

Submission to Justice Verma Committee by Gujarat Groups

5 January 2013

To,

The Chairperson

The Justice Verma Committee

New Delhi

Sub: Suggestions on amendments to the criminal laws relating to safety and security of women as invited by the committee.

Sir,

On the 3 January 2013, 45 representatives from women's groups, human rights groups of Gujarat met in Vadodara to put together suggestions on amendments to the criminal laws relating to safety and security of women as invited by the Justice Verma Committee set up by the Government of India.

We would like to state at the outset these suggestions are not exhaustive and other suggestions already submitted to the government by progressive women's groups should also be considered while working out the amendments to the laws relating safety and security of women.

In response to recent advertisement, the women's groups of Gujarat seek to highlight the following points.

1. Definition of the offence of Rape: The offence of rape currently includes only the act of peno-vaginal penetration. But, there are other invasive manners in which women are sexually harmed. We suggest the offence of 'rape' be substituted with a graded offence of 'sexual assault' 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. This definition should consider marital rape irrespective of the age of either spouse as well. (Refer Mallimath Committee Recommendations)

2. Instances of sexual assault takes place within a framework of gendered power. While instances of women sexually assaulting men are theoretically possible, there are no documented or anecdotal cases of this nature. As has been documented by women's groups, academic research and media reports, most actors in the criminal legal system are biased against women who complain of sexual assault and believe that complaints of sexual assault are false. In such a background where proving cases of sexual assault are so difficult for women, imagining that women and men can be put on the same footing and men should be allowed to bring cases of sexual assault against women, would disproportionately harm women. Hence, there must be gender specific laws.

3. Aggravated Sexual Assault: Section 376 should include instances of sexual assault during sectarian (caste, ethnic, communal) violence, sexual assault against physically and mentally disabled women, sexual assault carried out by the security forces, public stripping and parading of women.

The current rape definition is very male-female centric, the caste/community/religious/sexual identity as well as the social background of the perpetrator/s should be taken in account as it too plays a vital role in this crime. When the act of rape is also a manifestation of these social power structures, the social realities should have a bearing on the conviction. In such cases, there should be no concurrent punishments but consequent punishments for the crimes committed. Incidents of incest should be considered as custodial violence and should be added under section 376 as a separate clause (as subsection 376 E), as the victim is in the custody/safekeeping of the family member/ guardian.

Also, punishment for the security forces should be brought under the purview of this law, especially in areas where AFSP Act in force, as sexual abuse by security forces also additionally entails abuse of their power.

4. Acid Attack: A separate offence of acid attack should be included. Trials and convictions for the acid attack can be also discussed as one of the categories of aggravated sexual assault. (Proving sexual intention under this circumstance is difficult therefore the offense should be treated under section 307)

5. Change of Vocabulary: Outdated and offensive terms such as ‘rape’ ‘ravishment’ ‘enticement’ ‘chastity’ ‘outraging of modesty’ in the substantive provisions, to be replaced with terms that define harms in terms of sexual assault, violence and violation of bodily integrity.

6. Sexual harassment of women: Currently this is covered by Section 354 and 509. These provisions to be replaced by a graded offence of violating the bodily integrity of women. Acts within the gradation to include, groping and pinching of women, and also non-contact acts such as flashing, gesture, stalking, blackmailing via electronic media like MMS, etc. These offences are currently bailable, and should be made non-bail able and there should be gradation of punishment. The offence should also be made non-compoundable and the punishment should be increased.

7. If the witness/ complainant goes missing/or does not appear in the court the onus of producing them in the court should be on the police as it is our understanding that they are threatened by the accused and the social and economic power they wield. When violating the bodily integrity of the woman is considered a criminal offence then the state must take additional measures to support the victim to file complaint and later provide adequate victim and witness protection. The complainant and the witnesses should be provided vehicle with police protection to appear in the court.

8. Amendments proposed in Juvenile Justice Act for minors involved in aggravated sexual violence. Under Juvenile Justice Act, amendments proposed to grade the nature of criminal acts

and a corresponding stringent punishment. This is to make distinction between offenders of petty crimes and serious offences, more so those involved in sexual assaults. If they are involved in aggravated sexual violence, one suggestion they can be kept in institution till 18 years of age before serving the sentence.

