

CRIMINAL JUSTICE RESPONSE TO CRIME MOTIVATED BY INTOLERANCE AND DISCRIMINATION

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I. INTRODUCTION

Until the new Constitution of the Republic of Maldives came into effect in 2008, the criminal justice system of the Maldives has been functioning as an integrated body, whereby all relevant agencies of the system work together, but these bodies (i.e. investigation, prosecution and adjudication) became independent with the enforcement of the new Constitution, the purpose being to empower these agencies to work effectively and independently.

II. THE STATUS OF CRIME MOTIVED BY INTOLERANCE AND DISCRIMINATION

Although Maldives still remains a homogeneous country belonging to one nationality, it has become a host for thousands of migrant workers and hundreds of tourists of different nationalities. Thus, Maldives can now be considered a country where multi-racial people live or reside, be it for pleasure or for economic reasons.

Reported cases of ill-treatment faced by migrant workers are increasing although the basis of such treatment is ambiguous, and the negative attitudes faced at times by migrant workers from locals are of noticeable concern, but no official survey has been done so far.

In a press statement¹ released by the Human Rights Commission of the Maldives in 2016 on the International Day for the Elimination of Racial Discrimination, it was explained that Maldives is seeing an increase of racial indifference and hostility towards those of different races living the country. It pointed out that expatriate workers are subjected to harsh conditions such as congested spaces and that the most notable suffering inflicted on those workers is the society's perception of them as insignificant, making them prone to all kinds of abuse. It was also noted that, even though Maldivians are based on the same race, acts of discrimination (however small) against others based on differences among the society are seen and that being judgmental of a person based on his or her island, language, and political or religious differences will have adverse effects on the society.

With the enforcement of the new Constitution of the Republic of Maldives in the year 2008, discrimination of any kind, including race, national origin, colour, sex, age, mental or physical disability, political or other opinion, property, birth or other status or native island, was prohibited. Article 17(b) of the Constitution states:

Everyone is entitled to the rights and freedoms included in this chapter without discrimination of any kind, including race, national origin, colour, sex, age, mental or physical disability, political or other opinion, property, birth or other status, or native island².

Article 55 of the Constitution of the Republic of Maldives guarantees that no person is subjected to cruel, inhumane or degrading treatment or punishment, or to torture, while Article 56 of the Constitution ensures the right to appeal a conviction and sentence, or judgment or order in a criminal or civil matter tried on anyone, including foreigners, under the Maldivian Law.

Maldives has been taking measures on a national and international level to combat crimes against discrimination. Maldives acceded to the International Convention on the Elimination of All Forms of Racial Discrimination (ECRD) on 24 April 1984 and to the Convention against Torture and Other Inhuman or

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¹ <http://www.hrcm.org.mv/dhivehi/news/pressreleasearchive/PR052016.pdf>

² Constitution of the Republic of Maldives 2008; Article 17 (b).

Degrading Treatment or Punishment (CAT) on 20 April 2004³. Since then, a lot of work has been done on a national level by the relevant authorities and the parliament. The output of this work can be seen through the new enforced laws on sexual offences and harassment, gender equality, and the Domestic Violence Act⁴.

The object of the Gender Equality Act is to facilitate all steps towards prevention of discrimination based on gender and prevention of all ideas and practices that promote discrimination between men and women in conformation with the Convention on the Elimination of All forms of Discrimination Against Women and the Optional Protocol to the Convention on Elimination of All Forms of Discrimination Against Women⁵.

According to Section 4 of the Gender Equality Act:

Gender equality, for the purpose of the Act shall mean equality of opportunity, equality in accessing opportunities, the opportunity to achieve results on equal terms and the fundamental equality of rights and freedoms for men and women.

Similarly, Maldives has taken important policy initiatives to strengthen labour management and to protect labour rights including the ratification of the eight International Labour Organization conventions in 2013. The Government is committed to end the exploitation of workers in Maldives and this commitment was further demonstrated by the ratification of the Anti-Human Trafficking Act in 2013.⁶

Legislation, such as the Employment Act and the Civil Service Act (compatible with the Constitution), provides equal socio-economic services and benefits as well as equal access to economic and political participation. In addition to the above-mentioned legislation, the Penal Code of the Maldives enacted in 2014, provides a mechanism to criminalize the homicide offences, assault, threat offences, property damage and destruction offences and offences against the family, irrespective of the motive of the offender.

III. INVESTIGATION

In every country, the investigation authorities play a key role in combating any offence. In Maldives the main investigation agency is the Maldives Police Service. They are empowered by the Police Act 2008. The police are responsible for enforcing criminal law, enhancing public safety, maintaining order and keeping the peace throughout Maldives.⁷ Thus police officers are vested with special powers to arrest persons on suspicion of a crime, conduct searches, seize or discover evidence, and investigate criminal acts. The powers of the police are further elaborated and extended in the “Regulations on Executing of the Constitutional Authority and Discretion Accorded to the Police.”

