

26th September 2011

Call by civil society organizations and individuals to urgently enact comprehensive reforms in criminal law relating to sexual assault law and to bring related medico-legal investigation in line with legal standards

This is to express concern about the inordinate delay in the introduction of comprehensive law reform on sexual assault, and to press for urgent steps for its enactment. This concern arises in the backdrop of the brutal rape and killing of Meena Khalkho, a sixteen year old minor, allegedly at the hands of the Chhattisgarh police (see the following reports in the Indian Express – ‘16 year old encounter victim was Naxal, had “habitual sexual contact”’: C’garh’ (31 August 2011); ‘Naxal’ girl’s killing: Kin allege rape and murder, village points to govt job for brother’ (September 4, 2011) and ‘Chhattisgarh policemen face DNA test over charges of ‘Naxal’ girl’s gangrape, murder’ (September 7, 2011). The case yet again foregrounds that the price for delay in law reform is borne by countless victims and survivors, who pay with their life, dignity and the impossibility of securing justice.

Meena Khalkho’s case is not unique in its brutality or in the degrading procedures that routinely define rape investigations. It is instructive of ways in which patriarchy is deeply entrenched in medico legal practice and investigation – areas that the law reforms have yet to touch. It is said that the post mortem medical report of Meena Khalkho states that the deceased had ‘habitual sexual contact’, whilst also noting serious injuries that indicate sexual assault. The phrase ‘habitual sexual contact’ is not a factual description of the body of the deceased, or her genitals, or an opinion about the nature of the alleged offence; it is instead, a subjective view of her previous sexual history (in this case, a minor). While it is degrading to the victim and irrelevant to the law, it persists, and shapes the legal process and judicial outcomes.

The medical examination and post mortem report is meant to primarily focus on the condition of the body, the psychological state and forensic evidence towards ascertaining the factum of sexual assault, the crime in question. It is not an examination of the previous sexual history of the prosecutrix. In fact, amendments to the Indian Evidence Act, 1872 in 2003, expressly made any reference to previous sexual history impermissible in rape prosecutions. The amendments deleted section 155(4) of the Indian Evidence Act that allowed the defense to impeach the credibility of the prosecutrix in a rape case by showing that she was of generally immoral character, and simultaneously inserted a proviso to section 146 of the Act, to make it impermissible to question the prosecutrix in the cross examination as to her general immoral character (in cases of rape and attempt to rape). When the law specifically makes a woman’s previous sexual history irrelevant to a rape trial, how can medical examination and forensic practices introduce such references?

The two-finger test is degrading and traumatic as it mimics the rape itself, and must be stopped. The test and the accompanying observations do not help to establish the crime. It is a sexist, patriarchal and outdated medical practice that deflects attention away from the perpetrator of the crime, and the crime itself, to the victim’s sexual conduct. It has and continues to be a way of putting women and girls in the dock, to judge whether their sexuality and sexual conduct (real, imagined, or imputed) makes them worthy of legal protection. It transforms the trial into one questioning whether the victim is entitled to legal protection at all.

In addition to the Evidence Act, several judicial pronouncements have stressed that the two finger test and observations about ‘habitual to sex’ are irrelevant and must be erased from medico legal and forensic practices. Reference is made to the *State of Punjab vs Ramdev Singh* [(2004) 1 SCC421] the Supreme Court held, ‘Mere statement that according to doctor, victim's vagina admitted two fingers and she could on earlier occasions have had sexual intercourse five, ten or fifteen times rules out rape by accused once, as alleged, in no way casts doubt on victim's evidence.’ A decision by an Additional Sessions Judge in Delhi in August 2010 (*State vs Umesh Singh and Anr*, FIR No 1135/06) held that the two finger test was a violation of the right to privacy and dignity guaranteed under Article 21 of the Constitution. The judge further held that the test has no scientific or conclusive basis and is ‘absolutely unnecessary and irrelevant’, and directed appropriate action from the state of Delhi and the National Commission for Women.

Despite the directions, no guidelines have been issued as yet on forensic investigation in cases of sexual assault. There is a pressing need to bring medico legal and forensic practices in line with legal standards. This point has been echoed by Human Rights Watch in the report ‘Dignity on Trial: India’s Need for Sound Standards for Conducting and Interpreting Forensic Examination of Rape Survivors’ (2010).

