Status of Gender Equality in India

Joint Stakeholders report for the 3rd Universal Periodic Review on women and LGBTI issues

2012-2016

On behalf of
183 organizations, networks and individuals

PARTNERS FOR LAW IN DEVELOPMENT

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PLD is a legal resource group pursuing the realization of social justice and equality for all women through law, particularly in contexts of discrimination and marginalization. It pursues its goals through three mutually reinforcing strategies comprising of capacity development, production of knowledge resources and contributing towards public policy.

Introduction

The preamble to the Indian Constitution sets the nation's highest goal to be justice, equality, liberty and fraternity to all its citizens, seeking to realise these through a set of justiciable fundamental rights to individuals/groups, bolstered with directives that require State policy to prioritise social and economic justice. Despite Constitutional goals dedicated to reversing social and economic inequalities, the lived realities of marginalised populations show deep disparities, deprivations and a continuum of violations.

Women experience disadvantage and oppression differentially, based on their status, context and location. Gender inequalities arising from patriarchal structures are exacerbated by poverty, status – as Scheduled Castes (SCs), Scheduled Tribes (STs) (Constitutional categories created in recognition of the marginalisation of dalits and adivasi communities) or religious minority – or indeed on account of disability, single status/widowhood, livelihood, sexual orientation and gender identity. Likewise, the degree of stigma, criminalisation and exclusion of LGBTI persons varies according to other intersecting status identifiers.

This report combines concerns relating to women and LGBTI, outlining advancements and barriers vis-à-vis the recommendations made to India in the second Universal Periodic Review, with suggestions for actions to be taken for full realisation of women's rights and gender equality.[1]

1. Anti-Discrimination, Equal Opportunity and Empowerment

Women make up less than half of India's population. As per Census 2011, the population of India is 1210.19 million comprising 586.47 million (48.5%) females and 623.72 million (51.5%) males. Of the total population, about 16.6% are SC or dalits and 8.6% are ST.[2]

Of the total population, about 26.81 million are known to have one or multiple forms of disability.[3] While SCs, STs, women and children have been guaranteed affirmative action by the Constitution in recognition of historic and ongoing discrimination, all persons may assert their Constitutionally guaranteed rights against the State and its agents to protect their fundamental rights. In the face of increasing privatisation of essential and basic services, and an ever-expanding private and transnational presence in the market, equal opportunity and non-discrimination principles must be enforceable vis-à-vis the private sector. There is severe under-representation of women, SCs/STs and other marginalised constituencies in employment as well as in the legislative bodies.

WE RECOMMEND:

- Institute a comprehensive anti-discrimination law that tackles discrimination arising from sex, SC/ST status, religion, disability, sexual orientation, gender identity amongst others that is enforceable against private enterprises and transnational actors. The law must address single or intersecting discrimination including in relation to education, housing and employment.[4]
- Pass the long-pending Women's Reservation Bill to ensure women's representation in legislative bodies at the Centre and the states.

2. Institutions, Resources and Budgeting

The Ministry of Women and Child Development (MWCD) is the nodal body of the central government tasked with women's empowerment and gender equality. It undertakes programming and budgeting for key programmes and initiatives for women and children. Over 80% of the MWCD's budget is allocated for children (Integrated Child Development Scheme, ICDS), with less than 20% allocated for women exclusive programmes. The budget of the MWCD has been declining from Rs. 185.88 billion in 2014–15 (Revised Estimate) to Rs. 173.52 billion in 2015–16 (Revised Estimate) and Rs. 174.08 billion in 2016–17 (Budget Estimate). This serious reduction in the allocations to the MWCD's budget, enforced on account of enhanced devolution of Union taxes to states as recommended by the Fourteenth Finance Commission, is not being compensated in a number of states. The only scheme for women under the 'major programmes under Central plan' is the Beti Bachao, Beti Padhao campaign.

There have been sizable reductions in allocations to women-specific programmes, such as the shelter homes (Swadhar Greh) and the National Mission for Empowerment of Women, from the 2014–15 levels. Alarmingly, since 2015–16 there have been no allocations for assistance

to states for implementation of the Protection of Women from Domestic Violence Act, 2005; before this, the funds for the scheme remained unutilised. The Nirbhaya Fund (created in the aftermath of the law reform on sexual violence in 2013) has seen extremely low utilisation, with few ministries being allocated funds from it. The coverage of the one-stop crisis centres (OSCCs) was scaled down drastically, and other vital schemes like the Indira Gandhi Matritva Sahyog Yojana continue to be implemented in a pilot phase.[5]

The National Commission for Women (NCW) was constituted as an independent statutory body in 1990 to provide oversight to ensure protection and promotion of interests of women. In 2010, the National Mission for Empowerment of Women (NMEW) was created to facilitate processes of cross-sectoral convergence between departments to strengthen women's socio-economic development. Over time, the NCW and NMEW have become under-resourced and starved of autonomy, impeding their mandate and role.

