

Submission to the Justice Verma Commission by Jagori

January 4, 2013

I. Issues related to Sexual Assault

The Criminal Law (Amendment) Bill 2012:

The Bill in its current form does not recognise the structural and graded nature of sexual assault, based on concepts of hurt, harm, injury, humiliation and degradation. The Bill does not use well established categories of sexual assault, aggravated sexual assault and sexual offences.

Over the past few years, as part of the women's groups, there have been suggested amendments and recommendations to the Criminal Amendment Bills 2010 and 2012 respectively. A joint submission by women's groups from across the country to the Hon'ble Prime Minister, Home Minister and Law Minister was made in August 2012.

We reiterate our recommendations to the above-mentioned Bill as follows:

Amendment of Section 375 IPC: The term 'rape' needs to be replaced with sexual assault for all purposes and should move from the traditional concept of peno-vaginal penetration which shall include all acts where a man uses objects, penis, fingers or any other body part to penetrate the vagina, urethra, anus or mouth of a woman. It is also suggested to have a series of graded offences of penetrative as well as non-penetrative sexual assault.

Gender neutral aspect of the Law: It is suggested that the law should remain gender neutral for the survivor and gender specific for the perpetrator. The rationale is that the law has to be based on empirical evidence, wherein nearly 97% of the survivors of rape or sexual assault are women. If the perpetrator is made gender neutral, then there are huge possibilities of the law being misused. The new provisions on sexual assault and aggravated sexual assault should apply to any person and should be broad enough to cover sexual violence on transgender people and legal reform must address this.

Definition and age of consent: There is need to include a definition of 'consent' in the context of sexual assault, wherein the onus should not be on the survivor to prove that she did not give her consent. The focus of the investigation should be on the circumstances when the offence was committed and not on the woman's conduct. The age of consent which is currently 16 years should not be increased to 18 years. We believe that increasing the age of consent to 18 years would lead to criminalization of young people, particularly in the context of inter-caste/inter religious relationships that attract social disapproval.

Amendments in Section 354 and 509 IPC: We need to replace phrases such as 'outraging the modesty of a woman', with terms/phrases such as 'violation of bodily integrity and dignity of the

woman'. Further sexual assault/harassment be made a graded offence including acts such as stripping, parading naked women, groping, tonsuring of hair and also non-contact acts like stalking, flashing, blackmailing through SMS/MMS etc. Section 354 should be made cognizable and non-bailable.

Aggravated sexual assault: We believe that sexual crimes form a continuum and that the Bill should recognize the structural and graded nature of sexual assault, based on the concepts of hurt, harm, injury, humiliation and degradation and use well established categories of sexual assault, aggravated sexual assault and sexual offences.

Sexual assault by security forces has been included as a form of sexual assault in the Protection of Children from Sexual Offences Act, 2012. The Criminal Amendment Bill 2012 should include instances of sexual assault during sectarian violence and sexual assault carried out by security forces. There is an extensive documentation of sexual violence against women by security forces including the paramilitary forces in various parts of the country like Chattisgarh, North East and Kashmir. There should be no protection of legal immunity available to any public servant charged for a crime of sexual violence.

No special provisions have been made for ensuring access to justice for women with mental and/or physical disabilities. Clear procedures should be laid out on how testimonies of such women will be recorded, who will record it, etc.

Marital Rape: The exception of marital rape should be deleted.

Medical examination: Gender sensitive procedures and proformas for medical examination of survivors/victims should be specifically laid down. The two finger medical test used to determine if the survivor is 'habituated to sexual intercourse' is to be barred.

Punishment in sexual assault cases:

In cases of aggravated sexual assault, punishment should be for life without any remission. No death penalty. We recognise that every human being has a right to life. Our rage cannot give way to what are, in no uncertain terms, new cycles and cultures of violence. Death penalty is often used to distract attention away from the real issue. Studies show that if the punishments become stricter, the rate of convictions come down as the judges are then reluctant to award harsher sentences. Besides the imposition of death penalty is also quite likely to encourage perpetrators to murder or otherwise disappear their victims and witnesses, in a bid to silence the testimony that will convict them. In cases of custodial rape or caste and communal violence, convictions have always been difficult and therefore death penalty would make conviction next to impossible.

