

Submissions to Justice Verma Committee by All India Democratic Women's Association (AIDWA) and Women's groups

Date: 4th Jan.2013

Dear Justice Verma and other members of the Committee,

We, the undersigned, are women's organizations and others who have been engaged in the struggle for amendments to the substantive and procedural laws related to sexual assaults for the last 20 years and more. We have also had several meetings in this period with the administration and the Police including the Commissioner of Police, Delhi to urge them to take adequate steps to ensure the safety and security of women in our country. While we understand that the terms of reference of the present committee are limited we feel that the Committee should look at the issue in a comprehensive and holistic manner and examine whether the laws related to sexual assault in the IPC are adequate to do justice to women.

We feel that the law should reflect the different forms of sexual assaults that women experience in their daily lives and that the Criminal Law Amendment Bill 2012, though a step in the right direction, is erroneous in so far as it makes the rape law gender neutral and does not make sufficient or comprehensive changes to the various provisions which deal with sexual assaults. We also feel that there are deficiencies in the procedural laws which have an adverse impact on a complainant in a rape/sexual assault case.

Preventive steps also need to be taken to ensure the safety and security of women throughout the country.

We feel that the question of speedy justice is inextricably linked with how efficiently the police can investigate a case without being influenced in any manner. In a country where there are huge differences between the rich and the poor and between upper and lower castes and between different communities, the most vulnerable are often those who are marginalized and have neither influence nor power nor money. For these people it is extremely important that the rule of law holds sway.

Apart from this, a woman who has been subjected to sexual assault and other violent crimes is in urgent need of rehabilitation and medical and other care which must be systematically provided by the Government which often doles out ad hoc sums of money arbitrarily.

We start our recommendations on the terms of reference of this Committee and then go on to recommend other changes in the laws relating to sexual assault and in the procedural law.

I) Fast Track Courts and Speedy Justice and Efficient Investigation

1. We recommend that fast track courts be setup to deal with all cases of sexual assault. It should also be mandatory for these Courts to give their judgment in these cases within a period of three months. A proviso to Section 309(1) of the CrPC stipulates that the inquiry or trial of cases under S376 to 376 D should be completed within a period of two months as far as possible. We suggest that the section should be enlarged to include all cases of sexual assault including those under S354 IPC. We have seen in the past how the courts have misused the discretion given to them to adjourn cases and feel that the committee must find ways and means of limiting the discretion given to courts to adjourn cases for all sorts of reasons.

2. For quicker trials we also need a time-bound investigation of cases. The investigation should not only be quick but also efficient and scientific in nature. We suggest that in all cases of Sexual Assault and other violent crimes against women the investigation should be completed within one month. During this period and during the trial of the case we suggest that the accused should not be given bail as we are in any case recommending that both the investigation by the Police and the trial of the case should be completed within a period of 3 months. We say this because despite the law, those women who have suffered sexual assault and the witnesses in these cases are inevitably influenced to withdraw the case and to change their testimony. For this, of course, a witness protection legislation is also necessary.

3. To improve the efficiency of the police while investigating an offence of sexual assault and harassment under S375/376, S354, and S509 and under the various provisions of the Protection of Children under the Sexual Offences Act we suggest that the police should strictly follow Standard Operating Procedures. These procedures should mandate the police to immediately register a case, and send the complainant for medical examination within a few hours. The procedures should also detail the important evidence that the police should collect including clothes at the spot. It should also specify that the statement of the party and the witnesses should be collected within days of the incident. We also recommend that if the police do not follow this procedure they should be punished. A model Standard Operating Procedure should be circulated throughout India so that various States can follow this. We are attaching a list of Standard Operating Procedures that can act as a guideline.

It is pertinent to mention that from time to time the Delhi Police has issued certain Standing Orders including Standing Order No. 303/2010, which lays down certain guidelines to be followed in cases of rape. Though further changes can be suggested to them, these guidelines are a step in the right direction. The guidelines stipulate that a lady police official will be present in each police station, that 'the 'victim' and her family' will be made 'comfortable' and that the IO along with the lady police officer will escort the 'victim' for medical examination. The order also

stipulates that no 'victim' of sexual assault shall be called or made to stay in the police station during the night and that the statement of the 'victim' will be recorded in private in the presence of family members unless it is a case of 'incest'. It has also been stipulated that the investigation would be supervised by an ACP and that information of the case should immediately be given to the rape crisis cell. In the case of children it is mandated that the statement of the 'victim' should be recorded at her residence and that the child should be medically examined within 24 hours and her clothing promptly sent for forensic examination. It has also been stated that private hospitals should give immediate medical attention to the complainant and that the medical examination should be carried out after psychiatric help is made available to the child. We strongly feel that these mandates should also apply to women who need immediate medical help and counseling after they are sexually assaulted.

