

## **Background to discussions by women's groups on Sexual Assault amendments (2001- 2010)<sup>1</sup>**

Part I: Timeline of discussions on sexual assault legislation

Part II: Minutes/ responses

### Part I

<b>Date</b>	<b>Activity</b>	<b>Place</b>	<b>Minutes</b>
31 <sup>st</sup> July 2001	Ist meeting to discuss bill drafted by AIDWA, IFSHA and SAKSHI	Delhi	Not found (NF)
23 <sup>rd</sup> -24 <sup>th</sup> June 2001	FAOW organises meeting to discuss sexual assault laws	Bombay	See below
20 <sup>th</sup> August 2001	2 <sup>nd</sup> follow up meeting	Delhi	NF
17 <sup>th</sup> September 2001	3 <sup>rd</sup> follow up meeting	Delhi	NF
5 <sup>th</sup> October 2001	4 <sup>th</sup> follow up meeting	Delhi	NF
2 <sup>nd</sup> November 2001	5 <sup>th</sup> follow up meeting	Delhi	NF
7 <sup>th</sup> - 9 <sup>th</sup> December 2001	National Consultation on sexual assault laws (follow up of June)	Bombay	See below
8 <sup>th</sup> January 2002	Letter to Law Minister- outcome of national consultation held at Bombay		See below
30 <sup>th</sup> January 2002	Women's groups hold a consultation to finalise the AIDWA draft which is then presented to the Law Minister	Delhi	NF
7 <sup>th</sup> March 2002	Nirantar organises a meeting to discuss the discuss bill and position for a meeting with DWCD	Delhi	NF
4 July 2006	Voices against 377 meeting to discuss the AIDWA draft in the wake of media reports of the bill being tabled in the monsoon session	Delhi	See below
January 2010	Women's groups draft an Open Letter to the Law Minister (and open it for endorsements) in response to the Special Courts Bill and to urge him to introduce a comprehensive bill on sexual assault		Available at <a href="http://www.petitiononline.com/Moily/petition.html">http://www.petitiononline.com/Moily/petition.html</a>

### Part II

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i)	August- October 2001	Background Note on meetings from August- October on the AIDWA draft
ii)	5 <sup>th</sup> November 2001	Minutes of the discussion organised by Saheli on the sexual assault bill
iii)	17 <sup>th</sup> November 2001	PRISM's Response/minutes after the meeting
iv)	23 <sup>rd</sup> -24 <sup>th</sup> June 2001	Minutes of the meeting organised by FAOW in Bombay
v)	7 <sup>th</sup> -9 <sup>th</sup> December 2001	Minutes of the National Consultation organised in Bombay
vi)	8 <sup>th</sup> January 2002	Letter to the Law Minister as decided in the Bombay National Consultation
vii)	30 <sup>th</sup> January 2002	Text of Kirti Singh e-mail with the final AIDWA draft
viii)	4 <sup>th</sup> July 2006	Minutes of the voices meeting held in Delhi

<sup>1</sup> Based primarily on e-mail records from 2001 to 2010

i) August- October 2001

In 1993 a sub-committee set up by NCW submitted a report on changes proposed on law relating to sexual assault. During 1996-97 discussions on these recommendations were held with some women's groups in certain parts of the country. January 1997– a written petition was filed in the Supreme Court – asking the court to interpret Section 375, Indian Penal code, 1860 widely, including within the section all forms of penetration. The Supreme Court referred the issue to the Law Commission of India to consider whether rape section could be so judicially interpreted or otherwise to suggest amendment to law. The Law Commission opted for amendment to law. Between 7.9.2000 –17.9.2000, Law Commission invited the Sakshi, IFSHA, AIDWA to discuss amendments to the law on rape. At these discussions the three organisations used a draft prepared by them, based on the earlier draft of NCW sub committee as the basic document. The Law Commission has forwarded a final draft to Ministry of law.

ii) 5 November 2001 Sahehi organises discussion on the sexual assault bill:

Minutes of the same are reproduced below:

“In 1997 Sakshi, IFSHA and AIDWA filed a petition in a case of child sexual abuse in the Supreme Court asking for directions on the definition of 'sexual intercourse' in the Penal Code and related matters. The court in 1999 directed the Law Commission to look into the matter. This set the 172<sup>nd</sup> Law Commission into process.

Several women's groups in Delhi have been meeting over the last few months to discuss these recommendations. The main issue for debate has been that of gender neutrality, in order to include same sex-violence.

At a meeting on 2<sup>nd</sup> Nov at Kirti Singh's office, the following points of consensus were reached:

1. The expanded definition of sexual assault was agreed upon.
2. It should cover child (both girls and boys) sexual abuse.
3. The Sexual Assault Bill should not be gender neutral, but gender-specific.
4. No woman should be targeted by a man.
5. Marital rape should be included.
6. Deletion of Section 155 (4) which allows the past sexual history of the complainant (woman) to be brought in.
7. Deletion of Section 377.
8. Age of consent should be reduced to 16 yrs (all present agreed except for CWDS, who said they had to discuss the issue).

The debate that remains, however, is a crucial one: How should the issue of same-sex violence be addressed? Should it be part of this law, another section altogether?

We strongly feel that groups and individuals working on LGBTK issues should be involved in this process, and their specific realities and concerns vis-à-vis the Sexual Assault Bill articulated.

To further this process, a meeting is being arranged by PRISM on Thursday 8<sup>th</sup> November at 6.30 pm at the Lawyer's Collective office, 63/2 Masjid Road, Jangpura, New Delhi 110 014.”

iii) PRISM's Response after the meeting held on 17 November 2001

“We write to you as PRISM, a Delhi-based group that is attempting to consolidate the links between the sexual minorities and other movements, to project sexual minority rights as human rights and to increase LGBT participation in ‘other’ issues. We would like here to share our concerns related to the Criminal Law Amendment Bill dealing with sexual assault (herein after, ‘the Bill’), which must be looked at collectively and not in isolation from each other.

Concerns about the Criminal Law Amendment Bill, 2001 relating to sexual assault

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At the outset PRISM would like to make it clear that we are concerned with the Bill not just with respect to the implications it has for sexual minorities but also on children's rights, rights of women, men and transgender people in different contexts. We feel that all these concerns can and must be addressed without prejudice to each other. We all recognise the pressing, urgent need for more effective laws addressing child sexual abuse and demand that children be provided redress against such acts and situations without further extending their torment. We recognise the need for amendments to the laws to make them more effective with respect to sexual assault of women. We also recognise that there is a need to address specific contexts of violence, such as custodial violence. As such, we applaud the spirit behind many of the changes suggested by the Bill.