No chemical castration. It is an invasive procedure and goes against the right to life and bodily integrity of a person enshrined in the Constitution of India. Moreover, sexual assault has nothing to do with desires or sex androgens. Rather it is embedded in the framework of power.

II. Changes recommended in current Procedures and Administrative reforms Witness protection programme: There should be protection of victims/survivors and witnesses from the pre-trial to post conviction stages in accordance with the jurisprudential developments.

Reparation, Rehabilitation and compensation for survivors of sexual assault: As a measure of reparative justice for victims and survivors of sexual assault, the Bill must lay down State's obligation towards such remedy and reparation, including provisions for medical treatment, psychological care, shelter and income in order to overcome possible destitution and social ostracism. Compensation must be given to the victims, computed on the basis of injury received, with the first instalment to be paid within 15 days of filing of FIR. This should be independent of the outcome of the trial or the victim retracting her statement at a later point due to whatever reason. The framework for paying compensation should be similar to the SC/ST Protection of Atrocities Act.

Standard Operating Procedures (SOPs) for the Police: SOPs on dealing with cases of sexual violence should be revisited and made gender sensitive and rights oriented. Non-compliance of the SOPs by the police officials should lead to immediate punitive actions.

III. Addressing safety and gender inclusion in the working of public institutions:

a) Urban planning and design of public spaces

- Women's safety issues to be incorporated in Local Area Plans (LAPs) and Detailed Project Reports (DPRs) to incorporate women's safety concerns through consultations with women.
- Comprehensive women's safety guidelines/indicators for all plans and project proposals to be institutionally accepted and implemented by key urban planning bodies.
- Improved database: Consolidation and comparison of existing data on safe and unsafe areas for women. More safety audits to identify areas/neighbourhoods which are most unsafe for women, and determine appropriate planning/design interventions in these.
- The major planning documents (the CDP and the Master Plan) should be revisited at the earliest to reflect the women's safety perspective in all interventions, including transport, water and sanitation, slums and resettlement, environment etc.
- Training/ capacity-building: Training of all municipal staff involved in planning, through lectures, city walks/ safety audits, and FGDs.

- Regular data collection on women's safety: Make safety audits a regular planning tool and an integral part of the master planning process, with a commitment from local authorities to implement their recommendations.
- Planning education: Modification of curricula for urban planning and urban design programmes to ensure women's safety issues are part of the training imparted to urban planners and designers.

b) Provision and management of urban infrastructure and services

- Women's safety guidelines: Comprehensive guidelines to be implemented in partnership with urban planning and municipal bodies and other agencies involved in providing and managing public infrastructure, services and amenities.
- Safety audits to identify areas/ neighborhoods which have poor quality or badly located public toilets, broken pavements, open garbage dumps, unlit car parks, and non-functional street lights.
- Improvement of night shelters: Night shelters are an important public service provided by the state for the homeless. Safety of homeless women is a huge issue in Delhi, both within and outside the night shelters.
- Compliance: Detailed checklist on women's safety to be provided to all service providers. Compliance and certification mandatory.
- Training/capacity-building: Training of all municipal staff involved in maintenance of urban infrastructure, through lectures, city walks/safety audits, and FGDs.
- Regular data collection on women's safety: Ensure that the all neighborhoods are regularly surveyed and monitored.

c) Public transport

- Improved infrastructure at bus stops, metro stations and subways: Enhanced lighting, electronic signage and audio announcements at major bus stops. Convex mirrors can be installed in metro stations and subways to remove any blind corners.
- Advertisement of helpline numbers: Clear written and audio announcement of helpline numbers. Electronic messaging on women's safety inside buses and at bus stops, as well as billboards outside buses. Brief (one-minute) advertisements on women's safety to be played on LCD screens which have been installed in some buses.
- Visible police presence: Increased visible presence of marshals or police personnel at busy bus stops and metro stations, supplemented by plainclothes policemen and women. PCR vans to be parked near busy public transit points, especially during rush hours, and at night.

