



REPORT OF THE COMMITTEE ON
**AMENDMENTS
TO
CRIMINAL LAW**

JUSTICE J.S. VERMA (RETD)
CHAIRMAN

JUSTICE LEILA SETH (RETD)
MEMBER

GOPAL SUBRAMANIAM
MEMBER

JANUARY 23, 2013

जस्टिस वर्मा
आपराधिक कानूनों के
संशोधन संबंधी समिति
विज्ञान भवन एनैक्सी
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January 23, 2013

Dear Prime Minister,

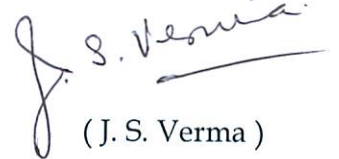
This Committee was constituted by GOI Notification No. SO (3003)E, dated December 23, 2012 to look into possible amendments of the Criminal Law to provide for quicker trial and enhanced punishment for criminals committing sexual assault of extreme nature against women. In view of the significance and urgency of the task, the Committee undertook to perform it within 30 days, which task has been completed.

Accordingly, the Committee has prepared its Report, which is enclosed herewith.

It is the Committee's hope that the promptitude with which this Committee was constituted within a few days of the brutal gang rape in Delhi on December 16, 2012, will continue to accomplish the task by speedy implementation of its Recommendations to retain public confidence in good governance.

With Regards,

Yours Sincerely



(J. S. Verma)

Hon'ble Dr. Manmohan Singh
Prime Minister of India
7, Race Course Road,
New Delhi

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PREFACE

1. The constitution of this Committee is in response to the country-wide peaceful public outcry of civil society, led by the youth, against the failure of governance to provide a safe and dignified environment for the women of India, who are constantly exposed to sexual violence. The immediate cause was the brutal gang rape of a young woman in the heart of the nation's capital in a public transport vehicle in the late evening of December 16, 2012. We refrain from saying anything more about the incident, which is *sub judice* for the trial in a court of law for the offences committed by the rapists. It is unfortunate that such a horrific gang rape (and the subsequent death of the victim) was required to trigger the response needed for the preservation of the rule of law—the bedrock of a republic democracy. Let us hope that this tragedy would occasion better governance, with the State taking all necessary measures to ensure a safe environment for the women in the country, thus preventing the recurrence of such sexual violence.
2. The urgency of the matter impelled the Committee to undertake the performance of the assigned task within the short period of 30 days to enable the authorities, with all their resources, to take the necessary follow up action within a further 30-day period, so that the same or a substantial portion of the same may be completed before commencement of the next session of the Parliament, which, we hope, will undertake the needed legislative exercise recommended by this Committee.



3. The Committee has been facilitated in the task by an overwhelming response to the Public Notice inviting suggestions within the available short time. An oral consultation was also held for interaction with the representatives of several stakeholders, particularly the women's social action groups and experts in the field. This stupendous task could not have been completed in time without the dedicated industry of a group of young lawyers, law graduates and academics who worked around the clock to do the necessary research and study required for the preparation of this report. We marvel at the extensive research done by them to collect relevant material from around the world on the subject within such a short span of time. Their contribution is acknowledged separately.
4. Women's social action groups, which have been actively advocating the cause of gender justice for decades, also came forward to give valuable suggestions with requisite supporting material. Many foreign contributors, including academia and students of prestigious foreign universities also volunteered and rendered valuable opinions. The list is long and the primary contributors are also acknowledged separately.
5. During this exercise, the Committee has been reassured that strict observance and faithful implementation of the constitutional mandate and the existing laws by a competent machinery is sufficient to prevent, and if need be, to punish any sexual harassment or assault; and the improvement needed in the laws, if any, is marginal, to await which is no excuse for the impairment of the rule of law. Correction of the



societal mindset of its gender bias depends more on social norms, and not merely on legal sanction. The deficiency in this behalf has to be overcome by the leaders in the society aided by the necessary systemic changes in education and societal behaviour.

6. This view of the Committee is buttressed by the fact that the executive, meanwhile, has taken several measures to this effect under the available regimen, and the judiciary too has issued several directions under the existing laws to ensure safety and protection of the dignity of women in public places and in public transport.
7. Failure of good governance is the obvious root cause for the current unsafe environment eroding the rule of law, and not the want of needed legislation. If there was a felt need for more laws, there are many recommendations of expert bodies and judicial decisions that remain unimplemented. The Law Commission's 84th Report in 1980 and its 172nd Report of 2000 relating to this subject, the National Police Commission Reports recommending autonomy and seminal improvement in the quality of the police force, which is the principal machinery for the maintenance of law and order, continue to gather dust for decades due to the apathy of all the political dispensations. The Supreme Court's judgment of 2006 in *Prakash Singh's* case giving certain directions for the autonomy and improving the quality of the police force remain to be implemented by all the governments. Action in this behalf does not brook any further delay, if there is a genuine desire to honour the purpose of constituting this Committee.



8. Attitudinal changes to correct the aberration of gender bias have to be brought about in the institutions of governance to improve the work culture, and in civil society to improve the social norms for realizing the constitutional promise of 'equality' in all spheres for the womenfolk. The 'workmen' must improve the work culture instead of quarreling with the 'tools'. In the Committee's view, without the improvement in this aspect, mere additions in the statute book are of no avail. Focus on the machinery for implementing the laws is, therefore, a significant part of this exercise.
9. The Committee hopes that the concern and urgency shown by the Government in constituting it will not wane with the passage of time and the publication of our report; and that the constitutional promise of gender justice in a social order with the egalitarian ethos will soon be realized without much ado. A positive reaction to the tragedy which triggered this response of the government would be the real tribute to the memory of the victim of gang rape and to the honour of the womenfolk.
10. The Committee concludes its task with this fervent hope.

J. S. Verma



ACKNOWLEDGEMENTS

1. It is not possible to ensure that the contribution of everyone in the performance of this stupendous task is duly acknowledged. They are too many to be named individually for an exhaustive list.
2. The response to the Committee's public notice inviting suggestions was overwhelming. We are grateful for the responses and suggestions received from all stake-holders, including women's groups, social activists, academia, eminent persons, National Commissions, and also some political parties. Many experts, such as medical personnel, psychologists, psychiatrists, mental health providers etc. also gave valuable advice. Help came voluntarily also from the faculty and students of some prestigious foreign universities. The Committee gratefully acknowledges the contribution of each of them.
3. The Committee also acknowledges the benefit it derived from oral interactions with representatives of many women's organizations, constitutional bodies and commissions, lawyers, and social activists etc., who were met for a better appreciation of their suggestions. A list of such persons is annexed.
4. The Committee needs to make a special mention of the team of young lawyers, law students and academics, who worked around the clock, throughout the period, researching and collecting material from across the world, and assisting the Committee in the performance of its task. The Committee's counsel, Abhishek Tewari, Advocate, was overall in-charge of the preparation of the report. He was assisted by Anubhav Kumar, Apoorv Kurup, Devansh Mohta, Jigar Patel, Nikhil Mehra, Nishit Agrawal, Shyam Nandan,



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Nithyaesh Natraj, Preetika Mathur, Salman Hashmi, Shwetasree Majumder, Siddharth Peter de Souza, Saumya Saxena, Talha Abdul Rahman and Prof. Mrinal Satish of the National Law University, Delhi. The Committee is indeed very grateful to them for their immense contribution and support.

5. The Committee would also like to thank Professor Laura Hoyano (Oxford University), Judge Michael Kirby (Australia), PRS Legislative Research, Center for Research, Bhuwan Ribhu (Bachpan Bachao Andolan), Sagar Preet Hooda, Prof. David Wilkins (Harvard University), Prof. Diane Rosenfeld (Harvard University), Prof. Sandra Fredman (Oxford University), Prof. Shlomit Wallerstein (Oxford University), Kavita Avula, Dr. Shekhar Seshadri, Dr. Sameer Malhotra, Shantha Sinha (NCPDR), Mukund Upadhyay, Kiran Bedi, Mihira Sood, Prateek Chadha, and Anirudh Mathur (student at Oxford University), for their valuable contributions.
6. Particular mention must be made of the invaluable contribution by the staff in the office of Mr. Gopal Subramaniam for providing the infrastructure and support needed for the Committee's work. Kewal Krishan Ahluwalia, Vipul Trivedi, and Bobby Kumar of that office need special mention. The Committee is grateful for their ungrudging services and support.
7. The Committee also acknowledges with gratitude the hope and expectation of the people of India from this Committee. We have tried to live up to their expectation.



LIST OF ABBREVIATIONS

ADR	Association of Democratic Reforms
AFSPA	Armed Forces Special Powers Act, 1958
AIR	All India Reporter
AITC	All India Trinamool Congress
BBA	Bachha Bachao Andolan
BJP	Bharatiya Janata Party
BSP	Bahujan Samaj Party
CAG	Comptroller and Auditor General
CBI	Central Bureau of Investigation
CCTV	Close Circuit Television
CEC	Chief Election Commissioner
CHRI	Commonwealth Human Rights Initiative
CID	Crime Investigation Department
CPI(ML)(L)	Communist Party of India Marxist- Leninist Liberation
CPO	Central Police Organisations
CrPC	Criminal Procedure Code, 1973
CRPF	Central Reserve Police Force
DGP	Director General of Police
FIR	First Information Report
GDP	Gross Domestic Product
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organisation
IND	Independent
IPC	Indian Penal Code, 1860



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IPS	Indian Police Service
JMM	Jharkhand Mukti Morcha
MGNREGA	Mahatma Gandhi National Rural Employment Guarantee Act, 2005
MHA	Ministry of Home Affairs, Government of India
MLA	Member of Legislative Assembly
MP	Member of Parliament
NCEUS	National Commission for Enterprises in Unorganised Sector
NCPCR	National Commission for Protection of Child Rights
NCRB	National Crime Records Bureau
NCT	National Capital Territory of Delhi
NCW	National Commission for Women
NHRC	National Human Rights Commission
NSCPP	National Security and Central Police Personnel Welfare
PCR	Police Control Room
PEB	Police Establishment Board
RCP	Rashtriya Communist Party
RJD	Rashtriya Janata Dal
RP Act	Representation of People's Act, 1951
SP	Samajwadi Party
UNDHR	United Nations Declaration on Human Rights
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UPSC	Union Public Service Commission
WRPE	Women's Role in Planned Economy
WTO	World Trade Organisation



INTRODUCTION

“Woman is the companion of man, gifted with equal mental capacities. She has the right to participate in the minutest details in the activities of man, and she has an equal right of freedom and liberty with him. She is entitled to a supreme place in her own sphere of activity as man is in his. This ought to be the natural condition of things and not as a result only of learning to read and write. By sheer force of a vicious custom, even the most ignorant and worthless men have been enjoying a superiority over woman which they do not deserve and ought not to have. Many of our movements stop half way because of the condition of our women.”

Mahatma Gandhi¹

1. Rape, sexual assault, eve-teasing and stalking are matters of serious concern – not only because of the physical, emotional and psychological trauma which they engender in the victim, but also because these are practices which are being tolerated by a society ostensibly wedded to the rule of law.
2. The fundamental rights to life with human dignity², to equality³, and to work in ones chosen profession or trade⁴ inherently include protection from sexual harassment. It is indubitably the position that the Constitution guarantees fundamental freedoms to women. In view of Article 15(3), which enables the State to make special provisions for women and children, the equality of women and children is firmly enshrined in Article 14 as well as Article 15(1) of

¹ M. K. Gandhi, *Speeches and Writings*. G. A. Natesan & Company, Madras, 1933.

² Constitution of India, Article 21

³ Ibid Articles 14 and 15

⁴ Ibid Article 19(1)(g)



the Constitution. It is also necessary to note that Article 21 applies equally to women. Article 21A, which guarantees the right to education applies to 'all children' irrespective of gender. Article 23 prohibits traffic in human beings and forced labour. Article 24 protects children and enjoins that no child below the age of 14 years will be employed to work in any factory or mine or hazardous employment. It may also be noticed that Article 51A(e) provides that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women.

3. In fact, the Preamble to the Constitution guarantees social, economic and political justice which, in the view of the Committee, would include gender justice, liberty of thought, expression, belief, faith and worship; equality of status and opportunity that would again reinforce the theory of equality; while fraternity enjoins citizens to treat each other with respect and dignity, regardless of gender.
4. The right to be protected from sexual harassment and sexual assault is, therefore, guaranteed by the Constitution, and is one of the pillars on which the very construct of gender justice stands⁵.
5. This right is buttressed by the directive principles of State policy contained in Articles 38, 39 and 39A of the Constitution, which are to be construed harmoniously with the fundamental rights in Part III; and these fundamental principles bind the

⁵ See also the observations of the Supreme Court of India in *Vishakha v. State of Rajasthan*, AIR 1997 SC 3011 and *Apparel Export Promotion Council v. A.K. Chopra*, AIR 1999 SC 625.



State in performance of its task of governance of the country.

6. Every person invested with public power remains primarily a citizen who is duty bound to perform the fundamental duties of every citizen with the added public duty of implementing the directive principles of securing a social order for the promotion of welfare of the people.
7. *A fortiori*, the duty of the State, therefore, is to provide a safe environment, at all times, for women, who constitute half the nation's population; and failure in discharging this public duty renders it accountable for the lapse. The State's role is not merely reactive to apprehend and punish the culprits for their crimes; its duty is also to prevent the commission of any crime to the best of its ability. Crimes against women are an egregious violation of several human rights demanding strict punishment with deterrence to prevent similar crimes in future by the likeminded.
8. The National Human Rights Commission has also held the government accountable and responsible for the violation of human rights within its jurisdiction, observing:

"...it is the primary and inescapable responsibility of the State to protect the right to life, liberty, equality and dignity of all of those who constitute it. It is also the responsibility of the State to ensure that such rights are not violated either through overt acts, or through abetment or negligence. It is a clear and emerging principle of human rights jurisprudence that the State is responsible not only for the acts of its own agents, but also for the acts of non-State players acting within its jurisdiction.



The State is, in addition, responsible for any inaction that may cause or facilitate the violation of human rights.”⁶

9. This Committee has proceeded to perform its task on the basis of the above constitutional obligation and juristic principles enunciating the State’s responsibility for the protection of the right to life with all aspects of human dignity of women. This is also the demand of the fundamental rights in Articles 14, 15 and 19 of our Constitution as indicated above. The substantive laws must meet these standards and the machinery prescribing the procedure for their implementation must be adequately equipped for it.
10. The purpose of laws is to prescribe the standard of behaviour of the people and to regulate their conduct in a civilized society. Faithful implementation of the laws is of the essence under the rule of law for good governance. In the absence of faithful implementation of the laws by efficient machinery, the laws remain mere rhetoric and a dead letter.
11. Dr. Rajendra Prasad, while moving the motion for adoption of the Constitution in the Constituent Assembly, had said:

“...Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. That will depend upon the men who administer it. If the people who are elected, are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the

⁶ NHRC Order dated April 1, 2002 in Case No. 1150/6/2001-2002



country. After all, a Constitution like a machine is a lifeless thing. It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them...

It requires men of strong character, men of vision, men who will not sacrifice the interests of the country, at large for the sake of smaller groups and areas and who will rise over the prejudices which are born of these differences. We can only hope that the country will throw up such men in abundance..."⁷

Is the fervent hope belied? If so, the faith has to be restored.

12. Amartya Sen in 'The Idea of Justice' echoed the same sentiment, in the following words:

"...There is no automatic guarantee of success by the mere existence of democratic institutions...The success of democracy is not merely a matter of having the most perfect institutional structure that we can think of. It depends inescapably on our actual behaviour patterns and the working of political and social interactions. There is no chance of resting the matter in the 'safe' hands of purely institutional virtuosity. The working of democratic institutions, like all other institutions, depends on the activities of human agents in utilizing opportunities for reasonable realization..."⁸

13. In short, 'institutional virtuosity' by itself is not enough without 'individual virtuosity'.

⁷ Constituent Assembly Debates, Volume XI.

⁸Amartya Sen. *The Idea of Justice*. 2011 Harvard University Press.



14. The most perfect laws also would remain ineffective without the efficiency and 'individual virtuosity' of the human agency for implementing the laws, namely, the law enforcement agencies. The mechanism has to be supported by the complementary role of civil society as envisaged in the fundamental duties of the citizens under Article 51A of the Constitution.
15. The fundamental duties of every citizen specified in Article 51A of the Constitution include the duties 'to renounce practices derogatory to the dignity of women' in clause (e), and the foremost duty 'to abide by the Constitution and respect its ideals' in clause (a). These fundamental duties are merely a reiteration of the values of the Indian ethos, which needed a reminder in the waning moral structure of the society, more prevalent in the institutions of governance. Aristotle, in his ancient and seminal work '*Politics*', emphasized the significance of 'education of citizens in the spirit of the Constitution', thus:

"The greatest of all means...for ensuring the stability of Constitutions – but which is nowadays generally neglected – is the education of citizens in the spirit of the Constitution..."⁹

The significance of this observation has to be sustained.

16. Thus, if these are guaranteed freedoms under the Constitution, how do they become real freedoms and how do they enable women to possess requisite capabilities which would lead to the

⁹ Aristotle, *Politics*, ed. R. F. Stalley, trans. Ernest Barker (Oxford, 1998)



fulfilment of their potential as individual citizens under India's liberal and democratic framework? In this respect, the Committee finds great support in the 'capability approach' postulated by Dr. Amartya Sen, who points out:

*"The idea of 'capability' (i.e. the opportunity to achieve valuable combinations of human functionings – what a person is able to do or be) can be very helpful in understanding the opportunity aspect of freedom and human rights. Indeed, even though the concept of opportunity is often invoked, it does require considerable elaboration, and capability can help in this elucidation. For example, seeing opportunity in terms of capability allows us to distinguish appropriately between (i) whether a person is actually able to do things she would value doing, and (ii) whether she possesses the means or instruments or permissions to pursue what she would like to do (her actual ability to do that pursuing may depend on many contingent circumstances)."*¹⁰ (Emphasis supplied)

17. While the Committee is of the view that there is merit in the capability approach propounded by Prof. Amartya Sen, it must also be borne in mind that the ability to dictate needs and desires (including the capacity and ability for consumption as well as income generation) are not irrelevant factors. The Committee is unable to disregard the subjugation of women, which has been occasioned in India on account of the lack of financial independence and security. Hence, while acknowledging that the capability approach does address a series of other issues in relation to

¹⁰ Amartya Sen, *Human Rights and Capabilities*, Journal of Human Development, Vol.6, No. 2. (July 2005), pp. 151-166 DOI: 10.1080/14649880500120491.



women, it is necessary, as a part of the overall change of consciousness, that women must be made equally capable and productive for the purpose of becoming self-sufficient financially, which would be one of the intrinsic safeguards for 'feeling' and 'perceiving' equality. Naturally, this cannot detract from the reality that political power, domestic violence, education and social status are indeed vital concerns.

18. The Committee is of the view that capabilities are indeed crucial to the people's potential functioning, as observed by Prof. Sen. But how do we arrive at that stage in respect of women, when it is evident that women have been kept away from reaching that stage for no fault of their own? This brings us to the vexed question that unless and until the State pursues a policy of avowed determination to be able to correct a historical imbalance in consciousness against women, it will not be possible for men and indeed women themselves, to view women differently and through the prism of equality. It is not enough that women occupy a few symbolic political positions to evidence true empowerment of women in this country. In the view of this Committee, the ethos of empowerment of women does not limit itself to political equality, but also extends, in equal terms, to social, educational, and economic equality.

19. If true empowerment of women were to mean anything, it is necessary that law, as well as public policy, must be capable of engaging substantially with women's rights, opportunities, acquisition of skills, the ability to generate self-confidence and insist on total equality in relationships, both with



society and the State. It is the inability of women to claim equality in society which has led to a slant against women as a consequence of which there has been a latent bias against women in the prosecution of crimes including its prevention. One wonders if the following words penned by Mahbub-ul-Haq hold true for Indian women:

“As we approach the 21st century, we hear the quiet steps of a rising revolution for gender equality. The basic parameters of such a revolution have already changed. Women have greatly expanded their capabilities over the last few decades through a liberal investment in their education. At the same time, women are acquiring much greater control over their lives through dramatic improvements in reproductive health. They stand ready and prepared to assume greater economic and political responsibilities. And technological advances and democratic processes are on their side in this struggle. Progress in technology is already overcoming the handicaps women suffer in holding jobs in the market, since jobs in the future industrial societies will be based not on muscular strength but on skills and discipline. And the democratic transition that is sweeping the globe will make sure that women exercise more political power as they begin to realize the real value of the majority votes that they control. It is quite clear that the 21st century will be a century of much greater gender equality than the world has ever seen before.”¹¹

20. We also revisit the report submitted by one of us in *Sheela Barse* (infra), which pithily states:

“Thus the meaning of law and the empowerment which law gives and the clothing of man with such

¹¹ *Human Development in South Asia, 2000: The Gender Question*, The Mahbub ul Haq Human Development Centre, Oxford University Press, 2000.



Constitutional rights is only to make sure that whether it be State or whether it be man, and after all the State contains men, that with Pausanius, King of Sparta, a man feels confidently that "laws should have an authority over men, not men over laws" in order to see that a human right is also accompanied by an enforcement modus effectualis, it is necessary to give it in the first instance the prime importance which it deserves and which is merited to it in law, after all law itself recognises the high dimensions and dyophysite existence of rights, the one absolute impregnable and the other subject to social regulation by valid statute law."

21. It is an admitted fact that women in India have suffered in various aspects of life and physical health, mental well-being, bodily integrity and safety, social relations, political empowerment, education and knowledge, domestic work and non-market care, paid work and other projects, shelter and environment, mobility, leisure activities, time autonomy, respect, religion, and if we may add, self-esteem / self-autonomy. We are of the opinion that Indian women have substantially suffered on most of these counts as a consequence of which the *de facto* equality guaranteed by the Constitution has not become a reality for them.
22. The achievement of empowerment and equality of women has to be necessarily a conjoint effort of the individual and the State. Cases of individual women performing well are not indicative of the empowerment of women as a collective responsibility under the Constitution. The nation also suffers from, on the other hand, dismal sex ratios in several states such as Punjab and Haryana. The nation suffers from the existence of chauvinistic institutions like *khap panchayats*, which, unfortunately, are politically so powerful



that they overrule, with impunity, the constitutionally mandated administration of equality in favour of women, by using extra constitutional, oppressive methods of punishment.

23. It is shocking to note that even after the recent horrific incident of gang rape, many political leaders, including members of Parliament/State legislatures, spiritual gurus with large followings and other eminent persons have been making statements reinforcing the gender bias. Some have even blamed the victim for having facilitated the rape by her own behaviour. Some of the worst examples are:

- (i) **Shri Anisur Rahman** (Communist Party of India (Marxist) – West Bengal): *"We have told the chief minister in the assembly that the government will pay money to compensate rape victims. What is your fee? If you are raped, what will be your fee?"*
- (ii) **Shri Asaram Bapu**: *"Only 5-6 people are not the culprits. The victim is as guilty as her rapists... She should have called the culprits brothers and begged before them to stop... This could have saved her dignity and life. Can one hand clap? I don't think so,"*
- (iii) **Shri Om Prakash Chautala** (INLD – Haryana): *"We should learn from the past... specially in Mughal era, people used to marry their girls to save them from Mughal atrocities and currently a similar situation is arising in the state. I think that's the reason khap has taken such a decision and I support it."*



- (iv) **Shri Sri Prakash Jaiswal** (Congress): *“New victory and a new marriage have their own significance. The memory of your victory fades with time, the same way one’s wife becomes old and loses her charm”*

Many of them have reflected this gender bias contrary to the constitutional mandate after swearing ‘to bear true faith and allegiance to the Constitution of India’, in addition to their fundamental duty ‘to abide by the Constitution and respect its ideals’. These deep rooted prejudices have to be eliminated for the efficacy of any laws on the subject. The time has come to enact laws providing for the subsequent disqualification of elected representatives on this ground alone.

24. This begs the question - does the Indian State live at two levels? One which comprises those who are affluent and who have access to the Constitution and its machinery, and the other comprising those who live in the silent domination of the superior will of tradition, customs and practices which are derogatory to women?
25. In our view, unless and until each one of these pernicious models is deconstructed by the collective will of not only Parliament, but also of the people of India, gory incidents, such as those which have been reported in recent times (and which continue to be reported) from across the country, will continue to shake the faith of the people. Each violent incident against an Indian woman is causing greater provocation. It is causing greater provocation not simply because it is a shameful incident, but also because it appears



that there is a vast disconnect between equality and respect and the obligations of those who administer the law.

26. These indeed compel us to admit to only one answer that whatever be the political orientation, the Indian State has failed to look at this issue in a substantive manner. While we acknowledge and greatly applaud the concerns of feminists and various persons who have spoken in support of women, we still feel distressed to say that all organs of the State have, in varying degrees, failed to fulfil the promise of equality in favour of women. We also notice that the high instances of female foeticide and infanticide, poor maternity and child care, women's diseases turning chronic, women being subjected to malnutrition, are outrageous stains on a free India. They disclose the inbuilt subconscious bias of those who rule against women. The Committee would like to remind the State that gender equality and safeguarding of human rights is a Millennium Development Goal (to be achieved by the year 2015) under the United Nations Millennium Declaration.

27. If these problems exist - and there have been consistent studies by sociologists which establish this fact - the mere setting up of Ministries for the social empowerment of women is highly inadequate. The immediate requirement is, therefore, that there should be minimal guaranteed rations in respect of women, compulsory access to education for women, free education in respect of women up to the undergraduate level, preferential opportunities to single women, rehabilitation of destitute women, prevention of trafficking in



women and a host of measures which would show that the Indian society is serious in reinforcing gender equality.

28. *A fortiori* the need for good governance is of a credible and efficient mechanism for law enforcement and justice delivery coupled with performance of the fundamental duties by every citizen.
29. Implicit in the terms of reference, this forms an integral part of the Report.
30. In our tradition bound society, structured on the basis of conservative values, when a woman is subjected to sexual assault in any form, it translates into a multiple crime. She is raped at home (literally and figuratively) and in public, followed by demeaning medical examination, examination and cross-examination by the police and in court, in salacious media reports, and in the insensitive response of society, including family and acquaintances. In sum, the victim suffers intermittent rape in full public glare.
31. Another humiliating aspect of the crime against women is that her status in the patriarchal structure of society also impedes her access to justice. The inequities of social status, caste prejudices, and economic deprivation further compound the gender injustice.
32. Despite the well-known Bhanwari Devi case, which led to the *Vishakha* judgment, full justice continues to elude the victim of sexual harassment and sexual assault even after two decades. The most appalling feature of the case is that the trial



court acquitted the accused observing that the rapists were middle-aged and respectable persons of a higher caste who could not have raped a lower caste woman. The mindset of the judiciary also needs to be improved by their education in gender sensitivity. The women's tragedy is to face the compounding of gender and social injustice contrary to the constitutional promise to 'secure a social order in which justice, social, economic and political, shall inform all the institutions of national life', and the State's obligation 'to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people'¹².

33. Education to correct gender bias and to cure the mindset of the prejudices influencing the law enforcement agencies has also to be a part of this exercise. A holistic view of the entire issue has to be taken by addressing the root causes and not merely the symptoms of the malady. Education has to begin at birth in the home, in formal education, personal behaviour, social interaction, and it has to continue life-long. The process may take time for its completion, but it must commence forthwith. The Report has, therefore, to deal with this aspect as well.
34. Women must enjoy freedom and should not be intended to act as carriers of 'perceived honour' any differently from male children. Thus, the excessive control over women, which has been exercised over the last few decades and its acceptance in India in recent years, is simply outrageous. We are also of the opinion that the

¹² Constitution of India, Article 38.



rape of Nirbhaya and the sacrifice of her life only reinforces that India requires de facto equality, freedom from superstition, renunciation of arcane, misogynist traditions and practices which are at variance with the Constitution, which seek to debilitate and handicap women.

35. On the contrary, it is necessary that the State must practice equality in matters of all such opportunities which it affords in public employment, the employment of women which would include even employment in other positions where women could completely show their ability to perform.
36. It is indeed tragic that the brutal gang rape of a young, defenseless woman on December 16, 2012 by a group of perverted men in the heart of the nation's capital was needed to bestir the government into action realizing the gravity of the situation, which could no longer countenance delay in taking necessary steps to provide adequate measures for the safety and protection of the womenfolk in the country. The setting up of this Committee is a step in that direction, and we hope, at the very outset, that the three arms of governance, viz, the executive, the judiciary and the legislature, will take the recommendations made herein to their logical conclusion.
37. We must note, with some satisfaction, that during the formulation of this Report, the Executive has taken steps to implement measures to ensure the safety of women in public transport¹³. The judiciary has also come down heavily in several

¹³ *Orders go out for CCTVs, bus checks, patrol vans*, Indian Express, Delhi, January 10, 2013.



instances, and, as reported in the media, the Supreme Court has, on January 11, 2013, taken cognizance of a PIL filed seeking directions in respect of women's safety in Delhi¹⁴. We hope that the impetus generated by the December 16 incident and the ensuing protests will continue in the future.

38. The involvement of civil society led by the youth in the spontaneous country-wide peaceful protest, demanding prompt measures by the government to protect the dignity of women has lent greater urgency to the long felt need. To quote Pratap Bhanu Mehta:

*"The disenchantment with the state often expresses itself in the thought that those who wield state power are not accountable."*¹⁵

39. To achieve this reality, stages of change do not have to be, in the Darwinian sense, mere steps in evolution but can be fast forwarded by fundamental changes of attitude. We are glad to note that the voices of protest raised post the December 16, 2012 incident have symbolised the potential of the youth of the nation, and, perhaps, their need to disregard past perceptions in relation to women. In the view of the Committee, the protests are clearly a call to modern India to renounce old ways of looking, thinking and acting towards women and are a strong, positive move towards true empowerment.

¹⁴ *Nipun Saxena & Anr. v. Union of India & Ors.* (Writ Petition (C) No. 565/2012).

¹⁵ Pratap Bhanu Mehta, *The Burden of Democracy*, 2003, Penguin Books, India.



40. Demand of accountability by the civil society of those responsible to provide good governance to curb the menace of sexual harassment escalating to assault on women in any form is the discharge of people's participatory role in republican governance. This is a positive fallout of the unfortunate incident. Sexual assault degenerates to its gravest form of rape beginning with uncontrolled sexual harassment in milder forms, which remain uncontrolled. It has, therefore, to be curbed at the initial stage.
41. The Report, therefore, deals with sexual crimes at all levels; and with the measures needed for prevention as well as punishment of all acts with sexual overtone that are an affront to human dignity. To go a step further, this Report also deals with the construct of gender justice in India and the various obstructions thereto, which prevent this nation of more than a billion persons from achieving the objectives stated in the Preamble to the Constitution.
42. The expressions 'aggravated sexual assault', 'Criminal Law', and 'speedier justice' used in the terms of reference contained in the Notification dated December 23, 2012 constituting the Committee, have to be interpreted expansively to serve the object of this exercise.
43. The expression 'aggravated sexual assault' must include all stages of affront to human dignity which is the quintessence of human rights, beginning with any act with a sexual overtone. The expression 'Criminal Law' must include all gender related laws: criminal, civil or electoral. The expression 'speedier justice' must include all



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institutions of the justice delivery system, which are meant to provide speedy justice to enforce the right to life with dignity guaranteed in Article 21 of the Constitution of India.

44. In short, a holistic view is to be taken of the unrealized and seriously threatened constitutional promise of the universally recognized human right of gender justice.

45. This is the scope of the Committee's Report.



METHODOLOGY ADOPTED BY THE COMMITTEE

1. In the performance of its task, the Committee adopted the method of inviting suggestions from all stakeholders through a public notice. In addition it interacted with a number of experts, social activist, interest groups; through their representatives, to elicit their views on the subject. For the purpose of further elaboration of some of their suggestions the committee also invited a number of representatives, eminent academics for an oral interaction.

Suggestions and views of various stake holders

2. The Committee directed the Ministry of Home Affairs, Government of India to issue a public notice on behalf of the Committee inviting views and suggestions from the general public. Accordingly, a public notice dated December 24, 2012, was issued by the Ministry of Home Affairs, which called for suggestions to be sent to the Committee by January 5, 2013. In response to the said public notice, the Committee received an overwhelming number of responses by way of emails, post and fax which were in excess of 70,000. These were sent by the stake-holders, social activists and the general public.
3. The Committee also addressed letters to various public functionaries, such as High Court judges and advocates general of various states.
 - (i) Members of the Indian and international academia;
 - (ii) Women's Organisations;



- (iii) Child rights Organisations;
- (iv) Members of the medical fraternity in India;
- (v) Non- government Organisations;
- (vi) Research groups;
- (vii) Members of the administrative and police services; and
- (viii) Legal experts

seeking their views and comments on theories and practices, experiences and also the medical and psychological aspects of sexual crimes. The Committee received positive responses from them, which have been pivotal in the drafting of this report and the framing of the Committee's recommendations.

Meetings with various stakeholders

4. The Committee held interactions at various times after December 23, 2012 (including on January 19th and 20th 2013), with various stakeholders, a list of whom is annexed. The views of the representatives of the Ministry of Home Affairs, the Ministry of Health and Family Welfare, Ministry of Women and Child Development, National Commission for Protection of Child Rights, National Commission for Women, Delhi Police and the Central Bureau of Investigation were also sought by the Committee. In these meetings, experts from all over India were given an opportunity to voice their opinions with an all-encompassing and a comprehensive set of agendas, covering a variety of issues that have a bearing on gender justice.



Collection of data from interested parties

5. We also undertook an analysis of a wide range of recommendations that came from political parties, and interest groups. These groups ranged from specific organisations with grass route experience and specialization in certain aspects, including child rights activists and specialists on disability rights. Further, the Committee engaged with organisations which worked with statistical databases, collected over years of research, which helped us to evaluate systemic problems, addressing which would have far reaching consequences for women's rights economic, social and political. The committee also consulted officers with administrative and policing experience to adequately identify the lacunas that plague the state machinery.

6. The committee engaged in in-depth global research to gather material for reaching its conclusions and crafting the proposed amendments in legislation. The Committee also analyzed past judgments, reviewed the trajectory of public policy and its sensitivity towards gender; and enquired into the differences of socio-political contexts in which uniform laws are/have been implemented. This led us to probe deeper in recognizing multiple patriarchies and striking at a wider 'culture of misogyny' through a change in educational practices. The committee hopes to have successfully addressed the concerns of the people, and done justice to the widespread protests across the country. But at the same time we hope that the state action is accompanied by sustained efforts by the people to move



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collectively towards a culture of equality and mutual respect.

7. The Committee also sought extensive data from various ministries and departments of the Central and State Governments to facilitate its task. The lukewarm responses received will be commented upon later in the Report.



CHAPTER ONE

CONSTITUTIONALISM, REPUBLICANISM, AND GENDER EQUALITY

"[Prejudice] it's like a hair across your cheek. You can't see it, you can't find it with your fingers, but you keep brushing at it because the feel of it is irritating."