The sexual minorities movement, if it may be called a movement, is young, but vibrant. There are processes around the country that are working on different aspects of empowerment, rights and services. There are processes that are seeking to form an understanding of contexts of same-sex violence. PRISM itself has set out on advocacy and lobbying processes on a range of issues and at a range of sites. There is a long way to go in understanding the different contexts of gender, same sex love, the structures of heterosexism, homophobia, and same sex violence, to name a few. It would be only fair for other movements to recognise that these processes are underway.

It is in this context that we are suddenly faced with a process, the Bill, which affects us directly, presumes understanding of the issues we are grappling with and the capability to address them... all this without so much as considering that there is even a movement to consult. So we feel it necessary to point out that the process of this Bill has yet again marginalized the issues and people affected.

So, what is the way in which we at PRISM look at the Bill?

**The context within which the Bill shall apply**

The context we are living and working in, as is the experience around the country, is that of patriarchy, heteronormativity and homophobia. The interaction of sexual minorities with society at large and with the legal system in particular is extremely painful. Whether it is the case of homophobic reactions within families or in social spheres including the workplace, aversion therapy being practiced in the medical profession, non-availability or accessibility of necessary healthcare services specific to sexual minorities, everyday harassment and extortion by police, criminal law or judicial pronouncements that make no bones about homosexuality being an aberration or a sick disease, we are faced with opposition difficult to negotiate with. The Bill will function in the very same context. These are the realities the sexual minorities movement is beginning to address.

The women's movement has been addressing the situation of the Indian woman for more than two decades now, although from a heteronormative perspective. Despite the the important breakthroughs the women's movement has achieved, Indian women are still far from true empowerment, far from being equal in society and before the law. At PRISM, we believe that the Bill in its current form fails to recognise this. Women are still not expected to possess sexual desire, still murdered every day for dowry, still hugely disadvantaged with respect to legal processes and infrastructure. The Bill will put women in the position where they can be accused by men, and other women, of sexual assault. Such a Bill must assume we live in a truly equal society with systems completely blind to gender. This assumption is faulty and the ramifications are serious for Indian women, they are serious for Indian women whose sexual orientation falls outside the heteropatriarchal norm.

The principles of the right to bodily autonomy and integrity are indeed amongst the most significant human rights – the question is whether the Bill will in reality contribute towards the realisation of these rights or will it be to their detriment. In other words, the decisions before us need to be informed by the context, and not ideology in isolation from it.

This being the background of our understanding, we would like to put across the following reservations:

**1. Expansion of meaning of sexual assault –**

the inclusion of sexual activity beyond vagino-penile penetrative sex within the legal understanding of sexual assault is indeed an extremely important and urgent change, especially from the context of child sexual abuse. At the same time, we must recognise that this is the first recognition of sexuality between women as sexual activity. At present Section 377, at least technically, does not apply to sexuality between women. The inclusion of non-penile penetrative and non-penetrative sex changes all this. In the extremely anti-woman context of the legal system in practice, the Bill thus directly makes lesbian women freshly vulnerable to harassment by the legal system and vested interests in a legalised fashion. These implications of this radical change need to be recognised.

**2. No protection from complaints by third parties-**

A basic principle in Criminal procedure is that ‘any person who is aware of an offence being committed’ may make a complaint (there are exceptions to this rule, albeit in atrociously heteronormative contexts of ‘offences against marriage’, where the Magistrate may take cognisance of a complaint only if it is filed by the husband or the wife). The Bill does not at all foresee the likelihood that the new Section 375 will be abused to harass adults in consensual same-sex relationships by vested interests. This new section in the present heteronormative context will provide homophobia with all the space to express itself. Familial pressures and abandonment, pressures to marry, hostility of colleagues and general working environment, extortion by police etc., can now be expressed in the form of threats of legal allegations of sexual assault. In our discussions on this issue at PRISM we have come to realise that the issue of third party complaints is complicated. For instance, if we were to consider this Bill as empowering, in the sense of providing people with remedies against same sex sexual violence, excluding third party complaints could be detrimental – not too many people are in a position to make police complaints that would expose their sexual orientation. The experiences in laws relating to domestic violence are parallels to this. We feel that in any case, this law is not attempting to empower sexual minorities or even people who do not identify as sexual minorities. We feel that this Bill has not been drafted keeping in mind the concerns of sexual minorities. Thus the focus of LGBT communities right now must be to ensure that the harm done by the Bill is minimal. This must be kept in mind in suggestions to changes in the Bill.

**3. Women as ‘accused’ -**

except with regard to child victims of sexual assault, PRISM has grave reservations over making sexual assault a gender-neutral law with respect to who can be accused under the new Section 375. Indian women are extremely disempowered in relation to legal systems. It is common knowledge that the very methods the police force uses to investigate crimes of rape deters women from lodging complaints. We all are aware that in our country men are acquitted of gang rape by judges who believe the high caste of an accused makes them incapable of raping women of a lower caste, a country where women are raped in police stations when attempting to lodge complaints of rape, by the medical officers assigned to gather physical evidence through post-complaint check-ups. This is the context in which this Bill will operate. Given this, certain changes for example the scrapping of the much-used provision that the accused may prove that the woman was generally of immoral character are very welcome changes. But the provision of gender-neutrality places the Indian woman in great danger of being unjustly harassed. Women who are raped will find that they are being prosecuted for sexual assault by the rapists. They will be accused of sexually assaulting their sisters-in-law, brothers-in-law, mothers-in-law, nephews, neices. In a society where women are not supposed to possess sexual desire, the villainess of mainstream cinema is not a thief or a terrorist, but a slut, a vamp. We at PRISM have no doubt that the Bill will be abused to disempower women even further. Lesbian relationships will become particularly vulnerable in the heterosexist, patriarchal society we live in where women’s sexuality is negated.

We are also specifically concerned about the position of women public servants with respect to custodial sexual assault and urge that there be sufficient safeguards to prevent unwarranted harassment of women officials. We believe that the bill will be prone to abuse to the disadvantage of those whose genders are marginalised – for eg emasculate women and effeminate men who are already in extremely vulnerable positions vis-à-vis society at large.

**4. Onus of consent on the accused –**

The Bill has also put the onus of proving consent where sexual intercourse has been proved to have taken place, in certain circumstances, on the accused. Again, at PRISM we feel that this is a complex question. There is a different context to custodial lesbian sexual assault and to sexual assault within a lesbian relationship. There is a different context to custodial heterosexual assault and sexual assault within a heterosexual relationship for that matter. All these cannot be clubbed together under one gender-neutral sexual assault law. The Bill fails to take into account these differences and makes a similar error that Section 377 IPC does – failing to treat non-consensual child abuse and consensual adult male-to-male sex differently.

