

# **Views of Lok Satta / Foundation for Democratic Reforms on legal and policing issues relating to offences against women**

## **Presented to the Committee of Eminent Jurists**

We are of the view that legal provisions relating to all offences against women with sexual overtones should be examined carefully in order to create a climate of safety and security for women of all ages. Heinous offenses like rape obviously need to be dealt with in a stern manner and speedy, certain, severe punishment should be the norm. However, we need to address a host of other, seemingly lesser, offences which create a climate of insecurity for women. Often failure to check these lesser offences leads to graver crimes. Equally, it is important to critically examine the infrastructure, efficacy, practices and culture of crime investigation and trial in courts. No matter how tough the laws are, they are only as good as the police investigation and trial in courts.

With these perspectives, we urge the Committee of Eminent Jurists to consider the following issues:

### **The legal provisions relating to offences against women:**

#### **1. Certain offences to be capital offenses:**

The sentence for certain forms of rape may be enhanced to reflect the severity of the crimes, and to act as deterrent for future offenders. Death sentence as punishment for rape may be incorporated in the following cases:

- a. Gang rape
- b. Rape with attempted murder
- c. Custodial rape
- d. Rape with abduction
- e. Rape of a minor

- f. Rape when committed by a person who knows he has an incurable sexually transmitted disease
  - g. Repeat offenders or those convicted of multiple rapes
- 2. A new section may be incorporated in IPC, providing for punishment of aiding and abetting of rape. There are many instances in which many people are witness to rape in a public place, sometimes as a 'punishment' for elopement or marriage without society's consent, or outside the caste. In such cases, those who cheer, applaud or encourage in any manner the crime of rape (Sec 376 IPC) or outraging the modesty of a woman (sec 354 IPC) should be punishable. The punishment may be at least 7 years Rigorous Imprisonment in case of abetting a rape, and at least 5 years in case of outraging the modesty of a woman, especially cases of disrobing etc.
- 3. Surprisingly, custodial rape is aailable offense under Sec 376 A, 376B, 376C, and 376D. In all these cases, rape should be a non-ailable offense.
- 4. The punishment for assault or criminal force to a woman with intent to outrage her modesty (under Sec 354 IPC) is only imprisonment upto two years, or fine, or both. It may be necessary to define a new crime as a subset of Sec 354 IPC, involving physical violence, disrobing, tearing or removing forcibly part of clothing, touching private parts, and other despicable acts, and in such cases the punishment should be not less than 5 years Rigorous Imprisonment and upto 10 years. If the victim is a minor, the punishment should be not less than 10 years Rigorous Imprisonment, and upto life imprisonment.
- 5. The offenses under Sec 354 IPC are nowailable. All such offenses should be made non-ailable.
- 6. **'Caning' as punishment**

The punishment for word, gesture or act intended to insult the modesty of a woman (Sec 509) is only imprisonment upto to one year, or fine or both. Often these actions are extremely offensive, and may involve exhibition of private parts, groping the body of the victim without consent etc. Such cases, if they are not checked effectively and exemplary punishment is not awarded, will lead to graver offenses including rape. Therefore, we believe, severe, swift and certain punishment in such cases is the greatest guarantor of safety of women in public places.

We therefore urge the Committee to consider mandatory 'caning' as a punishment under Sec 509 IPC, as well as in respect of all sexual offenses except in cases where death sentence is awarded.

In Singapore, caning is administered as a punishment except in cases of death penalty. The caning is done in prison, and not in public. It does not cause any irreversible damage, and all precautions are taken to prevent damage to vital organs. However, the pain inflicted is said to be excruciating even when only six strokes are administered, and the wounds take upto a month to heal.

*Sections 325 to 332 of the Criminal Procedure Code of Singapore lay down the procedures governing caning, including:*

- A convicted male criminal who is between the ages of 18 and 50 and has been certified medically fit by a medical officer may be subjected to judicial caning.*
- He will receive a maximum of 24 strokes of the cane on any one occasion, irrespective of the total number of offences committed.*
- If the offender is under 18 he may receive up to 10 strokes of the cane, but a lighter rattan cane will be used in this case. Boys under 16 may be sentenced to caning only by the High Court and not by district or juvenile courts.*
- The convict will not be caned if he has been sentenced to death.*
- The rattan cane shall not exceed half an inch (1.27 cm) in diameter and 1.2 meters long.*

We strongly urge that such a punishment should be incorporated in IPC in respect of all offences under Section 509, 354, 376 and related sections. In respect of Section 509, the caning above as a punishment may in fact suffice as a sufficient deterrence in most cases. Since there is no public humiliation, nor is there lasting physical damage, this form of punishment cannot be considered cruel and unusual. If the law is meant to regulate human behaviour, send a signal to society and ensure safety of women in a rapidly urbanizing, impersonal, modern society, we need to adopt some successful best practices from elsewhere.

