Submissions to Justice Verma Committee by PUCL

5th January, 2012

Justice J S Verma, Chairperson,

Justice Leila Seth, Mr. Gopal Subramanian, Members,

High Powered Committee to Undertake a Review of the Law

Relating to Sexual Assault in India,

Vigyan Bhawan, N Delhi.

Subject: PUCL Submission to the High Powered Committee on sexual assault

Dear Justice Verma, Justice Seth and Mr. Subramaniam,

The People's Union for Civil Liberties is a national organisation and working on issues relating to Civil Liberties and Democratic and Human Rights for the last 37 years. Being a decentralised organisation, we have been working in more than sixteen States of the Country through our State and District Branches.

The issue of subordination of women and discrimination and crimes against them has been at the centre of our work. The PUCL has been part of the larger anti rape and violence against women's movement in the country as it believes that only a strong protest movement by women's organisations, civil rights groups and the people can fight the problem of rape and other sexual crimes against women in general and also the growing incidence of rape as a political weapon in the hands of the powerful. Secondly, the PUCL believes that the discourse on rape has been stuck in the "honour-shame" framework, rather than be looked upon as a form of physical and emotional torture inflicted on women to subjugate, dominate and control them. This attitude also permeates the entire criminal justice system and therefore part of the battle of justice against sexual crimes is also to break out of the stereotypical and patriarchal notions that exist with regard to women's sexual and social behavior.

In the past, the PUCL along with other organisations has engaged with several struggles and cases against Rape including the 1980 case of the stripping of Maya Tyagi (Baghpat, UP) by Police, the 1978 Rameeza Bee Rape by police case which led to communal riots and the setting up of a Muktadar Commission, the Kotputli (Rajasthan) Rape by police Case of 1984, the Bhanwari (Bhateri, Rajasthan) gang rape case (1992), the JC Bose Hostel Rape case (1997) of Rajasthan, the Vachhati (Dharmapuri, TN) gang rape case of 1992, rape of minors and vulnerable women case by alleged godman, Premananda, in TN , the Manorama Rape Case of 2004 (Manipur), Ledha Rape (Chhattisgarh – 2006) case the Banda (UP) Rape case of 2010, the

Patan (Vadodara) gang rape case of 2008, the Surat gang rape case of 2009, the Muzzafarpur (Bihar) rape cases of 2012 are just an illustrative list of cases PUCL has been associated with

Several PUCL Fact Finding Teams have studied the incidents of sexual violence and rape in various states and at the national level. There is also some understanding developed by the PUCL in conflict situations where rape is used as tool of political dominance, for example in troubled areas of the North East, J&K or in riot torn regions like in Delhi (1984) and Gujarat (2002) or in States like Chhattisgarh, Jharkhand¸ Odisha where the operation green hunt is underway. Some of these reports also done collectively with other organisations has been used in in Districts courts and High Courts in the States and the Supreme Court of India.

Apart from engaging with specific cases, it is also our mandate to undertake a constant review of penal laws and the criminal procedure with a view to bring them in harmony with humane and liberal principles and ensure a just society.

It is in this context that the PUCL is sharing its learnings with this Committee that has been set up by the Government of India in the backdrop of the brutal gang rape and murder case of Delhi that took place on the 16th of December, 2012.

The mandate of the Committee as we have learnt from the government notification states that "…The Government has given anxious consideration to the need for reviewing the present laws so as to provide for speedier justice and enhanced punishment in cases of aggravated sexual assault"" "……..." are requested to share with this Committee their views, knowledge and experience suggesting possible amendments in the criminal laws and other relevant laws to provide for quicker investigation, prosecution and trial as also enhanced punishment for criminals accused of committing sexual assault of extreme nature against women."

The letter sent to us by Mr Gopal Subramaniam states that the "…. Committee feels that it is equally important to examine and study connected areas such as gender justice, respect towards women, and ancillary matters".

At the outset itself we would like to state that it is imperative that the above exercise needs to be done for all cases of sexual assault not just "extreme" or "aggravated" cases as it would be unscientific to look at only one end of the spectrum instead of seeing the continuity in sexual offences which if unaddressed ultimately lead to sexual crimes of an extreme nature. Also it is important that this exercise which is being undertaken by 30 years addresses all dimensions including the defintions of sexual assault and rape, the criminal justice system, the command responsibility, accountability and grievance redressal measures, compensation, reparation and rehabiltation of the survivor, long term structural issues and budgeting.

We present the comprehensive submission of the PUCL with the following qualifications:

(i) The Law and the Criminal Justice System : Critical and Important but with limitations

PUCL is of the firm belief that the increasing violence and sexual assaults against women cannot be addressed by mere legislative changes. By its very nature law steps in only after the event, by which time the damage is already done and the task left is only establishing culpability and imposing punishment.

Experience has shown that punishments, by themselves, have rarely acted as deterrents to the commission of crimes. More so in the cases of gender crimes, which is reflective of deeply embedded patriarchal values and mindsets amongst people in general and men in particular. Hence while we address legal issues, it is equally, if not more, important to also simultaneously address the structural issues which include patriarchal attitudes and mindsets, the deeply entrenched patriarchy in all our social institutions

However, the critical nature of the law and the response of the criminal justice system to individual cases is important as justice to the victim is very important within the Human Rights framework. It is therefore very important to discuss the details of the implementation of the law within the criminal justice system.

(ii) Caution against Dilution of Standards of Fair Trial

While it is important to ensure speedy prosecution and imposition of prescribed punishment to every person alleged to have committed sexual offences, a word of caution is warranted; in the desire for speedy justice, rules of fair trial and internationally accepted norms for conduct of trials should not in any manner be diluted or compromised. This includes lowering standards of proof, ignoring the basic ground rule of “presumption of innocence” of the accused, the shifting of the burden of proof from the prosecution to the defence and curtailing existing procedural safeguards in the Criminal Justice System.

PUCL would also like to point out that in many instances of inter-caste or inter-religious choice marriages, especially when the man is not a caste Hindu, but a Dalit or from a minority religion, the Police actively register FIRs for offences of abduction / kidnapping and rape. It is not uncommon to use the threat of arrest and prosecution for a range of sexual violence offences to silence or suppress those who challenge socially powerful sections. This is to be found both in urban and semi-urban places as also in rural India. Dilution of standards generally operates to the disadvantage of the most marginalised and disadvantaged sections and therefore these standards 2should not be tinkered with easily.

(iii) Abolition of Death Penalty

PUCL has consistently campaigned for abolition of death penalty. World over a majority of countries have abolished death penalty. Abolition of death penalty, has in no way, resulted in the

increase of crime. Further the joint study of PUCL and Amnesty International, titled `Lethal Lottery: The Death Penalty in India' which studied all SC judgments from 1950 till 2008, has demonstrated that the administration of death penalty has been arbitrary, capricious and erratic. Hence, the PUCL's demand for abolition of death penalty has not changed. Even in the most heinous cases of sexual assault which may qualify to be termed as rarest of the rare cases a sentence of life imprisonment is by itself an appropriate punishment for the offence committed. We would like to make it explicit that when we ask for the abolition the death penalty, we are not advocating acquittal or the release of prisoners as is wrongfully potrayed.

Keeping in view, the above mentioned context, our presentation is in 4 parts:

• Part I presents the review of Substantive Laws

• Part II talks of the Systemic Failure of the Enforcement of the Laws and Procedures along with suggestions. This is the heart of the report which is further broken down into 9 parts from Lodging of FIR to Punishment

• Part III talks of some preventive measures

• Part IV talks of the costing of the Bill

• Annexure I are case studies sent by the PUCL, Karnataka

1) REVIEW OF SUBSTANTIVE LAWS

A. Bringing about revisions in the Criminal Law Amendment Bill, 2012

The Criminal Law Amendment Bill, 2012 bringing about changes in the IPC sections of Rape and Sexual Assault has been passed by the Cabinet of the Government of India and placed before Parliament. There are several problems with this bill however, the Ministry of Home Affairs has refused to reconsider some of the premises of the bill and despite our efforts of trying to engage with it as a part of the larger collective. It is therefore extremely important that the present Committee examine each section from the point of view of its impact of the last woman. We strongly recommend the following changes.

