

# Gender Just, Gender Sensitive and NOT Gender Neutral Rape Laws

## Parliamentary Committee ignores Verma Committee

The report of the Parliamentary Standing Committee on the 2012 Criminal Law (Amendment) Bill as well as the 2013 Criminal Law (Amendment) Ordinance not only violates the letter and spirit of the Justice Verma Committee (JVC) recommendations but endangers and deepens women's vulnerability in this country.

Representatives of women's groups, democratic and human rights groups and activists are alarmed about the following major lacunae in current legislative protection to women, upheld by the Standing Committee report:

**The Accused Must Be Male:** One pernicious provision of the Ordinance 2013, upheld by the Committee report is blanket gender neutrality of the perpetrator of sexual harassment, assault and rape. Put simply: unlike in existing law where the accused is male, the Committee recommendations if enacted into a proposed new Bill, will make it possible for women to be charged with these offences. This is wholly unacceptable.

- ***The Reality of Rape:*** It is an act of violence that must be seen in the context of deeply entrenched power inequalities between men and woman in our society. Gender neutral provisions only strengthen those already powerful, silencing the real victims. The police and legal system are part of this inequity and bias against women, evident in the huge impunity for rape in our country. Recommending that these laws be gender neutral makes mockery of this reality.
- ***The Chilling Effect:*** Apart from situations where women hold positions of statutory authority (like police officers, etc), in all other situations, making the accused gender neutral means that complaints by women can be met with counter-complaints to get them to withdraw. Given the current odds against women securing justice, the gender neutrality of accused in sexual violence laws, will have a deep chilling effect on women's ability to even file complaints.
- ***Men, not boys:*** There is no basis to the argument that gender neutral laws allow young boys to be protected from abuse, because all young boys and girls are fully protected by gender neutral laws in the Protection of Children from Sexual Offences Act 2012.

**Age Of Consent Must Remain 16:** The Standing Committee report endorses the 2013 Ordinance, by raising the age of consent from 16 to 18, thus criminalizing the consent of young persons and exposing them to unjust imprisonment by forcing judges to take action merely on third party complaints, including khap panchayats. At the very least, any proposed new law should allow for a Young Person's Defence, where consent of young persons between 16-18 years is taken into account if there is no more than 4 years age difference between two consenting parties.

**Rape Within Marriage Must Be Recognized As An Offence:** Marital status must not have any bearing on the right of a woman to say no! The law must recognize when sexual assault and rape occur within marriage. Also, current IPC provisions recognizing rape in the context of judicial separation must be replaced by simple separation, given that most separated couples do not get judicial decrees, but simply start living apart. Without this change the law makers are only sending a signal that even while living apart from her husband, a woman can be raped by him without any recourse to justice.

We are also deeply concerned by the Standing Committee's silence on **ending impunity for sexual assault by security forces**. The existing statutory immunity for armed forces 'acting in the line of duty' surely cannot apply to sexual assault committed on women. No sanction should be required to proceed with prosecution of such personnel in sexual assault cases.

As the 2013 Criminal Law (Amendment) Ordinance and the report of the Parliamentary Standing Committee enter into Parliament for debate, we urge ALL PARTIES aligned with women's rights to ensure that laws made in the wake of the brutal Delhi gang rape case do not leave women even more vulnerable than they already are.

Date: 6<sup>th</sup> March 2013, signed by:

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