

Consultative Workshop with Legal Fraternity on the Draft Gender Equity Policy (GEP) for Gujarat State

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A report (Draft)

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Background

Following the recommendations of the National Policy for the Empowerment of Women (2001), the Government of Gujarat decided to formulate a state gender policy in 2002. Taking a lead role, the Department of Women and Child Development (DWCD) initiated a multi-stakeholder process of consultations involving NGOs and other implementers, researchers, academicians, policy makers, gender experts, prominent citizens. Thematic groups headed by the Secretaries of respective government department and including a consultant, prepared base papers, identified the core issues, suggested action points, identified the nodal agency, responsible department and significantly, a time frame. These were discussed and changes, if any, were incorporated. The thematic sections were linked and prepared as an overall policy document and debated at a State level seminar in February, 2003. Based on the outcome of this seminar, the DWCD prepared a draft Gujarat State Gender Equity Policy, 2004.

The working group on Legal Environment was chaired by Justice V S Bhatt, former Secretary, Legal Department, Government of Gujarat with Ms. Nupur Sinha, Centre for Social Justice (CSJ) as consultant. Whereas, the working group on Crimes Against Women was chaired by Shri K Nityanandan, IPS, former Secretary, Home Department and with Smt. Ila Pathak, AWAG as consultant. There was a consensus that to end the high level of crimes against women and to provide a gender just social and legal environment and effective redressal, mechanisms would need the concerted efforts and partnership of government and civil society organizations.

Context

The Gujarat State Gender Equity Policy (draft) was placed before the Cabinet in July 2004 and on the suggestion of the Cabinet for wider dialogue and dissemination, the DWCD and Gender Resource Centre (GRC) held consultations on various government departments including Rural Development, Health, Education, Information & Broadcasting.

In the last of the series of consultations on the thematic sections of the Gujarat State Gender Equity Policy (Draft), sections on the Legal Environment (7.7) and Violence (7.4) was opened up for discussion judges, prominent lawyers, representatives of legal institutions, issue based networks and gender experts and NGOs involved in legal support to women. A distinguished panel consisting of the Chairperson - State Commission for Women, Secretary - WCD, Secretary - Legal Department and chaired by Ex Chairperson of Law Commission, Gujarat, Justice A.K. Trivedi steered the lively discussion.

According to Ms. Preeti Oza, Director, GRC, the disturbing gap between the impressive economic growth made by Gujarat and the persisting low social development indicators and regional imbalances highlighted by the Human

Development Report for Gujarat, had pointed to the need to view gender and development at two levels: human rights and socially just practices.

Introductory Session

Addressing the issues linked with low social indicators made it imperative that we contextualize it in terms of governance and hence how gender can be integrated into the planning perspective, Ms Anita Kanwar, Secretary in charge, DWCD emphasized. Since policy was key to planning, the attempt has been to ensure the enactment of a gender policy in Gujarat which was lagging behind since even BIMARU states had enacted state gender policies. Equality, participation, involvement of civil society and changing mind sets should inform the basic approach of such a policy for Gujarat. The involvement of civil society was most significant. To ensure that programs were citizen centric and gender sensitive was a challenge, as evident from trainings conducted by SPIPA, Ms Kanwar stated.

That policy should be based on the principles of fairness and equity with regard to gender issues is stressed in the Constitution in the Directive Principles of State Policy. Although these are directives, not enforceable in court of law, they supplement fundamental rights in achieving a welfare state and is, in fact, fundamental to governance. Therefore, it was obligatory for the state to apply these principles while making laws, Ms. Bela Trivedi, Secretary, Legal Department, held.

Article 39 which outlines the policy principles which have a bearing on gender issues and achieving a welfare state also lay down principles of equal justice and free legal aid for ensuring justice, humane conditions of work and maternity reliefs. These and the amendments made in Cr. P.C. in 2005 by Parliament need to be incorporated and with the recently enacted Protection of Women from Domestic Violence Act on this issue. Also, since 'Family Law' fell within the ambit of the concurrent list of seventh schedule, state policy should stress the need for laws on succession, inheritance, divorce, maintenance, adoption, guardianship that was gender just. While the Supreme Court judgment and directives on the issue of sexual harassment at work place was path breaking, but a law is yet to be enacted.

