

People's Union for Democratic Rights

05 January 2013

To,
The Secretary
Justice Verma Commission
New Delhi

Subject: Submission of suggestions for changes in law and procedure regarding violence against women

People's Union for Democratic Rights, Delhi [PUDR] is a Delhi based democratic rights organisation that has been intervening in various issues of violence against marginalised sections of our society. While PUDR understands that Indian society is deeply patriarchal, we also believe that the Indian state is primarily responsible for the sorry state of women's rights in this country, and that its actions enforces and sustains the inequality of women in the family, community and society.

The fact is that rape is a crime whose basis lies in the operation of power: patriarchal, class, caste, ethnic and religious, and of the state. Thus raping women is used as an instrument to attack communities and to bring them to their knees by the state forces wherever armed forces are deployed. It has been an integral part of ethnic, caste and communal attacks. It is in these cases that the levels of reporting of sexual violence are low and prosecution virtually absent. By turning a blind eye to these crimes, the state actively abets and sustains the culture of rape. It is this reality that needs to be addressed if a safer and more just society for women is contemplated.

In whatever constrained way that law can be expected to promote justice it cannot do so in absence of its strict adherence and swift implementation. Legal mechanisms to achieve justice therefore should factor in the challenges and roadblocks of its implementation, structural or otherwise, right from the stage of planning and framing the law.

We list below some suggestions/inputs for better of violence against women:

Changes required in the definition of sexual violence

1. The expansion of the definition of penetrative sexual assault under Sec. 375 IPC, beyond peno-vaginal penetration (rape) as proposed in the Criminal Law Amendment Act is a step in the right direction. It is imperative that the definition of sexual assault is broad enough to include anal, oral rape, digital rape, rape with objects etc. and also includes sexual assault against transgender people. There is need for more deliberations and separate laws to deal with sexual offences committed on or by transgender people.
2. We find the expression '**penetrate for a sexual purpose**' in Sec 375(a) of the proposed Criminal Law Amendment Bill, 2012 deeply problematic. Any contact without consent is what must be punished and the intent of the perpetrator is both irrelevant, and impossible to prove.

3. **‘Outraging modesty of a woman’ to be replaced with ‘violation of bodily integrity’:** S.354 and S. 509 IPC, which contain archaic notions of ‘outrage of modesty’, ought to be repealed, and a clear gradation of offences and punishment as mentioned above should be inserted. We believe that ‘sexual assault’ should rest firmly on the concept of violation of bodily integrity and dignity, and sexual harassment should be defined as it is in the Vishaka Guidelines.
4. **Consent:** All the laws and provisions dealing with women be informed by the basic principle of treating women as intelligent, independent human beings capable of taking rational decisions. It is therefore imperative that the woman’s consent is explicitly called for in any sexual activity and not assumed. Rape within marriage should therefore be recognized and should be strictly penalized. The punishment for rape should be the same irrespective of whether the perpetrator is married to the survivor of rape or not. CLA Bill 2012 should introduce this and drop the provisions of making exception to the consent of the wife.
5. Separate and rigorous punishments be there in case aggravated forms of rape such as gang rapes, child rape, rapes in custody of police and security forces, in the custody of hospitals, jails, remand homes etc. and rape of women employed in homes as domestic workers.
6. Medical tests for rape continue to rely on judgements of the ‘character’ of women by deciding whether a woman is inured to sexual intercourse using the infamous ‘two-finger rule’. And the state continues to divest itself of any responsibility towards victims of rape. Leave alone a crime of power like rape, quaintly-named crimes against women such as ‘eve teasing’ and ‘outraging modesty’ are barely reported, investigated and prosecuted.

Changes required to ensure proper prosecution

1. Provision for criminal action and punishment for refusal to register a crime of rape, sexual assault or harassment.
2. Mandatory criminal action in cases where the judicial officer is of the opinion that the police/prosecution has performed a shoddy investigation, or has in any other manner reduced the possibility of conviction through acts of omission or commission.
3. Criminal investigations and action against doctors and medical staff accused of delaying the investigation, fabricating or hiding information; including against forensic agencies and officials for tampering with/contaminating forensic evidence. The present practice of departmental enquiries are no substitute to the registration of a criminal charge.
4. The Protection of Women from Domestic Violence Act was passed more than seven years ago but it has been poorly implemented. The Act also needs to specify the duties of the Protection Officer, the process of her appointment, and the accountability.
5. Other laws specifically dealing with women like The Dowry Prohibition Act, The Pre-Natal Diagnostic Techniques (regulation and prevention of misuse) Act, The Medical Termination of Pregnancy Act, The Maternity Benefit Act amongst other Acts be opened up for review to ensure their proper implementation.
6. All the workplaces, from smallest to the biggest, government, private, trust or aided, should have sexual harassment committees in place as per the guidelines of the Vishakaha Judgment in 1996. The structure and constitution of committee of complaints

in public or private offices be made democratic and independent of superior authorities. Details of each case at first information level (admissible or non-admissible) and its current status should be available in the public domain.

Changes required to address and prosecute sexual assault by police and security forces

1. Security forces be it the Army, Paramilitary, or SPOs recruited under the Police Acts should be covered by CLA 2012. Two justice systems that presently prevail in matters where the Army is concerned should be immediately revoked and all accused of sexual violence should be equally tried and punished under the IPC.
2. Withdrawal of the Armed Forces Special Powers Act, 1958 which, because of the overarching powers they give to the security forces, virtually provides legal sanction to rape and sexual assault. The powers of search and seizure under the AFSPA have worked as permissions to enter households and harass, molest and rape women with impunity.
3. Rape under no circumstances be presumed to be in '*good faith*' or '*in line of duty*' and overlooked without credible and proper inquiry, fixing culpability and punitive action.
4. Command responsibility should be fixed in cases of sexual assault committed by state personnel during security operations and while in custody. The commanding officer in the case of the military and paramilitary or the SP/DSP in the case of police forces should be held criminally liable for crimes committed by those under their command or within their control.
5. Rape not only a weapon of war but also a crime against humanity, an instrument of genocide and a part of torture techniques. Our domestic laws dealing with sexual assaults must be informed by the debate and brought in line with international jurisprudence governing armed conflict. There are many judgments like the 1998 Akyesu Judgment by the International Criminal Tribunal for Rwanda, International Criminal Tribunal for the former Yugoslavia (ICTY, 1993) jurisprudence, The Special Court for Sierra Leone (SCSL 2001) added to this growing body of knowledge by bringing forced marriages into the jurisprudence of violations of international humanitarian laws.
6. Strategic hamleting and shifting of people into camps as counter insurgency measures be given up as inquires over a period of time have proved them to be captive centres of sexual assault.
7. A mandatory and periodic investigation into the condition of women prisoners in jails and remand homes and its report be made available to the public.

Some Other measures to ensure liberty and equality of women:

1. Public Transport Facility be made available on demand to women working outside their homes (for the so called non-working women work inside their homes taking care of domestic chores).
2. Public transport- metro trains, buses. Number of staff members aboard a form of public transport be fixed. Presence of Women Staff be ensured in each public transport.

3. Registration of bus staff and issuing of identity cards and badges. Responsibility of the principal employer to ensure the above. Affixing responsibility on the contractor/ employer and bus owners as principal employer in cases of violence against passengers.
4. Building shelters for women, especially night shelters as a basic safety measure. Homeless, destitute women highly vulnerable to assault. And the possibilities of their complaints being registered, nil.
5. Limiting the time during which liquor shops remain open. Strict action against those found in a state of inebriation in public spaces.
6. Adequate street lights. All traffic lights to function in the same way as in the daytime.

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