency of NIPCCD should be extended and augmented beyond those organisations working for the development of women and children; but also to cater to educational institutions, corporate houses etc.
- **Gender Responsive Budgeting** coupled with Gender Audits should be taken more seriously to reflect purposive Gender Planning.
- **Gender Mainstreaming** of these institutions and Mechanisms in itself is important.
- It is crucial that there is coordination between the drivers of GRB, Ministry of Finance and Ministry of WCD.

The Committee strongly feels the need to revisit the gender architecture within the country. It is time now that the Ministry of WCD should revision its role in the National Processes for the advancement of Women. There is need to redefine and reclaim spaces in the overall Governance Structures from National to Local. Inter-ministerial Coordination process needs to be institutionalised as much as the effective coordination between different sections of the Ministry itself.

There is a need to review overall role, mandate and functioning of National Women Machineries (NWM), especially with respect to their role in policy, influence, coordination, mapping areas of overlapping and monitoring of gender equality commitments and investments across ministries / departments, looking at convergence across institutions and

strengthening institutional capacities for mainstreaming gender across government agencies and mechanisms. There is as much need to review financial and human resources and infrastructure.

The Committee also feels, quite strongly, that there is a need of a body, it may be given any name, with experts from different fields, who have an understanding of the development sector and gender issues, who can serve as the Think Tank for the Ministry and other mechanisms on issues of Policy, Legislations, analysing the policies of various Ministries and their impact, through a Gender Lens and advise the Ministry from time-to-time. It could help in framing the National Policy on Anti-discrimination and also a Plan of Action for its roll out and operation. There should be a unit exclusively to monitor the implementation of this Policy. It is imperative that such a body has autonomy and adequate resources. It could also be a platform for interaction amongst the Government, experts, academics, women study centres and other agencies that work for the advancement of Women and Girl Child; for free flow and exchange of ideas. Most important is that such a body should have complete autonomy. Such a body, indeed, could be the backstopping space for the Ministry for Perspectives and Analysis, Information, Research and Knowledge Management. It is not necessary that a new structure be created by the Ministry; bodies like the proposed NRCW or the National Institute of Women Affairs envisaged in the current budget (2015-16), could be strengthened and augmented along the perspectives stated above in order to realise the Vision and Mission of the Ministry.

INTRODUCTION

“Patriarchy had not been weakened, but had extended its sway and strengthened its hold on the majority of the population.”¹

Veena Mazumdar, 1985

1.1 Over sixty years since independence, and forty years since the last landmark Report on the Status of Women in India called “*Towards Equality*”, the struggle for Indian women striving to achieve a status of dignity, respect and equality seems like a long, endless and arduous journey. This period has witnessed enormous amount of feminist writings and activism, data and publications, grassroots struggles and protests, legislative and programmatic responses, and national endorsements to various women’s rights based international treaties and initiatives. What is however not so self-evident is, *if all these have had commensurate, and even measurable impact towards creating a gender equitable society in general, and improving the lives and status of women and girls in particular.*

1.2 As this Committee Report is being written, it is evident that much has changed over the decades with regard to many achievements of women in the areas of education, health and political participation in local governance. A striking change is the visible presence of a mature, vibrant, pervasive and widespread women’s movement all across the country². Also, noteworthy is the large scale collectivization of women into Self Help Groups, Cooperatives and other organisations, with a huge potential for transformation. However, despite these evident changes and achievements, *gender based discrimination - that assigns to women, lesser status and power - is deeply ingrained in the consciousness of both men and women; it has remained remarkably stubborn, being generally viewed as a natural corollary of the biological differences between them.*

1.3 The above statement made by Veena Mazumdar decades ago still resonates so well. It is clear that for achieving the dream of gender equality, *we still have miles to go as well as many barriers to cross.*

1.4 The various statistics on status of women in India are **paradoxical and intriguing**. In fact, a study commissioned by the National Commission for Women (NCW) in 2001 to update the work of the CSWI (Committee on the Status of Women in India) concluded that the advancement towards equality since the mid-70s has been mixed. There have been gains; there have also been retrogressive trends; and there have been barriers to advancement. Three significant facts that highlight women's neglect are (a) adverse sex ratio, with child sex ratio declining; (b) Maternal Mortality Rate (MMR) of a disturbingly high level; and, (c) declining female workforce participation rate.

1.5 The blatant paradox is baffling as has been discussed and presented in this report under different thematic sections. To illustrate a few: primary school enrolment for girls has shown remarkable improvement across several states; the dropout rates from the secondary levels remain disturbingly high. The picture with higher education for women continues to be dismal (Chapter - *Women and Education in India*). While age at marriage has shown a slight improvement, a fairly large number of districts in India show 80 per cent girls married off as children. Sharply declining sex-ratio and evidence of increasing gender-biased sex selection remains a matter of grave concern (Chapter - *Femicide: India's Missing Daughters*). Negligible numbers of women have lands and assets on their names though inheritance laws exist on paper. Share of women in wage employment, particularly in non-agriculture sectors, continues to remain woefully low. Number of women engaged in household duties and performing unpaid 'economic' activities has grown. Even now, almost 40-44 per cent women gather fuel and firewood for household use. (Chapter- *Women in the Indian Economy*). There have been significant improvements in the life expectancy of women and improvement in infant and child mortality levels in some states; however, the mortality rates for girls in these States remain higher than boys (Chapter- *Women and Health*).

1.6 It is clear that women empowerment indicators such as education, health and employment not only have a wide inter-state variation but also inter-district variations, within a state. There are emerging areas of concern and emerging geographies of worsening indicators. For example, immunization coverage for female children has worsened over the years, and new geographies

are emerging with alarmingly low sex-ratios unfavourable to girls. A large number of districts of the country, 262 to be precise, are officially classified as "Gender Critical".

1.7 Like inter-state, inter-district variations, there are significant variations between different social groups of women. Dalit women, Muslim women, Adivasi women, Single and excluded women especially widows, Differently abled women, Elderly women, Migrant, Displaced and Trafficked women, Women in the unorganized workforce, Women infected and affected by HIV/AIDS, and Women in conflict zones³ - all of them bear the burden of multiple marginalisation and on various indicators, fare lower compared to their male counterparts as well as women who are from other communities. The intersection of gender with caste, religion, ethnicity and exclusion in various forms adds further layers of discrimination reinforcing gender oppression.

1.8 Globally, in the 70s, 1975 was declared by the UN General Assembly as the International Women's Year; the first Conference on Women was held in Mexico City in 1975; and the decade of 1976-85 was declared as International Women's Decade. In India, the Report of the Committee on the Status of Women in India (CSWI), "Towards Equality" was put out in 1974. It was a revolutionary milestone in bringing about an advancement not only in the field of theoretical discourse on gender studies but also on the understanding of "women's agency".

1.9 The findings of the report, *Towards Equality* brought forth some hard hitting facts. Scrutinising a number of key sectors and compiling evidence of gender gaps, the CSWI highlighted the inequalities suffered by women in every sphere and the unfulfilled obligation of the Indian State in its Constitutional responsibility of not discriminating on grounds of gender. What followed was a more intense debate and evolving of discourse on women's issues, both amongst the feminist groups and the policy makers. The mid 1970s witnessed a tremendous upsurge of interest in understanding women's experiences within the development process, which could no longer be assumed to be inherently benign to everyone including women. A relatively new field of knowledge - Women's Studies - focusing on the lives and struggles of women, grew and spread from the mid-70s, developing considerable synergy with the women's

movement, identifying, understanding, researching and attempting to act on emerging gender issues of concern. There was emergence of a new consciousness regarding women as critical inputs for development rather than as targets of welfare policies⁴.

1.10 The earliest policy approach towards women was characterised by 'welfare' oriented and 'family centred' programmes. The 70s brought about a turning point when women were emerging as a recognised constituency in the development effort. However, the development discourse still ignored, if not denied, the need for a '**rights-based approach**' and its implications for women. Typically, rights based approach brings about a 'root cause' approach, focusing on matters of state policy and discrimination as well as structural determinants of inequalities⁵. It was the Sixth Plan (1980-85) that marked the shift and the focus shifted to '**women in development**' approach, emphasising the need to integrate women into the process of development. It recognized that women were active participants in the development process.

1.11 Indeed, in the 80s and early 90s, the problem identified was not one of women being *left out* of the development process but of the *relations* through which they are "integrated" into the process. The attention thus turned to the 'gender and development' (GAD) approach focussing on the need to perceive women in terms of the social relationship between men and women, based on the division of labour along gender lines and control over resources, in which women are systematically subordinated.

1.12 Also, in the 90s, the '**empowerment approach**' gained considerable attention and consensus. There was a paradigm shift that occurred in the Eighth Plan which recognized 'empowerment' of women and accepted it as a distinct strategy. This change can be attributed primarily to three reasons.⁶ The first was the end of the Cold War; it opened the door to greater "missionary zeal". The second was the Structural Adjustment Programmes (SAP); its evident failure, attributed to a lack of government accountability, impelled a major push for good governance and democracy. Thirdly, development thinkers globally sought to re-define *development* as being something more than mere economic growth, thus **bringing in the "rights based approach" within a "human rights framework"** to construct a more holistic definition

of development. Herein, an economic agenda was combined with a social agenda, along with an environmental sustainability agenda.

1.13 In the early 2000s, the rights based perspective was further reiterated within the human rights framework. Applying the participatory, human-rights framework to development brought in the dimension that any process of change ought to be 'participatory, accountable, and transparent, with equity in decision-making and sharing of the fruits or outcome of the processes.'⁷ In other words, development ought to respect the dignity and individual autonomy of all those whom it claims to help, including the poorest and the most excluded, including minorities and other vulnerable groups who are often discriminated against. It ought to create opportunities for their participation – opportunities that are not dependent on the whim of a benevolent outsider, but rooted in accountable institutions and procedures. It also ought to ensure environmental sustainability without which the economic and social agendas will be ineffective and inadequate in themselves.

1.14 As evident, the theoretical foundations of development discourse have experienced continuous evolution, in the process also influencing how development planners look at women and gender equality.⁸ Unfortunately, *changing discourse has not been able to successfully strike at India's androcentric social structure; its cultural norms and value systems that control and define women's role and their position in the family, community and society.* Thus, there exists a wide gap between progressive evolution of discourse, and the actual realization of gender equality and women's empowerment.

1.15 Despite a progressive **paradigm shift** in addressing the issues of gender equality, the last twenty five years of research and analysis demonstrate amply and conclusively vexatious and persistent challenges being encountered in improving the position and condition of women in India. **Globalization, liberalization and privatization** have impacted women, mostly adversely, while the macro-economy continues to be **gender-blind**. With the opening of the market and massive economic growth, India has witnessed a massive rise in the middle class. This rise in the middle class coupled with unprecedented growth in the use of mobile and other

information technologies and urban centres, with large number of working women and girls accessing public spaces, have given impetus to **the perception** of rising gender equality. What is important is that these perceptions must be addressed and factored into any discussion on status of women, as chapters in this report have done, since they not only determine the extent and nature of support to women and girls, but also determine the larger agenda of social justice and equity.

1.16 The concept of gender and women empowerment is now an integral part of any development and gender discourse as well as any policy initiative. With changing times, new possibilities for women's mobility and independence have emerged but women are also undergoing new forms of exploitation, discrimination, dependence and stigmatisation. The new possibilities may have ushered women into transforming/influencing gender relations or roles in socio-economic, cultural and political arenas; adequate protective social systems and institutions of social justice to safeguard their interests are however, not present.

1.17 Recent attention on **violence against women** has highlighted much deeper issues across India. It has removed the mask from the grim reality that many women in India face, both in public spaces and even within their own homes. As women have gained autonomy and confidence, skills and education, mobility and spaces of their own in the non-domestic sphere, as if as a **backlash** to push them back from their assertion of their due share, **violence in public spaces** has spiked. Brutal crimes against women are reported on a daily basis from all over the country. In intensified identity politics, women become embodiments of a community's identity. In communal and caste-based riots as well as conflict zones, women have been made victims repeatedly. From high rates of emotional, sexual and physical violence, to son preference, to women entrepreneurs' inability to compete on a level playing field with men, the ways in which women are discriminated against run the gambit. *The path towards total gender empowerment indeed is still uphill.*

1.18 Admittedly, several proactive measures have been taken. India has ratified various **international conventions and human rights instruments** committing to secure equality for

women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW, 1993) which India did with Reservations and Political Declarations; the Women's Rights Charter; the four UN World Conferences on Women, in particular the Beijing Conference and its Platform for Action (BPFA); the Vienna Convention on Human Rights; International Conference on Population and Development (ICPD); and the Millennium Development Goals (MDGs), to name a few. These are the **guiding documents** that have given new tools and indicators for assessing gender equality. The Human Development Report each year has been coming out with Gender Development Index; it now ranks countries on a Gender Inequality Index.

1.19 Even as the Indian government reported progress and further plans towards fulfilment of its commitments, CEDAW made some strong **concluding observations** in its 2014 Report. It welcomed the progress made by way of legislations in India. In doing so, the Committee's key recommendations were also relating to adoption of anti-discrimination legislations on all grounds. It referred to Committee's General Recommendation 28 (2010) Protection of women from inter-sectoral forms of discrimination in accordance with Art.1&2 of the convention and also the need to adhere to principles of equality between men and women. It made some very specific recommendations with regard to combating violence against women, especially in relation to implementation of the recommendations of Justice Verma Committee Report.

1.20 The principle of **gender equality is enshrined in the Indian Constitution**, whereby it not only guarantees equality to women but also empowers the State to adopt measures of positive discrimination in favour of women. Specifically, the Constitution guarantees to all Indian women - equality (Article 14), no distinction by the State (Article 15(1)), equality of opportunity (Article 16), and equal pay for equal work (Article 39(d)). It allows special provisions to be made by the State in favour of women and children (Article 15(3)); it renounces practices derogatory to the dignity of women (Article 51(A) (e)). It also allows for provisions to be made by the State for securing just and humane conditions of work and for maternity relief (Article 42).

1.21 It may be mentioned here that way back in 1990, prior to the ratification of CEDAW, India passed an Act in its Parliament for the setting up of a **National Commission for Women** to safeguard the rights and legal entitlements of women. In 1993, the **73rd and 74th Amendments (1993)** to the Constitution of India provided for reservation of seats in the local bodies of Panchayats and Municipalities for women, laying a strong foundation for their participation in decision making at the local levels and promising women voices in public space and opportunities in making **governance gender equal**. The **India Country Report, 1995** published on the eve of the Beijing Conference, recognised that *“though women’s issues have moved to centre stage in our thinking and women’s participation is now an inseparable part of both the rhetoric and theory of planning, gender equality and gender justice are still distant dreams.”* It further stated that *“although we pride ourselves in our constitutional and legal edifice, their realization in letter and spirit, in so far as gender is concerned, is yet to be achieved.”*

1.22 It thus conceded that there were **certain critical areas** that called for immediate attention. These included: persistent and institutionalized discrimination against the girl child; feminization of poverty; gender blindness in macro-economic policies; invisibility of women’s contribution to the economy, including care economy, and environmental sustenance; poor participation by women in decision-making structures and processes; gender gaps in literacy, education and health; growing trend of violence against women; gender-based societal norms; negative portrayals and perpetuation of gender stereotypes by mass media. The National Plan of Action for the Girl Child (1991-2000) was formulated to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child. The National Policy for the Empowerment of Women (2001) was prepared to bring about the advancement, development and empowerment of women; and 2001 was declared the Year of Women’s Empowerment (*Swashakti*) by the Government of India.

1.23 India’s constitutional commitments as well as international ratifications manifest themselves within the framework of a democratic polity through its progressive laws, development policies, plans and programmes that aim to create opportunities, and advance women in different spheres. Following closely the developments in discourse, India’s national development plans in the form

of the **Five Year Plans** have seen a marked shift (as has been discussed earlier). It must also be noted that the pursuit of **liberal economic policies**, and opening up of India's market to the world in 1990s was a paradigm shift from an earlier approach. Meanwhile, India - at least theoretically - was following on the global trends of 1990s in pushing women's issues to the fore-front of policy framing, and re-enforcing legislations and constitutional guarantees.

1.24 In the Ninth Plan, Ministries were required to indicate the flow of funds to the women's programs and schemes (with the Women's Component Plan framework was used); the Tenth Plan, for the first time set monitorable targets for a few key indicators of human development including among other things, reduction in gender gaps in literacy and wage rates, and reduction in Maternal Mortality Rate (MMR). The Tenth Five Year Plan called for a three pronged strategy of social empowerment, economic empowerment and providing gender justice, to create an enabling environment for achieving gender equality goals. The ideological shift from welfare to development to empowerment is evident in the **increased allocation of funds** for women and women centric programs. These however remain at a low of 5-6% only of the overall budget of the country. Also, as stated earlier, what remained a concern was the persistent mismatch between government policy and development outcomes for women. The idea of **Gender Responsive Budgeting** developed out of a growing understanding that macroeconomic policy, in particular the policies of globalization adopted since the 80s and 90s are neither class nor gender neutral⁹. Hence, the shift towards 'inclusive' growth in the Eleventh (2007-2012) and Twelfth Plans (2012-17), using GRB to mainstream gender into the planning process, and make 'inclusiveness' really meaningful¹⁰. It remains to be seen how the newly-constituted *Niti Aayog* will take forward the process.

1.25 Over the decades, various **legislations** to uphold women's rights have been enacted. For instance, the promulgation of *Vishakha* Guidelines by the Supreme Court of India in 1997 brought in mandatory institutional mechanisms for enforcing protection against sexual violence. Amendments to existing Laws including Dowry Prohibition Act (1956), the Immoral Trafficking of Women (Prevention) Act (1986), the Indecent Representation of Women (Prohibition) Act

(1986) and ushering in the new Protection of Women from Domestic Violence Act (2005) add to the Indian State's commitment and measures to safeguard women's rights and interests.¹¹

1.26 The brutal gang-rape of a 23-year-old woman in Delhi on 16 December 2012, led the Government to set up the **Justice Verma Committee** to propose amendments to criminal law dealing with sexual offences. Amongst many other recommendations, the Committee in its report recommended widening the definition of rape. In response, the Parliament passed the Criminal Law (Amendment) Act 2013 which provides for amendments of the Indian Penal Code, Indian Evidence Act, and the Code of Criminal Procedure. It also enacted the Sexual Harassment of Women at Workplace (Prohibition, Prevention and Redressal) Act 2013 (*16 years after the Supreme Court had directed the Indian Government to provide a legal framework to deal with the issue of sexual harassment*)¹². Some important recommendations of Justice Verma Committee-report were **unfortunately ignored**. A matter of greater concern is that incorporation of several main recommendations of the Verma Committee has not been enough: *violence against women continues with impunity*.

1.27 Laws on paper give little protection, if they are not enforced effectively. This is evident from women continuing to have **little access to land and property**. After the amendment of the Hindu Succession Act in 2005, on paper, most women in India have been provided the same status as that of men. In reality however, many **social norms** and socialisation processes forbid women from seeing themselves as equal right holders. On critical aspects of marriage and divorces, and in provision of maintenance to women, even legislative reforms have dragged its feet. For example, the Marriage Law Amendment Bill (2013) which was passed by the Rajya Sabha in August 2013 is still pending for further approval in Lok Sabha. Similarly, Christian Marriage and Matrimonial Causes Bill (1961) remains in its draft form.

1.28 Meanwhile, **huge data gaps** still exist, resulting in some issues pertaining to women remaining invisible and unclear. For instance, lack of disaggregated data on land ownership by women in India, mainly because the basic documents of land records at the village level do not have a column to indicate sex of the land owner recorded. This then means that data required to

take up interventions in a focused manner will not be possible, even though we realise that lack of control over resources is one of the main structural determinants of women's inequality. India must improve on these data gaps by bringing in **disaggregated data systems** in all spheres of life, which would also help capture the situation with regard to different social groups of women and ensure that the focus on the most marginalised is not lost. Such an overhaul needs to pay attention to quality of data – for instance, on data related to crimes against women. In fact, there is a need to generate periodic and comprehensive data on violence against women as part of the national statistical system.

1.29 Legislations, fund allocations, planning processes and several affirmative actions have been instrumental in bringing the issues of women to centrestage; however, these have not been enough to make a real difference in their lives. Initiatives have largely **failed to address strategic gender needs** and have not **questioned in any fundamental way those norms and structural factors like control over resources that perpetuate inequality**.

1.30 The Committee places on record its **highest appreciation of India's women's movement and activists**, and their enduring and untiring contributions to ensure that the issues of women, their concerns and needs are not even for a minute relegated, undermined and ignored. The strides towards the advancement of achieving gender equality in India would not have been possible without also the committed involvement of numerous *known and unknown* leaders and workers of the women's movement at different levels and across the country.

1.31 Against the backdrop of discrimination, exclusion, violence, custodial rape, dowry deaths and non-access to support systems, the women's movement emerged as the rallying point for the rise of feminist consciousness through the mid-1970s to the 1980s. In the midst of feminist debate of interesting dialogue, exciting debate and enlightening discourse, the 1980's gradually gave way to a convergence of rural and urban with grassroots women joining larger women's groups. Today, women's organizations, influenced by the women's movement, exist in a decentralized manner running into hundreds in numbers all over India, both urban and rural. There has also been a fragmentation of the women's movement with more specialised demands

and focus around particular themes or groups of women emerging. The Dalit feminist movement, for instance, emerged out of the sense of neglect from both the Dalit rights' movement and the women's movement, which ignored the multiple marginalisations of Dalit women.

1.32 From 1970s till date, the women's movement has campaigned against multiple issues affecting women's rights and entitlements. Various initiatives - conducting empirical research, citing hard data, multiple fact finding reports, academic discourse, mimeographs, films, novels, conferences and workshops, direct actions and street protests as well as legal recourse - make up the trajectory of efforts and events nurtured and fought by women's groups and organizations, all of which focussed on gender based discrimination and violence. Developments around individual women like Mathura (the case of a tribal girl raped in a police station, forcing a legal redefining of what constitutes Rape), Roop Kanwar (raising a debate on customary practices like Sati), Shah Bano (raising issues of Muslim women and their maintenance after divorce; thus putting the limelight on personal laws), Bhanwari Devi (case of a Dalit woman gang raped for fighting for gender justice and social reform) and "Nirbhaya" (the case of a young woman whose family came from India's hinterland, with aspirations for her share of modern India, who was brutally gang-raped and murdered spurring intense outrage and outpouring) are a few of those instances when the whole nation was forced to debate issues confronting women. Such instances saw the issue spread farther than the women's movement.

1.33 Based also on the Constitutional guarantees found in the fundamental rights for both men and women, the women's movement brought up debates for the realization of substantive gender equality. Women's activism in India has no doubt been instrumental to the enactment or amendment of several key legislations. Alongside, the contribution of civil society organisations to several grassroots level initiatives has to be lauded - initiatives that are changing women's lives in significant ways, showcasing the setting up of workable alternatives, and successful solutions for the complex issues confronting women. **Mahila Samakhya** is one such initiative with tremendous potential to challenge the dominant patriarchal norms from grassroots upwards. Rooted in the collective consciousness and empowerment of women, various state level innovations addressing issues of child marriage, girls' education, women's health, livelihoods,

alcoholism etc., have been taken up through Mahila Samakhya. Kudumbashree and SERP (Society for Elimination of Rural Poverty) are other initiatives which have transformed lives of tens of thousands of women, their families, and communities through efforts going beyond livelihood and skilling. *Nari adalats*, on the other hand, have provided community based platforms to women to secure justice. Efforts of individual women who have committed their lives to strengthening women's rights and mitigating violence cannot be forgotten. Their efforts have been remarkable, their struggles memorable and motivational.

1.34 **The agenda of gender equality in India is 'Unfinished' because it is still largely 'Unfulfilled'**. This Committee's analysis also shows that there is indeed a mismatch between the policies and their outcomes. Women in India have taken giant strides in many fields viz. sports, media, art and culture, education, politics, service sectors, science and technology with notable progress; the recurrent devastating stories of rapes, honour killings, sex trafficking, and acid throwing have continued in worse forms. The Gender Inequality Index (2013) is a conspicuous testimony to this **unfinished agenda**. India ranks as low as 132 out of 136 countries, better only than that of Afghanistan in South Asia. Even though the Global Gender Gap has improved marginally, where India ranks 101 among 136 countries, in economic participation its position is 124; in educational attainment 120; and in health and survival it is almost at the bottom - 135th. However, in political empowerment India is among the top 10 countries. In 1995, India was widely-acclaimed internationally for bringing in 1.3 million women through political participation in grassroots democracy. However, 20 years later, there continues to be a strong barrier for extending that politically critical mass of women to the Legislative Assemblies and Parliament.

1.35 The HLCSW clearly suggests that while attempting to improve the status of women, it is important to address underlying causes and consequences that result from the all-pervasive patriarchal norms that continue to privilege men over women, sometimes in subtle ways, but more often than not, in not so subtle ways. For example, *as demographics shift due to declining sex-ratios, negative consequences such as violence, fewer marriage opportunities and higher trafficking of girls and women will continue, creating harmful effects across communities.*

Evidence that the Committee Members gathered from the review of data, research papers, publications, reports, consultations and from its numerous state and field visits and by talking to several women and men including program functionaries and outreach workers tells that **it is simply not enough to focus on empowering women and girls through government schemes and projects.** Nor is it desirable to unthinkingly work with existing institutions and structures lest it reinforces the patronizing patriarchal beliefs. It is critically important to **transform these institutions.** While traditional institutions like family, religion, marriage etc., have remained stubbornly patriarchal and kept women in a subordinate position, what is worrisome is the fact that modern day institutions in the public sphere are also perpetrating the same norms. Similar is the case with **market forces and the booming corporate sector** in India – there is no evidence that they are gender-just; in fact, evidence points the other way.

1.36 In the present context, patriarchy has reinvented and transformed itself to fit into new socio-cultural realities of India. Surrogacy, marginalisation on the basis of sexual orientation, (lack of) access to water and IT/mobile revolution, as few examples, are today's realities and need to be understood with relation to their impact on women. Women have been at the receiving end in these changes; **clash between the new and the old**, between the modern and the traditional. On the one hand, liberalized economy may have contributed in providing better education, jobs, decision making powers and opportunities for some women; on the other hand, it appears that women have been made the target of a **strong backlash** in terms of increased violence both within and outside the home, wage differential and their commodification, to mention a few examples. As men find their avenues to status, wealth and power blocked, violence against women has become an increased means by which to express masculinity.¹³

1.37 What must be remembered is that gender equality is not a zero-sum game. In order to unravel centuries of patriarchal beliefs and challenge institutionalized norms, men should be part of both the discourse and the process of bringing about this change that rejects male superiority and female subordination. We must replicate and expand programmes that have challenged and uprooted these beliefs, norms and practices in schools, government institutions, market entities, families, and communities. Until we do, headlines about the high rates of women who

experience violence and shocking numbers of men who admit to violent behaviour and dominant attitudes will continue to be the dominant story. A story which hinders development, stifles attempts to reduce poverty, affects women's lives in the most profound ways, and denies them their due rights which then continues from generation to generation.

1.38 While the global slogan "**Gender parity 50:50 by 2030**" has raised the bar, India and Indian women deserve no less. The Government of India must seize this moment of opportunity, as the world stands at a cross-roads again on the eve of **Beijing+20**, and when the **Post-2015 Development Agenda and Sustainable Development Goals** are being discussed. "Towards Equality" report came at a time when the first UN Conference was about to take place in 1975. India once again has the opportunity to put out a strong positive message to the world in the upcoming Global Leaders' Meeting, "Beijing+20: ReCommitting for Women and Girls", on Achieving Gender Equality and Women's Empowerment by declaring its full intent and plan for ending gender based discrimination in the country.

1.39 A rigorous journey of two years in preparing and writing this report has made us realize like never before that the issue of gender equality has to be taken up on a war footing and revolutionary changes need to be brought in. Business as usual will not do. Gender equality otherwise will only be a dream and never a reality for women in India. This Committee particularly wants to draw attention to the **unacceptable decline in child sex ratio, increase in violence against women and economic disempowerment of women** as issues that need immediate proactive measures. Remarks such as "*The victim is as guilty as her rapists. ... she should have called the culprits brothers and begged before them to stop*", "*Boys are boys, they make mistakes*", "*We should stop our girls from wearing jeans*" must not be tolerated anymore in a democratic and a civilized nation.

1.40 This Committee strongly calls upon the government to take proactive measures to ending patriarchy in all its forms and achieving the goal of gender parity by 2030. The first immediate step towards that direction could be in ensuring **50:50 parity in Parliament and State**

Legislatures. India must also adopt a **Bill of Rights** as recommended by the Justice Verma Committee.

Approach Adopted by the HLCSW

1.41 It is pertinent to bring up here the genesis of this HLCSW. The Committee of Governors constituted by the President of India to 'Study and Recommend Strategies' for speedy Socio – Economic Development and Empowerment of Women, in its report of 3rd February 2009, recommended setting up of a National Commission on Status of Women to look into the current status of women and the outcomes of various development programmes relating to women's empowerment. The Group of Ministers which examined the recommendations of the Committee of Governors endorsed this proposal, and recommended setting up of a High Level Committee on the Status of Women in India (HLCSW).

1.42 On the basis of the above, the Government of India set up the High Level Committee on the Status of Women vide Notification No. 4-5/2009-WW (HLCW) issued on 24th May, 2013, under the Chairpersonship of Prof. (Dr.) Pam Rajput, 11 Members and a Member Secretary to undertake comprehensive study on the status of women since 1989 as well as to evolve appropriate policy interventions based on a contemporary assessment of women's needs. The Committee had its first meeting on June 24, 2013 and formally commenced its work.

1.43 The constitution of HLCSW assumes special significance in light of the fact that the last such effort was undertaken by a Committee (Committee on the Status of Women in India or CSWI) constituted in 1971 to assess the impact of the constitutional, legal and administrative provisions on the social and economic status of women in India. The CSWI's report, "Towards Equality" that was submitted in 1974, was a watershed in bringing women's issues to the fore, and initiating a healthy debate on the unequal status of women in India. Against this historical benchmark, and given the complexities of modern day Indian society, the job at hand for this HLCSW was mammoth and the responsibility onerous. To be able to capture the complex realities of issues in rapidly changing times in a country as diverse as India was daunting. A rigorous journey of two years overcoming all ups and downs, including dropping of the numbers

of members to eight, with no Member Secretary for the Committee for almost the whole tenure of the Committee (except for a couple of months) and many administrative and financial glitches, was undeniably worth its while.

1.44 The key tasks entrusted to the HLCSW included:

- a. To undertake an intensive literature survey on the status of women in India.
- b. To examine the overall status of women including the socio-economic, health and nutritional, legal and political status disaggregated by their geographic, economic and social position including their minority status, where relevant. Also, in the analysis to focus on cross-regional differences and inequalities both within and outside the household.
- c. To assess the impact made by existing policies and legislative changes on equality, security and holistic empowerment of women; and to identify inequalities in policy and legislation as well as gaps in implementation.
- d. To prepare an integrated report on the current socio-economic, political and legal status of women in India that captures the interconnectedness of these issues and their impact on women.
- e. To recommend measures for the holistic empowerment of women.

1.45 After thorough discussions initially, the Committee drew up the broad contours and trajectory for this report, keeping in mind the Government of India's Terms of Reference (ToR) which mandated the Committee to study the Status of Women since 1989. The Committee had **twenty nine sittings** in its tenure, each ranging from two to four days. Through these, the Committee set itself on the task of preparing the study report with a number of pertinent questions to be answered:

- Has there been a positive change in the status of women since 1989? If yes, in which areas?

- How effective are the laws, programmes and interventions in addressing the dynamic and complex reality of women and their agency in addressing vulnerabilities?
- Whether the power structures that operate in our society provide equal access to 'resources' and 'opportunities' in enabling women to bring about a positive change in their 'condition' and 'position'?
- Does the current development paradigm contain spaces that translate into empowerment for women?

Methodology

1.46 The Committee chalked out exhaustive methodological steps to ensure that the Terms of Reference were adequately met and justice done. The Committee has extensively studied and analysed quantitative data from various established surveys since 1989.

1.47 **Data Sources** included findings of surveys conducted by Census Commissioner's Office, National Sample Survey Organisation (NSSO), District Level Household Surveys (DLHS), and National Family Health Surveys (NFHS). Data pertaining to MIS of various programmes such as National Rural Health Mission (NRHM), Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) along with data of other similar programmes have also been used. Data pertaining to National Crime Records Bureau (NCRB) have been used in analyzing the situation with regard to violence against women. Various data sets tabulated by International Organizations (including UN) have also been referred.

1.48 The above data sets and indicators were also helpful in the Committee indexing the status of women across different states of India, wherein it tried to unravel the relative position and condition of women, across different dimensions of (dis)empowerment, through carefully chosen indicators which are somewhat unconventional when compared to other index-building exercises.

1.49 A situation analysis led by the quantitative information from the above sources set the initial ground; hundreds of micro-studies and published analysis were looked into for a qualitative picture to emerge. Here, the reports of many other Committees including Parliamentary Committees (Department-related as well as the one on Empowerment of Women) were studied.

1.50 Along with the quantitative and qualitative measures available, the HLCSW analysed policy responses i.e. whether policies, legislations, programmes and schemes as well as institutions and other mechanisms are supportive to gender justice outcomes. With a combination of these, the Committee sought to examine if quantitative changes were accompanied by qualitative shifts in the lives of women, and what the role of the State has been. For example, does better health in terms of improved life expectancy also mean that a woman can make choices with respect to accessing health resources as and when she wants? Or do supportive legislative initiatives translate into providing safety and violence-free spaces for women? To further understand these aspects better, the Committee not only undertook consultations, discussions and dialogues with stakeholders in Delhi and other locations, but also got enriched by the first hand understanding of women's everyday realities in contemporary India through its field visits and dialogues at the grassroots.

1.51 The Committee began its journey of a consultative and participatory process of its study by holding an interaction with national women's groups in Delhi, on its proposed approach and frameworks for analysis. Keeping in line with its decision to reach out to, and draw from the rich expertise and experiences that existed outside the Committee too, the Committee organised various consultations viz. on status of Dalit Women in India; status of Adivasi women in India; Justice Verma Committee and thereafter; Women and Media; Personal Laws; Women and the Judiciary/Women in the Judiciary, to list out some. The HLCSW also undertook a regional consultation in Bhubaneswar, drawing participants from seven states of India, mainly eastern India.

1.52 Further, in its effort to assess the women's machinery in the country, an interaction with former Chairpersons and Members (present and former) of the National Commission for Women

was organised. The HLCSW also interacted with the Chair and Members of the Parliamentary Committee on Empowerment of Women.

1.53 The Committee had the opportunity to invite experts and officials who came and made presentations and responded to queries, on chosen themes/issues. Expert presentations included those on Declining Sex Ratio; Women in Agriculture; Marriage in Indian Society; Census 2011 results and trends; and Minority Women amongst others. Focus Group Discussions were also held with Muslim women. On certain specific areas, background papers on different themes were also sought. In addition, the Committee drew on the advice of task force members (experts in respective fields) and peer reviews. In addition, the Committee actively sought and received submissions from civil society groups, activists and others on their respective areas of work, their analysis, data as well as their suggestions for future interventions.

1.54 Knowing that it would be difficult to cover all states of India within its tenure, the Committee chose a few representative states carefully in each region, and covered: Gujarat, Kerala, Nagaland, Odisha, Punjab, Tamil Nadu and Uttar Pradesh. In the visits to these states, the Committee interacted and collected information from various stakeholders. In each State, meetings were held with various concerned departments jointly, which was also seen as an opportunity for cross-learning and sharing across departments, provided by this Committee's visit. Consultations were also held with civil society representatives, both NGOs and CBOs; interactions with academia; also held were meetings with Chairpersons and Members of State Commissions for Women as well as State Social Welfare Boards.

1.55 The Committee undertook visits to a wide variety of economic enterprises for/by women; to understand better and gauge the implementation of schemes like SABLA, Short Stay Homes, Ujjwala etc., these were made part of the state visits; schools and school-based interventions for gender sensitisation and girl child development; post-disaster rehabilitation efforts; support services to survivors of violence including Rescue Help Lines; primary health centres; innovative initiatives like SHG-run toilet complexes and women's taxi services; a deeply transformative effort undertaken in Mararikulam Panchayat of Alapuzha district in Kerala where the Panchayat

took up crime-mapping in a sensitive and empowering way; community media efforts; all-women police stations and other police stations; prisons and protective homes, etc. Interactions with elected women representatives were especially woven in. In Gujarat, Punjab and Tamil Nadu, the Committee interacted with the Governors of these states; in Gujarat and Kerala, it met with the State Chief Ministers as well. In Kerala, the Minister for Social Justice and Panchayati Raj presided over a consultation and participated in wide ranging discussions.

1.56 Through all of the above – a situation analysis with a combination of quantitative and qualitative data, followed by assessments of policy responses coupled with rich glimpses of grassroots realities, along with inputs from a wide variety of stakeholders – this HLCSW has drawn up its recommendations.

1.57 Throughout these processes, gender justice outcomes were the main point of investigation. India's Constitutional Guarantees were the guiding principles to assess the reality vis-à-vis the promises and commitments made to India's women and girls. Keeping in line with progressive development discourse, the *Committee used a rights based framework, with citizens as rights-holders and the State as the duties-bearer to assess the current reality of various interventions*. A feminist lens was used to look at various issues. The Committee was keen on ensuring that its focus on the most marginalised does not get lost. It used an inter-sectionality approach to look at particular groups of women who face multiple discrimination and oppression. In its work, the Committee constantly sought to analyse the implications of the current development paradigm on women's equality and empowerment.

1.58 In undertaking its assessment, the Committee not only looked at the ToR given to it, but went beyond it in assessing and analysing certain important determinants of gender equality in the current day context like shedding more light on-media, on the relationship between Women and Environment, as well as specific detailed analysis of the gender architecture in the country.

1.59 Within an overall ecology where various inter-connected factors are at play to determine the gender justice outcomes for women and girls in India, this report has examined **social norms and attitudes** closely as they are viewed as an impediment to the achievement of equality. **Policies and legislations** have been discussed, understood and analysed as important tools for

change; the idea was also to see if these policies and legislations are working and transformative in nature. The role of **media** in today's day and age, given its double-edged potential, was studied carefully, including taking inputs from a national conference wherein more than 150 media professionals, academic experts and regulators participated. Role of the **women's movement** in bringing about a change in discourse and practice, in the situation of women in India, was a theme re-visited. **Institutional transformation** (or lack of it) as a 'driver' of women's empowerment - both public institutions in the spheres of education, health, law and justice etc., as well as social institutions such as family, marriage etc. - was analysed. The role and **impacts of various international treaties** that have been entered into by the Indian Government and the implications of the same were acknowledged. **Urban vs Rural** context needs were distinguished clearly, just as other variations were captured carefully. **Emerging issues** that need further understanding and responses were woven into the Committee's investigation.

1.60 The pages that follow present the status of women in India in the social, economic, political and legal spheres through eighteen distinct chapters. Given the inter-connectedness of issues, cross-references have been made across chapters, even as the presentation was sought to be kept as disaggregated as possible. Recommendations span the immediate to the long term, and are not kept limited to the Ministry of Women & Child Development alone. While several of the HLCSW's recommendations are addressed to the Government, attention and action from the private sector and civil society is also seen as essential.

1.61 In this report, the HLCSW has put emphasis on the role the State must play in ensuring equality and underscored the point that entitlements must be guaranteed through **gender-sensitive institutions**; that **adequate resources** must be planned and allocated through gender budgeting and other explicit means; and that strong **monitoring mechanisms** must be in place with **accountability** towards the community of women that these interventions seek to address. The Committee has also underlined the need for rigorous **institutional reforms** including those of the private sector and media to ensure effective implementation of women's empowerment programs and creation of **gender equitable norms in our journey towards a Gender-Just India**.

1 Veena Mazumdar (1985). *Emergence of the Women's Question in India and the Role of Women's Studies*. CWDS Occasional Paper: New Delhi. Pp. 4-5.

2 Background paper written by Indu Agnihotri for HLC "Addressing Poverty Amidst Growth and Democracy without Equality: The Challenges for Women's Movement in India".

3 Report of the 12th FYP Working Group on Women's Agency and Empowerment. Sec.2.3; P 19.

4 Department of Women and Child Development (1988). *National Perspective Plan for Women (1988 -2000 AD)*: Report of the Core Group set up by the Department.

5 *ibid*

6 Peter Uvin (2007). From the right to development to the rights-based approach: how 'human rights' entered development. *Development in Practice*, 17:4, 597 - 606.

7 Arjun Sengupta (2000) 'Right to Development'. Report of the Independent Expert on the Right to Development, pursuant to General Assembly resolution 54/175 and Commission on Human Rights resolution E/CN.4/RES/2000/5. [http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/4490c26031920601c12569610048a2a0/\\$FILE/G0015327.pdf](http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/4490c26031920601c12569610048a2a0/$FILE/G0015327.pdf)

8 Although the "principle of equality" - of both men and women - was recognized as early as in 1945 in the UN Charter and the UN Declaration of Human Rights (1948), researchers have pointed out that development planners worked on the assumption that what would benefit one section of society (especially men) would trickle down to the other(women). Also, initial discourses were limited to only "women", rather than challenging the systemic relations of inequality, involving the relations between both men and women.

9 Debbie Budlender, Rhonda Sharp and Kerry Allen (1998): *How to do a Gender-Sensitive Budget Analysis: Contemporary Research and Analysis*. Commonwealth Secretariat.

10 Working Group of Feminist Economists. *Towards Economic Growth: Ideas Emerging from Gendered Analyses*. Planning Commission National Alliance of Women, 11th and 12th Plans.

11 While acknowledging laws that guarantee better legal status to women, one cannot overlook instances that bring to the forefront "traditional male domination" of the legal system. The Jammu and Kashmir Permanent Resident (Disqualification) Bill 2004 deprives a woman of the status of permanent residency of the State if she married an outsider! And the Supreme Court judgment in *Christian Community Welfare Council of India* (in an appeal over the Judgment of the High Court, Mumbai) permitted, under certain circumstances, the arrest of a woman even in the absence of lady police at anytime in the day or night!

12 Some of the positive measures in these amendments included recognizing acid attacks, sexual harassment, voyeurism, stalking and trafficking of persons as criminal acts under the amendments to the Indian Penal Code, 1860. Five exclusive fast track courts were set up to deal with cases of sexual violence against women. Additionally a women's distress helpline number, 1091 was launched in various Indian cities.

13 Flavia Agnes (2013). No shortcuts on rape: make the legal system work. *Economic and Political Weekly*; January 12.

Chapter 2

India

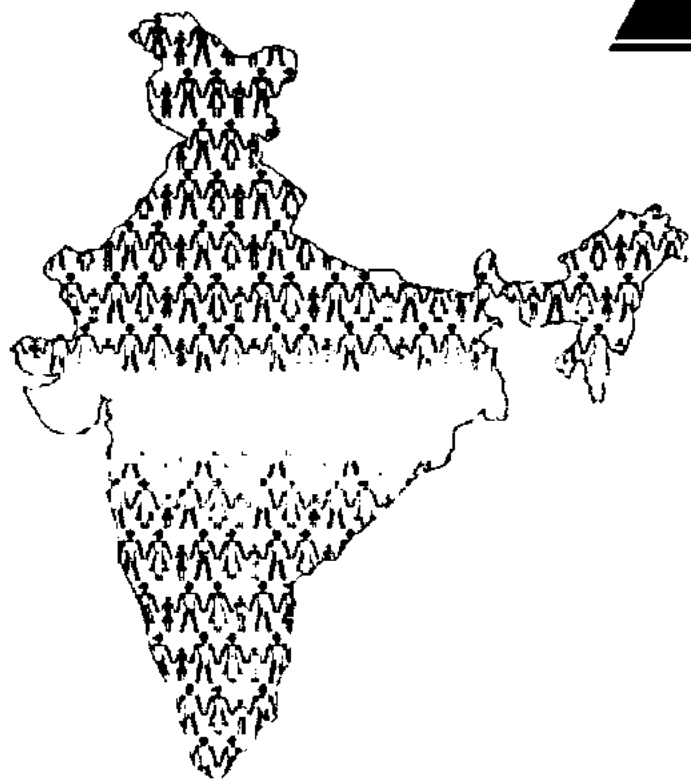
Demographics Profile: The Gender Composition



Introduction

2.1 The Census of India provides a wealth of data to assess the trends and differentials of the Status of Women in India. It also helps us to draw comparisons across various categories of women, as well as between women and men. This report has analysed numerous census tables and demographic data to reveal deeper structural drivers of the status of women; also to help set newer hypothesis. For example, the findings on sex-ratio at different ages, tells us how girls and women are treated during the entire spectrum of their life cycle. The data on female headed households is important to raise questions about changing expectations from women; also, how realistic they are if concomitant norms are not changing with regards to the role of women.

2.2 This chapter presents key demographic data on women and wherever possible compares it with the data on men to narrate a quantitative story of the changing status of women in India.¹



Chapter Highlights

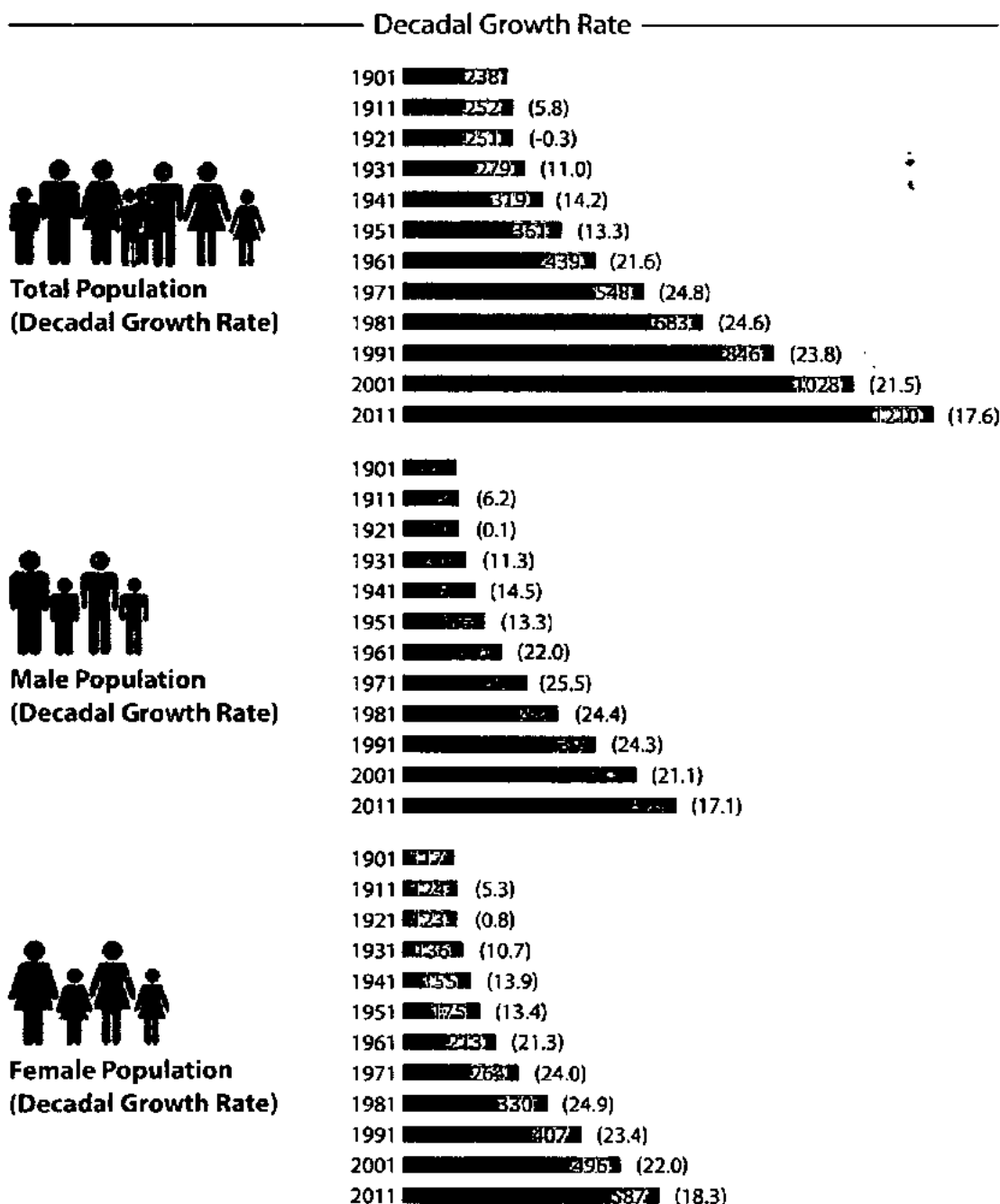
Female Population in India, 1901-2011 Trends

- Rural-Urban, caste, ethnicity and religion-wise distribution
- Age Structure
- Female Mortality (in early age)
- Sex-ratio (SR) and SR at birth
- Marital Status
- Fertility Decline
- Female Sterilisation
- Female Headed Households
- Differently abled Female Population

¹ Various other chapters in this report also present many of the demographic parameters in relation to specific groups of women to contextualize their situation.

2.3 India continues to be the second most populous country in the world after China, contributing to 17 percent of the total world population. From 1901 till 1951, the increase in overall population was not very rapid; it ranged from 14 million in the decade of 1901-11 to 42 million in the decade, 1941-51. In the decade 1951-61, the total population increased by 78 million with male population of 40 million, and female population of 38 million. After 1961, the increase in India's overall population was above 100 million. It increased rapidly in the subsequent decades with maximum increase of 182 million observed in 1991-2001 (Figure 1).

Figure 1: Female Population in India 1901-2011 (in millions)

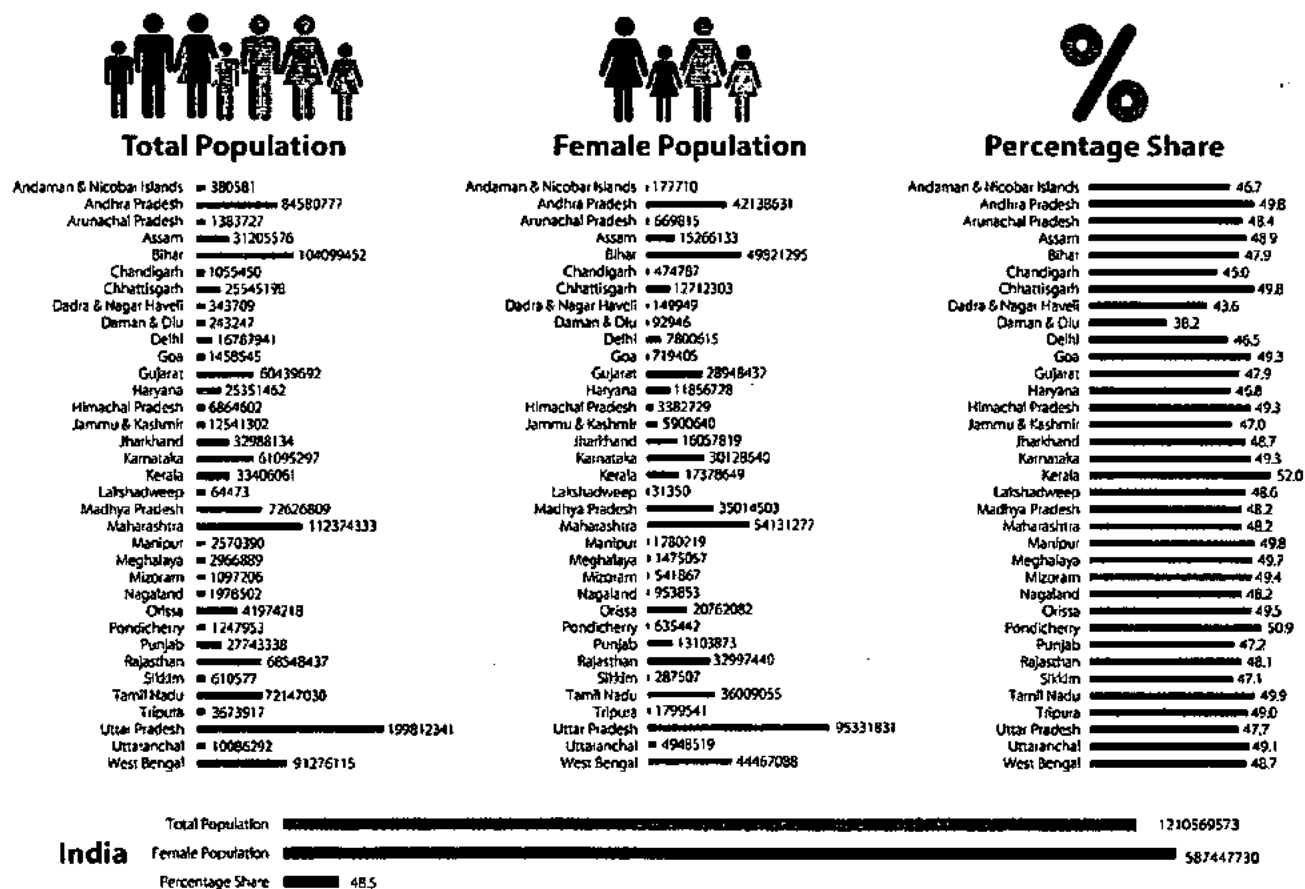


Source: Office of the Registrar General India, 2011



2.4 In last 111 years (1901 - 2011), the decadal growth in male population has remained higher than the decadal growth in female population. In the last two decades, the growth in female population seems to have overtaken the decadal growth in male population (Figure 1). It may be mentioned that it is during the 1980s that the female life expectancy began changing and it became higher than that of males.⁶ Notwithstanding these changes in the rate of decadal growth, the percentage share of female population to the total population in India has remained half or less than half for over a century. Among the states, only in two States - Kerala and Meghalaya - the share of females in total population exceeds 50 percent mark; in Daman and Diu, the share is less than 40 percent. In all the other States/Union Territories, the share of female population to the total population ranges from 43 to 50 percent (Figure 2).

Figure 2: Female Population and its share in total population for India, its States and Union Territories, 2011



Source: Office of the Registrar General India, 2011

⁶ The Chapter on Health deals with the data and discussion on life expectancy.



2.5 In both urban and rural areas, the percentage share of male population is slightly higher than the female population. It has remained by and large in the same range over the last decade, 2001-11 (Table 1).

2.6 The male Scheduled Castes (SC) as well as Scheduled Tribes (ST) population have remained higher than female SC and ST population, in both urban and rural India. The share of the female SC population varies from close to 1 per cent in Goa to 15 percent in Punjab; and the share of female ST population varies from little less than 1 per cent in Bihar to over 48 percent in Lakshadweep and Mizoram, and 47 percent in Nagaland.

Table 1: Percentage Share of Male and Female Population; Scheduled Caste and Scheduled Tribe Male and Female Population – to the Total Urban and Rural Population, 2001-2011








CENSUS						
% of Total Population	2011			2001		
	Total Population (in millions)	% Male	% Female	Total Population (in millions)	% Male	% Female
Total	1210.57	51.5	48.5	1028.61	51.7	48.3
Rural	833.46 (68.8%)	51.3	48.7	742.49 (72.2%)	51.4	48.6
Urban	377.11 (31.1%)	51.8	48.2	286.12 (27.8%)	52.6	47.4
Schedule Caste (SC) Population	20.13 million (16.6%)	8.6	8.0	16.66 million (16.20%)	8.4	7.8
Rural SC Pop.	15.38 million (18.5%)	9.5	8.9	13.30 million (17.9%)	9.2	8.6
Urban SC Pop.	4.75 million (12.6%)	6.5	6.1	3.36 million (11.7%)	6.1	5.6
Schedule Tribe Population	10.45 (8.6%)	4.3	4.3	8.2	4.1	4.1
Rural ST Pop.	9.41 (11.3%)	5.7	5.6	10.4	5.3	5.2
Urban ST Pop.	1.04 (2.8%)	1.4	1.4	2.4	1.3	1.2

Source: Census of India

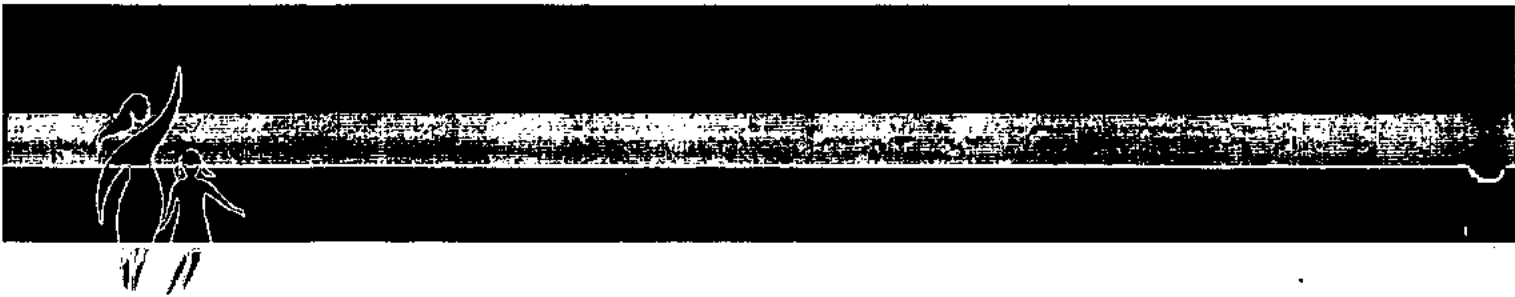


2.7 Of the total population (both males and females), the Hindu females constitute 38.8%, followed by Muslim women 6.5%, and Christians 1.2%. The percentage pattern is quite similar in the rural and urban areas (Figure 3).

Figure 3: Religion-wise Data

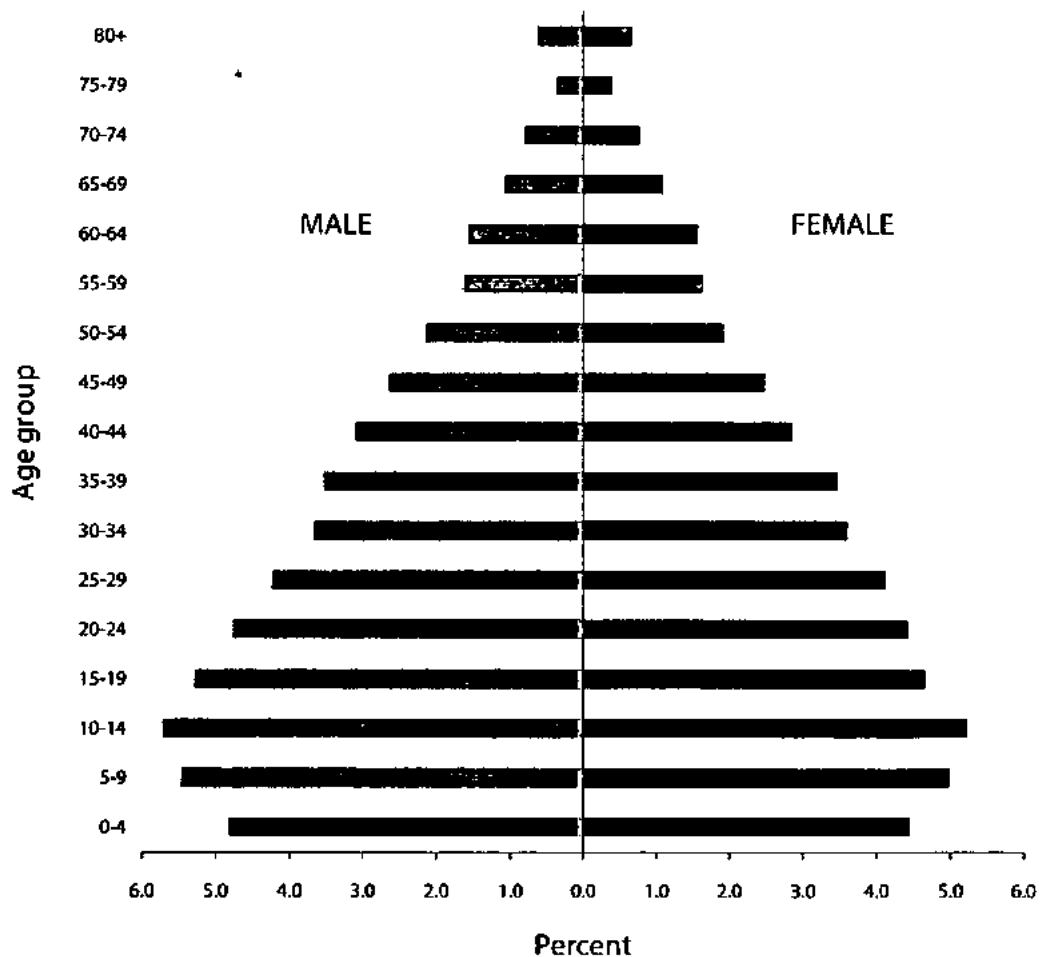
	Total Population			Rural		Urban	
	Total	Male (%)	Female (%)	Male (%)	Female (%)	Male (%)	Female (%)
 Hindus	82.76 million (80.5%)	41.7	38.8	42.3	39.9	39.9	35.7
 Muslims	13.82 million (13.4%)	6.9	6.5	6.1	5.8	9.1	8.2
 Christians	2.41 million (2.3%)	1.2	1.2	1.1	1.1	1.4	1.4
 Sikhs	1.92 million (1.8%)	0.9	0.9	1.0	0.9	0.9	0.8
 Buddhist	79.5 Lakhs (0.7%)	0.4	0.4	0.3	0.3	0.6	0.5
 Jain	42.3 Lakhs (0.4%)	0.2	0.2	0.1	0.1	0.6	0.5
 Other Religions	6.6 lakhs (0.6%)	0.3	0.3	0.4	0.4	0.1	0.1

Source: Census, 2001



2.8 Age structure is an important demographic parameter, which in turn is determined by birth, death, migration and expectation of life at birth. Age structure provides useful insights into the complex set of factors – social, cultural and economic – that drive how population age over a period of time. Figure 4 presents the age pyramid of the population as per the 2011 census data. The cohort-wise change is more visible in 0-14 years of age group and 60 year and above groups than what is observed in reproductive age group or 15-49 years. The higher male population in the early ages is clearly evident in the base of the pyramid while towards the top there is slight increase in the female population. One of the plausible reasons for it is the sex-ratio at birth as well as sex-differentials in mortality across different age groups.

Figure 4: Population Pyramid, Census 2011

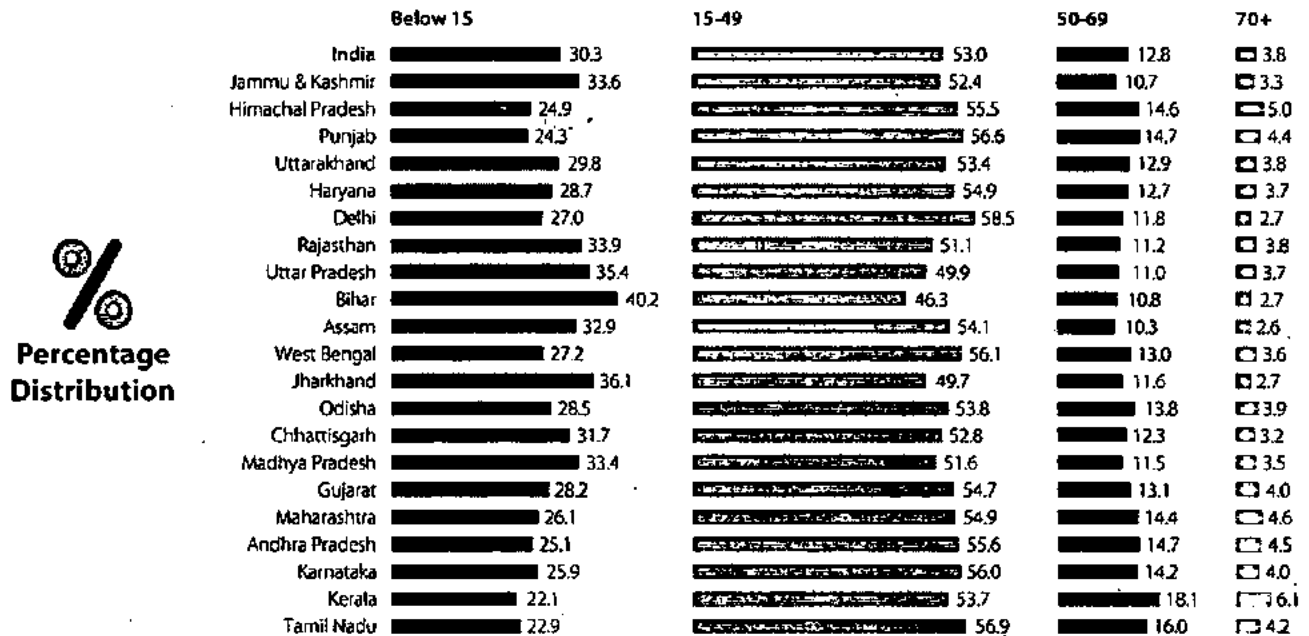


Source: Census 2011



2.9 Age and sex structure varies widely for Indian states. For example, Kerala, Tamil Nadu, Punjab and Himachal Pradesh have lower proportion of female population below age 15, which is between 22 and 25 percent compared to the national average of 30 Percent. In states like Bihar, Uttar Pradesh and Jharkhand, the proportion below 15 years is more than 35 percent as compared to national average; in Bihar it reaches up to 40 per cent (Figure 5). Punjab, Himachal Pradesh, Gujarat, Maharashtra, Tamil Nadu and Karnataka have increasing number of women in the 70 plus age group Kerala has over 6 per cent women – highest among all states – in this age group. It is obvious that women and girls in different states are at varying stages of life cycle facing different challenges. An in-depth understanding of their needs in varying contexts will be a prerequisite for sensitive and relevant policy and programmatic responses.

Figure 5: Percent Distribution of Female Population by Age according to States




Percentage Distribution

Female Population

India	587447730
Jammu & Kashmir	5900640
Himachal Pradesh	3382729
Punjab	13103873
Uttarakhand	4948519
Haryana	11856728
Delhi	7800615
Rajasthan	32997440
Uttar Pradesh	95331831
Bihar	49821295
Assam	15266133
West Bengal	44467088
Jharkhand	16057819
Odisha	20762082
Chhattisgarh	12712303
Madhya Pradesh	35014503
Gujarat	28948432
Maharashtra	54131277
Andhra Pradesh	42138631
Karnataka	30128640
Kerala	17378649
Tamil Nadu	36009055

Source: Office of the Registrar General India, 2011



2.10 Excess female mortality over male especially in early ages is particularly concerning. The phenomenon has been widely acknowledged, researched and discussed on various forums. It must be acknowledged that beyond age 9, the patterns on sex-differentials in mortality begin to change with men overtaking women in most age groups, and particularly in the higher ages (Refer to Annexure 3: *Sex-differentials in mortality over time and by age*).

2.11 Defined as number of women per 1000 men, sex-ratio in India has systematically declined from 972 in 1901 to 943 in 2011 (refer to Annexure 1). While there has been a slight improvement in the last two decades (1991-2001; 2001-2011), how sustainable is the improvement is not well established. According to 2011 census, there are 112 districts in the country with sex-ratio less than 900; 126 districts with sex-ratio between 900 and 925; and 9 districts with sex ratio less than 800. It appears that in the past two decades new districts have joined the rank of those with less than 800 sex-ratio (refer to Annexure 2); some of these districts belong to States like Jammu and Kashmir, and Gujarat.

2.12 The child sex-ratio (number of girls per 1000 boys in 0-6 age group), which also includes sex-ratio at birth (number of girl child born per 1000 boys) - is a continuing worrying trend in India. The Sample Registration Survey (SRS) Data, 2011-13 (Table 2) shows that sex-ratio at birth is 908 which is a marginal improvement from 906 during 2005-2006. The declining trend of girls born and also those up to age 6 years is attributed to both gender-biased sex-selection, and differential mortality due to discrimination against girls.^m Admittedly, a recent campaign Beti Bachao and Beti Padhao (BBBP) launched by the government is a clear recognition of the alarming sex-ratio situation in the country. Clearly, much more needs to be done.

Table 2: Sex Ratio at Birth in India and Large States

States	Sex Ratio at Birth						
	2006-08	2007-09	2008-10	2009-11	2010-12	2011-13	AHS, 2011
Punjab	836	836					-
Haryana	847	849	848	854	857	864	-
Jammu & Kashmir	862	870	873	880	895	902	-
Rajasthan	870	875	977	878	893	893	878
Delhi	877	882	884	880	884	887	-
Uttar Pradesh	877	874	870	875	874	878	904
Maharashtra	884	896	895	893	896	902	-
Gujarat	898	904	903	909	909	911	-
Bihar	914	917	912	910	909	911	919
Andhra Pradesh	917	919	920	915	914	916	-
Madhya Pradesh	919	926	921	920	921	920	904
Jharkhand	922	921	919	915	918	913	923
Assam	933	931	928	926	922	920	-
Karnataka	935	944	943	945	950	958	-
Tamil Nadu	936	929	927	926	928	927	-
Orissa	937	941	938	946	948	956	905
Himachal Pradesh	938	944	942	938	939	943	-
West Bengal	941	944	938	941	944	943	-
Kerala	964	968	966	965	966	966	-
Chhattisgarh	975	980	985	991	979	970	951
India	904	906	905	906	908	909	-

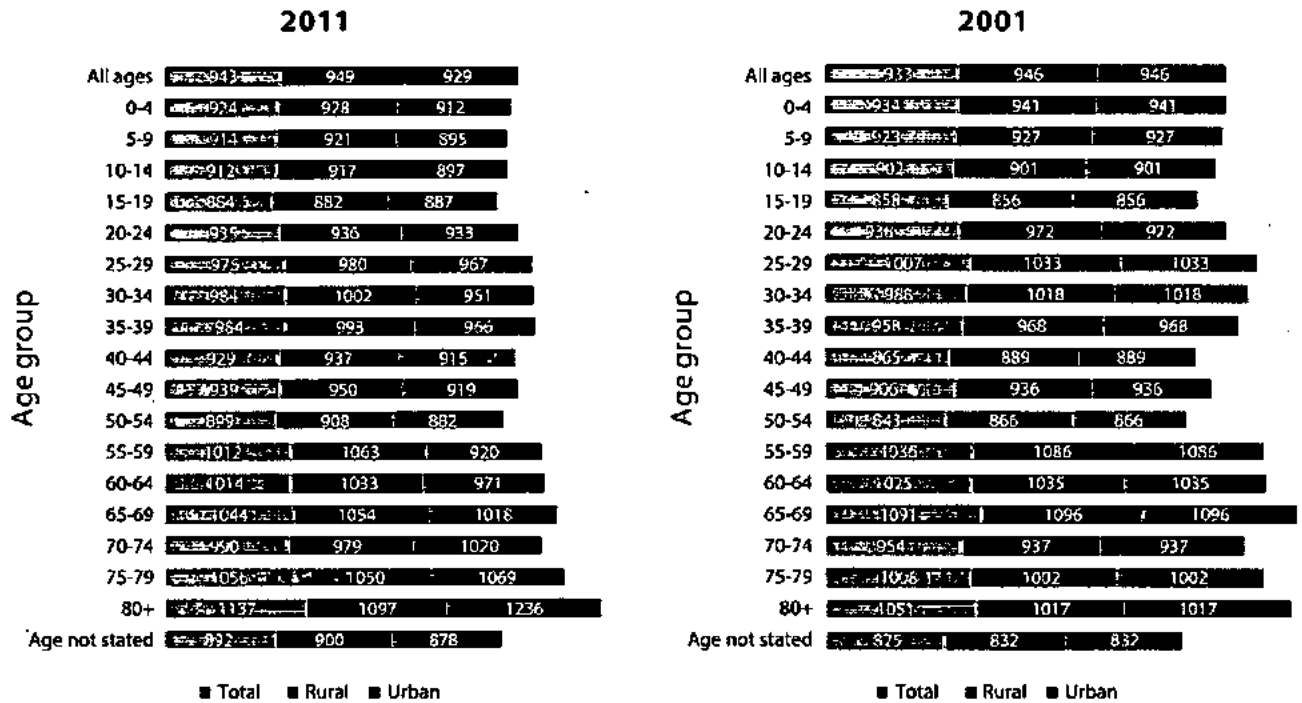
Source: SRS Annual Reports, Annual Health Survey (AHS) 2011 in EAG states

^m A separate chapter deals with the declining sex ratio in India given the grave nature of the phenomenon, looking specifically into the causes and consequences, also suggesting recommendations.

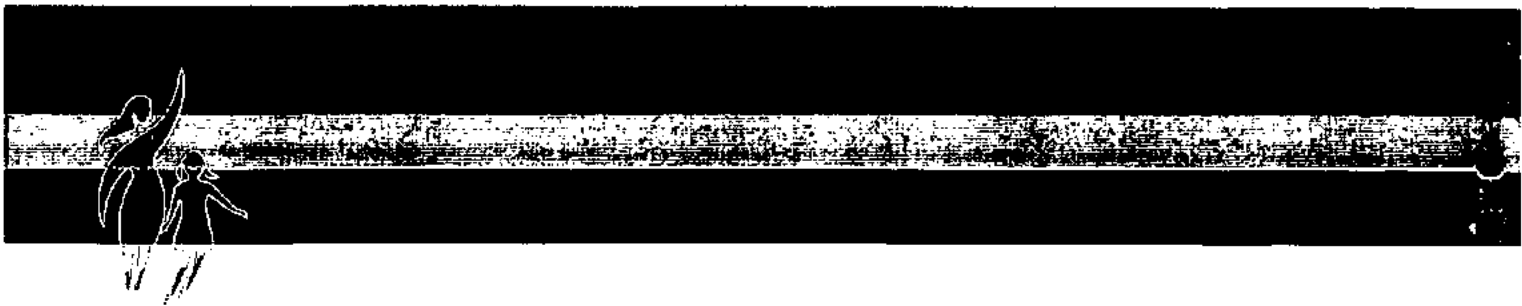


2.13 Sex ratios are unfavorable to girls at early ages. In last ten years, rural areas have shown a much steeper decline in sex ratio - unfavorable to girls, than urban areas. Figure 6 below shows sex-ratios by age groups in Rural and Urban India.

Figure 6: Sex Ratio by Age groups, Rural-Urban India

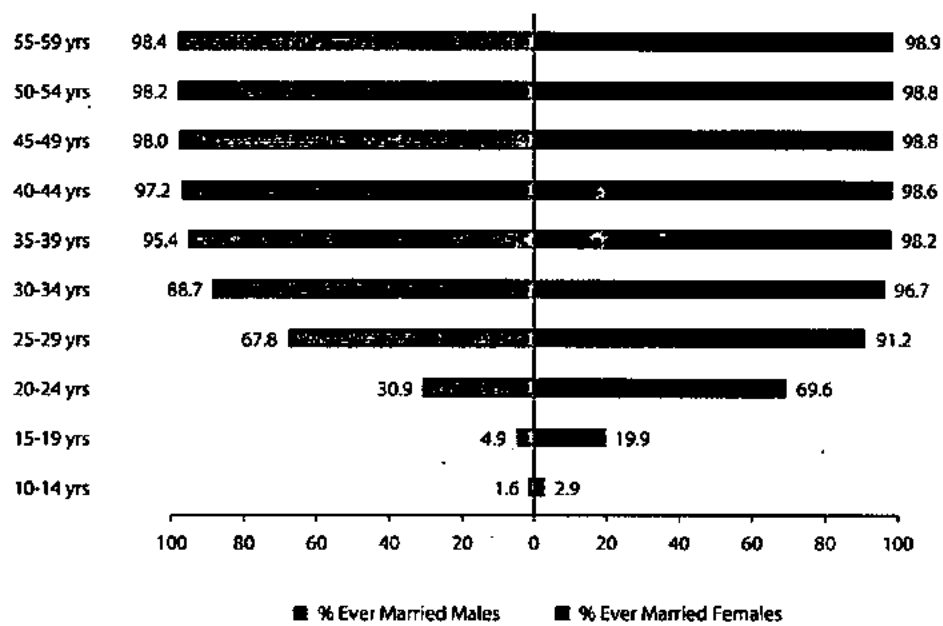


Source: Registrar General of India (calculated from 2001 and 2011 Census data)



2.14 Marriage is a universal phenomenon in India especially for girls. Society and family define marriage as a primary aspirational goal in life for girls taking precedence over all other aspirations and prepares them for this eventuality. According to 2011 census, nearly one-fourth (23%) of the girls were ever married before attaining age of 20. In the age group 20-24 years, nearly two-third of the women were ever married and in the age group 25-29 years, over 91 percent were ever married (Figure 7).

Figure 7: Percentage of Male and Female Ever Married (Census 2011)



Source: Census 2011



2.15 The magnitude of early marriage although declining over the years, remains huge and widespread. The states like Bihar, Rajasthan, Uttar Pradesh (UP) and West Bengal are well known for the high prevalence of child marriage rates (Table 3). Recent data on marriages is disturbing as they show increasing rates of child marriage in some areas; in many other areas, the situation has remained unchanged. For example, the states of Gujarat and Maharashtra have witnessed an increased proportion of girls marrying between ages 15-19 years; and states like Kerala, Tamil Nadu and Karnataka, the rates with which girls get married between ages 15-19 have remained by and large unchanged in the last decade.

Table 3: Percentage of Women ages 15-19 (Ever Married)

States	Census Years			% Point Change 2001-2011
	1991	2001	2011	
India	35.7 ^e	24.9	19.9	-5
Jammu and Kashmir	-	11.5	8.7	-2.8
Rajasthan	56.2	41.2	28.8	-12.4
Bihar	55.8	39.6	26.0	-13.6
UP	47	27.4	16.4	-11
MP	52.2	34.1	21.4	-12.7
Odisha	22.4	14.1	14.9	0.7
West Bengal	33.7	29.4	28.4	-1
Gujarat	22.6	18	20.3	2.3
Maharashtra	27.7	17.7	19.9	2.3
Andhra Pradesh	46.4	32.3	21	-11.3
Karnataka	27.5	20.4	20.5	-0.1
Tamil Nadu	18.1	15.7	15.1	-0.6
Kerala	-	13.3	12.7	-0.5

Source: Census of India



2.16 A district wise analysis of child marriages show that of the 641 districts in India, 23 per cent have registered a decline in child marriage by 10 or more percentage point. 27 per cent have registered only marginal decline between 2 and 9 percentage points; and 37 per cent have not shown any decline in the child marriage rates. On the contrary, 13 per cent districts have registered an increase by 2 or more percentage points. There are districts in Rajasthan (26), UP (56), Bihar (54), MP (33), West-Bengal (13), Odisha (7), Telangana (6), Maharashtra (12), Gujarat (2), Andhra Pradesh (9), Karnataka (16), where more than 50 per cent and in some cases (especially in Bihar and UP) 87-90 per cent girls are married off as a child.

2.17 Fertility decline in India over the past two and a half decades across all states is noteworthy. The total fertility rate (TFR)^{iv} has declined from 3.39 in 1992-93 to 2.23 in 2013 (Table 4) and states like Tamil Nadu, Kerala, Karnataka, Maharashtra, Andhra Pradesh, Himachal Pradesh, and Punjab have reached below replacement level of fertility. On the other hand, there are states like Bihar, UP, Rajasthan, Madhya Pradesh, Chhattisgarh, Jharkhand and a few others that are at moderately high level of fertility ranging from 2.6 to 3.4. It is clear from the fertility trend in the last two decades that India is on the verge of reaching overall low fertility levels across most of its states. There is a need to address high fertility in some areas but clearly there is no reason for coercive and aggressive family planning program focusing exclusively on women that has typically characterized Indian program in the past.

Table 4: Declining Fertility in India and its states

India/States	NFHS-1 1992-93	NFHS-2 1998-99	NFHS-3 2005-06	SRS 2013
India	3.39	2.85	2.68	2.3
Andhra Pradesh	2.59	2.25	1.79	1.8
Arunachal Pradesh	4.25	2.52	3.03	Na
Assam	3.53	2.31	2.42	2.3
Bihar	Na	3.7	4	3.4
Chhattisgarh	Na	2.79	2.62	2.6
Delhi	3.02	2.4	2.13	1.7
Goa	1.9	1.77	1.79	Na
Gujarat	2.99	2.72	2.42	2.3
Haryana	3.99	2.88	2.69	2.2
Himachal Pradesh	2.97	2.14	1.94	1.7
Jammu & Kashmir	Na	2.71	2.38	1.9
Jharkhand	Na	2.76	3.31	2.7
Karnataka	2.85	2.13	2.07	1.9
Kerala	2	1.96	1.93	1.8
Madhya Pradesh	Na	3.43	3.12	2.9
Maharashtra	2.86	2.52	2.11	1.8
Manipur	2.76	3.04	2.83	Na
Meghalaya	3.73	4.57	3.8	Na
Mizoram	2.3	2.89	2.86	Na
Nagaland	3.26	3.77	3.74	Na
Orissa	2.92	2.46	2.37	2.1
Punjab	2.92	2.21	1.99	1.7
Rajasthan	3.63	3.78	3.21	2.8
Sikkim	Na	2.75	2.02	Na
Tamil Nadu	2.48	2.19	1.8	1.7
Tripura	2.67	1.87	2.22	Na
Uttar Pradesh	Na	4.06	3.82	3.1
Uttaranchal	Na	2.61	2.55	Na
West Bengal	2.92	2.29	2.27	1.6

Note: NFHS gives estimate for States only not for Union Territories; SRS gives for major states

^{iv} Average number of children that a woman would bear in her reproductive life between 15 to 49 years.



2.18 Family Planning program in India has remained single mindedly focused to promote female sterilization. Men are not involved into accepting family planning methods and spacing methods have not been promoted as much as they should have been. Table 5 shows that while overall 37 per cent of all the eligible couples have accepted female sterilization, in some Indian states like Andhra Pradesh, share of female sterilization is as high as 63 per cent.