Expansion of definition of sexual assault: The expansion of the definition of penetrative sexual assault under Sec. 375 IPC, beyond peno-vaginal penetration (rape), as proposed in the Criminal Law Amendment Act is a step in the right direction. It is imperative that the definition of sexual assault is broad enough to include anal, oral rape, digital rape, rape with objects etc. and also includes sexual assault against transgender people. Section 377 should be repealed as it criminalizes consensual adult same-sex relations. As far as sexual adequately covered assault against adult men and male children by men is concerned, it would be adequately covered under Criminal Law Amendment Bill and the Protection of Children from Sexual Offences Act respectively.

Gap in law on sexual offences: However, there continue to be serious gaps in the codification of crimes of non-penetrative sexual assault. The gap between 'outrage of modesty' (S. 354 IPC) and 'penetrative sexual assault' remains large. We believe that sexual crimes form a continuum, and that the graded nature of sexual assault should be recognized, based on concepts of harm, injury, humiliation and degradation, and by using the well-established categories of sexual assault, aggravated sexual assault, and sexual offences.

'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 believe that 'sexual assault' should rest firmly on the concept of violation of bodily integrity and dignity, and sexual harassment should be defined as it is in the Vishakha Guidelines.

New sexual offences to be defined: New crimes need to be formulated to punish acts of attempt to rape, stripping, parading naked, groping, tonsuring of hair and mutilation which are intended to sexually assault, degrade or humiliate women who are so targeted. Further stalking, flashing, gesturing, blackmailing as well as sexual harassment must be codified as crimes under the rubric of sexual offences. These should include any electronic and other forms of technology which promote rape as a game, promote electronic stalking or forced viewing of pornography, etc. We welcome the introduction of a specific offence for acid attack.

Gender neutral sexual assault: The formulation of the crime of sexual assault as gender neutral in all circumstances, as proposed in the Criminal Law Amendment Act, 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 perpetrators, as there is no empirical evidence to support a finding to the contrary. The gender neutrality of perpetrator can be used to file false cases against women who complain of rape. Hence we strongly oppose the gender-neutrality clause in relation to perpetrators under Sec. 375 IPC.

Gender neutrality of the victim: The survivor of sexual assault should be treated as gender neutral with respect to the law, but the perpetrator ought to be defined as male. With respect to all forms of violence, the victims/survivors should not be described just as women, but as 'person', as transgender people face immense targeted sexual assault, and in some cases, especially of state and custodial violence, the victims can also include men. In cases of abuse of children also, children of all genders are targeted.

"Purpose": We also express a deep problem with the expression 'penetrate for a sexual purpose' in Sec 375(a) of the proposed Criminal Law Amendment Bill 2012. We maintain that any contact without consent is what must be punished and the intent of the perpetrator is both irrelevant, and impossible to prove.

Consent: Consent must be clearly defined as verbal agreement which can be withdrawn at any point during sexual activity. Initiation of sexual activity or sex work is not an invitation to rape

or sexual assault and battery. The lack of marks on the body can not be used as evidence of consent (as in the Suryanelli case) because sedation, rape based on threats of retaliatory violence, and rape where the perpetrator holds economic, caste, communal, custodial or state power over the survivor can all be perpetrated without leaving signs of force.

No exception to consent rule for marital Rape: Rape within marriage should be recognized and should be strictly penalized. The punishment for rape should be the same irrespective of whether the perpetrator is married to the survivor of rape or not.

No exception to consent during medical procedures: Consent should be required even when penetration/genital exam of a patient by a doctor occurs for "proper hygienic or medical purposes" which is currently a defined exception for rape under the Criminal Amendment Bill 2012. Unless the patient is unconscious, doctors must have the consent of a patient for any form of penetrative or genital physical exam, and punishment for doctors abusing their privilege as doctors should be higher than for civilians.

No exclusion of prosecution of Public Servants: We suggest an exclusion of the application of S. 45 and S. 197 Cr PC to the provisions of sexual assault, in order that the existing widespread impunity for sexual assault where it is committed by public servants, is ended. We believe that no sexual assault can ever be construed as being perpetrated "in discharge of official duty" and therefore the statutory requirement of prior sanction from the government for prosecution of public servants ought not to be extended to the crime of sexual assault;

Age of consent: The age of consent should be kept at 16 years of age acknowledging the reality of caste, communal and moral policing particularly when it comes to young people from different religions and castes falling in love and running away. As it is, the powers that be, including parents, natural guardians and caste and communal busybodies indulging in moral policing, misuse the age of consent law to prosecute young lovers who go against parental dictates of 'arranged marriage within the fold of one caste/religion'.

Consent during sex work: Rape during sex work must be recognized explicitly as a sexual offence. Sex work should be decriminalized so that what takes place without consent can be clearly distinguished from the specific acts the sex worker is paid for and has consented to.

Inclusion of women in drafting process: Local women's groups in India, including those of adivasi, dalit, religious minority women, transgender and sexual minorities, self help groups and women panchayat representatives must be consulted in drafting laws upholding women's rights at home and in public.

Our critique of the bill is attached.

B. Sexual Harassment at Work Place

It is our suggestion that Vishakha Guidelines passed by the Supreme Court of India in 1997 as well as the subsequent judgements in the Medha Kotwal Lele case ought to be implemented to the hilt. However, we feel that under your leadership this committee must also look at the proposed Sexual Harassment (Prevention, Prohibition and Redressal) Bill 2012, which has been passed by the Lok Sabha and is to be taken by the Rajya Sabha. This proposed law undermines the very spirit of Vishakha Guidelines by bringing in concepts like false and malicious complaints to once again intimidate aand victimise women. It is our suggestion that

1.The Committees against Sexual Harassment which are to be constituted in various state and private establishments, including informal sector worksites, houses where domestic workers work, construction sites, homes where women gather to do piece-work or beedi/agarbati rolling, sex work sites, and NGOs, should be constituted with priority and urgency as per the Vishakha judgment. Renewal of formal workplace licences to employ workers should be made contingent on this. The said Committees should function independently and effectively and not be controlled by the employer to avoid conflict of interest, and they should create an atmosphere of no tolerance to sexual harassment. This would go a long way in ensuring dignity and empowering women at their workplace.

Amendments in the Prevention of Sexual harassment at Work Place Bill, 2011

2.Section 14 of the proposed 2010 sexual harassment bill which punishes a woman for a so-called false or malicious complaint and false evidence must be scrapped. As this section will prevent the violated woman from using the law as every complaint that she may file, she maybe charged with filing false and malicious complaints, leading to the woman complainant job being affected including losing her job as the punishment will be governed by the service rules and not the IPC.

3.Similarly clause 10 suggesting conciliation as the first step – this would amount to covering up sexual harassment which is a criminal offence. The Bill should also take the caste, class and religious dimensions of the perpetrator and the victim into account, and mandate that women should not be forced to comply with gender specific dress codes and women employees should be able to choose their dress code.

II) Systemic failure in the enforcement of laws and procedures.

Systemic failure in the Criminal Justice system is experienced at every level- it is well known that every victim who comes out to file a case is breaking the culture of silence on sexual crimes and in particular rape and putting her story in the public domain. Instead of support, she faces not only denial by the society but the culture of denial is deeply entrenched in the criminal justice system and this is experienced at all levels beginning with the Registration of FIRs, Collection of

Medical Evidence, Investigation, Prosecution and Adjudication. Until these systemic failures are addressed, any amount of harsh penalties in the statute book and alterations in the substantive law will make no difference. One of the Major reasons for the systemic failure of the criminal justice system is the lack of transparency and accountability, towards which suggestions will be provided.

(i) Problems encountered with Registration of FIR

In our experience, there are 4 main problems encountered by sexual violence victims when they seek to register a FIR. We describe these below.

