



WOMEN'S RIGHTS IN INDIA

ALTERNATIVE REPORT FOR THE 58TH
PRESESSIONAL WORKING GROUP OF THE
CEDAW COMMITTEE

BY WILPF INDIA & WILPF INTERNATIONAL
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WOMEN'S INTERNATIONAL LEAGUE FOR
PEACE & FREEDOM

CEDAW Review of 4th and 5th Periodic Reports of India

Suggestions for the List of Issues Prior to Reporting

I. Health – article 12 of the Convention

Maternity Mortality

The combined fourth and fifth periodic report of India to CEDAW (hereafter, State report), under article 12, Health, claims that there is a drop in Infant Mortality Rate (IMR), Maternal Mortality Rate (MMR) and Total Fertility Rate (TFR). However, when looking at data from the 2011 Census report of India,¹ the decreases are not substantial. Regional comparison of IMR, MMR and TFR rates shows that Bangladesh, Bhutan, Nepal and Sri Lanka seem to fare better:

- o IMR (44) puts India 5th among 6 South Asian Countries.
- o MMR (200) puts India 4th among 6 South Asian Countries.
- o TFR (2.6) puts India 4th among 6 South Asian Countries.

Suggested questions for India:

- Please provide details on the current investment and initiatives in place with regards to the health care for women, especially reproductive health care.
- Please provide details on any change in figures on health care for women and reproductive health care since India's last regular report to CEDAW and compare it to the figures of India's surrounding neighbors.
- Please provide more details on the implementation of recommendation 41 of the concluding comments on the combined second and third periodic CEDAW review of India (hereafter, referred to in this report as the concluding comments), which recommends ensuring women access to safe abortions and to gender sensitive comprehensive contraceptive services including data of awareness and the actual use of these.

Sex ratio

In India, the use of medical technology to determine the sex of a foetus favors gender-biased sex selection. The skewed sex ratio indicates that there is a decline in the number of girls in India; some estimates put forward that India is missing 40 millions girls. Regional sex ratios support this claim. For example, in the State of Haryana, the ratio is 832 girls for every 1,000 boys. .

The 2011 Census report demonstrates that there is a skewed sex ratio:

- o There are 940 females per 1000 males in our population.
- o In the 0 to 6 age-group there are 914 girls for every 1000 boys. In 2001, this ratio was 927 girls to 1000 boys.
- o The census data shows an appalling drop in the number of females in the age-group of 7-15 years. There are 911 females for every 1000 males.

This census data points to the sex selective abortions of female foetuses. Despite amendments, the 'Preconception and Pre Natal diagnostic Techniques (Prohibition of Sex Selection) ACT' (PCPNDT Act)

¹ Census of India 2011. Available at:
http://www.censusindia.gov.in/2011-prov-results/prov_results_paper1_india.html

has not been effectively implemented.

Suggested questions for India

- Please provide the current figures of the misuse of preconception and pre natal diagnostic techniques with the purpose of sex-selection
- Please provide figures of reported transgression of the Prohibition of Sex Selection Act by medical staff

Health Status

The 2005-2006 National Family Health Survey (NFHS-3) report,² quoted by the State, shows that 55.3% of women were anaemic in the 15-49 age-group. The Census report and the above-mentioned skewed sex ratio suggest that there has not been much improvement in women's health status.

Data from the NFHS-3 report points to a worse situation for adolescent girls; it is reported that 46% of Indian adolescent girls were married before the age of 18. UNFPA estimated that if the trend continues between 2011 and 2020, more than 140 million girls will become child brides, of which at least 18.5 million will be under the age of 15.

Not only does this strongly indicate that the rights and personhood of girls are not valued (thus the skewed sex ratio), but it also suggests that young adolescents subjected to domestic violence lack access to support services. Furthermore, it highlights that young women are subject to early pregnancies, malnutrition and poor health, as evidenced by the figures of anaemia in women and girls. These factors either perpetuate the undernourished existence of mother and child or increase the number of maternal deaths.

Suggested questions for India:

- Please provide data on the current public spending on health and detail how it ranks within the allocations of public spending for other ministries.
- Please provide information on the implementation of CEDAW recommendation 41, of the above-mentioned concluding comments, on the monitoring of the privatisation of health services and its impact on the health of poor women.
- Please provide details on the mechanisms used by the government to ensure that sufficient public spending in health is allocated to women.
- Please provide the data on the current figures of female anaemia including a comparison with figures of male anaemia.
- Please highlight the relevant factors related to women's poor health including the relation between poor health and early marriage, gender inequality and poverty.

² National Family Health Survey 2005-2006 (NFHS-3) India Reports. Available at: <http://hetv.org/india/nfhs/>

II. Marriage and Family Life – article 16 of the Convention

Registration of all marriages

Paragraph 5 of the State Report refers to the coparcenary property in the Hindu Succession Act while Paragraph 6 refers to Guardians and Wards Act of 1890 and the Hindu Adoptions and Maintenance act of 1956.