**5. Process of law reform through the legislature –**

The experiences in the women's movements have shown that patriarchal mindsets influence the legislative processes more significantly than the interests of people's rights. The presently debated Bill against Domestic Violence against women is a stark example of the manner in which ideas presented to the legislative process are mutilated beyond recognition by the processes themselves. The Sexual Assault Bill once introduced into the process will be sent to all the states for comments, amended, reamended and then finalised by the Cabinet (if at all this is put through the process of a state sponsored Bill and not introduced as a Private Member's Bill) before being introduced in Parliament, after which, the Bill can be modified further by legislative processes before being passed as an Act. We have no reason to believe that the prevalent homophobia will not completely mutilate what is being presently seen as a positive impact for sexual minorities, given the present propensity of Indian politics to place premium on a skewed concept of 'Indian culture'. The process has to simply decide not to drop Section 377 in the Act for us to be landed in the same nightmare that the Sri Lankan sexual minorities are currently struggling to cope with. LGBT communities must realise that the chances of this happening are very high.

**6. The temptation of 'getting a foot in' -**

it is clear that this Bill will be the first recognition of same sex sexual behaviour that is acceptable. At the same time, it is necessary to recognise that this is in a negative context - it is like seeing a person dying of starvation and instead of providing food, of warning the person that one can be prosecuted for stealing food. The fact is that none of us are in a position to really understand the contexts and issues of same sex violence – we are still grappling with sex, sexuality and gender and do not as yet understand fully what legal strategies need to be used to deal with the problems within these contexts. Keeping this in mind, a negative articulation could only be seriously detrimental. We need to postpone the 'getting our foot in' until we have a holistic perspective and the rights status of sexual minorities is positive.

Keeping these concerns in mind, PRISM suggests...

1. That the process of the passing of this Bill into the hands of the Legislative system be stalled in order to enable a thorough consideration of the above issues and contexts of all people affected by it, and further to enable consultation of all affected by changes in the law
2. That gender neutrality be limited to cases of child sexual assault
3. That the sexual assault law must otherwise be gender specific to cases of sexual assault of females by males"

For PRISM

Jaya Sharma, Akshay Khanna, Dipika Nath, Shaleen Rakesh, Lesley Esteves

iv) 23 -24 June 2001 FAOW organizes a meeting in June 2001 on the 172nd report on the Review of Rape Laws of the Law Commission of India.

Minutes reproduced below:

“Dear Friends,

As you are well aware, the Law Commission of India has come up with a report on a review of the rape laws and this is now with the law ministry. The Law Commission's recommendations have been made in partial consultation with Sakshi, IFSHA, and AIDWA from Delhi. This process has been continuing for a while now and many groups have been discussing the recommendations which are quite far reaching.

Women's groups have been campaigning for changes within the rape laws for more than two decades now and in the last decade, child right's groups and LGBTK groups too have been campaigning for specific changes in sexual assault laws, especially in Section 377. The changes proposed in the LCI report affect each of these groups and thus it is important that we all meet to discuss our various concerns and come up with joint campaigns and recommendations, so that we are able to get all our demands included.

As a step towards this, we had a Maharashtra level meeting, convened by India Centre for Human Rights and Law - Child Rights Cell and Aanchal, and Forum Against Oppression of Women, on the 23rd and 24th of June 2001 at Bombay which was attended by various women's groups, child rights groups and LGBTK groups from Bombay, Pune and Goa. Sakshi too attended this meeting as they had been the ones to start the process of discussion with the LCI. The group from Goa has been working with child sexual abuse cases and so they were also invited. During the meeting, the three interest groups - LGBTK, child rights, and women's groups - met separately as well as together to discuss how the present laws affect each of us and what the impact of the proposed laws would be, and finally on how we could strategize and campaign together for the laws we feel would be helpful for all. From the separate and joint discussions that we all had, we felt that although each of our concerns were quite specific, there were some things in the LCI recommendations that all of us unanimously welcomed or opposed and these were as follows.

Ø The widened definition of sexual assault that the LCI had suggested was very welcome as it helped to look at sexual assault from a much broader, non-moralistic point of view.

Ø The inclusion of special clauses to include child sexual abuse was also a much needed and wanted change.

Ø Repealing of Section 377 was welcome, although it was felt that there should have been clear reasons stated for it.

Ø There was strong opposition to the fact that marital rape had not been included. And all present felt that we needed to strongly oppose this.

Ø The dropping of sec. 155 from the evidence act which probed the past sexual history of the victim was also a welcome move.

Ø Many of the changes in procedures suggested by the women's groups had, however, not been accepted and we needed to lobby for their inclusion.

There were two issues on which we could not arrive at a common understanding. These were:

Ø The LCI recommendations and the three groups who had given their recommendations have all asked for sexual assault laws to be made gender neutral. There was strong opposition to this from most groups present but some insisted that this be retained.

Ø There was no consensus on whether it would be better to have a separate law for child sexual abuse rather than include them in the general law. The opinion was divided on this too.

Seeing the kind of discussions we had and the various points that emerged from varying experiences we all

felt the need to have as many discussions as possible. Also realizing that these changes affect many people and would also affect others for many generations later, we all felt that we needed to have a larger national level consultation on this with various women's, LGBTK and child rights groups, from all over the country. This would help us formulate a collective understanding of the issues concerning all of us and to come up with a joint campaign, which might be very useful at this point when the recommendations are still under consideration. To this effect, we are organising a national level meeting and would like to extend this invitation to you. Please do make it possible to come to this meeting and join in the processes.

Women's groups:

It was twenty years ago, that various women's groups, all over the nation got galvanized and united in the struggle against sexual violence. The outcry was against the acquittal of two policemen, who had sexually assaulted a 14-year-old girl child. Supreme court found no fractured bones in the girl's body to indicate that she had not given consent, and therefore released the policemen. From then on started our efforts at changing the laws related to sexual assault, challenging the stigma attached and silence enforced around this issue. We exploded many myths surrounding the issue. Women's groups evolved and spread the understanding that sexual violence exists because of power exercised by men over women within the patriarchal societal structures, which are further graded through caste, class and religious divisions.

Only a few of the demands put forth by women's groups found place in the reforms over the years. Major being with respect to custodial rape. It was with this long history of raising demands for reforms in laws related to sexual assault that the group gathered at the discussion in Bombay looked at the 172<sup>nd</sup> recommendations by the Law Commission of India. In the discussion following points emerged.

While this recommendation has included some long-standing demands of the women's movements, it has excluded some very major ones. We all felt that the positive changes that the LCI recommends are:

1. One of the common concerns for women's groups has been the definition of the term rape itself. We have consistently asked for an overarching definition of sexual assault which would move away from the typical peno-vaginal penetration as the ultimate crime and violation. To that extent we really welcome the LCI recommendations and the broadening of definition of sexual assault done there. This redefinition is helpful in all cases - be they of assault on women or young children. It helps in looking at assault in terms of the violation rather than on grounds of morality and purity and that itself is a big battle won.
2. Besides this the other recommendation that is positive and important is that of not looking at the woman's past sexual history and character in dealing with cases of sexual assault.
3. The recommendation to do away with section 377 of IPC is also a welcome one. This section is used by police and societal, political, state authorities to harass sexual minorities.

