

INDIA

In its report to the UN Human Rights Committee, the government of India asserts that it has implemented several important measures towards the promotion and protection of human rights and women's rights in particular. For example, in paragraph 39, the government cites Article 51 A(e) of the Indian Constitution, which provides that, "a duty is cast on every citizen of India to renounce practices derogatory to the dignity of women." In paragraph 96, the government states that it fully complies with Articles 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR) because its Constitution guarantees equal rights for women and specifically prohibits discrimination based on sex. However, despite the government's assurances, the law remains biased against women, particularly in criminal law and in family law, which is governed by the personal laws of religious communities. Moreover, there is no reference to the trafficking of women and girls or to rape in the government report, although these crimes are pervasive in India. Discriminatory practices in employment also remain widespread throughout India, despite legislation to the contrary. These human rights violations against women are inconsistent with India's obligations under various provisions of the ICCPR.

The Centre for Feminist Legal Research, the Women's Centre, KARMIKA and the Centre for Social Research, four Indian non-governmental organizations, have prepared the enclosed submissions for the Human Rights Committee. A summary of Equality Now's concerns, based on these submissions and related information, follows.

Personal Laws

Family matters in India are governed by the personal laws of the various religious communities within the country. In paragraph 111 of its report, the Indian government states that it "believes in non-interference in the personal laws of the minority communities unless the initiatives come from such community." Equality Now submits that the government's obligations under the ICCPR cannot be negated by deference to the personal laws of minority communities when such deference results in the curtailment of human rights. The government's constitutional guarantee of freedom of religion should be subject to the fundamental human rights of women. Many personal laws in force in India are discriminatory in relation to women's rights in marriage, divorce, guardianship and adoption of children, and property ownership. In paragraph 45 of its report, the Indian government concedes that even the judiciary has urged the government to "enact a uniform civil code so that the inequalities suffered by certain women under the personal laws are removed." The government does not, however, indicate any future plans for reforming the personal laws in a manner consistent with its obligations under international law.

Christian Laws

Section 10 of the Indian Divorce Act 1869 discriminates against women because it prescribes different requirements for obtaining a divorce based on sex. Whereas a man may obtain a divorce based upon proof of adultery alone, a woman needs another cause in addition to adultery, such as incest, cruelty, bigamy, or desertion, in order to obtain a divorce.¹ The judiciary has acknowledged the need for the amendment of Christian personal laws to end the violation of women's rights. In Ammini E.J. v. Union of India, the High Court of Kerala noted the "totally intransigent attitude" of the Indian government in failing to reform personal laws that were discriminatory.² In two states, Kerala and Maharashtra, the personal laws have been effectively amended by court decisions. However, these laws remain in force throughout the rest of the country.

Although initiatives for reform have come from the community, the Indian government has not supported these initiatives and, in fact, has greatly delayed consideration of them. In 1994, three draft bills - The Christian Marriage Bill, the Indian Succession Amendment Bill and the Christian Adoption and Maintenance Bill - were presented to the government. These bills were proposed by Christian women's organizations and supported by the Ecumenical Committee for Changes in Personal Law, which includes in its membership the National Council of Churches, the Catholic Bishops Conference of India and the All India Catholic Union. The government of India has not responded to numerous letters, petitions and requests for a meeting from this Committee. Moreover, despite assurances from the Law Ministry that Christian personal laws would be changed upon the submission of a consensus draft with church support, the bills are still in limbo due to government inaction.³

Hindu Laws

Hindu personal law is also discriminatory in several ways. In paragraph 110 of its report, the Indian government asserts that much of Hindu personal law has been codified to "ensure equality for women and remove all legal disabilities from which they suffer." According to the submission sent by the Centre for Feminist Legal Research, however, widespread discrimination against women still exists in respect to property, guardianship and maintenance rights. In terms of property rights, Hindu males are afforded virtual dominion and claim of title over all joint family property, to the exclusion of women. The Hindu Succession Act of 1956 resulted in some improvement for women by granting them limited inheritance rights. However, the law remains

¹Annex 2, p.2

²Annex 1, p.12

³Annexure A to Annex 1, p.2

discriminatory in denying women's rights to full ownership and claim of title at birth and in giving male heirs preferential rights.

