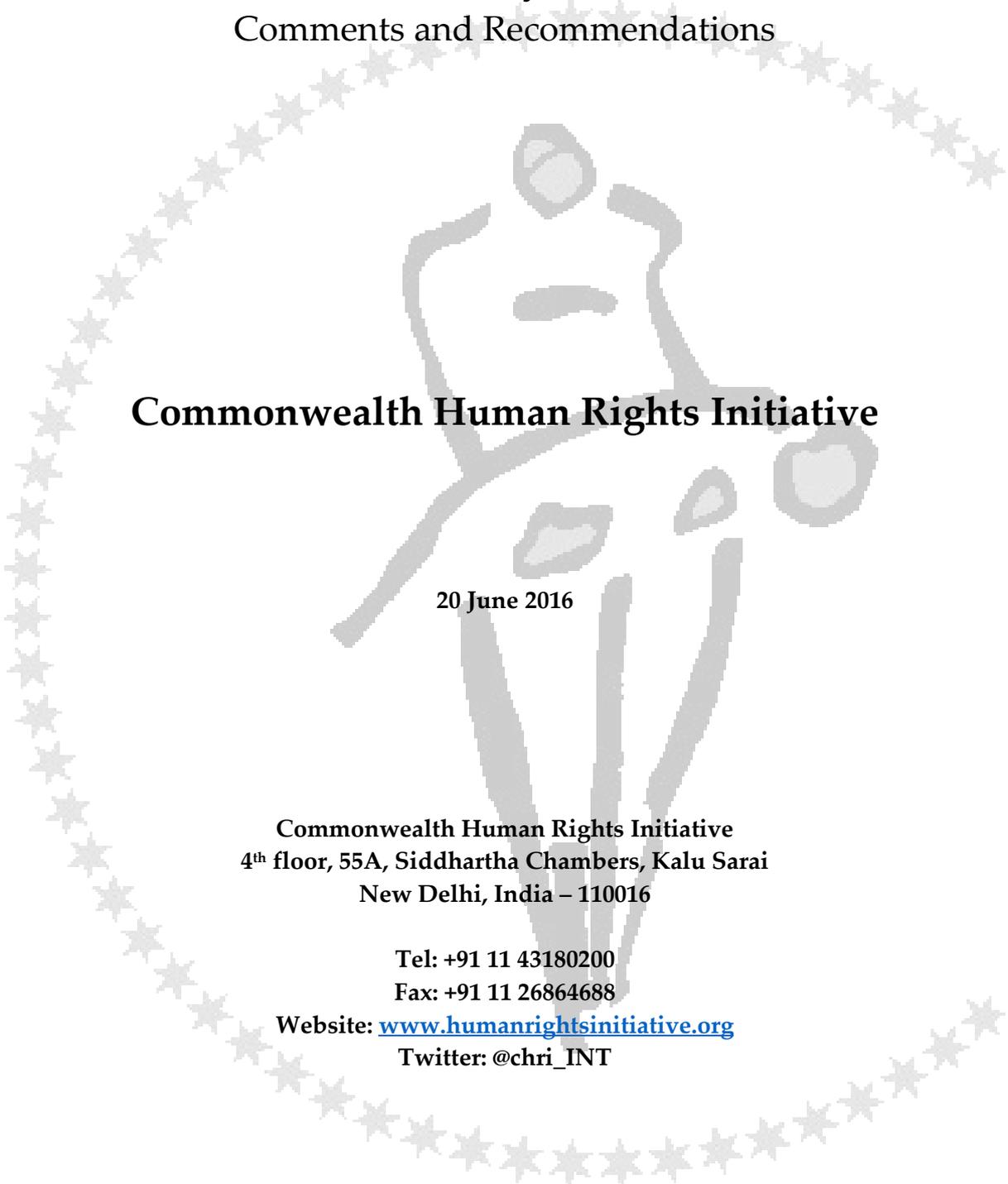


Draft National Policy for Women 2016
Comments and Recommendations



Commonwealth Human Rights Initiative

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Commonwealth Human Rights Initiative is an independent, non-government, international NGO working for the practical realisation of human rights in the countries of the Commonwealth.

INTRODUCTION

The following submission provides comments and recommendations by the Commonwealth Human Rights Initiative (CHRI) on the Draft National Policy for Women 2016. CHRI is an independent, non-governmental organisation working towards the practical realisation of human rights across the Commonwealth. Our main areas of work are Access to Information, Access to Justice (encompassing police and prison reform), and Human Rights advocacy. Much of our work relates to men and women equally and is underpinned by a gender neutral perspective, but we believe fully that gender equality must be mainstreamed into all aspects of government policy making.

