

Submissions to Justice Verma Committee by Forum Against the Oppression of Women (FAOW), Aawaaz-e-Niswaan (voice of women) (AEN) Lesbians and Bisexuals in Action (LABIA), Mumbai

To the Justice Verma Committee

We, the undersigned, women's groups, organisations and individuals, have been active in protests against rape and sexual assault for many years. We have engaged with the law and the State machinery and have also worked with survivors of sexual assault.

We write to you in response to your public call "to share with you our ideas, knowledge and experience so as to suggest possible amendments in the criminal laws and other relevant laws to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault of extreme nature against women".

We hereby place our concerns before you.

First of all we think that the committee should look at the entire gamut of sexual violence, not just "extreme" or "aggravated" cases. It should review all the laws relating to sexual assault and harassment, including the process of investigation, trial and speedy justice, the manner in which evidence (including medical and FSL) is collected and presented and recorded during the trial. This exercise of review for quicker investigation, speedier justice and trial needs to be done for ALL cases of sexual assault.

Secondly while we totally support the need for quicker trials, we are not sure if enhancement in punishment is a solution to the problem of sexual assault. We are particularly against the death penalty. Our vision of justice does not include death penalty, which is neither a deterrent nor an effective or ethical response to these acts of sexual violence. We append (Annexure 1) with this statement our reasons as to why we think the death penalty is not a punishment to be given for sexual assault. We also believe that castration, chemical or otherwise, should not be a punishment awarded to rapists. Any form of corporal punishment is barbaric and has no place in a civilised polity.

Thirdly we urge you to please carefully look at the Criminal Law Amendment Bill 2012 which has been passed by the Cabinet. It is changing the way in which rape will be looked at by making the law gender neutral. Sexual assault laws need to be gender sensitive, not gender neutral. Rape and sexual assault are gendered crimes, and whether they are committed on women, transgenders or men, they have to be looked at as "male pattern violence" prevalent in a patriarchal society. We have in our earlier recommendations (attached herein as 'Annexure 2) to the Home Minister urged that the suggested gender neutrality in the Bill be changed.

We ask for all sexual assault and rape laws to define sexual assault as a gendered crime committed by men on any person.

We have many other suggestions on the Bill which we attach herewith and urge you to take these studied and considered suggestions seriously and redraft the Criminal Amendment Bill accordingly.

As has been well documented, the experience of people accessing the justice system is abysmal. They are not encouraged to make complaints. They are further victimised by the very system that is there to help them make the complaint. There are many measures that we are suggesting for ensuring that people are able to make legitimate complaints and that there is a system that makes those from the margins – poor women, Dalit women, adivasi women, women in political conflict regions, migrant women, sex workers, transgenders, and others – confident of using the system that often goes against them.

For this we demand the following:

- Speedy and time bound justice delivery. Witness protection to be put in place, so that the survivor is not intimidated and further victimised by the accused or any other authorities.
- Immediate setting up of fast track courts for rape and other forms of sexual violence all across the country. State governments should operationalise their creation on a priority basis. Sentencing should be done within a period of six months.
- CC TV cameras in police stations to make sure that the procedures for receiving of complaints are followed and implemented at every level.
- Safe kit protocols to be used by the medical practitioners and the investigating officers in a gender sensitive manner where the person's past sexual history, background and sexuality are not called into question. Safety and privacy of the complainant have to be maintained at every level and at the same time their informed consent should be compulsory when carrying out any medical or legal procedure.
- There is urgent need to set up proper protocols for survivors' assistance – counselling and reaching out to survivors who require help; obligation to have sensitisation sessions incorporated into law for every state functionary at every level; and mandatory implementation of existing policies and procedures.
- All functionaries of the state involved at every step of the complaint, who violate any of the laid down protocols for registering complaints or in the manner specified, should be held accountable and tried for dereliction of duty.

Finally we request you have face to face meetings with some of the groups that have been working consistently on these issues for the last three decades so that the system of justice and the multiple ways in which it is denied can be discussed.

Attachment 1

Reasons for our opposition to the death penalty for sexual assault

We are opposed to the death penalty as a punishment for sexual assault for the following reasons:

1. We refuse to deem 'legitimate' any act of violence that would give the State the right to take life in our names. Justice meted by the State cannot bypass complex socio-political questions of violence against women by punishing rapists by death. Death penalty is often used to distract attention away from the real issue – it changes nothing but becomes a tool in the hands of the State to further exert its power over its citizens.