Paragraph 29 of the Common Core document states that 19 States in India have already taken necessary legislative measures for compulsory registration. The statement camouflages the reality of these women's lives.

Some necessary legislative measures ensuring the registration of all marriages are taken but the legislation has not made registration compulsory. They state that marriages have to be registered, thus laying down the responsibility. However if the marriage is not registered, it does not invalidate marriage. There is no compulsion.

The directive from the Supreme Court is noted in the same Paragraph 29:

"The direction comes from the Supreme Court which in *Seema vs. Ashwini Kumar* (2006 (2) SCC 578) directed the registration of marriages of all persons irrespective of their religion, who are citizens of India, should be made compulsory in their respective States".

The phrase, 'irrespective of religion' invites comment. Marriages are registered at the time of marriage when Muslims marry. Marriages of Christians are registered in their Churches and so on. Only Hindu marriages are not registered. So a Hindu widow has to go up to Supreme Court to prove that she was the wedded wife when her inheritance is challenged. The legislative measures taken by the State do not help these widows. It is very difficult to prove a Hindu marriage in Courts. That is the reason why Hindu women, a large majority in India, desperately need compulsory registration.

Suggested questions:

- Please provide information on how the State of India ensures that Hindu women enjoy their rights as spouses if the marriage has not been registered.
- Please provide further details on the implementation of CEDAW Recommendation 59 of the above-mentioned comments on the registration of all marriages since they were issued in 2007.

Child marriage

The Paragraph 97 of the State's report addresses the Prohibition of Child Marriage Act of 2006. It replaces the Child Marriage Restraint Act of 1929 in order to prohibit child marriages rather than just restraining them. However, only the name has changed, the content remains the same.

This Prohibition Act recognises the possibility of annulling the marriage if it has not been consummated. In practice, minor girls can hardly exercise their choice of annulling their marriage as the marriage is consummated much before they become aware of any such provisions. Once marriage is consummated, the law does not allow annulment. Child marriages can only be stopped when they are declared void by law and not 'voidable' as is the law today.

Suggested Questions:

- Please provide details on the current legislation available to ensure that child marriage is void.
- Please provide information on the current programmes designed to inform young girls about their rights against an eventual early and forced marriage.

III. Human rights of women in post-conflict situations

In 2008, conflict and riots in the Kandhamal district in Orissa led to numerous human rights violations including killings, and burning down of houses and all properties of many victims. This conflict led to the displacement of thousands of homeless civilians who later took shelter in the relief camps opened and organised by the State of Orissa.

WILPF India sent a delegation in 2009 to investigate and to research the background and the consequences of the continued violence. We can thus affirm that the deplorable and inhuman conditions of refugee camps disproportionately affected the rights of women. We can underline that there were no toilet facilities or bathing space, which exposed women to unsafe conditions when they were compelled to enter the forest to relieve themselves. There was a total lack of privacy and women refugees in the camps were all constantly worried about the inadequate supply of food and lack of nourishment for themselves and for their children.

The active participation of women in the peace-building process was not ensured. Peace Committees were organised but not a single women representative from the victims' group was asked to join such committees.

In light of the lack of procedures to ensure respect of UNSCR 1325 in post-conflict and refugee settings, WILPF India had the initiative of asking for a mechanism to protect the human rights of women in post-conflict situations. This initiative was submitted to the Supreme Court of India in Writ Petition No. 396 of 2009 (hereafter, the petition)³. The operations of this mechanism should start when conflicts arise and victims are moved to relief camps. It should specifically raise the demands of women and ask the State government and the Central government to respond to them, monitor the flow/ reach/ availability/ continuance, etc. The State and the Central governments should be vigilant till the camps are dismantled and each woman leaves for her home. The mechanism should also ensure women's participation in post-conflict negotiations as those of peace committees.

However, the above mentioned petition has been blocked by the government and, whilst the National Human Rights Commission was supposed to submit a report, the report has never been submitted to the best of our knowledge, despite our many requests for clarification.

Suggested questions for India:

- Please provide details on the initiatives taken by the government to ensure that women in refugee camps in India live in security and that their rights are protected.
- Please provide information on the mechanisms are in place to ensure women's participation in conflict and post-conflict.
- Please provide the current figures of participation of women in Peace Committees and mechanisms alike.
- Please explain in detail the current situation of the petition requesting a mechanism to protect human rights of women in post-conflict situations.

³ For more details: Writ Petition No. 396 of 2009 Available at:
<http://www.wilpfinternational.org/wp-content/uploads/2013/10/Writ-Petition-India-Manipour.pdf>

IV. The Armed Forces Special Powers Act

The Armed Forces (Special Powers) Act (AFSPA) was passed on 11 September 1958 by the Parliament of India. It is a law granting special powers to the armed forces in what the act terms as "disturbed area".