Ms Trivedi also suggested the setting up of a mechanism for compensation to women who suffered rape, through the Criminal Justice Compensation Board as suggested by the Supreme Court judgment in two cases. Laws also needed to be strengthened to end traffic in human beings, forced labour and to rehabilitate children engaged in hazardous work.

The Chairperson of the newly set up Gujarat State Commission for Women (SCW), Smt. Shobhanaben Patel sought support to protect women's rights in the state and to play an effective role. Jyotsnaben, Member Secretary, GSLSA, spoke of the state, national, international perspective on rights for women and the need for training all sections from the lower level officials to civil society groups.

Thematic Session

Prof. H C Dholakia, ex-member Gujarat Law Commission, although not physically present, in his paper, held that policy should strengthen gender aspects in the legislative framework to ensure gender justice and access to competent legal aid and support. The judiciary and the police as custodians of law and rights should complement the role of other institutions for building a gender just society. Setting up of a Committee of legal experts, sensitization workshops and special women's cells in the state legal service authority and at district level were some of the other suggestions.

The overall panel presentations clearly pointed to the ineffectiveness of law and legal controls in realizing the human rights standards guaranteed to women under the Constitution and international treaties such as CEDAW and Universal Declaration of Human Rights. This made it more important for all stake holder to come together to ensure that these standards are incorporated into the legal systems and are supported by a policy, programmes and mechanisms and resources to facilitate effective implementation.

GEP - Main Provisions of Legal Sections, Presentation

The two thematic sections on Legal Environment (7.7) and Violence (7.4), in the draft Gender Equity policy, placed for discussion through a power point presentation by Nupur Sinha and Anuradha of Centre for Social Justice (CSJ), covered a wide range of issues concerning women including economic rights, work environment, health, violence, governance, property rights, marriage, adoption, sex-pre- selective abortion and pre-natal tests. This also underlined the indivisibility of women's rights. Looking at gender as a social construct and upholding the constitutional guarantee of equality and the principles that frame the international treaties to which India is a signatory, such as CEDAW, the action points suggested looks at existing laws that need amendment/deletion/and new laws that are necessary.

Unequal and low wages for women, discrimination in government supported programmes, lack of mechanism for determining similarity of work between men and women were identified as areas of concern for women at their workplace. The changes suggested included making responsible officers personally liable, setting up a board to determine similarity of work between men and women, appointing NGOs to look into complaints of workers, increasing maternity benefit, an establishment needs at least ten women employees. There was also the need to revise the benefit rate of Rs 10 per day. Amendments suggest inclusion of home - based and informal sector women workers, a change in definition of employer and maternity benefit not lower than the minimum wages.

To strengthen governance, equal representation of women was a prime condition. To widen women's representation in public bodies, amendments have been suggested in the Gujarat Municipal Finance Board Act, Gujarat Tribal Development

Corporation Act, Gujarat water Supply and sewerage Board Act, Gujarat State cultural performance licensing board, Gujarat civil services Tribunal Act, Gujarat Co-operative societies Act, and all other statutory Acts. In the procedure for recovery of taxes under the Gujarat Panchayat Act, tendering the bill to 'some adult male' if the person to whom it is addressed is not present, needed to be changed by deleting the word 'male' so as to give women an identity in the law.

Changes in procedural aspects, in the Family Courts, covered areas of concern such as the adversarial system of justice administration that was not appropriate for handling family disputes, matrimonial disputes viewed as criminal, compromise as promoted as dispute solution. The changes suggested include the implementation of the Act to the entire state rather than being based on the demographic profile of a district. It should have jurisdiction over matters concerning adoption and proceedings under the Muslim Women (Protection of Rights on Divorce) Act. Preferably women judges should be selected who have experience of handling family matters. The panel of counselors should be selected from women's groups working on the issue and matters should be referred to court if counselors do not succeed in bringing about a settlement. Lawyers may be allowed at the adjudicating stage of the case. A legal aid cell needs to be set up at the entrance of the family court. The family court should be in the vicinity of the courts. A time frame of six months be set for disposal of cases and the proceedings should be in camera.