In addition to budgets for nodal ministries, the country has adopted Gender Responsive Budgeting (GRB) to integrate and address gender issues across ministerial domains. Over 10 years, 57 central ministries and departments adopted gender budgeting (2015), with a few states joining this exercise.[6] However, limitations such as the absence of participation of women's groups in planning, lack of contextual clarity and reduction of budgets make this ineffective. Without gender-disagregated data to assess outcomes, GRB has largely remained an ex-post exercise, with little influence on budget priority formulation.

The frontline workers – Anganwadi workers of the ICDS (under the MWCD), Auxiliary Nurse Midwives (ANMs), the Accredited Social Health Activists (ASHA) (both under the Ministry of Health and Family Welfare) and the workers of Mahila Samakya, a women's empowerment through education programme (under the Ministry of Human Resource Development) – tasked with facilitating access to and delivery of women-specific schemes to the most marginalised women are vulnerable as they lack status as regular workers, fixed wages or social security. These concerns have been discussed under the section on labour and livelihoods later in the report.

WE RECOMMEND:

- Create a separate ministry for women, with resources allocated exclusively for women-specific programmes and the machinery implementing gender-specific laws.
- Enhance the power of the NCW and assure its political and financial autonomy by aligning it with the Paris Principles governing National Institutions for Promotion and Protection of Human Rights, 1993.[7]
- Ensure women-specific schemes receive sufficient budgetary allocations from the Centre, without devolving the responsibility to the discretion of states.
- Plan GRB on the basis of consultative cross-sectoral situational analysis from a gender lens, with clearly defined outcomes and benefits to women. It must be adequately resourced and involve gender-disaggregated data to monitor the impact of schemes.

3. Violence Against Women/Children

Violence is a powerful means of controlling and subordinating women. Targeting of women also serves to degrade and humiliate entire population groups in situations of conflict and caste oppression. Accordingly, human rights obligations call for distinct responses to violence against women (VAW) across contexts such as home, workplace, displacement and disasters; during communal violence, militarisation, conflict or caste atrocities; and for the recognition of vulnerability on account of age, disability and power relations.

States obligations span prevention, prohibition, prosecution, punishment and redress. These involve addressing structural and root causes; undertaking prosecution, investigation, punishment; and initiating reparative compensation and restorative measures to help the victim's recovery and healing. Law is one amongst many interventions required to tackle gender-based violence.

Legislative reform: Since 2012, three law reform measures have enhanced criminal redress for women, children and dalit and adivasi women (SC/ST),[8] and obligated employers to provide redress to women for sexual harassment at the workplace.[9] The law, as a result, recognises a gradation of sexual offences, acid attacks, atrocities against dalits/adivasis (SC/ST), communal violence and vulnerabilities of children; it also stipulates scientific approaches for gathering medical evidence, and special procedures for children and those with disability.[10]

WE RECOMMEND:

- Remove prior sanction for prosecuting public servants accused of rape in the state of Jammu and Kashmir, to make the law consistent with the penal code applicable to the rest of India.[11]
- Introduce penalty for police inaction or non-compliance with law in cases of sexual assault in Jammu and Kashmir, to make it consistent with the law applicable to the rest of India.[12]
- While rape during communal riots is recognised, corresponding amendments in procedure, evidence, victim-witness protection must be enacted to facilitate redress within such contexts.[13]
- Ensure legal redress for rape to men and trans-persons.[14]
- Abolish prior sanction to prosecute armed forces for sexual assault.[15]
- Criminalise marital rape fully, including during marital cohabitation.
- Rethink the increase of the age of legal consent from 16 to 18 years (in 2012). This poses a serious concern as the criminalisation of consensual sexual contact amongst adolescents obstructs access of adolescents to health services, counselling and contraception, and legalises moral policing and retribution for inter-caste and inter-community relationships (by parents and community leaders).[16]

Mechanisms, resources, redress and victim support: The implementation of the law on sexual harassment in the workplace is entirely contingent on the state government and the employer instituting necessary steps to implement the law.

Despite the law coming into force in December 2013, most state governments have not constituted Local Committees to provide redress to unorganised sector women workers; a large majority of the organised sector too has not constituted Internal Committees. Further, in the absence of inter-ministerial convergence to monitor compliance by state governments and the organised sector, the implementation of the law is yet to be monitored by the State.[17] There is scarcely any step taken towards orienting the members of the committees to their legal role, making the non-implementation of the law a serious concern.

The criminal laws on sexual violence require the appointment of special educators for facilitating legal redress for women and children with disability. Along with little appreciation of mental health concerns and different types of disabilities, there is a paucity of professionals to implement this important provision. The insufficiency of dedicated personnel, support services and mechanisms, compounded by the lack of adequate training for them, remains a longstanding obstacle in implementing landmark legislations for women. The civil law on domestic violence (enacted in 2005) still suffers on account of no funds, inadequate number of protection officers (assigned additional charge), together with the scarcity of service providers.[18]

The police are the first port of call in activating redress for all forms of gender-based violence. Yet, experiences of women suggest that complaints are often not registered or registration is delayed. This, along with indifferent investigation and inadequate forensic facilities, results in high acquittals in cases of sexual violence.[19]