There are some major issues, however, on which we have very strong disagreements with the LCI recommendations and in fact feel that we need to campaign strongly against the proposed changes. Whatever changes do come take years and have impact on almost generations to come and so it is important that we stop them before they are enforced.

1. The first is the exclusion of marital rape from the purview of criminal law. Not only does the LCI report not include marital rape, it goes ahead to state that doing so would mean interfering in the institution of family! All the groups present felt that we need to insist on recognition of marital rape as a crime. At the same time we would have to debate on doing away with clauses like "restitution of conjugal rights" from the marriage laws.
2. The other major concern has been the tremendous delay involved in the court proceeding. Law commission has made no recommendation in this regards whatsoever. We all have experienced that in most

of the cases, the matter gets dragged on for years which completely exhausts the woman, her resources and provides ample opportunities to the accused (which many cases happened to be part of the state machinery) to eliminate any evidence whatsoever. In many a cases we have seen women are forced to retract their statements or have been forced to "disappear". We need special courts to deal with cases of sexual violence, which would help complete the cases in time bound manner.

3. One major and most perturbing concern is that of making sexual assault laws gender neutral. Though this was a suggestion put forth by Sakshi, IFSHA and AIDWA, all other groups who were present there at the meeting felt very strongly that this major change should not be recommended without any broad national level consultation of any nature. It was felt that its inclusion could damage women more than help them. Already we find a backlash from men against women on issues of domestic violence. Further in our analysis all along sexual assault has been understood as a gendered crime and so there is the specificity of men's gender power over women in all cases of sexual assault. We have always looked at these not only as individual cases of violation but as violence against all women in this society. This specificity and understanding has to be retained in today's world and hence sexual assault laws cannot be gender neutral much in the same way that domestic violence laws cannot be gender neutral.

4. For using gender neutrality in cases of same sex relationships, those of us present felt that today same sex relationships were criminalized. Without giving them any positive and legal recognition, if such clauses of sexual violence were included for same sex relationships, they would once again be used most against the weaker person and/or groups of people - openly LGBTK.. people in this case. We feel that we really need to dialogue on these issues and plan and campaign in ways that would get us changes in the law that we all want.

5. One of the suggestions which came from child rights group adds one important point. While not making the entire legislation gender neutral cases involving gang and custodial sexual assault on men should be covered by this legislation.

6. Some of the important recommendations made by women' groups with respect to procedure, specially in cases of child sexual abuse have not been accepted by Law Commission. These need to be included. There is a need to have special legislation dealing with sexual assault on children.

#### LGBTK groups:

The main issues that all LGBTK groups are fighting against are socio-cultural prejudice and persecution, be it from society around us, the state and its various instruments, and even our families. Section 377 has been under debate for a long time and all groups across the country have been asking for its repeal. It has been used consistently to threaten and harass both men, women and transgender people in various ways and more recently there have been more and more cases filed under it.

Simultaneously, we recognize that in the absence of other laws and the limited understanding of rape reflected in the present laws, child rights and other groups have been using it. Thus we have also demanded a simultaneous inclusion of laws to deal with child assault. We thus welcome the broadened understanding of "sexual assault" proposed in the LCI recommendations and the repeal of 377 within it. But we feel that the same law cannot be applicable to all as the contexts and vulnerabilities of each section are different and thus need to be addressed differently.

After a long debate of suggestions and counter arguments and a lot of deliberations in the separate group discussion, the following points were agreed upon by all the groups present:

Ø The definition of sexual assault in the 172nd report should be accepted.

Ø Child sexual abuse should be covered by sexual assault laws, but separately from adult assault as children are differently vulnerable.



Ø Section 377 must be repealed.

Ø Marital rape should be recognized as sexual assault under law.

Ø An anti-discriminatory clause on the basis of sexuality or sexual orientation should be introduced in article 14 of the constitution.

Ø LGBTK groups should work towards understanding the violence that happens to each of the various groups and find ways of dealing with sexual and other violence against us as well as amongst us.

The majority of the groups present also felt that "Gender neutrality" as an overarching term in sexual assault laws should be opposed since:

Ø In the absence of any positive recognition of same sex sexuality, it would only create space for already marginalised and disempowered persons to be further persecuted.

Ø Even in the case of anti-discriminatory clause on the basis of sexuality or sexual orientation, the same sex sexual assault laws should be separate to reflect our contexts and vulnerabilities.

Ø While it is true that there is same sex sexual assault, it cannot be that this issue can be addressed along with male to female or adult to child sexual assault. There have to be laws that take into account the strong and dangerous prejudices that exist against sexual minorities while formulating a law on same-sex sexual assault.

However, there was a strong dissent to this from Aanchal who felt that gender neutrality should be maintained to take care of legitimate same sex violence. It was hence decided that we should have a larger discussion on this issue and other recommendations of LCI on a national level by inviting all the LGBTK. groups for more deliberations. It was also felt that we need to continue to work with women's rights and child rights groups.

#### Child Rights:

In India, there is no separate law on child sexual abuse; the provisions of the general law, i.e. IPC, Cr.PC and Indian Evidence Act apply to cases of child sexual abuse. The existing law is inadequate to deal with child sexual abuse. There is a need to comprehensively amend the existing provisions of law dealing with child sexual abuse or enact a fresh enactment on this subject.

It is necessary to scrutinize the inadequacies in the existing law, and the LCI: 172nd Report, and examine whether the recommendations of LCI sufficiently plug the loopholes in the existing law.

The main inadequacies in Section 375 of IPC, i.e. the rape law in dealing with child sexual abuse are briefly mentioned here under :

Ø The perpetrator of the offence is male and the victim a female, therefore child sexual abuse of a boy child is not covered under this Section.

Ø The statutory age for rape is 16 years, while in case of marital rape the age is 15 years.

Ø Penetration is necessary to constitute rape under the existing law, in case of child sexual abuse, there may not always be penetration.

Ø Fondling and other kinds of sexual abuse which do not fall strictly within the purview of Section 375 of

IPC is covered under Section 354 of IPC. The trauma to the child is the same as in the case of penetration, but the punishment under Section 354 is minimal.

The LCI Recommendations has suggested the substitution of the term rape with that of sexual assault, and has also rendered this provision of law gender neutral and has expanded the same to include different sorts of penetration.