9. Marital rape exception to Section 375 be added.

Investigation/ Pre-trial Stage:

1. Standard Operating Procedures with detailed guidelines for each aspect of investigation

- Crisis support centres to specially handle violence against women should be set up at block and district level and at sub city level which should have personnel trained to handle cases of rape and sexual assault on women. The cell will be intimated as soon as a case of sexual assault on women is reported in the area/police station. The cells will be staffed with trained personnel in social work, legal skills and trauma counselling so as to ensure the victim the support. Case workers from these crisis cells can be assigned each of this case.

- Each support centre should be provided adequate security for safe functioning and protection of the rape survivors.

- Information regarding such centres shall be widely disseminated and made public in local language through various means and modes. This is to ensure that women and victims of the area can approach the centre in case the police do not take up their complaints immediately. If the police refuse to register a complaint, the case worker should know how to assist the victim in filing a private complaint before a magistrate.

- These centres should function round the clock and additionally have access for disabled, access to same-language personnel, transport facilities, access to information.

- The SOP of all the police and procedural details, right from filing of complaint to conviction, should be provided to the victim so that she knows that each procedure is being followed including her access to monetary compensation and, rehabilitation process. This should be given to the victim in local language and interpreted appropriately for women with disabilities the moment she comes to register the complaint.

- Every single rape/ sexual offence complaint should be immediately forwarded to the Women Support Centres. The centre should ensure the victim immediate access to lawyer, medical attention, counselling and other support services.

- All police stations to be instructed to compulsorily record an FIR in case of sexual assault and rape. Any delay or denial of the same will be treated with stringent punishment such as dismissal / suspension if it is revealed by the victim or her supporter or a complaint to that effect is made.

- Each police station should have a separate division on violence against women including sexual assault. These divisions should be preferably in charge of women police officers.

- Examination of the victim should be done in a friendly and non-threatening atmosphere and preferably via the mode of a case worker / counsellor. A sexual assault is a highly traumatising, violative and invasive incident. The natural reaction of the body, as testified to by millions of therapists and medical professionals is to shut down and dissociate from the assault occurring, with the result that recovered details are often garbled and inconsistent. These statements are later used to impeach a witness's testimony and contradictions have been observed to be the greatest cause of the low rate of convictions in this country.

To avoid this, prior to the obtaining of the 161 statement the rape victim should be given counselling, and the statement should be obtained through the case worker, who can pose questions and encourage the victim to speak in as comforting a manner as possible. Not only is this process victim friendly, but it also ensures that the best quality of evidence is obtained, because the victim is then given the courage to recall and recount the experience in all its horrifying detail, in comfortable and appealing surroundings.

Medical examination should not be done of young girls who have not started menstruation as the injuries themselves are indicative of the fact that she has been raped.

- Throughout the criminal justice process, the victim should always be accompanied by the case worker assigned to the case and be assisted through the process. This proposal is made to further three objectives. Firstly, in quite a many rape cases, family of the victims receive multitude of threats from the time the complaint is filed. Also, promises of marriage in a sad pretence at reparation often under immense social and community pressure are offered to victim to enable caving in later to the threats/appeasement by the rapist. Threats and promises of money, marriage and restoration of honour and dignity, furthered by a patriarchal society are found to be the main reasons for many witnesses turning hostile. Having a case worker involved in the case from the beginning will bring the existence of such threats to the fore and assist the courts to take cognisance of it.

2. The two finger test, which is widely used during medical examination of the rape victims to determine whether they are 'habituated to sexual intercourse' or not, should be explicitly barred.

3. Forensic tests to include DNA tests. Victims should not be subjected to lie-detection tests as is done in some parts of the country. Recording of medico-legal evidence must be such that it corroborates the actual incident which can assist in conviction and not cause technical issues and confusion which leads to letting off of the accused in rape cases.) The crime kit (additional tool used for the collection of medico-legal evidence, containing slides, swabs, test tubes and other equipment to collect samples of blood, hair, semen fingernail scrapings), gender sensitivity, the consequences of rape for survivors, stress management, court appearance, should be provided at the cost of the state at the appropriate stages of investigation and trial.

