

# EXECUTIVE SUMMARY

## OF THE IV & V NGO ALTERNATIVE REPORT ON CEDAW - 2014

### INTRODUCTION

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

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

### TOWARDS EQUALITY and NON DISCRIMINATION

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

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

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

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

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

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

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

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

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

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

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

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

advanced the law while negative judgements, particularly of the Supreme Court, have reinforced discrimination against women.

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

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

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

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

## **TRAFFICKING AND PROSTITUTION**

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

**RIGHTS OF PERSONS IN SEX WORK:** These women are extremely stigmatized and face multiple discriminations because of being in sex work. In addition to the extreme social marginalization, they are absent from the ambit of government welfare measures, unable to access justice and exposed to high levels of violence from State and non – State actors. General Recommendation 19 recognizes that people in sex work are especially vulnerable to violence because of their status, which may be unlawful and tends to marginalize them, specifically underlining the fact that people in sex work need equal protection of the laws against rape and other forms of violence. The Supreme Court of India in a recent judgment gave directives for the protection of women in sex work (Conditions conducive for sex workers to live with dignity in accordance with the provisions of Article 21 of the Constitution of India). GR 19 also calls on governments to report the measures taken to protect women in sex work. However, the State continues to be silent on the status of people in sex work across India. Further, their status

continues to be conflated with trafficked women and children; ‘invisibilising’ them, denying agency and access to equal protection of the law. They experience disproportionate levels of violence including police abuse, sexual assault, rape, harassment, extortion, abuse from clients and agents, intimate partners, local residents, and public authorities. Violence is an important factor affecting the vulnerability of sex workers to HIV, sexually transmitted infections.

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

## **POLITICAL AND PUBLIC LIFE**

Women’s limited public and political participation restricts progress towards non-discrimination and leads to further marginalization; it is of great concern that women’s participation in governing bodies at the local, state, and national levels remains low. Even initiatives and mechanisms designed to increase women’s public and political participation have not yet been able to achieve closer parity between women and men’s rates of participation.

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

## **EDUCATION**

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

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

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

Girls with disability and transgender girls are either not entering the school system or drop out early due to hostile and insensitive environment. It is important to recognize here that due to gender biases, majority of girls with disability remain invisible even within families and society who are not seen worth anything and are hidden as

shame by the family. Likewise transgender girls are either dismissed as invalid or forced to follow the norm in the form of early and forced marriage. The school system ironically has not been able to reach out to majority of girls with disability and they fall of the radar of elementary education and subsequently to all forms of formal and structural learning spaces. The government need to take a serious step in this direction to strengthen and expand vocational / technical training opportunities for young population especially for girls with focus on girls with special needs.

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

## **EMPLOYMENT**

During the last decade the country has witnessed severe economic discrimination of women in the employment sector. Due to lack of access to resources and equal opportunities women are being pushed towards poverty, malnutrition and deprivation. The faces of discrimination are lack of employment, lowered wages, worsening conditions of work, continuous casualisation of women’s work, exploitation of migrant women workers, lack of access to credit and lack of social security. According to statistics, from 2004 to 2009 employment of female workers has fallen by 7% in the urban areas and by 3% in rural areas unlike male workers. With globalization, *female worker trends of unemployment and displacement are being reinforced*. New categories have been formed namely the ‘*working poor category*’ where the majority of them are women. *Employment and poverty go hand in hand for women*. India must take steps in ratifying the ILO Convention 189 of Decent Employment for Domestic Workers and enact comprehensive legislation

## **HEALTH**

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

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

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

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

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

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

## **EQUALITY BEFORE LAW & MARRIAGE AND FAMILY LIFE**

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

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

## **CHILD MARRIAGE**

Recently, the UN Human Rights Council mooted a proposal to include child and forced marriage in the post-2015 International Development agenda; the proposal also acknowledged the multi-faceted impact of early marriage on the "economic, legal, health and social status of women and girls" as well as "the development of the community as a whole". The refusal by India to sign the resolution, which has been supported by over 107 countries, statistically having a share of 40% of the total child marriages in the world, raises many questions regarding India's true intent with regard to the impact of child marriages on the girl child.

