

## **Submissions to Justice Verma Committee by Saheli Women's Resource Centre, Delhi**

Date: 5th January, 2013

Referring to your public notice inviting comments regarding recommendations on amending laws to provide speedier justice and enhanced punishment in sexual assault cases, please find enclosed the submission of Saheli Women's Resource Centre, Delhi.

Along with our recommendation on Criminal Law Amendment Bill, we are also submitting the following documents for your perusal:

- Appendix A – About Saheli's work and our perspective on violence against women.
- Appendix B- Statement by Women's and Progressive Groups and Individuals Condemning Sexual Violence and opposing Death Penalty
- Appendix C- "Capital Punishment for Rape: Can it tackle growing violence against women?" Saheli Newsletter article, February 1999.
- Appendix D – Other Suggestions for Addressing Sexual violence against women and Ensuring Safety beyond the law.

At the outset, we would like to state that the terms of reference for suggestions invited by your committee are inadequate as they only take into account aggravated sexual assault. There is an urgent need to also examine the many everyday instances of sexual violence and harassment against women. Such 'smaller crimes' encourage and contribute to a culture of sexual violence in which 'aggravated' crimes occur with frightening regularity. We strongly believe that swift and effective redressal is required for the entire range of crimes against women. Deterrence must start from here to prevent aggravated crimes against women. For this, the state needs to take many steps beyond changes in criminal law.

Further, while we are in appreciation of your initiative, we strongly urge you to hold consultations with women's groups like ours who have been working on these issues consistently, at every stage of the formulation of the law.

About Saheli

### **(Appendix A)**

Saheli, set up in 1981 in Delhi, is a non-funded feminist collective part of the autonomous women's movement in India.

Since then, we have been working as a resource centre to provide support and alternatives to women in crisis. We have been active in campaigns and struggles against dowry, domestic violence, rape, sexual harassment and discrimination against women in the law, communalism

and war. Our work on women's health includes longstanding campaigns against coercive population control policies, hazardous contraceptives, sex-determination and sex selection and the unethical sale of vaccines against cervical cancer.

Increasing conservatism, militarisation, globalisation and state repression are some of the other challenges that we have addressed working jointly with queer, dalit, adivasi and democratic rights' groups, and other peoples' movements.

Our perspective on violence against women

Saheli emerged out of the campaigns against dowry related violence and custodial rape in the 1970s. Since then the issue of violence against women has been central to our work. Over the years we have developed our understanding to the correlation between violence on women within the family, home, community and violence on women on roads, at the workplace, during caste and communal violence and during war.

While much of this violence has social approval, our work with victims of violence revealed that even laws were highly inadequate in recognizing and redressing such violence and there was deep sexist bias in the police, legal and judicial machinery. As a result women refrained from going to police stations and in the absence of any social or governmental support systems continued to live with violence. Campaigning for the enactment of new laws as well as amendments to existing laws became a significant part of our work. However, dealing with insensitive, anti-woman and corrupt police and legal machinery in the implementation of these measures continues to be a major impediment in seeking justice.

Our experience also indicated that despite many changes in various laws relating to violence, especially rape and sexual violence against women, the definition of rape and consent, the issues of 'character' of rape victim continued to give benefit of doubt to the perpetrators resulting in extremely low conviction rate in rape cases. Further, the solutions cannot only be in terms of tightening of laws but also putting the redressal mechanisms in place and making them accountable.

It was in this background that women's groups started working on new definitions and terminology with a view to expand the scope of the rape law to include many kinds of sexual violence that may not come in the traditional definition of but were violation of bodily integrity of women. The notions of purity and honour linked with women have resulted in giving lesser or no protection of law to those considered to be less 'pure' and less 'woman' (like sex workers, transgender people or people with intersex variations) and therefore are denied access to the law and their rights. Sexual assault needs to be addressed as an assertion of power (power of caste, class, community, patriarchy, army, police and State) and an act of violence, not a sexual act. The recent gang rape case in Delhi itself is a case in point. The widespread sexual violence against dalit women as well as violence perpetrated against women during communal/ethnic carnages has to be seen in the above context.

Sexual violence on physically and/or mentally disabled women still continues to remain hidden from public attention. The safety of disabled women in public spaces is of particular concern as it is frequently unaddressed. In addition, disabled women frequently experience sexual violence/abuse from within the family and/or from their caregivers. The vulnerability of disabled women to sexual violence needs to be highlighted.