1. Complete Denial of the woman's story and non acceptance of the woman's complaint by the Police authorities

It is well known that there where the perpetrators of sexual violence are powerful, either belonging to the Ruling political elite, the Administration or those in uniform, even complaints don't get accepted. In the case of the Police, Central (Armed) Reserve Police Forces or the Army, FIRs are not lodged and refuge is taken under impunity provided under unjust laws such as the Armed Forces Special Powers Act. FIRs are also not lodged in situations where the perpetrator of violence is from the dominant caste, religion or community. This systemic problem is so extremely serious that the victims do not get relief many a times from senior authorities too. It is well known that when the victims have nowhere to go, they end up taking their lives.

2. Practice of Police recording `informal' complaints

Sec. 154 Cr.P.C. mandates that every information relating to the commission of a cognisable offence shall be registered by the police. Similarly, sec. 155 Cr.P.C. provides that in case of information regarding commission of a non-cognisable offence, it shall be entered in a book and referred to the Magistrate concerned.

However, a peculiar hybrid practice has evolved in many states wherein the police record the complaint of cognisable offence informally in a Separate Register thereby obviating the need to send the complaint to the Jurisdictional Magistrate. For instance, in Tamil Nadu it is called the CSR – Community Social Register. In Rajasthan and some other States, it goes into the Daily Diary or the NC (Non-cognisable) register. This practice originally evolved in respect of cases which are civil in nature in order to promote settlement between parties. It has now become the norm in respect of even cognisable cases. The police then attempts to threaten or coerce parties to settle matters or withdraw complaints, very often for monetary considerations.

This has reached such alarming proportions in State after State that even in cases involving offences u/s 302 and/or 307 IPC, the police only registers a CSR and not a FIR. This has two implications. Firstly, the procedure prescribed from sections 154 to 173 CrPC, which has in built

checks and balances where there is judicial overview of investigation by the police and the complainant has an opportunity to be heard and register objections by way of a protest petition in the event of the police/ magistrate deciding to close the complaint, is given a go by when complaints are registered outside the frame work under the Cr.PC. Secondly, it distorts crime statistics.

3. Police Standing Orders (PSO) which legitimise the non registration of offences of custodial violence

In Tamil Nadu, PSO 151 (Annexure 1) provides that in respect of charges of torture by the Police or of death or grievous hurt or rape or unnatural offences caused by the Police, the incidents of custodial violence will not be immediately registered and investigated but instead will be referred to the Revenue Divisional Officer (RDO) for enquiry to determine whether there is a prima facie case for launching a criminal prosecution. It stipulates that the Collector or the government will pass final orders on the further course of action to be taken. The government order further stipulates that when information of torture is received from non official sources then no FIR should be registered until after the verification of facts by the Revenue Divisional Officer.

This has resulted in non-registration of FIRs in cases of all forms of custodial violence, including rapes and sexual assault. The PUCL Tamil Nadu and Puducherry filed a civil writ petition three years ago, challenging the validity of the PSO. This is still pending in the Madras High Court.

It is learnt that similar Police Standing Orders exist in other states too. All such provisions, which go against the provisions of the Cr.P.C. requiring registration of FIR in case the complaint discloses a cognisable offence, should be repealed.

4. The political compulsion to suppress crime statistics

In almost all the states, every ruling party wants to claim reduction of crimes during their tenure as part of their claim to have delivered effective governance as compared to earlier regimes. There is also a pressure to claim that all registered cases have been solved. The pressure is most in the month of December, when they have to submit statistics to the National Crime Record Bureau (NCRB).This unrealistic pressure on the police department has resulted in police stations refusing to register complaints of cognisable offences as it will reflect poorly on their performance. Hence today we do not have credible and realistic data about crime incidents. Crime rates are artificially suppressed.

In the light of the above three widespread occurrences, the PUCL makes the following demands:

1.Every complaint brought to the police in a sexual violence case should be 2lodged by the police station as an FIR and there should be no group or class of p2eople who are given impunity

whether informally or through the law. The SP of the police district should be made accountable for non-registration of FIRs.

2.It is imperative that the practice of recording informal complaints in the form of CSR or by any other name should be expressly prohibited and it should be mandatory and compulsory to register all complaints disclosing commission of cognisable offences as FIRs as stipulated under the Cr.P.C. The complaint / FIR should be electronically numbered with a copy given to the complainant and with time bound intimation about the stages and result of investigation.

3. It should be mandatory that FIRs should be immediately registered in respect of all incidents of custodial crimes, rapes and sexual assault without being referred to an inquiry by a Revenue Divisional Officer or revenue official exercising quasi-judicial powers or Executive Magistrates. Similar provisions in other States like PSO 151 of the TN Police Standing Orders should be collated and repealed as contrary to the scheme of the Cr.P.C.

4. The compulsion to suppress or mask data resulting in faulty compilation of crime statistics should be addressed by impressing upon State Governments that the issue of crime statistics should not be a subject of political battles or rivalry amongst different parties. It is in public interest that all complaints are registered so we have credible data of nature of crime and crime rates in the country. Such data, in turn, will help us to evolve appropriate policies and legislations to address the issues. The police should not be under any undue pressure to show reduced crime statistics or 100% results in solving registered crimes. Accountability of individuals in the police and the government responsible for faulty compilation and manipulation of crime statistics should be fixed.

These issues have previously been elaborated in the reports of the National Police Commission (1981) and other expert bodies. Its unfortunate that the recommendations in this regard have till date never been implemented.

Investigation

1. Disbelief of the victim's story and investigation as harassment

. The Supreme Court has repeatedly held that the uncorroborated testimony of the Prosecutrix is paramount and should be believed and it is sufficient to convict the accused. This was given in the context of testimonies during the trial. However, the tendency to disbelieve the victim begins at the police station itself at the time of registration of the FIR and through the investigation. The dominant tendency to disbelieve the woman or survivor of sexual assault results in not only a delay in lodging the FIR, but also repeated interrogation of the victim takes place in order to elicit contradiction.

2. The disbelief of her statement by the Investigation officer, IO, results in failure to investigate the leads stated by her. This results in loss of evidence resulting in either a closure of the case or the filing of a weak charge sheet.

3. Though section 155 (4) of the Indian Evidence Act has been repealed as far as appreciation of evidence is concerned in the courts, it continues to influence police investigation where the sexual history and character of the complainant woman is enquired into great detail by the police, who are invariably men.

As stated by the Supreme Court in the Prakash Singh Vs Union of India case, there should be a separation of the police force for Investigation and Law Order. Further, there must be a dedicated pool of investigating officers who are trained in investigation of crimes against women and also have gender sensitivity.

4. Medical Examination- Suggestions for Changed Procedures

(1) Immediate Medical Examination and treatment of Survivor

Hitherto medical examination of survivors of sexual assault is done only upon requisition by Investigating Officer (IO) and done by doctors in the Forensic Department of Government Hospitals. Any survivor who independently approaches a medical professional for immediate treatment is refused on the ground that it is a medico-legal case and the doctors cannot examine or treat without a valid requisition from the IO / Police station. In some States, even change of jurisdiction requires administrative permission. Such measures results in delay which in turn (i) denies timely treatment and (ii) loss of valuable evidence.

With the amendment in Section 164 A Cr PC, where any registered medical practitioner can carry out rape medical exam, like in motor vehicles Act, no medical doctor can now refuse immediate treatment for rape and sexual assault victims. The record of injuries and report of such medical doctors becomes the basis for registering complaint.

However, this change has not been registered in rules of the various Government. What is needed is the creation of appropriate Guidelines, Protocols and Kits for examination, taking and preservation of samples, recording injuries and making medical notes and widely disseminating it through the various medical associations and the media.

(2) Examination and Treatment of Survivors by Specialist Doctors

As stated earlier examination of survivors of sexual violence is generally being done by doctors in Forensic Sciences department as it is considered to be a Medico-legal case. However, considering the nature of the violence it would be more appropriate and in the best interests of the survivor to be examined by a gynaecologist and obstetrician who is better trained professionally to medically examine and treat the survivor.

A large number of sexual violence cases involve young children below 12 years of age. Medical examination and treatment would be best provided by Paediatric Doctors in such cases.