Although Maldives Police Service is the principle investigating agency, the Human Rights Commission (HRCM) of Maldives⁸ which was established on 10 December 2003 as an independent and autonomous statutory body, was created by the President of the Republic of Maldives with the right to sue and be sued. The HRCM has the authority to investigate complaints filed with the HRCM alleging infringement of human rights or aiding and abetting such an act or should the Commission have reason to believe such an act was committed or is being committed⁹.

IV. PROSECUTION

In the Maldives, the sole power to prosecute any criminal case is vested in the Prosecutor General¹⁰.

³ https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=MDV&Lang=EN

⁴ Act No. 17/2014 (The Sexual Offences Act); Act No. 16/2014 (Sexual Harassment Act); Act No. 3/2012 (Domestic Violence Act).

⁵ Section 2; Act No. 18/2016 (Gender Equality Act).

⁶ Report of the Working Group on the Universal Periodic review (Human Rights Council; thirtieth session, Agenda item 6 (18 September 2015)).

⁷ Section 2 and 6, Act No.5/2008 (Police Act).

⁸ <http://www.hrcm.org.mv/aboutus/about.aspx#Establishment>

⁹ Section 20, Act No. 6/2006 (Human Rights Commission Act).

¹⁰ Article 223, The Constitution of the Republic of Maldives 2008.

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Article 220 of the Constitution of the Maldives states that there shall be an independent and impartial Prosecutor General of the Maldives. The Prosecutor General has the power to evaluate and assess the evidence presented by the investigating bodies to determine whether charges should be pursued and to institute and conduct criminal proceedings against any person before any court in respect of any alleged offence. These responsibilities and the power of the Prosecutor General are clearly defined in the Constitution of the Maldives, and they have been further elaborated in the Prosecutor's General Act¹¹.

While the Constitution ensures an independent and impartial prosecution, prompt investigation and prosecution are also guaranteed by the Constitution of the Republic of Maldives. Article 50 of the Constitution states:

After notice of an alleged offence has been brought to the attention of the investigation authorities, the matter shall be investigated promptly, and where warranted, the Prosecutor General shall lay charges as quickly as possible.

V. ADJUDICATION

With the ratification of the new Constitution of the Republic of Maldives, in the year 2008, the Maldivian Judiciary entered a new phase of transformation and progress. With the separation of powers of the state, it was established that all judicial powers are vested in the Supreme Court, High Court and such Trial Courts as established by the law. According to Article 141 of the Constitution of the Republic of Maldives, the Supreme Court is the highest authority for administering justice. Thus, the Supreme Court has the final authority on the interpretation of the Constitution, the law, or any other matter dealt by a court of law¹². Also, as the guardian of the Constitution and law, the Supreme Court plays a crucial role in the administration of the court system.

Maldives has a three-tier system for the administration of justice¹³. The Supreme Court, the High Court and lower courts. The lower courts, which include at least one Magistrate's Court (with limited jurisdiction) in each inhabited island, as well as the five specialized courts which sit in Male: The Criminal Court, the Civil Court, the Drug Court, the Family Court and the Juvenile Court. The Criminal Court as the first instance court has jurisdiction to adjudicate all types of criminal cases¹⁴. Even though magistrate courts, as the first instance courts, have jurisdiction to adjudicate criminal cases, an exception has been laid down by the Judicature Act of the Maldives. Schedule 5 of the Judicature Act stated that the following matters shall not be adjudicated by the magistrate courts.

- (a) Cases related to murder.
- (b) Issues specified in the Narcotics Act.
- (c) Among offences of theft, embezzlement, deception, fraud and treachery and mugging, those that involve an amount of MVR 100,000 (one hundred thousand) and above, or assets of the same value.
- (d) Matters regarding counterfeiting of notes and coins and the contraband of counterfeit money into Maldives.
- (e) Cases related to terrorism.
- (f) Charges brought under any of Chapter 1 of the Penal Code under the title 'Sedition and treason against the State'.
- (g) Cases of rape.
- (h) Cases which involve an amount of MVR 5,000,000 (five million) and above, or assets of the same value.

VI. CHALLENGES

The most challenging problem that the Maldives faced in approaching crimes motivated by the intolerance and discrimination is that there are no specific legal instruments criminalizing crimes motivated by intolerance and discrimination. Though legal instruments against discrimination (as mentioned above) have been

¹¹ Section 15, Act No. 9/2008 (Prosecutor General's Act).

¹² Article 145 (c), The Constitution of the Republic of Maldives 2008.

¹³ Act No. 22/2010 (Judicature Act of the Maldives).

¹⁴ Schedule 2 of the Act No. 22/2010 (Judicature Act of the Maldives).

established, awareness programmes are not effectively held on the mechanisms for reporting such crimes. Investigating and other relevant authorities are not well trained to proceed with the investigation and uncovering evidence of such crimes. Hence many of the crimes motivated by intolerance and discrimination remain unreported, unprosecuted and, therefore, invisible.

Another crime prevention issue faced by Maldives is the delay in prosecution and the adjudication process for various reasons, the main reason being not having resources and well-trained support staff.