7. Offences under Section 509 are bailable according to the first Schedule of CrPC. Also, under Section 320 CrPC, offenses under Section 509 are compoundable. We urge the Commission to recommend amendment of law to make these offences non-bailable and non-compoundable.
8. In respect of rape under Section 376 and other relevant sections, and offences under Section 354 IPC, confiscation of property should be also a mandatory punishment in addition to imprisonment or death. The value of property confiscated, or heavy fines realized should be deposited in a Special Fund to be utilized to compensate and rehabilitate the victim, and to ensure better prosecution of all offenses against women.

## **9. Special courts**

Special courts should be established to deal with rape offenses under Sec 376-376D IPC and other offenses under Sec 354 IPC in a speedy and efficient manner. Already legal provisions exist under Sec 327 CrPC providing for in camera hearing in trial of rape charges. Similarly, Sec 309 provides that the inquiry or trial in respect of offences under Sec 376 to 376D of IPC should be completed within two months. Clearly, these provisions are often violated and trials take a long time. Therefore, we urge the Committee to recommend an

effective and fool-proof institutional mechanism under High Court's control to ensure strict compliance with all the legal provisions relating to trials in these cases.

#### **11. Local courts to deal with simple offenses**

In respect of offenses under Sec 509, we need speedy and summary proceedings to ensure quick disposal of cases and swift punishment. Already the Parliament enacted the Gram Nyayalayas Act (Act No. 4 of 2009) providing for rural courts in every intermediate Panchayat, and ensuring swift and summary disposal of simple cases, duly following principles of natural justice, as an integral part of the independent justice system. In most states, these courts have not been created. Our judge-population ratio is about 11 per million, as opposed to about 50-100 per million in many societies with effective rule of law. We urge the Committee to ensure implementation of Gram Nyayalayas Act and entrustment of all cases under Sec 509 to these local courts. The powers of these local courts may include awarding a 'caning', upto 12 strokes. This will relieve the sessions courts and other subordinate courts of a large number of cases, and will ensure swift and effective justice. We also urge the Committee to ensure that such local courts are constituted in a similar manner in urban areas including metropolitan cities, at the rate of one for every 50,000 population. All offences under Sec 509, and the less severe cases under Sec 354 could be entrusted to these local courts for speedy justice. Once these courts have powers of caning, fine and imprisonment upto one year, a large number of offences against women can be tried locally, swiftly, and inexpensively. In all these cases, the law can mandate completion of trial within two months.

#### **12. Punishment to deter students and youth**

Offences against women are increasing among students. High school and college students must be made to realize that there would be serious consequences of their actions affecting their education and future career.

Therefore, in addition to the existing or proposed enhanced punishments for offenses against women, the following mandatory punishments should be incorporated in IPC.

- Those charged with rape or sexual assault by a trial court shall stand rusticated from their educational institution until they are acquitted by the court.
- Those convicted for rape or sexual assault shall be permanently barred from further education, and public employment and employment in any private educational or healthcare institution, or any institution involved in custodial care.
- If a student is convicted under Section 509 IPC, he shall be rusticated for at least one year from all educational institutions. If he is convicted twice, he shall be permanently barred from further education, and will be disqualified from public employment, or employment in any private educational or healthcare institution, or any institution involved in custodial care.

Such a punishment will act as a deterrent, and will help prevent a large number of offenses against women; and will ensure safety of women.

13. We urge the Committee to recommend amendment of law to ensure mandatory cancellation of bail if victims complain of harassment, backed by evidence.
14. The Committee may also consider recommending a suitable amendment to IPC, making the offence of coercion, threat or blackmail of victim of rape or her family by anybody a non-bailable, cognizable, non-compoundable offence, entailing at least two years prison term.
15. Some of the most gruesome crimes against women, including gang rapes, are committed by young people between 16 and 18 years of age. At this age, the culprits are sexually mature and are fully aware of the nature and magnitude of

the crime, and their actions cannot be dismissed as 'Juvenile', or indiscretions of youth. Therefore, we urge the Committee to recommend redefinition of the term "Juvenile" in Juvenile Justice Act, 2000, so that all culprits who have completed 16 years of age are tried as adults in respect of trials for sexual offences against women.

