



## Partners for Law in Development's Statement on India's 3rd UPR

*On Recommendations pertaining to women's equality, decriminalization of homosexuality and protection of rights of transgender persons.*

The Universal Periodic Review (UPR) is a peer review mechanism of the Human Rights Council which examines the human rights record of all the member states of the UN, every four years. India's 3rd UPR was conducted on 4th May, 2017 in Geneva where 112 UN Member states had proposed 250 recommendations to India. On 21st September 2017, the Government of India "accepted" 152 recommendations of the total 250 recommendations, while "noting" the other 98.

**On Women:** Out of the total 250 recommendations made, 71 pertained to various aspects of women's equality and rights, of which 50 were accepted by India. PLD commends the Government of India for accepting recommendations made with respect to eliminating discrimination against women, sexual and domestic violence, early and child marriage, forced and unsafe sterilizations, 'honour' killings and dowry-related deaths. In doing so, India affirms its constitutional obligation towards addressing the most violent forms of discrimination against women.

The government accepted all 6 recommendations made with respect to "punishing domestic violence as well as promoting awareness on gender violence, including 'honour' crimes" and "improving the enforcement of the legal provisions" relating to harmful practices such as child marriages, dowry-related murders and honour killings. It is inexplicable, that despite accepting recommendations focusing primarily on violence against women, India chose to not accept all of the 11 recommendations seeking criminalization of marital rape. Since marital rape is but an aspect of domestic violence, it is hoped that India will take immediate steps to assure that redress for sexual violence within marriage will be available under section 498A Indian Penal Code that pertains to cruelty against the wife in matrimonial home. Proactively signaling this is particularly important in view of the alarming pronouncements from the highest judiciary and the Ministry of Women and Child that seek to dilute the legal redress available for domestic violence.

We welcome India's acceptance of all 3 recommendations made with respect to prevention of "coercive, unsafe and abusive sterilization" and "immediately putting an end to camp-based

sterilization operations", and the acceptance of all 3 recommendations made in relation to "redoubling efforts in maternal health, sexual and reproductive health and comprehensive contraceptive services" along with providing "comprehensive sexuality education". We look forward to target driven approaches being replaced by holistic efforts to fulfill sexual and reproductive right to women including through scientific and accurate information and quality services to enhance decision-making and gender equality.

Even as we congratulate the government for accepting all 9 recommendations related to "adopting a law on combating trafficking in persons", we emphasize that these must not conflate sex work with trafficking, and further, must decriminalize all incidental aspects of sex work.

It is of concern that India has consistently, through the three Universal Periodic Reviews, not been inclined to consider the benefits of ratifying the Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) or the withdrawal of "declarations" to CEDAW. Such a stance unfortunately, limits the normative advancement on women's equality municipally, available with assistance of UN human rights system.

**On Transgender persons:** India accepted the recommendation related to protecting the rights of transgender persons. In commending this step, we call on India to ensure that the Transgender Persons (Protection of Rights) Bill 2016 is revised to incorporate all concerns raised by the community and the parliamentary committee, so as to guarantee non-discrimination in housing, employment, education in government funded or recognized institutions and provision of legal remedies against discrimination, harassment or sexual violence; and most importantly, guarantee self determination of gender identity.

**On Homosexuality:** Regrettably, the government did not accept any of the 5 recommendations made for "repealing Section 377 of the IPC for decriminalization of consensual same-sex relations". Indeed, India has consistently through each UPR, chosen not to accept recommendations on this subject. At the 2nd UPR in 2012, Indian representative cited the Constitutional guarantees of equality and non-discrimination, noting that "the process of decriminalization of law against LGBT community was taken forward by the judgment on Section 377 of IPC by the Delhi High Court" in 2009. When admittedly, there is a Constitutional obligation, not an impediment, to decriminalize homosexuality, it is not clear why proactive law reform have not been forthcoming on this subject. In this context, we call upon the government to lend vigorous support to decriminalization before the Supreme Court, in the curative petition on section 377 when it is heard.

Finally, we urge the Indian government to work in further collaboration with civil society, local communities to achieve gender equality and social justice in its fullest sense by implementing all recommendations made at UPR III.