This law was clamped in the North East region, Manipur, Tripura, Mizoram and Nagaland. This law has led to an atmosphere of impunity; thus numerous human rights violations were perpetrated by the Armed Forces and paramilitary forces. Women suffer enormously from these violations both directly and indirectly.

Women suffer directly through rape and torture by the Armed Forces and paramilitary forces in this atmosphere of impunity. They also suffer indirectly: owing to the massive extrajudicial killings taking place, many women find themselves as young widows. Widowhood drives women in this remote region to poverty. They struggle to take care of their families alone and they are subjected to stigmatisation as widows of suspect men. Furthermore, poverty prevents women from being able to report the crimes, further adding to the invisibility and impunity of these crimes⁴.

It must be clarified however, that the North East region is no longer facing any threats.

Several UN human rights bodies have addressed the legitimacy of the AFSPA:

- o In 1991, UN Human Rights Committee raised questions about the constitutionality of the AFSPA under Indian law and asked how it could be justified in light of Article - 4 of ICPCR.
- o On 23 March 2009, UN Commissioner for Human Rights, Navanethem Pillay, asked India to repeal the AFSPA. She termed the law as "dated and colonial-era law that breach contemporary international human rights standards".
- o On 31 March 2012, the UN asked India to revoke the AFSPA saying it had no place in Indian democracy. Christof Heyns, UN's Special Rapporteur on extrajudicial, summary or arbitrary executions said : "During my visit to Kashmir, AFSPA was described to me as 'hated' and 'draconian'. It clearly violated international law. A number of treaty bodies have pronounced it to be in violation of international law as well".

Two representative, atrocious incidents that occurred in the North Eastern State, Manipur, are presented below.

The Malom Massacre on 2 November 2000

In Malom town in Imphal valley of Manipur, ten civilians were allegedly shot and killed while waiting at a bus stop by the Assam Rifles, one of the Indian paramilitary forces operating in the State.

The incident came to be known as the 'Malom Massacre'. Among the ten killed, there was a 62-year-old woman and 18-year-old Sinam Chandramani, a National Child Bravery Award winner.

After these facts, Sharmila Irom, a human rights activist, began to fast in protest of the killings, taking neither food nor water. Three days after she began her hunger strike, she was arrested by the police and charged with an 'attempt to commit suicide,' and was later transferred to judicial custody.

Sharmila's health deteriorated rapidly, and the police forcibly used nasogastric intubation ~~order~~ to keep her alive while under arrest. Under section 309 of IPC, a person who 'attempts to commit suicide' can be punished with simple imprisonment for a term which may extend to one year or with fine or with both. So every year, Sharmila is released and as she continues fasting, is taken into custody again.

⁴ Frank van Lierde (2011) *We, widows of the gun*, Colophon, The Hague

On 3 November 2013, 13 years of fasting by Sharmila Irom would be completed. She will fast until AFSPA is repealed.

The case of Thanjam Manorama on 11 July 2004

Another incident ingrained in the memory of Indians about the Army's violence against women is the case of Thanjam Manorama. On 11 July 2004, Manorama was forcibly taken away from her home and then tortured, raped, and killed. Her body was then thrown out on the side of the road. This so disturbed the women of Manipur that some elderly women held a demonstration outside the Assam Rifles base and stood uncovered to challenge and shame the Armed Forces for their inhuman violence.

In January 2013, a Public Interest Litigation (PIL) was filed by a Manipur based victims' group and a human rights organisation in the Supreme Court of India. Investigations into 1,528 alleged extrajudicial killings in Manipur between 1979 and 2012 were launched. A three member panel headed by retired Supreme Court Judge Santosh Hegde was appointed to investigate and also to analyze the functioning of the State police and Security forces in Manipur. The panel submitted a report in 2013.

The panel found damning evidence of impunity and abuse of special powers by security forces, resulting in widespread human rights violations. All seven deaths in the six cases investigated by the panel members were extrajudicial killings and not deaths resulting from 'encounters' where security forces claimed they had fired in self-defence against armed insurgents.

The panel also said that the continuation of the AFSPA in Manipur has made 'a mockery of the law,' and that the security forces have been 'transgressing the legal bounds for their counter - insurgency operations in the State.' The panel noted that the AFSPA was an impediment to achieving peace in regions such as Jammu and Kashmir and the North east.

All these findings have led the way in pointing to the repeal of the AFSPA. Political parties like NCP, All India Trinamool Congress, Communist party of India (ML) support the repeal of the AFSPA. The Prime Minister and the Home Minister have also publicly supported the repeal.

Suggested questions for India:

- Please provide information as to why Recommendation 9 of the above-mentioned concluding comments urging for the abolishment or reform of the AFSPA has not been duly implemented although there is no threat of insurgency perceived in the North Eastern States
- Please provide details of the current public opinion and position of the high level officials on the AFSPA.
- Provide details about the case and the treatment of activist Sharmila Irom on hunger strike

For more details: WILPF International Office: María Muñoz Maraver mmunoz@wilpf.ch
WILPF India: Ila Patak women.awag@gmail.com