Marian Anderson

1. We wish to base a large number of our conclusions on the theory of the Constitution. The actions of those in authority have been in conflict with constitutional theory under which citizens of India are entitled to equality. We wish to say that equality is the bedrock of the Constitution. However, what is meant by equality under the Constitution, its manifestations and whether this enables a citizen to have a greater say in governance is one of the fundamental questions which arises before this Committee.
2. Thus it is important to state that, even though a government may enjoy popular public will, unless and until its actions are informed by constitutionalism, it will be unable to discharge the obligations towards citizens which are guaranteed under the Constitution. The way in which these rights are made visible in life, society, and on a practical and continual basis, is the obligation of the State. This cannot be more telling in the context of women, their rights and their empowerment.
3. The word 'republic' is also vital to understand the constitutional values which are embedded within the Constitution. We are aware of the cultural and



regional diversity and pluralism which exists in Indian society. The idea of republic, we must bear in mind, is a Platonian concept which also was adopted after the French revolution. In fact, we agree with a scholarly exposition in Jennings's analysis about '*Citizenship, Republicanism and Multiculturalism*' in the French context that reveals, that the concept of a 'republic' is a 'reflective ideal', as opposed to a 'regulative ideal'.¹⁶

4. We are of the opinion that the ideology and the conduct of political parties, and all constitutional institutions must bear the character of a republic. It is important, therefore that our public life as well as society, must be capable of reflecting republicanism.
5. India's democracy, as well as sovereignty is contingent on the realisation of the ideal of social justice. We are therefore of the view that gender inequality is contrary to the unifying idea of a sovereign, democratic republic.
6. We agree with the historian Pierre Rosanvallon:
*"Our history is directed towards a rationalist conception of democracy. In France, democracy is not based upon the confrontation of interests, it is not based upon the negotiation of demands and needs. It wants to establish itself upon an objective image of the general interest. And this general interest is not determined by confrontation; it is understood by reason"*¹⁷

¹⁶ Jennings, J. 2000. '*Citizenship, republicanism and multiculturalism in contemporary France*', British Journal of Political Science, Volume (4): 575-98.

¹⁷ Pierre Rosanvallon, '*Les élites françaises, la démocratie et l'Etat: Entretien avec Pierre Rosanvallon*', Esprit, 236 (1997), p. 62. In Jennings, J. 2000. '*Citizenship, republicanism and multiculturalism in contemporary France*', British Journal of Political Science, Volume (4): 575-98.



7. We would like to state that it is the youth of India who actually by their extraordinary protest have reinforced reason, and have attempted to confront the state and political elite, to what is modern reality in the context of the Constitution. The solidarity which cut across caste, creed, sex, religion and community clearly shows that the protest was dictated entirely by secular and rational considerations. We believe that the promotion of rational behaviour which appears to be the engagement of youth as we could see from the protest is one of the telling tales of optimism for the future; but we need to caution the State that if such protests and if such engagements are discarded by the arrogance of power, or the assumption of authority, the political class may itself find its existence deeply imperilled.
8. We think this lack of understanding of republicanism and its character in Indian Constitution has been a serious omission. We wish to clearly say that the Constitution embodies certain fundamental universal values. These values have to be secured in practice and reality and that is the obligation of the State. We think that a State which is unable to address itself to these issues is going to seriously undermine the constitutional existence of its citizens.
9. In fact, way back in *Ram Jawaya Kapur v. State of Punjab*¹⁸, we may note that Bijon Kumar Mukherjea, a scholar and Judge of great distinction, said that a modern State is expected to engage in all activities necessary for the promotion

¹⁸ AIR 1955 SC 549



of the social and economic welfare of the community. It may be noted that in *Ram Jawaya Kapur*, the question which arose was the width of the executive power and it was held that:-

“The limits within which the Executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the executive which our Constitution has set up. Our Constitution though federal in its structure, is modelled in the British Parliamentary System where the executive is deemed to have the primary responsibility for the formulation of the governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on of supervision of the general administration of the State.....”

10. Mukherjea, J. further went on to say:-

“.....As we have said already, the executive government are bound to conform not only to the law of the land but also to the provisions of the Constitution. The Indian Constitution is a written Constitution and even the Legislature cannot override the fundamental rights guaranteed by it to the citizens. Consequently, even if the acts of the executive are deemed to be sanctioned by the legislature, yet they can be declared to be void and inoperative if they infringe any of the fundamental rights of the petitioners guaranteed under Part III of the Constitution.....”

11. We have cited this decision as one of the first decisions which chose to speak about the theory of governance under the Constitution. What does the



theory of governance under the Constitution imply when the State is obliged to respect rights? There are two theories which exist. One is that the rights are injunctions against the State whereas the second is that the rights had both these injunctions (State as a non-violator) and also, in addition have an affirmative obligation to secure the conditions for those rights. This Committee is of the view that our Constitution, is a proactive Constitution, therefore, believing in the latter theory. This is in fact the challenge of governance under the Constitution when the Constitution is a living organism capable of reflecting dynamic aspirations, as well as a bundle of rights, which may be of competing character.

12. We notice that there was an earlier decision of the Supreme Court in *State of West Bengal v. Anwar Ali Sarkar*¹⁹, which set out an important principle with reference to Article 14 of the Constitution.

13. Article 14 of the Constitution runs as follows:-

"14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

14. The first part of Article 14 is borrowed from the Irish Constitution. It is a declaration of equality of civil rights of all persons. We also believe that that is why in the Preamble there is an express reference to the character of India being a democratic republic. Republicanism, as discussed above, in our view means equality of rights. In fact, it may be noted that Chief Justice Shastri (in *Sarkar*), very perceptively noted that:

¹⁹ 1952 SCR 284



“.....the second part which is a corollary of the first and is based on the last clause of the first section of the 14th Amendment of the American Constitution enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination or favouritism, or as an American Judge put it “it is a pledge of the protection of equal laws”..... that is laws operate alike on all persons under like circumstances.”

15. We would like to note that while Article 14 is used as a prohibitory injunction, we also find that there are certain words in *Sarkar* which suggest that, namely:

“and as the prohibition under the Article is directed against the State, which is defined in Article 12 as including not only the legislatures but also the governments in the country, Article 14 secures all persons within the territory of India against arbitrary laws as well as arbitrary application of laws. This is further made clear by defining law in Article 13 (which renders void any law which takes away or abridges the rights conferred by Part III as including among others any order or notification so that even executive orders or notifications must not infringe Article 14).”

16. This ensures non-discrimination in State action both in the legislative and administrative spheres in the democratic, republic of India. In fact, in *Sarkar*, it was noted that:

“....the State in the exercise of its governmental power must have necessity make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws. But classification implies discrimination between persons classified and those who are not members of that class. Atchison,



Topeka & Santa Fe R. Co. v. Matthews, that upon the class or caste duties and burdens different from those resting upon the general public indeed the very idea of classification is that of equality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality....."

17. We are referring to the above passage to indicate that even as far back as 1952, the Supreme Court was conscious of protection of fundamental rights and particularly in the sphere of non-discrimination. Obviously, legislative and administrative actions which are hostile in discrimination are forbidden by the Constitution. But at the same time, it is open to the State to actually adopt such special measures as may be necessary for the purpose of removing inequality. We also notice that in the farsighted judgment of Justice Shastri, where there was an express reference to the celebrated decision in *Hopkins*²⁰ which clearly said that "*.....though the law itself be fair on its face and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and an unequal hand so as to practically make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.*"

18. In our view, these telling observations in *Sarkar* are somewhat vital in understanding the concept of equal protection of the laws within the territory of India. This means that women are entitled not only to equality under Article 14 but are also entitled to the equal protection of the laws. Any offences which are committed in relation to them,

²⁰ *Yick Wo v. Hopkins*, 118 U.S. 356, 373 -74 (1886)



should not be tried in a facially compliant manner, but in an effective manner, so that there is honesty of purpose, integrity of prosecution as well as successful conviction of such offences, for which the state must evolve a dynamic review mechanism.

19. We must note that the Constitution is a pledge of the State. The State is responsible to live and administer the Constitution. As far as the rights of women are concerned, in our opinion, the State has failed to fulfil its trust and pledge with the Constitution to create both, atmospheric climatic and ground conditions for their welfare and benefit.

20. In the Squire Centenary Lecture, the Right Honourable Lord Woolf, Lord Chief Justice of England and Wales, clearly said that any worthwhile society required an efficient and effective legal system. Constitutions have to evolve to meet the needs of their citizens. Indeed, Lord Woolf perceptively remarked:-

“The evolution can be incremental in a way which would be difficult if we had a written Constitution. But flexibility comes at a price. We have never had the protection that a written Constitution can provide for institutions that have a fundamental role to play in society. One of those institutions is a legal system that is effective, efficient and independent. A democratic society pledged that the rule of law would be deeply flawed without such a legal system.....”²¹

²¹ *The Rule of Law and a Change in the Constitution* – The Rt. Hon. The Lord Woolf, Lord Chief Justice of England and Wales. 2004. Squire Centenary Lecture.



21. Lord Woolf rightly noted that the ability to cope without a written Constitution in Britain depended largely on the tradition of mutual respect, restraint and cooperation. We agree with Lord Woolf that:-

“There is hardly an institution performing functions of a public nature which has not been the subject of change. The changes have had an impact on the way in which our Constitution operates.....”²²

22. We are of the opinion that while acknowledging the sovereignty of the legislatures and the latitude given to executive governance, the primacy of sovereignty as well as latitude is only for public good and is informed by the theory of entrustment and protection of human rights. We must add that the rule of law is not only intended to prevent the government of the day from abusing its powers but is also meant to be the informing charter for its duties and attitudes including behavioral and social attitudes.

23. Have we seen a social attitude of political authority against *Khap Panchayats*? Have we seen an express denunciation by a collective body like Parliament against such bodies? Have we seen an express denunciation by Parliament to deal with offences against women? Have we seen the political establishment ever discuss the rights of women and particularly access of women to education and such other issues over the last 60 years in Parliament? We find that over the last 60 years the space and the quantum of debates which have taken place in Parliament in respect of women’s welfare has been extremely inadequate.

²² *Ibid*



Further, we have noted the sustained historical neglect of women in planning and public policy.

24. While we do agree that after the enforcement of the Constitution in a newly independent state, there are priorities in governance. We take note of the fact that the first 15 years of independent India were largely spent in the building of institutions under the Constitution which included a parliamentary democracy, independent judiciary, encouraging economic development and technological advancement which were to mark it as a modern State.

25. However, as far as women are concerned, the role of women in planned economy was not adequately prioritized. It is revealed that in 1939, there was a National Standing Committee which appointed a Sub-Committee to work out the role of women in a planned economy.²³ The National Planning Committee was set up in 1938 by the Indian national Congress at the joint initiative of Subhash Chandra Bose and Jawaharlal Nehru under the chairmanship of the latter. We further notice that the final report (Women's Role in Planned Economy WRPE) was presented before the Plenary Session of the National Planning Committee in 1940. According to historians, the said report did clearly show that there were issues at stake, and recommended that these be put in a framework of contemporary national and international thinking. We must note that the 1939 report came to light on account of the efforts of Maitreyi Krishnaraj from the archival sources

²³ Banerjee, N. 1998. 'Whatever Happened to the Dreams of Modernity? The Nehruvian Era and Woman's Position', Economic and Political Weekly, Volume(17).



which was brought back into public notice – ‘Remaking Society for Women: Visions from Past and Present’. Some of its key recommendations that have a direct bearing on a woman’s economic empowerment are summed up as below:

1. The report noted that economic rights of women were contingent on each woman being recognised as a separate and an independent unit within the economic structure.
2. WRPE report dealt with equal pay for equal work and also raised the question of compensation for household labour by absolute claim on a portion of the household income.
3. The report also accorded women the right to claim crèche facilities. (This crucial provision was not recognised till as late as 2006, in the Mahatma Gandhi National Rural Employment Guarantee Scheme (MNREGS), but unfortunately this provision still remains extremely inadequate if not dysfunctional)
4. The report suggested that “there should be cessation of all work during the day - so that the mid-day meal can be conveniently taken and the house wife is released from the duties in kitchen" [NPC 1948:227, resolution I lb].²⁴
5. It also condemned the prioritization of male workers over women, and sought equal guarantees for women at work regardless of their marital status.

²⁴ Ibid p2



26. Indeed, it is extraordinary that the said report went quietly unnoticed.
27. A similar trend of absence in policy can be viewed by analysing the Planning Commission Reports. The trend has historically been to view women as 'recipients' and not contributors to public policy. These patronizing tones blind the state to the specificities of women's issues and the particularities of their condition.²⁵
28. Bannerjee's paper asserts that the first Five Year Plans fails to recognize women as workers. Bannerjee writes "the first plan resolved to provide women with adequate services necessary to fulfil what was called a '*woman's legitimate role in the family*' [GOI 1974:306]. The Second Plan did mention women's work but it was mainly to talk about protecting them from hazards for which they were physically unfit. We do not find in the Five Year Plans any attempt to promote equality or remove specific handicaps of disadvantaged groups in the initial years. Thus, for a considerable period, agricultural activities as well as wage good industries other than those in the

²⁵ Ghosh, J. 2002. '*Globalization, export-oriented employment for women and social policy: A case study of India*', *Social Scientist*, Volume: 17-60. Kabeer, N. 2004. '*Globalization, Labor Standards, And Women S Rights: Dilemmas Of Collective (In) Action In An Interdependent World*', *Feminist Economics*, Volume(1): 3-35., Krishnaraj, M. 2000. '*Women's Perspectives on Public Policy in India: A Half-Century of Incomplete or Lost Agenda?*', *Gender, Technology and Development*, Volume(2): 161.

See also, Swaminathan, M. 1998. '*The new economic policies and the rural women*', *Women's Equality*, Volume. and Saxena, S 2010 "What do the literatures on India's New Economic Policy and on Women in the Informal Economy allow us to understand about the link between Macro Policy and Gendered Outcomes as seen through the Critical Feminist Analytical Lens?" unpublished thesis, University of Oxford.



factory sector, were outside the realm of planning. We also find that in the chapter on agricultural workers in 1956 Plan, there was no awareness shown about women in the agricultural sector. We also notice that the Third Plan also did not address the issue of women in employment. The only mention which we find about women in the Third Plan is about women's training for family planning work and midwifery²⁶. We notice that there was a thrust for women's development with respect to girls' education²⁷, however, the document in talking about the gap between boys' and girls' educational achievements did not examine the causes for such disparities.

29. A study undertaken by Krishnaraj (1998), has revealed that planning commission reports also did not account for the vast number of women employed in the informal sector of the economy, who lay outside the purview of any labour laws and were vulnerable to exploitation. It not till the Arjun Sengupta Report and the setting up of the National Commission for Enterprises in the Unorganized Sector (NCEUS) in the year 2008 that the unorganized economy was acknowledged. We think, this, has been a serious aberration in governance and in understanding the structural economics as far as women are concerned. We therefore, urge the state to make up for this historical neglect in understanding the role played by women.

²⁶ (1961 Plan Document, p. 179)

²⁷ (1974 Plan Document, p. 307) Banerjee, N. 1998. 'Whatever Happened to the Dreams of Modernity? The Nehruvian Era and Woman's Position', Economic and Political Weekly, Volume(17).



30. In India, we did not need special anti-discrimination legislation or for that matter, special courts to deal with complaints relating to discrimination because of the presence of a written Constitution. However, it may not be irrelevant to incorporate the principles of promotion of equality and prevention of unfair discrimination which have in fact been the subject matter of special legislation in some jurisdictions.

31. We notice that the Preamble to the South African Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 includes an express provision²⁸ that *“the consolidation of democracy in our country requires eradication of social and economic inequalities, especially those that are systemic in nature, which were generated in our history by colonialism, apartheid and patriarchy, and which brought pain and suffering to the great majority of our people.....”*

32. We think that the Preamble of our Constitution in 1950 proceeded to project these principles and proceeded on the basis that economic and social inequality was meant to be eradicated. The objective was sufficiently large and was cognizant of the oppression and discrimination which would exist in a patriarchal society.

33. We further note:-

“Although significant progress has been made in restructuring and transforming our society and its institutions, systemic inequalities and unfair discrimination remain deeply embedded in social structures, practices and attitudes, undermining the aspirations of our constitutional democracy....”

²⁸ Preamble. *Promotion of Equality and Prevention of Unfair Discrimination Act, 2000*. Republic of South Africa.



34. We believe that while certain measures may have been taken over a period of time but they have been too far and too few and they certainly have not attempted to restructure and transform society and its institutions. If there has to be a society which is based on equality of gender, we must ensure that not only does a woman not suffer on account of gender but also not suffer on account of caste or religion in addition. Thus a woman may suffer a double disadvantage – a) because she is a woman, and b) because she belongs to a caste/tribe/community/religion which is disadvantaged, she stands at a dangerous intersection if poor.

35. We also notice that in South Africa there was consciousness of adherence to international obligations and binding treaties. We quote:-

“South Africa also has international obligations under binding treaties and customary international law in the field of human rights which promote equality and prohibit unfair discrimination. Among these obligations are those specified in the Convention on the elimination of all forms of discrimination against women and the Convention on the elimination of all forms of racial discrimination.”²⁹

36. As we shall presently point out, India is a signatory to all the international Conventions relating to women and we shall consider their importance in constitutional interpretation and in the theory of the Indian State in its attitude towards women.

²⁹ *Ibid*



37. The further recital provides that Section 9 of the Constitution of South Africa provides for the enactment of national legislation to prevent or prohibit unfair discrimination and to promote the achievement of equality. This implies the advancement by special, legal and other measures of historically disadvantaged individuals, communities and social groups who were dispossessed of their land and resources, deprived of their human dignity, and who continued to endure the consequences.
38. The South African Promotion of Equality and Prevention of Unfair Discrimination Act endeavours to facilitate the transition to a democratic society united in its diversity marked by human relations that are caring and compassionate and guided by the principles of equality, fairness, equity, social progress, justice, human dignity and freedom. We are of the opinion that each of the concepts of equality, fairness, equity, social progress, justice, human dignity and freedom are to be found in the Indian Constitution. We also believe that by virtue of the Preamble, the Indian State is meant to be a 'caring' and 'compassionate' State towards those who are disabled in poverty, ability, or disadvantaged in any manner which would also include women who also have been subjected to a disadvantaged social position. We notice that Section 8 of the said Act provides for prohibition of unfair discrimination on the ground of gender. The Indian law has recognized in *Ashok Kumar Thakur v. Union of India*³⁰ that equality means not only facial equality but *de facto* equality:

³⁰ (2008) 6 SCC 1



“What I am concerned to see is not whether there is absolute equality in any academical sense of the term but whether the collective conscience of a sovereign democratic republic can regard the impugned law, contrasted with the ordinary law of the land, as the sort of substantially equal treatment which men of resolute minds and unbiased views can regard as right and proper in a democracy of the kind we have proclaimed ourselves to be. Such views must take into consideration the practical necessities of government, the right to alter the laws and many other facts, but in the forefront must remain the freedom of the individual from unjust and unequal treatment, unequal in the broad sense in which a democracy would view it. In my opinion, 'law' as used in Article 14 does not mean the "legal precepts which are actually recognised and applied in tribunals of a given time and place" but "the more general body of doctrine and tradition from which those precepts are chiefly drawn, and by which we criticise, them.”

39. We may notice that in the South African law, equality has been defined as both *de jure* and *de facto* equality. It has provided that:

“Equality includes the full and equal enjoyment of rights and freedoms as contemplated in the Constitution and includes de jure and de facto equality and also equality in terms of the outcomes.”

40. It is, therefore, to be noticed that in Section 8 of the South African law, there is a prohibition of unfair discrimination on ground of gender subject to Section 6, no person may unfairly discriminate against any person on the ground of gender, including – a) gender based violence; b) female genital mutilation; c) the system of preventing women from inheriting family property; d) any practice including the traditional, customary or religious practice which impairs the dignity of



women and undermines the equality of women and men including undermining the dignity and well-being of the girl child; e) any policy or conduct that unfairly limits access of women to land rights, finance and other resources, discrimination on the ground of pregnancy, limiting women's access to social services or benefits such as health, education and social security, the denial of access to opportunities including access to services or contractual opportunities for rendering services for consideration or failing to take steps to reasonably accommodate the needs of such persons, systemic inequality of access to opportunities by women as a result of the sexual division of labour.

41. We also notice that in South Africa, there is a Women Empowerment and Gender Equality Bill which is available for public comment. We notice that this is intended to be a legislative framework for empowerment of women, to give effect to Section 9 read with Section 2 of the Constitution of the Republic of South Africa 1996 in compliance with South Africa's international commitments; to provide for an obligation to adopt and implement the gender mainstreaming, to provide for offences of practices with adverse effects. We do notice that from the words of the said Bill, there is a recognition that lesbian, gay, bisexual, transgender, intersexual persons are endowed with the same alienable rights and are entitled to the same protection as all human beings and special provisions have been sought to be made to protect them from abuse and violation of their human rights including torture, rape and murder. We notice extensive references to gender inequality in workplace, in areas apart from the



workplace and that how law must override patriarchal, customary, traditional and religious provisions which have unequal outcomes and that collective societal environment is imperative for the country to realise substantive gender equality.

42. We may note further to our discussion on a universal charter of rights, that the United Nations protocol to prevent, suppress, punish trafficking in persons especially women and children adopted in November 2000 is a part of the United Nations Convention against organised crime and provides the first internationally recognised definition of trafficking (ESEAP 2003). Besides giving a framework for further discussions, it has proved to be a guiding principle for a matter of conceptual understanding of trafficking.
43. We are of the opinion that each one of these clauses is inbuilt into our constitutional concepts of Article 14, 19, 21 read with Article 51A(e) including the duty on the part of the State to make special provisions under Article 15(3). In view of Article 51A(e) of the Constitution which is the duty of every fundamental citizen to renounce practices which are derogatory to the dignity of women and the guaranteed Articles under the Constitution, we have already in our Constitution a duopoly of obligations of the State as well as obligations of the individuals. Unfortunately, as a result of the political class/establishment being unable to take a firm position, unequivocal in character, to reinstate these as fundamental principles of equality in which parliamentary democracy and republican character of the nation will be affirmed; and as a result of inaction and hiding behind the apathy and the delegated



responsibility of administration of laws by the police, the main discourse relating to subjugation of women has been lost sight of. We think it is necessary that this imbalance is set right by express statutory provisions which are outlined in the form of a draft Bill of Rights appended to this Report.

44. Empowerment of women means the advancement of women as contemplated under Articles 14 and 21 of the Constitution through integrated strategies, frameworks, programmes, plans, activities, budgets, which aim to eliminate structural inequalities and which enable women to gain power and control over decisions and resources which determine the quality of their lives in a sustainable manner.
45. The Committee is of the firm opinion that the lack of empowerment of women resides in three factors:-
 - a. The inequality perceived and felt by women;
 - b. *De facto* inequality; and
 - c. Poverty and lack of power, or, the inability to access authority in equal terms.
46. We regret to state that there have been cases where the police has viewed vulnerability of the victims as a corresponding additive to its own strength of control. We are afraid the violation of human rights pertaining to 'rape cases' including permission of rape, distorting investigation in rape, pre-conceived notions of 'honour,' certain regressive court judgment (in some cases, we are told, that the rapist made a magnanimous offer to marry the girl) are extraordinarily telling



euphemisms of misplaced morality. Thus, complaints of rape become mere matters of formality - low on priority because there is no understanding of the acuteness of the violation of human rights in respect of a woman by sexual assault and the psychological trauma she undergoes. This is compounded by vulnerabilities emanating from class/caste/community disadvantages and also that of poverty. This has led to a subculture of oppression and we are afraid that unless and until this is addressed not just in high sounding economic terms but in terms of concrete legislation, accountability, assertion of rights, guarantees of education and above all to secure spaces, India's constitutional claim to republicanism remains overstated. As Dr. Ambedkar opined:

"I feel that the constitution is workable, it is flexible and it is strong enough to hold the country together both in peacetime and in wartime. Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is that Man was vile."

47. In this respect, we note the submissions made before us by Ms. Indira Jaisingh, Additional Solicitor General of India, who stresses that equality for women not only be tested on the cornerstone of Article 15, but equally in the context of Article 16(4) of the Constitution (which has been interpreted to mean that women could also be considered as "other backward class").
48. In a certain sense, the ASG's views have some force, and we agree that the guarantee of non-discrimination based on sex ought to be available



equally against the State as well as against non-state actors. Laws to fill in the missing link on violence against women are, in our view, inevitable to ensure true equality.

49. This is indeed the correct way to look at this problem. We consider that non-discrimination is the foundation in any society which is governed by principles of equality based on humanity. We do believe that the collective failure of an organisation to provide an appropriate and professional service to each section of society regardless of sex, colour, culture or ethnic origin amounts to discrimination through unwitting prejudice, ignorance, thoughtlessness and stereotyping.
50. We do broadly agree that the institutional bias against women in India is a failure on the part of the State and its organs to provide appropriate non-discriminatory treatment to people because of their sex or gender. We do agree that such bias can be seen and detected in processes, attitudes and behaviour which disadvantage women.
51. However, in a country which mostly follows a patrilineal system, the seeds of discrimination are sown at the lowest social tier itself. Discrimination between sexes in the allocation of scarce resources in various fields such as nutrition, medical care and education is directly related to the greater desirability of the son and the transferability of the daughter. In most families, girls are taught to see brothers get more and better food. This attitude is internalized by girls often without being conscious of it; but a conscious effort is also made so that the



girls inculcate the cultural norms which legitimize a differential treatment between girls and boys³¹

52. We would like to say that non-discrimination is a wider concept. Non-discrimination is not merely the absence of discrimination. It is an affirmative position, which is called non-discrimination. In other words, the purpose of equality under the Constitution can simply be defeated by recourse to subtle, slants of behaviour, attitudes and power play as well as the exhibition of arrogance. We are of the opinion that this protest which was made by young India is a protest against institutional bias which both men and women perceive related to women and we think that is an important facet of this protest.
53. We wish to add that the supreme law does not have any bias against women - on the contrary, the Constitution guarantees political and social equality and liberty to women. Where, then, lies the mismatch in the letter of the law and its spirit?
54. Law is a normative exercise. What needs to be examined is whether the normative exercise is viewed as a sufficient communication to the society on what is and what is not an offence.
55. We are of the opinion that on account of the patriarchal structure of our society, women have been constantly marginalised and ignored. They have gone through years and years of struggle. On the other hand, we must not forget, they have participated in equal measure in India's freedom movement, and the framing of the Constitution.

³¹ Towards Equality-Report of the Committee on the Status of Women in India, Sharma K. and Sujaya C.P. (Ed), Pearson, 2012



They are as much architects of India's freedom and destiny as anyone else. But they had dual responsibilities. They also had a reproductive role as a result of which the concept of family and their role in the family was one which was geared to bring up and look after the family. The mere fact that they looked after the family did not in any manner diminish their abilities. They felt tradition bound and looked after families, but at the same time they were also having the same human curiosities and wanted to study, and sought education. The moment the patriarchal society realised that women, if educated, could become independent and could assert authority, it saw a challenge to its authority. It is this perceived challenge of authority which is misplaced and is a result of years and years of past cultural beliefs. We agree that this cannot be washed away in a day. We have to make transformative processes in society which will not only make society more secure, but give equality to women, respect them, give them secure spaces, and males will also be benefited as a result of their changed attitudes and liberation. Thus India will stand to gain.

56. We wish to make it clear that the acts of extra-constitutional bodies (like *khap panchayats*), which restrain the right of men and women to select a partner of their choice, do not enjoy the sanction of law in India. It is not that the framers of the Hindu Marriage Act were not aware of the *Smritis* and the *Dharmashastras* when they framed the law. We are, therefore, unable to understand how a set of self-styled bodies and *panchayats* can decide to outlaw marriages borne out of free choice. We are of the opinion that women's right to choose whom



they want to marry and also to enter into marriage as a civil union is vital to a democratic society.

57. There is, naturally, a certain degree of institutional bias against women. Their complaints are not taken seriously by the police. On account of the patriarchal structure the male police officers do not take complaints of rape seriously.

58. We have, during our deliberations, also seen that there is large-scale trafficking of women and female children in India. We have also noted the involvement of elements of the police force in the propagation of such a heinous crime. We have also been made aware that the police establishment and the CBI have been fully aware of this malaise for years, but apart from the issuance of advisories and circulars, they have done little to curb this menace. We have seen that complaints made by women and trafficked/abused children are not promptly registered (or at all) by the police. It is clear that this institutional bias, especially against the weaker sections of society, have resulted in women and children being contained and managed like chattel due to the apathy of the State. When a woman belongs to the weaker section of society, she already suffers from, therefore, a twin disadvantage i.e. she is standing at the crossroads of both being a woman as well as being economically disadvantaged.

59. We are also of the opinion that women must enjoy freedom and should not be intended to act as carriers of 'perceived honour' any differently from male children. Thus, the excessive control over women, which has been exercised over the last few



decades and its acceptance in India in recent years, is simply outrageous.

60. It is necessary that the State must actually practice equality in matters of all such opportunities which it affords in public employment. The employment of women should also include employment in other positions.
61. The State must also, in our view, seriously tackle and attempt to eradicate the evil of malnutrition of women and children. It is sad to note that in spite of several orders of the Supreme Court issuing directions to ensure women and children get mid-day meals, adequate measures have not been taken:

“ ... In one of the orders earlier passed, this Court had observed about the impact of this public interest litigation on the very existence of large section of poor people, their right to life and right to food to those who can ill-afford to provide to their families two meals a day and their misfortune becoming further grave during famine and drought.

On 28th November, 2001, this Court directed the State Governments/Union Territories to implement mid-day meal scheme by providing every child in every government and government aided primary school with a prepared mid-day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days.

... ..

It is a matter of anguish that despite lapse of nearly three and half years, the order dated 28th November, 2001 has not been fully implemented by all the States and Union Territories.



*It is a constitutional duty of every State and Union Territory to implement in letter and spirit the directions contained in the order dated 28th November, 2001 ...*³²

62. These are definitely schemes to ensure that poverty does not come in the way of survival of citizens. Yet, we are concerned that the vulnerability to poverty and destitution is far greater in respect of women.
63. The prevention of domestic violence having to be enforced through legislation called the Protection of Women from Domestic Violence Act, 2005 is itself an indication of the manner in which women have been disempowered. The statement of objects and reasons of the Domestic Violence Act is as follows:-

“Domestic violence is undoubtedly a human right issue and serious deterrent to development...

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498-A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.”

³² Order of the Supreme Court dated April 20, 2004 in W. P. (C) No. 196 of 2001 (PUCL v. UOI & Ors.)



64. While the enactment of this statute was a welcome measure, it has not led to a reduction in instances of domestic violence. This is primarily because there has been no change of fundamental attitudes towards women. The passing of legislation without adequate dissemination of implementing the spirit of the legislation as a part of normative human conduct is missing in Indian executive governance. The translation of legislation into behavioural attitudes is not simply a matter of psychological skill or acquisition but is indeed a charter of obligations enjoined upon the State. The State, which has the resources of the media, educational institutions, and executive governance, must have full time long term advisors who would be able to constantly monitor the condition of women from different standpoints and characteristics. We are unable to see in the Government of India any specialists in the Ministry of Health who are under a full time employment to be able to ascertain sociologically the condition of women much less their psychological well-being.
65. We must also recognize that our society has the need to recognize different sexual orientations a human reality. In addition to homosexuality, bisexuality, and lesbianism, there also exists the transgender community. In view of the lack of scientific understanding of the different variations of orientation, even advanced societies have had to first declassify 'homosexuality' from being a mental disorder and now it is understood as a triangular development occasioned by evolution, partial conditioning and neurological underpinnings owing to genetic reasons. Further, we are clear that Article 15(c) of the constitution of



India uses the word “sex” as including sexual orientation.

66. To better understand alternate sexualities we look to ‘Magnus Hirschfeld's Doctrine of Sexual Intermediaries and the Transgender Politics of (No-) Identity’³³.

67. In this work, Bauer traces the origins of the western conceptualization of sexual differences “according to a binomial scheme” within which, only the male/female combinatory was given a divine sanction and considered a natural order. Any other combination be it male/male and female/female) were largely understood as a sin, crime or illness. Over the years, the West developed an “alternative sexual conceptualization based on Galen's one sex model.”

68. Barner argues, “While the two-sex scheme posits a hierarchical structure in which the female sex is subordinated to its complementary opposite, the Galenic one-sex model establishes a bi-polar hierarchy, which results from the way individuals actualize in their bodies the unique sexual nature of maleness .”³⁴

69. He further posits:

“On this account, "fe-males" are only imperfect instantiations of the single existing sex and they must therefore be subordinated to "males" as the superior

³³ J. Edgar Bauer, *Magnus Hirschfeld's Doctrine Of Sexual Intermediaries And The Transgender Politics Of (No-) Identity*. Past and Present of Radical Sexual Politics. Ed Gert Hekma. Amsterdam 2004.

³⁴ Cf. Laqueur 1992, especially chapter 3: 63-113, In Barner 2003,



*realization of mankind's sexual nature. Although the one-sex model became a determinant factor in Renaissance anatomical studies and its traces are observable even in Sigmund Freud's theory of a unique male libido, it never challenged seriously the pervasive influence of sexual binarism, whose ideological prestige was supported by biblical revelation and allegedly observable factuality."*³⁵

70. The categorisations of "a first, paternal, ruling sex," and "a second, maternal, subordinate sex," the *third sex* was meant to reconcile their characteristics as one individual. Bauer further explains that:

*"For its modern advocates, the third sexual mode was an indispensable accretion to binary sexuality designed to closure the possibilities of what is conceivable as "sex". Later on, the third sex was conceived as an emblematic sexual variety that, besides superseding binomial sexuality, initiates a sexual series, which excludes the idea of its own final completion... While the proposal of a "suppletive" third sex sought to overcome the limitations of the sexual binomium by adding a collective category that included all previously rejected or ignored sexual alternatives, the postulation of a "serial" third sex reflected the insight that no final sexual category can do justice to the inexhaustible variability of human sexuality."*³⁶

71. Bauer refers to Ulrichs' (1825-1895) redefinition sexuality within a triadic scheme of sexual modes and concluded: "We constitute a third sex."³⁷ Basically, Ulrichs viewed male Uranians as female souls trapped in male bodies. Further, he regarded them as well as their female counterparts as

³⁵ Bauer, J. E. 2003. 'Magnus Hirschfelds doctrine of sexual intermediaries and the transgender politics of (no-) identity', Conference: Past and Present of Radical Sexual Politics, Amsterdam.

³⁶ Ibid

³⁷ (Ulrichs [1899] 1994: 47), in Ibid



appertaining to a separate, third sexual class clearly distinguishable from normal men and women. Bauer opines that from its inception, however, Ulrichs' third sex category was marked by a specific instability. In the letter quoted, Ulrichs asserted that "sexual dualism" is present embryonically in every human individual, but that it manifests itself in a greater degree in hermaphrodites and Uranians than in normal men and women.

72. He asserts that, *"Despite his intuitive awareness that all humans are to a greater or lesser extent bisexual, Ulrichs obviously decided to disregard his insight for reasons of argumentative strategy, and declared programmatically: "We are not concerned by any intermediary degrees."*

73. We quote with emphasis the following sentence, which is crucial for the purpose of the present debate: *"For it led, among other things, to the unwarranted acceptance of heterosexual teleology and to the psychoanalytical sanction of the patriarchal distributions of sexuality and power."* Borrowing again from Bauer, a primary assumption of Hirschfeld's doctrine of sexual intermediaries is that, *"there are no men and women, but only human beings that are to a large extent male or to a large extent female."*³⁸

74. There is an inexhaustible diversity of sexualities resulting from qualitative as well as quantitative differences that are determined by the way the "primary sexual disposition reacts to processes that hinder or advance its development". Against

³⁸ (Hirschfeld 1913: 4) in Ibid p5



this backdrop, all artificially separated sexual varieties prove to be transitions within the pervading continuity of nature.

75. Thus, if human rights of freedom mean anything, India cannot deny the citizens the right to be different. The state must not use oppressive and repressive labeling of despised sexuality. Thus the right to sexual orientation is a human right guaranteed by the fundamental principles of equality. We must also add that transgender communities are also entitled to an affirmation of gender autonomy. Our cultural prejudices must yield to constitutional principles of equality, empathy and respect.

