

Chapter Five: Comparative Analysis

In order to address the question of when and why states respond to women's claims making, in this chapter, we compare the processes of claims making by groups on domestic work and anti-rape laws at two levels: between the subnational and national levels on a particular issue, and between issues.

5.1 The Research Hypotheses

Based on Htun and Weldon's framework (2007) as well as the context of our own research, we had set out a series of hypotheses on when and why states respond to women's claims making (see chapter two).

- i. The relationship of actors and the links with certain policy types. Women's movements are more important actors for promoting gender status policies than for class-based policies. Other actors, such as labour unions or left-based parties, are less likely to make gender status issues a priority. Women's movements (which may still have an impact) are less critical for class-based gender equality policies.
- ii. The relationship of state responses and policy types. State responses have tended to focus on specific policy types (violence against women, for instance) but other issues such as women's labour rights and the unpaid care economy, have failed to achieve serious policy traction.
- iii. Influence of international and transnational networks. The influences of international and transnational networks is more likely to be significant in case of issues with little or limited traction with policy change or with more recent mobilisations (such as domestic work) rather than where there are more established mobilisations (violence against women).
- iv. Even within the broad categorisations of issues (violence against women and domestic work), there are some issues that are on the margins (for example, dalit women) where international and transnational networks maybe more influential.

These hypotheses will be addressed in the following sections through the overall comparison between mobilisations at various levels and between issues.

5.2 Comparison between the Claims-Making Processes on Anti-Rape Laws and Domestic Work

Anti-rape mobilisations have had a long history, with the mobilisations taking on a national character in the early days of the Mathura campaign. This has not been the case with domestic worker groups, which have since the 1980s functioned in a more sporadic manner directing their efforts at the subnational rather than the national level. While there has been a growth of domestic worker organisations since the late 1990s, corresponding largely with the growth of the sector and its increasing feminisation, domestic worker mobilisations have gained a national character only in the last six to seven years, a much younger history than the anti-rape mobilisations.

Although there have been persistent and long-standing mobilisations on anti-rape laws over 35 years, changes in anti-rape policies have not always followed the trajectory of the mobilisations in any neat fashion. However, where changes have occurred, these have been on the back of key moments in the history of women's mobilisations. The two most notable and wide-ranging changes in policy have centred on the mobilisations

around the Mathura case and the resulting amendments in the year 1983; and the mobilisations around the Nirbhaya case in December 2012 and the ensuing changes in law with the enactment of the Criminal Amendment Act 2013. However, in the years in between too, there have also been more small scale, but important, changes brought about by persistent mobilisations by women's groups, both through amendments to the law, as well as through judicial pronouncements (for instance, on the use of past sexual history of survivors of violence as evidence in criminal cases, or on the use of the two-finger test to gather evidence in cases of sexual violence).

In the case of domestic work at the national level, domestic worker organisations have come together only in more recent years to demand legislative measures such as a ban on child labour in domestic work. Changes in child labour laws, as well as the inclusion of domestic workers in the Unorganised Sector Workers Act and the Sexual Harassment Act 2013 have been some of the limited, albeit important, gains made by domestic worker groups. At the subnational levels, mobilisations of domestic workers as well as changes to policies have a longer, more sporadic history. Consequently, while gains have been made at subnational levels (for instance, on the inclusion of domestic workers in minimum wage notifications and the establishment of domestic workers welfare boards in some states), both at the national and the subnational levels, claims making by domestic worker groups have not necessarily translated into wholesale changes of policy on domestic work. Currently, the National Platform for Domestic Workers is mobilising for a comprehensive legislation at the national level. The ILO Convention on Domestic Work has also provided the impetus for mobilisations of domestic workers at the international, national and subnational levels.

