

SUBMITTED TO: JUSTICE J. S. VERMA COMMITTEE

SUBMITTED BY: INDRAPRASTHA PUBLIC AFFAIRS CENTRE (IPAC) NEW DELHI

In light of the increasing cases of violence against women, we at Indraprastha Public Affairs Centre (IPAC) would like to propose the following recommendations.

LEGAL CHANGES

It is important to review the definitions and terminologies used in the Indian Penal Code. Thus we recommend:

- The terms such as ‘rape’ ‘ravishment’ ‘enticement’ ‘chastity’ ‘outraging of modesty’ in the substantive provisions, to be replaced with terms that define harms in terms of sexual assault, violence and violation of bodily integrity and dignity.
- It is important to recognise that sexual assaults may be penetrative or non-penetrative in nature. The criminal law should include both forms of acts within its definition of sexual assault.
- Penetrative sexual assault currently includes only the act of peno-vaginal penetration. However there are other invasive manners in which women are sexually harmed. Hence it is suggested that the offence of ‘rape’ be substituted with a graded offence of ‘sexual assault’ which shall include all acts where a man uses objects, penis, fingers to penetrate the vagina, urethra, or anus of a woman.
- Since sexual assault is not limited to peno-vaginal penetration, emphasis on proving of sexual intercourse should also be accordingly modified from the procedural and substantive laws.
- However, the definition should be focused and unambiguous. Enlarging the definition would not help such as Pre-marital sex with the promise of marriage. Such acts should not automatically fall in the category of rape. A framework should be devised wherein there is a written agreement between the two individuals with mutual consent detailing all such promises, if any.

PUNISHMENT:

- The guiding principle which should determine the penalty in case of crimes should not be retribution or vengeance driven but based on the principles of justice.
- We believe that no such form of punishment should be provided to the perpetrators of any other crime including sexual assault that violates the values of basic human rights. Thus, we stand strongly against death penalty, chemical castration and other such proposed methods of punishment.
- **Medical Examination:** Medical Examination of the survivor of the sexual assault is essential for the health of the survivor as well as for the purpose of collecting evidence. It is imperative that medical assistance be provided to the survivor as soon as possible. The survivor will in most cases be in a state of trauma after the assault and the medical examination should be sensitive to the same.

Some recommendations regarding the medical examination in such cases are (the term patient used in the recommendations shall refer to the survivor of the sexual assault):

1. The medical examination should be survivor centric in its approach.
2. The examination should be prioritised according to the medical needs of the patient.
3. The examination should include a general medical history of the survivor along with the assault history. The survivor shall have complete right to refuse to answer any query and no negative inference should be drawn from the same.
4. The survivor of a sexual assault should be treated with utmost urgency and should not be made to wait unnecessarily in the hospital.
5. The hospital throughout the course of the examination should maintain complete confidentiality regarding the identity of the survivor. There should be no labelling of the patient in the hospital.
6. The survivor has every right to ask a family member, friend or any other person to be present with her during the course of the entire examination. The hospital should not have the power to deny entry to such person.
7. Wherever possible attempts should be made to accommodate the survivor's requests regarding the gender of the medical practitioner.
8. There should be no recordings or comments made on the moral character of the survivor during the examination and record writing process.
9. A medical practitioner should not refuse to conduct an examination on the ground of there being no FIR registered. A public medical practitioner cannot refuse to conduct an examination.
10. There is a need to develop a nationalised manual containing gender sensitive procedures to be undertaken at the time of medical examination.

II

POLICE AND JUDICIAL REFORM

- As per the directions of the directions given by the Supreme Court, in the **Prakash Singh v. Union of India** the State shall endeavour to take the reforms in the Police Structure and Administration. Whereby creating a body for the looking into the matters of promotion and transfers of Police officials in line of the recommended 'Police Establishment Board (PEB)' and 'Police Complaints Authority' to look into the matters of public-grievances with the functioning of Police in their area.
- Failure on the part of a public servant to obey any rule or law relating to the attendance of the person or an investigation should be a punishable offence.
- Failure to record F.I.Rs or attempting to dissuade a person from recording an F.I.R in cases of sexual assault should be a punishable offence.

- Increasing the judge-population ratio in the country rather than the short-term measure of setting up fast track courts.
- Strengthening the legal aid system for both victims and under trials by creation of a robust legal aid fund in each state so that lawyers on the legal aid panel are paid decent honorarium to take up cases referred to them and do justice to their job.

MONITORING OF CASES:

- A date base of cases of sexual assault be maintained to track the implementation and performance of the law, to help identify weak links
- There is an urgent need to pull up the functioning of statutory bodies already in place including the Human Rights Commission and Women Commission at the central government and the state government level. It has been observed that often the positions of members in many of the states remain vacant for long duration, which directly impacts their functioning. Along with strengthening them with requisite staff requirements they should be proactively made accountable for doing social audit of working of police and the suggested helpline in clause (b), and also monitoring the action taken on cases related to sexual assault and related crimes.
- It is also suggested that one of these bodies can be upgraded to act as a central monitoring agency for crimes against women, but with more teeth rather than just power of making recommendations. These bodies should have powers to carry out independent investigation, file cases in court and also direct for disciplinary action against police officials in cases of delay or refraining from registering of FIR in cases of crimes against women.

SEXUAL ASSAULT IN CONFLICT AREAS:

- Even as we reiterate our stand for repealing AFSPA in North East and Kashmir, as an immediate step we can demand that the immunity given to the Army and para-military forces should exclude crimes of sexual abuse and torture of women. There should be no need to seek special sanctions from the central government for trying Army personnel involved in such crimes.

III

SOCIAL BASE FOR THE VIOLENCE AGAINST WOMEN

- Gender sensitivity classes need to be made mandatory at school level. The ambit of these classes should be broad enough to cover and tackle the sexist and misogynistic elements of the society.
- At all higher educational institutions ‘Gender Studies’ should be made a mandatory course for the students
- With regard to the same it is important to critique the role of the media and to provide adequate guidelines for media representations relating to gender, sexual harassment and sexual assault. The media should be held accountable for propagating and supporting the oppressive societal structures through:

- The various casteist, sexist and misogynist advertisements, serials, movies and in other print forms also.
- The casteist and regional bias showcased by the media in deciding to report certain assaults as offences against the dignity of the nation while failing to report the innumerable forms of gruesome assaults faced by several other women from lower castes, tribes or conflict areas.
- Furthermore, the media in several cases fails to respect the confidentiality of the survivor's identity (especially when the survivor is from a lower caste, tribe or conflict area).

IV

INFRASTRUCTURAL AND TECHNOLOGICAL ENHANCEMENT:

- To have a better public transport system with increased connectivity and looking at issues of lighting in streets, deployment of police personnel in areas prone to such crimes, etc.
- Independent call centre to look into matters of sexual assault
- Better GPS facility which makes tracking of calls, vehicles, etc. easier and more efficient
- Setting up of helpdesks at all major railway terminal and inter-state bus depots.
- Starting information-cum-guidance centres for women at multiple locations in cities, district and taluka places which provide counselling support, information about welfare schemes and programmes and legal guidance which are staffed by trained social workers and lawyers (on a visiting basis).

We suggest that the definition of 'women' should include transgendered people who identify themselves as women, as this group is particularly vulnerable to sexual assault.