

Chapter Seven: Conclusion—When and Why Do States Respond to Women’s Claims?

India has a long and rich history of a vibrant autonomous women’s movement. The pre-history of the contemporary women’s movement, which coalesced around anti-rape and anti-dowry campaigns in the 1980s, lie in previous mobilisations such as the sharecropper- and peasant-based Telengana movement in Andhra Pradesh, the Tebhaga movement in Bengal in the 1940s, and the Shahada movement of the 1970s. These and other movements, such as the anti-price rise agitations in Bombay in 1973 and the Chipko movement in Uttarakhand in 1974, laid the foundation for the rise of the autonomous women’s movement in the 1980s.

Other events of the 1970s at the national and international levels also provided an impetus for the growth of the autonomous women’s movement in India. The release of the *Toward Equality* report in May 1974, the declaration of the Emergency in 1975, the first International Women’s Conference in the same year, and the declaration of the International Decade for Women from 1975-1985—all of these played their part in bringing attention to the conditions of women’s lives.

The cases of Rameeza Bi, Mathura and Maya Tyagi provided the focus for mobilisations in the early days of the anti-rape campaign. The mass protests, the growth of several autonomous women’s groups across the country and the coordinated nature of the campaigns for reform of anti-rape laws provided the movement with a “national character”.

At the time of the emergence of autonomous women’s groups in the early 1980s, several groups focusing on women’s economic disempowerment emerged. Some of these organisations such as Women’s Voice (and previously formed groups such as SEWA) began to focus on the issues of women in the informal economy, and in particular, the conditions of domestic workers. Other groups focusing on domestic workers such as the National Domestic Workers Movement were also established in the 1980s. However, these remained sporadic and state-specific without any national coordination or collaboration. It was only from the late 1990s onwards, when there a phenomenal growth in the sector, along with its increasing feminisation, that there was a growth in the number of groups mobilising domestic workers. These mobilisations were to gain a “national” character, with more coordination taking place only in the last six to seven years.

In Karnataka and Gujarat, the trajectories of mobilisations on anti-rape laws and domestic work have been different, based on the diverse contexts and histories of the two states. While organisations from both states were at the forefront of the anti-rape campaigns in the early days, the specific context of communal violence in Gujarat has shaped the more recent engagements of women’s organisations with the state. Karnataka, based on its history of a strong sexuality minorities mobilisation since the 1990s, has also taken a different trajectory in terms of its claims making on anti-rape laws. Despite these differences, organisations from the two states share a lot of similarities, particularly their focus on the implementation of laws.

On domestic work, the proliferation of organisations working on domestic work in Karnataka since the 1980s has shaped the nature and breadth of mobilisations on domestic work. In Gujarat, domestic worker mobilisations are still in their nascent

stages. Within this broad context of mobilisations on the two issues, we examine the relationship between women's claims making and policy change in India.

7.1 The Relationship between Claims Making by Women's Organisations and Policy Change

All the changes that we have tracked in terms of policy have emerged from long years of mobilisation by civil society. Women's organisations have persistently strategised to make visible concerns that require legal recognition and state intervention. However, as our research shows, the process of policy change have been slow and gradual, based on iterative claims. Moreover, policy change has been incremental, but also non-linear with setbacks. There is no neat correlation between the mobilisations by women's organisations and policy change, indicating that there are other factors that also determine when policy change occurs. Having said that, women's claims making has formed the essential backdrop for almost all of the policy changes that we have tracked, indicating that it comprises a key element in persuading governments to engage with issues affecting women's lives.

Within the anti-rape movement, two significant moments include the 1983 amendments to the rape laws and the recent Criminal Law Amendment Act 2013, which brought in wide-ranging changes to sexual assault and anti-rape laws. Both of these were on the back of strong mobilisations by women's groups. However, the overall story of the relationship between mobilisations by women's groups and policy change has been one of a very gradual and painstaking process. For instance, broadening the definition of rape beyond the narrow focus on penile-vaginal penetration has been a strong consensual claim by women's groups since the early 1990s, but women's groups had to persistently make this claim for a further 25 years before it was finally accepted by the state through the enactment of the Criminal Law Amendment Act 2013.

Often, the state has taken a conservative approach to the claims of women's groups. Sometimes, this conservative approach has also resulted in setbacks to claims making by women's groups with progressive changes based on years of campaigning by women's groups being reversed. The story of Section 377 provides a sorry example of the state's conservative approach to women's rights and the rights of LGBT communities. Having decriminalized homosexuality through a ground-breaking judgement of the High Court of Delhi in 2009, which read down the archaic Section 377, the state recriminalised homosexuality in 2013 through a Supreme Court judgement, which opined that reading down Section 377, was beyond its jurisdiction. Similarly, the age of consent, which had previously been at 16, was raised to 18 by the Protection of Children from Sexual Offence Act 2013. This stands in sharp contrast to the recent efforts by the state to reduce the age of criminal responsibility for juvenile offenders. Similarly, a claim such as the recognition of marital rape that goes completely against the conception of women's place in marriage has not found any acceptance by the state. Further, the key claim of women's groups to repeal laws that provide immunity to the army from being prosecuted for sexual crimes has also fallen on deaf ears. The "citadels of impunity" of family, state and community seem to prove the most difficult to shift of in terms of policy change, in spite of strong and persistent mobilisations by women's groups.