On the first hypothesis of the relationship between actors and policy type, while it is the case that it is largely women's groups that have mobilised on violence against women (gender status policy type), this does not capture the complexity of the landscape. There are several women's groups such as AIDWA, AIPWA, ANANDI, Women's Voice, SJS, WSS, Jagori and others that straddle the divide between violence against women and redistributive justice, including domestic work. In fact, these are often the groups that have also broadened the question of violence against women from its narrow focus on bodily integrity to include questions of vulnerability to violence based on social and economic disempowerment. Simultaneously, they have also brought in gender-sensitive perspectives in their work on redistributive justice. Moreover, women's organisations themselves have seen calls for inclusion of a different kind, be they from women's groups on the margins (dalit and Muslim women's groups) or sexuality minority rights groups. Similarly, while many domestic worker organisations come from a perspective of labour rights, and do not always seek to transform wider social structures, there are several domestic worker groups that come from an ethos of feminist politics (evidenced by the mobilisations to include domestic workers in the Sexual Harassment Act 2013). However, among most domestic worker groups, violence against women and caste discrimination, even when faced by domestic workers (gender status policy types) are relegated to claims of a second order in comparison with their primary focus on improving the working conditions of domestic workers (class-based policy). In this sense, the hypothesis that certain actors are linked with certain policy types holds water, to a point. Mobilisations on domestic work also destabilise the neat categorisations of actors into women's movement and labour unions, and policies into gender status and class-based policies, given that they straddle both. Moreover, there is a clear sense among domestic worker groups that the issue of domestic work has in fact fallen through the cracks of the divisions between the labour and women's movements: it belongs to neither when it ought to belong to both.

On the second hypothesis—uneven progress across policy types—namely, that policy responses have tended to focus on specific issues types (violence against women, for instance) but other issues such as women’s labour rights have failed to achieve serious policy traction, the research finds that this is largely true, but with caveats. While it is the case that there has been far longer and stronger mobilisation by women’s groups on anti-rape laws, and while policy responses have paid far more attention to questions of violence against women, the outcomes of this attention have been variegated and non-linear. The recent law reform which raised the age of consent indicates that state responses have not been consistently positive. Moreover, issues such as marital rape, recognition of violence against sex workers and the LGBT community, as well as a more robust framework to deal with sexual violence against dalit, minority and disabled women, have not received traction through many years of campaigning. Further, state impunity, particularly in cases of crimes committed by the army and special forces continue to exist as the law of the land.

With domestic work, it is the case that the issue has received far less visibility, attention and even less policy traction. However, even here, sporadic gains have been made over many years of mobilisations, particularly at subnational levels, and more recently at national and international levels. Overall though domestic work is clearly not as firmly on the map of issues to be tackled by policy makers, indicating a difference in policy responses across issue types.

Moreover, using Htun and Weldon’s other classification of policy types—doctrinal and non-doctrinal—while the understanding of doctrinal in terms of a conflict between religious or traditional authorities with the state does not necessarily translate to our context, there seem to be some “citadels of impunity” centred around family, sexuality, community and the state that have been more difficult to shift in policy terms. This is true of both anti-rape mobilisations and domestic worker mobilisations. Marital relations, sexuality (within a heteronormative framework), the gendered and caste-based division of labour and state authority seem to be some of these citadels. Drawing comparisons between the two issues, the domain of the “private”, it could be argued, corresponds to what may be classified (with modifications) as doctrinal issues. In other words, women’s claims, which demand the state’s entry into those spaces that are considered private such as the family, are not easily entertained by the state. So, the claims that challenge the institution of marriage such as the legal recognition of marital rape and the legal acceptance of same sex marriages find an unshifting response from the state. Similarly, claims by the domestic workers movement requiring the regulation of a work environment, which is usually a household—private space—have not always received a positive response from the state.

On the third hypothesis—the influence of international organisations, networks and frameworks—while domestic worker mobilisations have received an impetus by international institutions and networks such as the ILO, WIEGO and IDWN, and international frameworks such as the ILO convention no. 189/2011, there is no neat fit between international influences, local mobilisations and state pressure. The adoption of the Convention and the mobilisations preceding it have definitely spurred and provided an impetus to the mobilisations of domestic worker groups at the national and subnational level. Further, the state has been compelled to initiate the process of producing a Draft Policy on Domestic Work. However, it is also the case that the mobilisations at the national level for a central law on domestic work predate the initiation of the standard setting process at the ILO. Moreover, the Draft Policy remains

a draft, and the Indian state is yet to ratify C189. Even so, the adoption of the Convention have provided a rallying point for domestic worker groups, particularly for more recent mobilisations that have coalesced around a new national level law on domestic work. On the other hand, with anti-rape laws, while women's groups, particularly those affiliated with NAWO, do use international instruments such as CEDAW, women's groups also align with, influence and contribute to international campaigns such as the One Billion Rising campaign and the World Courts of Women. In comparative terms, therefore, international organisations, networks and frameworks have influenced local mobilisations and state responses far more on domestic work, an issue that has received less traction.