(3) Potency tests by Urologists

Currently Potency Tests of accused are conducted by Forensic Doctors who are generalist doctors and not having the expertise to conduct such tests. Some of these tests have inherent risks that need to be handled by specialists. It is therefore important that professional urologists and specialist doctors are engaged for purposes of conducting medical examination of the accused.

4. Necessity to Evolve Standardised Protocols for medical examination.

i) An absolute necessity to do away with the examination of the distensibility of the victim women's vagina with the invasive two finger test

Currently, the medical examination and protocols followed are outdated and vary from state to state. The rape examination form is more than a hundred years old. "It is built on patriarchal and stereotypical notions about women's sexual behaviour . For instance, medical and forensic evidence enables the prosecution to show that penetration of the vulva by the penis (a pre-requisite for the offence of rape) had in fact taken place. Doctors are required to testify to this fact, as also the presence of body fluids and injuries, if any. Note, however, that the law does n9ot require ejaculation. The protocols followed by doctors in examining rape victims across India go much beyond determining whether penetration had occurred. They continue to make assessments of the woman's sexual history, and play a major role in advancing stereotypical notions relating to women's sexual mores, by providing a scientific veneer to the process. This process includes the examination of the woman's hymen and the distensibility of her vagina. Whether the hymen is torn, and if so, if such tears are old or new are noted. Doctors conduct the "two-finger test," ostensibly to determine whether penetration has occurred. This highly invasive procedure involves the doctor inserting one, two, or more fingers into the woman's vagina to determine the elasticity of the orifice. If the doctor is able to insert two or more fingers, it ostensibly indicates that the woman has had prior intercourse. The rationale behind this "test" is that if two fingers can pass through the vagina, a body of the size of an erect penis could have passed through the orifice at an earlier point of time."

There is an absolute necessity to do away with the examination of the woman's hymen and the distensibility of her vagina with the two finger test as the previous sexual history of the woman is irrelevant to the current crime of rape against her .

ii). Apart from the examination of the survivors for the purpose of legal proceedings, it is equally important to have a protocol for immediate and continued treatment of the survivors. The survivors should be tested for pregnancy, STD, HIV and any diseases that they may be at risk of and given appropriate treatment/counselling.

iii). Urgent cognisance must be taken of the Guidelines issued by the Delhi High Court judgment of 23rd April, 2009 in W.P.(CRL) 696/2008; Delhi Commission for Women Vs Delhi Police case, for the police, hospitals/ doctors, Child Welfare Committees, Sessions Court, Magistrate Courts, Prosecutors and other concerned authorities : We quote what has been stated for the DOCTORS/ HOSPITALS/ HEALTH DEPARTMENT

a. Special rooms to be set up in all government hospitals for victims to be examined and questioned in privacy.

b. A sexual assault evidence collection kit or sexual assault forensic evidence (SAFE) kit consisting of a set of items used by medical personnel for gathering and preserving physical evidence following a sexual assault should be available with all the Government Hospitals. A sexual assault evidence collection kit should contain commonly available examination tools such as:

• Detailed instructions for the examiner

• Forms for documentation

• Tube for blood sample

• Urine sample container

• Paper bags for clothing collection

• Large sheet of paper for patient to undress over

• Cotton swabs for biological evidence collection

• Sterile water

• Glass slides

• Unwaxed dental floss

• Wooden stick for fingernail scrapings

• Envelopes or boxes for individual evidence samples

• Labels

Other items needed for a forensic/ medical exam and treatment that may be included in the rape kit are:

• Woods lamp

• Toluidine blue dye

• Drying rack for wet swabs and/or clothing

• Patient gown, cover sheet, blanket, pillow

• Needles/ syringes for blood drawing

• Speculums

• Post-it Notes used to collect trace evidence

• Camera (35 mm, digital, or Polaroid) film, batteries.

• Medscope and/ or colcoscope

• Microscope

• Surgilube

• Acetic acid diluted spray

• Medications

• Clean clothing and shower/ hygiene items for the victims to use after the examination

c. A detailed description of "Assault/ Abuse History" be mentioned by the attending doctor on the MLC of the victim. The doctor must ensure that the complete narration of the history of the case detailed by the victim and her escort is recorded.

d. After the examination is complete, the victim should be permitted to wash up using toiletries provided by the hospital. The hospital should also have a change of clothing to put on if her own clothing is taken as evidence.

e. All hospitals should co-operate with the police and preserve the samples likely to putrefy in their pathological facility till such time the police are able to complete their paper work for dispatch to forensic lab test including DNA.

iv). Attitude of Doctors

It is well known that just like the attitude of the police towards the rape victim which is frequently biased and apathetic, the Doctors too can be extremely apathetic although the Physical and psycho-social effects of sexual assault on women and girl children are well known. According to the Manual and Evidence Kit for the Examining Physician brought out by CEHAT, there are serious effects of sexual assault on the physical health and the psycho social well being of the woman, which are ignored by the doctors. They include:

• Injuries in the form of soreness, bruising, lacerations and bleeding of the external genitalia, introitus and vaginal walls.

• Tears, oedema and bleeding of the hymen.

• Injuries in the form of bruising, lacerations, bites, scratches on the head, neck, abdomen, breast, thighs and back.

• Tears and lacerations of the anus and rectal bleeding.

• Gastro-intestinal irritability

• Fatigue

• Tension headaches

• Intense startle reactions

• Disturbed eating and sleeping patterns

• Risk of pregnancy

• Risk of sexually transmitted disease including HIV

Alongwith the immediate effects of sexual assault on the psycho-social well-being of a woman, such assault also results in

• Shock

• Numbing

• Withdrawal

• Denial

• Unnatu9ral calm and detachment

• Fear

C. Long term impact of sexual assault on physical health and well-being of a woman could result in

• Dysparunia

• Sexual dysfunction

• HIV/AIDS infection

Long term impact of sexual assault on psycho-social well-being of a woman is reflected in

• Chronic anxiety

• Feelings of vulnerability

• Loss of control

• Self-blame

• Sense of betrayal

• Nightmares

• Catastrophic fantasies

• Mistrust

• Phobias

• Somatic symptoms

.

Post Traumatic Stress Disorder (PTSD) is usually seen in

• Psychic numbing

• Avoidance of stimuli associated with trauma

• Intrusive re-experiencing of trauma

• Intense psychological distress

• As a result of criminal victimisation, there is a lifetime increase in risk of mental illness.

There should be special accountability procedures for Doctors conducting rape examination which is discussed in the section on grievance redress and accountability.

V). Setting up more Forensic Science Laboratories and DNA printing faclitities in order to speed up investigations

It is imperative that stock be taken of the number of samples still to be investigated and pending before these labs. It is well known that results of the samples many a times are brought in after the trial is over. Chargesheets are filed without the FSL results. There is a definite case for the increase in the number of FSL and increasing the staff in order to speed up the process of investigations and trial.

5. Grievance Redress Mechanism against the errant Policemen, Doctors, Public Prosecutors and other administrative officials along with measures of Transparency and Accountability of various state agencies

1. All police station should have phone numbers of senior police officers and various commissions like the women's commission, human rights commission and the child rights commission. Also, a list of lawyers and women's organisations ought to be painted on the walls outside the police station or put up on a board there so that anybody can approach them if the FIR is not rejected or if there is a display of conduct violative of women's dignity or they have any other complaint.

2. The DK Basu guidelines must be implemented to the hilt.

3. CCTVs should be installed in all interrogation rooms.

4. Number of Police Control Room vans with GPS should be increased according to a prescribed norm.

5. A dedicated criminal investigation wing with training in scientific investigation of offences, sexual, gender and child related and others.

6. Citizens / Social audit of police stations should be mandatory in respect of offences against women, SC/ST, minorities – both religious, ethnic and sexual minorities.

7. The setting up of independent grievance redress and accountability procedures at the District and State level as envisaged by the Supreme Court in the Prakash Singh Vs Union of India ought to be implemented through the Police Acts of various states so that women/people can access the independent accountability mechanism at the District and State level.

8. The District SP must hold bi-monthly review meetings of all cases of sexual violence. At the state level, the Home Secretary along with the DG police must hold succh review meetings on a monthly basis.