In terms of the relationship between domestic worker mobilisations and policy change, it was only by the mid-2000s, and especially where domestic worker organisations had a presence, that there were changes in laws at the subnational levels with the enactment

of minimum wage legislations and the setting up of welfare boards. This was also the time that groups began to come together for joint action at the national level with proposals for a national-level legislation on domestic work. Limited gains were also made at the national level through the inclusion of domestic workers in the Unorganised Sector Workers Act 2008 and the Sexual Harassment at the Workplace Act 2013, again as a result of mobilisations by domestic worker groups.

Globally too, from the mid-2000s, through the work of IRENE, WIEGO and the ILO, momentum gathered to bring together domestic worker groups. The initiation of the standard-setting process at the ILO for an international instrument on domestic work in 2008 propelled further mobilisations internationally as well as in India. In the run up to the adoption of ILO Convention 189/ 2011, several groups mobilised to discuss the proposed convention. The Indian government set up the Task Force for Domestic Workers and drafted the National Policy on Domestic Workers. These developments also led to renewed network and coalition building between groups at the national and subnational levels for the regulation of domestic work. The setting up of the National Platform for Domestic Workers in 2012, with the demand for a comprehensive central legislation on domestic work and the ratification of the ILO Convention 189/2011 by the Indian government, has provided renewed energy and focus for the mobilisations of domestic worker groups. However, compared to the anti-rape movement, the domestic workers movement in India is still young and not as widespread and strong.

While it is clearly the case that domestic worker mobilisations are nascent when compared to anti-rape mobilisations, resulting in a lack of traction on the issue of domestic work at the policy level, it is also the case that apart from the strength of mobilisations, the ways in which the issue itself is conceived and framed provide the state with ostensible obstacles for policy change. The invisibilised nature of domestic work, its conception as an extension of women's natural roles as carers, its performance by marginalised women, the nature of the employment (with multiple employers), as well as the place where the work is performed provide the state with several "difficulties" for the regulation of domestic work.

7.2 The Domain of the Private

If we were to draw comparisons across the three issues (violence against women, domestic work and unpaid care work), it seems that what unites the lack of policy traction across several aspects of the three issues is the domain of the private. Marital rape, domestic work and unpaid care have all been issues where the mobilisations have received very little policy traction, and the domain of the private provides the unshakeable common ground. In this sense, the domain of the private corresponds to what may be classified (with modifications) as doctrinal issues in Htun and Weldon's classification (2007). 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 relationships find an uncompromising response from the state. Similarly, claims by the domestic workers movement requiring the regulation of a work environment—usually a household and therefore a private space for the employer (but not for the domestic worker)—have not received a positive response from the state.

The "private" also functions to invisibilise those issues that fall within its domain. In the case of domestic work, the workplace being performed in the private domain of the

home makes the work invisible. This invisibilisation also leads to its undervaluation, making it more difficult for groups to mobilise, negotiate and advocate with policy makers on issues regarding conditions of work, social security, sexual harassment at workplace or violence against women. With unpaid care work, as with domestic work, the issue of recognising and redistributing unpaid care work entails the rewriting of the rules of the gendered division of labour and the reorganisation of familial relationships. Similarly, with marital rape, it has been only when the husband and wife have begun living separately, that is, when the domain of the private home has already been torn asunder, that the law is willing to concede the possibility of marital rape.

7.3 Relationship between the Women's Movement and the Labour Movement

As we have noted in this report, particularly in Gujarat, but also at the national level, domestic work has fallen through the cracks of both the women's movement and the labour movement. While organisations such as AIDWA, AIPWA, Women's Voice and SJS seek to bridge this divide, it is clearly the case that the domestic workers' movement in India is largely seen as a labour issue by the women's movement and is sidelined by the mainstream labour movement, which is dominated by men who refuse to look at gender issues in the struggle for class equality. In order for the issue of domestic work to find wider acceptance and ownership within both the women's and the labour movement, it is essential for the issue to be more holistically addressed, viz., for domestic worker mobilisations to address the transformation of social structures and not just piecemeal changes in work relationships. The fallouts for the domestic workers movement without a more serious engagement by women's groups is not just in terms of whether the issue receives more visibility and policy traction, but also in terms of how the question of the transformation of domestic work is conceptualised and framed.