2. The State often reserves for itself the 'right to kill' — through the armed forces, the paramilitary and the police. We cannot forget the torture, rape and murder of Thangjam Manorama by the Assam Rifles in Manipur in 2004 or the abduction, gang rape and murder of Neelofar and Aasiya of Shopian (Kashmir) in 2009. Giving more powers to the State, whether arming the police and giving them the right to shoot at sight or awarding capital punishment, is not a viable solution to lessen the incidence of crime.

Furthermore, with death penalty at stake, the 'guardians of the law' will make sure that no complaints against them get registered and they will go to any length to make sure that justice does not see the light of day. The ordeal of Soni Sori, who had been tortured in police custody last year, still continues her fight from inside a prison in Chattisgarh, in spite of widespread publicity around her torture.

3. There is no evidence to suggest that the death penalty acts as a deterrent to rape. Available data shows that there is a low rate of conviction in rape cases and a strong possibility that the death penalty would lower this conviction rate even further as it is awarded only under the 'rarest of rare' circumstances. The most important factor that can act as a deterrent is the certainty of punishment, rather than the severity of its form.

4. As seen in countries like the US, men from minority communities make up a disproportionate number of death row inmates. In the context of India, a review of crimes that warrant capital punishment reveals the discriminatory way in which such laws are selectively and arbitrarily applied to disadvantaged communities, religious and ethnic minorities. This is a real and major concern, as the possibility of differential consequences for the same crime is injustice in itself.

5. The logic of awarding death penalty to rapists is based on the belief that rape is a fate worse than death. Patriarchal notions of 'honour' lead us to believe that rape is the worst thing that can happen to a woman. There is a need to strongly challenge this stereotype of the 'destroyed' woman who loses her honour and who has no place in society after she's been sexually

assaulted. We believe that rape is tool of patriarchy, an act of violence, and has nothing to do with morality, character or behaviour.

6. As we know, in cases of sexual assault where the perpetrator is in a position of power (such as in cases of custodial rape or caste and religious violence), conviction is notoriously difficult. The death penalty, for reasons that have already been mentioned, would make conviction next to impossible.

Attachment 2

Objections, Concerns and Suggestions to the Criminal Law Amendment Bill 2012 on Sexual Assault and Acid Attack

Women's groups had submitted objections, concerns and suggestions to the Criminal Law Amendment Bill, 2012 to which the Ministry of Home Affairs responded, which response was forwarded to us by way of letter dated 10th October 2012. None of the issues and concerns raised by women's groups have been seriously considered by the Ministry. We wish to reiterate these issues and request the present Commission to actively consider the following:

A. Penetrative SEXUAL ASSAULT – Sec. 375 IPC

i. Expansion of definition of sexual assault: The expansion of the definition of penetrative sexual assault under Sec. 375 IPC, beyond peno-vaginal penetration (rape) is welcome.

ii. Gender neutral sexual assault: The formulation of the crime of sexual assault as gender neutral, in all circumstances, makes the perpetrator/ accused also gender neutral, i.e a woman or man can be accused of sexual assault. We believe that the perpetrator has to remain gender-specific and limited to men, as there is no empirical evidence or other justification to support a finding to the contrary. Across the country women are being subjected to severe forms of sexual violence. We also recognise that sexual violence is targeting others such as transgender women, and legal reform must address this. We strongly oppose the gender-neutrality clause in relation to perpetrators under Sec. 375 IPC. We state that the forced sexual assault on children – boys and girls – is dealt with in the Protection of Children from Sexual Offences Act, 2012. The response of the MHA dated 10-10-2012 does not address why the perpetrator should be made gender-neutral.

iii. Definition of Consent: There is no amendment to the flawed definition of consent under Sec. 375 IPC, which has in many cases proved highly inadequate. The present definition has worked against the interests of justice for women. We further state that though several judgements have explained 'consent', it continues to be an uphill task for women subjected to sexual assault to prove that they did not consent to the act. In the circumstances, a comprehensive definition of 'consent' should be part of the legislation.

iv. Age of Consent for Sexual Intercourse: In the light of increasing evidence from courts, records of crimes, as well as studies on the exercise of agency by young people, we suggest that the age of consent to sexual intercourse should be retained as 16 years and not increased to 18 years. We believe that increasing the age of consent to 18 years would create conditions for misuse of the provision, particularly in the context of inter-caste/inter-religious relationships that attract social disapproval.

v. Sexual purpose: In Sec 375(a) the phrase ‘sexual purpose’ must be deleted because sexual assault is about exercise of power. At any rate, if the exception – medical purpose – is mentioned, there is no need for the phrase ‘sexual purpose’.

vi. Exception to Sec. 375 IPC: We recommend a deletion of the Exception to sexual assault under Sec. 375 IPC. Rape within marriage should not be condoned by law any longer.