We welcome the strong effort by the Ministry of Women and Child Development (MoWCD) to draft a policy framework towards this very goal, and commend the Ministry for inviting comments on the draft policy through a transparent process. The national policy as a set of principles seeks to provide policy direction towards securing “equal rights and opportunities for women in the family, community, workplace, and in governance”. This is a wide remit, making it all the more important that the policy truly mainstreams rights and equal opportunities for women across all folds of society and areas of governance. We appreciate the positive measures proposed to further women’s health and development.

We note, however, that certain pressing issues are not substantively addressed in the framework. To begin with, CHRI believes that the national policy needs to articulate a set of clear guiding principles. At present, these can only be gleaned through other sections. The national policy will serve as the generic policy framework to guide sector-specific policy documents and thus needs to ensure that sectors are able to integrate the principles easily into their framework. At the minimum, we recommend that the policy recognizes persistent discrimination against women as a deficit of democracy, holds the goal of women’s empowerment as necessary not only to “contribute to the development process” but equally as necessary for strengthening democracy in India, and lays down a clear set of guiding principles which underpin all policies and targets laid down.

More specifically, the issue of women’s access to justice - the distinct difficulties they face amplified by systemic barriers that impede their ability to avail justice – have not been holistically addressed. In fact, policing – the urgent need for both gender equality within police departments as well as a more gender-sensitive police response to women – is left out altogether, despite its centrality to securing justice for women. CHRI strongly believes that no meaningful change is possible on the ground without addressing women’s vulnerability in availing justice. The ability to stand up for one’s rights, challenge discrimination, avail legal remedies and demand accountability are all central to realizing the goal of women’s empowerment. This will not be possible until police organizations that are the first port of call for any victim are fundamentally reformed.

Our submission points to urgent measures that must be taken to improve policing towards being accessible and trusted by women, and contribute to improving women’s safety overall. CHRI has been campaigning for police reforms for over 15 years and is recognized for its work on legislative reform as part of the Soli Sorabjee Committee that formulated the Model Police Act 2006, and more recently the Ministry of Home affairs constituted committee mandated to review the 2006 Model

Police Act. More recently, we conducted a study on the status of women police in South Asia¹ which provided a detailed assessment of their experiences, the challenges they face, and the larger institutional cultures and environment they work within. The report highlights gender discrimination within police institutions and recommends measures to repair it. CHRI champions the inclusion of women in policing both as a harbinger for broader reforms in policing that can fulfill modern mandates, and for facilitating access to justice for women. It is this body of work that informs recommendations we put forward in this submission. We first emphasize the need to include access to justice as a separate priority area and then proceed to give recommendations under specific chapters relating to our work. We hope our recommendations will help shape a more specific and an all-inclusive national policy.

GENERAL COMMENTS

Access to Justice as a Priority Area

The national policy does not sufficiently recognize the deficits of the criminal justice system in protecting and responding to women. Women face distinct difficulties in accessing justice which hinders the realization of all their rights, be it social, economic or political. Facilitating women's access to justice is, therefore, key for women's empowerment. Yet the policy only makes scattered references to issues central to access to justice such as legal empowerment (point 1.7), legal awareness and legal aid (both covered under 7.4 (v)). There are varied factors, social and systemic, impeding women's access to justice including a dominant patriarchy, lack of awareness among women of legal rights and remedies, insensitive and unaccountable policing, and judicial processes stacked against women in every way. Moreover, barriers facing women vary considerably. Marginalised sections such as tribal, Dalit, and migrant women, for instance, face additional pressures based on their circumstances and merit special measures.

Tackling these barriers requires a holistic, multidisciplinary approach. **A recognition in the national policy of the distinct vulnerability of women in accessing justice will provide the right perspective to the government for taking effective and practicable measures. It will ensure that the goal of accessing justice underpins all other measures for implementing women's rights on the ground. It will further serve as a catalyst for broader legal and systemic reform in the criminal justice sector.** A comprehensive blueprint was laid down by Justice J. S. Verma Committee in its report on the legal framework governing sexual offences against women published in January 2013.² The national policy must reinforce the recommendations put forward by the Committee and push for their earnest implementation. At present, there is a severe lack of comprehensive objective data that pinpoints the difficulties women face in accessing justice. Without such data, it is impossible to accurately identify problems and key areas that need solutions.

CHRI recommends

¹ Commonwealth Human Rights Initiative, *Rough Roads to Equality: Women Police in South Asia*, 2015: <http://www.humanrightsinitiative.org/download/1449728344rough-roads-to-equalitywomen-police-in-south-asia-august-2015.pdf>.