With respect to guardianship of children, women are restricted in their ability to assume legal responsibility for their children. Under Section 6 of the Hindu Minority and Guardianship Act (1956), the father is considered to be the natural guardian of the child. A mother is only allowed to serve as the guardian in the event of the father's death or if the child is born out of wedlock. This provision of the Act denies women equal rights and responsibilities in the protection of their children. Although Hindu personal laws provide for a woman's maintenance during marriage and upon divorce as well, the right of maintenance is conditional. Under Section 18 of the Hindu Adoption and Maintenance Act of 1956, a wife will be denied maintenance if she is "unchaste" or "ceases to be a Hindu."

Muslim Laws

Personal laws within Muslim communities impose similar restrictions on Muslim women. Restrictions on the right to succession and property ownership parallel those in Hindu personal laws.⁴ In terms of maintenance within marriage, a Muslim woman can be denied maintenance under the customary law if she "refuses herself" to her husband or is "disobedient." Muslim men are not subject to the bigamy laws in India on the grounds that the Koran allows men to have four wives. The constitutional guarantee of freedom of religion is used to justify this exemption, despite the constitutional prohibition of sex discrimination.

The Indian government refers to the "community" in its justification of non-interference in personal laws. Yet there is no definition of the "community," and the government uses a selective interpretation of who represents the "community." The government has consistently disregarded the demands for reform urged by women's groups. Even when there is a clear consensus, as in the case of the proposed bills to amend Christian personal laws, the government has not supported changes necessary to bring the laws into compliance with international law. Personal laws of the different religious communities discriminate against women, denying them equal rights and equal protection of the law in violation of the ICCPR.

Trafficking in women and girls / Prostitution

In its report, the government of India is silent on the issue of trafficking in women and girls. This is alarming considering the number of women and girls affected. In Bombay alone, it is estimated that there are more than 100,000 prostitutes, 90% of whom are indentured slaves and

⁴Annex 1, p.9

20% of whom are under the age of 18 - some as young as nine years old.⁵ Many of the girls and women trafficked are brought across India's borders, a large percentage from Nepal.

Equality Now has several concerns regarding Indian legislation against trafficking. Although the Immoral Traffic Prevention Act (1986 Amendment to the Suppression of Immoral Traffic in Women and Girls Act of 1956) was intended to target traffickers, it has been used to prosecute prostitutes in far greater numbers. Although prostitution is legal in India, Section 8 of the Act prohibits a woman from soliciting or seducing "by words, gestures, or willful exposure of her person."⁶ Moreover, Section 20 of the Act puts the burden of proof on these women to establish that they are not prostitutes when they are brought before a magistrate for suspicious behavior, rather than requiring the police to prove that they are prostitutes.⁷ Section 20 has been unsuccessfully challenged in the judicial system as unconstitutional. The Supreme Court held that the difference between prostitute women and non-prostitute women was a reasonable classification and justified the difference in treatment.⁸

The devastating impact of trafficking on women, and particularly girls, is poignantly described in the annexed article from *The Nation*.⁹ Equality Now is concerned that the Indian government's failure to even mention the issue of trafficking in its report represents a lack of commitment to addressing a crisis of large proportion. *The Nation* article names Mehboob Thasildar as a kingpin of organized crime in India who trafficks women through a network reaching from South India to Nepal.¹⁰ Equality Now requests that the Committee inquire of the Indian delegation as to whether any investigation of Mehboob Thasildar has been undertaken in light of the fact that he has been so publicly identified as a trafficker.

Equality Now urges the Committee to press the Indian government to reform the Immoral Traffic Prevention Act to ensure that women charged with prostitution-related offenses are presumed innocent until proven guilty and to ensure that traffickers, rather than their victims, are the main targets of prosecution as the law originally intended. In addition, greater efforts by the Indian government should be made to control the trafficking of women and children across its borders. This trafficking constitutes a contemporary form of slavery which violates Article 8 of the ICCPR.