B. NON-PENETRATIVE SEXUAL ASSAULT

i. Gap in law of sexual offences: There continue to be serious gaps in the codification of crimes of non-penetrative sexual assault. The Bill retains a narrow definition of sexual assault, that focuses on penetration, albeit beyond penovaginal rape. There is a large gap in enumeration of crimes under the Penal Code between outrage of modesty (S. 354 IPC) and penetrative sexual assault. We believe that sexual crimes form a continuum, and that the Bill should recognise the structural and graded nature of sexual assault, based on concepts of hurt, harm, injury, humiliation and degradation, and use well-established categories of sexual assault, aggravated sexual assault, and sexual offences.

ii. Additional Sexual offences to be defined: New provisions should be formulated to define crimes that punish acts of stripping, parading naked, tonsuring of hair and mutilation which are intended to sexually assault, degrade or humiliate women, who are so targeted. Further, stalking, blackmailing (including through internet), as well as sexual harassment, must be codified as crimes under the rubric of sexual offences.

iii. ‘Outraging modesty of a woman’ to be replaced with ‘violation of bodily integrity: S. 354 and S. 509 IPC, which contain archaic notions of ‘outrage of modesty’, ought to be repealed, and a clear gradation of offences and punishment as mentioned above should be inserted. We strongly believe that ‘sexual assault’ should rest firmly on the concept of violation of bodily integrity and dignity.

The MHA’s response clearly indicates that the suggestions have not been seriously taken into account. We reiterate that the wording of the offences be changed from ‘outraging modesty’ to ‘violating bodily integrity’ and further recognise offences such as stripping, parading naked, tonsuring of hair and mutilation as forms of sexual assault, and include them in the proposed law.

C. Aggravated Sexual Assault Sec. 376 IPC

i. Sexual assault in Contexts of “Economic, Social or Political Dominance”: The phrase ‘economic, social or political dominance used in Sec 376(2)(i) is vague and general. All the terms used in this provision such as dominance, social, political, economic need much more clarity and specificity.

ii. Sexual Assault by Members of Security Forces: Sexual assault by security forces has been included as a form of aggravated sexual assault in The Protection of Children from Sexual Offences Act, 2012, (CSO) under S. 5(b) and Sec.

9 (b) under aggravated sexual assault. However the Criminal Law Amendment Bill 2012, does not even mention assault by security forces as a specific category of aggravated sexual assault under Sec. 376(2) IPC. There is extensive documentation of sexual violence against women by security forces in various parts of the country, including by the paramilitary forces. Hence, we strongly suggest inclusion of the perpetration of sexual assault by security forces under S. 376(2).

iii. Introduce Coercive Circumstances / Mass crimes under aggravated sexual assault: The category of ‘coercive circumstances’ should be introduced as a specific context of aggravated sexual assault. The term can be defined by an Explanation and elaborated by Illustrations. This should include the context of mass crimes. Recognising sexual assault in certain specific situations of conflict based on community, ethnicity, caste, religion and language, merit special recognition. Such contexts ought to be treated as specific circumstances for aggravated sexual assault.

D. Provisions to be added to Criminal Law Amendment Bill, 2012

We believe that there are important aspects that are conspicuous by their absence in the present Bill. These include:

i. Appropriate standards of procedure and evidence for sexual assault in the situations of aggravated sexual assault under Sec. 376(2) IPC detailed above

ii. Women with Physical / Mental Disabilities: 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, what qualifications are required to do so etc.

iii. Inclusion of Command / Superior Responsibility: In cases of sexual assault committed by state personnel, authorities higher up in the hierarchy should be held liable for dereliction of duty by those under their command. Ignorance or lack of information about sexual violence committed in his/her jurisdiction cannot be an excuse.