WE RECOMMEND:

- Establish special mechanisms stipulated for redress and victim support under the laws on workplace sexual harassment and criminal law amendments of 2013.
- Increase resource allocation from central funds to institute and capacitate mechanisms for implementing all laws relating to violence against women and children (without devolving the financial responsibility to the discretion of the states).
- Institute reforms to strengthen police accountability.
- Create more forensic laboratories and appoint judges to fill vacancies in judiciary.
- Scale up one-stop crisis centres to one per district to deliver single window support to all victims of violence, as originally envisaged.[20]
- Improve the quality of shelter homes, known for their poor conditions, substandard services and resource constraints.[21] The MWCD's scheme Swadhar Greh must be expanded beyond the existing 311 Swadhar Grehs in the country,[22] with budgetary allocations to enable similar interventions by states.
- Step up resource allocation towards support services for violence against women and children. Victim compensation schemes, although a laudable step, are not uniform across the states and victims rarely avail compensation, particularly at the interim stage.[23] As compensation is conditional upon criminal prosecution, it excludes many victims. Substantial resource allocation for support services must be part of the public health response to violence against women and children regardless of criminal prosecution.

4. LGBTQI

In its landmark judgment, the Delhi High Court decriminalised homosexuality (Section 377 of the Indian Penal Code) in 2009.[24] On appeal by private persons, the Supreme Court overturned this decision in 2013,[25] passing the onus to Parliament to consider the issue.[26] Since re-criminalisation, same sex desiring persons and their families have been re-stigmatised and rendered vulnerable to targeting and humiliation.[27] Instead of affirming the Constitutional rights of LGBTQI persons in court, the State left the civil society to fight conservative forces through arduous litigations. A private member's bill[28] proposing to decriminalise homosexuality introduced in Parliament in 2015 found no support. The State cannot sacrifice the Constitutional rights of a section of citizens to protracted legal processes.

After re-criminalising homosexual relations, the Supreme Court affirmed the equality of trans-people in NLSA vs. Union of India in 2014,[29] recognising the right to self-determine gender, and stipulating protection and welfare by the State, including through affirmative action (as part of the Constitutionally recognised Other Backward Classes). While a few states have formulated policies and schemes for trans-persons, the central government's proposed Transgender Persons Protection of Rights Bill, 2016, contradicts the Supreme Court judgment. It denies self-determination of gender identity, instead pathologising it; it fails to prescribe affirmative action measures to reverse historic discrimination and exploitation even as it criminalises traditional support systems and lifestyles associated with the lived realities of transgender people.[30] Rather than adopt a rights-based approach to reverse entrenched discrimination, the State adopts rehabilitation as a framework, which is unacceptable to the transgender and intersex communities.

Apart from enacting a law for the protection of transgender persons with full community consultation and in compliance with the NLSA judgment and global best practices, the State must institute policy measures to address stigma, discrimination and violence directed against persons on grounds of gender variance and sexuality. Such discrimination impedes access to education, health, means of livelihoods and legal redress. While all transgender persons are attacked for being different and lack adequate support systems from their natal families and community, the situation is worse for some on account of poverty, SC/ST status, regional location, religion and disability. A robust and inclusive social security scheme is necessary for the realisation of rights, as is a reorientation of medical practitioners, mental health professionals and service providers to notions of 'normal' and 'natural' in relation to sexuality and body. Internationally accepted norms must apply with the aim to end surgical and medical intervention in intersex infants and children, and access to safe and secure sex reassignment surgeries must be made available to adults who seek it.

Many LGBTQI people are forced to leave home or education on account of stigma, bullying and punitive measures for not complying with dominant gender norms. This impacts support systems and livelihood options. Institutional changes in healthcare, education and employment are necessary aspects of eliminating discrimination, along with the enactment of a comprehensive anti-discrimination law.

WE RECOMMEND:

- Decriminalise homosexuality and protect LGBTQI persons against discrimination in all fields of life.
- Enact a law for the protection of transgender persons with full community consultation and in compliance with the NLSA judgment and global best practices.
- Institute policy measures and schemes to eliminate discrimination in education, healthcare, housing and employment, including through a comprehensive anti-discrimination law.

5. Conflict

The CEDAW General Recommendation No. 30 provides an expansive definition of conflict to stipulate policies that address the fallout of conflict on women.[31] This applies to contexts of communal, caste, sectarian and ethnic violence as much as in militarised zones, where support services for women facing violence and mental health issues, as well as redress and accountability for sexual violence amongst others, must be available but are currently not.

Conflict-induced displacement is a growing concern particularly in the absence of a law protecting the rights of Internally Displaced Persons (IDPs), besides provisions addressing the concerns of women, the elderly, the sick, the injured and children. Women in these situations face multiple barriers to accessing healthcare, education and livelihoods, or indeed, legal redress. In most cases, IDPs do not possess identity cards, leaving them out of the purview of social security provisions. Women living in camps for prolonged periods are particularly vulnerable to trafficking and unsafe migration.