Among the various states where child marriages are still prevalent, Bihar, Rajasthan, Jharkhand, Uttar Pradesh, West Bengal, Madhya Pradesh, Andhra Pradesh and Karnataka register significantly higher numbers. According to the provisions of the Prohibition of Child Marriages Act, 2006, the State governments are required to appoint Child marriage Prohibition Officers and to frame rules. In the year 2012, 169 cases were reported under the Prohibition of Child Marriages Act, 2006, and only 9 were convicted 474 cases were pending trial till the end of the year 2012. Child marriage endangers the survival and well-being of women and girls. It does not merely constitute a single instance of violation but a continuum of violations throughout the life of the girl child.

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

## **SEXUAL VIOLENCE UNDER GENDER RECOMMENDATION 19**

### **VIOLENCE AGAINST WOMEN:**

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

Crimes against women have increased by 48% in 2012. Spousal violence has increased by 70% and conviction rates for rape and domestic violence continue to be minuscule. The ambit of violence against women seems to find new frontiers and victims; Domestic violence against intimate partners, Elderly women, based non-conforming sexualities, Acid attacks, Cyber crimes, Witch hunting, related to eviction are the latest to be added to the lexicon. Also, adding twists to the complexity are cases like the typical 1,500 plus 'Half Widows' of Jammu and Kashmir;

these are women whose husbands have disappeared but have not been declared deceased - these hapless women live a life of exploitation, economic and social exclusion with no legal protection and are unable to avail government schemes and compensation as they have no means to prove the death of their husbands and that links with militancy are absent.

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

The outrage against sexual violence has eclipsed concern urban homeless women and Dalit women who are at the other end of the spectrum. The debates surrounding aggravated rape almost entirely confined to death penalty, harsh sentences and speedy trials – with no attention to prevention, discussion on aggressive masculinity, misogyny, or normalized forms of sexual harassment is part of the continuum leading to rape. The discourse on State accountability for prevention, sexuality education, safer streets and public places – across regions, across classes, in rural as well as urban contexts, is missing the culture of stigma and victim blaming has entrenched de facto impunity for all forms of sexual offences against women.

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

## SEXUAL HARASSMENT AT WORKPLACE

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

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

## WOMEN WITH DISABILITIES IN INDIA:

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

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

The Supreme Court directions and interventions and the National Human Rights Commission’s (NHRC) obligation to monitor mental health institutions and hospitals in the public and private sectors, sexual abuse of women, remains rampant. Forced sterilization, hysterectomies and abortion of women with intellectual disabilities exists to enable menstrual management, and sexual exploitation<sup>vii</sup>. Access to even basic healthcare puts Women with disabilities at an even greater loss with the government pulling out of the health sector.

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

## **MUSLIM WOMEN**

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

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

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

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

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

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

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

Affirmative Action to advance Socio-Economic, Educational and Political participation of Muslim Women to attain at par Equality with other Indian Women from diverse groups in the Country is the way forward.

## **CHATTISGRAH**

The tribal women in the two districts of Dantewada and Bijapur in Chhattisgarh face Social, Economic, Cultural and Human Rights violations of the tribal people-women, at the hands of the state under the pretext of dealing with the Maoists and violation of the Constitution of India by the State and its machinery in the counter- insurgency operations are epitomized in the case of tribal teacher Ms. Soni Sori – hounded by the State for taking a stand for the rights of women and the tribals.

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

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

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

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

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

## **KANDHAMAL VIOLENCE**

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

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

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

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

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

## **DALIT WOMEN**

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

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

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

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

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

## **RURAL WOMEN**

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

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

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

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

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

There are no guidelines laid down that the NCW can take upon completion of inquiry and in the absence of a clear legal, definitional, and procedural framework it is unclear how these complaints were resolved. NCW spends a significant amount of time and energy on mediating marital conflicts and pushing for reconciliation even in cases of domestic violence or dowry harassment<sup>xvi</sup> and not on their role as a body that reviews laws and recommends reforms. The presence of officers of the State as member Secretaries within the commission and who participate in the processes of the Commission as Members is incongruous to the very notion of an independent human rights institution. The government even has the exclusive power to determine the composition of the commission thus making the very foundation of the Commission unstable.

