

Note from the Communist Party of India (Marxist) to Justice Verma Committee

Date: 4 January 2013

CPI (M) note to Justice Verma Commission

Note Submitted to the Justice Verma Committee on Amendments to Relevant Laws and Measures to Deal with Sexual Assaults & Violence Against Women

Some of the main points in the note are as follows:

- 1 In the case of aggravated sexual assault/rape which would include gang-rape, child rape, custodial rape etc. the maximum punishment should be rigorous life imprisonment for the entire life of the person.
2. In other cases of rape, the maximum sentence should be life imprisonment.
3. In both the above categories the minimum sentence which is proposed in the draft Bill should be increased. There should be no provision in the law which will allow courts to reduce the sentence even less than the minimum in the name of “extenuating circumstances”.
4. There has to be time-bound disposal of all cases of rape in courts. For this the law must provide for special fast-track courts.
5. In all cases of sexual assault the case must be completed within three months. No bail should be granted to the accused while the hearings are on as the entire process will be time-bound.
6. Public servants not implementing the law including timely filing of FIR should face punishment. In the proposed amendment on this issue in the Bill, a minimum punishment should be prescribed.
7. There must be rehabilitation measures including financial help mandated by law for victims of sexual assault.
8. Acid attacks on women must be treated as a serious crime. The minimum sentence for which must be enhanced and the maximum must provide for life imprisonment.
9. The law must mandate the setting up of a monitoring mechanism to aid the steps being taken by various agencies to prevent, control and punish those involved in sexual crimes against women including minors.
10. Clauses in the IPC and other relevant laws concerning sexual assault have to be gender specific and not gender neutral as proposed in the Bill pending before parliament.
11. Steps have to be taken to prevent the broadcast or publication of demeaning and highly sexist advertisements that commodify women’s bodies and promote aggressive misogynist cultures.

12. The legal framework against sexual crimes must make it mandatory to include in all educational syllabi in schools and colleges gender sensitization courses for boys and girls and young men and women

The Full Text of the Note is Given Below

January 3, 2013

Note from the Communist Party of India (Marxist) On Amendments to Relevant Laws and Measures to Deal with Sexual Assaults & Violence against Women

This is in reference to the public notice issued by the Government of India regarding the formation of the Committee under the Chairmanship of Justice Verma to suggest possible amendments in the “ criminal laws and other relevant laws for quicker trials and enhanced punishment of criminals accused of sexual assault of an extreme nature on women.”

We believe that a much more holistic approach is required and regret that the terms of reference are limited only to these two issues. The Committee had been set up in the wake of the heinous crime of extreme brutality including gang rape committed on a young para medical student in Delhi. Subsequently, the young woman succumbed to the injuries inflicted on her. This particular case of gangrape and murder would certainly fall in the category of “rarest of the rare” cases. Within the existing legal framework itself the sentence could be the death penalty for the criminals for which there are already legal precedents.

However in a situation where crime against women and in particular the crime of rape is the fastest growing crime it is essential for the Government to review the present laws and the proposed amendments so as to cover all the major aspects. In this context we would like to draw your attention to the Bill introduced in the Lok Sabha on October 19, 2012, which seeks to “amend the IPC, the CrPc, 1973 and the Indian Evidence Act” in so far as it concerns rape and sexual harassment of women (henceforth referred to as the Bill). Some of these proposals are flawed. It will amount to the application of double standards to the crime of sexual harassment and assault on women if only clauses pertaining to a particular type of sexual crime are considered for improvement while the law remains weak and ineffective on a range of other issues connected with sexual crimes. We would also like to point out that in a society based on class and caste inequalities, women of the economically exploited and caste oppressed sections, particularly dalits and tribals are even more vulnerable to sexual assault. We therefore seek your indulgence in accepting this memorandum which deals with issues which we consider are germane to the prevention of and punishment for cases of rape and cases of sexual assault and harassment.

1. Clauses in the IPC and other relevant laws concerning sexual assault have to be gender specific not gender neutral as proposed in the Bill referred to above. It is a total trivialization of the issue of sexual assault on women to suggest that it is a gender neutral crime. Thus the amendments moved to sections in the IPC namely 375, 376, 376A, 376B, 376C and 376D to make them gender neutral must be withdrawn. We hope you will make this recommendation.

2. The Bill widens the definition regarding sexual assault which is welcome. However it falls short in enhancement of punishment. The Bill proposes amendments in Sec 375.2 (a to l) in the redefined clauses. The perpetrators of the crime in these sections are men who are public servants such as police personnel, management of staff of jails, other institutions etc. This list should be expanded to include army men, paramilitary forces. Sexual assault committed by them should be considered as Aggravated Sexual assault. Aggravated sexual assault should include gangrape, custodial rape, child rape, rape during communal or caste driven violence, rape of a woman suffering mental or physical disability, sexual assault which causes grievous bodily harm or disfigurement.

3. In such cases of aggravated sexual assault/rape the punishment should be rigorous life imprisonment till death.

(Where the sexual assault is accompanied by other forms of violence leading to the death of the victim, the rarest of rare categories, which could include the death penalty, may be applied by the courts.)