Table 5: Current use of Contraceptives for India and States

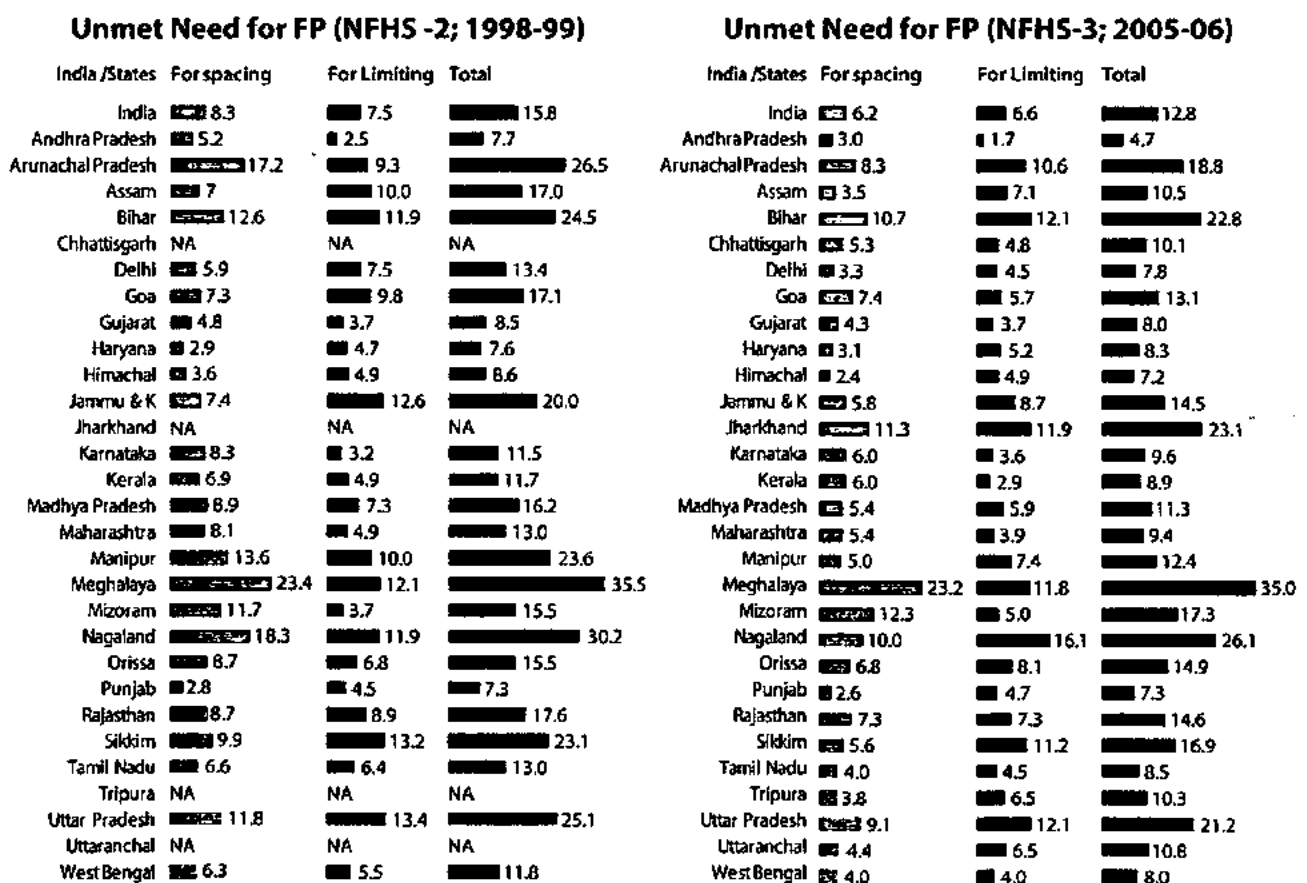
India/States	NFHS-2 (1998-99)							NFHS-3 (2005-06)						
	FS	Con-dom	Pills	MS	IUD	Rhythm	With-drawal	FS	Con-dom	Pills	MS	IUD	Rhythm	With-drawal
India	34.2	3.1	2.1	1.9	1.6	3.0	2.0	37.3	5.2	3.1	1.0	1.7	4.9	2.5
Andhra Pradesh	52.7	0.7	0.5	4.3	0.6	0.4	0.1	62.9	0.5	0.3	2.9	0.5	0.3	0.1
Arunachal Pradesh	20.6	0.7	7.3	0.1	4.2	1.5	0.9	22.5	2.8	8.1	0.1	3.4	2.4	3.2
Assam	15.7	1.8	6.3	1.0	1.9	11.1	1.7	13.0	2.3	10.3	0.2	1.0	17.2	11.7
Bihar	19.2	0.7	1.0	1.0	0.5	0.9	0.7	23.8	2.3	1.3	0.6	0.6	3	1.8
Chhattisgarh	NA	NA	NA	NA	NA	NA	NA	40.7	2.9	1.4	3.3	0.8	1.7	0.9
Delhi	26.3	17.5	4.0	2.3	6.2	4.5	2.6	23.0	22.9	4.5	0.8	5.0	6.3	4
Goa	27.8	4.9	0.9	0.4	1.9	5.8	4.9	25.4	7.5	1.5	0.1	2.2	6.7	4.4
Gujarat	43.0	3.5	1.5	2.3	3.1	4.8	0.8	42.9	5.8	2.6	0.6	4.4	8.3	1.7
Haryana	38.7	6.8	2.1	2.1	3.6	4.5	4.4	38.2	11.8	2.8	0.7	4.7	3.1	1.9
Himachal Pradesh	45.1	5.0	1.3	7.3	2.1	4.4	2.4	49.0	11.5	2.7	6.3	1.4	1	0.6
Jammu & Kashmir	28.0	4.8	3.3	2.7	3.0	1.8	4.9	26.3	8	4.7	2.6	2.7	1.4	6.2
Jharkhand	NA	NA	NA	NA	NA	NA	NA	23.4	2.7	3.8	0.4	0.6	2.1	2
Karnataka	51.5	1.0	0.6	0.7	2.8	1.5	0.2	57.4	1.7	0.8	0.2	2.5	0.6	0.4
Kerala	48.5	3.1	0.4	2.5	1.6	3.8	3.8	48.7	5.5	0.4	1	2.3	4.5	6.2
Madhya Pradesh	35.7	2.9	1.0	2.2	0.8	1.0	0.4	44.3	4.8	1.7	1.3	0.7	2	0.8
Maharashtra	48.5	4.0	1.7	3.7	1.9	0.7	0.3	51.1	6.2	2.4	2.1	3.0	1.4	0.4
Manipur	14.4	1.3	2.2	1.1	6.8	6.5	6.1	8.2	4.1	5.3	0.5	5.3	8.1	16.6
Meghalaya	6.5	1.3	4.5	0.0	3.3	3.1	1.1	9.5	2.4	4.9	0.1	1.5	2.4	3.2
Mizoram	45.2	0.9	5.4	0.1	5.4	0.7	0.0	42.9	1.4	10.6	0	4.7	0	0.3
Nagaland	12.3	1.8	2.5	0.0	7.7	4.5	1.4	9.9	2.6	4.7	0	5.2	5.2	2
Orissa	33.9	0.9	3.0	1.7	0.8	3.8	1.8	33.1	3	7	.1	0.5	1.7	3.3
Punjab	29.3	13.8	3.1	1.6	6.1	6.2	6.3	30.8	15.5	2.9	1.2	5.5	3.8	3.4
Rajasthan	30.8	3.1	1.5	1.5	1.2	1.3	0.6	34.2	5.7	2	0.8	1.6	1.2	1.1
Sikkim	22.4	1.5	9.5	2.4	5.6	2.1	0.2	21.2	4.1	12.8	4.5	3.0	5.8	3.1
Tamil Nadu	45.2	1.5	0.3	0.8	2.5	1.3	0.5	55.0	2.3	0.2	0.4	2.1	0.9	0.6
Tripura	NA	NA	NA	NA	NA	NA	NA	17.6	3.2	21.8	0.5	0.9	14	6.7
Uttar Pradesh	14.9	1.0	4.2	1.2	0.7	4.1	1.6	17.3	8.6	1.7	0.2	1.4	11.3	2.5
Uttaranchal	NA	NA	NA	NA	NA	NA	NA	32.1	15.7	4.2	1.8	1.5	2.1	1.7
West Bengal	32.0	2.9	9.2	1.8	1.4	8.7	9.8	32.2	4.3	11.7	0.7	0.6	12.3	8.4

Note: FS-Female Sterilization; MS-Male Sterilization; IUD-Intra Uterine Device



2.19 In 2005-06, only one per cent men had used male sterilization which is lower than the previous round of NFHS in 1998-99. The use of IUD is only 1.7 percent; and so is the use of other spacing methods like oral pills. A much higher use of terminal method particularly female sterilization than spacing methods is a matter of concern. The data shows that the difference between unmet needs i.e. percentage of women wanting no more children but not using any method for spacing, and terminal methods is marginal. However, in many cases, the level of unmet needs for spacing methods is higher than the terminal methods. Figure 8 below shows the extent of unmet need for both spacing and terminal methods for India, also the states.

Figure 8: Unmet Need for Family Planning from NFHS-2 and NFHS -3





2.20 The disproportionate emphasis on female sterilization can also be seen in terms of the declining age of its acceptance. The median age of female sterilization acceptance is as low as 23 years in case of Andhra Pradesh. For India as a whole, and in many of the states, it is showing a declining trend (Table 6).

Table 6: Median Age of Sterilization for Females (NFHS-1 and NFHS-2)

India/States	Median Age of Sterilization	
	NFHS-2	NFHS-3
India	25.7	25.5
Andhra	23.6	23.3
Arunachal	26.2	27.6
Assam	26.7	27.2
Bihar	27.7	27.4
Chhattisgarh	NA	26.4
Delhi	27.8	27.3
Goa	28.5	28.0
Gujarat	26.5	26.4
Haryana	26.5	26.0
Himachal	26.2	25.8
Jammu	28.2	28.2
Jharkhand	NA	26.9
Karnataka	24.2	23.9
Kerala	26.4	26.5
Madhya Pradesh	26.4	26.3
Maharashtra	25.0	24.9
Manipur	30.5	29.9
Meghalaya	28.6	29.4
Mizoram	29.3	28.4
Nagaland	29.0	28.7
Orissa	26.3	26.1
Punjab	27.1	26.9
Rajasthan	27.0	26.8
Sikkim	26.7	27.0
Tamil	25.3	24.9
Tripura	NA	27.4
Uttar Pradesh	28.3	28.4
Uttaranchal	NA	27.2
West Bengal	25.1	24.6



2.21 Over the last two decades the proportion of female headed households has increased both in the urban and the rural areas in India (Figure 9). About 27 million households, constituting 13 percent of total households in the country, are headed by women. Census 2011 showed that there are 49 lakh single-member female households, of which three-fourths were in rural areas. The vulnerability of such households - very often with lack of assets and productive resources, and with additional safety and security issues - is very high.

2.22 On the basis of 2001 Census data analysis, which remains largely true for 2011 Census (Figure 9) Prof. Ashish Bose⁹ had highlighted that in different regions/states of the country females may be reported as head for different reasons; therefore, there is no single reason for the headship of women. For example, the primary reason in Lakshadweep which is at the top of the households headed by women is that being a conglomeration of islands, the men are away on the high seas and women have to manage the households. What is important is that Lakshadweep is predominantly Muslim state but "one has to look for explanations in realms other than religion....one can easily surmise that geography prevails over sociology". Meghalaya, predominantly a Christian and Tribal State, has over 23 per cent of the households headed by women. There is no huge male out migration here but the state has matrilineal system prevailing among the Khasis where property vests with the youngest daughter of the family. On the other hand, massive outmigration of men to other countries and other Indian states in search of better economic prospects must be the main cause of the high proportion of female heads of households in many districts of Kerala, Himachal Pradesh and Uttaranchal. Besides male out-migration for reasons of geography or economy, the predominance of widows (discussed in detail in the Chapter on "marginalised women") does indicate the higher longevity of women as compared to that of men and constitute another important reason for increasing number of female headed households in India.

Figure 9: Female Headed Households in India and States (Census 2001-2011)



Source: Office of Registrar General of India, Census 2001 and 2011

⁹ Ashish Bose (2006). Where Women Prevail: 2001 Census and Female Heads of Households. *Economic and Political Weekly*, Vol. 41, No. 22 (June 3-9); pp. 2192-2194.



2.23 As per Census 2011, over 26 million people in the country which account for 2.2% of the total population are differently abled – labelled as disable in the Census (Table 7). The total disabled male population is 15 million (2.4% of the total population); there are 11 million disabled females (2% of total population). India's differently abled population has increased by 22% in decade 2001-11. Overall, this growth is much higher for women (27%) as compared to men (19%) in both urban and rural areas.

Table 7: Disabled Population and Decadal change in Disabled Population by Sex and Residence India

Residence	Disabled Population, 2011			Decadal change in Disabled Population (2001-11)		
	Persons	Males	Females	Persons	Males	Females
Total	26,810,557	14,986,202	11,824,355	22.4	18.9	27.1
Rural	18,631,921	10,408,168	8,223,753	13.7	10.6	17.8
Urban	8,178,636	4,578,034	3,600,602	48.2	43.3	55.0

Source: Census 2011



2.24 Sikkim and Odisha (3%) have the highest proportion of differently abled population followed by Jammu & Kashmir, Andhra Pradesh, and Maharashtra with above 2.5% of differently abled population. On the other hand, Daman & Diu, Dadar & Nagar Haveli, Mizoram, Delhi and Chandigarh are the states and UTs with less than 1.5% differently abled population (Table 8).

Table 8: Proportion of Disabled Population by Sex and Place of Residence in India and States, 2011 (in percentage)

India/States & UTs	Persons			Males			Females		
	Total	Rural	Urban	Total	Rural	Urban	Total	Rural	Urban
Sikkim	2.98	3.47	1.52	3.03	3.52	1.53	2.92	3.41	1.50
Odisha	2.96	3.05	2.52	3.18	3.28	2.71	2.74	2.82	2.33
Jammu & Kashmir	2.88	3.01	2.54	3.08	3.24	2.68	2.65	2.75	2.38
Andhra Pradesh	2.68	2.68	2.67	2.89	2.88	2.90	2.47	2.49	2.44
Maharashtra	2.64	2.71	2.55	2.91	3.01	2.78	2.35	2.38	2.30
Lakshadweep	2.50	2.80	2.42	2.53	2.60	2.51	2.48	3.02	2.33
Chhattisgarh	2.45	2.54	2.13	2.60	2.69	2.32	2.29	2.39	1.94
Puducherry	2.42	2.68	2.30	2.67	3.02	2.51	2.17	2.35	2.09
Punjab	2.36	2.48	2.15	2.59	2.76	2.31	2.09	2.17	1.97
Jharkhand	2.33	2.38	2.17	2.52	2.57	2.36	2.14	2.19	1.96
Rajasthan	2.28	2.37	2.02	2.39	2.46	2.17	2.17	2.27	1.86
Kerala	2.28	2.37	2.18	2.46	2.57	2.35	2.11	2.20	2.02
Goa	2.26	2.65	2.03	2.30	2.72	2.06	2.22	2.59	2.00
Himachal Pradesh	2.26	2.31	1.84	2.48	2.54	1.98	2.04	2.08	1.67
Bihar	2.24	2.22	2.42	2.47	2.46	2.62	1.98	1.96	2.20
INDIA	2.21	2.24	2.17	2.40	2.43	2.34	2.01	2.03	1.98
West Bengal	2.21	2.20	2.23	2.41	2.41	2.40	2.00	1.98	2.05
Karnataka	2.17	2.12	2.25	2.35	2.32	2.39	1.98	1.91	2.10
Haryana	2.16	2.17	2.13	2.34	2.38	2.26	1.95	1.92	1.99
Madhya Pradesh	2.14	2.10	2.22	2.36	2.33	2.46	1.89	1.87	1.97
Uttar Pradesh	2.08	2.04	2.23	2.26	2.23	2.39	1.88	1.83	2.05
Manipur	2.05	2.00	2.16	2.17	2.12	2.29	1.93	1.89	2.04
Arunachal Pradesh	1.93	2.09	1.39	2.00	2.16	1.47	1.86	2.02	1.31
Uttarakhand	1.84	1.91	1.68	2.00	2.08	1.83	1.67	1.73	1.51
Gujarat	1.81	1.64	2.03	1.95	1.81	2.12	1.66	1.47	1.92
Tripura	1.75	1.66	2.02	1.89	1.78	2.23	1.60	1.53	1.80
Andman & Nicobar	1.75	2.06	1.24	1.90	2.24	1.34	1.58	1.85	1.13
Tamil Nadu	1.64	1.67	1.60	1.82	1.86	1.78	1.45	1.48	1.42
Assam	1.54	1.55	1.47	1.61	1.63	1.55	1.46	1.47	1.39
Nagaland	1.50	1.67	1.07	1.58	1.76	1.13	1.41	1.58	0.99
Meghalaya	1.49	1.58	1.13	1.56	1.64	1.26	1.42	1.53	1.01
Chandigarh	1.40	1.19	1.41	1.51	1.24	1.51	1.27	1.13	1.28
NCT of Delhi	1.40	1.46	1.40	1.54	1.62	1.54	1.24	1.27	1.24
Mizoram	1.38	1.64	1.14	1.48	1.70	1.26	1.28	1.58	1.02
Dadra & Nagar Haveli	0.96	1.07	0.83	0.98	1.12	0.83	0.93	1.01	0.83
Daman & Diu	0.90	1.29	0.78	0.86	1.39	0.72	0.96	1.16	0.88

Source: Census 2011



2.25 According to 2011 census, 20.3% of the differently abled are movement disabled followed by hearing impaired (18.9%) and visually impaired (18.8%); nearly 5.6% of the disabled population is mentally challenged. Out of the total disabled population in rural India, 21.7% were with movement disability (Figure 10).

Figure 10: Percent Distribution of Disabled Population by Type of Disability in India (Census 2011)

Type of Disability	Persons			Males			Females		
	Total	Rural	Urban	Total	Rural	Urban	Total	Rural	Urban
In Seeing	18.8	18.8	18.7	18.8	18.8	18.7	18.8	18.8	18.7
In Hearing	18.9	18.2	20.5	18.9	18.2	20.5	18.9	18.2	20.5
In Speech	7.5	7.0	8.5	7.5	7.0	8.5	7.5	7.0	8.5
In movement	20.3	21.7	17.1	20.3	21.7	17.1	20.3	21.7	17.1
Mental Retardation	5.6	5.5	5.9	5.6	5.5	5.9	5.6	5.5	5.9
Mental illness	2.7	2.7	2.8	2.7	2.7	2.8	2.7	2.7	2.8
Multiple disability	7.9	8.5	6.5	7.9	8.5	6.5	7.9	8.5	6.5
Any other	18.4	17.7	20.0	18.4	17.7	20.0	18.4	17.7	20.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0



Conclusion

2.26 A few patterns that emerge from India's demographics profile are worth noting. They are serious and call for deep reflections and appropriate response. At the outset, a significant number of girls are eliminated by a variety of discriminatory practices including gender biased sex selection. Disturbingly low sex-ratios at birth and continuing low sex-ratios are indicators of these various forms of discriminations and biases that operate against women and girls. The marriage data presents yet another grim scenario. Those who survive the initial onslaught of negative gender bias practices, a significantly high proportion are 'pushed' into marriage at a very tender and young age. The fact that over one-fourth of the girls continue to get married between age 15 and 19 and in several districts almost two-thirds of them get married by 19 years is extremely debilitating to the growth potentials of girls.

2.27 Thus the 'demographic dividend' that India has - due to its young age structure - is an opportunity lost. For, as a country we are not paying attention; but in fact we discriminate against almost half of the young population that is women and girls. This is paradoxical to say the least.

2.28 India also has a number of states where a very large number of young girls need education, skills and safe spaces. A detailed discussion on female education is presented in the chapter on Education. It may be noted here that in states like Assam, Bihar, UP, Rajasthan, Maharashtra, Madhya Pradesh, Jammu and Kashmir and others, over one third of the total female population is below age 15 and they need immediate attention to protect them from any discriminatory and harmful practices including denial of access to education.⁴

2.29 Further, despite declining fertility trends, and reasonably high unmet need for spacing methods, it is concerning that India continues to emphasize female sterilization over other methods. There is an urgent need to take corrective measure on this front.

2.30 Yet another demographic trend needing immediate attention is the increasing number of elderly women. This trend will grow much more rapidly in the coming years with increasing life expectancy. Increasing number of female headed household is the testimony of this phenomenon. Whether these women are equipped and supported adequately is not well understood. What appears most certain is that elderly women and if they are single, are vulnerable and need a stronger support system. Also requiring attention are the disabled persons, who are potentially at a higher risk of exploitation and abuse.

⁴ Some of the conventional data on girls' and women's education and women's workforce participation are dealt with in separate chapters dedicated to these themes.



Census Years

State/UTs	1901	1911	1921	1931
Andaman & Nicobar Islands	318	352	303	495
Andhra Pradesh	985	992	993	987
Arunachal Pradesh	NA	NA	NA	NA
Assam	919	915	896	874
Bihar	1061	1051	1020	995
Chandigarh	771	720	743	751
Chhattisgarh	1046	1039	1041	1043
Dadra & Nagar Haveli	960	967	940	911
Daman & Diu	995	1040	1143	1088
Delhi #	862	793	733	722
Goa	1091	1108	1120	1088
Gujarat	954	946	944	945
Haryana	867	835	844	844
Himachal Pradesh	884	889	890	897
Jammu & Kashmir	882	876	870	865
Jharkhand	1032	1021	1002	989
Karnataka	983	981	969	965
Kerala	1004	1008	1011	1022
Lakshadweep	1063	987	1027	994
Madhya Pradesh	972	967	946	947
Maharashtra	978	966	950	947
Manipur	1037	1029	1041	1065
Meghalaya	1036	1013	1000	971
Mizoram	1113	1120	1109	1102
Nagaland	973	993	992	997
Orissa	1037	1056	1086	1067
Pudducherry	NA	1058	1053	NA
Punjab	832	780	799	815
Rajasthan	905	908	896	907
Sikkim	916	951	970	967
Tamil Nadu	1044	1042	1029	1027
Tripura	874	885	885	885
Uttar Pradesh	938	916	908	903
Uttarakhand	918	907	916	913
West Bengal	945	925	905	890
India	972	964	955	950

Source: Office of the Registrar General, India.
NA: Not Available.

Contd..



Census Years

State/UTs	1941	1951	1961	1971
Andaman & Nicobar Islands	574	625	617	644
Andhra Pradesh	980	986	981	977
Arunachal Pradesh	NA	NA	894	861
Assam	875	868	869	896
Bihar	1002	1000	1005	957
Chandigarh	763	781	652	749
Chhattisgarh	1032	1024	1008	998
Dadra & Nagar Haveli	925	946	963	1007
Daman & Diu	1080	1125	1169	1099
Delhi #	715	768	785	801
Goa	1084	1128	1066	981
Gujarat	941	952	940	934
Haryana	869	871	868	867
Himachal Pradesh	890	912	938	958
Jammu & Kashmir	869	873	878	878
Jharkhand	978	961	960	945
Karnataka	960	966	959	957
Kerala	1027	1028	1022	1016
Lakshadweep	1018	1043	1020	978
Madhya Pradesh	946	945	932	920
Maharashtra	949	941	936	930
Manipur	1055	1036	1015	980
Meghalaya	966	949	937	942
Mizoram	1069	1041	1009	946
Nagaland	1021	999	933	871
Orissa	1053	1022	1001	988
Pudducherry	NA	1030	1013	989
Punjab	836	844	854	865
Rajasthan	906	921	908	911
Sikkim	920	907	904	863
Tamil Nadu	1012	1007	992	978
Tripura	886	904	932	943
Uttar Pradesh	907	908	907	876
Uttarakhand	907	940	947	940
West Bengal	852	865	878	891
India	945	946	941	930

Source: Office of the Registrar General, India.
NA: Not Available.

Contd...



Census Years

State/UTs	1981	1991	2001	2011
Andaman & Nicobar Islands	760	818	846	876
Andhra Pradesh	975	972	978	993
Arunachal Pradesh	862	859	893	938
Assam	910	923	935	958
Bihar	948	907	919	918
Chandigarh	769	790	777	818
Chhattisgarh	996	985	989	991
Dadra & Nagar Haveli	974	952	812	774
Daman & Diu	1062	969	710	618
Delhi #	808	827	821	868
Goa	975	967	961	973
Gujarat	942	934	920	919
Haryana	870	865	861	879
Himachal Pradesh	973	976	968	972
Jammu & Kashmir	892	896	892	889
Jharkhand	940	922	941	948
Karnataka	963	960	965	973
Kerala	1032	1036	1058	1,084
Lakshadweep	975	943	948	946
Madhya Pradesh	921	912	919	931
Maharashtra	937	934	922	929
Manipur	971	958	974	992
Meghalaya	954	955	972	989
Mizoram	919	921	935	976
Nagaland	863	886	900	931
Orissa	981	971	972	979
Pudducherry	985	979	1001	1,037
Punjab	879	882	876	895
Rajasthan	919	910	921	928
Sikkim	835	878	875	890
Tamil Nadu	977	974	987	996
Tripura	946	945	948	960
Uttar Pradesh	882	876	898	912
Uttarakhand	936	936	962	963
West Bengal	911	917	934	950
India	934	927	933	943

Source: Office of the Registrar General, India.
NA: Not Available.



Annexure 2 Districts with low to high sex ratio,

Census 2011 and 2001

Sex ratio	Census 2011		Census 2001	
	No. of districts	State (/# of district)	No. of districts	State (/# of district)
Below 800	9	ARP (2), J&K (2), GJ (1), SK (1), UT (3)	8	ARP (1), DL (3), MH (1), SK (1), UT (2)
800-850	11	ARP (2), MP (2), DL (2), J&K (1), MH (1), RJ (1), HP (1), UT (1)	34	ARP (1), DL (5), GJ (1), HR (6), HP (1), J&K (1), MP (3), MH (1), PJ (1), RJ (2), SK (1), UP (8), WB (1), UT (2)
850-875	44	HR (9), J&K (5), MP (1), MH (1), DL (3), PJ (3), RJ (2), SK (1), UP (18), UT (1)	57	ARP (2), BH (1), DL (1), HR (8), HP (2), J&K (2), JH (1), MP (3), MH (1), NG (1), PJ (6), RJ (3), UP (24), UK (1), UT (1)
875-900	48	BH (3), HR (7), HP (1), J&K (4), MP (3), MH (1), DL (3), PJ (7), RJ (2), UP (16), UK (1)	61	ARP (1), AS (2), BH (6), GJ (1), HR (3), HP (1), J&K (2), JH (1), MP (8), NG (1), PJ (8), RJ (8), UP (18)
900-925	126	ARP (5), AS (2), BH (24), GJ (6), HR (5), HP (3), J&K (7), JH (4), KA (1), MP (15), MH (6), MZ (1), NG (4), DL (1), OR (1), PJ (8), RJ (10), SK (1), UP (19), UK (2), WB (1)	77	ARP (3), AS (4), BH (19), GJ (7), HR (2), HP (1), J&K (7), JH (1), KA (1), MP (7), MH (3), MN (2), MZ (4), NG (3), OR (1), PJ (1), RJ (3), UP (4), UK (2), WB (2)
925-950	100	AP (1), ARP (1), AS (7), BH (9), GJ (11), J&K (1), JH (8), KA (1), MP (8), MH (15), MN (3), MG (1), MZ (2), NG (3), OR (3), RJ (7), SK (1), TN (1), TR (1), UP (4), UK (1), WB (9), UT (2)	117	AP (2), ARP (1), AS (15), BH (8), CG (1), GJ (10), HP (1), J&K (2), JH (6), KA (4), MP (11), MH (16), MN (1), MG (2), NG (3), OR (5), PJ (1), RJ (6), SK (2), TN (2), TR (2), UP (4), UK (1), WB (10), UT (1)
950 +	302	AP (22), ARP (6), AS (18), BH (2), CG (18), GO (2), GJ (8), HP (7), J&K (2), JH (12), KA (28), KE (14), MP (21), MH (11), MN (6), MG (6), MZ (5), NG (4), OR (26), PJ (2), RJ (11), TN (31), TR (3), UP (14), UK (9), WB (9), UT (5)	239	AP (21), ARP (4), AS (2), BH (3), CG (15), GO (2), GJ (6), HP (6), JH (9), KA (22), KE (14), MP (13), MH (13), MN (6), MG (5), MZ (4), OR (24), RJ (10), TN (28), TR (2), UP (12), UK (8), WB (5), UT (5)

ARP-Arunachal Pradesh, AS-Assam, AP-Andhra Pradesh, BH-Bihar, CG-Chhattisgarh, DL-Delhi, GJ-Gujarat, HR-Haryana, J&K-Jammu and Kashmir, MP-Madhya Pradesh, MH-Maharashtra, MN-Manipur, MG-Meghalaya, MN-Manipur, MZ-Mizoram, NG-Nagaland, OR-Orissa, PJ-Punjab, RJ-Rajasthan, SK-Sikkim, TN-Tamil Nadu, TR-Tripura, UP-Uttar Pradesh, UK-Uttarakhand, UT-Union Territory, WB-West Bengal



Age Group	Year													
	2001		2003		2005		2007		2009		2011		2013	
	F	M	F	M	F	M	F	M	F	M	F	M	F	M
0-4	20.5	18.3	18.5	16.3	18.2	16.4	16.9	15.2	14.9	13.4	13.0	11.5	11.5	10.6
5-9	2.0	1.8	1.5	1.3	1.7	1.5	1.3	1.3	1.0	1.1	1.0	1.0	0.8	0.8
10-14	1.2	1.3	1.0	0.9	1.1	1.1	1.0	0.9	0.9	0.7	0.7	0.7	0.6	0.6
15-19	1.9	1.5	1.9	1.3	1.9	1.5	1.5	1.3	1.4	1.2	1.4	1.2	1.1	1.0
20-24	2.5	2.1	2.0	1.8	2.1	2.0	2.0	2.0	1.7	1.8	1.6	1.7	1.5	1.7
25-29	2.9	2.6	2.2	2.4	2.2	2.3	1.8	2.3	1.8	2.1	1.5	2.1	1.6	2.1
30-34	2.5	3.3	2.2	3.0	2.0	3.0	2.0	3.1	1.9	3.0	1.6	2.9	1.6	2.5
35-39	2.9	4.2	2.6	3.9	2.4	3.9	2.4	4.1	2.4	4.1	1.7	3.7	2.3	3.7
40-44	3.4	5.4	3.3	5.5	3.0	5.0	3.0	5.8	2.7	4.8	2.5	5.3	2.8	4.9
45-49	4.5	7.8	4.3	7.5	4.4	7.2	4.0	7.8	3.6	7.3	3.7	7.2	3.9	7.5
50-54	8.1	11.5	7.5	11.9	6.4	10.8	6.1	11.4	5.8	10.8	6.0	10.3	6.4	10.3
55-59	13.0	18.7	11.4	18.7	10.9	15.4	10.8	15.1	9.0	15.0	9.3	15.7	9.1	15.5
60-64	18.3	26.5	19.9	27.6	18.2	24.2	19.2	26.1	16.5	24.2	16.1	23.8	16.1	20.7
65-69	33.4	44.2	30.6	43.3	27.7	37.7	28.2	37.4	29.3	39.1	26.7	40.1	26.8	32.7
70-74	46.3	57.0	48.8	59.9	48.0	57.5	51.3	62.2	47.0	58.4	42.5	58.1	43.2	54.9
75-79	73.6	90.4	69.7	91.0	64.5	83.6	64.6	84.9	82.7	96.0	66.4	81.5	61.2	81.7
80-84	87.6	112.5	103.1	115.7	99.9	113.9	105.2	123.0	100.0	113.1	95.1	115.9	102.0	129.9
85+	161.7	182.9	159.6	193.8	168.1	170.6	192.6	199.0	168.2	180.6	154.8	183.6	202.4	226.1
All ages	8.0	8.8	7.5	8.4	7.1	8.0	6.9	8.0	6.7	7.8	6.3	7.8	6.4	7.5

Source: Sample Registration System, Registrar General of India

Chapter-3

Indexing the Status of Women

States/UTs and their Ranking

In this chapter we have attempted to rank Indian states and Union Territories according to various 'status of women' indicators. The idea is to gain a macro-view of the relative status of women in different states and UTs on four major domains—social, economic, health and political – to assess the status. We recognize the conceptual and operational¹ challenges in using quantitative indicators across different domains if they are not gathered in a comparable time frame or may not be interpreted as carrying equal weights. Notwithstanding these challenges we think quantitative macro indicators do provide useful insights into why and how different states vary. They stimulate hypotheses and provoke ideas to intervene. It is important to mention that while, the index surely summarises, complex, multi-dimensional realities of women empowerment in an easier to understand manner than the battery of many separate indicators, it by no means claims to be a conclusive or exhaustive. We recognize that status of women could be measured in many different ways and different people may advocate for different indicators. We as a committee however thought the ones included in the index are important and critical ones and hope that the results this exercises has produced will stimulate forward looking and constructive discussions.

The Approach towards Index

We decided to employ some unconventional indicators than what has been previously used. Indicator on crime against women, average female deposits per account in schedule commercial banks and Child Sex Ratio are few indicators that remained relatively unexploited in construction of composite indices, but have emerged as very strong indicators to assess the situation on discrimination against women. Similarly, instead of mean years of schooling or literacy rate of females, the committee has laboured in to quantify dropout rate of females in transition from Class VIII to Class IX, a period where culmination of free and compulsory education adversely affects the females. Similarly, instead of using Total fertility

Rate and Maternal Mortality Ratio, we have included different proxies such as children born to girls aged 15-19 years and institutional deliveries.

We also departed from the established tradition of aggregating the indices and presenting a composite picture, and have restricted in presenting the aggregation of only specific constructs identified. Such an aggregated composite index approach takes away the focus from specific areas of potential intervention.

Methodology

A set of 18 indicators were drawn that were assumed to be the proxies for status of women, underlining their position² and condition. These indicators represented four domains/constructs, namely Social, Economic, Health and Political. All the indicators chosen have an impact on the position and condition of women, thereby on their overall status and as such indicators may not have internal correlations amongst themselves but may broadly inform the construct.

It must be stated that choices of indicators were largely restricted to the data available to the extent possible for all the geographical units with a five year reference range 2007/2008 – 2012/2013. Where ever possible latest data set available was analysed.

The indicators along with their construct are presented in the following table.

Table: List of Indicators along with their Construct		
A	Social Indicators	Source (Years)
1	Child Sex Ratio	Census of India (2011)
2	Percent Girls less than 18 years married ³	Census of India (2011)
3	Rate of Crime Against Women ⁴	National Crimes Record Bureau (2013)
4	Percent Girl dropping out of school in transition from class VIII to Class IX ⁵	District Information System for Education (2012 & 2013)
B	Economic Indicators	Source (Years)
5	Female (15-59years) Labour Force Participation Rate (per 1000) as per Usual Status	National Sample Survey Organisation; Key Indicators of Employment and Unemployment in India (2011-2012)
6	Female (15-59 years) Unemployment Rate as per Usual Status	-do-
7	Distribution (per 10,000) of female workers according to usual status by occupation division (Category 1 – 4 of NCO of 2004) ⁶	

8	Difference between Males and females Average wage/salary earnings (Rs 0.00) per day received by regular wage/salaried employees (activity status 31, 71 & 72) of age 15 – 59 years ⁷	
9	Average female Deposits per account (Rs 0.00) of females in Scheduled Commercial Banks according to Broad Ownership Category	Reserve Bank of India (2013)
C	Health Indicators	Source (years)
10	Percent Births to women (age 15 -19) to Total Births	District level Household Survey – III (2007-2008)
11	Percent Institutional Births to Total Births	-do-
12	Percent Female Sterilisation to total Family Planning Method adopted ⁸	-do-
13	Percent Mothers having at least 3 Ante Natal Check-ups	-do-
14	Sex Ratio	Census of India (2011)
D	Political Indicators	Source (Years)
15	Percent of women voters over women electors during 16 th Lok Sabha elections	Election Commission of India (2014)
16	Percent Women contestants to total Seats during 16 th Lok Sabha elections	-do-
17	Percent women elected to State Assemblies	Women and men in India, 16 th edition, 2014
18	Percent elected women representatives at all three levels in Panchayats ⁹	Devolutions of Panchayats in India, Devolution Index Report 2013

Establishing Functional Relationship

It was an important exercise to establish the functional relationship of indicators with the corresponding impact on status of women. As an illustration, low value of child sex ratio means less discrimination and better status of women in the geographical area, whereas low value of women voters points towards higher discrimination.

For the purpose of this report, the functional relationship of the indicator with the status of women is defined in terms of **Higher Value** and its corresponding impact on the status of women. Higher Value may have a positive relation (↑) or a negative relation (↓).

In the Table below, the functional relationship of indicators on the status of women is presented.

Table: List of Indicators along with their Functional relationship		
A	Social Indicators	Functional Relation
1	Child Sex Ratio	↓
2	Percent Girls less than 18 years married	↑
3	Rate of Crime Against Women	↑
4	Percent Girl dropping out of school in transition from class VIII to Class IX	↑
B	Economic Indicators	
5	Female Labour Force Participation Rate (per 1000) as per Usual Status	↓
6	Female Unemployment Rate as per Usual Status	↑
7	Average females (per 10,000) in Category 1 -4 of NCO Classification of 2004	↓
8	Difference between Males and females Average wage/salary earnings (Rs 0.00) per day received female wage/salaried employees	↑
9	State-Wise female Deposits of Scheduled Commercial Banks according to Broad Ownership Category	↓
C	Health Indicators	
10	Percent Births to women (age 15 -19) to Total Births	↑
11	Percent Institutional Births to Total Births	↓
12	Percent Female Sterilisation to total Family Planning Method adopted	↑
13	Percent Mothers having atleast 3 Ante natal Check-ups	↓
14	Sex Ratio	↓
D	Political Indicators	
15	Percent of women voters over women electors during 16 th Lok Sabha elections	↓
16	Percent Women contestants to total Male during 16 th Lok Sabha elections	↓
17	Percent women elected to State Assemblies	↓
18	Percent elected women representatives at all three levels in Panchayats	↓

a) Normalisation of Scores

Once the functionality of an indicator with the status of women is established, normalisation of score is done to normalise the values, which are obviously in different units and scales. That is, in order to obtain figures which are free from the units, and also to standardise their values, they are normalised so that all the values lie between 0 and 1.

The following formula is used where the value has ↑ functional relation

$$I = \frac{1 - \frac{1 - I_{max}}{I_{min} - I_{max}} (I - I_{min})}{1 - \frac{1 - I_{max}}{I_{min} - I_{max}} (I_{max} - I_{min})}$$

However, where the higher value has ↓ functional relationship, the below formula is applied

$$I_{ij} = \frac{\max\{I_{ij}\}}{\max\{I_{ij}, I_{ij}^{\downarrow}\}}$$

Where I_{ij} is the value of the indicator j corresponding to the region i . All scores will lie between 0 and 1 where 1 will correspond to highest value and 0 will correspond to lowest value.

b) Weightage and Computation of Index

Given the equal importance of all the constructs in determining the impact on the status of women, the committee decided to give equal weightage to all the indicators. Therefore simple average of all normalised scores have been taken to construct the index. The States and Union Territories are ranked according to their score.

The ranking of States and Union Territories is done on the basis of Highest Score to Lowest Score, where higher scores signifies maximum discrimination and lower status of women, while lower scores signifies minimum discrimination and better status of women. The committee decided not to club all the four constructs to give a composite index, but to present the status of women independently for each of the construct. Therefore, the ranking of the States and Union Territories have been done separately on the basis of Social, Economic, Health and Political Constructs.

It must be pointed out that the states with lowest score signifying better status of women does not mean the ideal situation for gender equality and no discrimination against women. Since the committee decided not to assign any goalposts or ideal benchmarks for each indicator, the ranking simply means inter-alia performance of each State and Union Territory amongst or between themselves.

Ranking of States and Union Territories on Social Construct

States	Index Value	Rank (From Most Discriminatory to Least Discriminatory)	Union Territories	Index Value	Rank (From Most Discriminatory to Least Discriminatory)
Rajasthan	0.7015	1	Chandigarh	0.3943	1
Gujrat	0.6410	2	Dadar & Nagar Haveli	0.3504	2
Haryana	0.5974	3	Daman & Diu	0.2686	3
Delhi	0.5523	4	A & N Island	0.2325	4
Punjab	0.5192	5	Lakshwadeep	0.2048	5
Jammu & Kashmir	0.5099	6	Puducherry	0.1374	6
Maharashtra	0.5076	7			
Madhya Pradesh	0.4956	8			
Assam	0.4730	9			
Uttar Pradesh	0.4653	10			
West Bengal	0.4482	11			
Jharkhand	0.4480	12			
Andhra Pradesh	0.4392	13			
Karnataka	0.4077	14			
Arunachal Pradesh	0.3611	15			
Manipur	0.3472	16			
Orrissa	0.3462	17			
Bihar	0.3454	18			
Tamil Nadu	0.3336	19			
Uttarakhand	0.3314	20			
Tripura	0.3147	21			
Meghalaya	0.3075	22			
Goa	0.3070	23			
Sikkim	0.3053	24			
Mizoram	0.3030	25			
Nagaland	0.2887	26			
Himachal Pradesh	0.2763	27			
Chattisgarh	0.2384	28			
Kerala	0.2363	29			

Ranking of States and Union Territories on Economic Construct

States	Index Score	Rank (From Most Discriminatory to Least Discriminatory)	Union Territories	Index Score	Rank (From Most Discriminatory to Least Discriminatory)
Bihar	0.8118	1	Lakshwadeep	0.8150	1
Tripura	0.7524	2	Puducherry	0.6408	2
Assam	0.7426	3	Daman & Diu	0.5035	3
Jharkhand	0.7383	4	Dadar & Nagar Haveli	0.4953	4
Jammu & Kashmir	0.7261	5	A & N Island	0.4869	5
Nagaland	0.7132	6	Chandigarh	0.2066	6
Uttar Pradesh	0.7021	7			
Orrissa	0.6470	8			
Manipur	0.6429	9			
West Bengal	0.6376	10			
Kerala	0.6307	11			
Madhya Pradesh	0.6305	12			
Tamil Nadu	0.5920	13			
Andhra Pradesh	0.5856	14			
Mizoram	0.5811	15			
Rajasthan	0.5702	16			
Punjab	0.5613	17			
Haryana	0.5559	18			
Uttrakhand	0.5543	19			
Arunachal Pradesh	0.5413	20			
Karnataka	0.5406	21			
Chattisgarh	0.5224	22			
Gujrat	0.5200	23			
Maharashtra	0.5199	24			
Himachal Pradesh	0.5190	25			
Sikkim	0.4188	26			
Meghalaya	0.4067	27			
Goa	0.3937	28			
Delhi	0.2546	29			

Ranking of States and Union Territories on Health Construct

States	Index Value	Rank (From Most Discriminatory to Least Discriminatory)	Union Territories	Index Value	Rank (From Most Discriminatory to Least Discriminatory)
Bihar	0.6566	1	Dadar & Nagar Haveli	0.5459	1
Chattisgarh	0.6225	2	Daman & Diu	0.4529	2
Uttar Pradesh	0.6101	3	A & N Island	0.3818	3
Jharkhand	0.6090	4	Chandigarh	0.3188	4
Madhya Pradesh	0.5945	5	Puducherry	0.2248	5
Rajasthan	0.5905	6	Lakshwadeep	0.1101	6
West Bengal	0.5603	7			
Maharashtra	0.5599	8			
Karnataka	0.5579	9			
Uttarakhand	0.5368	10			
Nagaland	0.5343	11			
Tripura	0.5214	12			
Haryana	0.5194	13			
Andhra Pradesh	0.5180	14			
Gujrat	0.4712	15			
Assam	0.4576	16			
Arunachal Pradesh	0.4500	17			
Meghalaya	0.4452	18			
Orrissa	0.4429	19			
Sikkim	0.4286	20			
Himachal Pradesh	0.4171	21			
Mizoram	0.3950	22			
Punjab	0.3720	23			
Jammu & Kashmir	0.3297	24			
Delhi	0.3244	25			
Manipur	0.2906	26			
Tamil Nadu	0.2763	27			
Kerala	0.1864	28			
Goa	0.1510	29			

Ranking of States and Union Territories on Political Construct

States	Index Value	Rank (From Most Discriminatory to Least Discriminatory)	Union Territories	Index Value	Rank (From Most Discriminatory to Least Discriminatory)
Mizoram	0.9032	<i>1</i>	Daman & Diu	0.7213	<i>1</i>
Jammu & Kashmir	0.9000	<i>2</i>	A & N Island	0.6786	<i>2</i>
Gujrat	0.7833	<i>3</i>	Lakshwadeep	0.5989	<i>3</i>
Arunachal Pradesh	0.7565	<i>4</i>	Puducherry	0.5969	<i>4</i>
Goa	0.7060	<i>5</i>	Dadar & Nagar Haveli	0.5240	<i>5</i>
Nagaland	0.6731	<i>6</i>	Chandigarh	0.4444	<i>6</i>
Delhi	0.6590	<i>7</i>			
Andhra Pradesh	0.6548	<i>8</i>			
Haryana	0.6416	<i>9</i>			
Karnataka	0.6365	<i>10</i>			
Meghalaya	0.6310	<i>11</i>			
Tamil Nadu	0.6300	<i>12</i>			
Orrissa	0.6174	<i>13</i>			
Maharashtra	0.5989	<i>14</i>			
Punjab	0.5820	<i>15</i>			
Jharkhand	0.5657	<i>16</i>			
Manipur	0.5384	<i>17</i>			
Himachal Pradesh	0.5379	<i>18</i>			
West Bengal	0.5260	<i>19</i>			
Uttrakhand	0.5223	<i>20</i>			
Uttar Pradesh	0.5122	<i>21</i>			
Sikkim	0.4943	<i>22</i>			
Kerala	0.4885	<i>23</i>			
Assam	0.4774	<i>24</i>			
Madhya Pradesh	0.4659	<i>25</i>			
Rajasthan	0.4304	<i>26</i>			
Chattisgarh	0.3958	<i>27</i>			
Bihar	0.3828	<i>28</i>			
Tripura	0.3677	<i>29</i>			

Overview

States	SOCIAL		ECONOMIC		HEALTH		POLITICAL	
	Index Value	Rank (From Most Discriminatory to Least Discriminatory)	Index Score	Rank (From Most Discriminatory to Least Discriminatory)	Index Value	Rank (From Most Discriminatory to Least Discriminatory)	Index Value	Rank (From Most Discriminatory to Least Discriminatory)
Andhra Pradesh	0.4392	13	0.5856	14	0.5180	14	0.6548	8
Arunachal Pradesh	0.3611	15	0.5413	20	0.4500	17	0.7565	4
Assam	0.4730	9	0.7426	3	0.4576	16	0.4774	24
Bihar	0.3454	18	0.8118	1	0.6586	1	0.3828	28
Chattisgarh	0.2384	28	0.5224	22	0.6225	2	0.3958	27
Delhi	0.5523	4	0.2546	29	0.3244	25	0.6590	7
Goa	0.3070	23	0.3937	28	0.1510	29	0.7069	5
Gujrat	0.6410	2	0.5200	23	0.4712	15	0.7833	3
Haryana	0.5974	3	0.5559	21	0.5194	13	0.6416	9
Himachal Pradesh	0.2763	27	0.5199	25	0.4171	21	0.5379	18
Jammu & Kashmir	0.5099	6	0.7261	5	0.3297	24	0.9000	2
Jharkhand	0.4480	12	0.7383	4	0.6080	4	0.5657	16
Karnataka	0.4077	14	0.5406	21	0.5579	9	0.6365	10
Kerala	0.2363	29	0.6307	11	0.1264	28	0.4885	23
Madhya Pradesh	0.4956	8	0.6305	12	0.5945	5	0.4669	25
Maharashtra	0.5076	7	0.5199	24	0.5599	8	0.5989	14
Manipur	0.3472	16	0.6429	9	0.2906	26	0.5384	17
Meghalaya	0.3075	22	0.4067	27	0.4452	18	0.6310	11
Mizoram	0.3080	25	0.5811	15	0.3950	22	0.9032	1
Nagaland	0.2887	26	0.7132	6	0.5343	11	0.6731	6
Orissa	0.3462	17	0.6470	8	0.4429	19	0.6174	13
Punjab	0.5192	5	0.5613	17	0.3720	23	0.5820	15
Rajasthan	0.7015	1	0.5702	16	0.5905	6	0.4304	26
Sikkim	0.3053	24	0.4188	26	0.4285	20	0.4943	22
Tamil Nadu	0.3335	19	0.5820	13	0.2763	27	0.6300	12
Tripura	0.3147	21	0.7524	2	0.5214	12	0.3677	29
Uttar Pradesh	0.4653	10	0.7021	7	0.6101	3	0.5122	21
Uttarakhand	0.3314	20	0.5543	19	0.5368	10	0.5223	20
West Bengal	0.4482	11	0.6375	10	0.5608	7	0.5280	19

Better and Lower Performing States

<i>Better Performing States</i>			
<i>Social</i>	<i>Economic</i>	<i>Health</i>	<i>Political</i>
Kerala	Delhi	Goa	Tripura
Chattisgarh	Goa	Kerala	Bihar
Himachal Pradesh	Meghalaya	Tamil Nadu	Chattisgarh
Nagaland	Sikkim	Manipur	Rajasthan
Mizoram	Himachal Pradesh	Delhi	Madhya Pradesh
<i>Low Performing States</i>			
<i>Social</i>	<i>Economic</i>	<i>Health</i>	<i>Political</i>
Rajasthan	Bihar	Bihar	Mizoram
Gujrat	Tripura	Chattisgarh	Jammu & Kashmir
Haryana	Assam	Uttar Pradesh	Gujrat
Delhi	Jharkhand	Jharkhand	Arunachal Pradesh
Punjab	Jammu & Kashmir	Madhya Pradesh	Goa

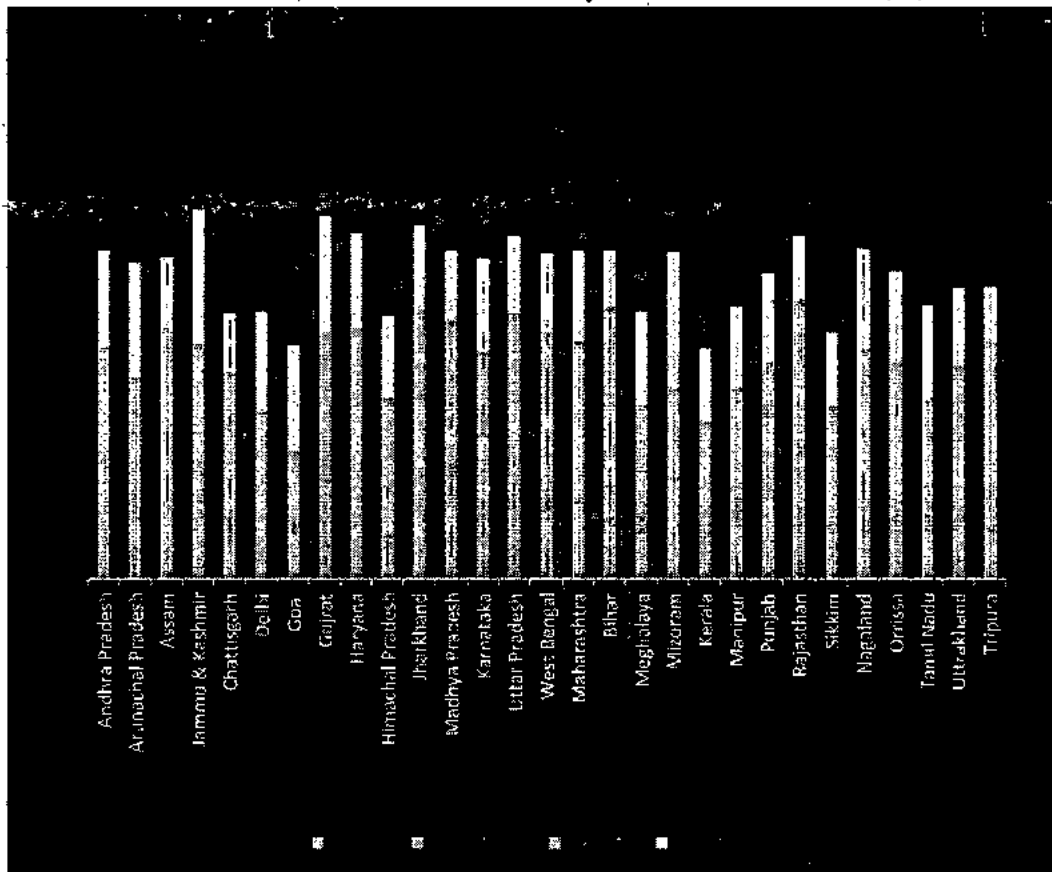
Major Results

1. The Index across four constructs on Social, Economic, Health and Political unravels quite an interesting pattern. There are very apparent State level discrepancies, highlighting that perhaps none of the States has achieved a level where the status of women is at par across all the four constructs. Delhi is the top performer in terms of better economic status of women, but remains an underperformer in making the state socially non-discriminatory for women. Tripura stands at top in terms of women's access to political participation, but at the same time is also a state where economic discrimination against women is yet to be-resolved. Goa may have more healthy women have little successes creating an enabling environment for women's political participation.

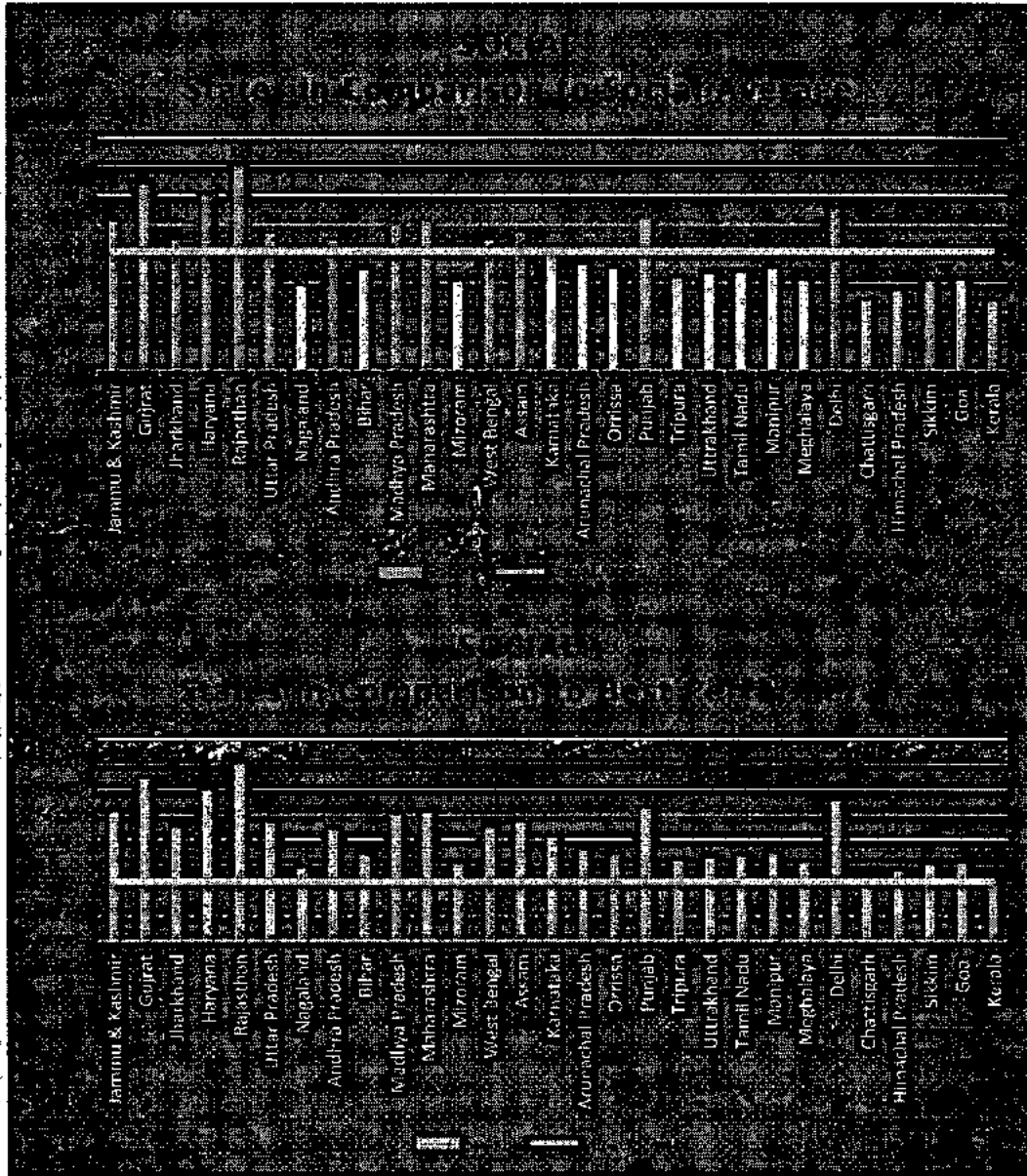
This pattern confirms the hypothesis of this committee that holistic and comprehensive empowerment of women in India is still a distant dream, one that can be hardly achieved without equal emphasis, growth and development across all of the above four constructs.

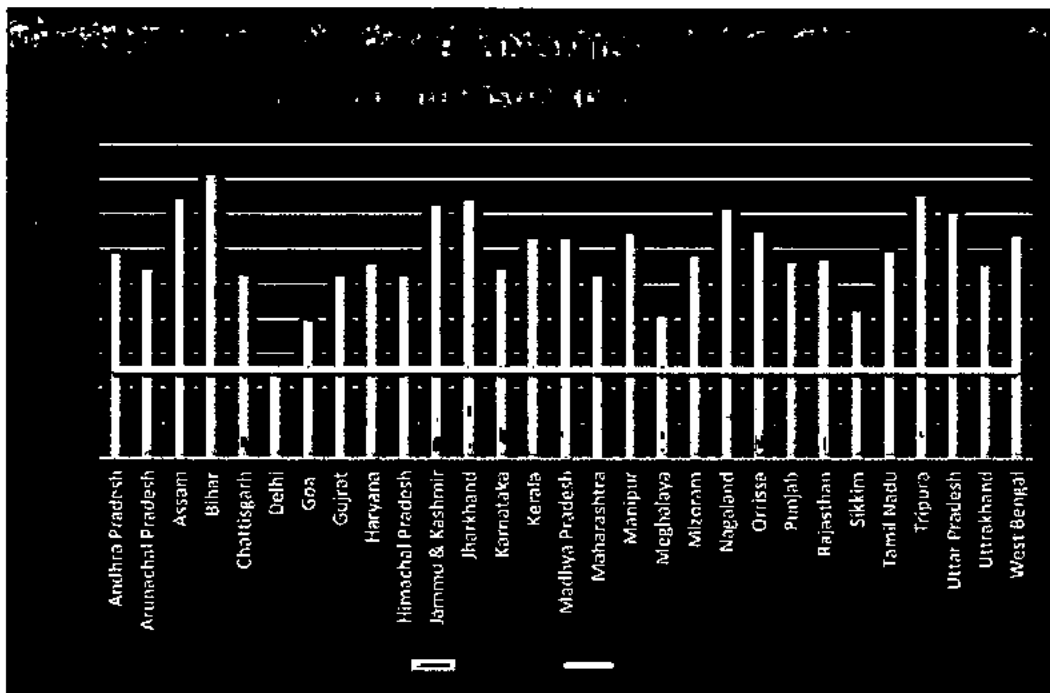
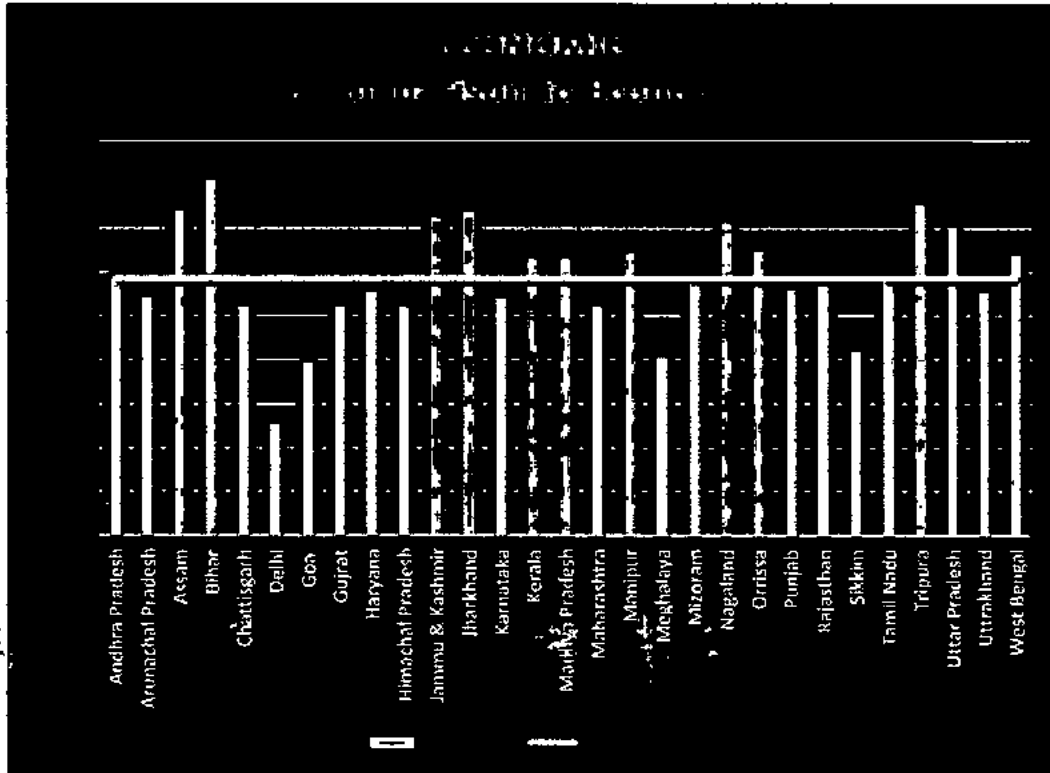
2. Child Sex Ratio appears to have an important impact in determining the performance of State in Social Construct. Haryana, Punjab, Delhi and Rajasthan are the four states that have the most skewed Child Sex Ratio in the country. In the index, the above four states are also noted for their underperformance in social aspects. Delhi with noted performance in health and political construct, becomes an underperformer in Social because of skewed Child Sex Ratio and most cases of Crimes against Women
3. North Eastern States of Tripura, Nagaland, Sikkim, Meghalaya, Mizoram and Nagaland along with Chattisgarh appear prominently in the better performing states across all four constructs. These are the states with relatively higher concentration of tribal populations. This fact points towards a more egalitarian and gender equitable society amongst the tribals.

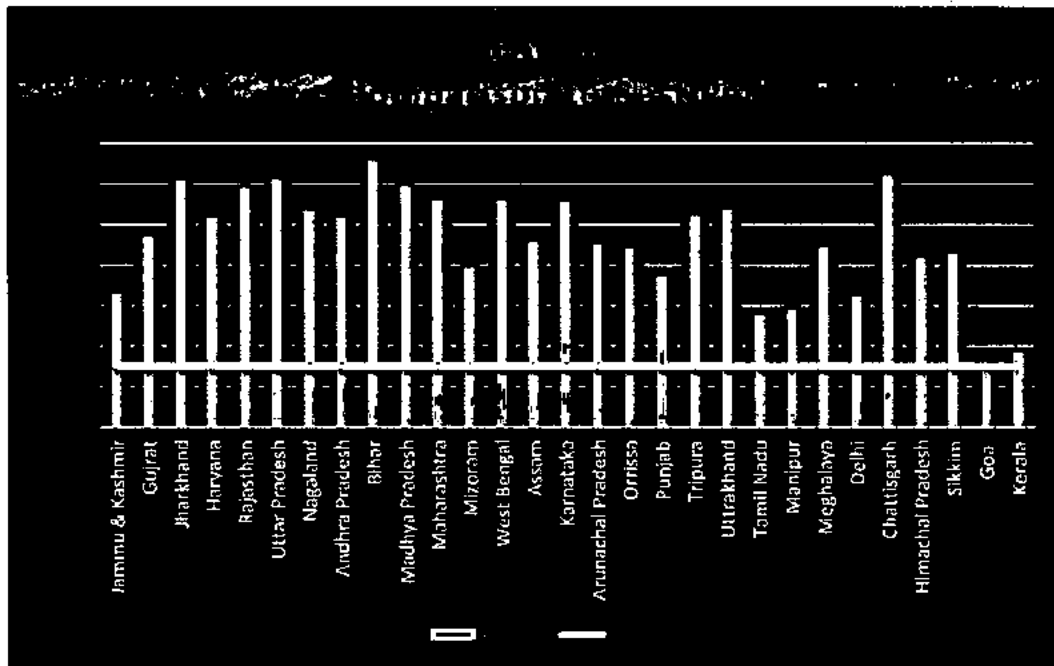
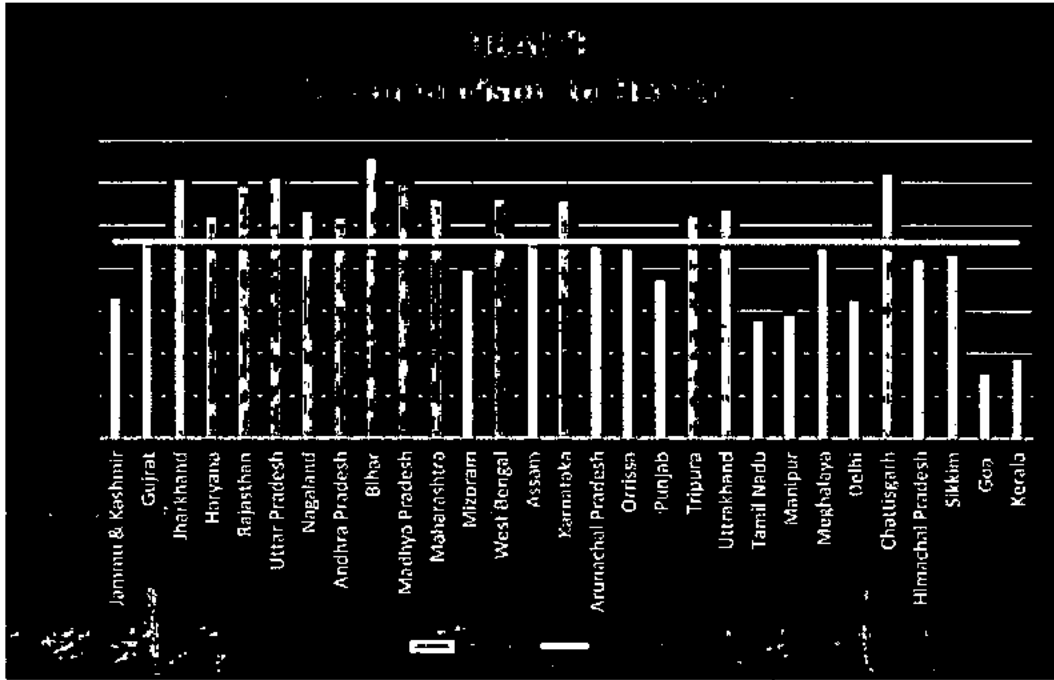
States in Comparison

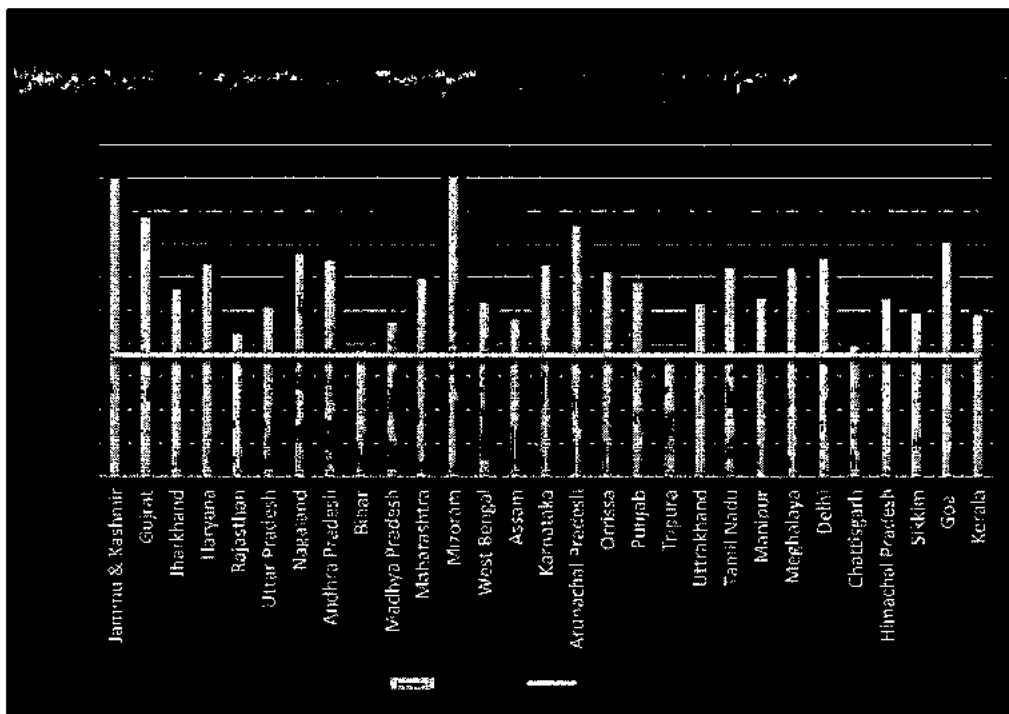
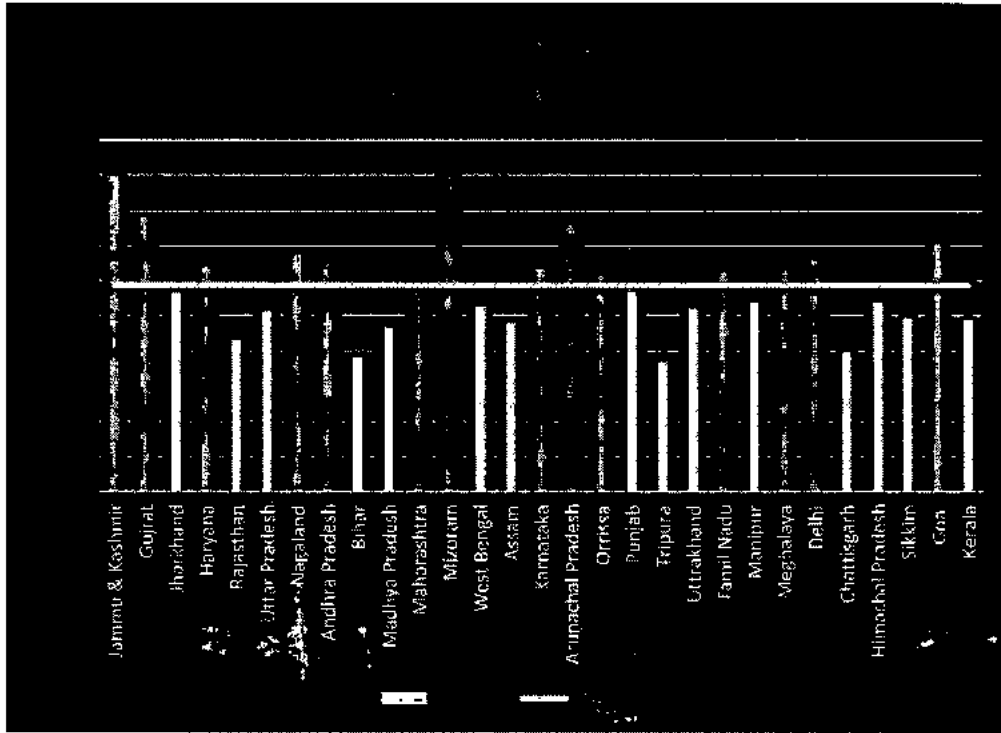


Inter State Comparisons with Construct Average and Best Performer









¹ Some of the operational issues were specifically encountered in the domain of health, where the most comprehensive data on various indicators is at least ten years old from NFHS-3. Even this data set do not have populated figures for Union Territories. On the other hand, data set like the Sample Registration System estimates important variables at Country level and for bigger states. Data on political participation of women, especially in Panchayats and Urban Local Bodies is also not forthcoming, at least not easily.

² An indicator is assumed to represent a construct. The other well-known measurement model is reflexive model where construct is assumed to influence the indicator.

³ The figures are taken from Census 2011 and include those girls under 18 who have been married but at the time of survey were single (Meaning divorced, separated and widowed). The Data from census may not give the actual number of females married before the age of 18 years, but suggests a pattern in which under 18 years girls are married.

⁴ The figures are taken from National Crime Records Bureau (2013) and includes crimes against women under Indian Penal Code as well as under special and local laws.

⁵ The values have been computed from DISE 2011 and 2012. Number of girls transitioning to Class IX in the year 2012 was subtracted from number of girls enrolled in Class VIII in the previous year, i.e 2011. It must be noted that as per the constitutional provisions, free and compulsory education is upto the age of 14 years which roughly corresponds to Class VIII. The negative values indicates increase in enrolment in class IX.

⁶ Category 1 is Legislators, senior officials and managers; Category 2 is professionals; Category 3 is Technicians and associate professionals and Category 4 is clerks. The committee is of the view that the above four categories indicates formal workforce and distribution of females, in it is an indication of their acceptance, suitability and skills in formal workforce.

⁷ The activity code pertains to workers in wage employment, workers who did not work owing to sickness but had regular wage employment, and workers who did not work owing to other reasons but had regular wage employment.

⁸ The indicator assumes significance on patriarchal norms of masculinity and also signifies control over women.

⁹ Data not available for States where the Panchayati Raj Act is not in force or suspended. In calculating the final index value, such states have been averaged proportionately.

Chapter 4

Socio Cultural Context of Women in India

“When woman, whom we call *abala* becomes *sabala*, all those who are helpless will become powerful.”

Mahatma Gandhi at the All India Women’s Conference on December 23, 1936

“One woman dies every hour due to dowry related reasons on an average in India.”

National Crime Record Bureau, 2012

Chapter Highlights
Introduction: *Patriarchy - Reinforced and Legitimised*

- Demographic Indicators
- Gender Norms and Discriminatory Social Practices
- Changing Milieu and Women in India

Conclusion: *The Way Forward with Recommendations*

Introduction

Patriarchy Reinforced and Legitimised

4.1 The paradoxical situation of women in India is alarming. On one hand women are worshipped as goddesses, while on the other hand, they are burnt and killed in the womb itself. Virginity and chastity are considered virtues that are most important for girls and women. Yet, the country has one of largest number of child sex workers in the world. Boys – seen as a big support for parents in old age – are considered necessary in order for the family lineage to continue. *Girls, on the other hand, are unwanted yet embody the ‘honour’ of the family.* It’s a double bind for girls/women as they not only have to preserve ‘family honour’ in society, but also remain silent when various atrocities such as abuse, violence, rape, early marriages happen both inside and outside the home. In the few cases, in which they break their silence, the

repercussions are immense. Nevertheless, it is important that this silence is broken, individually and collectively.

4.2 India is a highly patriarchal society, in which the economic, political, religious, social and cultural institutions are largely controlled by men. Control over women, their livelihood choices, and sexuality has developed and evolved over centuries through various social practices and institutions that are governed by patriarchy. *It is through a combination of family, caste, community, religion, among others, that patriarchal values and ideas get constantly reinforced and legitimized.* Inequality between various genders and their oppression are furthered through the socio-economic divisions based on biological factors, i.e. reiteration and propagation of the notion that women's sole responsibility and role in society is reproduction and childcare; the male is the protector and provider.

4.3 It is within the family that the first lessons in hierarchy, subordination, discrimination are learnt. 'The family not only mirrors the order in the state and educates its children to follow it, it also creates and constantly reinforces that order'.¹ Segal's (1999) analysis of patriarchal family structure in India highlights the gender socialisation and status attributed to the men and women in the society:

*"In India's clearly patriarchal society, males are valued more and the preference is more for the male child. Men act as heads of households, primary wage earners, decision makers, and disciplinarians. Male children especially the eldest male, grows with the knowledge that, upon the death of his father, he will become the head of the household, and will also be responsible for his mother, female relatives, and younger siblings. He is expected to model his behaviour after that of his father. Women in the family are subordinate and serve as caretakers. As children they are groomed to move into, and contribute to, the well-being of husbands' family."*²

4.4 A man is considered the head of the household; within the family he controls women's sexuality, labour or production, reproduction and mobility³. Many authors analysing the weak status of women in Indian society have generally argued that in a patriarchal, patrilineal society,

where males are the decision makers and the wage earners, where adult male members are the social security for their ageing parents, and where male children bring their wives to the parental home, female children do not have much value. Gender bias is entrenched in the cultural heritage of Indian society. It is a society that idolises sons; an obsession that cuts across all differences of caste, class and religion.

4.5 The **socialisation of the girl child** in India is described by using six themes: '*unwanted*'; '*neglected*'; '*undernourished*'; '*underdeveloped*'; '*used*'; '*liability*'; and '*exploitation*' – all explaining the plight of the girl child **through her life cycle**. Each theme encapsulates the significant features of the social and cultural environment which surrounds her at a particular stage.⁴

4.6 This process of blinkered acculturation is compounded by the other social hierarchies where the girl child is brought up to believe that she is not just the repository of the 'honour' of her own family but also that of her community/caste etc. False morality is administered from childhood and patriarchy makes women accomplices in its institutionalization; and women themselves reinforce patriarchal norms over generations⁵

4.7 **Socialisation in schools** is believed to play an instrumental role in shaping mindsets of boys and girls. The school is an important area where 'femininity' and 'masculinity' is attributed. It is necessary that the attribution must take place in a rational, correct, egalitarian and sensible way⁶ It is clear that there is major thrust in ensuring numerical equality (parity) in access to schooling and there has also been a gender convergence in academic achievement. However, schools have yet to become major engines of gender transformation. Education is valued differently for boys and girls and gender stereotypes and discrimination is visible in different facets of education system. The differential valuation of the tasks performed by men and women remains one of the fundamental causes of differential investment in boys and girls, men and women with regard to education and skill formation.

4.8 **Religion** has always been an important part of Indian culture. India is known for its diversity of religious beliefs and practices. Around the world, scholars have pointed to the abundant evidence of women's subjugation to men mediated by the world's greatest religions. India is no

different. The relationship between religion and society is a complex one. 'The fit is not necessarily close but is always apparent. Religion, also, is not only shaped by social forces and factors but is itself one of these forces and factors'⁷. Aldridge (2000) reflects on the various practices like veiling of women in some Islamic cultures, exclusion of women from priesthood in Catholic and Orthodox Christianity and strong preference for sons over daughters in Hinduism. '*It is not difficult to trawl through the sacred scriptures, rituals and traditional practices of the world's greatest religions in order to produce abundant evidence of women's subjugation to men*'.⁸ Religion has played an important role in exploitation of women and in regulating women's lives in highly discriminatory ways, including her sexuality.

4.9 In more recent times, discussions around Shahbano's case saw how the discourse was so much around the religious identity of Muslims in India. Shahbano, the woman — her personal story, suffering, difficulties and interests were lost in the process. The discussions that followed resulted in creation of The Muslim Women (Protection of Rights on Divorce) Act, 1986. It is a testimony to indicate ways in which national/religious identity is used to control women and to further personal and political power over them.

4.10 It is important to highlight that women usually oppose wars, violence and fundamentalism; still they are invariably victims of communalization and conflict, especially those belonging to minority and marginalized communities. However, from some recent communal violence episodes in the country it is also emerging that women are many a times falling prey to fundamentalist forces and are becoming part of rioting communities. This is a new challenge in front of the women's movements and needs to be further understood and addressed.

4.11 **Caste system**, one of the most significant features of the Hindu social system, at times becomes central to the exploitation of women and regulator of women's lives. One such example is, forbidding non-endogamous unions and widow remarriage, a clear way of controlling women's sexuality, and sustaining patriarchy at every cost. The movement of women is highly restricted in order to safeguard the caste structure.

4.12 Gender within caste society is defined and structured in such a manner that the 'manhood' of the caste is defined both by the degree of control men exercise over women, and the degree of

passivity of the women of the caste. By the same argument, demonstrating control by humiliating women of another caste is a certain way of reducing the 'manhood' of that caste.⁹ In 2013, a total of 2,073 cases of rape of women belonging to Scheduled Castes were reported in the country as compared to 1,576 cases in the year 2012, showing an increase of 31.5%. Madhya Pradesh reported 397 cases accounting for 19.1% of the total 2073 cases reported followed by Uttar Pradesh 18.9% (391 out of 2,073 cases).¹⁰

4.13 The social relations of caste and gender are based on the exercise of power through the use of force – be it direct assertion through violence or by restricting space and freedom. The most absolute exercise of power is that grievance or dissent is not even articulated. To articulate a grievance indicates a degree of political awareness of a wrong which the absolute exercise of power does not permit. So what we witness today in the increasing violence that enforces the maintenance of 'order' in relations of caste and gender is the weakening of an absolute power that did not allow the space to articulate grievance and the consequent blurring of carefully drawn lines of demarcation. The strong impact of caste even on the judicial system has been witnessed; for instance in Rajasthan, where the court (1995) acquitted five men of rape, saying upper-caste men *could not have raped a Dalit*. The state has asked a higher court to review that case—a request that is still pending.