In addition, the impunity enjoyed by the armed forces in areas under operation of the Armed Forces Special Powers Act, 1958 (AFSPA) is a serious concern. Several treaty bodies including CEDAW and UPR have recommended the repeal of AFSPA, but the Act remains operational.

WE RECOMMEND:

- Institute a national policy on conflict in compliance with CEDAW and its General Recommendation No. 30.
- Constitute an empowered national task force on VAW in conflict regions.
- Establish a gender-sensitive national policy on IDPs, in compliance with the Guiding Principles on Internal Displacement.[32]
- Provide human rights and gender training to police and security forces in highly militarised areas.
- Include women in formal peace-building measures.
- Repeal AFSPA.

6. Health

The health system in India is increasingly characterised by the withdrawal of State services, growing privatisation and a focus on public–private partnerships in health services, and poor infrastructure, all of which adversely impact women and other vulnerable groups. Access to healthcare in the country is hence inequitable and compromised, particularly for the marginalised.[33]

India's budgetary allocation for health remains at less than 1% of Gross Domestic Product (GDP).[34] The low public provisioning for health has led to shortages of skilled human resources and a reliance on an exploitative private health sector, resulting in debilitating poverty, debt and poor health status. The arena of women's health, especially reproductive health, has numerous case studies exemplifying this in relation to maternal health, contraceptive services and other reproductive health concerns.

There is social discrimination on the basis of sex; caste, dalit, adivasi and minority status; disability; gender identity and sexuality, all of which impede access to healthcare.[35] The health system must acknowledge and institute corrective measures to respond to vulnerable population groups, including providing universal access to comprehensive healthcare.

Access to sanitation and safe drinking water are key determinants of health. Yet, fewer than 50% households have drinking water resources within their premises (46.6%).[36] Access to sanitation and safe drinking water must be ensured for all, taking into consideration barriers to access arising from caste, gender, location, disability, class and other factors.

In the arena of sexual and reproductive health, the focus has not substantially moved beyond reduction of maternal mortality and fertility control. Even with regard to maternal health only 46.9% of women in the 15–44 age group received any antenatal care.[37]

India has failed to achieve the MGD Goal 5 of reducing maternal mortality to 109 per 100,000 live births by 2015.[38] Over the last nine years, the State has invested several millions of rupees in the National Rural Health Mission and subsequently the National Health Mission, a large portion of which has been focused on maternal healthcare. Yet, studies point to persistent gaps in the health system that result in preventable maternal mortality.[39]

To improve access to healthcare during pregnancy, childbirth and post-partum period as well as infant care, the Janani Shishu Suraksha Karyakram (JSSK) scheme was introduced.[40] Case studies from the field show the various ways in which JSSK is denied to women and their babies when attending public facilities, forcing them to access private services.[41] The government programme assuring women of free and cashless services in public sector facilities has failed to live up to its promise.

Availability of safe abortion remains a huge challenge, which is further compromised by poor access, poor quality and the denial of care.

The draft Surrogacy Regulation Bill, 2016, seeks to regulate an exploitative surrogacy industry, currently governed by the Indian Council of Medical Research guidelines, by banning commercial surrogacy. Notwithstanding serious concerns related to this bill (discussed under labour), the government must regulate all IVF technologies and not surrogacy alone.

Healthcare services, including Anti-Retroviral Therapy medicines and supply of condoms, particularly for sex workers and HIV positive women, are not adequately and consistently available. Under the targeted intervention programme, sex workers, men having sex with men (MSM) and transgender persons are mandated to undertake HIV test every six months, without the provision for 'opting out'.

Despite the domestic violence law mandating provisioning of healthcare, health sector responses or linkages with crisis support services are negligent.[42]

WE RECOMMEND:

- Increase India's budgetary allocation for health to at least 5% of the GDP.
- Ensure universal access to comprehensive and quality healthcare, removing all barriers to access for vulnerable women and others.
- Ensure access to safe drinking water and sanitation.
- Expand JSSK to cover maternal healthcare through the private sector until such time as quality care is assured in public facilities. Private sector regulation is urgently required. Grievance redress mechanisms are essential and should be implemented in public and private facilities.
- Strengthen Maternal Death Reviews as a step towards prevention.[43]
- Revise laws and policies that restrict access to safe abortion services.[44]

- Regulate the Assisted Reproductive Technology industry to ensure ethical medical practices, including the protection of the rights of egg donors, surrogates and those who access such technology. Services in the public health sector for primary and secondary infertility must be improved.
- Prohibit mandatory testing on sex workers, MSM, transgender persons for HIV/AIDS.

7. Education

Education is a powerful medium of social transformation; hence it must be inclusive and well resourced, besides combining knowledge and skill development with consciousness about social inequalities. The National Education Policy (NEP), 1986, sought to harness this potential, visualising 'education as a change agent to improve the status of women'. Not only has there been a rollback in the social justice dimension of education, but the resource allocation also remains well below 6% of India's GDP.