- Autos and taxis: Making the display of auto and taxi drivers' identification, service standards and helpline numbers mandatory, with random checks by mobile teams to enforce the same.
- Mobile teams: Expanding the mandate of the transport department's mobile teams to include response to safety issues and complaints, especially once they are linked to a central control room.
- Effective registration, monitoring and regulation of transport services (whether public, private or contractual) to make them safe, accessible and available to all.
- Emergency telephones: Installation of emergency telephones linked to a central helpline, at major bus and metro stations, in subways and selected pedestrian crossings, perhaps with sponsorship from one of the major mobile companies in Delhi.
- Training/ capacity-building: Sensitisation/training of public transport staff, including bus drivers and conductors, metro drivers and ticketing staff at metro stations, on the importance of ensuring women's safety, and actions to be taken when an incidence of sexual harassment is witnessed or reported. Training of auto-rickshaw and taxi drivers on women's safety issues.
- Zero tolerance: Zero tolerance policy towards sexual harassment of women by drivers and conductors of all public service vehicles, including buses, autos, taxis and other private hire vehicles registered in Delhi.
- Advocacy efforts: Public awareness campaigns in the print and electronic media to raise awareness on women's safety, promote changes in attitude, encourage witnesses and citizens to intervene, and deter perpetrators.
- Capacity-building of all officers, inspectors and sub-inspectors, to begin with, in women's safety issues, including the importance of not trivializing the incident, recording the time and place of its occurrence, and providing a supportive response to the victim. This can also be done with the support of NGOs.
- Developing a Standard Operating Procedure on handling cases of sexual harassment and assault
- Regular review the response mechanism (PCR response and follow up or review of police run helplines)and taking immediate actions on dereliction of duties
- Developing and widely-publicising a zero tolerance policy towards sexual harassment in public spaces.
- Development of a comprehensive strategy towards inducting and retaining women in the police force. This could include, for instance, a review of benefits, preferential housing allocation for women personnel, improved working conditions (including basic amenities like toilets and clean work spaces which are often lacking), avenues for training, capacity building and career progress, and a zero tolerance towards sexual harassment within the police force.

d) Education

- Make the environment within and around the school safer for girls and women (e.g. through better infrastructure such toilets, well-lit corridors, improved lighting around the institution and on connecting streets, appointment and accessibility of counsellors, laying down strict guidelines relating to treatment of girl students, etc.)
- Preparation and circulation of simple guidelines to all educational institutions to improve their physical environment and amenities, in order to make the space within and around the institution safe for girls and women.
- Awareness campaigns, street plays, DVDs and other creative messaging in schools and colleges on the importance of women's safety in public spaces, and the unacceptability of sexual harassment in any form.
- Safety audit of all schools, colleges and university campus areas to identify the specific challenges relating to safety of girls and women. This could be made mandatory for every educational institution, to be conducted by staff and students of the institution itself.
- Ensuring that school and campus facilities, including hostels and PG accommodation, are safe for female students. Certification of secure non-campus accommodation by the police and students' associations, based on predetermined criteria, in order to prevent sexual and other forms of harassment by landlords. Sensitisation workshop for all principals and teachers, both male and female, on issues of women's safety and sexual harassment
- Advocacy campaign on diversity, especially at college and university level, to discourage harassment of women students belonging to particular religion, community or states.
- Review of school and college curriculum to see where gender equality/ violence against women/ women's safety issues can be incorporated. Training of teachers to reinterpret existing texts and encourage dialogue and discussion on sensitive issues.

e) Police Helplines

- Police helplines need to be streamlined – having many different numbers is not practical and usable
- All calls should be reviewed to check the performance of the call operators. Cases should be tracked to check on adequacy of interventions made by the police. Appropriate and immediate disciplinary action against helpline staff and PCR staff for inappropriate/inadequate response amounting to negligence or dereliction of duty.
- Systematic feedback, either of all callers.
- A grievance redress mechanism for processing complaints by designated authorities.

- Training all levels of PCR staff as well as personnel in police stations require training on:

Gender sensitization, understanding violence and its impact upon women, capacity development and communication skills to deal with sexual abuse and sexual harassment cases.

Communication skills – how to communicate with sympathy and give the woman in distress a sense of comfort and confidence

- A comprehensive manual or guide should be prepared detailing the standard operating procedures of the helpline, roles and responsibilities. This should include information about procedures to be followed, forms to be filled, monitoring mechanisms and documentation.
- Creating a specialized and dedicated staff to run the helpline so that there are no disruptions/loss of learning due to frequent transfers. As the role of call takers is more that of counselor/effective communicator, non-police personnel can also be part of this process.
- A more robust coordination between agencies, not limited to only taking survivors to Government hospitals for medical treatment, legal services etc.