

Submissions to Justice Verma Committee by Hazards Centre

05 January 2013

To,

The Justice Verma Commission,

New Delhi

We are writing to you to express our concerns regarding the rising violence against women in India and the lack of strong action by responsible authorities to ensure justice to women and sexual minorities through effective and participatory mechanisms. A secure and dignified life is our right and should not be a privilege enjoyed by a few members of our society. After a series of public meetings, rallies and public hearings in New Delhi with urban poor women and men, community based organizations and researchers, we share our suggestions to Justice Verma Commission for effective mechanisms to address sexual assault and condition of women in our society and strongly recommend that they be adopted at the earliest:

1. Extend deadline for accepting recommendations from civil society and ensure more participatory mechanisms of grievance redressal. Recent public hearings organized by the National Commission for Women have not included women from various sections of society and this is a must for any effective mechanisms to discourage and end violence against women.
2. Immediate implementation of police reforms as suggested by the eight reports of the National Police Commission, and other reports of Administrative Reforms Commission (1966), Gore Committee on Police Training (1971), Ribeiro Committee on Police Reforms (1998), Padmanabhaiah Committee on Police Reforms (2000), Malimath Committee on Criminal Justice System (2000), Review Committee (2004), Expert Committee (2006), Thomas Commission (2006), and Administrative Reforms Commission (2007).
3. Ensure participation of women in public decision making, this should be done in conjunction with implementation of 74th Amendment in every city. Formation of citizen-police violence monitoring committees in every Mohalla (at the electoral booth level) and Ward. Ensure that more than half the members of these committees must be women nominated by the Mohalla's Mahila Mandals, and these committees must meet regularly on a monthly basis at a given place and time. These committees must have the authority to direct immediate action by the police on matters that come up before them, including immediate suspension of police officials found guilty of dereliction of duty. Regular lok adalats and public hearings should be organized by Government to register complaints and suggestions of people vis a vis their localities.

4. Regular public scrutiny, through open public hearings, of the records of all serving policemen and policewomen at the circle level to ascertain their performance in cases of sexual violence. Ensure that laws preventing the hire of public servants with a history of violence against women are strictly enforced.
5. Set up dedicated competent investigating teams along with adequate forensic laboratory facilities to assist fast-track courts in speedily discharging their duties in cases of sexual violence. The records of these teams must be publicly available on dedicated websites.
6. End evictions (housing, street-vendors, street-dwellers, homeless workers) that use physical force against women, children and men that leave them and their livelihoods in a more vulnerable condition. Studies and media reports observe police brutality against women and children during evictions, and even deaths of children in the process. The government must provide safe and secure housing for poor women in the city.
7. Address violence against women stemming from caste, racial or ethnic discrimination. Train police officers to be sensitive to reported cases of violence and provide proper assistance to women facing such violence.
8. Police must make public its records of crimes against women and ensure action is taken in each case in a timely manner. At the same time, preserve the privacy and confidentiality of personal information of the complainant to avoid backlash and further harassment of women.
9. Schools must provide education on sexual harassment and gender sensitization. This must be given to all, boys and girls, keeping in mind that there is a growing concern regarding sexual abuse of young boys in schools and residential areas.
10. Put adequate laws in place to ensure that child sexual abuse is ended.
11. Setting up help lines that are regularly and publicly monitored by women's groups and Mahila Mandals to address the largely unreported cases of domestic violence and marital rape that form the basis for the retrograde values that children (particularly boys) pick up early on in life. Support this with counseling services and immediate intervention teams under the direct supervision of state-run hospitals.

12. Increase the visible, 24-hour presence of Policewomen in resettlement colonies to ensure the safety of women in those areas. Punish those of neglect their duty. The lack of safety is having adverse impacts on education of women and their ability to commute to workplaces. Studies have proved that the drop out rate of girls from schools has increased in resettlement colonies as a result of sexual harassment and insecure environments.

13. Increase safe public transport for women in the city. The guidelines published by the Ministry of Urban Development clearly mention that there should be 1 public bus for every 10,000 people in the city. Despite a directive given by the Supreme Court in July 28, 1998 to the Delhi Government to increase its bus fleet from roughly 3500 in the mid-1990s to 10,000 by 2001 (EPCA Report, July 2004, page 4). In March 2007, EPCA again noted that the buses numbered 8341, and “the intent and spirit of the 1998 Supreme Court directive has been flouted as the city is short of roughly 4,000 buses as against the ordered 10,000 which were to be on the roads of Delhi by 2001” (EPCA Report No. 31, March 31, 2007, pages 6-7). And in July 2012, a study by the Institute of Urban Transport (India) and Urban Mass Transit Company Limited revealed that, on an average, DTC rolls out 5,185 buses for operations on a day out of a total of 6,088 in its fleet. Instead, the Delhi Government is privatizing public transport which is leading to lesser accountability and more expensive transport facilities in the city.

14. Provide adequate shelter for homeless women according to the Supreme Court orders and Master Plans. The number of safe shelters for homeless women should be in proportion to the number of homeless women in the city.