4. In other cases of rape the maximum sentence should be life imprisonment. It is found that courts rarely give the maximum sentence. It is therefore essential to increase minimum sentences in all cases of sexual assault from the existing level which are only seven years for rape and ten years for aggravated sexual assault/rape. The present legal framework also permits courts to further reduce the sentence to even less than the minimum in the name of extenuating circumstances. This must be prohibited.

5. The critical issue is the requirement for time-bound processes of justice in all cases of rape. The law must specifically mention the formation of special fast track courts for all cases of rape.

6. In all cases of sexual assault the case must be completed within three months.

7. Since our proposal is for speedy justice, the accused must by law continue to remain in jail till the verdict is pronounced. No bail can be granted to a rape accused while the hearings are on as the entire process will be time-bound.

8. Public servants not implementing the law including timely filing of FIR should be punished with a minimum punishment of one year and fine which may extend to three years. In the proposed amendment on this issue in the Bill there is no minimum prescribed.

9. There must be rehabilitation measures including financial help mandated by law for victims of sexual assault which should be decided according to the requirements. It is humiliating and insulting to women when so-called rape compensation packages are declared such as 20,000 rupees etc. by some State Governments. The rehabilitation should include medical expenses and also may also include a Government job. Counselling and other help must be mandatorily provided.

10. Acid attacks on women are a fast growing crime. A new clause is sought to be introduced in the Bill under Sec 325 B. Depending on the extent of injury the law must provide for life imprisonment while the minimum sentence must also be enhanced. The law must provide for medical rehabilitation.

11. Sec 354 and 509, which contains such archaic terms as “outraging the modesty of a woman” must be redrafted to specifically use the term sexual harassment and the punishment enhanced. Sexual harassment has nothing to do with the modesty of a woman and everything to do with impermissible sexual behaviour and assertion of power by the criminals. The sentence should be enhanced to a minimum of one to five years depending on the degree of harassment, whether verbal, physical etc. and also a fine imposed. Serial offenders should be punished with the maximum.

12. In this connection steps are required to prevent the broadcast or publication of demeaning and highly sexist advertisements that tend to commodify women’s bodies. With the wide reach of satellite channels these advertisements promote aggressive misogynist cultures. The relevant rules and laws must be amended to prevent such advertisements, since on this count, self-regulation has failed.

13. The law must mandate the setting up of a monitoring mechanism to audit the steps being taken by various Government agencies to prevent, control and punish those involved in sexual crimes against women including minors. An annual report of the monitoring mechanism must be made public.

14. The legal framework against sexual crimes must make it mandatory to include in all educational syllabuses in schools and colleges, gender sensitization courses for boys and girls, men and women. This is essential to change the thinking of a predominantly male-child preference based society along with culturally sanctioned retrograde male privileges.

15. In spite of the surge in so-called honour crimes the Government has failed to bring any stand alone law for the purpose. The illegal fatwas of Khap Panchayats are a case in point. These diktats range from fatwas on dress codes for young women and school girls, to bans on friendships, self choice partnerships, the punishment also ranging from boycotts to public lynching and killings. Narrow vote bank politics has influenced Governments leading to inaction and even encouragement to these self-proclaimed panchayats in spite of repeated instruction for action from various courts including the Supreme Court. We request the Commission to

recommend a stand alone law to cover all honour related crimes and to take strict action against the diktats and their enforcement by the so-called khap panchayats including their disenfranchisement.

There are other flaws in the Bill and the legal framework which need to be addressed and which have been raised by women's organisations.

Administrative Steps

Along with the legal framework, it will also be necessary for the Government to urgently take administrative steps. One of the critical issues is to make public spaces safe and secure for women at all times. This must include all forms of public transport. With the privatisation of transport systems, the accountability of the Government has been diluted and no action is taken against private bus owners. For example even now many buses in Delhi have black tinted windows. Strong regulations for security must be ensured and accountability fixed including punishment for officers guilty of non-implementation. Mapping of vulnerable areas in the city and towns must also be a regular procedure to be followed. Specifically, provision for public toilets for women must be made and the area be properly lit.

For fast track courts to be set up, it is essential for the Government to recruit a large number of judges at various levels. Recruitment must go hand in hand with strict standards of the quality of the recruitment. Judges often reflect retrograde social outlooks towards women. Thus gender sensitive standards must be set for such recruitments.

It will also be necessary to recruit many more women police personnel to be able to speed up the investigations and be involved in help-lines etc. and training courses are required for this

It is essential for the Central Government and the State Governments to work out standard operating procedures which should immediately come into place once a complaint of sexual harassment and/or rape is reported.

We are aware of the far reaching recommendations you had made for legal measures against sexual harassment at the work place. Unfortunately not only has the Government diluted or subverted some of those important recommendations but it passed the Bill without discussion in the lower House while it is yet to be placed before the upper House. We mention this only because of our anxiety that without a comprehensive report on the issues connected with sexual harassment and assault, Government may find a short cut to ignore the issues which will be of great disservice to women and girls in particular and the society at large. It is with the request that the Committee take note of the wider issues involved that we submit this memorandum to you. The urgent requirement is to reform the laws and take urgent administrative steps to do

justice to the brave young woman whose life was brutally cut short and also the countless others who have been victims of sexual assault and are yet to get justice.