The resource allocation to education in the last four years has seen a consistent reduction in proportion to the GDP, from 0.66% in 2012 to 0.48% in 2016.[45] Some key features of the Right to Education Act (RTE) have not been implemented and are being withdrawn[46] without acknowledging or tackling the causes of implementation failure arising from infrastructural gaps, such as inadequacy relating to learning material, teacher trainings, amenities and electricity. Further, affirmative action[47] to secure the inclusion of children from marginalised groups in public or private educational institutions has remained unsatisfactory as the policy fails to acknowledge or put in place concrete approaches to overcome social and political barriers to inclusion. The resource gap in secondary education deprives adolescents from marginalised communities of access and opportunities after primary education, on

account of high costs of private education, pushing them into labour markets and unpaid household work.

In contrast to the NEP 1986 that approached education as a way to reverse inequalities, the draft NEP 2016 avoids articulation of gender justice as a goal; its curriculum is silent on all social inequalities including in relation to gender. This silence, along with resource and infrastructural limitations, will impede access to education for and empowerment of girls from marginalised groups, along with trans-children[48] and those with disabilities to whom legal protection has been affirmed more recently. One positive aspect is that the draft policy calls for adult education and lifelong learning, yet it limits its focus to market-friendly skills, to the neglect of unconventional and traditional skills.

The refusal to adopt Comprehensive Sexuality Education disables young people from accessing information on sexual and reproductive health, making them vulnerable to becoming victims or predators of sexual violence. Comprehensive sexuality education, distinct from sex education, includes age-appropriate, medically accurate information on a broad set of topics related to sexuality, to enable adolescents to make informed decisions about their bodies, gender, sexuality and relationships.

An innovative programme of the NEP 1986, focusing on using education for the empowerment of the most marginalised rural women, was the Mahila Samakhya. Independent evaluations found the programme to have powerful outcomes through collectivisation of women across about 130 districts of the 10 states of Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Jharkhand, Karnataka, Kerala, Uttar Pradesh and Uttarakhand.[49] Yet, a recent policy decision to shift this programme from the Ministry of Human Resource Development to the Ministry of Rural Development has closed its funding, hurting one of the most significant social justice initiatives led by marginalised women.

WE RECOMMEND:

- Increase budgetary allocation for education.
- Align proposed national policy on education to the principles of the NEP 1986 and CEDAW obligations.
- Integrate comprehensive sexuality education in all educational institutions.
- Include children with disability through the creation of varied spaces within educational institutions or classrooms, extra-curricular activities and infrastructure.
- Provide appropriate facilities and assistive devices, in schools located in smaller towns and villages as well as in bigger cities.
- Initiate resource programmes like the Mahila Samakhya that use education as a medium of empowerment and social justice for the most marginalised women.

8. Labour and Livelihoods

State policy and projects increasingly adopt market-based growth models of development, focusing on profits and productivity to the detriment of social justice goals in respect of women and marginalised groups. This development model has led to joblessness and decreasing work participation rates for women, especially in the formal sector, in a period when India is reported to have seen a spurt in growth.[50] Decreased investments in agriculture have increased feminisation of agriculture. The appropriation of natural resources through legislations such as the Land Acquisition Act, 2013, for urbanised manufacturing and infrastructure (including the creation of Special Economic Zones, SEZs) has been at the cost of access to sources of food and livelihood security for women and communities.

Women workers in agriculture and primary sectors continue to be rendered invisible and under-reported with low social security and lack of support services. The compulsion to migrate due to the breakdown of livelihoods creates a vulnerable community of migrant women who are then pushed into situations of high risk. With few options for safe migration for unorganised sector women workers, they become vulnerable to trafficking and exploitative labour.

Poverty and hunger in India have a feminised face. Programmes for poverty alleviation have received decreasing attention and resources. Access to basic services for the poor is available for only a small targeted number, from which women are largely excluded. Programmes such as micro-credit interventions, Jandhan, etc., which appear pro-poor, have failed to give rise to asset creation for the poor; instead, they have fed consumerism, resulting in greater indebtedness.

The frontline women workers providing services to the most vulnerable and marginalised women in public programmes for maternal and child health, as well as public health, are the Anganwadi workers (under ICDS),[51] and ANMs and ASHAs[52] (under the National Rural Health Mission). They are treated as honorary workers, do not get fixed wages, lack social security and work in difficult conditions, reportedly at high risk of rape and sexual harassment but lack State protection or redress.[53] Women workers in government programmes such as Mahila Samakhya have been rendered unemployed due to the closure of the programme.

Recently proposed labour reforms[54] do not provide for safe migration or regulation of informal and unorganised sector workers, safe work conditions, social security or address problems of exploitation and trafficking. On the other hand, approaches to trafficking often conflate sex work with trafficking which, together with criminalisation of soliciting (an aspect of sex work), results in systemic harassment of sex workers (in addition to the social stigma).

While maternity benefits have been enhanced in law, these do not apply to informal sector workers, who are also not covered by social security measures.[55]

A draft Surrogacy Regulation Bill, 2016, seeks to ban commercial surrogacy, allowing only for altruistic surrogacy. It forbids foreign nationals, all single people, same sex couples, live-in partners and married couples who have biological or adopted children from availing of surrogacy. There are apprehensions that the proposed ban will leave women surrogate workers totally unprotected, it is

likely to push the industry underground, rendering poor women surrogates more vulnerable to exploitation.

