



RASHTRIYA GARIMA ABHIYAN

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To,
Shri Ranjan Gogoi,
The Hon'ble Chief Justice of India,
New Delhi, India- 110001

Subject: Letter expressing appreciation for your conscientious effort to curb cases of child sexual abuse through the suo moto petition and recommendations

Respected Sir,

On July 12th, 2019, the Supreme Court of India, under your directions, led a commendable initiative of registering a suo moto PIL on the rise in cases of child rape corresponding lack of infrastructure and delay in probe and trial of these cases. **We welcome the conscientious efforts of the Supreme Court under your leadership towards introducing this suo moto petition.** With the grim statistics of child sexual abuse cases in India rising upto of 24,212 cases in the first six months of this year, there is an urgent need for addressing the issue of child sexual abuse in the country.

Rashtriya Garima Abhiyan, is a survivor focused forum with more than 12,000 survivors of sexual violence and their families, committed to end violence against children and women and to empower them to live a life of respect and dignity. Along with the survivors, Rashtriya Garima Abhiyan is also an alliance of 30 organizations from across the country who are working towards ensuring justice and rehabilitation to the survivors of sexual violence and other injustices. We have worked with the survivors of child sexual abuse and gender-based violence, to intervene through medico-legal aid, psychological support and building their capacities as “barefoot lawyers”. Rashtriya Garima Abhiyan has been providing psychosocial counseling to victims to bring them out of trauma and inspire them to fight for their rights. We additionally provide counseling to the victim's families to sensitize them towards the victim's situation and make them understand that it's never the victim's fault, thus, preparing them to support the victim in the fight for justice.

As a token of appreciation for this initiative by the Supreme Court under your leadership, we 1500 survivors and their families have come together to show our gratitude by signing a letter of thanks. Furthermore, the survivors of Rashtriya Garima Abhiyan would like to make a few recommendations to be considered for this initiative-

- a. **The commercial sexual exploitation of children and sex trafficking of minors are actually cases of serial rape of children.** However, in a number of cases that we have dealt, the accused have been charged only under the Immoral Traffic (Prevention) Act, 1956 and not under the Prevention of Children from Sexual Offences Act, 2012 ('POCSO') in the FIR. POCSO, Act provides better safeguard, rehabilitation and compensation for the victims. It is to be noted that any sexual act with a minor (other than a wife above 15 years of age) is an offence of rape under section 375 of the IPC and Section 3, 5, 7 & 9 of the POCSO Act, 2012. We humbly request the Court to provide direction to the Police force to also put charge under POSCO Act in all the cases of commercial sexual exploitation and sex trafficking of children.

- b. Rashtriya Garima Abhiyan observed that 57 minor survivors, during their medical examination post-incident, were tested with the regressive and humiliating method of the **Two Finger Test**, a practice which in fact has been termed as ‘violative of right to *privacy, physical and mental integrity and dignity* of the survivor of rape’ by the Supreme Court in *Lillu & Anr vs State of Haryana* in 2013. The test is not only violative of a women’s privacy and right over her body but is also unscientific and not in consonance with the necessary evidentiary requirement for proving sexual assault. There are cases where we have written evidence from the doctors (medical examiners) in the Medico Legal Certificates proves that they have conducted two finger tests on the victims.

This practice is an attack on the dignity of the victim and should be treated as rape (according to the Protection of Children from Sexual Offenses Act of 2013 which considers vaginal insertion of fingers as rape). **Any doctor found to be continuing with this practice should be prosecuted under the POCSO act and his/her license should be cancelled for a lifetime.**

<u>State</u>	<u>Number of Cases</u>
Rajasthan	12
Madhya Pradesh	36
Maharashtra	5
Uttar Pradesh	4
Total	57

- c. Pregnancy out of rape is very common in rural areas where there is not much education about consent, contraceptives and openness and courage for the women to come out and register complaint out of her own. In cases of child rape, it becomes extremely difficult. In a number of cases, the pregnancy cannot be terminated since the period during which it is permissible to terminate the pregnancy has elapsed. This, in most of the cases, arises due to the fact that the doctor conducting or issuing the medico-legal certificate does not conduct a pregnancy test. It is for this reason that medical examination should be conducted for a longer term of at least 3 months so that cases of pregnancy be identified and abortion if needed be conducted. We identified 65 cases of rape induced pregnancy. We have seen such cases there is no report of pregnancy declared by the doctor, but pregnancy has occurred leading to mental to physical trauma to the victim. An illustrative number of rape induced pregnancy cases is given below:

<u>State</u>	<u>Total Number of cases</u>
Madhya Pradesh	59
Uttar Pradesh	3
Rajasthan	1
Maharashtra	2
Total	65

- d. Supreme Court has held that sexual history of the victims is not relevant in rape cases and therefore the victim must not be traumatized by asking questions relating thereto. Also, any kind of sexual act with or without the consent of minor constitutes rape. A comment on virginity and sexual history is at all not important but despite that doctor continue to make such remarks in the medico legal reports which hamper adjudication and further victimizes the victim.

This becomes evident from the perusal of Medico Legal Certificate. We request the Honourable court to punitively punish the medical practitioners who are recording such unnecessary information in the reports. An illustrative list of cases in which such remarks were made is given below:

State	Number of Cases
Rajasthan	8
Madhya Pradesh	11
Total	19

- a. The Criminal Law Amendment Act, 2013 introduced section 357A which ensures compensation to the victims of sexual abuse. According to NALSA's compensation scheme that extends to the cases registered under the Protection of Children from Sexual Offenses (POCSO) Act of 2013, the survivors are entitled to a compensation upto Rupees 7 lakh. However, Rashtriya Garima Abhiyan observed that in 202 cases, the survivors neither received any interim compensation, nor a final compensation even after conviction of the accused in the case. We request the Supreme Court to provide orders to the District Legal Aid Authorities and District Courts to dispense the relevant compensation to appropriate cases and ensure the systematic disbursement of the compensation in the future.
- b. According to Section-19 (6) of Protection of Children from Sexual Offenses (POCSO) Act of 2013, Special Juvenile Police Units (SJPU) or the local police shall, without unnecessary delay and within a period of 24 hours, report the case to the CWC and the special court so that the child can be provided with a shelter immediately. Despite that, we experience a number of instances wherein the police does not take the case to the Child Welfare Committee (CWC), instead takes it directly to the court with an additional delay in the process. That affects the case, as well as the psychological wellbeing of the child who is exposed to the trauma of living under the same circumstances. We request the Court to direct the Police to ensure that due process as delineated in the law is followed.

In the hope that you will consider the above recommendations made by the survivors of Rashtriya Garima Abhiyan.

Yours sincerely,

Bhanwari Devi Rajasthan

Ashif Shaikh, Madhya Pradesh

Urmila Bai Madhya Pradesh

Heena Chauhan Madhya Pradesh

Geeta Devi Uttar Pradesh

Kashi Bai, Uttar Pradesh

Neena Nigam, Maharashtra