



Recommendations on Laws Relating to Sexual Assault in India

SUBMISSION TO THE JUSTICE VERMA COMMITTEE

National Network of Sex Workers [NNSW] India, 5 January 2013

PREAMBLE

- We, members of the National Network of Sex Workers [NNSW] based in Andhra Pradesh, Maharashtra, Karnataka, Kerala and Tamil Nadu are sex workers' organizations and sex work support organizations committed to advocate for the rights of people in sex work including women, persons who identify as women and transgender women.
- The objective of this network is to give voice to sex workers issues and be heard across the country. Although sex work per se is not illegal in our country, sex workers are often abused and harassed by law enforcing agencies and private parties.

SUBMISSION

1. International and National commitments call on States to exercise “*due diligence in preventing, investigating and punishing acts of violence against women*” and providing women “*access to mechanisms of justice*” and *due redress in accordance with national legislations*.¹² The Hon’ble Supreme Court of India has upheld the rights of women in sex work observing that Article 21 grants them a right to *live with dignity*³. Despite these commitments, people in sex work continue to be stigmatized, discriminated and denied access to their rights. Violence against people in sex work denies them the fundamental right to life and dignity.
2. Violence and sexual assault is linked to the perception of sex workers as not being 'normal citizens' and has led to routine and large scale violations of human and fundamental rights like right to life, equality, equal protection of laws and due process under law. Stigmatization of sex workers permeates the criminal-justice machinery across India resulting in a lack of protection under the law.
3. Sexual Violence within sex work
 - 3.1 The incidence of rape of sex workers (women, persons who identify as women and transgender women in sex work) is high with little social or legal recognition. Myths surrounding the violence of rape against sex workers ensure that they are constantly on the fringes of access and redress to justice. These myths include ‘A sex worker cannot be raped’ (If she has consented to multiple partners or commercial sex, she

¹ Declaration on Elimination of Violence Against Women, 1993, UN General Assembly

²The Political Declaration made by States at the UN General Assembly further commit to strengthening ‘*legal, policy, administrative and other measures for the promotion and protection of women’s full enjoyment of human rights*’ and the ‘*elimination of all forms of discrimination including violence against women*’. The Declaration also calls on States to protect the rights of specific vulnerable populations and ensure an environment that strengthens efforts against stigma and discrimination.

³ Budhadev Karmaskar v State of Bengal, Cr Ap No. 135 of 2012



has given up the right to refuse other partners or other acts); ‘No harm is done’; ‘They deserve to be raped’; ‘All sex workers are the same’.⁴

Though Criminal law makes no distinction between victim-survivors, and despite evidence⁵ indicating a high incidence of violence (i.e. abusive clients, coercion and exploitation by brothel owners) these acts in practice do not get legal recognition and the police refuse to register FIRs.

- 3.2. Social stigma makes it easier to sexually assault people in sex work, judicial stigma means lower rape complaints, and near-zero convictions. Rape convictions for *all* women are anyway abysmally low in India. These rapes (barring those in marriage) are legally recognized as crimes, even when not redressed⁶ that is not the case of sexual assault on sex workers. As in the case of a 52-year-old woman in Mumbai who accused industrialist Abhishek Kasliwal of offering her a late night ride and then raping her in his car? Public and media sympathy stayed with her until it was known that she was a sex worker. Somehow, this reduced the severity of the charge in the minds of lawmakers; she became less of a ‘good woman’ in the eyes of the law.⁷

4. State Violence against sex workers

For sex workers, the State has become an instrument of violence, feared; rather than seen as protectors of rights. Sex workers fear to file complaints because of the fear of reprisals.

- 4.1 People in positions of authority routinely demand sexual favours from sex workers for releasing them from custody, speedy redress of grievance, accessing entitlements⁸. This should be considered within the purview of “Aggravated Sexual Assault”.
- 4.2 Police routinely abuse sex workers, illegally detain, sexually assault and torture them in custody. Their rights when being arrested are routinely violated in blatant violation of the guidelines laid down by the National Human Rights Commission on arrest and custody.
- 4.3 People in authority regularly verbally abuse sex workers using specific sexual innuendo and language. This should be considered as sexual assault.
- 4.4 When sex workers approach the police to register cases of violence and assault by private parties; their right to remedies are routinely denied by the police who refuse to lodge First Information Reports or investigate the assaults.

RECOMMENDATIONS

1. Recognize all forms of sexual assault and violence against sex workers and pass directives for investigation and registering of FIRs and timely action against perpetrators.
2. Rules about arresting and detaining women at night should also strictly apply to transgender and women in sex work.

⁴ Kinnel, Hillary (2008): Violence and sex work in Britain. Devon: Willan Publishing.