The Forest Rights Act (FRA), 2006, provides for protection of the rights of forest dwellers to forest and forest resources. Yet, lack of commitment to the implementation of this law, and the enactment of contradictory laws such as the Compensatory Afforestation Management and Planning Authority and the Compensatory Afforestation Fund Bill, 2015, negates the primacy of the rights of forest dwellers and directly impacts women's struggles for livelihoods.

WE RECOMMEND:

- Recognise women as primary workers; record invisible unpaid work; create greater opportunities for awareness, skill building, access to legal rights and support services such as credit, markets, social security, with the necessary resource investments.
- Address women's low participation in the workforce by improving access to relevant higher education and training, skill development, child care and maternity protection, etc.
- Ensure that the livelihoods policy reflects a greater concern for the protection of livelihoods and the traditional rights of marginalised communities to resources as provided in FRA 2006.
- Provide greater opportunities for communities to strengthen livelihoods based on community-based management of natural resources with women as equal partners in the management of resources, ensuring rights to the Commons.
- Ensure frontline workers for social justice programmes have secure employment/minimum wages with social security.
- Formulate policies and actions to help women create sustainable assets for livelihood generation, especially land and housing, instead of simply focusing on short-term credit or wages.
- Enact positive legislation for the protection of women in the informal sector, sex work, special zones and arenas like garment and fisheries industries where women employees are at risk.
- Ensure that the provisions of the Immoral Traffic Prevention Act (ITPA), 1956, are not imposed upon adult consensual sex work.
- Strengthen protective and redress mechanisms for women workers in all sectors. These encompass providing protection for women employees in government welfare programmes; initiating labour reforms and social security measures for women in the organised and unorganised sectors, including the right to organise; and expansion of crèche services, Public Distribution System, Mid-day Meal and access to the Commons.
- Reinforce provisions for protection and affirmative action, legislative and institutional, to support the rights of dalits, adivasi (SC/ST) and marginal workers to resources on which their lives and livelihoods depend.

Notes

1 The UN Human Rights Council carries out a peer review on the status of human rights of member countries every four years called the Universal Periodic Review (UPR). India's first UPR was held in 2008, the second in 2012 and the third scheduled for May 2017. The recommendations from the second UPR cycle will be central to the review undertaken in the third cycle. A/HRC/21/10, 9 July 2012, and A/HRC/DEC/21/108, 15 October 2012.

2 Primary Census 2011.

3 http://www.disabilityaffairs.gov.in/content/page/state-ut-wise-persons.php.

4 Recommendations 27, 29 & 33, UN Committee on the Elimination of Discrimination Against Women (CEDAW), 'Concluding Observations on the Combined 4th and 5th Periodic Reports of India', 18 July 2014, CEDAW/C/IND/CO/4-5.

5 Bhumika Jhamb and Yamini Mishra, 'Gender Responsive Budgeting in India: Time to Ask Questions', *Economic and Political Weekly* 50(50) (2015), p 54.

6 A number of states such as Gujarat, Bihar, Madhya Pradesh, Karnataka, Assam, Kerala, Delhi, Chhattisgarh, Rajasthan, Uttarakhand and Tripura, among others, are already implementing the strategy; Jharkhand and Odisha have taken preliminary steps.

7 CEDAW (n 3) Observation 17.

8 Namely, Criminal Law (Amendment) Act, 2013; Prevention of Children from Sexual Offences Act, 2012.

9 Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

10 Criminal Law (Amendment) Act 2013, S.13, S.16 and S.27; Protection of Children from Sexual Offences Act, 2012, S.19, S.26, S.38 and S.45; Guidelines and Protocol for the Medico-Legal Examination of Victims of Sexual Violence.

11 S.197(1) of the Code of Criminal Procedure provides that in the case of a public servant accused of any sexual offences (under S.166A, S.166B, S.354, S.354A, S.354B, S.354C, S.354D, S.370, S.375, S.376, S.376A, S.376C, S.376D or S.509 of the Indian Penal Code, IPC), no sanction shall be required before initiating prosecution. This is not included in the Ranbir Penal Code that applies to Jammu and Kashmir.

12 S.166A IPC makes it punishable for a public servant to disobey any direction of law in conducting an investigation, fail to register an FIR relating to an acid attack or sexual offence (S.326A; S.326B; S.354; S.354B; S.370; S.370A; S.376; S.376A; S.376B; S.376C; S.376D; S.376E; S.509 IPC) or disobey the law that prohibits him from requiring the attendance at any place of any person for purposes of investigation.

13 For instance, in the seven cases of gang rape of women belonging to the minority Muslim community during communal attacks in Muzaffarnagar district in Uttar Pradesh in September 2013 (which were registered in September and October 2013 and the charge-sheets filed in April 2014), at least six trials have not been concluded. See CEDAW (n 3) Observation 23(d).

