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INDIA: SECOND NGO SHADOW REPORT ON CEDAW

EXECUTIVE SUMMARY

INTRODUCTION

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

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

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

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 Such a declaration is unconstitutional and needs to be withdrawn.

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

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

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

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

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

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

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

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

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

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

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

SEX ROLE STEREOTYPING AND PREJUDICE

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

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

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

TRAFFICKING AND PROSTITUTION

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

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

POLITICAL AND PUBLIC LIFE

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

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

EDUCATION

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

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

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

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

EMPLOYMENT

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

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

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

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

HEALTH

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

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

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

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

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

RURAL WOMEN

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

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

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

EQUALITY BEFORE LAW, MARRIAGE AND FAMILY LIFE

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

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

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

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

WOMEN IN GUJARAT

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

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

TSUNAMI AND ITS IMPACT ON WOMEN

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

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

WOMEN IN ARMED CONFLICT: NORTH EAST

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

DALIT WOMEN

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

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

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

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

SITUATION OF TRIBAL WOMEN IN INDIA

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

VIOLENCE AGAINST WOMEN ON THE BASIS OF SEXUAL ORIENTATION

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

WOMEN IN URBAN SETTLEMENTS

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

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

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

GENERAL RECOMMENDATION 19: VIOLENCE AGAINST WOMEN

Sexual Assault: Marital Rape Continues To Be Lawful

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

The Killing Fields of Witch-Hunting

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

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

Sex Selective Abortions, Gender Cleansing or Crime Against Humanity?

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

CONCLUSION

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

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

PART I: CEDAW ARTICLES

CHAPTER 1

INTRODUCTION CRITICAL ENGAGEMENTS ON CEDAW IN INDIA

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

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

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

AN OUTLINE OF CRITICAL CONCERNS

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

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

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

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

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

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

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

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

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

THE NGO ALTERNATIVE CEDAW REPORT, 2000: LOBBYING STRATEGIES

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

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

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

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

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

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

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

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

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

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

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

RECOMMENDATIONS TO THE GOVERNMENT

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

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

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

NGO STRATEGIES

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

NAWO'S AGENDA

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

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