A larger, connected issue is that of justice for victims and survivors of sexual assault. Survey based studies world over have shown that only a small fraction of sexual assault is reported to the police. Given the trauma, social stigma and the degrading legal process involved, the majority of cases remain unreported in India. The fate of reported cases is telling of the hostility of the legal system to deliver justice to women victims of sexual violence. The data in the National Crime Records Bureau shows an alarming discrepancy between the charge sheeting rate and the conviction rate in rape cases:

YEAR	RAPE CASES REPORTED	CHARGESHEETING RATE	CONVICTION RATE
2009	21397	94.2	26.9
2008	21467	93.9	26.6
2007	20737	94.6	26.4

Source: National Crime Records Bureau, India

The women’s movement has been agitating for comprehensive reform of penal laws relating to sexual assault for over two decades; however only piecemeal changes have been brought about by the government. In the last decade, the pressure mounted through various recommendations and draft bills to concretise the discussion on reform. In 2010, women’s groups across India held consultations and responded to the Law Ministry’s proposed Criminal Law Amendment Bill, submitting their recommendations to the bill.

In the backdrop of reports that continue to show-case how the law becomes a tool for humiliating and degrading victims of sexual crimes - the case of Meena Khalko being a recent example - it is of grave concern that the proposed Criminal Law Amendment Bill 2010 has not been acted upon. The Meena Khalko case should be a wake up call for enactment of long delayed amendments sought by women’s rights activists and groups across the country.

We the undersigned women’s activists, concerned citizens and organizations demand:

1. A coordinated response by all the concerned Ministries and Authorities to issue notifications to forensic laboratories and medical personnel prohibiting the two finger test and use of terms such as 'habituated to sexual intercourse' in investigations;
2. The government put in place guidelines or protocol for medical and forensic examination of survivors of sexual assault and victims in case of rape-murder in consultation with women's groups and health organizations, and other experts working on the issue, and initiate orientations to operationalise the guidelines;
3. The government, without any further delay, enacts the long awaited amendments to sexual assault laws in line with the recommendations of women's rights groups and activists submitted to them in 2010.

Signed by:
Madhu Mehra
Partners for Law in Development

THE LIST OF ENDORSEMENTS IS ATTACHED TO THIS LETTER

Call by Civil Society Organizations and Individuals to Urgently Enact Comprehensive Reforms in Criminal Law Relating to Sexual Assault Law and to Bring Related Medico-Legal Investigation in Line with Legal Standards

ORGANISATION		
Sl. No	NAME	CITY
1	Partners for Law in Development	New Delhi
2	Vikalp (Women's Group)	Baroda
3	Akshara	New Delhi
4	Nirantar	New Delhi
5	Saheli	New Delhi
6	LABIA - Lesbians and Bisexuals in Action	Mumbai
7	FAOW – Forum Against Women in Action	Mumbai
8	Stree Adhikar Sanghatan	Delhi
9	Asmita Collective	Hyderabad

INDIVIDUAL		
Sl. No	NAME	CITY
24	Uma Chakravarti, Historian and Activist	Delhi
25	Aruna Roy, MKSS – Mazdoor Kisan Shakti Sangathan	Devdungri, Rajasthan
26	Professor Babu Mathew, National Law University	Delhi
27	Professor Mohan Rao, JNU	Delhi
28	Professor Nandini Sundar, Sociology, Delhi University	Delhi
29	Professor Janaki Nair, Centre for Historical Studies, JNU	Delhi
30	Professor Veena Das, John Hopkins University	U.S.A
31	Rebecca John, Lawyer	Delhi
32	Vrinda Grover, Lawyer	Delhi
33	Leena Ganesh, Anthropologist, architect, media person and activist	Mumbai
34	Harsh Mander, Aman Biradari	Delhi

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10	Jagori	Delhi
11	Swayam	Kolkata
12	Stree Adhikar Sangathan	Delhi
13	Eklavaya	Madhya Pradesh
14	TARSHI – Talking about Reproductive and Sexual Health Issues	Delhi
15	Anweshi	Andhra Pradesh
16	Tulir	Chennai
17	Chotanagpur Sankritik Sangh	Jharkhand
18	Point of View	Mumbai
19	KHOJ	Amravati, Maharashtra
20	Masum	Pune
21	RAHI Foundation	Delhi
22	FXB India Suraksha	Uttar Pradesh
23	The Shakti Resource Centre	Chennai

**LIST OF ORGANISATIONS
END HERE**

35	Professor Shirin Rai, University of Warwick	Warwick, U.K
36	Kalpana Kannabiran, Council for Social Development/ Asmita	Hyderabad
37	Professor Rupal Oza, Hunter College,	New York
38	V.S Elizabeth, NLSIU	Bangalore
39	Farah Naqvi , writer and activist	Delhi
40	Geeta Ramaseshan, Lawyer	Chennai
41	Prita Jha, Nyayagrah	Ahmedabad
42	Dr. Pratiksha Baxi, Jawaharlal Nehru University (JNU)	Delhi
43	Kabir Sadanand, Film Director	Mumbai
44	Dr. Anupama Roy, JNU	Delhi
45	Professor Ujjwal Singh, Political Science, Delhi University	Delhi
46	Dr. Sudha Vasan, Sociology, Delhi University	Delhi