**16. Shifting burden of proof**

As a general rule, under our adversarial system of justice, the prosecution has to prove beyond all reasonable doubt that the accused had committed the crime. But in respect of rape, it is necessary to revisit this procedure. Most prosecutions in rape cases are failing, and instances of violent sexual crimes against women are on the increase. The accused are escaping the consequences of their crimes by resorting to many dubious technicalities, and often the vulnerable woman is further victimized because of social stigma. In an increasingly urbanised, impersonal society women need added protection of law, and sexual offenders must be subjected to a higher standard in trial courts.

Therefore we urge the Committee to recommend amendment of Chapter VII of the Indian Evidence Act to insert the following provision shifting the burden of proof to the accused after the prima facie evidence points to the culpability of the accused, and the person is charged with the offence in a trial court:

"In all cases where a person is charged of an offence against women, the burden of proof shall be on the person who is charged for such offence to prove that he has not committed the offence".

17. Often, the investigation in rape cases is extremely inefficient and tardy. Sometimes, there are deliberate acts of omission or commission denying justice. Often, statements under Sec 161 CrPC are not signed by witnesses, and copies not furnished to the complainants. Complaints of manipulation by police to

favour the accused are not uncommon. We urge the committee to recommend incorporation of a section in chapter XI of IPC relating to offence against public justice, covering all such acts of omission and commission, and making them punishable for a term of at least three years.

18. Under the Indian Evidence Act, (Sec 25 and 26), statements or confessions made to a police officer, or in police custody by the accused (except in the presence of a magistrate) are not admissible in a court of law. In cases of rape, it is often very hard to gather evidence as time advances. Sometimes, the culprit is moved by contrition, and makes a statement or confession to the police officer. While such statements may not be conclusive proof of guilt, they should be given sufficient weightage in conjunction with other corroborative evidence in determining the guilt or otherwise. Section 24 of the Indian Evidence Act provides adequate safeguard against admitting confession caused by inducement, threat or promise.

Therefore, we urge the Committee to recommend that the law should be amended to the effect that statements or confession made to a police officer by the accused involved in a sexual offence should be admissible in a court.

#### **19. Victim's right to representation**

Given the sensitivity of rape and molestation cases, the vulnerability of the victim, and the impact of these offences on society, there is need to provide for victim's representation in the trial. Usually in cognizable criminal cases, the state and the accused are the two adversarial parties. In rape and related cases, victim should have right of representation to ensure justice, and to ensure the victim is not in any way inconvenienced or humiliated, and is not further victimized. If the victim cannot afford a lawyer, the law should provide for free legal aid to the victim.

20. In all cases of rape under sections 376 – 376 D IPC, and sexual assault under section 354 IPC, there should be a norm that no commutation of sentence or

pardon for convicts shall be allowed. The power of pardon or commutation by the President or Governor is admittedly a constitutional, sovereign power (Articles 72 and 161), and cannot be abridged by law. However, the executive can evolve mechanisms and guidelines in such cases to ensure that such power will never be invoked in favour of convicts of rape and related offences.

## **21. RP Act Amendment**

There are serious charges of sexual offences against elected representatives at various levels in the country. Once known sexual offenders are seen to be elected to responsible positions, and exercising power and influence, it creates a permissive climate that promotes violence and sexual offences against women. Therefore it is important that elected representatives are seen to set an example to society, and a message should be sent that no one is above law.

We therefore urge the Committee to recommend amendment of the Representation of the People Act to the effect that a person who is charged by a trial court with an offence against women, including an offence punishable under Section 376-376D or Section 498A of the IPC, shall be disqualified from being elected as a representative of the people, until he is acquitted by a court of law.

## **22. Punishment for willful false complaints**

Once the laws relating to offences against women are strengthened to provide for more severe punishment, and burden of proof is shifted to the accused, there could be dangers of false complaints against innocent persons to settle personal scores or to besmirch their reputation for political or other purposes. Therefore, it is important that effective safeguards are instituted to prevent filing of false complaints. Otherwise, the laws intended to protect women will lose credibility, and there is danger of genuine cases being dealt with in a frivolous manner. This will ultimately defeat the purpose of the law, and endanger safety of women further.

Therefore we urge the Committee to recommend insertion of a section in IPC which makes a filing of a false complaint of a sexual offence deliberately and maliciously against an innocent person a cognizable and non-bailable offence with a penalty of at least 5 years of rigorous imprisonment.