4.14 It might be simpler to view caste as a Hindu phenomenon, and resort to a conventional explanation that sees conversion as an escape from an oppressive reality. A look at the experience and social practice of other religious groups in India re-emphasises the resilience of caste, not as a religious institution but an institution that structures social relations irrespective of religious faith.¹¹

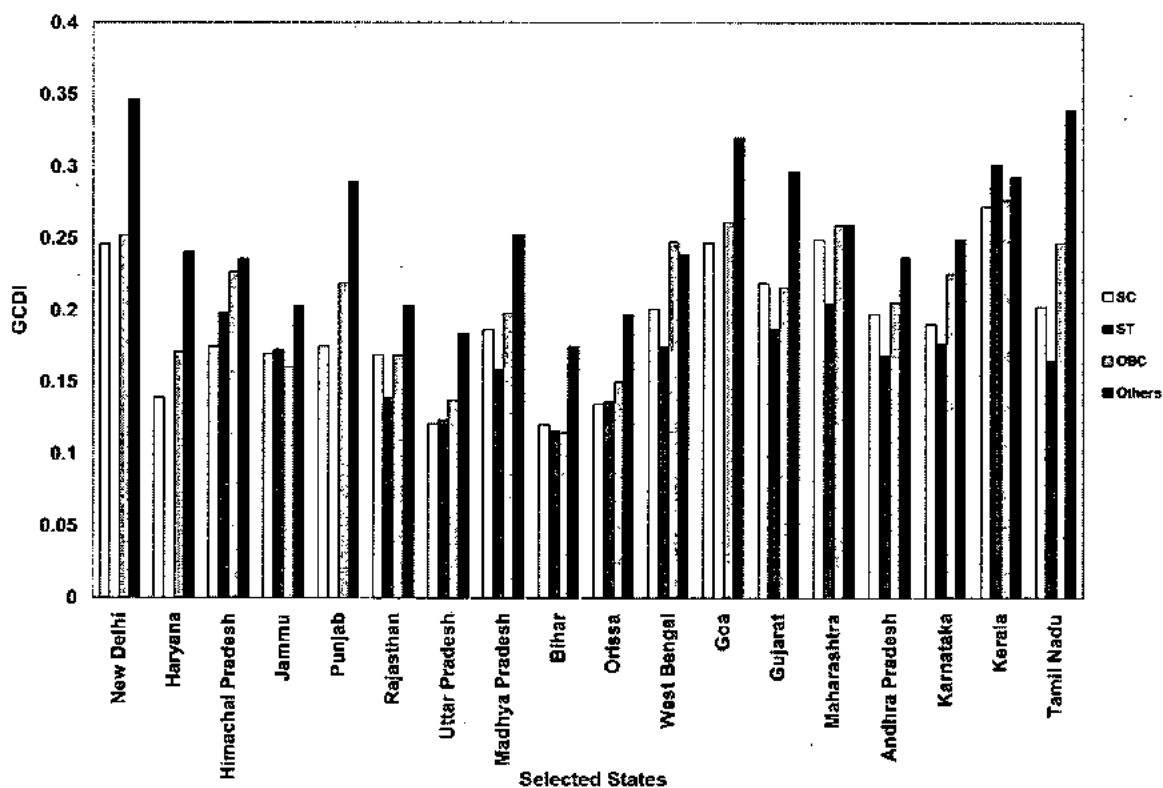
4.15 The crux of the problem in gender relations lies in the fact that gender roles, rights and obligations are not just different but they are highly unequal. In almost every sphere of human functioning in India, the roles defined for women are subordinated to those defined for males. The rights for women are fewer or less emancipating than those of men, and women's obligations are more limiting than those of men, resulting in gender disparity at every level, cutting across all types of class and caste powerlessness.¹²

4.16 It is through a combination of family, caste, community, religion, among others, that patriarchal values and ideas get constantly reinforced and legitimized. "Patriarchal ideas blur the distinction between sex and gender and assume that all socio-economic and political distinctions between men and women are rooted in biology or anatomy".¹³

Demographic Indicators

4.17 The issues pervading the lives of women can be addressed after identifying and targeting specific problem areas that various groups and sections of women in different parts of the country face today. Reviewing some indicators depict the progress and deterioration in the situation of Indian women.

Figure 1: Gender-Caste Development Index, India, 1998-99¹⁴



4.18 The *Gender-Caste Development Index (GCDI)* is based on indicators of material standard of living such as land ownership, education, occupation, livestock, and consumer durables. Figure (1) shows the GCDI for SC, ST, OBC, and Others for NFHS-2 for the major states of India. Several features stand out: in all the states, the women in the Others category are the best off and the SC/ST women are the worst off. In no state for any of the caste groups does the value of the index cross 0.5 (the halfway mark). What is noteworthy is, in terms of the GCDI, SCs lag behind OBCs, who, in turn, lag behind the upper-caste women for most of India.

4.19 Religious groups (As per Census 2001)

Table 1: Sex Ratio according to Religion in India

Name of Religion	Percentage to total population	Sex ratio
Hindus	80.5	931
Muslims	13.4	936
Christians	2.3	1009
Sikhs	1.9	893
Buddhists	0.8	953
Jains	0.4	940
Other religions	0.6	992
India	100	933

Table 2: Distribution of Women Population by Religion (As per Census 2001)

Name of Religion	Percentage to total female population	Sex Ratio 2001	Percentage of 0-6 population to total population	Child Sex Ratio 2001	Sex/Child Sex Ratio 2011 (Awaited)
Hindus	80.5	931	15.6	925	
Muslims	13.4	936	18.7	950	
Christians	2.3	1009	13.5	964	
Sikhs	1.9	893	12.8	786	
Buddhists	0.8	953	14.4	942	
Jains	0.4	940	10.6	870	-
Other religions	0.6	992	18.0	976	
India	100	933	15.9	927	

Source: GOI, NSSO, Primary data (2009-10).

Table 3: Literacy Rates (Religion Wise - %age)

Name of Religion	Literacy Rate (Total)	Literacy Rate (Males)	Literacy Rate (Females)
Hindus	65.1	76.2	53.2
Muslims	59.1	67.6	50.1
Christians	80.3	84.4	76.2
Sikhs	69.4	75.2	63.1
Buddhists	72.7	83.1	61.7
Jains	94.1	97.4	90.6
Other religions	47.0	60.8	33.2
India	64.8	75.3	53.7

Source: Census of India 2001

Table 4: Work Participation Rate (Religion Wise) - India: 2001

Name of Religion	Work Participation Rate		
	Total	Male	Female
Hindus	40.4	52.4	27.5
Muslims	31.3	47.5	14.1
Christians	39.7	50.7	28.7
Sikhs	37.7	53.3	20.2
Buddhists	40.6	49.2	31.7
Jains	32.9	55.2	9.2
Other Religions	48.4	52.5	44.2
India	39.1	51.7	25.6

Source: Census of India, 2011

4.20 *Minority Communities*: The status of women among the Scheduled Tribe (ST) population is generally observed to be better as compared to other categories.¹⁵ The tribal population comprises roughly eight percent of the total population of India i.e. about 68 million persons. However, there are clear statistics indicating existence of gender inequality in tribal societies despite women's active participation in social and economic life.

4.21 Sex Ratio among Scheduled Tribes: In 2011, India's ST population as a whole had a sex ratio of 990, much better than the national ratio of 943. The child sex ratio for 0-6 years of age was also significantly better for tribals at 957 than for the country as a whole (919). It was, however, worryingly lower than the overall sex ratio. Detailed data shows that this decline is happening more or less across the board. Of the 58 tribal communities for which the Census has compiled data, 27 have overall sex ratios of over 1,000. In other words, in all these tribes, women outnumber men. In one more tribe, the Thadous of Manipur, the sex ratio is 1,000 which means there are about as many women as men. However, when it comes to the child sex ratio, there are only two tribal groups - the Bhattadas/Dhotadas and the Bhuais/Bhuyans, both from Odisha - which have a ratio of over 1,000.¹⁶ All 56 others have fewer girls than boys with the ratio dipping to as low as 879 among the Sugalis and 888 among the Malayalis of the south and 888 among Minas, a tribe found largely in Rajasthan. Even among the Minas, the overall sex ratio of 919 is significantly better than the CSR, though it's the lowest for any tribal group. Among the Sugalis and Malayalis, the overall sex ratios are much higher at 957 and 970 respectively.¹⁷

Table 5: Sex Ratio among Scheduled Tribes by residence: 2001 – 2011¹⁸

Sex Ratio 2001			Sex Ratio 2011		
Total	Rural	Urban	Total	Rural	Urban
978	981	944	990	991	980

Table 6 : Drop Out Rates for Girls

	ST	All categories
Classes I - V	33.9	25.1
Classes I - VIII	55.4	41.0
Classes I - X	71.3	47.9

(Source: Statistics of School Education 2010-2011)

4.22 National Family Health Survey III (2005-06) also reports lower antenatal care and lower access to antenatal care services and information by the ST compared to SC, OBC and others .

4.23 SC /Dalit Women: _The Dalit women are positioned at the bottom of the caste hierarchy, subject to multiple forms of discrimination on the basis of their caste, class and gender. According to a 2006 report¹⁹, "Dalit women endure violence in both the general community and in the family, from state and non-state actors of different genders, castes and socio-economic groupings". According to the NCRB data (Table 7), the number of rapes of Dalit women went up by 57% from 1000 in 1999 to 1576 in 2012 over the years.

Table 7: Number of Rapes of Dalit Women

Year	Dalit Women
1999	1000
2000	1083
2001	1316
2002	1331
2003	1089
2004	1157
2005	1172
2006	1217
2007	1349
2008	1457
2009	1346
2010	1349
2011	1557
2012	1576

Source: National Crime Record Bureau, GOI, 1999-2012

4.24 *Female Work Participation*: Rural female workers engaged in agriculture as a proportion of total workers has declined since 1999-2000, but the fall was more drastic between 2004-05 and 2009-10, and continued till 2011-12. Further, no significant increase in the proportion of female workers was seen in either secondary sector or tertiary sector employment in rural areas. This is in keeping with the trend of fewer women in work, especially in rural India. Urban female

workers in the secondary and tertiary sectors have grown as a proportion of total workers in the last decade, but this increase is meagre relative to the number of women leaving the labour force in rural areas.

(Refer to individual chapters of the report for further details on demography, education, health, economy and marginalised communities).

4.25 Empowerment and Autonomy

NFHS 3 quantifies the status of 'empowerment' among women across various strata of society and indicates the extent to which they are 'autonomous'. Based on Kishore and Subaiya (2008), the sources of empowerment are considered to be job for cash, education and access over resources like owning an account, access to credit and regular media exposure. The indicators of autonomy are decision-making, freedom of movement, and gender role attitude.

Table 8: Extent of Empowerment, Decision Making and Freedom of Movement

Empowerment (%)					
	Job for Cash	Higher Education	Owns account	Given loan	Regular Media Exposure
India	54.67	44.7	15.07	10.48	51.38
Urban	88.14	65.81	23.97	7.35	77.26
Rural	44.97	34.39	10.72	12.39	38.74
Wealth Quintiles					
Poorest	42.64	10.62	3.72	11.06	12.39
Middle	54.79	36.72	10.53	15.04	47.2
Richest	82.52	84.35	33.61	5.21	89.34
Decision-making (%)					

	Large Purchase	Daily needs purchase	Visit Family	What to do with money husband earns
Urban	10.4	39.94	12.25	7.11
Rural	7.64	29.1	10.74	6.19
Wealth Quintiles				
Poorest	8.1	28.92	9.62	6.96
Middle	9.23	32.21	12.92	7.09
Richest	7.74	36.72	13.45	5.15
Freedom of movement (%)				
	To market	To health facility	To outside village	
Urban	66.17	60.29	45.46	
Rural	44.27	41.5	33.98	
Wealth Quintiles				
Poorest	41.87	39.15	29.84	
Middle	48.07	44.63	36.21	
Richest	67.59	61.87	48.25	

4.26 Some of the striking revelations of the NFHS-3 are that only 15% Indian women have their own bank account; and only 10% are given any loan at all - indicating limited empowerment as part of formal economy. To understand women's participation in decision-making in the household, the NFHS-3 shows that Indian women have little say in making important decisions concerning the family except the purchase of daily household needs. Visiting her family is also linked with freedom of movement. Only 10% women have a say in this decision. Further, the autonomy of rural and poor woman is severely impaired as they are not allowed free movement. This restricted freedom of movement, especially outside the village emanates from the conception

that women are unsafe outside the four walls of their homes. Therefore, there is a need for identification of cultural factors that have a bearing on empowerment and autonomy separately, as showcased in NFHS 3. This suggests that we have to look beyond economic resources or isolated educational, health or legal policies into broadly cultural and social influences, which have a larger role to play in shaping women's autonomy and agency.

4.27 NFHS 3 also indicated the level of autonomy within marital relationship. Information was sought from ever-married women on six specific situations: whether the husband became jealous or angry if they talked to other men; whether the husband accused them of being unfaithful; whether the husband would not permit them to meet their female friends; whether the husband tried to limit contact with their natal family; whether the husband insisted on knowing where they are at all times; and whether the husband did not trust them with money.

Discriminatory Gender Norms, Harmful Social Practices And Sterotyping Of Women

*"It's a miracle a woman survives in India. Even before she is born, she is at risk of being aborted due to our obsession for sons. As a child, she faces abuse, rape and early marriage and even when she marries, she is killed for dowry. If she survives all of this, as a widow she is discriminated against and given no rights over inheritance or property."*²⁰

4.28 *Dowry*: The system of dowry giving, whereby the women's parents give material goods and money to the family of the bridegroom during marriage, has been a significant factor in making the girl child in India 'less wanted' and a 'liability' to parents. There are various explanations for the origin of dowry in India. The first international conference on dowry burning and dowry deaths held at Harvard University in 1995, observed that the dowry was more prevalent in areas where the caste system is more rigid. Most of the incidents were observed amongst the upper caste. It also indicated that 'dowry' was more prevalent in affluent Hindu societies²¹.

4.29 Birodkar (1999)²² also argues convincingly that dowry in the Indian context is bound up to a great extent with the caste system. The role of women and the nature of the division of work differed in different castes. People from low castes did most of the physical labour and menial

work and since the taboos on women working outside the house were not strong, men and women both contributed to the income of the house. So, in lower castes, the coming of a bride into the grooms' house meant an increase in the overall numbers who could work and become a source of income for the family. The family from which the bride came however suffered the loss of one earning member.²³ To compensate this, the groom's family had to pay money called the 'bride price' to the bride's family. But in the upper caste, the women were not allowed to work outside the house and the men had only priestly and marital duties (i.e. conducting rituals for marriage and other religious occasions) allocated to them. They were paid for conducting the rituals and ceremonies and were also given donations. Since women could not go out to work and contribute to the family's income, the coming of a bride in the house was an additional burden on the groom's family. So to compensate for this, the bride's family had to pay money to the groom's family, called 'dowry'. It was seen as a compensation for the cost of maintaining a person who is a financial liability.

4.30 But recent statistics in India indicate that the problem has spread in all the castes/classes and religions. "Expanding Dimensions of Dowry," a survey by AIDWA in 2003, revealed that the scope and spread of dowry have widened over the last decade. It was noted that the acceptability of dowry moved beyond Hindu upper castes to Christians, Muslims, animists and other tribal groups.²⁴

4.31 With globalisation and liberalization, weddings also have been impacted. They are now big business in which groom's side try to make as much money as possible; and the money spent on marriages has become an indicator of economic and social status of the families. The rates of dowry vary depending on the groom's accomplishments, family status and other attainments such as education, employment or prospects in acquisition of wealth irrespective of girls own credentials.

4.32 It is important to note that the practice of dowry-giving gifts does not begin and end with one lavish wedding ceremony but continues in the form of gifts/money given during every important occasion of girls married life (such as pregnancy, childbirth, especially the birth of a male child, festivals, the death of a father or mother-in-law, etc). In many instances, the

exchange is also a two-way giving of gifts, but it is equally true that it is the girl's family that ends up giving much more than it receives²⁵. Since dowry is a status symbol, families with meagre resources find it especially burdensome to nurture and raise a female child who, as soon as she is old enough to contribute to the family, gets married, becomes part of her husband's home and puts her family in an economic crisis through the marriage, as parents have to spend large sum of money for her dowry.

4.33 Although the dowry system was banned decades ago by law (The Dowry Prohibition Act, 1961), it continues to flourish in India. It has led to numerous cases of what we call 'dowry deaths'; brides murdered by grooms family for not bringing enough dowry into the marriage. According the National Crime Records Bureau (NCRB) figures, one woman dies every hour due to dowry related reasons on an average in the country. NCRB states that 8,233 dowry deaths were reported in 2012 from various states, as against 8,618 in 2011. The number of dowry deaths in the country has seen a steady growth during the period between 2007 and 2011. While in 2007, 8,093 such deaths were reported, the numbers rose to 8,172 and 8,383 in 2008 and 2009 respectively. In 2010, 8,391 such deaths were reported. The overall conviction rate in 2011 was 35.8 per cent, slightly above the 32 per cent conviction rate recorded in 2012 according to the NCRB.²⁶ The cases of dowry deaths have decreased by 1.8% during the year 2013 over the previous year (8,233 cases). 28.9% of the total such cases reported in the country were reported from Uttar Pradesh (2,335 cases) alone followed by Bihar (1,182 cases) (14.6%). The highest rate of crime (2.43) was reported from Bihar followed by Uttar Pradesh (2.36) as compared to the national average of 1.4 (NCRB).

4.34 It is to be noted that some of these deaths are in fact suicides, when girls chose to kill themselves to spare their parents from extreme pressures of dowry. The following note written by four sisters who hanged themselves to death explains the plight of some girls:

'Our parents are not yet ready to pay fully for the dowry of our sisters who are married some time ago. Having sold their gold and land, we are not sure that they will be able to provide anything for our marriage. Hence the decision to end our lives' (Times of India, Nov 4, 1999).

4.35 The law has been amended twice in the past pursuant to demands made by the women's movement. Despite its existence for decades the law has been ineffectual in curbing the practice of dowry. Women's groups and new protection laws have managed to stem the tide, but not turn it around.²⁷ The more recently enacted Protection of Women from Domestic Violence Act (PWDVA) also includes some harmful practices that are relevant to India as civil offences - dowry related harassment being one of them (*for details see chapter on Law*). It is apparent that the practice is not simply a kind of economic transaction. Certainly, it reinforces women's vulnerability and unequal position in Indian society. Dowry devalues the girl, as parents have to 'purchase, her groom by paying large sums of cash, furniture, clothing, jewellery, gadgets, wedding expenses etc. As per the AIDWA Survey report (2003), a majority of respondents had admitted to be afraid of giving birth to a girl child because of dowry at the time of the marriage.

4.36 *Honour killing* is a barbaric act of murder; where a member of a family or a community is killed because of the belief that the person has brought dishonour to the family or the community. Not surprisingly, the victims of such killings are mostly women; revealing a distorted sense of family honour. In Indian cultural codes and norms, honour is much more than a measure of an individual woman's moral quality: it mirrors the character of entire family and shapes its relationship with the community. A culture where the yardstick of family honour is their daughters' purity and chastity, and where the ultimate honour of the family lies in marrying their daughters without any scandal, leaves us with a little hope for disclosure of any kind which is seen to rob them of these virtues. Stein (1988) rightly points out: 'Marriage is still seen as only way in which Indian women can be a part of their own society, can function as social beings, even at the expense of their own personalities, and occasionally their lives'

4.37 This extreme reaction by family/community is also closely associated with the complex web of caste, class and religious norms, and any digression is met with violence and sheer rejection. Honour killings have taken the shape of public lynching of the couple, murder of the girl or boy or both, murder made to appear as suicide, sexual assault on other women members of the family, mostly those belonging to the lower caste. Even with such media attention these cases get, there is no official statistics available on the total number of 'such killings. A UN figure estimates, one in five cases of honour killing internationally every year comes from India.²⁸ Of

the 5000 cases reported internationally, 1000 are from India. Non-governmental organisations put the number at four times this figure.²⁹ A 2008 judgement of the Punjab and Haryana High Court referred to thousands of cases of young couples who had been victimized in the name of honour, for having crossed the *lakshman rekha*.

4.38 The intervention of caste/community assemblies in the name of 'Khap Panchayats', 'Katta Panchayats' etc. play an influential role in pronouncing on the invalidity and impropriety of Sagotra and inter-caste marriages. The Khaps' handing over punishment to the couple, and pressurizing the family members to execute their verdict by any means amounts to flagrant violation of rule of law and invasion of personal liberty of the persons affected.³⁰ Any attempt to effectively tackle this socio-cultural phenomenon, rooted in superstition and authoritarianism, must address itself to various factors and dimensions viz. the nature and magnitude of the problem, the adequacy of existing law, and the wisdom in using penal and other measures of sanction to curb the power and conduct of caste combines. The law as it stands does not act either as a deterrence or as a sobering influence on the caste combinations and assemblies who regard themselves as being outside the purview of law.

4.39 With regards to the intervention of caste/community assemblies in the name of 'Khap Panchayats', 'Katta, the Law Commission of India (Report No. 242, August 2012) states that:

In a recent case – Arumugam Servai vs. State of Tamil Nadu [reported in (2011) 6 SCC 405], the Supreme Court strongly deprecated the practice of khap/katta panchayats taking law into their own hands and indulging in offensive activities which endanger the personal lives of the persons marrying according to their choice. In another case, Lata Singh vs. State of U.P. (2006, 5 SCC 475), the Supreme Court observed and directed as under:

"This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass

the person who undergoes such intercaste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law. We sometimes hear of 'honour' killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism".³¹

4.40 This is a classic example of how women who try to challenge patriarchy bear the backlash of the family and the community, to the extent that they are eliminated from the very family and society to which they belonged. The status quo of patriarchy when challenged is met with extreme reactions.

4.41 *Child marriage:* Nearly 17 million Indian children between the ages of 10 and 19 (6% of the age group) – are married. Of these married children, 76% or 12.7 million are girls, reveals the 2011 Census figures. Uttar Pradesh has the most married children (2.8 million), followed by Bihar and Rajasthan (with 1.6 million each). Six million children were born to couples married in the age group of 10-19. The majority of these children were boys (3 million). Uttar Pradesh has the highest number of children born to children: 1 million (Census, 2011).

4.42 In India, between 2005-2013, 43 per cent of women aged 20-24 were first married by the age of 18. Girls with no education are 5.5 times more likely to marry or enter into union as those with at least 10 years of education. "These figures confirm that child marriage is rooted in gender norms and in expectations about the value and roles of girls," (UN Report, 2014)

4.43 Child marriage is a violation of child rights, whether it happens to a girl or a boy. It denies the child the basic right to good health, nutrition, education, and freedom from violence, abuse and exploitation. The practice of child marriage is an obstacle to nearly every developmental goal: eradicating poverty and hunger (MDG 1); achieving universal primary education (MDG 2); promoting gender equality (MDG 3); protecting children's lives (MDG 4); and improving health (MDG 5 & 6). Child marriage also denies the child the right to be precisely that: a child, as it removes her/him from the care and protection of her/his family (and in most cases from school too) and throws her/him prematurely into the world of adults, with a number of burdens and responsibilities that the child is not prepared for.

4.44 Despite legislation forbidding child marriage in India since 1929 (The CMRA - Child Marriage Restraint Act), the adoption of the much more progressive Prohibition of Child Marriage Act in 2006, and the existence of many government and non-governmental initiatives to prevent child marriage, marrying children off continues to be accepted by large sections of society, constituting a social norm. All child marriages are forced, as a person is not capable of giving full and informed consent before attaining the age of majority. Despite the existence of the CMRA, a UNICEF report showed that prosecutions under this Act did not exceed 89 in any given year.³² It is clear that such practices highlight a deep-rooted mindset that women are inferior and must be restricted to being homemakers and child bearers.

4.45 *Devadasi/jogini system and child prostitution*: The cultural practice of dedication of girls to gods and goddesses in temples has been a long standing tradition in Indian society. The 'Devadasi' system is mainly prevalent among the poor untouchable and schedule castes, where girls are sold in the name of religion for some monetary gain. They then lead a life of prostitution with a religious sanction³³. This system was also seen as a means for poverty-stricken parents to unburden themselves of daughters. This Devadasi/Jogini system of prostitution, originating from a patriarchal framework where high caste men are allowed free and religiously-sanctioned sexual assault on dalit women, is still prevalent though illegal since 1988. The National Human Rights Commission indicated that Andhra Pradesh had 29,000 joginis. 'Devadasis', with girls of just 12 or 13 years, form 80% of the brothel population in the states of Maharashtra and Karnataka in India³⁴. The National Commission for Women estimated that there are 48,358 Devadasis

currently in India.³⁵ The 'Devadasi' system clearly demonstrates the conflux of economic and social forces, which eventually robs young girls of any control over their lives and forces them into a life of subordination.

4.46 *Sati*: The practice, of 'Sati', self-immolation by a widow on her husbands' death was a very common practice in some parts of India in earlier times. Historians explain this practice in various ways; one being the low status attributed to widows. Today 'Sati' is illegal, with very rare incidents of women being forced to commit it; however, the glorification of the practice in the form of Sati temples continues. This is yet another profound illustration of the patriarchal structure of Indian society: whether it is committed to prove chastity and purity or to escape widowhood, it mirrors the image of women in the society. It clearly shows the 'non recognition' of the individuality of women. Even if 'Sati' is outdated, the low status of 'widows' is a reality. Even today widows prefer to spend rest of their lives in temples or as a religious pilgrim to avoid social stigma, hatred and exploitation and many a times are dumped into these places because they are no longer wanted in the family or the society.

4.47 *Gender biased sex selection*: (*This issue is discussed in detail as a separate chapter*) The determination of sex of the unborn child and the subsequent termination of pregnancy, if found to be female has assumed alarming proportion in India. Media and academic research has shown that sex-selective abortion which was earlier mostly a middle- and upper middle-class phenomenon of the educated, has now spread to other classes and communities, and to even regions like the South, where the practice was not reported earlier.

4.48 Though there is an Act (Pre- Natal Diagnosis Techniques (Regulation and Prevention of Misuse) Act, 1993) to prevent the misuse of pre-natal diagnostic techniques, the number of gender-linked abortions are rampant. Female infanticide is another way by which parents in India get rid of their unwanted baby girls. Although such practice was outlawed more than a century ago, with passage of Female Infanticide Prohibition Act (1870), the practice continues.

The patriarchal social structure, religious beliefs, poverty, obsession for male child and negative attitude towards girls has led to strong gender discrimination in India, which starts even before birth.

4.49 *Witch hunting* as motive has led to 2,097 murders between 2000 and 2012—majority (363) of them in Jharkhand, shows statistics of National Crime Record Bureau. Originally practised only by few tribal communities, witch hunting is now becoming common among Dalits and other minority communities, and is on rise in rural India. Apart from Jharkhand, at least 11 other states—Haryana, Chhattisgarh, Odisha, West Bengal, Madhya Pradesh, Rajasthan, Andhra Pradesh, Gujarat, Maharashtra, Assam and Bihar—still report cases of witch hunting. Witch hunting has changed over time. In the late 19th and early 20th century, women branded as witches were banished from their communities, fined and in extreme cases, killed. From 1933 to the 1970s, there was a decline in the number of such murders. It was a time when Adivasi movements were coming up and attempts were made to tone down any internal tensions. Since the 1980s, “there has been a resurgence in the practice”³⁶.

4.50 Though branding someone a witch may have various superstitious reasons such as death of animals, failure of crops or failure in exam, it has a number of socio economic reasons and implications as well. It is seen that single women or women who own some form of property or question the patriarchal norms of the society tend to get branded as witches. There are several reasons behind this labeling such as gender inequality and property disputes. Branding a woman as a witch is “a common ploy to grab land, settle scores or even to punish her for turning down sexual advances. Women who become too powerful, and thus threaten the male leadership can also become the target of witch hunting.”³⁷ These are women who are unsupported, either because they are single or widows. It is primarily connected to land. It happens with women who are economically well-off or self-sustaining.”³⁸

4.51 It is clear that witch-hunting is essentially about patriarchy and gender-based control. Once a woman is pronounced a witch, she is subjected to horrific forms of violence including rape, physical and mental torture, and humiliation. She is socially boycotted, and often forced to flee her village for fear of being killed. Witch-hunting discourages any attempt by women to assert themselves and ensures that they maintain their inferior position in society³⁹. There is no specific law in India against the practice. Few States - Bihar, Jharkhand and Chhattisgarh - have special laws about witch hunting. However, like other laws relating to women, the conviction rates remain low.

4.52 *Discrimination against women in difficult situations (widows, elderly and single women):* Almost 15 million elderly Indians live all alone and close to three-fourths of them are women (Census, 2011). In rural areas, 28 lakh elderly women live all alone while in urban areas about 8.2 lakh elderly women live alone (Census 2011).

4.53 About 27 million households, constituting 11 percent of total households in the country, are headed by women. Census 2011 also reports that there are 49 lakh single-member female households, of which three-fourths were in rural areas. In Chhattisgarh, Madhya Pradesh, Tamil Nadu, Andhra Pradesh, Maharashtra, Odisha and Gujarat, the proportion of single-member female-headed households was more than 20 per cent. The vulnerability of such households - very often with lack of assets and productive resources, and with additional safety and security issues - is very high.

4.54 The longevity in India in general has been on the rise. But the fact that women are outliving men has led to what can be termed "Feminization of Ageing". Compared to elderly men, more than double elderly women live alone. Of the poor widowed women living alone, 32% are not even aware of widow pension scheme; and only 27% are using it.⁴⁰

4.55 For widows, not only are the rituals savage, widowhood in itself constitutes a low status. Thousands of widows are disowned by relatives and made homeless, forcing many women to seek informal work as domestic labourers or turn to begging or prostitution. Poverty is often given as the reason for families having to cast off the unproductive. Studies indicate that ill-treatment of widows is not confined to families and communities living in poverty. In India, widows from middle class families are taken to visit holy shrines to pray for their deceased husbands; they are then abandoned there to live out the rest of their lives in extreme poverty, often by begging, or effectively interned in ashrams established for widows⁴¹.

4.56 Over 90% of working elderly women (EW) living independently are working due to economic/other compulsion. They are largely engaged in the informal sector or as agricultural labour with no benefits. Of the widowed women, 48% have no source of income at all due to high illiteracy and low skills. Illness is a big challenge to dignity. Almost 60% EW mention lack of money as the main reason for not taking treatment. CEDAW (GR-27) recognises that women

tend to suffer disproportionately from various forms of discrimination, and ageing makes this more complex. Countries are obligated to respect, protect and promote human rights of elderly women.⁴²

4.57 If widows are denied autonomy, and the means to live productive and creative lives, they are also denied the opportunity to contribute to the social and economic development of their families and communities. The economic and social marginalisation of widows involves a huge waste of skills and resources. The contribution that widows could make is considerable, because many widows are not old; In India, for example, 34 per cent of rural widows are under 50 years of age⁴³.

4.58 *Stereotyping of women and their roles* is seen in all institutions, public or private. Media, with its wide coverage and impact has also played a role in reinforcing these stereotypes. A study commissioned by the Geena Davis Institute on Gender in Media, with support from UN Women and The Rockefeller Foundation, reveals deep-seated discrimination, pervasive stereotyping, sexualisation of women and their underrepresentation in powerful roles by the international film industry. Indian films, the study finds, have a significantly higher prevalence of sexualisation of female characters and the movies score low in depicting women in significant speaking roles and as engineers and scientists'.⁴⁴

4.59 In response to the trends in projection of women in television, advertising and cinema, feminists and others involved in the women's movement have brought the discourse surrounding politics within the family out into the public domain⁴⁵. Good wife, mother and daughter-in-law: Advertisements, cinema and television serials most glorify the institution of family, marriage, motherhood and reinforce the notion of a 'ideal women' who is self-sacrificing, respectful and dutiful. Media has done little to raise self-awareness of girl and women viewers as rights-bearing persons. However, winds of change are blowing and one does come across some proactive initiatives by media to highlight positive stories of change, and also bring forth the regressive and patriarchal mind-sets at various levels (parliamentarians, judiciary, police, caste panchayats and institutions)

4.60 *Stereotyping in language and imagery* is another reality women in India have to live with in the current context. Words and language do have the power to change mindsets. Unfortunately, the stereotyping in language and imagery has further contributed to disregarding women as equal to men; and frivolous terminology is used to undermine the brutal nature of acts of atrocities against women. For instance, when families decide that their daughters have brought *dishonor* upon them and the community, they plot and brutally kill them and the state refers to this as "*honor killings*" almost offering the act sanctity instead of dealing with it as cold blooded murder largely directed against women and girls. Terms such as *eve-teasing* are still in common parlance, preferring to equate the serious crime of stalking with juvenile courtship and coyness. The liberal usage of the clearly derogatory term '*ladki patana*' became almost a non-offensive substitute for wooing women in this stalking manner in colleges and schools. Similarly "*maal*" is a common reference to women in films. The etymology is perhaps unclear but no other word degraded and commodifies women like the word '*item*' does.

4.61 In advertising, the dark skin is associated with failure - be it in academia, a professional life, social situations or even marriage. In folk songs too, the complexion of a woman is revered and considered the only criterion for beauty and honor. Matrimonial ads demanding "fair-skinned brides" probably similar to the characters that one gets to see on entertainment televisions across the country every night. Such stereo-typing in language and imagery is getting ingrained into popular culture and can only jar rudely on a society that is fighting all forms of terrible violence against women. There is a thin line between creative freedom and misogyny; and that line has to be marked and respected especially in the usage of language. The fact remains that institutional mechanisms and the mass media as a medium has a massive reach, and has to own up to its role.

4.62 Even the language used by duty bearers and law enforcement agencies can be very prejudiced. In the widely covered Kolkata Park Street rape case, the victim was termed a woman of "loose morals and character" by the administration and described as such to the Press. Recently the Supreme Court of India, came under criticism for language it used in a judgment regarding live-in relationships. The Supreme Court, in its written judgment, said "If a man has a *keep* whom he maintains financially, and uses mainly for sexual purpose and as a servant, it

would not be a relationship in the nature of marriage". In fact, the judgment was received harshly by activists fighting against discriminating language and stereotypes against women.

4.63 The legal, judicial as well as general discourse on gender-based violence is embedded in the language of 'protection of women as daughters, wives or mothers'. This discourse seeks to communicate ownership and control of women by men. It perpetuates inequality and reaffirms norms and practices that are discriminatory. Therefore, important is to change the misogynistic culture.

Changing Milieu for Women

4.64 India's socio-cultural landscape is a complex mixture of the traditional and modern, consisting of numerous modern institutions that continue to rest on a traditional base. Industrialization, globalization, urbanization and modernization in India have led to some irreversible changes for women; both positive and negative. For example, industrialization has led to many women venturing out of homes for employment. Increasing female education, training, access to money and movement into the public sphere comes with this major shift. "Paid employment enabled women to meet other people from the wider society and enabled them to participate in a larger social life". However, the traditional role of the female as the primary care giver and house-worker is still expected to be fulfilled, and changes to the patriarchal family power structure are often strongly contested⁴⁶. Many women are still actively discouraged from working and becoming financially independent in Indian families. Those who manage to go out to pursue a career are expected to also take care of the household 'duties' and meet societal expectations. The legitimacy of a woman's personal authority goes against the conception of individuals as interconnected with, and defined by, family and kinship networks, where they have to consider others' expectations and fulfil responsibilities to them.⁴⁷

4.65 *Marriage* is still considered an essential institution in Indian society. It is highly patriarchal in structure, with husband considered head of the family, and the primary breadwinner. Most government policies and schemes end up reiterating the importance of marriage in a girl's life. The accumulated money in girl child schemes is mostly made available at age 18 – thus, tying it to age at marriage. In present context, however, the 'live-in relationships' have also to be taken into account as they are prevalent, especially in metro cities⁴⁸. The shifts in attitudes towards live in relationships is reflected in a recent landmark judgement of Supreme court, which could revolutionize the social fabric of the Indian society, wherein it has ruled that an unmarried couple living together would be presumed legally married and the women in the relationship would be eligible to inherit the property after the death of her partner⁴⁹.

4.66 *Skewed sex ratio* has led to many changes in the pattern of marriages in different states, and migration due to marriages is on the rise. The need for women, for productive and reproductive purposes, is being addressed through unconventional marriages that are uniting rural, illiterate Indians across boundaries of region, language, religion and even caste. Marriages are increasingly coming to note in

which men from Uttar Pradesh, Haryana, Punjab and Rajasthan are marrying women from West Bengal, Assam, Bihar, Andhra Pradesh and Tamil Nadu. These unusual marriages are a consequence of a combination of factors: adverse sex ratio, acute poverty and the desire of parents to escape dowry⁵⁰. Desertion and abandoning of brides, especially in cases of

Some Demographic Indicators Of Change

The mean age at marriage for women was 19.5 years in 1992 which marginally increased to 19.9 years in 2001 and to 21.0 years in 2010.

The share of women parliamentarians was 10.96% in 2011

In 2008, out of 26,45,885 representatives of Gram Panchayats, 9,75,057 (36.9%) were women.

The proportion of women in the total Central Government employment has increased from 7.53% in 2001 to 10.04% in 2009.

The gender parity index in primary education has gone up from 0.76 in 1990-91 to 1.01 in 2010-11 and in secondary education the increase is from 0.60 in 1990-91 to 0.87 in 2010-11.

Significant Pointers from SAARC Development Goals – India Country Report

transnational marriages is another phenomenon which is disturbing. Field visits of the HLCW to Punjab, Gujarat highlighted the large number of abandoned women by NRI spouses.

4.67 As against 61% in 1993, 91% women in India were migrating for marriage in 2008. While in 1993, 8.3% rural women were migrating for work, only 0.7% migrated for this reason in 2008. On the other hand, the figures for migration of women in urban areas in 1993 and 2008 were 4.9% and 2.7%, respectively. As far as migration for education is concerned, in 1993 1.1% rural women migrated, the figure declined to 0.5% in 2008. A sharp fall was seen in urban areas too. In 1993, 7% urban women migrated for education; in 2008 the percentage declined to 2.2.

Table 9

Table: Percent of migrants by reason for migration during 1993, 1999–2000 and 2007–2008, all India

Reason for migration	Migrated in (%)											
	49th Round (1993)				55th Round (1999–2000)				64th Round (2007–2008)			
	Rural areas		Urban areas		Rural areas		Urban areas		Rural areas		Urban areas	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Employment related reason	47.7	8.3	41.5	4.9	30.3	1.0	51.9	3.0	28.6	0.7	55.7	2.7
Studies	4.1	1.1	18.0	7.0	5.3	0.4	6.2	1.3	10.7	0.5	6.8	2.2
Marriage	2.3	61.6	0.9	31.7	9.4	88.8	1.6	58.5	9.4	91.2	1.4	60.8

Source: Statement-4.13, Report No. S33 (Migration in India), 2007–2008, NSSO; Internal Migration in India: An Overview of its Features, Trends and Policy Challenges, Ravi Srivastava, ICSSR-UNICEF Workshop (2011)

Table 10: Percentage Distribution of Migrants in Different Migration Streams by Sex

Sex	Year	Rural to urban	Urban to urban	Urban to rural	Rural to rural	Total migrants
Female	1961	9.7	5.8	3.2	81.3	100.0
	1971	10.5	6.7	5.1	77.7	100.0
	1981	12.5	8.7	5.5	73.3	100.0

	1991	13.5	8.8	5.5	72.2	100.0
	2001	13.6	9.7	5.6	71.1	100.0
Male	1961	25.7	13.0	4.6	56.7	100.0
	1971	26.0	14.0	6.5	53.5	100.0
	1981	30.0	17.4	7.0	45.6	100.0
	1991	31.6	17.8	7.2	43.4	100.0
	2001	27.1	18.3	8.6	46.0	100.0

Source: Office of the Registrar General, India.

Table 11: Percentage Distribution of Migrants by Reasons of Migration

Reasons for migration	Year			
	1991		2001	
	Female	Male	Female	Male
1	2	3	4	5
Employment	1.8	27.0	3.2	37.6
Education	0.8	4.8	1.3	6.2
Family Moved	11.0	26.6	23.7	35.6
Marriage	76.1	4.0	64.9	2.1
Business	0.6	6.9	0.3	2.9
Natural Calamities like Drought, Floods etc.	0.2	1.1	NA	NA
Others	9.5	29.6	6.7	15.7

Source: Office of the Registrar General, India.

Note: Excludes Assam & Jammu & Kashmir for 1991 and 2001

4.68 Rural-to-urban migration has also affected households; and it is often seen that women are the most impacted. The process of migration affects women both ways: when they migrate with families/or without, and when they stay back while their husbands migrate. In case they are left behind, the female-headed households are faced with the multiple tasks of not only running the household but also looking after the family, children and the aged. Their vulnerability to exploitation by middlemen, money lenders, landlords, and other dominant persons in the community also increases. When they also migrate, their vulnerability to other external factors increases immensely such as no safety nets of the community, lack of social security benefits, mostly out of school children, lack of care giving provisions. Added to this, the pressures of working in long and difficult conditions.

**Regional Consultation on Adivasi Women
High Level Committee on the Status of Women
Bhubaneswar, Odisha**

The issue of migration was discussed to a great extent during the Regional Consultation. It was brought to notice that a large population from the States of Odisha, Chhattisgarh, and Jharkhand are increasingly migrating. The reasons behind this trend varies from the increasing conflict, lack of economic opportunities, natural disasters, crop failures, and others. This has also increased the vulnerability of girls/women to exploitation and trafficking. State Government and civil society organisations have been carrying out a number of awareness generating programmes in these States.

It was recognised that while migration in itself is not harmful, the issue of safe migration is an area of deep concern. The crucial need for the Government to maintain records and details of the number of people migrating was highlighted. It was further shared that many a times only the details of the men are recorded. That the sheet/document which is required to be filled up at the Labour office at the time of migrating has only a column requiring details of the head of the family. The need for gender disaggregated data was highlighted. The crucial need for recording and documenting details and issuing identity cards for all the migrants was raised, in light of the fact that a number of benefits are attached to such registration. Further, it was submitted that the State Governments need to coordinate with each other so as to ensure that the migrants can avail of the various benefits (Rashtriya Swasthya Bima Yojna (RSBY), and others) in the host/destination State as well. For example a large number of migrant population go to Kerala to work but in order to benefit under RSBY they have to be present in their home town.

4.69 Urbanization and industrialization have brought about changes and these changes have occurred at different rates across India, and as expected, gender role changes have been integrated with varying degrees of resistance. For instance, in the rural areas of the least developed states such as Uttar Pradesh,

women's roles have changed little and patriarchal practices are basically unchallenged; whereas in major cities of more developed states, it is seen that women have more readily been assimilated⁵¹ However, discrimination against women is all pervasive and applies to women from all strata and classes of Indian society. In spite of having greater access to education and relatively greater control and say regarding their life choices and decisions when compared to women from the lower classes, women from the upper classes too face gender-based oppression, discrimination and they remain subordinate to men.⁵²

4.70 Women have been at the receiving end due to the changes; clash between the new and the old; between the modern and the traditional. On one hand liberalized economy has contributed in providing better education, jobs, decision making powers and opportunities for women; on the other, it has made them the target of a strong backlash in terms of increased violence both within and outside the home, wage differential, and their commodification. The gender hierarchy though constructed in local contexts is shaped by globalised material relations, which gives rise to a situation where some men may fail to achieve the traditional norms of masculine success.⁵³ As men find their avenues to status, wealth and power blocked, violence against women has presented as an alternative means by which to express masculinity.⁵⁴

4.71 The manifestations of gender-related injustices have undergone considerable transformation. The kind of changes taking place today demand a rethinking of the very terms in which women's issues were initially raised.⁵⁵ The focus needs to be expanded from the individual acts of violence against women to the broader social context, and the wider social institutions and culture which promote these violent behaviours.⁵⁶ A classic example of this is the nationwide discourse around structural and ideological frameworks that needed to be challenged and changed as an aftermath of the horrifying gang rape of a 23-year-old student in New Delhi on December 16 2012, which also led to a more comprehensive law. On the other side, a more regressive discourse highlighting deep-rooted patriarchal mind-set with parallel discussions on women being blamed for violence against them, and the onus being placed on them to ensure their safety came to the forefront. Asking women to give up mobile phones, not to wear jeans, marry early to name a few. The paradox was never more alarming for women; one hand the hard

earned freedom, opportunities and changes in their lives and on the other a big cost price for achieving those!

4.72 Women are central to the search for ecological sustainability. Environmental degradation has also impacted women immensely. In view of the heavy reliance of poor women on natural resources, they are among the first to notice and feel the effects of environmental stress, often increasing their workload, reducing their access to land and other resources and undermining their health. Scarcity of clean water, desertification, exposure to toxic chemicals and hazardous wastes and exposure to infectious diseases through caring for the sick. Agricultural inputs such as pesticides, which are usually handled by women, have been shown to have negative effects on human genetic structure and to affect women's reproductive system, pregnancy outcomes and fetal development. A number of policy-oriented publications have examined the adverse effects of environmental degradation on women, particularly poor women in developing countries.⁵⁶ These studies have proposed strategies for incorporating women's concerns into environmental policies as well as for ensuring their participation at all levels of development.

4.73 While discussing the socio-cultural milieu in which Indian women are located, it is not out of place to point out that Indian women often relate to public spaces relatively uneasily compared to men. This has a lot to do with safety as well as expected norms of behaviour. It has been noted repeatedly by academics, that the 'outer world', especially in India, even when women spend a lot of time in it (like rural women often do) whether working or traveling or living, is not as marked and affected by their experiences of it, as it is by men's experiences, needs and concerns. Feminists have long been pointing to the existence of a gender-blind approach to planning around this, which is constraining and limiting women's development in various ways.

4.74 Modernisation and development programmes have been introduced and initiated by a large number of governmental and nongovernmental agencies in order to improve women's lives. The policies and procedures often reflect and perpetuate unequal gender hierarchies.⁵⁷ In cases, where positive legislative and legal changes have been brought about to ensure equality to women; social, cultural and religious expectations have played a significant role in undermining

those changes. For example, even after changes in the Hindu Succession Act, realities of most women's lives in Indian society militate against their willingness to substantiate their claim to parental property through succession. Women's identification with their roles as mothers, daughters and sisters, informed by the Hindu religious ideology to which they subscribe, weakens the social legitimacy of such a claim to a significant extent.

4.75 Over the years, the Indian State has enacted special laws in addition to gender specific provisions in general criminal laws to counter harmful practices against women. Many of these laws and legal provisions have been enacted as a consequence of active lobbying by the women's movement. Some illustrations are - the Dowry Prohibition Act, 1961; The Commission of Sati (Prevention) Act; 1987 Prohibition of Child Marriages Act 2006; and the Preconception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PC&PDT Act); Protection of Women from Domestic Violence Act, 2005 (PWDVA), etc. (*For details see the Chapter on Law*)

4.76 The government also recognizes the intricate relationship of value of girl child and several development concerns associated with it. Therefore, it has addressed the issue through various national and state policies and programmes. The 11th National Five-Year Plan (2007-2012) has a specific focus on investing in activities to reduce child marriage. The objective to delay marriage, in many cases, becomes part of broader reproductive health interventions. The increasing concern about declining female-male sex ratios and increasing female foeticide led to more interventions linking financial incentives with age at marriage (e.g., *Dhanalakshmi, Sabla, Balika Samridhhi Yojana, Apni Beti Apna Dhan*). *The very recent Beti Bachao, Beti Padao* is a huge step forward to enhance value of a girl child and prevent gender biased sex selection. (*For details see the chapter on Schemes*)

Conclusion and Recommendations

4.77 The need to change discriminatory social norms against girls/women is fundamental. Development and wellbeing of a girl child and ensuring non-discrimination at family level is the primary responsibility of individual parents and families. However, the role of society in providing the economic, social and cultural context in which families care for their children is

equally important. Societal attitudes influence parenting and therefore, discriminatory practices such as gender biased sex selection, dowry are accepted by families because there is a social sanction to it. It is often seen that parents who marry their children early do not always recognize the harm they are doing to the children, especially when there is a culture of acceptance of the practice.

4.78 Social norms and practices regarding girl child need to change radically and intensely:

Changing social norms is a mammoth task which requires both short term and long term interventions. Understanding of, and responses to various cultural and social practices are in part a product of public attitudes within the society. An understanding of this helps to build culturally sensitive interventions and policies to combat the issues in hand. Understanding individual differences and the uniqueness of cases are equally important, especially in the context to changing social norms. Therefore, the role of families, community and civil society is important.

4.79 The role of the State in bringing a radical change is even more important in practices which have strong cultural and social sanctions. The government can bring changes in the objective circumstances that perpetuate discrimination and neglect towards a girl child by strengthening and implementing its various economic, social policies for gender equality. This will further impact the subjective changes in perceptions and expectations towards girls/women. Therefore, paramount is the need for a **strong political will** to bring about such changes in policies, programmes, laws and ensure its effective implementation.

4.80 Small and big steps need to be taken at National, State, district and village level:

- A monitoring agency for data on gender like a gender atlas which comes out regularly nationally.
- A gender scorecard (details of which can be worked out with experts) of people in public life such as politicians and bureaucrats
- Rigorous implementation and monitoring of the laws and schemes; strengthened enforcement of legislation that discriminate girl child/women (such as child marriage, sex determination before birth, domestic violence etc.) will act as a deterrent go a long way in bringing about long term shifts in harmful practices.

- Strong support services to women in terms of providing shelter, medical, legal aid and counselling services, witness/victim protection programs, and other support needed to sustain women in their struggle for justice and dignity.
- Ensuring gender friendly public spaces which includes transport, street lighting, toilets etc.
- Increase access to quality education, especially of girls is important to ensure that girls are provided equal opportunities as boys, and seen as equally important for the progress and development of the family, community and nation
- Large scale sensitization and capacity building of all stakeholders (Parliamentarians, police, judiciary, media, government functionaries, duty bearers, doctors', health workers (ASHAs), Anganwadi workers, youth).
- Investment in community based programmes and services to create public awareness and motivation to influence mind-sets at large
- Replication and scaling of best practices/good practices: It is vital that various initiatives at community, state and national level are reviewed and those that have potential for bringing about change highlighted and scaled up, whenever possible.

4.81 *Reforming institutions, public*

and private: Institutions are important domains for gender socialisation and formation of attitudes and beliefs; also source of persisting discrimination against girls/ women. Gender socialisation happens at various levels. It is an ongoing phenomenon. Multiple institutions impact on gender formation: the school, the family, the workplace, peers, the mass media, and the new communication technologies in the present times. Institutions

Nagaland Adolescent Girls Club

The club was formed by the Nagaland State Social Welfare Board, Kohima under the State Plan activities 2006 – 2007.

Any girl between the age of 10 – 19 years can join the club. Members of the club take action to improve their lives, stand up for their rights, equality and acceptance. The club members meet once in a month, celebrate club days, work to achieve promises, are active Agents of Change and help in Club's Activities. The club provides support and guidance, counselling and legal support services, girl friendly recreational facilities, facilities exchanges programme and training, and skill development.

simultaneously shape, and are shaped by individual agency; thus, the process is both dynamic and subject to change.

4.82 *Stereotyping* plagues the functioning of a number of social institutions. Professions like law, medicine, and politics are considered predominantly male professions and patriarchal structures in these areas remain largely unchallenged. Women's merit is repeatedly questioned with respect to handling responsibilities within these institutions. The need, as feminist activism has expressed before us, is to gender every sector in society and explore the ways that institutions discriminate and marginalise women. Institutions, like individual experiences, cannot be dominated on the basis of a perception of biological superiority; *this is simply sexism in practice*⁵⁸.

4.83 *Schools* for example, are major institutions in teaching and reinforcing cultural/social values and expectations. However, they are also a space with considerable degree of autonomy to produce new and progressive identities and beliefs. Investing and revamping the way education is imparted can have a considerable impact on the generations that go through this vital institution from a very tender age to the most formative years of one's life. Education on gender for young men and adults will need to be distinct from education on gender for children. 'Gender' (and the associated idea of 'masculinity' and 'femininity') is a social (not biological) construct. By young adulthood perceptions of gender are more fixed⁵⁹.

4.84 *Making Role of professional social workers more prominent and engaging*: Social workers have different roles to play, from social and political change, to community development and to individual case work. The social workers' contribution to large scale social change must be valued. Social workers together with other professionals can organise to bring about changes in present situation. For example, a 'lobby' of social workers, like minded professionals, feminists and philanthropists can press for legislative changes, for planning of National and State campaigns which enable such changes to come. Community work is essential to bring changes at local level. Social workers have major role to play in this. This might require a partial replication of what is done at 'macro level' for example, planning educational programmes for parents and teachers, gender sensitisation in schools, but the efforts also have to be more localised. Community interventions and community-based programmes have more potential for making

changes in the population, because the whole community is targeted for small but important and long term changes. There is considerable potential for social workers to work with families, by harnessing the support and the strength of the family to provide a safe environment for girls/women. 4.85 Social workers can work closely with organisations and systems. Even when formal procedures are lacking, where there is good will, agreements and trust at local level can be developed. However, this is more likely to happen when social work develops a stronger professional identity and there is wide recognition of social work as a profession.

4.85 *Behaviour and social change communication*: Identifying the networks and organizations that can support the implementation of Behaviour Change Communication initiatives at the national, state and local level, and work towards large scale social mobilisation and communication that can lead to change in behaviour patterns. Training of frontline workers; community and social mobilization activities; awareness campaigns with various groups (self-help groups, federations, mothers' clubs, religious leaders, priests, teachers and NGO etc.) need to be planned and implemented. Conducting studies where social norms are changing/have changed and it's sharing with various partners to foster consensus and collaboration will go a long way. Knowledge building and its sharing for evidence based advocacy and scaling up of initiatives is required.

4.86 *Incorporating targeted interventions/dialogue for and with boys and men to engage them* in the process of making change is equally important. Felicitating and acknowledging role models from the community as *positive deviants (boys and girls, men and women)* who have challenged discriminative social norms and brought about a change will help more people to break the norms that are discriminatory against girls/women.

4.87 The *role of mass media* (print, electronic and social) need to be tapped in order to highlight positive stories from

In Tamil Nadu: Anna radio (radio person) is a community radio and seen as a forum to empower women. It started with live shows on a weekly basis. This grew and collaboration was carried out with university, Women's Development Corporation. Focus of discussions were issues impacting women such as health, environment, nutrition, alcoholism etc.

"My community is very narrow minded. I was supported by a number of people and well-wishers. When we talk the women listen because we share similar stories and same problems. Through the programmes we address all social issues" (Radio Jockey).

across the country; also messaging to enhance the value of a girl child and the role women are playing in the development of the nation.

4.88 The main features of Indian society namely, family structure and values; patriarchy and gender socialisation; caste and religion have played an instrumental role in keeping women in an oppressed position. The state, women's movements, voluntary organisations have played a significant role in raising awareness and taking actions; however, much is still desired.

4.89 The core argument is, in a society that is plagued by the materialistic system of dowry, age old customs and prejudices against women, laws and regulations against them will be largely ineffective until the basic attitudes, norms and opinions, undergo a fundamental change. It is imperative to change society's outlook towards girls; for that, change in the economic, social and religious roots of gender preference is needed.

4.90 It is also clear that to change such strongly protected and highly discriminatory norms, the role and status of women in the society needs to change -and this change needs to happen at both macro and micro level. The power inequalities need to be addressed at the broader level and interventions to ensure equal and safe environment for women need to be addressed and targeted at all levels. *Development and growth cannot be lopsided. It has to take into account the needs and aspirations of half of India's population, that is being discriminated and dominated by the other half.*

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Chapter 5

Femicide: India's Missing Girls

Introduction

5.1 India is one of the most dangerous place in the world for a girl child to be born¹. Persistent imbalance in India's sex ratio, especially declining child sex ratio, is putting the country on the brink of "an epidemic". If the trend is not reversed, it will become a national calamity with far reaching consequences eroding gender justice, social cohesion and human development². This indeed is an unacceptable violation of the fundamental rights of an entire sex of Indians.

Chapter Highlights
Introduction

- *Sex Ratio in India*
- *Declining Child sex ratio*
- *Causes of skewed sex ratio*
- *Some major consequences of skewed sex ratio*

Responses/Initiatives
Conclusion and Recommendations

5.2 Available literature, reiterated by this report, puts emphasis on a number of factors leading to girls being eliminated from the society, including gender biased sex selection, neglect and early discriminatory practices. The issue of 'missing' girls, also referred to as the daughter deficit - crosses the spectrum of India's regions, economic classes, and castes. An outcome of patriarchal "undervaluation of girls" and perceived "utility" of boys over girls; needs to change and for this, gender bias and deep rooted prejudices need to be tacked strongly and extensively.

Sex Ratio in India: an unconscionable testimony of discrimination against women/girls

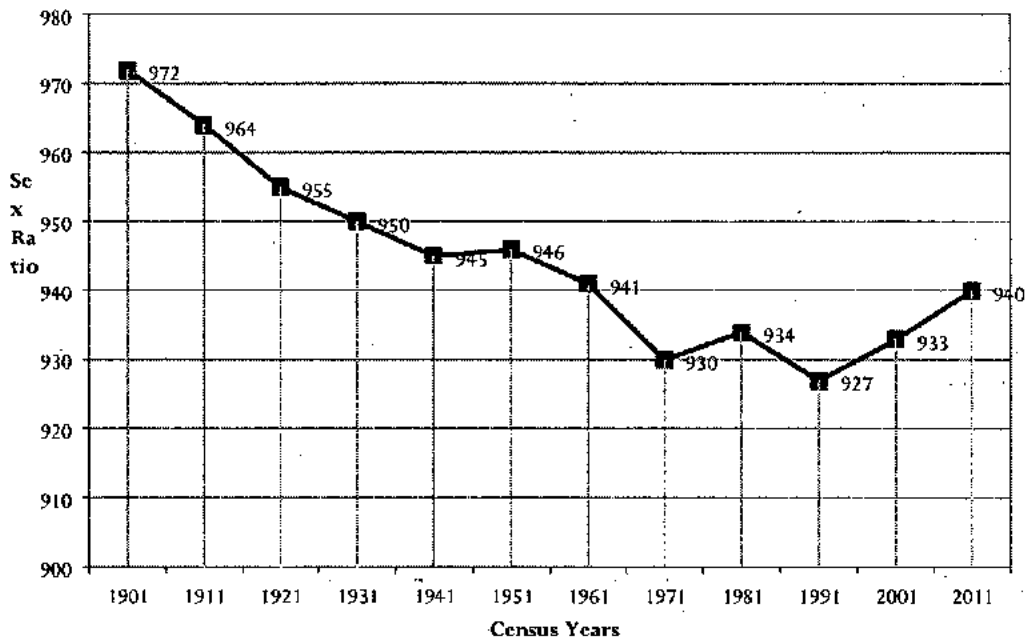
5.3 Sex Ratio (SR) is an important parameter to reflect the status of women in society. In most parts of the world, it has long been observed that as a natural phenomenon, more boys than girls are born. However, with a slight biological edge over the boys; more female babies survive. Women also tend to outlive men at the other end of the life cycle, leading to sex ratios that increasingly favour women with age³.

What is sex ratio?

- Sex Ratio is a tool to determine gender equity of the population.
- Sex ratio, in India, is defined as the number of females per 1000 males in the population.
- Whereas, Internationally, Sex ratio is defined as number of males per 100 females.

5.4 Sex ratio in India has been historically unfavourable to women. The picture is not very different between pre-independent period and post-independent period (Figure 1). Given below is the graphical depiction of the trend from 1901 to 2011⁴.

Figure 1: Sex Ratio in India, 1901-011



Source: Gender Composition of the population, No.5, Census 2011

5.5 This declining trend in overall sex ratio was highlighted and discussed at length in the *Towards Equality Report* of the Committee on the Status of Women in India. However, not much seems to have changed for women over decades and low sex ratio is still a matter of grave concern.

5.6 Sex ratio of total population has seen upward surge in the last two consecutive censuses. In 2011 Census, Sex ratio in India increased to 940 from 934 recorded in the 2001 Census. However, the overall numbers are still a matter of great concern. The current sex ratio (number of females per 1000 males) at the national level is 943. Rural sex ratio is 949 and the urban is 929. Among the States, Kerala at 1084 has the highest sex ratio followed by Puducherry at 1037. Daman and Diu has the lowest sex ratio of 618 in the country⁵.

Trends in Sex Ratio

-Increase in sex ratio is noted in Twenty-nine States and Union Territories.

-Gujarat, Bihar and Jammu & Kashmir have shown a decline in the Sex Ratio in Census 2011

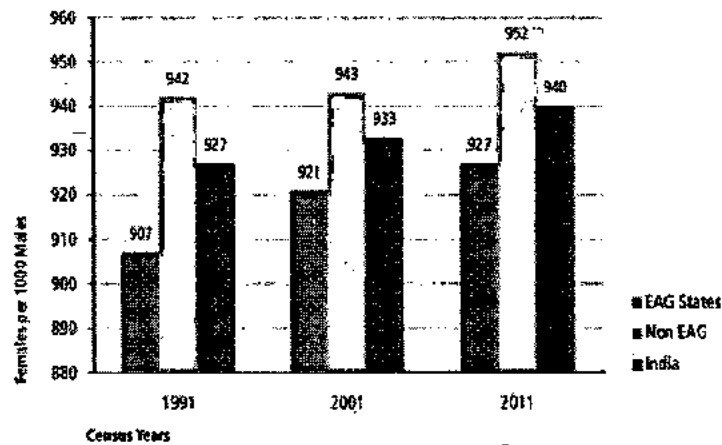
-At all India Level, Sex Ratio has shown an increase in both rural and urban areas:

Source: Census 2011, figures

5.7 The following graph (Figure 2) gives a comparison of Sex ratio among EAG and non-EAG states against national level data, as per 2011 Census⁶. Empowered Action Group (EAG) states are most populous states in India and hence contributing more to the size of national population, namely: Bihar, Jharkhand, MP, Chhattisgarh, Odisha, Rajasthan, Uttar Pradesh (UP) and Uttaranchal. Overall low sex ratio clearly indicates low status of women in Indian society.

Figure 2:

Sex ratio in India, EAG and non EAG States: 1991-2011



Source: Women and Men in India, 2013; 15th Issue; Central Statistics Office; National Statistical Organisation; Ministry of Statistics and Programme Implementation; Government of India

Declining Child Sex Ratio (0-6 years): The numbers are telling

5.8 Even though Census 1991 recorded an all-time low sex ratio of 927, its most worrying statistic turned out to be the declining Child Sex Ratio (CSR)

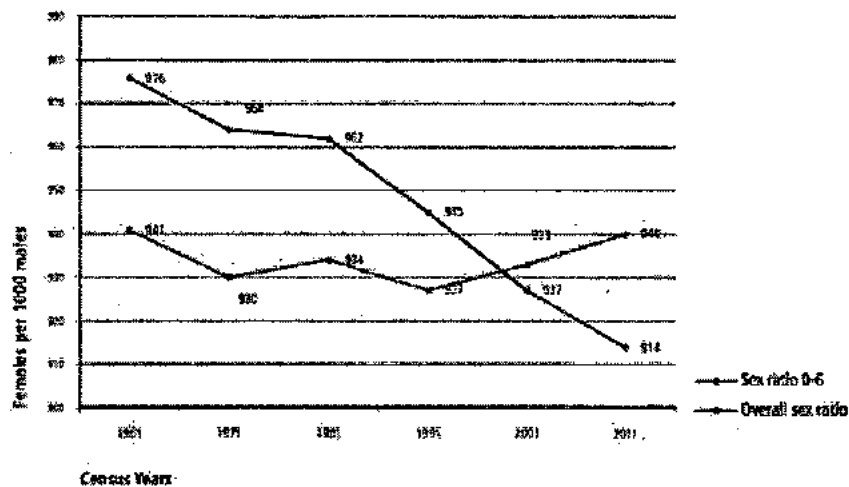
What is child sex ratio (CSR)?

-Child sex ratio is the number of girl children per 1,000 boys' children

-For provisional population totals of Census 2011, child sex ratio has been compiled for the age-group 0-6 years only.

in several states, even below 900 in Punjab and Haryana. A decade later Census 2001 showed that India's overall CSR had dropped below that of the general population. While the CSRs fell from 943 in 1991 to 927 in 2001, that of the overall sex ratio rose from 927 to 933 in the same period (a clear sign that life expectancy among surviving women was increasing significantly). Census 2001 had also made history because CSRs fell in very different parts of the country such as Goa, urban Odisha, and even pockets in the North-East⁷. In recent times this ratio has decreased markedly and is the lowest since independence at 914 as per census 2011. The graph below (Figure 3) shows the trends of Child Sex Ratio (CSR) and the overall sex ratio for a period from 1961 to 2011⁸.

Figure 3:
Child sex ratio 0-6 years and overall sex ratio, India: 1961-2011



Source: Gender Composition of the population, No.5, Census 2011

5.9 The graph clearly shows that the overall sex ratio has steadily improved since 1991, while the CSR has a declining trend persistently since 1961. However, comparing trends as per 2001 and 2011 Census (Table 1), one promising picture is that many states and Union Territories (UTs) that had lowest CSR in 2001 are showing substantial improvement in 2011.

Table 1: Trends in Child Sex Ratio (0-6) in Major States (2001 and 2011)

State	Child Sex Ratio (0-6 years) 2001	Child Sex Ratio (0-6 years) 2011*	Change in CSR (0-6 years) 2001-2011
India	927	914	-13
J & K	941	859	- 82
Himachal Pradesh	896	906	+10
Punjab	798	846	+48
Uttarakhand	908	886	-22
Haryana	819	830	+11
Delhi	868	866	-2
Rajasthan	909	883	-26
Gujarat	883	886	+3
Maharashtra	913	883	-30
Andhra Pradesh	961	943	-18
Karnataka	946	943	-3
Kerala	960	959	-1
Tamil Nadu	942	946	+4
Uttar Pradesh	916	899	-17
Bihar	942	933	-9
Assam	965	957	-8
West Bengal	960	950	-10
Jharkhand	965	943	-22
Orissa	953	934	-19
Chhattisgarh	975	964	-9
Madhya Pradesh	932	912	-20

Source: Census, 2011 (provisional data) presentation by Registrar and Census Commissioner, India to HLCW)

5.10 In the rural areas, CSR is higher as compared to urban areas. However, it has declined in both rural and urban areas. The decline in rural India is more than three times as compared to drop in urban India in 2011 – a matter of great concern⁹. The table below (Table 2), clearly depicts it.

Table 2 : Child Sex Ratio (0-6) Rural –Urban Areas, 1991-2011

Source: Census, 2011 (provisional data) presented by Registrar and Census Commissioner, India to HLCW)

5.11 In rural areas, 25 States/UTs have shown a decline in Child Sex Ratio (0-6yrs) in 2011 Census over 2001 Census; in 9 States/UTs the CSR has improved. No change is seen in one State (Gujarat). In comparison to this, urban areas have shown a slightly better trend than rural. Although 21 States/UTs have shown a decline in CSR, 13 states/UTs have shown an

Census	Total	Rural	Urban
1991	945	948	935
2001	927	933	906
2011	914	919	902

improvement and one state (Kerala) there is no change¹⁰.

5.12 Changes in CSR at the district level (Tables 3, 4 & 5) are more pronounced. Of the total 640 districts in the country, 461 districts have experienced decline in CSR. Census 2011 also points to the spread of this phenomenon from largely urban and prosperous areas to rural, remote and tribal pockets of the country. While in 2001, 120 tribal districts had CSR of 950 or more, in 2011 this number declined to 90 districts.

Table 3: Child Sex Ratio (0-6 years), Top Ten Districts

District	State/UT	CSR (0-6 years)
Lahul & Spiti	Himachal Pradesh	1013
Tawang	Arunachal Pradesh	1005
Dakshin Dantewada	Chhattisgarh	1005
Kamrup Metropolitan	Assam	994
Bastar	Chhattisgarh	991
Nabarangpur	Orissa	988
Kolasib	Mizoram	987
Nawada	Bihar	985
East Siang	Arunachal	984
Aizawl	Mizoram	984

Source: Census, 2011 (provisional data) presentation by Registrar and Census Commissioner, India to HLCW)

Table 4: Child Sex Ratio (0-6 years) bottom 10 districts

District	State/UT	CSR (0-6 years)
Jhajjar	Haryana	774
Mahendragarh	Haryana	778
Rewari	Haryana	784
Samba	Jammu & Kashmir	787
Sonapat	Haryana	790
Jammu	Jammu & Kashmir	795
Bid	Maharashtra	801
Ambala	Haryana	807
Rohtak	Haryana	807
Pithoragarh	Uttarakhand	812

Source: Census, 2011 (provisional data) presentation by Registrar and Census Commissioner, India to HLCW)

5.13 The child sex ratio has declined in 461 districts (Table 5) which is about three fourth of total districts in the country. In 38 districts, the decline has been more than 50 points. On positive side, in 51 districts increase has been 20 or more points. There are some noteworthy findings which require further study and analysis for example, in Haryana: Statistics reveal

that Kinnaur had a child sex ratio of 979 as per Census, 2001. It has dipped to 963 in 2011 census. Whereas the child sex ratio of the adjoining district of Lahaul & Spiti shot up from 961 to 1033 during the same period.¹¹

Table 5: CSR Ratio in Districts

Total number of districts	640
Decline	461
More than 100 points	7
50 to 99 points	31
20 to 49 points	178
1 to 19 points	245
No Change	20
Increase	159
Up to 10 points	74
11 to 20 points	34
21 to 30 points	17
31 to 49 points	19
50+	15

Source: Census, 2011 (provisional data) presentation by Registrar and Census Commissioner, India to HLCW)

Sex Ratio at Birth (SRB)

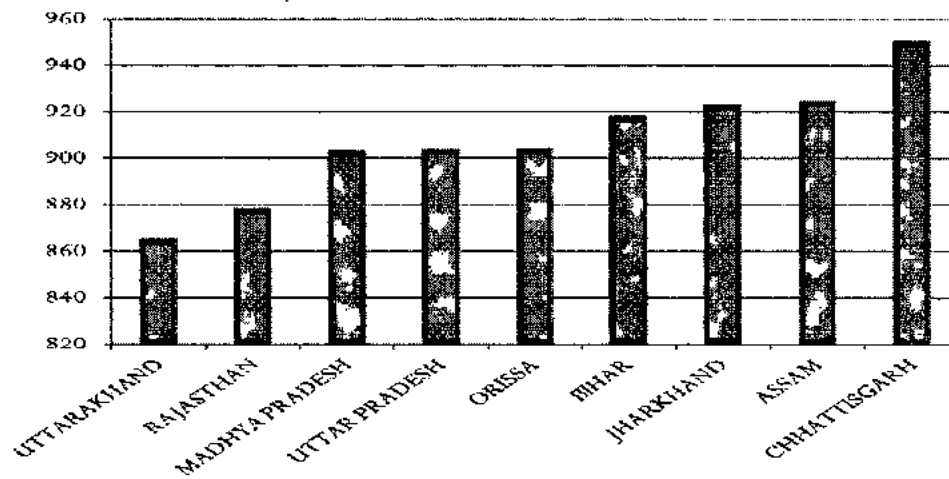
5.14 The normal Sex Ratio at Birth (SRB) is usually in the range, 943-962. Over time, with higher male mortality, this imbalance is expected to even out for higher age groups. However, early discriminatory behaviour such as gender-

biased sex selection before birth or neglect of girls after birth artificially skews sex ratio at birth as well as child sex ratio in favour of boys.¹² Also, as compared to CSR, the SRB is a more forceful indicator of the extent of the practice of gender biased sex selection.

5.15 The information on Sex Ratio at Birth is available in AHS (Annual Health Survey) at District level for EAG States. This facilitates comparison with Census 2011 results, and to an extent explains the reason behind the declining trend in child sex ratio. Uttarakhand records the lowest SRB while Chhattisgarh, the highest¹³ (Figure 4).

What is Sex Ratio at Birth (SRB)?
-SRB is the number of girls born for every 1000 boys born.
-SRB is one of the key determinants affecting Child Sex Ratio

Figure 4: SRB for EAG States, Census 2011



Source: Census, 2011 (Provisional Data) presentation by Registrar and Census Commissioner, India to HLCW

Table 6: Child Sex Ratio (2011) and Sex Ratio at Birth (AHS) in EAG states

State	Child sex ratio, 2011 census	Sex Ratio at Birth(AHS)
Uttarakhand	886	866
Rajasthan	883	878
Uttar Pradesh	899	904
Bihar	933	919
Assam	957	925
Jharkhand	943	923
Orissa	934	905
Chhattisgarh	964	951
Madhya Pradesh	912	904

Source: Census, 2011 (Provisional Data) presentation by Registrar and Census Commissioner, India to HLCW

5.16 Across all 9 AHS States, SRB in rural areas is significantly higher than that of urban areas. In UP, rural SRB is 911 compared to 873 in urban.

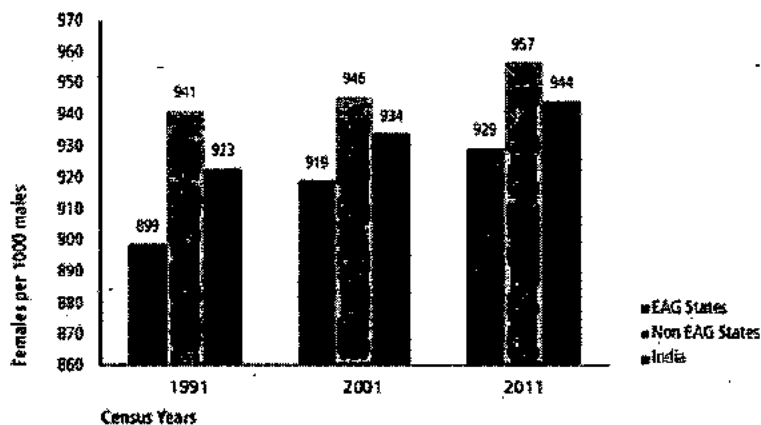
Sex Ratio of Population of Age 7 years and above

5.17 The sex ratio of population of age 7 years and above has increased from 942 in 2001 to 944 in 2011 at the national level. The trend remained the same in majority of the states¹⁴. Kerala(1099), TN (1000) and AP (997) recorded the highest sex ratio, while Punjab(899), Jammu & Kashmir (887) and Haryana(885) recorded the lowest among the bottom ones for the 7+ years of population¹⁵.

5.18 The following graph (Figure 5) gives a comparison of CSR and sex ratio in 7+ age population among EAG and non-EAG states against the national level data, as per 2011 Census¹⁶.

Figure 5:

Sex ratio in the 7+ age group in India, EAG and non EAG States; 1991-2011



5.19 Overall sex ratio and sex ratio among 7 + age population are showing a steady improvement in both EAG and non-EAG states, similar to that of the national trend. But, the declining trend in CSR among EAG states compared to the non-EAG states causes grave concern. The decline from 2001 to 2011 among EAG states is of 17 points, while that among non-EAG is 10 points for the same period¹⁷.

Causes for the decline in Sex Ratio, especially Child Sex Ratio

5.20 *Son Preference:* The preference for sons is a long standing cultural tradition in India, which pervades every section of society - rich and poor, less educated and highly educated, urban and rural. Interestingly, it has not weakened over the years despite significant modernization and socioeconomic development. It may have become even stronger with the decline in fertility¹⁸. Many studies indicate that at the early stages of the demographic transition when fertility is high, and couples have a large number of children, there are very few families without a son. If they do have a son they are uncertain whether he will survive to adulthood, so they produce a larger number of children with the expectation that at least one of them will be a boy who will survive and provide economic support in their old age. If they do not have a son they continue to have children until the birth of a son. At the later stages of the transition, when fertility declines and families are smaller, the likelihood that families will have a son also declines. Therefore, couples - even those with higher education and affluence - attempt to have a boy rather than a girl. Although they prefer having just one or two children, they want to ensure that at least one of them is a boy. It appears that fertility decline

may have reinforced or increased the sex ratio at birth in India¹⁹. In spite of the fact that India has a National Population Policy (2000) and that India has been a signatory to the International Conference on Population and Development (ICPD), which entails a commitment to reproductive rights; several states in the country introduced a strong two-child norm. Analysts have cautioned that such vigorous pursuit of the two-child norm will be an invitation to female sex selective abortion²⁰.

5.21 *Gender Biased Sex Selection*: Based on extensive desk research of the existing studies in India, 'Synthesis of Research on Gender Biased Sex Selection: Insights and Learnings'(2014), a document by UNICEF in association with UNFPA, identified four key determinants of gender biased sex selection: birth order; interaction between the desire to limit the family size, variables related to socio-economic status and son preference; son preference and the low value of daughters; the availability of and access to unregulated sex determination technologies²¹. At the heart of the matter is the **low status attributed to girls and women**, and prejudices they face throughout their lives.

5.22 Following the Census 2001 results, many scholars have been attempting to see how much sex selection is going on, drawing evidences from various data sources. It is important to note here that in India, abortion is legal under certain circumstances as defined in the Medical Termination of Pregnancy Act, 1971. However, the law does not permit abortion for the reason of sex selection. From perspective of women's reproductive and sexual rights, it is important that women have access to safe and legal abortion.

5.23 The *Pre Conception and Pre Natal Diagnostic Techniques Act (PCPNDT)* regulates sex selection before or after conception. The law was first enacted in 1994; amended in 2003. Its purpose is to prevent misuse of technologies such as ultrasound that enables sex determination. The law provides for imprisonment which may extend up to three years and fine of up to Rs. 10,000 for first conviction. However, there are bottlenecks in its implementation and the convictions have been negligible. Lack of resources to carry out inspection and monitoring, lack of dedicated qualified staff, poor performance of advisory committees at various levels, insufficient understanding of the law and procedural errors are a few such bottlenecks.

5.24 There have been studies by scholars in different regions of the country covering almost all the States and UTs. In one such study in Punjab, an attempt was made to explore the

socio-economic and cultural dimensions of the *gender biased sex selection* practice. According to this study, birth of a girl child is considered a bad investment for future; she is labeled a 'consumer' rather than a producer. Majority of the respondents in diverse regions of the State approved of the practice of feticide citing the escalating demands of dowry as the main reason for it. The other reason was the inability of daughters to provide social security to parents—since they move out of their maternal homes upon marriage, and are considered a resource through which the in-laws can attain greater wealth.²²

5.25 *Infanticide*: Female infanticide is another form of eliminating the girl child that was (and sadly, still is) in practice in India. It is reported that female infanticide existed even in 1789 in certain parts of India such as Rajasthan, Gujarat and UP. In the post-independent period, the practice was reported from certain parts of Rajasthan, Odisha, Bihar, Maharashtra and Tamil Nadu²³.

5.26 Micro level research and ethnographic studies have thrown some light on this practice. Village level anthropologies, deploying the terminology of kinship and marriage practices appear to explain the incidence of female infanticide in parts of north India. Infant boys have less chances to survive taking into account the biological and environmental upheavals²⁴. In spite of all these hardships on infant boys, and possibility of survival of girl infants, the age specific sex ratio when it comes to women/girls is so persistently poor in India. The age specific sex ratio is used to determine the age at which women go 'missing'. Infanticides, in the first few days, are often reported as still-births or not reported at all within the birth registration system²⁵. It is therefore difficult to assess the number of girl children 'missing' from the census data on account of sex selective abortion, and the number lost due to early infanticide²⁶.

5.27 Satish Agnihotri sounded a note of caution in his study of differential mortality rates among children, by region and social group in India, with sex selection as yet only of marginal concern. He led to coin the notion of "prosperity effect", defined in terms of the relative effects of increases in income on the survival of boys and girls, with startling evidence that such prosperity worsened the gender gap of survival²⁷. The provisional results of Census 2011 showed that country's overall CSR has dropped further. State wise picture, rather than regional trends, demonstrated and demanded a wider perspective; beyond the debate around the so-called prosperity belt of north-west India and the poorer states²⁸.

5.28 Currently, it appears that the sex selection techniques are providing ample opportunity to the female foeticide, and socio-economic problems are providing opportunity of female infanticide. Even though the law is a powerful instrument of social change yet law alone cannot root out this social problem²⁹. Devender Kumari and Krishan Kumar Kajal in their article point out that, “there should be simple methods of complaint registration, accessible to the poorest and most vulnerable women, and there should be regular assessment of indicators of status of women in society such as sex ratio, female mortality, literacy, and economic participation”.

5.29 *Neglect, poor nutrition and higher under five mortality of girls:* Medical Research and studies show that at conception there are more male than female embryos. External maternal stress around the time of conception is associated with a reduction in the male to female sex ratio, suggesting that the male embryo is more vulnerable than the female.³⁰The male foetus is at greater risk of death or damage from almost all the obstetric catastrophes that can happen before birth.³¹ When times are tough, women tend naturally to abort a higher percentage of male foetuses. Researchers call it culling, but they do not know why it occurs³². However, this process seems to reverse after birth in India. As per the data released by the United Nations Department of Economic and Social Affairs (UN-DESA) for 150 countries over 40 years, India and China are the only two countries in the world where female infant mortality is higher than male infant mortality in the 2000s. The data shows that an Indian girl child aged 1-5 years is 75% more likely to die than an Indian boy, making this the worst gender differential in child mortality for any country in the world. India also has among the worst sex ratios at birth in the world, ranking 131st on this variable.

5.30 Even though the Census 2011 has brought much disquiet because of the declining child sex ratio and in many instances, this decline has been interpreted as the direct result of more sex-selective abortions of female foetuses taking place,

MUMBAI: Nearly 40% of deaths registered among girls (0 to 6 years) in the city between 2010 and 2014 have been due to lack of proper nutrition, revealed a central government report. (TOI, April 20, 2015)

it is important to note that in India, unlike most countries of the world, more girls than boys have been dying during childhood which also directly contributes to a decline in the child sex ratio.

5.31 It is also seen that under-5 mortality is higher for girls than for boys in every state of India including states such as Kerala. Also, the gender gap in mortality is found not only in rural but also in urban areas in a majority of the states. The higher the gender gap in under-5 mortality, the more adverse the sex ratio will become for girls.

5.32 Following 2001, India's Sample Registration System has been publishing the sex ratio at birth in some of the more populous Indian states. Between 2001-03 and 2006-08, there have been substantial improvements in the sex ratio at birth in a large number of states, especially states such as Punjab, Haryana and Rajasthan which have had very low sex ratios at birth for several decades. On the other hand, the southern states of Andhra Pradesh, Karnataka and Tamil Nadu have registered declines in the sex ratio at birth. The increasing trend of SRB in the majority of Indian states suggest that excess female mortality in childhood may have contributed significantly to the declining child sex ratio, witnessed in the 2011 Census.