² Report of the Committee on Amendments to Criminal Law, January 23, 2013: <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>.

- That access to justice be included as a separate priority area in the national policy as a recognition of its centrality for women's empowerment;
- That the national policy recognizes the distinct vulnerability of women in accessing justice;
- That the national policy puts forward a holistic framework to address social, economic, cultural and institutional barriers for women's access to justice;
- That the national policy articulates the roles and minimum duties of each criminal justice actor to assure lawful access to justice for women and ensure that professionals of justice system handle cases in a gender sensitive manner;
- That central and state governments be urged to develop independent and effective mechanisms to observe and monitor women's access to justice;
- That the recommendations of Justice Verma Committee are closely monitored by the national and state level committees constituted under Section 7 of this policy.

CHAPTER 5: PRIORITY AREAS

IV. Governance and Decision Making

This section deals with steps towards achieving increased representation of women in political life and decision-making. *First*, CHRI believes that this section does not adequately cover all state institutions. There is no mention of the police, for instance. This is a significant gap. While all state institutions in general are obligated to take steps for realizing the constitutional guarantee of equal opportunity under Article 16, the police in particular need to take urgent steps to improve gender diversity. Criminal law assigns a central role to women police officers while arresting and searching females and in response to crimes against women. Effective implementation of these statutory duties will require far more number of women police, foremost at the police station but ultimately at all levels, than currently available. Moreover, better policing, which is critical for facilitating access to justice for women, will only be possible when policing is informed by distinct skillsets and lived experiences of women, and enjoys wide public trust due to visibly improved diversity. **We recommend that the language in this section is made clearer to ensure no state authority is exempt from the obligation of improving gender diversity, and that a specific mention be made of increasing strength of women in policing.**

Second, while CHRI welcomes the emphasis on setting targets for women's representation in governance institutions, we strongly believe that numbers alone are not sufficient. Data shows that women are consistently under-represented at senior levels of decision-making. In the police service, for instance, women police constitute 6.44 % of the total police strength; of this, nearly 90 % are at the constabulary.³ There are multiple causes for low representation of women in governance institutions,⁴ but their underrepresentation at decision-making positions points to an institutional bias rooted in traditional gender roles and stereotypes and compounded by lack of support for balancing care

³ Ministry of Home Affairs, Bureau of Police Research and Development, Data on Police Organizations in India as on 1.1. 2015. While the 2015 report had been made available on BPRD website, it is no longer visible on their website.

⁴ CHRI recently published a report titled *Looking Into the Haze-A National Study on Monitoring of Jails in India (2016)* that addresses monitoring of Indian jails and recommends equitable representation of women in the Board of Visitors (BOVs). The BOV is made up of Ex-Officio area functionaries from the Judiciary, Police, Department of Medical and Health, Agriculture, Industries, Social Welfare, Employment, Education and Probation and Non-Official Visitors who are lay people selected from local society for periodically inspecting jails. The study found that only 13 states have a gender criteria for appointment but even that is limited to 33% representation which, too, is followed in only 4 states. See <http://www.humanrightsinitiative.org/download/1466407883Looking%20into%20the%20Haze.pdf>.

responsibilities with professional obligations. To identify solutions, the national policy must recognize the need to find ways to frame the extent of institutional bias and push government institutions to root out discriminatory practices by way of mainstreaming women.

We wish to make a brief point in relation to reservations for women in public institutions. While we certainly support the underpinnings and objectives of reservations as a policy mechanism to infuse greater numbers of women into institutions, there is an absence of time-bound rigorous target-setting to fill the quotas set with required regular reporting on progress made as well as strategies employed. In many cases, this reduces reservation to a simple cosmetic exercise that does not achieve demonstrable impact on the ground. We suggest the national policy addresses this lack through a concrete recommendation. Also, we recognise that 33% reservation for women is the general standard and there is guidance, among some government departments, on how to meet this standard. Our concern, exemplified by snail pace representation of women even in police departments with reservation in place for decades, is that it is taking inordinate time to even achieve 33%. While we realise this is perhaps out of the remit of the national policy such as this, we believe equal opportunity can only be realised if women are rapidly seen at all levels of each government department where, in terms of representation, there is no more than 60% of any one gender across the board. We simply would like to flag this for the Ministry's consideration.

CHRI Recommends

We recommend that following provisions be added in the governance and decision making section.