Amendment in section 160 of the CrPC for female victims of sexual offense, include the suggestion that the complaint/statement be recorded by a women police officer/women officer present in the vicinity/ a women authorized by an organisation working on women's issues. Statement be recorded at residence and ensure that the victims is not harassed by the accused, victims right to a private lawyer and immediate medical examination of the person accused of rape, are other suggestions. To strengthen women's economic security, change was needed in the archaic laws that prevailed and in the judicial interpretations that were generally not gender friendly. The changes suggested included the consideration of women's social income (not potential earning capacity) in fixing the maintenance coasts. If the wife was unable to prove her husband's income, a minimum limit needs to be specified and interim amount should also be specified and the payments made to the court. The employer of husband should directly deduct the maintenance amount from salary to ensure regular payments and the order should be applicable from the date of application. If adultery is used as defense against women for non-payment of maintenance and this charge is not proved, then a fine should be imposed. The rights of the second wife should also be ensured. There was a need to recognize irreversible breakdown of marriage as a ground for staying away from the husband.

The issue in terms of women's rights to matrimonial home and property where the lack of alternative place for women who face violence and the non-recognition of women's household work in maintaining the matrimonial home, the changes suggested included recognition of women's right to matrimonial home, joint ownership of property in lease/ allotments by government/ property acquired by

couple after marriage, change in Hindu marriage Act and special marriage act on recognition and distribution of matrimonial property and empower the magistrate to issue a restraint order.

The adoption laws were discriminatory and only Hindus could adopt under the existing laws has been areas of increasing concern over the years. Hence, the changes suggested focus on the equal right of spouses to give/take in adoption. Also included was the need to introduce a new act to cover adoption so that members from other communities / religions could adopt as was done in Maharashtra. Guardianship too, being discriminatory, it was suggested that mother have the same right as the father. Amendment in section 7 of the Hindu marriage act to include adoptive parents and adoptive girl child, both parents have a right to the exclusion of others, court should be authorized to appoint guardian for minor married girl. In the area of custody, the mother's lower economic status should not be a valid reason for denying custody, if the father re-marries, the mother had a preferential right if she is willing, if both the parents re-marry, custody should be joint responsibility of parents, in case of the mother's death, the maternal grand parents could ask for custody, the sex of the child should not be sole determining factor while deciding custody.

With regard to restitution of conjugal rights, there are provisions which violate right to personal liberty. These provisions should be deleted from all acts and section 13 and 27 of special marriage act be amended by reducing number of years from seven to two. Amendments in the laws concerning rape has been a long standing demand of all those concerned with gender equality and changes should expand the definition of rape, recognise marital rape, increase the age of consent to 18 years, add provision to ensure that body marks are not critical as proof and that aggravated sexual assault should include prohibited relation, minor, guardian, employer. Also suggested was that a women's character should not be relevant in the cross examination, trial be held in camera, a victim rehabilitation fund be set up, section 155(4) of the India Evidence Act that allows evidence on immoral character of women should be repealed.

In the case of the Infant Milk Substitute, Feeding Bottles and Infant food Act, it was of concern that only four voluntary organisations were authorized to approach court in case of violation of any provision of law. In the context of the growing gap in the child sex ratio in Gujarat, and pre-sex selective abortions practiced widely and increasingly, the Supreme Court had recommended that the central government be directed to create public awareness against pre-natal determination of sex. The central supervisory board also do the same as under section 16(iii) of PNDDT act. The board should also review and monitor the implementation of the Act. The Board should further examine the necessity to amend the Act keeping in mind emerging technology and difficulties encountered by the PNDDT Act, 1994. The areas of concern included the issues of 'license' which is 'deemed' to have been renewed if appropriate authority fails to renew the certificate of registration or to communicate rejection within period of 90 days. No mechanism such as, spot or periodic check by

inspectors or persons authorized in this respect have been provided for. It was imperative that regular mechanism be set up and the provision on deemed renewal of licenses must be done away with.

In the area of Indecent Representation of Women Act, there was the problem of stereotyping women within definitions. Here, it was suggested that the offender should bear the cost of litigation, section 58 be amended to make offence non-cognizable, complaints should be disposed within six months, details of offenses be published, given wide coverage through electronic and cyber media and effective implementation should be ensured.