Child rights' groups may consider the following options :

Ø Accept the LCI Recommendations pro tanto as the proposed amendments cover sexual abuse of a boy child and different types of sexual abuse, viz. vaginal, anal, oral, and penile, any other part of body or object penetration.

Ø Separate provision on child sexual abuse be incorporated in the existing law.

Ø Separate law on child sexual abuse be enacted.

Ø Add an Exception to the existing Section 375 of IPC, stating that in case of child sexual abuse, both the perpetrator and the victim may be male or female.

Ø Procedural changes are imperative as the child witness undergoes secondary damage at the trial stage as she/he is not offered any concessions due to age. The LCI recommendations have not dealt with any procedural change.

Ø A separate provision to be incorporated to cover paedophilia.

Ø Child sexual abuse trials require to be expedited and judges be provided with expert assistance, e.g. counselors, doctors.”

#### v) 7-9<sup>th</sup> December 2001 National Consultation in Mumbai

Minutes reproduced below:

##### “PROPOSED CHANGES IN RAPE LAWS - SOME CRITICAL RESPONSES

A national -level meeting was held in Mumbai from 7th to 9th December 2001 in response to the proposed changes in the rape laws introduced in the 172<sup>nd</sup> report of the Law Commission of India. As women's groups, child rights groups and groups working amongst sexual minorities, we were keen to arrive at a common understanding and plan strategies in response to the proposed changes in the existing rape law provisions. Especially because these changes seek to include all of us in its scope and purview as envisaged in the LCI report. In addition to responding to the LCI, we place before you our ideas and understanding that emerged in this three-day meeting, the ideological issues involved and the real threats posed to all of us who are engaged in creating a society free of violence.

For information, the LCI recommendations, while making changes in the interests of women, are also based on an explicit understanding of seeking legal redressal for child sexual abuse that has increasingly come into prominence and lacks any legal mechanisms whatsoever of dealing with the reality. These recommendations were an outcome of the long legal case waged since 1994 by an NGO named Sakshi in New Delhi in dealing with the sexual abuse of an 8-year old minor child at the hands of her father, a government employee. In the course of the case, the Supreme Court urged the LCI to look into the existing rape laws and give recommendations suggesting any scope for change that incorporates the interests of both women and children. Along with Sakshi, both IFSHA and AIDWA in New Delhi were also consulted. These consultations resulted in proposing the laws to be gender-neutral thereby implying both the victim and the accused to be of either sex. This will cover not only women and children as is the stated intention

but will bring into the purview of the law lesbians, gays and all other sexual minorities whose struggle for identity itself continues to be fraught with obstacles. The pitting of three socially oppressed groups in this manner by bringing us all under one umbrella legislation on sexual assault without taking our specific needs into account, raises many serious implications that were addressed in this three-day meeting. It is our endeavor to share these concerns with you and others who have always stood for the rights of women, children and sexual minorities.

#### WHO REPRESENTS US?

The question of representation is of paramount importance today when various oppressed and exploited groups are asserting their identities and drawing the attention of the state and society to their special needs and demands. The amended rape law in itself has been an outcome of women's struggles ever since the Mathura rape case in the early eighties. Various deliberations and discussions over the years has clearly indicated the need of women's groups to improve the existing rape law provisions especially to hasten the procedure of getting legal justice, to improve the CrPC as well as the Indian Evidence Act. However, at no point in these collective processes have any women's organisations, women, or any survivors of rape indicated the need to make these laws gender-neutral. Therefore, we are concerned how the LCI has proposed these legal reforms without adequately consulting women's organisations, child rights organisations, and sexual minorities to make the process entirely representative. Any gender-neutral laws de facto bring into its purview the issue of lesbians, gays, bisexuals, transgendered and other sexual minorities. No process of consultation on legal reform should ever be so top-down that those who are so directly affected by these changes are not taken into consultation at all. As sexual minorities, despite our emerging as a formidable force in the struggle for visibility and our basic rights, even our existence is not taken into consideration by this heterosexist and patriarchal state and society. In the absence of recognition of our sexual identities, we are extremely cautious of any purported interest in the curbing of violence amongst us. The homophobic attack of the right wing forces on the screening of Fire and the arrests in Lucknow of social workers working with HIV positive persons under charges of IPC 377 is evidence of the intolerance of this patriarchal heterosexist society. While we deem it necessary to make the perpetrators of child sexual abuse punishable by law, it is sacrilegious to do it at the cost of bringing in the entire lesbian and gay community into the ambit of the same law without any consultation whatsoever. Our non-inclusion as sexual minority groups is the biggest oversight of the LCI, if it can be called an oversight at all. The emergence of lesbian and gay groups in the last decade is evident to any group or person seeking to represent the interests of sexual minorities or concerned with the question of sexual assault. Women's groups who have struggled to voice their own needs and demands because of being marginalized in society need to be equally vigilant not to represent or patronise the interests of lesbians and gays or any other marginalised section in society. We first need anti-discrimination laws for sexual minorities before our other needs are addressed. Our other needs and demands need to be left to us for both articulating and demanding in a collective process. The fact that our struggles are interconnected in putting an end to an exploitative social order can gain strength from the democracy and space all of us give to each other instead of seeking to represent others. Any legal reform that does not take into open consultation the sections of society that it seeks to represent is highly undesirable and cannot elicit the trust of those it represents. We do not need any spokespersons for us nor do we wish to be dragged against our wishes or even by default into the existing laws. These laws in any case have precious little to offer to even children or women for whom it has ostensibly been made and which continue to be placed in an overall heteronormative and heterosexist framework.

#### WE OPPOSE GENDER-NEUTRALITY

The women's movement has always demanded and worked towards reforms in the existing rape laws. However, once the issue of child sexual abuse is brought into the ambit of the same laws, the entire range of provisions has to be made gender-neutral since it includes boys also. The addition of other socially vulnerable groups increases the complexity already faced by women in rape trials and procedures, which already are biased against women. The proposed change focusing on gender-neutrality for rape laws negates the sustained struggle of the women's movement against all forms and levels of patriarchal violence we women face in this society. We continue to bear the brunt of rape by men from the home and the street

to police stations, riots, and armed conflicts. We continue to be raped in caste conflicts, raped for punishment to defy societal norms and we also come in handy to be raped in revenge when two or more conflicting groups want to get at the "honour" of the other. Our struggle for just punishment and improvement of the existing rape law procedures continues to be an uphill task. The proportion of rape conviction despite all efforts barely manages to touch 4% in this country. In this dismal scenario, the proposed changes that make the rape laws gender-neutral will in our understanding completely undermine any and all gains already made by the women's movement. Today, the rights won by various sections of society through struggle are under attack. In such a context, we need to be vigilant that we do not play into the hands of the state or judiciary in the guise of seemingly progressive laws. The current changes proposed in the labour laws in this era of liberalisation are completely negating the reality of class differences as the state accommodates the conditions of labour to the needs of capital and proposes to curb all existing provisions of workers organizing around their own interests. Similarly, here too the politics of patriarchy are being completely buried by recommending gender-neutrality in rape laws. Men and women being considered at par is an assumption on which gender neutrality is being posited as a positive measure. It is futuristic to assume that both women and men are subject to sexual assault in the same way or intensity. However, this is not the reality. In the present society, we oppose gender neutrality not only where rape is concerned but also in any legislation pertaining to maintenance, domestic violence or sexual harassment at the workplace.