On the relationship between international organisations/normative frameworks and organisations working on the margins of claims making on violence, it is the case that dalit women's organisations, for instance, have for publicising violence against them at international forums (such as CERD, CEDAW and the UN Human Rights Council) to visibilise their concerns and to pressurise the Indian state to take these concerns seriously. In this sense, international platforms are perceived by groups as an additional opportunity to highlight the issues concerning the marginalised. However, while this has helped raise awareness of the issue at both a national and international level, at times, the use of international forums have proved costly for marginalised groups, as has been the case with NFDW's participation at the Durban conference. Again, while in contexts of crisis such as the communal violence in Gujarat, groups have relied on mobilisations from outside the state coordinated by both international/transnational organisations and by groups in other Indian state.

5.3 Comparison between Subnational Levels by Policy Type

5.3.1 Comparing mobilisations of domestic workers at the subnational levels

It is clearly the case that domestic worker mobilisations have a far longer history in Karnataka than in Gujarat. These differences are also reflected in the nature and depth of mobilisations at the national and subnational levels with far more organisations in and from Karnataka engaging with a more robust set of claims making with both the employer as well as the state.

In Gujarat, the domestic workers' movement is still in its infancy. There are only a handful of groups that work directly with women domestic workers. As such, mobilisations are largely restricted to skill building for greater employability. In fact, skills training seems to be a prominent focus for groups in Gujarat which are otherwise ideologically very different (SEWA and Saath). There is barely any advocacy in Gujarat targeting policy change and domestic work does not feature in the schedule of employment/work under the state Labour Department. One of the reasons for the lack of claims making directed at the state could be that organisations such as SEWA have only started mobilising domestic workers since the late 2000s, and organisations like Saath, that have been working in this sector for much longer, do not necessarily mobilise domestic workers with a rights framework. Instead, they have engaged with domestic workers from a perspective of entrepreneurship, where skill development, training and placement take precedence over discourses on workers' rights. Further, the issue of domestic work has fallen through the cracks of both the labour movement and the women's movement. The more established trade unions have mobilised only male domestic workers. Moreover, while there are several women's groups in Gujarat that

have a strong ethos in redistributive claims making,¹⁸² the issues of women domestic workers have not been taken up by women's groups in Gujarat. SEWA, which has had a strong ethos of mobilising women workers in the informal economy since the 1970s, and which has emerged from the context of Gujarat—much before many other women's groups sprang up around the country—was also one of the early players to mobilise women domestic workers in other states such as Kerala since the 1980s. However, this organisation has not provided the same solid base for mobilising women domestic workers in its home state till recently. Moreover, the NDWM, which began mobilising domestic workers in the neighbouring state of Maharashtra does not have a presence in Gujarat.

In stark contrast, in Karnataka, there are six sector-specific domestic worker unions and a further two domestic worker unions affiliated to central trade unions. These groups have emerged from a rights framework, and there is a vibrant movement that has resulted in modest gains for Karnataka through the Minimum Wages Act, as well as more significant levels of engagement with wage negotiations and conditions of work. The scene for domestic worker mobilisations in Karnataka was set early on through the establishment of groups such as Women's Voice, which came from a clear perspective of the need for an intersectional caste, class and gender analysis in its work with women in the slums of Bangalore. The involvement of at least a few women's groups in mobilising domestic workers from the early days mark the mobilisations in Karnataka as distinct from Gujarat. The establishment of the first domestic workers union by Women's Voice in the 1980s also provided the framework and template for domestic worker mobilisations that followed in Karnataka: a strong labour rights focus through unionisation. Further, the entry of the NDWM in Karnataka in the late 1990s also provided a strong “national” level organisational focus for domestic worker mobilisations.

Further, owing to the nature of groups, as well as the length of mobilisations, there is also a clear divide between groups in Karnataka and Gujarat on the depth of claims making on domestic work directed at both the state and employers. While in Gujarat, wage negotiations with domestic workers are largely done through the dhanda samitis (SEWA) and placements (Saath), in Karnataka, claims making on wages have been directed at both the state as well as employers. The inclusion of domestic workers in the minimum wage notifications in the state is a result of these efforts. Wage negotiations directed at employers are also rich in their depth, through issues such as fair wages and rate cards (SJS) informing the mobilisations of groups. Moreover, on questions of leave and social security, groups in Karnataka have targeted the state at both national and subnational levels.