### **Measures related to Policing:**

#### **1. Crime surveys**

Crime in India is measured by police case registration records and the only source of information available to the public is the crime statistics collated by National Crime Record Bureau (NCRB). However, it is well known that problems of public non-reporting, police non-registration, and political interference exist today. Especially the sexual offences against women, minor and major, are largely under-reported and very poorly registered. There is a general belief that crime statistics, though not adequately collated, are underused in terms of building a wider public opinion on law and order in this country. Efficient usage of police and criminal justice resources would be possible only when we possess abundant and accurate information on crime against women.

#### **Recommendation**

An annual crime survey that mainly includes victimization by sexual incidents, public perception of police and criminal justice system, and public opinion of local crime levels against women and changes. Any other significant details can be appended.

#### **Survey details**

- a.** The International Crime Victim Survey (ICVS) which is used in European countries and by many others shall be modified to include more details (Questionnaire) and to match our Indian Penal Code (IPC). The NCRB shall be authorized to perform design and oversight functions.
- b.** Survey to be conducted annually at household level.

- c. Survey shall be conducted by public or private organizations or both.
- d. Statistics shall be collated at as narrow as Mandal level and be made available for public consumption.

The empirical findings of such surveys will help us build institutions and mechanisms and evolve legal procedures aimed at better delivery of justice, and ensuring protection and safety of women.

## **2. Display of convicts' database**

In many countries in Europe and North America, an extensive database of criminals is prepared by the police based on prosecution and convictions, and the details are displayed to the public electronically and otherwise in an accessible manner. Also there are procedures ensuring restricting access of a convicted sexual offender to schools etc. people should have knowledge of sexual offenders in their neighborhood or place of work, and be able to take preventive action to protect their children and ensure safety of women. We therefore urge the Committee to recommend preparation and regular updating of such data bases and making them available to the public through the internet and other means

## **3. Women's cells in police stations**

According to Bureau of Police Research & Development, as on 01.01.2012, the ratio of women constables to total constabulary is about 1:8. There were a total of 499 Women Police Stations in the country out of the 14,185 police stations and there was not a single Women Police Station in Delhi. There were 11 States/UTs where there were no separate Women Police Stations at all. The actual strength of women police in India is just 84,479 while the sanctioned strength of total police force (Civil Police + Armed Police) is 2,124,596 which shows how inadequate our police strength is from the perspective of gender equality.

Gender representative police is expected to support more effective community relations, since a police service whose composition more adequately reflects the population it serves may result in a greater perception of legitimacy. It can potentially moderate extremes in the use of force. Above all, it can result in a police service that responds with greater alacrity and commitment to preventing abuses of women's rights. For this reason, efforts to recruit women must 'aim high' in the sense of seeking to attract large numbers of women to improve gender parity. Recruitment drives targeting women must avoid gendered divisions of labour and power that relegate women to the lower ranks and the least-valued tasks.

As an immediate step, every police station must be provided with a separate cell for women to handle crimes against women. This cell, consisting of at least four women police personnel, should function in a separate room or enclosure, and must be entrusted with all offences related to women. Such a step will enhance public confidence in policing, and will encourage many hitherto unreported cases to come to light, and witnesses to come forward. As an intermediate and long term measure, the number of women police stations in our country must be increased significantly.

#### **4. Forensic infrastructure**

The forensic laboratory infrastructure available to the police forces in India is woefully inadequate. We only have four functioning central forensic science laboratories (CFSLs) in the country, and 29 state forensic laboratories, of which only about 15 are properly equipped and are functional. There are 50 regional forensic labs, most of which are not functional. In addition, there are about 342 district mobile forensic units, most of which are non-functional. Three more central labs are now being established. Material in only about 6% of criminal cases is referred to forensic labs in India. There are inordinate delays in forensic examination, and the reports are of poor quality in many cases. Often the staff is not sanctioned, personnel are not posted to sanctioned vacancies, and there is

very little accountability. Tampering of evidence, false reports and interference in functioning are oft-repeated complaints.

The cost of establishing a good, functional forensic laboratory is only about Rs. 1-2 crore at district or state level. More than capital cost, we need trained, motivated personnel, and systems of accountability to ensure credible, high quality functioning. In the US, there are over 300 well-equipped, state of the art forensic laboratories, deploying over 12500 highly trained scientific personnel for forensic examination. In about 24% of all criminal cases police seek and receive help from forensic experts.