9. All hospitals, whether PHCs, CHCs, district hospitals or referal hospitals must have a board with names of senior doctors with their phone number and designation for complaints. Each medical staff personnel must have his or her name on his body.

10. ACRs of district officials, especially DMs, SPs, Doctors and Public Prosecutors should record sensitivity, alacrity and sincerity exhibited by the officers and their team in dealing with crimes against women as a key result area. This should be the case with SDMs and SHOs also. Feedback should be obtained from the persons concerned about the officers they had to interact with. This should also be considered when the ACR is prepared.

11.A State level monitoring committee for crimes against women chaired by the Chief Minister should be compulsorily constituted like under Prevention of Atrocities against SC & ST Act, which is supposed to review crimes against Dalits and Tribals every three months.

6. Compensation, Reparation, Rehabilitation and Legal Aid

A woman survivor of sexual violence must be looked upon as the responsibility of the State. As such, she has a right to obtain economic, psychological and other support to rebuild her life consequent to the torture and trauma of rape or sexual violence.

There is no law on reparation and rehabilitation except for cases of SC & ST Atrocities Act where the rules of 1995 to the Prevention of SC & ST Act, 1989 make it mandatory for governments to provide to families of SC/ST victims of such crimes. However, the compensation is not indexed and the same amount as was being given when the Act came into force 1995 continues even after 12 years. The compensation is also staggered. A quarter of the total amount is given at the time of filing the FIR, 50 % at the time of chargesheet and the rest at the time of conviction.

Women of castes and communities other than SC & ST are left to the whims and fancies and the discretion of the District Collector or the Chief Minister who may choose to give or not to give money or to the victim.

Compensation against sexual violence is the right of every woman and she should get the money by right. This should not stop at a single monetary grant as compensation but move to a complete rehabilitation package for the survivor. Compensation should also be delinked with the legal process and not conditional to the outcome of the trial. There should be a proper programme and scheme for this from the Women and Child Development Department or the Department of Social Justice.

The present scheme of bringing all compensations under District Legal Services Authority, taking it out of the Administrative fold of the District Collector, has done more damage and has been a denial of compensation by design. As the DLSA is a completely inaccessible authority, although names are still being recommended by the District Collector for rehabilitation, no money has been sanctioned till now in many States.

Legal Aid: This seems to be the most difficult and the almost not workable support for the victim woman who has to fight a case in court. Neither are good lawyers available, nor are the lawyers who offer to become legal aid lawyers provided with decent money. An assessment of the DLSA, SLSA and NLSA needs to be done, before recommending its role for sexual assault cases.

7) Trials and Appeals:

III. Appointment and the Role of Special Public Prosecutors

The appointments to the posts of public prosecutors in District Courts and High Courts are all political appointments with little or no consideration paid to their professional efficiency, integrity and credibility. Prosecutors are known to collude with the accused and deliberately fail or neglect to examine important witnesses or place crucial evidence before the court. Sometimes inexperience or ignorance of prosecutors also results in shoddy prosecution. It is important that the best possible legal talent is availed in cases of sexual assault. Towards this it is suggested that a pool of trained special Prosecutors, preferably women, is created from which prosecutors are appointed for cases involving sexual assault. Here, we would like to stress that merely having women prosecutors, judicial officers or police officials by themselves is not enough. Gender sensitive orientation and training is required for all those involved with the criminal justice system, at least those who are involved with gender violence.

IV. Incamera Trials: Though the revision in the CrPC in 1981 providing for incamera trials was welcome, reviewing its 30 years of implementation, it can be said that incamera trials have ended up becoming only for "men's ears" trials as the accused are mostly males, the lawyers on both sides are mostly men and so are their juniors, the judge, the reader and the clerks. It is in front of all these men that the prosecutrix (complainant woman) has to stand alone and talk openly about the most intimate details of the incident of rape or sexual assault. This is quite intimidating and inhibiting and therefore urgently needs to undergo a change by making women PPs mandatory along with the women members of the family of the girl and social activists who could sit in the Trial room.

V. Provision for `Vulnerable witness' protection

Appropriate amendments should be introduced in the Evidence Act and Criminal Procedure Code to define `vulnerable witness' and provide for special and more sensitive procedures for the purpose of recording the evidence of survivors of sexual assault. The `vulnerable witness' court model set up in Karkardooma court complex in Delhi should be expanded and extended to all States. The special courts could be presided by women judges who undergo proper gender orientation and sensitisation programmes

VI. Speedy and Fair Trial: The case of Fast Track Courts.

All cases of sexual crimes, whether rape or sexual assault should be priority cases and trials should happen with speed, without jeopardising the principles of Fair Trial. The case of Fast Track courts as the best option for speedy trial has not been researched enough. There have been a few cases where the Fast Track Courts have delivered justice with speed, however, in those same courts there have been cases pending for years together of child sexual abuse. It is important that both the Judicial Officer and the Public Prosecutor work in tandem to ensure that once the trial commences, hearings happen on a day to day basis and justice is delivered expeditiously. However, the case of judicial delay also happens as the cause list per judicial officer is a minimum of hundred and seventy five to two hundred cases a day. In these

circumstances, cases are bound to be listed and relisted, without coming up for hearing for months. It is important the number of judges at the trial court level be increased ten times, as stated by the former Chief Justice of the Supreme Court of India in order to prevent pendencies in these matters. Adequate infrastructure ought to be provided to both the judicial officer and the public prosecutor who in many placces does not even have a table and chair to sit. All judges need to be gender sensitised through special programmes aimed at changing attitudes and mind sets, social perspectives and institutional cultures through experiential learning and participatory pedagogy at all levels including the Supreme Court.

VII. Mandatory Filing of Appeals and speedy hearing in High Courts.

Most cases of acquittal in sexual assault and rape are not even appealed in the Higher Courts by the State. It is frequently seen that the Public Prosecutor, District Collector and Law Secretary, those involved in ensuring that an appeal gets filed in the higher court concerned, frequently never recommend appeal for cases of sexual crimes, particularly where the accused are from the more powerful community whereas in ordinary theft cases, the State always goes into appeal. This must change and all cases of sexual violence must be appealed in the Higher Court, whether at the District Court or High Court or Supreme Court level. This should be made mandatory.

It is also worth knowing that the pendency of appeals in all High Courts is so high that in most of the High Courts appeals of the eighties are coming up for hearing. It takes on an average twenty years for Rape Appeals to come for hearing in the High Court. The 1992 case of Bhanwari Devi of Bhateri village in Rajasthan explains that despite the Jaipur District Court having acquitted the accused on grounds of caste and age in November 1995, the matter has not come up for hearing in the last 16 years despite the appeal being accepted by the Rajasthan High Court's, Jaipur Bench in February 1997. It has been more than twenty years since Bhanwari Devi was gang raped and there seems to be no hope for justice. Two of the five accused have even died.

Can High Courts and the Supreme Court Fast Track the appeals pending in cases of sexual crimes? This should be a call that the Chief Justice of the Supreme Court and the High Court must take and ensure that the further victimisation of the survivor of sexual violence must not happen due to systemic delays or shortage of judges.

8. Sentencing in Rape and Sexual Assault Cases: Riddng rape sentencing of stereotypes

1) Impact of stereotypes in the Medical Reports on Sentencing for Rape and Sexual Assault:

"Stereotypes find their way into the trial process through medical examination. Assume that in examining an unmarried rape victim, the doctor notes the presence of old tears on her hymen. The doctor also notes that she was able to insert two or more fingers into the vagina of the victim. Although the doctor does not expressly opine that the woman was sexually active, this information is conveyed to the court by way of the medical report. ……in cases where the medical report indicated that the woman had been sexually active before

marriage, lower sentences were imposed on the offenders who raped them. In contrast, in cases where the offender had raped a virgin, the sentence was relatively higher.