The violence, rape and sexual torture by police, paramilitary and armed forces in states of Kashmir, North East, Chhattisgarh and other States opened up another manifestation of patriarchal power by the state agencies. This brought us face to face with the reality of laws like the Armed Force Special Powers Act (AFSPA) and similar laws made by many state governments that give impunity to police and army personnel employed in these areas resulting in increased vulnerability of women to molestation, mass rapes, sexual assault and torture by the State agencies.

Further, we feel that the pervasive culture of sexual violence against women is not something that should be solely addressed through criminal legislation. The point of view required here is not only that of safety of women, but that of women's constitutional rights as citizens and dignity as human beings. Women have a constitutional right to life and liberty, to enjoy life free from the fear of sexual violence and assault. It is a vision of such a society where individuals are empowered and fearless that should drive forward the legislative and institutional efforts to address sexual violence against women.

## **RECOMMENDATIONS ON CRIMINAL LAW AMENDMENT BILL 2012 ON SEXUAL ASSAULT**

At the outset, we wish to place on record that for over two decades women's groups have been seeking amendments to the law relating to sexual assault. In particular, in June 2010, in response to the Criminal Law Amendment Bill 2010, we presented our key concerns to the Secretary, Ministry of Home Affairs, in the form of comments and draft provisions. Against this backdrop, we would like to record our disappointment and dismay with the government as the 2012 Bill does not reflect the concerns expressed and suggestions made by us that were based on years of consistent engagement with victims and survivors of sexual assault.

The 2012 Bill is fundamentally different from the 2010 Bill, as it makes the offence of sexual assault a gender-neutral provision both with respect to the perpetrator and the victim. This major change has been introduced in criminal law without any consultation or discussion with women's groups. Below we are outlining our concerns regarding CLA 2012.

### **A. Penetrative Sexual Assault – Sec. 375 IPC**

i. Expansion of definition of sexual assault: The expansion of the definition of rape, beyond peno-vaginal penetration is welcome. However, we want to strongly assert that the definition of sexual assault should be broadened to include anal, oral rape, digital rape, rape with objects etc.

ii. Gender neutral sexual assault: The formulation of the crime of sexual assault as gender neutral, in all circumstances, makes the perpetrator/ accused also gender neutral, i.e both a woman and a man can be accused of sexual assault. For all the reasons mentioned in appendix A (our perspective on violence against women), we believe that the perpetrator has to remain gender-specific and limited to male, In addition, any legal reform must also recognize and address sexual violence against transgender people.

iii. Definition of Consent: There is no amendment to the flawed definition of consent under Sec. 375 IPC, which has in many cases proved highly inadequate and worked against the interests of justice for women.

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

v. Exception to Sec. 375 IPC: We recommend a deletion of the Exception to sexual assault under Sec. 375 IPC.

## **B. Non-Penetrative Sexual Assault**

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

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

iii. “Outraging modesty of a woman” to be replaced with “violation of bodily integrity”: S. 354 and S. 509 IPC, which contain archaic notions of “outrage of modesty”, ought to be repealed, and a clear gradation of offences and punishment as mentioned above should be inserted. We strongly believe that “sexual assault” should rest firmly on the concept of violation of bodily integrity and dignity and not on notions of “modesty”.

### **C. Aggravated Sexual Assault Sec. 376 IPC**

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

ii. Sexual Assault by Members of Security Forces and Police : Sexual assault by security forces has been included as a form of aggravated sexual assault in The Protection of Children from Sexual Offences Act, 2012, (CSO) under S. 5(b) and Sec. 9 (b) under aggravated sexual assault. However the Criminal Law Amendment Bill 2012, does not even mention assault by security forces as a specific category of aggravated sexual assault under Sec. 376(2) IPC. There is extensive documentation of sexual violence against women by security forces in various parts of the country, including by the paramilitary forces. Hence, we strongly suggest inclusion of the perpetration of sexual assault by security forces under S. 376(2). –

iii. Special Forces Acts: We endorse the recommendations in Section A of the submission made by Women Against Sexual Violence and State Repression (WSS) on the issue of state led violence, rape and sexual torture on women by police, paramilitary and armed forces in states of Kashmir, North East, Chhattisgarh etc. Laws like the Armed Force Special Powers Act (AFSPA) and similar ones made by many state governments that give impunity to police and army personnel employed in these areas resulting in increased vulnerability of women to molestation, mass rapes, sexual assault and torture by the State agencies. We strongly demand the repeal of such laws that give impunity to police and security forces and set standards of accountability for them and make them criminally liable for the sexual violence against women.

