



SUBMISSION TO THE
UN OFFICE OF THE HIGH COMMISSIONER ON HUMAN RIGHTS

TOWARDS PREPARATION OF REPORT IN PURSUANCE OF HRC RESOLUTION
29/22 ON THE PROTECTION OF THE FAMILY

by
Partners for Law in Development¹

This submission is based on the extensive field work and documentation by Partners for Law in Development on protection gaps relating to women in the context of conjugality and family life. This submission draws upon understandings drawn from PLD's work with women across family forms, arising from intersecting vulnerabilities of poverty, gender, sexuality, caste, class and similar systems of inequality. We urge that the concerns raised in our submission be given attention in the report to the Human Rights Council on: *“the impact of the implementation by States of their obligations under relevant provisions of international human rights law with regard to the protection of the family, on the contribution of families in realizing the right to an adequate standard of living for their members, particularly through their role in poverty eradication and in achieving sustainable development, while giving due consideration to the status of the family in the developments related to the ongoing work on the future sustainable development goals and the post-2015 development agenda ...”*

Families are indeed, a fundamental unit through which the state can implement equality and non-discrimination, on grounds of sex (including sexual orientation and gender identity), age, ability, marital status, amongst others, and a unit towards whom the state must ensure basic needs of quality health care, education, sustainable livelihood as part of its obligation to guarantee socio economic and cultural rights. Any framework that aspires to promoting an adequate standard of living for the family, must be premised on the recognition of three key factors – a) Recognition and respect for all family forms, which are diverse, including but not limited to the examples of women or children headed households; b) while the family is a social unit, its members do not enjoy equal status vis a vis each other. The inequalities, abuse and violence directed at women, children and the elderly; as well as against those rendered vulnerable on account of sexual orientation, gender identity or ability, is well documented and recognised. Their legal protection must be of paramount importance; c) the primary duty bearer for eliminating poverty, achieving sustainable development, and ensuring equal rights to all individuals to found families of their choice, to secure legal protection against discrimination, abuse within the family, is the State. These three aspects are outlined below for clarity and emphasis:

A. RECOGNITION OF DIVERSE FORMS OF FAMILY - Institutionalised definitions of the 'family' limit recognition and legal protection to family forms that are derived from dominant cultural, religious and caste norms. Postcolonial societies such as India reflect a diversity of family forms due to regional, customary, caste, sexuality, geographic differences, and livelihood patterns amongst others. PLD's field studies in six states in India have shown that changing economic trends, large scale migrations, unequal sex ratio have shaped contemporary conjugalities over the past two

¹PLD is a legal resource group in India that works towards advancing social justice and women's rights in contexts of marginalization arising from gender, sexuality, culture, caste, conflict, poverty and development. You may also find more about us on www.pldindia.org

decades, that do not subscribe to conventional definitions of the family.² Some instances of non-normative conjugalities documented by PLD's study include *maitri karar* in Gujarat,³ the practice of *nata* in Rajasthan,⁴ customarily practiced polygamy in Himachal Pradesh, as well as same-sex unions across the country. Recent reports indicate the emergence of polyandry in Haryana and Punjab in the wake of severely unequal sex ratio.⁵ The study found that women in these diverse conjugalities, discharge the same roles as 'wives' in normative family forms, but are excluded from core minimum legal protections. These protection gaps relate to domestic violence, particularly economic abuse and eviction from household, uncertain custody/ guardianship of children; they also have little or no access to crisis intervention services. While the gender discrimination women experience across family forms is the same, women in non-normative unions are rendered more vulnerable to abuse and oppression because they are excluded from legal protection, that is typically limited to legal wives.⁶ Such conditionality cannot be the basis for fundamental legal protections, that must be available to all women, who are situated similarly in terms of the reproductive and productive labour, care-giving and sexual intimacy they contribute – regardless of their legal status. This is not to suggest that all family forms must be legally recognised, but rather to emphasise that irrespective of legal recognition, women across family forms must be able to access legal protection.