“Thus, the sexual history of the victim had an impact on the sentence imposed on the offender. Another factor related to virginity is the perceived loss experienced by an unmarried victim, in terms of her marriageability. The Supreme Court has in a number of cases noted how rape adversely affects the chances of a woman finding a suitable groom. In this context, the Court has even held that the marital status of the woman can be a relevant factor in rape sentencing. It is not surprising then that offenders who raped unmarried (and virginal) women got higher sentences in contrast to men who raped married women. Further, courts tend to impose lower sentences when a victim who was unmarried when the offence was committed, gets married during the trial. Since the rape did not impact the victim’s ability to get married, the harm caused by the offence is discounted. An egregious example of this approach is the Supreme Court’s decision in Baldev Singh v. State of Punjab (2011), another gang rape case that got a lot of media attention. One of the reasons that the Court gave for reducing the sentence in this case was that the victim was now married.”

2) The second stereotype that affects rape sentencing is the perception that rape is a matter of shame for the victim.

“The Supreme Court has in fact frequently observed that a woman experiences a ‘deep sense of deathless shame’ as a consequence of being raped. Combined with the notion that a woman considers her chastity and virginity to be invaluable, a myth has developed that on being inflicted with this ‘shameful’ act, a woman will necessarily physically resist her attacker, when sexually assaulted. Such physical resistance, it is believed, leads to injuries on the woman’s body, which then demonstrates that sex was not consensual. Note, however, that the law does not require the woman to resist the attack. The presence of injuries might corroborate lack of consent, but the absence of injuries should not imply consent. Although courts do not appear to infer consent from absence of injuries, I found a marked decrease in sentences in cases where no injuries were present on the woman’s body. Hence, unfortunately, the notion that a woman should physically resist rape makes its way into rape sentencing.”

3) The Stereotype of Acquaintance Rape to be less Traumatic than Rape by a Stranger.

“The third interesting finding was that courts consider acquaintance rape to be less traumatic than rape by a stranger. Offenders who were in a romantic relationship with the women they raped got lower sentences, compared to their counterparts who raped women they did not know. In cases of statutory rape where the under-aged girl had consented to intercourse, courts consistently imposed lower sentences on the offenders, based on the understanding that the young woman had otherwise ‘contributed’ to the offence.

4) The stereotype of Rape leading to the loss of virginity and thus the loss of honour: So instead of sentencing the rapist making the rapist marry the rape survivor.

In several cases the judges at Trial Court and even High Court level let off the rapist and compound the serious criminal case by suggesting that he marry the rape survivor as he is responsible for the loss of her chastity. Her honour will be restored if he marries her. This has serious implications as many a times the man's commitment towards the survivor is only till she changes her statement in court and then after an acquittal he leaves her. Also the woman who has gone through the trauma of rape finds it very difficult to accept the man but has to do it under pressure. It also clearly shows how for judges rape within marriage is acceptable.

"Law reform movements, as well as policy-makers have not paid much attention to issues pertaining to stereotypes surrounding rape sentencing. For justifiable reasons, their focus has been on steps to ensure higher convictions in rape cases. In addition to these efforts, there is need for reforms to rid rape sentencing of stereotypes. This would include

• First, changing the nature of medical evidence collected in rape cases. Protocols for medical examination of rape victims should be modified and corresponding changes should be made to medical education syllabi.

• The second reform required is the formulation of principles to be followed by judges while sentencing rape offenders. Factors that should not be considered in sentencing rape offenders (such as the victim's sexual mores) should be listed. Currently, a large number of rape offenders whose victims do not adhere to the stereotypical construct of a rape victim get relatively lower sentences.

• Ensuring principled sentencing, one that is in tune with our constitutional values, is a better guarantee for justice to rape victims, rather than legislative steps providing for capital punishment, chemical castration and the like."

9. The question of CAPITAL PUNISHMENT

The present punishment prescribed for rape and custodial, gang rape or other aggravated cases of sexual assault, with provisions for mandatory minimum sentence in the event of conviction is quite stringent. In case of homicidal rapes the present law already vests sufficient power on courts to impose capital punishment. PUCL submits that any provision for imposing capital punishment for a non – homicidal rape would render it cruel, inhuman and grossly disproportionate and hence unconstitutional. At any rate, as long as the number of convictions recorded remains abysmally low providing for harsher punishments remains meaningless.

Moreover, providing for death as punishment for rape would result in the rapists killing their victims to escape identification and subsequently death penalty. If death is the consequence of both rape as well as rape followed by the murder of the victim, eliminating the victim would provide an impetus/incentive for murder.

1. Chemical castration

There is a frenzied demand to introduce `chemical castration' as a punishment in offences of rape. It is true that in about nine states in the United States as well as in some European countries, chemical castration is prescribed as punishment for sexual assault. It is said to have reduced recidivism among habitual offenders especially among paedophiles. However the constitutional validity of such a punishment as yet remains untested except in South Carolina in the United States where surgical castration has been held to be unconstitutional by the Supreme Court of South Carolina.

Castration as punishment is both inhuman and against the norms of a civilized and liberal society apart from being inconsistent with our approach to punishment. All crimes involve use of limbs/parts of body, but we do not chop them off or make them dysfunctional as punishment. All crimes are conceived in the mind and executed with the hand, the legs, the eyes and the ears, but the mind is not made dysfunctional, the hand and the leg are not chopped off or the eyes gouged or made blind by some other means.

In 1980s, the police at Bhagalpur in Bihar blinded a few hardened criminals by pouring acid in their eyes, which led to action being taken against them; even at that time there was public support for the police action as the persons were hardened criminals. Supreme Court, however, came down heavily on the officials who perpetrated the crime. Hence punishments cannot be imposed on the basis of `popular demand'.

Chemical castration means the administration of anti-androgen drugs which suppress the production of testosterone in men thereby temporarily reducing erection and sperm count. Recently the Chief Minister of Tamil Nadu has announced that chemical castration should be introduced as a punishment for rape. PUCL is opposed to such a primitive and barbaric punishment for more than one reason

It is unconstitutional

In principle, such a punishment would be against the Convention against Torture, Cruel, Inhuman or Degrading Treatment and Punishment. Chemical castration robs a person of human dignity and is not reflective of the aspirations of a modern, democratic and civilised State. Such a punishment is crass, crude and would be in violation of Article 21 of the Constitution. In `State v. Brown', 284 S.C. 407, 326 S.E.2d 410 (1985), the Supreme Court of South Carolina held that surgical castration was a `cruel and unusual' punishment and hence unconstitutional.

Based on a false premise

The demand for castration as a punishment is based on the erroneous premise that sex crimes are committed on account of sex drive. Sexual violence is about violence and power where the accused generally chooses a weaker person such as a lone woman or a child when they are isolated. Moreover, sexual assault is not necessarily about penile- vaginal/anal intercourse.

Aggressors are known to have used objects such as rods, bottles etc on women. Hence preventing erection may not really impact on crime against women.

Impractical

In practice, it is impractical as it requires periodic (ranging from every two weeks to every three months) administration of the drug to the accused. It is not clear if the prescription of castration is in lieu of imprisonment or in addition to imprisonment. If it is in lieu then it is not clear how it can be enforced. It is impossible for the enforcement agencies, whether jail or police, to ensure that the required drug in the required dosage is administered at regular periodicity. In a country where every rule is subverted (for instance it is common knowledge that when bail is granted on condition that the accused report and sign at a police station, for adequate `consideration' the police permit the accused to sign for all days on one day or permit impersonation or even themselves sign for the accused). So there is every possibility that it will be merely recorded that the drug is administered without actually doing so. If it is in addition to imprisonment, it becomes superfluous as the convict is already removed from society and there is no reason to inflict further harm.

Unethical

Drugs should be prescribed by doctors and not by Legislators / Judges. It is most unethical to administer a drug under compulsion of law whether a patient requires it or not. There may be a few cases of habitual offenders such as paedophiles who may require it as a treatment to address perverse sexual desires. Even in such cases, it should be supervised by a doctor and followed up with proper psychiatric treatment. Further administration of hormones has a lot of side effects on the health of the convict. These drugs are known to cause side effects such as diabetes, gall stones, hypertension, fatigue, weight gain, cold sweats, nightmares, muscle weakness, male breast development, liver damage, blood clots and so on. Supreme Court of India has emphasised in more than one case that merely because a person is undergoing a sentence of imprisonment, he is not stripped of his other fundamental rights. Chemical castration strips the convict of all dignity, ruins his health and probably creates more problems than solve the problem at hand.