7.4 What Are the other Factors behind Gender-Egalitarian Policy Change?

Apart from mobilisations by women's groups, which are counteracted by conservative forces and the lack of coordination and alliance building, there are several other factors that have emerged through the research as important for addressing the question of when and why states respond to women's claims making.

7.4.1 Champions in government

At the national and the subnational levels, particularly in the context of domestic work, the role of champions in policy corridors have been crucial in propelling policy changes. The 2001 minimum wage notification in Karnataka had one crucial champion in the form of a Labour Commissioner who pushed for the inclusion of domestic workers, in spite of pressures against it. While the mobilisations by domestic worker groups were key to bringing the issue to the table, its inclusion was enabled by the impetus he provided in pushing the notification through. At the national level, the role of Sonia Gandhi, as the head of erstwhile National Advisory Council in providing support to domestic worker groups in the face of a hostile Indian delegation to the ILO has also been noted by some of our interviewees. This is also the case with the formation of the Task Force and Working Groups for domestic workers, which as interviewees suggest was based on the initiative taken by key government functionaries.

7.4.2 Mass demonstrations and protests

Mass demonstrations and large-scale public protests, as in the case of the early days of the anti-rape campaigns or in the case of Nirbhaya in December 2012, have been key factors in forcing the attention of the state to the issue of violence against women. In December 2012, mobilisations, particularly by youth groups across the country, and also by vast numbers of people in Delhi, forced the state to take notice. Wanting to be seen to be taking action, the state set up the Justice Verma Committee. The fact that mobilisations by women's groups had already been in motion for several decades previously allowed them to not only shape public discourse but also to engage seriously with the JVC process of consultation.

7.4.3 Open policy process

Unlike with previous law commissions, which have also called for comments or recommendations on proposed law reforms, the process of consultation set up by the JVC was considered a truly democratic and open policy space. By widely publicising its call for recommendations for reform of the sexual assault and rape laws, the committee kept the door wide open for serious public consultation and received 80,000 responses. The wide range of voices that were heard created further pressure on the state to take seriously the recommendations that were proposed by the JVC. Although the recommendations were only partially accepted, the Criminal Law Amendment Act 2013 went much further than many previous legislations in incorporating women's claims.

7.4.4 Strong networks and consensus

Another facilitating factor for policy change was the presence of strong networks and coalitions among women's organisations with consensus-building mechanisms. In other words, when women's groups network and consult widely to build consensus and speak in one strong voice, there is a higher possibility of these claims being included in policies. The autonomous women's conferences after the Mathura rape case was one such mechanism, which brought together women's groups from across the country to build consensus on the changes required in the country's rape laws. However, it is difficult for some claims that fall in the domain of the private—such as the criminalisation of marital rape, legislation for domestic workers and the recognition of unpaid care work—to gain policy traction despite having a consensus. Some other issues, that challenge core societal norms, as well as those that are contentious or debated among women's groups may also face difficulties in gaining policy traction, such as in the case of the acceptance of gender neutrality in rape laws.

7.5 Conclusion

It is clear that long years of women's claims making have been central to the changes in policies on anti-rape and domestic work, even if these have been slow, sporadic and sometimes, non-linear. There are other factors that pose counterpoints to the mobilisations by women's groups, whether this be in terms of how issues have been framed or in terms of how certain citadels of impunity of the family, state and community, have been protected from policy reforms. The issue of framing has sometimes resulted in setbacks to policy reforms. For example, the framing of rape as an issue of honour and shame by conservative groups have resulted in calls for chemical castration of offenders, which has meant that the sentencing policy of the most recent law reforms have included the death penalty for offenders in cases of violent aggravated rape. Similarly, the issue of domestic work, when it is framed as an extension of women's natural roles, or as "difficult to regulate" because of the multiplicity of employers, pose obstacles for serious policy change.

Moreover, the domain of the private has been protected from serious intrusion by the state—this has been the case with the intractability of the recognition of marital rape, and the regulation of domestic work and unpaid care work. The question of how claims making ought to deal with the “intractable” nature of policy change in these domains is an issue for women’s groups. On marital rape for instance, whether other avenues are to be explored—the domestic violence legislation, or the laws on divorce—are some of the issues being explored by women’s groups, albeit not without contention. Domestic worker groups too have provided robust counterpoints to the question of the domain of the private, by both reframing and visibilising domestic work as *work* and by locating the private space of the family as a public space of work for domestic workers. Moreover, by engaging with mechanisms such as welfare boards, the “difficulties” of regulating informal work with multiple employers are also reframed as within the realms of the possibility of regulation.

The long and vibrant history of mobilisations on anti-rape laws as well as the emerging mobilisations at the national level on domestic work have provided strong foundations for building the blocks for policy change focused on transforming social structures for women.