The Commission lacks operational autonomy thus unable to impartially hold both the State and the Non-State actors accountable in order to protect the rights of Indian women. It is important to safeguard the political autonomy of this nodal women's rights institution by replacing the current nomination system with a transparent, democratic and non-partisan selection process for members and Chairperson of the Commission. A comprehensive

review of the performance of the Commission in terms of - its role in addressing systemic gender-related social, economic and legal issues

### **GENERAL RECOMMENDATION 30: WOMEN IN CONFLICT PREVENTION, CONFLICT AND POST CONFLICT SITUATION FALLOUT OF ARMED CONFLICT IN THE NORTH EAST**

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

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

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

Special attention should to be paid to the needs of indigenous, rural, poor, differently abled, trafficked, religious, sexual minority women and young girls in conflict situations despite heightened international attention to sexual violence and the increased status of India as a responsible global player, within the country, Army atrocities as well as increased violations by non state actors continue against people taking the form of sexual assault in case of women in the different conflict areas. The CEDAW committee's stand was reinforced nationally by the Justice J.S. Verma Committee, set up in 2013 to suggest amendments to laws relating to crimes against women. It recommended review of the continuance of the Armed Forces (Special Powers) Act (AFSPA) in the context of extending legal protection to women in conflict areas. Despite the recommendations of the Committee, as well as this national committee set up by the government itself the Armed Forces Special Powers Act 1958 continues keeping an atmosphere of relentless aggression alive and resulting in gross violations of human rights particularly of women.

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

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

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

### **CHALLENGES AND ISSUES FACED BY WOMEN LIVING WITH HIV (WLHIV) IN INDIA**

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

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

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

Access to justice is an impediment for women living with HIV. The State is required to look into such as non-accessibility of legal services and discriminatory practices. Redressal mechanisms should be made available to women in community health centres, district hospitals and local level legal aid centers.

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

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

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

Women between the age of 40-60 are predominantly targeted and labeled witches. The instigators of witch hunting are largely those who are proximate to the victims – either as part of the extended family, neighbour or immediate community. Many of the accusations/ causes that trigger ‘witch’ accusations may appear to be trivial but assume alarming proportions in contexts of structural neglect, deprivations that enable such accusations and victimization, without fear of consequences. Illness, deaths and tragedies that cannot be explained, particularly in

the context where education, health facilities, and sanitation are lacking, differences in religion, rituals, or extent of religiosity, in a context of close proximity tend to get rationalized through explanations of witch craft.

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

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

## **RECOMMENDATIONS**

### **ARTICLE 1-5:**

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

### **ARTICLE 6:**

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

### **ARTICLE 7&8:**

- The national government must pass the Women's Reservation Bill which has been pending in Parliament (Lok Sabha) since July 2010 with immediate effect reserving one-third of seats in Parliament and state legislatures for women.
- A national Judicial Services Commission must be set up immediately and one-third of the judiciary in each state and the Supreme Court must be women.

- The Two Child Norm tends to undermine the women's quota in the Panchayati Raj Institutions (PRIs). This is in violation of the Right of Political Participation under International Conventions.
- Gender Budgeting must be made mandatory for all departments and mechanisms should be put in place to ensure that at least 33% of the direct and indirect beneficiaries of all government schemes are women and girl children.

#### **ARTICLE 10:**

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

#### **ARTICLE 11:**

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

#### **ARTICLE 12:**

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

#### **ARTICLE 15:**

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

#### **ARTICLE 16:**

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

#### **MUSLIM WOMEN:**

- The Muslim Community which is the largest Socio-religious Minority needs a separate sub plan like there exists for Schedule Casts and Schedule Tribes to attain Equity and Equality.
- Enact non-discrimination legislation that would be based on Constitutional guarantees and applicable to both public and private actors in healthcare settings. The legislation should specify grounds for non-discrimination and specifically include HIV status.

#### **KANDHAMAL:**

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

#### **CHHATTISGARH:**

- The different articles of the Constitution of India that ensure and guarantee the citizens a life of dignity and protect their livelihood bring peace be followed in letter and in spirit.
- Reports & Recommendations of various Human Rights Organisations and the Supreme Court of India be implemented in letter and spirit by the State & Central Governments.