#### SEPARATE LAW NEEDED AGAINST CHILD SEXUAL ABUSE

Next, as individuals and organisations working on the reality of child sexual abuse we clearly want a completely separate law dealing with child sexual abuse. We are very concerned that by conflating the question of child sexual abuse with that of violence against women, the proposed changes will not adequately deal with the problems of either children or women. Our children do need to grow up safely without the reality of violence marring their experience and innocence or even living in the threat of such violence. However, the means to address this reality need not entail the clubbing of child abuse in a rape law meant for adult women. The conditions and circumstances that contribute to child sexual abuse necessitate the creation of very different laws, procedures and processes. Continuing to place child abuse in the archaic outrage of modesty provisions meant for women or under IPC 377 which in any case needs to be repealed for several valid reasons that we come to later is far from adequate. The conflating of consensual adult sex with the nonconsensual penetration of children compounds the problem in different ways. In addition, child-sensitive procedures of investigation and arbitration are the need of the day, which does not get addressed at all.

#### REPEAL OF IPC 377

The repeal of 377 is crucial as it is an extremely archaic and moralistic law that has nothing to do with sexual violence but is a direct means of sexual control and regulation. It makes any sexual contact beyond peno-vaginal penetration unnatural and therefore unlawful and to be penalised. The existence of IPC 377 along with the government's open support of MSM groups and HIV/AIDS work shows the schizophrenic application of laws and policies of the Indian state. In the absence of the repeal of IPC 377, as sexual minorities we continue to face extreme homophobia accompanied by extortion, blackmail and sexual exploitation as a means to silence us into shame and fear. Therefore, we are extremely cautious of the state and its machinery and cannot negotiate with any ostensible concern for same-sex violence. The violence inflicted by the police and homophobics and our marginalization in a heterosexual patriarchal society needs to be taken cognizance of not only by the LCI but also by NGOs like Sakshi who have become the self-appointed representatives of sexual minorities today. What we need first and foremost is the recognition of our sexual identities by the state and society through introducing anti-discriminatory laws based on sexual orientation by amending Article 15 of the constitution. We also need some sort of concrete, positive statement from the state against the continual harassment faced by sexual minorities. Unless this protection is available, the laws against same sex violence would just result in further violation of all those who look different or identify differently.

## CHALLENGES BEFORE US

We need to view these initiatives for legal reforms in the present socio-cultural and political context without engaging in only legal or literal interpretations of the same. This is happening at a time of right-wing ascendancy the world over when the model of the nuclear family is being upheld all over again in patriarchal reassertion to counter the challenges posed by the women's movement to the state and society. The changes sought in matrimonial laws is resulting in courts, judges and the police becoming the moral guardians of women in crisis situations and imposing reconciliation whereas we want justice to be able to live in dignity. The media is going hoarse with images of upper-class upper-caste women toeing the patriarchal line in keeping rich families intact thereby ignoring the struggles and the daily reality of the vast majority of ordinary women in the face of caste, patriarchal and class oppression. The attack on Fire, a film depicting lesbian love, and of Water showing the travails of widowhood, by the Hindu right-wing forces is evident of the intolerance of these forces in granting any other identity of woman as a social being. And it is not a coincidence that the reassertion of such patriarchal values is happening at a time of economic liberalization where the gains made by women face the danger of falling prey to the forces of consumerism and male chauvinism. Changes in laws always reflect the interplay of various ideological forces. Therefore, we need to be cautious of the hectic pace of legal activism spurred by big NGOs that negate the history of struggles of oppressed groups and their presents needs and realities. The struggles of women along with lesbians and gays have challenged the dominant paradigms of a heterosexual patriarchal society. The real dangers of the proposed gender-neutrality of the rape laws today ignores both the problems separately faced by women and children as well as the needs of lesbians, gays, bisexuals, transgendered, eunuchs, and various other sexual minorities. Today, more than ever we need to unite with all democratic forces to resist these top-down legal reforms in our struggle for an egalitarian society. And today more than ever, all other progressive sections need to stand by the struggles of women, children and all sexual minorities to be able to live in dignity in a society free of violence, a society of our own making.”

Aawaaz-e-Niswaan, Mumbai/Anveshi Research Centre for Women's Studies, Hyderabad /Arvanis Social Welfare Society, Mumbai /Broad MSM Organisation and Network (BAMON), New Delhi /Campaign for Lesbian Rights, New Delhi /CCDT, Mumbai /Centre for Women's Development Studies, New Delhi /Child Rights Cell: India Centre for Human Rights and Law, Mumbai /Forum Against Oppression of Women, Mumbai /Initiatives: Women in Development, Mumbai /Lakshya, Baroda /Majlis, Mumbai /Mahila Sarvangeen Utkarsh Mandal (MASUM), Pune/Organised Lesbian Alliance for Visibility and Action, (OLAVA) Pune /Open Learning System, Bhuvaneshwar /Saathi, Hyderabad /Sahayatrika Project, Trivandrum /Saheli, New Delhi /Sahiyar, Baroda /Sama, New Delhi /Samabhavana Society, Mumbai /Sangama, Bangalore /Shahna's Safety and Traffic Supporters, Mumbai /Special Cell to help Women and Children, Mumbai /Stree Manch, Nagpur /Stree Sangam, Mumbai /Udaan Plus, Mumbai /Vacha, Mumbai /Women's Centre, Mumbai/Women's Rights Law Centre, Nagpur /Women's Rights Initiative, Lawyer's Collective, New Delhi.

In the course of these three-day deliberations, two organisations Aanchal and Humsafar Trust, expressed their disagreement with the general stand taken by the rest of the organisations and sought to strategise separately.

### CONTACT ADDRESSES:

Forum Against Oppression of Women, 29, Bhatia Bhavan,  
Babrekar Marg, Gokhale  
Road, Dadar (West), Mumbai 400028.

SAHELII, Above Shop # 105, Defence Colony Flyover  
Market, New Delhi 110024

vi) 8 January 2002 Saheli drafts the letter to the Law Minister, as decided in the Bombay meeting.