With reference to sexual harassment at workplace, an act should be based on the guidelines laid down by the supreme court in the Vishakha case, provide punitive measures, fix time limit for completion of proceedings, set up committee to ensure compliance of law. The Bombay Court Fee Act should exempt women from court fee, reduce and penalty should be given to touts who falsely register innocent girls marriage.

To end the projection of women in an undignified manner, obscenity should be covered as a factor for licensing by the Gujarat State Cultural Performance Licensing Board. It should be ensured that plays are not derogatory to women and the board should have 50% representation of women as well as power to withdraw license.

Areas which need attention were specified with concrete suggestions made for changes. These include the Registration and Tenancy Act to increase women's control and ownership of land, property and other common property resources and registration of land and property under the joint ownership of wife and husband should be promoted. Also, changes in the Panchayat Act should ensure a mandate of one third presence of women of quorum in gram Panchayats and gram sabhas, create information support centres so as to enable women to file nominations, create a women's empowerment fund that is accessible to elected representatives and women's participation should be actively promoted in public decision making bodies. A fund should be set up to support SHGs and women's co-operatives and enable them to initiate economic activities and for this change need to be made in the Co-operative Act and Rules. Changes should also be made in Acts/Rules which specifies formation of public bodies so that membership of village institutions/management committees be made open to both men and women instead of the household as a unit.

The need to develop statutory and procedural framework was stressed so that domestic and home based workers are registered and they can then be entitled to receive social security support. So, changes need to be made in the Acts concerning labour, workmen and compensation. Registration of death and birth has been a long standing concern and so system should be developed to ensure 100 per cent registration of births, deaths, marriages and should involve PRIs, ICDS functionaries

and other involved in data collection and they must all undergo gender sensitization.

Regulation of advertisements on baby food, tinned/processed food should be ensured so that nutritional messages and healthy food habits are encouraged. The protection of water and sanitation issues should also be put under the consumer protection Act. Amendments should also be made in laws related to agriculture, irrigation and watershed and other related societies to include both husband and wife as equal members with full voting rights. Gender balance should be ensured within joint forest management programmes. In this context, it was important to reconstitute the state level working group on JFM to include gender representation. Forest protection committees should also include 50 per cent representation of women as a great deal of subsistence activities of women involved in forest resources. All encroachments on common property resources should be removed and women's group should be entitled to develop and manage the same. Clear guidelines were also needed for developing and mangling fodder bank grassland and mangroves and women's groups and PRIs should have an active role in the same.

Violence against women in Gujarat has been the focus of sustained campaigns. Institutional mechanisms to provide legal and other support to women in distress have been the focus owing to the weakness in the laws and the criminal justice system. The rates of conviction too are low. To make the law more sensitive to women and in enforcing laws to curb or deal with violence has made little progress and has caused immense suffering to women in that they do not have adequate legal or other forms of redress. Laws also do not cover the wide range of violence that women face.

Registered crimes against women have shown a decrease in 2000 as compared with previous years although rape incidences had increased. Incidences of crimes under special laws was shown to be low and there was also a decline from 4.9 per cent in 1999 to 4.3 per cent in the contribution of Gujarat to total number of crimes committed against women in India.

It was suggested that women specific offences be segregated and focus should be on the same. Crime under section 498A and suicides were major areas of concern. Increased stress was laid on better investigation, gender sensitization of all levels of police, prosecution and judiciary. Special courts should be set up to deal with crimes against women, counseling centres should be encouraged and legal aid provided to women in distress. Increase in the all women police stations now only 6, to cover each district, its officials trained at basic level and in service levels, roles of these should not be confined to counseling alone, are suggestions. If a complainant insists, her complaint should be registered and there should be pre-registered counseling as well so that the concerned women is aware of the implications of the choices she makes. The concerned women is aware of the implications of the choices she makes.

The counseling centres should be located at Commissionerate and district headquarters.