14 The penal provision on rape, S.375 of the IPC, recognises only females as victims, denying legal protection to male or trans victims of rape. Section 377 criminalises homosexuality, obviating the possibility of consent with respect to anal sex for men. Despite the recommendations of the Report of the Committee on Amendments to Criminal Law (Justice Verma Report), 23 January 2013, p 439, that the victim of sexual assault be gender neutral and the perpetrator be gender specific, the law does not protect men or trans persons.

15 Armed forces have been known to abuse the provisions of S.6 Armed Forces (Special Powers) Act, 1958. See Manjula Sen, 'Right To Rape?' *The Telegraph* (Calcutta, 19 June 2013).

16 See 'The Many Shades of Rape Cases in Delhi', *The Hindu* (New Delhi, 29 July 2014); 'Why the FIR Doesn't Tell You the Whole Story', *The Hindu* (New Delhi, 22 December 2015).

17 '97 PC Firms Not Aware of Sexual Harassment at Workplace Law', *Deccan Herald* (New Delhi, 23 August 2015).

18 Protection of Women from Domestic Violence Act, 2005; see also Lawyers Collective, 'Staying Alive: Evaluating Court Orders', 6th Monitoring & Evaluation Report 2013, on the Protection of Women from Domestic Violence Act, 2005 (New Delhi, January 2013).

19 Commonwealth Human Rights Initiative, 'Draft National Policy for Women 2016: Comments and Recommendations' (New Delhi, 20 June 2016), ch 5; see also Commonwealth Human Rights Initiative, 'Rough Roads to Equality: Women Police in South Asia (2015)' (New Delhi, August 2015), pp 58–61.

20 The Centre's plan for district-wise OSCCs has been scaled down to 17 operational OSCCs, with 150 more proposed.

21 *Peace and Equality Cell vs. Unknown*, Writ Petition (PIL) No. 321 of 2014.

22 Lok Sabha Un-starred Question No. 729, to be answered on 24 July 2015, available at http://164.100.47.194/Loksabha/Questions/qsearch15.aspx

23 Apoorva Mandhani, 'SC Directs Centre to Formulate National Policy for Proper Rehabilitation of Rape Survivors', *Law Live* (27 May 2016).

24 *Naz Foundation vs. Govt. of NCT Delhi*, 2010 CriLJ 94.

25 *Suresh Kumar Koushal and another vs. NAZ Foundation and Others*, Civil Appeal No. 10972 of 2013.

26 Ibid., para 31(ii).

27 Pawan Dhall and Paul Boyce, 'Livelihood, Exclusion and Opportunity: Socio-economic Welfare among Gender and Sexuality Non-normative People in India', *Evidence Report No. 106: Sexuality, Poverty and Law* (Brighton, UK: University of Sussex, 2015), p 20.

28 Rights of Transgender Persons Bill, 2014.

29 *National Legal Services Authority vs. Union of India and others*, Writ Petition (Civil) No. 400 of 2012.

30 Transgender Persons (Protection of Rights) Bill, 2016.

31 As defined by CEDAW General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations, CEDAW/C/GC/30.

32 See UN High Commissioner for Refugees (UNHCR), 'Guiding Principles on Internal Displacement', 22 July 1998, ADM 1.1, PRL 12.1, PR00/98/109.

33 The percentage of women likely to be receiving care from a doctor during pregnancy in the country is 50.2%; the percentage of ST women is likely to be as low as 32.8%, and SC women only 42% (NFHS3). Only 17.7% of births to ST women were delivered in health facilities compared with 51% of births amongst 'others'. Studies show that Muslim and SC/ST women are less likely to receive good quality antenatal and postnatal care, and are also less likely to deliver in institutions. Moreover, the availability of health infrastructure in areas inhabited by some of these groups is very poor. Despite the numerous maternal health programmes operational under the National Rural Health Mission, there is differential utilisation of maternal health schemes such as the Janani Suraksha Yojana (JSY). See Bindu Balasubramaniam and G. Santhi, 'How Does NRHM Help Tribal Women? A Study of Financial Incentives for Maternal Health Services in Heggadadevanakote Taluk, Mysore District, Karnataka' (New Delhi: Centre for Health and Social Justice, 2011); see also Centre for Health and Social Justice, *Reaching the Unreached: Rapid Assessment Studies of Health Programmes Implementation in India* (New Delhi, 2011).

34 The current government health expenditure is estimated at 0.9% of GDP while the out-of-pocket expenses are 69% of the current health expenditure (NHA, 2013–14). Further expenditure, for example, on mental health is only about 1% (NHA, 2013–14) and needs to be addressed; see 'National Health Accounts Estimates for India 2013–14' (National Health Systems Resource Centre and Ministry of Health and Family Welfare, 2016).

35 As per the Sachar Committee Report (2006), a Muslim-dominated village is less likely to have a health centre as compared to one that has a lower concentration of Muslims; see Zamrooda Khanday and Yavnika Tanwar, *Exploring Religion-based Discrimination in Health Facilities in Mumbai* (Mumbai: Centre for Enquiry into Health and Allied Themes, 2013).