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

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

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

i. Appropriate standards of procedure and evidence for sexual assault in the situations of aggravated sexual assault under Sec. 376(2) IPC detailed above. Further, this SOP must be rigorously followed in all cases and police personnel held accountable for not following the appropriate procedure. To this purpose, CCTVs can be installed in police stations.

ii. Aggressive and misogynist behavior of police: Ensure that action is taken against police personnel against whom there are complaints or allegations of verbal abuse, sexual assault, unprovoked use of physical force. Keeping in mind the reports of misogynist language and aggressive behavior towards the protesters in the recent agitations in Delhi and elsewhere, police personnel need to be held accountable for such actions which perpetuate an atmosphere of fear and reticence of women to report sexual violence.

iii. Women with Physical / Mental Disabilities: No special provisions have been made for ensuring access to justice for women with mental and/or physical disabilities. Clear procedures should be laid out on how testimonies of such women will be recorded, who will record it, what qualifications are required to do so etc. We need to draw your attention to the sexual violence perpetuated against women with disabilities each day in both public and private sphere. Such assaults are not isolated incidents, but are rather experienced in a continuum. They happen within the homes, in public transport, in state run institutions with frightening regularity.

Women with disabilities are extremely vulnerable to various degrees of sexual violence as they are considered soft targets by the perpetrators. There must be a mechanism set across the country where they can report such matters and seek redressal, without the scare of any negative consequences. It must also be noted that disability is not a homogeneous category and the protocols must be devised taking into account the realities of women with mental and/or physical disabilities. Training/sensitization of police officers, judiciary and medical professionals on issues concerning women with disabilities should be made mandatory. There must be Standard Operating Procedures (SOP) in place for the police to follow while investigating cases of sexual assault. These SOPs must refer to the specific needs of women with disabilities, at each stage of the investigation and the role of the police during trial.

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

v. Prioritise medical treatment and care of victim of sexual assault: Statutory recognition of comprehensive psycho-social support, care and treatment to victim survivors of sexual violence.

vi. Norms related to Medical/Forensic Examination and Medico-Legal Documentation: Gender sensitive procedures and proformas for medical examination of victim should be specifically laid down. Prohibit the two finger test and abolish the detailed examination of hymen and documentation of old injuries to hymen. Appropriate directions should be issued to all hospitals – public and private.

vii. Accountability for Proper Investigation and Evidence in Rape trials – If a rape trial gets thrown out of court, or the accused is acquitted on the pretext of lack of evidence, or evidence

that is inadmissible (it has been tampered with, or was not collected by legal procedures) – the police investigators of the case should be held responsible and criminally liable.

viii. Protection of Victims and Witnesses: Protection of victims and witnesses from the pre-trial to post-conviction stages in accordance with the jurisprudential developments and Law Commission's 198th report released in August 2006.

ix. Reparation including Compensation and Rehabilitation: Reparation including Compensation and Rehabilitation: As a measure of reparative justice, for victims and survivors of sexual assault, the 2012 Bill must lay down State obligations towards such remedy and reparation, including provisions for medical treatment, psychological care, shelter, and income, in order to overcome possible destitution and social ostracism. These provisions should not be linked to the criminal trial and prosecution.

x. Role of public institutions: If any public institutions such as schools, hospitals or workplaces discriminate against or deny admission to rape survivors, they should face punishment. Such a measure would go a long way in addressing the continuing stigma faced by women and delinking the notions of rape and humiliation.

xi. Deletion of S. 377 IPC: Sec 377 needs to be deleted from the text of the 2012 Bill as it is redundant now, particularly since "sexual assault" has been broadly defined under the present Bill to include anal intercourse without consent, and the Protection of Children from Sexual Offence Act 2002 criminalises penetrative sexual assault on children. Thus the only remaining purpose the law serves is to criminalise consensual intimate acts between adults in private, which the Delhi High Court has held as contrary to the constitutional guarantee of equality, dignity and privacy for all.

