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Sub: Call by civil society organizations and individuals to urgently enact comprehensive reforms in criminal law relating to sexual assault law and to bring related medico-legal investigation in line with legal standards

To

Shri Salman Khurshid
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Shri Ghulam Nabi Azad
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This is to express concern about the inordinate delay in the introduction of comprehensive law reform on sexual assault, and to press for urgent steps for its enactment. This concern arises in the backdrop of the brutal rape and killing of Meena Khalkho, a sixteen year old minor, allegedly at the hands of the Chhattisgarh police (see the following reports in the Indian Express – ‘16 year old encounter victim was Naxal, had “habitual sexual contact”: C’garh’ (31 August 2011); ‘Naxal’ girl’s killing: Kin allege rape and murder, village points to govt job for brother’ (September 4, 2011) and ‘Chhattisgarh policemen face DNA test over charges of ‘Naxal’ girl’s gangrape, murder’ (September 7, 2011). The case yet again foregrounds that the price for delay in law reform is borne by countless victims and survivors, who pay with their life, dignity and the impossibility of securing justice.

Meena Khalko’s case is not unique in its brutality or in the degrading procedures that routinely define rape investigations. It is instructive of ways in which patriarchy is deeply entrenched in medico legal practice and investigation – areas that the law reforms have yet to touch. It is said that the post mortem medical report of Meena Khalko states that the deceased had ‘habitual sexual contact’, whilst also noting serious injuries that indicate sexual assault. The phrase ‘habitual sexual contact’ is not a factual description of the body of the deceased, or her genitals, or an opinion about the nature of the alleged offence; it is instead, a subjective view of her previous sexual history (in this case, a minor). While it is degrading to the victim and irrelevant to the law, it persists, and shapes the legal process and judicial outcomes.

The medical examination and post mortem report is meant to primarily focus on the condition of the body, the psychological state and forensic evidence towards ascertaining the factum of sexual assault, the crime in question. It is not an examination of the previous sexual history of the prosecutrix. In fact, amendments to the Indian Evidence Act, 1872 in 2003, expressly made any reference to previous sexual history impermissible in rape prosecutions. The amendments deleted section 155(4) of the Indian Evidence Act that allowed the defense to impeach the credibility of the prosecutrix in a rape case by showing that she was of generally immoral character, and simultaneously inserted a proviso to section 146 of the Act, to make it impermissible to question the prosecutrix in the cross examination as to her general immoral character (in cases of rape and attempt to rape). When the law specifically makes a woman’s previous sexual history irrelevant to a rape trial, how can medical examination and forensic practices introduce such references?

The two-finger test is degrading and traumatic as it mimics the rape itself, and must be stopped. The test and the accompanying observations do not help to establish the crime. It is a sexist, patriarchal and outdated medical practice that deflects attention away from the perpetrator of the crime, and the crime itself, to the victim’s sexual conduct. It has and continues to be a way of putting women and girls in the dock, to judge whether their sexuality and sexual conduct (real, imagined, or imputed) makes them worthy of legal protection. It transforms the trial into one questioning whether the victim is entitled to legal protection at all.

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In addition to the Evidence Act, several judicial pronouncements have stressed that the two finger test and observations about ‘habitual to sex’ are irrelevant and must be erased from medico legal and forensic practices. Reference is made to the *State of Punjab vs Ramdev Singh* [(2004) 1 SCC421] the Supreme Court held, ‘Mere statement that according to doctor, victim's vagina admitted two fingers and she could on earlier occasions have had sexual intercourse five, ten or fifteen times rules out rape by accused once, as alleged, in no way casts doubt on victim's evidence.’ A decision by an Additional Sessions Judge in Delhi in August 2010 (*State vs Umesh Singh and Anr*, FIR No 1135/06) held that the two finger test was a violation of the right to privacy and dignity guaranteed under Article 21 of the Constitution. The judge further held that the test has no scientific or conclusive basis and is ‘absolutely unnecessary and irrelevant’, and directed appropriate action from the state of Delhi and the National Commission for Women. Despite the directions, no guidelines have been issued as yet on forensic investigation in cases of sexual assault. There is a pressing need to bring medico legal and forensic practices in line with legal standards. This point has been echoed by Human Rights Watch in the report ‘Dignity on Trial: India’s Need for Sound Standards for Conducting and Interpreting Forensic Examination of Rape Survivors’ (2010).

A larger, connected issue is that of justice for victims and survivors of sexual assault. Survey-based studies world over have shown that only a small fraction of sexual assault is reported to the police. Given the trauma, social stigma and the degrading legal process involved, the majority of cases remain unreported in India. The fate of reported cases is telling of the hostility of the legal system to deliver justice to women victims of sexual violence. The data in the National Crime Records Bureau shows an alarming discrepancy between the charge sheeting rate and the conviction rate in rape cases:

YEAR	RAPE CASES REPORTED	CHARGESHEETING RATE	CONVICTION RATE
2009	21397	94.2	26.9
2008	21467	93.9	26.6
2007	20737	94.6	26.4

Source: National Crime Records Bureau, India

The women’s movement has been agitating for comprehensive reform of penal laws relating to sexual assault for over two decades; however only piecemeal changes have been brought about by the government. In the last decade, the pressure mounted through various recommendations and draft bills to concretise the discussion on reform. In 2010, women’s groups across India held consultations and responded to the Law Ministry’s proposed Criminal Law Amendment Bill, submitting their recommendations to the bill.

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In the backdrop of reports that continue to show-case how the law becomes a tool for humiliating and degrading victims of sexual crimes - the case of Meena Khalko being a recent example - it is of grave concern that the proposed Criminal Law Amendment Bill 2010 has not been acted upon. The Meena Khalko case should be a wake up call for enactment of long delayed amendments sought by women's rights activists and groups across the country.

We the undersigned women's activists, concerned citizens and organizations demand:

1. A coordinated response by all the concerned Ministries and Authorities to issue notifications to forensic laboratories and medical personnel prohibiting the two finger test and use of terms such as 'habituated to sexual intercourse' in investigations;
2. The government put in place guidelines or protocol for medical and forensic examination of survivors of sexual assault and victims in case of rape-murder in consultation with women's groups and health organizations, and other experts working on the issue, and initiate orientations to operationalise the guidelines;
3. The government, without any further delay, enacts the long awaited amendments to sexual assault laws in line with the recommendations of women's rights groups and activists submitted to them in 2010.

Signed by:

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* A signed copy of this letter will sent by post.

THE LIST OF ENDORSEMENTS IS ATTACHED TO THIS LETTER

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