#### **WOMEN WITH DISABILITIES:**

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

#### **DALIT WOMEN:**

- Passing of central legislation the SC/ST Sub-Plan should be given statutory status by passing central legislation in this regard, as in Andhra Pradesh ensuring that the amounts allocated in this sub-plan do not lapse or are misused. A separate authority should be set up at State level for its effective implementation.

- 50% of the Schedule Caste / Sub Plan related schemes be focused on dalit women in such a way the schemes are designed to improve and encourage women leadership, ownership of land resources and capital assets. The state must distribute 5 acres of cultivable land in the name of dalits.
- The state must ensure as a rule no displacement is caused to SC/ST families from their land / habitations but in cases displacements occurred a proper compensation in the form of land from the SC/SP fund.
- Inclusive budgeting for dalit women must be enhanced in education particularly in the programme of Kasturba Gandhi Balika Vidyalaya scheme (KGBVS) – which is a special scheme for the marginalized community and structural limitations that currently create impediments must be removed in order to achieve desired results.

#### **WOMEN LIVING WITH HIV/AIDS:**

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

#### **NATIONAL COMMISSION OF WOMEN:**

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

#### **GENERAL RECOMMENDATION 19:**

##### **VIOLENCE AGAINST WOMEN**

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

##### **SEXUAL VIOLENCE**

- The police in every state must have Standard Operating Procedures with detailed guidelines for each aspect of investigation and the role of the police during trial.
- The state must establish one-stop crisis centres for women which would be responsible for providing immediate access to quality and free medical attention, psychological counselling, legal aid and other support services as may be required by the victim.

- The State needs to re-consider the legal age of consent of 18 years stipulated under the law, and reduce it to 16 years to ensure the law serves best interests of the child through respect for the child's evolving capacities

#### **GENERAL RECOMMENDATION30:**

- The State to honor its international commitment to women in conflict transformation and peace building under UN Security Council Resolutions 1325, 1820, 1888, 1889, 1960, 2106 and 2122
- Ratification of The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol.
- Immediate repeal of the Armed Forces (Special Powers) Act, 1958 and JK AFSPA 1990, Section 197 Criminal Procedure Code and the Chhattisgarh Special Public Security Act 2005.

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

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

#### **Follow up of Concluding Observations:**

- The Non-Governmental Organisations as well the Women's Movements in India appeal to the CEDAW Committee that they must encourage the State Party to disseminate widely in India the Concluding Observations to the Civil Society, government officials, Parliamentarian, Politicians to ensure de jure and de facto equality of Women as well take further steps that are required in that regard.
- Immediate steps to be taken to ratify the Optional Protocol to the convention.
- The State should be encouraged to the adherence of International Human Rights instruments and enhance the enjoyment by women of their human rights and fundamental freedoms in all aspects of life.

#### **Conclusion:**

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

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

#### **Coordinated by**

**THE NATIONAL ALLIANCE OF WOMEN (NAWO) – INDIA.**

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#### **ENDNOTES**

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

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

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

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

<sup>v</sup> National Sample Survey, 64<sup>th</sup> round, carried out by National Sample Survey Organization for the years 2007-08  
[http://mospi.nic.in/Mospi\\_New/site/inner.aspx?status=4&menu\\_id=119](http://mospi.nic.in/Mospi_New/site/inner.aspx?status=4&menu_id=119)

<sup>vi</sup> *Ibid.*

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

<sup>viii</sup> 15 CEDAW / C/ IND / CO3

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

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

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

<sup>xii</sup> Report of the visit of the Vice Chairperson, National Commission for Minorities, to Orissa, 21-24 April 2008 at page 2, para 2; Report on the visit of the Vice Chairperson, National Commission for Minorities, to Orissa, 11-13 September 2008, at para 2

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

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

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

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

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

<sup>xviii</sup> The Economic Times, 'A distraught tribal: The genesis of Assam ethnic violence', August 12, 2012  
Outlook, *A Bridge Too Far*, August 13, 2012, <http://www.outlookindia.com/article.aspx?281840>

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

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

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

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<sup>xxiii</sup> I Concluding Observation of the Committee on the Elimination of Discrimination Against Women: India 22<sup>nd</sup> Session & 37<sup>th</sup> Session.