

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE: AL
IND 9/2014:

5 December 2014

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 24/6 and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged physical, sexual and emotional abuse against Mrs. [REDACTED] by her husband and members of his family.

According to the information received:

Mrs. [REDACTED], born on [REDACTED], first became acquainted with Mr. [REDACTED] born on [REDACTED] whilst studying at M.K. Junior College, Chincani in 2006. Mrs. [REDACTED] was 16 years old at the time whereas Mr. [REDACTED] was 19. Following their acquaintance, the two became friends and the friendship progressed into a romantic relationship, though Mrs. [REDACTED] refused to have a sexual relationship with him. One evening, Mr. [REDACTED] invited her to his home and is alleged to have contaminated a beverage given to Mrs. [REDACTED] with drugs before having sexual intercourse with her and filming it on his mobile telephone without her consent. Following this event the footage was reportedly made public on the Internet and through mobile phone contact, again without Mrs. [REDACTED]'s permission.

Since then Mr. [REDACTED] continued abusing her violently, including by using physical and intimate violence, before she ceased the relationship in 2007.

In 2009 Mrs. [REDACTED]'s father became aware of the sexual footage taken by Mr. [REDACTED]. Mrs. [REDACTED]'s father contacted the father of Mr. [REDACTED] and the two of them reportedly decided upon the

marriage of their daughter and son. The marriage took place on 19 April 2009 and was solemnized according to Hindu marriage rituals. A dowry was reportedly paid to Mrs. [REDACTED]'s family.

Following the marriage Mrs. [REDACTED] is reported to have lived with Mr. [REDACTED] and his parents. During this time she reportedly suffered mental and physical abuse from both Mr. [REDACTED] and his mother. This includes an incident when Mr. [REDACTED]'s mother allegedly burnt Mrs. [REDACTED] with a hot steel spoon.

The family of Mr. [REDACTED] is also alleged to have attempted to extort money from Mrs. [REDACTED] and her family. They are reported to have used the footage taken of Mrs. [REDACTED] without her permission to attempt to bribe her and her family for money, as well as uploading the footage a second time in 2013 for financial gain. Mr. [REDACTED] is also reported to have uploaded the footage a third and fourth time in 2014 to further stigmatise Mrs. [REDACTED].

Mrs. [REDACTED] is reported to have submitted a series of complaints to the Boisar Police. A First Information Report was submitted in 2013 for offences 498(A), 323, 504, 506 of the Penal Code and section 67 of the IT Act, 2000. Following this complaint it is alleged that the police investigation into these allegations was inadequate. It is alleged that the investigators failed to seize key evidence and to record the statements of witnesses. As a response to this, Mrs. [REDACTED] submitted the Criminal Writ Petition No.550 in 2014 seeking the transfer of the investigation.

Following the third and fourth postings of the sexual footage of Mrs. [REDACTED] in 2014, she filed a second First Information Report (No. I-91/14) dated 20/05/2014 for offenses 354 C under the Penal Code and section 67(A) of the IT Act. It is reported that to date there has been no arrest or progress in investigating this complaint.

It is reported that Mrs. [REDACTED] no longer lives with her husband or his family and has sought the transfer of her case to a Fast Track Court. Mrs. [REDACTED] has expressed suicidal thoughts in relation to the alleged lack of adequate investigation and resolution of her case.

In light of all of the above, and whilst acknowledging investigation is ongoing, serious concern is expressed that the above allegations may contravene the rights to physical integrity, privacy, right to the highest attainable standard of physical and mental health, freedom from exploitation and violence. Serious concern is also expressed at alleged the lack of sufficient implementation of the duty of the State to exercise due diligence in relation to allegations of violence against women. Further concern is expressed regarding the mental state and well-being of Mrs. [REDACTED] and the potential lack of adequate interventions to support her recovery and social re-integration.

In connection with the above alleged facts and concerns, please refer to the **international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

Moreover, as it is my responsibility under the mandates provided 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 any additional information and any comments you may have on the above-mentioned allegations.
2. Please explain what action is being taken by the state to investigate the allegations lodged by Mrs. [REDACTED].
3. Please describe what actions will be taken to ensure the victim's access to justice in relation to this case, including the possibility of transferring the case to a Fast Track Court, as requested by Mrs. [REDACTED].
4. [REDACTED] Please provide details of what support is being provided to Mrs. [REDACTED] to safeguard her right to health and wellbeing and ensure her recovery and social reintegration.

We would be grateful if you could provide statistics on the number of complaints lodged by or on behalf of women and girls victims of violence and exploitation, of persons prosecuted and convicted, and the remedies provided to victims.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Dainius Pūras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Rashida Manjoo
Special Rapporteur on violence against women, its causes and consequences

Annex

Reference to international human rights law

In connection with the above allegations, it is necessary to recall Article 17 of the International Covenant on Civil and Political Rights, which India ratified in 1979 which protects the right to privacy stating

In addition of relevance is the right to marry only with one's free and full consent recognized in the Universal Declaration of Human Rights (Article 16(2)) and in a number of subsequent international human rights treaties such as the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages and in Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women which provides for the right of women and men to freely choose a spouse, to enter into marriage only with their free and full consent and to have the same rights and responsibilities during the marriage and at its dissolution.

Of relevance to this case is also the Declaration on the Elimination of Violence against Women, which was adopted by the United Nations General Assembly and states that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia, (a) the right to life; (b) the right to equality; (c) the right to liberty and security of person; and (d) the right to equal protection under the law (Art.3). Article 4 (c & d) of the same instrument notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms.

The Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (ratified by your Excellency's Government in 1993), whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In general recommendation No. 19, the Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfil this obligation; in paragraph 9, it makes clear that "under general international law and specific human

rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.

In addition of note is General Comment 14 of the Committee on Economic, Social and Cultural Rights, which indicates that States are obliged to take measures to protect all vulnerable or marginalized groups of society, in particular women, in the light of gender-based expressions of violence. Violations of the obligation to protect follow from the failure of a State to protect women against violence or to prosecute perpetrators (GC 14, Paras.35 and 51).

Finally, in her visit report to India (A/HRC/26/38/Add.1), the Special Rapporteur on violence against women, its causes and consequences, voiced concerns with regard to the investigation of cases and the prosecution and punishment for crimes committed against women (Paragraph 62). She further recommended that the Government of India:

- Amend the Criminal Law (Amendment) Act, 2013 and in particular ...include a definition of marital rape as a criminal offence;
- Ensure that police stations are equipped with sufficient and trained human and financial resources to handle all cases of violence against women and establish specific gender mechanisms, where possible (paragraph 78 k ii)
- Design and launch a comprehensive training and awareness-raising programme for police officers charged with the responsibility of filing complaints of violence against women, including First Information Reports and domestic incident reports (paragraph 80).