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INDIVIDUALS CONTINUED		
47	Nandini Nayak, SOAS	London
48	Nalini Visvanatan, Independent Researcher	U.S.A
49	Shama Patel	U.S.A
50	Vasudha Nagaraj	Andhra Pradesh
51	Vasudha Mohanka, Tata Institute of Social Sciences (TISS)	Mumbai
52	Rohini Hensman	Mumbai
53	Amita Pitre	Mumbai
54	Kalyani Menon Sen	Delhi
55	Pushpa Achanta, writer	Bangalore
56	Uma V. Chandru	Chennai
57	Anusha Hariharan	Delhi
58	Rinku Lamba, JNU	Delhi
59	Mengia Hong Tschalaer, Columbia Law School/Universi ty of Zurich	New York / Zurich

60	Dr. Karen Gabriel, St Stephen's College, English Department, Delhi University	Delhi
61	Professor Rajni Palriwala, Sociology, Delhi University	Delhi
62	Professor Mala Liyanage, Law and Society Trust	Colombo
63	V. Venkatesan, Journalist	Delhi
64	Bikram Jeet Batra, Lawyer and Researcher	U.K
65	Rebecca Grapevine, Historian, University of Michigan	U.S.A
66	Dr. Gitanjali Gangoli, School for Policy Studies	Bristol, U.K
67	Oishik Sircar, OP Jindal Global Law School	Sonipat
68	Dr. Jinee Lokaneeta, Drew University, Madison	N.J, U.S.A

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70	Anagha Sarpotdar, TISS	Mumbai
71	Susie Tharu, EFL University and Anveshi	Hyderabad
72	Sharmila Rege, Savitribai Phule Collective	Pune
73	Teena Gill, Filmmaker	Delhi
74	Rajashri Dasgupta	Kolkata
75	Neeru Mehra, University of Santa Barbara	U.S.A
76	Shefali Malhoutra	U.K
77	Ammu Abraham	Mumbai
78	Guguletu Samkange	Cape Town
79	Srabasti Basu, Writer	Kolkata
80	Nikasha Tangirala, McGill University	Montreal
81	Sudha Krishna, Zee T.V	New York
82	Shaila Tangirala	Toronto
83	Suraj Valand, Physical Therapist	Cape Town
84	Sateesh V. Kumar	Gurgaon

69	Dr. Brenna Bhandar, Queen Marys	London
87	Umesh O, Ph.D Scholar, JNU	Delhi
88	Dr. A.Bimol Akoijam, JNU	Delhi
89	Persis Ginwalla, Independent Development Professional	Ahmedabad
90	Parvez Mody, University of Cambridge	Cambridge, U.K
91	Dr. Sorab Dalal	Mumbai
92	Ponni Arasu	Chennai and Delhi
93	Vasanth Kannabiran, Pallavi Gupta, Nancy Nagamma, Volga, N. Beena, Asmita Collective	Hyderabad
94	Dr. Srila Roy, School of Sociology and Social Policy, University of Nottingham	Nottingham, U.K
95	Lalita Ramdas, Greenpeace	India

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85	Sarika Garg, Morgan Stanley Smith Barney	New York
86	Tushar Unadkat, Filmmaker	Toronto
97	Kalpana Swaminathan, Novelist	Mumbai
98	Meena Alexander, Poet and Writer	New York
99	Vibha Singh, Writer	Mumbai
100	Ashoo Naik, Big Bang Co.	Mumbai
101	Jaykumar Menon, X Prize Foundation	New York
102	Tapan Raychaudhuri, Historian	Kolkata and Oxford
103	Vijay Singh, Film Director	Paris
104	Varun Khanna, Film Director, ARTESIAN MEDIA	Mumbai and L.A
105	Shamma Chaki, Designer	Mumbai
106	Vahida Nainar	Mumbai
107	Kamayani Bali Mahabal, Advocate	Mumbai

108	Shraddha Chikerur, Institute of Economic Growth	Delhi
109	Kalpana Swaminathan, Surgeon and Writer	Mumbai
110	Kamakshi Rao, Consultant	Bangalore
111	Abhishek Chaki, Investment Banker	Mumbai
112	Madhu Mantena, Fillmaker, BIG BANG Co.	Mumbai
113	Nabaneeta Dev Sen, PadmaShri winning writer	Kolkata
114	Indrani Sen, Journalist	New York
115	Jon and Sasmira Christensen, Doctors	Mumbai and New York
116	Shobha Venkatesh Ghosh, University of Mumbai	Mumbai