

Submission to the Justice Verma Committee by Amnesty International

4 January 2013

Amnesty International welcomes the opportunity to make a submission to the Justice Verma Committee on the reform of laws and criminal justice practices relating to crimes of sexual violence, including rape, in India.

Amnesty International notes that the Committee has invited submissions on:

“Possible amendments in the criminal laws and other relevant laws to provide for quicker investigation, prosecution and trial as also enhanced punishment for criminals accused of committing sexual assault of extreme nature against women, and connected areas such as gender justice, respect towards womanhood, and ancillary matters.”¹

The recommendations and comments made in this submission mostly focus on areas of legal reform needed to address impunity for sexual violence against women in line with the Committee’s terms of reference. However, Amnesty International reminds the Committee that, although women and girls are disproportionately subjected to rape and other forms of sexual violence, men and boys and members of the transgendered community are also subjected to these crimes and are entitled, as a fundamental human right, to equal protection of the law.

This briefing, although not exhaustive, contains a general overview of India’s obligations under international human rights law (A), a list of general principles to keep in mind before drafting legislation on violence against women (B), suggested amendments to specific Indian laws (C), and some suggestions on the broader question of implementation (D).

In addition to recommendations for law reform, the briefing also highlights some other administrative, bureaucratic and societal changes that are necessary for India to effectively prevent and respond to rape and other sexual and gender-based crimes. However, in the short time available for comment, it was not possible to provide a detailed analysis of each of these areas, or to set out a comprehensive list of all areas requiring legal reform.

Amnesty International would therefore welcome the chance to provide more detailed input in the future to assist the Committee in its task.

A. India’s obligations under international human rights law

Sexual and other gender-based acts of violence violate the fundamental right to be free from discrimination and to physical and mental integrity. Such acts should be criminal offences, whether the victims are female or male.

India has ratified a range of international human rights instruments including the

International Covenant on Civil and Political rights (ICCPR), which provides inter alia for the right to life (Article 6), equal rights of men and women (Article 3), the right to be free from torture or cruel, inhuman or degrading treatment or punishment (Article 7), the right to legal remedy (Article 2) and the right to equal protection of the law (Article 26).

India has also ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The Committee on the Elimination of All Forms of Discrimination Against Women has asked state parties to the CEDAW to ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity, as gender-based violence is a form of discrimination.² Even when such acts are committed by non-state actors, the state bears responsibility and its officials can be held criminally liable if they knew or had reasonable grounds to believe that such acts are being committed by non-state actors and they failed to exercise due diligence to prevent, investigate and prosecute them.³

India is also signatory to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, although it has yet to ratify this treaty. The Committee against Torture has found that where rape and other forms of sexual violence are committed by state actors, such as the police or armed forces, or in custodial settings, these crimes constitute torture.

Furthermore, where the perpetrators hold a position of trust, such as teachers, religious leaders, hospital workers or doctors, sexual violence is also a breach of a duty of care.

B. General Principles Relevant to Drafting Legislation on Violence against Women

1. Criminalize all forms of sexual & gender-based violence against all people, regardless of gender

1.1 A full range of sexual violence acts should be expressly criminalised under Indian law and not subsumed under general crimes. These should include sexual intercourse without consent (generally referred to as 'rape'), aggravated sexual assault, indecent assault and acts of indecency (offences that generally involve inappropriate touching, including of genitals or other intimate areas or forcing a person to touch the genitals or intimate areas of another person).

1.2 Domestic law should also criminalize rape and other crimes of sexual violence as crimes under international law. Sexual and gender-based violence committed in the context of an armed conflict can amount to war crimes. If committed as part of a widespread or systematic attack against civilians, they can also be crimes against humanity whether in the context of armed conflict or not.

1.3 All persons should be equally protected by the law from violence with no discrimination on the basis of age, sex, race, ethnicity, religion, marital status, social status, caste or descent, migration status, employment (including sex work), sexual orientation or gender identity, or for appearance (for example, the way a woman is dressed).⁴

1.4 Criminal law should identify rape and other sexual violence as crimes against the physical and mental integrity of the victim, not as a crime against modesty, morality or honour.

1.5 Rape and other forms of sexual violence should be defined as sexual conduct in which the victim involved was coerced, by violent or non-violent means, and therefore the victim's agreement to engage in sexual acts was not truly and freely given.

1.6 There should be no assumption in law or in practice that a survivor has given their consent because they have not physically resisted the unwanted sexual conduct regardless of whether or not the

perpetrator threatened to use or used physical violence.

1.7 Criminal law should enable the effective prosecution of any person suspected for acts of sexual violence, and there should be no exemptions for certain perpetrators (such as in 'marital rape').

1.8 There should be no discriminatory defences for perpetrators available on the grounds of "honour", "passion" or "provocation" that can be used to limit criminal liability for sexual violence.

1.9 Criminal laws should provide that rape and some other forms of sexual violence in custody amount to torture.⁵ They should also include provisions about rape and other crimes of sexual violence which may lead to deaths, and include sentences commensurate to these crimes.

1.10 There should be no immunity from prosecution for sexual and gender-based crimes, for example for members of the police force or armed services, or high-ranking officials or heads of state.

2. Amend criminal procedure to remove all gender (and other) discriminatory rules and practice

.1 Gender discriminatory criminal procedure rules and rules of evidence applicable to cases involving sexual violence, should be amended.

2.2 Other rules relating to evidence, such as any need for corroboration of a rape victim's testimony, or allowing evidence of the victim's previous sexual conduct should also be reviewed and amended. Such rules are inherently discriminatory, wrongly focus on the actions of the victim rather than the perpetrator, blame the

1 See <http://pib.nic.in/newsite/erelease.aspx?relid=91148> (initial mandate); and <http://pib.nic.in/newsite/erelease.aspx?relid=91179> (expansion of the mandate).

2 General Recommendation 19, (11th session, 1992) available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> (last accessed 4 January 2012). 3 CAT GC No 2, UN Doc CAT/C/GC/2 (2008). AI Index: ASA 20/002/2013

4 See Article 26 of the International Covenant on Civil and Political Rights.

5 ECHR in *Aydin v. Turkey*, Judgment of 27 September 1997, Application No. 57/1996/676/866; UN CAT in *C.T. and K.M v. Sweden*, Communication No. 279/2005, 17 November 2006, UN Doc.

CAT/C/37/D/279/2005 (2007). UN CAT in *V.L. v. Switzerland*, Communication No. 262/2005, 20 November 2006, UN Doc. CAT/C/37/D/262/2005 (2007).

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