15. Take punitive action against on-duty police officials who participate in sexual harassment either directly or indirectly.

16. Take strict action against police officials who extract bribes from sex workers who practice their trade either on or off the streets, and their customers; who disregard sex workers’ right to safety; and who do not address complaints of sexual violence against women and sexual minorities working on streets. Stop the police from being perpetrators of violence against women in our society.

17. End discriminatory hiring practices that include the sexual exploitation and harassment during the employment process of women, especially within the police.

18. Make Public offices, Public Distribution System shops, etc. more accessible to women. Ensure that these public facilities treat women with respect and dignity while addressing their needs.

19. Effectively monitor localities through beat officers from police stations. These should include women police officers as well.

20. Police must consult Mahila mandals, mahila samitis and community based organizations to ensure women's safety. Street vendors have also played a significant role in identifying perpetrators of sexual violence and being the eyes and ears of the streets in the city. They should also be included in consultations for making the city more women friendly.

21. Enforce strict action thru effective laws, against any disrespect directed towards an individual or women collectively through language, content and graphic displays. This should include politicians, public officials esp. who should be barred from taking up posts in the government or private sector.

22. Effectively implement relevant laws and judgments already in the constitution designed to ensure safe and secure public spaces, workplace and homes for women.

23. Amend the Indian Evidence Act which puts the burden on women and their bodies to prove the occurrence of an assault on them.

We also endorse suggestions put forward by several women's organizations,

1. Definition of the offence: The offence of rape currently includes only the act of peno-vaginal penetration. However there are other invasive manners in which women are sexually harmed. Hence it is suggested that 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 but simultaneously is not restricted to penetration either.

2. Same sex sexual assault: This can be addressed in either of the following two ways. We prefer the first option.

(a) The amended Sections 375, 376, 376 A,B,C and D to remain gender specific. And Section 377 be redrafted in accordance with the Delhi High Court judgment in Naz Foundation vs NCT of Delhi; or

(b) For the purpose of Sections 375, 376, 376 A,B,C and D, the definition of victim be made gender neutral in order to extend protection to male, transsexual and transgender victims of sexual assault. But the definition of the perpetrator be retained as gender specific, i.e. sexual assault can be committed only by men. This is because instances of sexual assault take 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. Section 377 be repealed, as cases of non-consensual same-sex sexual assaults would then be covered by the above sections and provisions of the Protection of Children from Sexual Offences Act 2012.

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

4. Acid Attack: A separate offence of acid attack be included. This offence must be gender neutral as such are known to have harmed men and children accompanying the woman targeted. Also there are cases where women have been perpetrators. Please refer to Partners for Law and Development's note on acid attack and the 2011 report published by the Avon Center, Cornell Law School.

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, public stripping and parading of women, groping and pinching of women, and also non-contact acts such as flashing, stalking, blackmailing via electronic media like MMS, etc.

7. Repeal marital rape exception to Section 375.

Investigation/ Pre-trial Stage:

1. Provide Standard Operating Procedures with detailed guidelines for each aspect of investigation (Refer to the SOPs in place for the Delhi Police since 2005)
2. Explicitly bar 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.
3. Forensic tests must include DNA tests. Victims should not be subjected to lie detection tests as is done in some parts of the country.

4. Establish a One stop rape crisis center. Provision for immediate access of the victim to lawyer, medical attention and other support services as may be required.
5. Provide 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.
6. Compensation to be given to the victims, computed on the basis of injury received. The first installment 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, which 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.

Trial:

1. Swift and certain prosecution
2. Time bound trials: Trials in rape cases must be concluded within a period of 90 days.
3. 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.
 4. Analysis of reported cases show that a large number of cases end in acquittal because key witnesses such as doctors are not examined in court. This needs to be addressed.
 5. 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.
 6. Experience has shown that in-camera trials are not helpful as it is more traumatic for the victim to be surrounded by aggressive defence lawyers and the accused in a closed court room. Additionally there is no scope for monitoring the trial, which becomes important given the attitudinal biases that actors in the legal system have towards women who complain of sexual assault.
7. Better provisions for shielding the victim from the defence, including the accused.

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 with no remission.
 3. No death penalty. 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. No 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 policemen deployed at all public places, so that women are able to identify whom to approach.
2. CCTV cameras inside police stations
3. Strict monitoring of tinted glasses on vehicles
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.

We urge you to seriously consider every recommendation represented in this letter.

Thanking you,

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On behalf of,

Beghar Madoor Sangharsh Samiti, New Delhi

Sahayogita Samaj Vikas Sanstha, New Delhi

Mahila Kalpana Shakti, New Delhi

Mahila Kamgaar Manch, New Delhi
Bawana Sangharsh Samiti, New Delhi
Labour Education and Development Society, New Delhi
Delhi Forces, Neev
Abhiudaya, New Delhi
Dilli Mahila Shakti Manch, New Delhi
Wazirpur Industrial Area representatives, New Delhi
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