

To

The Hon'ble Prime Minister/ Home Minister/ UPA Chairperson

The molestation of a young teenaged girl in Guwahati by a mob on 9th July, 2012, has evoked widespread outrage and condemnation from many quarters, prominently from feminist and women's rights groups. Even as we express our anger at the incident, we are not shocked or surprised by the impunity and brazenness with which the assault was committed by a group of men, on a busy main road in full public view.

The inadequacy of existing law, prejudiced and shoddy investigation by the police, casual prosecution, absence of any witness/ victim protection mechanisms, tardy and prolonged legal processes without any certainty of conviction, all cumulatively ensure that there will be no legal consequences for these crimes. The perpetrators remain secure in the knowledge that the legal system of this country is unable and unwilling to punish those who violate the bodily integrity and dignity of girls and women, and commit acts of violence repeatedly with impunity.

This impunity manifests itself routinely in cases of sexual harassment, molestation, rape of women in urban and rural areas, the targeting of women's bodies during communal and caste conflicts or the sexual assault of women by men in uniform engaged in counter insurgency operations, in the North East, Kashmir and Central India. The common feature in all these instances of sexual violence is the absence of accountability and failure of the legal system to punish the guilty. The recent incident of molestation in Guwahati has only once again underscored the gaps in the law and the weakness of the legal system in ensuring justice for women survivors of violence.

For over 20 years the women's movement has been highlighting the need for law reform. In 2010, in the aftermath of similar protests over the injustice in the Ruchika Ghirotra case, women's groups had sought changes in the law. At that

time the Home Ministry had responded by proposing the Criminal Law Amendment Bill, 2010, which suggested a host of amendments to substantive and procedural law relating to sexual violence. A Committee headed by the then Home Secy. Mr. G.K. Pillai was also constituted comprising of all the relevant Ministries to take forward the legal reform process.

Women's groups welcomed this initiative as a long overdue step. To give comprehensive feedback, we organized 2 national consultations with women's rights, child rights, human rights groups, scholars, lawyers etc. and formulated an alternative draft Bill based on our experiences and engagement with the issues and the legal processes. We presented our draft Bill to Mr. G.K. Pillai, (former Home Secy.) in June 2010. Our representative delegation was assured that the government would call a national consultation on the Bill and start a dialogue with women's groups and others on the Criminal Law Amendment Bill, 2010. Since then the government has passed the Child Sexual Offences Bill, to protect minors with regard to sexual violence. However despite our repeated reminders and requests no progress has been made on amending the law relating to sexual violence.

The facts speak for themselves. It is clear that measures to prevent, protect and punish sexual violence against women are not a priority of the UPA government, perhaps not even on its agenda, as it completes 8 years in power.

A constant theme guiding policies, laws and financial allocations of the Prime Minister and the Home Minister has been "security." We would like to point out that women's security is jeopardized, threatened and their lives and dignity are at great risk, on a daily basis from the likelihood of sexual assault in public and private spaces. This threat diminishes women's capacity and ability to exercise their fundamental freedoms and makes mockery of the right to equality and right to life with dignity, guaranteed by the Constitution. Even their basic rights, to education, to earn a livelihood, to travel etc. are all severely crippled by the threat of sexual violence.

At present only 2 provisions of the Indian Penal Code primarily deal with the issue of sexual violence against women. Sec. 376 IPC punishes rape and Sec. 354 IPC punishes outraging the 'modesty' of a woman. Sec. 354 IPC applies to routine incidents of molestation and certainly does not respond to aggravated sexual assault by a mob, accompanied by public stripping and parading. There is no penal provision to redress the harm, injury, humiliation and trauma suffered by the young girl in Guwahati when she was assaulted by a group of men, or indeed countless attacks similar to this reported from different parts of India. Yet it is this penal provision which the police and court will have to base their charge upon. Sec. 354 IPC offers no commensurate penalty – nor is a deterrent. It is a bailable offence and allows the Court to award a maximum of 2 year imprisonment or at its discretion, a mere fine as a minimum sentence.

This is precisely the problem with the legal provisions relating to sexual violence. The law attaches gravity only to rape i.e penile penetration of the vagina. All other forms of sexual assault find no specific mention and fall into the residual category of Sec. 354 IPC, which trivializes the crimes. In effect there is a legal vacuum on various kinds of sexual assault that are reported routinely, including public stripping, parading and mob violence. The draft Statements of Objects and Reasons to the Bill formulated and presented by women's groups to the Home Ministry in June 2010 had stated then and we repeat today, that the existing law uses notions of 'dishonour' and 'modesty' which utterly fail to capture the assaultive nature of the offence and the harm caused by it. The draft bill submitted by women's rights groups in 2010 had, therefore, graded offences into categories of sexual assault, aggravated sexual assault and sexual offences, based on the concepts of harm, injury, humiliation and degradation.

The government is not only constitutionally and legally obliged to provide this protection to women from sexual violence, but is obliged under international law to constitute a legal regime that protects, respects and promotes women's rights. The widespread and systematic sexual violence against women, points to the gross failure of the government to exercise due diligence and makes the government culpable and responsible for these crimes against women.

We expect the government to immediately initiate a process of dialogue with women's rights groups, activists, lawyers and scholars on the Criminal law Amendment Bill, 2010, by organizing consultations. We are also cognizant of the fact that law reform alone will not ensure justice or the safety of women. At these consultations therefore we would also make recommendations on other critical dimensions of a comprehensive response to sexual violence, including prevention, protection, and access to justice.

In addition to taking immediate steps towards discussing law reform in a time bound manner, we expect a transparent and thorough probe into the alleged role of the media in instigating the Guwahati attack.

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