⁵Annex 3, p.12

⁶Annex 1, p.7

⁷Id.

⁸Id.

⁹Annex 3

¹⁰Annex 3, p.19

Rape

The report prepared by the Indian government fails to address the issue of rape. Under Section 375 of the Indian Penal Code (1860), rape within marriage is not recognized as a crime. Although the Criminal Act Amendment of 1983 allows for prosecution of a judicially separated husband who rapes his wife, this does not protect all victims of marital rape. Moreover, the penalty for separated husbands guilty of raping their wives is up to two years imprisonment. This is less severe than the penalty for rape in other cases, where the perpetrators face a mandatory minimum sentence of seven years in prison.¹¹

The provision of the Indian Evidence Act of 1872 that relates to rape further limits the capacity of the law to protect women who have been victimized by rape. Section 155(4) of the Act allows the defense lawyer in a rape trial to use evidence that the rape victim is of “generally immoral character,” in order to destroy her credibility and mitigate the defendant’s culpability. For example, in Stya Rani v. Prem Chand, the defendants’ sentences were reduced from 10 years to 5 years each because of the “conduct” of the victim.¹² The court criticized the victim for accompanying the defendants and determined that her behavior reflected an “immoral” character that warranted a reduction in the defendants’ sentences.

Rape laws in India result in the preclusion, in many cases, of an adequate remedy for victims of rape. The inability of married women to charge their husbands with rape, disparate sentences based on the marital status of the victim, and the practice of putting the rape victim’s character on trial all deny women equal protection under the law, in violation of Article 26 of the ICCPR.

Adultery

Section 497 of the Indian Penal Code (1860) criminalizes adultery committed by a man. Section 198 of the Code of Criminal Procedure (1973) allows husbands to bring criminal charges against the men with whom their wives have committed adultery.¹³ However, the law explicitly denies women the right to charge their husbands with adultery. While there have been several court challenges to the criminal provision concerning adultery, the judiciary has repeatedly upheld it as being beneficial to women, for it protects them from prosecution. The adultery provision has also been upheld as being integral to the preservation of the marital unit.¹⁴ The criminalization of adultery in India is discriminatory on its face and violates Articles 3 and 26 of the ICCPR guaranteeing equality under and equal protection of the law.

¹¹Annex 1, p.6

¹²Annex 4, p.2

¹³Annex 1, p.6

¹⁴Id.

Dowry Deaths

4, 811 dowry deaths were reported in 1995. In paragraph 115 of its report, the Indian government cites section 174 of the Criminal Procedure Code as a positive example of legislation on familial violence. This provision allows for post-mortems in all cases where a woman dies within seven years of her marriage. The government also cites section 113A of the Indian Evidence Act, which allows the court to presume that a wife's death was actually abetted by a husband or relative if it occurred within seven years of the marriage and if prior abuse can be shown. Also mentioned in paragraph 115 of the government report is the new "cruelty to wife" offense under the Indian Penal Code, which carries a penalty of up to three years imprisonment and a fine. This provision, Section 498A of the Indian Penal Code, applies to in-laws as well as husbands.

Equality Now is concerned that the Indian government has not used the aforementioned legal provisions to prosecute dowry murder or domestic violence to any significant degree. According to KARMIKA, prosecution is impeded by uncooperative police, and cases that do get to court are interminably slow in proceeding. KARMIKA cites the case of Satya Rani Chadda, whose daughter's death by burning in 1978 is still in the trial stage.¹⁵ Equality Now is also concerned by reports of gender bias in the judiciary. One judge is cited as having said that men and women are not born equal and therefore any call for equality is a negation of the natural law. Another judge presiding over a dowry case is reported to have said that there is nothing wrong with demanding money from a rich father-in-law.¹⁶

More responsive police protection and more vigorous prosecution in dowry death and domestic violence are needed under these laws to ensure that women's rights under Articles 3 and 26 of the ICCPR are respected.