However, this Standing Order, which was issued after directions were given by the Delhi High Court in judgments in 2003, 2007 and 2008 are seldom followed by the police in letter and spirit.

4. We also recommend that the medical examination of a sexual assault victim should be carried out in an efficient and scientific manner and should ensure that the victim is not subjected to any further trauma. The two finger test which has been found to be not only unscientific and unnecessary but also subjects the complainant to further trauma and humiliation should be immediately stopped.

5. The Supreme Court in Prakash Singh's case had noted that the violation of fundamental and human rights of the citizens by the police is generally in the nature of non enforcement and discriminatory application of the laws so that those having clout are not held accountable even for blatant violation of laws and in any case not brought to justice for the direct violations of the rights of citizens. The S.C had directed the central government to carry out extensive police reforms to stop political/Executive interference in police work and to ensure their independence. The judgment had directed the constitution of a State Security Commission in every state to ensure that the state government does not exercise influence or pressure on the state police. This judgment had laid down rules for selection of the DGP and IG of police and other officers and a minimum tenure for all of them. It had directed that there should be a separation between the investigating police and the police which would look after law and order as this would ensure speedier investigation and better expertise.

Most importantly the Court had also directed that a police complaint authority headed by a District Judge should be setup in every district to look into complaints against police officials up to the rank of DSP while grievances against police officers of higher ranks would be examined by a state level Complaint Authority headed by a retired judge of the High Court or the Supreme Court. Both these heads had to be chosen from a panel of names proposed by the Chief Justice of the State or Chief Justice of India respectively. However, the directions of the Supreme Court have not been followed out and the model Police Act drafted by the National Police Commission has still not replaced the Police Act of 1861.

6. In the Criminal Law Amendment Bill, 2012 the government has proposed a new Section 166A punishing a public servant who 'knowingly disobeys any direction of the law' regulating the manner in which he shall conduct such investigation'. The punishment that is prescribed is up to 1 year of imprisonment. We suggest that the word 'knowingly' be deleted as lack of knowledge of law cannot be allowed to be a defence and will be always used as a convenient defence in these cases. We also feel that the prescribed period of punishment is too low and should be increased with a prescribed minimum and a maximum punishment of up to 5 years depending on the severity of the offence and its consequences.

7. We also feel that it is necessary that in cases of Sexual Assault and violent crimes against women including acid attacks the prior sanction of the government under Section 45 to arrest a member of the armed forces and Section 197 of the CrPC to prosecute a case against a public servant should not be necessary. This should also apply to private armies engaged by the state. Changes may accordingly be made in both these Sections exempting cases of Sexual Offences and other violent crimes against women from the application of the Sections.

II) Punishment

As far as harsher punishment is concerned we do not feel that the death penalty should be prescribed as a punishment in cases of sexual assault. Presently Section 376 prescribes life imprisonment as the maximum punishment for rape. It also prescribes a minimum of 7 years of imprisonment for rape and a minimum of 10 years of imprisonment for custodial rape and for gang rape. In a large majority of rape cases even the minimum sentence of seven years and ten years is not awarded by the courts in our country. We feel that life imprisonment should be awarded in aggravated forms of rape and that life imprisonment should mean imprisonment for the entire period that the convict is alive. Sentences under different sections should run consecutively, not concurrently. At present the convicts, particularly influential ones manage to get frequent parole and further manage to get their sentences commuted. This should not be allowed and appropriate changes to ensure this should be made in the law.