76. We can do no better than to quote Nancy Fraser³⁹:

“Alternative remedies of homophobia and heterosexism are currently associated with gay identity politics, which aims to revalue gay and lesbian identity. Transformative remedies, in contrast, are associated with queer politics, which would deconstruct the homo-hetero dichotomy...so as to de-stabilize all fixed sexual identities. The point is not to dissolve all sexual differences in a single, universal human identity; it is, rather, to sustain a sexual field of multiple, debinarized, fluid ever -shifting differences”

77. We need to remember that the founding fathers of our Constitution never thought that the Constitution is ‘mirror of perverse social discrimination’. On the contrary, it promised the mirror in which equality will be reflected brightly. Thus, all the sexual identities, including sexual minorities, including transgender communities are

³⁹ Fraser, Nancy, *Justice Interruptus: Critical Reflections on the "Postsocialist" Condition*, Routledge, 1997



entitled to be totally protected. The Constitution enables change of beliefs, greater understanding and is also an equally guaranteed instrument to secure the rights of sexually despised minorities.

78. It would be clear from the above that there is a substantial deprivation of equality, status and opportunity for women. The Constitution contemplates an ever vigilant State, an ever effective State, and ever sensitive State, and yet, the measures of success of a State not in terms of money or monetary indices, but in terms of the capability and capacity of human beings to live without discrimination based on principles of equality and fulfilment of individual potentiality.
79. The rape of Nirbhaya and the sacrifice of her life only reinforces that India requires de facto equality, requires freedom from superstition, renunciation of arcane, misogynist traditions and practices which are completely at variance with the Constitution.



CHAPTER TWO

GENDER JUSTICE AND INDIA'S OBLIGATIONS UNDER INTERNATIONAL CONVENTIONS

1. The Committee notes that the obligation of the State to ensure gender justice (including protecting women from crime and abuse) arises from many sources of international law. We note some of these below:

The Universal Declaration of Human Rights, 1948

2. India was one of the 48 countries which voted in favour of the adoption of the UDHR by the United Nations General Assembly on 10th December 1948. The UDHR is not a treaty in itself but defines 'fundamental freedoms' and 'human rights' for the purposes of the UN Charter. The UDHR is generally agreed to be the foundation of international human rights law as it inspired the numerous human rights conventions which followed including the ICCPR and ICESCR.
3. The Preamble to the UDHR states as follows:

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been



proclaimed as the highest aspiration of the common people,"

4. Article 16 of the UDHR should also be mentioned:

"Article 16

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.*
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.*
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."*

The International Covenant on Civil and Political Rights, 1966

5. The UDHR was followed up by the ICCPR, the Preamble to which *inter alia* states:

"Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,"



6. Article 3 of the ICCPR places an obligation on all covenanting parties to:

"...undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant."

7. Article 23 of the ICCPR upholds certain inherent rights of the family and of men and women to commit to a union:

"Article 23

- 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*
 - 2. The right of men and women of marriageable age to marry and to found a family shall be recognized.*
 - 3. No marriage shall be entered into without the free and full consent of the intending spouses.*
 - 4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children."*
8. India acceded to the ICCPR on April 10, 1979. India has, however, not signed or ratified the optional protocols to the ICCPR (including the Second Optional Protocol, which abolishes death penalty).



International Covenant on Economic, Social and Cultural Rights, 1966

9. India is also a party to the ICESCR, which states in its Preamble:

“Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,”

10. Article 7 of the ICESCR obligates state parties to:

“recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

- (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*
(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays”

11. India acceded to the ICESCR on April 10, 1979. India has not signed or ratified the optional protocol to the ICESCR.



12. India is also party to the Beijing Principles of the Independence of the Judiciary (drawn up and agreed to in 1995 by the Chief Justices of countries in the Asia-Pacific region). These principles represent the minimum standards to be necessarily observed in order to maintain the independent and effective functioning of the judiciary. Under these principles the judiciary has a duty to ensure that all persons are able to live securely under the Rule of Law. This is particularly important to women. The judiciary also has a duty to promote the observance and the attainment of human rights of women under the Beijing Principles. The said principles set out the objectives of the judiciary as below:

The objectives and functions of the Judiciary include the following:

(a) To ensure that all persons are able to live securely under the Rule of Law;

(b) To promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and

(c) To administer the law impartially among persons and between persons and the State."

13. India is also a party to the Convention on the Political Rights of Women, 1954. The said Convention enjoins state parties to *inter alia* ensure the protection of the following political rights of women:

(a) Women shall be entitled to vote in all elections on equal terms with men, without any discrimination;



- (b) Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination; and
- (c) Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.

14. India signed the Convention on the Political Rights of Women on April 29, 1953 and ratified it on November 1, 1961.

The Declaration on Elimination of Violence against Women 1993 and Convention on Elimination of all forms of Discrimination against Women

15. The Committee is conscious of the recommendations in respect of India made by the UN Committee on the Elimination of Discrimination against Women (“CEDAW Committee”) in February 2007. The CEDAW Committee has recommended that the country should “*widen the definition of rape in its Penal Code to reflect the realities of sexual abuse experienced by women and to remove the exception of marital rape from the definition of rape.....*”

16. We wish to add that in the Declaration on Elimination of Violence against Women 1993 (“DEVW”), the following passage is pertinent:-

“Violence against women is a manifestation of historically negligent poor relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women and that violence against women is one of the crucial social



mechanisms by which women are forced into subordinate position compared with men.....”

17. We, in fact, note that Article 14 of the DEVW provided that:

“....State should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end should:

(d) develop penal, civil, labour and administrative sanction and domestic legislation to punish and redress wrongs caused to women; women who are subjected to violence should be provided with access to the mechanism of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; State also informed women of their rights in seeking redress through such mechanisms.”

18. Further, the Convention on Elimination of all forms of Discrimination against Women (“CEDAW”) under Article 11(1) provides as follows:-

“States parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure on the basis of equality of men and women, the same rights in particular (a) the right to work as an inalienable right of all human beings; (b) the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.”

19. Article 22 postulates that equality in employment can be seriously impaired when women are subjected to gender specific violence such as sexual harassment in the work place.



20. Article 24 postulates that State parties will undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present convention. Article 24 also requires State parties to include in their reports information about sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the workplace.
21. We notice that CEDAW was ratified by India on 25th June 1993. The only reservation which has been made by India is to Article 29, paragraph 1, relating to dispute resolution between States by arbitration. We also notice that Government of India has made the commitment at the Fourth World Conference in Beijing to formulate and operationalize a national policy on women, which will continuously guide an informed action at every level and at every sector.
22. We are of the firm opinion that substantive equality and women's rights as human rights have been established both in domestic and international legal regimes. We are of the opinion that, having regard to the exposition of the law in *Ashok Kumar Thakur v. Union of India*⁴⁰ that the Constitution embraces the substantive equality approach as provided in Article 15(1) and Article 15(3). We are also convinced that the concept of formative action under sub-article (3) of Article 15 is not merely an enabling provision but, in the context of Article 14, may be a mandatory obligation.

⁴⁰ (2008) 6 SCC 1



23. We are further of the opinion that merely facial gender neutral laws and policies cannot deny what has perceptively called “.....*differential access to justice faced by women seeking to engage with the legal system.....*”⁴¹
24. The concept of dignity under Article 21 is also significant and it must be noticed that it is conjoined by the preceding expression ‘right to life’. We are of the opinion that any form of violence or assault, sexual or otherwise, on women is a violation of the fundamental right to live with dignity. We also are in agreement with the view expressed that substantive due process in State action is mandatory to ensure the right to live with dignity. However, the issue before us is not simply the redrafting of existing laws but also the need to reassert and reaffirm that the State has primary obligations under the Constitution to secure fundamental rights of its citizens. The fundamental rights of women include safety and bodily integrity. The said rights, in turn, include secure spaces where they can exercise autonomy and freewill.
25. We must also note that the concepts of equality, the rule of law, justice, social, economic and political, liberty of thought and expression are all ultimately engendered to the exercise of individual autonomy and fulfilment of the optimum potential. We are further of the opinion that if constitutional obligations towards women are not fulfilled there would be a declaration against the State that right to equality and dignity have been denied. We must note that in the context of

⁴¹ See *Handbook on Law of Domestic Violence*, Lawyer’s Collective. Indira Jaising ed., 2009 Lexis Nexis.



women, and in the context of persons with disabilities, the role of the State as a guarantor of fundamental rights in respect of the latter, the role of the State as *parens patriae* is fundamental to the Constitution. We also wish to state that merely because there are private actors or non-state actors, as perceptively described, the duty of the State does not diminish nor do the obligations of the State attenuate. On the contrary, we are of the opinion that they are deeply enhanced.

26. We notice that CEDAW, for the first time in the sphere of international law, accorded primacy and supremacy to women's human rights. The definition of "discrimination against women" under Article 1 of CEDAW was clarified by Recommendation 19 to include gender based violence:-

"The definition of discrimination includes gender based violence, i.e., violence that is directed against woman because she is a woman or that affects woman disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender based violence may breach specific provisions of the Convention regardless of whether those provisions expressly mention violence..."

27. Thus, it is clear that the expression 'ensure safeguards' clearly means that such safeguards be effective safeguards. We also need to add that the concept of safeguards is to create a climate of security. This, of course, is a twin objective – one to deal with immediate redressal of an individual grievance and the other to create an atmosphere and climate of security which is synonymous with the exercise of freedom. We also must bear in mind that this injunction for creating safeguards to



prevent discrimination against women is not only against public authorities but also extends to the private sphere as signified by “.....*any person, organization or enterprise...*”

28. We must add that there is a special definition of violence against women. We need to note that this definition is an extraordinarily wide but perceptive definition. It seeks to capture both the act of violence as well as the consequence of violence upon the individual. It also clarifies that the said Act is a direct deprivation of liberty whether occurring in public or in private life. At this juncture, we would like to say that Article 1 of the DEWV clearly defined violence against women as any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or in private life.

29. We also must note that further elaboration of violence against women has been described as “.....*physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation....*”⁴².

30. We would like to state that a detailed study was conducted by the United Nations called the “In-

⁴²DEWV, Article 1.



depth Study on all forms of Violence against Women"⁴³. This study clearly finds that non-implementation or ineffective implementation of existing domestic laws in most countries was the single most important reason for continued immunity to perpetrators of violence against women particularly in intimate relationships.

31. We are therefore of the opinion that failure to frame a domestic law, which is requisite for dealing with violence against women, will constitute a breach of the international Convention. Secondly, the law must be implemented in a manner that satisfies the criteria of impartial administration of justice, which is the fundamental cornerstone of the rule of law. We also need to add that while physical violence is an offence, it also constitutes deprivation of human rights and liberty, and is a form of sex discrimination. Thus, violence against women has a dual characteristic. It is an offence under the principles of penology but, more importantly, it is a direct constitutional violation. The number of constitutional violations in India assume great importance as they have a bearing upon the true meaning of democracy, the true meaning of republic, and the true meaning of social justice. We therefore wish to caution the State and suggest to the Legislature that it must keep aside all other business and first correct this aberration of the Constitution which has been permitted in the Indian society for so many decades.

⁴³*In-depth study on all forms of violence against women –Report of the Secretary General, July 2006, UN General Assembly Document A/61/122/Add.1*
www.un.org/womenwatch/daw/vaw/SGstudyvaw.htm



32. In respect of our views above, we take note of the Dowry Prohibition Act, 1961, as well as the Protection of Women from Domestic Violence Act, 2005, both of which were enacted to prevent and remedy the occurrence of dowry and domestic violence in Indian society. The National Crime Records Bureau statistics, however, establish that offences of cruelty and violence by the husband and his family against the wife (for dowry or otherwise) constituted over 3% of the total number of crimes against women in 2006-2007. The conviction rate was only approximately 21%. One wonders why Parliament had to enact special legislation in respect of dowry and domestic violence if the provisions of the IPC were being effectively enforced.



CHAPTER THREE

RAPE AND SEXUAL ASSAULT

1. The statutory definition of the offence of “rape” is found under section 375. It reads thus:

“375. Rape. – A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: –

First. – Against her will.

Secondly. – Without her consent.

Thirdly. – With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly. – With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. – With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. – With or without her consent, when she is under sixteen years of age.

Explanation. – Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception. – Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.”



2. Simply put, the offence of rape is “ravishment of a woman” without her consent or against her will by force, fear or fraud and also includes the “carnal knowledge” of a woman.⁴⁴
3. “Carnal Knowledge” means penetration to any slightest degree. This ingredient of rape has been statutory incorporated under the Explanation to Section 375.

Ingredients of the offence

Consent

4. In order to bring home the charge of rape against a man, it is necessary to establish that the “sexual intercourse” complained of was either against the will or without her consent. Where the consent is obtained under the circumstances enumerated under clauses *firstly* to *sixthly*, the same would also amount to rape.
5. In *Dileep Singh v. State of Bihar*⁴⁵ the Supreme Court observed that “*though will and consent often interlace and an act done against the will of the person can be said to be an act done without consent, the Indian Penal Code categorizes these two expressions under separate heads in order to as comprehensive as possible.*”
6. The difference between the two expressions was brought out by the Supreme Court in *State of UP v. Chottey Lal*⁴⁶ in the following words:

“15. Be that as it may, in our view, clause Sixthly of Section 375 IPC is not attracted since the prosecutrix has been found to be above 16 years (although below 18

⁴⁴ *Bhupendra Sharma v. State of HP* (2003)8 SCC 551 [para 10-11]

⁴⁵ (2005)1SCC 88 (para 14)

⁴⁶ (2011)2 SCC 550



years). In the facts of the case what is crucial to be considered is whether clause Firstly or clause Secondly of Section 375 IPC is attracted. The expressions "against her will" and "without her consent" may overlap sometimes but surely the two expressions in clause Firstly and clause Secondly have different connotation and dimension. The expression "against her will" would ordinarily mean that the intercourse was done by a man with a woman despite her resistance and opposition. On the other hand, the expression "without her consent" would comprehend an act of reason accompanied by deliberation. (Emphasis supplied)"

7. It must be noted that the Courts have followed the tests laid down under Section 90 of the IPC for establishing "consent". Section 90 reads thus:

"90. Consent known to be given under fear or misconception. – A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

[Consent of insane person] if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

[Consent of child] unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age."

8. In this context the decision of Supreme Court in *State of H.P v. Mango Ram*⁴⁷ is noteworthy. The Court observed as follows:

⁴⁷ (2000) 7 SCC 224



“13... .. The evidence as a whole indicates that there was resistance by the prosecutrix and there was no voluntary participation by her for the sexual act. Submission of the body under the fear of terror cannot be construed as a consented sexual act. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances. From the evidence on record, it cannot be said that the prosecutrix had given consent and thereafter she turned round and acted against the interest of the accused. There is clear credible evidence that she resisted the onslaught and made all possible efforts to prevent the accused from committing rape on her. Therefore, the finding entered by the learned Sessions Judge that there was consent on the part of the prosecutrix is without any basis.”

9. The United Nations Handbook points out that the definitions of rape and sexual assault have evolved over time, from requiring use of force or violence, to requiring a lack of positive consent.
10. The United Nations recommends that the definition of rape should require the existence of ‘unequivocal and voluntary agreement’ as well as proof by the accused of steps taken to ascertain whether the complainant was consenting.⁴⁸ This has the advantage of shifting the burden to the defence to prove that such steps were taken. This approach was endorsed by the CEDAW committee in its views in *Vertido v The Philippines*,⁴⁹ which made it clear that such a definition would assist in minimizing secondary victimization of the complainant/survivor in proceedings.

⁴⁸ Ibid.

⁴⁹ Above n 96.



11. Similarly, under Canadian law, the accused cannot argue that there was belief in consent if the accused did not take reasonable steps to ascertain that there was consent to the specific sexual activity. It is not enough that the accused subjectively believed there was consent. He must also demonstrate that he took reasonable steps to ascertain it.⁵⁰
12. Under the law of England and Wales, a person consents if he or she 'agrees by choice and has the freedom and capacity to make that choice.'⁵¹ There are certain statutory presumptions regarding consent. For example, lack of consent is assumed if violence was used or threatened or the accused had induced a fear of violence; the complainant was unlawfully detained, asleep or unconscious; or the accused had administered a substance capable of causing the complainant to be stupefied or overpowered. Lack of consent is conclusively proved if the defendant intentionally deceived the complainant as to the nature or purpose of the relevant act, or induced consent by impersonating a person known to the complainant.⁵² The underlying principle is that consent to sexual activity 'requires a conscious, operating mind, capable of granting, revoking or withholding consent to each and every sexual act.'⁵³ There are some similar presumptions in the Indian statute. We have defined consent keeping the above in mind.

⁵⁰ Canadian Criminal Code s. 273.2.

⁵¹ Sexual Offences Act 2003 (UK) s. 74.

⁵² Sexual Offences Act 2003, ss 75 and 76.

⁵³ *R v J.A.* (n 91).



Penetration

13. The section further clarifies that mere penetration is sufficient to constitute the offence of rape.
14. In *Koppula Venkatrao v. State of AP*⁵⁴ the Supreme Court held as follows:

“12. The sine qua non of the offence of rape is penetration, and not ejaculation. Ejaculation without penetration constitutes an attempt to commit rape and not actual rape. Definition of “rape” as contained in Section 375 IPC refers to “sexual intercourse” and the Explanation appended to the section provides that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Intercourse means sexual connection.”

15. Pursuant to the aforesaid observation the offence of ‘attempt to commit rape’ also need elaboration. Section 376 read with Section 511 of IPC penalizes the offence of ‘attempt to rape’.

Attempt to commit rape

16. In *Koppula Venkatrao (supra)* the Supreme Court, with respect to the applicability of section 511 to the offence of rape, held the following:

“8. The plea relating to applicability of Section 376 read with Section 511 IPC needs careful consideration. In every crime, there is first, intention to commit, secondly, preparation to commit it, and thirdly, attempt to commit it. If the third stage, that is, attempt is successful, then the crime is complete. If the attempt fails, the crime is not complete, but law punishes the person attempting the act. Section 511 is a general

⁵⁴ (2004)3 SCC 602



provision dealing with attempts to commit offences not made punishable by other specific sections. It makes punishable all attempts to commit offences punishable with imprisonment and not only those punishable with death. An attempt is made punishable, because every attempt, although it falls short of success, must create alarm, which by itself is an injury, and the moral guilt of the offender is the same as if he had succeeded. Moral guilt must be united to injury in order to justify punishment. As the injury is not as great as if the act had been committed, only half the punishment is awarded.

9. *A culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. The word "attempt" is not itself defined, and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of Section 511 require. An attempt to commit a crime is to be distinguished from an intention to commit it; and from preparation made for its commission. Mere intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under Section 122 (waging war against*



the Government of India) and Section 399 (preparation to commit dacoity). The dividing line between a mere preparation and an attempt is sometimes thin and has to be decided on the facts of each case. There is a greater degree of determination in attempt as compared with preparation.

10. An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in part-execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission or consummation/completion. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. The illustrations given in Section 511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt.

11. In order to find an accused guilty of an attempt with intent to commit a rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part. Indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events, and in spite of all resistance, materials must exist. Surrounding circumstances many times throw beacon light on that aspect."



Evidence and proof

17. It is well settled that the evidence of the victim of rape is on the same footing as the evidence of an injured complainant or witness. Her testimony alone is sufficient for conviction. In prosecutions of rape, the law does not require corroboration. It is only by way of *abundant caution* that the court may look for some corroboration so as to *satisfy* its conscience and rule out any false accusation.⁵⁵
18. However, the above principle of presumption while prosecuting rape cases emerged in the aforesaid background.
19. In *Tukaram v. State of Maharashtra*⁵⁶ the Supreme Court had disbelieved the statement of the victim of rape, on the ground that the circumstantial evidence did not lead to the inference of guilt and "*in fact derogates in no uncertain measure from the inference drawn by it.*"⁵⁷
20. The facts were these - Mathura was a young girl labourer of 14-16. Her brother and she were brought to their local police station to record their statements in respect of a complaint lodged by her brother. While at the police station, Mathura was raped by Head Constable Tukaram and Constable Ganpat, a fact which she reported to a crowd that had gathered outside the police station. Mathura was then examined by a doctor, who advised her to file a police complaint, which complaint was registered by the police after some hesitation and protests from the crowd.

⁵⁵ *Infra* 1 (para 22)

⁵⁶ (1979)2 SCC 143

⁵⁷ *Ibid* (para 17)



21. Mathura's medical examination revealed no injuries and evidence of prior intercourse. Presence of semen was detected on her clothes and the pyjama of Ganpat. The Trial Court, however, refused to convict the accused. The High Court reversed the finding and sentenced Tukaram to rigorous imprisonment for one year and Ganpat for five years. The High Court held that both these 'gentlemen' were perfect strangers to Mathura and that it was unlikely that *'she would make any overtures and invite the accused to satisfy her sexual desires'* The High Court came to the conclusion that Mathura did not consent to intercourse. The Supreme Court reversed the High Court verdict and held that as there were no injuries shown by the medical report, the story of 'stiff resistance having been put up by the girl is all false' and the alleged intercourse was a peaceful affair. The Court further held that crimes and alarms were a concoction on her part. The Court further held that under Section 375 only the "fear of death or hurt" could vitiate consent for sexual intercourse.
22. Following this verdict a nation-wide protest was launched for inclusion of custodial rape within the legislative provision. The Supreme Court's judgment was criticised by four eminent law teachers - Upendra Baxi, Vasudha Dhagamdar, Raghunath Kelkar, and Lotika Sarkar - who posed the following questions in an open letter to the Supreme Court -
- a) *Was this not a decision which violated human rights of women under the law and the Constitution?*
 - b) *The judgment provided no cogent analysis as to why the factors which weighed with the High Court were insufficient to justify conviction for rape?*



- c) *The fact remains that Mathura was asked to remain in the police station even after her statement was recorded and her friends and relations were asked to leave. Why?*
- d) *Why were the lights put off and the doors shut?*
23. The decision of *Tukaram v. State of Maharashtra*⁵⁸, is a relevant case to show how public opinion and various organisations have espoused the rights of women.
24. Accordingly the Criminal Law Amendment Act, 1983 was passed which included situation of “aggravated rape” under section 376A to E. Further, the India Evidence Act, 1872 was also amended by the Criminal Law Amendment Act, 1983 and section 114A was incorporated which imposed the burden of proving “consent” upon the accused in the aforesaid cases of aggravated rape. This was an exception of the general rule of presumption of innocence of the accused.
25. However, even before the above amendments came in to force in the case of *Bharvada Gohinbhai Hirjibhai v. State of Gujarat*⁵⁹, the Supreme Court reversed the trend and came to a conclusion that it was open to the Court to rely upon the evidence of a complainant even without seeking corroboration if corroboration by medical evidence is available. We also notice that the said judgment seems to have stereotyped Indian and Western women in a somewhat unorthodox way:

“9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of

⁵⁸ (1979) 2 SCC 143

⁵⁹ (1983) 3 SCC 217



corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyze the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opiated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focussed on the Indian horizon. We must not be swept off the feet by the approach made in the Western World which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the Western World. It is wholly unnecessary to import the said concept on a turn-key basis and to transplate it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian Society, and its profile. The identities of the two worlds are different. The solution of problems cannot therefore be identical. It is conceivable in the Western Society that a female may level false accusation as regards sexual molestation against a male for several reasons such as:

- (1) *The female may be a 'gold digger' and may well have an economic motive to extract money by holding out the gun of prosecution or public exposure.*
- (2) *She may be suffering from psychological neurosis and may seek an escape from the neurotic prison by phantasizing or imagining a situation where she is desired, wanted, and chased by males.*
- (3) *She may want to wreak vengeance on the male for real or imaginary wrongs. She may have a grudge against a particular male, or males in general, and may have the design to square the account.*
- (4) *She may have been induced to do so in consideration of economic rewards, by a person*



interested in placing the accused in a compromising or embarrassing position, on account of personal or political vendetta.

- (5) *She may do so to gain notoriety or publicity or to appease her own ego or to satisfy her feeling of self-importance in the context of her inferiority complex.*
- (6) *She may do so on account of jealousy.*
- (7) *She may do so to win sympathy of others.*
- (8) *She may do so upon being repulsed.*

10. *By and large these factors are not relevant to India, and the Indian conditions. Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural Society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because : (1) A girl or a woman in the tradition bound non-permissive Society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracised by the Society or being looked down by the Society including by her own family members, relatives, friends and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance. With a suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being over powered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The*



natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross examination by Counsel for the culprit, and the risk of being disbelieved, acts as a deterrent”.

26. As a listing of these characteristics, we regret that there is a profiling of an Indian girl which has taken place which is an overgeneralisation and it would neither be accurate nor scientific to test the testimony of an Indian women with reference to the criteria which are mentioned in paragraph 10 above. But what is important is that the judgment, in a certain sense, discloses how a woman is viewed in India.
27. We feel that it is the duty of the State as well as civil society to deconstruct the paradigm of shame-honour in connection with a rape victim. Rape is a form of sexual assault just like any other crime against the human body under the IPC. While we agree that it has its distinguishing characteristics, we do not think that there is any basis for society or the State and much less the police/doctors to treat a rape victim as a victim of any other crime. In other words, we are of the opinion that while the said paragraph quoted illustrates the misplaced juxtaposition of shame and honour with the crime of rape, the juxtaposition is clearly a matter of reality and at the same time we think



that it is necessary for this to be deconstructed. It also shows that women have been looped into a vicious cycle of shame and honour as a consequence of which they have been attended with an inherent disability to report crimes of sexual offences against them.

28. In other words, a woman seems to be risking her reputation and honour by reporting a crime of sexual assault against herself. This view must change and while the above passage shows the fundamental misconceptions which are inbuilt in society dealing with women, we are more concerned with the observations in so far as they describe the position of women in Indian society, not in as much as women in the context of rape. In fact, we believe that equality before law, which is guaranteed under the Constitution, invariably means the eschewing of irrelevant considerations and we do believe that many of these considerations must be viewed as irrelevant in a changing society. However, we do notice that the above characteristics are completely inconsistent with fundamental rights which are guaranteed to a woman under the Constitution. We further believe that these cannot be the basis for the purpose of defining the rights of women under the law.

29. At this stage, we notice in *Rafique v. State of UP*⁶⁰, where Krishna Iyer, J. made the following observations:-

“There are several "sacred cows" of the criminal law in Indo-Anglian jurisprudence which are superstitious survivals and need to be re-examined. When rapists are revelling in their promiscuous pursuits and half of

⁶⁰ 1981 SCR (1) 402



humankind-womankind-is protesting against its hapless lot, when no woman of honour will accuse another of rape since she sacrifices thereby what is dearest to her, we cannot cling to a fossil formula and insist on corroborative testimony, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. In this case, the testimony has commanded acceptance from two courts. When a woman is ravished what is inflicted is not merely physical injury, but "the deep sense of some deathless shame".

*A rape! a rape!...
Yes, you have ravish'd justice;
Forced her to do your pleasure."*

"Hardly a sensitized judge who sees the conspectus of circumstances in its totality and rejects the testimony of a rape victim unless there are very strong circumstances militating against its veracity. None we see in his case, and confirmation of the conviction by the courts below must, therefore, be a matter of course. Judicial response to human rights cannot be blunted by legal bigotry."

30. The effect of the Criminal Law Amendment of 1983 was examined by the Supreme Court⁶¹ and it was observed as follows:

"15. In spite of the decision of this Court that (depending upon the circumstances of the case) corroboration of the prosecutrix was not necessary, the cases continued to end in acquittal on account of mishandling of the crime by the police and the invocation of the theory of 'consent' by the courts who tried the offence. To overcome this difficulty, the legislature intervened and introduced Section 114-A in the Evidence Act by Act No. 43 of 1983 reading as under:

"114-A. Presumption as to absence of consent in certain prosecutions for rape. – In a prosecution for rape under clause (a) or clause (b) or clause

⁶¹ *Shri Bodhisattwa Gautam v. Shubra Chakraborty*, 1996 SCC (1) 490.



(c) or clause (d) or clause (e) or clause (g) of subsection (2) of Section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent."

16. *This section enables a court to raise a presumption that the woman who was the victim of rape had not consented and that the offence was committed against her will. The situation, however, has hardly improved. Conviction rates for rape are still lower than any other major crime and the women continue to argue even today that in rape cases the victimised women, rather than the rapists, were put on trial. A large number of women still fail to report rapes to the police because they fear embarrassing and insensitive treatment by the doctors, the law enforcement personnel and/or the cross-examining defence attorneys. The fear has to be allayed from the minds of women so that if and when this crime is committed, the victim may promptly report the matter to the police and on a charge-sheet being submitted, the trial may proceed speedily without causing any embarrassment to the prosecutrix who may come in the witness-box without fear psychosis."*

31. Further in *State of Maharashtra v. Chandraprakash Kewalchand Jain* the Court observed:⁶²

"15. It is necessary at the outset to state what the approach of the court should be while evaluating the prosecution evidence, particularly the evidence of the prosecutrix, in sex offences. Is it essential that the evidence of the prosecutrix should be corroborated in material particulars before the court bases a conviction on her testimony? Does the rule of prudence demand that in all cases save the rarest of rare the court should look for corroboration before acting on the evidence of

⁶² (1990) 1 SCC 550



the prosecutrix? Let us see if the Evidence Act provides the clue. Under the said statute 'Evidence' means and includes all statements which the court permits or requires to be made before it by witnesses, in relation to the matters of fact under inquiry. Under Section 59 all facts, except the contents of documents, may be proved by oral evidence. Section 118 then tells us who may give oral evidence. According to that section all persons are competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Even in the case of an accomplice Section 133 provides that he shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. However, illustration (b) to Section 114, which lays down a rule of practice, says that the court 'may' presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars. Thus under Section 133, which lays down a rule of law, an accomplice is a competent witness and a conviction based solely on his uncorroborated evidence is not illegal although in view of Section 114, illustration (b), courts do not as a matter of practice do so and look for corroboration in material particulars. This is the conjoint effect of Sections 133 and 114, illustration (b).

16. *A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the*



prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness. For the above reasons we think that exception has rightly been taken to the approach of the High Court as is reflected in the following passage:

“It is only in the rarest of rare cases if the court finds that the testimony of the prosecutrix is so trustworthy, truthful and reliable that other corroboration may not be necessary.”

With respect, the law is not correctly stated. If we may say so, it is just the reverse. Ordinarily the evidence of a prosecutrix must carry the same weight as is attached to an injured person who is a victim of violence, unless there are special circumstances which call for greater caution, in which case it would be safe to act on her testimony if there is independent evidence lending assurance to her accusation.

17. *We think it proper, having regard to the increase in the number of sex violation cases in the recent past, particularly cases of molestation and rape in custody, to*



remove the notion, if it persists, that the testimony of a woman who is a victim of sexual violence must ordinarily be corroborated in material particulars except in the rarest of rare cases. To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. Ours is a conservative society where it concerns sexual behaviour. Ours is not a permissive society as in some of the western and European countries. Our standard of decency and morality in public life is not the same as in those countries. It is, however, unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. An Indian woman is now required to suffer indignities in different forms, from lewd remarks to eve-teasing, from molestation to rape. Decency and morality in public life can be promoted and protected only if we deal strictly with those who violate the societal norms. The standard of proof to be expected by the court in such cases must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix is available. Courts must also realise that ordinarily a woman, more so a young girl, will not stake her reputation by levelling a false charge concerning her chastity.

18. But when such a crime is committed by a person in authority, e.g. a police officer, should the court's approach be the same as in any other case involving a private citizen? By our criminal laws wide powers are conferred on police officers investigating cognizable offences. The infrastructure of our criminal investigation system recognises and indeed protects the right of a woman to decent and dignified treatment at the hands of the investigating agency. This is evident from the proviso to sub-section (2) of Section 47 of the Code which obliges the police officer desiring to effect entry to give an opportunity to the woman in occupation to withdraw from the building. So also sub-



section (2) of Section 53 requires that whenever a female accused is to be medically examined such examination must be under the supervision of a female medical practitioner. The proviso to Section 160 stipulates that whenever the presence of a woman is required as a witness the investigating officer will record her statement at her own residence. These are just a few provisions which reflect the concern of the legislature to prevent harassment and exploitation of women and preserve their dignity. Notwithstanding this concern, if a police officer misuses his authority and power while dealing with a young helpless girl aged about 19 or 20 years, her conduct and behaviour must be judged in the backdrop of the situation in which she was placed. The purpose and setting, the person and his position, the misuse or abuse of office and the despair of the victim which led to her surrender are all relevant factors which must be present in the mind of the court while evaluating the conduct evidence of the prosecutrix. A person in authority, such as a police officer, carries with him the awe of office which is bound to condition the behaviour of his victim. The court must not be oblivious of the emotional turmoil and the psychological injury that a prosecutrix suffers on being molested or raped. She suffers a tremendous sense of shame and the fear of being shunned by society and her near relatives, including her husband. Instead of treating her with compassion and understanding as one who is an injured victim of a crime, she is, more often than not, treated as a sinner and shunned. It must, therefore, be realised that a woman who is subjected to sex violence would always be slow and hesitant about disclosing her plight. The court must, therefore, evaluate her evidence in the above background.

32. We are of the opinion that these factors are to be kept in mind as we go forward. We do think that the criterion that 'a stigma attaches to the rape victim in Indian society.' is a counter-productive basis of appraisal. We do not think the victim suffers a stigma. It is a stigma against society. The rights of women in the context of the Constitution are



clearly intended to overcome all negative perceptions generated against them. We do think that the reiteration of the theory of stigma and shame has itself led to an 'unintended' diminution of the status of the victim. In other words, the victims can and ought to recover like any other victims from an accident, but that is possible only when there is a due discharge of the functions by the State. Except for this caveat, we think that the formulation by Lodha, J. has substantially aligned itself with modern psychological and scientific understanding of psychosocial trauma.

33. There is some degree of substance in the criticism which we have heard from women's organisations that women do not need sympathy, empathy or charity. They are equal *per se*. In other words, they claim what general human rights and the Constitution guarantees as their natural space to live freely and effect decisions based on individual judgment. We are unable to discountenance this argument. On the contrary this is entirely correct. The fundamental attitude, based on paternalism, must be discarded. We also think that the judgments of courts can sometimes be misconstrued as suggestive of sympathetic consideration in a criminal trial. We also think that the right to justice is a fundamental right under the Constitution and must not be earned out of a sympathy having regard to the social malaise which exists in society. In other words, we advocate an approach that if the juxtaposition between honour and shame on the one hand and the crime of rape is deconstructed, people would be able to step forward and be heard. Such crimes should be registered immediately and investigated impartially and in respect of which we propose to



make recommendations in the succeeding paragraphs. If an impartial investigation brings offenders to book, it is going to add to the confidence of not only the individual victim but also to women in society that such crimes can be brought to book. No woman in India must feel a sense of shame or stigma in the event of sexual assault. She is entitled to the redressal of that injury and that offence and she is therefore statutorily and constitutionally capable of access to the rule of law.

34. We believe that there is no danger and no shame or loss of honour in a victim seeking redressal by filing complaints and must in fact exercise, consistent with fundamental rights of women, the right to file complaints and bring offenders to book. We also think that it is the duty of the State to encourage such a climate and also to make available such resources that enable them to file such complaints.
35. If the depiction of the Indian society is what is depicted by Thakkar, J. in 1983, we must change the situation. We are indeed impressed by the reasoning of Lodha, J. who, although relying upon the decision of Thakkar, J. in *Bharwada Bhoginbai Hirjibai*, has correctly elucidated the psychological factors. We think that the scientific alignment adopted by Lodha, J. is the correct way to fashion the attitude of society towards a rape victim, which is to administer to her not only justice, but also such psychological therapeutic intervention as is necessary for rediscovery of the self and increased self-affirmation.



