

January 28, 2013

**Shri Venkaiah Naidu  
Chairperson,  
Parliamentary Standing Committee on Home Affairs**

Dear Sir,

**Sub: Submissions in relation to the Criminal Law (Amendment) Bill 2012 from the perspective of women with disabilities**

We the representatives of various organisations representing persons with disabilities would like to submit the following in response to your press release inviting suggestions to the Criminal Law (Amendment) Bill 2012.

**Amendments to the Indian Penal Code, 1860**

1. Clause 5 of the CLAB seeks redefine Section 375 of the Indian Penal Code to make the offence of sexual assault gender neutral with respect to both the perpetrator and the victim. There is increasing evidence that sexual assault is carried out against men, women and transgender persons, both in normal times as well as in custodial and conflict situations. Hence it is only appropriate that for the purpose of Section 375, the victim should be gender neutral. We however feel that there is no empirical basis for making the perpetrator gender neutral. No matter who the victim is, documented evidence shows that in cases of sexual assault, the perpetrator is always male. In a system where a large number of judges, lawyers and medical professionals are biased against women and feel that most complaints of sexual offences are false cases, making the perpetrator gender neutral and allowing men to bring complaints of sexual assault against women, would disempower women even further.

Defining the perpetrator as gender neutral would be against the interest of disabled women as well. There is general lack of awareness on the issue of sexuality of persons with disabilities as they are either considered asexual or hyper-sexual. Our experience while handling cases of sexual assault against women with disabilities and conversations with authorities dealing with such issues has only reinforced this belief. Many a time Police officers as well as heads of mental health institutions have often commented that disabled women are unable to control their sexual urges and make sexual advances on

men, and later the men are blamed for the same. If the perpetrator is made gender neutral, whenever a disabled woman complains of sexual assault, the alleged assaulter would file a counter complaint that it was he who was raped by the disabled woman. Given the widespread belief regarding disabled women's hypersexuality, there are chances that such counter-allegations by men would be believed. Hence, we oppose the making of the perpetrator, gender neutral. However, for the reasons stated in the previous paragraph, the definition of the victim should be gender specific.

Therefore we would suggest that the recommendation of the Justice Verma Committee in this regard may be considered.

2. Although 'consent' is the main ingredient of the sexual offences, the term itself is not defined in the law. As a result, judges infer the presence or absence of consent of the victim, from her clothes, conduct, past sexual history, life style, marital status, physical ability to resist the aggressor and such other subjective factors. Although the Supreme Court of India has held on numerous occasions that for consent to be valid, it should be unequivocal consent and not passive submission, this does not find reflection in judicial decisions. We hence urge the Committee to adopt the definition of the term 'consent', which has been suggested by the Justice Verma Committee. Consent has been defined by the latter in the following manner:

**Consent means an unequivocal voluntary agreement when the person by words, gestures or any form of non-verbal communication, communicates willingness to participate in the specific act.**

3. The proposed Section 376(2)(c) addresses sexual assault in custodial situations like jails, remand homes or women's institutions. In light of the vulnerability of disabled women and children to sexual exploitation in such institutions, as is borne out by a number of incidents in recent times as well as our own experience, we recommend that the clause should be redrafted in the following manner:

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, **including institutions catering to persons with disabilities**, commits sexual assault on any inmate of such jail, remand home, place or institution;  
or

Additionally, the Explanation 1 (a) should be suitably modified to effect the above suggestion.

4. The proposed Section 376(2)(j) makes sexual assault on a 'person suffering from mental or physical disability', an aggravated sexual assault with a minimum punishment of ten years imprisonment and fine. In our experience a large number of disabled women who become vulnerable to sexual assault have sensory impairments such as blindness, deafness, speech impairment. Hence in addition to mental and physical disability, this clause should also mention sensory disability. Additionally, the term 'suffering' in this clause is derogatory and should be removed. Our recommendation is that this clause should be redrafted as:

**(j) commits sexual assault on a person with mental or physical or sensory disability; or**

#### **Amendments to the Code of Criminal Procedure, 1973**

5. Clause 7 of the CLAB proposes to add a Proviso to Section 154 of the CrPC stating that whenever a woman provides information of sexual offences committed against her, such information should be recorded by a woman police officer. Based on our experience of taking cases of sexual assault against disabled women to police stations, we have realized that the communication barrier between the disabled victim and the police is one of the major hindrances to filing an FIR. We therefore propose that another Proviso should be added to Section 154 in the following manner:

