

ANNEX B

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January 10, 2002

To,
The Hon'ble Law Minister,
Room No. 402,
'A' Wing,
Shastri Bhavan,
New Delhi

Re: Responses to the 172nd Report of the Law Commission of India

Dear Shri Arun Jaitley,

A national meeting was held to discuss the 172nd report of the Review of Rape Laws of the Law Commission of India (LCI) in Mumbai from the 7th to 9th December 2001. The meeting was attended by women's groups, child rights groups and sexual minority rights groups from different parts of the country. The undersigned groups were unanimous in their views as represented below.

The LCI recommendations, which are at present with the Law Ministry, have suggested wide ranging changes in the sexual assault laws, Sections 375, 376 and 377 of the IPC and the Evidence Act. While we welcome some of the changes that have been suggested, like expansion of the definition of sexual assault, recognition of child sexual abuse, and modifications in the Evidence Act, we strongly oppose some of the other proposed changes and also the way in which these have been proposed.

We oppose the LCI 172nd report for the following reasons:

These recommendations have been made in consultation with only three groups - Sakshi, AIDWA and IFSHA (all from Delhi). Though these three groups work with women and children only, they do not, however, represent all the women's groups and child rights groups that exist in the country. Changes in a law that affect all women and children all over the country cannot be made without a wider

consultation with all these groups. We demand that such consultations be held and that the undersigned groups included in these.

The LCI recommendations affect people from sexual minorities because of inclusion of gender neutrality in sexual assault laws and deletion of Section 377 of the IPC. Many sexual minority rights groups have been active in the past few years in the country and it is a big lapse on the part of the LCI that they did not consult any of them before suggesting changes that would crucially affect their lives. We insist that no changes in the laws be made without consulting all these groups and taking their recommendations into account.

Experience of sexual abuse for children, women, and sexuality minorities is different and so the law dealing with it for each of them should also be different. The law should take into account these specificities for understanding sexual abuse and the procedures needed for trials of sexual assault cases. We do not support the clubbing of these three socially oppressed groups by bringing us all under one umbrella legislation on sexual assault as it raises many serious implications that we discussed in the three-day meeting held in Mumbai.

We present here before you specific recommendations from each of these groups for laws related to sexual assault.

Firstly, women's groups have been campaigning for changes in the rape laws for the past two decades. Despite some of these having been addressed by the LCI 172nd report, we wish to place before you some serious concerns raised by this report. The introduction of gender neutrality in rape laws changes the entire understanding of rape itself in the present society. The proposed change focussing on gender-neutrality for rape laws negates the sustained struggle of the women's movement against all forms and levels of patriarchal violence we women face in this society. We continue to bear the brunt of rape by men from the home and the street to police stations, riots, and armed conflicts. We continue to be raped in caste conflicts, raped for punishment to defy societal norms and we also come in handy to be raped in revenge when two or more conflicting groups want to get at the "honour" of the other. Clearly, rape is a gendered crime and is an indication of men's power over women and their bodies. Hence we strongly oppose gender neutrality that seemingly equates women and men. In cases of sexual assault men are the perpetrators and women are the victims of the abuse. We oppose the introduction of gender neutrality in any law that deals specifically with crimes against women. We also demand that marital rape be recognised and coupled with civil remedies.

Secondly, it is essential that there be a separate law to deal with child sexual abuse to take care of both the substantive and procedural law. There should be specific provisions keeping in mind the gender, age and different types of sexual offences a child is subjected to. The legislation must also cover within its ambit incest, child sex tourism, child pornography, organised pedophilia, sexual assault in the name of religion, abuse at the workplace and all other inter-connected offences. It is also very necessary to have a child friendly procedural system, which recognises the damage being caused to the children within the present system. Confrontation between the child and the accused should be limited, special courts must be designated to handle cases with regard to child sexual abuse and exploitation, time bound expedited hearing of matter, etc. A child related law must also look into the aspects of victim assistance and support, rehabilitation and diverse legal remedies.