There are also interesting distinctions between the two subnational levels on the issue of skill development and placement. While some domestic worker groups such as the DWRU have not been averse to the provision of training for domestic workers in Karnataka, they see the difficulties and contradictions of a domestic workers' union performing the functions of a labour rights organisation as well as a training and placement facility; these groups see the function of a placement agency in particular posing difficulties for their efforts to secure domestic workers' rights as workers. In Gujarat, on the other hand, where Saath promotes an entrepreneurship model of

¹⁸² See the anti-rape mobilisations in Gujarat for details. Moreover, this is the state where one of the few networks on land rights for women—the Working Group for Women and Land Ownership—is active; and there is a strong anganwadi workers mobilisation.

securing rights, skill development, training and placement take precedence over discourses on workers' rights.

A point of similarity between Gujarat and Karnataka is that some issues, such as sexual harassment and caste-based discrimination, are of a secondary order for most domestic worker groups (with exceptions such as Women's Voice and SJS, which clearly come from an ethos of feminist politics). Moreover, many domestic worker groups see their natural allies as other unorganised sector worker groups, and not necessarily women's groups. This poses problems for a more robust and holistic understanding of women's rights that transcend the divisions between redistributive and recognition claims making.

Further, in spite of the proliferation of a dynamic and diverse set of domestic worker groups in Karnataka (or possibly because of), there has been no robust and consolidated set of claims making directed at the subnational-level state after the minimum wages notifications, apart from claims making on social security. While it is early days yet, it is clear that the centre of gravity has shifted to national-level mobilisations in the last several years centred on claims making for a national law regulating domestic work, which may prove to be at the cost of the subnational level engagements..

5.3.2 Comparing anti-rape mobilisations at the subnational levels

The one clear difference when comparing anti-rape mobilisations between subnational levels is on mobilisations by LGBT groups. In Karnataka there has been a far stronger mobilisation on sexuality minority rights with the proliferation of LGBT and sex worker groups since the mid-1990s. This has influenced the nature of claims making in Karnataka at both subnational and national levels. At the subnational level, it has resulted in robust campaigns, particularly on violence against the transgender and sex worker communities. At the national level, strong claims for the "gender neutrality" and "gender inclusivity" of sexual assault and rape laws has come from groups in Bangalore (though not all groups speak in one voice). Moreover, groups have also called for the inclusion of sex workers in sexual assault and rape laws.

On the other hand, the communal violence in Gujarat in 2002 has framed the modes of engagement within women's groups as well as their engagements with the state in Gujarat. For a start, communal violence led to polarization within civil society groups in Gujarat, with a few women's groups emerging as anti-state while many others were either intimidated by the communal tensions or did not find action appropriate at the time. It was also key in broadening the mandates of some organisations, with an understanding of communal politics informing the analytical frameworks of groups working on violence against women. Moreover, claims for the recognition of sexual violence in situations of mass crimes animated claims making by groups from Gujarat at the national level.

There is a lot that is common between the anti-rape mobilisations in Gujarat and Karnataka. For a start, groups from both Gujarat and Karnataka have had a long history of mobilising on the issue, with groups involved at the national level in both states since Mathura. Moreover, groups in both Karnataka and Gujarat focus their energies on monitoring the implementation of laws and policies as a means of holding the state accountable at the subnational level. One of the reasons for their emphasis on implementation was their direct involvement in providing support to the victims of violence and their experience of obstacles at multiple levels in seeking justice for

women survivors of violence. Very often, their claims on state accountability emerged from existing practices of state agents and communities in addressing cases of sexual violence against women. In both states, groups were also sceptical of the clamour for legal reform, without the concomitant attention to the effects of reforms, with several groups engaging the state machinery to inculcate a more gender-sensitive understanding of policy. Moreover, in both states, groups work with alternate forms of justice for women survivors of violence through the *nyaya samitis* in Gujarat and the World Courts of Women initiated by Vimochana.

Another commonality between some of the groups from Gujarat and Karnataka is in terms of their wider conception of violence against women. Women's groups that also work on livelihoods and access to resources felt the need to broaden feminist discourses on violence from an exclusive focus on women's bodies to include the violence related to economic, social and political issues. It was felt that such a wider definition that is cognizant of women's lived experiences and would also be more responsive and sensitive to the sexual violence faced by women arising out of her social and economic conditions.

Taken together, at the national level, the whole of the anti-rape mobilisation is indeed greater than the sum of its parts; the cumulative efforts of many groups across the country make for robust anti-rape mobilisation. Over the last 35 years, there have been several shifts in the discourse of women's groups' mobilisation, making them far more inclusive of the concerns of issues at the margins (dalit women, disability, sexuality minority issues, communalism, state violence/ AFSPA). However, it seems that many of these are also issues at the margins of policy-making processes, reflecting on the long arduous relationship between claims making and policy change.