Part III. Preventive Measures

Systematic study of offenders.

As a society we have debated, discussed and have over time gained a significant body of knowledge on the psychological and emotional trauma that a sexual assault survivor goes through. There is significant documentation on Rape Trauma Syndrome and treatment for the same. A time has probably come to also study and understand the psyche of sexual offenders by conducting systematic studies, enforcing mandatory therapeutic sessions/group therapy etc for the offenders to not only treat and rehabilitate them but to also better understand the societal

triggers which make persons indulge in such assaults so that we as a society can address this issue in early stages and thereby prevent the occurrence of such crimes.

`Offender rehabilitation' as a separate field of activity should also be initiated. Universities, Medical Colleges, Research Institutions and specialists encouraged to work to develop knowledge, skills and protocols relating to `offender rehabilitation'.

Other Measures – Gender Sensitisation

It is ironical that the level of sexual violence is so high even after there has been continued gender sensitisation programmes over the last decade all across the country, especially focusing on police officials. The widespread criticism of lack of gender sensitivity amongst police officials belies the impact of such gender sensitisation programmes conducted at huge public cost.

Gender sensitization programmes, as they exist today, have by and large been tokenistic, lacking creativity and have had little impact on changing gendered mindsets. An entirely new programme aimed at changing attitudes and mindsets, social perspectives and institutional cultures should be designed at the mass level based on experiential learning methodologies and other creative learning pedagogies and rolled out from primary schools through colleges to work spaces.

Every year village assemblies should be organized on March 8, International Women's Day, as an open house where women could be encouraged to speak about their experiences. Women should be encouraged to speak in special sessions in the country's legislatures on issues related to women's discrimination and equality and the way state policies and laws impact women's experience of inclusion, equity, justice and dignity.

Dealing with Minor Offences

There is plenty of literature to show that people who commit serious offences start with minor offences like so called 'eve teasing', minor molestation and the like and escalate over time. Dealing with minor offences in a timely and effective manner prevents commission of serious crimes later. Hence it is important that in instances of sexual assault or other similar offences, apart from warning, it is important for the offenders to compulsorily go through gender sensitisation and orientation programmes.

Part IV. Making Provision for Adequate Annual Financial Budgetary Allocations as Part of Plan Expenditure

Many laws, criminal laws in particular, fail as budgets are not allocated for them and where they are, because financial allocations do not reach the right place at the right time. We also learn that in most states such allocations are not part of Plan Expenditure and therefore are subject to the uncertainties of unplanned expenditures funds and do no reach in time. This is a serious lacuna

which needs to be recognized as a systemic issue and needs to be set right immediately. Or else all forward looking provisions become unworkable because of non-avilability of funds.

Once a rough consensus is achieved we recommend that in the draft Bill itself the process of 'costing' or the nature of financial budgetary allocations provisioning should be added in the Bill thereby facilitating each government department responsible for implementation of the Bill to list all the concrete components required to make the law a reality. This would include staff, training, office expenses, publishing costs, chairs tables, grants for children etc.

The experience of South Africa, Brazil and many other jurisdictions shows that if all agencies tasked with implementing a Bill map out specific interventions required of them – the likelihood of a realistic, achievable Bill that is implemented increases dramatically. The Mexican Law on Access of Women to a Life Free of Violence (2007), for instance, establishes legal obligations for the State and municipalities to take budgetary and administrative measures to ensure the rights of women to a life free of violence.

It is frequently seen in India that important laws remain paper tigers as there is no financial support to implement the bill. The Protection of Women from Domestic Violence Act, 2005 is one such bill, where there is no financing from central Government towards its implementation and even today State Governments are not taking its implementation seriously.

It is therefore suggested that any legal reform undertaken, should go through a costing process participated in by representative Central and State Government agencies together, led by representatives of women's organisations together with gender budget analysts, financial experts, legal draughts persons to design a workable Bill before it is tabled in Parliament.

Conclusion

In conclusion it can be said that it is a long haul and difficult journey for India – but changing the way Indian society treats women, in the end, is the only safeguard preventing violence against women. We hope this Committee will examine our submission and seek any clarification that may be required and invite us for making a presentation in person. Since this submission has been done on extremely short notice please permit us to send you some other suggestions left out by us to the committee.

With regards,
Prof. Prabhakar Sinha, President
Dr. V. Suresh, General Secretary
Kavita Srivastava, National Secretary

The PUCL –Karnataka would like to focus on three forms of sexual assault which have been documented by the group.

1) Communally targeted sexual assault

2) Sexual violence against the transgender community

3) Sexual crimes against Dalit women

I. Communally targeted sexual assault

The PUCL-K in two reports titled Communal Policing in Dakshina Kannada 2008 and Atttacks on pubs and birthday parties(2012) has documented how the sexuality of women is being sought to be policed by fundamentalisms. The Reports indicate that young women who seek to assert their autonomy and independence by having consensual intimate relationships with men of their choice, often across boundaries of religion, are assaulted for their choices.

To cite a few instances:

<u>The Amnesia Pub Incident (24 January, 2009)</u>

According to one of the victims of the attack, around 4 pm, a group of over 40 people, wearing saffron headbands and scarves, came in through the main gate and approached the bouncer of the pub. She said that before barging into the pub, the mob went into a huddle and prayed silently. Then they began raising slogans 'Bharat Mata ki Jai,' 'Jai Sri Ram,' 'Bajrang Dal ki Jai' and 'Sri Ram Sene ki Jai.'

"Once inside, they went straight for the women guests. They rounded them up at the centre of the dance floor and then started beating them mercilessly," she said. After the initial beating, some of the assailants began to single out some of them and molested them. "We have been molested and humiliated in the name of God and country by people who obviously have no regard for either of the two," she told The Hindu.

nother victim spoke to the Times Now Channel covering her face. Recounting the trauma that no amount of consolation can erase, she claimed that the Sri Ram Sena activists hurled abuses at them and called them "prostitutes". "We were attacked, beaten horribly, our hair pulled, we were kicked, put on the floor. A few of our pants were pulled down, skirts pulled down. We were molested more than attacked. Being molested in front of the camera and being called prostitutes is something no girl wants to go through." "We are scared for life…..We were thrown about, hit. What you did not see was what we saw that day–the footage of us being molested," recalled a horrified victim. They said that, "What happened on Saturday was traumatizing, but we need to feel safe again." (http://timesnow.tv/NewsDtls.aspx?NewsID=27720)

One of the facts to note about the attack was it was well orchestrated with the media receiving advance notice of the attack. In fact the attack began only after the TV cameras were well stationed to cover the attack in all its details. It should also be noted that Amnesia Pub is located in a posh, crowded and up market locality. This attack took place around 4 pm. and was observed by numerous passersby.

The Birthday party attack (2012)

Testimony of a witness: "The girls who saw four of the boys being trashed were shocked at the sight and ran in all directions. Some of the assailants started chasing these girls inside the bungalow. You may not believe me but one of the girls jumped down from the first floor. She was caught by nearly 20 assailants who began to pull off her clothes. They slapped her and pushed her to the wall. By then another girl started running. The assailants who caught her literally stripped her. Leaving her with only one piece of clothing the assailants deliberately molested her body. This sight sent a chill down my spine. Never in my life had I seen something as horrific as this, though I had heard of such things. These scenes could not be made into visuals for the news. Very little of what happened there could be shot on camera. However, the way the assailants were manhandling the girls, if the news cameras were not present I shudder to think how much further they would have gone. Some of the assailants were shooting the rampage with their mobile phones. Afterwards all the boys and girls partying in the house were locked inside one room. All this happened at lightning speed. At the most it must have taken about 15 minutes."

These two attacks were only the tip of the iceberg when it came to sexual assaults on young women as a way of exercising control over them. There were 145 such incidents documented by the newsmedia from 1998-2-12. Shockingly the state has not treated these incidents with seriousness with a view to prevent these targettted assaults on the sexuality of young women. The fact that these attacks are meant to control and intimidate women so that they do not exercise the freedoms which are the right of all citizens under the Indian Constitution needs to be recognized.