⁵ The power to tackle violence: Avahan’s experience with community led crisis response in India. 2009

⁶ Her body your gaze, prostitution, violence and ways of seeing, Bisakha Datta, Nine Degrees of Justice

⁷ *ibid.*

⁸ Pan India Survey of Sex Workers



3. Survivors of sexual assault should be offered the option of having a lawyer of their choice appointed as Special Public Prosecutor for the case.
4. Cases of sexual assault and violence should be speedily disposed through day to day hearing and trial.
5. Issue directives to facilitate sex workers to obtain restraining orders and other protective measures against perpetrators of violence (including State Actors).
6. Maintain confidentiality and respect the privacy of sex workers approaching law enforcement and judiciary for redress in cases of sexual assault, rape and violence.
7. Provide trained counsellors for survivors of sexual assault, rape and violence. Ensure specific skills and sensitivity in dealing with women, persons who identify as women and transgender women in sex work.
8. Sensitivity to violence faced by sex workers should be made an integral part of training for police personnel, public prosecutors and the judiciary in partnership with community organisations of sex workers.
9. Standard Operating Procedures with detailed guidelines on investigating violence and sexual assault should be developed through consultation with experts and women's groups, sex worker community organisations, activists and legal experts working with sex workers. This should include specific guidelines detailing procedures to investigate sexual assault and violence faced by women, persons who identify as women and transgender women in sex work.
10. Constitute a sexual assault State / District task force comprising of civil society representatives working on violence against women, police, state or district commission for women that monitors response to complaints, filing cases, filing charge sheets and its presentation in court in a timely manner.

Amend provisions of IPC and other laws

11. Amend Section 377 of the Indian Penal Code in accordance with the Delhi High Judgment in Naz Foundation vs. NCT of Delhi
12. Amend or repeal laws including provisions of Immoral Traffic (Prevention) Act that criminalize consenting and adult sex work and related activities.
13. For amended Sections 375, 376, 376 A, B, C and D (Indian Penal Code) the perpetrator must remain gender specific
14. For the purposes of Sections 375, 376, 376 A, B, C and D; the definition of the victim be made gender neutral to extend protection to male, transsexual and transgender victims of sexual assault.

Sexual assault and armed conflict

15. In a situation of mass violence (caste, communal or armed conflict) various forms of sexual assault are perpetrated against women, persons who identify as women and transgender women and girls. Doctors working in such situations should therefore look for signs/evidence of sexual assault amongst all women, persons who identify as women and transgender women and girls who come to the hospital, whether they are brought dead or alive. Sexual Assault examination should be made a part of post mortems in situations of armed conflict and communal violence.
16. Health professionals must receive training on their ethical duties and neutral role in situations of armed conflict. The State must provide security to its health professionals under such circumstances so that they may be allowed to carry out their duties without fear or external pressure.
17. In instances where sexual violence is perpetrated by state actors, an independent committee of experts must be established to conduct medico-legal examinations and other investigations.
18. Treatment and psychosocial support to address the physical and mental health consequences of sexual violence should specially be made available in situations of armed conflict.



19. Pass directives to ensure that any action taken by the law enforcement against female, male and transgender people in sex work is in pursuance to and in strict compliance with the due process established by law

SIGNATORIES

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5 January 2013



We the members of WE Community Action Network (V- CAN), Tamil Nadu endorse the submission made by the National Network of Sex workers to the Honble Justice Verma Commission on Recommendations on laws on sexual assault in India

Signatories

1. Jeeva, Transgender, President, V- CAN , Chennai, TN

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Sahabhagini - State Level Federation of Women in Sex Work Collectives – Karnataka

We, the members of Sahabhagini - State Level Federation of Women in Sex Work Collectives – Karnataka endorse the submission made by National Network of Sex Workers [NNSW] India to THE JUSTICE VERMA COMMITTEE

Signatories

1. Gangavva Teli, President, Sahabhagini Federation – Karnataka

2. Shanthamma, Secretary, Sahabhagini Federation (Mandya District)

3. Renukamma, Board Member, Sahabhagini Federation (Chitraduraga District)

4. Manjula, Treasurer, Sahabhagini Federation (Mysore District)

5 January 2013

Karnataka

Signatures in support of

Recommendations on LAWS Relating to Sexual Assault in India

SUBMISSION TO THE JUSTICE VERMA COMMITTEE

CBOs from Andhra Pradesh, India – (CBOs promoted by HLFPPPT, Swagathi program)

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* Ramanamma

We the community of women in sex work from Manipur and Nagaland endorse the submission made by National Network of Sex Workers (India) and call on the Commission to please give special emphasis to the abuse and violence faced by women in sex work in conflict

1. Ms. M. C. Reeta 
Meetei Leimarol Senai Sang (MLSS), Manipur

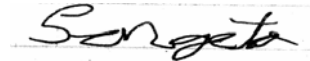
2. Ms. Avi 
Asha (community-based group of sex workers), Dimapur District, Nagaland

The following represent **Home Sweet Home** (Community-managed night shelter for sex workers in Imphal West district)

3. Ms. Heting, Senapati District, Manipur



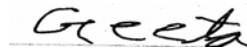
4. Ms. Sangeets, Imphal West District, Manipur



5. Ms. Kimboi, Chandel District, Manipur



6. Ms. Geeta, Imphal West District, Manipur



7. Ms. Maibam Jenny, Imphal West District, Manipur



8. Ms. Maibam Sundari, Imphal West District, Manipur



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5 January 2013

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