36. Many people who have faced accidents have overcome the disability caused by those accidents and have proceeded with life in a positive way. We must be able to teach the same rehabilitative methodology to rape victims. But in order to do that, it is necessary that they must be encouraged to report such crimes of sexual violence. In fact, it is the process of reporting such crimes which will be a forward looking step in being able to assert and demand justice. The demand of justice is not a personal aspiration. The demand of justice is a fundamental charter of freedom which is guaranteed under the Constitution to every individual. In the context of a woman, it is all the more necessary that we snap the link between shame and honour, on the one hand, and the crime itself. We urge every victim to have the requisite courage to go forward and we exhort civil society to support all such cases where people who are filing complaints genuinely are given massive support to bring perpetrators to book.

37. We do notice that this concept of shame has somehow led the police to have an upper hand. The police have become arbiters of honour. The police, without registering even a FIR, assume that they have the moral capacity to pronounce upon the rights and wrongs of the rapist as well as the rape victim. This is simply deplorable and it is inconceivable in a modern society, which is governed by republican values. We think that it is necessary for the police officers to be completely sensitised against the honour-shame theory, and to treat every woman complainant as an individual in her own right capable of asserting her grievance. In other words, we feel that an indirect validation of police inaction in rape crimes has



taken place as a result of – a) amorphous attribution of women’s position in Indian society; b) the theory of shame-honour; and c) the policeman, ‘being the male’ in a ‘patriarchal society, ought to be ‘the moral judge’. It not only skews the justice delivery system at the stage of lodging the complaint, but it has a strongly debilitating effect resulting in direct violation of fundamental human freedoms and rights under the Constitution and the various international instruments.

38. We wish to take this point further. When a woman complains of rape, it is not the physical part of the woman which is directly the focus of attention. It is the offence and the offence against the bodily integrity of the woman as a person which is the offence in question. We therefore think that we need a woman to be viewed as a whole and not as a physical centre of sexual congress. At the same time it must not be viewed that a woman, while making a complaint, is in any way acting less honourably or in any way disturbing what is considered as the repository of honour of the family, community and others.

39. An offence against a person is very different from offence against a community. We think that there has been a completely erroneous connection which is being made between a woman and a community. In other words, we feel very strongly that an assault on a woman is an assault on the person of the woman. In this regard, we would like to quote Sohaila Abdulali, a rape victim, who recounts her experience which took place 32 years ago in Mumbai:



“Rape is horrible. But it is not horrible for all the reasons that have been drilled into the heads of Indian women. It is horrible because you are violated, you are scared, someone else takes control of your body and hurts you in the most intimate way. It is not horrible because you lose your “virtue.” It is not horrible because your father and your brother are dishonored. I reject the notion that my virtue is located in my vagina, just as I reject the notion that men’s brains are in their genitals.

If we take honor out of the equation, rape will still be horrible, but it will be a personal, and not a societal, horror. We will be able to give women who have been assaulted what they truly need: not a load of rubbish about how they should feel guilty or ashamed, but empathy for going through a terrible trauma.”⁶³

40. We are given to understand that the Government of India had brought out a Criminal Law Amendment Bill, 2012. We notice that a detailed critique of the said Bill was submitted on behalf of women’s groups and other stakeholders. We, too, have had the opportunity of examining the said Bill, which is presently pending before Parliament.
41. While we feel that the Criminal Law Amendment Bill, 2012 has provisions that are somewhat protective of the right of safety of women, we feel that the said Bill is far from complete. It needs a series of revisions, many of which we propose to recommend at a later stage in this Report.
42. At this juncture, we would like to revisit the recommendations made by previous Law

⁶³ *I Was Wounded; My Honor Wasn’t* - Sohaila Abdulali, New York Times, January 7, 2013
http://www.nytimes.com/2013/01/08/opinion/after-being-raped-i-was-wounded-my-honor-wasnt.html?_r=0



Commissions on various issues pertaining to crimes against women.

43. We begin with the 84th Law Commission Report⁶⁴. The said report was submitted on 25th April 1980 by the 42nd Law Commission presided over by Mr. Justice P.V. Dixit, former Chief Justice of the Madhya Pradesh High Court. It was pointed out in the said report that:

“1.1 During recent years, the impact on the criminal justice system on victims of rape and other sexual offences has received considerable attention both in legal circles and amongst organizations and individuals connected with the welfare of women. In the field of criminology, an increasing interest has been shown in the victim and his or her position with the criminal justice system. In consequence, greater attention has now been paid to female victims of the sexual offence. Psychologists have, for some times past, been studying the effects of rape and other sexual offences upon women or girls and their personality.”

44. We agree with the following observations of the 84th Report of the Law Commission:-

“1.2 It is often stated that a woman who is raped undergoes two crisis, the rape and the subsequent trial. While the first seriously moves her dignity, curbs her individual, disturbs her sense of security and may often run her physically, the second is no less potent of mixture, in as much as it not only forces her to relive through the traumatic experience, but also does so in the grudge of publicity in a totally alien atmosphere, with the whole apparatus and paraphernalia of the criminal justice system focused upon her.”

⁶⁴ Law Commission of India, 84th Report on Rape and Allied Offences – Some Questions of Substantive Law, Procedure and Evidence. 1980. <http://lawcommissionofindia.nic.in/51-100/Report84.pdf>



45. We also agree with the following observation of the 42nd Law Commission regarding the purpose of criminal law:

“Thus, we acknowledge that criminal law is the chief legal instrument to prevent anti-social acts of a serious character. The object is sought to be achieved, in the first instance, by the legislative command embodying that aspect of punishment which is called “general deterrence”. Once a crime – whether sexual or any other crime – has been committed, this aspect is, at least for the time being, exhausted in regard to that particular criminal act. The fact that the particular crime has been committed shows that the object of deterrence has failed to prevent the particular criminal act.”

46. We must point out that the Law Commission of India in its 42nd Report⁶⁵ as well as the 69th Report⁶⁶ has also made certain suggestions to the IPC and the Evidence Act. With reference to the IPC, it was suggested that where the circumstances are such that a male may be able to take undue advantage of the situation and seduce the woman to illicit intercourse, the Commission recommended the insertion in the Code of three specific sections, intended respectively to deal with illicit intercourse – a) by a person having custody of a woman, with that woman; b) by superintendent of an institution with an inmate of an institution; and c) by a person in-charge of a hospital, with a mentally disordered patient.

47. We are indeed shocked to note that notwithstanding the fact that these Law

⁶⁵ Law Commission of India, 42nd Report on the Indian Penal Code. 1971. <http://lawcommissionofindia.nic.in/1-50/Report42.pdf>

⁶⁶ Law Commission of India, 69th Report on the Indian Evidence Act 1872.1977. <http://lawcommissionofindia.nic.in/51-100/Report69.pdf>



Commission Reports were made decades ago, very little attention has been paid to the implementation of these recommendations. We also note that the National Legal Vision Document (drafted by one of us) in fact wanted a separate office of the Attorney General and Solicitor General to be established which would study the implementation of recommendations of the Law Commission. This, unfortunately, has also not been carried out.

48. The 42nd Law Commission (in the 84th Report) recommended that Sections 375 to 376E be redrafted.

49. While the Law Commission in its 84th Report made recommendations in the context of forcible and fraudulent sexual intercourse as well as illicit sexual intercourse by way of seduction, the 84th Report proceeded further. It examined the issue of 'consent'. According to the Law Commission, the statutory definition of rape in India emphasized the element of absence of consent. In fact, absence of consent is an important aspect. Barring cases where consent is irrelevant and the age of the girl is the only crucial factor (because of the statutory requirement of minimum age), want of consent becomes infructuous as a determining factor in most prosecutions for rape. It is also the factor to which the law has devoted its most detailed attention.

50. We agree with the 84th Report that:-

"2.6 Consent is the anti-thesis of rape. Even if some may find any discussion on consent, it is too complicated. The matter cannot consistently with the needs of the subject be put in simple one phrase



formulation. When circumstances in life present an infinite variety, the law must be well equipped to deal with them, nuances of consent are therefore unavoidable."

51. It may also be noted that the 84th Report of the Law Commission therefore dealt with the substantial law relating to the law of consent in the context of rape. Consent must be real. Often, it is vitiated by circumstances which take away the freedom of choice. Section 90 of the IPC runs thus:-

"A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows or has reason to believe, that the consent was given in consequence of such fear or conception; or if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gave his consent; or unless the contrary appears from the context if consent is given by a person who is under 12 years of age."

52. Thus the 84th Law Commission Report observed as follows:

"2.9 The modifications recommended by us in the third clause vitiate consent not only when a woman is put in fear of death or hurt, but also when she is put in fear of any injury being caused to any person (including herself) in body mind, reputation or property and also when her consent is obtained by criminal intimidation, that is to say, by any words or acts intended or calculated to put her in fear of any injury or danger to herself or to any person in whom she is interested or when she is threatened with any injury to her reputation or property or to the reputation of any one in whom she is interested. Thus, if the consent is obtained after giving the woman a threat of spreading false and scandalous rumours about her character or destruction



of her property or injury to her children or parents or by holding out other threats of injury to her person, reputation or property, that consent will also not be consent under the third clause as recommended to be amended."

53. The 84th Law Commission Report correctly said that violence was not mandatory.

"2.11. Overt violence, if necessary. – While these are the main amendments on the point of consent, we may also mention a few points that have been raised during the suggestions made to us, concerning the concept of consent. There is a suggestion that the definition of "rape" should make it clear that the crime can take place without overt violence. We have given careful thought to this aspect, but we do not think that the law needs any clarification in this regard. Overt violence, or, for that matter, violence of any particular category, is not a necessary element of rape as defined in S. 375. The cardinal fact is absence of consent on the part of the woman."

54. There can be cases of consent even when there is no violence. Violence – or, for that matter, marks of resistance – are not conclusive of consent. In any case, after a clarification is made in S. 375 on the lines recommended by us, this point would lose much of its practical importance.

55. The 84th Report further recommended that the minimum age should be increased to 18 years and observed as follows:

"2.20. Increase in minimum age. – The question to be considered is whether the age should be increased to 18 years. The minimum age of marriage now laid down by law (after 1978) is 18 years in the case of females and the relevant clause of S. 375 should reflect this changed attitude. Since marriage with a girl below 18 years is prohibited (though it is not void as a matter of personal



law), sexual intercourse with a girl below 18 years should also be prohibited

56. On the question of Section 354 relating to outraging modesty of women and indecent assaults, the 84th Report suggested that Section 354A must be inserted regarding indecent assault on a minor. The 84th Report also opined that eve teasing was amply covered under Section 509 of the IPC, and observed as follows:

"2.31. Recommendation as to Section 354-A, Indian Penal Code. – Accordingly, we would recommend that, while incorporating S. 354-A in the Indian Penal Code, after the words "obscene manner", the words "with or without the consent of the minor" should also be added.

XVI. Indecent gestures

2.32. Section 509 IPC – We may mention here that acts which do not amount to an "assault" – acts such as indecent gestures and acts that have come to be known as "eve teasing" – are amply covered by S. 509 of the Indian Penal Code. The matter strictly does not fall within the purview of rape or assault, but we refer to it because one of the women's organisations with whom we held discussions was anxious that the law should penalise such behaviour in public places or on public transport vehicles particularly."

57. Where there is physical contact or threat of physical contact, the offender can be charged under S. 354 of the same Code, punishing a person who *"assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty"*. The punishment is imprisonment of either description up to two years or fine or both. Both the offences are, as the law now stands, cognizable



58. We notice that many other recommendations have been made in respect of female victims of sexual offences. In particular, we have also noticed the suggestion contained in paragraph 3.15 of the 84th Report that a new sub-section be added in Section 160 of the CrPC to require the statement of female victims of sexual assault under the age of 12 to be recorded by a woman police officer. It is unfortunate that it is only in 2012, in the Protection of Children from Sexual Offences Act, 2012, that an attempt has been made by Parliament to provide special measures for the recording of statements of children who are victims of sexual offences.
59. We also notice in the 84th Report that the medical report is a document of vital importance and deserves attention.
60. We notice that the medical examination report of the accused in a case of rape or attempt to commit rape is an important document, and we have dealt with this aspect at some length later in this Report. We also think that any delay in reporting rape will result delay in the commencement of the investigation. But at the same time, the police are duty bound to register such cases and must not insult or harass or refuse to hear the victim or the complainant.
61. We notice that the following recommendations were made for the purpose of recording of reasons by inserting Sections 53(1A), (1B), (1C) and (1D) in the CrPC:-

“4.7. Recommendation as to Section 53 CrPC. – It is very important that reasons should be given for the



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opinion expressed in the report. Accordingly, we recommend the insertion in S. 53 of the Code of Criminal Procedure, of the following sub-sections:

Ss. 53(1-A), (1-B), (1-C) and (1-D) Code of Criminal Procedure, 1973 to be inserted.

(1-A) When a person accused of rape or an attempt to commit rape is arrested and an examination of his person is to be made under this section, he shall be forwarded without delay to the registered medical practitioner by whom he is to be examined.

(1-B) The registered medical practitioner conducting such examination shall without delay examine such person and prepare a report specifically recording the result of his examination and giving the following particulars:

(i) the name and address of the accused and of the person by whom he was brought,

(ii) the age of the accused,

(iii) marks of injury, if any, on the person of the accused, and

(iv) other material particulars in reasonable detail.

(1-C) The report shall state precisely the reasons for each conclusion arrived at.

(1-D) The exact time of commencement and completion of the examination shall also be noted in the report, and the registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in S. 1973 as part of the documents referred to in cl. (a) of sub-s. (5) of that section."



62. We are of the view that Section 417A suggested by the 84th Report requires to be enacted, as suggested below:

“When a woman is arrested and there are no suitable arrangements in the locality for keeping her in custody in a place of detention exclusively meant for women she shall be sent to an institution established and maintained for the reception, care, protection and welfare of women or children licensed under the Women’s and Children’s Institutions (Licensing) Act, 1956 or an institution recognized by the State Government except in cases where any special law requires that she should be sent to a protective home or other place of detention authorized for the purposes of such special law.”

63. What is most surprising is that Parliament has ignored the recommendation of the 84th Report, which calls for the punishment of a station-in-charge who fails to register information of a cognisable offence given to him. In this respect the 84th Report recommended as follows:

“X. Non-recording of information relating to cognizable offences

3.29. Section 167-A IPC – Refusal to register case of rape. – We now come to another matter concerning the stage of investigation. During our oral discussions with the representatives of women's organisations, it was stated that in some cases the police fail to register a case of rape reported to them even when the full facts are communicated to them. We have not been able to gather statistics of the number of such cases, as the collection of the relevant figures would take considerable time and the present Report deals with a matter of urgency. We hope that the percentage of such cases would not be high. Nevertheless, we do take the view that in principle, the law should contain a specific provision dealing with refusal (or failure without sufficient cause) to register such cases. The offence of rape is a cognizable



offence and if the police fail to register it, it is a clear violation of the provisions of the Code of Criminal Procedure, 1973 in this regard. Cognizable offences reported to the police are “registered” – as the popular usage goes – under S. 154(1) of the Code of Criminal Procedure. If the officer in charge of a police station refuses to record the information reported relating to a cognizable offence, there is a remedy already provided in the Code of Criminal Procedure, the relevant provision being in the following terms:

“(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-s. (1) [of S. 154] may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.”

3.32. Insertion of Section 167-A, Indian Penal Code recommended. – Having regard to what we have stated above, we would recommend the insertion of a specific penal provision, say, as S. 167-A, in the Indian Penal Code on the subject. In view of the general scheme adopted in that Code, the proposed provision would not be confined to refusal to register the offence of rape and would cover other cognizable offences as well. The following is a rough draft of the provision that we recommend:

“167-A. – Whoever, being an officer-in-charge of a police station and required by law to record any information relating to the commission of a cognisable offence reported to him, refuses or without reasonable cause fails to record such information shall be punished with imprisonment of either description for a term



which may extend to one year, or with fine, or with both."

64. Section 375 of the Indian Penal Code has traditionally defined rape in narrow terms as 'sexual intercourse' or 'penetration' in the circumstances defined in the statute. The Indian Criminal Law Amendment Bill 2012 proposes replacing the offence of 'rape' with that of 'sexual assault'. However, while the new provisions widen the definition of 'penetration' beyond vaginal penetration, the new offence remains limited to that of 'penetration'. Other types of sexual assault are not subject to appropriate legal sanction.
65. Two contrasting positions on this issue have been taken in other jurisdictions examined here.
- a. **A wide definition of sexual assault to replace the offence of rape and indecent assault:**
 - i. The *UN Handbook* recommends that existing offences of 'rape' and 'indecent assault' be replaced with a broad offence of 'sexual assault' graded according to harm.⁶⁷ However, its definition of 'sexual assault' is significantly wider than that of the proposed Indian approach. The *Handbook* recommends that 'sexual assault' be defined as a violation of bodily integrity and sexual autonomy. Moreover, it recommends the removal of any requirement of proof of penetration.
 - ii. This follows the approach in Canada, which does not have a separate definition of rape.

⁶⁷ *Handbook for Legislation on Violence against Women*, 2009, UN <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>



Instead, s. 271 of the Criminal Code in Canada prohibits 'sexual assault'. Section 265 defines 'sexual assault' as non-consensual touching in circumstances of a 'sexual nature'.⁶⁸ The law does not distinguish between different types of touching from groping to penetration. All are sexual assaults and criminal offences.

- iii. The advantage of this approach is that it does not require complex definitions of 'penetration', which are inevitably unable to capture the full range of violations to which a woman could be subject. Such definitions also considerably increase the evidential burden of the prosecution to prove penetration.
 - iv. The disadvantage of this approach is that the epithet 'rape' continues to bring with it a high degree of moral and social opprobrium, which is not conveyed by the words 'sexual assault.' By removing the epithet 'rape', there is a risk of diluting the extent of moral condemnation.
- b. Retaining an offence of 'rape' within a wider offence of sexual assault.**
- i. This approach retains the specific offence of rape but includes it in a cluster of offences under the category of sexual assault. This is the approach of the legislation in England and Wales, which specifies offences of 'rape',

⁶⁸ In certain circumstances- aggravated sexual assault or sexual assault with a weapon- there are increased penalties but this does not change the underlying nature of the offence (ss. 272-273 of the *Criminal Code*).



‘assault by penetration’, ‘sexual assault’ and ‘causing a person to engage in sexual activity without consent’.

1. ‘Rape’ occurs when a person (A) ‘intentionally penetrates the vagina, anus or mouth of another person (B) with his penis’ without consent. This carries a maximum sentence of life imprisonment.⁶⁹
2. ‘Assault by penetration’ occurs when (A), without consent, ‘intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else,’ and the penetration is sexual. This carries a maximum sentence of life imprisonment.⁷⁰
3. ‘Sexual assault’ occurs when (A) ‘intentionally touches another person (B),’ and the touching is sexual. This carries a maximum sentence of 10 years’ imprisonment.⁷¹
4. ‘Causing a person to engage in sexual activity without consent’ occurs when (A) intentionally causes another person (B) to engage in a sexual activity without consent.⁷² Where the activity is equivalent to rape or assault by penetration, the maximum sentence is life imprisonment. In other cases, the maximum sentence is 10 years.

⁶⁹ Sexual Offences Act 2003 (UK), s. 1.

⁷⁰ Sexual Offences Act 2003 (UK), s. 2.

⁷¹ Sexual Offences Act 2003(UK), s. 3.

⁷² Sexual Offences Act 2003 (UK), s. 4.



- ii. A similar approach is taken by the **South African** legislation, which distinguishes between rape and other forms of sexual assault. Under South African law,⁷³
1. 'Rape' is defined as all *penetrative* offences. 'Sexual penetration' is defined in broad and gender-neutral terms which go well beyond the prior common law restriction to penile-vaginal penetration.⁷⁴
 2. 'Sexual assault' replaces the common law offence of 'indecent assault'. Section 5 of the Act provides that sexual assault is committed where a person ('A') unlawfully and intentionally sexually violates a complainant ('B'). 'Sexual violation' has a wide definition.
 3. The advantage of this approach is that it retains the moral opprobrium attached to the common understanding of rape. Notably the separation of rape from other forms of sexual assault was supported by the South African Law Reform Commission in its 1999 Discussion Paper on the reform of South African sexual violence laws.⁷⁵ The Commission argued that sexual violence involving the penetration of the body using sexual organs is qualitatively different from non-penetrative forms of sexual assault and therefore should be

⁷³ Sexual Offences Act 2007 (SA), s.3.

⁷⁴ See *Masiya v Director of Public Prosecutions, Pretoria and Another* [2007] ZACC 9; 2007 (5) SA 30 (CC) para 26.

⁷⁵ SALRC, 'Project 105: Sexual Offences, Discussion Paper 85: Sexual Offences - The Substantive Law' (1999) <<http://salawreform.justice.gov.za/dpapers/dp85.pdf>> accessed 12 January 2013.



treated as a more severe offence.⁷⁶ To combine penetrative acts with non-penetrative acts in a single offence, it argued, would reduce the gravity of the offence. Furthermore, it argued that the division between penetrative and non-penetrative sexual offences would provide a better guide to judicial officers in sentencing.⁷⁷

- iii. The disadvantage of this approach is that there will still be disputes as to when an act is penetrative and when it is not, potentially making it more difficult to prove a rape case.

66. **The meaning of 'sexual':** In both cases it is necessary to give some guidance as to when an assault is a sexual as against any ordinary assault.

- a. The Canadian Criminal Code is silent as to the definition of 'sexual'. The Supreme Court of Canada in *R v Chase* gave a broad definition: 'viewed in the light of all the circumstances, is the sexual or carnal context of the assault visible to a reasonable observer.'⁷⁸ Courts will examine the part of the body touched, the nature of the contact, the situation in which it occurred, the words and gestures accompanying the act, threats, intent of the accused and any other relevant circumstances.⁷⁹ However, it is not a pre-requisite that the assault be for sexual gratification. The motive of the accused is

⁷⁶ *ibid* p. 80.

⁷⁷ *ibid*.

⁷⁸ *R v Chase*, [1989] 2 SCR 293 para 11, citing *R v Taylor* (1985), 44 CR (3d) 263 at p 269.

⁷⁹ *ibid*.



just 'simply one of many factors to be considered.'⁸⁰

- b. The UK legislation has a statutory definition, which like the Canadian, relies on the way in which a 'reasonable observer' might view the activity. Under s. 78, an activity is sexual if a reasonable person would consider that it is 'because of its nature sexual' or that 'because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.'

67. We are of the considered opinion that in the Indian context it is important to keep a separate offence of 'rape'. This is a widely understood term which also expresses society's strong moral condemnation. In the current context, there is a risk that a move to a generic crime of 'sexual assault' might signal a dilution of the political and social commitment to respecting, protecting and promoting women's right to integrity, agency and autonomy. However, there should also be a criminal prohibition of other, non-penetrative forms of sexual assault, which currently is not found in the IPC, aside from the inappropriate references to 'outraging the modesty' of women in Sections 354 and 509. We recommended the enactment of Section 354 in another form while we have recommended the repeal of Section 509.

68. We have kept in mind that the offence of *rape* be retained but redefined to include all forms of non-consensual penetration of a sexual nature. Penetration should itself be widely defined as in

⁸⁰ Ibid.



the South African legislation to go beyond the vagina, mouth or anus.

69. An offence of *sexual assault* should be introduced to include all forms of non-consensual non-penetrative touching of a sexual nature. It is recommended here that the Canadian approach be followed, according to which the 'sexual nature' of an act is established if: 'viewed in the light of all the circumstances... the sexual or carnal context of the assault [is] visible to a reasonable observer.'⁸¹ Courts will examine the part of the body touched, the nature of the contact, the situation in which it occurred, the words and gestures accompanying the act, threats, intent of the accused and any other relevant circumstances. It should not be a prerequisite that the assault be for sexual gratification. The motive of the accused is 'simply one of many factors to be considered.'⁸²

70. In this background it is necessary to examine the Criminal Law Amendment Bill, 2012. The offence of rape falls under Chapter XVI dealing with "offences affecting human body". Sections 375 to 376D are put under the category of "sexual offences". While Courts have often used the expression "sexual assault" in dealing with not only rape cases but also cases of sexual abuse, the IPC did not define the said expression. The definition of "assault" is found under section 351.

71. By virtue of the Amendment, the legislature has sought to widen the scope of the offence under section 375 to 376D by substituting the expression rape with "sexual assault". While we feel that the

⁸¹ *R v Chase* (n 78).

⁸² *ibid.*



proposed Bill (as placed before Parliament) proposes some welcome changes to the law, there is still much ground that needs to be covered. Accordingly, this Committee has recommended amendments (appended to this Report) to the Criminal Law Amendment Bill 2012, which should be considered and enacted by Parliament at the earliest possible, if not immediately. In any event, we feel that the same ought to be promulgated by the Government as an ordinance.

Marital Rape

72. The exemption for marital rape stems from a long out-dated notion of marriage which regarded wives as no more than the property of their husbands. According to the common law of coverture, a wife was deemed to have consented at the time of the marriage to have intercourse with her husband at his whim. Moreover, this consent could not be revoked. As far back as 1736, Sir Matthew Hale declared: *'The husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given herself up in this kind unto her husband which she cannot retract'*.⁸³
73. This immunity has now been withdrawn in most major jurisdictions. In England and Wales, the House of Lords held in 1991 that the status of married women had changed beyond all recognition since Hale set out his proposition. Most importantly, Lord Keith, speaking for the Court, declared, *'marriage is in modern times*

⁸³ Sir Matthew Hale. *History of the Pleas of the Crown*, 1 Hale PC (1736) 629. See further S. Fredman *Women and the Law* (OUP, 1997) pp. 55-57.



*regarded as a partnership of equals, and no longer one in which the wife must be the subservient chattel of the husband.*⁸⁴

74. Our view is supported by the judgment of the European Commission of Human Rights in *C.R. v UK*, which endorsed the conclusion that a rapist remains a rapist regardless of his relationship with the victim. Importantly, it acknowledged that this change in the common law was in accordance with the fundamental objectives of the Convention on Human Rights, the very essence of which is respect for human rights, dignity and freedom.⁸⁵ This was given statutory recognition in the Criminal Justice and Public Order Act 1994.⁸⁶

75. We find that the same is true in Canada, South Africa and Australia. In Canada, the provisions in the Criminal Code, which denied criminal liability for marital rape, were repealed in 1983.⁸⁷ It is now a crime in Canada for a husband to rape his wife. South Africa criminalised marital rape in 1993, reversing the common law principle that a husband could not be found guilty of raping his wife. Section 5 of the Prevention of Family Violence Act 1993 provides: 'Notwithstanding anything to the contrary contained in any law or in the common law, a husband may be convicted of the rape of his wife.' In Australia, the common law 'marital rape immunity' was legislatively

⁸⁴ *R. v R* [1991] 4 All ER 481 at p.484.

⁸⁵ *C.R. v UK Publ.* ECHR, Ser.A, No. 335-C; see Palmer Feminist Legal Studies Vol.V no.1 [1997] pp. 1-7

⁸⁶ S. 142 abolished the marital rape exception by excluding the word 'unlawful' preceding 'sexual intercourse' in s. 1 of the Sexual Offences Act 1956.

⁸⁷ R.S.C. 1985, c. C-46.



abolished in all jurisdictions from 1976.⁸⁸ In 1991, the Australian High Court had no doubt that: 'if it was ever the common law that by marriage a wife gave irrevocable consent to sexual intercourse by her husband, it is no longer the common law.'⁸⁹ According to Justice Brennan (as he then was): '*The common law fiction has always been offensive to human dignity and incompatible with the legal status of a spouse.*'⁹⁰

76. These jurisdictions have also gone further and recognised that consent should not be implied by the relationship between the accused and the complainant in any event. In the Canadian 2011 Supreme Court decision in *R v. J.A.*, Chief Justice McLachlin emphasised that the relationship between the accused and the complainant 'does not change the nature of the inquiry into whether the complaint consented' to the sexual activity.⁹¹ The defendant cannot argue that the complainant's

⁸⁸ Criminal Law Consolidation Act 1935, s. 73(3). See also s. 73(4) which provides that 'No person shall, by reason only of the fact that he is married to some other person, be presumed to have consented to an indecent assault by that other person.' The Crimes (Sexual Assault) Amendment Act 1981 (NSW) inserted s. 61A(4) into the Crimes Act 1900 (NSW), which provided that the fact that a person is married to a person on whom an offence of sexual assault is alleged to have been committed is no bar to conviction for that offence. The Crimes (Amendment) Ordinance (No 5) 1985 (ACT) inserted s 92R into the Crimes Act 1900 (NSW), as it applied to the ACT, which provided that the fact that a person is married to a person upon whom an offence of sexual intercourse without consent contrary to s. 92D is alleged to have been committed shall be no bar to the conviction of the first-mentioned person for the offence. In Victoria, the Crimes (Amendment) Act 1985 (Vic) substituted for s 62(2) of the Crimes Act 1958 (Vic) a new sub-section providing that the existence of a marriage does not constitute, or raise any presumption of, consent by a person to a sexual penetration or indecent assault by another person.

⁸⁹ *R v L* [1991] HCA 48; (1991) 174 CLR 379 at p. 390 per Mason CJ, Deane and Toohey JJ.

⁹⁰ *R v L* [1991] HCA 48; (1991) 174 CLR 379 at p. 402.

⁹¹ [2011] 2 SCR 40, para 64.



consent was implied by the relationship between the accused and the complainant.⁹² In South Africa, the 2007 Criminal Law (Sexual Offences and Related Matters) Amendment Act ('Sexual Offences Act') provides, at s. 56 (1), that a marital or other relationship between the perpetrator or victim is not a valid defence against the crimes of rape or sexual violation.

77. Even when marital rape is recognised as a crime, there is a risk that judges might regard marital rape as less serious than other forms of rape, requiring more lenient sentences, as happened in South Africa.⁹³ In response, the South African Criminal Law (Sentencing) Act of 2007 now provides that the relationship between the victim and the accused may not be regarded as a 'substantial and compelling circumstance' justifying a deviation from legislatively required minimum sentences for rape.

78. It is also important that the legal prohibition on marital rape is accompanied by changes in the attitudes of prosecutors, police officers and those in society more generally. For example, in South Africa, despite these legal developments, rates of marital rape remain shockingly high. A 2010 study suggests that 18.8% of women are raped by their partners on one or more occasion.⁹⁴ Rates of reporting and conviction also remain low,

⁹² *ibid* para 47.

⁹³ See, for example, *S v Moipolai* [2004] ZANWHC 19 (Mogoeng J) and *S v Modise* [2007] ZANWHC 73.

⁹⁴ Gender Links and the South African Medical Research Council, 'The War at Home' (2010) <<http://www.mrc.ac.za/gender/gbvthewar.pdf>> accessed 12 January 2013.



aggravated by the prevalent beliefs that marital rape is acceptable or is less serious than other types of rape.⁹⁵ Changes in the law therefore need to be accompanied by widespread measures raising awareness of women's rights to autonomy and physical integrity, regardless of marriage or other intimate relationship. This was underlined in *Vertido v The Philippines*, a recent Communication under the Optional Protocol of the Convention on the Elimination of Discrimination Against Women (CEDAW), where the CEDAW Committee emphasised the importance of appropriate training for judges, lawyers, law enforcement officers and medical personnel in understanding crimes of rape and other sexual offences in a gender-sensitive manner.⁹⁶

79. We, therefore, recommend that:

- i. The exception for marital rape be removed.
- ii. The law ought to specify that:
 - a. A marital or other relationship between the perpetrator or victim is not a valid defence against the crimes of rape or sexual violation;
 - b. The relationship between the accused and the complainant is not relevant to the inquiry into whether the complainant consented to the sexual activity;
 - c. The fact that the accused and victim are married or in another intimate relationship may not be regarded as a mitigating factor justifying lower sentences for rape.

⁹⁵ See further Gemma Hancox, 'Marital Rape in South Africa: Enough is Enough' (2012) BUWA Journal on African Women's Experiences 70 <<http://www.osisa.org/buwa/south-africa/marital-rape-south-africa>> accessed 12 January 2013.

⁹⁶ *Vertido v The Philippines* Communication No. 18/2008, Committee on the Elimination of Discrimination against Women July 2010.



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80. We must, at this stage, rely upon Prof. Sandra Fredman of the University of Oxford, who has submitted to the Committee that that *“training and awareness programmes should be provided to ensure that all levels of the criminal justice system and ordinary people are aware that marriage should not be regarded as extinguishing the legal or sexual autonomy of the wife”*.



CHAPTER FOUR

SEXUAL HARASSMENT AT THE WORKPLACE

1. While much has been said and done in the past several years about sexual harassment at the workplace, it is evident that this evil is still rampant in Indian society. Parliament is therefore considering the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012. We however notice that there was no debate in the Lok Sabha on 3rd September 2012 when this Bill was introduced, and it is now pending approval in the Rajya Sabha.
2. We are also aware that in compliance with the judgment in *Vishakha v. State of Rajasthan*⁹⁷, universities such as the Jawaharlal Nehru University and the University of Delhi have formulated policies and constituted mechanisms to prevent and redress complaints of sexual harassment. We have taken note of the suggestion that those universities whose anti-sexual harassment policy rules and committee mechanism meet the standards of *Vishakha* are proposed to be exempted from the purview of the Sexual Harassment Bill, 2012, as these committees are more democratic and are better related to ensure prevention and prohibition of sexual harassment in educational institutions. We do notice that there is an anomaly in the Bill that it does not include within its ambit the students of universities, colleges or schools. We will deal with

⁹⁷ AIR 1997 Supreme Court 3011



other shortcomings of the proposed Bill subsequently.

3. We must, however, first revisit the Supreme Court's judgment in *Vishakha*. Here, the petitioner in question sought to enforce the fundamental rights of working women. The said petition wanted an enforcement of Article 14, 19 and 21 'in view of the prevailing climate in which the violation of these rights is not uncommon'. Regrettably, notwithstanding the directions of the Supreme Court in *Vishakha*, there is no empirical evidence to suggest that conditions of working women have distinctly improved in the recent past. We also notice that the petition was presented as a class action by certain social activists and NGOs with the aim of focusing attention towards the 'societal aberration' and also to a system finding suitable methods for realisation of the true concept of gender equality. There was also a prayer that sexual harassment of women in all workplaces must be enjoined through judicial orders until the vacuum in the existing legislation was replaced.

4. The Court, in *Vishakha*, took notice of Articles 15 and Article 42 of the Constitution. We would like to emphasise Article 42:-

"The State shall make provision for securing just and humane conditions of work and for maternity relief."

5. Article 42, naturally, needs to be read along with the other provisions which are contained in the fundamental rights and the Preamble and it emphasises, in the light of the preamble of values, that the State is meant to be caring and



compassionate about those who are underprivileged or those who are disadvantaged and those who may not even need special provisions but may insist upon the simple compliance with constitutional guarantees.