5.33 "While sex selection is largely contributing to low sex ratio at birth, the skew among living children is driven by gross neglect of a girl child. Field studies in several northern states in 2000s showed discrimination against girl child in distribution of food and in times of sickness. She is given much more domestic work. It is the daughter aversion-in some deliberate, and in others unconscious"³³

5.34 Until recently, son preference was manifested after birth through female infanticide, abandonment of new-born girls, poorer nutrition and neglect of health care, all causing higher female mortality³⁴. Studies have shown that unequal access to health care is the most important factor in differential gender mortality, especially in countries where health care costs are borne by the family³⁵. As early as 1990, the Indian Economist Amartya Sen estimated that differential female mortality had resulted in around 100 million missing females across the developing world with the overwhelming majority of these in China, India, Pakistan and Bangladesh³⁶. Das Gupta and Bhat computed that between 1981 and 1991, approximately 4.2 million girls in the age group 0-4 had died, in excess of official death rates, and also arrived at an estimate of 1.2 million girls missing due to sex selective abortions, which was under 1% of all female live births. They substantiated that between 1951 and 1981 the sex ratio among children became marginally masculine and then worsened post 1981, for the first time in urban India³⁷.

5.35 *Systematic gender discrimination throughout the lifecycle of a women:* If a girl child survives feticide, infanticide, neglect, poor nutrition and lack of medical assistance, the chances that she will still face further discrimination as a women are no less as is clear from overall low sex ratio in India. There is an appalling drop in the population of girls in the age group of 7-15 years as is indicated from the Census 2011, which shows that sex ratio skew worsens with age. Whereas the CSR is 9191 girls per 1000 boys, the sex ratio for 7-15 years is even lower at 911³⁸.

5.36 It is known that girls face challenges during menstruation and any shortfall in nutrition can have damaging effects on her health with anaemia, infections. Census 2011 data clearly shows that for the age group 14-18 years, the difference between boys and girls population adds up to 77lakh³⁹. With high incidence of child marriages in India, maternal mortality rates amongst child brides is much higher, and so are the other health complications. Health care to women is still a huge area of concern. This along with overall neglect to a women's physical, emotional and psychological needs puts them in vulnerable situation in every stage of their lives.

5.37 Even though different studies and research have stressed one factor more than the other to explain the declining sex ratio, especially CSR, it can be said that an amalgam of social, political and economic factors play a role in ensuring that girls are fewer and unequal, at birth as well as after birth. When social and cultural norms around dowry, family honour, old age security, cremation/funeral rituals in particular religions, and safety and security concerning girls are still strong; the political will to implement legislations relating to discrimination of girl child is weak; and the reality of economics of marriage (cost of marriage, dowry), and financial dependence of girls/women, along with proliferation and marketability of technologies such as ultrasound prevails, girls will continue to be unwanted and hence eliminated.

Some major consequences of skewed sex ratio

5.38 *Social consequences:* The low sex ratio in India is not only an indicator of demographic shift but has far reaching impact on the overall status of women. Gender biased sex selection which contributes to skewed child sex ratio (CSR) has far reaching implications for girls/women in our society. It not only gives a social sanction and cultural acceptability to this harmful norm but also perpetuates the very discrimination that causes such practices to

thrive unabated and unlamented. It also carries health risks including repeat or unsafe abortion and exposure to various forms of medical quackery, along with emotional trauma.

5.39 Literature has just begun to emerge on the social consequences of the gender imbalance, key to which are concerns over the effect of too many men in society⁴⁰. Based on an extensive review of the literature, Kaur (2013) concludes:

“The shortage of women may reinforce gendered female roles such as reproduction, domestic work, and care work. Women would have little agency of their own and could indeed suffer a deterioration in their equity prospects. It is equally possible that as female security gets compromised with an excess of men vying for them, parents may withdraw unmarried girls from school or higher education, or restrict them from taking up employment before marriage. As safeguarding the virginity of a woman before marriage remains important in India, early marriage may be seen as the solution. Thus many of the gains made by women in recent decades may be in danger of being reversed”.

5.40 Research on the consequences of gender biased sex selection has tended to focus largely on its demographic implications, particularly in creating a marriage squeeze.⁴¹ One of the obvious consequences of the continued skewed sex ratio would be the shortage of brides. Sociologists also agree that such a state of affairs encourages abuse, notably in the trafficking, drug abuse and physical violence against women.⁴² Societies with adverse female sex ratio have indicated the presence of customs like polyandry, abduction and purchase of women. Therefore, it is a double bind for girls/women and they bear the brunt in all situations. Due to increased violence against them, couples do not wish to bear girls and so they are killed/eliminated. In case that does not happen and a woman produces daughters, chances of that woman facing domestic violence are higher because of the perceived inability to produce male child.

5.41 *Developmental and Economic Implications:* The concerns regarding missing girls/women in India have to be seen beyond the social domain issue to become a political and developmental issue. The impact of gender biased sex selection in terms of loss to human capital and productivity, its effect on the status of women and girls, its links with various forms of gender biased violence and its economic burden on the family and community have seldom been explored systematically⁴³.

5.42 Gender equality needs to be seen as a core development objective in its own right. It is also smart economics. Greater equality can enhance productivity, improve development outcomes for the next generation, and make institutions more representative.⁴⁴ The non-recognition of power of women/girls as drivers of economic growth, as producers rather than just consumers, as creators of demands has remained. Therefore, women's participation in economic activities should be an essential part of planning process⁴⁵.

5.43 Even today, as men are switching to non-farm activities and women becoming primary cultivators, (though without land rights), their contribution to economy of the country is invisible. The recognition that women are the critical workers in the lead sectors triggering India's growth rate and comfortable domestic savings ratio has to come. Women value has not only to be seen from social aspects but also developmental⁴⁶.

Responses: Governmental and Non-governmental

- **Governmental Responses**

5.44 Legislation (PC&PNDT Act): The demand for a law to regulate diagnostic technology was first articulated by the women's movement in the late 1980s in response to the misuse to genetic tests such as amniocentesis intended for the detection of sex linked genetic abnormalities in foetuses, for the sole purpose of sex determination. As a consequence of campaign pressure, the first central legislation took the form of the Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) (PNDT) Act of 1994, subsequently revised as the PC (Pre-Conception) - PNDT (Regulation and Prevention of Misuse) Act of 2003⁴⁷. The Act was enacted with the dual objective of regulating pre-natal diagnostic techniques and to prohibit the use of pre-conception methods for sex selection (pre-conception was addressed by the 2003 amendment).

5.45 The PC&PNDT Act allows the conduct of pre-natal diagnostic techniques only for purposes and under conditions specified in the Act. It also prohibits the disclosure of the sex of the foetus to the pregnant woman or any other persons to prevent sex selective abortions. Due to various bottlenecks in ensuring effective implementation, there are certain systems and procedures put into place. For example, since prohibition of disclosure is difficult to enforce as it takes place behind closed doors and can be done verbally, registration and monitoring has been put into place. In this, all units engaged in either advising or conducting

pre-natal diagnostic techniques are to be registered. Once registered, the units are mandated to self-monitor by maintaining records of all pregnancy-related services rendered. These records are then subjected to the scrutiny of state agencies to check veracity and ensure statutory compliance. The records also put in place a 'paper trail' of referrals that can be monitored by state agencies. This is essential as there are various professionals and units associated in the conduct of these techniques such as the doctor advising the test, the professional conducting the test, etc; and information on the sex of the foetus may be disclosed by any of these professionals or any person rendering services in such units. s. The law is based on a presumption that a woman (or her family) will follow a particular route that can be monitored in this manner⁴⁸. However, legislation by no means had the result that was anticipated. The practice continued and several glitches remain, which makes monitoring and implementation of this legislation a real challenge.

5.46 It is suggested that, on the whole, the légal regime be rationalized to take cognizance of advancing technology and to provide a framework to regulate all medical professionals and the provision of medical services, which can be used in guarding against the misuse of any form of technology or unethical medical practices that act to the detriment of women's rights. For instance, due to lack of regulation, increasing numbers of Indian women are entering into surrogacy arrangements for monetary benefits. Commercial surrogacy arrangements raise concerns that go beyond issues of sex selection (although the issue of sex selection is also associated). There is no law until now for surrogacy. However the government is currently in the process of preparing a law for the regulation of assisted reproductive techniques, which covers surrogacy arrangements.

5.47 The Ministry of Health and Family Welfare, Government of India, has undertaken several measures to implement the 'Pre Conception & Pre Natal Diagnostics Technique Act (PC & PNDT Act). The Department of Women and Child Development has supported workshops to raise awareness on the issue of the girl child, while the Registrar General's Office has been promoting birth registration and introduced mechanisms to monitor sex ratio at birth among institutional deliveries⁴⁹

5.48 The launching of the Balika Samridhi Yojana in 1997 was a major initiative of the Government to raise the overall status of the girl child in India⁵⁰. In 2007, the state government of Andhra Pradesh introduced the Cradle and Bell Scheme in regions with a high

prevalence of female infanticide. The infamous district of Nalconda had given record number of 58 girls to the government in a period of one year⁵¹!

5.49 The long term interventions from the government (both state and centre) include girls' education, nutrition, health, protection against violence and exploitation, female literacy, skill development, work participation, maternity protection, access to micro finance, credit, asset creation and ownership, support to most deprived groups, women's security, empowerment and their participation in local governance. Ensuring girl's education and female literacy is a major priority. To promote girl's education, various steps are being taken. These include girl child friendly schools, targeted interventions under SSA, School Management Committees (SMCs) to ensure universal enrolment of girls, *Balika Manch* to encourage participation of girls, availability of separate functional toilets for girls and guidelines, protocols for girl child friendly schools, including residential schools (KGBVs)/hostels for habitations un-served by regular schools and so on.

Punjab Initiatives

As per 2011 census figures, Punjab has been able to register an improvement (48 points) in CSR. In a statement by the government of Punjab, following initiatives of the government were highlighted, which contributed to a positive shift:

- Consistent awareness campaigns, especially in remote rural areas, including the Nanhi Chhan programme launched by NGOS.
- Strict enforcement of legislation
- Pro-girl child policies, initiatives such as motivating couples with Rs. 15,000 long-term LIC policies in the name of girl child maturing to Rs 1.25lakh at the marriageable age of girls, bicycles to school-going girl children, and other motivational schemes of free books and uniforms to girls of BPL families.

Source: <http://archive.indianexpress.com/news/govt-claims-credit-for-improved-sex-ratio/774991/>

5.50 Several Girl Child Protection Schemes - first launched by the Tamil Nadu government in 1992 as a response to the incidence of female infanticide in the state - were introduced by the state governments. This was followed by the Conditional Cash Transfer schemes such as Apna Beti Apna Dhan (Haryana) and Laddli (Delhi), etc.

5.51 A 2010 desk review of 15 conditional cash transfer schemes (Dhan Lakshmi, Ladli, Beti Hai Anmol, Kanyadan, and others) is revealing. Most of them promised relatively small amounts at maturity, had complex conditions (immunization, school enrolment, institutional delivery, sterilization, among others), gave cash amounts at the age of 18 (for dowry), and were aimed at poor or BPL families. From the data it is clear that this is not a poor or BPL-only phenomenon. Small cash amounts are unlikely to make an iota of difference to families who have resources to pay for sex selective technology. On this issue, Indian policymakers, accustomed to 'targeting' the poor (i.e. BPL) need to bravely enter the unfamiliar terrain of targeting the not-so-poor, the upwardly mobile, and the wealthy families.⁵² Recognizing the importance of the trends emphasized in the Census 2001 data, the Planning Commission of India incorporated gender equity as an integral part of the broader strategy.

5.52 *Beti Bachao Beti Padhao*, - a comprehensive national initiative to improve the Child Sex Ratio and ensure girls' education towards ensuring gender equality - is now launched. This focuses on multi-sectoral interventions in 100 gender critical districts, where the Child Sex Ratio is very low. Multi-sectoral action in 100 districts will focus on implementation of PC&PNDT Act, strengthen community action, retention of girls in secondary schools, availability of functional toilets for girls, capacity-building and sensitization of government official and grass-roots functionaries. These interventions will be supplemented by a national media campaign. Several community initiatives are emerging, including those involving panchayati raj institutions.

- **Non-Governmental Responses**

5.53 A National Plan of Action was formulated by the SAARC countries in 1992, exclusively for Girl Child in the region, towards ensuring equality through "Survival, Protection and Development of Girl Children". 1991-2000 was declared as the Decade of the Girl Child by SAARC. The United Nations believes that the practice of gender biased sex selection resulting in adverse sex ratio is essentially about gender discrimination. The legacy and mandate entrusted by the Beijing Declaration and the International Conference on Population and Development (ICPD) Programme of Action gave the UN impetus and responsibility to work on this issue⁵³. Studies were commissioned that also supported grassroots level initiatives to address the specific aspects at the micro level and at the same time engage in advocacy activities at the state and national level. Some of the bi-lateral organisations also

address the problem of declining sex ratio through their various programmes. Over and above this, non-governmental organisations and civil society organisations also have formed coalitions and campaigns against this issue.

5.54 *Civil society* played a critical role not only in getting a legislation in place (PC&PNDT) but also taking proactive measures to ensure its implementation and raise awareness. For example, there was a major drop of 30 points in the CSR of the state of Maharashtra (the very state that had pioneered the regulation of sex selection with the first state law in 1986). In response, several organizations and individuals came together as a coalition and formed Forum against Sex Selection (FASS) that tried to generate holistic understanding of the situation, and address all key issues related to sex selection and gender discrimination. Dismayed at the Census 2011 figures that highlighted the decline in CSR (0-6 years), over 200 civil society organisations came together with the National Foundation for India (NFI) in launching a campaign against gender biased sex selection. The design of the campaign is a culmination of a year-long process arrived at through various inputs and perspectives of the civil society groups and individuals working on the issue of sex selection⁵⁴.

5.55 Some other campaigns such as, 'Because I am a Girl' (Plan India), 'Let Girls Live' (World Vision India), 'Signature Campaign' by Girls Count, Project Sukanya, an initiative of the Indian Medical Association (IMA), and the Pune Municipal Corporation (PMC), Satyamev Jayate - Television Chat Show hosted by the actor Amir Khan - all helped in generation of wide spread awareness about the widespread practise of female foeticide and infanticide.

5.56 Despite the efforts of the government, civil society organizations, NGOs, UN agencies and the media to keep the issue of gender bias sex selection and female feticide high on the public and policy agenda, little or no desired results have been forthcoming.⁵⁵

Conclusion and Recommendations

5.57 The data on the CSR when looked at in combination with available data on child mortality rates highlights the need for both **short term and long term interventions** in order to ensure that girls are as much wanted in the society as boys. Therefore, along with addressing pressing issues such as gender biased sex selection and pre-birth elimination of girls, ensuring care and protection in their early years is equally important. Focusing merely

on promoting the value or image of girls will not be enough to counter son-preference. Aversion to daughters has to be squarely confronted through policy measures that increase the economic, social and political worth of daughters. Aversion to daughters has to be squarely confronted through policy measures that increase the economic, social and political worth of daughters. Issues such as ensuring equal entitlements for girls/women in terms of property rights, employment and income generation, equal access to nutrition, health, and education have to take center stage of discourse and planning on development.

- *Comprehensive National policy on Sex Ratio*

5.58 The need of the hour is to have a gender sensitive policy within the rights based framework. Policies and programmes that directly or indirectly lead to gender bias need to be altered. India needs to do away with its two-child norm in its population policy given its correlation to missing girl children. This norm has continuing biases from the coercive population policies preceding it, stacked against women. The population policy obviously has to plan futuristically, given the many demographic, socio-cultural and economic implications of these skewed sex ratios. In doing so, it is also equally vital that the Reproductive Rights of women are safeguarded and they don't suffer further discrimination and challenges just because they are unable to make decisions that impact them due to policy glitches.

5.59 While formulating such a policy, it is very important to recognise the role played by women in development of the country, and their potential economic contribution. Therefore, the need to study different aspects that have led to low sex ratio including invisibility of women/girls as drivers of growth and development of the nations. A prerequisite of the policy must be to understand the underlying factors and address each of the contributory factors. Over-emphasis on one aspect and ignoring the others would lead to unsuccessful reforms as seen in the past.

- *Rigorous implementation of the Acts that address discrimination against girl child/women*

5.60 Effective enforcement of the PC & PNDT Act is an imperative. Among other things, this can include mapping and monitoring of clinical, diagnostic facilities, medical audits and strengthening of the supervisory boards. Similarly, allied laws and policy such as the Dowry Prohibition Act, Hindu Succession (Amendment) Act, 2005, Prevention of Child Marriage

Act, Prevention of Sexual Harassment at Workplace, etc. needs to be rigorously implemented and monitored.

5.61 In all the states, conviction rate is extremely low in case of violation of the PC &PNDT Act. For example, in Uttar Pradesh, with a low child sex ratio, it has been reported that between 2002 and 2012, in 71 districts of the state, as many as 57 cases of violation were registered against different doctors and owners of ultrasound clinics. However, not a single has yet reached its conclusion. Most of these cases are still under trial while only a few have reached to the court, and are pending due to lack of perusal⁵⁶.

- *Empowerment of girls/women through a life cycle approach*

5.62 Evidence at different stages of a women's life clearly indicate that radical changes need to happen for promoting gender equality and ensuring respect and dignity at every stage of a woman's life. In order to create a welcoming, positive and enabling environment for women, both long term and short term initiatives need to be taken.

5.63 Some of the longer term interventions include girls' education, nutrition, health, protection, skill development, work participation, maternity protection, access to micro finance, credit, asset creation and ownership, support to most deprived groups, women's security, empowerment and their participation in governance and decision making at every level.

- *Gender sensitive socialisation in various institutions*

5.64 Gender sensitization in childhood and adolescence for school and out-of-school boys and girls needs to be intensified along with sensitization of duty bearers. There is a need for reorientation and change in thinking towards girls, and this has to be done at family level, community level and within formal and informal institutions.

- *Large scale awareness generation with multi-pronged approach*

5.65 A national communication strategy is key to a national policy response. Awareness generation on the issue of CSR and valuing girl child must be promoted through special drives, campaigns involving various stakeholders at national, state and community level through various mediums of communication. Campaigns, positive image of girls and role

models within the community needs to be highlighted. It is also important to understand that behaviour change through communication is a specialized field whose expertise must be harnessed to bring about attitudinal and behavioral changes in the masses. Beti Bachao, Beti Padhao Campaign is a right step in this direction. This Committee looks forward to the committed implementation of the scheme; that the spirit apparent now behind the scheme should percolate all the way down till the village level functionaries.

- *Engagement of key stakeholders and creating community safety nets*

5.66 There is a greater need to elicit participation of pro-active vigilant groups, social activists/NGOs with support and accountability in each local area in rural/urban settings. The "Women's SHG Movement" must be actively drawn into this. Community-based accountability framework (at each ward/ *mohalla*/ village) must be put in place with an administrative, social and community partnership. Various forums for discourse need to be promoted. Involvement of men and youth is vital. Counsellors, ANMs, ASHAs can be part of the safety nets at community level to ensure violations do not happen and if they happen, for them to be brought to notice.

- *Evaluation and concurrent monitoring of Schemes to incentivise and promote value of girl child*

5.67 An effective mechanism of planning, monitoring and evaluation of the schemes must be developed. It is vital to evaluate if the schemes are achieving their intent and target. Also, the schemes that are currently being implemented at the state and centre need an impact evaluation, and also analysis of the beneficiary perspective. For example, Under the ICDS scheme, jointly along with NRHM, the government has introduced a Mother and Child Protection Card (MCPC) for monitoring the mother and children. In this age of digitization and IT, it would not be very difficult for the government to convert the data into electronic form for tracking girl children in a focused fashion, with extra parameters as well as higher frequency built into the girl child MCPC. Frontline workers as well as senior officials of both NRHM and ICDS should be made accountable for ensuring that the girl child survives through the vulnerable stages of infant stage, malnutrition and morbidity.

- *Political Will and Accountability*

5.68 Along with policy reforms, it is vital that political will to implement the policies, laws and schemes sees a shift. This will be apparent if accountability mechanisms are put into place. There must be an inter-ministerial group comprising of key line departments such as health, women and child, education, etc. in order to ensure effective implementation and monitoring of various policies and schemes relating to girls/women. Apart from this, each MP, MLA, PRI/ULB member needs to take responsibility of their respective constituency/district/village. Rewards, recognition must be promoted for progress and detection, prosecution for negligence, inaction, and complicity ensured. For example, very recently Haryana and Himachal Pradesh governments announced that they would incentivise villages that show an improved sex ratio with providing development grants.

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²Twelfth Planning Commission paper on Women and Children

³Sex Ratios and Gender Biased Sex Selection: History, Debates and Future Directions. UN Women and UNFPA, 2014

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⁵Women and Men in India, 2013; 15th Issue; Central Statistics Office; National Statistical Organisation; Ministry of Statistics and Programme Implementation, Government of India.

⁶*Ibid*

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⁸Gender Composition of the Population, No.5, Census 2011; *op cit*.

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¹⁰*Ibid*

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¹³Census 2011 (Provisional Data); *op cit*.

¹⁴Gender Composition of the Population, No.5, Census 2011; *op cit*.

¹⁵*Ibid*

¹⁶*Ibid*

¹⁷*Ibid*

¹⁸For more on this refer to Basu, 1999; Bhat and Halli, 1999; Clark, 2000; Croll, 2002; Das Gupta and Bhat, 1997; Haub and Sharma, 2006; Hesketh and Xing, 2006; Westley and Choe, 2007.

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²⁶*Ibid*

²⁷Agnihotri, Satish B (2003) Survival of the Girl child: Tunnelling out of Chakravayuha. *Economic and Political Weekly* vol.38 no. 41, October 11-17. Pp4351-60;

²⁸*Ibid*

²⁹D Kumari and K K Kajal (2012). Female Foeticide and Infanticide: A Socio-Legal Problem. *International Journal of Science and Research (IJSR)* available on 13 April 2015 at <http://ijsr.net/archive/v3i6/MDIwMTO2OTk%3D.pdf>

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Chapter - 6

A Silent Epidemic: Violence Against Women and Girls in India

“It is unfortunate that such a horrific gang rape (and the subsequent death of the victim¹) was required to trigger the response needed for the preservation of the rule of law—the bedrock of a republic democracy. Let us hope that this tragedy would occasion better governance, with the State taking all necessary measures to ensure a safe environment for the women in the country, thus preventing the recurrence of such sexual violence”.

Justice Verma Committee report (2013)

Chapter Highlights

Introduction

- Reasons for Violence
- Magnitude and forms of violence against women in various life situations
- Other Heinous Forms of Violence
- Practices and Efforts to Reduce Violence
- National Mechanisms

Conclusion and Recommendations

Introduction

6.1 The aforementioned remark, from the landmark report by the Justice Verma Committee is both revealing and hard-hitting. It exposes how we, as a society, internalize and respond to violence against women (VAW) and girls in India. Millions of women and girls suffer silently acts of violence that vary in intensity throughout their life. What is worse, VAW and girls has been normalized to the extent that despite daily occurrence, there is little or no recognition of it and much less willingness and desire to address such instances, unless they are as extreme and as horrific as the *Nirbhaya* incident. The question however is, have we really woken up to the dreadful reality of women's life post-*Nirbhaya*? Are we, as a society, prepared to address this issue in its entirety or will we let this pass into the annals of history and wait for another gory and gruesome incident? The past two and half years post-*Nirbhaya* have not been encouraging, if one takes note of the anecdotes and media reportage of continued VAW and girls on a daily basis.

6.2 Acts of violence and brutality against women and girls are not new to India and the *Nirbhaya* incident was certainly not the first such. Urvashi Butalia², while analysing the December 16 2012 incident, observes; “...it is true that certain kinds of rape or the rape of certain women evokes more outrage than that of others. Caste rape, for example, where Dalit women are particularly targeted by upper caste men and sometimes by their own men, is so naturalized in Indian culture, that it evokes

very little outrage, and even the legal machinery sees it as something that is a part of our society."
This naturalization or normalization of VAW and girls is a serious threat.

6.3 The widespread nature and normalization of VAW are not so difficult to gauge, if one gives a casual glance to one's surroundings. One cannot escape observing unwanted stares and touches across spaces as well as sexist, lewd and demeaning comments addressed to women, supposedly made in 'jest' and 'good humour' in public as well as private spaces. At the same time, convoluted debates and fault finding continue, with women being reprimanded or scoffed at for 'provoking' violence based on what they wear, how they look, what they do, who they talk to, where they go, what time they go, whom they are seen with and whether or not they use mobiles and the internet—the list is endless. There are a number of incidents where even Members of Parliament have tried to undermine the issue, made derogatory sexist remarks, justified male VAW³ and have had no sense of remorse or wrongdoing! The statement from the Justice Verma Committee is significant as it not only challenges the existing social mindset toward women and promotes zero tolerance for VAW, but also squarely holds the State responsible for providing a safe environment for women.

6.4 Women and girls face wide range of violence that include but not limited to physical, emotional, sexual and economic, and various other non-physical yet life threatening ones. Entrenched in discriminatory structures, a woman may suffer from various manifestations of violence at every stage of her life. Gender biased sex selection is the most crude form of discrimination that physically eliminates girl child even before she is born. As discussed elsewhere in the report the practice of selectively removing female foetuses continues to remain at alarming proportion in some parts of the country despite legislative and other educational measures. If a girl survives sex-selection, she may face infanticide or die due to malnutrition, infection or neglect in the childhood stage.. As a young child, a girl may be faced with incest and denied care and affection because of the parents' preference for sons. As an adolescent, she may be subjected to abuse, rape, acid attacks, sexual harassment or trafficked. At this age she is likely to be dropped out of the schools and married off much before she is physically and mentally mature to enter into marital union and may also bear a child. Also, during the adolescent age, she is likely to be denied mobility and forced into a bondage that contributes to low self-esteem, fear and shame of speaking out. There is evidence of young women being attacked by their own family if they choose to make individual decision about marrying someone of their own choice. They often fall into the jaws of death where honour and the assertion of masculine status are upheld by local bodies. In marriage, as wives, women may experience domestic violence, dowry

related violence, marital rape or honour killings and as widows they may be deprived of property or subjected to being labelled as a witch or mentally challenged.

6.5 Sadly, the prevalence of such violent occurrences in the entire life cycle of a woman finds acceptance in Indian society and the issue is treated entirely as a private matter leading perpetrators to enjoy complete impunity.⁴

Reasons for Violence

6.6 It has been acknowledged that violence results from a complex interplay of individual, family, community, social and global factors. Myriads of factors responsible for the violence are discussed in this chapter. Conflict, communal and caste based tensions, media, masculinity norms, women's own socialisation norms, our political system reflecting patriarchal values and brazenness when there is such an incidence all add up to the vulnerabilities of women and girls. Women become embodiments of identity in some cases and of honour in other. Love and jealousy related attacks (acid attacks) too continue to threaten and happen in large numbers. On the other hand, media portrayal of women is dismissive and sexist and something that does not build a respectful or appropriate picture of women. We discuss below some of the possible reasons for violence against women and girls.

6.7 One possible explanation for VAW can be found in the analysis of 'power' and who is 'entitled' to wield it. In a society such as India, which is deeply entrenched in patriarchy, power is analogous to men and the 'man is superior to a woman and therefore has more rights than a woman' norm ensures that males have unquestionable rights to expand and control resources, spaces and opportunities. The strong son-preference, which comes at the cost of systematic elimination of daughters, is a crude manifestation of this unequal gender norm. Besides, key structures recognized by patriarchy, including family, caste, religion and the State, tend to legitimize the superiority of men over women through both implicit and explicit means, instead of promoting gender justice and equality. Violence and discrimination are effective tools in the hands of people—both men and women—who have claim to power. VAW and girls is, therefore, an issue that goes beyond "women versus men", and underscores the fact that both women and men can be and are responsible in perpetuating unequal and unjust gender order. It happens even within a matrilineal society (for instance, in Meghalaya), which may practice such norms and vest greater power and authority in men in the family through various legal rights and customary practices.

6.8 It has also been evidenced that increasing globalization has brought in norms and practices that have been responsible for increasing VAW. The study on the Impact of WTO on Women in Agriculture, released in January 2005, made an attempt to comprehend the plight of rural Indian women by reviewing public hearings in Punjab, West Bengal, Karnataka and Bundelkhand (Uttar Pradesh). The study revealed that there has been a spurt in the various forms of VAW such as rape, female feticide, dowry deaths and trafficking of women, primarily on account of the shifts in the rural economy. It also pointed out that women are the ultimate sufferers of increased incidents of farm suicides as they are left to look after the household with no assets and the burden of indebtedness on their shoulders⁵. With increased migration, the process of urbanization has intensified and accelerated. This has brought in its wake the problems of poverty, inequality and exclusion disproportionately impacting women and girls. Rising urban crime, in general, and gender-based violence, in particular, is a result of a combination of physical and socio-economic factors, and are phenomena that affect a large number of cities.

Yet another important driver of violence against women particularly violence among intimate partners is alcohol consumption by men. Both large national surveys like NFHS and micro studies show a clear association between husband's alcohol consumption and reported physical violence⁶ and that excessive alcohol use for partner increased the risk for common mental disorders among their female partners⁷. Socio-cultural factors like social norms around masculinity and drinking expectancies determine if alcohol drinking is acceptable on certain occasions, how much and why. Very often these norms around drinking normalize violence against women under one or the other pretext. For example excessive drinking on certain festivals is an accepted norm. However one does not know what implications this norm has for women's sense of safety and actual experience of violence on these occasions. It is likely that violence on such occasions are neither reported nor recorded as women and girls are expected to take care of themselves on these occasions. Alcohol frequently acts as a dis-inhibitor, reduces self-control and affects cognitive and physical functioning, thereby reducing the ability of an individual to negotiate non-violent conflict resolution⁸.

6.9 Despite these constraints, women and girls in India have made major strides over the past few decades in almost every conceivable aspect of life.. The gender gap in education, for example, is reducing and is almost negligible at higher levels of education. Life expectancy of women has surpassed that of men.. Women and girls are visible in significant numbers in sectors and spaces that were traditionally occupied by men – banking, trade, technology and in hitherto exclusive masculine jobs like piloting and public transportation. They are also certainly more mobile than ever before

with a large number of young, educated, unmarried, aspiring women living alone in several urban areas in order to compete for and secure compatible jobs and enhance skills and education. This has led to increased self-confidence and assertiveness among them.

6.10 Many believe that increased VAW is the result of the changes in women described above without concomitant changes in the overall regressive and oppressive norms against them. Perhaps, women and girls have been changing much faster than the social norms surrounding them, and in particular, men and orthodox sections of the society may not be prepared to accept these changes. As a result, violence is used against women and girls to 'show them their place' and as a mechanism to push back. There are certainly organized movements appealing against many laws that have come to favor women and there have been reports of many incidents of backlash⁹. This 'backlash', manifested in violence, goes a long way with women like Rameeza Bibi, Maya Tyagi¹⁰ and Bhanwari Devi¹¹ who was gang raped because she was fighting against child marriage. We also witnessed the Mangalore pub incident where a group of men barged into a pub and thrashed every person, including girls present, stating that engaging in such activity is against "Indian tradition". Clearly, tradition, in this context, was used as a euphemism for patriarchy and regressive social norms.

6.11 There are nation-wide coalitions, which pit guaranteeing women equal rights against breakdown of families and rise in the number of divorce cases. There have been campaigns against the 'misuse' of Indian laws, primarily, the Protection of Women from Domestic Violence Act; the cruelty statute of Section 498A, which provides women who are being harassed for a marriage dowry a means of redress; and alimony and custody provisions under the Hindu Marriage Act. It is held that the laws are being abused by women to extort and blackmail their male victims and their families. The growing trend of allegations on women misusing the law has forced the judiciary and police to issue directions regarding special procedures to be followed for cases being filed under Section 498A and dowry laws. These special directions include arrest only once a *prima facie* case of cruelty has been established¹². An important feature of the 'backlash' against women's equality rights has been a growing intolerance towards Violence against Women Human Rights Defenders (WHRDs) who are exposed to gender-specific risks and are targets of gender-based violence¹³.

6.12 Similar is the growth of Khap Panchayats¹⁴ which have started issuing singular statements addressing all women in order to instil fear in young women and families with daughters, and successfully silence any protest that could arise against their rulings. These Khaps have sought to impose dress codes on women, and one even said that girls are 'agents' that pollute society and bring

a bad name to the community”¹⁵. The Indian state has been quite reticent in initiating any action against Khaps, even though it is apparent that Khap diktats are blatantly undercutting women’s rights and thereby contradicting the verdicts of the highest constitutional law-making bodies.

6.13 Whatever the reasons for violence – regressive social norms, unequal institutional practices, women-insensitive globalization or backlash due to rising status of women –none of the reasons can be justified. Women have equal rights as that of men to make choices and realize their dreams and aspiration in a violence free situation. There are serious and profoundly negative health – physical and mental -- social and economic consequences of violence against women¹⁶. Due to the fear of violence, at younger ages women can’t exercise control over their reproductive choices and do not access timely preventive and curative services. A much higher incidence of unwanted pregnancies, unsafe abortions, HIV, chronic malnutrition and other negative reproductive and sexual health consequences have been well documented among women who are exposed to violence compared to those who are not. Seven to 36 percent of women who experienced spousal violence for example had wounds, broken bones and teeth, bruises, severe burns and other forms of injuries according to the National Family Health Survey data in 2008-09¹⁷. The exposure to violence prevents a large number of women at various ages to access their entitlements and rights, and realize their full potentials. *A majority suffers silently.*

6.14 That women are under attack, is clear from several incidences in the past, which led to large scale protests by women’s and other groups. It led to the introduction of fresh or amended legislations to safeguard women and punish the perpetrators. Yet, the two gruesome instances of the rape and murder of a young para medico student in Delhi on 16 December 2012 and the rape of a photojournalist in Mumbai on 22 August 2013 shocked the collective conscience of the nation that attracted widespread protest and were highlighted in the media¹⁸. The irony is that there are numerous other cases of sexual assault, molestation, rape and child sexual abuse that continue to be unreported. This is confirmed by a researcher using data from the National Crime Records Bureau (NCRB) and the National Family Health Surveys presented later in the chapter. Under-reporting has been found in the context of sexual and physical violence, both for violence committed by “men other than the survivor’s husband” and violence committed by husbands¹⁹.

6.15 One can gauge how integral is violence to women’s lives through crime data analysis. Although highly deficient and select in nature, NCRB provides significant insight into the nature, magnitude, and time trend with respect to VAW. Crimes that specifically target women (such as, rape,

molestation, sexual harassment, domestic violence and kidnapping) are covered under the various sections of the Indian Penal Code (IPC). In addition, new legislations and amendments to the existing ones have been introduced to effectively deal with the newer forms/aspects of crimes against women. These crimes are covered under the Special and Local Law (SLL)²⁰. It is significant that 96 percent of crimes against women are registered under different sections of the IPC and only 4 percent are registered under SLL. There has been an escalation in the total number of registered crimes against women under different sections of the IPC and SLL from 2001-12 (Table 1). The proportion of IPC crimes committed against women in total IPC crimes has also increased continually during last 10 years, from 7.4 percent in 2001 to 9.6 percent during 2010 to 10.2 percent in 2012²¹. (Table 2). The 2012 regional crime records indicate that West Bengal accounted for the highest incidence of reported crimes against women in the country at nearly 13 percent, followed by Andhra Pradesh, where 12 percent of total crimes were against women.

Magnitude and forms of violence against women in various life situations

Child Sexual Abuse

6.16 Sexual violence begins very early in life. In 2005, the Government of India, realizing the significance of the problem of child sexual abuse, carried out a National Study on Child Abuse. This study²², which is the largest of its kind undertaken anywhere in the world, covered 13 states with a sample size of 12447 children, 2324 young adults and 2449 stakeholders. It looked at different forms of child abuse: Physical Abuse, Sexual Abuse and Emotional Abuse and Girl Child Neglect in five different evidence groups, namely, children in a family environment, children in school, children at work, children on the street and children in institutions. Despite several limitations the study produced voluminous data on the extent and nature of child abuse. Two out of every three children were found to be physically abused, and the same number of school going children reported facing corporal punishment. More than half of the children (53.2%) reported having faced one or more forms of sexual abuse with one in four facing severe forms of sexual abuse and half experiencing other forms of sexual abuse. Every second child reported facing emotional abuse. Not surprising, half of the girls interviewed wished they were boys.

Child Marriages

6.17 The continuation of child marriage in India despite a 200-year old social campaign against it reflects the complexity of the phenomenon. The underlying reasons are many, including poverty, low

or no value accorded to female education and health, worry about the need to pay a greater amount as dowry if the girl reaches her 20s, fear of social disapproval if a daughter is not married, and most significantly, the desire to control female sexuality.²³ Although there has been a declining trend in child marriages as per the recent (2011) census data, in several parts of the country, over 60 (in some districts over 85 percent) of girls are married off while they are children.²⁴ Needless to say that the underage bride is vulnerable to domestic and sexual abuse and her health suffers irreparable damage as she is forced to bear children when her body is not prepared for pregnancy.

6.18 Cases of bride-kidnapping primarily occur in the impoverished parts of rural eastern India, in states such as West Bengal and Assam, where male-female ratios are among the lowest in the country, meaning a relatively greater supply of women. The victims are snatched or duped with the promise of employment by trafficking rings and, then sold into wedlock in richer states.²⁵ With Haryana's current sex ratio, which stands at 877 women for 1,000 men, and its abysmal child sex ratio of 830 girls, the number of male bachelors has been piling up over decades, driving many to look for brides in other states. It is, therefore, not surprising that people in Haryana have been importing brides from the eastern states of West Bengal and Assam. Brides from several other eastern and southern states, who have been 'acquired' through these means, can be found in almost every village of Haryana.²⁶

6.19 Realizing this, the Government of India to focus on child issues created a new Ministry, Ministry of Women and Child Development (MWCD). The MWCD in 2007-08 took significant steps to address the issue of child protection by setting up a National Commission for the Protection of Child Rights (NCPCR) and amended the Juvenile Justice (Care and protection of Children) Act 2000 –again recently amended to change the definition of juveniles. Later, Government of India also amended the Child Marriage Restraint Act 1929, launched the Integrated Child Protection Scheme (ICPS) and proposed amendments to the ITPA and drafted Offences against Offences against Children (Prevention) Bill. These initiatives are laudable but having them on paper only is not sufficient. As we will analyse in the subsequent sections and present evidence, various forms of violence against women and girls continue to happen unabatedly.

Violence within Marriage and Domestic Spheres

6.20 The most common form of VAW that has been studied and documented in India and elsewhere in the world is domestic, intimate partner and spousal violence. The National Family Health Survey (NFHS), through two rounds of surveys, has gathered useful data on various forms of domestic

violence in India and Indian States, along with information on several other health, social and economic parameters, both at the individual and the household levels²⁷. The data is useful in that it provides population-based estimates of the VAW within the domestic spheres as against the reported data from NCRB that presents select cases. The NFHS data also allows deeper analysis of cause and consequences. The NFHS 3²⁸ data from 2008-09 shows that 34 percent of all women, within the age group of 15-49 years, have experienced physical violence at various points of time since the age of 15; 19 percent experienced physical violence in the 12 months preceding the survey. In more than 85 percent of the cases with reported physical violence, the husband was the most common perpetrator.

It is however important to point out that though national survey like NFHS provides useful data on domestic violence, there is a huge gap²⁹ between what is reported in the survey and the figures from the police's National Crime Records Bureau (NCRB). There is an urgent need to undertake reliable and periodical surveys on violence against women.

6.21 Notably, women across all castes, classes, religious and educational backgrounds are subjected to violence within the intimate partner relationships and family structures. The prevalence is, however, relatively high among rural women and women with lower levels of education. Women belonging to scheduled castes (dalits), followed by those from scheduled tribes are the worst with close to 42 and 39 percent respectively reporting to have experienced physical violence. The prevalence of the experience of physical violence since the age of 15 was found to be 45 percent for women in the lowest wealth quintile and 19 percent for women in the highest wealth quintile. Despite the differentials by wealth, the NFHS data highlights high rates of all forms of violence in even the wealthiest households.

6.22 Currently, married and widowed women are at a much higher risk of physical violence (37 and 38 percent) than other categories of women, such as women who were never married (16 percent). While the experience of sexual violence is reported by women across all categories – single, married, never married, widowed, separated, deserted – the prevalence is highest among divorced, separated, or deserted women. Over 25 percent of them reported to have experienced sexual violence, followed by 10 percent each of the currently married and widowed women in the third round of NFHS³⁰. For a vast majority of married women, sexual violence is perpetrated by the husband and for never-married women, the perpetrator is usually a relative, acquaintance or a boyfriend. These findings corroborate the observation that most sexual assaults and rapes happen inside the home and perpetrators are usually the people who are known to the victim. This is significant in the light of the Government of India's reluctance to accept marital rape as a form of violence. In the words of Butalia (2014), *"The*

State's reluctance to recognize marital rape as a crime is a serious lacuna....From seeing rape within marriage as 'legal', it is not a long stretch to begin to see rape within the home, within the family, as legal. And this means that the majority of rapes will therefore not even be recognized, let alone dealt with in legal or social terms."

6.23 According to the NFHS 3 data, only one in four women have sought help to end the violence they have experienced. Two out of three women who experienced violence not only never sought help, but also never told anyone about the incident(s). A majority of women – over 85 per cent – who experienced sexual violence, never told anyone about the incident(s) and only 8 per cent have sought help. The stigma associated with domestic violence is huge and the data illustrates that no level of education or wealth can make women seek help or talk about it. The NFHS data also indicates that the most educated women and women in the highest wealth quintile are less likely to seek help than less educated or less wealthy women.

6.24 During the mid-1970s and 80s, dowry was the dominant paradigm for understanding violence in the family. This is reflected in the number of reports on its spread and its impact on public discourses. The need to address violence within the domestic sphere through legislative means was recognized fairly early. Growing incidents of dowry-related violence and bride burning led to the introduction of legislations such as the Dowry Prohibition Act (DPA), 1961, which sought to curb the evil of giving and taking of dowry.³¹ Under this provision, 'cruelty' to the wife by the husband or his relatives was made a cognizable and non-bailable offence. This was later modified to a bailable offence, but punishable with imprisonment up to three years and a fine. Similarly, Section 304B (dowry death) was introduced in the IPC in 1986, which highlighted dowry death as a new offense.

6.25 Despite the enactment of the DPA, 1961, the practice of giving and taking of dowry continues. There were amendments to the DPA in the years 1984 and 1986, *inter alia*, in the definition of 'dowry', which made the penalty more stringent. Other amendments included requirement of maintenance of lists of 'gifts' exchanged by both parties during the wedding, which could serve as a record in case the marriage does not work out and the woman has to leave her matrimonial home; she could then retrieve her share of the gifts by referring to the list. However, the Act does not provide for registration of the list.

6.26 Data from the NCRB shows an increase in the number of cases filed under the DPA in the last five years. It is believed that cases under the DPA are filed only once, which suggests the deterioration of the matrimonial relationship in question, thereby showing that the legislation fails to

prevent exchange of dowry, but can assist the bride in claiming the list of items given under the name of 'stridhan'.³² The DPA seeks to penalize both giving and taking of dowry, and requires the appointment of dowry prohibition officers in every State. The National Commission for Women (NCW) had proposed amendments in the DPA in order to further widen the definition of dowry and ensure that givers and takers of dowry are both not given similar penalties. However, dowry exchange has increased manifold in recent years and dowry is increasingly being considered a status symbol by many. Today, the practice has assumed scandalous proportions, spread to different regions and even penetrated into Muslim and tribal communities³³. Often, dowry is not a one-time transaction, it continues with every event /festival and further demands are made from the woman/bride/daughter-in-law's family. Further, often the woman is threatened with or a victim of violence, if such demands are not fulfilled.

6.27 The introduction of the Protection of Women from Domestic Violence Act (PWDVA) – a civil law – in 2005 (it came into effect on October 26, 2006)³⁴ was an important landmark. It brought in the concept of domestic relationships, which sought to include all relationships based on consanguinity, marriage, adoption and even relationships that were “in the nature of marriage”. This was felt necessary in light of the absence of compulsory registration of marriages in India, which left a large number of women outside the domain of legal protection.³⁵ The law recognized specific functionaries in the form of protection officers, service providers, shelter homes and medical facilities and also mandated the State to work towards providing a multi-agency response in cases of women facing domestic violence. As the PWDVA is a civil law, detailed data is not available with the NCRB. *Table 3* provides a record of the number of crimes against women for the year 2012.

6.28 The Committee on the Elimination of Discrimination against Women (CEDAW) in its concluding comments, appreciating the passage of PWDVA 2005, expressed concern that the various States and Union Territories have not put into place mechanisms to effectively enforce this Act³⁶. Similar concern was expressed by the United Nations (UN) Special Rapporteur on VAW in her recent visit to India³⁷. Another area of concern is that over a period of time a number of judgements have limited the scope of the PWDVA, 2005 thereby defeating the very objective that it sought to address. The details of the same have been discussed in the chapter on Women and Law. The Lawyers Collective, a Delhi based organisation with research support from the International Center for Research on Women (ICRW)³⁸ which had spearheaded the campaign towards enactment of this law initiated the exercise of monitoring the implementation of the legislation. The first report on the same was released in October 2007; since then this exercise is being carried out on an annual basis.

6.29 Another form of violence which married woman commonly face is desertion. Desertion is rampant in rural areas and the principal reason is migration to cities for jobs and labour of any type. This reflects the dearth of work or earning capacities that are low in villages.

6.30 Marriage to a person residing in a different country increases the legal complexity of matrimonial disputes significantly. Despite being a gender neutral term, we generally understand marriage to a non-resident Indian (NRI) as an Indian girl marrying a man of Indian origin residing in a different country. Due to the fact that such marriages are highly coveted in India, families are considerably in a lot of pressure and hurry while agreeing on such partnerships and fail to understand the groom and his family or check or make inquiries about the latter's background. There has been a significant increase in the reports of newly-wedded brides being reduced to domestic servants in their matrimonial homes, their papers and passports being seized by the husband and the women being subjected to severe forms of torture and harassment. Factors such as being isolated from support structures in a place far away from home, and facing inevitable constraints such as language, lack of knowledge of local criminal laws or justice mechanisms, police and legal systems, make the women involved in such scenarios completely vulnerable. In addition, the lack of friends and family, immediate and readily available monetary support makes her access to any form of support system very difficult.

6.31 Cases of women being subjected to the cruelty of false marriage, cheating and dowry extortion have increased in proportion to the growing number of Indians emigrating in search of greener pastures abroad³⁹. There have been several cases where victims were abandoned at the airport upon arrival in a foreign country or victims realizing that their new husbands were either already married or gave false information about their jobs and immigration status. Desertion of married women by their NRI husbands is an emerging and distinctive form of VAW.

6.32 Based on the recommendations of the Parliamentary Committee on Empowerment of Woman (14th Lok Sabha) on the 'Plight of Indian Women deserted by NRI Husbands', which was discussed and deliberated upon by the Inter-ministerial Committee meeting held on July 7, 2008, the National Commission for Women was nominated by the Government of India, vide Ministry of Overseas Indian Affairs order dated April 28, 2009,⁴⁰ as the coordinating agency for dealing with issues pertaining to NRI marriages at the national level. The NRI Cell was formally inaugurated on September 24, 2009. The Cell deals with complaints received from India and abroad with regard to cross-country marriages, wherein there is a deprivation of women's rights or any issue involving grave injustice to women. A scheme providing legal/financial assistance to Indian women deserted

by their overseas spouses was launched by the Ministry of Overseas Indian Affairs in 2007. It was revised with effect from November 30, 2011 to widen its scope and include marriages solemnized in India or overseas, with an Indian or foreigner husband. Besides, the quantum of assistance under the scheme was almost doubled.⁴¹

VAW and Girls in Public Spaces

6.33 Sexual VAW and girls in public spaces has begun to receive attention fairly recently⁴². Women and girls experience and fear various types of violence in public spaces, from sexual harassment to assault, which includes rape, acid attacks, among other acts. These incidents occur on streets, public transport and parks, in and around schools and workplaces, in public sanitation facilities and water and food distribution sites, or in their own neighbourhoods. Sexual violence in public may comprise a broad range of unwanted behaviour that includes verbal and physical harassment, exhibitionism, unwanted touching or groping some part of body and rape.

6.34 Unfortunately, there is insufficient empirical data on the magnitude of the problem and drivers of sexual violence in public spaces. Further, little is known about attitudes and perceptions and how to change them or improve infrastructure and facilities as preventive measures.⁴³ Under the UN Women's Safe Cities Program, a study⁴⁴ was carried out in Delhi, spread across public spaces such as bus stops, markets and shopping malls in all nine districts of the city. The study involved 5,010 people, comprising 3816 women, 944 men and 250 common witnesses. The data collected showed that almost two out of three women reported incidents of sexual harassment around two to five times over one year preceding the survey. School and college students in the age group of 15-19 and women workers in the unorganized sector were particularly vulnerable. Three out of five women reported facing sexual harassment not only after dark, but during the day as well. A similar study was conducted at a smaller scale amongst 1,045 women in the city of Guwahati, which showed that over 50 percent of harassment cases happened in buses and other public spaces.

Sexual Harassment in Work Place

6.35 There are no reliable estimates on the magnitude of sexual harassment at workplaces. As per a survey conducted on a small sample of working women in major cities by Oxfam and the Indian Market Research Bureau (IMRB) in 2012, 17 percent women reported having experienced sexual harassment at their respective workplaces.⁴⁵ An informed consideration of the situation on ground suggests that sexual harassment is quite common and estimates could be much higher than the one

quoted by the survey. Workplace sexual harassment, like other forms of sexual violence, is something women generally do not like to talk about. In fact, sexual harassment has remained one of the central concerns of the women's movement in India⁴⁶ and, like in the case of many other legislative responses to prevent VAW, the women's movement has contributed significantly in the introduction and definition of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

6.36 Sexual Harassment in the workplace is an issue that is now much in the open with multiple cases being reported. Cases of sexual harassment have been reported in multinational corporations wherein one such case the victim was forced to resign due to non-addressal of grievance. A former high-profile editor of a popular daily, was sent behind bars in Goa. One of the top ranking environmentalists has been recently implicated in such case. Cases of sexual harassment have also been filed against people who hold the highest judicial and academic positions in the country. However, it is still believed that majority of cases of sexual harassment go unreported. Issues ranging from being made to feel responsible about what happened to jeopardizing ones career have been cited as some of the common reasons why women fail to come out. The need is to create a safe working environment.

6.37 For years women kept silent until a ray of hope emerged with the Supreme Court ruling on the *Vishakha* case⁴⁷, which finally came into existence as an Act in April 2013.⁴⁸ The Act is making headway as it has made it mandatory for institutions to set up an Internal Complaints Committees against Sexual Harassment of Women. However, sexual harassment at the workplace still remains one of the most under-reported form of gender discrimination. 4.37 Women's rights activists point out that organizations generally view such cases from the perspective of their public image and not as a breach of an individual employee's right to dignity and safety, leading to skewed attitudes and hushing up of such cases. Further, due to the lack of trained personnel for implementing committees, a significantly low number of cases involving workplace sexual harassment have been taken up so far. Recently, the Minister of Women and Child Development notified (September 17, 2014) institutions and organizations to follow the Act seriously. It is, however, important to highlight some provisions that still remain areas of concern (*See Box Item below*).

Areas of concern in the Sexual Harassment Act

- The Act has a provision which seeks to penalize women in case of false or malicious complaint. This is truly intended to be a deterrent even for several genuine cases, and is more likely to work against women than the perpetrators.
- The Act includes provision for conciliation. Though included in good spirit that conciliation shall be availed of only at the request of the woman; in light of office policies and dynamics, this will remain an area of concern
- It is not very clear how the unorganized sector will be covered. Though the Act provides the mechanism of the Local Complaints Committee, the practicability of the functioning of such a Committee is yet to be seen.
- The Act mandates constitution of Internal and Local Complaints Committee. The status of implementation of this Act must be sought by the nodal Ministry

VAW due to Caste, Communal and Ethnic Violence

6.38 This brand of violence is the best known and familiar to societies that follow the norms of the caste system stringently. *Dalit* women are highly vulnerable to sexual exploitation due to caste violence, besides being forced into caste-based occupations such as manual scavenging, bonded labour, and sweeping. Even when dalit women are elected to local self-governments, they are not allowed to exercise their leadership qualities because of dominant caste hierarchies. For instance, an educated dalit woman from Dausa district of Rajasthan, despite being an elected member of her village Panchayat, was not allowed to sit on a chair on a podium during a Republic Day function because it was occupied by upper caste women in the audience.⁴⁹ Clearly, there are hierarchies within the country's highly caste stratified society that cannot be dismantled so easily. This manifests itself into extreme forms of VAW.⁵⁰ The subjugation of women within this domain is frightful and no local court or courts of justice have ever been able to deliver justice to women. State legislations are not strongly followed, which is one of the reasons for the numerous cases pending in the courts.⁵¹

6.39 Dalit women are discriminated not only by people of higher castes, but also within their own communities. Women are active in large numbers in the movement but most leadership positions in the organisations, local bodies and associations have until now been held by men. Since the late 1980s, dalit women have increasingly felt and articulated the need for a separate platform – created, developed and controlled by themselves – through which they could forge their own identity, fight for their rights and find solutions to their particular problems as dalits and as women. They assert that there is need for strong alliances between the dalit movement, the women's movement and the dalit women's movement if their common vision of social, economic and political equality and justice for

all is to be realised. The National Federation of Dalit Women (NFDW) was launched by dalit women themselves and committed itself to undertake several tasks to bring about positive changes in the lives of dalit women such as legal action against caste based atrocities, political empowerment of dalit women, economic empowerment against growing pauperisation, building self-confidence, and leadership.⁵²

6.40 There are dark histories of communal riots in various parts of India characterized by rape, murder and elimination of people. Women and children are the worst sufferers of the communal violence. Sadly, this continues to happen at some regular intervals. More often than not no protection is given to the vulnerable groups especially women and children while perpetrators plunder their homes, snatch away their lives, and destroy their property.. The draft Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill has been pending in Parliament for over eight years; despite the necessity for such a law.⁵³

Violence Against Internally Displaced Women and in Conflict Zones

6.41 Conflict and disaster induced displacement is common in several districts of select states in India. Sexual and gender-based violence is one of the most pervasive violations of the rights of women and girls during such displacement. During situations of internal displacement, women and girls are at significant risk of various forms of sexual and gender-based violence, which include rape, forced impregnation, forced abortion, trafficking, and sexual slavery. While men and boys may also be affected, research indicates that sexual and gender-based violence predominantly affects women and girls. There is no law that protects the rights of Internally Displaced Persons (IDP). Women living in camps for prolonged periods, at times for decades, are also particularly vulnerable to trafficking and unsafe migration. There is a need to study further the link between IDPs and their vulnerability to trafficking.

6.42 Assam alone has witnessed over five lakh people being displaced due to major ethnic conflicts during 2011, 2012, 2013 and 2014.⁵⁴ However, in the absence of any gender-sensitive policy addressing conflict-induced displacement, the critical needs of women are not met and there are gaps in the resettlement and rehabilitation procedures. Peace committees formed in the aftermath of major conflicts are viewed as inconspicuous structures without any composition and guidelines. Participation of women or representation of women's issues seems to be of lesser interest, leading to a major drawback in such committees. Even the ongoing formal peace negotiations have undermined women's agenda and women's representation. India does not have a policy on displacement, and

there are no programs or policies being devised specifically for those displaced due to armed conflicts.

6.43 While one of the principal prerequisites of post-independence development projects has been land acquisition; most of these projects have caused major changes in land use, leading to dispossession and displacement of a large number of people and their involuntary resettlement in other areas. Almost all analyses on displacement and policies on relocation assume the household or the family to be the smallest unit of convergent interests, where the benefits and the burden of policies are shared by all members. Yet, there is evidence that the burden of change is far greater for women and they have little or no access to the benefits of development than men.⁵⁵

6.44 "Encounter killings", the term used in India, is a euphemism for extra-judicial killings. Over the last two decades Kashmir has recorded a high number of widows who are categorized as half widows, gun widows, and so on. In Manipur too "fake encounters" have been recorded. The Human Rights Alert has documented 1528 cases of extrajudicial killings in Manipur since 1979. Also, women's access to justice or legal action against perpetrators seems remote when laws such as the Armed Forces Special Power Act exist, as in the north east region, and Kashmir. The reason being the Act grants extraordinary powers to the military including the power to detain people, use lethal force, enter and search premises without having a warrant. The Act does not contain any provision for safeguarding rights of people, and therefore is a great risk factor wherever it is being enforced⁵⁶. Under such conditions, the vulnerabilities of women could lead to extreme forms of mental trauma, isolation, displacement that can lead to trafficking, domestic labour and forced sex work.

6.45 The tacit sanction of impunity to perpetrators of VAW in conflict zones in the name of national security is also a matter of serious concern. In fact, the extent of impunity enjoyed by perpetrators reduces conviction rates accompanied by delayed access to legal action or justice. Even those convicted may be given bail and acquitted. State action, in other words, is minimal in cases of violations. In 2005, a civil vigilante group, sponsored by a prominent local political leader, with the tacit sanction of the State and Central government, called the "*SalwaJudum*" was given a unbridled powers to detect and identify Maoist rebels. The turn of events showed that the group went down heavily on innocent people leading to the most widespread displacement in the country⁵⁷. The exact figures of displacement are not known, but in the 4-5 years that the *SalwaJudum* was active, it is believed to have displaced more than 300,000 *Adivasis* from 644 villages, along with killing, raping, looting and burning down entire villages.

6.46 In conflict areas where the army has jurisdiction, in matters of investigation and prosecution of sexual violence committed by its personnel while on duty - in many instances, the army has challenged the jurisdiction of civilian courts and the state government's authority to institute an Enquiry Commission. It is therefore important for the government to reconsider the Justice Verma Committee recommendations as well as ratify some of the international treaty bodies such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its optional protocol, the International Convention for the Protection of All Persons from Enforced Disappearance, besides the two optional protocols to the ICCPR, and the optional protocol to CEDAW.

Custodial Violence as well as VAW and Girls at Shelters and Short-stay Homes

6.47 There exists ample evidence of custodial violence, torture and abuse of police power. A recent case of custodial atrocity has been of Soni Sori, a 35-year old *adivasi* schoolteacher, who was subjected to sexual violence at the Dantewada police station in Chhattisgarh, under the directions of the superintendent of police (SP). On October 8, 2011, Sori was stripped and was administered electric current; stones, pebbles and batons were forcefully inserted into her private parts. An independent medical examination at a medical college in Kolkata confirmed the brutality inflicted on her by the police. Meanwhile, the SP was conferred the President's Gallantry Award for bravery, in complete ignorance of the serious charges levelled against him for ordering the torture of a woman in custody.⁵⁸ Concerns were raised about the lack of adequate protective measures to ensure the safety of inmates, especially with respect to gender-related killings. In 2012, 55 deaths of female inmates were registered, of which eight were reported to be suicides.

6.48 Incidents of sexual abuse of women at shelter and short-stay homes are also not uncommon. In 2012, the Haryana government sealed the Apna Ghar shelter home almost a month after it was exposed for the sexual and physical assault of over 100 women and children.⁵⁹ In a surprise raid by the team of the National Commission for Protection of Child Rights (NCPCR), nearly 120 people, including children, girls and women, were rescued. The inmates were allegedly subjected to sexual abuse, physical and mental exploitation, and used as bonded labour. Cases of such abuse may be greater and more significant, when the victim is intellectually disabled or differently abled. The recent case in Mumbai, where a peon at a home for differently-abled girls was arrested for sexual assault and rape of the cohabitants⁶⁰; and the judgment delivered by the Supreme Court, which struck down the order on termination of pregnancy of an intellectually disabled woman - are incidents worth consideration and deliberation.⁶¹

6.49 With regard to rape and sexual assault, following the nationwide protest over the Mathura rape case, the Criminal Law (Amendment) Act, 1983 was implemented, recognizing custodial rape by a policeman or head of certain institutions, and introducing specific provisions for non-disclosure of identity of victims of sexual offences,⁶² presumption of absence of consent in certain cases of rape,⁶³ in-camera proceedings,⁶⁴ and others.⁶⁵ Again, based on the Justice Verma Committee report, the Criminal Law (Amendment) Act, 2013 was tabled in Parliament, and passed in February 2013.

6.50 Custodial sexual assault can also occur outside of an institutional setting. The former UN Special Rapporteur on VAW, Radhika Coomaraswamy, explained, "[w]hen police or military personnel enter homes to search, question, intimidate and/or harass, there is at the very least an unspoken presumption, if not an overt order, that those within the home cannot leave, thereby placing them in *de facto*, albeit in many cases unofficial custody of the State."⁶⁶ There is evidence of the above in parts of India, where conflict is rife and women are left to face the wrath of security forces in the absence of the spouse or other family members. The national and state commissions of human rights do not have any control over police action. Many reports and studies have dealt with the problem of police impunity and custodial violence, and it has been a key concern in the international community as well.

Violence against Elderly Women, Widows and Other Single Women

6.51 Issues concerning single women have been discussed elsewhere in this report. Here, we briefly touch upon violence-related vulnerabilities of these women. A few studies have established that dependency on the younger generation results in neglect and in some cases, ill-treatment and different forms of violence against older people, in particular elderly women.⁶⁷ Populations across the world are ageing, with women being a predominant part of the elderly; a large number of them being widows. India is home to 40 million widows and their lives are precarious because of their long-term dependency on their husbands and sons. Stories of neglect and abandonment are rife in the country.

6.52 In our analysis, it has been found that female population, especially in states where there is a history of conflict, comprises widows of all ages.⁶⁸ Women's organizations have made submissions to the general recommendations of Human Rights of Women in Situations of Conflict and Post-conflict, highlighting the various categories of widows found in conflict ridden areas of Kashmir such as half widows, gun widows, and conflict widows. It is necessary for the State to establish mechanisms for relief, redress and compensation to various categories of widows mentioned. The Special Rapporteur on VAW observed that widows also face particular vulnerabilities as they are

often denied and dispossessed of property by their in-laws following the death of their spouses. In addition, social exclusion and poverty compel some widows to engage in sex work and prostitution, and their children to perform hazardous labour or beg on the streets.⁶⁹

6.53 One of the challenges faced by single women is that they are not recognized as 'full 'citizens of the country by the society. Both caste and community traditions restrain them from living a life of dignity and freedom. Their status remains obscure, and only a low percentage of them are mentioned as head of household on ration cards, and other records. A study on the status of low-income single women in India, released by the National Forum for Single Women's Rights, stated that there are hardly any schemes that can cover single women and even if they do, the processes are too lengthy and cumbersome. Data for this study was collected from single women in Bihar, Gujarat, Himachal Pradesh, Jharkhand, Maharashtra and Rajasthan with about 386 respondents. More than half the respondents were below the age of 45 years, while only 7.3 percent were over 60 years of age.

6.54 Single women are usually a wide category including unmarried, deserted, and divorced women. They are quite often the most vulnerable sections of the society, especially if they come from lower income groups. In some regions, there are superstitions that single women are witches, and they bring bad luck. After separation/divorce/widowhood, women often do not have a place to live in. A study by the Stri Mukti Sangharsh Chalval (Kasegaon) focused on the nature of desertion and the problems deserted women face, both within the family and outside of it. In an attempt to look at their lives, economic status, struggles and aspirations, the study focused on around 143 women, who were either widows or had been deserted. The study revealed that around 80 percent of them were residing in their natal villages; only 7.6 percent in their marital villages; and 11 percent women were actually staying in villages that were neither their natal nor their marital homes. The data further showed that almost 70 percent women did not own any house; they were either living on rent or on encroached space or were residing within the joint family setup. Out of the 143 women respondents, only one woman had agricultural land in her name. Only 18 of the 143 women received any benefit from the government. The data revealed that the income of almost 96 percent of the women was below the official below poverty line (BPL) mark of Rs 11,000 and among these 52.4 percent of the women had an income that was below Rs 4,000.⁷⁰

6.55 The Planning Commission of India in the past had pushed for special dispensation for single women, particularly those who are single by choice, under various government schemes in the Twelfth Five-Year Plan (2012-2017). The Plan document had proposed, a percentage of the schemes such as Indira AwasYojana, Mahatma Gandhi National Rural Employment Guarantee Scheme be

earmarked for single women. It also suggested focusing on providing legal aid for ensuring entitlements and matrimonial rights to single women; for family courts to support with respect to compensation, should there be a divorce; and for the courts to recover the money from the men involved. There is a need for the central and the state governments to make adequate budgetary provisions to reach out to this large number of *single* women.

Violence faced by Women with Different Sex-orientation

6.56 Women with a sexual orientation other than heterosexual, are equally vulnerable and increasingly discriminated against by the society as well as government personnel (depending on individual mindsets) due to the overt non-acceptance of lesbianism in the country. In such circumstances, they are systematically restricted with respect to access to resources, and are unable to fully participate in the society. There is also an increased risk of violence both at the inter-personal as well as collective levels. Rashida Manjoo took note of this and said that mere perception of different sexual orientation is sufficient to put people at risk of violence. It is also a contributory factor to the inability of the lesbian, gay, bisexual, transgender and intersex community to report cases of violence.⁷¹

6.57 A Delhi-based organization, CREA, conducted a study on violence against lesbian women, female sex workers and disabled women, which investigated the extent of violence against them. One of the main findings was that they are often unable to seek and receive protection from state agencies. Few women have taken the help of police as their experience reflects the sheer hostility with which the latter dealt with them. Domestically, the study found that there is rigid control exercised by the family with a lesbian family member, which has led young lesbians to run away from home on account of the violence they are subjected to or due to situations where they are forced to get married. Clearly, the notion of choice and option for women in same-sex relationships is restricted. In suffering multiple forms of violence and social exclusion, the study showed that space is required for lesbian women to get on with their lives and that institutions, schools and colleges would do well in playing a supportive role to queer women and ensuring equal treatment to them.⁷²

Violence against Transgender

6.58 Transgender is often used as an umbrella term to signify individuals who defy rigid, binary gender constructions, and who express or present a breaking and/or blurring of culturally prevalent stereotypical gender roles. In India, there are people with a wide range of transgender-related

identities, cultures or experiences including *Hijras*, *Aravanis*, *Kothis*, *Jogtas/Jogappas* and *Shiv-Shakthis*. If one is to understand the nature of the violence against transgender people, what emerges clearly is the all-encompassing nature of the violence, its roots in both the State and civil society, the nature of surveillance by the State, and the deeply sexual nature of the violence. Sexual violence is constant, pervasive along with being subject to physical violence such as beatings and threats of disfigurement with acid bulbs, the sexuality of the *Hijra* also becomes a target of prurient curiosity, at the least, which leads to brutal violence, at the most.

6.59 Violence against transgender people is an everyday reality. Even the institution of family plays a significant role in their marginalization. Instead of protecting their child from the violence inflicted by the wider society, the family in fact provides an arena to act out the intolerances of the wider society. Given the enormous sense of isolation faced by the *Hijras*, the only cultural space available for transgender people in India is the *Hijra* community.

6.60 In the path-breaking judgment of *NALSA v. Union of India & Or.*,⁷³ the Supreme Court affirmed the constitutional rights and freedoms of transgender persons including those who identify as third gender and those who identify in a gender opposite to their biological sex i.e., persons assigned female sex at birth, identifying as male and vice-versa. By recognizing diverse gender identities, the court broke the binary gender construct of 'man' and 'woman' that had pervaded Indian law so far.

Violence, Stigma and Discrimination against HIV-positive Women

6.61 Women and girls are particularly vulnerable to HIV/AIDS owing not only to their biological conditions, but also to economic and social inequalities and culturally accepted gender roles that place them in a subordinate position vis-à-vis men regarding decisions relating to sexual relations⁷⁴. Significant amount of work on stigma and discrimination against people living with HIV especially women living with HIV have been carried out in India to demonstrate the need for urgent attention⁷⁵. Because of the invisibility of the problem and non-recognition of the issue those afflicted are worse off in rural areas. There are cases in Manipur where women have been abandoned in rural areas whereas there is a strong HIV positive women's network in the capital city of Imphal. HIV positive women face various forms of violence - physical, psychological and economic abuse, because of their HIV status. Abandoned by their families and imposing stigma against them, women suffer doubly. They have no work opportunities; and if admitted to a hospital they often receive ill-treatment from service providers. In the treatment programs also women with HIV compared to men are less likely to adhere to the regular antiretroviral treatment⁷⁶.

6.62 There are several commendable instances where women with HIV have come out and made public appearances, and launched strong advocacy to ensure that they are not discriminated for gendered reason⁷⁷. In the NACP IV document⁷⁸, there is special mention to address stigma and discrimination.

VAW in Sex Work

6.63 Sex workers are exposed to a range of abuse, including physical attacks and harassment by clients, family members, state authorities and the community at large. Many sex workers are forcibly detained and rehabilitated, and face a consistent lack of legal protection. Many face challenges in gaining access to essential health services, including treatment for HIV/AIDS and sexually transmitted diseases. A recent order of the Supreme Court took the position that a sex worker engages in such work to survive and does 'not lead a life of dignity'. In her discussions with interlocutors, the Special Rapporteur noted a tendency to conflate sex work with trafficking, and when sex workers are identified as victims of trafficking, the assistance that is provided to them is not targeted to their specific needs.⁷⁹

6.64 Raids of brothels by non-government organizations (NGOs) and the police to rescue victims often fail as families return the children to the same brokers. There are also cases where girls and young women are tricked with promises of marriage. Apne Aap⁸⁰, a NGO working on rehabilitation and rescue, claims that over a third of all sex workers are usually under the age of 18⁸¹. The tribal community of Bedia, which resides along the Jaipur Highway outside Bharatpur, take pride in their family business, which is prostitution. Traditionally, they were entertainers, but with changing times, prostitution or sex work has become their family profession. Adolescent girls are initiated into the family 'tradition'. Apart from the Bedia clan, there are other tribal communities such as the *Kanjars*, *Nuts* and *Sanshis*, who takes up prostitution as their primary source of income. 4.64 Problem is particularly serious if female sex-workers acquire HIV or develop serious health problems. Violence against them in such scenarios is serious and more often than not - never addressed.

VAW with Disabilities

6.65 The cost of violence on women with disabilities is widespread. In India, with a population of more than one billion, it is believed that 70 million people have disabilities; about 48 percent of them being women. The Girls and women with disabilities are vulnerable and considered soft targets, with the perpetrators assuming they can get away easily. In December 2012, following a rape bid on a

woman with disabilities at Thakurpukur, West Bengal, a total of 25 organizations representing persons with disabilities sent a petition to Justice J S Verma Committee and suggested amendments to laws on safety of women. In many cases, women with disabilities are unable to comprehend or communicate about the acts of violence. Some reports suggest there may be three times more victims of abuse as compared to other women⁸².

6.66 It is not surprising to find that the status of people with disabilities is worse, when the status of women in India itself is so low. A person with disability is considered someone unable to fulfill the duties of a normal being, be it a man or a woman. The medical, nutritional, educational, emotional, psychological, sexual, recreational and employment needs of a disabled daughter are the last in the list of priorities of a family. There is a strong evidence of infanticide on children suffering disabilities, with baby girls being at a higher risk. The problems that confront women with disabilities are even more severe in the rural areas. The inadequate or total lack of access to information, health care and rehabilitation services is compounded by much higher illiteracy rates, longer distances to services and facilities, and more severe conditions of poverty than in urban areas. In addition, traditions and prejudices that discriminate against women are more likely to be widely practiced in the rural areas⁸³.

6.67 On the issue of disability, there is a positive move because of the movement initiated between the 1980s and 1990s. Some of the factors which may have led to its rise could have been the more accountable state policy; strong presence of women's movements; and the interest and push of international agencies, the presence of which created a more conducive space for the political mobilisation of marginalised groups such as the disabled. The passing of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was a landmark step forward. Unlike the women's movement in India where changes in law and policies followed aggressive protests and lobbying by women's activists, in the case of the Disability Rights Movement (DRM), the shifts in the State's development policies itself triggered the background for disability rights activists to come together. The role of transnational discourses on disability rights flowing from international funding organisations further helped to consolidate the disability rights group identities in the Indian context. From the beginning, gender has also been incorporated as a major aspect of disabled identity owing to the already existing fertile ground laid for it by disabled feminist scholars in the west.⁸⁴ However, the DRM is still trying to register its presence in the public sphere, and work towards creating a more disabled-friendly environment in the country.

Violence Against Women as a Public Health Burden

6.68 The chapter on Women and Health discusses violence against women and girls as a major health issue. The *Lancet* – an international journal on health has recently dedicated a series on the issue highlighting its global nature⁸⁵. According to a report released by WHO in partnership with the London School of Hygiene & Tropical Medicine, and the South African Medical Research Council⁸⁶, physical or sexual violence is a public health problem that affects more than one third of all women globally. Women suffer violent deaths either directly – through homicide – or indirectly, through suicide, maternal causes and AIDS. Violence is also an important cause of morbidity from multiple mental, physical, sexual and reproductive health outcomes. It is also linked with known risk factors for poor health such as alcohol and drug use, smoking, and unsafe sex. Violence during pregnancy has been associated with an increased risk of miscarriage, premature delivery, and low birth weight.

6.69 A recent report published by WHO, *Preventing Intimate Partner and Sexual Violence against Women: Taking Action and Generating Evidence*⁸⁷ recognizes how infant and early childhood experiences influence the likelihood of people (later) becoming perpetrators or victims of intimate partner and sexual violence, as well as the need for early childhood interventions, especially for children growing up in families where there is abuse. It recognizes the importance of strategies to empower women, financially and personally, and of challenging social norms that perpetuate this violence. Laws and policies that promote and protect the human rights of women are also necessary, if not sufficient, to address violence against women. In addition, health and other services need to be available and responsive to the needs of women suffering abuse. Concerted action is needed in all of these areas (but there is limited research on the most effective approaches).

6.70 The health sector can play a vital role in preventing violence against women, helping to identify abuse early, providing victims with the necessary treatment, and referring them to appropriate and informed care. Health services must be places where women feel safe, are treated with respect, are not stigmatized, and where they can receive quality, informed support. A comprehensive health sector response to the problem is needed, in particular addressing the reluctance of abused women to seek help. The high rates documented of sexual abuse experienced by girls and women are of great concern, especially in light of the HIV epidemic. Greater public awareness of this problem is needed, and a strong public health response that focuses on preventing such violence from occurring in the first place.

Other Heinous Forms of Violence

Trafficking

6.71 Trafficking of women and children, especially girls, in India has become an epidemic⁸⁸ despite several legislative provisions.⁸⁹ According to researchers⁹⁰, the trafficking of women and children in India has increased over the years; 'while in 2010, almost one in every three missing children was untraced, in 2013 one in two missing kids was lost forever'⁹¹. According to one estimate, trafficking of persons, especially women and children, which is a 10-billion-dollar a year enterprise⁹² and is considered the third largest in the global organized crime industry (after drugs and arms trade). India is one of the key hubs for trafficking.⁹³ Despite these assertions, painstaking research for evidence, and highly acclaimed activism and initiatives, such as the one by Bachpan Bachao Andolan,⁹⁴ India has done very little to combat the issue and to ensure that the legal provisions are implemented in the spirit they were formulated. Unfortunately, the data from the NCRB is grossly underreported and does not help address the cause appropriately. For example, the number of cases registered under the Immoral Trafficking (Prevention) Act, 1956, was only 2,499 in 2010 and 2,575 in 2013. Similarly, the number of registered cases under Selling of Girls for Prostitution (Section-372 IPC) was only 130 in 2010 and 100 in 2013.⁹⁵ The seriousness of the issue can be gauged from the fact that the Supreme Court had to intervene and ask the government to implement stricter measures.⁹⁶

6.72 The issue of trafficking is rather complex; also due to its link to migration. One estimate pegs the number of domestic workers in India at 50 million, with Delhi alone accounting for about 10 lakh workers. Most of them are migrants and are subject to harsh working conditions. A significant proportion of this population is children, especially young girls. There is no law that regulates domestic work and placement agencies at the central or state level. Most of the women who are trafficked have been found to have a strong desire to migrate because they are being abused at home, in the community, or because of dire poverty. Once trafficked, the nature of work the victims are forced to undertake is equally abusive, varying from commercial sexual exploitation and different forms of forced labour. In general, victims are lured either by kidnapping or through prospects of better income/better life and then forced to work in establishments against their wishes. There are arguments that countering trafficking by preventing migration of women is to lock them into domestic systems of oppression and sexual exploitation at their respective places of origin. Measures taken to prevent women from migrating such as requiring permission of male members of the family or government sanction may actually compound the problem. What is needed is an effective system

that prevents women from being abused during the process of migration. This can only be established if the approach to trafficking is designed within a human rights framework.

6.73 The demand from the urban middle class, especially in Delhi and Mumbai, for young maids has fuelled the epidemic of trafficking of children, especially girls. To meet the demands of urban homes, thousands of placement agencies have sprung up to supply girls as domestic servants or maids. Young girls are lured, abducted or kidnapped from states, such as Jharkhand, Odisha and Assam, and trafficked to Delhi and Mumbai. In the process, many are sexually assaulted and pressured into domestic labor.⁹⁷ The poorly paid plantation workers and their families in Assam are, for instance, a major source for human traffickers, who lure mainly women and children with promises of a new life. However, they end up trapped in factories and households, while the traffickers benefit in terms of the 'sale'. Some of the victims, who are marginally lucky, end up as servants in large urban households, where they are fed and have somewhere to sleep.⁹⁸ Several others are trafficked into the red-light districts of cities such as Kolkata or Mumbai, or sold abroad, most commonly to households in the Persian Gulf, where they have no guarantee of ever returning or seeing their families again. Similar is the case with respect to the low income communities of Jharkhand and Odisha.

6.74 Efforts are ongoing to introduce stricter guidelines for placement agencies operating in Delhi, though it is not certain whether these agencies would stop trafficking. It is ironic that most state governments do not have an equipped force for handling cases of trafficking or missing children. A joint investigation by the Assam police and its counterpart in Delhi found 36 Delhi-based placement agencies involved in trafficking girls and children from Assam to Haryana, Punjab, and Mumbai and several other metropolitan cities.⁹⁹

Witch-hunting

6.75 'Witch hunting', widely prevalent in some parts of India, is one of the worst and most traditional forms of violence against women also because there is no reparative justice to them. Witch hunting is common in areas where community has a stronghold over society, and criminal justice system has very little penetration in those communities and police often fails to bring forth evidence in any convincing manner¹⁰⁰.

6.76 There is no official estimate on the number of women who are killed on the name of witch hunting. According to the State Government records in Assam however, between 2005 and May 2013, 66 women have been killed in the name of witch hunting and that there is some evidence of

increasing trends in witch hunting in as many as ten districts of Assam including Kamrup, Nalbari, Goalpara, Sivasagar and Udalguri. Cases of witch hunting have also been recorded in Jharkhand, Tamil Nadu, West Bengal and others.¹⁰¹

6.77 By all evidence, witch hunting is linked to economic reasons camouflaged within the belief systems characterised by superstitions, magic, the unseen spirit, and ancestor worship. Any peculiar situation such as a drought, illness, death or misfortune is believed to be caused by an individual or a couple who are possessed, have supernatural powers, and who are believed to be practicing witchcraft. A woman who inherits land from her dead husband is likely to be targeted as a 'witch' by the rural power structure, which results in taking away her property and banishing her from her home for ever¹⁰². Land becomes an issue because according to the customary system, lineage and land ownership are in the hands of men.

6.78 There have been some constructive moves in places like Jharkhand and Assam to address the issue; they are clearly not adequate and have not been supported by appropriate operational plan and strategy in place¹⁰³. There are no support systems in place or resources from which women can get help if they are evicted or abandoned from their homes and abandoned by their families. In such situations, women accept any compromise offered by the community. Combating Witch hunting in Jharkhand poses additional problem as 'Naxal' or 'Maoist' areas are not easily accessible. This is a problem faced in most remote areas too, where no one can lodge complaints.

Honour Killings/Crimes

6.79 The existence of orthodox, feudal and caste based governance led by ill-informed men with patriarchal values and arrogance in the rural areas spread across the country from north to south have been responsible for committing serious, heinous crime against women and girls in the name of caste and community 'honour'. Seen in the form of *Khap Panchayats* or kangaroo courts, also known as 'shalishi adalats' in the rural areas of West Bengal village authorities have a record of eliminating young couples who marry against the 'norms' or women who challenge them. Honour killing is done in orthodox homes when a young woman enters into a marriage of her choice or becomes a victim of rape as the case may be¹⁰⁴. According to national legal research desk, "there are no official figures on honour killings, though an independent study in 2010 suggested that as many as 900 were being committed every year in the northern states of Haryana, Punjab and Uttar Pradesh. Many cases go unreported with police and local politicians turning a blind eye to what some see as an acceptable form of traditional justice by families seeking to protect what they see as their "honour". Though

such killings are rampant in many states the law is ill-equipped to deal with the enormity of this crime.

6.80 Researchers have shown how state, agencies, media, and the judicial system collide to legitimize patriarchal concepts and practices in case of marriages¹⁰⁵. Activists and researchers have recommended a multi-pronged strategy to deal with the issue of honour killings particularly with reference to unconstitutional institutions like *Khap* and *Shalishi adalats*. There is a need for separate legislation to deal with honour killings which not only criminalizes the murderers directly involved but even those in the community who have supported and abetted the murders¹⁰⁶. Activists have also recommended for concerted and continuous engagement with communities to change their mind sets, which requires banning *Khap*, implementing model punishments, and involving a number of social and community based organizations.