“LETTER TO THE LAW MINISTER

The Minister of Law and Justice Shri Arun Jaitley,  
Ministry of Law and Justice,  
Shastri Bhawan,  
New Delhi 110001

Subject: Response to the 172<sup>nd</sup> report of the Review of Rape Laws of the Law Commission of India

Dear Shri Arun Jaitley,

A national meeting was held to discuss the 172<sup>nd</sup> report of the Review of Rape Laws of the Law Commission of India (LCI) in Mumbai from the 7<sup>th</sup> to 9<sup>th</sup> December, 2001. The meeting was attended by women’s groups, child rights groups and sexual minority rights groups from different parts of the country. The undersigned groups were unanimous in their views as represented below.

The LCI recommendations, which are at present with the Law Ministry, have suggested wide ranging changes in the sexual assault laws, Sections 375, 376 and 377 of the IPC and the Evidence Act. While we welcome some of the changes that have been suggested, like expansion of the definition of sexual assault, recognition of child sexual abuse, and modifications in the Evidence Act, we strongly oppose some of the other proposed changes and also the way in which these have been made.

We oppose the LCI 172<sup>nd</sup> report for the following reasons:

These recommendations have been made in consultation with only three groups – Sakshi, AIDWA and IFSHA (all from Delhi). Though these three groups work with women and children only, they do not, however, represent all the women’s groups and child rights groups that exist in the country. Changes in a law that affect all women and children all over the country cannot be made without a wider consultation with all these groups. We demand that such consultations be held and that the undersigned groups included in these.

The LCI recommendations affect people from sexual minorities because of inclusion of gender neutrality in sexual assault laws and deletion of Section 377 of the IPC. Many sexual minority rights groups have been active in the past few years in the country and it is a big lapse on the part of the LCI that they did not consult any of them before suggesting changes that would crucially affect their lives. We insist that no changes in the laws be made without consulting all these groups and taking their recommendations into account.

Experience of sexual abuse for children, women, and sexuality minorities is different and so the law dealing with it for each of them should also be different. The law should take into account these specificities for understanding sexual abuse and the procedures needed for trials of sexual assault cases. We do not support the pitting of these three socially oppressed groups by bringing us all under one umbrella legislation on sexual assault as it raises many serious implications that we discussed in the three day meeting held in Mumbai. We present here before you specific recommendations from each of these groups for laws related to sexual assault.

**Firstly**, women’s groups have been campaigning for changes in the rape laws for the past two decades. Despite some of these having been addressed by the LCI 172<sup>nd</sup> report, we wish to place before you some serious concerns raised by this report. The introduction of gender neutrality in rape laws changes the entire understanding of rape itself in the present society.

The proposed change focussing on gender-neutrality for rape laws negates the sustained struggle of the women’s movement against all forms and levels of patriarchal violence we women face in this society. We continue to bear the brunt of rape by men from the home and the street to police stations, riots, and armed

conflicts. We continue to be raped in caste conflicts, raped for punishment to defy societal norms and we also come in handy to be raped in revenge when two or more conflicting groups want to get at the “honour” of the other. It has now been internationally accepted that rape of women is committed as an act of war. This has happened in many situations, the most recent being in Bosnia Herzegovina.

Clearly, rape is a gendered crime and is an indication of men’s power over women and their bodies. Hence we strongly oppose gender neutrality that seemingly equates women and men. In cases of sexual assault men are the perpetrators and women are the victims of the abuse. We oppose the introduction of gender neutrality in any law that deals specifically with crimes against women.

We also demand that marital rape be recognised and coupled with civil remedies.

**Secondly**, it is essential that there be a separate law to deal with child sexual abuse to take care of both the substantive and procedural law. There should be specific provisions keeping in mind the gender, age and different types of sexual offences a child is subjected to. The legislation must also cover within its ambit incest, child sex tourism, child pornography, organised paedophilia, sexual assault in the name of religion, abuse at the workplace and all other inter-connected offences. It is also very necessary to have a child friendly procedural system which recognises the damage being caused to the children within the present system. Confrontation between the child and the accused should be limited, special courts must be designated to handle cases with regard to child sexual abuse and exploitation, time bound expedited hearing of matter, etc. A child related law must also look into the aspects of victim assistance and support, rehabilitation and diverse legal remedies.

**Thirdly**, laws based on gender neutrality de facto bring into its purview the issues of lesbians, gays, bisexuals, transgendered and other sexual minority groups. Sexual minorities have not been given any positive recognition through law till today. Certain same sex sexual acts have in fact been criminalised and there are no positive anti-discrimination clauses to protect their human and other civil rights. In the absence of all this, we believe and know that any law that acknowledges same sex violence would just work against the completely invisibilised and marginalised sexuality minority people themselves. We hence insist that we do not need any same sex violence laws as of today. After adequate measures are included for protection of rights, we can work towards addressing issues of same sex sexual assault. Even then, however, it would be important that the people from the affected communities themselves describe, define and address sexual assault from their perspective and experiences. Eunuchs, who have a recognised social identity and presence in our society, have been victims of sexual assault from men for a long time. To deal with this we feel that there has to be a provision in the law. We recommend that sexual assault laws be gender specific (i.e. considering men as the perpetrators and women as the victims), and that eunuchs be treated as women as far as these laws go. In light of the above we urge you to not accept the LCI recommendations in the form that they are. The suggestions made here have preceded a wide debate amongst different groups who will be affected by changes in the sexual assault laws. A deliberation with these and other such groups from across the country is essential before making such drastic changes in the law.

We understand that a Draft Bill on Sexual Assault based on the LCI recommendations has been prepared. We urge you not to accept any bill based on these recommendations. In view of the reasons given above, which clearly reveal how adversely it will affect various groups, we request you to open up the process for wide consultation amongst us all before taking the bill to the Parliament.

Finally, we look forward to meeting and discussing these issues with you at the earliest. An all-India level delegation will meet you at a time and date suitable to both you and us.

We await a positive reply from you.”

Thanks and regards,

(SAHELI, Above Shop # 105, Defence Colony Flyover Market, New Delhi)

**On Behalf Of**

Aawaaz-e-Niswaan, Mumbai

Anveshi Research Centre for Women’s Studies, Hyderabad

Arvanis Social Welfare Society, Mumbai  
BAMNON, New Delhi  
Campaign for Lesbian Rights, New Delhi  
CCDT, Mumbai  
Centre for Women's Development Studies, New Delhi  
Child Rights Cell: India Centre for Human Rights and Law, Mumbai  
Forum Against Oppression of Women, Mumbai  
Initiatives: Women in Development, Mumbai  
Lakshya, Baroda  
Majlis, Mumbai  
Mahila Sarvangeen Utkarsh Mandal (MASUM), Pune  
OLAVA, Pune  
Open Learning System, Bhuvaneshwar  
People for Rights of Indian Sexual Minorities (PRISM), New Delhi  
Saathi, Hyderabad  
Sahayatrika Project, Trivandrum  
Saheli, New Delhi  
Sahiyar, Baroda  
Sama, New Delhi  
Samabhavana Society, Mumbai  
Sangama, Bangalore  
Sangini, New Delhi  
Shahna's Safety and Traffic Supporters, Mumbai  
Special Cell to help Women and Children, Mumbai  
Stree Manch, Nagpur  
Stree Sangam, Mumbai  
Udaan Plus, Mumbai  
Vacha, Mumbai  
Women's Centre, Mumbai  
Women's Rights Law Centre, Nagpur

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Mumbai 400028.