6. We do take note of a shift in the manner in which the women's organisations have presented themselves as a 'rising community', a more conscious and aware community, and not wanting the 'succour' of any special provisions. Women want constitutional guarantees to be simply and plainly enforced and we think that it is the duty of the State to make special provisions to ensure that they are granted. We would like to reiterate that the Indian society is a sovereign, socialist, secular and a republic. The words 'socialist', 'secular' and 'republic' bear great meaning. We are therefore of the opinion that the Indian State appears to have been out of tune with its own Constitution. It does not view that the State is meant to be a just and a humane State where it cares for the rights of citizens. We also would like to say that in the discourse of rights, we are aware that there must be economic policies which actually take forward growth but not at the expense of the obligations of the State towards the poor.
7. Article 51 of the Constitution provides that the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organised people with one another.
8. Article 253 of the Constitution which provides that Parliament can legislate for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other



country or countries or any decision made at any international conference association or other body.

9. We also would like to point out that Entry 14 of List 1 provides that Parliament can enter into treaties and agreements with foreign countries and implement treaties, agreements and conventions with foreign countries. We are also of the opinion that such international conventions which are consistent with fundamental rights and in harmony with its spirit, must actually be read into the provisions of the fundamental rights because they actually impart clarity and perhaps more vigour to the content of the Article. We also notice that under Article 51(c) of the Constitution and under Article 253 read with Entry 54, the power of Parliament to enact laws to implement international conventions exists.
10. We also notice therefore that we have a large number of provisions in the Constitution that mandate the State and its various organs to guarantee gender equality. If laws have to give effect to the same, it is necessary that laws which involve crime against women must also be sufficiently structured to give effect to these guarantees.
11. In *Vishakha*, it was observed that:-

“Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The common minimum requirement of this right has received global acceptance. The international conventions and norms are, therefore, are of great significance in the formulation of the guidelines to achieve this purpose.”



12. In a certain sense, the judiciary is also the enforcing authority for fundamental rights. In *Vishakha*, the principles of independence of the judiciary were also referred to and in particular the objective and function of the judiciary was stated as follows:-

- a) To ensure that all persons are able to live securely under the rule of law;
- b) To promote within the proper limits of the judicial function, the observance and attainment of human rights;
- c) To administer the law impartially among persons and between persons and the State.

13. In this context, we must add a note about the lower judiciary in the words of the Commissioner appointed by the Supreme Court in *Sheela Barse* (infra):

“Usually the most important encounter which the citizen has with the law is at the primary level. This level, in fact, frightens many citizens, and has given a feeling of helplessness that the administration of law does not necessarily lead to justice in the predominance of Truth. Even the secondary and the Tertiary level courts i.e. the High Court and the Supreme Court to function, they too depend upon the impressions of the primary level courts. Thus, if an error creeps in there, it becomes an error which may not perceptible of correction by the secondary and the tertiary levels.”

14. The *Vishakha* judgment made it clear that gender equality and the right to a secure workspace was part of the fundamental rights guaranteed under the Constitution, and that it was the duty of the judiciary to ensure (as a part of the Constitutional machinery) that the State enforced these rights, especially in view of the nation’s obligation to



comply with covenants of international treaties and conventions.

15. It is necessary that the judicial system must also cooperate in enhancing the credibility and faith of people in the rule of law. We are of the utmost confidence that judiciary will lead by example and will ensure that speedy justice to rape victims is given. We must point out that apart from the various recommendations which we have made for the protection of the juveniles including the females and children who are rescued from trafficking, we are of the opinion that the inadequacy of judicial personnel, which is cited as a reason for non-expeditious disposal of cases can be immediately and effectively addressed in the following manner:

- (a) Retired Judges of the Supreme Court, High Court and the District Courts could be appointed as ad-hoc judges to expeditiously dispose pending cases;
- (b) Parliament should consider equalisation of age of retirement of the subordinate judiciary, the High Court and the Supreme Court so that manpower will be immediately available;
- (c) Infrastructure for ad hoc judges can be easily identified in respect of unutilised government buildings and be made available.
- (d) Adjournment should not be allowed as a matter of course in respect of cases specially fixed for hearing before the ad-hoc courts, or even before regular courts.



- (e) Public prosecutors should be appointed on the basis of merit in accordance with the recommendations made by the Chief Justice of the High Court and not on the basis of any political considerations.
- (f) Cases of rape and sexual assault should be tried by women prosecutors, and, to the extent possible, by women judges. In any event, all judges of the subordinate and higher judiciary should receive training in gender sensitivity.

16. We would also like to refer to the decision in *Nilabati Behera v, State of Orissa & Others*⁹⁸. This was an important pronouncement to ensure that an enforceable right of compensation was also a part of the enforcement of guaranteed rights. Thus, what can happen in respect of an offence like rape is that there could be not only an offence as defined in the IPC but simultaneously there would be a constitutional violation of Articles 14, 14, 19 and 21 and which would also enable the victim to claim right to compensation. We are of the view that a right to claim compensation will lie against the State in the event the State is unable to secure safe conditions / safe spaces for women. It is under these circumstances that the norms and guidelines were actually prescribed in *Vishakha* by the Supreme Court.

17. In 2000, in *Municipal Corporation of Delhi v. Female Workers' Muster Roll*⁹⁹, we notice the constitutional

⁹⁸ (1993) 2 SCC 746

⁹⁹ AIR 2000 SC 1274



position vis-à-vis the Indian reality noted by the Supreme Court:

“Not long ago, the place of a woman in rural areas has been traditionally her home; but the poor illiterate women forced by sheer poverty now come out to seek various jobs so as to overcome the economic hardship. They also take up jobs which involve hard physical labour. The female workers who are engaged by the Corporation on muster roll have to work at the site of construction and repairing of roads. Their services have also been utilised for digging of trenches. Since they are engaged on daily wages, they, in order to earn their daily bread, work even in advance stage of pregnancy and also soon after delivery, unmindful of -detriment to their health or to the health of the new-born. It is in this background that we have to look to our Constitution which, in its Preamble, promises social and economic justice. We may first look at the Fundamental Rights contained in Chapter III of the Constitution. Article 14 provides that the State shall not deny to any person equality before law or the equal protection of the laws within the territory of India. Dealing with this Article vis-a-vis the Labour Laws, this Court in Hindustan Antibiotics Ltd. v. Workmen , has held that labour to whichever sector it may belong in a particular region and in a particular industry will be treated on equal basis. Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Clause (3) of this Article provides as under:

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

18. The Court also noticed Article 39(e) of the Constitution:

8. From Part III, we may shift to Part IV of the Constitution containing Directive Principles of State Policy. Article 38 provides that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in



which justice, social, economic and political shall inform all the institutions of the national life. Sub-clause (2) of this Article mandates that the State shall strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities.

19. In our considered view, the time has come when women must be able to feel liberated and emancipated from what could be fundamentally oppressive conditions against which an autonomous choice of freedom can be exercised and made available by women. Thus, we notice the guaranteeing of the private space to the women, which is to choose her religious and private beliefs and also her capacity to assert equality which in the public space is vitally important. Very often, a woman may have to assert equality vis-à-vis her own family and that is why it is necessary to understand the subtle dimension of a woman being able to exercise autonomy and free will at all points of time in the same way a man can. This, we will later see, is sexual autonomy in the fullest degree.
20. We now examine the proposed Bill in greater detail.
21. We note that Section 10(1) of the Sexual Harassment Bill, 2012 stipulates that on receipt of complaint of sexual harassment, conciliation must be attempted between the complainant and respondent. This is in violation of the mandate prescribed by the Supreme Court in *Vishakha*, which was a direction to the State 'to ensure a safe workplace / educational institution for women'. In this context, we think that the attempts to get justice cannot be muscled by attempts at conciliation.



There are certain areas, such as contractual matters where there could be conciliation, but in matters of harassment and humiliation of women an attempt to compromise the same is indeed yet another way in which the dignity of women is undermined. We are in agreement with the objections raised by many women's organisations that the said provision actually shows very little regard for the dignity of women. We think that Section 10(1) of the Bill, in so far as it proposes conciliation as a first step, must be deleted.

22. We now wish to look at Section 14 of the Sexual Harassment Bill, 2012. We notice from the provisions of the Bill that Section 14 appears to penalise a woman for filing a false complaint. We think that such a provision is a completely abusive provision and is intended to nullify the objective of the law. We think that these 'red-rag' provisions ought not to be permitted to be introduced and they show very little thought.

23. As far as Section 11(ii) is concerned, which has enabled the internal complaints committee to be given powers of a civil court for summoning discovery and production of documents is concerned, this amounts to colourable legislation because powers of courts cannot be simply conferred upon domestic committees, particularly when the composition of the internal committee does not have any legal background. We are also of the opinion that the Bill does not specify any training to the committee for fulfilling these duties. This is in distinction to the composition of the local complaints committee in which at least one member has to preferably have a background in law or legal knowledge.



24. As far as clause 6 of the Bill is concerned, which contains ambiguous guidelines for constitution of the local complaints committee, we notice that the Bill provides that every district officer shall constitute a local complaints committee in the district. It also prescribes that an additional local complaints committee shall be constituted at the block level to address complaints in certain cases. However, the jurisdiction and functions of these commissions is unclear. This needs to be clarified.
25. We are further of the opinion that suitable provisions should be added to the Bill to make payment of compensation for a woman who has suffered sexual harassment which should be paid by the company which compensation will be determined by a Tribunal.
26. Pursuant to a review of the Sexual Harassment Bill as passed by the Lok Sabha, applicable case laws, a review of available literature and various conversations with Indian and international experts, we have arrived at the conclusion that, read as a whole, the Sexual Harassment Bill is unsatisfactory. While the Sexual Harassment Bill purports to be in effectuation of the Hon'ble Supreme Court's dictum in *Vishakha v. State of Rajasthan*¹⁰⁰, it is clear from a reading of the said Bill that the spirit of the judgment in *Vishakha* is not adequately reflected. It is our aim that the applicable law relating to sexual harassment at the workplace ought to ensure that not even an imperceptible influence of any gender bias is felt against the female workforce either in the performance of their duties or in their career progression. Our analysis of the Sexual

¹⁰⁰ (1997) 6 SCC 241



Harassment Bill and suggestions for a more effective legislation are as follows:

- (a) **Definition of Sexual Harassment:** We are of the view that the present definition of “sexual harassment” contained in Section 2(n) and the consequential provision relating to the prevention of sexual harassment contained in Section 3 of the Sexual Harassment Bill is satisfactory and should be retained in any future bill.

However, it is important to note that the definition requires some clarification inasmuch as any interpretation of the word “unwelcome” as contained in the said definition must give due weight to both objective as well as subjective criteria in order to ensure that women of differing perceptions and comfort levels are given appropriate protection. Therefore, we suggest that after the definition of “sexual harassment”, the following explanation may be inserted:

“Explanation: In determining whether the behaviour or act complained of is unwelcome, one of the factors to be given due weight shall be the subjective perception of the complainant.”

- (b) **Employment Tribunal:** We are of the view that the present structure mandating the setting up of an Internal Complaints Committee to which any complaint must be filed is counter-productive to the ends sought to be met. While each employer may opt for an internal mechanism for redressal of complaints of sexual harassment, it would better serve the ends sought to be achieved to set up a separate Tribunal to be termed as the Employment Tribunal to receive and adjudicate all complaints.



It is our apprehension that the in-house dealing of all grievances would dissuade women from filing complaints and may promote a culture of suppression of legitimate complaints in order to avoid the concerned establishment falling into disrepute. Consequently the setting up of a Tribunal as proposed herein would obviate the need for both the Internal Complaints Committee as well as the Local Complaints Committee as envisaged under the present Sexual Harassment Bill.

- (c) **Constitution and jurisdiction of an Employment Tribunal:** We propose that an Employment Tribunal be set up which should comprise of two retired judges (of which one must be a woman), two eminent sociologists and one social activist, who has sufficient experience in the field of gender-based discrimination. The members of the Tribunal should be appointed by a collegium consisting of the Chief Justice of the High Court (or his nominee judge) of the concerned state or a District Judge, if the appointment is to be made in a *Taluka*, as the case may be, along with no less than one eminent female sociologist and one female advocate of the local High Court or District Court, as the case may be.

We further propose that the proposed Employment Tribunal's operation should not be trammelled by the application of complex procedures found in civil suits under the CPC or allied legislation. We therefore suggest that the Tribunal ought to follow a summary procedure for the disposal of complaints so as to expedite the resolution of disputes. It is apprehended that if the complaint of sexual harassment is tried as a full



blown civil trial then the parties concerned will be adversely affected in the workplace for a prolonged period of time which can cause a prejudicial effect to both or either party. It is expected that typical complaints of sexual harassment will not be evidence-intensive and hence should not require either a plethora of documents or witnesses. It is therefore proposed that, under the principle of *kompetenz kompetenz*, the Tribunal ought to be free to choose its own procedure for each complaint. Specifically, it is suggested that parties shall not as a matter of right be free to call upon witnesses, unless permitted by the Tribunal in the facts of the case.

- (d) **Establishments to which the proposed Act shall apply**: Since each and every act of sexual harassment at the workplace is a form of sex discrimination which in effect denies a woman her fundamental rights guaranteed under the Constitution, it is proposed that any legislation dealing with the said issue should have the widest possible application so as to take within its scope every female member of the national workforce. Therefore, any legislation must apply to all government institutions, all public bodies, all *panchayats*, all establishments covered under the Factories Act and the Industrial Disputes Act and all employers in the private sector who are not otherwise covered by the categories listed above. The present definition of “workplace” contained in Section 2(o) is of wide amplitude and in that sense is acceptable. However, it bears mentioning that a clarification may be inserted in the said definition that the “unorganized sector” is not exempt from the ambit of the proposed legislation. To this end,



we suggest that the proposed legislation should also cover women in the armed forces and police, agricultural workers and women students and staff of all schools and educational institutions. The present definition appears to exclude government and other educational institutions.

It is also proposed that domestic workers should also fall within the ambit of the proposed legislation. This would facilitate protection from situations where their wages are withheld arbitrarily as also to provide a basis for monetary compensation in the event of sexual harassment/assault besides steps taken under the general criminal law. Since education and behaviour at home is the most valuable form of learning, we feel that providing dignity to domestic workers is one of the most effective ways to humanize the treatment meted out to those of lower castes or economic class. We note that the present Sexual Harassment Bill does in fact cover domestic workers. We only reiterate the need for such protection to highlight the importance of covering every single female member of the national workforce.

- (e) **Mode of Enforcement**: The intendment of the proposed legislation ought to be the widest possible dissemination of the rules relating to sexual harassment so that all persons at the workplace are aware of what is expected. We therefore suggest that the sexual harassment policy of each establishment ought to be prominently displayed within the premises with complete details on the procedure for making a complaint. Further, it is suggested that the policy should form part and parcel of the letter of



appointment to ensure every person joining the establishment is made aware of their rights against sexual harassment. Any dereliction in the duty of the employer to prominently disseminate the sexual harassment policy in the work place and the mode for making a complaint ought to be met with a fine in the first instance, and imprisonment of the concerned officer for a repeat offence.

(f) **Requirement of Complaint to be made only in writing:**

This Committee is of the view that ground realities and the fact that the proposed legislation shall be applicable to the widest possible amplitude of workplaces, it would be too onerous a burden to expect a complaint to be made only in writing. Often the more underprivileged members of the female workforce are not in a position to make a complaint in writing for various reasons, such as, illiteracy, lack of education to permit them to put down on paper that which they have experienced and which may otherwise be clear in their minds. We propose that complainants may be free to approach the Tribunal directly to state a complaint orally, which may then be transcribed into the written form in the manner prescribed by the Tribunal.

(g) **Limitation:** We are of the view that period of limitation of 3 months for the making of a complaint contained in Section 9(1) of the Sexual Harassment Bill may be misused to defeat the ends sought to be achieved. It may often transpire that a woman may fail to make a complaint on the occurrence of the first instance of sexual harassment and may only do so upon a repetition of such instances. It would in those circumstances be unfair for only the last of such incidents (or



those that fall within the three month limitation) to form the basis of her complaint when evidence of prior instances may reveal a systemic flaw at the workplace which is promotive of gender-based discrimination. It is therefore suggested that no fixed time period of limitation be prescribed and that the only expectation be that a complaint shall be made within a reasonable period of time with regard to the facts and circumstances surrounding the making of such a complaint and the personal circumstances of the complainant. A determination of what amounts to a reasonable period of time shall be made by the Tribunal which may then be refined through the development of case law on the point.

- (h) **Conciliation**: The Committee is of the view that conciliation in cases of sexual harassment is antithetical to the intended result, inasmuch as the concept of conciliation pre-supposes the existence of a valid complaint. If in fact a false complaint is made or one which is incapable of proof, there will be no need for a conciliation. Alternatively, since conciliation arises at a time prior to action being taken on a complaint it may be used as an effective tool to muzzle the Tribunal's primary duty of investigating and prosecuting cases of sexual harassment so as to lend sufficient teeth to the legislation. If a valid complaint is made, then the consequences that ensue must only be those mandated by the proposed legislation. We are further of the view that the complainant shall not be permitted to withdraw a complaint once made so as to ensure that all cases of sexual harassment are properly dealt with under the law of the land. We apprehend that permitting either mandatory conciliation, even if at the instance of the



complainant, or permitting the complainant to withdraw her complaint will negatively impact the ability of women to bring valid complaints before the Tribunal. It cannot be gainsaid that the myriad pressurizing influences that are brought to bear upon women in our society may act to disable her from pursuing a valid complaint.

- (i) **Role of the Employer:** While we have proposed the elimination of a mandatory Internal Complaints Committee, we are of the view that the best source for prevention of incidents of sexual harassment is an enlightened employer. Our suggestions should not be read to mean that we wish to restrict the various optional measures that an employer may take to prevent sexual harassment. They should be free to set up an internal committee, if they so desire, however, a complainant cannot be compelled to approach such an internal committee prior to approaching the proposed Employment Tribunal. They are also free to take other measures such as education programmes within their premises to further strengthen anti-sexual harassment measures within their establishments. Employers must take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions internally when an instance of sexual harassment is brought to their notice, informing employees of their right to raise, and how to raise, the issue of harassment, and developing methods to sensitize all concerned. Particularly, all employers must have a nodal officer to whom all complaints of sexual harassment may be made, whether in writing or otherwise. Such a person should always be a



female member of the workforce and should be granted sufficient training to deal with such situations. It shall be such nodal officer's duty to assist an aggrieved party to make a complaint to the Tribunal, if necessary. We would like to clarify that it shall not be mandatory for a complainant to approach such nodal officer prior to the filing of a complaint with the Tribunal.

- (j) **Liability of the Employer:** We are of the view that it would be inequitable to visit the employer with liability in all cases of sexual harassment though the primary responsibility for avoiding situations of sexual harassment lies with the employer. We therefore propose that the liability of the employer will be limited to case where the employer has (a) by an act or omission facilitated the specific act of sexual harassment complained of; (b) permitted the creation of an environment at the workplace where acts of sexual harassment have become widespread and systemic; or (c) been found in breach of any other obligation under the Act, including but not limited to, the proper disclosure of the sexual harassment policy and the mode of filing of a complaint or the forwarding of any complaint received by either the employer, or by any person appointed by the employer on its behalf, to the Tribunal at the instance of the complainant.
- (k) **Action during Pendency of the Enquiry/Case:** The proposed Section 12 of the Sexual Harassment Bill empowers the Internal Complaints Committee or the Local Complaints Committee to direct the employer to either transfer the aggrieved woman or the respondent or to grant leave to the aggrieved woman if it deems fit. Once an



Employment Tribunal, as envisaged by these recommendations, is put into place, it follows that this power will be exercisable by the Tribunal. However, we are of the view that the Tribunal should not have the power to compulsorily transfer or grant leave to the aggrieved woman. It is our view that either of these powers should only be exercised with the consent of the aggrieved woman. In the event that the aggrieved woman is not amenable to either transfer or grant of leave then no such action ought to be taken against her will so as to ensure that she does not foster either a sense of bias or alienation merely on account of the fact that she exercised her rights under the proposed legislation to file a complaint of sexual harassment. However, to facilitate a feasible working environment, both the aggrieved woman and the respondent should not be compelled to work together on any project. They should be separated at the workplace such that they do not need to come into contact with one another pending the adjudication of the complaint. Additionally, it is suggested that leave may be granted to the respondent pending adjudication in the event that the aggrieved woman is neither amenable to transfer or leave or that given the structure of the workplace or the nature of the work it is infeasible or impossible for the aggrieved woman and the respondent to be separated in the discharge of their duties. The present act seems to regard the granting of leave as a beneficial provision for the aggrieved woman without taking into account her wishes. This, to our mind, is contrary to the ends sought to be achieved by the proposed legislation inasmuch as there should not be any provision that enhances a sense of victimhood in the aggrieved woman.



(l) **Action in relation to False or Malicious Complaints or Giving of False Evidence:**

The present Section 14 of the Sexual Harassment Bill appears to be a provision which is liable to misuse. Where an aggrieved woman makes a complaint it is possible that she will be faced with opposition from the employer as well. In such cases it is often possible that evidence may be manipulated by the employer or those acting in concert with the employer so as to ostensibly falsify the allegations of the aggrieved woman. Therefore the fear is that such a provision may be used to counter the complaint of the aggrieved woman and would promote a culture among employers with means to render false the genuine complaint of an aggrieved woman.

Accordingly, it is our recommendation that the said provision be deleted so as to foster an environment conducive to the making of complaints under the proposed legislation. The Tribunal shall always have the option of reprimanding the aggrieved woman or the witness, as the case may be, in its order in relation to any falsification. It is our belief that such an order of reprimand will have far reaching consequences for the future employment prospects of the aggrieved woman which may be punishment enough.

- (m) **Review of Premises by the Tribunal:** The Tribunal ought to also be mandated to conduct periodic inspection of various establishments within their jurisdiction to obtain information on the state of the enforcement of the proposed legislation and to assess various steps taken by



employers to ensure proper compliance with the terms of the proposed legislation. The purpose of these inspections should not be limited to the enforcement of the proposed legislation but should also extend to activities relating to gender sensitization based on the experiences collated by them. This may be through various education programmes or assessments received by those that have interacted with a specific employer as either workers or as clients or in any other capacity.

- (n) **Special Provisions as to Universities:** While in the preceding Recommendation No. 2 we have recommended that students and staff of all educational institutions may also be included within the definition of “workplace” under the proposed legislation, we are in receipt of certain submissions made the Jawahar Lal Nehru University which, in part, deal with the issue of sexual harassment. Those universities, in which Internal Complaint Committees have functioned successfully to deal with sexual harassment, should share their internal guidelines on combating sexual harassment in their University with other Universities across India. As an example, the internal complaint committee of JNU is known as Gender Sensitisation Committee against Sexual Harassment, which is stated to have been extremely effective in its working partly due to the diverse nature of its constituent members. This model may be examined.

Further with regards to the constitution of ICC's within Universities in the *Dr. B. N Ray v. Ramjas*



*College & Ors*¹⁰¹ judgment on 21st May 2012, the Delhi High Court ruled that:

“It was very much in the domain and competence of the University to provide, by way of Ordinance, that the members of the Committee would include representatives from all the sections of the college community”.

The High Court then went on to say that in fact such a constitution would be welcome on the basis that it

“...meets the objective of ensuring that all sections of the college community have full faith in the functioning of the Committee on account of presence of their representatives on it. The findings of such a broad based Committee are likely to be better received and accepted by all the sections of the college community”.

The court held that the mere fact that the chairperson of the committee was ranked junior to the accused was not violative of his rights under Article 14 of the Constitution.

We note that the court in *Dr. B. N Ray v. Ramjas College & Ors* stated that whilst the principles of natural justice should be followed in the procedures of the University’s ICC, it is not imperative that the complainant(s) in a case of sexual harassment need be cross examined in the presence of the accused.

¹⁰¹ Judgment dated May 21, 2012 in Writ Petition (C) No. 4427 of 2008.



CHAPTER FIVE

OTHER OFFENCES AGAINST WOMEN

Eve Teasing

1. Another important aspect of sexual harassment is the horrendous practice of eve-teasing. In a recent judgment in *DIG v. S. Samudiram*¹⁰², the Supreme Court has referred to eve-teasing as a euphemism, which attracts penal action. In this case, a policeman was caught eve teasing a married woman. It led to his dismissal from service and the initiation of criminal proceedings. The aggrieved employee challenged the dismissal order before the Tamil Nadu Administrative Tribunal, Chennai. While the said application was pending before the Tribunal, the Judicial Magistrate, Tenkasi rendered a judgment acquitting the respondent of all charges. The Tribunal noticed that no reliance could be placed on the judgment of the Criminal Court and upheld the order of dismissal from service, which was eventually upheld by the Supreme Court.
2. Since the case was in the context of eve teasing, the following observations of Radhakrishnan, J. are very important. In our view, the learned Judge perceptively has looked at not only sexual harassment at workplaces but the safety of women in all places. We are of the opinion that the safety of women in all places is again a fundamental guarantee which is enforceable against the State. We note the Supreme Court's observations which are as follows:-

¹⁰² (2012) 11 SCALE 420



“26. We may, in the facts and circumstances of this case, wish to add some aspects which are also of considerable public importance. We notice that there is no uniform law in this country to curb eve-teasing effectively in or within the precinct of educational institutions, places of worship, bus stands, metro-stations, railway stations, cinema theatres, parks, beaches, places of festival, public service vehicles or any other similar place. Eve-teasing generally occurs in public places which, with a little effort, can be effectively curbed. Consequences of not curbing such a menace, needless to say, at times disastrous. There are many instances where girls of young age are being harassed, which sometimes may lead to serious psychological problems and even committing suicide. Every citizen in this country has right to live with dignity and honour which is a fundamental right guaranteed under Article 21 of the Constitution of India. Sexual harassment like eve-teasing of women amounts to violation of rights guaranteed under Articles 14, 15 as well. We notice in the absence of effective legislation to contain eve-teasing, normally, complaints are registered under Section 294 or Section 509 IPC.

... ..

28. It is for the prosecution to prove that the accused committed any obscene act or the accused sang, recited or uttered any obscene song; ballad or words and this was done in or near a public place, it was of obscene nature and that it had caused annoyance to others. Normally, it is very difficult to establish those facts and, seldom, complaints are being filed and criminal cases will take years and years and often people get away with no punishment and filing complaint and to undergo a criminal trial itself is an agony for the complainant, over and above, the extreme physical or mental agony already suffered.

... ..

30. The burden is on the prosecution to prove that the accused had uttered the words or made the sound or



gesture and that such word, sound or gesture was intended by the accused to be heard or seen by some woman. Normally, it is difficult to establish this and, seldom, woman files complaints and often the wrong doers are left unpunished even if complaint is filed since there is no effective mechanism to monitor and follow up such acts. The necessity of a proper legislation to curb eve-teasing is of extreme importance, even the Tamil Nadu Legislation has no teeth.

31. Eve teasing today has become pernicious, horrid and disgusting practice. The Indian Journal of Criminology and Criminalistics (January- June 1995 Edn.) has categorized eve teasing into five heads viz. (1) verbal eve teasing; (2) physical eve teasing; (3) psychological harassment; (4) sexual harassment; and (5) harassment through some objects. In Vishaka and Others v. State of Rajasthan; (1977) 6 SCC 241, this Court has laid down certain guidelines on sexual harassments. In Rupan Deol Bajaj and Another v. K.P.S. Gill; (1995) 6 SCC 194, this Court has explained the meaning of 'modesty' in relation to women. More and more girl students, women etc. go to educational institutions, work places etc. and their protection is of extreme importance to a civilized and cultured society. The experiences of women and girl children in over-crowded buses, metros, trains etc. are horrendous and a painful ordeal.

32. The Parliament is currently considering the Protection of Woman against Sexual Harassment at Workplace Bill, 2010, which is intended to protect female workers in most workplaces. Provisions of that Bill are not sufficient to curb eve-teasing. Before undertaking suitable legislation to curb eve-teasing, it is necessary to take at least some urgent measures so that it can be curtailed to some extent. In public interest, we are therefore inclined to give the following directions:

1) All the State Governments and Union Territories are directed to depute plain clothed female police officers in the precincts of bus-stands and stops,



railway stations, metro stations, cinema theatres, shopping malls, parks, beaches, public service vehicles, places of worship etc. so as to monitor and supervise incidents of eve-teasing.

2) *There will be a further direction to the State Government and Union Territories to install CCTV in strategic positions which itself would be a deterrent and if detected, the offender could be caught.*

3) *Persons in-charge of the educational institutions, places of worship, cinema theatres, railway stations, bus-stands have to take steps as they deem fit to prevent eve-teasing, within their precincts and, on a complaint being made, they must pass on the information to the nearest police station or the Women's Help Centre.*

4) *Where any incident of eve-teasing is committed in a public service vehicle either by the passengers or the persons in charge of the vehicle, the crew of such vehicle shall, on a complaint made by the aggrieved person, take such vehicle to the nearest police station and give information to the police. Failure to do so should lead to cancellation of the permit to ply.*

5) *State Governments and Union Territories are directed to establish Women' Helpline in various cities and towns, so as to curb eve-teasing within three months.*

6) *Suitable boards cautioning such act of eve-teasing be exhibited in all public places including precincts of educational institutions, bus stands, railway stations, cinema theatres, parties, beaches, public service vehicles, places of worship etc.*

7) *Responsibility is also on the passers-by and on noticing such incident, they should also report the same to the nearest police station or to Women Helpline to save the victims from such crimes.*



- 8) *The State Governments and Union Territories of India would take adequate and effective measures by issuing suitable instructions to the concerned authorities including the District Collectors and the District Superintendent of Police so as to take effective and proper measures to curb such incidents of eve-teasing.*
3. We have recommended insertion of provisions in the IPC to criminalise the act of eve-teasing.

Acid Attacks

4. We understand that a most heinous form of attack on women, which is commonplace in several Asian and African countries, is the throwing of acid on women for a multitude of reasons, including alleged adultery, turning down advances from men, and also as a form of domestic violence. Acids and other corrosive substances are thrown on women or administered to them, thereby causing death or physical and psychological damage with unfathomable consequences. The 226th Report of the Law Commission of India, which dealt particularly with this offence stated:

“Though acid attack is a crime which can be committed against any man or woman, it has a specific gender dimension in India. Most of the reported acid attacks have been committed on women, particularly young women for spurning suitors, for rejecting proposals of marriage, for denying dowry etc. The attacker cannot bear the fact that he has been rejected and seeks to destroy the body of the woman who has dared to stand up to him”.¹⁰³

¹⁰³ ‘Proposal for the inclusion of acid attacks as specific offences in the Indian Penal Code and a law for compensation for victims of crime’, Law Commission of India, July 2008 at p. 3.



5. In a certain sense, the aggressor is conscious that self-worth and self-esteem of a woman often lies in her face, which is a part of her personality. The dismemberment of the face or the body is not merely an offence against the human body but will cause permanent psychological damage to the victim. What happens when there is permanent physical and psychological damage to a victim, is a critical question and law makers have to be aware that offences are not simply based on the principle of what might be called offence against the body, i.e., damage of the body, but they must take into account the consequences on the right to live with dignity which survives the crime. This is an important consideration both in the fields of criminology and also in the field of sociology.
6. The Law Commission studied instances of acid attacks and also laws to deal with the offence in various countries including Australia, Bangladesh, Cambodia, China, El Salvador, Ethiopia, Italy, Laos, Malaysia, Nepal, Pakistan, Thailand, Sri Lanka, Uganda, UK, USA and Vietnam. However, the incidence in Bangladesh, India, Pakistan, Cambodia and Uganda are much higher and are on the rise. The Bangladesh Government therefore enacted a law called the Acid Offences Prevention Act, 2002. The Law Commission after examining the law in various jurisdictions, came to the conclusion that a separate Act should be proposed for dealing with compensation to victims of acid attacks, rape, sexual assault, kidnapping.
7. Traditionally, the offence is dealt with under Section 326 of the IPC which deals with 'Voluntarily causing grievous hurt by dangerous



weapons or means'. This provision also deals with causing grievous hurt using 'corrosive substances' which include acids.

8. In fact in *Sachin Jana Vs. State of West Bengal*¹⁰⁴, a case involving acid attack which had caused disfigurement of the victim, the Supreme Court applied Section 307 IPC (Attempt to murder) read with Section 34 on the basis that to justify a conviction under Section 307 it was not essential that 'bodily injury capable of causing death was inflicted'. The Section made a distinction between the act of the accused and its result. Therefore it was not necessary that the injury actually caused to the victim should be sufficient under ordinary circumstances to result in death. The court is only required to see whether the act, irrespective of its result, was done with the intention or knowledge mentioned in Section 307. It was sufficient if there was intent coupled with an overt act in execution thereof. The Supreme Court in this case, also relied upon the decision in *State of Maharashtra Vs. Balram*¹⁰⁵.
9. The gender specificity and discriminatory nature of this offence does not allow us to ignore this offence as yet another crime against women. We recommend that acid attacks be specifically defined as an offence in the IPC, and that the victim be compensated by the accused. However in relation to crimes against women, the Central and State governments must contribute substantial corpus to frame a compensation fund. We note that the existing Criminal Law (Amendment) Bill, 2012, does include a definition of acid attack.

¹⁰⁴ (2008) 3 SCC 390

¹⁰⁵ (1983) 2 SCC 28



Offences against women in border areas / conflict zones

10. We now address a very important, yet often neglected area concerning sexual violence against women – that of legal protections for women in conflict areas. Our views on this subject are informed by the plight of a large number of women from areas in Kashmir, the North-East, Chhattisgarh, Odisha and Andhra Pradesh who were heard at length in the course of preparing our report. We are indeed deeply concerned at the growing distrust of the State and its efforts to designate these regions as ‘areas of conflict’ even when civil society is available to engage and inform the lot of the poor. We are convinced that such an attitude on the part of the State only encourages the alienation of our fellow citizens.
11. At the outset, we notice that impunity for systematic or isolated sexual violence in the process of Internal Security duties is being legitimized by the Armed Forces Special Powers Act, which is in force in large parts of our country. It must be recognized that women in conflict areas are entitled to all the security and dignity that is afforded to citizens in any other part of our country. India has signed the *International Convention for the Protection of All Persons from Enforced Disappearance*¹⁰⁶, which has to be honoured. We therefore believe that strong measures to ensure such security and dignity will go a long way not only to provide women in conflict areas their rightful entitlements, but also to

¹⁰⁶ <http://www2.ohchr.org/english/law/disappearance-convention.htm>



restore confidence in the administration in such areas leading to mainstreaming.

12. To this end, we make the following recommendations for immediate implementation:

- a) Sexual violence against women by members of the armed forces or uniformed personnel must be brought under the purview of ordinary criminal law;
- b) Special care must also be taken to ensure the safety of women who are complainants and witnesses in cases of sexual assault by armed personnel;
- c) There should be special commissioners – who are either judicially or legislatively appointed – for women’s safety and security in all areas of conflict in the country. These commissioners must be chosen from those who have experience with women’s issues, preferably in conflict areas. In addition, such commissioners must be vested with adequate powers to monitor and initiate action for redress and criminal prosecution in all cases of sexual violence against women by armed personnel;
- d) Care must be taken to ensure the safety and security of women detainees in police stations, and women at army or paramilitary check points, and this should be a subject under the regular monitoring of the special commissioners mentioned earlier;



- e) The general law relating to detention of women during specified hours of the day must be strictly followed;
- f) Training and monitoring of armed personnel must be reoriented to include and emphasize strict observance by the armed personnel of all orders issued in this behalf;
- g) There is an imminent need to review the continuance of AFSPA and AFSPA-like legal protocols in internal conflict areas as soon as possible. This is necessary for determining the propriety of resorting to this legislation in the area(s) concerned; and
- h) Jurisdictional issues must be resolved immediately and simple procedural protocols put in place to avoid situations where police refuse or refrain from registering cases against paramilitary personnel.



