

ARTICLE 490 OF THE MOROCCAN CRIMINAL CODE

Between Repeal and Amendment

POLICY PAPERS SERIES

by **MENASSAT**

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Executive Summary

In this paper, we seek to shed light on the issue of consensual relations between adults outside the institution of marriage, which has become one of the topics receiving considerable attention. Morocco has joined and ratified a set of laws that enshrine human rights in their universal meaning and has granted them significant value and status. However, in the case of consensual relations between adults, individuals still face challenges in this regard.

This paper seeks to describe and analyze the effects resulting from the application of Article 490 of the Criminal Code, which criminalizes consensual relations. It also seeks to examine ways to advance the exercise of rights and freedoms, and the practice of consensual relations between adults, within a constitutional and legal framework. The sun does not enter bedrooms, nor does it shine from them; and the state cannot monitor individuals inside their rooms.

Introduction

The importance of studying individual freedoms, especially those related to sexual practices outside the framework of marriage, stems from the accumulation of demands calling for the amendment of the Criminal Code, particularly Article 490, which criminalizes consensual relations outside the institution of marriage. It also stems from the continued rejection and transgression of this provision by some actors and segments of Moroccan society, as well as from the spread of sexual relations before the age of marriage.

This paper aims to highlight the main features of sexual transformations in Morocco from the perspective of the contradictions between individual values and collective values, and the view of sexuality as a new pattern of human pleasure.

Moroccan society has experienced a set of transformations and changes across different and multiple dimensions. Among the aspects that must be emphasized in the context of these transformations is the question of individual freedoms and the extent to which national legislation and laws are compatible with them, through the adoption of legislation that enables individuals to exercise their rights and freedoms legally, away from the violations or abuses they may encounter.

Consensual Relations as an Individual Freedom

In 2011, Morocco adopted a new Constitution, which came as a result of protest movements demanding justice, equality, fairness, and the recognition of rights and freedoms. In this regard, the Constitution enshrined, in Chapter II, a set of rights and freedoms. Article 24 affirmed that every person has the right to the protection of their private life, and to the protection of privacy, thereby guaranteeing individuals' rights and affirming their freedoms.

The High Commission for Planning also indicated, in the 2014 General Population and Housing Census, that the average age of marriage had increased. Among women, it rose from 17.3 years in 1960 to 25.7 years in 2014, while the average age of marriage among men rose from 24.1 years in 1960 to 30.1 years in 2014. This confirms that resorting to sexual practice outside the framework of marriage and to consensual relations is a widespread issue in the country.

Aware of the importance and depth of this societal transformation, the National Human Rights Council submitted a memorandum concerning Draft Law No. 10.16, which aims to amend and supplement the Criminal Code. The memorandum included a set of recommendations intended to reconsider the issue of individual freedoms, including the criminalization of consensual sexual practices outside the institution of marriage, especially those between adults. It also stressed the need to protect public decency and to criminalize sexual relations that take place by force. The memorandum expressed by the National Human Rights Council represents a qualitative leap in the issue of individual freedoms in Morocco. It generated major societal debate between supporters, opponents, objectors, and neutral positions, and constitutes a path toward progress and the recognition of rights and freedoms.

Who Owns the Body in Morocco?

The field research conducted by Menassat for Research and Social Studies on the topic “Individual Freedoms in Morocco: Representations and Practices” produced important findings in the field of sexuality in Morocco. This paper will present some of the results of that study.

Different transformations affecting sexuality in Morocco can be observed by focusing on the image of the body within Moroccan society. 75.4% of respondents agree that their body belongs to them and that they are free to use it, compared with 24.5% who do not agree that their body belongs to them and who are subject to certain conditions that make them dissatisfied. Regarding the gender variable, 74.7% of men and 76.8% of women agree that they are free in the ownership of their bodies, while only 25.3% of men and 23.2% of women do not agree with freedom of body ownership.

The study results clearly indicate that educational level is not an important factor in individuals’ representations of freedom over ownership of their bodies. The proportion of educated respondents — secondary education at 58.66% and higher education at 50% — who consider themselves free in the ownership of their bodies is high. The same is observed among non-schooled groups at 57.78% and among those whose level is Qur’anic school at 54.44%. Place of residence is also not a fundamental factor in respondents’ views on bodily freedom. The proportion of those who fully agree with bodily freedom remains high in villages, at 53.75%, and in small towns, at 47.54%.

27% of respondents say they are against Article 490, which criminalizes consensual relations outside the institution of marriage. Among them, 48.3% consider these relations to be a personal freedom, and 24.3% believe that the law should not create morality. Meanwhile, 50.4% support this law, including 65.4% who consider that this article limits corruption and moral dissolution; 22.4% have no position. The results also show that 69.2% have no knowledge of this article.

These figures reflect some of the transformations Moroccan society has experienced, embodied in the growing concern with the body, the strong tendency toward sexual practice outside the framework of marriage, the changing status and role of women within society, and women’s contribution to management, administration, and decision-making.

A Society Oscillating Between Conservatism and Modernity

Although Morocco is considered an Islamic state, as stipulated in the Moroccan Constitution, and although many of the laws in force in the country express a traditional and conservative orientation in matters of individual and collective freedoms, the lived reality of many Moroccans reveals a significant transformation in value and moral systems. These transformations affect different social groups, categories, and levels. They became particularly visible in the period before the Arab Spring of 2011 and after it, forming the expression of complex transitional trajectories. Among their manifestations is the call to adopt laws that reflect the paths of transformation Morocco has experienced.

The opening of schooling to women and their entry into the labor market contributed to creating a form of conflict between the conservative reference framework and the modernist reference framework. Women have acquired a stable income and a position within the family, as well as an opinion regarding education, clothing, and relations with the other sex. They have also gained financial independence. All these transformations have affected the structures of the relationship between women and the family and changed its conditions. This is reflected in women's economic and sexual position within the family and society in general.

As for young people, they are characterized by a set of traits that make them individuals who desire change and revolt against prevailing traditional values and beliefs. Despite what characterizes young people today, especially regarding their levels of knowledge of religious matters, they are more open to topics related to rights and individual freedoms, and are the most inclined toward the exercise of sexual freedom outside the framework of marriage. This orientation can be explained by the social and economic transformations that Morocco is currently experiencing, the rise in the age of marriage, and the expansion of the margins of individual freedom.

Conclusion and Recommendations

In recent years, Moroccan society has experienced a set of transformations and changes affecting several aspects. Among these transformations are value changes among youth groups and the change in their view of certain matters related to sex. Today, this has become one of the issues that receives broad public debate, and there is now a clear controversy around the issue of individual and sexual freedoms.

It may be noted that political institutions, in their relationship with religious institutions, still refuse and continue to resist opening space through the legal arsenal in a way that corresponds to the societal and value transformations experienced by Moroccan society. If we have tried to shed light on the practice of sex before marriage, it remains religiously prohibited and legally criminalized. Although the standards that determine the legitimacy of sexual behavior still draw from the Islamic religion, law, jurisprudence, customs, and traditions, the daily sexual behavior of Moroccans is a liberating behavior that moves beyond this sharp contradiction between citizens' actual practice and the texts of Moroccan legislation.

This paper recommends reconsidering the legal texts that frame public freedoms in Morocco, and issuing laws that keep pace with the developments and transformations experienced by society, especially the repeal of Article 490 of the Moroccan Criminal Code. It also recommends the inclusion of sex education in school curricula, while organizing awareness-raising workshops and communication activities that accompany the changes taking place in society and combat the social stigma generated by them.



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