III) Amendments to the Sexual Assault Sections of the Indian Penal Code

1. The recent Criminal Law Amendment Bill, 2012 introduced by the government in the Lok Sabha seeks to amend the laws relating to Sexual Assault in the Indian Penal Code. The changes proposed in Section 375 to broaden the definition of rape and to include within it all forms of penetrative sexual assault is a first step in the right direction. The section has however been made gender neutral which is a reversal of what the government had proposed in 2010. This seems to imply that women can commit sexual assault against men for which there is no empirical evidence at all. The section will allow men to file false cases of penetrative sexual assault against women. The proposed government bill in 2010 rightly made the law gender specific as far as

adults were concerned and the accused persons could only be men while the complainants/victims were women.

2. For a long time women's organizations and others have been proposing that Section 377 which allegedly deals with 'unnatural offences' but in fact targets consensual sexual intercourse should be deleted. We had also proposed that another section be added to the Indian Penal Code to address penetrative sexual assault in same sex relationships. This will also ensure that there is no justification for a gender neutral provision in Section 375 of the IPC. We reiterate both these proposals.

3. Apart from this various vital suggestions made by women's organizations in the attached proposals redrafted by AIDWA and in the National Commission for Women's proposals have been ignored by the present bill. A notable example of this is that while the law relating to molestation vis-a-vis children has been amended in the Protection of Children from Sexual Offences Act, 2012, no such amendment has been suggested as far as the definition of molestation of women is concerned. The amendment to Section 354 IPC merely increases the period of punishment that can be awarded to a minimum of 1 year and a maximum of 5 years but makes no changes to the insulting, moralistic, inappropriate and archaic definition in S354 IPC which makes sexual assault punishable only when it 'outrages the modesty of a woman'. We fail to see why the section dealing with unlawful sexual touch of an adult woman has not been amended in the government bill. We had suggested and are again suggesting that Section 354 be redefined to punish touching a woman with a sexual purpose or intent. We also feel that the categories of aggravated forms of penetrative sexual assault (rape) should also be recognized as categories of non penetrative assault. We further state that aggravated forms of molestation which cause or are accompanied by causing hurt or injury or by stripping should be specifically recognized and added as an additional category.

4. The bill, like the old Penal code, exempts marital rape as an offense if a wife is not under 16 years of age. This exemption, totally and unreasonably, ignores the long standing demand of the women's organizations and groups and others to recognize marital rape as rape. We also recommend deletion of Section 376 A as we see no reason why the punishment for sexual assault on a separated wife should not be the same as ordinary sexual assault.

5. We suggest that consent be also defined as the unequivocal voluntary agreement by a person to engage in the sexual activity in question. One major reason for defining consent in this way is to distinguish consent from mere passiveness. Case law concerning rape is replete with examples in which it has been said that the victim has consented when she has merely remained passive due to a variety of reasons.

6. In both the redrafted AIDWA proposals and the NCW proposals clause 'Sixthly' under Section 375 defines statutory rape as rape of a complainant under 18 years of age. However,

taking note of the social reality that there are many instances of consensual sexual activity between young girls above 16 years of age and young boys and that it would lead to injustice if these young boys were prosecuted for rape, we had suggested an amendment by way of a proviso to clause 'sixthly' to exempt such consensual activity from the purview of statutory rape provided the accused person is not more than 5 years older. We strongly feel that this proviso should be included in the government bill.

7. In the sections on aggravated penetrative and non-penetrative sexual assaults we further feel that sexual assault by personnel of the armed forces and by personnel of the para-military and other allied forces, as also private armies engaged by the state, should be included.

8. Similarly, penetrative and non-penetrative sexual assault at the time of or together with other forms of communal or caste or sectarian violence should be categorized as an aggravated form of sexual assault.

9. In clause (b) of Section 376(2) sexual assault at the instigation of or with the consent or acquiescence of a public official or other persons acting in an official capacity should also be added as an aggravated form of sexual assault. This clause should also be added in the new section which should deal with aggravated forms of non-penetrative sexual assault.

10. In Section 375(a) of the 2012 Bill penetration of the mouth apart from the vagina etc of a person with any part of a body or an object of another person is defined as sexual assault. However, if an object or a part of the body, for example a finger, is inserted into the mouth it would be appropriate to equate this with penetrative sexual assault. Incidentally the Law Commission draft on which this clause seems to be based does not mention the mouth in Section 375 (b). It is only when the penis is forcibly introduced in the mouth that penetrative sexual assault occurs.

