

Mandate of the Working Group on the issue of discrimination against women in law and in practice

REFERENCE:
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Excellency,

I have the honour to address you in my capacity as Chairperson of the Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolution 15/23.

In this connection, we would like to bring to the attention of your Excellency's Government **concerns relating to the criminalisation of adultery in India under Section 497 of the Indian Penal Code, which seems to contravene international human rights norms and standards as outlined below.**

Adultery is criminalised under the Section 497 of the Indian Penal Code. However, the statute treats men and women differently. Under Section 497 of the Penal Code, a man who has consensual sexual intercourse with the wife of another man, without the other man's consent, is guilty of the offense of adultery. A man convicted of the offense of adultery can be imprisoned for up to five years or subject to a fine.

Defining adultery in these terms perpetuates harmful gender stereotypes, the instrumentalisation of women's bodies and the understanding of women as property of men, thus contributing to discrimination and violence against women. Adultery thus defined is an offense only because one man has "interfered" with the "property" of another. Accordingly, since 2006, the Indian National Commission for Women has recommended that the Penal Code be amended to decriminalise adultery.

It is our firm belief that laws criminalising adultery, such as Section 497 of the Penal Code, are based on and result in discrimination against women. Our Group has noted that the enforcement of such laws leads to discrimination and violence against women in law and in practice and has stressed that while criminal law definitions of adultery may be ostensibly gender neutral and prohibit adultery by both men and women, closer analysis reveals that the criminalisation of adultery is both in concept and practice overwhelmingly directed against women and girls. Criminalisation of adultery hence contravenes article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (acceded to by India on 9 July 1993), in which States parties condemn discrimination against women in all its forms, and agree to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women. Our expert group considers that the offence of adultery, though it may constitute a matrimonial offence, should not be regarded as a criminal offence punishable by imprisonment.

It is also our view that criminalisation of sexual relations between consenting adults should be regarded as an interference with the privacy of the individuals concerned

in violation of article 17 of the International Covenant on Civil and Political Rights (ICCPR) (acceded to by India on 10 April 1979) which provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

We therefore call upon your Excellency's Government to comprehensively review the provisions of the Penal Code, and to remove all provisions that discriminate against, or have a discriminatory impact on women, including those regarding adultery.

In addition we would like to express our concerns that the criminalisation of adultery contravenes article 5 of the Convention on the Elimination of All Forms of Discrimination against Women, by reinforcing social and cultural patterns that are based on prejudice and stereotyped roles for men and women. We are concerned that such discriminatory legislation may exacerbate gender-based violence, as women who are accused and/or convicted of adultery tend to be targets of violence and abuse, by members of family, community or law enforcement officers, due to a belief that they deserve to be punished for their moral crimes.

In its General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 on violence against women, the CEDAW Committee recommends that Member States repeal all legal provisions that discriminate against women, and thereby enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence against them; including in customary, religious and indigenous laws, including legislation that criminalises adultery or any other criminal provisions that affects women disproportionately [CEDAW/C/GC/35, paragraph 31(a)].

The Working Group would also like to recall that in its Concluding observations on the combined fourth and fifth periodic reports, the CEDAW Committee expressed concerns about the persistence of so-called “honour crimes” perpetrated by family members against women and girls; (CEDAW/C/IND/CO/4-5, paragraph 10(f)).

In a similar vein, the Working Group would like to recall that the recommendations made in the context of the Universal Periodic Review of India, which are under consideration or are supported by the Government of India, which called for a number of measures to, *inter alia*, enact comprehensive reforms to address sexual violence and all acts of violence against women, including “honour” crimes (...); strictly enforce the legal provisions prohibiting harmful and discriminatory practices that violate the rights of women and girls, and that it undertake effective public education measures, including awareness-raising programmes designed to eliminate gender-based prejudices, traditional practices and provisions of personal status laws that are harmful and discriminatory to women and girls(138.41. 138.88.).

Finally, The Working Group would also like to recall that in her report of the visit undertaken to India from 21 April to 1 May 2013, the Special Rapporteur on violence against women, its causes and consequences noted, *inter alia*, that “(...) significant gaps remain in the legislative framework as regards the failure to recognize all forms of

violence against women and to adopt a holistic approach that addresses the root and structural causes of violence against women(...)" and that "the inability to ensure accountability and redress for victims has led to an increase of violence against women and the continued discriminatory treatment of victims. (A/HRC/26/38/Add.1, paragraph 75).

As it is our responsibility under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide information on the impact of the criminalisation of adultery, including the number of prosecutions for adultery.
2. Please provide information on any measures that your Excellency's Government has taken or intends to take in order to implement the recommendations by UN human rights mechanisms, referred to above, and to bring its legislation into compliance with international human rights law.

The Working Group would appreciate a response within 60 days and remains available for any type of technical advice on legislative reform that your Excellency's Government may require.

We would like to inform you that this communication will be made available to the public on the website page of the mandate of the Working Group and will be included in the periodic communications reports of the Special Procedures to the Human Rights Council. Any response of Your Excellency's Government will also be made public in the same manner.

Please accept, Excellency, the assurances of our highest consideration.

Alda Facio
Vice-Chair of the Working Group on the issue of discrimination against women in law
and in practice