Failure of the investigating authorities to make the investigation in line with the provisions of the Constitution is another critical issue. Article 52 of the Constitution of the Maldives states: "No confession shall be admissible in evidence unless made in court by an accused who is in a sound state of mind. No statement or evidence must be obtained from any source by compulsion or by unlawful means and such statement or evidence is inadmissible in evidence." Hence, the investigation itself becomes unconstitutional if not carried in accordance to the Constitutional provision.

Delay in the investigation, prosecution and in adjudication amounts to disposal of evidence and witnesses being reluctant to testify against the offenders as they are being threatened. However, the Criminal Procedure Act¹⁵ has taken measures to lessen such problems as it laid down a timeframe for the investigation, prosecution and adjudication process. It also established a mechanism for witness protection such as suppression of identity, testimony through video-link and use of voice distortion.

The Ministry of Gender and Family has the mandate to facilitate the provision of social, psychological and legal services to persons reporting deprivation of rights resulting from gender discrimination or violence, but they do not have the investigatory power which further delays the justice to the victims of domestic violence.

VII. VIOLENCE AGAINST WOMEN IN MALDIVES

Like in any other country, violence against women is a crime Maldives is struggling to deal with. It is a serious issue and often a hidden issue where the victims silently live in humiliation. Giving voice to the issue is a first step in combating it, and the Domestic Violence Act, enacted on 23 April 2012, is a milestone in making the existence of the issue in Maldives loud and clear. The creation of the Domestic Violence Act paved way to establish stakeholders in combating violence in the Maldives. The Domestic Violence Act defines certain acts conducted between individuals in a domestic relationship to be an act of domestic violence. Section 3(a) of the Domestic Violence Act defines what constitutes such domestic relationship while Section 4(a) lists the individual acts which, when conducted between two people, can be considered an act of domestic violence. A major outcome of the Domestic Violence Act is the introduction of "protection orders" detailed in sections 7 and 8 of the Act. Under the Act, victims are able to request and obtain emergency and permanent protection orders against the perpetrators.

VIII. CASES OF DOMESTIC VIOLENCE

Name, place and specific details have been omitted from the below-mentioned cases to ensure the confidentiality of the victims.

1. A case filed by the Applicant against her husband for committing various domestic violence acts, at the Family Court of the Maldives on 2017 for a protection order. According to the case report the husband committed physical, psychological and verbal abuse along with intimidation and many other acts and caused the children to witness the domestic violence against the Applicant. Here, the court issued a protection order for a period of one year as the domestic violence acts committed against the Applicant were proved by the witnesses' statements and by the reports presented by the Maldives Police Services stating that 2 incidents of violence against the Applicant by her husband were lodged and investigated and sent to the Prosecutor General's office for prosecution.

With regard to this case, it is noted that the perpetrator's acts were reported to the relevant investigating authority and are being investigated but sadly our records show that the perpetrators are not prosecuted.

¹⁵ Act No. 12/2016 (Criminal Procedure Act)

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2. A case filed by the Prosecutor General against the Respondent at the Criminal Court for breaching the Protection Order issued by the Family Court against the Respondent to avoid committing any act against his ex-wife, that would suffice as a domestic violence act. He denied the charges against him. To prove the case, the Prosecutor General presented the ex-wife, her father and sibling as witnesses, but in their statements, they supported the Respondents' stand. Hence, the Court decided that the Respondent was not guilty of the charge.

In this case, it is evident from the case report that the witnesses, especially the father, favoured the Respondent as he did not want the Respondent to be prosecuted with criminal charges as the child of the Respondent is in the care of the ex-wife and if prosecuted, the child might suffer.

These case studies give us a clear indication that various forms of violence exist in Maldives and that also indicate that there are very limited services available to the victims. The case studies also show that perpetrators are rarely prosecuted or punished. Hence, they are not held accountable for their actions.

3. A case filed by the Prosecutor General at the Criminal Court of the Maldives, where the respondent was reported by his wife, for hitting her and pushing her from a jetty. The respondent hit the wife's head, whereby the respondent's wife fell onto a boat nearby and hit her mouth which rendered her unconscious. It was proved by the medical reports that the respondent's wife suffered severe injury to her mouth and that her leg was injured by the respondent's acts. It was decided that the respondent was guilty and sentenced to pay a fine of MVR 200, as this was his first criminal offence.

This clearly is a case of violence against women which can be prosecuted under the Domestic Violence Act, but the respondent was prosecuted under the Penal Code for battery. This case raised concerns among the public and the Court was criticized for its judgment. But it is important to note that the court decides cases based on the facts presented before it.

IX. RECOMMENDATIONS

- Revising and improving the legislative framework to facilitate the anticipated results, so that the prosecution can prosecute under the relevant legislation to achieve the results from the specialized acts such as the Domestic Violence Act.
- Creating school and society-based awareness programmes across all age groups on respectful relationships and responses to domestic and family violence.
- The provision and availability of supportive housing models to assist victims of domestic and family violence to find safety for themselves and their children.
- Focus on long-term care of the victims, such as rehabilitation and reintegration, and measures to decrease the chances of reoccurrence of any type of further abuse against women.
- Establish a good psychosocial support system at a national level.