11. The IPC does not specifically recognize certain types of offences involving violence against women. This results in grave injustice towards women .We have been suggesting that stalking be recognized as a separate offence in the IPC and that an appropriate punishment should be prescribed for it upto 5 years. By not recognizing Stalking as a crime most of the perpetrators manage to escape prosecution and can only be charged under Section 509 IPC which is inadequate. Similarly stripping a woman should also be recognized as a serious sexual offence against her.

IV) Amendments to the CrPC

1. The proposed amendment to Section 273 CrPC in the Bill by way of an insertion stating that the victim should not be confronted by the accused is welcome. However, the method of cross examination needs to be specified so that the victim is not harassed and further victimized during

the cross examination. We feel that in all cases of sexual assault questions in cross examination should be addressed to the Court which should then question the complainant keeping in view the various provisions of the Evidence Act which prohibit certain types of cross examination.

2. We appreciate the proposed amendments to section 154 and section 161 of the CrPC in the Criminal Law Amendment Bill, 2012 but feel that the questioning of the victim must also be carried out by a woman and that if a female police officer is not available, a female government servant or a woman authorized by an organization working in the relevant area should carry out the questioning.

V) Relief and Rehabilitation

Relief and rehabilitation of the victim has become an urgent necessity in all cases of sexual assault and other violent crimes against women like acid attacks. Statutory schemes to provide immediate medical and other relief to the Complainants who have suffered sexual and other forms of violence should immediately be put in place in all States. The scheme should provide for immediate monetary relief to be given to the complainant whether her case is pending in court or not. The amount that is provided should not be subject to an upper limit as has presently been suggested by the National Commission for Women as some victims of violence like those who have suffered acid attacks may need extensive and repeated medical attention apart from other relief. Women subjected to sexual and other forms of violence should be provided with monetary relief during the time they are not in a position to work or earn. For those who can work, a government job should be provided. The Scheme should be administered by a Board which has been properly selected. The present amendment to the CrPC by Section 357A mandates each State government to prepare a scheme for the 'victim' and her dependents. However, this is not enough.

VI) Preventive Steps and Ensuring Safety for Women

Preventive steps to stop sexual assaults against women throughout the country would involve several measures. However, in cities and towns increased patrolling and deployment of police, including police women in public places should take place. The police should map vulnerable areas in each metropolitan city and town where such crimes are likely to take place and accordingly ensure police presence. The infrastructure in cities should be improved to make them safer for women. In cities and towns lighting plays a crucial role particularly in public places and this should be carried out. Ways and means of ensuring that public transport is safe should also be thought about apart from stating that no vehicles will ply with tinted glasses.

Apart from this, a national helpline with the same number throughout India should be activated so that those who have been subjected to sexual assaults and other violent attacks can access it.

VII) Gender Sensitisation

Lastly we feel that our multiple strategies to end gender violence must include extensive, in-depth courses in gender sensitization particularly of those who are in charge of dealing with crimes against women. Members of the police force and of the judiciary should regularly have courses of gender sensitization based on the concept of women's equality and their rights to all the fundamental freedoms and liberties that male citizens take for granted. Training programmes in gender sensitization at the time of recruitment should be a must. For ordinary citizens it is necessary that these sensitization programmes takes place in their place of work. It is also necessary for the government to use the mass media to gender sensitize the citizens. Gender Sensitization should start at the primary school level and all school children should be imparted education which teaches that girls and women are equal human beings and should not be discriminated against in any manner whatsoever. All school curriculums should be reviewed to ensure that no material which is discriminatory towards women continues to be a part of the curriculum. A strong campaign should be launched to counter the erroneous, but oft repeated assumption that women's attire, behavior, etc. incites rape and sexual assault, which amounts to blaming the victim for the crime, and diverts attention from the actual perpetrator.

We hope that the committee will take a comprehensive view of the issue and all our recommendations will be considered seriously.

Thanking You,

Yours Sincerely,

(Kirti Singh), (Sudha Sundararaman)—All India Democratic Women's Association

(Beena Jain) — All India Women's Conference

(Dr. Indu Agnihotri) — Centre for Women's Development Studies

(Jyotsna Chatterjee) — Joint Women's Programme

(Dr. Mohini Giri) — Guild of Service

(Vimal Thorat) — All India Dalit Mahila Adhikar Manch

(Annie Raja) — National Federation Of Indian Women

(Leila Passah) — Young Women's Christian Association of India

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