The action points related to gender sensitization of police including PSO, curriculum changes, clear awareness of people that their role was to file complaints and not counsel. Counselling should involve NGOs and social workers who are more aware of the issues involved. Better monitoring system to be in place while filing charge-sheets, co-ordination between Public Prosecutor and police during trial, more information and research on unnatural deaths at home and role of police in cases under section 498A should be heard within specific period while tests/formats need to be devised for post mortem and injury reports as per the recommendations of the National Human Rights Commission.

The recommendations on structural and institutional changes include maintenance of well managed shelters for women in distress at Taluka level to begin with, setting up of at least one working women's hostel also at taluka levels. Social workers as part of all police stations, legal aid to be activated at the taluka and district levels and these need to be linked, creation of special cell, within legal aid centres, for women's issues and setting up of separate criminal courts to handle cases of violence against women. Special public prosecutors were also needed to look into cases of violence against women as also a hotline, which was toll free, for women in distress. Pre - printed formats for lodging complaints with separate recording to crimes against women should be supplied to the police. The data should be computerized and submitted to commissioner, women and child development of the State Commission for Women and be available to the public. Women should have adequate representation in all implementation in all implementing machinery. The physical atmosphere in the court should be more conducive, family courts Act should be enforced and procedures in courts should be strict so that cases are disposed speedily. A 24 hour domestic violence cell should be created and a three tier monitoring system developed with more public participation.

Feedback Session

While some of the issues raised during feedback on the existing provisions of the draft policy were already part of the draft policy, several concrete suggestions were added. Dr Leena Mehta, Reader, M S University, Vadorara, suggested that modifications were needed in view of provision for adoption in chapter IV of the Juvenile Justice Act -2000(Amended) to cover protection of children. There was also the need to add provisions to the Immoral Trafficking of Women and Children Act, taking into consideration points made by the Government of India report on 'Trafficking of Women and Children in India, Challenges and Responses, 2004. Also to be added was the Juvenile Justice (Rules) giving attention to abandoned newborns, in particular the girl child that comes under the category of children in need of care and protection. Ilaben Pathak of Ahmedabad Women's Action Group (AWAG), spoke on the need for the State Women's Commission initiating a dialogue on the two-child norm that was passed by the state legislature, although this

contradicted the population policy of the state. There was also a need to debate the issue of prohibition

Family courts came in for criticism in terms of its environment that was far from being gender friendly, women approaching the same not being aware of the procedures, need for lawyers to be allowed in the Family Court, need for special training of family judges. The maintenance for separated women must be enforced strictly and Adv. Piyush Jadugar suggested that the warrant to the husband must include that he begin the first installment at first hearing itself. Recommending such procedural amendments must be done. In the High Court, there was a lack of lawyers who could put up quality arguments, executive magistrates need to be well trained to record dying declarations. There was no platform to put across what was happening at the ground level, according to Ami Yagnik. Also suggested was the role of informal redressal mechanism such as Nyay Samities that had emerged in Women's federations and partnership with state institutions so that there is more effective delivery of justice at the grass root level.

Ms Anita Karwal, In-charge Secretary-WCD, added that time frame for the Action Points need to be more specific and there should be linkages between responsible agencies. There was also the need to make people more aware of the rights that exist under the law and the Right to Information Act facilitates such information. Under the Bombay Police Act, individuals with a background of merit could counsel on behalf of the police and this can be considered. There was a need to look at the construction pattern of jails, anganwadis, PHCs, etc so as to ensure a gender sensitive environment. Each department should place before the State Commission for Women, if not the Vidhan Sabha, report of the work done.

Concluding Session

Justice Trivedi, who chaired the consultative meeting, gave his expert comments suggesting that a legal monitoring committee be set up and put under the State Women's Commission and periodic review of reports be put before the Vidhan Sabha with recommendations. Women's security was important and the law should be scrutinized in that context. To make the policy a success and have an impact, monitoring on the implementation was crucial and specific reports should be placed before the government, from time to time.

Ms Preeti Oza, Director-GRC, in her concluding vote of thanks stated that GRC would play a role in setting up platform for dialogue. It would take serious note of the thinking, analysis and suggestions of the legal fraternity and civil society groups and experts and would play a proactive role in moving the policy to ensure gender equity and equality.

The animated discussion continued over lunch.