Acid Attacks

6.81 Acid attacks have emerged as the cruellest form of gendered sexual violence on unsuspecting women both in the public space as well in their own homes. Till date there is no government data on the exact number of acid attacks in the country. According to a research conducted recently, about 78% of the reported acid attack case is for refusal to marriage or a rejection of romance¹⁰⁷. Other issues responsible for these attacks have been failures of a girl to bring a dowry to her husband, marital disputes, family disputes, political rivalries, land disputes, and the accidental presence of the victims at the scene. A search of Indian newspapers found 153 reported cases of acid violence from January 2002 to October 2010. Such attacks have long-lasting consequences on the life of the victim who faces perpetual torture, stigma and permanent damage for most of her life. It leads to medical complications, psychological trauma and a complete loss of livelihood.

6.82 The Criminal Law (Amendment) Act, 2013 has included specific sections in the Indian Penal Code, stipulating penalty and provision of fine for throwing acid on a person or even attempting to throw acid on a person. Thus, acid attack is now included as a separate offence. In addition, Section 326A and B IPC states that in addition to imprisonment, fine will also be imposed which shall be paid to the victim, and shall be an amount in order to meet the medical expenses and treatment of the victim. There is also now an important Supreme Court decision to regulate production, sell and purchase of acid¹⁰⁸. Despite these moves there are many survivors of acid attack waiting for justice and proper medical treatment. Compensation to victims of acid attacks is of vital importance as huge

medical costs are often involved¹⁰⁹. The victims of acid attack need both short term as well as long term specialized medical treatments and plastic surgeries.

Cyber Violence

6.83 Even though India is one of the few countries to enact Information Technology (IT) Act, 2000 to combat cybercrimes, issues regarding women remain untouched under this Act. The Act has termed certain offences as hacking, publishing of obscene materials in the net and tampering data, as punishable offences. The grave threat to security of women in general, is not covered fully by this Act. By all means, cyber-crimes against women are on the rise and women have been severely victimized in the domain of cyberspace. Some perpetrators try to defame women by sending obscene e-mails, stalking women by using chat rooms, , developing pornographic videos (mostly created without their consent) where women are depicted in compromising positions, , spoofing e-mails, morphing of images for pornographic content, etc. The sex-offenders look for their victims on social network websites, as well as on job or marriage websites, where people post their personal information for better prospects. The revealing of personal information has made women more a casualty of cybercrime.

6.84 The biggest problem of cybercrime lies in the operation and motive of the criminal. Since cyberspace is a transit space, the anonymity provides the offenders the chance to escape after the commission of the crime. Many websites and blogs provide security tips for safety of women and children over cyberspace¹¹⁰.

Practices and Efforts to Reduce Violence

Engaging Men and Boys

6.85 In recent years, both network based and formal experiments have happened to engage with men and boys in gender based violence prevention. These need to be encouraged and promoted. On network based initiatives, Men against Violence and Abuse (MAVA)¹¹¹ established in 1993 has reached out to over 5000 men and women facing gender-related problems. In 2001 another network based initiative began in Uttar Pradesh (UP) called Men's Action for Stopping Violence against Women (MASVAW)¹¹². MASVAW has a wide network of volunteers across several districts in UP. The MASVAW approach has also been recently expanded in the rural areas of Maharashtra. In 2012, a group - Men's Action for Equity (MAE)¹¹³, was started in Madhya Pradesh, to work with men for

gender equity and VAW issues. The group works towards involving men on issues of gender based violence, father care, and addressing masculinity¹¹⁴.

6.86 Men's groups and networks have worked closely with women's group and state machineries. For example, MAVA works closely with women's organizations in Mumbai like Akshara, StreeMukti Sanghatana, Sakhya, Mahila Dakshata Samiti, Special Cell for Women-in-Distress, and Sophia's Centre for Women's Studies. These initiatives help promote on-going referrals, joint collaborative programs for college youths and municipal school children, dialogue with women's groups across the state on men's involvement to tackle gender issues. They have been involved in contextualizing specific cases of acid attacks, molestations and rapes and use them in their awareness raising campaigns. The Forum to Engage Men (FEM¹¹⁵) is yet another network of individuals and organizations much closely aligned to feminist ideology. Launched in 2007, its primary objective is to work with boys and men to usher in a gender just society. It has raised concern over ways in which practice of masculinities aggravate violence, and gender inequalities can be addressed. FEM is also making the attempt to see that issues of violations do not get framed as women's issue but is more inclusive in which men get associated as well.

6.87 An evidence based programing, using structured experiment as opposed to network based initiative, called *Yari Dosti* has received large attention in recent years¹¹⁶. Working with several groups of men and boys in Mumbai's low income communities, *Yari dosti* demonstrated and validated the need for gender transformative programing while engaging with men and boys to prevent violence against women and girls.

6.88 Attempts have also been made by film personalities and the media to cover certain advertisements of male sensitivity to women. Aamir Khan's popular television program *Satyamev Jayate* made various episodes to discuss violence against women, acid attack, stalking/teasing, and also on engaging with men and boys¹¹⁷. In March 2013, Farhan Akhtar performed at a college concert in Bangalore representing his organisation, MARD¹¹⁸ and speaking against rape and discrimination. Using social networking sites, Akhtar made an attempt to popularize this campaign, and hopes to extending the campaign to schools and colleges, "to drive home the message that women need to be respected". In April 2013, Farhan Akhtar did a similar campaign in Kolkata at the Eden Gardens in which a poem was composed by his father, Javed Akhtar; sportsmen like Sachin Tendulkar lent their voice to it.

6.89 On primary prevention programs, Gender Equity Movement in Schools (GEMS) implemented by Mumbai Municipal Corporation in its schools has been hailed¹¹⁹ as a promising approach to address school based violence¹²⁰. The program is currently under implementation in the schools of Jharkhand.

State & Societal Responses

6.90 In response to the articulation of women's groups in national and international forums, the State has been seeking to address gender issues in its development policies, especially since the 1980s. This tilt is evident in its development policy statements such as the *Shramshakti Report* (1988) and the *National Perspective Plan for Women 1988-2000* (1988). These statements have also accommodated the problems of self-employed women and those working in the informal sector of the economy. Similar orientation towards women's health and education are seen in reports such as *Health for All by 2000* (1987), *The Challenge of Education* (1985) revised and updated as *National Policy on Education* (1991).

6.91 The Panchayati Raj Act (1992), and the Microfinance/Self Help Group (SHG) based poverty alleviation programmes initiated far-reaching changes in gender relationships. The enactment of the Panchayati Raj Act, through the 73rd and 74th Constitutional Amendments aimed at the progressive devolution of political powers to local communities. More than one million women for the first time in history enjoyed political power within local communities. Yet, despite the success of these experiments, the fate of the Women's Reservation Bill ensuring women's participation in Parliament and State Assemblies remains doubtful. The WRB if passed shall ensure "critical mass" of women enter the Parliament and State Legislatures. This is not to imply that women's equality will automatically devolve through political representation or that violence against women would cease.

6.92 Implemented with funds allotted through various state poverty alleviation programmes, the microfinance/SHG movements viewed as transformative and empowering for women, are said to have:

- improved women's economic position through access to loans, market, skill development and business development inputs;
- provided women functional literacy through cooperation with adult literacy and educational institutions; development of knowledge and skills has also enabled them to deal with local and district administration.

6.93 There is a need to evaluate microfinance/SHG movements in India to assess if they have led to reduction in violence. Kudumbashree¹²¹ in Kerala and Mahila Samakhya¹²² programs have done exemplary work in addressing the drivers that cause violence against women. Crime mapping¹²³ especially by associations of women in Kerala is worth evaluating and scaling up. In 2000, in a bid to strengthen SHG women, the Department of Rural Development, Andhra Pradesh, created the Indira KranthiPatham. The Programme facilitated SHG women in using their rights and bring about a safe working environment around them. Social Action Committees came up as support systems in every village; also Community Managed Family Counselling Centres. The resourcing of quality gender training contributed to women's radical thinking where they realised that violating women rights to life and livelihood is to be understood as subordination of women in society. A total of 11,832 Village level Social Action Committees, 516 *Mandal* level Social Action Committees and 4 District level Social Action Committees were formed to deal with cases related gender discrimination. A total of 85,546 SHG members who received gender training chose to work on protection of women rights as members in these committees. District level Gender Resource Groups (GREGs) were also created to address gender issues. All the Staff - the Community Coordinators, Assistant Project Managers, District Project Managers - in 22 districts are believed to have been sensitized to gender issues through training.

6.94 In areas where the Mahila Samakhya programmes have worked, *Nari Adalats* have evolved to respond to violence against women at the Gram Panchayat level in areas where the Mahila Samkhya programmes. A case in point is that of the Assam Mahila Samata Society. Nari Adalats have emerged through the *mahila sanghas* or through complaints that have been made to *sanghas*. Nari Adalats include new opinions and thoughts that have arisen in the society towards dowry, divorce, polygamy, etc. The Dondua Gram Panchayat Nari Adalat of Morigaon District (Assam) has settled 76 number of cases alone within four years.

6.95 In March 2014, following the Criminal Amendment Act, 2013, the Ministry of Health and Family Welfare, Government of India, brought out new guidelines giving clear directives to all health facilitators to ensure that survivors of all forms of sexual violence, rape and incest have immediate access to health care services. The guidelines suggests immediate and follow up treatment, post rape care including emergency contraception, access to safe abortion services, police protection, emergency shelter, documentation of cases, forensic services and referrals for legal aid and other services.

6.96 Further, under the same Ministry, in January 2014, the Department of Health Research (DHR) drew up guidelines titled, Forensic Medical Care for Victims of Sexual Assault that addresses psychological aspects of sexual violence. The new rules focus on bracing a survivor of sexual assault from any 'secondary victimisation' resulting from inadequate support from family, friends, service providers, and the criminal justice system. According to the guidelines, a counsellor must tell a survivor what might happen in court, and discuss methods by which they can handle the situation. Visualisation techniques can be employed to help the survivor recover from the trauma soon after being questioned; conversations with friends and family can be used to prevent the victim from thinking about the ordeal. The guidelines suggest the survivor may feel a sense of injustice resulting from lack of information; perceived lack of interest by the police or courts; delay in the legal process; or loss of income or job resulting from the impact of the assault.¹²⁴

6.97 Legislative interventions have been in the form of special enactments such as the Dowry Prohibition Act, 1961, which was enacted recognizing the need to address the social evil of dowry; the Indecent Representation of Women (Prohibition) Act, 1986, enacted with the specific objective of prohibiting the indecent representation of women through advertisement, publication, writing, and painting or in any other manner; The Protection of Women from Domestic Violence Act, 2005 a civil law, which seeks to provide emergency relief to women in the form of protection orders, residence orders, monetary relief and compensation orders. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 seeks to address issues of sexual harassment in the organized and unorganized sectors, and creates an effective complaints and redressal mechanism in the form of an Internal/Local Complaints Committee.

6.98 Other State initiatives include the **Nirbhaya Centres or One Stop Centres (OSCs)** initiated in the aftermath of the nationwide protest against the gang rape, and the death of the paramedic in 2012. The idea of a Nirbhaya Fund came up in which the then Finance Minister (in his budget speech, 2013-14) announced setting up the "Nirbhaya Fund" with Government contribution of Rs. 1000crores for the safety and security of women and girl children. As reported, for funding from the Nirbhaya fund, the Department of Information and Technology, and Ministry of Home Affairs proposed schemes to enforce mandatory provision of SOS Alert Buttons in all the Mobile handsets or providing SOS alert systems through free downloading for the police administration to respond to distress calls. Further, Ministry of Road Transport and Highways proposed a scheme of 'Security of Women in Road Transport in the country'. The Ministry of Women and Child Development sent a programme 'SHUBH' envisaging vulnerability mapping; support for prevention focused activities

such as awareness generation through sustained campaign initiatives against violence; advocacy; information dissemination regarding available services; sensitisation of caregivers; new measures for preventing violence as well as replicating good practices in identified locations.

6.99 With the current government's insistence to revisit the Nirbhaya Fund and Nirbhaya Centres in 642 districts of the country, as per the Ministry of Women & Child Development, these Centres are to provide support services to the survivors of any form of violence against women. Such Centres are to be, or rather encouraged to be located within a hospital. Although progress is being made globally, many women and girls who experience physical and sexual violence still lack access to quality multi-sectoral services. These services are essential as they provide much-needed support to survivors of violence, by keeping them safe, providing health care for their injuries, responding to their sexual and reproductive health needs, including provision of post-rape care and counselling, and facilitating their access to the police and justice system. Particularly vulnerable groups—such as migrants, women living with disabilities, indigenous women or women living in remote areas—have even more limited options and often lack access to basic services.

6.100 Among other initiatives of the current Government, *Beti Bachao Beti Padhao*¹²⁵ is a major initiative that will go a long way, if implemented in the spirit it has been conceived, to enhance value of a girl child. The Census 2011 showed that Child Sex Ratio (CSR) from 0-6 years in India had fallen from 927 in 2001 to an all-time low of 918 females per 1000 males in 2011. *Beti Bachao Beti Padhao* is a major comprehensive initiative to improve CSR and ensure girls' education towards ensuring gender equality. It focuses on multi-sectoral interventions in 100 gender critical districts, where the CSR is very low; wherein it will focus on implementation of the PC & PNDT Act, strengthen community action, improve retention of girls in elementary and secondary schools, ensure the availability of functional toilets for girls, capacity-building and sensitization of government officials and grass-roots functionaries. These interventions will be supplemented by a national media campaign.

6.101 Standard Operating Procedures (SOP) agreed upon by various stakeholders need to be developed to prevent and respond to Sexual and other forms of gender-based violence (SGBV). The response to SGBV requires the establishment of a multi-sectoral working group to enable a collaborative, multi-functional, inter-agency and community based approach. 4.101 There is also a need to put emphasis on monitoring and ensuring implementation of the various laws in an effective manner. Most of the laws mentioned above have an in-built mechanism to facilitate implementation. For example, the Dowry Prohibition officers under Section 8B of the DPA are required to take steps

towards preventing the giving and taking of dowry. The protection officers and services providers under the PWDVA are required to act as a bridge/link between the women and the court and assist her in accessing various other reliefs such as legal aid, medical facility and shelter homes. The Internal and the Local Complaints Committee are required to be set up under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in order to provide urgent redressal to a woman victim of sexual harassment. However, inadequate allocation of budget and personnel required for the implementation of gender specific laws act as a major impediment in achieving the objectives of these special laws. There is a need to understand the structural deficiencies in laws, rationalize the implementation processes particularly within the context of the existing criminal justice system.

6.102 In particular reference to women's campaigns against violence, the State enacted two important amendments to the Indian Penal Code. The impact of the amendments was limited i.e. The Criminal Law (Amendment) Act (1983) retained the patriarchal definition of rape and (despite women's demands) did not recognize marital rape. It however introduced a clause which made the revelation of a victim's name a criminal offence, and introduced more stringent punishment for custodial rape. Similarly, the Criminal Law (Second Amendment) Act (1983), intended as a deterrent against domestic violence, was narrow in its scope and implied dowry harassment (Gandhi, 1997: 582-35; Agnes, 1993: 19-33). Under the Act, the husband and his family were liable to prosecution in case of suicide by a woman within the first seven years of marriage; it empowered a police inspector to make a thorough inquiry into such cases.

6.103 In many instances, the enactments in terms of legislative and policy enactments were an immediate reaction to a particular incident. The amendments in the rape laws for instance, which were being demanded by the women's group for over a decade was only enacted after the Delhi gang rape case of December 2012. While State initiatives have emerged to redress crimes through legislations the last recent years (2005-date), has witnessed several legislations, taking a decisive stand to deal with the offender or perpetrator directly.

6.104 With all the Constitutional guarantees, it is the responsibility of the State to see that crime is reported and that there is easy access to justice for victims of violence. However, the reality shows the reluctance or rather the hostility in which such victims are attended to. This is especially true of marginalised groups in India, including the poor or those in remote areas where justice is beyond reach.

6.105 The *Nirbhaya* case also brought to the fore the issue of crime committed by juveniles. The boy, who was found to be below 18 years, was described as the most heinous of the rapists. Debates ensued in relooking at the definition of "child" under various laws including the Juvenile Justice (Care and Protection) Act, 2000. The element of individual care plan for the child is being debated as the objective is to give the juvenile offenders a chance to reform and re-integrate into society. The Government has recently amended the Juvenile Justice (care and protection) Act, 2000 in order to lower the age of juvenile from 18 to 16, if heinous crimes are committed.

6.106 To mention other initiatives, the Association of Strong Women Alone (Rajasthan) came up in 2000 comprising of single women, widows, women separated from their husbands, and those living alone. By 2008, the strength of the organisation was 26,299 spread over 28 districts of the State. Lobbying done by the Association members in favour of single women, led the State Government issue certain orders that gave priority to single women in terms of their jobs, pensions, assistance during drought relief work, and a waiver of school fees for their children. In the context of divorced women, the Government has given legal recognition to the divorce granted by a *Qazi* for all administrative and governance purposes in the Muslim Community. With this, Muslim Divorced Women are now eligible for pension and for all government facilities and entitlement. Till now, the Association has given co-operation in Jharkhand, Himachal Pradesh, Bihar, Gujarat, Punjab and Maharashtra.

6.107 The Safe City Campaigns in Delhi/West Bengal/Assam.. Every metropolis in India portrays a sorry picture where women are groped, followed, stalked and sexually assaulted almost every day. Jagori, a women's organisation in Delhi, initiated the Safe City Campaign in 2004 with support from UN Women and in collaboration with various other national and International partners. The success of safe city initiative is in its bold confrontation of VAW in urban spaces. Believing that most women have no voice, the safe city campaign believes that the worst affected must come out of their unsafe environment. The campaign is a joint efforts of the Department of Women and Child Development, the Delhi Government and UN Women and the UN Habitat.

6.108 A similar initiative was taken through individual effort of Brinda Dasgupta who started the Campaign completely on her own after suffering assault on a Kolkata street in broad daylight. Through meetings and gatherings, the Campaign grew in 2010 in partnership with the Kolkata Police and Kolkata Municipal Corporation. The Telegraph joined this Campaign as a media partner. The Safe City Campaigners also encouraged the Puja Committees of Kolkata to support their cause. A case in point is that of the New Alipore Association Puja Committee, which assisted in distributing

small leaflets listing some important numbers that women could use when teased or molested, with a few basic safety instructions.

6.109 Almost 16 months after the media's relentless exposure of a girl molested in the streets of Guwahati, Assam in 2012, the North East Network conducted a survey to find out the safety issues of women commuters in the city. Inspired by the safe city campaign in Delhi, the organization involved a mixed group of young volunteers to interview a total sample of 1,045 women. The results of the survey reveals the range of harassment /abuse that women have suffered in the city (55.5%) physical assault (31.3%) and staring or leering (36%).¹²⁶ A public hearing on sexual violence in Assam has brought out shocking revelations of 20 cases, which points a finger at judiciary. That the judicial mechanism needs to be revamped was made in order to ensure that the victims get immediate aid as per the latest legal provisions.¹²⁷

6.110 The 16 Days Campaign Protesting Violence against Women is an international campaign in order to symbolically link VAW and human rights. The campaign has been used as an organising strategy by individuals and groups around the world to call for the elimination of all forms of VAW by a) raising awareness about gender-based violence as a human rights issue at the local, national, regional and international levels; b) strengthening local work around VAW; c) establishing a clear link between local and international work to end VAW; d) providing a forum in which organisers can develop and share new and effective strategies; e) demonstrating the solidarity of women around the world organising against VAW; and f) creating tools to put pressure on governments to implement promises made on eliminating VAW.

6.111 The One Billion Rising (OBR) Campaign a worldwide campaign was launched in India by Sangat South Asia in November 2012 Signed by 182 countries, OBR campaign seeks to stop VAW. Thousands of activists and women's groups' world over have struggled to put an end to all forms of VAW and girls. The word One Billion emanates from what the United Nations stated - *that 1 in 3 women on the planet will be beaten or raped during her lifetime*. On February 14, 2012, India, along with other countries demonstrated the campaign through music, dance and walks. The message was strong all over the country ; the OBR is likely to be an annual event to remind all about stopping VAW.

6.112 **Influencing Parliamentarians:** An organization called Democracy Connect (DC) has attempted to influence Members of Parliament (MPs) on preventing VAW. In this context, a MP from Sikkim, who is also a member of the Asia-Pacific Standing Committee of Male

Parliamentarians on Prevention of VAW & Girls, showed interest in pursuing this initiative of DC as well as focus on ensuring safety of north east women in major cities of India, where they migrate for better opportunities of education and jobs. This initiative is commendable and the strategies chalked out to involve the MPs included the following:

- Parliamentarians must familiarize themselves with different forms of VAW viz. domestic violence; VAW in conflict situations; violence during displacements in the event of ethnic conflicts, sexual harassment in the work place; violence and murders in the name of witch-hunting, violence against trafficked or economic-migrant women; relief homes, etc; Making MPs sensitive towards rapid decrease in number of girls as well as rise in single male child families and social consequences of the same. This includes the PCPNDT Act; Vishaka Judgement (behaviors/attitudes in Parliament construes harassment at the work place and therefore is, punishable by law).
- Orient Parliamentarians on the Convention for the Elimination of All Forms of Discrimination Against Women, (CEDAW); ICPD Programme of Action, which recognizes reproductive health as a human rights issue – both have been ratified by India.

National Mechanisms

National Commission for Women

6.113 The National Commission for Women (NCW) is a statutory body established under the National Commission Act, 1990 to safeguard women's rights. It has a wide mandate covering almost all aspects of women's development viz. to investigate and examine the legal safeguards provided for women under the Constitution, and other laws, and recommend to Government measures for their effective implementation. Also, review the existing provisions of the Constitution and other laws affecting women and recommend amendments to meet any lacunae, inadequacies or shortcomings in such laws. It can look into complaints and take *suo moto* notice of matters relating to deprivation of women's rights as well, and take up the issues with appropriate authorities. Further, NCW can take up studies/research on issues of relevance to women, participate and advise in the planning process for socio-economic development of women, evaluate the progress made thereof; inspect jails, remand homes etc. where women are kept under custody and seek remedial action wherever necessary. NCW has launched the *Parivarik Mahila Lok Adalats* (family courts conducted by women) to ensure speedy justice for women. These adalats are organized even in remote areas with the help of the state legal aid and advisory bodies, state/district judicial machineries, and the women's groups.

6.114 The issue that the Commission is merely a recommendatory body and has no decision making power per se has been raised in many forums. In the state visits conducted by this High Level Committee (HLC) the State Commissions for women highlighted similar issues which acts as an obstacle for them in carrying out their duties.¹²⁸ Earlier this year, the Ministry of Women and Child Development presented a proposal to the Cabinet to strengthen the National Commission of Women Act, 1990 by vesting more powers to it. The proposed changes is to ensure that the commission has the same powers as the NHRC, giving it the powers of a civil court to conduct judicial proceedings. Currently, the commission has powers of simply summoning, but with the changes, defaulters will have to pay up to Rs 5000 for not appearing. The selection of the chairperson will be taken care of by a committee headed by the Prime Minister, and only a retired judge will be appointed.

National Mission on Empowerment of Women (NMEW)

6.115 A more recent initiative of the Government is the launch, in March 2010, of the National Mission for Empowerment of Women (2010-15). The NMEW aims to use convergence of schemes/programmes of different Ministries and Departments in securing women's social, economic and educational empowerment, along with monitoring them and reviewing gender budgeting in the country. The Mission aims at initiatives to facilitate the processes that contribute to economic empowerment of women, social empowerment of women with emphasis on health and education, eliminate VAW, gender mainstreaming of policies, programmes and institutional arrangements, awareness generation and advocacy for bridging information and service gaps, etc.

Other Initiatives

6.116 *Family Counselling Cells* (FCCs) providing preventive, referral and rehabilitative services to women and children survivors of violence, have been established across the country by the Central Social Welfare Board (CSWB), which was constituted in 1953 by a parliamentary resolution. The CSWB is a semi-autonomous body comprising predominantly social workers with knowledge of the prevailing social reality. Its' mandate is to provide technical and financial assistance to the voluntary organizations. Since 1984, the CSWB, through the State Social Welfare Advisory Boards (SSWABs) has established Family Counselling Cells (FCCs) attached to voluntary organizations. The venture was expanded in the 1990s to the establishment of FCCs attached to select police stations.

6.117 The *Mahila Samakya* programme, initiated by the Department of Education, Ministry of Human Resource Development with funds from the Dutch Government, and the Microfinance/Self Help Group programmes may be categorized as an attempt to prevent violence through the empowerment of women.

6.118 *Homes for Juveniles, Homes and Shelter for Women* - Some of the schematic interventions carried out by the Government in the form of shelter homes for protection of women are as follows:

- Short Stay Homes - Recognizing the need to prevent women from exploitation and to support their survival and rehabilitation, the scheme of Short Stay Home (SSH) for women and girls was introduced. This scheme provides for temporary accommodation, maintenance and rehabilitative services to women and girls rendered homeless due to family discord, crime, violence, mental stress, social ostracism.
- Swadhar Scheme - This Scheme has been launched with provisions for food, shelter, clothing, counselling, training, clinical and legal aid to rehabilitate women in difficult circumstances.
- Ujjawala - is a comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation, Re-Integration and Repatriation of Victims of Trafficking for Commercial Sexual Exploitation. The Scheme provides for shelter, food, clothing for victims, counselling, medical care, legal and other support, vocational training and income generation activities besides also promoting community based systems to prevent trafficking from source areas.

6.119 *All Women Police Stations (AWPS) and Mahila Suraksha Samitis (MSS)*. The State has also put in place certain punitive vigilance and conciliation mechanisms to address the issue of VAW in response to women's demands. These include the All Women Police Stations (AWPS) and Mahila Suraksha Samitis (MSS) established in different parts of the country. The AWPS was established because of the assumption that women and children are not comfortable entering a general police station to file complaints. The existence of the AWPS has caused serious flaws in the investigation of crimes against women. This is because in the cities, where the AWPSs are established, the local police stations often refuse to file complaints or investigate crimes against women. Women are directed to the AWPS which may be located at a considerable distance from their place of residence. The AWPS are also not necessarily equipped to help women to overcome the trauma of violence, file complaints, and seek remedies. The MSS is a committee comprising women members of the

Legislative Assembly, social workers, activists and researchers in Gujarat. These committees have the power to enforce meticulous police investigation in cases of atrocities against women. Through liaison with the police and a network of sub units in the various districts and Talukas (administrative sub divisions in districts), the MSS can maintain vigilance against gender crimes and call to question criminal investigation procedures in such cases; it can also sensitize the police regarding such crimes.

Conclusions and Recommendations

6.120 This chapter has provided an overview of the magnitude and the drivers of violence against women in varying contexts, and at various stages of their life cycle. Further, locating the question within the broader socio-economic struggles of the Indian women's movement since the 1980s, this chapter has examined the state and civil society responses. It has argued that the action for change will have to go beyond the formulation of laws to incorporate strategies, policies and programmes that are based on the experiences and perceptions of women.

6.121 Therefore, the recommendations stated below imply the need to look beyond the legal framework to tackle the problem at multiple levels. The strategies to prevent VAW and to meet the needs of the survivors can be effective through state and civil society partnership. There is an urgent need to focus on both prevention of VAW and girls, protection of their rights, as well as provision of quality, sensitive and adequate services to survivors of violence including speedy administration of justice. We reiterate that government must fulfil its obligation to gender equality and women's human rights in line with the Beijing Platform for Action, and commitments made to CEDAW Committee and that the Government must take cognizance of and implement the recommendations of the Justice Verma report as speedily as possible.

6.122 *The Recommendations:*

A. Adopt a National Policy including a National Action Plan to End VAW

- National policy including a national action plan must commit to 'zero tolerance' to VAW and girls. There is an urgent need to break silence around violence and de-stigmatize women survivors. This can be done through the creation of supportive and enabling environment.
- The very first step to ensure a zero tolerance is to criminalize all forms of sexist language and expressions – verbal and non-verbal that demean women, and are used to compromise women's dignity and bodily integrity. These expressions must be considered punishable act

by law. Through both mass awareness campaigns and educational programs also through a legal back up on the line of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, promote language of gender equality and respect and dignity for women.

B. Generate High Quality and Regular Population based Representative Data on Various Forms of

VAW and girls; Improve Quality of Crime Data and Assess Cost of Violence

- There is a complete lack of reliable and periodical data on VAW and girls, which leads to a situation of speculations and sensationalism; it also creates an atmosphere of fear and anxiety. This kind of situation can be extremely debilitating. Though the existing data is limited to violence faced by married women, there is a huge gap between what is reported on marital violence by the national surveys such as the National Family Health Survey (NFHS-3) and the figures from the police's National Crime Records Bureau (NCRB). *There are no nationally representative data on VAW and girls in open/public spaces, and work places.* Sexual harassment at the workplace remains the most under-reported form of violence despite legislative responses. A survey on child sexual abuse was done in 2005-06, which was a onetime activity that provided a lot of insights. NFHS produces high quality data but is limited to married women. Government must institute similar high quality data gathering exercise on a regular basis to provide the prevalence and incidence of violence in various settings – work places both from organized and unorganized sectors, public and open spaces, educational and health institutions and other important institutions like prison, shelter homes, and short-stay homes to inform policy and program responses.

Key Recommendations by HLC On VAW

Adopt a National Policy including a National Action Plan to End VAW

Criminalize sexist expressions demeaning woman and her bodily integrity

Generate High Quality and Regular Population based Representative Data on Various Forms of VAW and girls; Improve Quality of Crime Data and Assess Cost of Violence

Undertake Systematic and Evidence based Primary Violence Prevention Programs

Smart cities should be safe cities. Design, Implement and Evaluate Safe City Programs

Establish one stop centre per block

Strengthen Implementation of various Violence Prevention Laws and Policies through Allocation of adequate Resources, Coordination and Capacity Building of Implementing Agencies

- There is an urgent need to review the various data systems in place to record crimes and evaluate them for their quality and completeness.
- Undertake systematic and regular micro studies to assess the ground realities of VAW and girls in different contexts to inform programs. Gender research centres and Universities can be encouraged to undertake such studies under scholarship programs.
- There are no reliable estimates on the economic cost of VAW in India. Global estimates indicate huge economic cost of violence in different countries. For example, estimates of low productivity from domestic violence against women ranged from 1 - 2% of the GDP in Brazil and Tanzania to 2.0% in Chile and the annual cost of intimate partner violence was estimated to be \$5.8 billion in USA in 2003. Previous studies estimating the socio-economic costs of gender based violence have documented the drop in women's earnings due to lost productivity, job loss, due to sudden death and loss of tax revenues due to death and incarceration.

C. Undertake Systematic and Evidence based Primary Violence Prevention Programs

- Conduct sustained, large scale, national public education campaigns through national print and audio visual media geared towards changing mind sets of society to end gender inequalities and increase awareness of rights, current laws and policies.
- Introduce gender equality and violence prevention programs in schools and colleges on the lines of Gender Equality Movement in Schools (GEMS) with clear monitoring framework and accountability mechanism. Build gender equality agenda in the training of teachers, and build their capacities to engage with children on issues of violence at an early age and within the school system.
- Engage men and boys to dispel and redefine the traditional, harmful, and violent notions of manhood by supporting networking among men's groups like MASVAW, MAVA and evidence based programming like *Yari Dosti*. The programs to question and challenge traditional forms of masculinities and to create new norms must be systematically undertaken in various institutions, and by using innovative models of behaviour change.
- Encourage and promote primary prevention exercises on the line of "women friendly Grama Panchayat", in Kerala which undertook detailed crime-mapping exercise to prevent VAW. A detailed description of this program is presented in chapter on women centric program and schemes in India. Facilitated by women's collective Kudumbashree the gram panchayat reached out to women and girls to step forward to share their experiences of violence

including so-called “eve-teasing” and identify safe and unsafe places of the panchayat. While a systematic evaluation is yet to be undertaken, all anecdotal evidence points to the fact that such processes themselves in addition to the numerous immediate, medium and long term interventions put into place in this Panchayat have been a major deterrent in terms of violence against women. It is apparent that such grassroots action is needed in all Panchayats of the country.

- Engage civil society and police to set up Mohalla Committees¹²⁹ in urban areas on the lines of what civil society and Mumbai police carried out in Mumbai soon after 1992 riots. By all evidence the experiment was hugely successful to maintain, peace and curb overall
- Alcohol is a serious risk factor promoting violence against women. Studies have established the linkages as noted earlier. The structural perspective to address alcohol and VAW however is missing. In other words, it is essential to look beyond individual drinking patters and address how alcohol policies of selling, taxation, regulation etc. buoy alcohol consumption and how could these be revised to address VAW and other social harms needs to be at the core of discussion on these issues. Moreover there seems to be a minimal inter-sectoral dialogue between stakeholders that are directly affected by these issues, viz: alcohol policy makers and stakeholders, programmers and policy makers who address VAW.

D. Smart cities should be designed to be safe for women and girls

One of the key indicators of smart cities should be that they are safe cities for women. Improve access and safety for women in public spaces. This requires a multi-sectoral approach. An assessment is needed to identify vulnerable sections of the population to design effective solutions. For instance, displacement, poverty and ageing are risk factors for women. There is a need to harness strategies and resources from multiple sectors to improve the health and well-being of women living in urban areas. By mapping safety risks such as defective infrastructure, obscured walking routes, and deficient lighting and improving infrastructure including transportation services, the city can better protect the safety and well-being of its vulnerable population especially women and girls

E. Ensure effective implementation of violence prevention Acts and Legislations

- Though some States have allocated budget for the implementation of the PWDVA, there is need for assistance from the Central Government for effective implementation of the PWDV Act. The growing trend of allegations on women misusing various laws must be resisted and

consciously countered. The Government has a responsibility to create proper perspective on VAW through public education and awareness programs.

- Ensure development of multi sector-response by effective coordination between the protection officers (PO), service providers, police and the legal services authority. Some suggestions in the regard include: a) Having a provision of Full time POs; b) preferably recruit senior women POs; c) Having someone with experience on the issue is an added advantage; d) Number of POs to be appointed must take into account the size and population of the area; also the degree of its accessibility; e) Providing for necessary office assistance such as infrastructure, support staff, communications facilities, etc. by the State Government; f) Gender sensitisation of POs, police and service providers to be done periodically; and g) Family Counselling Centres to have full knowledge of the Act as well as the support they can accrue from POs.
- Allocate sufficient resources for One Stop Centres to be established one per block; and ensure adequate staff to run them with access to medical attention, psychological counselling, legal aid, shelters, and other support services.
- In a time bound manner, ensure resource allocations for the establishment of special courts, complaints procedures and support services that come under the legislations of VAW.
- Ensure speedy implementation of relief orders. Judiciary also needs to be sensitized to domestic violence issues.
- Ensure that all laws, policies and services are accessible, and take into account the needs of women and girls who face multiple discriminations due to class, caste, religion, disabilities, sexual orientations, and other marginalisation.
- Ensure reparative justice and gender sensitive interventions at all stages of the displacement cycle for women and girls displaced due to ethnic violence and conflict, paying special attention to reproductive health, psychological, legal and socioeconomic needs.

Ensure effective implementation of various violence prevention schemes, improve adequacy, quality and effectiveness of support services including inter-agency coordination

- Chapter on women centric programs and schemes presents a detailed analysis of various schemes and what need to be done to improve them. We shall not repeat them here. However broadly we recommend that government should provide holistic, accessible, quality, sensitive, sufficient and coordinated support services for women and girl survivors of violence

including legal, police and medical support, counselling, shelter, employment and compensation

- Adopt a Standard Operating Procedure for making the police force accountable and sensitive as they deal with incidences of violence against women. Gender-sensitive investigations must be enforced, starting with the filing of the FIR (First Information Reports). This way cases can be better reported and conviction of perpetrators assured.
- There must be a well-coordinated interface between different departments and those institutions dealing with the sexually abused and support services for ensuring comprehensive care to survivors of sexual violence. For example, Legal Services Authority, Women's Commission and Child Welfare Committees including hospitals that deal with SOP Management of Sexual Assault - their convergence is needed because a lot of sexually abused women are victims of trafficking, internally displaced, abducted, whose cases could be referred to the Commissions and the like.

Undertake appropriate legislative changes, repeals and changes in customary laws

- Enact special measures for punishing perpetrators of acid attacks, and strictly regulate the sale and distribution of acid.
- Take efforts towards eliminating any criminalisation of same sex
- Repeal the Armed Forces Special Powers Act (AFSPA), which gives unbridled powers to security forces in areas where the Act is imposed.
- Bring out a mechanism for dealing with cases of extra judicial killings and arbitrary detention of women by state actors and security forces; currently there is no mechanism to look into problems of arbitrary detention.
- Practices of the customary laws that obstruct women's participation in decision making both in conflict and post conflict reconstruction must be checked and banned. It must be ensured that there is no derogation on international standards in the context of customary laws that have strong underlying patriarchal content.

Table 1: Crime Head-wise Incidents of Crime against Women during 2001-2012
(Sec. 363-369, 371-373 IPC)

Crime Head	Year												
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Rape	16075	16373	15847	18233	18359	19348	20737	21467	12139 7	22,172	24206	24,9 23	337 07
Kidnapping/ Abduction	14645	14506	13296	15578	15750	17414	20416	22939	25741	29795	35565 *	38,2 62	518 81
Dowry Death	6851	6822	6208	7026	6787	7618	8093	8172	8383	8391	8618	8,23 3	808 3
Torture	49170	49237	50703	58121	58319	63128	75930	81344	89546	94041	99135	106, 527	1,18 ,866
Molestation	34124	33943	32939	34567	34175	36617	38734	40413	38711	40613	42968	45,3 51	707 39
Sexual Harassment	9746	10155	12325	10001	9984	9966	10950	12214	11009	9961	8570	9,17 3	125 89
Importation of Girls	114	76	46	89	149	67	61	67	48	36	80	59	31
Preventing Sati	0	0	0	0	1	0	0	1	0	0	1	0	0
Immoral Traffic	8796	6598	5510	5748	5908	4541	3568	2659	2474	2499	2435	2,56 3	257 9
Inde. Rep of Women	1052	2508	1043	1378	2917	1562	1200	1025	845	895	453	141	362
Dowry Prohibition Act, 1961	3222	2816	2684	3592	3204	4504	5623	5555	5650	5182	6619	9,03 8	107 09
Total	14379 5	14303 4	14060 1	15433 3	15555 3	16476 5	18531 2	19585 6	20380 4	21358 5	22865 0	24427 0	30954 6

Source- Sec. 363-369, 371-373 IPC; Also,

National Crime Records Bureau, Ministry of Home Affairs. Crime in India. 2005 Statistics. Chapter-5 Crime against Women. Pp. 241-246; National Crime Records Bureau, Ministry of Home Affairs. Crime in India. 2010 Statistics. Chapter-5 Crime against Women. Pp. 79-88; National Crime Records Bureau, Ministry of Home Affairs. Crime in India. 2011 Statistics. Chapter-5 Crime against Women.

Table 2: Proportion of Crime against Women (IPC) towards total IPC crimes

Year	Total IPC Crimes	Crime Against women (IPC cases)	Percentage to total IPC crimes
2001	17,69,308	1,30,725	7.4
2002	17,80,330	1,31,112	7.4
2003	17,16,120	1,31,364	7.6
2004	18,32,015	1,43,615	7.8
2005	18,22,602	1,43,523	7.9
2006	18,78,293	1,54,158	8.2
2007	19,89,673	1,74,921	8.8
2008	20,93,379	1,86,617	8.9
2009	21,21,345	2,03,804	9.2
2010	22,24,831	2,13,585	9.6
2011	23,25,575	2,28,650	9.8
2012	23,87,188	2,44,270	10.2
2013	26,47,722	2,95,896	11.2

Sources: The Table is prepared from the following sources: 1) National Crime Records Bureau, Ministry of Home Affairs. Crime in India. 2005 Statistics; Chapter-5 Crime against Women; Pp. 241-246. 2) National Crime Records Bureau, Ministry of Home Affairs. Crime in India. 2010 Statistics; Chapter-5, Crime against Women; Pp. 79-88; 3) NCBR: Crime in India (2011); Pp198.

Table 3: Statistics on Crime in the Domestic Sphere

Nature of crime	Year			
	2010	2011	2012	2013
Cruelty against married women (Section 498A of the IPC)*	94041	99135	106527	118866
Dowry death (Section 304B IPC)*	8391	8618	8233	8083
Protection of Women from Domestic Violence Act, 2005**	11,718	9413	N/A	N/A

*Source: National Crime Records Bureau Report, 2013.

**Source: Rajya Sabha Unstarred Question 1073.

- ¹ Justice Verma, J.S., Justice Seth, L. and Subramaniam, G. (2013). Report of the Committee on Amendments to Criminal Law. Government of India.
- ² Butalia, Urvashi (2014). December 16 2012: A Rape, a Murder and a Movement. Heinrich Boell Stiftung, India.
- ³ One of the senior leaders of a political party while referring to the Mumbai rape case, in a public speech, said, "Boys will be boys after all...they are likely to commit these kinds of little mistakes..."
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- ¹⁰⁹ There are organisations like the Parivartan Jan Andolan, (PJA), making all attempts to stop the acid attacks and pave the way for complete justice and rehabilitation.
- ¹¹⁰ Cyber crime against women in India by D Halder, <http://www.cyberlawtimes.com/articles/103.html>
- ¹¹¹ <http://www.mavaindia.org/>, retrieved on May 4, 2015
- ¹¹² <http://www.chsj.org/masvaw.html>, retrieved on May 4, 2015
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¹²⁷ Public Hearing on Sexual Violence (WinG Guwahati, January 2014) took note of cases of rape (10), gangrape (2), molestation (4), voyeurism (1). In addition there were reports of acid attack, marital rape, and state-induced sexual violence covering 10 districts of Assam. According to the National Crime Records Bureau Data in 2012, Assam had 1716 incidence of rape. We are informed that this data may be inadequate because of under-reportage.

¹²⁸ Members, Tamil Nadu Commission for Women, December 2014.

¹²⁹ Thakkar, U. (February 07, 2004). Mohalla Committees of Mumbai. *Economic and Political Weekly* Vol - XXXIX (06).

Chapter- 7

Women and the Law

Introduction

7.1 Independent Indian society has traditionally placed emphasis and reliance on legislative reform to improve the status of women and to accord them their fundamental rights. This chapter will address post-1974 legislative reforms and changes in the position of women vis-à-vis the law, thereby attempting to arrive at a more holistic picture on the legal status of women.

7.2 Gender based violence and discrimination against women continues to be a pervasive feature of our society. Unequal economic, social and political status and position of women is an outcome of patriarchy and the deeply entrenched socio-cultural stereotypes about women. These are sometimes perpetuated by laws, regulations, and policies which do not sufficiently address the subordinate status of women.¹ The past year has seen a watershed of activism and outrage at women being denied their fundamental rights. These protests were incited by the rise in crimes against women and triggered by the gruesome gang rape of December 2012 and led to a spur of legislative reform in the form of the Criminal Laws Amendments and the Sexual Harassment at the Workplace (Prevention, Prohibition, and Redressal) Act 2013. Though the past two decades in particular have seen a number of enactments for the protection and empowerment of women in both the public and private sphere, yet gender based violence and discrimination against women continue to be a pervasive feature of our society.

7.3 There is clearly a lacunae in the laws and also gaps in their implementation; this chapter presents these deficiencies by looking at Government policies, laws and locating the women within the legal system. The Chapter begins by laying out the Constitutional rights in favour of women and deals with laws that impact the socio-economic status of women, that is, personal laws governing marriage, divorce, inheritance and others. As crime against women is on the rise and has incited nationwide protests and outrage, the next section delves into gender-based crimes and laws on dowry, rape, sexual harassment, trafficking, honour killing and others. The third section deals with labour laws with particular reference to those

impacting rights and working conditions of women. The final section deals with access to justice and other relevant issues such as police reforms, prison reform viz-a-viz women.

7.4 The Constitutional rights of women have undergone a conceptual change. Articles 14, 19, and 21, the right to equality before the law, right to freedom and liberty and the right to life respectively are said to constitute a Golden Triangle "which are of prime importance and which breathe vitality in the concept of the rule of law".² Articles 14, 15 and 16 form part of the scheme of the Constitutional right to equality. Articles 15(3) and 15(4) are now considered integral components of the right to equality and equality calls upon the State to give special treatment to persons in different situations in order to establish substantive equality. It is in light of this conceptual shift that women's demand for affirmative Government action and legislative reform must be considered. Adopting positive measures to abolish inequality is a duty cast upon the State by the Constitution of India and that women and marginalized communities should be the subjects of affirmative action is part of their fundamental right to equality under Articles 14, 15 and 16.

7.5 Displaying conclusive commitment to gender justice and women's rights, India ratified the Convention on Elimination of all forms of Discrimination against Women (CEDAW) on the 25th of June 1993. CEDAW carries broad and perceptive definitions of discrimination and gender-based violence. It places an obligation upon State parties in Article 11(1) to:

"take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure on the basis of equality of men and women the same rights in particular (a) the right to work as an inalienable right of all human beings; (b) the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction"

7.6 As per the Verma Committee Report, "CEDAW, for the first time in the sphere of international law, accorded primacy and supremacy to women's human rights."³ India, as a party to the Convention, must display commitment to the principles elucidated in CEDAW and adherence to its clauses. CEDAW along with the Universal Declaration of Human Rights (UDHR) have been cited extensively in several important judgments by the Hon'ble Supreme Court and have served as benchmarks to test the violation of Constitutional rights.

7.7 The further sections of the chapter proceeds with this Constitutional framework of Fundamental rights and duties in mind. It takes the position that the status of women of all classes shall be so as to enable them to reach their fullest potential, which requires prevention of violence, representation in the public sphere and at all decision making positions and removal of factors which jeopardize a woman's socio-economic security. Access to justice is yet another area that has been analyzed with a view to ensure that women have means to redress the violation of their rights.

Section I - *An assessment of Family Laws*

7.8 With a rich and diverse cultural heritage, religious beliefs and customary practices, India provides a vast, complex and at times a contradictory field of personal laws where the traditional coexist with the modern.⁴ British rule brought with it uniform codes of civil and criminal law but omitted personal law, as to intervene in matters close to the very heart of religious doctrine and practice⁵ and thus personal law, determined by the religion of the subject, has persisted in India since before the assumption of power by the crown. Till today, in India divorce, marriage, inheritance and succession are the subjects of personal law, which varies from religion to religion and is 'attached to an individual at birth and applied to the person wherever he or she goes'⁶.

7.9 In the context of women's rights, one cannot adopt a linear view with customs and scriptures forming one end of the spectrum and statutory and jurisprudential reform at the other. The history is complex and are not only constrained by certain patriarchal norms but moulded by several social, economic and political underpinnings.⁷ The Preamble clearly signals that we have chosen the democratic path under rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. Thus, suggestions for Law Reform contained in this section need to contextualize "rights" and "social justice" as stated in the Preamble of the Constitution and is required to be based on an inclusive approach so that women who are situated at the margins of society are not excluded from the realm of rights and entitlements.

7.10 The Constitution of India guarantees equality and equal protection to both men and women. Growth and development of the nation has to translate into an environment in which women are able to access and enjoy rights and freedom guaranteed in the Constitution at par with men. On analysis, this Committee has found that Personal Laws contain several provisions that are discriminatory towards women and amongst women of different religions. Law has to be dynamic and should keep pace with the changes in social, cultural, economic and political arena. In order for an egalitarian system to prevail, the Legislature must ensure that the law acts as a catalyst in achieving the ultimate objective of a welfare state.

7.11 Article 44 of the Constitution requires the State to endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India. This aspect however seems to have been given a new meaning through the enactment of laws such as the Protection of Women from Domestic Violence Act, 2005, the Prohibition of Child Marriage Act, 2006 and the Medical Termination of Pregnancy Act, 1971, all of which are applicable to women irrespective of their religion. Thus, the way ahead to safeguard women's rights appears to be two pronged, firstly through a step by step approach of either through enactment of laws which are universally applicable to women of all communities and secondly through introduction of a particular aspect for reform in all existing laws. Thus, in this entire debate, rather than excluding women from the realm of rights, we need to adopt an inclusive approach using Article 21 so that women are not deprived of their right to live with dignity.

7.12 Personal Laws come under a specific domain of civil law and should imbibe the goals as propounded by the makers of our Constitution through provisions enumerated in the Directive Principles of State Policy. There is a need to address discrimination not only *de jure* but also *defacto*, which necessitates State to adopt laws, policies and practices and undertake proactive measures and affirmative action in order to obliterate these discriminatory provisions and practices. Thus, all personal laws should be in tandem with the principle of equality. Women are working and contributing to the family and society in many ways and it is high time the State recognizes the unpaid contributions of women in their families. The State should enact laws in areas of matrimonial property in which no personal laws exist and ensure women right to property and assets in the natal and as well as in the matrimonial home.

7.13 There is a strong need today as never before to make Indian women aware of their rights and create systems which ensure that women are able to access these rights and enjoy them at par with men. Attaining gender equality is not a fight by the women alone but it is a responsibility of every citizen. Quoting Krishna Iyer, J:

"The fight is not for woman's status but for human worth. The claim is not to end inequality of women but to restore universal justice. The bid is not for loaves and fishes for the forsaken gender but for cosmic harmony which never comes till woman comes".⁸

7.14 In light of the framework as set above, the current section seeks to examine rights of women in marriage, divorce, inheritance, succession, custody and guardianship under the

broad framework of Hindu, Muslim, Christian and Parsi Laws. Since the examination of the above issues would require going beyond laws which are specifically applicable to the community, legislations such as the Special Marriage Act, 1954, the Foreign Marriage Act, 1969 and issues such as age at marriage, registration of marriage and NRI marriages have also been dealt with. Customary laws do not find place in this report but would be dealt at length by the Committee in its substantive report.

Marriage and Divorce

I. Hindu Law

7.15 The Hindu Marriage Act, 1955 (herein after referred to as the HMA) resulted from an effort at securing some legal rights for Hindu women after independence by 'amending and codifying the existing laws relating to marriage'.⁹ The Act retained the sacramental aspects and ritualistic solemnization of a Hindu marriage and also included formal recognition of the dissolution of marriage under certain conditions. It had the effect of bringing Hindu personal law reform within the powers of the State.

7.16 The matrimonial remedies granted by the HMA were "judicial separation, restitution of conjugal rights, declaration of nullity and annulment and finally, divorce".¹⁰ Dissolution of marriage under the HMA is based on three separate theories of divorce. The first is the theory of matrimonial fault or offence.¹¹ Secondly, the HMA allowed the dissolution of marriage based on the 'theory of frustration due to specified circumstances'¹², which include mental disorder or venereal disease. Finally, following a 1976 amendment, the HMA also allowed divorce through mutual consent in which the husband and wife can agree to part ways and ask the court to dissolve their marriage after a period of separation.

7.17 Section 13 (divorce) lays out the circumstances under which a spouse can apply for a decree of divorce. The grounds for divorce under S.13 (1) (i) are adultery, cruelty, desertion, religious conversion, or mental disease/disorder. S.13 (2) provides the wife additional rights to divorce where the husband had a wife prior to marrying her, where the husband had been guilty of rape, sodomy or bestiality, where cohabitation is not resumed one year after the grant of a maintenance order, and if her marriage was solemnized before she was fifteen and she wishes to repudiate it between the ages 15-18. The Marriage Laws (Amendment) Act, 1976 reformed the HMA to introduce several new grounds for divorce, including cruelty,

desertion, and adultery, which had previously only been grounds for judicial separation. The 1976 Amendment was a positive step, especially since it also introduced mutual consent as a means to obtain divorce in Section 13B. The 1976 amendment modernized the HMA by allowing the dissolution of marriage in three scenarios, where there is matrimonial fault, mutual consent, and frustration by disease or insanity

- **Restitution of Conjugal Rights**

7.18 Section 9 of the HMA states that when either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply for restitution of conjugal rights. For decades after the enactment, Courts held that a Hindu marriage is a sacrament and that it is the duty of the wife to reside with her husband. It has only been post 1975 that Courts began to look into aspects of a woman having a right to hold her job in case it requires her from being away from her husband.

7.19 In the case of *N.R. Radhakrishna V. Dhanalakshmi*¹³ the Madras High Court stated that under the modern law the concept of the wife's obedience to her husband and her duty to live under his roof under all circumstances does not apply. Similarly in the case of *Swaraj Garg V. R.M Garg*¹⁴ the Delhi High Court providing Constitutional validity to the wife's right to hold a job ruled that an exclusive right to the husband to decide on the matrimonial home would be violate of the equality clause under Article 14 of the Constitution. In the case of *T.Sareetha V. T.Venkatasubbiah*¹⁵ the Andhra High Court struck down Section 9 of the HMA as unconstitutional on the ground that it constitutes the grossest form of violation of an individual's right to privacy guaranteed under Article 21 of the Constitution. However, the very next year the Hon'ble Supreme Court in the case of *Saroj Rani v. Sudarshan Kumar Chadha*¹⁶ overruled the Andhra Court ruling and stated conjugal rights is an inherent rights in the institution of marriage and that are enough safeguards under Section 9 to prevent it from becoming a tyranny.

7.20 The objective of Section 9 was to preserve the institution of marriage but is now being misused. The practice of filing a suit for restitution of conjugal rights every time a wife files for maintenance or files a complaint of cruelty continues, thereby defeating her claim. Further restitution of conjugal rights is against human rights of a person as no one can be or should be forced to live with any other person.

7.21 Recommendation:

- The Committee recommends that the provision relating to restitution of conjugal rights under various statutes (Section 9 of the Hindu Marriage Act, Section 22 of the Special Marriage Act, Section 32 of the Divorce Act and others) should be deleted. It should no longer be available as a matrimonial remedy.

- **Grounds for divorce**

7.22 Judicial decisions on the grounds for divorce beg mention, in particular the ground of cruelty under the HMA. Section 13(1)(ia) states that any marriage solemnized whether before or after the commencement of the Act may on a petition presented by either the husband or the wife be dissolved by a decree of divorce on the grounds that the other party has after the solemnization of marriage treated the petitioner with cruelty.

7.23 Case analysis has revealed an aspect of the broad interpretation of cruelty – that it is gender biased even though the statute is gender neutral. There are several cases in which the ‘context’ is only used to assess the impact of the behavior on the husband and not the behavior of the wife. Cases such as *Praveen Mehta v. Inderjit Mehta*¹⁷, where the wife’s ill-health and potentially mental illness did not excuse her lack of cooperation for sex, is an example of this. The judgment in *Savitri Pandey v. Prem Chandra Pandey*¹⁸ in which the wife was the petitioner, also indicates a gender bias in the way the Supreme Court uses ‘context’. Interpreting cruelty much more strictly than in previous cases, the Supreme Court said that cruelty ‘cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other’.

7.24 The Supreme Court adopts a paternalistic role, to the detriment of women, in divorce cases. It is often prescriptive of what the appropriate behaviour within a marriage is, be it on conjugation or reproduction¹⁹. Patricia Uberoi says that, ‘judge’s sympathy for the “fair sex” often tends to be conditional on women’s conformity to expected standards of feminine propriety’²⁰ and the Supreme Court punishes transgressions from this norm. By declaring certain types of behavior as ‘faults’ on the part of women, the Supreme Court is asserting traditional notions of femininity and womanhood. The Supreme Court, in *Suman Kapur v. Sudhir Kapur*²¹, cited women’s focus on their career as evidence of neglect of the husband

and household. The courts in these cases and in *G.V.N.* looked upon men's education and social status favorably. Women's education and work, however, seemed to detract from their role as wives and mothers.

7.25 Recommendation:

- The Committee recommends that a definition of "cruelty" under the HMA and other Laws should must be introduced in order to ensure that it is not completely left to the interpretation of the courts. Further, a proviso must be added to the definition of cruelty stating that patriarchal notions of a wife's behavior will not constitute cruelty.

- **Bigamy**

7.26 Section 5 of the HMA clearly states that one condition for a Hindu marriage is that none of the parties should have a living spouse at the time of marriage. Though it prohibits bigamy, it awards no remedy for the first wife to obtain injunction against her husband to prevent his second marriage, her only option is to obtain a divorce under the ground of bigamy. The Indian Penal Code under Section 494 and 497 provides penalty for bigamy and adultery but the second marriage has to be strictly proven in order for the Court to uphold the conviction.

7.27 The issue of bigamy becomes very crucial in claims of maintenance. Many a times the plea of bigamy is advanced by the husband to deny the women from any form of maintenance.²² The Hon'ble Supreme Court in the case of *Rameshchandra Daga V. Rameshwari Daga*²³ upheld the maintenance of "another woman" where the husband was refusing to provide maintenance on the ground that she had not taken "formal divorce" even though she had taken a customary divorce through a divorce deed. However, in sharp contrast the Supreme Court in the case of *Somabhai Bhatiya Vs State of Gujarat*²⁴ held that under Section 125 of the Code of criminal procedure, 1973 there is no scope for enlarging it by introducing any artificial definition to include a woman not lawfully married in the expression "wife". It further stated that it is inconsequential that the man was treating the woman as his wife.

7.28 While upholding the institution of monogamy within the Hindu marriage, the price for the "immorality" generally gets paid by the woman. To address this issue it is required that

the suggested clause be included in the Act itself. Even Special Marriage Act, 1954 and Parsi Marriage and Divorce Act, 1936 (as amended in 1988) have such a provision.

7.29 Recommendations: The Committee therefore recommends that

- A clause be added to Section 5 or in Section 11 of the HMA to the following effect:
*“(1) No Hindu (whether such Hindu has changed his or her religion or domicile or not) shall contract any marriage under this Act or any other law in the lifetime of his or her, wife or husband, whether a Hindu or not, except after his or her lawful divorce from such wife or husband or after his or her marriage with such wife or husband has lawfully been annulled.
(2) Every marriage contracted contrary to the provisions of subsection (1) shall be void.”*
- Further, Section 16 should also be amended to include all children born outside wedlock and not only children of void and voidable marriage. Further, the term “illegitimate” should not be used in any statute or document.

7.30 Under Section 494 and 497 of the Indian Penal Code the provision of bigamy and adultery can be used only by the husband against the person who has committed adultery with his wife. This is an archaic provision which is based on the presumption of the wife being the “property” of the husband.

- The Committee recommends that amendment to the archaic provision of Section 497 of the Indian Penal Code relating to adultery should also be carried out.

- **Irretrievable breakdown of marriage as a ground for divorce**

7.31 The Hindu Marriage Act, 1955 does not allow for divorce in terms of what the Law Commission in its 71st Report called the ‘breakdown theory’²⁵. This theory addresses ‘broken marriages’ through no fault of any particular spouse and where any fault was ‘the outcome rather than the cause of the deteriorating marriage’²⁶. Unlike divorce by mutual consent, one party’s wish to dissolve the marriage, coupled with a long period of separation, is enough to deem a marriage ‘irretrievably broken’ where reconciliation is impossible.

7.32 The Judiciary and the Law Commission share the view that “Irretrievable breakdown of marriage” (IBM) should be made a ground for divorce. This is clear from the Law Commission Reports and the existing case law.²⁷ IBM was sought to be made a ground for

divorce through the Marriage Law (Amendment) Bill, 1981 and 2010. Both these Bills lapsed due to various accounts. In 2013, the Marriage Law (Amendment) Bill was reintroduced and passed in the Rajya Sabha in August 2013. The Bill provides for IBM as a ground for divorce and seeks to provide the wife and children a share in the property. This Bill too has lapsed. The Committee is of the opinion that IBM should be made a ground for divorce only when women's economic security in terms of share in resources and matrimonial property is assured.

7.33 Divorce contributes to the destitution of women as they do not have a secured right to the matrimonial home and often lack independent/sufficient means of livelihood²⁸. While Indian women have a legal right to maintenance, 'this right/remedy does not provide women, from any community, adequate financial support to be able to live in a manner similar to the manner in which they have lived during the subsistence of marriage'²⁹. Financial insecurity combined with social stigma makes divorce prohibitive for a large number of women in India. Much of the women's movement and many practicing lawyers, therefore, do not agree with liberalizing divorce at this moment in time, without first securing economic rights and other safeguards for women. In countries where irretrievable breakdown of marriage has been introduced as a ground for divorce, laws relating to an equitable division of all marital property also exists.³⁰

7.34 Recommendations:

➤ The Committee recommends that irretrievable breakdown of marriage should not be made a ground for divorce. While it is a real, and potentially fair ground on which to seek divorce, women's economic security in terms of share in resources and matrimonial property in India is still not assured. It should not be introduced until financial safeguards are in place for women and these safeguards have been tested.

➤ Further, the Bill as pending seeks to cover irretrievable breakdown of marriage as a ground for divorce only under the Hindu Marriage Act, 1955 and Special Marriage Act, 1954 (herein after referred to as the SMA). If and when this amendment is introduced, IBM as a ground for divorce should be introduced under the Divorce Act, 1869, the Parsi Marriage and Divorce Act, 1936 and the Dissolution of Muslim Marriages Act, 1939 as well. It should also be a general matrimonial relief available to everyone.

II. Muslim Law

7.35 Under Muslim law marriage is a civil and dissoluble contract which is in sharp contrast to the principles of Hinduism and Christianity where marriage was traditionally viewed as an indissoluble sacrament.³¹ Free consent is pivotal and is understood by the term "*qabul*". As the *nikah* is contracted by a declaration of offer by one party followed by acceptance, the document which records the contractual agreement of marriage is termed as *nikahnama*. The *nikahnama* is usually drawn by the qazi who performs the marriage and varies from region to region. Recently, Muslim women's groups demanding the abolition of polygamy, arbitrary triple talaq campaigned for a model Nikahnama which would provide safeguards for women in terms of adequate amount of mehr and others.

7.36 Some of the key features of a muslim marriage which seek to protect rights of woman in marriage are provisions like the *mehr*, the right to personal allowance or maintenance (*mewa khori*) and right to enter into a pre-marriage agreement. For the Muslim community the Shariat Application Act of 1937, the Dissolution of Muslim Marriage Act of 1939 provide very limited and partial solution to the existing socio-legal problems such as marriage, divorce, custody of children, polygamy etc. Further, through the passage of time some of these provisions have deteriorated due to various socio-cultural reasons and the right of mehr has been reduced to a mere token being replaced by exorbitant demands in the form of dowry.

• Forms of divorce

7.37 As Islamic law of marriage is based on a contractual theory it provides from its inception grounds for dissolution and elaborate procedure. Both the husband and wife are empowered to dissolve the marriage. Divorce may be through Talaq (*release*), Ila (*vow of abstinence*), Zihar, Khul (*untie/disrobe*), mubaraa (*form of mutual agreement*) or judicial divorce. Talaq-al-Bidaa or triple talaq is the mode in which talaq is pronounced thrice in one sitting and is an irrevocable form of divorce. The judicial provisions for divorce are provided under the Dissolution of Muslim Marriage Act, 1939 under which grounds such as insanity, neglect, cruelty, impotence and failure to perform marital obligations exists.³²

7.38 The right of unilateral divorce given to Muslim husbands renders wives extremely vulnerable and insecure regarding their marital status. The talaq-al-bidaa becomes effective from the moment of its pronouncement. There is a need to ensure that law prevails and proper procedure must be followed as laid down in Qur'an and Sunnah. Triple divorce is not in keeping with either of the two. Further, after an irrevocable divorce a husband cannot remarry the wife until she performs Halala. Halala is the process through which the wife is expected to marry someone else, consummate the marriage, obtain divorce and then observe the iddat period. Though the concept of halala was meant to act as a deterrent to husband's callously pronouncing talaq on the wife, it is the woman who bears the consequences of such a callous act.³³

7.39 The Supreme Court in the case of *Shamin Ara*³⁴ has invalidated arbitrary divorce and laid down clear guidelines as per Quranic injunctions for pronouncing divorce so that Muslim women are not deprived of their right to maintenance when they file proceedings in Court. It also refers to fraudulent tactics assorted by the lawyers at the behest of their client, of sending talaqnama along with their reply to their maintenance application under a misconception that a divorced Muslim women is not entitled to maintenance or economic settlement.

7.40 Recommendation:

➤ The Committee suggests that there should be a complete ban on the oral, unilateral and triple divorce (talaq).

- **Polygamy**

7.41 The practice of taking a second wife does exist amongst the Muslims in India. In such situations it is either by deserting the first wife or refusing to divorce her when wife asks for khula'. There is need to regulate polygamy by stipulating strict conditions as required and by stating that no man should be free to take another wife according to his whims. However, by regulating polygamy we should not end up subjecting Muslim women to a similar plight as Hindu women who are trapped, knowingly or unknowingly, in bigamous marriages or "marriage like" relationships. This is an important concern which needs to be clearly stated while suggesting reforms within personal laws.

7.42 Further, there is a need to ensure that the right to maintenance, sustenance, protection, residence belong to the realm of right to life, which is within the purview of Article 21 of our Constitution and forms the core of our fundamental rights. Aims in reforms must be towards an inclusive realm of rights rather than an exclusive one, which would lead to denial of rights to a section of women, most of whom are from marginalized sections of our society.³⁵

7.43 **Recommendations:** The Committee recommends that

- Payment of maintenance to the wife and children must be made mandatory during the marriage, or in the event of separation and divorce. A minimum 'mehr' should be paid to the bride before the marriage and the amount should not be less than the groom's annual income.
- The Dissolution of Muslims Marriages Act, 1939 should be amended. Specific provisions should be introduced making Triple talaq and polygamy void. A provision should also be added providing for interim maintenance.

7.44 However, one needs to keep in mind that especially in the case of Muslim law, which is primarily not codified, many a times codification of Laws affects its flexibility which may be against the interest of women. It can lead to imposition of traditions which deny justice and equality to women and have a negative impact on women's human rights. Therefore, instead of codifying laws, the existing Laws should be amended to include progressive reforms in line with constitutional values like equality and justice. Progressive reforms should be done in the area of Muslim Personal Law keeping in mind the human rights of women such as provision for maintenance, abolition of oral divorce and polygamy.

III. Christian Law

7.45 Provisions regarding solemnization and regulation of Christian marriages are dealt under the Indian Christian Marriage Act, 1872. Though performed in a Church they are simultaneously registered with a civil authority i.e. Registrar of births, marriages and deaths which then transforms them into civil contracts.

• Grounds for divorce

7.46 The Divorce Act, 1869 (herein after referred to as the TDA) was introduced in India by the British rulers. Prior to the amendments carried out in 2001, under Section 10 while a

husband could get divorce on the ground of adultery, the wife had to prove an additional ground of cruelty or desertion as well. It was then through a catena of case laws and on recommendation of the Law Commission that the required amendment was carried out thereby providing cruelty, adultery and desertion as independent grounds for divorce. Further, till 2001 mutual consent as a ground for divorce was available in all matrimonial statutes except to Christian couples. Therefore Christian couples who wanted divorce on this ground had to first get their marriage registered under the Special Marriage Act, 1954 (herein after referred to as the SMA) and then file a joint petition for divorce on grounds of mutual consent.

7.47 However, till today while in statutes such as the HMA and the SMA parties who claim for divorce through mutual consent have to present to the Court that they have been living separately for a period of one year or more and that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved, under the TDA, the parties have to present that they have been living separately for a period of two years or more. This provision is discriminatory with respect to Christians.

7.48 Recommendation:

➤ The Committee recommends that in order to ensure consistency amongst all laws relating to marriage and divorce the period of two years prescribed for mutual consent divorce under the TDA should be amended to one year.

IV. The Special Marriage Act, 1954

7.49 The Special Marriage Act, 1954 provides for a civil marriage of two Indians without the necessity of renouncing their respective religions. Person belonging to the same religion can also opt to get married under this Act. Provision of registration enables parties to avail of secular and uniform remedies despite solemnization of marriage through their respective religious ceremonies. It is contracted at the civil registry in the presence of a marriage officer appointed by the State. Once parties opt for this form of marriage, in matters of succession they are governed by the Indian Succession Act, 1925.

7.50 Recommendations: Some of the changes that the Committee suggests are as follows:

- Section 6 of the Special Marriage Act, 1954 requires the marriage officer to be put up every notice of intended marriage at some conspicuous place in his office. It is recommended that notices should not be displayed on the notice board outside the Registrar's office as it places young people, desirous of contracting marriages of choice, at great risk.
- At present the notice period prescribed under Section 5 is 30 days, this must be reduced to 7 days so that it is conducive for people registering their marriages under it. This is necessary because this provision serves no purpose, except delay the process and a couple wanting to marry in a hurry because of parental or other disapproval cannot afford to wait for a full month.
- Under Section 4, the age for performance of marriage is 18 for the girls and 21 for the boys, however under Section 15 the age for registration of marriage is 21 years for both the parties. This provision needs to be clarified.
- The special provision made for two Hindus marrying under the Act should be deleted. Section 21 A reads as follows

Special provision in certain cases - Where the marriage is solemnized under this Act of any person who professes the Hindu, Buddhist, Sikh or Jain religion with a person who professes the Hindu, Buddhist, Sikh or Jain religion, Section 19 and Section 21 shall not apply and so much of Section 20 as creates a disability shall also not apply.]

Thus, where for everyone who marries under the Special Marriage Act, succession would be governed by the Indian Succession Act. This exception for Hindus should be deleted.

- In order to promote more marriages under the Special Marriages Act, 1954, the Government should promote schemes and undertake campaign for publicising the same.
- In view of the recent spate of crimes and killings in the name of 'honour' in many parts of our country, the Committee is of the opinion that there is a need for a standalone law on this issue, the 19th Law Commission had proposed the same. The Committee will deal in detail on this in the report relating to criminal laws.

V. Age at Marriage

7.51 The issue of age of marriage is linked to the age of consent to sexual intercourse under the various provisions of the Indian Penal Code, 1860, respective provisions under the

Prohibition of Child Marriage Act (PCMA), 2006 and the varying age of marriages prescribed under various personal laws and provisions relating to maintenance.

7.52 Section 375 of the Indian Penal Code, 1860 expands the definition of rape to include sexual intercourse with a girl less than 18 years of age. It however provides an exception if the woman is his wife and she is not less than 15 years of age. The PCMA prescribed the definition of a child as someone who if a girl has not completed 18 years of age and if a boy then someone who has not completed 21 years. The Special Marriage Act, 1954 stipulates the time of marriage as 21 years for a boy and 18 years for a girl³⁶. The Parsi Marriage and Divorce Act, 1936 declares that a child marriage is void³⁷. The Indian Christian Marriage Act, 1872 though defines minor as a person below 21 does not invalidate a minor's marriage³⁸. Under Muslim law girls can be marriage after they attain puberty.

7.53 Within the domain of matrimonial law issue of maintenance of wives and children are the most crucial to the validity of marriage. There have been a catena of cases where the Courts have hesitated to declare minor marriages as void due to maintenance and legitimacy of children. Marriages if held void, the young girls and their children would be deprived of their basic right of survival.

7.54 **Recommendations:** In light of the above the Committee is of the opinion that:

- There should be a move towards bringing uniformity in laws regarding age at marriage and there is a need to ensure that Prohibition of Child Marriage Act (PCMA), 2006 is strictly implemented.
- Further, in the 205th report on the Prohibition of Child Marriage Act, the 18th Law Commission had recommended that the minimum age of marriage for both girls and boys should be the same i.e. 18 years. This should be adhered to. This is also in tandem with the recommendations of various international bodies like the UNICEF which points out the discrimination inherent in a provision which stipulates a lower age of marriage of the girl.
- The Prohibition of Child Marriage Act (PCMA), 2006 must hold all child marriages voidable and not void.

VI. Registration of Marriages

7.55 Under the Hindu Law the parties to the marriage may solemnize the marriage by performing the ceremony as per the Hindu customs and rites. Registration is optional & not mandatory. Marriages solemnized as per the customs may be subsequently registered. It is left to the State Governments to frame rules for mandatory registration of marriages and omission to register the marriage does not affect the validity of the marriage.³⁹ The Indian Christian Marriages Act, 1872 provides for solemnization of marriages, in a civil form. The Act provides the essential ingredients, conditional ceremonies and also for registration of these marriages under the State authority. It is mandatory for the church to forward contents of the register which provides details of marriage to the registrar of marriages every three months.⁴⁰

7.56 A Muslim marriage since its inception is a contract and as mentioned earlier the nikahnama bears details of the bride, groom and their respective signatures. The Special Marriage Act, 1954 is performed at the office of the Registrar of marriages. The couple along with three witnesses' have to sign in the register of marriages maintained by the registrar.⁴¹ The registration of Parsi marriages is not compulsory but they have a built in mechanism for the registration of the marriages performed by the officiating priests.⁴²

7.57 In 1994 the National Commission for women prepared a draft Bill on compulsory registration of marriages. It stated that a declaration of marriage must be sent to the registrar of marriage within three days of its performance⁴³. The Supreme Court in the case of *Seema Vs Ashwini Kumar*⁴⁴ issued direction that within three months all States should frame rules for registration of marriages. The Court further stated that a Central legislation would enable women to claim rights in the form of maintenance and inheritance and other benefits and privileges. Most of the States namely Kerala, Karnataka, Himachal Pradesh Gujarat, Haryana, Andhra Pradesh, Madhya Pradesh, Uttarakhand, Mizoram and Chhattisgarh have framed Act and Rules regarding compulsory registration of marriages.

7.58 Under Hindu law, even if a Hindu marriage is registered, it does not render the marriage valid, if the mandate of essential conditions and essential ceremonies have not been complied with. Hence, registration is only a facilitating measure. However, it cannot be denied that registration of marriages may help in prevents child marriages, bigamous marriages, forced

marriages and enable a married women to claims rights viz., residence, property, maintenance.

7.59 Recommendations:

➤ The Committee recommends that a Central enactment for registration of marriages should be passed which is applicable to all religious groups. However, care should be taken to make it inclusive and not exclude anyone from the realm of rights. Hence, if there is sufficient proof of a marriage, the mere fact that it is not registered should not deprive any woman or her children of their rights accruing from a valid marriage. At the same time, Government must make all efforts to publicise the advantages of registering a marriage and make marriage registration an easy and expeditious process. Care should be taken to ensure that the touts hanging around in the office of the Registrar of Marriages do not exploit the parties who come to register their marriages.

➤ Section 15(d) of the Special Marriages Act, 1954 states that at the time of registration, the parties should have completed twenty one years of age. This needs to be looked at in light of the fact that the prescribed age for marriage under Special Marriages Act, 1954 is 18 years for girls and 21 years for boys.

VII. NRI Marriages

7.60 Marriages in India have a close relationship with social status. It is for this reason that the marriage of a woman with a man residing outside India has significant allure for Indian families. The difficulty in ascertaining the antecedents of the man and his family due to their locations abroad, often means that the woman is susceptible to significant ill treatment and hardship at the hands of the NRI husband and his family. Living in strange surroundings, away from home, the woman is entirely dependent on the man for her sustenance and well-being. Thus, when the marriage turns abusive or problematic, women are left with scant or no legal recourse.

7.61 The current legal framework compels her to be either rendered remediless or endure the abuse. To the Courts empowered to grant her remedy, she lacks access, and the Courts that she has access to, lack the remedies. The conflict of laws raises a massive problem of

jurisdiction of Courts, for only those Courts possess jurisdiction where the couple or the respondent (often, the husband) is habitually resident- which is the foreign country. The second condition may be the domicile of the parties, which also leads back to foreign Courts. The domicile of the husband in the foreign land is easily established due to his status as a resident there, and Section 15 of the Indian Succession Act, as also the common law, provide that the wife has no independent domicile, and follows that of the husband.⁴⁵ Thus, when women returns to India, to their family and familiar surroundings, they do leave marital abuse behind, but they also leave behind their legal rights and entitlements. Instead of having a special legislation to deal with issues and problems emerging from NRI marriages, the Foreign Marriage Act, 1969 should be amended to address these issues and provide remedies.

- **The Foreign Marriage Act, 1969**

7.62 The Foreign Marriage Act, 1969 currently governs a very narrow range of marriages- those in which a couple, at least one of whom is an Indian citizen, marry abroad. The Act is procedural in nature, stipulating only the manner in which the marriage needs to be undertaken. For remedies, it refers to the Special Marriage Act, which too is subservient to any remedy that the law of the foreign jurisdiction provides. Even these remedies are contingent on the requirements of residence and domicile- which are deeply problematic for the woman.

7.63 **Recommendations:** The Committee recommends that

- The Foreign Marriage Act, 1969 should encompass a wider range of marriages within its fold, and should provide for greater access to marital and familial remedies. Other Acts governing marriages are constrained by their operation to largely local marriages, where there are no provisions regarding jurisdiction and processes over persons located abroad. Neither these laws, nor the Foreign Marriages Act provide any safeguards for women in marriages solemnised in India, where the couple intends to reside abroad.

- The Foreign Marriages Act should therefore govern marriages of the following kind:

- Marriage between two persons where one spouse is a citizen or a resident of a country abroad;
- Marriage between two NRIs;

- Marriage between two persons, both of whom are not citizens of India, but one or both of whom are currently residing in India though married abroad.

- The Act should provide for a wide gamut of remedies, not limited to divorce, judicial separation, maintenance, alimony and custody. It must also entitle the wife to a half share in the husband's share of the immovable property acquired during the period of marriage, and also a half share in the movable properties and damages and compensation for harassment, abuse and abandonment.⁴⁶

- Access to the above reliefs by the wife should not be contingent on her permanent or habitual residence or domicile. Currently, women may avail of remedies under the Act only if they have resided in India for three years preceding the petition for relief. This must be amended in line with the other laws for the benefit of women, such as S.125, CrPC, Protection of Women from Domestic Violence Act, 2005 etc., where jurisdiction vests in a Court on the basis of the *present* residence of the woman.

- The procedure during registration and petitions for relief must include safeguards to the interests of women and children moving abroad, to ease access to Courts and marital remedies. For instance, NRI marriages in India in which the husband is a foreigner/ person resident abroad should be registered under the Foreign Marriage Act, 1969 along with a declaration/Affidavit giving his full particulars, including:

- His citizenship or permanent residency number
- His place and nature of employment and the details of his earnings
- The listing of his properties in India and abroad.

- The Act should also provide for attachment of property and other safeguards to protect the rights of women and children to financial support.

- **Amendments to the Guardians and Wards Act, 1890**

7.64 Women in NRI marriages are often denied custody of their children, since their departure from the foreign country incapacitate them from participating in the costly custody proceedings abroad. If a woman assumes custody of the children by bringing them to India, she is construed as a 'wrong-doer' and a kidnapper.

7.65 Recommendations: The Committee therefore recommends that

➤ To ensure access to remedies and legal proceedings, Section 9 should be amended to confer jurisdiction upon Courts where the minor is 'presently residing'. In proceedings for custody, a father who has wilfully refused to pay maintenance and child support should be refused visitation rights/custody.

➤ India should maintain *status quo* with respect to the Hague Convention on the Civil Aspects of International Child Abduction, and not sign it. Being a gender-neutral Convention, it does not account for the specific experiences of women, and this often acts against them.⁴⁷

- **Amendments to the Procedural Laws and other marriage laws**

7.66 Recommendations: In the opinion of the Committee the following changes are required to be made in the context of other substantive and procedural laws which comes into play while dealing with NRI marriages.

➤ Section 13 of the Code of Civil Procedure, 1908 which includes the exception of violation of principles of natural justice, should be read widely, or an additional exception should be added where the woman is *unable* to contest litigation abroad. This would exempt them from the hardship of unjustly passed divorce decrees or custody or other orders. These decrees, without enough opportunity for the woman to represent her case, pass unfavourable orders, and also later prevent her from exercising remedies in India.

➤ Akin to Section 126 of the Code of Criminal Procedure, 1908 jurisdiction for matrimonial reliefs and marriage related offences should be conferred on Courts in a place where the woman is presently residing.

➤ The bail conditions for an NRI should provide that he deposit his passport in Court. Also, the provisions of S.10 (3) (e) of the Passport Act, 1967 should be actively enforced. This provides that:

(3) *The passport authority may impound or cause to be impounded or revoke a passport or travel document,-*

... (e) *if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India;*⁴⁸

- The Passport Act, 1967 should also state that the NRI provide security in Court for the amount equivalent to the amount of dowry/stridhan claimed. All marriage laws should also be amended to specifically provide for injunctions preventing a husband from selling or alienating property during the pendency of proceedings in a case for maintenance, alimony or property.
- Since a major hurdle in claiming matrimonial relief is the difficulty in serving processes on NRI husband and in-laws located abroad, the Committee suggests that Lookout Notices should be issued for husbands against whom offences have been registered. It further recommends that India should sign reciprocal treaties for the service of summons, enforcement of maintenance orders and extradition with all countries with a sizeable population of people of Indian Origin.⁴⁹

Economic Rights of Women in Marriage: Maintenance and Common Marital Property

7.67 Maintenance is crucial to women who are in conflict marriages and to deserted and destitute women. It is reflective of the social obligation which the State casts upon the economically stronger members of the family to provide shelter and sustenance to the others.⁵⁰ Although maintenance can be claimed under personal law of parties, most women opt to claim them under the summary proceedings available under Section 125 of the Code of Criminal Procedure, 1973 (CrPC). This provision is a beneficial social legislation aimed at preventing vagrancy and delinquency.⁵¹ In the case of *Captain Ramesh Chandra Kaushal V. Veena Kaushal*⁵² the Hon'ble Supreme Court clearly mentioned that provision for maintenance has been enacted to protect women and children's rights and falls within the Constitutional ambit of Article 15(3).

7.68 Recently, in the case of *Badshah v. Sou. Urmila Badshah Godse*⁵³ Justices Ranjana Desai and A.K. Sikhri while upholding the right to maintenance of a Hindu woman who had been duped into a bigamous marriage, emphasized that while dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalized sections of the society. The purpose they said is to achieve "social justice" which is the Constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble clearly signals that we have chosen the democratic path under rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving social justice.⁵⁴

I. Maintenance

i. Hindu Law

7.69 The two primary legislations applicable to Hindus as far as economic rights are concerned are the Hindu Marriage Act, 1955 and the Hindu Adoption and Maintenance Act, 1956.