**Provided that if the information is given by a person with disability against whom an offence under section 354, section 375, section 376, section 376A, section 376B and section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be conveyed, in a medium in which such person is comfortable, including sign language and with the assistance of a professional working on disability or mental health issues, including special educator or trained interpreter, as the case may be.**

6. Clause 8 of the CLAB proposes modify the Proviso to Section 160 of the CrPC stating that persons below the age of 18 and above the age of 65 and women shall not be summoned to any place other than their places of residence in relation to investigation by the police. We

propose that persons with disabilities should also be exempted from this requirement and the Proviso should be suitably modified.

7. Clause 9 of the CLAB provides that for the purpose of Section 161 of the CrPC, the statement of a woman who complains of any sexual offence shall be recorded by a woman police officer. We propose that another Proviso be added after clause 3 of Section 161, to the following effect:

**Provided that the statement of a person with disability, against whom an offence under section 354, section 375, section 376, section 376A, section 376B and section 509 of the Indian Penal Code is alleged to have been committed or attempted, shall be recorded with the assistance of a professional working on disability or mental health issues, including a special educator or trained interpreter, as the case may demand.**

#### **Additional Recommendations:**

8. During the process of Test Identification Parade, if the person identifying the arrestee is a person with disability, then such person should be allowed to identify the arrestee through alternative means such as voice or touch. Additionally at the time of the TI Parade, the Magistrate conducting the same should take the assistance of a professional working on disability or mental health issues, including special educator or sign language interpreter so that the process could be explained to the person with disability identifying the arrestee. Finally, we suggest that the identification process must be videographed. We recommend that these changes should be effected in Section 54A of the CrPC.
9. Reported judicial decisions show that the statement of disabled women in cases of sexual offences are seldom recorded during the trial either because of the lack of availability of trained interpreters or because it is presumed that she would be unable to answer the questions posed to her. Reported judgments show that non recording of statement of the victim weakens the prosecution cases and result in acquittal. Therefore, we recommend that a Proviso similar to the above should also be added after Section 164 (5) of the CrPC.

#### **Amendments to the Indian Evidence Act, 1872**

10. Section 119 of the Indian Evidence Act is titled 'dumb witnesses'. This outdated and derogatory terminology needs to be revised. We recommend that this Section be redrafted in the following manner:  
**Witnesses unable to depose verbally:** A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or **any form of alternative communication, including signs, Braille, augmentative communication boards or with the assistance of a trained special educator or interpreter;** but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

We hope that the Committee will consider these suggestions seriously.

We can give any further inputs/clarifications as may be required by the committee. Also, if the committee is desirous, we would be willing to personally appear before it.

**Signatory organisations, in alphabetical order:**

1. **Centre for Care of Tortured Victims, Kolkata**
2. **Differently-Abled Welfare Federation, Kerala**
3. **Gujarat Viklang Adhikar Manch, Gujarat**
4. **Haryana Viklang Adhikar Manch, Haryana**
5. **Himachal Viklang Adhikar Manch, Himachal Pradesh**
6. **Janarth, Aurangabad, Maharashtra**
7. **Jharkhand Viklang Morcha, Jharkhand**
8. **Karnataka Rajya Angavikalara Mattu Palakara Okkota**
9. **Lakshwadeep Disabled Association, Lakshwadeep**
10. **Manipur Rights for the Disabled, Manipur**
11. **Marg, Aurangabad, Maharashtra**
12. **Mehac Foundation, Delhi**
13. **Paschim Banga Rajya Prathibandhi Sammelani, West Bengal**
14. **Platform for Rights of Disabled, Orissa**
15. **Point of View, Mumbai**
16. **Sangarsha Apang Ani Palak Sangh, Aurangabad**
17. **Snehi, Delhi**
18. **Sruti Disability Rights Centre, Kolkata, West Bengal**
19. **Tamilnadu Assn for the Rights of Differently-Abled & Caregivers, Tamilnadu**
20. **The Banyan, Tamilnadu**
21. **Vikalangula Hakkula Jathiya Vedika, Andhra Pradesh**
22. **Voice Vision, Mumbai**
23. **Women's Studies Research Centre, University of Calcutta**

**Prepared by:**

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