Thirdly, laws based on gender neutrality de facto bring into its purview the issues of lesbians, gays, bisexuals, transgendered and other sexual minority groups. Sexual minorities have not been given any positive recognition through law till today. Certain same sex sexual acts have in fact been criminalised and there are no positive anti-discrimination clauses to protect their human and other civil rights. In the absence of all this, we believe and know that any law that acknowledges same sex violence would just work against the completely invisibilised and marginalised sexuality minority people themselves. We hence insist that we do not need any same sex violence laws as of today. After adequate measures are included for protection of rights, we can work towards addressing issues of same sex sexual assault. Even then, however, it would be important that the people from the affected communities themselves describe, define and address sexual assault from their perspective and experiences. Eunuchs, who have a recognised social identity and presence in our society, have been victims of sexual assault from men for a long time. To deal with this we feel that there has to be a provision in the law. We recommend that sexual assault laws be gender specific (i.e. considering men as the perpetrators and women as the victims), and that eunuchs be treated as women as far as these laws go.

In light of the above we urge you to not accept the LCI recommendations in the form that they are. The suggestions made here have preceded a wide debate amongst different groups who will be affected by changes in the sexual assault laws. A deliberation with these and other such groups from across the country is essential before making such drastic changes in the law. We understand that a Draft Bill on Sexual Assault based on the LCI recommendations has been prepared. We urge you not to accept any bill based on these recommendations. In view of the reasons given above, which clearly reveal how adversely it will affect various groups, we request you to open up the process for wide consultation amongst us all before taking the bill to the Parliament.

Finally, we look forward to meeting and discussing these issues with you at the earliest. An all-India level delegation will meet you at a time and date suitable to both.

We await a positive reply from you.

Thanks and regards,

Sadhna Arya, Vrinda Grover

SAHELI, (Above Shop # 105, Defence Colony Flyover Market, New Delhi)

On Behalf Of

Aawaaz-e-Niswaan, Mumbai
Anveshi Research Centre for Women's Studies, Hyderabad
Arvanis Social Welfare Society, Mumbai
Broad MSM Organisation and Network (BAMNON), New Delhi
Campaign for Lesbian Rights, New Delhi
CCDT, Mumbai
Centre for Women's Development Studies, New Delhi
Child Rights Cell: India Centre for Human Rights and Law, Mumbai
Forum Against Oppression of Women, Mumbai
Initiatives: Women in Development, Mumbai
Jagori, New Delhi
Lakshya, Baroda
Majlis, Mumbai
Mahila Sarvangeen Utkarsh Mandal (MASUM), Pune
Nirantar, Centre for Women and Education, New Delhi
Organised Lesbian Alliance for Visibility and Action, (OLAVA) Pune
Open Learning System, Bhuvaneshwar
People for Rights of Indian Sexual Minorities (PRISM), New Delhi
Partners for Law and Development (PLD), New Delhi
Saathi, Hyderabad
Sahayatrika Project, Trivandrum
Saheli, New Delhi
Sahiyar, Baroda
Sama, New Delhi
Samabhavana Society, Mumbai

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Sangama, Bangalore
Sangini, New Delhi
Shahna's Safety and Traffic Supporters, Mumbai
Special Cell to help Women and Children, Mumbai
Stree Manch, Nagpur
Stree Sangam, Mumbai
Udaan Plus, Mumbai
Vacha, Mumbai
Women's Centre, Mumbai
Women's Rights Law Centre, Nagpur
Women's Rights Initiative, Lawyer's Collective, New Delhi

CONTACT ADDRESSES:

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SAHELI, Above Shop # 105, Defence Colony Flyover Market, New Delhi 110024.

CC:

- Law Commission of India
7th Floor,
Shastri Bhavan,
New Delhi
- Justice Malimath Committee