- **Hindu Marriage Act, 1955**

7.70 Sections 24 and 25 of the Hindu Marriage Act, 1955 provides for Maintenance and Alimony. These two provisions are gender neutral and offer relief to both husband and wife. Alimony as defined by *Corpus Juris* is the “allowance required by law to be made to a wife, out of her husband’s estate for her support either during the matrimonial suit or on its termination, where the facts of the marriage is established and she proves herself entitled to a separate maintenance.”

7.71 Section 24 of the Act talks about Maintenance *pendent lite* and expenses of proceedings. It states that where in any proceedings, under the Hindu Marriage Act, it appears to the Court that either the wife or the husband has no independent income sufficient for her or his support and the necessary expenses of the proceedings, the Court may, on an application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceedings, and a monthly sum during such proceeding as the Court deems to be reasonable having regard to the petitioner’s own income and the income of the respondent. A proviso was added to the Section by the Marriage Laws Amendment Act, 2001 to expedite such proceedings, it states that the application for the payment of the expenses of the proceedings and such monthly sum during the proceedings, shall, as far as possible be disposed of within sixty days from the service of such notice on the wife or the husband.

7.72 Section 25 deals with the issue of granting permanent alimony and maintenance. Sub-Section (1) states that any Court exercising jurisdiction under the HMA, at any time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, order the respondent to pay to the applicant for her or his maintenance and support such gross sum or monthly or periodical sum for a term not

exceeding the life of the applicant. The Court will take into account the respondent's income and other property (if any), the income and other property of the applicant and the conduct of the parties. The Court may if necessary secure the payment through a charge on the immovable property of the respondent. Sub-section (2) provides for a varying, modifying or rescinding the order granted under sub-section (1) at the instance of either party if the Court is satisfied that there is a change in the circumstances of either party at any time subsequent to the order.

7.73 According to Sub-section (3), the above order granted for maintenance and alimony can be varied, modified or granted if the Court is satisfied that the party in whose favour the order has been granted has re-married or, in case of the wife, she has not remained unchaste and in case of the husband, if he has had sexual intercourse with any woman outside the wedlock.

7.74 The maintenance provisions under these two Sections are independent rights and the marriage being void holds no defence in an application for maintenance and alimony. There is a clear distinction between the two Sections with regard to the term 'income'. Whereas under Section 24 the word used is 'income', under Section 25 it includes 'income and other property'. The Supreme Court has held that in fixing the amount of maintenance, Courts are required to consider:

- (a) The income and other property of the claimant,
- (b) The income and other property of the non-claimant,
- (c) The conduct of parties, and
- (d) Any particular circumstances or special factor.⁵⁵

7.75 Recommendations:

➤ The Law Commission in its 98th report dealt with the issue of the exact date from which interim maintenance under Section 24 can be granted.⁵⁶ According to a few High Courts, the order of interim maintenance can be made effective from the date of service of summons on the main petition, whereas the other trend is of holding the date of the order to relate back to some date later than the date of the petition. In order to make the law certain and specific, the Commission recommended the insertion of another Section making it clear that an order of maintenance granted under Section 24 or 25 may be given from such date,

not earlier than the date of the application under that Section, as the Court considers just and proper. The Committee is of the opinion that this recommendation should be adhered to.

➤ The Committee recommends that under Section 24 and 25, husbands should not have a right to claim maintenance. This right is not there in any other law.

➤ The Committee recommends that the term maintenance should be substituted across all legislations and a more rights based language should be adopted. The Protection of Women from Domestic Violence Act, 2005 uses the term “monetary relief”, the term “monetary entitlement” could also be used. Further, the definition as existent under the PWDVA should be brought into the HMA and other provisions regarding maintenance thereby broadening its definition.

- **Hindu Adoption and Maintenance Act, 1956 (HAMA)**

7.76 Section 3(b) of the HAMA defines “maintenance” which includes in all cases, provision for food, clothing, residence, education and medical attendant and treatment. In cases of an unmarried daughter, it also includes the reasonable expenses of and incident to her marriage.

7.77 Section 18 deals with the granting of maintenance to wife only. It states in sub-section (1) that a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime subject to other provisions of the section. Sub-section (2) enumerates provisions where the law entitles the wife to live separately from her husband without forfeiting her claim to maintenance. The Act, under sub-section (3), makes it clear that the wife shall not be entitled to separate residence and maintenance if she is unchaste or ceases to be a Hindu by conversion. Section 23 of the Act gives the Court the discretion to determine if any, and to what extent maintenance shall be awarded. In determining the amount of maintenance, to be awarded to a wife, children or infirm parents, regard shall be had to the following subjective considerations, amongst others;

- a) Position and status of the Parties;
- b) Reasonable wants of the claimant;
- c) If the claimant is living separately, whether the claimant is justified in doing so;

7.78 In the case of *Narinder Pal Kaur Chawla Vs Manjeet Singh Chawla*⁵⁷ where the wife had filed for maintenance under Section 18 of HAMA and pleaded that her husband has duped her by suppressing information of his earlier marriage. The Delhi High Court upheld

the right of the wife and held that even if the woman cannot be referred as "Hindu" wife, she is entitled to a lump sum settlement by way of damages.

7.79 Recommendation:

➤ The Committee is of the opinion that Section 18 of the HAMA should be revised as it involves a value judgment on the character of the woman. It views maintenance as an award to be given to deserving wives alone and not as an entitlement. The Committee further suggests that any reference to conduct in a maintenance provisions should be deleted. Maintenance has nothing to do with conduct and is a right which accrues to the woman because of the loss of capacity to work and the loss of opportunity that she suffers from as a result of her contribution to house work and as a result of her being involved in care work.

ii. Muslim law

7.80 The uncodified Muslim law recognised the wife's right to maintenance during the subsistence of marriage and during the *iddat* period. However, since Muslim marriages were contractual and since the woman was entitled to re marry, Muslim law did not put an obligation on the Muslim man for post-divorce maintenance.⁵⁸

7.81 After the 1986 *Shah Bano* case, and the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, Muslim personal law has been a major political and controversial issue, and has been extensively debated.⁵⁹ As per the provisions of this enactment a divorced woman is entitled to maintenance for the *iddat* period and for a fair and reasonable settlement for life. Several Courts have interpreted it in favour of women by granting them large lump sum settlements.⁶⁰ In *Daniel Latifi v. Union of India*,⁶¹ the Constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986 was questioned before the Supreme Court. The Hon'ble Supreme Court upheld the validity of the Act and its provisions whilst concluding that "a Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well" beyond the *iddat* period, which provision must be made within the *iddat* period in terms of Section 3(1)(a) of the Act.

7.82 since then, in *Shamim Ara v. State of U.P.*⁶² the Supreme Court held that a Talaqnama sent along with the reply to an application filed by the wife for maintenance under S.125 Cr.PC is invalid and also aid down clear stipulation as per Quranic injunctions, for pronouncing talaq. In *Shabana Bano v. Imran Khan*⁶³ the Supreme Court upheld the right of a wife to continue to receive maintenance under S.125 Cr.PC until the husband fulfils his obligation to pay his wife lump sum maintenance.

7.83 Recommendation:

➤ These landmark judgements are not known to all judges and Magistrates adjudicating over the rights of Muslim women. The Committee recommends that all judges should be made aware of the manner in which the Supreme Court has interpreted the Muslim Law and has safeguarded the rights of Muslim women as due to ignorance of law many Muslim women are denied of their rights.

iii. Section 125, Code of Criminal Procedure

7.84 This is a provision in the general law where maintenance can be claimed subject to the provisions prescribed in the Section. The Section speaks of order for maintenance of wives, children and parents. If a person having sufficient means neglects or refuses to maintain his wife who is unable to maintain herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for such maintenance as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct. Breach of such order, according to sub-section (3) can lead to imprisonment of up to one month or until the payment if made sooner. Though situated in the realm of criminal law it is more viewed as a quasi-civil proceeding.⁶⁴

7.85 This sub section comes with a proviso that 'no warrant shall be issued for the recovery of any amount due under this Section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due.' Also, 'if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this Section notwithstanding such offer, if he is satisfied that there is just ground for so doing.' The explanation states that keeping of a mistress or contracting a marriage by the husband is a just ground for refusal to live with him. Sub-section (4) states

that a wife shall not be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent. According to sub section (5), on proof of any condition stipulated in sub-section (4), the Magistrate shall cancel the order.

7.86 Recommendations: The Committee recommends that

- The procedural aspect of Section 125 should be relooked at. Though the Section clearly states that the proceedings need to be completed within 90 days and it is supposed to be summary proceedings, the process of litigation gets prolonged when the Courts invariably start taking evidence thus delaying the maintenance application.
- There must be a time frame for the execution of the interim maintenance u/s 125 Cr.P.C. As after one year, the wife has to file the execution application again and again. The provision must be made for the passing of one Composite order fixing the maintenance amount including the execution and the same has to continue till it is varied, altered or rescinded.
- Section 125 should be amended to include maintenance for women in live- in relationships which are in the nature of marriage and for unmarried dependent daughters. Presently only the Hindu Adoption and Maintenance Act allows unmarried daughters to claim maintenance.
- The provision which allows maintenance to be stopped if a woman has been unchaste or has refused to live with her husband should be deleted.
- Clause 4 and 5 of Section 125 of the CrPC provides the scope for husbands to engage destitute and deserted women in protracted and humiliating litigation. These interventions entangle women in circuitous legal rigmaroles which are time-consuming, financially draining and emotionally charged.⁶⁵ The law under Section 125 is overt in its discrimination and the Law Commission had proposed its 133rd Report in 1985, the need for spelling out the criteria for quantification of the amount of maintenance and “[erasing] onerous and embarrassing fetters imposed on the wife”⁶⁶. A Private member’s bill by Susheela Gopalan, MP, had also been moved in this regard and several women’s groups and the NCW have suggested amendments to this law. The Committee recommends that the suggestions made above should be carried out.
- The Committee recommends that detailed guidelines on the basis of which maintenance can be granted should be clearly laid out. These include that maintenance to be

awarded should allow the wife and children to maintain a life style similar to the one they have been used to during the period that the parties lived together.

iv. Rights of women in Bigamous or Technical Defective Marriages

7.87 There have been several rulings which have upheld the rights of women in technically defective marriages. The Protection of Women from Domestic Violence Act, 2005 is also made applicable to women living in 'marriage like relationships. In 2005, in *Rameshchandra Daga v. Rameshwari Daga*⁶⁷ the Supreme Court, while awarding maintenance to a woman whose husband had challenged the validity of their marriage on the ground of previous subsisting marriage, had conceded that despite codification and introduction of monogamy, the ground reality had not changed much and that Hindu marriages, like Muslim marriages, continue to be bigamous. The Court had further commented that though such marriages are illegal as per the provisions of the codified Hindu law, they are not 'immoral' and hence a financially dependent woman cannot be denied maintenance on this ground.

7.88 In 2010, the Supreme Court in *Chanmuniya v. Virendra Kumar Singh Kushwaha*⁶⁸, had upheld the right of women in technically defective marriages by holding that the term 'wife' must be given a broad and expansive interpretation. The bench had recommended that cases where a man and woman have been living together for a reasonable period of time should be brought within the scope of Section 125 Cr.PC and a strict proof of marriage should not be a pre-condition for maintenance so as to fulfill the true spirit and essence of the beneficial provision of maintenance. Even earlier, in 1976, in *Govindrao v Anandibai*⁶⁹, Justice Kania of the Bombay High Court had held that since the Act is a social legislation, it could not have been the intention of the legislature that even in a case where a Hindu woman was duped into contracting a bigamous marriage, she should be deprived of her right to claim maintenance.

7.89 Recently, in *Badshah v. Sou. Urmila Badshah Godse*⁷⁰ Justices Ranjana Desai and A.K. Sikhri upheld the right of a Hindu woman who had been duped into a bigamous marriage and thwarted the attempt of her husband to subsequently deny her maintenance. The judgment emphasized that while dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalized sections of the society. The purpose is to achieve "social justice" which is the Constitutional vision, enshrined in the Preamble of the Constitution of India. There is a non-rebuttable presumption

that the Legislature while making a provision like Section 125 Cr.PC, to fulfill its Constitutional duty in good faith, had always intended to give relief to the woman becoming “wife” under such circumstances. Justice Sikhari cited the journey from *Shah Bano* to *Shabana Bano* which guarantees maintenance rights of Muslim women as a classical example.

7.90 There are judgments such as the *D. Velusamy v. D. Patchaiammal*⁷¹ which have referred to women in such relationships in a derogative tone as mistresses, keeps and concubines, while also denying them their basic rights of maintenance under Section 125 Cr.PC as well as under the Protection of Women from Domestic Violence Act, 2005. Judges must restrain themselves from using such derogatory language while referring to women.

7.91 **Recommendations:**

➤ The Committee is of the view that aim in reforms must be towards an inclusive realm of rights rather than an exclusive one, which would lead to denial of rights to a section of women, most of whom are from marginalized sections of our society. Right to maintenance, sustenance, protection, residence belong to the realm of right to life, which are within the purview of Article 21 of our Constitution and forms the core of our fundamental rights.

v. **Other critical points for consideration**

7.92 It has been found that the legal provisions regarding granting of maintenance have become all but futile due to various factors. These include the lengthy time taken by Courts to make an award coupled with the procedural obstacles; the petty amount of maintenance granted renders the whole effort worthless.

7.93 **Some of the key recommendations in this area are:**

➤ The Committee is of the opinion that detailed guidelines need to be framed for highlighting the use of such criteria while determining the amount of maintenance. At present the only criteria used in determining the amount of maintenance granted is “standard of living”. It is felt that other criteria such as length of marriage, age and health of the parties, future earning capacity of the parties, need of the party, disability and others should also be considered.

➤ The Committee further suggests that a specific fund must be created so that women are paid maintenance as soon as an order of maintenance is obtained and it should be the duty of the State to pay the woman concern from this fund as per the order of the Court and recover the amount from the husband either by attaching his salary or through any other appropriate measures.

➤ The Committee is of the opinion that in proceedings for maintenance or in another matrimonial proceedings, that judges must restrain themselves from terming women in technically defective marriages in derogative terms such as “concubines” “mistresses”, “keeps” or any other similar terms.

➤ Further the Committee suggests that any reference to conduct in the maintenance provisions in any law should be deleted. Maintenance has nothing to do with conduct and is a right which accrues to the woman because of the loss of capacity to work and the loss of opportunity that she suffers from as a result of her contribution to house work and as a result of her being involved in care work.

7.94 The time from when maintenance is to be granted is a crucial issue. The earlier norm was that maintenance would be applicable from the date of order. However, since then various judgments have upheld the right of a woman to be granted maintenance from the date of application. However, there are still instances where Courts consider that as a normal rule maintenance should be awarded from the date of order and only in special circumstances it can be awarded from the date of application after recording reasons.⁷²

7.95 Recommendation:

➤ It is recommended that maintenance should not only be awarded from the date of the application but should also include necessary expenses that the woman has incurred prior to the date of the Application. This has been incorporated to some extent in the PWDV Act, 2005.

7.96 Another major hurdle is the unaffordability of legal fees by the woman and the lack of access to Courts.⁷³ It has been seen that the maintenance granted is more to the extent of being symbolic in nature. A survey conducted to look into the issue of similarity between the amount of maintenance and the time taken for the cases shows that between the period 1998-2010, husbands who were fairly well-off paid maintenance to their wives ranging between 1.2 – 57% of their income and the time taken ranged between 1-12 years.⁷⁴ Maintenance must

be viewed as an entitlement and not largesse; it is the valuation of women's work in the home, including care work, and arises from the loss of her capacity to earn through employment outside the home.

7.97 Recommendations:

- The Committee is of the opinion that there is an urgent need for amendment in the Court Fees Act, 1870 to delete the requirement for court fees for suits of maintenance. With the exception of Maharashtra, women and children throughout the country are required to pay huge amounts of Court fees. Since they obviously cannot do this, they are required to prove in lengthy proceedings that they should be allowed to sue in forma pauperis.
- Further as mentioned earlier the term "maintenance" should be substituted to use a rights based language. The Protection of Women from Domestic Violence Act, 2005 uses the term "monetary relief".

II. Common Matrimonial Property

7.98 The matrimonial laws of most countries have adopted the principle of "division of matrimonial property" at the time of divorce and primarily relies upon "contribution".⁷⁵ Upon this, on marriage the property acquired by the spouses after marriage is deemed as their joint property with equal powers of maintenance, management, improvement and disposal. Upon divorce the property is divided equally between them. In India there is till date no law regarding women's rights in marital property. This severely compromises women's fundamental right to live with freedom and dignity under Article 21 upon the breakdown of marriage. This lacuna continues to exist due to the continued devaluing of care work and women's work in the home, which is considered part and parcel of their gender role. It represents the fiction of the public sphere as unrelated to the private sphere and fails to take into account the value of the work done at home by women, how that work enables their husbands to pursue success in their jobs, and (where women work outside the home) the effect that the disproportionate responsibility on women for care work and the home has on women's career and economic prospects⁷⁶. Within this constraint women's economic rights revolve around the right of maintenance which is far from adequate substitute and is also at times "linked to the conduct of the wife".

7.99 India follows the common law regime of “separation of property”. Under this notion property acquired by the husband is treated as his exclusive property. A wife does not acquire any right, title or interest in the assets acquired by the husband during the subsistence of marriage. If a husband dies intestate, the widow is generally awarded a status no higher than her children, thus completely ignoring her contribution to the household and family in the form of unpaid work.⁷⁷ The recently enacted Protection of Women from Domestic Violence Act, 2005 guarantees the right to residence, however since the objective of the Act was to provide urgent relief to women facing violence at home, the relief is only temporary in nature and does not entitle her to any share in the property.

7.100 Section 27 of the Hindu Marriage Act, states that the Court may make provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage which may belong jointly to both husband and wife. The expression jointly in the Act is significant as it demarcates the limits of the matrimonial Courts. Although the Court has discretion to order any settlement of property to the benefit of the spouse, it is empowered to distribute property that is jointly held by the husband and the wife.

7.101 General Recommendation 17 of the Convention on Elimination of all Forms of Discrimination against Women (CEDAW) deals with measurement and quantification of the unremunerated domestic activities of women and their recognition in the Gross national product. In *Lata Wadhwa V State of Bihar*⁷⁸, the Supreme Court while awarding compensation to the family of the deceased (including housewives) and injured in fire, attempted to estimate the value of services rendered by them to the house. In the case of *National Insurance Company V, Minor Deepika*⁷⁹ the Madras High Court stated that one cannot ignore or forget that the homemaker, by applying herself to the tasks at home, liberates her spouse to devote his time and energy and attention to the tasks that augment his income and generate property for the family. Further, the Apex Court has observed that the Government should “assess the value of the unpaid homemaker both in accident claims and in matters of division of matrimonial property”⁸⁰.

7.102 In India, till now Goa is the only State which follows a regime of common matrimonial property, which is based on the Portuguese Civil Code, the living legacy left in Goa by the Portuguese. Under it on marriage, there are four different marital options under the law—community property, absolute separation of property, separation of assets existing prior to marriage and communion of property after marriage and total regime. In the absence of ante

nuptial contract regarding the distribution of property, the custom prevails, which presumes that the spouses are married under the simple communion of acquired properties. Under this system the spouses register their separate properties at the time of marriage. Separate properties include property that each spouse holds at the time of marriage, or that which is acquired by succession, gift or under a previous exclusive right. If separate property is not registered at the time of marriage, it is considered to be community property. All property acquired during the marriage is considered to be owned jointly by both spouses and is to be divided equally if parties divorce.⁸¹

7.103 Matrimonial property rights under the Portuguese Civil Code are founded on the nature of marriage, family and property and the socio-economic conditions of that time that is the late nineteenth century and the early twentieth century and have been frozen as of that date, in Goa. So much so that the newer forms of property and the systems under which they are held are not reflected in the family law and neither is the changing nature of the family and of property reflected.

7.104 **Recommendations:** The Committee is of the opinion that

- A Community of Property regime must be discussed and in the specific context of India. Any proposal on Community of Property should be separate from personal laws and be applicable to women from all communities. For this the economic rationale is the prerequisite and should begin with "discussions on the nature of assets that will form a part of the Community of Property".⁸²
- The framework of the law has to have a gender just base, the procedure to access it must be women-friendly and there has to be certainty in both the content and the process to actualize the right.
- The law must have space for the changing nature of land holdings and forms of property that come within the ambit of matrimonial property be it leasehold rights or tenancy rights or cyber estate or time-shares, etc.
- The concept of matrimonial property rights as being based on recognition to women's work needs to be emphasized in orientation and refresher programmes for the judiciary, this subject must find space in the curriculum drawn up by the Judicial Academies. The Status of Women Committee Report in 1975 had recommended that legal recognition be given to the economic value of the contribution made by the wife through household work. This should be the basis for determining ownership of matrimonial property, rather than continuing with the

archaic test of actual financial contribution, they had urged. While it may sound progressive to have the Courts look at the non-financial contributions made by women to marital property building, considering the patriarchal frameworks within which procedural aspects operate and the access to information available to women, it may be desirable that the Courts are informed of the logic of matrimonial property rights, but that this arithmetical calculation does not become a part of the procedure in the case and the uniform prescription for matrimonial property rights for women as it stands now must continue.⁸³

Custody and Guardianship

7.105 Custody and guardianship of children are also subjects under personal laws. The Hindu Minority and Guardianship Act 1956 (HMGA), Hindu Adoption and Maintenance Act, 1956, Mohammedan law and the Guardian and Wards Act, 1890 are the relevant laws that determine child custody and guardianship of a minor's property and interests. The Guardian and Wards Act 1890 (G&WA) is very outdated legislation and

"was meant to deal with the appointment/ declaration that a person is a guardian of a minor's person and property in certain circumstances [for example] if the father was unfit or had died etc. This law is also the only law under which an application for guardianship and custody can be moved when no divorce or other proceedings are pending."⁸⁴

7.106 The Law Commission of India in its 83rd (1980) report and 133rd (1989) report made several recommendations. The 83rd Report was on "The Guardians and Wards Act, 1890 and Certain Provisions of the Hindu Minority and Guardianship Act" whereas the 133rd was specifically about "Removal of Discrimination against Women in Matters Relating to Guardianship and Custody of Minor Children and Elaboration of the Welfare Principle". The reports brought to light that making the father the natural guardian meant that children whose father's were other than the husband – children of the woman or adoptive children were left without the protection of the law. Furthermore, the HMGA does not allocate guardianship of a female adoptive child and makes the father the natural guardian of an unmarried girl, paying homage to the age-old conception of women and girls as the property of their father first and husband next.⁸⁵

I. Hindu Law

• The Hindu Minority and Guardianship Act, 1956

7.107 Section 6(a) of the HMGA provides that the father, and *after him* the mother, is the natural guardian of a minor and his/her property. The Hon'ble Supreme Court in *Githa Hariharan & Anr v. Reserve Bank of India & Anr*,⁸⁶ heard a petition challenging the provisions of Section 6(a) of the Hindu Minority and Guardianship Act, 1956 read with Section 19(b) of the G&WA as violative of Articles 14 and 15 of the Constitution. The Hon'ble Supreme Court was pleased to hold that;

"26. In our opinion the word 'after' shall have to be given a meaning which would sub-serve the need of the situation viz., welfare of the minor and having due regard to the factum that law courts endeavour to retain the legislation rather than declaring it to be a void, we do feel it expedient to record that the word 'after' does not necessarily mean after the death of the father, on the contrary, it depicts an intent so as to ascribe the meaning thereto as 'in the absence of' - be it temporary or otherwise or total apathy of the father towards the child or even inability of the father by reason of ailment or otherwise and it is only in the event of such a meaning being ascribed to the word 'after' as used in S. 6 then and in that event the same would be in accordance with the intent of the legislation viz. welfare of the child.

27. In that view of the matter question of ascribing the literal meaning to the word 'after' in the context does not and cannot arise having due regard to the object of the statute, read with the Constitutional guarantee of gender equality and to give a full play to the legislative intent, since any other interpretation would render the statute void and which situation in our view ought to be avoided."

7.108 The Court stopped short of declaring the provision unconstitutional in spite of a clear indication that upon plain reading the provision was contrary to established international and Indian law. However, despite this mother still comes after father as a natural guardian. It is time that both parents are given equal guardianship rights in the statute book.

7.109 **Recommendations:** The Committee therefore recommends that . . .

➤ Section 6 clause (a) needs to be amended to read as follows

“(a) in the case of a boy or an unmarried girl.....the father and mother” and clause (b) may be deleted.

Further a proviso should be added stating that the custody of a minor child should ordinarily be with the mother at least till the age of 12 years.

➤ Section 7 of the HMGA should be amended to state that the guardianship of adopted children irrespective of the gender of the child should be given to both adoptive mother and father. At present only allocates guardianship of the adoptive son.

- **Hindu Adoption and Maintenance Act, 1956**

7.110 Section 8 of the HAMA states that any Hindu female who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption, provided that if she has a husband living she shall not adopt except with the consent of her husband unless the husband has completely or finally renounced the world or has ceased to be a Hindu or has been declared to be of unsound mind. Section 7 prescribes similar conditions for a Hindu male.

7.111 **Recommendation:**

➤ The Committee is of the opinion that the provision that a wife/ husband's consent is not required if they do not continue to be Hindus or are of unsound mind must be removed. It does not go with the protection of rights of persons with disabilities, nor Constitutional standards.

II. Muslim Law

7.112 Under the Mohammedan law, the father is the natural guardian and the mother has *hizanat* or custody of the female child till puberty and custody of the male child till seven years of age in the case of Sunnis and 2 years of age for Shias.

7.113 Recommendations:

- The Committee suggests that both mother and father both should be declared as natural guardians of the child while deciding its custody. Further the custody of a minor child should ordinarily be with the mother at least till the age of 12 years.
- Further, it is recommended that the 'best interest of the child' should be the guiding principle while deciding custody of the children.

7.114 Under Muslim law there are 3 kinds of guardian. Under it with respect of person and the property, woman is never treated as the guardian unless courts appoints her.

III. Others

7.115 The Guardian and Wards Act, 1890 is the other relevant law that determines child custody and guardianship of a minor's property and interests. Christians and Parsi have no separate law on guardianship and hence fall back on the Guardians and Wards Act, 1890 (herein after referred to as the G&WA). The G&WA also gives preferential treatment to the father in Section 19, where it prevents Courts from appointing a guardian when the father is alive unless in the opinion of the Court he is unfit as a guardian for the child. These provisions are intuitively repugnant to human rights and violate Articles 14 and 15 of the Indian Constitution. They are also not in keeping with India's international obligations as they violate Articles 1 and 2(c), 2(f) and 2(g) of CEDAW.

7.116 The Hon'ble Supreme Court held as early as 1973 in *Rosy Jacob's case*⁸⁷, that the primary consideration for the grant of custody should be the welfare of the child and not the right of the father as the natural guardian. The judgment thus held that Section 19 of the G&WA must yield to Section 17 of the Act.

7.117 Custody and Guardianship law is based on archaic notions that devalue women as equal human being and thus require a complete overhaul. A starting point would be the recommendations of the Law Commission, though even those would have to be assessed and made afresh in a new report. There is no doubt that mothers must be deemed equal and natural guardians of children and that there should be a presumption in favor of the mother for the grant of custody for the entire duration of minority of the child, which may be reassessed based on the wishes of the child at the age of 12. Furthermore, the welfare of the

child should be the paramount consideration in appointing a guardian where a choice has to be made between either parent or a third party.

7.118 Recommendations: The Committee therefore recommends that

- The position of mother as a guardian in all the laws must be introduced. There must be a clear cut amendment in all laws to declare her as a natural guardian. Mother and father both should be declared as natural guardians of the child while deciding its custody. Further the custody of a minor child should ordinarily be with the mother at least till the age of 12 years.
- The Guardian and Wards Act, 1890 needs to be completely overhauled and a new Children's Act needs to be thought about. This Act should spell out the duties and responsibilities of parents towards their children and the rights that children have vis-a-vis their parents and the State.
- With regard to the concept of "illegitimate" child, as already stated earlier, it should be deleted as it is non-progressive in nature
- The best interests of the child must be considered in determining custody and guardianship of minor's person and property. Bench manuals should be prepared by the highest judiciary laying down guidelines for custody so as to protect the best interest of children and to ensure that custody is not used as a bargaining tool.
- Currently the custody issues under matrimonial laws are addressed as ancillary issues. This should be corrected by recognizing custody as an independent issue.
- Guardianship should vest in both adoptive father and mother of both adopted son and daughter.
- Consequences of adoption especially rights in favour of adopted child, obligations of adoptive parents, relationship of the child with the adopted family should be clearly provided in the Juvenile Justice (Care and Protection of Children) Act. The Central Adoption Resource Agency (CARA) does not spell out in terms the consequences of adoption. The Juvenile Justice (Care and Protection of Children) Act says all rights the natural child has will be given to the adoptive child, but this is only provided in the definition clause.
- The term guardian is not very clear under the G&WA. There is a conflict in rights of natural and testamentary guardian which needs to be addressed.

Inheritance and Succession

7.119 Property rights of women in India have evolved through a continuing struggle between the status quo and the progressive forces. While rights of women have come a long way ahead in the last century, women in India continue to get less rights in property than men have, both in terms of quality and quantity. Similar to law regarding marriage and divorce property rights too continue to be governed by their respective personal laws. Hindus, Sikhs, Jains and Buddhist are thus governed by a single code, Christians are governed by another, Muslims have not codified their property rights as yet and tribal of various regions continue to be governed by their respective rights as accorded by their customs and norms of their tribes.⁸⁸

I. Hindu Law

7.120 Property of a Hindu woman varies depending on the status of the woman in the family and her marital status, whether she is a daughter, married or unmarried or deserted, wife or widow or mother. It also depends on what kind of property one is looking at, whether it is one's ancestral property or whether it is self-acquired property. The Hindu Succession Act, 1956 was the first post-independence enactment of property rights among Hindus – it applies to both *Mitakshara* and *Dayabhaya* systems as also to persons in South of India previously governed by certain matriarchal systems.⁸⁹

7.121 Hindu law recognizes the entity by the name of “coparcenary”. A coparcenary is a legal institution consisting earlier of three generations of male members in the family. Every male member became a coparcenary which meant that no person's share in the ancestral property can be determined with certainty, it diminishes on the birth of a male member and enlarges on the death of another.⁹⁰ A coparcenary has the right to demand partition in the property. With the 2005 amendments daughter was also made a coparcenary under the HSA.

7.122 Recommendations:

- i. **Devolution of property** – One area of concern is the manner in which a woman's property devolves upon her heirs in the comparison to the devolution of a male's property. Under Section 8(1) when a male dies his class I heirs are his wife, mother and children or

their representatives in their absence. However, under Section 15(1) when a woman dies, intestate then her property would devolve upon her sons, daughters and husband, secondly on the heirs of the husband, thirdly upon her mother and father, fourthly upon the heirs of her father and fifthly upon the heirs of her mother.⁹¹ The Law Commission in its 207th report had recommended necessary amendments under Section 15 of the HSA in order to equate her parent's heir along with her husband's heir⁹². The Supreme Court in the case of *Omprakash V. Radhacharan*⁹³ though upheld this method of devolution acknowledged its unfairness and injustice.

➤ The Committee recommends that appropriate changes should be made under Section 15 and Section 16 of the HSA to ensure that in absence of her husband and children, the property would go to her parents and her parent's heirs rather than the heirs of her husband and if parents are not alive then the property should go to her siblings and more distant heirs and not heirs of the husband.⁹⁴

ii. **Land laws** – Another critical point was Section 4(2) of the Hindu Succession Act, 1956 which specifically protected special laws in every State to address the issue of fragmentation of agricultural land. The 2005 amendments deleted Section 4 of HSA. Prior to the amendments, the HSA was not applicable to State land and State laws were applicable. It may be pertinent to mention that various States have special laws which deny women equal rights of succession in tenancy rights. For example, the Delhi Land Reforms Act, the male descendants are first on the list, the widow and father are next and unmarried daughters are ninth. Though, Section 4(2) of the HSA has been deleted via the 2005 amendments, special State laws which deal with agricultural land continue to exist on paper.⁹⁵ Post 2005 amendments, the Law Ministry had stated that the required State amendments will be made however, the same has not been done.

➤ The Delhi High Court has held that the provisions of the HSA shall prevail over State laws, however, the Committee is of the opinion that there is a need to clearly state the same through statutory amendment. Land laws including the various land Reforms Acts and Tenancy Acts in Uttar Pradesh, Delhi, Haryana, Punjab, Himachal Pradesh and Jammu and Kashmir should be amended to ensure that women inherit agricultural property and tenancy rights equally with their male siblings. In addition the Central Government should also direct the State Governments to amend laws relating to agricultural land.

iii. The right to will – Section 30 of the HSA states that any Hindu may dispose off by will or other testamentary disposition any property which is capable of being so in accordance with the provision of the Indian Succession Act, 1925 or any other law for the time being in force.

- Though it is a gender neutral provision it is believed to be generally used against women. Under Muslim law a person can will away not more than 1/3rd of his property. The Committee suggests that right to will should be restricted so that daughters are not disinherited.⁹⁶

iv. Daughters as coparceners – The study done by Ms Kirit Singh (for UNFPA) revealed that despite daughters being given coparcenary rights, the law is not being implemented in an effective manner i.e: daughters are still not getting their right in the ancestral share.

- The Committee therefore recommends that some form of restriction should be put in case the daughter “wants to” relinquish her rights.

v. Hindu Undivided Family (HUF)

- The Committee is of the opinion that the tax exemption for the HUF should be abolished as no such exemption is given to property in any other law. The revenue generated may be used for programmes for empowerment of women.

vi. Male preference - Most statutes mention the term son and daughter separately. It is important how their descendants are treated. There is a preference of agnates (pure male line) over cognates especially for relatives beyond class I and class II heirs.

- The Committee recommends that Section 8 of the HSA should be amended and agnates and cognates be brought at par. Therefore clause (d) of Section 8 needs to be deleted and the term cognates be added in clause (c) itself after agnates. Similarly there should be no difference between those related by full, half or uterine blood.

vii. Conversion – Section 26 states that if before or after the commencement of this Act a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property. Inheritance rights of convert himself or herself is protected by the Caste Disabilities Removal Act 1850, there is no justification for disqualifying their descendants born after conversion.

- Hence the Committee is of the opinion that Section 26 should be deleted.

viii. **Concept of “illegitimate child”**- There is no need to differentiate between legitimate and illegitimate children. For the fault of parents, children should not be denied property rights in their parent’s property. Further latest judicial trend also recognize right of succession of so called illegitimate children like children of live-in relationships.

➤ The Committee is of the opinion that the term “illegitimate children” should not be used and Section 3(j) should be redrafted as “*Related means related by blood or by adoption or by marriage*”.

ix. **Mothers, wives and widows** - When the HSA was amended in 2005, daughters got the same rights as sons had in the joint family property. Prior to this, certain States has also amended their laws to make daughters coparceners.

➤ The Committee is of the opinion that wives, mothers and widows are still not made coparceners, though through a progressive Supreme Court judgment a widow got the same share in the joint family property as the other members when her husband died. Further, implication of deletion of Section 24 (certain widows remarrying may not inherit as widows) by the 2005 Amendment Act needs to be clarified.

x. **Definition of “ancestral property” and “self-acquired property”**: Self acquired property or self-acquisitions generally include the property that the deceased may have left earned, i.e., his salary or share in profits or what he may have received through a gift or will or through inheritance from another relative or by way of lottery etc. It is still not clear whether this self-acquired property can form a part of the larger ancestral property.

➤ The Committee recommends that as there is also no clear definition of ancestral property available and it is essential that the terms ancestral property and self-acquired property be statutorily defined.

II. Muslim Law

7.123 As earlier mentioned Muslim law is not codified in India. The Shariat Application Act, 1937 explicitly states that Muslim personal law shall be applicable to all cases in which the parties are Muslims. There are two main schools of law governing the Muslims regarding matters of property in India, namely the Hanafi law followed by Sunni Muslims and the Ithna

Asahari law governing the Shia muslims. Though there are four sects amongst Sunni Muslims, Hanafi law is applied to most.⁹⁷

7.124 Under Muslim law there is no difference between ancestral and self-acquired property or even movable or immovable property. No Muslim can inherit during the lifetime of his ancestors and there is no construct of a joint family. However, under Muslim law there are three categories of heirs one is sharers or Quranic heirs who are entitled to inherit a fixed share, the next are residuary who are entitled to residuary property after the sharers are awarded. Third is the distant kindered.⁹⁸ Unlike Hindu law, no Muslim is allowed to make a will in favour of any of his heirs and a bequest to a stranger is allowed only to the extent of one third of the property.⁹⁹

7.125 Recommendations:

- Share in property - Both in Shia and Sunni, a woman is given half the share of the man. For instance if a son and a daughter inherit, the daughter obtains one share while the son obtains two. The Committee is of the opinion that there is a need to address such a discriminatory practice.
- There is a preference for agnates especially in Sunni law, in Hanafi law the son's son and son's daughters are both heirs but daughter's son and daughter's daughter are out of the heir line. The Committee suggests that this discrimination needs to be addressed.
- The Muslim Personal law (Shariat) Application Act, 1937 abrogated the customs and usages in favor of Muslim personal law but excluded agricultural land. In most of the northern States inequality amongst men and women prevail as agricultural land is the most important form of property.¹⁰⁰ The Committee suggests that this issue be addressed.

III. Property Rights for Christian and Parsi women

7.126 The laws of succession for Christian and Parsi women are laid down in the Indian Succession Act, 1925. Section 31 to 49 deal with Christian Succession and Section 50 to 56 deal with Succession for Parsis.

- Indian Christian widow's rights is not exclusive rights and gets curtailed as the other heirs step. Under Section 33 of the Indian Succession Act, only if the intestate has left none who are of kindred to him, the whole of his property would belong to his widow. Where the intestate has left a widow and any lineal descendants, one third of his property devolves to his widow and the remaining two thirds go to his lineal descendants. If he has left no lineal descendants but has left persons who are kindred to him, one half of his property devolves to his widow and the remaining half goes to those who are of kindred to him.¹⁰¹ Thus the presence of even the remotest kindred deprives the widow of half share of her husband's property.¹⁰²
- The Committee thus recommends that necessary amendments may be carried out in this section to ensure that rights of a widow does not get effected by the presence of such remote kinders.
- Under Section 42 of Act if the intestate father is living then the father shall inherit the property. In the absence of the father the mother, brother or sister shall inherit the property. There is a need to overcome the gender discrimination within this provisions hence
- The Committee suggests that father and mother should be treated in the category with respect to inheritance.

7.127 Prima facie the property rights of Parsis are quite gender just. However, amongst Parsis loss of rights occur by conversion thereby effecting descendants of converts. Non-Parsi women who are either wife or widow of a Parsi cannot inherit but their children can inherit. Moreover, children of Parsi women born to her from a non-parsi husband are not considered Parsi. This provisions discriminates against Parsi women who marry outside their community.

IV. General Recommendations

7.128 In addition to the above specific recommendations, in order to ensure equality for women in the sphere to inheritance and property rights the Committee suggests the following broad recommendations;

- Any land or property given/allotted by the Government under various laws including rehabilitation schemes should be given in the joint names of the husband and wife. Similarly sons and daughters must be treated as equals whenever the Government allots lands to heirs. There have been many suggestions for providing women access to cultivable land, ensuring joint ownership or sole ownership to women of all land distributed by the State including under rehabilitation schemes, facilitation “group ownership” ownership or leasing and allotment of homestead lands of 10–15 cents to landless families within in one kilometer of existing habitation with priority to single women. Priority should be given to women, particularly single women in housing schemes of the Government.¹⁰³
- The Department of Land Resources, Ministry of Rural Development should launch a campaign to correct all revenue records and ensure that women’s land ownership records are properly recorded by the states with intimation to them. The revenue officers should also ensure that daughters and women are not being coerced into giving up their claim¹⁰⁴.
- More women officers should be appointed in the revenue administration, particularly at the levels of the tehsildars, kanungos and village patwaris.
- It should also be ensured that during the course of marriage if a husband buys or sells property in allotment it should automatically be registered under the names of both the spouses.
- Gender sensitization of key functionaries like the patwaris and revenue officers is necessary to ensure that these officers do not act against the interest of women. Along with this these it should be ensured that these officers are aware with the latest development in law.
- Providing incentives may help in getting property registered under the names of women. This can be done through incentives like charging much less stamp duty if the property is registered in the name of the wife or daughter. The Department of Registration and Stamps, Rajasthan offers a 50 percent reduction in stamp duty for agricultural land if it is registered in the name of the women¹⁰⁵.

Section II - *An assessment of Criminal Laws*

7.129 Violence against women has been acknowledged as “one of the crucial social mechanisms by which women are forced into a subordinate position compared with men” and therefore a violation of women’s equality rights.¹⁰⁶ Unequal economic, social, and political status and position of women is an outcome of patriarchy and the deeply entrenched sociocultural stereotypes about women and is sometimes perpetuated by laws, regulations, and policy which do not sufficiently address the subordinate status of women.¹⁰⁷ Women face violence due to their position of inequality; their vulnerability to violence being exacerbated due to their positions of dependency as well as prevailing patriarchal attitudes.

7.130 The Declaration on Elimination of Violence against Women, 1993 (DEVAW) clearly defined violence against women

“as any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or in private life.”¹⁰⁸

Article 2 of the DEVAW further went ahead to identify various forms of violence including but not limited to physical, sexual and psychological violence occurring in the family, within the general community or violence perpetrated or condoned by the State.¹⁰⁹

7.131 The Indian Constitution guarantees equality before the law, equal protection of laws under Article 14 and prohibits discrimination on grounds of sex under Article 15. A unique feature of the Indian Constitution is Article 15(3), which empowers the State to take special measures for women and children. Article 23 prohibits traffic in human beings and forced labour and Article 51A(e) provides that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women.¹¹⁰

7.132 India was one of the 48 countries which voted in favour of the adoption of the UDHR by the United Nations General Assembly on 10th December 1948. The UDHR defines ‘fundamental freedoms’ and ‘human rights’ for the purposes of the UN Charter.¹¹¹ India acceded to the International Covenant on Civil and Political Rights, 1966 ICCPR and Article 3 of the ICCPR places an obligation on all covenanting parties to undertake to ensure the

equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

7.133 India signed and in 1993 ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The definition of “discrimination against women” under Article 1 of CEDAW was clarified by Recommendation 19 to include gender based violence which defined it to include

“Violence that is directed against woman because she is a woman or that affects woman disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender based violence may breach specific provisions of the Convention regardless of whether those provisions expressly mention violence....”

Article 24 requires the State parties to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

7.134 Article 14 of the DEVAW requires State to pursue by all appropriate means and without delay a policy of eliminating violence against women and to this end requires them to develop penal, civil, labour and administrative sanction and domestic legislation to punish and redress wrongs caused to women, facilitate access to the mechanism of justice and provide just and effective remedies for the harm that they have suffered. It also casts a duty on the State to inform women of their rights in seeking redress through such mechanisms.

7.135 Over the years, the State has enacted special laws in addition to gender specific provisions in general criminal laws to counter harmful practices against women. Many have been enacted as a consequence of active lobbying by the women’s movement particularly in the 1980s.¹¹² Moreover, significant gains in terms of legislative reforms have been made recently through the enactment of the Criminal Laws (Amendment) Act, 2013 and the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013. In 2006, the Protection of Women from Domestic Violence Act, 2005 was brought into force. Whilst these laws are far from perfect, they are certainly a base to build upon and are a reflection of the hard won legislative reform.

7.136 Passing legislation, however, does not indicate judicial or executive sensitivity to women's rights. Faithful implementation of the laws is the essence under the rule of law for good governance. In the absence of faithful implementation of the laws by efficient machinery, the laws remain mere rhetoric and a dead letter.¹¹³ There are reports of denial of registration of cases by the police, inadequate investigations, as well as lack of prosecution of these cases in court. Further, court procedures often lead to delays of several years before women get justice. This, coupled with the prevailing gender bias of the implementing agencies, acts as a barrier for women to access justice.¹¹⁴ Mention may be made at this point of the initiative taken by the Lawyers Collective, a Delhi based organisation, to carry out a monitoring and evaluation exercise of the implementation of the PWDVA, 2005 on an annual basis ever since its enactment.¹¹⁵

7.137 The CEDAW Committee in its concluding comments on the recent 4th and 5th Country Report has recommended that the State put in place an effective system to monitor and evaluate the implementation, effectiveness and impact of legislation to combat sexual violence and allocate sufficient resources for the immediate enforcement of legislation on violence against women and for the establishment of special courts, complaints procedures and support services envisaged under that legislation in a time bound manner.¹¹⁶

Prevalence of Violence against Women

7.138 According to the National Crime Records Bureau (NCRB) data, the total number of cases of crimes against women under the Indian Penal Code (IPC) and Special Legislations (SLL) for the past 4 years are as follows

Table 1: Total number of cases of crimes against women under the Indian Penal Code and Special Legislations

	Year	Total incidents of crimes against women
1.	2010	2,13,585
2.	2011	2,28,650
3.	2012	2,44,270
4.	2013	3,09,546

Source: NCRB Report 2013

Table 2 - Head-wise number of crimes against women under the Indian Penal Code (IPC) and Special Legislations

Sl No	Crime head	Year					% variation in 2013 over 2012
		2009	2010	2011	2012	2013	
1	Rape	21,397	22,172	24,206	24,923	33,707	35.2
2	Kidnapping and Abduction	25,741	29,795	35,565	38,262	51,881	35.6
3	Dowry Death	8,383	8,391	8,618	8,233	8,083	-1.8
4	Cruelty by husband and relatives	89,546	94,041	99,135	106,527	1,18,866	11.6
5	Molestation	38,711	40,613	42,968	45,351	70,739	56
6	Sexual Harassment	11,009	9,961	8,570	9,173	12,589	37.2
7	Importation of Girls	48	36	80	59	31	-47.4
8	Sati Prevention Act	0	0	1	0	0	0
9	Immoral Traffic Prevention Act	2,474	2,499	2,435	2,563	2,579	0.6
10	Indecent Representation of Women Act	845	895	453	141	362	156.7
11	Dowry Prohibition Act	5,650	5,182	6,619	9,038	10,709	17.9
	Total	2,03,804	2,13,585	2,28,650	2,44,270	3,09,546	26.7
		4	85	50	0	6	

Source: NCRB 2013

7.139 A total of 3,09,546 incidents of crime against women (both under IPC and SLL) were reported in the country during the year 2013 as compared to 2,44,270 in the year 2012 recording an increase of 26.7% during the year 2013. These crimes have continuously increased during 2009 - 2013 with 2,03,804 cases in the year 2009, 2,13,585 cases in 2010, 2,28,650 cases in 2011, 2,44,270 cases in 2012 and 3,09,546 in 2013. The crime against women during the year 2013 has increased by 26.7% over the year 2012 and by 51.9% over

the year 2009. The IPC component of crimes against women has accounted for 95.6% of total crimes and the rest 4.4% were SLL crimes against women. The proportion of IPC crimes committed against women towards total IPC crimes has increased during last 5 years from 9.2% in the year 2009 to 11.2% during the year 2013.¹¹⁷

7.140 The 2005-06 National Family Health Survey (NFHS- III) reported that one-third of women aged 15 to 49 had experienced physical violence, and approximately one in 10 had been a victim of sexual violence. The survey also found that only one in four abused women had ever sought help and that 54% of women believed it was justified for a husband to beat his wife.¹¹⁸ It has been said that the data from the National Crime Records Bureau and the National Family Health Surveys does not reflect the true picture (it is under-reported) in the context of sexual and physical violence, both for violence committed by “men other than survivor’s husband” and violence committed by husbands.¹¹⁹

7.141 The nation suffers, at one hand, from dismal sex ratios in several states such as Punjab and Haryana and on the other hand from the existence of chauvinistic institutions like Khap Panchayats, which, unfortunately, are politically so powerful that they overrule, with impunity, the constitutionally mandated administration of equality in favour of women, by using extra constitutional, oppressive methods of punishment.¹²⁰

Rape and Sexual Assault

7.142 In India, laws pertaining to rape has witnessed an incremental change in the past three decades. Rape has been defined as an “unlawful sexual activity with a person without consent and by force or threat of injury”.¹²¹ Section 375, 376, 376 A-E¹²² of the Indian Penal Code deals with rape and sexual assault. Section 354 and 509 of the IPC refers to words or assault with an intent to outrage the modesty of a woman. Urgent amendments were brought out when after the judgment in the *Mathura Rape case*,¹²³ where after the accused were let out on grounds relating to the past sexual behavior of the victim, an open letter was written by four law professors questioning the Supreme Court verdict. This letter triggered a nation-wide protest, initiated by a group of women, from different organizations and led to the enactment of the Criminal law (Amendment) Act of 1983.¹²⁴

7.143 These amendments included the introduction of the notion of custodial rape by a policeman or head of institutions and specific provisions for non-disclosure of identity of the

victim of sexual offences.¹²⁵ Presumption of absence of consent in certain cases of rape,¹²⁶ in-camera proceedings,¹²⁷ and others were also incorporated. The Indian Evidence (Amendment) Act, 2002 added provisions stating that it is not permissible to raise questions relating to the general moral character of the victim during cross-examination and the Criminal Procedure Code (Amendment) Act, 2005 introduced Section 164(A) (medical examination of victims of rape), Section 53 (A) (medical examination of accused of rape) and Section 176(1A)(a)(b) (investigation by Judicial Magistrates of custodial rape and deaths). The total number of cases registered under the above provisions in the last four years are as follows:

Sl No	Crime Head	Year				% variation in 2013 over 2012
		2010	2011	2012	2013	
1.	Rape (Section 376 IPC)	22,172	24,206	24,923	33,707	35.2
2.	Assault on women with intent to outrage her modesty (S 354)	40,613	42,968	45,351	70,739	56.0
3.	Insult to modesty of women (S 509 IPC)	9,961	8,570	9,173	12,589	37.2

7.144 The gang rape on December 2012 was a catalyst in bringing about further changes in the rape laws. Demand for changes in rape laws was being made by the women's movement for over a decade now, following the recommendations made by the Law Commission of India in its 172nd Report. The gang rape incident which created public furor led to a nationwide movement seeking immediate changes in laws relating to violence against women. On 22nd December 2012, the Central Government appointed a Committee under auspices of Justice J.S. Verma, former Chief Justice of India (23rd December 2012). The Committee was expected to submit a report suggesting amendments to the criminal law. The report was submitted (13th January 2013) and the Government promulgated an ordinance giving effect to some of the suggestions provided in Justice Verma Committee Report. Thereafter, based on the same, the Criminal Law (Amendment) Act, 2013 was enacted.

7.145 The Act introduced specific offences under various provisions of the IPC, such as, Acid Attack¹²⁸, Sexual Harassment¹²⁹, Voyeurism¹³⁰ and Stalking¹³¹ apart from changes in

the subsisting penal provisions. The definition of "Rape" under Section 375 IPC has been expanded¹³². The grounds for aggravated forms of rape have been expanded to include rape by a person in a position of authority and control, rape by a guardian or a person in a position of trust and rape accompanied by grievous injury or hurt amongst others. The amendment also includes higher penalty for rape committed by members of armed forces deployed in an area by the Central Government.¹³³ In addition, Section 357 C of the IPC mandates free medical assistance for victims of rape and acid attack in all private and government hospitals. The Criminal Law Amendment Act, 2013, though a welcome step, failed to address/incorporate a few issues which had been recommended by the Verma Committee. This will be deliberated later on in the chapter.

7.146 The concluding comments of the CEDAW Committee in the 4th and 5th periodic report earlier this year clearly recommends the implementation of the recommendations of the Justice Verma Commission regarding violence against women.¹³⁴ The UN Special Rapporteur on Violence against women in her recent visit to India has also recommended the need to include a definition of marital rape as a criminal offence; expand the scope of protection of the law relating to rape and include other categories of women (including unmarried women, lesbian, transgender etc) and define gang rape as multiple crimes requiring appropriate punishment.¹³⁵

- **Age of consent**

7.147 The Criminal Law Amendment Act, 2013 states that the age of consent shall be eighteen years. The Justice Verma Committee and the Law Commission in its 172nd and its 205th Report¹³⁶ had recommended that the age of consent be reduced to 16 years. The effect of keeping the age of consent at eighteen is to criminalize consensual sexual acts between young people in certain circumstances. The laws in different countries with respect to the age of consent differ widely, with some taking into account the difference in ages between the participants in determining whether the offence of statutory rape has been committed.

7.148 The *first* effect of criminalizing consensual sexual activity between adolescents is increasing parental control over them. Sexual encounters are happening at an earlier age, thus the minimum age for consent should be lowered to prevent young teenagers from being criminalised. Further, many a times parents may file cases of rape which actually may be

cases of elopement – where the parents' objection may be related more to the social unsuitability of the match rather than the age of the girl. The issue then becomes about much more than age to involve caste, religion, class and the exercise of parental and social control over sexual choices.

7.149 Increasing the age of consent only drives those who need the most help underground out of fear. Instead of receiving advice on safe sex, youngsters are made to conceal their sexual activity.¹³⁷ Finally, is the context of child marriages that poses a persistent problem and are merely 'voidable' between the ages of 15-18 and the law of rape does not apply when a man has sex with his lawfully wedded minor wife.¹³⁸ Thus, the law is exposed as hypocritical: it clearly does not believe a married adolescent girls incapable of consent but is troubled by the thought of young people engaging in sexual acts without the sanction of marriage.

- **Marital Rape**

7.150 Section 375 of the Indian Penal Code, 1860 provides an exception to marital rape. The exemption for marital rape stems from a long out-dated notion of marriage which regarded wives as no more than the property of their husbands.¹³⁹ International jurisprudence however endorses that a rapist remains a rapist regardless of his relationship with the victim. This advancement is in accordance with the fundamental objectives of the Convention on Human Rights, the very essence of which is respect for human rights, dignity and freedom. Country trend shows the same. In Canada, the provisions in the Criminal Code, which denied criminal liability for marital rape, was repealed in 1983. South Africa criminalised marital rape in 1993, reversing the common law principle that a husband could not be found guilty of raping his wife. In Australia, the common law 'marital rape immunity' was legislatively abolished in all jurisdictions from 1976.¹⁴⁰

7.151 According to the NFHS 3 data, 39% of currently married women age 15-49 have ever experienced any physical or sexual or emotional violence in their current marriage and 27% have experienced the violence in the past 12 months. The Verma Committee report had suggested that the exception relating to marital rape provided under Section 375 of the Indian Penal Code be removed and that marital or other relationship between the perpetrator and victim is not a valid defense against the crimes of rape or sexual violation. Similar

recommendations had been made by the Law Commission in its 172nd and its 205th Report¹⁴¹. However, the Criminal Law (Amendment) Act, 2013 retains the exception relating to marital rape under Section 375, IPC. As per the exception, sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age is not sexual assault.

7.152 The UN Committee on the Elimination of Discrimination against Women (“CEDAW Committee”) has observed that India should “*widen the definition of rape in its Penal Code to reflect the realities of sexual abuse experienced by women and to remove the exception of marital rape from the definition of rape...*” In its concluding comments on the 4th and 5th periodic report the Committee again recommended inclusion of marital rape as a criminal offence.¹⁴² The UNSRVAW in her recent visit to India also recommended the same.¹⁴³

- **Investigation and Procedural issues**

7.153 Under Indian criminal law, the prosecution can secure a conviction on a rape charge based solely on the testimony of the rape survivor, provided the testimony is cogent and consistent. It is only by way of abundant caution that the Court may look for some corroboration so as to satisfy its conscience and rule out any false accusation.¹⁴⁴ However, in practice, judges and the police give significant weight to forensic evidence, and it can influence to a great deal whether a conviction is secured. The Verma Committee noted that in our tradition bound society, structured on the basis of conservative values, when a woman is subjected to sexual assault in any form, it translates into a multiple crime. She is raped at home (literally and figuratively) and in public, followed by demeaning medical examination, examination and cross-examination by the police and in court, in salacious media reports, and in the insensitive response of society, including family and acquaintances. In sum, the victim suffers intermittent rape in full public glare.¹⁴⁵

7.154 A 2009 Human Rights Watch Report states that in cases of rape, women report specific difficulties with the ways they are treated during the process of forensic evidence collection. Police officers and doctors often send survivors from one hospital to another to take various tests, and often make them wait for hours, subject them to multiple uncomfortable examinations, and sometimes publicly identify them as “rape cases” in hospital corridors.¹⁴⁶ Also overburdened gynaecologists and other physicians are often reluctant to examine rape

survivors because they want to avoid embroiling themselves in a complex and sensitive case that could eventually require them to testify in court.¹⁴⁷

7.155 As per the recent amendments i.e., 357 C Criminal Procedure Code (CrPC) all hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall have to immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code, and shall have to immediately inform the police of such incident. Section 164A of the CrPC states that medical examination of the victim of rape shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf.

7.156 However, in June 2010 the Maharashtra Government issued a set of guidelines related to the forensic examination of rape survivors that reinstate questions about the hymen and the number of fingers that can be admitted into the hymen orifice. Similarly, in early 2010 the office of the Director General of Health Services in Delhi introduced a template for the forensic examination of rape survivors at government hospitals that seeks information about the size of the hymenal orifice and asks doctors to comment on whether the survivor is "habituated to sexual intercourse." Many health rights and women's rights activists regard these as a setback to women's rights.¹⁴⁸

7.157 There have, however, been a number of positive developments as well. The Hon'ble High Court of Delhi in the case of *Delhi Commission for Women Vs Shri Lalit Pandey and Others* issued comprehensive guidelines for police, hospital, doctors, child welfare committees, courts, prosecutors and other authorities, regarding investigation of rape and sexual assault cases. The Delhi police also listed out the same specifying detailed guidelines to be followed by the police at the time of investigating rape cases.¹⁴⁹

7.158 The Department of Health Research (DHR) under the Ministry of Health and Family Welfare, brought out guidelines for health workers titled "Forensic Medical Care for Victims of Sexual Assault" in 2013. It focusses on bracing a victim of sexual assault for 'secondary victimization' resulting from inadequate support from family, friends, service providers, and the criminal justice system. It lists out in details all the dos and don'ts for health worker while

dealing with a victim of sexual assault. According to the guidelines, a counsellor must tell a victim what might happen in court and discuss methods by which they can handle the situation.¹⁵⁰

7.159 In countries such as Canada, South Africa, the United States, and the United Kingdom, one stop multidisciplinary centres provide survivors of sexual violence with integrated services, including physical and psychological care. Staff members at such centres offer medical aid and psychological counselling using standard treatment and examination protocols. The discussion around setting up of One Stop Crisis Centres or Nirbhaya centres have been doing the rounds ever since the then Finance Minister had announced contribution of Rs. 1000 crores for the safety and security of women and girl children. This year's budget has further increased the amount. These Centres are to provide support services to the survivors of any form of violence against women. According to recent reports such centers are going to be set up in every State (one in every State).

7.160 Although progress is being made globally, many women and girls who experience physical and sexual violence still lack access to quality multi-sectoral services. These services are essential as they provide the much-needed support to survivors of violence, by keeping them safe, providing health care for their injuries, responding to their sexual and reproductive health needs, including provision of post-rape care and counselling and facilitating their access to the police and justice system.

7.161 The concluding comments of the CEDAW Committee in the 4th and 5th periodic report earlier this year clearly recommends inclusion of provision for systematic training on women's rights to all law enforcement personnel, to medical staff and judicial officials.¹⁵¹ The UNSRVAW during her recent visit raised concerns about evidence gathering, including the practice of degrading medical and forensic examinations, such as the "two-finger test" for victims of sexual violence. The test is often carried out without the victim's consent despite the practice being officially discontinued by the Director General of Health Services in 2011, and a Supreme Court decision of 2013 branding it as a violation of the victims' right to privacy.¹⁵²

- **Relief and Rehabilitation of Rape Victims**

7.162 In *Delhi Domestic Working Women's Forum v. Union of India*¹⁵³ and others, the Hon'ble Supreme Court directed the National Commission of Women (NCW) to formulate a

scheme for "compensation" to rape victims and setting up of the Criminal Injuries Compensation Board.¹⁵⁴ In 2008 through the amendment of the Code of Criminal Procedure, Section 357A was added. As per Section 357A the State Governments have to formulate a victim compensation scheme in consultation with the Central Government. This provisions would include women who have been victims of rape as well. Till date 24 States and 7 Union territories have notified the victim compensation scheme¹⁵⁵. Under the scheme, compensation to rape victims is also included and the amount of compensation varies from Rs 20,000 to Rs 10 lakhs.

7.163 The NCW in April 2010 had proposed a Scheme for relief and rehabilitation of victims of Rape. In addition to the provision for monetary relief, the scheme also casts a duty on the Criminal Injuries Relief and Rehabilitation Board to make provision for legal, medical, psychological or any other form of aid/assistance, provide counselling support to the victims, initiate suitable measures to ensure the protection of the victim and witnesses, periodically review the progress of investigation and others similar support.¹⁵⁶ It was stated by the Ministry that since the provision of compensation/relief is already provided to a victim of rape under section 357A of the CrPC, this scheme may not be necessary¹⁵⁷. However, what may need to be considered is that this scheme focussed on providing a holistic support to a victim. It is hoped that the Nirbhaya/One Stop crisis centre which is in the process of being rolled out fulfils all the criteria which is required. At present this scheme which is expected to provide all forms of relief and support ranging from medical, legal, psychological all under one roof shall be based out of a hospital.

7.164 The concluding comments of the CEDAW Committee in the 4th and 5th periodic report earlier this year clearly recommended establishment, without delay, of one-stop crisis centres providing women and girls victims of violence and rape with free and immediate access to medical attention, psychological counselling, legal aid, shelters and other support services.¹⁵⁸

7.165 Recommendations:

- Offences of sexual assault and harassment must be taken seriously by law enforcement agencies and the legal system; an environment of permissibility surrounding sexual offences against women is contrary to women's rights in every sphere.

- Marital Rape should be made an offence irrespective of the age of the wife and the relationship between the perpetrator and the victim should be irrelevant in evaluating consent.
- The age of consent should be revised to 16 and there should be a close-in-age exception for young people in consensual sexual relationships where the two are above 16.
- Every attempt should be made to comply with the provisions of CEDAW and the Convention on Human Rights and the exceptions or reservations made by India must be re-evaluated.
- A separate category of heinous offences may be introduced in the definition of rape.
- Rape by armed personnel in the area that they are deployed in or during the discharge of their duty must be specifically penalized.
- Procedural aspects relating to the reporting, registering, evidence gathering and prosecution of rape charges must be evaluated.
- Rape victims must be assured psychological counseling throughout the rehabilitation process – including after legal proceedings – irrespective of whether a conviction has been obtained.
- Immediate police reforms should be carried out. Special operating procedures (SOPs) should be set out to guide and regulate police action during investigation.
- Compensation schemes should be called and viewed as Schemes for Rehabilitation and Reparation and should be set up or made operational wherever they are in existence. The same should be done for victims of violence such as through Acid Attacks etc.
- Any coercion by the court, community, family, or any other person or body on a victim of rape or sexual assault to marry the perpetrator following a rape must be made illegal.

Acid attack

7.166 One of the most heinous forms of attack on women, which is a commonplace in several Asian and African countries, is the throwing of acid on women for a multitude of reasons. These reasons may vary from alleged adultery, turning down advances from men, and also as a form of domestic violence. Acids and other corrosive substances are thrown on women or administered to them, thereby causing death or physical and psychological damage with

unfathomable consequences.¹⁵⁹ It has also been observed that there is no scope for rehabilitation for acid survivors and there is no one to provide support.

7.167 The 226th Report of the Law Commission of India, which dealt particularly with this offence stated:

“Though acid attack is a crime which can be committed against any man or woman, it has a specific gender dimension in India. Most of the reported acid attacks have been committed on women, particularly young women for spurning suitors, for rejecting proposals of marriage, for denying dowry etc. The attacker cannot bear the fact that he has been rejected and seeks to destroy the body of the woman who has dared to stand up to him”.

7.168 The Criminal Law Amendment Act, 2013 introduced a new provision to deal with the offence of acid attack within the Indian Penal Code. Section 326A and 326B seeks to penalize the offence of causing injury to a person due to an acid attack or even an attempt to throw acid on a person. It also states that the fine levied on the accused shall be paid to the victim and shall be reasonable to meet the medical expenses of the victim. Prior to this, most cases of acid attacks were dealt with under Sections which relates to hurt and grievous hurt. As per data available the total number of cases registered on account of acid attacks during 2011, 2012 and 2013 indicating cases registered (CR) are 83, 85 and 66.¹⁶⁰ According to a recent newspaper report the year 2014 has seen a never-before 309 acid attack incidents being reported from across the country. This is almost 300 per cent more than the average number of such cases witnessed during the preceding three years. Uttar Pradesh topped the list with 185 cases till November 2014, followed by Madhya Pradesh with 53 cases. Among the seven UTs, acid attack cases were reported only from Delhi, which witnessed 27 such cases last year.¹⁶¹

7.169 The concluding comments of the CEDAW Committee in the 4th and 5th Periodic report earlier this year clearly recommended enactment of a specific legislation to introduce heavier sentences for perpetrators of acid attacks, to regulate the sale and distribution of acid substances, and to conduct large-scale campaigns to raise public awareness on the criminal nature of such attacks.¹⁶² However, there is a need to note that throwing of acid which is comparatively a recent phenomenon is just a manifestation of violence against women. Thirty years ago we constantly used to hear of stove burning or stove bursting cases and following this several campaigns were carried out where police were forced to record such cases as unnatural death rather than mere accidents. 30 years down the line merely forms or means of

inflicting violence that has changed from kerosene to acid whereas the larger mindset of patriarchy and inflicting violence has remained constant.

7.170 Arising from the directions of the Hon'ble Supreme Court in Writ Petition (Criminal) no. 129/2006, *Laxmi vs Union of India and others*, the Ministry of Home Affairs has issued an Advisory on "Measures to be taken to prevent acid attacks on people and for treatment and rehabilitation of survivors" on 30th August, 2013 to all States/UTs for regulating sale of acids and minimize the easy availability of acids. The Poisons Possession and Sale Rules, 2013, are to be formulated and enforced by the States/UTs. The formulation of the Rules is being monitored by Hon'ble Supreme Court directly. However, Ministry of Home Affairs is also pursuing the States / UTs to expedite the formulation and effectively implement the Rules and interim measures as enumerated in the aforesaid advisory. The Ministry of Health and Family Welfare has already circulated an advisory dated 2/5/2013 regarding the provision of free medical treatment and rehabilitation to acid attack victims.

7.171 As mentioned above, Section 357A would also cover cases of acid attack. As per available informational States except, Andhra Pradesh, Madhya Pradesh, Meghalaya, Nagaland, Telengana have notified their scheme.¹⁶³ The NCW had proposed a Scheme towards relief and rehabilitation of Offences (by acid) on women and children in the year 2008. The scheme had proposed setting up of criminal injuries relief and rehabilitation board at the National, State and District level. It included provisions for immediate financial assistance to the extent of Rs 5,00,000 and total assistance of not exceeding 25,00,000 to victims of acid attack. It also contained a provision for immediate medical assistance by hospitals to victims of acid attack.¹⁶⁴ What needs to be taken into consideration is that acid attack leaves long term injury and disfigurement of the victim. Many a times the woman may not be able to live a normal life. Victims of acid attack also complain of discrimination in educational institutions and employment opportunities.

7.172 Recommendations:

- Sale of acid and similar corrosive substances should be regulated immediately.
- Immediate medical care should be provided to victims of acid attack.
- There should be immediate and effective disbursement of funds/monetary relief to the victim or family of acid attack.

- Rehabilitative measures for victims of acid attack should be undertaken by the Government.

Sexual Harassment of Women at Workplace

7.173 In all the crime heads that affect women, perhaps the most significant progress has been in identifying and criminalizing sexual harassment at the workplace through first the *Vishakha* Judgement¹⁶⁵ and then the enactment of the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013 (SHWA). In response to a writ petition filed by women's groups, the highest court in the land had issued the *Vishaka* Guidelines on Sexual Harassment at the Workplace in 1997. The Supreme Court held, sexual harassment at the workplace is violative of Article 14 of the Constitution which guarantees the Right to equality as well as Article 19 which guarantees the Right to Practise any Profession, trade or business. Since the right to work depends on the availability of a safe working environment, and the Right to Life (Article 21) means a life with dignity, the hazards posed by sexual harassment need to be removed for these rights to have any meaning.¹⁶⁶

7.174 The guidelines also casts an affirmative duty on the State to ensure that workspace and environment was fair, comfortable and safe for women. It elaborated a set of guidelines that must be followed to ensure women a conducive working environment. Article 22 of the CEDAW postulates that equality in employment can be seriously impaired when women are subjected to gender specific violence such as sexual harassment in the work place. However, several incidents revealed that the *Vishakha* guidelines had not been implemented in workspaces across the country.

7.175 The SHWA was brought into place in December 2013. The guidelines laid down in *Vishaka* were incorporated in the SHWA to a large extent, defined sexual harassment and put the onus for prevention and redressal upon the employer, thereby making it a fundamental condition of service. While the public sector and private sector are covered, the law also includes other work places, including the sphere of paid domestic work. However, it is difficult to say how the Act will impact working conditions for women. The increased publicity and larger number of women that appear to be reporting instances of harassment at the workplaces, however, suggest that the enactment has instilled some amount of confidence

and security amongst women that are involved in public life through employment. However, there are a few provisions in the law which will need to be relooked at

- A major problem with the SHWA is that it allows for the prosecution of the aggrieved woman where the Committee arrives at the conclusion that the complaint is false and/or malicious (Section 14). Although there is a proviso which states that “a mere inability to substantiate a complaint or provide adequate proof need not attract action under this section”, it still allows for the further victimization of a victim by subjecting them to an allegation of false complaint and malicious intent and making them the subject of an inquiry. The provision is, therefore, likely to make women fear retaliation and deter them from making a complaint.
- The SHWA also does not adequately address harassment faced by women who work in the unorganized sector and is designed keeping in mind a structured workspace. The definition of workplace in Section 2(o) is wide and specifically includes women working in homes or in the organized sector – yet the measures under the SHWA are not practicable enough in addressing any harassment they may face.
- The proper functioning of these bodies in the organised sector and “Local Complaints Committees” depends largely on their composition. The requirement of women members as well as members “familiar with issues related to sexual harassment” is crucial for a sensitive handling of cases, since sexual harassment at the workplace must be viewed within the framework of unequal power relations within the workplace, where women at lower rungs are more vulnerable.¹⁶⁷
- Upon careful reading, the Act falls short of making the offence cognizable and places upon the Internal/Local committee some of the powers of the police as well as the Court. It must be explicated that formal police/court proceedings can run parallel to the functions of the Internal Complaints Committee – making a complaint to the Internal/Local Committee cannot preclude and needn't precede the lodging of an FIR or making a formal complaint. As per the provisions of the Criminal Laws (Amendment) Act 2013, sexual harassment is a new offence under Section 354A of the IPC and is cognizable and bailable. The relationship between the provisions of the SHWA and section 354A of the IPC, particularly the effect of Section 27 of the SHWA, must be clarified at the earliest.

7.176 In the concluding comments to the recent 4th and 5th Report, the CEDAW Committee has recommended adoption of the Draft National Policy on Domestic Workers, and ensure that the provisions of Sexual Harassment of Women in the Workplace Act is reviewed and applied to domestic workers.¹⁶⁸

7.177 Recommendations:

- Another chapter must clearly address measures for women who work in smaller offices or in the unorganized sector or as domestic workers.
- Measures to prevent the Internal/Local committee from influencing or pressuring the complainant must be introduced. These may include disallowing the withdrawal of a complaint.
- Conciliation between the complainant and the accused appears anti-thetical to the offence and the procedure; it may be clarified as reaching a settlement at the behest of the complainant rather than a procedure of “conciliation”.
- The Internal/Local complaints committee must be required to provide all possible assistance to the aggrieved woman in registering a criminal complaint.
- Section 14(1) of the SHWA are prone to misuse and may act as a deterrent against lodging a complaint. Further, the employer is capable of suppressing or twisting information and deciding against the aggrieved woman even where the complaint is bona fide. The said provision should be deleted.
- The SHWA should introduce civil and criminal consequences for employers and committee members where coercion or manipulation has taken place.

Domestic Violence and Dowry

7.178 The need to address the aspect of violence within the domestic sphere was brought about with the increase in the number of violence being perpetrated on married women within the home sometimes even leading to death. Growing incidents of dowry related violence and bride burning led to the enactment of legislations such as the Dowry Prohibition Act, 1961 and insertion of provision such as Section 498A and 304 B of the Indian Penal Code.

Nature of Crime	Year		
	2010	2011	2012
Cruelty against married women (Section 498A of the IPC)*	94041	99135	106527
Dowry death (Section 304B IPC)*	8391	8618	8233
Protection of Women from Domestic Violence Act , 2005**	11,718	9413	N/A

Protection of Women from Domestic Violence Act (PWDVA)

7.179 The Protection of Women from Domestic Violence Act (PWDVA) was introduced in 2005 and came into effect on 26th October 2006.¹⁶⁹ The PWDVA defines Domestic Violence¹⁷⁰ broadly to include any act, commission, omission or conduct which causes mental and physical harm to the aggrieved person. The definition so framed appears to be in line with the Constitutional principles as well as the definition of violence against women that is adopted in the CEDAW and Declaration on Elimination of Violence against Women 1993. The Act specifically states in its Statement of Objects and Reasons that “*Domestic violence is undoubtedly a human right issue and serious deterrent to development....*”. According to the third National Health and Family Survey (NHFS-3) overall 39% of currently married women aged 15-49 have experienced some form of physical/sexual/emotional violence out of which being slapped is the most common form of spousal physical violence.

7.180 The law is an important landmark because it introduced the concept of “domestic relationship” which sought to include all relationships based on consanguinity, marriage, adoption and even relationships which were “in the nature of marriage”. This was felt necessary, since in light of the absence of compulsory registration of marriages in India, a large number of women are left outside the domain of legal protection.¹⁷¹ The law recognized specific functionaries in the form of protection officers, service providers, shelter homes and medical facilities and also casts a duty on the State to work towards providing a multi-agency response in case a woman facing domestic violence.

7.181 The rights of the aggrieved person are given under Section 5 which are namely in the form of protection, residence, monetary relief, custody and compensation order. It defines “domestic relationship” under section 2(f) as “*a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or*

are family members living together as a joint family thereby going beyond the traditional notion of a married woman being the only one being subjected to domestic violence”.

7.182 According to the latest data, only six States have appointed independent Protection Officers and representatives of State Governments had requested for financial assistance for effective implementation of the Act¹⁷². Further, there have also been judgments that betray a lack of appreciation of the purpose and function of this Act. For instance, in *S R Batra & another vs Taruna Batra*,¹⁷³ the Supreme Court while interpreting the expression “shared household” under Section 2(s) and “right to reside” under Section 17 of the PWDVA held that the wife is entitled to claim a right to residence in a shared household, and a “shared household” would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. In *D Veluswamy vs D Patchaimal*¹⁷⁴ the Supreme Court laid down four conditions which need to be satisfied for a couple cohabiting together to fall under the definition of “relationship in the nature of marriage”. The High Courts of Patna and Kerala have cautioned the lower courts in passing interim or ex-parte orders as envisaged under the PWDVA. Lawyers Collective, a Delhi based organisation, to carry out a monitoring and evaluation exercise of the implementation of the PWDVA, 2005 on an annual basis ever since its enactment.¹⁷⁵

7.183 Recommendations:

- (i) Allocating sufficient resources to ensure that an adequate proportion of protection officers are employed;
- (ii) Ensuring that protection officers are properly equipped to conduct their activities, in terms of administrative and logistical resources, and that funds are made available for their full-time employment.

Cruelty in Marriage

7.184 Under Section 498A of the Indian Penal Code (IPC), the husband or relative of a husband who treats a woman with cruelty is liable to imprisonment for up to three years as well as a fine. ‘Cruelty’ is defined as more severe¹⁷⁶ than under divorce law. According to Flavia Agnes, the provision was aimed at ‘dealing with dowry harassment and suicide’¹⁷⁷ though ‘the wording was wide enough to apply to other situations of domestic violence’¹⁷⁸

and applied to both mental and physical cruelty provided it was 'grave'. The National Crime Records Bureau data shows that the total number of cases registered under Section 498 A of the Indian Penal Code in the year 2010, 2011, 2012 and 2013 are 94,041, 99,135, 106,527 and 1,18,866.

7.185 It is believed that though many women may not be in a position to see it through to its logical end, this does not deny the usefulness of this provision in bringing husbands to the negotiating table. Since the offence is non-bailable, the initial imprisonment for a day or two helps to convey to the husbands the message that the wives are not going to take the violence lying down any longer.¹⁷⁹

7.186 However, since cruelty is defined as any act that is likely to drive the woman to commit suicide or to cause grave injury or danger to life, many a times police officers exercise their discretion to assess whether the sexual abuse or verbal and psychological abuse faced by a woman from her husband or in-laws would qualify as cruelty under Sec 498A or not.¹⁸⁰ Being criminal law in nature, Sec 498A of the IPC necessitates that the "cruelty" of the husband and his relatives be proved "beyond reasonable doubt" which is sometimes impossible considering that violence occurs within the confines of the house.¹⁸¹

7.187 Over the years, this provision has received much negative attention as a provision that allows false complaints to be lodged against husbands and has gained notoriety as a means through which unscrupulous wives exploit their husband's and in-laws. The 2003 Malimath Committee report on reforms in the criminal justice system notes significantly that there is a general complaint that Section 498A is subject to gross misuse. There has been an increasing demand of making Section 498A compoundable in light of the rising discussions around misuse of this Section. In a number of States this has been made compoundable.¹⁸² In light of the growing discourse of misuse of section 498A the Ministry of Home affairs had taken out specific directives regarding arrest, registration of cases and conciliation under Section 498A in 2002, 2012 and then again in 2014. The 243rd Law Commission Report also recommended making Section 498A compoundable.

7.188 While launch of campaigns such as Beti Bachao Beti Padhao and debates around dowry reflects concern on the issue of sex selective abortion, the declining sex ratio and dowry death. There seems to be more concern about the unborn and the dead and a lack of thrust in securing the rights of the women who are alive and are facing violence.

Dowry

7.189 Dowry has been the subject of protest by the women's movement since the seventies and early eighties. In spite of the Dowry Prohibition Act, 1961 (DPA) and the amendments carried out in 1983, 85 and 86 only a handful of cases were decided under it ten years after the enactment.¹⁸³ The 1986 Amendment allowed the State Government to appoint Dowry Prohibition Officers (DPOs) and made the demanding of dowry punishable for at least six months, up to two years and fine. Section 8B of the DPA makes giving and taking of dowry a cognizable and a non-bailable offence. The practice of dowry and instances of dowry related crimes have continued to increase and further, 'Cruelty on account of dowry' and 'Dowry Death' account for an astounding 50.1% of crimes against women.¹⁸⁴ The reasons for this increase are manifold including improper implementation, the hidden nature of the offence, and spread of the practice across class and caste¹⁸⁵, exacerbated by low conviction rates (20.2%)¹⁸⁶.

7.190 A study commissioned by the UNFPA entitled *Laws and Son Preference in India: a Reality Check* reviewed the laws pertaining to dowry and analyzed reasons for its lack of effectiveness. As per the study, the very definition of dowry in Section 2 of the DPA as "in connection with the marriage" has led to subjective interpretation and acquittals by the court.¹⁸⁷ Whilst there have been some positive pronouncements, the Courts have also limited the definition of dowry.¹⁸⁸ The National Commission for Women had proposed amendments to the Dowry Prohibition Act. The proposed amendments to the Dowry Prohibition Act is currently pending with the Ministry of Women and Child Development. Some of the key changes proposed are as follows:

- Widen the definition of dowry. Under the existing law, property or valuable security given or agreed to be given either directly or indirectly, at, before or any time after the marriage in connection with the marriage is defined as dowry.
- Provide lesser penalty for the giver of dowry. At present the giver and taker of dowry are equally punished.
- Mandatory provision for maintaining lists of gifts. The existing law requires the bride and the groom to maintain a list of gifts received by each of them.
- Definition of dowry to be expanded to include stridhan and the provisions of the husband inheriting it to be deleted.

- State Governments to authorize the Protection Officers appointed under the Protection of Women from Domestic Violence Act, 2005 to function as the Dowry Prohibition Officer.

With the practice of dowry growing at a fast rate and it being adopted in newer communities, the campaign against dowry needs to be rethought in terms of linking it with property rights of women in their parents' home¹⁸⁹.

7.191 Section 304B¹⁹⁰, introduced in the Indian Penal Code through a 1986 amendment, created the offence of "dowry death". Further, Section 113B of the Indian Evidence Act, 1872, added by a significant amendment in 1983, allowed the Courts to presume that a suicide of a woman had been abetted by her husband or his relative(s) if it is shown that:

- (a) The woman has committed suicide within a period of seven years from the date of marriage, and
- (b) The husband or relation had subjected her to cruelty as defined in Section 498A of IPC.

7.192 Thus, for constituting an offence under this Section, the Court has to attach specific significance to the time of alleged cruelty and harassment to which the victim was subjected to and the time of her death, as well as whether the alleged demand of dowry was in connection with the marriage. That the presumption in law is dowry death for the disappearance of a married woman indicates how deep the menace of the practice of dowry and instances of domestic violence run in Indian society. The Law Commission in its 202nd report recommended strict implementation of the law by Courts to achieve the legislative intention.¹⁹¹

7.193 Recommendations:

- The definition of "cruelty" under Sec 498A should be reviewed to include the varied forms of violence against women within the home, and ensure that it is in line with the definition of "domestic violence" given under the Protection of Women from Domestic Violence Act, 2005 and several human rights treaties and conventions ratified by India.¹⁹²
- Proposed amendments to the Dowry Prohibition Act be subjected to wider consultations.

- The words “soon before” under Section 304B should be omitted.