We urge the Committee to recommend a comprehensive restructuring of forensic laboratories, establishing a well-equipped, functional forensic laboratory in every district on priority basis, a national training and monitoring institute for all forensic laboratories, deployment of highly trained personal, and fool-proof mechanisms to ensure that there is no possibility of tampering evidence and to enforce accountability.

#### **5. Protocols in dealing with rape cases:**

The police investigation of rape cases is often uninformed and clumsy. Vaginal swabs are sometimes not collected, and rarely is material sent for DNA analysis or forensic examination. Crude methods of investigation are employed, and in many cases the accused escapes conviction because of poor investigation and inadequate evidence.

We urge the Committee to recommend development of protocols and strict adherence to them by the police, forensic examiners and physicians. In all cases of sexual assault, there should be check lists of items to be attended to, and constant, effective monitoring to enforce compliance.

### **SAFE kit (Sexual Assault Forensic Evidence collection kit):**

The SAFE kit (Sexual Assault Forensic Evidence collection kit) affords the opportunity to collect any DNA that may have been left by the suspect. The kit is filled with tools that may be used by the examiner for evidence collection during the forensic medical exam. In the Delhi Commission for Women vs. Delhi Police case, 2009 the Delhi High Court pronounced its judgment specifically mandating that a SAFE Kit consisting of a set of items that is used by medical personnel for gathering and preserving physical evidence should be available with all the Government Hospitals. A statutory provision needs to be made by the Government that mandates all Police Stations, Forensic Labs and Government hospitals to be equipped with SAFE kit.

## **6 Rights of Victims**

Victims of rape are often ignorant and consumed by fear. They are in an emotionally disturbed condition, and are highly vulnerable. Added to that, the procedures of investigation and the social stigma attached to rape make the situation unbearable to the victims. Therefore, we urge the Committee to recommend that the rights of victims of rape and sexual assault should be codified and printed in all regional languages, and every complainant and victim should be furnished these copies. Steps should be taken to ensure that they understand these rights.

## **7 Community policing:**

Amicable police public relations provide opportunities for ordinary citizens to contribute to the prevention and detection of crime. Today, however, uncongenial police public relation is thwarting the effectiveness of the police.

A police station can be divided into sectors corresponding to wards and areas at local level. All the household members in a particular sector can constitute

a policing committee of that sector. Each sector may have an active group consisting of about 6 respectable persons of that locality (on a rotation basis), a homeguard, a chowkidar and one police constable/head constable as the secretary. An online forum may also be created which can act as an effective interface between police and public. Members of the community can voice their complaints and give their suggestions for providing better policing to the society. Since the active group consists of the members of the community, there exists rapport between the police and the public. It allows the police to establish an effective intelligence network with the target neighbourhood as a result of which the police can identify areas at risk and the level of threat in a particular community. It therefore reaches out to law-abiding people in the community and involves them in the police process, serving as the vital link required to enlist their help in actively promoting order and stability.

The Committee police will be trained to handle simple situations like harassment of girls etc. There will be structured and instant communication with the local enforcement authorities. They will have identity cards, and will supplement police efforts by regular local patrols. They act as a bridge between the community and the police force.

We urge the Committee to recommend creation of a model and establishment of simple, lucid processes and protocols for Community Policing in rural and urban areas separately. We urge creating of such community policing units all over the country to supplement police efforts, and to enhance safety of women.

## **Gender Sensitization**

Media: In many movies, in the guise of entertainment, women are depicted as sex objects. Humiliating women and abduction in the name of love are exhibited and are portrayed acts of heroism, such portrayal of women has profound impact on the impressionable young minds. Therefore, in depiction of women there should be strict enforcement of censorship particularly, it is necessary to ensure that all scenes and themes which legitimize or condone any form of use of force

against women should be strictly censored.

Courses: From 9<sup>th</sup> class onwards, there must be short, flexible, participatory course on human relations and gender sensitization. We are moving from an agrarian society to modern industrial society. Joint families are breaking up and there are many broken families. Culturally, Indian adolescents are highly repressed sexually. They tend to show two different personalities – one of an obedient, peaceful son at home and the other of reckless, violent and sometimes criminal behavior outside home, particularly where they are protected by anonymity. This poses a grave social challenge and cannot be addressed by mere law. There must be a constant effort to sensitize them in gender and human relations.

There are already such programmes designed for students, police, law makers by institutions such as UNICEF, Human Rights Commissions and Judicial Commission. There is a need to make these programmes more meaningful, and make participation mandatory at all levels.

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