It should also be noted that these forms of sexual assault are undertaken mainly by the forces associated with the Hindu Right. The groups who have assaulted women include the Hindu Jagran Vedike, Sri Ram Sene and Bajrang Dal. All these groups are connected too the RSS and as such the BJP, which is also a fiduciary of the RSS, has to be accountable for these actions. In particular the failure to take any action by the BJP against these groups inspite of 145 reported incidents points to an insentivity to the issue of targeted sexual violence against women in Dakshina Kannada district.

It should also be noted that similar (though far fewer) cases of communal policing have also been reported to have been done by some Muslim groups such as the Karnataka Forum for Dignity (KFD).

As such there is a pressing need for urgent state action on these forms of communally targeted sexual violence. These forms of sexual violence have a deeper objective of preventing forms of franternization between majority and minority communities. These sexual attacks are especially aimed at preventing the development of romantic attachments between Hindu women and Muslim men, which in the understanding of the Hindutva groups is a contamination of the 'Hindu nation'. Sexual assault is being used as a weapon to curb women's freedom to choose those they want to develop intimate relationships with. In fact, these romantic and intimate relationships actually promote the ideal of fraternity as envisaged in the Preamble of the Indian Constitution. As such there is a crying need to defend these relationships from the violent assaults of the Hindutva groups which aim at rendering India a congery of discrete and insular groups with no relationship of love and affection between them.

We recommend that

• FIR's be registered in all such cases

• Action taken against groups such as the Bajrang Dal, Hindu Jagran Vedike and Sri Ram Sene which violate the law with such impunity

• Implement 'Guidelines on Communal Harmony' by recognizing these assaults as communally targeted sexual violence

• Ensure that time bound trials are conducted in all cases of communally targeted sexual violence.

II. Sexual assault against transgender persons

The PUCL-K has extensively documented the phenomenon of brutal sexual violence and assaults perpetrated against the transgender community. While this has been an ongoing issue, it has not captured much attention and remained a seriously underreported phenomenon.

The PUCL-K in 2003 came out with a report titled, Human rights violations against the transgender community in which for the first time the sexual violence suffered by the hijra/kothi population was documented. To cite a couple of egregious incidents:

'Then he(the Police Officer) asked me to leave in a naked condition, refusing to return my clothes. But as I turned I could sense that he was getting sexually aroused. He wanted to fuck me. I didn't have a condom. I didn't even like taking it in the backside. Then he hit me very hard. He covered my mouth with his hand and started fucking me. He was very big, and without a condom, it was all so painful. My ass was bleeding. I could feel blood going down on my thighs. The policeman shouted at me, saying "Hey, stop crying. I will hit you again if you cried". Then he lifted me, asked me to bend and fucked me more. Finally he was done and he left, thankfully leaving my clothes with me.'

Around 15-20 police men stripped her naked in the presence of a senior police officer (Circle Inspector Munirathnam Naidu) who was in the Police Station at that time. Smita describes him to be “around 50 years old, wheatish skin colour, 5’4″ in height and very fat”. All the 15-20 police men stood around her, sexually abusing her by touching all over her naked body. They humiliated her further by forcing her to spread her thighs and touching her sexual organs. Many of them hit her with lathis on her head, hands, thighs, shoulders etc. They also attempted to shave off her hair. She continuously begged them to let her go and even fell at their feet. They verbally abused her by repeatedly referring to her as ‘khoja, gandu, bastard, son of a bitch’ and used the foulest language as they continued to beat her, making vile comments like: “Did you come here to get fucked anally?”, “Whose cocks did you come here to suck?”, “People get AIDS from you, one day you will die of AIDS, chakka, I will fuck your mother”.

Based on these shocking narratives, the PUCL-K concludes that,

Sexual violence is a constant, pervasive theme in all these narratives. Along with subjection to physical violence such as beatings and threats of disfigurement with acid bulbs, the sexuality of the hijra also becomes a target of prurient curiosity, at the very least and brutal violence as its most extreme manifestation. As the narratives indicate, the police constantly degrade hijras by asking them sexual questions, feeling up their breasts, stripping them, and in some cases raping them. With or without the element of physical violence, such actions constitute a violation of the integrity and privacy of the very sexual being of the person. The police attitude seems to be that since kothis and hijras engage in sex work, they are not entitled to any rights of sexual citizenship.’

While this is one aspect of the reality of the daily interface of the transgender community with the law enforcement machinery, these experiences have been shrouded in silence. As the PUCL-K notes

Disturbing as these narratives are,they have yet to be picked up by mainstream human rights community in India. It is important that these narratives become part of our understanding of human suffering.’

If these are indeed the everyday experiences of members of the trangender community, the question is how can the law account for them in terms of criminal protection ? We submit that the only logical, clear solution to the problem of including transgender people within the protection of sexual assault laws is to introduce the word ‘person’ instead of ‘woman’ when it comes to who can be victimised. The advantage of this simple formulation is that one takes care of acts of sexual assault against persons which includes women, effeminate men, hijras, kothis and the spectrum of sexual minorities.

This simple shift from ‘woman’ to ‘person’ when it comes to victims is also a radical shift from protecting those who are assaulted on grounds of sex to protecting all those who are assaulted on grounds of gender. Our conceptual understanding is that sexual violence is always gendered and

that it is perpetrated on account of one's gender. This means that the violence is not only restricted to non consensual sexual acts but also includes acts of violence perpetrated on the female body. Thus it is not only women, but all those who are perceived to be transgressing the boundaries of gender who can be subject to sexual assault. This includes female to male transexuals, hijras, kothis, effeminate gay men and all those who violate the social codes of gender. Our proposal is rooted in the concrete history of discrimination and seeks to extend protection to vulnerable groups, rather than become a tool in the hand of adversaries.

The new legal framework on sexual assault should also include all forms of penetration, including penetration by any part of the body or any other object into any bodily orifice.

III Sexual Crimes against Dalit women

In Karnataka, as in rest of the country, sexual crimes against dalit women go largely unnoticed. In particular, large scale sexual exploitations by landlords are commonplace and are conducted with arrogant impunity – being rarely registered with the police. PUCL's experience with villagers of Budihalli is just one instance where such gross violence and violations were merely recorded – without justice finally getting served.

PUCL-K was alerted to the crisis in Budihalli village, Chitrdurga district, with exodus of the entire Madiga community, who occupy the lowest rung of caste/class hierarchy as untouchables of our society. What we found was a tragic tale of continued and large scale sexual exploitation of the Madiga women at the hands of Gollas and Nayakas – the land holding communities. Further, several victims testified that they were threatened with setting their huts on fire – if they did not cooperate with sexual demands.

Within a climate of entrenched caste divisions, it was objectionable that the main position taken in the official responses was one of accepting only those events or realities that were substantiated by police records, especially since both medical facilities and police station were a substantial distance away from Budihalli. Furthermore the administration lacked sensitivity to understand the great psychological and social barriers that Madiga women faced to openly acknowledge, let alone file FIRs and register cases of sexual exploitation against males from dominant communities. The fact that a few individual cases had been registered can only be seen as only the 'tip of the iceberg' for a much larger, deeper and historically rooted social malaise that pervades our society. Even in judicial cases dealing with sexual harassment, the testimony of victims is accepted 'Prima Facie'. In this instance we had 21 women coming forward to testify and sign a statement charging sexual exploitation, despite social stigma that such victims still face in our society.

Other groups have separately investigated similar reports from the Chitradurga region. Their findings substantiate ours and lead us to to conclude that such sexual exploitations are far more

prevalent than suspected and require our urgent attention and response. We recommend that the following few steps be immediately taken to address and stem this historical and grave plight of dalit women in rural communities:

1) Better accessibility to medical centre and police station.

2) Presence of a woman constable at all police station and filing of all FIRs.

3) Fast Track police and judicial response for crimes of sexual violence.

4) No difference be considered between such instances of sexual explotation, under real and life endangering threat of arson, and rape.

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Phone 2275 0014 PP FAX 4215 1459

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