Child Sex ratio

7.194 Another consequence of gender discrimination, especially violence against women, in India is the declining child sex ratio. This phenomenon has spread across States. While there is an overall positive trend in the sex ratio with the number of females to every 1000 males increasing to 940 in 2011 from 933 in 2001, the Child sex ratio (CSR) (0-6 years of age), defined as the number of girls for every 1000 boys is dropping in spite of special legislation and measures to eliminate pre-natal sex-determination.¹⁹³ The Census of India recorded 914 girls for every 1000 boys (in the 0-6 years age group) in 2011 as against 927 in 2001¹⁹⁴. Furthermore, the fall in CSR has been unabated since 1961 in spite of an increase in the overall trend¹⁹⁵. The road to eliminating discrimination against women and children and tackling sex-selective abortions and gender-based violence is still fraught with difficulties. A comparative table of the last three census figures is given below

	1991	2001	2011
Child Sex Ratio (CSR) 0-6 years age	945	927	914
Sex Ratio 7+ years age		942	944
Overall Sex Ratio	927	933	940

7.195 The declining child sex ratio is a silent demographic disaster in the making which will have adverse implications on women in the form of increased trafficking for sexual exploitation, honour killings, ‘bought’ brides, rapes, etc. Already, States such as Haryana and Punjab which have acutely adverse child sex ratios are displaying disturbing trends.¹⁹⁶

7.196 While the declining/skewed sex – ratio is the result of overall discrimination against women and girls having a number of socio-cultural causes ranging from dowry, increasing costs of marriage, support during old age and others , perhaps the most overt form of discrimination against the girl child and a direct contributor to the problem is sex-selective abortion. The Odisha High Court in the case of *Hemantha Rath v. Union of India*¹⁹⁷ clearly stated that “such techniques are misused by medical practitioners as a device dose

determination of the sex of the foetus and if it is a female one the same is aborted to prevent the birth of the female child'.

7.197 The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex-Selection) Act, 1994 (PCPNDT Act) prohibits sex-selection through abortions and makes it illegal to relay information about the sex of the fetus¹⁹⁸. It does this by limiting the use of diagnostic techniques only to cases where they are deemed medically necessary in order to determine genetic abnormalities and congenital defects in the fetus¹⁹⁹. The Act was first introduced in 1994 and was amended to the PCPNDT Act in 2003. The PCPNDT Act sets up the Central Supervisory Board (CSB) as well as the State Supervisory Boards (SSB) which are required to review and monitor implementation of the Act. The CSB and SSB are in turn mandated to appoint Appropriate Authorities(AAs)²⁰⁰ which carry out integral functions relating to enforcement such as investigating complaints²⁰¹ and cancelling registrations of centers where testing is carried out²⁰². The Act provides for mandatory registration of genetic counselling centers, genetic laboratories or genetic clinics and the method of keeping a track of these units is by mandating that they maintain certain records.

7.198 The weakness and non-implementation of the Act has been highlighted in various seminal cases. These range from definitional inadequacies²⁰³ to state apathy evidenced by the delayed notification of the Act and subsequent non-implementation.²⁰⁴ Delay in court procedures and the imposition of weaker penalties by Magistrates and Judges pose another problem. In the case of *CEHAT V. Union of India*²⁰⁵ the Supreme Court had issued detailed directions to the Central and State Government to hold regular meetings, review and monitor implementation of the Act and ensure that the AAs furnish regular quarterly reports on registration of clinics and take action whenever necessary. However, a recent Supreme Court ruling has recognized continued lapses in the implementation of the Law.²⁰⁶ Further, the report of the Sectoral Innovation Council (SIC) has reflected on the widespread misuse of diagnostic techniques in violation of the Act and has come to the conclusion that the inspecting mechanism at the National and State level is dysfunctional. It has further stated that there is no regulation on sale and purchase of ultrasound machines which are flooding urban, rural and even remote areas.²⁰⁷ However, when addressing these concerns, it is important to state at the outset that the implementation of the Act should not obstruct women's reproductive choices in terms of accessing medically safe abortions.

7.199 The following recommendations arise from the draft report of the Sectoral Innovation Council and a 2013 study initiated by the UNFPA entitled “Laws and Son Preference in India: A Reality Check”.

7.200 Recommendations:

- Improving the inspecting mechanism at the national and state mechanism, with penalties attached to the non-performance of duties by statutory bodies constituted under the Act.
- Adding a provision to regulate the sale of machines used in pre-natal diagnosis as proportional to the number of registered clinics in operation.
- Impose record keeping obligations regarding registered clinics and the sale and purchase of ultrasound machines upon the Appropriate Authorities appointed by the Central and State Governments.
- The Appropriate Authorities should involve local NGO's in compiling information on clinics that are operational and on illegal practices within the NGO's area of operation.
- A holistic approach to sex selection, which acknowledges the negative impact of social and legal discrimination against women and girls, needs to be adopted and reflected in policy. Awareness programs would need to reflect this approach by addressing dowry, child marriage, lack of education for girls, the overall socio-economic status of women whilst giving clear and assertive information about the PCPNDT Act, the offences and the penalties under it.

Trafficking

7.201 Article 23 of the Constitution, which provides for prohibition of traffic in human beings and forced labour, clearly mandates that traffic in human beings, beggary and other similar forms of forced labour, are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. The Immoral Traffic (Prevention) Act, 1956 (ITPA) initially enacted as the ‘Suppression of Immoral Traffic in Women and Girls Act, 1956, was enacted to bring into effect the “UN Convention For the Suppression Of The Traffic In Persons And Of The Exploitation Of The Prostitution Of Others, 1950” which for nearly 50 years was the sole international treaty on trafficking.²⁰⁸ The ITPA is the main legislative tool for preventing and combating trafficking of human beings in India.

7.202 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children which is commonly known as the Palermo Protocol²⁰⁹ is said to be the first major international intervention to address trafficking based on an expanded understanding of the term that included forced labour²¹⁰. The Palermo Protocol, however, is critiqued for being “designed to facilitate cooperation between States to combat organized crime, rather than to protect or give restitution to the victims of crime”.²¹¹ The term ‘trafficking in persons’ is nowhere defined under the ITPA. It was only through the recent Criminal Law Amendment Act, 2013 that a definition for trafficking was introduced under the Indian Penal Code. Offences under ITPA include brothel keeping, living on earnings of sex work, procuring, inducing or detaining for prostitution, with or without consent, prostitution in areas notified by Police and near public places and soliciting. Penalties are higher for crimes involving children. All offences are cognizable, that is, Police do not require a warrant to arrest or investigate. ITPA also accords wide powers to search, remove detain and evict sex workers, under the purview of ‘rescue and rehabilitation.

7.203 The number of provisions in the Indian Penal Code also seek to capture data relating to trafficking include: (i) Procurement of minor girls (section 366-A IPC); (ii) Importation of girls from foreign country ((Sec. 366-B IPC); (iii) Selling of girls for prostitution (Section-372 IPC);(iv) Buying of girls for prostitution (Section -373 IPC).

7.204 A study by the Ministry of Women and Child Development commissioned in 2004 had estimated that around 2.8 million women are victims of trafficking, out of which 36% are children. While research shows that most of the women who are trafficked have a strong desire to migrate because there is abuse in the home, in the community or because of dire poverty. Once trafficked the nature of work is abusive whether vary from commercial sexual exploitation, different forms of forced labour. In general victims are lured either by kidnapping or offered prospects of better income/better life and then forced to work in establishments against their wishes.

7.205 Another ongoing debate amongst various groups with regard to ITPA is the issue of decriminalizing and legalizing sex work. Decriminalisation is based on the view that sex work may be a personal choice and a private matter between consenting adults. Distinguishing between trafficking and sex work, this approach seeks to decriminalise voluntary sex work and all related activities; forced sex work on the other hand is considered a separate issue for which existing laws related to trafficking are sought to be

strengthened.²¹² Legalization is similar to decriminalization in seeking to address prostitution/sex work outside the purview of criminal law. It advocates support measures to regulate sex work such as licensing, zoning (segregating sex workers into a separate place), mandatory check-ups and recognition of sex work as a lawful activity.²¹³ Pro-sex work researchers argue that instead of preventing trafficking, criminalisation will actually force sex workers underground, making it more difficult for them to access appropriate services and increasing the likelihood of their exploitation. The ITPA criminalizes only the outward manifestations of sex work such as soliciting, brothel keeping, and trafficking while at the same time refraining from specifically targeting the sex worker.

7.206 The Immoral Traffic Prevention (Amendment) Bill 2006 amending the Immoral Traffic Prevention Act (ITPA) 1956 was referred to a group of ministers after objections were raised at a Union Cabinet meeting earlier in 2007²¹⁴. The proposed Bill though purporting to decriminalize soliciting, sought to criminalize clients of sex workers by making any person who visited or was found in a brothel liable to punishment. The Verma Committee Report²¹⁵ laid a number of observations with regard to cases of trafficking and implementation of the ITPA. Key amongst them being.

- In cases of trafficking, at least the offences which are cognate offences like Sections 366, 367, 370, 372 and 373 of the IPC are vital provisions which are not relied upon when a case of trafficking is brought to the attention of the police.
- Section 5 of the ITPA makes 'procuring, inducing or taking a person for the sake of prostitution' as a punishable offence. However, the records show that this is one of the most underused provisions of the Act with an abysmal rate of prosecution and conviction.
- The women and children who are subjected to the offences under the Act are firstly 'arrested' as 'prostitutes'. That young children and women who are supposed to be protected by the Act are 'arrested' under the very same law. The result is that women and children are arrested for the Act of 'soliciting' prostitution and prosecuted. This is a typical case of the survivor of an offence (we prefer the term to 'victim') ultimately becomes the convict.
- Lack of an established protocol for verifying the age of the survivors leads to the exploitation of loopholes in the ITPA and Juvenile Justice Act. Since most of the

trafficked persons do not have adequate records to prove their age, they are shown as adults using falsified documents presented mostly by pimps and middlemen.

- Even though under Section 22A of the ITPA, the State Governments have the power to set up Special Courts to deal with the offence of trafficking, the said provision has not been utilized optimally by the States. As we had mentioned the need for specialized investigating and prosecuting agencies, specialised courts are also required to effectively deal with this complex crime.

7.207 The Verma Committee further stressed on the need for law to be sensitive and emphasized the need for a comprehensive code to deal with 'Trafficking and Sexual Exploitation (both commercial and otherwise)'. This code ought to be complemented with specialised judicial mechanism to prosecute offender while protection.²¹⁶ The Special Rapporteur on Violence against Women in her recent visit to India had recommended that there is a need to review the Immoral Traffic (Prevention) Act, 1956, that it de facto criminalizes sex work and there is actually a need to ensure that measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers.²¹⁷

Choice in marriage – Honour crimes

7.208 Marriages between couples belonging to same *Gotra* (family name), with members of other castes or the couple leaving the parental home to live together and marry, has often led to violent reaction from the family members or the community members.²¹⁸ As far as India is concerned, "honour killings" are mostly reported in the States of Haryana, Punjab, Rajasthan and U.P, Bhagalpur in Bihar is also one of the known places for "honour killings". some incidents are reported from Delhi and Tamil Nadu as well.²¹⁹ In some cultures, honour killings are considered less serious than other murders because they arise from long standing cultural traditions and are thus deemed appropriate or justifiable.²²⁰

7.209 The intervention of caste/community assemblies in the name of 'Khap Panchayats', 'Katta Panchayats' etc. in the occurrence of these offences and other related incidents involving serious life and liberty consequences, are frequently noticed. *Khap Panchayats* are generally an institution functioning as a public forum for governance and the resolution of disputes for a grouping of one or more villages, which may be comprised of members of the

same *gotra* (clan) or caste. Decisions of the *Khap* are considered binding on the parties as their hold in the socio-economic community of the village is almost absolute. However, *Khaps* and their diktats do not have the force of law. The *Panchayats* try to adopt the chosen course of 'moral vigilantism' and enforce their diktats by assuming to themselves the role of social or community guardians.²²¹ The punitive measures imposed by *Khaps* when their diktats are not followed are extreme, involving social boycott, excommunication or violence in the form of Honour Crimes and Killings.²²²

7.210 It is ironic that while women are often not allotted any honour of their own, men's honour often depends upon women's conduct, especially sexual conduct²²³. Central to this is the fear, control or shaping of women's sexuality²²⁴ and therefore control of women's sexuality often translates into maintaining power structures. Honour is inextricable from the patriarchal family structure, and a woman's body and sexual encounters are sited within marital relations and are instrumental in the production of children for her husband/his family²²⁵. The men - husbands, fathers, uncles and brothers are defenders of the family honour which is largely dependant on the control and repression of the women of the family. Honour "has to do with self-regard and social-esteem"²²⁶ and men would measure their own position in society based on the propriety of the women who are in a sense their subjects; the ability to control their behavior reflects on the authority and prestige of men.

7.211 While not legally binding on the State, the human rights standards enumerated in paragraph 232 of the Beijing Platform for Action (BPFA 1995) recognizes that the "human rights of women include their right to have control over and decide freely and responsibly on matters relating to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence". The Beijing Platform for Action on Women's Human Rights calls upon States to "take urgent action to combat and eliminate violence against women, which is a human rights violation resulting from harmful traditional or customary practices, cultural prejudices and extremism".²²⁷

7.212 Honour crimes and *Khap* diktats have received widespread media coverage and incited social and judicial outrage. However, they form a major lacuna in the law and poses a complexity that the IPC is unable to address. The perpetrators of these crimes are often institutions or groups rather than individuals and booking them involves a social restructuring exercise in addition to a clear legislative stand. The last must, nevertheless be a first step and measures to protect potential victims of honour crimes must be evolved.

7.213 The Manoj-Babli honour killings case was perhaps the first of its kind where defendants were convicted for an honour killing, including a life sentence to the *Khap* head who ordered the killing. The court took serious note of the fact that the policemen deployed for the security of Manoj and Babli actually facilitated the accused in perpetrating the crime. After the judgment in the Manoj-Babli case, however, a congregation of caste panchayats representing.²²⁸ The Hon'ble Supreme Court in *Bhagwan Das v. State (NCT of Delhi)*²²⁹ went so far as to express the opinion that honour killings were heinous offences which fell under the "rarest of rare" cases that would attract the death penalty.

7.214 There are no laws which punish the illegal and often barbaric actions of the *Khap* or community panchayats or other caste or religious associations. There is a need for a legislation which bars against congregation or assembly for the purpose of objecting to and condemning the conduct of young persons of marriageable age marrying according to their choice, the ground of objection being that they belong to the same *gotra* or to different castes or communities. The Panchayatdars or caste elders have no right to interfere with the life and liberty of such young couples whose marriages are permitted by law and they cannot create a situation whereby such couples are placed in a hostile environment in the village/locality concerned and exposed to the risk of safety

7.215 Various women's groups had demanded a comprehensive legislation to deal with crime and killings in the name of honour and had submitted a bill ("Prevention of Crimes In The Name Of 'Honour' & Tradition Bill, 2010") regarding the same to the National Commission for Women (NCW).²³⁰ The Law Commission in its 242nd Report had also recommended that honour crimes become the subject of an altogether separate law and recommended a bill entitled "The Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill, 2011" to this effect. The Verma Committee Report further suggested that Section 340 of the Indian Penal Code should be amended to include honour killings as a separate offence.

7.216 Recommendations:

- Introducing separate legislation, as recommended by the NCW, and other women's organizations, to address Honour Crimes.
- Amending Section 340 of the Indian Penal Code to introduce honour killings as a separate offence.

- Making police and legal protection mandatory for couples/women/children/families who approach any institution with the apprehension of harm at the hands of their family member(s) or community.
- Considering the status of Khap Panchayats carefully and evaluate whether the institution can be made to conform to certain socio-legal principles. If not, banning Khap Panchayats may be a radical move that requires consideration.
- The State must make a conclusive statement about the sexual and marital choices of women and men as forming an integral part of their fundamental rights. This may be elucidated by way of legislation, preamble to legislation, or policy interventions and awareness initiatives. One immediate amendment may be to Section 3 and/or Section 5 of the Hindu Marriage Act 1956 to include an explanation that specifically states that inter-caste marriages and marriages within the same gotra are not within the degrees of prohibited relationships.
- Criminal consequences must arise from Khap decisions that lead to an honour killing or violent crime that address all the players, not merely the perpetrators.
- The Special Marriage Act, 1954 needs to be amended for the removal of 30 days waiting period for registering a marriage provided there is a mutual consent and both are above the legally permissible age

Choice in Marriage: Child Marriage

7.217 The NFHS III shows that the median age for marriage for women aged between 20-49 years was recorded as 17.2 years and the median age at marriage for men between the same age as 23.4 years. A 2011 UNICEF study reveals that a majority of the Indian women marry as adolescent and that 30% of the girls aged 15 – 19 are currently married or in union also that three in five women aged 20-49 years were married as adolescent , compared to one in five men.²³¹ The data also reflects wide disparities across States, with the proportion marrying that early being as high as 60-61% in the States of Jharkhand and Bihar, and as low as 12% in Himachal Pradesh and Goa – the States with the lowest and highest educational levels, respectively.

7.218 There is evidence that marriage before the age of 18 constrains adolescent girls' opportunities to obtain higher education, and severely restricts their autonomy. Further, the decline of this "early marriage rate" has been slow, from 50 percent of all women in 1993 to

45 percent in 2006. Marital abuse is also a common problem in such marriages.²³² The Universal Declaration for Human Rights recognizes the right to free and full consent, further the CEDAW under Article 16 mentions the right to protection from child marriage and calls for legislation to specify the minimum age of marriage.

7.219 Child marriage can be attributed to a variety of reasons chief amongst them being poverty, tradition, culture and patriarchal norms. Large parts of the society think of a girl child as a liability and view her as belonging to another family (her in laws) who shall benefit from any investment made in her in terms of education and others. The practice of dowry is also a crucial factor, the demand for younger brides acts as an incentive for families to marry their daughters off at a younger age as dowry increases with the age of the bride. Further a society which puts a high premium on virginity and chastity girls are married off early in order to control their sexual and reproductive behavior.²³³

7.220 Though child marriage adversely affects both boys and girls, its effect on girls is far more severe than boys. Young girls are also more prone to domestic violence and have limited social or community network. The Law Commission of India in its 205th Report had stated

*“.....that a child bride is more liable to suffer from pregnancy related problems and how high both maternal and infant mortality are in cases of child marriages. Apart from this child marriage deprives all girl children of their basic fundamental human rights to develop in a natural and healthy environment. It deprives girls of their right to education and to physical and mental and psychological development. It also isolates her and infringes her right to liberty, speech and movement”.*²³⁴

7.221 The Prohibition of Child Marriage Act (PCMA) was enacted in the year 2006. Prior to that, child marriages were dealt under the Child Marriage Restraint Act (CMRA). The PCMA stipulates the minimum age for marriage as 18 years for girls and 21 years for boys. It does not render child marriages void but states that it is voidable at the option of the parties who are allowed to file a petition to declare it void within two years of attaining majority. It allows for provisions of maintenance and residence to the girl till her remarriage and provides penalty to anyone involved in contracting a child marriage including anyone who performs, conducts, directs or abets any child marriage.

7.222 The Act lays emphasis on the prevention of child marriages by providing for the appointment of child marriage prohibition officers (CMPO) by the State Governments and empowers them to prevent and prosecute solemnization of child marriages and create awareness on the issue. As per information provided by States & UTs, 19 States and 6 UTs have framed the Rules and 20 States and 7 UTs have appointed CMPOs.²³⁵ On the issue of validity of marriages it had been argued that invalidating child marriages may result in girls losing their rights that accrue from marriage and so may not be desired by the girls themselves²³⁶, however, the Committee is of the opinion that in light of the health and other concerns it should be absolutely necessary that all marriages below a certain age should be invalidated.

7.223 Recommendations: The Committee therefore recommends that

- The PCMA should be implemented in an effective manner and all States should appoint CMPO and provide them the required infrastructure.
- The minimum age of marriage for boys and girls should be the same.
- The exception to marital rape in case the wife is not under fifteen years of age provided under section 375 of the Indian Penal Code should be deleted.

Witch-hunting

7.224 One of the highly neglected but widespread violence committed upon women across rural communities in many parts of India is the targeting of women, accused and labeled as witches. Although widespread across specific communities, it is especially associated with indigenous and backward castes in tribal and rural regions of the country²³⁷. A study done by and NGO (Partners for Law and Development) identifies 17 States where this form of violence can be found.²³⁸ The identification and expulsion of witches was prevalent in nineteenth century India; Ajay Skaria's work, "Women, Witchcraft and Gratuitous Violence in Colonial Western India" (May 1997) reveals that the number of women killed as witches in the early nineteenth century exceeds those who died as *Sati* in the Rajputana region. The violence that is inflicted upon women is varied but there are some similarities that define witch hunting and constitute the very essence of this kind of violence.

7.225 It typically targets single middle-aged and elderly women, often widows, who own or control some material resource in order to divest them of their home, land, or productive

resources. This specific type of violence is perpetrated by the family members of the woman who is targeted and branded. It is also known to target women who transgress social authorities and mores. A woman who is outspoken and questions the authority of the men of the village is a perfect example of such a situation.²³⁹ The roots of witch hunting therefore lie in patriarchy and patriarchal control. It is intrinsically linked to the cultural hierarchy in the community and also linked to land and control over material resources. Violence is an integral part of witch hunting which is often accompanied by high degree of brutality.

7.226 Witch hunting is generally neglected and neither recognized nor addressed by the Governments at the Center or State. Three states in the country have enacted laws to address practice of witch hunting, namely, Bihar,²⁴⁰ Chhattisgarh²⁴¹ and Jharkhand.²⁴² These laws are however said to be woefully inadequate as they do not take into account the more grievous and egregious violations that are committed upon women but address only the smaller violations. They address lesser offences like branding/harassment arising from branding, with trivial sentences of 3-4 months. The highest sentence of 5 years is for practice of witchcraft/sorcery. All the serious violations like murder are tried under the Indian Penal Code.

7.227 Stripping and parading in public is one common form of violence committed on women branded as witch. Till the recent 2013 Criminal Amendment Act, this specific offence could only be covered under "outraging the modesty of a woman" which in no way covered the extent of humiliation faced. Further, the lack of will amongst the law enforcement mechanism and undertake vigorous investigation is identified as one of major issues in dealing with this form of violence. There is also a crucial need to look into aspects of shelter, protection and promise of non-recurrence of such form of violence as well.

7.228 Observing that the State party has not taken sufficient sustained and systematic action to modify or eliminate stereotypes and harmful practices, the CEDAW Committee in its concluding remarks has urged India to strengthen its awareness-raising and educational efforts, targeted at both women and men, with the involvement of civil society and community leaders, to eliminate all harmful traditional practices, and collaborate with the media to enhance a positive, non-stereotypical and non-discriminatory portrayal of women.²⁴³ The UNSRVAW in her recent visit also recommended that the Government design and launch targeted awareness-raising campaigns at the community level on harmful customary practices, including witch-hunting.²⁴⁴

7.229 Recommendations:

- Need for strict and immediate action from the police to prevent such form of violence. Even in States where there are no special laws the mechanism provided under the IPC should be utilized to effectively stop or deter such instances from recurring.
- Need to develop schemes for proper counselling, rehabilitation and compensation for such women. Homelessness and eviction are one of the most common form of violence inflicted once a women is branded as a witch.
- Need for quality research on the issue of witch-hunting, the specific nature of violence faced and the gaps in implementation of laws. This is crucial prior to carrying out any national level policy or changes in existing laws. Proposal should include aspects of compensation, health care, reintegration into the family and society as well.

Women in Conflict

7.230 Women in India, as well as elsewhere, are affected by conflict in various ways due to their role in society. Discrimination, that women often have to face in times of peace, gets reinforced in war as the community becomes militarized. Militarism and masculinist values, such as domination, aggression and assertiveness, are closely intertwined. In patriarchic societies men enjoy control over women's productive power, reproduction, sexuality and/or mobility as well as over property and other economic resources.²⁴⁵ Next to the direct effects of conflicts on women, such as rape and other forms of violence, women's' lives are seriously threatened and affected also by assaults on the members of their families. As women are dependent on their husbands or fathers; death, disappearance or detainment of these men has often serious consequences for them.

7.231 Discussion on this issue in the context of India needs to be carried out in the backdrop of subjects as the Armed Forces (Special Powers) Act (AFSPA) and other extraordinary legislations such as the Unlawful Activities (Prevention) Act (UAPA) and Chhattisgarh Special Public Security Act (CSPSA) – seemingly “protective” legislations which were put forward by States as necessary for security.²⁴⁶ Currently, the three major areas of conflict in India are in Jammu and Kashmir, in the North-eastern states and in central and eastern India where Maoist rebels operate. India is party to the two binding documents: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on

Economic, Social and Cultural Rights (ICESC). It is also a party to the 1949 Geneva Conventions.

7.232 The implementation of AFSPA and similar laws in the Jammu and Kashmir and the northeastern states of India has led to a host of abuses by the army²⁴⁷; violence against women is one of the primary manifestations of these. The torture, and murder of Thangjam Manorama in 2004, the infamous case of mass rape that occurred in Kunarposhpora in the Kupwara district in Kashmir Killings in the hands of the fifth battalion of the Rajputana Rifles²⁴⁸, the well-known rape and murder cases of Manorama, Niloufer and Asiya and the torture and sexual assault of Soni Sori are painful reminders of how legislations such as these, professedly put in place to ensure “security” actually play out.²⁴⁹ Irom Sharmila went on a fast against the draconian provisions of the AFSPA, ten years later, she has courageously continued her protest but the AFSPA remains intact in Manipur, Kashmir, and other parts of the Northeast.²⁵⁰

“In a Regional Consultation on Adivasi Women organized by the High level Committee on the Status of Women on 16th and 17th September 2014 some of the participants raised concerns over safety and security of women due to the increase in the presence of security forces in States such as Jharkhand and Chattisgarh”.

7.233 The Armed Forces (Special Powers), Act 1958 and similar legislations in States such as the Kashmir, Chhattisgarh, Manipur other north eastern States accords the Governor or Administrator of a State the power to declare a certain area as ‘disturbed’²⁵¹. The armed forces have special powers to arrest without warrant, use force and even to shoot to kill, and enter and search any premises conferred upon them²⁵². This power is bestowed on any person of the rank of a soldier and above. This Act further provides for compulsory sanction by the Central government before prosecuting any personnel of the armed forces. This delay in the procedure for grant of sanction often results in the loss of crucial evidence required for prosecution. Survivors of sexual violence are reluctant to come forward because they do not think that they will receive justice. Given the prevailing state of impunity, which is strengthened by laws such as AFSPA and the Disturbed Areas Act, the survivors are uncertain if their testimonies would result in the conviction of the perpetrators, and often do not come out openly and talk about the sexual violence that they have faced.

7.234 A 2006 report of the *Medicines Sans Frontieres* (MSF) in Kashmir states that 11.6% of interviewees admitted they had been victims of sexual violence since 1989. Almost two-thirds of the people interviewed (63.9%) had heard over a similar period about cases of rape, while one in seven had witnessed rape.²⁵³ Most cases of sexual violence that are reported, fall through because of a lack of proper investigative procedures. The Human Rights Alert has documented 1528 cases of extrajudicial killings in Manipur since 1979. Though there has not ever been a systematic assessment of the effects of militarization on the people of Manipur. However, it can be said that three decades of suffering and humiliation at the hands of the military has greatly undermined people's physical and spiritual integrity and threatened the survival of entire communities.²⁵⁴

7.235 According to unofficial sources more than 10,000 persons have disappeared in Kashmir, and there are more than 3,000 half widows.²⁵⁵ The condition of the half widows is even worse as they cannot remarry and are even denied a share in the inheritance. They cannot even think of remarriage as there is no consensus among the religious scholars and theologians as to whether they can be pronounced widows. Child marriage too is becoming common in the heavily militarised areas in order to escape rape and molestation.²⁵⁶ The dropout rate from schools is also on the rise as the girls are fed up of the routine taunts and harassment by the army personnel when they are enroute to school.²⁵⁷

7.236 In 2005, a civil vigilante group, sponsored by a prominent local political leader, with the tacit sanction of the State and Central government, called the "*Salwa Judum*" was given a unbridled powers to detect and identify Maoist rebels. The turn of events showed that the group went down heavily on innocent people leading to the most widespread displacement in the country.²⁵⁸

7.237 The CEDAW Committee in its concluding comments recommended review of the application of the Armed Forces Special Powers Act and its amendment or repeal so that sexual violence against women perpetrated by members of the armed forces or uniformed personnel be brought under the purview of ordinary criminal law. It also recommended an amendment to Section 19 of the Protection of Human Rights act and confer powers to the National Human Rights Commission to investigate cases against armed forces personnel, in particular cases of violence against women.²⁵⁹ The UNSRVAW had also recommended repeal of the Armed Forces (Special) Powers Act and the Armed Forces (Jammu and Kashmir) Special Powers Act.²⁶⁰

7.238 The Verma Committee expressed deep concern at the growing distrust of the State and its efforts to designate these regions as 'areas of conflict' even when civil society is available to engage and inform the lot of the poor. The Committee was of the view that such forms of sexual assault deserve to be treated as aggravated sexual offence in law. That it is important to note that sexual assault in situations of communal violence, regional conflicts and armed conflicts are committed upon women and children on account of their identity.²⁶¹

7.239 Recommendations:

- Sexual violence against women by members of the armed forces or uniformed personnel must be brought under the purview of ordinary criminal law. Though the criminal law amendment Act, 2013 has added rape by security personnel under the definition of rape subsequent amendments need to be carried out in other relevant legislations as well.
- Special care must also be taken to ensure the safety of women who are complainants and witnesses in cases of sexual assault by armed personnel;
- There should be special commissioners – who are either judicially or legislatively appointed – for women's safety and security in all areas of conflict in the country. These commissioners must be chosen from those who have experience with women's issues, preferably in conflict areas. In addition, such commissioners must be vested with adequate powers to monitor and initiate action for redress and criminal prosecution in all cases of sexual violence against women by armed personnel;
- Care must be taken to ensure the safety and security of women detainees in police stations, and women at army or paramilitary check points, and this should be a subject under the regular monitoring of the special commissioners mentioned earlier;
- The general law relating to detention of women during specified hours of the day must be strictly followed;
- There is an imminent need to review the continuance of AFSPA and AFSPA-like legal protocols in internal conflict areas as soon as possible. This is necessary for determining the propriety of resorting to this legislation in the area(s) concerned; and
- Jurisdictional issues must be resolved immediately and simple procedural protocols put in place to avoid situations where police refuse or refrain from registering cases against paramilitary personnel.²⁶²

Indecent Representation of Women

7.240 Article 51-A (e) makes it a fundamental duty of every citizen to renounce practices derogatory to the dignity of women. Indecent representation of women as well as denigrating or derogatory representation of women is a violation of woman's dignity. The Indecent Representation of Women (Prohibition) Act, 1986 (IRWA) was enacted with the specific objective of prohibiting the indecent representation of women through advertisement, publication, writing, and painting or in any other manner. The Act of 1986 defines "indecent representation of women", it prohibits indecent representation of women in any form in any advertisement, publication etc and prescribes punishment for violation of the same.

7.241 On closer analysis at the IRWA would show that the definition highlights three aspects;

1. Portrayal of the woman's body or any part of her body in an indecent way; this also includes two more terms, 'figure' of a woman and 'form';
2. The portrayal must be indecent, or derogatory or denigrating women;
3. It must be of such nature as to deprave, corrupt or injure public morality.

7.242 These three primary ingredients that build up the indecent representation of women is easily seen in numerous TV commercials and cinemas in India. The approach of this legislation was however criticized by Indian feminists as one which is extremely influenced by the patriarchal outlook. The Act defined *indecent representation* as "the depiction in any manner of the figure of a woman; her form or body or any part thereof in such way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals" was criticized as it embraced the concept of morality more and overlooked derogatory messages targeted to women.²⁶³

7.243 As the term obscenity in the Indian Penal Code is still shadowed by the concept of morality and depravation of the mind, in this law, the term 'indecent representation' could not become free of the concept of morality. In this age many women have defined their own dressing statements, uploading in the social media images or profile pictures which could be 'indecent' in the background of Indian orthodox social mindset two or three decades ago. The drawback from which all the IRWA provisions suffer lies in the language which indicates "no person shall publish", "no person shall produce or cause to be produced..." "whoever

publishes or transmits...” all of which has definitely a chilling effect to the right to freedom of speech and expression as has been guaranteed under Article 19(1) (a) of the Constitution of India, which guarantees all citizens the right to freedom of speech and expression. It should be noted that the legal understanding regarding obscenity and pornography is still blurred. The concepts of obscenity and pornography overlap with each other and the shadow of obscenity law still shrouded the indecency law.

7.244 It one of the submission to the Parliamentary Standing Committee it was mentioned that it is essential to differentiate between ‘indecent representation’ and ‘exploitation’ because these were two different concepts but often looked together. That it is very important for not assuming a moralistic stand and at the same time being conscious about the fact that women’s position in the society was not denigrated. It was specifically highlighted that attempt should be made to avoid even regressive representation of women which did not necessarily have indecent representation. Indecent representation of women is subjective but there is a need for certain standards which should not objectify woman or reduce her to a physical object.²⁶⁴

7.245 The IRWA focuses on indecent representation of women and brings under its ambit references that are derogatory to the dignity of women. The Act, in its present form, relates primarily to the print media. As of date there are a number of other legislations such as the Provisions under the Indian Penal Code, 1860 which prohibit sale, hire, distribution etc. of obscene books (Section 292), or obscene objects to young persons (Section 293), or prohibit obscene acts and songs (Section 294). Likewise, the Cinematograph Act, 1952 provides for certification of films based on their content with reference to decency and morality in cinema and there are regulating mechanisms governing advertising and broadcasting. Subsequently, with the enactment of the Information Technology Act, 2000, obscenity or indecency in content and transactions carried out in electronic form was also made punishable (Section 67).

7.246 In light of the above discussion there is a need to examine the rationale/necessity for having a separate legislation on the issue in itself and whether we need a fresh approach towards it in the context of the recent debates on censorship and freedom of expression. Further, in light of the recent technological revolution which has resulted in the development of newer forms of communication such as internet and satellite based communication, multi-media messaging, cable television etc to there is a need to discuss as to what extent should we

widen the scope of the law and lastly what steps need to be taken to strengthen the existing safeguards to prevent indecent representation of women through any media, on the other.

7.247 According to the National Crime Records Bureau the total number of cases registered under the IRWA total number of 845, 895 and 453 cases of violation of the Act in the years 2009, 2010 and 2011 respectively, for the law to be more effective, stringent punishment which acts as a deterrent also becomes essential. The Indecent Representation of Women (Prohibition) Bill, 2012, was introduced in the Rajya Sabha on December 2012. The Bill sought to enlarge the scope of the Indent Representation Act, 1986 and intended to bring new forms of communication like internet, mobile etc within the ambit of the Act so as to regulate indecent representation of women in the country. The UNSRVAW has recommended the adoption of the Indecent Representation of Women (Prohibition) Bill, 2012, to ensure that gender stereotypes are also banned in electronic media.²⁶⁵

Surrogacy

7.248 Surrogacy is defined as the practice whereby one woman carries a child for another with the intention that the child should be handed over after birth. Surrogacy is commercial or altruistic depending on whether the surrogate receives financial reward for her pregnancy or the relinquishment of the child, or not.²⁶⁶ In commercial surrogacy agreements, the surrogate mother enters into an agreement with the commissioning couple or a single parent to bear the burden of pregnancy. In return of her agreeing to carry the term of the pregnancy, she is paid by the commissioning agent for that.

7.249 Currently, India is one of the few countries that permits this trade in a completely unregulated manner.²⁶⁷ According to the ICMR, there were an estimated 250 IVF clinics in 2005. The Indian Society for Assisted Reproduction has a membership of more than 600 clinics.²⁶⁸ The cost of hiring a surrogate in India ranges from \$6,000 to \$8,000, as against about \$80,000 in the US.²⁶⁹ This has made India a favourable destination for foreign couples who look for a cost-effective treatment for infertility and a whole branch of medical tourism has flourished on the surrogate practice.²⁷⁰ The incidence of total infertility in India is estimated at 8 to 10%, and for the vast majority of Indian women it is preventable as it is caused by poor health, nutrition, maternity services and high levels of infections. Only about 2% of Indian women suffer from "primary" infertility which is amenable to ART alone.²⁷¹

7.250 Given the highly unregulated nature of medical care in the country, there is a substantial amount of unethical practices involved and that the guidelines of the Indian Council of Medical Research (ICMR) are being implemented more in the breach than otherwise (Sama 2010). Others have pointed to the vulnerabilities of the women involved, driven as they are by ordinary economic concerns to offer their bodies up for exploitation (Pande 2009).²⁷² The growth of reproductive tourism has also been justified as a win-win situation: women from abroad, desperate to bear biological babies, can now do so while Indian women surrogates earn money.

7.251 Doctor, Nayna Patel of the Akanksha Fertility clinic, Anand, says that since women choose to become surrogates, and it is not forced on them, it cannot be termed exploitation. The Gestational mothers (GMs) get much needed money and the couples return home with babies. However, the appropriateness and the extent of informed choice is questionable when such decisions are taken under the pressures of domestic economic crisis.²⁷³ What is not remarked upon simultaneously is that on these “donations” rests a transnational industry, making profits selling hype and hope in an increasingly speculative market, selling futures.²⁷⁴

7.252 The Judiciary in India has recognized the reproductive right of humans as a basic right. For instance, in *B. K. Parthasarathi v. Government of Andhra Pradesh*, the Andhra Pradesh High Court upheld “the right of reproductive autonomy” of an individual as a facet of his “right to privacy”. Even in *Javed v. State of Haryana*, though the Supreme Court upheld the two living children norm to debar a person from contesting a *Panchayati Raj* election it refrained from stating that the right to procreation is not a basic human right jurisdictions in various countries have held different views regarding the legalization of surrogacy.²⁷⁵ The issue of surrogacy gained limelight in India in the baby Manji case where a Japanese couple while waiting for their surrogate child separated and once the surrogate child was born the issue of nationality and whether the child could be handed over to the husband was dealt by the Supreme Court.

7.253 As mentioned above, this industry has a somewhat quasi-legal status in India since there is no law regulating it but only some non-binding guidelines namely, the National Guidelines for accreditation, Supervision and Regulation of ART Clinics in India (henceforth, the guidelines).²⁷⁶ The Government has now come up with a bill to regulate this booming market. But the bill, as we noted earlier, was drafted at the behest of the very industry it seeks to regulate, and is meant not so much to offer protection to the women surrogates as to the industry.²⁷⁷

7.254 In order to critically engage with this “industry” that cashes in on the patriarchal stigmatisation of childlessness and the socio-economic vulnerabilities of women, the voices of such women need to be heard.²⁷⁸ However, whether women make an informed choice regarding what gestational surrogacy means for their overall health and well-being needs to be understood.²⁷⁹

7.255 Recommendations

Some of the key issues which need to be kept in mind while engaging with the Assisted Reproductive Technology Bill (ART) include

- As equality and volunteerism may be rare in surrogacy agreements, arrangements to ensure informed consent, proper counselling and legal assistance for drawing up contracts for safe procedures, as well as total healthcare insurance and compensation, must be ensured through the state regulatory institutions proposed in the bill.
- The issue of the amount of compensation should not be left to the private contract between the surrogate and the commissioning parents – two unequal parties.
- The contract should include strict provisions for legal support to the surrogate mother in getting a fair contract. Given the surrogate’s relative socio-economic vulnerability, the absence of safeguards is glaring in a situation governed by India’s relative “cheapness” and the search for profits by the agencies involved.
- The amount of compensation given to the surrogate mother is another particularly difficult aspect when what is involved is the creation of life – a baby no less. Its value has to be universally uniform as a product of the procreative power of women and not of social labour that varies in value and creates commodities.

Section III - An Assessment of Labour Laws

7.256 India has witnessed many social changes post-independence. Today, women have come out of homes and established an identity of their own in different areas of work. According to the Census 2011, the total number of female workers in India is 149.8 million and female workers in rural and urban areas are 121.8 and 28.0 million respectively. Out of total 149.8 million female workers, 35.9 million females are working as cultivators and another 61.5 million are agricultural labourers. Of the remaining female workers, 8.5 million are in household industry and 43.7 million are classified as other workers.²⁸⁰ Women workers constituted 20.5 percent of total employment in organised sector in the country.²⁸¹

7.257 Though most Indian women make an economic contribution in one form or another (including housework, working in family land etc.) much of their work is not documented. Owing to cultural restrictions and family responsibility, women participation in the formal economy is limited. Some concerns that affect working women relate to gender discrimination, quantum of payment, safety at work place, working hours and conditions of employment that are sensitive to cultural and religious bondages as well as family responsibilities. The Economic survey data for 2007-08 reveals that the overall percentage share of female participation in work was comparatively low as compared to that of male.

7.258 The participation of women in the workforce, the quality of work allotted to them and their contribution to the GDP are indicators of the extent of their being mainstreamed into the economy. On the issue of the quality of work allotted to women and consequent remuneration, the major issue is that over 90 percent of women are in informal employment where they are poorly paid, have unsatisfactory conditions of work, do not enjoy the protection of labour laws, have no control on the terms and conditions of their employment and are subject to great insecurity of employment.²⁸² The opening up of the economy and rapid economic growth have escalated some of the existing structural barriers and posed new challenges in the form of dismantling of traditional support structures, displacement due to migration, obsolescence of traditional skill sets have emerged.

7.259 Constitutional rights and duties enumerated in Part III and IV of the Constitution of India are pivotal to the demand for protection of laws of women workers. Article 14 guarantees equality before the law and equal protection of the laws; Article 15 prohibits

discrimination on the grounds of sex; Article 16 (1) provides equality of opportunity in matters relating to public employment and appointments; Article 16(2) prohibits discrimination on the grounds of sex in matters of employment under the State; Article 23 (1) prohibits traffic in human beings and beggar and other similar forms of forced labour; Article 24 prohibits employment of children below the age of 14 in factories or mines or any other hazardous employment. Labour laws and its regulation are listed in the Union List and the Concurrent List in the 7th Schedule of the Constitution of India. The Parliament of India is thereby empowered to make laws with respect to the matters enumerated in the Union List and both, the Parliament of India, and the Legislature of any State is empowered to make laws with respect to the matters enumerated in the Concurrent List.²⁸³

7.260 The establishment of the International Labour Organization influenced considerably the activities of the State in the area of labour laws. India has ratified Convention No. 100 Equal Remuneration, 1951 and Convention No. 111 Discrimination (Employment and Occupation), 1958. Other Conventions affecting gender equality that India has ratified are: Convention No. 4 Night Work (Women) Convention, 1919; Convention No. 45 Underground Work (Women), 1935; Convention No.89 Night Work (Women) Revised, 1948; Convention No. 41, Night Work (Women) 1934.²⁸⁴ Consequently, such laws were passed which not only regulated the hours of work but also contained provisions of health, safety and welfare of women workers and guarantees equality before law and equal treatment to women workers.

7.261 Besides, measures adopted by the Government for the implementation of these ILO Conventions, various other provisions have been made in the labour legislations for the protection and welfare of women workers. These labour welfare legislations are of two kinds. The first category contains those statutory enactments which are exclusively for women workers such as

- The Maternity Benefit Act, 1961 and
- The Equal Remuneration Act, 1976.

7. 262 In the second category are included those labour statutes which provide measures for the workers at large but contain special provisions for the welfare of women workers. The Statute in the second category include amongst others

- The Factories Act, 1948

- Minimum Wages Act, 1948
- Payment of Wages Act, 1936
- The Workmen Compensation Act, 1923
- The Mines Act, 1952
- The Plantation Labour Act, 1951
- The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
- The Contract Labour (Regulation and Abolition) Act, 1970
- Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996

7.263 These legislations primarily relate to regulation of employment in dangerous occupations/employments, prohibition of night work, restriction on carriage of heavy loads, wages, health, gratuity, maternity relief, equal pay for equal work, social security, provision of crèches and other welfare facilities etc.

7.264 The set of first labour laws, including the Factories Act, the Mines Act, etc, were passed to protect workers in the period between 1928 and 1960 mainly with industrial workers in view. The 1960s and 1970s saw a number of legislative attempts such as the Interstate Migrant Act and the Bonded Labour Act to bring into the fold of protection the non-industrial workers.²⁸⁵ However, the opening of the market and the growing privatisation has made it difficult to apply the law to a large per cent of the workforce due to the casual nature of employer-employee relationship and in order to evade the labour laws many employers disguise the employment relationship in a variety of ways.²⁸⁶

7.265 This casualization of women's work has increased with the downturn in the global economy. There is evidence to show that women in the unorganised sector suffered a decline in number of work days available, poorer payment for piece work, deterioration in employment status, conversion to casual or temporary status, etc.²⁸⁷ What is generic to the condition of women workers as a whole is their double burden of work. Women's time used in economic activities that give them a return is limited but their participation in such economic activities that add to the economic output of the household far exceeds that of men.²⁸⁸

7.266 The CEDAW Committee in its concluding remarks have recommended that the State adopt effective measures in the formal labour market, including temporary special measures,

to increase female participation, to narrow and close the wage gap between women and men, and to ensure the application of the principle of equal pay for work of equal value, as well as equal opportunities at work. It also recommended that the state adopt the Draft National Policy on Domestic Workers, and ensure that the provisions of Sexual Harassment of Women in the Workplace Act is reviewed and applied to domestic workers; and Ratify the International Labour Organization (ILO) Convention No. 177 (1996) concerning Home Work, as well as ILO Convention No. 189 (2011) concerning Decent Work for Domestic Workers, and amend the relevant domestic legislation accordingly.²⁸⁹

i. The Equal Remuneration Act, 1976

7.267 Article 39 of the Constitution envisages that the State shall direct its policy, among other things, towards securing that there is equal pay for equal work for both men and women. India has ratified the Equal Remuneration Convention, 1951 (No. 100) of the ILO. Article 2 of the Convention states that *“each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.”* These appropriate methods can be applied through (a) national laws or regulations; (b) legally established or recognized machinery for wage determination; (c) collective agreements between employers and workers; or (d) a combination of these various means.

7.268 To this end, the Equal Remuneration Act, 1976 provides for the payment of equal remuneration to men and women workers for same or similar nature of work. Under this law, no discrimination is permissible in recruitment and service conditions except where employment of women is prohibited or restricted by the law²⁹⁰. It prohibits discrimination while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer²⁹¹ and provides for an Advisory Committee for the purpose of providing increasing employment opportunities for women.

7.269 Studies have documented the disparity between the wage rates of men and women in India. Wages for the kinds of work performed predominantly by women are classified as “light work” compared to “hard work” performed largely by men who are paid higher wage rates. The net result is occupational segregation by gender, and the wage gap is a continuing

reality in India.²⁹² A milestone in the area of implementation of Equal Remuneration Act was reached with the pronouncement of the Supreme Court decision in *People's Union for Democratic Rights v. Union of India*²⁹³ where it said that it is the principle of equality embodied in Article 14 of the Constitution which finds expression in provision of the Equal Remuneration Act.

7.270 Recommendations:

- Ensure that the Equal Remuneration Act is strictly implemented in all States.
- Existing government committees and Advisory Boards for implementation of the ERA should meet regularly and should be made functional.
- Within the existing government machinery for implementation of the ERA, special cells should be formed to monitor discrimination against women workers in wages, categorization and promotion
- Make provisions for greater representation of women as "Labor Officers".

ii. The Maternity Benefit Act, 1961

7.271 The Maternity Benefit Act, 1961 is an important component of labour legislation designed to protect women's rights and facilitate their participation in the workplace. It is one benefit that every women shall be entitled to and her employer shall be liable for the payment of the maternity benefit.

7.272 In the case of *Air India V. Nargesh Mirza*²⁹⁴ the Supreme Court struck down the provision of rules which stipulated termination of service of an air hostess on her first pregnancy as being arbitrary and abhorrent to the notions of a civilized society. In *Mrs. Neera Mathur v Life Insurance Corporation of India*²⁹⁵ the Supreme Court on perusing the questionnaire which sought information regarding pregnancy status of the job applicant considered them to be an invasion of privacy of a person and violative of Article 21 which guarantees right to life and privacy. It took a judgment of the Hon'ble Supreme Court in the *MCD worker's case* in 2004 to extend the benefit under the Act to women (muster roll) employees of the MCD who have been working for daily wages. In a recent landmark judgment, the Kerala High Court held that women employees who raise surrogate babies are also eligible for maternity leave.²⁹⁶

7.273 The Maternity Benefit Act was amended in 2008 to increase the amount of medical bonus. As of today under section 8 every woman is entitled to a medical bonus of Rs 1000 if no pre-natal confinement and post-natal care has been provided by the employer free of charge. It further empowers the government to make a further upward revision of the amount to Rs 20,000 as per necessity.²⁹⁷ Though the Act does not limit the benefit, for Central Government employees governed by the Central Civil Service (Leave) Rules, 1972, female employees are entitled to maternity leave for a period of 180 days for their first two live born children.²⁹⁸ What this achieves is merely to further gender injustice and is a myopic legal provision that does not take into account strong son-preference.

7.274 However, the Act as a tool that provides protection during and immediately after pregnancy is nowhere near adequate. For it to be truly beneficial to women and facilitate their participation in the public sphere, the Act must take into account the health of the child, the long term physical well-being of mother and child, and the care work performed by women and men in their role as parents. Lastly, the Act does not provide for any paternity benefit. The Central Government in 1999 by notification under Central Civil Services (Leave) Rule 551 (A) made provisions for paternity leave for a male Central Government employee.

7.275 Recommendations:

- Universal availability of maternity benefits and childcare facilities to all women workers across the organized and unorganized sectors. This recommendation has been made in the Shramshakti Report 1988.
- Amending the Act to make it illegal to preferentially employ based on marital status and pregnancy, including warnings against becoming pregnant.
- To make it mandatory for workers to inform their female employees of their rights and benefits, in addition to having it displayed at the work place.
- The benefit should not be available only twice.
- The Act should be amended to provide medical bonus in the case of miscarriages also.
- It is recommended that the period of leave be extended to 24 weeks and crèche facilities be made mandatory in all establishments/organizations.
- The provision of paternity benefit for men to encourage their participation in childcare.
- The Statement of Objects and Reasons should state that the thrust behind the Act is a holistic view of pregnancy, motherhood, and fatherhood which must take into account

the health of the child, the long term physical well-being of mother and child, and the care work performed by women and men in their crucial role as parents.

iii. The Factories Act, 1948

7.276 The Factories Act is a welfare legislation enacted with an intention to regulate working conditions in the factories and to provide health, safety and welfare measures. The Act defines a factory as any whereon ten or more workers are working (with the aid of power) or whereon twenty or more workers are working without the aid of power²⁹⁹. In *B.Y. Kshatriya (Pvt) Ltd & Ors. v. Union of India*,³⁰⁰ the Supreme Court summarized the object and purpose of the Factories Act in the following words:

7.277 *"The Act is enacted primarily with the object of protecting workers employed in factories against industrial and occupational hazards. For that purpose it seeks to impose upon the owners or to the occupiers certain obligations to protect workers unwary as well as negligent and to secure for them employment in conditions conducive to their health and safety."*

7.278 There are specific provisions under the Factories Act, 1948 dealing with rights of women labourers ranging from separate enclosed accommodation of latrines and urinals for male and female workers, to no woman or young person being allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery, that every factory employing more than thirty women workers should provide for crèche for the use of children, no woman shall be required or allowed to work in any factory except between the hours of 6 A.M. and 7 P.M.³⁰¹ and maternity leave with wages for expecting mothers for a maximum period of 12 weeks.

7.279 The position in international law, regarding the question of whether night work was detrimental to the health and welfare of women workers has changed over the decades.³⁰² The High Court of Madras while declaring the Section 66 ultra vires has issued directions in *R. Vasantha vs. Union of India & Others*³⁰³ to the employers to ensure adequate safeguards and provision of transportation to the women workers working in the night shifts. The Hon'ble Court has also issued a set of guidelines for ensuring safety and welfare for women while they are allowed to do night work. Similarly, in the case of *Triveni K.S. and Others v. Union of India and others*³⁰⁴ the High Court held that the rationale of why women should not be

employed during night for their own safety and welfare was a philosophy of a bygone age out of tune with modern claims of equality, especially between sexes and Section 66(1)(b) of the Act was struck down as unconstitutional.

7.280 The Union Government has now decided to amend the provision (The Factories (Amendment) Bill, 2014) to provide for women working in late night shift³⁰⁵, the proposed amendment states that women will be allowed to work if there are adequate safeguards as regards occupational safety and health, provision of shelter, restrooms, lunchrooms, night crèches and ladies' toilets, protection from sexual harassment, and their transportation from the factory premises to the nearest point of their residence. While this is an answer to the immediate needs of women by allowing them to access opportunities that they have been denied so far, the move to introduce night-shift for women have been opposed by workers in other countries on the ground that it contributes towards long-term deleterious social, psychological and physical health consequences.³⁰⁶ The state of Rajasthan has already carried out amendments in the Factories Act, the net result of it may be that female workers will be employed in three shifts and in a sense become camp coolies, contrary to the International Labour Organisation (ILO) norms.³⁰⁷

7.281 The proposed amendment also seeks to amend the definition of factory so to define it as any premise where the minimum number of workers employed in the definition to 20 (if power is used) and 40 (if power is not used). It is a retrograde step in a law in terms of the safety, health, and welfare of workers.³⁰⁸ Thirdly, the provisions relating to creches reiterates the notion that women are primarily responsible for the care and nurture of children. There has been a constant demand that crèches be provided irrespective of the gender of the workers. The proposed amendments of 2014 does not include this at all, even though removing restrictions on women workers is one of the planks on which the amendments are proposed.

7.282 Lastly, the issue of safety of women at workplaces came up for review in the famous case of *Vishakha v. State of Rajasthan*³⁰⁹. Implementation of these guidelines has already begun by employers by amending the rules under the Industrial Employment (Standing Orders) Act, 1946.³¹⁰ The enactment of the Sexual harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 casts a duty on every workplace to put in place mechanisms in the form of Internal Complaints Committee to address grievances of sexual harassment.

7.283 Recommendations:

- Under Section 47 clearly mention adequate, suitable and separate shelters or rest-rooms for male and female workers.
- Under Section 108 clearly mention that every factory shall set up an information centre for women workers, which shall provide them with information regarding the protective measures under the Act and the rules made thereunder.
- Reconsider position under Section 66 which seeks to cast further restrictions on employment of women.

iv. Industrial Dispute Act, 1947

7.284 The Industrial Disputes Act, 1947 was enacted to make provisions for prevention and settlement of industrial disputes and for providing certain safeguards to the workers. Chapter-II refers to Works Committee in an industrial establishment in which one hundred or more workmen are employed consisting of representatives of employers and workmen engaged in the establishment. The main purpose of the Works Committee is to promote measures for securing and preserving amity and good relations between the employer and workmen. The later chapters then refer to disputes to labour courts and Industrial Tribunals and includes provisions relating to lay-off and retrenchment and closure.

7.285 As labour is a subject on the Concurrent List of the Constitution, States too can amend the laws and the Rajasthan government has already gone ahead with amendments to the Industrial Disputes Act. In its present form Chapter VB of the IDA necessitates firms to obtain prior government permission to retrench, lay off workers (and close down factories) in an establishment employing 100 or more workers. When the Act was amended in 1976, it had stipulated that firms employing 300 or more workers had to obtain permission from the competent authority for retrenchments, lay-offs, and closures. By an amendment in 1982, it was expanded, and establishments engaging not less than 100 workers were brought within its purview. These provisions were challenged by employers as being arbitrary and unconstitutional, and they were repealed by the Supreme Court of India in the *Meenakshi Mills case (1992)*, *Madura Coats case (1994)*, and *Orissa Textiles case (1994)*.³¹¹

7.286 Chapter VB of IDA, it is argued, creates obstacles in adjusting the workforce of an establishment (and its closure) to market conditions and consequently hinders employment

creation. However in reality, prior government permission to carry out retrenchment and lay-off of workers is necessary only in the case of permanent workers of an enterprise. Thus, the contractual contingent is out of the purview of IDA and in 2010-11 constituted around 34% of the workforce in organised manufacturing sector.³¹²

7.287 The Rajasthan amendment raised the employment threshold for retrenchment/lay off to 300 workers. The amendments also seeks to increase the percentage of workers needed for registration as a representative union from 15% to 30%. Today many states do not have a law obliging employers to compulsorily recognise any trade union for the purpose of collective bargaining.³¹³ The amendment to the IDA is the most controversial of all labour law reforms. The industry lobby has long demanded its amendment and trade unions are expected to resist it the most.

7.288 Recommendations:

- Workers in the unorganized sector are not covered by the Industrial Disputes Act, 1947 and hence cannot raise an industrial dispute. As a result unorganized sector women workers have no recourse if they are illegally dismissed or discharged from their services. Therefore even if women were to unionize, they can be arbitrarily dismissed from service and will have no recourse to challenge this dismissal.
- Employees who perform supervisory roles are not covered by the IDA. As a result, women who are senior and who would ideally be a part of the negotiating team are excluded from the scope of collective agreements and therefore the interests of women workers are not reflected in collective agreements

v. The Minimum Wages Act, 1948

7.289 Article 39 states that the State shall, in particular, direct its policy towards securing that the citizen, men and women equally shall have the right to an adequate livelihood. The Minimum Wages Act, 1948 safeguards the interests of workers by providing fixation of minimum wages mainly focusing on unorganized sector and in specified occupations. The Act binds the employers to pay their workers the minimum wages fixed under the Act and owing to their jurisdiction, the Central and the State Governments fix, revise, review and enforce the payment of minimum wages without any discrimination of gender (Section

3).The Act also regulates the working hours and enforces overtime payment for working longer hours or on holidays / off days (Section 13, 14).

7.290 In the case of *Raptakos Brett* the Supreme Court specified that additional factors such as children's education, medical requirement, provision for old age, marriage, etc. which should constitute 25% should be used while fixing the minimum wage.³¹⁴ The Supreme Court in the *Asiad Workers Case*³¹⁵ stated that where a person was working for less than the minimum wages, it would be considered forced labour which is prohibited by Article 23. The *Shramshakti* Report in 1988 observed that the minimum wage legislations was not strictly followed with the exception of some regions of Kerala where trade unions exist.³¹⁶

7.291 Due to the absence of unionization, low literacy levels of women workers and lack of implementation infrastructure it is often easy for the employers to violate the provisions under this Act. Lack of adequate numbers of inspectors for ensuring the implementation of the Act, in the unorganized sector is one of the reasons that the provisions of the Act are constantly violated. Middlemen i.e. the contractors take advantage of the absence of workers organizations and the poor bargaining power of women workers and exploit the workers by taking a portion of their wage.³¹⁷ Unionization, availability of legal grievance redressal mechanisms and legal awareness are necessary to thwart these processes of exploitation of the woman worker.

7.292 Recommendation:

- That the Minimum Wages Act should apply to all employments including those which are not amongst the scheduled employments.
- The total number of Inspectors should be increased.
- The penalty for non-payment of minimum wage on the employer is only Rs. 500 or imprisonment upto 6 months. The penalty must be increased.

vi. The Workmen's Compensation Act, 1923

7.293 The Workmen's Compensation Act, 1923 is amongst the earliest social security legislation in India enacted with the purpose of making the employer liable to pay compensation to employees who are affected, or to their dependents in case of death. The Workmen's Compensation (Amendment) Act, 2000 w.e.f. 08.12.2000 has brought all the

workers within its ambit irrespective of their nature of employment i.e whether employed on casual basis or otherwise than for the purposes of the employer's trade or business. For the first time, casual labourers will be provided compensation for death or disability. Under Section 2(3) of the Act, the State Governments are empowered to extend the scope of the Act to any class of persons.³¹⁸

7.294 The working of the Act has brought to light several shortcomings which impede relief to the workers. A weak feature of the Act is that it places the entire liability for compensation on the employer but there is no obligation on the part of the employer to insure his liability. Thus in many cases small employers find it difficult to pay compensation in the event of a heavy liability arising out of a fatal accident. Such defaults tend to bring the law into disrepute. On the other hand trade unions suggest that the rate of compensation should be increased, as the Act does not meet present requirements. Further, the Act makes no provision for medical care and treatment which is the greatest need of the worker when he meets with an accident.

7.295 Recommendations:

- Ensure that the medical examination of female workers be carried out by female medical professionals.
- Ensure that women are assisted in the process of claiming compensation under this Act.

vii. The Unorganized Worker's Social Security Act, 2008

7.296 Almost 400 million people - more than 85% of the working population in India - work in the unorganised sector. Of these, at least 120 million are women.³¹⁹ In spite of their vast numbers, and their substantial contribution to the national economy, they are amongst the poorest sections of our population.³²⁰ Unorganised sector work is characterised by low wages that are often insufficient to meet minimum living standards including nutrition, long working hours, hazardous working conditions, lack of basic services such as first aid, drinking water and sanitation at the worksite, etc.

7.297 A large 'invisible' section of workers are employed in what is called 'home-based work' where, typically, workers use their own premises to do piece-rated work. Parents often take the help of children to supplement their own earnings, and this is a major reason for the widespread prevalence of child labour in the unorganised sector. Women are given low and unequal wages. Sexual harassment is common but unarticulated due to fear of loss of employment.³²¹

7.298 The Second National Commission on Labour was set up in 2002 with the twin objectives of suggesting rationalisation of existing laws relating to labour in the organised sector and to suggest an 'umbrella' legislation for ensuring a minimum level of protection to workers in the unorganised sector.³²² The Unorganized Worker's Social Security Act was thus enacted in 2008. It provides for formulation of Social Security schemes for social security and welfare of workers in unorganized sector. It makes provision for the registration of all unorganized workers. It also provides for welfare schemes for different sections of the unorganized sector workers on matters relating to life and disability cover, health, insurance, maternity benefits and old age pension.

7.299 The Act however has no penal sections to curb malpractices like non-payment of wages, paying less than minimum wages, delays in payment, unequal remuneration, etc. Wage-related problems are a regular feature of the unorganised sector. The very structure of the sector is such that the worker, especially migrant and women workers are totally powerless.³²³

7.300 The Act fails to exploit the full potential of two structures that together could have given teeth to the enactment. These are (a) the workers' facilitation centres (WFC) and (b) panchayati raj institutions. Further, there are no specific provisions in the Act regarding women workers especially about equal remuneration, decent work conditions, and protection from sexual harassment at the workplace.³²⁴ The recommendations of the Shramshakti report (1988) which concentrated on issues of women workers in the unorganised sector should have been reflected in the act.

7.301 Recommendation:

- Need for specific provisions regarding women workers especially about equal remuneration, decent work conditions and protection from sexual harassment at the workplace.

viii. Domestic Workers

7.302 According to the ILO, there are at least 53 million domestic workers across 117 countries and women constitute 83% of this workforce.³²⁵ Since the great majority of domestic workers are women, some 2.2% of all employed women are domestic workers. The Census 2001 puts the number of domestic workers at 6.4 million.³²⁶ More up to date figures are difficult to come by with even the 2011 draft National Policy on Domestic Work citing these figures. With no reliable numbers available, the neglect accorded to this portion of the workforce as well as the hidden nature of the employment comes to the fore, making legislative and legal intervention even more difficult.

7.303 As per the Draft National Policy, “domestic workers are not covered under any significant labour law mainly because of the nature of their work and the employment relationship”.³²⁷ Domestic workers further lack registration and organization and comprise largely of women, which renders them invisible. The Government created a Task Force on Domestic Workers in 2011 that came out with its first report, which included the Draft National Policy. This policy is yet to be operationalized. The National Commission for Women has drafted a Domestic Workers (Registration, Social Security and Welfare) Act, 2010, (Bill which is yet to be passed) and held consultations on the same. However, there is still an absence of targeted legislation as regards domestic workers.

7.304 A legislation on domestic workers would have to tackle issues of invisibility and the lack of structured employment. The ILO pointed to the difficulty of defining “domestic workers” as they “are not a homogenous group. The wages for domestic workers would have to be considered and a reasonable standard set for the level of work. The issues of registration of workers, the creation of unions, regulation of agencies, the applicability of various legislations such as Sexual Harassment at the Workplace Act, 2013 and the Maternity Benefits Act, 1961 would need to be clarified and made to apply to domestic workers.

7.305 The lower wages accorded to women's domestic work mirror the social and legal value accorded to unpaid work within the household. The lower wages for women's care and household work compared to work performed outside the home is reflected in other branches of the law. The campaign by domestic workers and trade unions for legislative coverage of domestic work and for a working life of dignity is in many ways closely linked to the demand by the women's movement for recognition of unpaid household and care work performed by women within the household.³²⁸

7.306 Recommendations:

- Comprehensive umbrella legislation for domestic workers that defines domestic work and workers broadly and accounts for their security and fair work conditions, including applicability of provisions in other legislations.
- Proper survey of the sector of employment to ascertain accurate numbers of those who work in it and the working conditions of the same.
- Form a method of registration and community participation for domestic workers in the nature of a Labour Union.

ix. The Contract Labour (Regulation and Abolition) Act, 1970

7.307 With a view in removing the difficulties of contract labour and bearing in mind the decisions of the Supreme Court the Contract Labour (Regulation and Abolition) Act was enacted in 1970. This Act seeks to regulate the employment of contract labour in certain establishments and to provide for its abolition under certain circumstances.³²⁹ Contract Labour, by and large, is neither borne on pay roll or muster roll nor are paid wages directly. The establishments, which farm out work to contractors, do not own any direct responsibility in regard to their labourers.

7.308 Contract Labour (Abolition and Regulation) Act and Rules, 1970 provides for the separate provision for utilities and fixed working hours for women. The possibility of adverse consequences against women ought to be taken into account. Affirmative action for women, have in some cases, resulted in adverse consequences in terms of loss of employment opportunities for women.

7.309 The amendments to the CLRA in Rajasthan raises the applicability of the Act to establishments having more than 50 workers from the current 20. This move would have the implication that all permanent jobs in establishments having less than 50 workers (but above 20 workers) could be abolished. This employer- friendly move would also implicitly encourage the use of contract workers more liberally in establishments employing more than 50 workers.³³⁰ The engagement of contract workmen is larger in ratio than permanent workmen in not only the private sector, but also public sector undertakings. Without following the provisions of the Act, the Supreme Court in the Steel Authority of India's case (2001) rejected the claims of workers and virtually legalised outsourcing of labour. It ruled that the CLRA Act do not provide automatic absorption of contract labour on issuing a notification prohibiting employment of contract labour and the principal employer cannot be required to absorb those contract labour.³³¹

7.310 Recommendations:

- Adequate representation of women in the State and Central Advisory Board under the Contract Labor Act.
- Provisions for separate rest rooms for men and women should be provided.
- Provisions for crèches to be included
- Provision for mandatory presence of a women inspector when a premise employing women contract laborers is under inspection.

x. Other legislations governing labour rights in specific sectors

i. Beedi and Cigar Workers (Conditions of Employment) Act, 1966

7.311 Beedi manufacturing is one of the traditional and largely home-based industries in India. The Beedi and Cigar workers (Conditions of Employment) Act, 1966 is the only labour enactment, which deals with, home workers in a detailed manner. The enactment is particularly relevant, as bulks of the home workers in beedi rolling are women. The purpose of this Act is to provide for the welfare of workers in beedi and cigar establishments self-employed and regulation of work conditions.³³²

7.312 Section 25 of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 stipulates that no woman shall be required or allowed to work in any industrial premise

except between 6 a.m. and 7 p.m. It is a well-known fact that women workers in this sector are rarely paid the minimum wage, conditions of work are dismal and pressure of the work is high. A policy must be evolved so that only a minimum number of *beedis* should be rolled per hour by any worker and overall work conditions must be improved through better implementation mechanisms.³³³

ii. The Plantation Labour Act, 1951

7.313 This Act regulates, for the first time, the condition of work of plantation workers and provides for their welfare. Though, in the first instance, it applies only to tea, coffee, rubber and cinnamon plantations, the State Governments have been empowered to extend the provisions of the Act to other plantations with the approval of the Central Government. The Act bans employment of any women or child in any plantation between 7 p.m. to 6 a.m. except without permission of the State Government.³³⁴

7.314 The Act makes provisions in respect of grant of sickness and maternity benefit in the form of allowance in case of confinement or expected confinement on production of sickness certificate issued by a certified medical practitioner. The Act also stipulates for providing crèche facilities in plantations where on any day in preceding 12 months 15 or more women workers were employed or the number of children (below the age of 6 years) of women workers is 20 or more. (Section 12).

iii. The Mines Act, 1952

7.315 The Act has been enacted to amend and consolidate the law relating to the regulation of labour and safety in mines. It seeks to regulate the working conditions in mines by providing for measures required to be taken for the safety and security of workers employed therein and certain amenities for them.

7.316 The Mines Act, 1952 prohibits employment of women during night hours. According to Section 46(1)(b) of this Act no women shall, notwithstanding anything contained in any other law be employed in any mine above ground except between the hours 6 a.m. and 7 p.m. It also prohibits employment of women in any part of a mine which is below ground. Section 57(j) of the Mines Act, 1952 empowers the Central Government to make regulations for prohibiting, restricting or regulating the employment of women in mines or in any class of

mines or on particular kinds of labour which are attended by danger to the life, safety or health of such persons.³³⁵ The legal prohibition combined with a number of changes, including mechanization of mines over time has resulted in extremely low employment of women in the main mining activities.

7.317 There are a number of other legislations that prohibit women from working on night shifts in certain sectors, including the Factories Act, 1948, which has been discussed above. In a number of recent cases, high courts have held such restrictions on women's employment as unconstitutional. Instead of barring women from working in night shifts, it must be the statutory responsibility of the employer to provide safe working conditions for women. In many instances the mines which hire women workers are illegal and hence conditions of work are dismal. The first step towards protecting the rights of women mine workers is therefore to make them visible to the legal machinery.³³⁶

iv. The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996

7.318 The purpose of this Act is to regulate the employment and conditions of service of construction workers and to provide for their safety, health and welfare measures. The Act applies to every establishment which employs/had employed on any day of preceding 12 months, 10 or more building workers in building or construction work. It covers all Central and State Government establishments. The special feature of the Act is that it covers all private residential buildings if the cost of construction is more than rupees ten lakhs.

7.319 Section 22 of the Act describes the functions of the Board applicable to the beneficiaries. These boards are to provide immediate assistance in case of accident, pay maternity benefit to the female beneficiaries, and to make provisions and improvement of other welfare measures as may be prescribed. There are many States where the Welfare Boards have been created but partly due to the non-registration of workers and partly due to bureaucratic proceedings, very often the Board has not been functional in disbursing the social security benefits to the workers. There are numerous case studies on the construction sector and the conditions of work for construction workers which reveal that workers are not provided with facilities of drinking water, toilet, crèche, canteen, safety measures and first aid, accommodations at the worksite along with other social security provisions (maternity benefits, old age benefit, pension, compensation of accidents).³³⁷ Most of the workers in this

industry are contract, migrant workers without any social security benefits. The workers are highly exploited as most of the time they are not paid minimum wages and that too at irregular intervals.

7.320 Recommendations:

- Policy of prohibiting women from working underground in mines needs to be reviewed.
- Instead of barring women from working in night shifts, it must be the statutory responsibility of the employer to provide safe working conditions for women.

Section IV - Access to Justice and other issues

7.321 Law and justice institutions play a key role in the distribution of rights and resources among women and men across all sectors. They underpin the forms and functions of other institutions and reflect and shape development outcomes. Access to justice, therefore, is not just a right by itself, it is also a means to ensure equitable outcomes. Justice YK Sabharwal correctly identifies that if 'justice' is identified as a bundle of rights within the modern nation state, then access to justice must be secured through a machinery that makes these rights actually justiciable.³³⁸ However, hindrances in attempts at prosecuting those rights often render the rights themselves nugatory. For this reason, the Law Commission of India, in the 189th Report acknowledged that access to justice is a fundamental human right.³³⁹

7.322 Lord Woolf, in his iconic Access to Justice Report in UK in 1995, identified 8 principles that a judicial system should meet to make justice accessible. These are: (a) be *just* in the results it delivers; (b) be *fair* in the way it treats litigants; (c) offer appropriate procedures at a reasonable *cost*; (d) deal with cases with reasonable *speed*; (e) be *understandable* to those who use it; (f) be *responsive* to the needs of those who use it; (g) provide as much *certainty* as the nature of particular cases allows; and (h) be *effective*: adequately resourced and organized.³⁴⁰

7.323 The Indian Constitution guarantees equality as a 'Fundamental Right' in Articles 14, 15 and 16 under Part III. Article 14 guarantees equality before law and the equal protection of laws. Article 15 prohibits discrimination on the basis of religion, race, caste, sex, place of birth, or any of them. Article 15 also allows for special provisions to be made for women, children, socially and educationally backward classes of citizens as well as the Schedule Castes and the Scheduled Tribes (SCs and STs). Article 16 provides for equality of opportunity in matters of public employment. While the Constitution does not specifically mention reservation for women, the Constitutional (74th Amendment) Act, 1992, brought in provisions mandating one-third reservations for women in local governance bodies.

7.324 Part IV of the Indian Constitution enlists socio-economic and cultural rights under the title of 'Directive Principles of State Policies' (DPSP). While the DPSP, unlike the fundamental rights, are not enforceable, these rights are meant to guide the state while

legislating and policy making. The Supreme Court and the High Courts under Article 32 and 226 respectively, have the power to enforce constitutional guarantees of fundamental rights.

7.325 In 1976, the 42nd Constitutional Amendment inserted Article 39-A obligating the State to "provide free legal aid by a suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability". It is in this context that a comprehensive law was enacted in 1987 - Legal Services Authorities Act, 1987. This has led to the setting up of Legal Services Authorities at the National, State and District levels along with Legal Services Committees at the Supreme Court, High Court and the Taluka levels.³⁴¹

7.326 In 1979 the Supreme Court in *Hussainara Khatun v. State of Bihar* held that free legal aid is implicit in the guarantee of Articles 14 and 21.³⁴² Justice Bhagwati in the same case directed the government of introducing a dynamic and comprehensive legal services program, since this is not only a mandate of equal justice implicit in Article 14 and right to life and liberty conferred by Article 21, but also the compulsion of the constitutional directive embodied in Article 39A. In *M.H.Hoskot's case*³⁴³ the Supreme Court did not hesitate to imply this right in Article 22(1) and Article 21 jointly while pressing into service application of a Directive Principle of State Policy under Article 39-A of Equal Justice and free legal aid.

Women and Access to Justice

7.327 Women often have few resources of their own and "their access to resources are molded through their status within families and communities".³⁴⁴ Access to Justice then necessarily comes with State commitments to assure women access to education and to employment as well as to active measures to combat social ideals that prevent women's full participation in public life.³⁴⁵ Another aspect is that a woman's status in the patriarchal structure of society also impedes her access to justice. The inequities of social status, caste prejudices, and economic deprivation further compound the gender injustice. The woman's tragedy is to face the compounding of gender and social injustice contrary to the constitutional promise to 'secure a social order in which justice, social, economic and political, shall inform all the institutions of national life', and the State's obligation 'to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people'.³⁴⁶

7.328 It is however clear that today the structure of judicial remedies is still insufficient to serve the needs of women, particularly poor and marginalized women, in accessing justice. Unfortunately, when the legal aid law was enacted, the focus was on assigning a lawyer to the needy client who took the task in a traditional style of protracted litigation. Moreover, the system was premised on three assumptions which were contrary to ground realities — that the victim was aware of his/her rights and knew how to approach courts; that legal aid offices were available in far-flung villages and tribal settlements; and that the lawyer assigned had the right values, attitudes and competence to do a professional job appropriate to the justice needs of the rural/tribal population.³⁴⁷

7.329 Assuring women access to justice in the Indian context can only be achieved through a multi-pronged approach. The first prong includes reforming 'the justice chain', which refers to '*the series of steps that a woman has to take to access the formal justice system or to claim her rights*'³⁴⁸, to eliminate judicial delays and threshold barriers that women face when seeking redressal of wrongs by any means. This must be coupled with an attempt to remove substantive barriers to justice, including incomplete or unjust laws, biased policies, and oppressive judicial views. The second approach must be initiatives to educate and inform the public at large in order to enable those from marginalized communities, including women, to seek and demand legal service and justice. Finally, the gender imbalance and lack of gender sensitivity in the judiciary prevents the dispensation of meaningful justice for women as an important gender perspective is lost in a traditional and patriarchal bench.

7.330 Perceiving access to justice as only a roadmap to reach formal systems of dispute resolution would be to cast the corridors of the judicial system as the culmination and end-point of the struggle for women's rights. The judiciary and other means of dispute resolution can only be a way by which the rights of women are recognized, validated and secured. The objective of the entire process therefore is a life of dignity and self-determination, free from violence and discrimination. For this reason, law reforms attempting to secure access to justice must also ensure that justice, that is, a life of dignity and self-determination- is actually secured. Lord Woolf correctly characterized the 'just' outcomes of the judicial process as the top-most priority in the Access to Justice Reforms of 1995 in the United Kingdom. This would require not only that women can actually enter the judicial process, but also that they are granted substantive rights through the content of the laws to in order to secure a life of social, economic and domestic justice.

I. Reforming the Justice Chain

7.331 Laws and the legal systems are major tools that may be used to promote justice and these play a vital role in the wellbeing of any society. Formal legal system comprises of the constitutional provisions as well as substantive and procedural laws. Constitution and substantive laws set the normative framework while procedural laws facilitate enforcement.³⁴⁹ Presently, the formal legal system is adapted to accommodate a set of laws and procedures to protect women from violence. Yet several pitfalls, systemic constraints and restraints within the system operate against elimination of violence against women. These lacunae exist in spite of the process of law reform that has been initiated by several stakeholders in the justice delivery system as well as the civil society.³⁵⁰

Remove substantive barriers to justice

7.332 The ability to claim one's rights and seek a remedy is influenced by the content of the laws that sanction these rights and govern the processes for obtaining redress. While there are now in many jurisdictions laws that support the advancement of women and gender equality, discriminatory laws also remain.³⁵¹ Protective laws on the surface appear to provide protection for women against harmful and dangerous occupational environments, however, they subvert women's ability to make choices and operate to restrict their access to a wider range of employment opportunities. An example of this would be total or partial restrictions on women to work at night. Gender-neutral laws, although appearing to be unbiased, may impact disproportionately on one sex if they do not take into account existing inequalities.

7.333 Further, ill-founded assumptions of the law have significantly impaired the capacity of women to prove violence within the home in Courts. Due to the codes of 'secrecy' and notion of 'privacy', the only witnesses to such violence were the perpetrators themselves. In response to this, the Indian legislature amended the Indian Evidence Act and the Indian Penal Code, stating that in cases of deaths within 7 years of marriage, which were immediately preceded by demands for dowry, will be presumed to be dowry deaths. The burden of proof would then be on the accused to disprove this allegation. While the Legislature took many strides forward in mainstreaming the experiences of women within the legal system, the Judiciary took strides backwards. In a spate of judicial decisions, it held that the scope of the term "immediately before" does not include demands of dowry made even 2 days before the death of the woman.

7.334 The recent Criminal Law (Amendment) Act, 2013, though with its own major flaws, has conceded some ground to viewing the law through the eyes of women by criminalizing 'stalking' and 'eve-teasing'. Though it is too early to comment on the shape that these laws will take when actually applied by the Courts, there is already some backlash in courtrooms, with accused and their counsel claiming that the new rape laws are excessively harsh, and that harshness should be mitigated through other means.

7.335 The most significant lapse of the Criminal Law (Amendment) Act, 2013 is its continued protection of marital rape. There is no greater symbol of the impunity than violence within the private sphere, and the state's sanction of it. The other location of such defence of the private against the values of equality and justice of the 'public' are the personal laws, which continue to treat sons and daughters, men and women in a highly discriminatory manner, continually excluding them from inheritance.

7.336 The Sexual Harassment at the Workplace Act envisions a radical change in the contours of the workplace, which is the classically patriarchal domain of men, rampant with overt and covert discrimination and exclusion. The Act attempts to create an inclusive and congenial atmosphere for women by punishing any form of sexual overtures or advances, which may tend to harass the woman. At the same time, the Act, unlike any other legislation, has a specific provision for punishment of false cases, which deters and casts a chilling effect on even those women who have genuine complaints but are legitimately fearful of the backlash³⁵².

7.337 There are several other sites for struggles for women's rights within the legal and judicial system. Foremost among them is the distortion of the Protection of Women from Domestic Violence Act, 2005. The Act intended to protect women from all forms of violence perpetrated upon them within the family and granting them a civil remedy to simultaneously prevent neglect and destitution. One of the most remarkable achievements of this law is its protection of '*relationships in the nature of marriage*'. This phrase originally intended to refer to live-in relationships, in recognition that there are several relationships in rural and urban areas both where marriage may not actually be solemnised, or may be solemnised inadequately, and that such relationships should not be denied protection under the law solely because of the technical form that it takes. A regressive reading of this provision has not only set this progressive legislation back, but also disgracefully labelled women in such relationships as '*concubines*' and '*keeps*'.³⁵³

7.338 Judicial interpretations of the legislation has also imposed a threshold bar on impleading relatives of the husband, who may not live in the same house as the wife, in complaints on domestic violence.³⁵⁴ In utter neglect of social realities, as per which both families continue to exert significant control and influence over the couple long after the marriage, and are themselves responsible for perpetrating violence and harassment. Rape trials are fraught with problems of the perception of 'consent' and appropriate sexual conduct of women. Despite the prohibition on admitting prior sexual history of rape victims, lawyers continue to cite them and judges continue to base the adjudication of rape cases upon them, unjustly penalizing women who do not fit into the stereotypical mould of chastity and restraint.

7.339 These provisions merely illustrate, and do not exhaust the several ways in which the Indian legal system continues to alienate substantive justice for women. The pursuit of justice will only be complete once the substantive content of these laws are addressed. While the struggle to change mindsets is indeed a long one, one way by which these discriminatory legal provisions can be overcome is by ensuring a truly democratic form of governance. The need for increased representation of women in the Parliament and the Judiciary cannot be overemphasized. The participation of women in the decision-making process will not only enable self-determination of the class of women within the country, but also infuse decision-making with sensitivity.