xii. Marital Rape: Following from a better, more comprehensive definition of consent, rape that occurs within marital relationships as well as "relationships in the nature of marriage" defined in Sec. 2 (f) of the Protection of Women from Domestic Violence Act, should be included in this bill.

xiii. Sexual violence faced by sex workers: Violence and sexual assault is linked to the perception of sex workers as not being 'normal citizens' and has led to routine and large scale violations of human and fundamental rights like right to life, equality, equal protection of laws and due process under law. Stigmatization of sex workers permeates the criminal-justice machinery across India resulting in a lack of protection under the law.

Myths surrounding the violence of rape against sex workers ensure that they are constantly on the fringes of access and redress to justice, continually stigmatized, discriminated and denied access to their rights. These myths include "a sex worker cannot be raped", "they deserve to be raped" etc. Social stigma makes it easier to sexually assault people in sex work, and means that public sympathy for a sex worker who has been assaulted is near non-existent; and judicial

stigma means lower rape complaints, and near-zero convictions. For sex workers, the State has become an instrument of violence and is feared rather than seen as a protector of rights. When sex workers approach the police to register cases of violence and assault by private parties, their right to remedies are routinely denied by the police who refuse to lodge First Information Reports or investigate the assaults. People in positions of authority routinely demand sexual favours from sex workers for releasing them from custody, speedy redress of grievance, accessing entitlements. Sex workers are also detained illegally and tortured in custody. This should be considered within the purview of “Aggravated Sexual Assault”. Further, it should be considered sexual assault when people in authority verbally abuse sex workers using specific sexual innuendo and language.

### **E. Argument against inclusion of death penalty in the case of sexual assault**

The recent Delhi bus gangrape case has led to an overwhelming demand for the death penalty for the perpetrators of sexual violence. We think that death penalty is not the answer and there is a need to evolve punishments that act as true deterrents to the very large number of men who commit these crimes. Our stance is not anti-punishment but against the State executing the death penalty. The fact that cases of rape have a conviction rate of as low as 26% shows that perpetrators of sexual violence enjoy a high degree of impunity, including being freed of charges.

Statement by women’s and progressive groups and individuals condemning sexual violence and opposing death penalty

(Appendix B)

“Capital Punishment for Rape: Can it Tackle the Growing Violence Against Women?” Saheli Newsletter February 1999)

(Appendix C)

Demands and Suggestions for addressing sexual violence and ensuring safety of women beyond the Law.

### **(Appendix D)**

- Ensure the accountability of police and certainty and swiftness of action.
- Look into the role of police in dealing with women participating in campaigns/demonstrations.
- More women police personnel in remote areas, smaller cities and rural areas.
- Look into pervasive sexual violence in Nari Niketans, remand homes, etc.



- The need to address all forms of sexual harassment and violence and not label them as minor offences; revisions in the law needed alongside sensitization of the law enforcing authorities.
- The criminal justice system should put in place accessible provisions and procedures for physically and mentally disabled girls/women (such as sign language for the deaf, braille for the blind etc.).
- The government needs to think and act to change normalization of such violence.
- Routine and frequent gender sensitisation of police force, also link it with their performance indicators (promotions/demotions).
- An audit of all institutions, including NCW, SCWs, etc. and establishment of protocols and procedures that advance women's rights
- Include women from the movement in Committees constituted by the Government including the Justice Verma Committee; as well in the NCW, SCWs, Social Welfare Boards, etc.
- The Justice Verma Committee should hold consultations with women's groups.
- Support to survivors – medical care and other support mechanisms
- Rehabilitation and compensation for victims; for example in cases of acid attacks
- One common helpline to be established and the same should be disabled friendly as well.
- Every MP and MLA should set aside some fund for women-related issues.
- Government should refrain from giving gallantry awards to those against whom there are complaints of sexual torture or violence.
- All political parties must bar those charged with rape and sexual harassment from holding government positions.

In view of these serious concerns, it is critical that the Government holds a process of consultation with women's groups and also with persons affected by sexual violence at every stage of the formulation of the Bill.

Saheli Women's Resource Centre

New Delhi, 5th January 2013

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