4. Ensure an enabling and victim friendly environment e.g. privacy, confidentiality, and comfort, professional and sensitive treatment. A checklist of all the tests to be conducted should be

included in the SOP manual, which shall be given to police, medical personnel, court, as well as victim so as it can be crosschecked and verified if it has been done at every stage.

5. Guidelines for victim and witness protection. These should be available for victims of violation of bodily integrity (outraging the modesty in the current law) as well. Launch a witness and victim/survivor protection programme with staff and funds to assist courts with the implementation, headed by a sensitive senior official in the relevant local and national justice department of India.

6. Compensation to be given to the victims, computed on the basis of injury received. 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. Proactive enforcement of Section 357A of the CrPC, that talks about awarding compensation to the victims of crime. Please refer to the framework for paying compensation under the SC ST protection of atrocities Act 1989.

7. Local and national level mechanisms to ensure record-keeping requirements are consistently met, and statistics submitted regularly to relevant office. Review of data capturing systems to enhance compilation of data. Community involvement in monitoring progress of investigation of cases of sexual assault must be put into place at district, state and national level.

Senior Police officials, lawyers and representatives of progressive women's groups, should meet every two months to report on the total number of cases recorded and action taken. The idea is to speed up the investigation process and get rid of the apathy among the police and to severely diminish the sense of impunity that the accused currently enjoy.

This monitoring should be structured both at the police and judicial level. Appointment of a Special Rapporteur for Violence against women, at the National Level a long-standing demand of the women's groups should be implemented immediately. Training on how to handle cases of sexual assault as different from other cases with sensitivity and devoid of patriarchal stereotypes should become part of mandatory and ongoing training for all police personnel starting from the lowest level. This will over a period of time create a woman centred approach when she comes to record her complaint.

8. There is a need to increase accountability of the police officers/courts for their approach and functioning in sexual assault cases through a system of incentives and punitive action. While the errant officials should be either fined or suspended, those who function with due diligence should be rewarded in cash or promotions.

Trial:

1. We demand swift and a prosecution that keeps in mind the violation of the woman's fundamental right to bodily integrity and that justice delayed is justice denied. Appointment of Special Public Prosecutors who are sensitive and experience should be done for these cases.

2. Time bound trials: Trials in rape cases must be conducted on a day-to-day basis in fast track courts. Lengthy trials erode the victim's resilience and patience. In many cases the victims and their families are unable to sustain their living/earning when they have to appear for lengthy court procedures. The charge sheet in such cases should be filed within 90 days and the matter should be disposed in 90 days after the charges are framed. If the trial is delayed further than the prescribed time limit, the victim should be given "injustice allowance by the state, which would not be less than Rs. 5000/per month, and failing to fulfil this requirement, the state will pay with current bank simple interest rate on delayed payment.

3. The judges should submit the report of the trial on a daily basis after 90 days and the state High Court will monitor the proceedings and failure in it will be subject to adverse remark in the service record of the concerned sessions judge. And also the state High Court should appreciate the disposal of sexual assault case equivalent to 3 sessions. Following the recent Supreme Court Judgement Section 309 of the CrPC provides that in every inquiry or trial the proceedings should be held as expeditiously as possible and once the examination of witnesses begins the same shall be continued on a day-to day basis till all the witnesses are examined.

4. Provision for interpreters/ translators in order to record the testimony of disabled victims or witnesses. Cases involving disabled women end in acquittal as their testimony is either not recorded at all or is recorded without the help of independent interpreters. Often the help of family members is taken in interpreting the testimony, which affects the case at the High Court stage as family members are interested parties and relying on their interpretation of the testimony goes against the rule of impartiality of criminal trials. Enforce current legal protections for victims and witnesses. In particular, defendants or persons close to them should face legal action if they threaten or attack victims or obstruct the course of justice.

5. Analysis of reported cases shows that a large number of cases are ending in acquittal because key witnesses such as doctors are not examined in court. SOP must make it mandatory for doctors who have examined the victim to remain present during trial and under no circumstances can this be avoided.