7.340 Recommendations:

- Marital Rape should be made an offence irrespective of the age of the wife and the relationship between the perpetrator and the victim should be irrelevant in evaluating consent.
- The age of consent should be revised to 16 and there should be a close-in-age exception for young people in consensual sexual relationships where the two are above 16.
- Discriminatory laws relating to marriage, divorce, inheritance and other similar aspects need to be amended (details of the same are provided in the section on family laws).

Re engineer procedural laws

7.341 Just as fair laws can dispense justice, unfair laws can lead to infringement of rights and violations of principles of justice. Similarly, even if laws are fair and impartial, but implementation of laws is carried out in unfair manner, it may act as a barrier to achieve the goal of justice.³⁵⁵ The Constitution under Article 15(3) allows the State to make specific provisions towards empowerment of women and children. Under this mandate the Government has enacted various women centric laws varying from the Protection of Women from Domestic Violence Act 2005, the Dowry Prohibition Act 1961, National Commission for Women Act, the Prohibition of Child Marriage Act, 2006 and the recently enacted Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

7.342 In order to ensure that women are able to access the reliefs which were envisaged under these laws, most of them have sought to have an in-built mechanism to facilitate access to justice. The Dowry Prohibition officers under Section 8B of the DPA are required to take steps towards preventing the giving and taking of dowry. The protection officers and services providers under the PWDVA are required to act as a bridge/link between the women and the court and assist her in accessing various other reliefs such as legal aid, medical facility and shelter homes. The Internal and the Local Complaints Committee are required to be set up under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in order to provide urgent redressal to a woman victim of sexual harassment.

7.343 However, in many cases, non-implementation is written into the law due to reasons of inaccurate definitions delineating the coverage of the law, this many a times is combined with the absence of an effective statutory mechanism and procedural safeguards that facilitate access to justice. Inadequate allocation of budget and personnel required for the implementation of gender specific laws is also a major impediment in achieving the objectives of these special laws. There is an urgent need to understand structural deficiencies in laws and rationalize implementation processes, particularly within the context of the existing criminal justice system.

7.344 As we are aware the criminal justice system in which laws dealing with harmful practices are enforced, is laden with problems such as judicial delays, overburdening of courts, lack of training and gender sensitization of members of the judiciary, law enforcement

officials and implementing agencies. Support services to women in terms of providing shelter, medical, legal aid and counselling services, witness/victim protection programs, and other support needed to sustain women in their struggle for justice is far from adequate in meeting the demand for such services. Studies have shown that cases under certain statutes and areas of law are choking the dockets of magisterial and specialized courts, and these include matrimonial cases and cases under Section 498A of the Indian Penal Code, 1860.³⁵⁶

7.345 Most women, and every organization working in the field of women's rights, have encountered the adamant refusal of the police to register FIRs in cases of crimes against women. Indian law has recently provided two responses to this problem. The first lies in the Criminal Law Amendment Act, 2013, which states that reporting of information on sexual offences needs to be videographed, and that no prior sanction is required to prosecute public officials (which includes police officers as well) who refuse to take down the FIR. The second lies in the recent Supreme Court judgment in the case of *Lalita Kumari v. Government of UP*,³⁵⁷ which held that the Police cannot refuse to file an FIR.

7.346 However, often women approaching the formal state mechanism to complain against cruelty, violence and dowry demands are put through a compulsory mediation process.³⁵⁸ The Courts, too, undermine the seriousness of marital cruelty, violence and offences, and direct the parties to compulsory mediation. These attempts at conciliation and mediation sometimes succeed in intimidating the harassers into meeting the requests of the women complainants. More often, however, these processes do nothing to balance the power inequalities existing between the husband and the wife, such that the outcome compromises the interests of the woman and does little to deter the violence, since many a times the mediators themselves have a biased mindset.

7.347 Most of these measures are driven by the misperception that the family unit and marriage needs to be preserved³⁵⁹, and that women tend to misuse the laws that are created for their benefit. While the emphasis on preservation of the family unit inevitably compromises the rights and safety of women, there is no empirical support for the stance that misuse is actually as great a problem as it is perceived. In fact, most cases of crimes against women are *not* reported, either to save the marriage and the family, or because the woman herself needs to face the stigma.

7.348 These misperceptions contribute to a lax attitude of police personnel in treating crimes against women with the seriousness that it merits, such that policepersons often sympathize with the perpetrators. For this reason, investigation into dowry demands and dowry deaths, marital cruelty and bride-burning, honour crimes is not carried out properly, characterizing them as 'internal family matters'. While police reforms and gender-sensitization are strategies that need to be adopted, there is a need for introducing Standard Operating Procedures in the investigation of such crimes, such that there is little scope for individual discretion in the investigation process.

7.349 Recommendations:

- Ensure that independent protection officers and dowry prohibition officers are appointed under the PWDVA and the DPA.
- Ensure that adequate resource allocations (budgetary and human) have been made under the PWDVA for protection officers and service providers to carry out their activities in an effective manner.
- Monitoring constitution of Internal and Local Complaints Committee in every workplace and every district as mandated under the SHW Act.
- Ensure timely disposal of complaints of sexual harassment by the internal/local Complaints Committee.
- Introduce Standard Operating Procedures in the investigation of such crimes, such that there is little scope for individual discretion in the investigation process.
- Prioritization has to be worked out for an expeditious resolution of certain category of cases, such as those filed by women who are victims of violence. These must receive fast track and out of turn disposal but in a uniform, organized and systematic manner.
- Fast Track procedures must be evolved to deal with the cases earmarked as causing bottlenecks.
- Special Court Rooms, additional buildings and other infrastructure must be provided for the above purpose. Increased infrastructural support must be considered on a war-footing.

Legal Aid

7.350 Located in Part IV on the Directive Principles of State Policy, Art.39A obligates the State to make endeavor to provide legal services to those who are unable to access it. In

pursuance of this, the Legal Services Authorities Act, 1987 was passed. This aspires to overcome the financial disabilities of women (and other groups) in accessing courts and the judicial system, by making them eligible for legal aid, irrespective of their economic status.³⁶⁰ This Act arose largely in response to the observations of the Supreme Court in the case of *Hussainara Khatoon v. State of Bihar*,³⁶¹ where free legal aid and speedy trial was elevated to the status of a fundamental right.

“There can be no doubt that speedy trial, and by speedy trial, we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 ... legal aid is really nothing else but equal justice in action. Legal aid is in fact the delivery system of social justice. If free legal services are not provided to such an accused, the trial itself may run the risk of being vitiated as contravening Article 21 and we have no doubt that every State Government would try to avoid such a possible eventuality.”

7.351 This was not the first time that free legal aid was declared as a fundamental right under Art.21, as an essential component of the ‘just, fair and reasonable’ standard. Previously, *Suk Das v. Union Territory of Arunachal Pradesh*,³⁶² and *M.H. Hoskot v. State of Maharashtra*³⁶³ had held to the same effect.³⁶⁴

7.352 The Legal Services Authority Act 1987 puts in place a statutory system for providing free legal aid and services to the marginalized groups in India. The Act provides that legal aid will be available for a wide range of litigants ranging from persons in custody, children, women, members of the Scheduled Castes and the Scheduled Tribes community, victims of trafficking and others.³⁶⁵ The Act mandates constitution of an extensive network of legal aid authorities at the taluk, district and State levels. The Legal Services Institutions provide legal aid in both civil and criminal matters and are also mandated to create legal awareness and assist people in settling their disputes using alternate dispute resolution mechanisms.

7.353 The National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010, spells out the processes for legal aid. All Legal Services Authorities (LSAs) are required to have a front office and a Committee is required to evaluate an application for eligibility to legal services. They are required to select legal aid lawyers with at least 3 years of experience and are also required to set up a Monitoring Committee for close monitoring of the court based legal services and the progress of the cases in legal aided

matters.³⁶⁶ The National Legal Services Authority (Legal Aid Clinics) Regulations, 2011 lays down the manner in which District Legal Services Authority shall establish legal aid clinics in places where the people face geographical, social and other barriers for access to the legal services institutions.

7.354 However, in practice, legal aid is fraught with its own difficulties. The funds earmarked for this purpose are not always sufficient, and are also not released easily and efficiently. This is compounded by the ignorance of several women of this provision. This calls for a revision in not only the legal aid provisions of the law, but also in the court fee structures and other expenses associated with litigation. For instance, women are not required to pay any court fee in maintenance suits in the state of Maharashtra, while this requirement still exists in most other states. The absurdity of asking a woman who is seeking maintenance to pay court fee is evident on the face itself.

7.355 In a consultation organized on Access to Justice (GOI and UNDP) some of the biggest hurdles identified by the members of the legal services authority were lack of funds, infrastructure, transparency in working and accountability (both of the panel lawyers and the LSAs themselves). Some of the other challenges identified by the SLSAs included naxalism, illiteracy, poverty, exploitation, ignorance, and superstition.³⁶⁷ A study done by MARG in collaboration with the Ministry of Law and Justice and UNDP on the needs assessment of the Legal Services Authorities in the states of Madhya Pradesh, Jharkhand, Bihar, Uttar Pradesh, Odisha, Rajasthan and Chhattisgarh identified lack of training for legal aid lawyers, lack of monitoring of legal aid cases, absence of a central database showing progress of cases, insufficient payment of fees for cases by the LSA, no system of tracking case progress as some of the key obstacles faced.³⁶⁸

7.356 Another issue highlighted was that the duties under legal aid authority is generally carried out by judges as an additional responsibility apart from their regular judicial work. Member Secretary of Uttar Pradesh legal Services Authority pointed out that the establishment of courts in remote areas implies that many judicial officers maintain two establishments.³⁶⁹ Further, discussion on legal aid also focussed on the often poor quality of lawyers who provide legal aid services. Lack of competent lawyers to provide such services was attributed to the lack of funds to engage competent lawyers.

7.357 Recommendations:

- Transparent system for receiving applications for empanelment through advertising in the official language of the state in at least two newspapers with wide circulation in the state, as well as notices in court premises.
- Potential panel lawyers to be interviewed by Member Secretaries and Chairpersons of LSAs.
- Selection of lawyers with minimum three years' experience, preference to be given to lawyers with experience on cases affecting persons mentioned in Section 12 of the LSA Act.
- Lawyers with proven track record of commitment to social justice must be given preference.
- New panel to be constituted every three years, with existing panel continuing till replaced by new one.

II. Legal Literacy and awareness generation

7.358 Women may have less access to information about their rights and entitlements as well as how to seek remedies. They may also be excluded from engagements over matters external to the household, such as land and natural resources negotiations, business and enterprises. Even where women are aware of their legal rights, they may not claim them due to dependency, shame or fear. Women may not seek redress due to an "ingrained dependency or powerlessness: feeling that her situation is inevitable or that she feels incapable of changing her life".³⁷⁰ Where judicial structures are distant from communities, people, including women are less willing to make claims.

7.359 Women, lying at the intersection of poverty and gender-based discrimination, face a twin disadvantage. While the high costs associated with litigation, compounded by their protracted length, debar persons from accessing courts generally, women suffer more since they already do not enjoy control over financial and other resources within the family. In this manner, poverty cripples not only the ability of women to access justice, but also their agency, since the eventual decision to pursue legal remedies lies with the male head of the family. Thus, it is the need of the hour that the poor illiterate people should be imparted with

legal knowledge and should be educated on their basic rights which should be done from the grass root level of the country.

7.360 Recently, the Department of Justice has attempted to obliterate impediments of lack of information and knowledge by its two-phase Project on Access to Justice for the Marginalized People, supported by the UNDP. Included within the project are programmes to spread legal literacy, undertaken through the special training of volunteers, the National and State Legal Services Authorities etc.³⁷¹ Independently of formal, state-run legal literacy programmes, various NGOs and Law Schools have for long been involved in this endeavour. The constitution of this Committee marks an important point to assess and re-assess strategies and policy interventions by which women can be made legally literate, and thereby empowered. The Protection of Women from Domestic Violence Act, 2006 exhibits another strategy of raising legal awareness among women to make justice accessible, which is to obligate the State itself to take measures to widely publicize the legislation and its contents. In an age of multifarious modes of communication, the television and radio can act as formidable allies in this cause.

7.361 Legal literacy and legal awareness are the principal means to achieve the objective of equality before the law for the citizens of our country. All efforts should be made to achieve the object of the Legal services Authorities Act and make the legal aid programmes meaningful and purposeful. Legal aid without legal literacy is less meaningful and purposeful. So, it would be highly useful if some important legal topics are included as compulsory subjects from primary education stage itself. Such legal education would enable the people to settle several of their disputes outside the courts at the grass roots level without seeking help from legal experts who are generally expensive.³⁷² It is said that justice delayed is justice denied. So, we will have to find out a *via media* to render social justice to the poor and needy who want their grievances redressed through law courts.³⁷³

7.362 Recommendations:

- Under Section 4(1) of the Legal Services Authority Act, the LSAs should spread legal awareness particularly among the weaker sections about their rights, entitlements and privileges. Legal awareness camps should be carefully designed keeping in mind the following

- Topics for the legal awareness camp should be decided in consultation with the local community.
 - The timings should be reasonable and at the convenience of the participants rather than the resource persons.
 - Sessions should be structured systematically. Packing in too much information in too short a time leads to confusion rather than awareness. Resource persons should be encouraged to use films, role plays and other interactive methods rather than only lectures.
 - A pool of suitable resource persons should be developed. Resource persons should be selected on the basis of their knowledge of the subject as well as communication skills.
 - Legal literacy materials on the issue should be invariably distributed among the participants for future reference.
- In order to avoid duplication a body should be identified at a national level whose primary function shall be to carry out awareness generation.
 - Conducting awareness programmes on relevant laws should be taken up by the Government at a national level.
 - Awareness generation should be a component in all the women related schemes and programmes.

Women in Judiciary

7.363 Currently, women occupy disproportionately low number of judicial positions. These numbers dwindle even more as one looks at the judges of higher courts. It is interesting to note that at present there is only one female judge in the Supreme Court³⁷⁴ and that out of the total sanctioned strength of judges across the 24 High Courts in India a mere 64 (appx.) are women.³⁷⁵ The struggle for women to attain judicial posts and to move through the echelons of the judiciary appears daunting in the face of severe under-representation. The upper Courts in particular are confronted with constitutional issues, yet the scarcity of female judges would indicate that the Courts have not been able to implement the Constitutional guarantee of equality in Articles 14-16 within their own judicial composition. The Late Justice Sunanda Bhandare said that

"A woman is inferior to no man though she has to be twice as good to go half as far".
A truism that is reflected in the legal profession.

7.364 As regards promotions and appointments to the judiciary, it is interesting to note that women are present in much larger numbers amongst the subordinate judiciary than in higher judicial posts. Across the country, appointments to the High Court bench are by promotion from the lower judiciary and selection by a collegium of senior judges. The number of female judges starts to dwindle when the system of appointment allows the arbitrary view of the selector to creep in. Elevation to the Supreme Court is based on 'consultations' under Art.142 of the Constitution of India, by a highly impermeable and opaque Collegium system. Justice Ruma Pal said in her Tarkunde lecture that:

"As I have said elsewhere 'the process by which a judge is appointed to a superior court is one of the best kept secrets in this country'. The very secrecy of the process leads to an inadequate input of information as to the abilities and suitability of a possible candidate for appointment as a judge...Consensus within the collegium is sometimes resolved through a trade-off resulting in dubious appointments with disastrous consequences for the litigants and the credibility of the judicial system. Besides, institutional independence has also been compromised by growing sycophancy and 'lobbying' within the system."

7.365 As the majority of judges are male, the collegium is itself generally all male and clearly fails to appoint women in representative numbers. In a consultation organized by the HLCSW on "Women in the Judiciary" it was shared that often women were judged on the basis of their behavioral traits (loose character, volatile etc.) rather than merit. That there is also present a double bind as traits associated with an effective judge fall foul of traditional notions of femininity; for example, what is assertiveness in male candidates is taken as aggression in females. Low as the number of women on the bench is, members of marginalized communities and women with intersecting oppression are even fewer, if any, in number.³⁷⁶ It was highlighted that there is a need to call for reform of the system of appointments to the higher judiciary to introduce transparency, objectivity and affirmative action in favor of female and otherwise marginalized candidates.

7.366 For women to be better represented in the judiciary, it stands to reason that their conditions of service and the facilities provided to them must substantively match those provided to men. As said by Justice Sujata Manohar, "Women now demand not merely structural adjustment, but structural transformation – making it possible for them to participate and contribute in larger decision making, while also fulfilling their

responsibilities” as the burden of caregiving often falls largely on women, irrespective of their occupation otherwise. Dependents of female judges should, therefore, be given the same status as those of male judges. Women should be transferred within a reasonable distance of their home base and be given accommodation regardless of their marital status. Structural difficulties, such as inadequate toilet and childcare facilities in courts, would need to be overcome.

7.367 The space of the Court must move from masculine to substantively gender balanced as is indeed mandated by the Supreme Court itself in *Vishaka & Ors v. State of Rajasthan and Ors*. The guidelines mandated putting in place structures to facilitate appropriate work conditions in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces. It is pertinent to ask whether most Courts and the Supreme Court itself can attest to the implementation of this guideline. The case of sexual harassment a women Judicial magistrate in the Rajasthan Judiciary and the recent case of sexual harassment of a Judicial Magistrate of Madhya Pradesh highlights the patriarchal and male dominated judicial system under which women have to serve.

7.368 Without mainstreaming gender through the judiciary, the application of laws to the disadvantage of women is infinitely more likely, even where the law is not *per se* discriminatory. The effective use of law depends on a supportive judiciary and a supportive judiciary is one where female voices speak as loudly as male voices. Part of attaining this may be through gender justice initiatives that train and inform judges on the differences in the situations of men and women, but part is certainly by calling for greater representation amongst the judiciary. A deep understanding of women’s social roles, obligations, vulnerabilities and perceptions of what constitutes violation of her personal, physical, and professional integrity is necessary to adjudicate any dispute that involves women or impacts social and family life – arguably all disputes. Furthermore, female perceptions of logic and justice may vary from traditional masculine views on the subject; a gender diverse bench should reflect this diversity of opinion. In addition to this, training men and women judges alike to be sensitive to social issues and on gender justice is essential as there is no guarantee that women will be less prejudicial than men merely by virtue of their gender.

7.369 Under Section 3 of the Judicial Appointments Commission Bill, 2013 the Judicial Appointments Commission is to comprise of the Chief Justice of India , two senior most Judges of Supreme Court next to Chief Justice of India, Union Minister in-charge of Law and

Justice and two eminent persons to be nominated by a Committee. The Secretary to Government of India in the Department of Justice would be the convener to the Commission.³⁷⁷ The Standing Committee had recommended that with respect to the composition and functions of the Judicial Appointment Commission, there should be three eminent persons, instead of two. At least one of the three members should be an SC, ST, OBC, woman, or minority, preferably by rotation.³⁷⁸ The Constitution 121st amendment Act incorporated the above recommendation.

7.370 Recommendations:

- There should be a Code of Conduct to review objectionable sexist comments made by judges in their official capacities.
- Reforms to the collegium system of appointment of High Court and Supreme Court Judges – require the collegium to include a female judge to promote diversity and transparency.
- More representation is required from the marginalized and minority groups. Affirmative action may be required in this regard.
- Transparent appointment and promotion procedure is necessary to ensure representation of women including marginalized, minority women.
- Introducing a rotating roster since even after appointment women are excluded and given “soft-law” rosters or appointed them on less important committees.
- Important to appoint women at the right time, earlier in their careers, so that they have the opportunity to develop a good jurisprudence in their position as Judges.
- Courts and legal offices must develop support services for women. These include bathrooms and sanitation facilities, crèche and daycare for children, medical benefits, maternity and childcare leave, counseling and mental well-being, an informal mentoring/buddy system for new entrants in the judiciary to ease their way.
- Important to assess competence in candidates and give deserving appointments. Merit, in appointments and promotions, needs to be redefined to include the ability to do the job, integrity and fairness.

Alternate Dispute Resolution (ADR)

7.371 Alternate forms of Justice Delivery methods are not new to India and have been in existence in some form or the other in the days before the modern justice delivery system was

introduced by the colonial British rulers. There were various types of arbitral bodies which led to the emergence of the celebrated Panchayati Raj system in India, especially in the rural locales. A dispute is basically '*lis inter parties*' and the justice dispensation system in India has found an alternative to adversarial litigation in the form of ADR mechanism in which two parties don't contest but carry out arbitration, mediation, conciliation or judicial settlement including settlement through Lok Adalat.³⁷⁹

7.372 The first avenue where the ADR has been effectively introduced and recognized by law is in the field of labour law, namely, Industrial Disputes Act 1947. The Family Courts Act 1984 was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs. Section 5 of the Family Courts Act provides enabling provision for the Government to require the association of Social Welfare Organisations to help a Family Court to arrive at a settlement. Section 6 of the Act provides for appointment of permanent counsellors to effect settlement in family matters.³⁸⁰ To this extent the ADR has got much recognition in the matter of settlement of family disputes. The Consumer Protection Act 1986 also provides effective, inexpensive, simple and speedy redressal of consumers' grievances, which the civil courts are not able to provide.³⁸¹

7.373 Alternative dispute resolution has greatly expanded over the last several years to include many areas in addition to the traditional commercial dispute in the form of arbitration; mediation has become an important first step in the dispute resolution process. Arbitrators and mediators have an important role in resolving disputes. Mediators act as neutrals to reconcile the parties' differences before proceeding to arbitration or litigation. Arbitrators act as neutral third parties to hear the evidence and decide the case.

7.374 The Government of India set up in 1980 a Committee under the chairmanship of Mr. P. N. Bhagwati, and later, the Parliament enacted the Legal Services Authorities Act, 1987 in view of the mandate of Article 39A of the Constitution. The Legal Services Authorities Act, 1987 implemented in its true spirit has created popularity and utility for Lok Adalats for speedy resolution of disputes. The provisions relating to Lok Adalat are contained in Sections 19 to 22 of the Legal Services Authorities Act 1987.³⁸²

7.375 Section 19 of the LSA Act states that Central, State, District, and Taluk level Legal Services Authorities will be responsible for organizing Lok Adalats to facilitate settling of

disputes through voluntary compromise between the parties. Section 20 of the Act refers to the conditions under which cases can be referred to Lok Adalats. Under Section 20(4), in their efforts to arrive at a compromise between the parties, Lok Adalats should be guided by principles of justice, equity and fair play. If no compromise is arrived at between the parties, the matter is returned to the concerned court. In case a compromise is reached, an award is passed. No appeal can be made against this award: the decision is final and binding.

7.376 After the amendment in 2002, provision has been made under Section 22B of the LSA Act to set up Permanent Lok Adalats for compulsory pre-litigative mechanism for conciliation and settlement of cases relating to public utility services.³⁸³ Lok Adalats now have the power to decide cases on merit in case parties cannot come to a compromise. The Supreme Court of India in *Moideen Sevamandir v. A.M. Kutty Hassan*³⁸⁴ directed the National Legal Services Authority to formulate uniform guidelines for effective functioning of Lok Adalats. Accordingly, the National Legal Services Authority (Lok Adalat) Regulations, 2009 were made and notified in the Gazette of India on 20th October, 2009. This has brought a uniform pattern for organizing and conducting of Lok Adalats in the country.³⁸⁵

7.377 The purpose of this special provision seems to help the litigant to settle his dispute outside the Court instead of going through elaborate process in the court trial. The litigants on the institution of the suit or proceedings may request the Court to refer the disputes and if the court feels that there exist any element of settlement which may be acceptable to the parties; it may refer them to any of the forums abovementioned at any stage of the proceedings.³⁸⁶ The ADR method is participatory and there is scope for the parties to the dispute to participate in the solution-finding process. ADR methods, especially mediation and conciliation not only address the dispute but is also believed to address the emotions underlying the dispute.³⁸⁷

7.378 The legal system also greatly encourages ADR mechanisms for dispute resolution. The impetus came from the Justice Bhagwati Committee Report, which brought indigenous and local systems of dispute resolution back into focus.³⁸⁸ The state, towards this end, has set up Lok Adalats, *nyaya panchayats*, *mahila* courts, court-annexed mediation and conciliation centres.

7.379 It is however believed that adversarial form of dispute resolution that the formal court systems adopt are often perceived as undesirable by women themselves. This is because entering a space of adversity against a family or a community on which the woman heavily relies and often has strong bonds with as well places the woman between a rock and a hard place. Due to their localization and objective of conciliation, women often find it preferable to elect informal remedies than opt for an adversarial right-based adjudication by the courts. This conciliatory tactic serves the needs of those women who do not seek to put their familial relationships under threat, but only want the harassment to end.

7.380 However, in certain cases the experience of women opting into ADR has also spun a narrative of disempowerment- that ADR mechanisms do not play the role of empowerment of the parties involved, and instead, the focus is on reaching a 'compromise'. As a result, women often complain of being coerced into settlements and not at all being satisfied with the results. The problem is exacerbated when compromises are forced onto women who are suffering from domestic violence and cruelty, when, in other parts of the world, mediation in these circumstances is considered unethical due to the compromised bargaining position of women in the process.³⁸⁹

7.381 Recommendations:

- Reducing delays by strengthening the system and enhancing manpower. This includes the timely appointment of more judges at every level and of Public Prosecutors as well as practices such as taking cases out of turn when the need arises.
- Implementing alternative methods through which justice may be accessed such as nari adalats and family courts. This involves moving beyond defining access to justice as access to the courts and instead adopts a holistic view of the concept of justice through the lens of the ordinary citizen.
- Implementing educational and awareness schemes to demystify the law for the common man, including those who are illiterate.
- Introducing specialized forces in addition to ordinary police and introduce different kinds of courts within each district court. The government can recommend a basic minimum model or infrastructure for mahila courts.
- Doing away with court fees for women who file cases seeking maintenance under the laws such as HAMA.

Family Courts

7.382 In 1975, the Committee on the Status of Women recommended that all matters concerning the family' should be dealt with separately. The Law Commission in its 59th Report (1974) had also stressed that in dealing with disputes concerning the family, the Court ought to adopt and approach radical steps distinguished from the existing ordinary civil proceedings and that these courts should make reasonable efforts at settlement before the commencement of the trial.³⁹⁰

7.383 The Family Courts Act 1984 was thus enacted with a view to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith. Under Section 3(1)(a) of the Family Courts Act, it is mandatory for the State Governments to set up a Family Court for every area in the State comprising of city or a town whose population exceeds one million. The Act provides that persons who are appointed to the family courts should be committed to the need to protect and preserve the institution of marriage and to promote the settlement of disputes by conciliation and counselling. Preference would also be given for appointment of women as Family Court Judges. The Act gives power to each of the High Courts to make rules for the procedure to be followed by the family courts in arriving at settlements and other matters. It was hoped, would make it possible for the parties to represent their own cases and thus to have more control over the decision-making process. Relief it was believed, could be moulded to suit the needs of every individual case.

7.384 The setting up of family courts was seen as a positive measure to centralize all litigation concerning women. The very nature of criminal courts facilitated quicker disposal of applications to a civil court. There was seriousness and a sense of intimidation associated with a criminal court, which would act in a woman's favour. Rajasthan and Karnataka were the first two states to set up family courts³⁹¹.

7.385 However, some of the concerns raised were underlying this whole approach is the assumption of equality between the parties to a dispute. The Act has nowhere taken into consideration the basic discrepancy in power between men and women.³⁹² The Family Courts Act prescribes conciliation with the dominant purpose of 'preserving the institution of marriage' and 'promoting the welfare of children'. The statement of objects and reasons to the act reads". That family courts be set up for the settlement of family disputes, where emphasis

should be laid on conciliation and achieving socially desirable results. Repeated emphasis on the preservation of the institution of marriage can work against the interests of women.³⁹³

7.386 The Family Courts Act occludes lawyers during the procedure unless the court grants permission. However, functioning within a system which, no matter how informal it is made, is still alien to the majority of people, can be a difficult task. Lawyers in many cases can act as some kind of a buffer between the woman and her spouse, they can also to some extent mitigate the power imbalance between the parties.

7.387 The Family Courts Act could provide for safeguards to women with reference to rights over matrimonial home, and preference as primary care-takers in matters relating to the custody of children. For instance, the Act could provide that in cases of proven cruelty judicial separation, and divorce the woman would have the right to continue to reside in the matrimonial home. Maintenance is another area the act could make provisions for. For instance, interim maintenance should be compulsorily ordered during the pendency of cases. Execution proceedings in all matters should be automatically pursued by the courts without the parties having to make fresh applications each time. Besides this, conciliation should be made purely voluntary and should be carried out by an outsider. Parties should be given the choice of engaging the services of a lawyer if they so desire Above all the family courts should be structured in such a manner as to promote gender justice.

7.388 Recommendations:

Develop a monitoring mechanisms to review the functioning and outcome of the cases related to women in the family courts.

- It has been suggested that women judges and those who have expertise and experience in settling family disputes should be appointed.
- The marriage counsellors should not be frequently changed as it causes hardship to a women who has to explain her problems afresh to the new counsellors each time.
- The family courts committed to simplification of procedures must omit the provisions relating to Court Fees Act.

Prison Reforms Vis-À-Vis Women

7.389 The need for prison reforms has come into focus during the last few decades. The Supreme Court and the High Courts have commented upon the deplorable conditions prevailing inside the prisons, resulting in violation of prisoner's rights. Prison being the 'State' subject under Entry-4 in the Seventh Schedule of the Constitution, States have all the responsibility / competence to bring any change in the prison laws and to address any issue which has a bearing upon prison management on universally acceptable principles. The Universal Declaration of Human Rights, to which India is a signatory, states that "No one shall be subject to torture or cruel, inhuman or degrading treatment or punishment"³⁹⁴. Also important is the United Nations Covenant on Civil and Political Rights which states that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person"³⁹⁵.

7.390 The human rights approach to prison management draws its normative framework from the International human rights standards and norms relating to prisoner's rights, legal framework regarding prison management, human rights jurisprudence emerged through Supreme Court and High Courts Judgments relating to prisoner's rights and prison reforms. The problem of prison administration has also been examined by numerous expert bodies set up by the Government of India. The **All India Jail Manual Committee of 1957-59** suggested a specialised approach towards care, treatment and rehabilitation of women offenders. The Committee gave emphasis to vocational training for women, while in custody. Another Committee, i.e. The **All India Committee on Jail Reforms, (1980-83)** popularly known as the **Mulla Committee** observed that "*women in prison as we have witnessed during our visits to various jails in different States and Union Territories suffer from unhealthy living conditions, exploitation, unnecessary prolonged severance from their families and lack of gainful and purposeful employment.*"³⁹⁶ The National and the State Human Rights Commission have also over the years, drawn attention to the appalling conditions in the prisons and urged governments to introduce reforms and focus on human rights.

7.391 The Government of India appointed the **Justice Krishna Iyer Committee** to undertake a study on the situation of women prisoners in India. The Committee made a number of very useful recommendations for women prisoners and suggested a National Policy for Custodial

Justice for Women. It laid particular emphasis on the need for adoption of a specialised approach towards handling, treatment and rehabilitation of women prisoners.³⁹⁷

7.392 The Law Commission of India in its 135th Report on Women in custody has also given detailed recommendations regarding arrest, sentencing of women and conditions of women in custody. In addition to recommendations regarding inserting various provisions in the CrPC³⁹⁸ it also laid down detailed guidelines which was envisaged to be a guiding principle while carrying out the provisions. While expressing concern over the conditions of women in prisons, it stated that, the High Court should be vested with the power to ensure that the safeguards so inserted are complied with and referred to as a guide while implementing the remaining provisions. It laid down specific recommendations, key amongst them are as follows

- medical examination of female prisoners which is to be carried out only by female medical practitioners,
- transit of female prisoners which states that she will not be subject to any handcuff and will be accompanied by the matron/relative,
- place of detention which states that if there are no such facilities in the locality then the woman should be sent to an institution established under the Women's and Children's Institution (Licensing) Act 1956
- inspection of jails by a lady judicial officer and in her absence by a male judicial officer accompanied by a social worker and
- jail visitors in order to inspect the conditions of prisons and ensure that requisite facilities are being provided.³⁹⁹

7.393 In the case of *Sheela Barse V. State of Maharashtra*⁴⁰⁰ expressing serious concern about the safety and security of women in police lock-up, the Supreme Court directed that a woman judge should be appointed to carry out surprise visits to police stations to see that all legal safeguards are being enforced. The directives issued by the Court included amongst others included

- Female suspects must be kept in separate lock-ups under the supervision of female constables.
- Interrogation of females must be carried out in the presence of female police officers.

- The Magistrate before whom an arrested person is produced shall inquire from the arrested person whether she has any complaint regarding torture or maltreatment in police custody.

7.394 The Parliamentary Committee on Empowerment of Women in 2001 had examined the issue of women in detention and made a series of recommendations. This was followed by an action taken report in the year 2002-03 which recommended amongst others the following

- The cases of under trials be speedily disposed off and custodial justice for women prisoners be ensured by the prison authorities through constitution of Prison adalats in the prison premises.
- The Prison staff be given training and be sensitized to women's issues and their needs. That outside institutes, trainers and NGOs be involved in such training programmes to ensure positive results in sensitizing the jail staff.
- The Ministry of Home Affairs should take steps to assess the impact of training being provided to the prison officials through an independent outside agency.

Women in Prisons

7.395 Although women constitute only about 4.4% of the total populations in custodial establishments, they face some of the most aggravated forms of deprivation, violations and disabilities. Women jails exclusively for women prisoners exist only in 12 States/UTs and the occupancy rate of such prisons during the period (2013) was high against the available capacity.⁴⁰¹ According to the NIMHANS-National Commission for Women *study in the Central Prison, Bangalore* - many of the women were illiterate, had never stepped out of their houses, had no financial resources and many had been arrested on petty charges. Most had no idea about legal procedures, such as, what is the process of trial, how to arrange for a defence lawyer, what laws exists to protect their children or property etc.⁴⁰²

7.396 Justice Krishna Iyer Report states that "*womanhood and childhood even in criminal wrappings and behavioural aberrations deserve to be nursed in dignity and restored to working normally, using all the material, moral and spiritual resources at the society's command*". He also observed that the "existing malpractice and the delinquencies in the various forms of custody tend to effect women more adversely than men. This is on account of the fact that the women are still a marginal group in the custodial population and tend to be

less vocal, demanding and violent in demonstrating against custodial or other injustice.”⁴⁰³

Some of the key recommendations made by the Committee were as follows

- Formulate and adopt a *National Policy on Custodial Justice to Women*.
- Creation of a statutory autonomous body to be designated as the *National Authority on Custodial Justice to Women (NACJW)* to overview the implementation of the proposed policy.
- Create special courts for women or Mahila Nyayalayas which can serve the purpose of rendering criminal justice to the women better than the normal courts do, and certainly with greater speed and sensitivity.
- Nari Bandigriha Adalats be held in the nature of mobile judicial camps as an immediate modality for rendering speedy redress to women in custody.
- Prison be brought into the concurrent Lists of the Seventh Schedule of the Indian Constitution in order to strengthen the process of standardized and uniform national approaches to reform of custodial conditions.
- Need to have a *Comprehensive Prison and Prisoners Act* which can bring together in a single Act the provisions presently dispersed in several Acts.
- A comprehensive code to cover the administration of all custodial institutions and the treatment of inmates of such institutions, with special provisions for the treatment and handling of women.
- Critical assessment of the efficacy and relevance of various legislations bearing on women’s status in custody.
- A cadre of women police be set up with much greater representation of women in the national police than their current strength.
- Separate police lock-ups should be established in consultation with State IGs of Police. It should be mandatory for each police station to provide enclosed space for holding all arrestees and separated space for female arrestees.
- Separate Women’s police stations where they exist be suitably reinforced with adequate training and tools of the trade.

7.397 The Parliamentary Committee on Empowerment of Women during their interaction with the jail authorities and jail visits had observed that there is total neglect on the part of the concerned authorities in providing basic facilities to women prisoners. There is overcrowding, mal-nutrition, lack of medical care, educational, vocational and legal facilities

in almost all the jails. The general condition relating to food, clothing, recreation, hygiene is not proper and needs considerable improvement.⁴⁰⁴ A study of the NCW on the women jails in Punjab also observed that the food given and the scales of diet, have not been revised or reformulated since the time when the jail manual was first written in 1896.⁴⁰⁵

7.398 A visit by the members of this Committee to the women jail in Ludhiana, Punjab reflected the deplorable living conditions of these women. There was no greenery, no trees or plants, no grass on the ground in any of the enclosures where women are kept. A number of the inmates sleep on the floor and there was no place to even walk and there is a complete lack of physical activity. The kitchen was in a dilapidated state and the cleanliness level was very low.⁴⁰⁶ The NCW study has also reported of similar overcrowding the women jails in Punjab⁴⁰⁷.

7.399 The overcrowding in every jail makes everything difficult - in terms of resource allocation, management, and security arrangements, living conditions and providing for a larger and larger number of inmates. Physical and psychological torture resulting from overcrowding, lack of space for segregation of sick, restrictions on movement resulting from shortage of staff, inadequate medical facilities and several such afflictions result not from any malfeasance of the prison staff but from the collective neglect of the whole system.⁴⁰⁸

7.400 Compared to the above, the women prisons in Lucknow, Uttar Pradesh and Sabarmati in Gujarat were in a much better condition in terms of capacity of inmates, hygienic conditions of their enclosures and the general environment of the surroundings. We were informed that in the Sabarmati prison, the inmates are provided with proper medical facility and the prison had an anganwadi centre and the inmates are taught several skills such as tailoring, beauty parlour work and others. That, they were given minimum wages and whatever they earn 50% is put in the bank and 50% is given to them. These inmates were then tied to some organisation so that once they are released they can get some jobs.⁴⁰⁹

7.401 The Committee on Empowerment of Women has also observed that majority of the female population in jails consists of under trials and they languish in jails for offences for which sentences would have been far less if they had been convicted.⁴¹⁰ Although the population of women in prisons is relatively low, their adverse social positions and social disadvantage make them more liable to rejection from families and greater dejection when they are in prison. Low levels of education and poor legal awareness makes women more

likely to serve longer sentences in prison. A majority of the women prisoners belong to the lower socio-economic strata, a few to the lower middle class and a very few belong to the middle class strata of society.⁴¹¹

7.402 In the Sabarmati prison we were informed that some women under trials have been in prison for more than six years. A few of them were above the age of seventy and were in a terminally sick condition. Though we were informed that many of them had submitted representations for quicker trial and release, they were yet to be heard.⁴¹² The stigma of a jail term sometimes ruins a woman's life because her family would refuse to take her back even after her release. Often, women preferred to stay in prison even after they were released because of social ostracism. Indian law permits women who are destitute or mental patients to be kept in jail until alternative accommodation is found for them. Women are under detention in the dowry act cases, drug trafficking- NDPS act, excise act, theft, prostitution, murders due to family disputes and illicit relationships.

7.403 Another area of concern is the mental health of women in prisons. The NCRB data for the year 2013 shows that a total of 4,820 inmates having mental illness out of 4,11,992 inmates, accounting for 1.2% of total inmates, were lodged in various jails at the end of 2013.⁴¹³ Of particular concern are the effects of trauma and substance use disorders, which are often a result of past victimisation. Mental ill health may also be appreciated in relation to psychological distress in the form of suicidality and self-harm, both of which are elevated among women compared with both their male counterparts and the general population.⁴¹⁴ During our visit to these women prisons we were informed that very few counsellors visited jails to give much needed advice to the inmates. Though the Lucknow prison was in a much better condition in terms of infrastructure and hygienic conditions and there was a separate medical unit there were a few inmates who were said to be mentally unfit.⁴¹⁵

7.404 Custodial violence, torture and abuse of police power are widespread within custodial situations. Women prisoners are particularly vulnerable to custodial sexual abuse. As women in prisons are frequently victims of physical and sexual abuse, United Nations on Human Rights Rule 53 of the Standard Minimum Rules for the Treatment of Prisoners states that women prisoners must only be guarded by female officers.⁴¹⁶ With regard to rape and sexual assault, the Criminal Law (Amendment) Act of 1983 introduced the notion of custodial rape by a policeman or head of certain institutions and specific provisions for non- disclosure of identity of the victim of sexual offences , presumption of absence of consent in certain cases

of rape , in-camera proceedings, etc . Based on the Verma Committee Report the Criminal Law (Amendment) Act, 2013 expands the definition of custodial rape. However, many reports and studies have dealt with the problem of police impunity and custodial violence and it has been the concern of international community too.

Children of women prisoners

7.405 The National Crime Records Bureau data for 2013 shows that a total of 342 women convicts with their 407 children and 1,252 women undertrials with their 1,518 children were lodged in various prisons in the country at the end of 2013.⁴¹⁷ The law permits children up to the age of 6 years to be with their imprisoned mothers inside the prison. Many a times, suckling children or infants normally accompany their mothers to stay in the prison. But the prison environment is not conducive to the normal growth and development of children. At times, pregnant women are admitted into the prison and thus many children are born while their mothers are in prison. Such children never get to experience a normal family life, sometimes till the age permitted to stay inside.⁴¹⁸

7.406 The shocking survey on children of women prisoners, conducted by the National Institute of Criminology and Forensic Sciences, Delhi, during 1997-2000, documents the conditions of deprivation and criminality in which they are forced to grow up, lack of proper nutrition, inadequate medical care, and little opportunity for education. Indian Council of Legal Aid and Advice filed public interest litigation in the Supreme Court, asking the State Governments to formulate proper guidelines for the protection and welfare of children of women prisoners.⁴¹⁹ The *R.D. Upadhyay Vs. the State of Andhra Pradesh and Others*⁴²⁰ judgment by the Hon'ble Supreme Court issued directions to all States and UTs in 2008 laying down guidelines relating to children living in prisons with their mothers.

7.407 Children born in jails or those who accompany their mothers to jails, stay in crowded jails amidst women convicts, under-trials and offenders. This is very harmful to their personality development. These children are compelled to live behind bars without being offenders. Due to lack of guidance and proper care/education, they are liable to grow up to be burdens on society. The Parliamentary Committee on Empowerment of Women, therefore, desire that infant care facilities like creches under ICDS should be established/run in each prison for proper care and development of children accompanying their mothers. After attaining the age of six, they should be admitted to regular or residential schools through

NGOs as part of the rehabilitation of the mother.⁴²¹ During our visit to the Sabarmati prison we were informed that the prison has an exclusive 'anganwadi' centre for children of the women inmates.⁴²²

7.408 In the course of working with women prisoners and to develop a holistic approach towards their rehabilitation, there is a need to include extensive work with the children of the women prisoners as one of the major areas of work. As observed by the Mulla Committee, most prison inmates belong to the economically backwards classes and this could be attributed to their inability to arrange for the bail bond. Legal aid workers are needed to help such persons in getting them released either on bail or on personal recognisance. *Bail provisions must be interpreted liberally in case of women prisoners with children, as children suffer the worst kind of neglect when the mother is in prison.*

7.409 Recommendations

- Implement the recommendations made by the Krishna Iyer Committee.
- Sophisticated gender sensitive training in human rights and human handling skills need to be imparted to jail officials urgently and continuously.
- A well-laid policy for rehabilitation during the post-release period for women should be drawn up in collaboration with the Social Welfare Departments of the State Government and NGOs.
- The National Commission for Women and the State Commissions for Women, whenever mandated, have the right to enter and inspect any place(s) where women are kept in custody. To ensure transparency, the Committee recommend that Women Members of Parliament, and Legislative Assemblies, Chairpersons of the National Commission for Women and the respective State Commissions for Women, women lawyers and representatives of the NGOs associated with the jail should be given permission to enter the women's jails without prior notice.
- Satisfactory facilities for appropriate vocational training, elementary education, medical care, free legal aid, etc are lacking and suitable corrective measures need to be taken.
- Counselling by psychologists and psychiatrists must be provided for inmates, particularly for women who live away from their children and other dependents and may suffer mental breakdowns.

- There should be a uniform wage structure for the women convicts in all the jails. The prisoners should be aware of the amount earned by them and proper accounts should be maintained by the prison staff.
- The jail visitors committee should comprise members of the judiciary, social workers, journalists and others with powers to visit prisons and interact with inmates and represent their grievances. One-third of the members of the jail visitors Committee should be women.

POLICE REFORMS

7.410 Police are at the frontline of the criminal justice system and are often called upon to intervene when an act of violence is in progress or shortly after it has occurred.⁴²³ Proper policing ensures a safer community which is accessible to all for enjoyment and the society perceives them as custodians of law and order, providing safety and security to all.

7.411 The most perfect laws would also remain ineffective without the efficiency and 'individual virtuosity' of the human agency for implementing the laws. Implementation and enforcement of law requires comity amongst law enforcement agencies and courts and poses a serious challenge to the guarantee of women's rights and gender justice in India. Government agencies including the police whose primary duty is to ensure the safety and security of all its citizenry, including women (who make up half of the population), thus, play a critical role in ensuring that the purposes and objectives of the legislation are complied with.⁴²⁴

7.412 In addition to their efficiency, the attitude and response of the Police can also have a significant impact on ensuing developments, including the prevention of future violent acts and the protection of victims. The manner in which they respond, the quality of service delivery, the time frame within which they respond, non-application of individual discretion while handling cases are factors which play a key role in determining the standard of policing. Through enhanced practices, ensuring greater access to services such as shelters, counselling and legal assistance, improved presentation of evidence at trial and application of effective measures to protect victims and witnesses, a gender friendly police can be developed and can play a significant role in bettering the lives of all women.⁴²⁵ However,

what needs to be borne in mind is that police, does not work in a vacuum, they are a part of the society and are as much likely to be influenced by the societal trends, like others. The patriarchal mind-set which is there in the society can thus be reflected in the attitude, mind-set and behaviour of the policemen.⁴²⁶

7.413 Historically, police responses to violence against women have been typified by uneven service delivery, underreporting by both police and victims, and victim dissatisfaction. Many police officials have viewed domestic violence as a "private" matter, best left behind closed doors. This has resulted in attitudes and systems that minimize police responses and discourage specialized responses to women who are victims. This has been further compounded by limited access to police and the inability of women to report victimization.⁴²⁷

7.414 Over the years, there has been growing realization that police personnel have been functioning with a variety of constraints and handicaps, reflecting in their performance. In addition, there is a feeling that the police performance has been falling short of public expectations, which is affecting the overall image of the police in the country. Urgent reform is needed in order to attain a standard of policing which is based upon a positive and co-operative relationship between civil society and the police service as envisaged in the fundamental duties of the citizens under Article 51A of the Constitution.⁴²⁸

Background

7.415 The Supreme Court in *Vineet Narain & Ors Vs. Union Of India & anr*⁴²⁹ observed that Government agencies must be duly compelled to perform their legal obligations and to proceed in accordance with law against each and every person involved, irrespective of the height at which he is placed in the power set up. In *Prakash Singh*⁴³⁰ the court noted that the then Home Minister, in a letter dated 3rd April, 1997 sent to all the State Governments expressed that

"the time had come to rise above limited perceptions to bring about some drastic changes in the shape of reforms and restructuring of the police before the country is overtaken by unhealthy developments. It was expressed that the popular perception all over the country appears to be that many of the deficiencies in the functioning of the police had arisen largely due to an overdose of unhealthy and petty political interferences at various levels".

7.416 The Court also noted that all the following Commissions and Committees: National Police Commission, National Human Rights Commission, Law Commission, Ribeiro Committee, Padmanabhaiah Committee and Malimath Committee had broadly come to the conclusion of urgent need for police reforms with agreement on the key areas of focus which are:

- State Security Commission at State level;
- transparent procedure for the appointment of Police Chief and the desirability of giving him a minimum fixed tenure;
- separation of investigation from law and order; and
- a new Police Act which should reflect the democratic aspirations of the people.⁴³¹

7.417 The seven directives issued in *Prakash Singh* were regarding:

- Constitution of State Security Commission
- Selection and Minimum Tenure of DGP
- Minimum Tenure of I.G. of Police & other officers
- Separation of Investigation
- Police Establishment Board
- Police Complaints Authority
- National Security Commission⁴³²

7.418 However, more than six years later, no state or the Centre has adopted this reform “package” in its entirety. If the Supreme Court’s directions in *Prakash Singh* are implemented, there will be a crucial modernization of the police to be service orientated for the citizenry in a manner which is efficient, scientific, and consistent with human dignity.

7.419 The Ministry of Home Affairs, set up a Committee of Experts, under the Chairmanship of Dr. Soli J. Sorabjee, in September 2005 to draft a new Police Act that could meet, inter alia, the growing challenges to policing and to fulfill the democratic aspirations of the people.⁴³³ The Verma Committee recommended that the new Police Act should be consistent substantially with the Model Police Act, 2006 proposed by the Sorabjee Drafting Committee and the Police Act annexed to the 8th report of the National Police Commission. That, it should clearly set out the duties and responsibilities of the police towards the people. One such duty must be to prevent the harassment of women and children in public places and in

public transport which includes stalking, the making of objectionable gestures, signs, remarks or harassment caused in any way.⁴³⁴

7.420 In the recent past, countries all over the world and police agencies have adopted standardized definitions of domestic violence, improved access to the police and other services for victims, hired and promoted more women police officers, implemented standardized protocols for reporting, investigation and documentation, and improved measures to meet the needs of victims and provide protection from further harm.⁴³⁵

Police Stations

7.421 Police stations in India provide a hostile environment for most complainants and for women, especially, the environment is not only hostile but also intimidating. Few women victims of crime, thus, manage to muster the courage to come to a police station to complain. The non-registration of crime coupled with the lack of willingness to complain gives a false crime statistic resulting in an inadequate response.⁴³⁶

7.422 The Ministry of Home Affairs has issued an advisory on 22.04.2013 whereby the States/UTs were requested to raise the women representation in Police to 33%. Most of the States/UTs have set up 'All Women Police Stations' at the district level and 'Mahila/ Children help desk' at the police station level.⁴³⁷ In Delhi, in the year 2013, 24x7 women helpdesks have been set up at all police stations, there has been a conversion of 522 posts of male Constables to that of Woman Constables and creation of additional posts of 306 W/SIs and 778 Woman Constables.⁴³⁸ During the state visit to Tamil Nadu, the Committee members were informed that as on date they have the highest number of women in police force with around 20% or so of the police force comprising of women.⁴³⁹

7.423 The picture is, however, not uniform in all the regions. During the Committee's interaction with an officer of the Women Police Station in Sitapur, Uttar Pradesh, we were informed that there are 70 Women Police Station in Uttar Pradesh (older districts), however, none in the 5 new districts. That in Sitapur out of the 1000 Police Officer only 35 were women police officer. It was further observed that the Mahila Desk which was expected to hear and address grievances of women who approach the police stations was literally set up on the outer premises of the police station. That, there was simple no space or infrastructure to house or listen to any of the women who approach the desk. With minimal infrastructure

support and privacy such grim situation would discourage women in coming forward to report cases of violence.⁴⁴⁰

7.424 Promising practices were also observed by the Committee during the various visit

- **Police station based support structures** - These support structures are police station based and have been running in all district of Gujarat. Two counsellors man these desks and are present everyday between 10:30 am to 6 pm. Cases dealt by them primarily relate to dowry, DV, custody and others. They have also developed and maintained a database lawyers, Protection officers, Govt officers etc in order to refer cases in a coordinated fashion.⁴⁴¹
- During an interaction of the members of this Committee with an officer of the **Uttar Pradesh Police Mahila Samman Parkostha**, we were informed that the Uttar Pradesh police have developed a web portal so as to facilitate filing of complaints by women who hesitate or do not have access to police stations. Once a woman files a complaint through this portal she is given an ID number for her complaint, that at the same time an sms notice of the same goes to the SP of that district and the nodal cell. That there is regular follow up on the complaints filed.⁴⁴²
- **SHE teams** - In October 2014, Telangana state government launched SHE teams to curb eve teasing and to provide safety and security to women in public spaces, to facilitate women's mobility. Each SHE team has one Sub Inspector, one ASI or Head Constable, 2 PCs and 1 WPC. These teams use civil clothes, and use discreet cameras in their work.
- **WASPS** - In Jalandhar city, a police force by the name of WASPS (Women Armed Special Protection Squad) of 30 women constables, armed and with motorcycles equipped with wireless sets, on a patrol duty from morning till evening around schools, colleges and areas where women are supposed to be more in workplaces etc. Having a women's force for this job might encourage women survivors of violence to feel more comfortable about approaching them for help rather than the regular male police force.

Training and partnerships

7.425 In spite of the rising number of crime against women, the police response to violence against women continues to be grossly inadequate and inappropriate. In addition to the lack

of financial and human resource, the culture of masculinity prevalent in the department makes the police officers hold some stereotypes about violence against women. These stereotypes lead to a certain standard pattern of police responses. These can also be reflected in aspects of trivialisation, legitimization, non-intervention and acting as peacemaker and mediators in cases of violence against women.

7.426 In order to make police officers behave and act in a gender sensitive manner in cases of violence against women and in the discharge of their duties in general, there is an urgent need to conduct gender sensitization training courses for police. Gender sensitization training cannot, however, be optional and sporadic in nature and must form a part of the curricula at judicial and police academies. It must be a critical peg that is necessary to clear in order to progress to the profession. The changing legal environment, awareness amongst citizens, internal debate within police cadres for developing a better profile and overseeing by judicial and human rights institutions have also necessitated the change to adopt a human rights based approach. In this environment, creatively designed training packages which are administered consistently are required for making training effective and long-lasting.⁴⁴³

7.427 In addition to trainings, regular interaction and working in partnership with civil society members and the community in general also helps in bridging the gap between society and police in general. During the Committee's visit to Gujarat, the members had the opportunity to visit the office of the **Abhayam Helpline** which is a public private partnership between the State government and GVK Foundation. The helpline is supported by dedicated rescue vans with one woman counsellor and one woman police constable for each van. After piloting this in two districts quite successfully, the government of Gujarat is now planning to scale this up to all the districts of the state. The Helpline also works with the help of a well-mapped out resource directory in terms of legal aid, short stay homes, rehabilitation centres and so on.

Standard Operating Procedures

7.428 Standard operating procedures (SOPs) are primarily written instructions intended to document how to perform a routine activity so as to ensure consistency and quality in service. They are useful tools to operationalize and communicate important policies, government regulations, and best practices. In 1979, the United Nations General Assembly adopted a Code of Conduct for Law Enforcement Officials. The purpose of the Code of Conduct is to

ensure that law enforcement officials (police) act in accordance with the principles of human rights, including respect for all persons, acting at all times in accordance with the law and protecting the rights of all people including vulnerable persons such as children and juveniles, and women who experience violence.⁴⁴⁴

7.429 Critical to both an appropriate and effective police response to cases of violence against women is the presence of standard operating procedures. These SOPs also help in prevention of future and escalating incidents. These SOPs can recognize and emphasize that violence against women and domestic violence are criminal offences, and must encompass giving priority response/attention to all reports of violence against women with proscribed sensitivities and with the need to ensure victim safety. These SOPs can be supported by public policy statements from senior levels of government. Creation of standardized and consistent police response prevent further acts of violence and therefore allows for no level of discretion to be exercised at the level of the police station. The Special Unit for Women and Children under the Delhi Police regularly issues standing orders on procedure to be adopted while dealing with cases of sexual abuse, Section 498A and others.

Custodial Violence

7.430 An attempt has been made by the National Crime Records Bureau - since 1999 to gather information on details of cases where human rights were violated due to police excesses such as 'illegal detentions', 'fake encounters', 'extortion', 'torture', etc. In Delhi, out of 141 cases of human rights violation by police, majority cases were reported under 'Indignity to Women' (23 cases) and 'Extortion' (9 cases). Out of 178 cases of human rights violations, highest cases of human rights violation registered against police personnel under 'Indignity to women' (26 cases) followed by 'Atrocities on SC/ST' (15 cases), 'Extortion' (12 cases), 'Torture' (7 cases), 'Illegal Detention/Arrest' & 'Fake encounter killing' (2 cases each) and 'False Implication' (1 case).⁴⁴⁵ In addition to sexual violence many women inmates referred to severe physical violence.⁴⁴⁶

7.431 The Verma Committee report listed out a series of recommendations which need to be acted upon till the time the Model Police Act, 2006 comes to force:

- i. Filing and Registration of Complaints

- The guidelines issued for the police by the High Court of Delhi in *Delhi Commission for Women v. Lalit Pandey* and another must be mandatory and immediately followed in relation to all sexual offence complaints across the Country.
- All police stations should have CCTV's at the entrance of the police station, in police cells and in the questioning room. All PCR vans should also contain CCTV's.
- In addition to every individual being able to register an FIR at any police station irrespective of the jurisdiction in which the crime was complained of in writing, every individual must also be able to register his complaint online on a designated website.

ii. Amenities in Police Stations

- Many crimes of sexual violence or gender violence are facilitated in police stations because of lack of essential and separate amenities for women for example separate lock ups for men and women and separate bathrooms.

iii. Scientific Investigation

- The investigative branch of the police should have the appropriate scientific equipment and training to be able to conduct the highest standards of investigation in every case.
- The investigative branch of the police should also be appropriately trained to investigate sexual offence cases.

iv. Police Performance Measurement

- There need to be a substantially improved auditing mechanisms in place to monitor police performance.

v. Police Welfare

- Police welfare will facilitate better police performance.
- The functions and duties of the bureau must include the administration and monitoring of welfare measures for police personnel.

vi. Police Presence and Community Policing:

- The total number of police personnel present on the street needs to be increased.

- There is need to develop community policing by involving the local population.⁴⁴⁷

7.432 The concluding comments of the CEDAW Committee under the 4th and 5th Periodic Report recommends strengthening the efficiency of the police, ensure that police officers fulfil their duty to protect women and girls against violence and are held accountable, adopt Standard Procedures for the police in each State on gender-sensitive investigations and treatment of victims and of witnesses, and to ensure that FIR (First Information Reports) are duly filed.⁴⁴⁸

7.433 Recommendations

- Every police station must be provided with all essential amenities including a “reception/-visitors” room, separate toilets for men and women and separate lock-ups for men and women.
- There should be more enrollment of women in police.
- Every police station must have a Women and Child Protection Desk, staffed, as far as possible, by women police personnel, to record complaints of crimes against women and children and to deal with the tasks relating to administration of special legislations relating to women and children.
- There must be adequate number of police stations and each police station should have availability of adequate strength of staff.
- A gender specific training policy covering all ranks and categories of police personnel should be formulated. The policy should aim to promote a service culture of police personnel and ensure that all police personnel are adequately trained to efficiently perform their job taking due care of proper attitudinal development.
- Complete implementations of the directions as issued by the Supreme Court in the Prakash Singh judgment
- Implement the recommendations of the Verma Committee report including enactment of the Police Act which should be consistent with the Model Police Act, 2006 proposed by the Sorabjee Drafting Committee.

BILL OF RIGHTS

7.434 Among the most significant recommendations of the Verma Committee, is the "Bill of Rights". It is a charter to set out the rights guaranteed to women under the Constitution of India, and provides for its justifiability taking into consideration India's commitment to international conventions including Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Civil and Political Rights. Under it, the State, commits itself to provide right to life, security, and bodily integrity; democratic and civil rights; equality and non-discrimination; right to secured spaces; special provisions for elderly and disabled women; and protection of women in distress. The Bill of Rights would act as a superseding legislation, the contravention of which would be tantamount to falling foul of Constitutional Principles.

7.435 It takes into recognition the historical distinctions, exclusions and restrictions on the basis of gender, including that fact that certain practices including cultural, social, political, religious and customary norms are patriarchal and impair the agency, dignity and equality of women. It also acknowledges that, though, through the constitutional guarantees under Article 14, 19, 21 and 51(A) we already have a duopoly of obligations of the State as well as obligations of the individuals, since the political class/establishment has been unable to take a firm position and reinstate the fundamental principles of equality, the main discourse relating to subjugation of women has been lost sight of.⁴⁴⁹ It is in this context, that, the Bill of rights is proposed in order to set right this imbalance. The rights guaranteed under it falls under the following broad categories:

- Right to Life, Security, and Bodily Integrity
- Democratic and Civil Rights
- Equality and Non- Discrimination
- Right to Secured spaces
- Special protections
- Special Protection of Women in Distress

7.436 Recommendation

- The State should commission the drafting of a proper Bill of Rights for women in keeping with the Bill formulated by the Verma Committee. This Bill should be given the status of a superseding legislation.

- ¹ Working Group Report on Women Agency and Empowerment, 12th Five Year Plan at page 31.
- ² *Bachan Singh v. State of Punjab* (1982) 3 SCC 24.
- ³ Justice Verma, Justice Leila Seth and Gopal Subramaniam, Report of the Committee on Amendments on Criminal Law, January 23, 2013 at page 66.
- ⁴ Flavia Agnes, *Family Law (Volume I) Family Laws and Constitutional Claims* (New Delhi: Oxford University Press) 2011 at page 2.
- ⁵ Partha Chatterjee, 'Secularism and Toleration' (Jul. 9, 1994) 29(28) *EPW* 1768, 1769.
- ⁶ Parashar, Archana, *Women and Family Law Reform in India* (Sage Publications) 1992 at page 46.
- ⁷ *Ibid* at page 51.
- ⁸ Iyer V.K.R., *Law and Life* (Vikas Publishing House, New Delhi) 1979 at page 31.
- ⁹ Monmayee Basu, *Hindu Women and Marriage Law: From Sacrament to Contract* (New Delhi: Oxford University Press) 2001 at page 77.
- ¹⁰ *Ibid* at 100.
- ¹¹ *Supra* note 8 at page 101.
- ¹² Law Commission of India, Report No 71 - *The Hindu Marriage Act 1955 – Irretrievable Breakdown of Marriage as a Ground for Divorce*, 1978 at page 5.
- ¹³ *AIR 1975 Mad 331*.
- ¹⁴ *AIR 1978 Del 296*.
- ¹⁵ *AIR 1983 AP 356*.
- ¹⁶ *AIR 1984 SC 1562*.
- ¹⁷ *AIR 2002 SC 2582*.
- ¹⁸ *AIR 2002 SC 591*.
- ¹⁹ Suman Kapur v. Sudhir Kapur (2008) *MANU/SC/4705/2008*.
- ²⁰ P. Uberoi, "When is a Marriage not a Marriage? Sex, Sacrament and Contract in Hindu Marriage" 29 (1&2) *Contributions to Indian Sociology*, (n.s.) at page 321.
- ²¹ *AIR 2009 S.C. at page 589*.
- ²² Flavia Agnes, *Family Law (Volume II) Marriage, Divorce and Matrimonial Litigation* (New Delhi: Oxford University Press) 2011 at page 14.
- ²³ *I (2005) DMC 1 SC*.
- ²⁴ *AIR 2005 SC at page 1809*.
- ²⁵ Flavia Agnes, 'Protective Legislations: Myth of Misuse' (1995) 30(16) *Economic and Political Weekly* 865 at page 1.
- ²⁶ Lord Chancellor in the House of Lords Debate, 30th June, 1969, Col. 319.
- ²⁷ *Naveen Kohli v. Neelu Kohli* (2006) *MANU/SC/1387/2006*.
- ²⁸ Terree McGovern 'Modern Matrimonial Matters in India' (1983-84) 70 *Women Law. J.* 18
- ²⁹ Kirti Singh, *The Economic Rights and Entitlements of Separated and Divorced Women* (New Delhi ERF/IDRC 2010) at page 4.
- ³⁰ Kirti Singh, *Towards Achieving Equal Rights in Marriage*, June 16, 2012 Vol XLVII No 24 at page 19.
- ³¹ *Supra* note 4 at page 43.
- ³² Section 2, the Dissolution of Muslim Marriage Act, 1939.
- ³³ Asghar Ali Engineer, Why Codification of Muslim Personal Law? *Counter currents*, 02 May, 2009.
- ³⁴ *2002 (7) SCC 518*.
- ³⁵ *Supra* note 33.
- ³⁶ Section 4(c), The Special Marriage Act, 1954.
- ³⁷ Section 3(1)(c), The Parsi Marriage and Divorce Act, 1936.
- ³⁸ Section 3, The Indian Christian Marriage Act, 1872.
- ³⁹ Section 8, The Hindu Marriage Act, 1955.
- ⁴⁰ Section 34, The Indian Christian Marriage Act, 1872.
- ⁴¹ Section 11, The Special Marriage Act, 1954.
- ⁴² Section 6, The Parsi Marriage and Divorce Act, 1936.
- ⁴³ *Supra* note 22 at page 99.
- ⁴⁴ *AIR 2006 S.C 1158*.
- ⁴⁵ *Laws relating to NRI marriages and their impact on Women*, Kirti Singh and Pam Rajput (Report prepared for the National Commission for Women) 2014 at page 78.
- ⁴⁶ *Id*
- ⁴⁷ *Supra* note 45 at page 84.
- ⁴⁸ *Ibid* at page 81.
- ⁴⁹ *Supra* note 45 at page 84.
- ⁵⁰ *Supra* note 22 at page 119.

- ⁵¹ Flavia Anges, *Conjugality, Property, Morality and Maintenance*, October 31, 2009 Vol XLIV No 44 *Economic and Political Weekly* at page 60.
- ⁵² AIR 1978 SC 1807.
- ⁵³ 2014 (1) SCC 188.
- ⁵⁴ *Ibid*
- ⁵⁵ *Modern Hindu Law*, Dr. Paras Diwan (21st Ed)
- ⁵⁶ Tenth Law Commission of India, Report No. 98, 'Section 24 to 26, Hindu Marriage Act, 1955: Orders for interim maintenance and orders for the maintenance of children in matrimonial proceedings'.
- ⁵⁷ 1 (2008) DMC 529 Del.
- ⁵⁸ *Supra* note 22 at page 122.
- ⁵⁹ Razia Patel, 'Indian Muslim Women, Politics of Muslim Personal Law and Struggle for Life with Dignity and Justice' 2009 Vol XLIV No 44 *EPW* at page 44.
- ⁶⁰ Flavia Agnes, *Economic Rights of Women in Islamic Law*, *Economic and Political Weekly* October 12-19, 1996 at page 2836.
- ⁶¹ (2001) 7 SCC 740.
- ⁶² 2002 (7) SCC 518
- ⁶³ AIR 2010 SC 305.
- ⁶⁴ *Supra* note 22 at page 123.
- ⁶⁵ Flavia Anges, *Conjugality, Property, Morality and Maintenance*, October 31, 2009 Vol XLIV No 44 *Economic and Political Weekly* at page 61.
- ⁶⁶ 133rd Report of the Law Commission of India at page 28.
- ⁶⁷ 1 (2005) DMC 1 SC.
- ⁶⁸ SLP-Civil No 15071.
- ⁶⁹ AIR, 1976 Bom.
- ⁷⁰ 2014 (1) SCC 188.
- ⁷¹ (2010)10 SCC 469.
- ⁷² *Supra* note 22 at page 195.
- ⁷³ Kirti Singh, *Separated and Divorced Women in India*, Economic Rights and Entitlements. IDRC and Sage, 2013 at page 188.
- ⁷⁴ *Ibid* at page 190.
- ⁷⁵ *Supra* note 51 at page 58.
- ⁷⁶ *Supra* note 73 at page 189.
- ⁷⁷ *Supra* note 65 at page 59.
- ⁷⁸ 2001 (8) SCC 197.
- ⁷⁹ MANU/TN/1304/2009.
- ⁸⁰ *Arun Kumar Aggarwal Vs National Insurance Company* 2010 Indlaw SC 996.
- ⁸¹ Jhuma Sen, *Matrimonial property Rights: Is India ready for a law?* *Journal of Indian Law and Society*, Vol I, 2009.
- ⁸² *Supra* note 76 at page 193.
- ⁸³ *Id.*
- ⁸⁴ *Supra* note 1 at page 21.
- ⁸⁵ Section 6, The Hindu Minority and Guardianship Act, 1956.
- ⁸⁶ (1999) 2 SCC 228.
- ⁸⁷ AIR 1973 SC 2090
- ⁸⁸ Shrutii Pandey, *Property Rights of Indian Women*, <http://www.legalpundits.com/> on 2nd July 2014.
- ⁸⁹ *Id.*
- ⁹⁰ *Supra* note 91.
- ⁹¹ Section 15 of the Hindu Succession Act.
- ⁹² Report no 207, Law Commission of India, Proposal to amend Section 15 of the Hindu Succession Act, 1956 in case a female dies intestate leaving herself acquired property with no heirs at page 23.
- ⁹³ (2009)15 SCC 66
- ⁹⁴ Kirti Singh, *Laws and Son preference in India: A reality check* (New Delhi: UNFPA, 2013) at page 52.
- ⁹⁵ *Ibid* at page 50.
- ⁹⁶ *Id.*
- ⁹⁷ *Supra* note 88.
- ⁹⁸ *Supra* note 4 at page 65.
- ⁹⁹ *Supra* note 97.
- ¹⁰⁰ *Id.*
- ¹⁰¹ *Supra* note 97.

¹⁰² Supra note 94 at page 50.

¹⁰³ Ibid at page 51.

¹⁰⁴ Id.

¹⁰⁵ Supra note 94 at page 50.

¹⁰⁶ The Declaration on Elimination of Violence against Women, 1993.

¹⁰⁷ Supra note 1 at page 32.

¹⁰⁸ Article 1, The Declaration on Elimination of Violence against Women, 1993.

¹⁰⁹ Violence against women shall be understood to encompass, but not be limited to, the following:

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

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

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

¹¹⁰ Supra note 3 at page 2.

¹¹¹ Id at page 57.

¹¹² Asmita Basu, Harmful Practices against Women in India : An examination of selected Legislative Responses, Expert Group Meeting on good practices in legislation to address harmful practices against women United Nations Conference Centre, Addis Ababa, Ethiopia, 25 to 28 May 2009

¹¹³ Supra note 3 at page 4.

¹¹⁴ Supra note 1 at page 32.

¹¹⁵ Staying Alive: Monitoring and Evaluation Report of the implementation of the Protection of Women from Domestic Violence Act, 2006.

¹¹⁶ Concluding observations on the combined Fourth and Fifth Periodic reports of India: CEDAW Committee, July 2014 at page 4.

¹¹⁷ Crime against Women, National Crime Records Bureau 2013 at page 81.

¹¹⁸ Supra note 1 at page 7.

¹¹⁹ Aashish Gupta, Reporting and incidence of violence against women in India. Research Institute for Compassionate Economics (www.riceinstitute.org), September 25th, 2014.)

¹²⁰ Supra note 3 at page 11.

¹²¹ Blacks Law Dictionary (8th ed. 2004)

¹²² Section 376E inserted by Act No. 13 of 2013 (w.e.f 3/02/2013)

¹²³ Tukaram v. State of Maharashtra AIR 1979 SC 185

¹²⁴ Supra note 3 at page 79.

¹²⁵ Section 228A, IPC.

¹²⁶ Section 114A, Indian Evidence Act.

¹²⁷ Section 327(2) of CrPC.

¹²⁸ Clause *Seventhly* has been inserted under Section 100 of the Indian Penal Code which states the right of private defense of the body extending to causing death.

“Seventhly - An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequences of such act.”

Section 326A has been inserted which makes an act of causing grievous hurt by throwing or administering acid with the intention or knowledge that hurt will be caused a punishable offense with an imprisonment of not less than ten years extending to life, and with fine. The fine shall be just and reasonable to meet the medical expenses of victim's treatment. And the fine shall be paid to the victim.

Section 326B has been inserted which makes throwing or attempt to throw acid with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt, a punishable offence with minimum 5 years imprisonment extending to 7 years, and be liable to fine.

¹²⁹ *Section 354A* defines offense of sexual harassment as an act of:

- 1) Physical contact and advances involving unwelcome and explicit sexual overtures; or
- 2) A demand or request for sexual favours; or
- 3) Showing pornography against the will of a woman; or
- 4) Making sexually coloured remarks.

The punishment with respect to offences specified under clause (1), (2), (3) involve rigorous imprisonment for a term that may extend to 3 years, or with fine, or with both. Whereas, offence committed under clause (4) shall be punished with imprisonment of one year, or with fine, or both.

(NOTE: The issue of sexual harassment at workplace was first dealt by the Hon'ble Supreme Court in *Vishaka and others v. State of Rajasthan and others*, AIR 1997 SC 3011)

- ¹³⁰Section 354C defines 'Voyeurism' making it punishable with imprisonment of not less than one year extending to three, and minimum three years and maximum seven for repeat offenders who will also be liable to fine.
- ¹³¹Section 354D defines 'Stalking' and makes it punishable with imprisonment of 1-3 years and fine, and imprisonment extending upto 5 years and fine for repeat offender. It penalises persons who follow, contact, monitor emails or spies upon a person to foster personal interaction repeatedly, despite a clear indication of disinterest of the victim.
- ¹³²Rape is now defined beyond un-consented penile penetration, to penile penetration to any extent, as well as penetration to any extent with an object or a part of the body into the vagina, mouth, urethra or anus of a woman or making her perform the same on him or a third person.
- ¹³³Section 376.
- ¹³⁴Supra note 116 at page 3.
- ¹³⁵Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, mission to India, Human Rights Council, Twenty-sixth session, 1st April 2014 at page 19.
- ¹³⁶Law Commission of India, Report No 172nd on "Review of Rape Laws" and 205th on "The proposal to amend the Prohibition of Child Marriage Act, 2006".
- ¹³⁷AIDWA, Age of Sexual Consent Briefing paper at page 5.
- ¹³⁸Agnes, Flavia. "Controversy Over Age of Consent", (20 July 2013) Vol XLVIII No. 29 *Economic and Political Weekly* at page 10 – 13.
- ¹³⁹Anjali Srivastava and Devanshu Jain, Marital Rape, A Legalized Sin, *Indian Journal of Applied Research*, Volume : 3 | Issue : 12 | Dec 2013 at page 249.
- ¹⁴⁰Supra note 3 at page 115.
- ¹⁴¹Law Commission of India, Report No 172nd on "Review of Rape Laws" and 205th on "The proposal to amend the Prohibition of Child Marriage Act, 2006" at page 44.
- ¹⁴²Supra note 116.
- ¹⁴³Supra note 135 at page 19.
- ¹⁴⁴Supra note 3 at page 78.
- ¹⁴⁵Ibid at page 14.
- ¹⁴⁶Dignity in Trial, Human Rights Watch, September 2010 at page 17.
- ¹⁴⁷Id.
- ¹⁴⁸Ibid at page 10.
- ¹⁴⁹Standing Order 303 of 2009.
- ¹⁵⁰<http://www.thehindu.com/news/national/new-guidelines-for-psychological-support-to-molestation-victims/article5554590.ece>
- ¹⁵¹Supra note 116 at page 4.
- ¹⁵²Supra note 135.
- ¹⁵³(1995) 1 SCC
- ¹⁵⁴http://nlrd.org/wp-content/uploads/2012/07/Scheme_Rape_Victim.pdf
- ¹⁵⁵Ministry of Women and Child Development, Lok Sabha Unstarred Question No 2964, Rehabilitation of Rape Victims.
- ¹⁵⁶Revised scheme for relief and rehabilitation of victims of rape, National Commission for Women on 5th April 2010.
- ¹⁵⁷Supra note 155.
- ¹⁵⁸Supra note 116 at page 4.
- ¹⁵⁹Supra note 3 at page 158.
- ¹⁶⁰Rajya Sabha, Unstarred Question No 3738, answered on 13.08.2014, incidents of acid attacks on women.
- ¹⁶¹<http://indianexpress.com/article/india/india-others/309-acid-attack-cases-in-14-300-rise-in-3-yrs/> 10th April 2015, Indian Express.
- ¹⁶²Supra note 116 at page 3.
- ¹⁶³Supra note 160.
- ¹⁶⁴Scheme for Relief and Rehabilitation of Offences (by acid) on women and children, National Commission for Women (29th January 2009)
- ¹⁶⁵Vishakha v. State of Rajasthan AIR 1997 SC 3011
- ¹⁶⁶Laxmi Murthy, From Mathura to Bhanwari, June 8, 2013 Vol XLVIII No 23 *Economic & Political Weekly* at page 17.
- ¹⁶⁷Ibid at page 19.
- ¹⁶⁸Supra note 116 at page 9.
- ¹⁶⁹Indira Jaising, Bringing Rights Home: Review of the campaign for a law on Domestic Violence, October 31, 2009 Vol XLIV no 44 EPW *Economic & Political Weekly* at page 50.

¹⁷⁰ Section 3 of the PWDVA, 2005

¹⁷¹ Supra note 174 at page 53.

¹⁷² Written reply to the Rajya Sabha on 27th Feb 2013, Smt. Krishna Tirath, Minister for Women and Child Development.

¹⁷³ 2007 (3) SCC 169.

¹⁷⁴ (2010) 10 SCC 469.

¹⁷⁵ Staying Alive: Monitoring and Evaluation Report of the implementation of the Protection of Women from Domestic Violence Act, 2006.

¹⁷⁶ In s.498A, 'cruelty' means – (a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

¹⁷⁷ Agnes, Flavia 'Protecting Women Against Violence? Review of a Decade of Legislation, 1980-89' (1992) 27(17) EPW 19.

¹⁷⁸ Id

¹⁷⁹ Supra note 182 at page 25

¹⁸⁰ Jayna Kothari, Criminal Law on Domestic Violence: Promises and Limits, Economic and Political Weekly November 12, 2005 at page 4845.

¹⁸¹ Ibid page 4846.

¹⁸² Supra note 180 at page 4848.

¹⁸³ Supra note 94 at page 12.

¹⁸⁴ Ibid at page 15.

¹⁸⁵ Government of India, *Report of the Joint Select Committee of the Parliament on Dowry*, New Delhi, 1981

¹⁸⁶ Supra note 117, *Crime in India: Statistics*.

¹⁸⁷ The Supreme Court held in *Appasaheb v. State of Maharashtra*, (2007) 9 SCC 721 that "*the giving or taking of property or valuable security must have some connection with the marriage of the parties and the correlation between the giving and taking of property or valuable security with the marriage of the parties is essential*". Also see *Satvir Singh v. State of Punjab*, where the SC held that these words were crucial to the definition of dowry.

¹⁸⁸ Supra note 94 pg 19.

¹⁸⁹ Supra note 177 at page 25.

¹⁹⁰ 304B. Dowry death.—

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. Explanation.—For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

¹⁹¹ Law Commission of India, 202nd Report on the Proposal to amend Section 304B of the Indian Penal Code at page 89.

¹⁹² Supra note 180 at page 4846.

¹⁹³ Supra note 94 at pg. 1,5

¹⁹⁴ "Chapter 5: Gender Composition of the Population" *Census of India 2011*. Statement 16, page 90. Available at: http://www.censusindia.gov.in/2011-prov-results/data_files/india/Final_PPT_2011_chapter5.pdf. Last Accessed: 30 Dec 2013.

¹⁹⁵ Ibid.

¹⁹⁶ Supra note 1 at page 7.

¹⁹⁷ AIR 2008 Ori 71

¹⁹⁸ Section 5(2) of the PC & PNDT Act

¹⁹⁹ Section 4(2) of the PC & PNDT Act

²⁰⁰ Section 17

²⁰¹ Section 17(4)©

²⁰² Section 17(4)(a)

²⁰³ For instance, as stated in Singh, Kirti. "Laws and Son Preference in India: A Reality Check" UNFPA (August 2013): 61; in *Dr. K.L. Sehgal v. Office of District AA; Dr. Sonal Randhawa v. Union of India* MANU/DE/1688/2010, the definition of the term 'sonologist' was highlighted as inadequate.

²⁰⁴ In *Gaurav Goyal v. State of Haryana*, CWP No. 15152 of 2007, a case in which the remains of 250 female fetuses had been recovered from a septic tank in a nursing home in Patiala, no action could be initiated under the Act as it had negligently not been properly notified. Further, in *CEHAT v. UoI* (2003) 8 SCC 398, the Hon'ble Supreme Court held that it was "apparent that to a large extent the PCPNDT Act is not (being) implemented by the Central or the State Governments" (As quoted in Singh, Kirti. "Laws and Son Preference in India: A Reality Check" UNFPA (August 2013): 67).

²⁰⁵ (2003)8 SCC 398

²⁰⁶ *Voluntary Health Association of Punjab Vs. Union of India & Others* Writ Petition (Civil) No. 349 Of 2006.

²⁰⁷ *Supra* note 94 at page 73.

²⁰⁸ Annie George, U Vindhya and Sawmya Ray, Sex Trafficking and Sex Work: Definitions, Debates and Dynamics – A Review of Literature, April 24, 2010 vol xlv no 17 *EPW Economic & Political Weekly* at page 65.

²⁰⁹ It defines trafficking in persons as follows:

"*Trafficking in persons*" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"

²¹⁰ *Supra* note 208 at page 65.

²¹¹ *Ibid* at page 66.

²¹² *Supra* note 215 at page 68.

²¹³ *Id.*

²¹⁴ Human Trafficking Bill: Limited priorities, *Economic and Political Weekly* September 15, 2007 at page 3680.

²¹⁵ *Supra* note 3 at page 158.

²¹⁶ *Ibid* at page 161.

²¹⁷ *Supra* note 135.

²¹⁸ Report No 242, Law Commission of India, Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework at page 3

²¹⁹ *Id.*

²²⁰ *Supra* note 223 at page 2.

²²¹ Dr. Pranab Kumar Rana, Mr Bhabani Prasad Mishra, Honour Killings-A gross violation of Human rights & Its Challenges , *International Journal of Humanities and Social Science Invention* ISSN Volume 2 Issue 6 1 June, 2013 at page 24-29.

²²² *Supra* note 3 at page 230.

²²³ Wikan, Unni. "Shame and Honour: A Contestable Pair." *Man*, New Series, Vol. 19, No. 4 (Dec., 1984), pp. 635-652. 638

²²⁴ Sen, Purna. "'Crime of Honour', Value and Meaning." *'Honour': Crimes, Paradigms and Violence against Women*. Ed.s Lynn Welchman and Sara Hossain. Zed Books, London, NY: 2005. pp. 42 – 63. 46

²²⁵ *Ibid* at page 47

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