International human rights instruments have consistently advocated an inclusive framework on family, based on recognition of diversity of family forms in recognition of women's labour and care-giving in the household. The UN Special Rapporteur for Violence against Women in her report at the 52nd session of the Human Rights Commission stated that '...the family is defined broadly as the site of intimate personal relationship. A subjective definition, i.e. any unit where the individuals concerned feel they are a family, is more inclusive than an objective one and more relevant for the discussion of domestic violence. Rather than relying on the institutionalized definitions of family imputed by the State, notions of family should be re-conceptualized around expressions of ideals of nurturance and care. There is a need to make room for "difference and plurality" within our understanding of what constitutes family.'⁷ The ICCPR General Comment No.19 on Article 23 of the Covenant, emphasise the importance of providing the '*widest possible protection and assistance to the family*'. The CEDAW General Recommendation 21 clarifying Article 16, reiterates that the legal protection to women must not be limited to legally recognised wives alone, but women in diverse family forms. The CEDAW General Recommendation 29, in para 31, enjoins State parties to '*consider the situation of women in these (de facto) unions, and of the children resulting from them, and takes the necessary measures to ensure the protection of their economic rights*'. The CEDAW General Recommendation 29, in para 24, also urges State parties who recognize other forms of relationships '*whether as a de-facto union, registered partnership or marriage*' to '*ensure protection of the economic rights of the women in those relationships*'. Principle 24 of the Yogyakarta Principles extends these protections to same sex conjugal units as well. The report of the Working

²Partners for Law in Development, Rights in Intimate Relationships: Towards an Inclusive and Just Framework of Women's Rights and the Family, 2010. <http://feministlawarchives.pldindia.org/wp-content/uploads/RIR-Report.pdf>?

³A bigamous union formalized through a written 'friendship agreement' practiced by men upper-caste, middle class men with women from poor communities, with clearly defined roles and obligations between the parties, and provision for childcare, maintenance and cohabitation.

⁴Prevalent amongst lower caste groups, with taking of a bride through a contract upon payment of bride price. This takes the form of serial monogamy, as a woman can be taken into *nata* more than once, but sequentially.

⁵http://nipccd.nic.in/reports/rcl_lsr.pdf

⁶*Supra* note 2.

⁷E/CN.4/1996/53, Para 25.

Group on Discrimination Against Women in Law and Practice (2015) on the theme of discrimination in family and cultural life, asserts the need to apply the women's right to equality within the family, whether they are governed by secular family law systems, State-enforced religious family law systems, and plural systems.

B. ENSURE EQUALITY AND NON-DISCRIMINATION THROUGH PROTECTION OF INDIVIDUAL RIGHTS WITHIN THE FAMILY - There is extensive documentation on domestic abuse against individuals who are vulnerable based on their sex (including sexual orientation and gender identity), gender, age and ability. Studies in India have shown widespread intimate partner violence, domestic abuse, dowry related deaths, marital rape and killing in the name of honour of young women and men who choose to marry across caste, religion and other social divides. There have also been cases of torture through forced treatments including electric therapies by parents and medical establishments against children to 'cure' them of homosexuality.

Discrimination against women within normative families occur in terms of reproductive rights, sexual violence, disproportionate share of domestic work and care-giving labour; in addition to denial of or unequal succession rights, economic resources and decision making. Further, women run households often lack the same privileges as male headed families. More recently, there is growing recognition of elderly abuse. The realities of women, children, the elderly and those with disability show that family members are not equally situated, and that legal protection to individuals within de jure and de facto families and households is fundamental to realisation of equality and non-discrimination. Such protection across diverse families holds the promise for making families a powerful transformative unit in society.

C. STATE BEARS THE PRIMARY DUTY TO ADVANCE HUMAN RIGHTS WITHIN THE FAMILY, ELIMINATE POVERTY AND ACHIEVE SUSTAINABLE DEVELOPMENT - State is the primary duty bearer for fulfilment of all rights and ensuring legal protection of individuals against state as well as non-state actors. As highlighted above, the non-state actors often include family, community members, cultural and institutional bodies, private enterprises whose compliance with human rights must be ensured through appropriate domestic legal, policy and programmatic interventions. The duty to ensure compliance by private actors rests upon the State.

CEDAW in Article 16 stresses the obligation of the state to take appropriate measure to eliminate discrimination against women in all matters relating to marriage and family relations. These include equality in rights and responsibilities to enter, during and after marriage. The Convention on the Rights of Persons with Disabilities in Article 12 emphasizes the importance on state's responsibility to recognize the legal capacity of persons with disabilities over all aspects of their lives on equal basis with other persons. The Rights of Persons with Disabilities Bill 2014 (India) places upon the government, the responsibility to protect and prevent persons with disabilities from all forms of abuse, violence and exploitation and protect legal remedies to them. In the context of the elderly, the United Nations Principles for Older Persons adopted by the General Assembly resolution 46/91 talks about older persons's access to legal and social services to enhance their autonomy.

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