- iv. Prioritise medical treatment and care of victim of sexual assault: Statutory recognition of comprehensive psycho-social support, care and treatment to victim / survivors of sexual violence;
- v. Norms related to Medical / Forensic Examination and Medico-Legal Documentation: Gender sensitive procedures and proformas for medical examination of victim be specifically laid down. Prohibit the two finger test and detailed examination of hymen and documentation of old injuries to hymen. Appropriate directions should be issued to all hospitals – public and private.
- vi. Protection of Victims and Witnesses: Protection of victims and witnesses from the pre-trial to post-conviction stages in accordance with the jurisprudential developments and Law Commission's 198th report released in August 2006.
- vii. Reparation including Compensation and Rehabilitation: As a measure of reparative justice, for victims and survivors of sexual assault, the 2012 Bill must lay down State obligations towards such remedy and reparation, including provisions for medical treatment, psychological care, shelter, and income, in order to overcome possible destitution and social ostracism. These provisions should not be linked to the criminal trial and prosecution.
- viii. Role of the Media: The insensitivity with which the media often reports sexual violence, particularly in non heteronormative cases and the impunity they enjoy in this regard must be addressed in the Bill. Pinki Pramanik is a case in point where not only was her identity revealed through photos, but there was a complete violation of her right to privacy, dignity and bodily integrity.
- ix. Deletion of S. 377 IPC: Sec 377 needs to be deleted from the text of the 2012 Bill as it is redundant now, particularly since 'sexual assault' has been broadly defined under the present Bill to include anal intercourse without consent, and the Protection of Children from Sexual Offence Act 2002 criminalises penetrative sexual assault on children. Thus the only remaining purpose the law serves is to criminalise consensual intimate acts between adults in private, which the Delhi High Court has held as contrary to the constitutional guarantee of equality, dignity and privacy for all.

E. ACID ATTACKS Sec. 326A IPC

- i. Acid attack defined as a crime: We welcome the introduction of a specific offence for acid attack. As this offence has been codified for the first time, women's groups across the country are discussing the new provision and will communicate our detailed comments shortly.
- ii. Compensation: Sec. 357A of Cr PC should also be amended to ensure that in all acid attack cases, the woman, have the right to claim ad-interim compensation, separate from any compensation the victim may receive under any other legal provision.
- iii. Punishment: Sec. 326A IPC must include a mandatory minimum sentence.

We request the Commission to consider the aforementioned.

Attachment 3

Demands in the Context of Existing Legal Provisions

a) Police:

It is a common experience that the police response to rape victims is neither sensitive nor follows the protocol laid down by the apex court in the past. Invariably women are detained in police stations overnight and complaint not registered. They are neither provided with food nor allowed to use toilets. Police do not believe narration of the woman and make derogatory comments.

If the survivor has reported to the hospital prior to reporting to police station, police cannot seek explanation from the examining doctor as to why the police was not informed of the assault. Section 39 CrPC does not mandate the doctor to inform the police of a case of sexual assault, if the survivor does not wish to do so. More so Police interfere and insist on their presence during medical examination. They issue requisition seeking information pertaining to whether rape has taken place or not. Police also do not collect the evidence in time which then becomes a futile exercise on the part of the doctor as the samples gets putrefied.

We demand that the government should 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 steps to operationalise the guidelines.

Section 157 of CrPC (Amendment 2008) states that the recording of the statement of the survivor shall be conducted at her residence or a place of her choice as far as possible preferably a woman police officer. This should be followed strictly.

Police must ensure that they file the charge-sheet as far as possible within the stipulated time limit of 90 days and ensure that public spaces are free from harassment, molestation and assault. This means that they should stop assaulting women sexually that approach them to register complaints. They must register all FIRs and attend to complaints.

CCTV cameras should be set up in all police stations and swift action must be taken against errant police personnel.

Compulsory courses within the training curriculum on gender sensitisation for all personnel employed and engaged by the State in its various institutions, including the police must be initiated by the state governments.

Monitoring committee should be constituted at every state and central level to respond comprehensively towards the cause of crime against women.

b) Medical Examination:

Chemical analyser report indicating absence of traces of semen in vaginal swab cannot be held as evidence to discredit statement of the sexual assault survivor. This has been cited as reason for acquittal in many judgements (including Bombay High Court judgement in Criminal Appeal No.368 of 2007, Mahadeo Kuchankar vs State of Maharashtra).

We demand that the two finger test performed on survivors of rape at the hospitals to be stopped.

The two-finger test is degrading and traumatic as it mimics the rape itself. 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. In the State of Punjab vs Ramdev Singh[(2004) 1 SCC 421] 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.

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 coordinated response by all the concerned Ministries and Authorities needs to be done immediately 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.

c) Measures to Ensure Speedy Trials

Immediate setting up of fast track courts for rape and other forms of sexual violence all across the country is needed to avert the delay and to ensure that the trauma faced by the survivor of rape is not played in the court for prolonged period.

State governments should operationalise their establishment on a priority basis.

Speedy in-camera trials on day-to-day basis should be carried out and sentencing should be done within a period of six months.

Special prosecutors for rape trials should be appointed.

d) Implementation of the Existing Supreme Court Directions

We demand immediate implementation of the directions by the Hon. Supreme Court of India on 19th October 1994 in the Writ Petition (Crl.) No. 362 of 1993 in matter of Delhi Domestic Working Women's Forum vs. Union of India and others.