CHAPTER SIX

TRAFFICKING OF WOMEN AND CHILDREN

1. We have dealt with issues regarding sexual offences committed on women and children in detail. We have also talked about the legal and policy changes needed to address the menace. However, these changes can only handle perceptible and tangible problems. Perceptible problems occur when offences are committed on perceptible people. One of the biggest areas of concern in our country (and around the world) pertains to offences committed silently and under the cloak of darkness on lakhs of poor children and women who are uprooted illegally from their recorded geographic co-ordinates and whisked away into anonymity; into a world of mirth and darkness.
2. This report will be incomplete without dealing with the heinous offence of trafficking of humans, whether it is of children or women for various purposes, understated as immoral but in reality heinous. It now stands undisputed that one of the main reasons for human trafficking is for Commercial Sexual Exploitation (CSE) of these children and women. This view has been reaffirmed by the Supreme Court in the decision of *Bachpan Bachao Andolan v. Union of India*¹⁰⁷. Offences committed initially on them never come to light. Over time the sexual abuse becomes part of their life. It then gets termed as prostitution and then the abuse borders on being consensual. It is this vicious circle of missing children/women-

¹⁰⁷ (2011) 5 SCC 1



trafficking-abuse-prostitution which needs to be curbed with urgent measures.

3. The NHRC, in a report¹⁰⁸ published on 'missing children' says that on an average 44000 children go missing in the country every year. Of these children, 11,000 remain untraced. It cannot be ignored that there are cases where children run away from their homes. However, it also cannot be ignored that many are taken away against their volition. We are surprised by the fact that when the factum of a child going missing is reported to the police station, no FIR is registered. It is merely reduced to a General Diary (GD) entry which then passes through various information dissemination channels and finally rests in the National Crime Records Bureau's (NCRB) TALAASH Information System. This database is not properly updated since the police reporting of having recovered missing children to the NCRB is, apparently, lax.
4. It is quite unacceptable that cases of 'missing children', which may or may not be the result of trafficking in humans, is considered at par with a 'lost and found' situation of inanimate objects. Further, the accountability of the police in these cases is almost non-existent. We are of the strong opinion that it be made legally mandatory that FIRs be registered by the police in case where children are reported to be missing. This makes the police more accountable and under the direct control of the courts.
5. The report of the NHRC also refers to and reiterates the guidelines issued by the Supreme

¹⁰⁸Report of the NHRC Committee on Missing Children. NHRC 2007. http://nhrc.nic.in/Reports_misscl.htm



Court in the case of *Horilal v. Commissioner of Police, Delhi*¹⁰⁹. These guidelines pertain to procedure to be followed in case of missing children and kidnapped minor girls and women. We believe that states need to implement these guidelines in right earnest so as to nip this evil in the bud.

6. Apart from the report of the NHRC, we have also had the opportunity to interview a young girl from an eastern State, who was subjected to trafficking, but who still retains a sparkle in her eyes and enthusiasm to forge forward. We also interacted with child victims of trafficking and sexual abuse. These stories further confirm our belief that missing children who are further trafficked for various purposes belong to an extremely unfortunate lot and without preventing sexual and other forms of abuse committed on these children, the task remains unfinished. Some poignant statements made by these children are extracted below:

(1) CASE OF THE TRAFFICKED GIRL: This is the testimony of a girl trafficked from her native place in the eastern part of the country to New Delhi, where she was raped, sexually and physically abused, and forced to do unpaid labour. The Committee is saddened to note that despite judicial notice having been taken of the involvement of 'placement agencies' and despite the same being in the knowledge of the State, the Committee has not been provided with any credible material that shows any genuine step having been taken by the State to deal with this menace. This case study/testimony assumes importance because

¹⁰⁹ W.P (Crl) 610 of 1996.



it is reflective of a pattern of violence upon women, which has been invisibilised by the State.

“Girl: मेरे को उन लोग बहकाए ना दिल्ली चलो।

Q: कौन, किन्होने कहा बेटा?

Q: और ये विक्रम मतलब तुमको लेके गया या और भी लडकियों को लेके गया?

Girl: और भी लडकियों को लगाया था पर मेरे को दिल्ली आने के बाद में वो लडकी लाता है पता चला मुझे।

Q: “” क्या करता है?

Girl: ऑफिस प्लेसमेंट चलाता है।

Q: अच्छा घर में क्या काम करती थी तुम बेटा?

Girl: डस्टींग, झाडू पोया और कपड़े मशीन से धोती थी।

Q: लेकिन तुम्हें कुछ भी पैसे दिये या नहीं दिया.?

Girl: नहीं वाला एक भी पैसा नहीं दिया।

Girl: वो तो बोलती थी मैडम के सारे पैसे इक्टठे ले जाईयों। अगर पैसे दे दूँगी तो भागने का डर होता है ना उन लोग को शक करते है कि लडकी को पैसे दे देंगे तो भाग जायेगी। इसलिए उन लोग मेरे को पैसे नहीं देते थे महिने में।

Q: लेकिन प्लेसमेंट एजेंसी मतलब इसकी employment वो अक्ल अंटी से खत्म हो गई।

B: अक्ल अंटी मतलब इनका एक सिस्टम होता है कि मैं ये लडकी दे रहा हूँ और मैं इसको बदल भी सकता हूँ और ये मेरी गारन्टी है अगर ये बदल गई तो मैं दूसरी लडकी दे दूँगा। Like contract labour

Girl: गुडगॉवा में लेकर आया फिर मैंने बोला के मुझे घर जाना है। मुझे पैसे दे दो। तो बोला कि अभी हम लोग गाँव जाएंगे कटठा मतलब एक महिने बाद हम सारे घर जा रहे है। तो तुम भी एक महिने काम कर लो फिर सारे घर जायेंगे तुम भी हमारे साथ चली जाना।

Girl: एक महिने के लिए। मेरे को बोला एक महिने काम लगाऊँगा। मैंने भी बोला कि एक महिने के लिए काम लगा रहे



हो मेरे को तो मेरे को गुडगाँव के अन्दर ही काम लगा दो मैं आपको कोई शिकायत नहीं पहुँचाऊँगी।

Girl: तो उन्होंने बोला कि ठीक है मैं गुडगाँवा के अन्दर ही लगा दूँगा। पहचान में ही लगा दूँगा बोला। और मेरे को वहाँ पंजाब ले गया।

Girl: हाँ जी, वहाँ स्टेशन है वहाँ उतरे थे, वहाँ रात हो गई फिर मेरे को रस्ते पे जंगल में सुलाया था रात को फिर....

Q: कौन "" ने?

Girl: "" ने। फिर सुबह उठके 4.00 बजे मेरे को कोठी पहुँचाया जालंधर।

Q: जब जंगल में सुलाया तो "" ने कुछ तुम्हारे साथ बलात्कार या कुछ ऐसे करने की कोशिश की?

Girl: कोशिश नहीं उन्होंने किया। गलत किया।

Q: अच्छा। और ये गुजराल नगर में फिर बेटा किस कोठी में तुम्हे लगाया, क्या काम?

Q: पैसे तुम्हे देते थे वे लोग?

Girl: नहीं उन लोग इक्कठे देंगे बोले। वहाँ का तो सारा पैसा मेरे सामने गिनती करके वो "" के हाथ में पैसे पकड़ाए।

Girl: "" ने वहाँ से सारे पैसे उसी टाईम गिनवा के, सारे पैसे गिनवा के उन्होंने हाथ में ले लिया।

Q: अपने हाथ में?

Girl: अपने हाथ में ले लिया। मेरे को साहब ने बोला कि पता नहीं ये आदमी देगा कि नहीं देगा तो 6000 तुम दो महिने का 6000 तू अपने हाथ में रख ले। इसे मत बताना कि तेरे हाथ में 6000 पैसे हैं।

Girl: फिर गुडगाँवा, मेरे को गुडगाँवा में कोठी से निकाला और उस टाईम उन्होंने जानबूझ करके भेज दिया था अपने बीवी बच्चे को घर फिर ऑफिस में मैं अकेली थी। गुडगाँवा में मतलब घर पे मैं अकेली थी और कोई भी नहीं थे।

Q: तो तब क्या करते थे ये?

Girl: मैं उनके घर पे 17 दिन थी। 17 दिन में से 10 दिन के करीब मेरे साथ उन्होंने गलत किया।



Girl: जी, एक दिन उनके घर पे मेहमान आए हुए थे। तो उसका छोटे वाला बच्चा था तो उसको गोद में लेकर मैं ऊपर गई। फिर मैं रो रही थी कि मुझे घर जाना है मुझे घर भेजो। रोज रोज ऐसे मारपीट कर रहे हो मुझे। इससे अच्छा है मुझे मर जाना चाहिए। तो उन्होंने बोला कि मरने का शौक है तो तुम्हें अभी धक्का देके। धक्का दे दूंगा तो अभी गिर के मर जाएगी। ऐसे बोला था। मुझे हाथ लगाया था पर धक्का नहीं दिया था।”

B: This fellow basically sold her to this other gentleman the driver.

Q: He sold her to the driver?

B Actually

Q: for a certain sum of money.

B actually as per our understanding, because he was a driver, she was told that he was going to (Name of State)

B actually being taken to Mumbai the same principle as she was earlier taken to Punjab and then she said that i am not going to go with you then at the Railway Station it was very difficult for him to say, that is how it was.

Q: That is how she went with that guy?

Q: 2008 में ये कह रहे है कि जब इनकी पोस्टिंग इस इलाके में थी शकूर पुर के इलाके में तो वहाँ पे कोई प्लेसमेंट एजेंसीज नहीं थी और इका दूका शुरू हुई थी। आज वहाँ पे 500-700 से ज्यादा प्लेसमेंट एजेंसिज है।

Girl: गाँव मे बोला था मम्मी पापा को फिर मैंने एक बार फोन किया था तो बोला कि "" ने तो बोला कि तुम तो मर गई है।

B: ये "" जब तुमको लेके जाता था जगह जगह।

Girl: जी

B: अलग अलग जगह जब लडकी छोडता था।

Girl: जी।

B: लगभग कितनी लडकिया छोडता होगा। 1,2,...10



- Girl:** नहीं इतना से तो उसके पास ज्यादा लडकियाँ होंगी। गिनती तो नहीं कर पाऊँगी लेकिन कम से कम 150 से ऊपर होंगी लडकियाँ उसके पास।
- Girl:** क्योंकि मुझे गुडगाँवा से जहाँ जाता था वहाँ पे ले जाता था लेकिन वो तो बीच बीच में पार्क में ले जाता था। पार्क भी जे जाता था। पार्क में गलत तो नहीं करता था लेकिन बैठा के दारू पिलाता था।
- Q:** बेटा तुम्हे सबसे पहले तो हम जल्दी से जल्दी जो है ये पैसे दिलवायेंगे आपको
- Girl:** जी, वो तो अब तक मुझे ढूँढ रहा है। उसी के डर से मैं कहीं घूम.. बाहर भी नहीं आती हूँ। कुछ नहीं।

(2) CASE OF FOUR TRAFFICKED CHILDREN SUBJECTED TO SEXUAL VIOLENCE AND DRUG ABUSE: The testimony of four children, parts of which have been extracted below, establish the sorry state of affairs in which the protection homes under the Juvenile Justice Act are being run, and acts of sexual violence, in which even the police is complicit.

- “Child-1:** उसको लडके को मोटे को ज्यादा कराया। मतलब
- B:** बाबा ने नशा कराया उसको।
- Child-1:** मतलब बहुत कुछ करा दिया उसको।
- Child-2:** ड्रिज, ब्रिज, सुलोशन, सिरिज।
- Child-1:** नहीं सिरिज नहीं।
- B** नशा कराया।
- Child-1:** सुलोशन, भाँग, गॉजा वगैरह पीला दिया उसको फुल कर दिया उसको।
- B:** हूँ।
- Child-1:** इस तरफ मैं सोया हुआ था, उस तरफ वो सोया हुआ था और इधर मैं सो रहा था और जैसे ही आँख खुली मेरी तो। तो उसके साथ बाबा गन्दा काम कर रहा था।



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- Child-1: जामा मस्जिद पे एक गैंग रेप हुआ था।
- Q: हॉ
- Child-1: बच्ची के साथ।
- Q: जी।
- D: हॉ हॉ
- Child-1: 12 साल की लडकी थी
- Q: जी।
- Child-1: उसके साथ में हुआ था गैंग रेप।
- Q: लेकिन तुम जो ये हनुमान मन्दिर। मतलब हम आपसे ये पूछना चाह रहे थे जैसे कि ये नशा वशा करते थे। इसमें क्या कुछ पुलिस वालो का भी हाथ था?
- C: पुलिस वाले ही तो Pimps थे।
- Child-2: जैसे सर हम लोग नशा करते है
- D: जी।
- Child-2: जो चोरी करने लगे या कुछ करने लगे। तो पुलिस वाले हमसे पैसे लेते है।
- Q: मतलब तुम नशा करते हो तो पुलिस वाले तुमसे पैसे लेते है?
- Child-2: हॉ पकड लिया
- Child-3: जामा मस्जिद में भी कितने लोग बेचते रहते है। पुलिस वाले एस.एच.ओ, वेस.एच.ओ सब जाते रहते है देखते है खुले आम बिक रहा है। फिर भी कुछ नहीं बोलते है।

- D: बेटा अभी ये पूछ रहे थे कि पुलिस वाले अगर लडको के साथ नहीं तो लडकियो के साथ तो करते होंगे उल्टा काम ये।



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- Child-2: करते तो होंगे ये। ड्रिंक करते है चौकी में। ऐसा लेडिस के साथ भी करते है वो।
- D: हाँ
- Q: किन के साथ?
- Child-2: लेडिस के साथ जैसे बाहर घुमती रहती है।
- B: उसको पकड लेते है।
- Child-1: उसको पटा के लाया पैसे दिया ओर कर लेते है।
- Q: कहाँ कर लेते है?
- Child-2: चौकी में कौन देख रहा है। गया काम बन गया।
- Q: कहाँ चौकी मे ले गये।
- Child-2: चौकी में भी
- Q: लडकी को?
- Child-2: और क्या, मीना बाजार में बहुत ऐसे ही होता रहता है।
- Q: मतलब वो , वो जो पुलिस वाला है वो पैसे लेता है, वो पैसे देता है या वो वैसे ही वो वो..
- Child-2: पैसे देता है वो जैसे हो गया 100-50 दे दिया।
- Q: वो जो लडकी को।
- Child-2: हाँ।
- Child-3: अगर कोई छोटी लडकी रहती है उसे ले जाते है। गलत काम करवाते है।
- Q: मतलब उसको जबरदस्ती ले जाते है।
- Child-3: पैसे का लालच दिखा के।
- D: पुलिस वाले ले जाते है।
- Child-3: हाँ, पैसे का लालच दिखा के।
- Q: पुलिस वाले पैसे का लालच दिखाके उसको लेके जाते है। और फिर उसको, उसको फिर उसके साथ गलत काम करके उसको छोडते है?
- Child-3: हाँ। पैसे तो मांगती है अगर वो बोलती मुझे इस काम के लिए लाए थे और ये करा रहे हो वो मना करती



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है तो फिर उसको मार के भगा देते है। 100 रूपये दे देते है उसे कभी 10 रु.

Q: अच्छा, और कभी, नहीं, जैसे कि समझ लो जामा मस्जिद में छोटी लडकी है उसको सडक से उठा लिया पहले उसको उसको लालच दिखा दी। ले गया वहाँ पुलिस स्टेशन। उसके साथ गलत काम कर लिया। बाद में वो सीधा जी.बी.रोड भेज देता है।

Child-3: हाँ बहुत जन कर देते है बिचवा देते है

Q: बिचवा देते है?

Child-4: मेरी आँखो के सामने.....

Child-3: हाँ, बिचवा देते है.....

Child-4: ये बिचवा देते है और पुलिस वाले ही जो है वो बच्चो को बिचवा देते है।

Child-4: बच्चा हो, लेडिस हो कोई भी हो।

Q: वहाँ पर साहरनपुर में।

Child-4: हाँ वहाँ पे।

Q: तो वहाँ पे पुलिस देखती नही है देखती नही है ये सब।

Child-4: बाजार मे जा भी नही सकता। पैसे मिलते है ना।

Q: कौन?

Child-4: पुलिस वाले को पैसे मिलते है तो क्या जायेगा।

Child-4: तो एक गाडी आई। एक लडकी बैग लेके जा रही थी तो पुलिस वाले ने पकड ली।

D: लडकी को



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- Child-4: हाँ लडकी को पूछा ताछा क्या क्या पता नहीं।
उसको बिठा लिया।
- D किसने?
- Child-4: पुलिस वालो ने।
- D अपनी गाडी में?
- Child-4: हाँ, और जहाँ पे जंगल था, जंगल के अन्दर गाडी
घुसेड दी।
- Q: है?
- Child-4: सभी देखने लगे क्या कर रहे है, हम उसके पीछे
पीछे गये देखा तो लडकी चिल्ला रही है और एक ने
मुँह दबा रखा है और। ...
- Child-4: तीन लोग थे।
- Child-4: तीन पुलिस वाले थे। एक ड्राइवर था और दो और
थे।
- Q: हाँ।
- D: पुलिस की गाडी थी पी.सी.आर वैन होती है।
- Child-4 हाँ,
- D: पी.सी.आर वैन सर।
- Q: पी.सी.आर और ये पी.सी.आर वैन जो है वो लेके गये
लडकी को
- D: जंगल में।
- Child-4: जंगल में ले के गये और हम भी उसके पीछे पीछे
गये।
- Q: हाँ।
- Child-4: देखने के लिए।
- Child-2: देखने के लिए।
- Child-4: जो ड्राइवर था।
- Child-2: जो पी.सी.आर का ड्राइवर था।
- Child-4: तो उसने मुँह दबा रखा था और जो दो थे वो उसका
रेप कर रहे थे।



- Q: है?
- Child-4: वो उसे रेप कर रहे थे।
- Q: वो रेप कर रहे थे?
- Child-4: रेप कर रहे थे।
- Q: हाँ। और फिर
- Child-4: मतलब फिर जो लडका था। वो मुझे भी देखे जो मैंने उसको देखा तो मैं भी बहुत डर गया कि पुलिस वाले है अगर कुछ भी
- Child-3: पकड लिया तो।
- Child-4: अगर शोर भी मचा दिया तो हमको तो मार....
- Q: बिल्कुल मार देंगे तुम्हे जान से।
- Child-4: हाँ, मार डालेंगे क्योंकि पुलिस वाले है।
- Q: हाँ।
- Child-4: तो उसने मेरे को बोला कि जो भी देख रहा है बस तू अपने सीने में रखियों किसी को बताईयों मत। नहीं तो अगर। अभी पता चल गया ना इनको। कि हमने। तो यही पे गोली मार देंगे।
- Child-4: तीनो ने किया। उसके बाद उसने वो पता नहीं लडकी को क्या दिया। पता नहीं क्या किया। लडकी को वो नीचे फेंक दिया। उससे गाडी से। गाडी से नीचे फेंका....”

The Committee was extremely moved after listening to the above narrations.

7. As far as the trafficking of these children is concerned, the law seems to lag behind social realities. The only law in India dealing with offence of trafficking is the ITPA apart from the IPC, the latter having many provisions which may be employed to deal with different aspects of



trafficking. Ironically though, the term 'trafficking in persons' is nowhere defined in our law. It has been however defined in the United Nations Palermo Protocol¹¹⁰ as :

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"

8. The above definition links traditional offences under the Indian Penal Code to the composite offence of 'trafficking in persons' and this inexorable link will put an additional burden on the police to lodge an FIR and investigate it in accordance with law. The above definition is also pertinent because the nadir of an offence need not always be in another offence. Phrases like 'abuse of power or a position of vulnerability' and 'giving or receiving benefits to achieve the consent of a person having control of another person' etc. are *per se* not offences in the eyes of our law. It is therefore imperative that these actions be linked to the offence of 'trafficking' so as to make them culpable. This definition has been adopted in the

¹¹⁰Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime, 2000 http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf (ratified by India in May, 2011)



Goa Children's Act, 2003¹¹¹ which can also be used as a template to evolve law in this area.

9. In any event, we recommend that the definition of 'trafficking' contained in the Palermo Protocol ought to be adopted by the Legislature as a definition of the offence in the Indian context, since the lack of definition of trafficking and the ineffective law enforcement in relation to trafficking and in particular the non-application of the provisions contained in the Indian Penal Code in relation to the same have actually made trafficking a huge industry which has not been brought to any critical gaze of law enforcement for reasons already cited. We believe that in order to protect the dignity of women in particular, it is necessary that the definition of trafficking as contained above must be incorporated as an independent definition in the Penal Code as a separate offence.
10. The ITPA was enacted to bring into effect the "UN Convention For The Suppression Of The Traffic In Persons And Of The Exploitation Of The Prostitution Of Others, 1950". Moreover, it was aimed to give effect to the lofty Constitutional mandate in Article 23. However, when we look at the provisions of the said Act, it appears to be an Act for the prevention of immoral traffic rather than dealing with traffic itself. As noted above, the expression

¹¹¹The Goa Children's Act, 2003. Section 2(z):

(z) "child trafficking" means the procurement, recruitment, transportation, transfer, harbouring or receipt of children legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise.



'trafficking' is not defined in the ITPA. We may add that there can be cases of children who are trafficked, who are sexually assaulted, but yet are not actually into prostitution. We further notice that in cases of trafficking, at least the offences which are cognate offences like Sections 366, 367, 370, 372 and 373 of the IPC are vital provisions which are not relied upon when a case of trafficking is brought to the attention of the police. Article 23 of the Constitution, which provides for prohibition of traffic in human beings and forced labour, clearly mandates that traffic in human beings, beggary and other similar forms of forced labour, are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

11. The ITPA defines a 'trafficking police officer' in Section 2(j) and prescribes a punishment (under Section 3) for keeping a brothel or allowing premises to be used as a brothel and to further punish for living on the earnings of prostitution. Section 5 provides that - (a) any person who procures or attempts to procure a person whether with or without his consent for the purpose of prostitution or induces a person to go from any place with the intent that he may for the purpose of prostitution become the inmate of a frequent brothel or takes or attempts to take a person or causes a person to be taken from one place to another with a view to his carrying on or being brought up to carry on prostitution or cause or induces a person to carry on prostitution shall be punishable on conviction with rigorous imprisonment for a term not less than 3 years and not more than 7 years and also with fine which



may extend to Rs.2000. Strangely, the said provision contains the following words:-

“If any offence under this sub-section is committed against the will of any person, the punishment offered for a term of 7 years shall extend imprisonment for a term of 14 years....”

12. It is further provided that if the person, in respect of whom an offence committed under the sub-section, is a child, the punishment provided under this sub-section shall extend to a rigorous imprisonment for a term not less than 7 years but may extend to life.

13. To deliberate further, we should not lose track of the social realities which lead to women and children being pushed into these criminal rings. We should also not forget that controlling such crimes have great consequences on the survivors. As observed by the Supreme Court in the *Bachpan Bachao Andolan*¹¹² decision:

“34. Trafficking in women and children has become an increasingly lucrative business especially since the risk of being prosecuted is very low. Women and children do not usually come to the brothels on their own will, but are brought through highly systematic, organised and illegal trafficking networks run by experienced individuals who buy, transport and sell children into prostitution. Traffickers tend to work in groups and children being trafficked often change hands to ensure that neither the trafficker nor the child gets caught during transit. Different groups of traffickers include gang members, police, pimps and even politicians, all working as a nexus. Trafficking networks are well organised and have linkages both within the country and in the neighbouring countries. Most traffickers are men. The role of

¹¹² Supra Note



women in this business is restricted to recruitment at the brothels."

14. Trafficking is a complex crime with innumerable constituents. It is time we looked at a comprehensive code to deal with CSE as opposed to prostitution, which is traditionally viewed in the our society as 'immoral'. We have been introduced to an elaborate study on '*Trafficking of Women and Children in India*' made by the Institute of Social Sciences under the auspices of NHRC and UNIFEM. This study has underlined that victims of CSE are victims of rape¹¹³. The said study has highlighted most of the areas of concern while dealing with the crime of trafficking.

15. What comes to the fore from these studies and the various recommendations we have received, apart from the oral interactions had by us, is that our law has many effective provisions to deal with trafficking. They are scattered in different statutes like the ITPA, Juvenile Justice Act and the IPC. However, due to lack of synergies, these provisions remain underused and in many cases abused. Section 5 of the ITPA makes 'procuring, inducing or taking a person for the sake of prostitution' as a punishable offence. However the records show that this is one of the most underused provisions of the Act with an abysmal rate of prosecution and conviction. On the other hand, one of the prime examples for the abuse of law is Section 8 of the same Act. The women and children who are subjected to the offences under the Act are firstly 'arrested' as 'prostitutes'. We are amazed at how young children and women who

¹¹³*Trafficking in Women and Children in India*, Shanker Sen & P.M. Nair (Ed), Orient Longman, 2005 at p. 303



are supposed to be protected by the Act are 'arrested' under the very same law. The result is that women and children are arrested for the Act of 'soliciting' prostitution and prosecuted. This is a typical case of the survivor of an offence (we prefer the term to 'victim') ultimately becomes the convict. We recommend that the law needs to be sensitized and overhauled lest it degrades into a tool to stigmatize girls and women for the rest of their lives.

16. It has also been brought to our notice that the lack of an established protocol for verifying the age of the survivors leads to the exploitation of loopholes in the ITPA and Juvenile Justice Act. The survivors, if they are below the age of 18 are sent to Child Welfare Committee (CWC) as prescribed in the Juvenile Justice Act. This could lead to they being taken away from the clutches of the criminals. However since most of the trafficked persons do not have adequate records to prove their age, they are shown as adults using falsified documents presented mostly by pimps and middlemen. It is shown from studies that in most cases, the survivors are 'bailed out' by pimps and middlemen.

17. A standardized protocol has to be put in place whereby the age of survivors is objectively assessed by a body of experts using well recognized tests like the ossification test. We note with concern that there appears to be a deep rooted nexus between some in the police force and criminals, which has primarily led to the misuse and abuse of the law. The offence of trafficking is much more intricate and complex than traditional offences. The country needs a specialized police



force to deal with trafficking since it has *inter alia* trans-border connections as well. It is a sophisticated crime which needs a specialised law enforcement agency to tackle.

18. We also perceive that a 'prevention or conviction' approach will not solve the problem. One of us, while assisting the court as the Solicitor General of India in *Bachpan Bachao Andolan* had the opportunity to present a detailed report to the court on issues of child trafficking in India. The Supreme Court reaffirmed the submission of the Solicitor General that "*rehabilitation will be the measure of success of the Juvenile Justice Act*"¹¹⁴. The shelter homes/corrective institutions and CWCs should perform the role of rehabilitating the survivors. They should not become breeding grounds for future offences. It is of paramount importance that the shelter homes and corrective institutions are constantly monitored by an independent body and reports are periodically assessed by the State governments.

19. The recommendations given by the Solicitor General have now become diktats of the court. We are reproducing the suggestions given with respect to the synergy of the ITPA and Juvenile Justice Act as part of our opinion in this regard:

"38. The following directions are necessary:

(a) Every Magistrate before whom a child is brought must be conscious of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000;

(b) He must find out whether the child is below the age of 18 years;

¹¹⁴ Supra note at p. 19



- (c) *If it is so, he cannot be accused of an offence under Section 7 or 8 of ITPA;*
- (d) *The child will then have to be protected under Juvenile Justice Authority;*
- (e) *The Magistrate has a responsibility to ascertain and confirm that the person produced before her or him is a child by accurate medical examination;*
- (f) *The definition of a child in Section 2(k) means a juvenile or a child as a person who has not completed 18 years of age;*
- (g) *Once the age test is passed under Section 17(2) establishes that the child is a child/minor less than 18 years of age, the Magistrate/Sessions Judge while framing charges must also take into account whether any offence has been committed under Sections 342, 366, 366-A, 366-B, 367, 368, 370, 371, 372, 373, 375 and if so, he or she must also frame charges additionally;*
- (h) *The child should be considered as a child in the protection of the Child Welfare Act;*
- (i) *The child should be handed over to the Child Welfare Committee to take care of the child. The performance of the Child Welfare Committees must be reviewed by the High Court with a committee of not less than three Hon'ble Judges and two psychiatrists;*
- (j) *A child must not be charged with any offence under ITPA or IPC;*
- (k) *A minor trafficked victim must be classified as a child in need of care and protection. Further, the Magistrate must also order for intermediate custody of minor under Section 17(3) of ITPA, 1956;*
- (l) *There should not be any joint proceedings of a juvenile and a person who is not a juvenile on account of Section 18 of the Juvenile Justice (Care and Protection of Children) Act, 2000;*



(m) It is necessary that courts must be directed that the same lawyer must not represent the trafficker as well as the trafficked minor;

(n) Evidence of child should be taken in camera. Courts must protect the dignity of children. The children's best interest should be the priority.

20. Even though under Section 22A of the ITPA, the State Governments have the power to set up Special Courts to deal with the offence of trafficking, the said provision has not been utilized optimally by the States. As we had mentioned the need for specialized investigating and prosecuting agencies, specialised courts are also required to effectively deal with this complex crime.

21. We have had the opportunity of meeting many children who have been subjected to the most inhuman crime of trafficking. Many of them have no recollection of their roots and have been subjected to various other crimes on the way. We reiterate the need for a comprehensive code to deal with 'Trafficking and Sexual Exploitation (both commercial and otherwise)'. This code ought to be complemented with specialised judicial mechanism to prosecute offender while protecting the survivors.

22. At this juncture, we may note the desensitization of the police that has taken place in such a fundamental matter. We note that the police force is unable to seriously view the offences of trafficking and sexual abuse of trafficked women and children is on account of three factors:-

- a) The members of the police force themselves often come from a society where patriarchal superiority is established;



- b) Police is considered to be an expression of power and authority as distinguished from service and protection of the oppressed; and
 - c) They are as much alive either in the form of connivance or in the trafficking of children including female children.
23. The police are also aware that such female children are either used as domestic labour, open to sexual assault and sometimes sexually assault such children. If trafficking in women is taking place with the complete knowledge of the police, and a few rescue operations take place at the instance of either an NGO or the police but which rescue operations do not actually cover the entire field of trafficked children, it is clear to us that there is a fundamental incompetence in the ability of the police to deal with rape cases.
24. At our request, the Commissioner, Delhi Police submitted certain alarming facts in respect of missing children, by way of an affidavit. We were also briefed by a Special Commissioner of Police, Delhi, who met with us during the course of our oral consultations, that FIRs, in cases of missing children above 8 years of age, would be registered only after 24 hours after the children went missing. It is interesting to note that the analysis of reasons for missing children has been prepared on the information provided by the Delhi Legal Services Authority. It is also interesting to note that there were 3395 cases of missing children in 2011 and 3519 cases in 2012.



25. We have been informed by the Delhi Police that:-

“viii. Investigation of cases of kidnapping related to missing children was being hampered on account of absence of photographs of the children, particularly those belonging to poor strata of society. To tackle the problem, a scheme PEHCHAAN was launched in July 2012 in which a photograph is taken of the entire family with all children and a copy of the photograph is given to the family for record so that in case a child is reported missing, his/her photograph is available. This scheme has been implemented in areas where maximum children are reported missing. 64,055 children have been photographed under this scheme in various parts of Delhi and beyond with initial focus on JJ clusters and rehabilitation colonies and a Police station wise data base has been maintained.”

26. We are uncomfortable with such photographs being taken and are unsure whether this can lead to sexual profiling. We have been further led to understand that, in a meeting held on June 21, 2012 (prior to the present Commissioner being in place), the Lt. Governor of Delhi asked for a gender breakup of missing children. It is clear, therefore, that the State is fully aware of the problem of missing children and its implications. We notice from the minutes of subsequent meeting held on August 23, 2012 presided by Lt. Governor, that:-

“Gender distribution of missing children be indicated during the next meeting. Causative factors behind missing children be also depicted by pie chart.....”

27. We have also seen correspondence between the Delhi Police and the Director, Department of Women and Child Development, Government of NCT of Delhi, wherein the Delhi Police has sought the following information:



“How many cases of rape and other crimes against women have been reported in the NCT wherein one or more of the accused person(s) are staff of protective homes for women, or where the offence has taken place within the premises of a protective home for women for the period 01.01.2007 to 31.12.2012. Data in respect of each such crime be provided separately.”

28. We find that no reply has been made available by the Delhi Government.
29. During the course of our oral consultations, women’s organizations from Banda and Saharanpur in UP confirmed to us that the sale of women and children is rampant in the outlying areas of Saharanpur and in some areas of Bareilly. The Committee is unable to dismiss such reports as it has received lateral information of sale of women and children in a bazar near Saharanpur. Under these circumstances, it is clear that successive state governments of Uttar Pradesh have obviously turned a blind eye to the issue of trafficking.
30. Our view has been corroborated by the CBI officer who appeared before us during the oral hearing. He submitted that trafficking has been a persistent problem since 1999. He also admitted that many procedural hitches including delayed registration of complaints has hampered the attempts to curb the menace. This is an important aberration which must be addressed by Parliament.
31. We must also note, with some alarm, the submission made before us by the Director General, Health Services (MoHFW), when asked by the Committee whether organs of accident victims were being illegally removed at the



hospital taken by the police. He stated that this was indeed the case and hinted at the connivance of the police.

32. The Director, CBI, has also submitted that the CBI is aware of such kind of cases. We find, however, that no serious attempt has been made on the part of the CBI from 2007 till 2012 to investigate these cases. We do note that on 27th February 2012, a case of cheating and kidnapping of minor girls, who were wrongfully confined and sexually exploited under false promise of employment, was registered which is pending trial. We are somewhat surprised however that the CBI has not given us details of any of the legal provisions under which this case has been registered.
33. We notice that when cases are directed to be registered under the orders of the High Court, the performance of the CBI appears to be slightly better. We also understand that the CBI is aware about the running of placement agencies as a trafficking racket. The CBI says that it has designated one of its units as an Anti-Human Trafficking Unit, but this unit has commenced functioning only with effect from 28th February 2012.
34. Paragraphs 3.5 and 3.6 of the CBI (Crime) Manual 2005 were brought to our notice, which deal with trafficking of human beings:-

“3.5 The Special Crimes Zones-I & II are organized into Branches/ Units having territorial jurisdiction over one or more States as well as Central Investigating Units having all-India jurisdiction. These Branches/Units take up collection of



information and investigation of the following types of cases: –

.....

(f) Global trafficking in human beings especially women and children for various activities including prostitution, child sex etc.

.....

(h) Trade in human organs.

3.6 The Special Crimes Division may also undertake the task of collection, collation and dissemination of information/intelligence in respect of organized gangs of criminals, terrorists, kidnapers/abductors, trafficking of human beings, especially women and children."

35. We are also informed by the Director, CBI, that the AHTU is being strengthened. We must say that the CBI has candidly admitted that no organised gang has been apprehended by the CBI during the above said period.
36. On the issue of illegal extraction of organs, we find that only three cases have been registered by the CBI - one is a case in the year 2007 against one Mahender Singh Goldi. The allegation was that the kidneys of boys and girls were being extracted and they were being sold by deceiving them.
37. A charge sheet was filed against 9 persons and the case is still pending at the stage of prosecution evidence. In respect of a third complaint, a closure report was filed. These three are enough for us to arouse a suspicion that there exists a huge racket of extraction and sale of human organs and in view of the statement made by the Director General of Health Services and in the context of trafficking of children whose numbers are not available, we draw an adverse inference against all



the State police departments, who have failed to respond to the data sheet which this Committee had requested. We come to the conclusion that there appears to be organised networks and gangs which are operating which through middlemen are inducing and abducting children including female children and with the connivance of police is actually selling them, abducting them, subjecting them to sexual assault and possibly extraction of organs. Therefore the advisory issued by the Ministry of Home Affairs dated 31st January 2012 assumes special significance.