SAHELII, Above Shop # 105, Defence Colony Flyover Market, New Delhi 110024

vii) 30 January 2002 women's groups meet to finalise the AIDWA draft

“To all concerned

Dear friends,

This is to inform all those who have been involved in the discussions initiated by AIDWA on the draft Bill on Sexual Assault that the final draft is ready and will be presented to the law minister shortly. Many extremely useful suggestions made by various women's groups have been included. The final bill reflects a broad consensus on important points reached through the discussions. The Bill is gender specific, it includes child sexual abuse as well as marital rape. It also makes important additions like stalking, making a child witness to sexual activity etc punishable. There is also agreement on the deletion of ss.377. The only point of difference is the approach to same sex non-consensual intercourse. The present draft includes a clause i.e clause II 7 of the draft to replace s.377 which recognizes non-consensual same sex intercourse as sexual assault. A change has also been introduced in the Indian Evidence Act to provide for the Expert Evidence in cases of child sexual abuse. Since the Bill itself is gender specific we hope it will be possible for those groups who do not agree with the clause on s.377 to lend their support to the rest of the clauses and the main body of the bill.

Several national women's organizations at a meeting held on January 30 have finalized the present draft



which is being appended to this letter. This is to request all those who agree with the draft to put your signatures to it and send it to me at the earliest.”

Kirti Singh

viii) 4 July 2006: Minutes reproduced below:

**Voices against 377 Meeting  
Lawyer's Collective's office**

**Attended by CREA, PLD, PRISM, Nirantar, Lawyer's Collective, Naz, PUCL**

The meeting was called with the following agenda: -

- Discuss the implications of the new sexual Assault bill prepared by AIDWA on the recommendation of 172<sup>nd</sup> report of Law Commission.
- To stall the process of the bill, which, as per media reports is ready to be introduced in the forthcoming monsoon session of the Parliament.
- PRISM would share recent cases of activism by Voices members in case of police harassment of a lesbian couple in Delhi and how the situation would have been difficult if the AIDWA draft was made law.

*[Brief history]*

So far as the history of the bill goes After AIDWA drafted it some women's rights groups / queer groups commented upon it and the bill underwent some further changes. That was around 2001-2002. The bill was then passed on to NCW and is presently with Home Ministry (HM). At the moment Both NCW and Home ministry is keeping mum as to what's the present shape of the bill but Mr. Shivraj Patil has reportedly said that its ready to be introduced in the monsoon session and is intended to make rape laws gender neutral. Further, the HM seems to be pretty clear that they are not scrapping Section 377.

As the group started the discussion the first issue that came up was that we didn't even know what the present shape of the bill is. So Jaya from PRISM suggested it would be futile to spend time upon the bill as it has surely undergone changes in the home ministry of which we are not aware. So we rather have our own list of what we want and what we don't want in the bill ready.

It was suggested we meet up NCW, Kirti Singh and Shivraj Patil in order to stall the process of the bill. Further we should try to hear from as many groups as we can on the bill. Let's circulate it in all directions and hear from all.

*[Lesley from PRISM shared the incident of police harassment of lesbian couple]*

“The father of one of the women lodged FIR against another accusing her of abduction. The paharganj police tried to arrest the accused. They kept chasing her for month. Both girls were adults and it was a consensual relationship and this fact was clear to police. The voices members approached the police who weren't very cooperative. Same was the situation with the Magistrate. Finally the members were able to quash the proceedings by obtaining orders from High Court.”

According to PRISM the things would have been difficult if the law was gender neutral. As for now the prosecution couldn't establish Section 366 or 377.

*[At this point it was felt that even if this isn't the final bill we should still discuss its merits and demerits so as to give ourselves a framework. It was also suggested that we lobby for more positive measures in the bill giving recognition to queer groups. The major changes brought about by the bill were briefly mentioned and then we discussed what are our concerns regarding the bill. Following is what the group more or less concluded]*

- It is agreed that we as Voices members are not too sure how is the criminalization of non consensual same sex intercourse. Criminalization of 'non-consensual' should by implication mean non criminalization of 'Consensual', but if 377 is kept then there would be a clear conflict.
- We understand that there are such queer groups who are happy with the gender neutrality of Section 377.
- Section 509 (sexual exhibit to woman) is too broad. Section 509A (sexual exhibit to a minor) ignores middle class realities and is too broad.
- Extremely shabby drafting.
- Certain words in section 377 like 'intoxication', 'unsoundness of mind' 'mistake of identity' not qualified. 'Mistake of identity' clause can be misused as it is quite often that a homosexual person might be cross dressing and then there are the sex change operations. So how do we define mistake of identity?
- The bill doesn't recognize the hijra groups.
- There is nothing on same sex custodial rape in the lines of 376 A,B,C, D.
- Third party complaints are very dangerous for the gay and lesbians as most of the time the fathers go and file complaints against consensual adults. While this might be a concern it's not really possible to lobby for such a law which prohibits a father from filing a criminal complaint to save his child. What we can instead do is give high validity to the *factum* of consent.
- We need to negotiate regarding burden of proof. If it can be shifted in certain offences like 498A then why not in rape cases.
- There is contradiction between Section 375 and 377.

*[Moves which we need to make strategically. Responsibilities allocated to members for the steps]*

- It was unanimously agreed that the bill needs to be stalled from being introduced. It was suggested we don't outrightly reject AIDWA's bill and try to understand their logic. Let's try to find out if some of the problems with the bill is a result of intention or bad drafting.
- Meetings with Kirti Singh, Girija Vyas, Brinda, Shivraj Patil to be fixed.
- It was suggested we use Right to information Act and obtain the latest draft of the bill from HM
- There was a consensus amongst the group that we are still not very sure about the position of all groups on the bill. We don't have hijra community with voices.
- We need to have coalition with groups working with women's rights, civil liberties, child rights, gay and lesbian rights, law at a national level. There is a need to increase the strength of voices and take it beyond Delhi and for this all members need to make efforts.
- For better coordination we should have a secretariat

January 2010 Womens's groups draft an Open Letter to the Law Minister responds to the Ruchika case by introducing the Sexual Offences [Special Courts] Bill, 2010.