The directions include Legal assistance to the rape survivor at the police station, Guidance to her about the police procedures plus court proceedings, Counselling and medical assistance, List of advocates to be kept at police station, Appointment of the advocate by the court, Maintaining anonymity about the identity of the survivor, Setting up of Criminal Injuries Compensation Board, Implementation of the NCW scheme for providing compensation the survivors of rape.

We also demand the following measures to facilitate justice and safety for all people especially women

- Greater dignity, equality, autonomy and rights for women and girls from a society that should stop questioning and policing their actions at every step.
- Immediate relief in terms of legal, medical, financial and psychological assistance and long-term rehabilitation measures must be provided to survivors of sexual assault.
- Provision of improved infrastructure to make cities safer for women, including well-lit pavements and bus stops, help lines and emergency services.
- Effective registration, monitoring and regulation of transport services (whether public, private or contractual) to make them safe, accessible and available to all.
- Compulsory courses within the training curriculum on gender sensitisation for all personnel employed and engaged by the State in its various institutions, including the police.
- That the police do its duty to ensure that public spaces are free from harassment, molestation and assault. This means that they themselves have to stop sexually assaulting women who come to make complaints. They have to register all FIRs and attend to complaints.
- The National Commission for Women has time and again proved itself to be an institution that works against the interests of women. NCW's inability to fulfil its mandate of addressing issues of violence against women, the problematic nature of the statements made by the Chairperson and its sheer inertia in many serious situations warrants that the NCW role be reviewed and audited as soon as possible.

- The State acknowledges the reality of custodial violence against women in many parts of the country, especially in Kashmir, North-East and Chhattisgarh. There are several pending cases and immediate action should be taken by the government to punish the guilty and to ensure that these incidents of violence are not allowed to be repeated.

Submitted by :

Aawaaz-e-Niswaan (voice of women)(AEN) is a vibrant feminist collective of students, academicians, activists from the women's movement and women who daily confront violations of their rights and evolve strategies to combat them. Defined by the lived reality of women who continue to struggle for their human rights in the context of patriarchy and communalism, Aawaaz-e-Niswaan has consistently sought to speak up for the rights of all women, even as our work focuses on Muslim women's issues. AEN believes that it is a part of a wider sisterhood of women, and that irrespective of caste or religion the challenges faced by women within a patriarchal society remain more or less the same. However keeping in mind the intricacies and complexities of the problems faced by Muslim women it focused on the issues faced by them and issues related to the voice and representation of Muslim women.

Akshara established 16 years ago as a women's resource organisations believes in changing society by changing people. At the individual level: every year over 1000 young women and men benefit from scholarships for education and our capacity development workshops for skills, confidence and leadership. At the societal level: our media program uses different forms of communications for interactive learning like info fairs, Internet courses and a free reference library for students. For collective actions, our advocacy program campaigns along with others for better legislation and policies.

Forum Against the Oppression of Women (FAOW), is voluntary women's campaign group, consisting of women from varied backgrounds. FAOW was formed in 1979 as a platform to respond to an extremely unjust judgment in a rape case, namely the Mathura rape case. FAOW is a leading women's group in Bombay, and functions as a discussion and campaign group, actively networking and campaigning around all issues concerning the discrimination of, and violence against women, while occasionally fighting individual cases. FAOW is a part of the National Network of Autonomous Women's Groups, and has co-organised and participated in six National Conferences of Women's Movements in India, which bring together women from across India. FAOW was part of the campaign started to bring about changes in rape laws, which arose out of the Mathura rape case, resulting in. the Criminal Law (Amendment) Act, 1983, which introduced several changes in the laws concerning rape. FAOW is also a part of the women's health movement in India, It has been a part of the process for drafting bills against sex determination tests and sex selective abortions, sexual harassment and domestic violence. Several of its members are on the Complaints Committees against sexual harassment in various establishments.

Lesbians and Bisexuals in Action (LABIA), is an autonomous, non-funded collective of lesbian and bisexual women and transgender persons. LABIA is a campaign and activist group with a focus on queer and feminist activism. We have been in existence in Bombay since 1995. Our activities have included networking with individual queer women as well as queer groups in India and in other countries, campaigning for the rights of peoples and communities of marginalised genders and sexualities with other like minded groups, and organising jointly with the struggles of other marginalised groups, feminist and people's movements. We publish a zine, SCRIPTS, at least once a year and see it as a vibrant space for multiple conversations of queer/feminist/activist/creative voices. We have a phonenumber for LBT women to connect, interact and talk about their concerns with other LBT women and also run a film club called CineLabia. (www.labiacollective.org)