6. A large number of cases are also compromised during the trial. Compromising or settling rape cases is not allowed under the law and hence pressure is brought upon the victim and her family to turn hostile during the trial. Such trends need to be detected and prevented by ensuring that the victim compensation is paid immediately and in full. In such cases, it shall be the state's responsibility, and the case should be of the state against the accused.

7. Groups in Gujarat believe that in camera trials should continue but with a condition attached. The victim should be allowed a group of persons including her family (a number can be specified no lesser than five) who can be from her family/friends/women's group subject to her discretion assisted by the rape crisis cell to be present with her during the trial proceedings. This is to ensure that the accused and his team of lawyers do not intimidate her and there is a monitoring of the trial. If the victim feels threatened, her support group can take it up with the judge if required.

8. Improved provisions for shielding the victim from the defence, including the accused need to be put into place.

9. While no bail should be granted in such cases, but if it were to be so, the accused if out on conditional bail it should be subject to externment from the area under the police station jurisdiction that the victim specifies so as to ensure her security, prevent threat/intimidation/offers of compromise etc.

10. In the case of Prakash Singh Vs Union of India gave detailed guidelines for having a special force that is trained to investigate. It recommended that the law and order function and investigation need to be treated differently as they required different skills.

Sentencing:

1. Sentences should run consecutively instead of concurrently in sexual crimes.

2. In cases of aggravated sexual assault, punishment should be for life imprisonment till death with no remission.

3. We categorically say No to death penalty for rape cases. There is no scientific basis for claiming its deterrent effect. Studies show that as punishments become stricter, the rate of conviction falls as then judges are reluctant to award harsh sentences. It embodies the idea of retribution which is as violent as the offence for which it is being suggested.

4. We categorically also say no to chemical castration. Sexual assault is embedded in a framework of power and has got very little to do with sex. Targeting the sexual organ is misplaced therefore. We know from experience that sexual assaults are carried out with objects as well, including the recent Delhi case. No scientific basis for claiming its deterrent effect. It is also an invasive procedure and goes against the right to life and bodily integrity of a person as enshrined in the Indian Constitution.

Prevention:

1. Uniformed police should be deployed at all public places, so that women are able to identify whom to approach. Also, increase the number of women police in policing work than administrative duties.

2. Gujarat groups express great discomfort being under the culture of constant surveillance being suggested by Gujarat Police and also reject the current order passed that says that girls should not be asked to go to tuition classes before 7 a.m. and after 9 p.m.

3. Strict monitoring of tinted glasses on vehicles should be immediately undertaken and removed.

4. Mass visible and audio messages on what constitutes sexual offenses and what are the remedies and punishment for the same, in all public vehicles and public places such as markets, bus stands, train stations, malls, etc.

5. Please refer to the recent guidelines issued by the Supreme Court to address violence against women in public places.

Monitoring and Review:

1. A data base of cases of sexual assault be maintained to track the implementation and performance of the law, to help identify weak links. A separate website or the one that of police or judiciary at should have updates of all the cases at the district and state level and their proceedings to monitor the progress of each case registered.

Staffing

- Provision of support to service providers to assist them with their own traumatised and stress.
- Take measures to protect human rights defenders and other individuals who provide protection to victims.
- Also it might be useful to have a statement in terms of use of experts who can support the prosecution of such cases.

Signatories

Action Aid-Ahmedabad, Alfazal Education Trust, Anis, ARCH-Vahini,

Area Networking and Development Initiatives – ANANDI, Behavioural Science Centre,

Centre for Social Justice, CHETNA, Documentation and Study Centre for Action,

Ekta Mahila Sangathan, Kutch Mahila Vikas Sangathan, Lok Vikas Sanstha,

Mahila Vikas Sangathan, Navsarjan Trust, Nirmala Samaj, Olakh, Prayas Centre For Labour Research And Action, SAHAJ (Society for Health Alternatives), SAFAR,

Sahiyar (Stree Sangathan), SAHR WARU, Samarthan Mahila Mahasangathan, Sangini,

Setco Foundation, Sharda Mahila Vikas Society, Shramjivi Mahila Sangathan,

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