1. All state institutions, statutory bodies, civil services and the judiciary must establish the quantum of lack of women at each level of each institution and lay down incremental time-bound targets for increasing women's representation at all levels.
2. All state and UT police departments are directed to frame time-bound targets to achieve *at least* 33 %representation of women as laid down by the central government. Emphasis must be laid on
 - i. ensuring presence of three Women Sub-Inspectors and ten women Constables in all police stations as laid down by the Ministry of Home Affairs advisories⁵;
 - ii. ensuring geographical, class, caste, religion, and ethnic diversity while increasing women's representation to avoid predominance of any single group;
 - iii. providing equal opportunities to women for all police work based solely on capability and merit;
 - iv. improving working conditions for women personnel and ensuring non-discriminatory promotion procedures.⁶
3. State institutions are urged to review their existing policies and practices to ascertain underlying gender bias and accordingly formulate a comprehensive gender policy which will guide the process of increasing number of women employees and ensuring equal and meaningful participation. The policy will
 - i. lay down a clear target in terms of the desired gender ratio within the institution, in commensurate with the National Policy for Women;

⁵ Government of India (2013), Ministry of Home Affairs, D.O. No. 15011/21/2013 – SC/ST – W:
http://mha.nic.in/sites/upload_files/mha/files/AdvisoryWomenPolice-290513.pdf.

⁶ For detailed recommendations on women police, see CHRI's report *Rough Roads to Equality: Women Police in South Asia* 2015.

- ii. specify measures to achieve the target including increasing recruitment of women at all levels, addressing discrimination, providing women-friendly infrastructure and facilities, allocating necessary funds and instituting monitoring mechanisms.
4. State institutions must report to the concerned committee at the national and state level established under section 7.2 in the national policy on progress and strategies employed to reach the target for increased women representation.
5. State institutions must ensure full compliance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

V. Violence Against Women

This section deals with measures for combating violence against women. CHRI believes that the policy does not sufficiently address the role of police. The police have a great role to play in the response to, and prevention of, crimes against women. The police are the first port of call in the criminal justice system for victims, and it is with the police that the system's response begins. But there are multiple problems when it comes to police response to women. Very often, women complainants are subjected to scorn and humiliation at the hands of police officers who show a lack of sensitivity to their concerns and refuse to register sexual offences. Investigations are often riddled with loopholes and weakened by prejudice.

Any policy measure on violence against women that fails to recognize police ineffectiveness and how it perpetuates insecurity among women will not yield results on the ground. It is imperative that a clear message is sent from police leadership that every police officer, no matter how overworked or stressed, is sensitive towards crimes against women. Police officers must be made to understand the extraordinary courage that is required of women to report sexual crimes, deal with the trauma, and persist through the legal process. In practical terms, there must be a demand for the highest standards of police investigation of gender-based crimes in terms of collection of evidence (forensic, medical, written), preservation of crime scenes, collecting statements; and no tolerance of police collusion or alliances with suspects or accused persons.

Steps have been taken to address the problem. Section 166A of the Indian Penal Code (brought in through the Criminal Law (Amendment) Act 2013) penalises refusal to register complaints of sexual offences; yet there are hardly any instance of police officers being prosecuted under this Section. Lack of proper enforcement and close monitoring of this provision remains a significant gap. Despite the presence of several Ministry of Home Affairs (MHA) advisories on "Crime Against Women",⁷ compliance across states remains poor. Some police departments, for instance Delhi Police, have issued guidelines on investigating cases of rape, but concerns remain on steps taken to train Investigating Officers properly and monitor the implementation of the guidelines to ensure no officer gets away with any wrongdoing. It is important that the guidelines develop lay down clear consequences for the police officer ignoring or violating provisions detailed in the guidelines.

⁷ These include: Ministry of Home Affairs, Government of India, Advisory dated 5 May 2004, File No. 15011/21/2004-SC/ST Cell: <http://mha.nic.in/caw>; Advisory dated 4 September 2009 F. NO.15011/48/2009-SC/ST-W: http://mha.nic.in/sites/upload_files/mha/files/pdf/AdCrime-Agnst-Women170909.pdf; Advisory dated 22 April 2013 D.O. No. 15011/21/2013 – SC/ST – W: http://mha.nic.in/sites/upload_files/mha/files/AdvisoryWomenPolice-290513.pdf; and Advisory dated 5 January 2015 15011/72/2014 – SC/ST – W: http://mha.nic.in/sites/upload_files/mha/files/CrimesagainstWomen0601.PDF.