38. When one looks at the 'efforts' undertaken by the executive, we have examined the Delhi Police's 'Zipnet' website which was set up in 2004 to act as a country-wide database for, inter alia, missing women and children. When Zipnet was established, its objective was to have a nation-wide network / database by 2012 - i.e., all police stations in the country would be connected. This has, sadly, not been achieved.
39. As we have noticed, there appears to be great difficulty in getting the correct numbers of untraced women and children. We must therefore look at the figures with a certain degree of suspicion because there has been a lack of proper effort by the State and the law enforcement machinery either to register cases or for that matter of fact have an exact number of missing women and children. There is no correlation between the number of children who are missing and the number children who are traced and supposedly rehabilitated.



40. The failure of statutory authorities in seeking to protect children is quite evident. The abject failure of the State to maintain proper protective homes for distressed women and children - homes and shelters where women and children are treated with love and affection and where a conducive climate of counselling and motivation for a better future is made available. If this failure is not remedied immediately, then such children and women might also not only slip back to crime, but they would feel that society has cheated them.
41. Trafficking is an organised crime but yet we are not satisfied that traffickers are brought to book. Notwithstanding the very well-meaning publications of UNODC as well as the provisions of the ITPA, we do not find that State Governments have taken any synergistic steps. We also find that in spite of excellent resource materials, this has not weighed on the priority of the police. We are also of the view that even though the NHRC and the MHA have issued circulars and advisories (especially after the mass killings of children in Nithari village), the provisions of registering complaints is not being strictly followed. It is clear to us that even though Anti-Human Trafficking Units have been set up in the country we are surprised that such units have not cracked any gangs and particularly gangs, which operate at a national and international level. We also must point out that human trafficking is no less a serious crime than drug trafficking.
42. One of the representations submitted to this Committee claims that more than one lakh children in the country go missing each year. We are unable to comment upon the correctness of this



figure but we are also not able to dismiss it. We are afraid that even though there are salutary provisions in the Juvenile Justice (Care and Protection) Act, 2000, they have not been implemented in the spirit for mainstreaming the child into the society.

43. In other words, children have not been strengthened and made confident to lead a normal life in conjunction with their parents and society. As per NCRB's records, in the year 2009, 68,227 children were missing, 77,133 were missing in 2010 and 59,668 were missing in 2011. We also notice that these figures exclude 5 States which are the most vulnerable States of trafficking. The data seen by us does not indicate whether those children who have been traced are the ones which are missing.

44. We must, at this stage, note that by way of a series of letters, we had requested, *inter alia*, details of missing children from the police departments of all states and Union Territories. While only the Delhi Police acknowledged our request, we are not satisfied with the figures furnished by it in respect of missing children.

45. In view of the advisory issued by the of the Ministry of Home Affairs dated 31st January 2012¹¹⁵, there can be no doubt that Government of India is completely cognizant of the seriousness of the problem but has been unable to crack it.

¹¹⁵ *Advisory on missing children-measures needed to prevent trafficking and trace the children-regarding*. Ministry of Home Affairs, Government of India, Office Memorandum No. F.NO.15011/60/2011.



46. It is pertinent to examine the text of the said advisory:

*“The issue of missing and untraced children, based on police records, is a matter of deep concern to the Government of India. It requires a concerted and systematic attention of Central and State Governments. As missing children are exposed to high risk situations, they are vulnerable and fall prey to crimes of exploitation, abuse, including human trafficking. It is, therefore, necessary that effective steps be taken for investigation of cases relating to missing children and tracing of these children. **This advisory is in continuation of the advisories dated 09.09.2009, 14.7.2010 02.12.2011 and 4.1.2012 issued by this Ministry to all the States / UTs on similar/related issues of crimes against children.***

... ..

An officer not below the rank of a DIG should be declared Nodal Officer for every state/UT for handling the cases of missing children.

Supervision of investigation of such cases by senior police officers of the level of Dy.SP/Addl.SP may be ensured.

When, any heinous crime or organized crime on missing children, such as, victims of rape, sexual abuse, child pornography, organ trade etc, is reported, and then the investigation of such cases should be taken over by the CID of the States/UTs to expedite the investigation and to ensure prosecution of the offenders.

State Crime branch should maintain close links with District Missing Children Unit (DMCU) and ensure that uploading of data and matching of missing children with UIDBs/Children found is carried out effectively.

The Missing Persons Squad (MPS) will match the information regarding missing children with the data available with the MPS and if matched it should be



communicated to the concerned police station. A monthly report should be sent to DMCU.

When the missing person is traced through search or rescue from places of exploitation, the police control room, District Missing Persons Unit (DMPU) and Missing Persons Squad (MPS) should be informed immediately for updating the record and for discontinuing the search.

Whether these missing children land up in Begging Rings, Flesh Trade, Pedophilic Net and Organ Trade or end up getting exported for Camel Jockeying Etc., it is always an Organised Crime. Profile of all traffickers who facilitate such trafficking should be maintained at PS level in Gang Registers.

The State CID should use data mining to analyse patterns, gather intelligence and to build profiles which have inter state ramifications, ascertain angles of trafficking, organized crime, number age/sex profile and maintain liaison with other central agencies dealing with the matter.

All police officers and men, especially the team of officers handling investigation into these cases need to be trained and sensitized on an ongoing basis to the issues concerned. The issues of missing children, human trafficking along with JJ Act may be made part of syllabus in the state police training colleges to sensitize the police force. The training should focus on imparting knowledge of the substantial and procedural laws, court rulings, administrative procedures, skills in child-friendly investigations, including interviewing, interrogation, scientific data collection, presentation in the court of law, networking with the prosecutors, facilitating victims/witness protection programmes etc.

As there is considerable overlap in the problems of missing children and trafficked children, AHTUs should play an active role.



The Superintendent of Police in the districts and Commissioners of Police in the metropolitan areas should review each case of missing children/persons during their monthly crime review meetings to find out the actual number of missing children, number of children traced/untraced, children, the reasons for child disappearance/missing and its links to human trafficking and to take stringent action against the perpetrators of the crime. They should also take strong measures for successful prosecution of the offenders in the court of law.

In cases where children and women have been smuggled illegally out of the country, the investigation agencies should utilize Interpol channels to communicate with member countries and if need be, have appropriate Interpol Notices issued through CBI/Interpol wing, in order to trace the victims.

An exercise to check all the unclaimed and unidentified children who are kept under safe custody in various shelter homes of the government/non-governmental agencies may be undertaken and details may be matched with the available missing children data base in the country as most of the children lodged in these shelter homes are indeed missing children. Missing Persons Bureau in the state should have a centralized data on children lodged in these shelter homes run by the government/non-governmental agencies in the state with mechanism to update the data on regular basis. This data along with the photographs of the children should be digitized and regularly sent to NCRB and NCRB will upload this data in their website www.ncrb.gov.in for pan-India search by other state police/stake holders.

A number of children reportedly die after disappearance/missing and their dead bodies remain unidentified. States/UTs should also consider making it mandatory for the investigating officers and provide the necessary infrastructure to have the DNA profiling of all such unidentified dead bodies for future comparison and identification. DNA profile of the



nearest blood relative through informed consent should be done if child is not found for 3 months. Both the DNA data base may be maintained at the state MPS for future comparison and matching.

Similarly, in order to curtail offences of child sex abuse, in all cases of pornography, cyber crimes etc. under investigation, efforts should be made to correlate the pictures of the child with the details of missing children and vice-versa.

The data available in each missing children file should be uploaded to the computer maintained at the police station for this purpose. It will be the responsibility of each I.O. to ensure that efforts made towards tracing the missing children is also uploaded on the computer, which would be linked to national database and via CCTNS, eventually. CCTNS should update it promptly on the proposed 'Khoya Bachpan' website.

The SHO/Inspector of the police station will ensure that the computerized record of missing children is maintained up-to-date and the same is sent to DCRB and from there to SCRB. The State and District/City police Control Room/local Police net, ZIP NET, www.trackthemissingchild.gov.in should be updated immediately. It would be useful to access data on missing children through other websites maintained by www.childlineindia.org.in and www.stoptrafficking.in to mention a few.

NCRB is mandated to function as a national repository of crime and criminal related data in the country and the States /UTs should evolve a mechanism to share the data on missing children and human trafficking cases to NCRB in the prescribed proforma of NCRB on monthly basis for analysis and study to find the emerging trends in these sensitive issues.

NCRB should device methods of uploading the data on a real-time basis not only of missing persons but also with respect to traced and un-traced persons as well as linking the database with those of rescued persons from



different places including children rescued from exploitative or forced labour.

The universal number 1098 for reporting of missing children 24x7 is being run in some States / UTs, but there is no uniformity. It needs to be made effective and operational if not done earlier. There should be at least one dedicated police personnel at this helpline on 24x7 basis with proper monitoring mechanism. In the meantime BPR&D would explore further possibilities of integrating 1098 with 100 to make it toll free.

Responsible and competent NGOs be earmarked as Nodal NGOs in States for assisting the law enforcement agencies in this regard. The NGOs who have done work in this field with commitment be supported by the law enforcement agencies and synergy be established so that they could work in tandem.

When training the police, they must be oriented to undertake all preventive steps including steps to identify children in distress, watch of suspicious persons, special attention at transit points viz. border areas, ICPs, railway stations, bus stations, airports, ports etc., identify vulnerable population/places and take steps to address the vulnerability on time.

BSE/ITBP/SSB personnel in outposts on borders should be trained to look-out for trafficked children on the borders. They should be sensitized to question and detect unaccompanied minors/children or accompanying adults with suspicious behaviour during pursuant checking of vehicles/public transport.

The law enforcement agencies may involve representatives of Panchayati Raj Institutions and the community at large, such as, Village Watch & ward/ Municipal Committees/Neighbourhood Committees/Resident Welfare Associations etc.. This will enable the community to get fully involved along with the administration/police in identification, tracing & recovery of missing and trafficked children and arrest of accused persons.



Community awareness programmes on the issue of missing children and its links with human trafficking may be undertaken by the District administration. Periodic interface with Public and Safety Awareness Campaign should be conducted in schools and vulnerable areas, jointly by the district administration. Schools must be encouraged to issue Identity cards to children.

The activities of various departments and agencies in the States /UTs need to be integrated through a nodal agency. These includes Home Department, Police Department, Social Welfare Department, Women and Child Welfare Department, Juvenile Justice Department, Child Welfare Committees, Labour Department, Health Department, Tourism Department as well as other agencies like State Human Rights Commission, State Women's Commission, State Commission for Child Rights, Railways, RPF, BSF, SSB, ITBP etc. State governments may institutionalize a coordinating mechanism among all these agencies through an SOP clearly mandating the roles and responsibilities of each of these agencies.

In places, where vulnerable groups of children are found in large numbers, a mechanism should be evolved in partnership with NGOs and social workers, where by apart from rendering counseling to them, awareness-raising activities are also carried out.

The protocols and SOPs developed by UNODC in the Joint Project of MHA-UNODC, during 2006-2008, including protocol on interstate transfer of rescued victims may be effectively utilized (refer www.unodc.org/india).

47. A Standard Operating Procedure for dealing with cases of missing and found children appears to have been issued by the Commissioner of Police on 19th May 2011. In fact, the Standard Operating Procedure is rather long and one can easily see that the purpose of such a detailed procedure is



only to make sure that no officer will be able to understand the steps nor will he be able to effectively ensure compliance with the same.

48. In fact, we also take note of the fact that on September 16, 2009, the Delhi High Court on its own Motion¹¹⁶ has taken *suo motu* cognizance pertaining to missing children. One of the first directions is that Delhi Police will, without any delay, register all complaints of missing children as FIRs and that the Delhi Police will strictly follow the Supreme Court's directions in *Horilal*. We also understand that the Supreme Court, on January 17, 2013, has directed police stations across the country to compulsorily register missing complaints of any minor and appoint a special police officer to handle complaints of juveniles. Such police personnel should be stationed at every police station in plain clothes.

49. We may now add that in *Bachpan Bachao Andolan etc. v. Union of India etc*¹¹⁷, the issue arose in the context of trafficking of missing children for the purpose of forced labour and placing them with placement agencies. The Delhi High Court's following observations in this context are relevant:

"17. Trafficking in women and children is the gravest form of abuse and exploitation of human beings. Thousands of Indians are trafficked everyday to some destination or the other and are forced to lead lives of slavery. They are forced to survive in brothels, factories, guesthouses, dance bars, farms and even in the homes of well-off Indians, with no control over their bodies and lives.

¹¹⁶ Writ Petition (Crl) No. 249/2009 – *Court on its own Motion v. State*.

¹¹⁷ Judgment dated December 24, 2010 in Writ Petition (Crl.) No. 82 / 2009.



The Indian Constitution specifically bans the trafficking of persons. Article 23 & others in the Fundamental Rights, Part III of the Constitution, prohibits “traffic in human beings and other similar forms of forced labour”. Though there is no concrete definition of trafficking, it could be said that trafficking necessarily involves movement/transportation, of a person by means of coercion or deceit, and consequent exploitation leading to commercialization. The abusers, including the traffickers, the recruiters, the transporters, the sellers, the buyers, the end-users etc., exploit the vulnerability of the trafficked person. Trafficking shows phenomenal increase with globalization. Increasing profit with little or no risk, organized activities, low priority in law enforcement etc., aggravate the situation. The income generated by trafficking is comparable to the money generated through trafficking in arms and drugs. Trafficking in human beings take place for the purpose of exploitation which in general could be categorized as (a) Sex based and (b) Non-sex-based. The former category includes trafficking for prostitution, Commercial sexual abuse, paedophilia, pornography, cyber-sex, and different types of disguised sexual exploitation that take place in some of the massage parlours, beauty parlours, bars, and other manifestations like call girl racket, friendship clubs, etc. Non sex based trafficking could be for different types of servitude, like domestic labour, industrial labour, adoption, organ transplant, camel racing, marriage related rackets etc. But the growing trafficking in women is principally for the purpose of prostitution. Prostitution is an international problem. However, we are aware of the fact that it is legalized in many countries around the globe. Unfortunately, society remains tolerant of this abominable crime against women. There are assorted ways of getting women into prostitution that are common to many countries; then there are particular unique methods varies to a country. Probably, the three most common methods are false employment promises, false marriages and kidnapping. But what makes women and girls



vulnerable are economic distress, desertion by their spouses, sexually exploitative social customs and family traditions. In a recent survey in India, prostituted women cited the following reasons for their remaining in the trade, reasons that have been echoed in all the concerned countries. In descending order of significance, they are: poverty and unemployment; lack of proper reintegration services, lack of options; stigma and adverse social attitudes; family expectations and pressure; resignation and acclimatization to the lifestyle. The two principal Indian laws that addresses the trafficking and prostitution in particular are the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA) and the Immoral Traffic (Prevention) Act, 1986 (ITPA), colloquially called PITA, and amendment to SITA. Neither law prohibits prostitution per se, but both forbids commercialized vice and soliciting.”

50. It was further observed as follows:-

“The main concern of all the counsel in these writ petitions was that there was no comprehensive legislation regulating the placement agencies to take care of the menace. On the other hand, there were multiple statutes and authorities under those statutes and the challenge was as to how to achieve the coordination to remove/disconnect them. It would be of use to mention that this has been the focus of the various proceedings in these writ petitions and directions were given from time to time. Though, it is not necessary to take note of all those orders, some of the important orders and directions passed in all these proceedings from time to time need a look, as that would pave the way for final direction, which we propose to issue in this order. In the order dated 04.10.2004, this Court had highlighted two issues, which arise in these writ petitions, viz., tracing and production of children on the one hand and functioning of different placement agencies working in NCT of Delhi on the other hand. However, directions were given to the Government of NCT, Delhi by that



order, to provide framework within which the placement agencies could be regulated and monitored."

51. The manner in which the Juvenile Justice Act has been implemented shows a complete failure of the State. It shows apathy but perhaps more importantly it shows vested interests. This is a matter of serious concern. We are informed that the Principal Magistrate, Juvenile Justice Board, has actually passed orders to segregate juveniles on the basis of age to ensure that younger juveniles were tender and impressionable minds are not mistreated and are kept away from elder juveniles. We are also given to understand that it has been observed that:-

"No constructive occupational training or schedule has been formulated or are being followed, rather the fact that they are able to move out of the protective custody of the observation home, at will, shows juveniles are prone to outside influence and are easy targets for those who may want to manipulate them. It is submitted that a constructive and productive role which the institution is required to play is possible only if the provisions of the JJ Act 2000 and Rules framed thereunder are followed by the Department of Social Welfare in creating requisite infrastructure and institutions in accordance with Acts and Rules for the administration of juvenile justice."¹¹⁸

52. We have also examined orders passed by the Juvenile Justice Boards in various matters. One of these orders is extracted below, which clearly sets out the hostile atmosphere which seems to be commonplace in juvenile homes in the country:

¹¹⁸ CITE



"Facts¹¹⁹

The child was produced before the Board on 23.8.2010 along with Ms. Nandini of SAFMA and Mr. Anant K. Asthana, advocate from DLSA.

The child made a complaint in the Board that he was given beatings by the elder children inside the home. He said that he has not reported this to Superintendent of the Home, accordingly it was deemed fit to apprise the Superintendent of the situation and to ask him to file a report. What happened thereafter was in fact beyond the comprehension of the Board. Child appeared before the Board on 25.8.2010 and report of Superintendent was also received. The report of superintendent is reiterated, as its contents are important in explaining the conduct/language used by the juvenile in the Board and Chamber.

Report:

"With due respect, I would like to inform your goodself that juvenile Deepak is living in child friendly environment and enjoying his life at Prayas Observation Home, Delhi Gate. He has gained 10 kg weight in a month. As per the Juvenile he told lie to release. No elder children tease him and beat him. We are providing due care, guidance and supervision for his complete development. In future I will take care of this child."

... ..

***There was something wrong. The body language of the boy was betraying the utterance and he seemed terrified.** He was called in the chamber. He was asked to tell the truth. The child put all his power to control his emotions and pain and kept on repeating that nothing in fact had happened, no one had beaten*

¹¹⁹ FIR No. 89 of 2010, PS Swaroop Nagar, u/s 380/411/34 IPC - before the Juvenile Justice Board I, Sewa Kutir Complex, Kingsway Camp: Presided over by Ms. Anuradha Shukla, Principal Magistrate



him. He was 30 kg of weight when he came to the Home and weighs 40 kg now.

There was still something that the child was trying to hide and terror and tension were apparent in his eyes. We talked and talked and the child, as he is – broken down.

He said that initially he was beaten by a child who is in custody in a case of murder, Bhaiya, however, blamed him as he had bit the boy (who had beaten him) in hand to save himself from being suffocated. He got serious injuries in his ribs.

Thereafter he explained the incident that took place after he had made the complaint in the Board (regarding the beatings given by the other/elder children). He says that when he went from the Board to the home, the paper (order of the Board) was given to Kale Wale Bhaiya. He went to the room and started playing carom. Bhaiya came there; he showed the paper to everybody and read it over loudly. Then Bhaiya beat him. Bhaiya put his head between the legs and hit on his head by elbow. **The boy was told that if he would say anything against him (bhaiya) the other boys (co-inmates) will not spare him. Thereafter all the children kept on beating him even after Bhaiya left.** Child was made to rub his nose in front of Bhaiya and was made to seek apology. He was apologised but on the condition that he would say before the Board as was told to him and the poor boy did the same.

There is an observation in the board proceedings dated 25.08.2010 that the child had a swollen hand (right), he could not move his third finger. He says he had bandage over the hands, which were removed in the morning. He has marks of beatings on his back.

... ..

The entire law of Juvenile justice is aimed at providing "CARE AND PROTECTION" to the children whether



it be a child in conflict with law or a neglected child in need of care and protection, and the law definitely is not talking about the kind of care and protection which has been given to this particular child in the instant matter. The fundamental rights of the juvenile have been violated and brutally so.

It is worth consideration that whatever be the administrative set up for keeping a child in protective custody / understanding / memorandum between the government and the non governmental authorities (Prayas in the instant matter), each child is kept under the protective custody by the order of the board. He is in de-jure custody of the board and the ultimate responsibility of his care and protection is of none other than board, logically also because he has been kept there because the Board wanted him to be kept there. The board feels ashamed in having failed to ensure the safety and the protection of the child.

The manner in which the child has been dealt with cannot be tolerated for an adult person; he is a small boy who has seen enough sufferings in his small life.

The child lost his mother at an early age, his father is a drunkard and does not bother where and how his child is surviving. His elder brother is missing for more than a year and there are allegations of he having been murdered – the investigation is going on.

As if this all was not sufficient, the child has been given this ghastly treatment by none other than the person, who was supposed to be his protector under the law.

There is no reason with us to believe that the child would have given a false statement. The injuries on his body were apparent and an observation to the effect has come in the proceedings dated 23-08-2010. There is no reason why the Board should tolerate this brutal act either.

We feel guilty of betraying the faith of the child, which he showed in us when we told him that he



is not safe outside and so we are taking him in custody – our custody – protective custody.

It is pertinent to note that a child is kept in an observation home, or for that reason in any institution, not as a mark of punishment but for his own protection and only if it is in his interest.

Keeping a child in protective custody and giving him this kind of treatment is a crime and the law proclaims so under Section 23 of the JUVENILE JUSTICE (Care and Protection of Children) ACT, 2000 (herein after referred to as the JJ ACT)."

53. We are of the opinion that there has been a failure to create the requisite infrastructure which would help children to be reintegrated into society. The priority for making these high quality institutions so that de facto inequality can be cured, has been completely overlooked by all concerned.
54. We also notice that in a Vision Document on Child Rights 2012-2013 has been under the aegis of the Assam State Legal Services Authority.
55. It is atrocious that juveniles were being lodged *en masse* in jails. The Delhi High Court in *Court on its own Motion v. Department of Women and Child Development*¹²⁰, by an order dated 11th May 2012 held that the same violated Article 21 of the Constitution. It is strange that without sending them to the juvenile home, they were taken to Tihar Jail. It is clear that a number of directions are being passed by the Courts but we are unable to see any perceptible change.

¹²⁰ Writ Petition (C) No. 8889/2011.



56. In a case involving sanction for prosecution against physical and sexual abuse in custody (*State v. Rameez*), Muralidhar, J. observed as follows:-

“7. This Court has failed to understand how the State could be a prejudiced in any manner by the order dated 30th November 2005 passed by the learned Principal Magistrate, JJB whereby its attention has been drawn to the commission of cognizable offences by policemen of P.S.New Usmanpur. The said order describes in some detail the statements made by the four juveniles which prima facie show that serious crimes have been committed by the said policemen against the four respondents who were in their custody. Is the State suggesting that no policeman can even be accused of committing a custodial offence? Is it completely identifying itself with the suspects, to the extent it will seek to challenge any order that directs that the allegations made against them for commission of serious crimes against children should be investigated? Can this Court be unmindful of the increasing instances of custodial crimes committed by the uniformed gentry which have been documented in detail in the reports of the National Human Rights Commission over the past fifteen years?

8. In our system of criminal justice, the victims of crime trust our police to undertake a fair investigation and the State to prosecute the offenders. Therefore, in most criminal cases involving trial of cognizable offences there are only two parties: the State and the accused. The victims are participants in the trial only as witnesses. The trust reposed in the State that it will prosecute the offenders will stand betrayed if the State begins to identify itself with the accused and seek to defend them to the extent it will not even allow a case to be registered against them. The State in this case is doing precisely this. What is really disturbing is that it is in the process trying to shield policemen who are expected to be the enforcers of the law, the State is forgetting that there are several provisions in the Indian Penal



Code (IPC) to deal with the offence of custodial violence. It is policemen who are invariably the accused when such offences are committed. And it is the State that has to be the prosecutor. It is incomprehensible that where policemen are accused of sexually abusing the children arrested by them and kept in police custody, the prosecuting agency (the State) will actually step into the shoes of the policemen and challenge the order of a court asking that a case be registered and the crime investigated. If this were to be permitted it would be a sad day for the rule of law as it militates against the scheme of criminal justice where trust is reposed by victims in the State that it will prosecute the perpetrators of crimes even if, and perhaps particularly if, they are policemen."

57. We think that the above leaves us in no doubt of the sheer abuse of these institutions. In view of the above, we recommend that in each of the States, all the children homes, observation homes, juvenile homes and women's protective homes be placed under the legal guardianship of the High Court. We would also suggest that a Committee of Judges be formed which could undertake surprise inspections to make sure that the children are living in a healthy atmosphere. The said Committee of Judges may also constitute a Board of psychiatrists who would prescribe detailed psychotherapy for the children. Thereafter, aptitudinal tests must be undertaken and the children must also be reintegrated with their families on the one hand, and normal educational possibilities for mainstreaming should be made available.
58. We are of the view that it is be duty of the State to provide education free of charge upto undergraduate level for all children in need of care and protection and also with those who are in



conflict with law who come in these institutions. We are also of the opinion that women in protective homes must be given therapy and they must also be made to lead a useful life and there must be new projects which should be devised so that their self-worth and self-esteem can grow up and they can be again mainstreamed into society.

59. We think only judiciary can give "*ummeed*", an expression which a trafficked (and then rescued) child, which we met with, said that he would like the name of his organisation for street children to bear that name. He is a child who has seen the atrocities of life and described them to us. When we asked him, what he would like to do, he said, just as he was rescued by well-meaning social activists, he too would like to run an NGO for street children in the Jama Masjid area.
60. Similarly, we recommend that all homes for children with disabilities should be registered with the Registrar of the High Court. They should also be kept under the guardianship of the High Court and will ensure that special facilities are provided to these persons with disabilities by the State or by the institution under whose care they have been lodged.
61. We are also of the opinion that all the women's protective homes must not be the erstwhile *naari-niketan* model but must actually be modernised, psychologically revolutionised, and useful homes of productivity. We are also of the opinion that widows' homes in Vridavan, Mathura and Banaras be also revamped and structural changes be made



and they should be under the legal guardianship of the High Court. It is necessary that widows must not be viewed with suspicion and must not be disempowered in our society. They too need to be brought into the mainstream. We all are now concerned about the mentally ill persons including women, who are institutionalised.

62. We are sorry to say that even the corporates have to understand that India is not a land of sweat-shops. We also want to make it clear that the world must not consider India as a place where children can be used for the purpose of cheap labour and which labour will maximise in profits of investors. India i.e. Bharat, is the Union of States and consists of its children and those under privileged children for whom the founding fathers of the Constitution have enacted a Constitution.
63. We also recommend that in order to have complete figures of all missing children, every District Magistrate in the country report with the help of all his officers, supervised by a judicial officer to the High Court the total number of missing children in every District. Thereafter, the FIR should be registered. The High Court shall monitor the investigation of all these cases.
64. To conclude, we cannot be ignorant about the institutional apathy shown towards survivors of such heinous crimes. We would like to reiterate the observation made by one of us in the report submitted to the Supreme Court while acting as the Commissioner appointed by the Court in the case of *Sheela Barse v. Union of India*¹²¹:

¹²¹ Report of Commissioner Appointed by the Hon'ble Supreme Court of India vide order dated 13.5.1994 in Writ Petition



“A disturbing nexus between the judiciary, the police and the Administration has come to light. Administrative apathy, authoritarian excesses and judicial connivance has led to a most shocking state of affairs negating the very basis of the existence of human life and democratic safeguards enshrined in the Constitution of India”.

65. The said observation holds true in the present situation as well and needs immediate cleansing and rectification.
66. As noticed above, the ITPA does not achieve the objective it is meant to achieve, primarily since it does not define ‘trafficking’, and is hence reduced to a legislation dealing with prostitution. This glaring vacuum has also been noticed by the NHRC, which has observed as follows:

*“The **Immoral Traffic (Prevention) Act, 1956 (ITPA)**, initially enacted as the ‘Suppression of Immoral Traffic in Women and Girls Act, 1956, is the main legislative tool for preventing and combating trafficking in human beings in India. However, till date, its prime objective has been to inhibit/abolish traffic in women and girls for the purpose of prostitution as an organized means of living. The Act criminalizes the procurers, traffickers and profiteers of the trade but in no way does it define ‘trafficking’ per se in human beings.”¹²²*

67. We recommend that in place of the existing Section 370 of the IPC, a new section be inserted, which defines and comprehensively criminalises trafficking, which we have recommended later.

(Criminal) No. 237 of 1989 *Sheela Barse Vs. Union of India And Another*

¹²²*Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women.* NHRC, http://nhrc.nic.in/women_child_issues.htm



CHAPTER SEVEN

CHILD SEXUAL ABUSE

“One child goes missing every eight minutes in our country or seven children every hour. 331 children went missing in India’s capital between 1st June and 18th July 2011 according to the Zonal Integrated Peace Network.”¹²³

1. This, according to us, is a shocking state of affairs. We must understand that if children can be trafficked, it sets the climate for “a rape culture”. The Committee believes, on the basis of evidence received, that police officers, if not complicit, at least are negligent in preventing trafficking in children. The trafficking of women and children is a failure of governance. The victims of trafficking are easy prey to sexual violence at the hands of bad characters with, at times, the help of a conniving policeman. The Committee reiterates that without a proactive political crusade against the real problems of life such as impoverishment, nutrition, child abuse, lack of physical protection, destitution, lack of access education and corruption, it will be difficult to provide sustained secured spaces for women and children.
2. It is rather unfortunate that a schism of two Indias – one for the rich and one for the impoverished – have emerged. The country-wide protest after the recent Delhi gang-rape, led by the country’s youth who braved the cold and physical injury, is a reflection of

¹²³ MISSING CHILDREN OF INDIA: A PIONEERING STUDY BY BACHPAN BACHAO ANDOLAN (VITASTA, 2012), preface. We are given to understand that this as a conservative figure because the figures are dependent on reporting and recording of the FIR which is often avoided.



the conscience of 'We, the People'. In our view, this is a wakeup call for all national institutions of governance to ensure the faithful performance of the constitutional mandate. The Government figures show that complaints for 117,000 missing children were received in last two years, but only 16,000 FIRs were eventually registered under the category of kidnapping.¹²⁴ As per the NCRB Report, 2011, an increase of 122.2% has been observed in such cases (80 cases were reported during the year 2011 as compared to 36 cases in 2010).¹²⁵

3. On August 8, 2012, in respect of a query raised by Mr. Dhiraj Prasad Sahu, MP (Rajya Sabha), the Ministry of Home Affairs had provided data, which was tabled before the Parliament. In the said response, which is based on (conservative) data available with NCRB between 2009 and 2011, 2,05,028 children were reported to be missing. Out of the said number, 140,978 children are claimed to have been traced whereas 64,050 are claimed to be untraced. The datasheet provided to the Parliament does not appear to contain the number of missing children in respect of the following states: Bihar (2010), Goa (2010 & 2011), Jammu & Kashmir (2010 & 2011), Jharkhand (2009, 2010 & 2011), Maharashtra (2011), Meghalaya (2010), Odisha (2011), Punjab (2011), Tripura (2009) and Uttar Pradesh (2010). Thus, the data is incomplete and unreliable to say the least. The response provided to the Parliament is further caveated by the following statement: "*However, data regarding number of children handed over to their families is not maintained centrally by National Crime Records*

¹²⁴ Id.

¹²⁵ Report of National Crime Records Bureau 2011, page 100.



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Bureau", and thus, we are unable to understand that the true import of the word "traced" in the datasheet.

4. We also notice that a question had been put up by Mr. Bijayant Panda and Mr. Rajaiah Siricilla on August 2, 2012 in respect of "*the details of human trafficking rackets busted including rackets of trafficking of women and children and cases registered in this regard...*" We have not come across any answer to the said question.
5. The Committee takes note that the afore-stated statistics reveal (i) the minimalistic approach of the State to establish and fund child protection homes, and (ii) that Integrated Child Protection Schemes have clearly failed to achieve their avowed objective. The Committee is aware that there is no recourse available to the children who manage to escape from physically and mentally debilitating environment of child protection homes, and if they approach the law enforcement agency, they are again sent back to the same protection home wherefrom they escaped.
6. While we have come across isolated instances where quantitative questions have been asked by members of Parliament in Lok Sabha in this regard, the Committee has not been able to find any concrete response from the Government in the minutes of Parliamentary proceedings. In fact, the Committee has been unable to get satisfactory responses to the quantitative/statistical queries raised by it in this regard.



7. The Committee is distressed to infer that the State has failed to treat the symptoms as well as the malady on account of the apathy towards women and children for the amelioration of their constitutional rights of safety and protection against sexual abuse. Sadly, the apathy of the political executive has been transmitted also to the bureaucracy, for which this issue holds a low priority as well.

8. The Committee is horrified at the plight of India's missing children. The constitutional philosophy of distributive justice requires the economic growth to be qualitative as well as quantitative, for which national and regional policies must be adequate. The media is obligated to focus attention on the disparities and deprivations of large sections of the Indian people to motivate good governance. This effort also seems to be lacking.

9. We note, with much despair, that in many cases a child is subjected to sexual abuse in his/her home. We are also deeply concerned at the failure of the State to prevent and prosecute cases of child abuse, which take place in institutions of care and custody patronized by the State. We believe fundamental rights must not be ignored by the State on a specious argument of paucity of resources, when the rich continue to thrive and wasteful expenditure of public monies is more than evident. In fact, the provision of Article 15(3) of the Constitution, being an enabling provision, is a clear indication of the obligation of the State to adopt and strictly enforce preferential measures in relation to matters affecting women and children.



10. It is clear that such children, who are the victims of abuse, will require psychotherapy of a high order to progressively boost their confidence to take their place as members of society. There is no significant data pertaining to rehabilitation of children in juvenile justice homes. An audit of the quality of rehabilitation of such children is imperative. There also appears to be some nexus between organized crime syndicates involved in trafficking of women and children and the law enforcement machinery of the country, which facilitates the crime¹²⁶. This nexus needs to be broken forthwith, and we are concerned whether juvenile homes which serve as smoke screens and as a forum for legitimating for such purposes.
11. The National Commission for Protection of Child Rights had done an inspection on a Children Shelter Home in Rohtak called '*Apna Ghar*' run by the *Bharat Vikas Sangh*. To support our conclusion that the definition of a 'home' must be re-visited in the Juvenile Justice Act and that the duties of the State must be clearly outlined and until all infrastructure for taking forward the home in the true way is done the homes must be under the local guardianship of the Court, we are discussing the report.
12. On 9th May, 2012 at 3:00pm, the in-charge of Child Line, Meerut visited the Commission's office to discuss certain issues. It seems that three girls had run away from one shelter home in Rohtak and contacted Child Line, Delhi. Child Line was to

¹²⁶ *Haryana cops raped us - Children's home inmates*: Indian Express, Chandigarh, June 6, 2012. See also *On the Spot Visit Report - "Bharat Vikas Sangh" run "Apna Ghar" Children's Shelter Home in Rohtak - A case of Protector turning Predator*, National Commission for Protection of Child Rights, June 2012 (http://www.ncpcr.gov.in/publications_reports.htm)



present the girls then placed with *Rose* home in Dwarka, Delhi, before CWC.