Employment

In paragraph 46 of its report, the Indian government states that it has successfully passed several laws in an attempt to protect and promote the rights of women in the workplace. According to the report submitted by the Centre for Feminist Legal Research, there are special provisions within laws such as the Factories Act (1948) and the Mines Act (1966) that attempt to end discrimination against women workers.¹⁷ The Equal Remuneration Act (ERA) of 1976 was designed to provide for equal pay for equal work, or similar work, and to prohibit discrimination in the recruitment of workers. Despite extensive legislation, women are underrepresented in the workforce, the practice of paying women lower wages for comparable work continues and

¹⁵Annex 4, p.1-2

¹⁶Annex 4, p.1

¹⁷Annex 1, p.2

women are often relegated to lower paying positions.¹⁸ According to the 1991 census, women constituted 16.83% of the workforce, and 94% of women workers were in the unorganized sector to which the labor laws do not apply.¹⁹

The ERA does not address the issue of gender stereotyping, nor does it establish a procedure by which the government or an administrative agency can monitor discriminatory practices. In paragraph 45 of its report, the Indian government cites the landmark 1987 ERA case, Mackinnon, Mackenzie and Co. V. Audry D'Costa as an example of the judiciary ensuring women's constitutional rights. In that case, the Supreme Court held that a female stenographer was entitled to the same pay as her male counterpart. However, the Court also stated that there are "some kinds of work which women will not be able to undertake. Men do work like loading, unloading, carrying and lifting heavier things which women cannot do. In such cases there cannot be any discrimination on ground of sex."²⁰ The Centre for Feminist Legal Research has received reports of discrimination in government supported activities such as road building and canal construction.²¹ An absolute preclusion of women from certain kinds of employment constitutes discrimination based on sex.

The under-enforcement of anti-discriminatory provisions of labor laws, as well as the implicit acceptance of wage differentials and gender stereotyping in the division of labor, all constitute discrimination against women and violate their right to equal treatment under Article 26 of the ICCPR.

Political Representation

Under Article 16 of its Constitution, the Indian government ensures equal opportunity in all matters relating to public employment or appointment to any office. Currently, three to seven percent of the seats in Parliament and State assemblies are occupied by women.²² Equality Now notes a recent government call for the reservation of a third of all local and national government seats for women in an attempt to promote equality and honor its commitment to affirmative action. Some affirmative action plans have been implemented on the village to district levels. Equality Now welcomes this effort and urges the Committee to support this initiative and to encourage the Indian government to implement it more fully. However, Equality Now is concerned about the report from the Centre for Feminist Legal Research that under the Local Government in Delhi (Disqualification for Membership)(Small Family) Bill passed in July 1996

¹⁸Annex 1, p.2-3

¹⁹Annex 2, p.5

²⁰Annex 1, p.3

²¹Id.

²²Annex 5, p.1

and the Rajasthan Panchayati Raj Act of 1994, persons with more than two children are disqualified from holding office in village and municipal government.²³ This exclusion of candidates based on the number of children they have violates the right of all citizens to take part in public affairs and the right to equal protection of the law guaranteed by Articles 25 and 26 of the ICCPR.

Conclusion

The government of India has reported that it has undertaken several important measures towards ensuring full equality between men and women in accordance with the ICCPR. However, the continuing existence of discriminatory laws, inadequate enforcement of existing laws for the protection of women and non-prosecution of violence against women are inconsistent with India's obligations under the ICCPR. Equality Now hopes that the concerns raised above and detailed in the attached annexes will be addressed by the Human Rights Committee in its discussions with the government delegation of India.

INDEX OF ANNEXES

1. Submissions pertaining to Discrimination Against Women in response to the Government of India's Third Periodic Report under the International Covenant on Civil and Political Rights - prepared by Ratna Kapur and Madhu Mehra of the Centre for Feminist Legal Research.
2. Submission from the Women's Centre - prepared by Ammu Abraham.
3. Robert I. Friedman, "India's Shame," The Nation, April 8, 1996, p.11-20.
4. Submission from KARMIKA - prepared by Subhadra Butalia.
5. Submission from the Centre for Social Research - prepared by Kamla Nath.

²³Annex 1, p.14