CHRI recommends

We recommend that police response and operational readiness is covered as a sub-section within Violence Against Women as follows:

1. Strengthening the protection of women against crime and violence, first and foremost, requires fundamental, holistic and systemic reform of the police. Only then will other special measures to improve police response to violence against women yield effective results. Improving meaningful compliance of states/UTs with Supreme Court directives on police reforms⁸ will be given priority in order to transform policing into a citizen-friendly, efficient and accountable public service.
2. Emphasis will be laid on ensuring compliance with Ministry of Home Affairs (MHA) advisories and Standing Orders on crimes against women.
3. Police departments will be encouraged to adopt processes that will enable regular tracking of safety concerns among women and level of crime victimisation on the basis of which operational decisions, such as allocation of police personnel and resources, may be taken. This should be done on a periodic basis to ascertain trends and reassess policing priorities. Data gathered should be systematically recorded, accessible to all units within a department, and made publicly available.
4. Emphasis will be laid on developing specific operational step-by-step protocols on the police response to, and investigation of, crimes against women, namely rape, domestic violence, molestation and sexual harassment, where needed. These should be placed in the public domain.
5. Steps will be taken to put in place mechanisms for regular monitoring of police response including accountability provisions effected through the Criminal Law (Amendment) Act, 2013, including cases registered against police officers under Section 166A and their outcomes in court.
6. In order to facilitate access to justice for women, emphasis will be laid on reclaiming police stations as spaces of public utility and designing them such that they are accessible to women. Steps will be taken to:
 - i. Provide Women and Child-Protection Desk in all police stations, staffed, as far as possible, by women police personnel, to record complaints of crimes against women and children and to deal with the tasks relating to administration of special legislations relating to women and children;
 - ii. Increasing the presence of women police personnel on the streets.

CHAPTER 7: OPERATIONAL STRATEGIES

7.2 Effective gender institutional architecture

This section elaborates the mechanisms that will be put in place to monitor implementation of the national policy for women. CHRI welcomes the cooperative approach enshrined in the policy through the Ministry seeking active partnership with civil society organizations through the sector-specific sub-committees to be set up under 7.2 (ii). These committees are to have representation from the concerned ministries/departments, national and state commission for women, social welfare boards and representatives of several civil society organizations. While we welcome the move to institutionalise a role for civil society, we suggest that the policy specifies an open and transparent process by which the CSOs will be selected for the sub-committees. We strongly advise against

⁸ *Prakash Singh and Others versus Union of India and Others (2006) 8 SCC 1*

leaving the selection of civil society representatives to nomination by the concerned ministries and departments, as this limits the pool of potential candidates and can politicise appointments. Laying down clear directions for selecting independent candidates will ensure that only suitable and qualified candidates are selected.

CHRI recommends:

1. The national policy develops a transparent process for selecting civil society representatives which must include:
 - i. clear selection criteria taking into account the need to include a balance of skills, qualities, experience and background;
 - ii. widely available information, in Hindi, English and the local language, on the mandate of the Committee and the selection process and criteria is provided in all localities;
 - iii. an open appointment process is devised whereby applications are invited from the public.

7.3. Legislation

This section talks of steps that will be taken for effective implementation of legislations. CHRI would like to emphasise that a special mention be made of the *Right to Information Act 2005* (RTI Act) which is an important tool of empowerment. The fundamental right to seek and obtain information from government is deemed to be a part of Articles 19(1)(a) and 21 of the Constitution. Studies conducted by civil society and annual reports of Information Commissions have shown that the number of women using the RTI Act to seek information from public authorities is abysmally low during the last 10 years. While civil society studies⁹ have pegged it at 8% some State Information Commission reports¹⁰ have reported much lower figures. Section 25 of the RTI Act mandates the Government at the Centre and in the States and Union Territories to develop training programmes for citizens to educate them about the procedures for seeking and obtaining information from the public authorities. This provision lays particular emphasis on educating the disadvantaged segments of society.

There is very little information in the public domain about the special efforts made by the Central Government, in particular, the Union Ministry of Woman and Child Development and their counterpart departments in the States and Union Territories to mainstream RTI into their numerous training and empowerment programmes for women and girl children. It is recommended that the Governments allocate resources for educating women, in particular those belonging to the dalit, adivasi and minority communities, widows, women working in the unorganised sector and those who are heads of their households, commercial sex workers etc. on a priority basis about their rights to seek and receive information under the RTI Act.

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⁹ RTI Assessment and Advocacy Group and Samya, Centre for Equity Studies, *Report: Peoples Monitoring of the RTI Regime in India: 2011-2013*, October 2014: <http://nebula.wsimg.com/93c4b1e26eb3fbd41782c6526475ed79?AccessKeyId=52EBDBA4FE710433B3D8&disposition=0&alloworigin=1>.

¹⁰ Chhattisgarh State Information Commission, Annual Report 2013: http://siccg.gov.in/annual_report/2013_AR.pdf.