36 Census 2011 from the National Health Profile 2015.

37 DLHS 2012–13 in National Health Profile 2015.

38 A Global Gender Inequality value of 0.563 in 2015 places India at a position of 130 among 188 countries. India's maternal mortality rate stands at 190 deaths per 100,000 live births (2013); see UNDP, Gender Inequality Index.

39 J. Dasgupta, et al., 'Chronicles of Deaths Foretold: A Civil Society Analysis of Maternal Deaths in Seven Districts from the States of Odisha, West Bengal, Jharkhand and Uttar Pradesh' (New Delhi: National Alliance for Maternal Health and Human Rights, and New Delhi: SAHAYOG, 2016).

40 JSSK is an initiative of the Government of India to assure completely free and cashless services to pregnant women including deliveries (normal and Caesareans) up to 42 days after delivery, sick newborns up to 30 days after birth and infants up to one year of age in all government institutions. The aim is that no mother or newborn should die due to want of money.

41 Renu Khanna and Mahima Taparia, 'Entitlements for Cash Free Maternal Health Services: Implementation Experiences from Three Districts in Gujarat, India', SAHAJ briefing (2016).

42 Protection of Women from Domestic Violence Act, 2005.

43 Underreporting of maternal deaths still continues. By the government's own admission, as of March 2012, only 18% of all expected maternal deaths were being reported under the Maternal Death Review (MDR) process, and of these, only two-thirds were being reviewed by the district level committee for MDR. Maternal Death Reviews are largely restricted to finding a medical cause for death rather than identifying gaps in the health system and instituting corrective action, the original objective of the whole process. In addition, one of the major shortcomings of the central government-instituted MDR process is the lack of information in the public domain. In several other countries where confidential enquiries into maternal deaths are conducted, the identifying information regarding individuals and institutions connected to the death are kept confidential to maintain ethical standards, but the causes, contributors and learning from the enquiries are made public. This is not so in the review process in India, where no information at all on the process is made public, which precludes engagement from civil society, academics and professional associations in the process and signals a major lack of accountability. Civil society initiatives like the Dead Women Talking were designed to bridge some of these gaps. The initiative used a 'social autopsy' process to document events leading up to the maternal death. Social autopsy is defined as 'an interview process aimed at identifying social, behavioural, and health systems contributors to maternal and child deaths'; see B. Subha Sri and Renu Khanna, *Dead Women Talking: A Civil Society Report on Maternal Deaths in India* (CommonHealth and Jan Swasthya Abhiyan, 2014).

44 The Protection of Children from Sexual Offences Act, 2012 (POCSO), criminalises sex below the age of 18 years even if it is consensual and makes it mandatory to report if, for example, any girl below 18 years accesses abortion services, creating barriers for hospitals and others in providing services as well as for those seeking them.

45 Centre for Budget and Governance Accountability, 'Connecting the Dots: An Analysis of Union Budget 2016–17' (New Delhi, 2016).

46 For instance, the principles of 'no detention' and 'continuous comprehensive education' are to be dropped.

47 25% reservation for marginalised groups.

48 The Transgender Person's Protection and Rights Bill, 2016, recognises that all educational institutions funded or recognised by the government must provide inclusive education and opportunities for sports, recreation and leisure activities without discrimination, on an equal basis with others. The Bill does little to re-envision an inclusive model of education through its silence on curriculum, uniforms and infrastructural needs of trans-persons within educational institutions, or indeed of protection from harassment, factors that are often cited as reasons for trans-persons dropping out of school.

49 The findings of independent evaluations conducted by IIMs (Ahmedabad and Bangalore) affirm this.

50 http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/genericdocument/wcms_342357.pdf.

51 There is a shortage of Anganwadi workers and helpers, who are considered to be 'honorary workers' from the local community, and paid Rs. 3000 and Rs. 1500 per month respectively from central government funds, leaving it to the discretion of the state government to top this up further. See Lok Sabha Un-starred Question No. 2293, to be answered on 11 December 2015, available at http://164.100.47.190/loksabhaquestions/annex/6/AU2293.pdf.

52 ASHA workers are considered honorary volunteers, and get incentives based on performance instead of wages. See Lok Sabha Un-starred Question No. 1037, to be answered on 20 April 2016, available at http://164.100.47.192/Loksabha/Questions/QResult15.aspx?qref=33391&lsno=16.

53 See Lok Sabha Un-starred Question No. 4491, available at http://164.100.47.192/Loksabha/Questions/QResult15.aspx?qref=40295&lsno=16.

54 Recommendation 138.129 of the Maternity Benefit Act, 2016, to extend maternity leave from three to six months is only applicable to organised sector women, with no provision for paternity benefit. The National Food Security Act, 2013, promises to make universal the central scheme for maternity benefit, but this is yet to be implemented. The MWCD has been unable to upscale the maternity benefit scheme involving conditional cash transfer, the Indira Gandhi Matritva Suraksha Yojana (IGMSY), which was started in 53 districts as a pilot scheme in 2010. This central scheme is neither universal nor unconditional, as it disqualifies women who have more than two children from benefiting from it.