13. The members of the Commission recorded the statements of the three girls. On hearing the statements, the members went to Rohtak. The *Apna Ghar* houses *Nari Sadan*, *Swadhar* - shelter home for women, home for runaway couples, home for mentally challenged women and children.
14. The team reached the place at 8:30 p.m. The team was surprised to note that a police official, one Sub Inspector Bhim Singh Ranga, SHO, Gandhi Camp was sitting with the owner-cum-director of the Home Ms. Jaswanti. The police official informed that he was present to collect the photographs of the three girls reported to have escaped from the home two days ago for which Jaswanti had lodged a complaint with the police station.
15. The NCPCR team visiting the said home was shocked to note that the children who were supposed to be housed in the building were forced to work as construction workers and were made to steal bricks from various other construction sites during night time. The children white-washed and painted the entire building. It had a small courtyard and no playing area. The children were not allowed to venture out of the complex. The children were not allowed to go out for the formal day school and a few children sponsored by the citizens were withdrawn from the school by the director. Upon an inquiry being made, the director of the home stated that the atmosphere in the neighbourhood school



was not conducive and corrupted the mind of young children.

16. We are shocked to note that the state is not informed of any constitutional aspirations. It is indeed interesting to note that the visitors' book revealed that the Dy. Commissioner, Judicial Magistrate, Sub Divisional Magistrates, Officers of WCD had visited the place. The judicial magistrates do not appear to have interacted with the children to get a feedback on the ground reality and the treatment meted out to the children.
17. The presence of Sub Inspector Bhim Singh Ranga of Gandhi Camp raised doubts. It was clear that there is a close relationship between him and director Jaswanti. The Report further States that:

"They would get only daliya or daal and rice every day to eat. Only when some dignitary or celebrity was to visit the home, kheer, poori-sabzi or roti daal would be served. A set of second hand used clothes was given to children once in a year. Fresh clothes were provided only when some dignitary or celebrity was to visit the home. Cots, beddings were not provided and the inmates were forced to sleep together in a huddled manner. Even during the winter time, the inmates were not provided with proper warm clothes. Only bare minimum could be provided. One common towel was used by a group of children. Provision of soap case, oil, tooth paste, tooth brush was regarded as a luxury not generally made available."

18. The Committee noticed the following living conditions revealed by the inmates:

"Living Conditions as revealed by the inmates"



- *The children were not allowed to venture out of the Home and were treated as captive all the time.*
- *Medical attention was provided by a private doctor who would not write a prescription, but just give the medicine. ADC cross checked with the doctor referred by the Director Jaswanti who denied that Jaswanti would ever bring children to him for treatment.*
- *Children were forced to live together with the mentally challenged women, where as they needed to be segregated as this had a definite bearing on the psyche of the children.*
- *Most of the children were malnourished as they were not provided with the proper dietary requirements. Unless a special day, the evening meals consisted Dalia with high water content barely enough to feed a growing child in his/her developmental stage.*
- *For the newly born babies the mothers were forced to beg Director Jaswanti for the milk and at times even on begging it would be denied as a part of punishment even for a flimsy mistake by the mother.*
- *On occasions as a part of punishment, children were forced to go hungry for 2-3 days even for most minor mistakes committed even unwittingly. And sometimes the punishment would be extended to all the children even as old as 4-5 years.*
- *The sexually abused six girls transferred from Drone Foundation Gurgaon to Naaz Foundation Delhi and again on re-transfer to Haryana were finally sent to "Apna Ghar Rohtak" revealed that even in this home they were subjected to harsh abuse and have been forced to engage only in cleaning and sweeping without any one caring for their dietary requirements. Out of these 4 girls were HIV positive, and their medical record was not properly maintained in the Home."*



19. We are shocked to note the following:

“ABUSES, ITS FORMS and OTHER IRREGULAR ACTS COMMITTED BY THE DIRECTOR, HER DAUGHTER, HER SON-IN-LAW AND THE DRIVER AS REPORTED BY THE CHILDREN

- *The most frequent form used by Director Jaswanti was the abusive, obscene and vulgar language used, which at times was even shameful for the children to repeat.*
- *Calling names like Randi, Vaishya and sexually abusive terminology*
- *Physically beating of children and even adolescent girls by the Director Jaswanti, her daughter Sushma@Simmi and Jai Bhagwan on the slightest of pretext of committing a mistake or refusal obey orders even if vulgar and not acceptable to girls.*
- *Even the boys were not spared of thrashings and spankings by the trio on the slightest of pretext of committing a mistake or refusal to obey orders.*
- *Forcing the girls to disrobe and lie in a naked condition overnight. Sometimes the girls would be tied to the grilled fencing with the duppatta for even two to three days and beating them with iron rods & wooden sticks;*
- *On slightest pretext of indiscipline making the children go without food and water for day ranging 1 to 3;*
- *Forcing two girls to lay in a naked condition in a locked room and subjecting them to engage in a lesbian act in presence of the Director Jaswanti who derived a special satisfaction out of the act and in case of a refusal to do so hitting their private parts with wooden rolling pins, scissors etc. which would result in bleeding at times.*
- *Using the children as domestic helps and sending them to her own home, home of her daughter and others without any remunerations;*



- *Forcing the children to work in agricultural fields (a good number of sickles have been reportedly found in the premises by the police)*
- *Sexual molesting of girls by Mr. Jaibhagwan, reportedly the son-in-law of the owner of the Home;*
- *Girls with good looks were sent to weddings to serve as waitress or even to perform.*
- *Tips earned would be snatched away by the director.*
- *Abandoning mentally challenged women from the Home in trains / bus stops in the middle of night with accomplice driver Satish Ahlawat.*
- *Allegedly selling / giving away of babies / infants in adoption without the consent of biological mothers or even following norms for adoption of destitute/orphaned children;*
- *Reportedly restoring children to mothers/relatives without any specific orders from CWC and without conducting any Inquiry as required under section 33 of the JJ Act, 2000.*
- *On the occasion of Holi the children were intoxicated by Jaswanti and Sushma@Simmi resulting in a child falling sick.*
- *As a part of punishment unleashed on a child committing a grave mistake of demanding more food some amenities, child was forced to clean all the utensils for entire week or sweep the entire floor with a wet cloth.*
- *Cooking was normally entrusted to elder children of Apna Ghar, adolescents and the adult inmates of Swadhar Shelter Home.*
- *It is very clear that the frequent visit by the police to this home raises suspicion that these children must have been used for sexual favours."*

20. We think that there has been a dereliction of duty of all the visitors including the judicial magistrates who visited this home. There has been a gross failure on the part of the Government of India and



its agencies and in its belief of outsourcing its fundamental obligations to do justice to the poor. It is therefore advisable that these homes be taken out of the control of the private organisations and placed under the supervision of the High Courts until the Parliament passes a stringent law and the Government finds competent care takers, teachers and psychotherapists because each one of these children need psychotherapy in order to mainstream them.

21. During our oral consultations with the NCPCR, the following shocking revelations were made to us:
 - (a) There have been gross failures in the juvenile justice system not only because the provisions of the Juvenile Justice Act are lacking, but also that these provisions are not implemented in their letter and spirit.
 - (b) The police, a key stakeholder under the Juvenile Justice Act has its role and functions defined under Section 63 therefore for the prevention of juvenile crime or handling of juveniles or children to perform their functions more effectively. They are to be specially instructed and trained and be designated as juvenile or child welfare officers and work in coordination with the police. The Act calls for setting up of Special Juvenile Police Units in every district level and city and a child welfare officer at every police station to co-ordinate and upgrade the police treatment of the juveniles and children. SJPUs and Child Welfare Officers do not exist in every police station and even where they do they have been largely untrained.



(c) Child Welfare Committees and Juvenile Justice Boards are yet to get the infrastructure they require to function optimally and structures such as Observation Homes and Special Homes are not yet established in several districts and it is not surprising that juvenile justice functionaries find it extremely challenging to work in such situations which do not have reformatory and rehabilitative services.

22. One of us, as a Commissioner in *Sheela Barse v. Union of India*, where the Commissioner, after holding camp sittings in every jail in Assam, found that people who are not mentally ill were described as mentally ill and were in Jail for large number of years. The apathetic attitude of the State was brought on record by the Commissioner. A passage from that report is relevant:

“One of the questions which may arise is whether there is any cause for concern that while an effort is made to seek a fair and equitable and proper administration of law in relation to individual liberty of a mentally ill person with society’s interests in maintaining order and protecting the public would be ignored. As the Commissioner will point out in later paragraphs that this kind of concern which has been raised is a bogie only for the purpose of belittling and justifying the barbarism towards mentally ill persons and adequate machinery can be employed and “adequate machinery of a non-police nature” can be employed for the purpose of ensuring that society’s interests are also safeguarded” (para 17)

23. According to the Palermo Protocol, 2000¹²⁷:

¹²⁷ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, was adopted by the UN at Palermo, Italy, in 2000, and it supported the United Nations Convention against Transnational Organized Crime



“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

24. Therefore, it is evident, as is also confirmed by the case-studies brought to the notice of the Committee that one form of exploitation leads to another. *“Trafficking is the process which may result in any kind of exploitation or might be, for kind of exploitation. If we consider that the majority of children are going missing or run away, to become victims of one or other exploitative situations, it can be safely said that majority of missing children can be victims of trafficking.”*¹²⁸ While society is guilty of fomenting a culture of silence, the State certainly has facilitated a culture of invisibilisation of the impoverished.
25. The Report of the Committee investigating allegations of large scale sexual abuse, rape and murder of children in Nithari village, Noida, UP, commissioned by the Ministry of Women and Child Development in 2007, specifically notes that:

(<http://www.unodc.org/unodc/en/treaties/CTOC/index.html>).

This was signed by India in December 2002, but not ratified until May 13, 2011

¹²⁸ Bachpan Bachao Andolan, MISSING CHILDREN OF INDIA: A PIONEERING STUDY BY BACHPAN BACHAO ANDOLAN (VITASTA, 2012) at 103.



“It does not appear that the Police diligently filed Gumshudhi reports. According to District Administration, the investigation of disappearance of Payal based on the Court Orders led to the cases of other missing children. The Committee’s meeting with victim families revealed that the police were insensitive to their woes and rude in their approach and their behaviour was generally gender and child insensitive. One of the victims’ mother mentioned that her daughter was taken by Maya, the maid servant of the accused, to work in his house on the fateful day and the girl never returned.”¹²⁹

26. The Committee has been apprised by researchers and social workers that the parents complaining about their missing children in Nithari, Uttar Pradesh were themselves suspected by the police of having sold their children. The evident apathy of the State reflected, *inter alia*, in the behavior of the police undermines confidence. The Committee considers this as an additional instance of inability of the criminal justice system to deracinate criminal behavior at an early opportunity. The Nithari Report¹³⁰ confirms that discovery of the sexual abuse and murder of missing children was a fortuitous discovery by the Police – a byproduct of investigation when a woman by the name of Payal had gone missing.
27. The Committee is of the view that such apathy of the institutions mirrors the apathy of the society. Sexual repression means repression of one’s identity and their right to be himself or herself; and in fact societal rewards eulogizes and rewards certain behavioural patterns that conform to a societal

¹²⁹ Report of the Committee investigating into allegations of large scale sexual abuse, rape and murder of children in Nithari village of NOIDA, UP, commissioned by Ministry of Women and Child Development (2007), page 14.

¹³⁰ Id.



construct of a being. Admittedly, one of the methods in which the society represses humanism and sexuality, and sub-consciously imposes a construct is through parenting.

28. Thus, we are clear that there has to be a new training module which should be taught through the internet and media for parents about addressing and forms of communication towards children especially female children.
29. In schools teachers should promote group interactive practices so that the idea of a male child having masculinity and which necessarily implies an implied repudiation of femininity or sensitivity must be discouraged. The attempt of education should be to liberate children from social constructs and not to reinforce them; and thrust has to be inculcation of respect for other person especially that of the other gender.
30. We, therefore, think that one of the ideas of gender roles which is firmly embedded in the psyche of the Indian male needs to be now psychologically reconstructed on rational lines in the context of relationship with society and with women and particularly respect and equality towards women. We, therefore, suggest that there must be an improvisation in the school curriculum which must involve the subject of what are called as "Social Science- Practical Applications", and in fact, the curriculum must be modified to include a flavor of the afore-stated approach in each of the subjects. The State must be careful in choosing text books and must ensure the readings should serve the overarching object of liberation and education in the true sense. We are of the view that this must also



involve on-the-field interactions. We must add here that the country is in dire need of a cadre of psychologists and we suggest that a counselor must be attached to each school in India for the purpose of enabling this advanced interaction.

31. The scope of criminal law is not only to punish for transgressions but also to prevent commission of transgressions. In its consultation with the experts, the Committee was surprised to find out that offences such as stalking, voyeurism, 'eve-teasing' etc are perceived as 'minor' offences, even though they are capable of depriving not only a girl child but frail children of their right to education and their freedom of expression and movement. We are thus of the view that it is not sufficient for the State to legislate and establish machinery of prosecution, but conscious and well thought out attempts will have to be made to ensure the culture of mutual respect is fostered in India's children. Preventive measures for the initial minor aberrations are necessary to check their escalation into major sexual aberrations.
32. The Committee sees a direct and rational nexus between methods of parenting and school curriculum and the rights of women, especially the girl child. Through proper parenting and appropriate school curriculum, India can teach its children to respect the members of the other and the same sex, and would to a great extent succor gender mainstreaming. We firmly believe that this would lead to reduction in drop outs, and would enable better understanding, mutual acceptance of each other when children enter into adolescents. These practices in schools are a must. We must again



remind the State that these practices should be practiced in every school in India.

33. We, therefore, urge all sections of civil society, and in particular the political leadership, to realize that there needs to be strong psychological correction in the parenting practices, which should be imparted at the *panchayat* level as well as at the school level, and which can be actively broadcast by the media and we are sure that the media will spend some part of its time in doing this social service by broadcasting these modules so that people can see them and adopt them. The change in the medium of communication, the attitude of communication which should be designed in the form a module must also be broadcast in the media.
34. At this juncture, we recommend that, in addition to immediately curing the systemic problems affecting the juvenile justice system in this country, the following terms need to be defined in the Juvenile Justice (Care and Protection of Children) Act, 2000, in the manner suggested below:
- (a) **“harm”** means any act, omission or commission of which, may injure or endanger the health, safety, life, limb or well-being, whether mental or physical, of a juvenile.¹³¹
- (b) **“health”** is absence of any disease or infirmity and includes a state of complete physical, mental and social well-being.¹³²

¹³¹ Please refer to the Protection of Women from Domestic Violence, 2005 (section 3).

¹³² *CESC Ltd v. Subhash Chandra Bose* (1992)1 SCC 441 (para 32)



35. We must also notice that the categorization of offences of eve teasing, stalking and sexual assault also have one offence in between which is sexual ragging. We have come to learn from psychiatrists that sexual ragging and sodomy also lead to tremendous mental damage. We must also note that when we deal with the issues relating to 'male culture', it is important that the male ego of the Indian adult must be founded on reason and on mutual respect. There is also a syndrome of male versus male which leads to sodomy and the tendency to dominate the other male, and instances of committing rapes in the presence of a male friend or a relative or a boyfriend or a husband. In other words, here the conquest is conquest of a male over another male by subjugating the woman to rape and sexual assault.
36. In an article published in the Hindu¹³³, it has been lucidly argued that sexual assault and affront to women's sexuality is more often an instrument of subjugation and it says:

"Rape, though, is something rapists do, not who they are. Precisely why particular individuals find pleasure in inflicting violence on women is a question everyone from evolutionary biologists to cultural theorists have weighed in on; there is no consensus, and may never be. Yet, as Welsh noted, strange behaviour "always has a context." Five such contexts suggest themselves as possible keys to the production of India's urban-male dysfunction. Together, these contexts ensure young men are rarely fully weaned; able to lead an adult life characterised by agency and individual choice. The consequence is a deep rage that manifests itself in nihilist behaviours.

¹³³ Praveen Swami, Rapist in the Mirror, the Hindu, Jan 11, 2013 accessed at <http://www.thehindu.com/opinion/lead/the-rapist-in-the-mirror/article4295240.ece> on January 14, 2013



India's transforming urban economy has, firstly, produced a mass of young, prospectless men. The parents of these children, many first-generation migrants to cities, worked on the land or were artisans. Though this generation's position in the economy may have been inequitable, its agency as workers was not. The young, though, find themselves fighting for space in an economy that offers mainly casual work. This casualisation has come about even as hard-pressed parents are spending ever more on education. Even the pressures on middle-class and lower middle-class men are enormous. Frequently coddled in son-worshipping parents, young men are only rarely able to realise the investment and hopes vested in them.

For a second context to hyper-violent masculinity, we must look at culture. Increasingly, cities have no recreational spaces for young men. Films, long one of the few cultural activities that a working-class audience could participate in, now target élites; movie theatre prices exclude large parts of the youth population. There is diminishing access to theatre, art, music and sport. In its place, the street becomes the stage for acting out adulthood, through substance abuse and violence.

Thirdly, a number of young men, particularly in new urban slums, are being brought up by no-parent families – families that fathers have abandoned or are largely absent from, and where mothers work long hours. Elsewhere in the world, too, this social crisis has been linked to sexual violence. South African researcher Amelia Kleijn, in a 2010 study of child rapists, found most had deprived childhoods marked by “physical and emotional abuse, as well as neglect.”

Fourth, there is a crisis of sexuality. Few men, working class or rich, have access to a sexual culture which allows them sexual freedoms or choices. The crisis is exacerbated by the fact that sections of urban élites participate in a sexual culture which is relatively liberal – a culture that young men can watch on television and in public spaces, but never hope to



*participate in. For some, the sexually independent woman is thus enemy to be annihilated. In his hit song C**t, the rape-valorising rap star Honey Singh voices his yearning to kick a woman after raping her, to drive out the bhoot of ego from her head. Similarly, Strang sees on the streets a wash of “blonde and auburn wigs, lipstick smeared on those deadly pincer-like insect jaws....*

Young men of all classes, finally, see women as status-enhancing commodities – emulating the long-standing gender privileges tradition has vested in elite men.

None of these five contexts is new. Particular stresses linked to the reordering of India’s social fabric, though, are giving new lethality to gender inequity. In a 2008 paper, Jon Wolseth showed how neoliberalism created the conditions for a murderous surge of youth gang violence in the Honduras during the 1980s. Economic policies, he argued, had not just impoverished the poor; they also tore apart community networks, diminished public spaces and closed the door to political participation. Evangelical Christianity and the assault rifle-armed gang emerged as mode of liberation. Elsewhere in Latin America, scholars have observed much the same.

In India, women’s bodies appear to have become the principal terrain on which male rage is venting itself. It isn’t that young Indian men are inherently violent than they were in the past. In 2011, according to the National Crime Records Bureau, 29,937 men between 18 and 30 were arrested for murder. Twenty years earlier, it was 38,961. In 1991, 270,602 men of this age group were arrested for rioting; in 2011, the figure was 72,867. Sexual violence data, though, trends the other way. 8,864 18-30 men were arrested for rape in 1991; 16,528 in 2011. Molestation and sexual harassment arrests from this cohort have also almost doubled, from 23,075 in 1992, the first year for which data is available, to 32,581 in 2011.



Lacking agency isn't, obviously, the cause of sexual violence: women aren't responding to their disenfranchisement by attacking men; men with power can, and do, rape. The point here is, rather, that the large-scale disempowerment of urban men is lending intensity to a pre-existing culture of sexual violence."

37. Thus, rape and other forms of sexual assault have been found to be consistently deployed as an expression of power and must not necessarily be seen as 'crime of passion' only. Sexual assaults on women and children has been found to be have been used consistently by State and private persons in conflict areas including in communal violence; where by raping women, men attempt to establish their superiority over the other. The Committee is of the view that such forms of sexual assault deserve to be treated as aggravated sexual offence in law. It is important to note that sexual assault in situations of communal violence, regional conflicts and armed conflicts are committed upon women and children on account of their identity. This, we believe, is an important aspect which we need to bear in mind because of sub-cultures which also exist and the Indian State is pretty much unaware of, and for whose reformation there are hardly any proponents.

Destitutes

38. Destitute persons cannot live on alms or charity. They are as much the citizens of India as persons of means. The Constitution mandates the State to ensure adequate means of livelihood to all people. It is, therefore, a breach of this duty, if the State is unable to *actually* prevent destitution and, more importantly, the sexual abuse of destitute persons. Eradication of poverty is not only a State obligation,



but also a Millennium Development Goal¹³⁴, which needs to be achieved by 2015.

39. We are clearly of the opinion that the removal of stigma from rape is the first necessary step. We are unable to appreciate the view that the survivor of rape is a 'zinda laash' (a living corpse). Such comments are unfortunate and are antithetical to the construct of a progressive society.
40. We have been made aware of an initiative by a police officer, who had started, in 2005, a project called 'Parivartan'¹³⁵ in the Delhi Police, which had the following objective:

"QUALITY OBJECTIVES

- a) *To reduce the annual growth rate of crime against women & children by at least 25% per annum.*
- b) *To organize at least one pantomime show in each beat covered under Parivartan programme on yearly basis.*
- c) *To organize at least one workshop and lectures in educational institutes in each Police Station covered under Parivartan programme on yearly basis to sensitize the students and teachers about the prevailing crime against women.*
- d) *To organize at least one self-defense training programme in each Sub-division of North West District on yearly basis to empower the women/girls.*
- e) *To initiate action on the complaints immediately except those which required review by the Senior*

¹³⁴ United Nations Millennium Declaration, UN General Assembly Resolution No. A/55/L.2.

¹³⁵ www.delhipolice.nic.in/parivartan/parivartan.htm



Officers, which can be taken within 3 days from the receipt of the complaint.

- f) To process the complaints regarding functioning of Parivartan within 3 days.*
- g) To organize at least one workshop on monthly basis to sensitize the male staff about Parivartan and crime against women.*
- h) To review the role/participation of the members of Women Safety Committee in the implementation of programmes under Parivartan on yearly basis.*
- i) To organize at least one awareness programme/meeting in each beat covered under Parivartan programme on yearly basis."*

This initiative needs to be studied carefully and replicated across the country.

41. There is an urgent need to audit the performance of all institutions of governance and law and order. It is indeed necessary that we must now have external social audit for the sake of transparency. We also wish to make it clear that every case of a missing child must be registered as an FIR. A copy of that complaint will be sent to the NCPCR, which is expected to approach the High Court seeking *habeas corpus* relief. During the course of our studies and deliberations, we were unable to discover any care that has been taken in selecting wardens or superintendents of juvenile homes, nor were we able to see any visible effort been made by the State to train and sensitize them against sexual abuse. We are therefore of the opinion that the Government needs to take urgent and necessary steps in this regard. We are also of the opinion that the working of the system of juvenile justice homes, child welfare committees, child protection centers, is



wholly unsatisfactory and it needs drastic improvement.

42. We also need to have an oversight mechanism and the Court appears to be that oversight mechanism. It must be a function of the High Court, through an inspecting judge, to give weekly reports on the conditions in relation to each of the custody homes and matters, particularly relating to sexual abuse of the inmates. There needs to be professionalization in the appointment of wardens, superintendents, caretakers of all custodial homes including homes for disabled and poor all over the country.
43. Further, special training needs to be imparted to psychotherapists and psychologists in matters of counseling rape/sexual assault victims. The training imparted in mental health hospitals needs improvement. We think that mere bio-medical intervention is not enough. There must be a combination of bio-medical (psychiatry) and also active psychotherapy. We also believe mere creation of a statutory authority like the National Commission for Protection of Women and Children is not enough. It must be invested with proper infrastructure. While we appreciate the laudable work of the Chairperson of the NCPCR in many areas, we find that the NCPCR as an organization is constrained for want of adequate resources, with no independent budgetary grant and autonomy. This deficiency needs to be cured promptly.
44. We have also viewed rape as a psycho-social phenomenon. In this, we see the intersection between the individual, the social culture and also the group and we also see the exacerbating factors such as alcohol, aggression which is often preceded



either by sexual repression or child sex abuse or wanton neglect or a feeling of deprivation which are translated into active sexual aggression resulting in rape. We make it clear that we do not condone rape by any of these means. If rape has to be prevented, it has to be prevented not only as a crime, it has to be also prevented by substantive attitudinal changes in society.

45. We are also of the opinion that social alienation is one of the factors and we think that the demonstration of male sexuality by active forcible penetration and overpowering of women is something which needs to be rejected as a part of masculinity and we need psychological practices which correct such aberrations which have crept into society on account of the marginalization of women including the claim of upper caste to be able to overpower women belonging to *dalit* and oppressed sections of society.



CHAPTER EIGHT

KHAP PANCHAYAT AND HONOUR KILLINGS

1. *Khap* is a form of grouping, which may comprise of more than one village. Sometimes these villages comprised of people belonging to the same *gotra* (clan) or caste or multi-*gotra* or multi-castes.
2. The *Khap Panchayat* as a social institution has a long history. These institutions functioned as a public forum for resolution of difference by providing a platform for direct negotiations between the disputants from such village or villages which fell under *Khap*. The decisions meted out by the *Khap Panchayat* would bind the parties, and in a rare case, the dissatisfied party may apply for review to *Sarv-Khap*, which functioned as a higher assembly of representatives from all neighbouring *Khaps*.
3. This logic of maintaining caste order by preventing inter-caste marriages and further debarring intra-caste marriages which are sagotra, severely limits the freedom to freely choose ones partner; these practices have no legal sanction under Hindu Marriage Act. This further unduly emphasizes a woman's 'honour' thereby encouraging not just control of sexuality but also her marital choice, by stigmatising inter-caste marriages.¹³⁶ This has much wider social and economic repercussions and restraining women's free mobility affecting her education/ employment and fundamental rights.

¹³⁶ Chakravarti, U. 1993. 'Conceptualising Brahmanical patriarchy in early India: Gender, caste, class and state', *Economic and Political Weekly*, Volume(14): 579-85. See also; Baxi, P., Rai, S. M. and Ali, S. S. 2006. 'Legacies of common law crimes of honour in India and Pakistan', *Third World Quarterly*, Volume(7): 1239-53.



4. In his erudite paper titled *Khap Panchayats: A Socio-Historic Overview*, Ajay Kumar¹³⁷ states that "... the relative ease and speed with which justice was dispensed and the sense of solidarity and support that villages and communities provided to families gave khap a firm social standing. Of course, given the strong hold patriarchy had on all aspects of society, women played no part in khap deliberations. The position of the lower caste and schedule caste were no different". In his words, a *Khap panchayat* is seen as upholding the concept of *bhaichara* on a *gotra*, caste or territorial basis.
5. It is believed that *Khap Panchayats* generally consist of powerful elements of a dominant caste, senior citizens who "wished to be considered as upholders of village norms, custodian of rural culture and guardians of public morality."¹³⁸ The means adopted by *Khap Panchayat* to secure compliance of members of their community with their notions of morality and right conduct, in the name of culture and tradition, has assumed unreasonable proportions. *Khaps* regularly oppose marriages between people related by blood or belonging to the same *gotra* (*sagotra*), or people who are members of a *Khap* (on territorial basis). However, *Khap* permits marriage within the same caste and prohibits *inter-caste* marriage.¹³⁹
6. A *Khap panchayat* does not allow any violation of the above diktat to go unnoticed and imposes upon

¹³⁷ Kumar.A "Khap Panchayats: A Socio-Historic Overview" No. 4 Economic & Political Weekly, Vol XLVII

See also, Chowdhry, P. 1997. 'Enforcing cultural codes: Gender and violence in northern India', Economic and Political Weekly, Volume: 1019-28.

¹³⁸ Yadav, B. 2009. 'Khap Panchayats: Stealing Freedom?', Economic and Political Weekly, Volume: 16-9.

¹³⁹ Ibid



the violator social boycott or excommunication as punishment. These punishments have also taken form of gross human right violation where these purported violators have been subjected to brutality and sometimes have been brutally murdered.

7. At this juncture, the decision of the Supreme Court in *Arumugam Servai v. State of Tamil Nadu*¹⁴⁰ is noteworthy. This case arose in the context of violation of certain provisions of Schedule Tribe and Schedule Caste (Prevention of Atrocities) Act, 1989. The Court in this case, based upon the principle of equality and “life, liberty and pursuits of happiness” -from the American Constitution- identified certain practices prevalent in India which also included the human rights violation carried out by *Khap Panchayat*.
8. The Supreme Court observed and directed as follows:

“12. We have in recent years heard of “Khap Panchayats” (known as “Katta Panchayats” in Tamil Nadu) which often decree or encourage honour killings or other atrocities in an institutionalised way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out. As already stated in Lata Singh case, there is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal-minded persons deserve harsh punishment. Only in this way can we stamp out such acts of barbarism and feudal mentality. Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal.

¹⁴⁰ (2011)6 SCC 405



13. Hence, we direct the administrative and police officials to take strong measures to prevent such atrocious acts. If any such incidents happen, apart from instituting criminal proceedings against those responsible for such atrocities, the State Government is directed to immediately suspend the District Magistrate/Collector and SSP/SPs of the district as well as other officials concerned and charge-sheet them and proceed against them departmentally if they do not (1) prevent the incident if it has not already occurred but they have knowledge of it in advance, or (2) if it has occurred, they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them, as in our opinion they will be deemed to be directly or indirectly accountable in this connection”

9. The actions of *Khap Panchayats* are extremely relevant for the consideration of this Committee in the context of crimes against women, on the basis of gender, since one of the most prevalent practices employed by *Khap Panchayats* to enforce their decisions is that of “Honour Killing” .
10. The Supreme Court, in *Lata Singh v. State of UP*¹⁴¹, took cognizance of such practices, where life threats were meted out to a girl who married outside her caste of her free will. Upon taking note of the facts of her case the court observed as follows:

“16. Since several such instances are coming to our knowledge of harassment, threats and violence against young men and women who marry outside their caste, we feel it necessary to make some general comments on the matter. The nation is passing through a crucial transitional period in our history, and this Court cannot remain silent in matters of great public concern, such as the present one.

¹⁴¹ (2006)5 SCC 475



17. *The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut-off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple is not harassed by anyone nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.*

18. *We sometimes hear of "honour" killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal-minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism.*

11. Generally "honour killing" and "honour crimes" are used to describe the incident of violence and



harassment caused to young couple intending to marry or having married against the wishes of the community or family members. But killing in the name of honour of a person upon the belief that the person has 'dishonoured' the family has been prevalent in our part of the world.

12. The Law Commission, in its 242nd Report, observed as follows:

*"In so far as the caste or community panchayats play a constructive role in addressing the common problems concerning the society or amicably settling the disputes between the local inhabitants and families, dissuading the people from a criminal path, the mission and the work of these village elders and Panchayatdars can be commended; but, if they exceed their limits, as it is often happening, impose their decisions in matters relating to matrimony and interfere with the legitimate choices of youngsters and indulge in acts of endangering their life and liberty, the law cannot remain a silent spectator in our progressive democratic polity wedded to cherished constitutional values."*¹⁴²

13. In India, "honour killing" is being practiced against young couple marrying either against the wishes of their family or marrying outside their caste or religion which are regarded as "objectionable matrimonies"¹⁴³. *Khap Panchayats* have been adopting this course to enforce their diktat "by assuming to themselves the role of social or community guardian".¹⁴⁴ Where a murder is committed in the name of culture and honour, it has been regarded as less serious than murder and members of the

¹⁴² *Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework.* Law Commission of India. August 2012.

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*



communities are found to have condoned the killing.

14. As women have largely been targets of “honour killing” it is extremely important for the Committee to take note of this social menace and atrocities against woman. Therefore, with the intention of checking any unwarranted interference by the members of such *panchayats*, who would resort to criminal intimidation by the members of unlawful assembly to secure compliance with illegal assembly, the Law Commission of India was assigned the task to examine the need to have a separate legislation to curb “honour killings” in cases of matrimonial choices.
15. The 242nd Law Commission Report recommended a bill entitled “*The Prohibition of Unlawful Assembly (Interference with the Freedom of Matrimonial Alliances) Bill, 2011 which prohibited a person or any group of person from gathering, assembling or congregating at any time with the view or intention of condemning any marriage, not prohibited by law.*” However, the Commission did not find it appropriate to suggest an amendment to section 300 of the IPC to include honour killing as a separate offence.
16. It is pertinent to note that the Supreme Court in *Bhagwandas v. State (NCT of Delhi)*¹⁴⁵ had opined that “*honour killing for whatever reason would come within the category of rarest of rare case deserving death penalty.*”

¹⁴⁵ (2011)6 SCC 396



17. The Law Commission commented upon the decision of the Supreme Court in *Bhagwandas*, as being contrary to the settled principle of awarding death sentence in the *Bacchhan Singh*¹⁴⁶ case. The Law Commission observed thus:

“10.1 Before we conclude this Report, we would like to refer to one recent decision of the Supreme Court wherein a direction of far reaching consequences has been given by the Supreme Court while laying down the proposition that the so-called honour killing comes within the category of rarest of the rare cases deserving death punishment. It was observed “this is necessary as a deterrent for such outrageous, uncivilized behaviour. All persons who are planning to perpetrate ‘honour killing’ should know that the gallows await them”. This decision in Bhagwan Das Vs. State (NCT of Delhi) [(2011) 6 SCC 396] as well as the decision in Arumugam Servai (supra) were rendered by the same Bench. A copy of the judgment was directed to be sent to all the High Courts who shall circulate the same to all the Sessions Judges. Following this judgment, in the recent times, as seen from the newspaper reports, almost all the accused in the so-called honour killing murder cases were sentenced to death by the Sessions Courts in U.P. and Delhi. With great respect, we are constrained to say that such a blanket direction given by the Supreme Court making death sentence a rule in “honour killings” cases, makes a departure from the principles firmly entrenched in our criminal jurisprudence by virtue of a series of decisions rendered by larger Benches of Supreme Court, for e.g. Bachan Singh Vs. State of Punjab and Machhi Singh Vs. State of Punjab⁶. It is settled law that aggravating and mitigating circumstances should be weighed and it is only in very exceptional and rare cases, death sentence should be imposed. Death sentence, in other words, is a last resort. Further, where there is more than one accused, the degree of participation and culpability may vary. It is needless to emphasize that each case must be judged by the facts and circumstances emerging in that case. No hard and fast rule can be laid down in the light

¹⁴⁶ (1980) 2 SCC 684



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of the Supreme Court's consistent approach towards death sentence vs. life imprisonment issue. This judgment in the case of Bhagwan Das is bound to create uncertainty in the state of law and we are sure that in the near future, the correctness of such proposition will be tested by a larger Bench of Hon'ble Supreme Court."

18. We expect the State to ensure that these institutions will not interfere with the choices made by men and women in respect of marriage, as emphasized by the Supreme Court.



CHAPTER NINE

SENTENCING AND PUNISHMENT

The judicial trend in awarding punishment

1. Over the years, courts in India have consistently held that sexual offences ought to be dealt with sternly and severely as undue sympathy to impose inadequate sentence would do more harm to the system and undermine public confidence in the efficacy of law. We cite a few cases in support:
2. In *Mahesh v. State of M. P.*¹⁴⁷, the Supreme Court observed that:

“It will be a mockery of justice to permit these appellants [the accused] to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justicing system of this country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon”. [Emphasis supplied]

3. *Sevaka Perumal v. State of T.N.*¹⁴⁸, is also in the same vein:

“Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats. If the courts did not protect the injured, the injured would then resort to private vengeance. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and

¹⁴⁷ (1987) 3 SCC 80

¹⁴⁸ (1991) 3 SCC 471



the manner in which it was executed or committed etc.”

4. Later in *Dhananjay Chatterjee v. State of W.B.*¹⁴⁹, the Supreme Court opined that:

“...shockingly large number of criminals go unpunished thereby increasingly encouraging the criminals and in the ultimate, making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the court responds to the society's cry for justice against the criminal. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment”.

5. Then, in *Ravji v. State of Rajasthan*, (1996) 2 SCC 175, the Supreme Court observed that:

“It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should “respond to the society's cry for justice against the criminal”. If for extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, most deterrent punishment is not given, the case of deterrent punishment will lose its relevance”.

¹⁴⁹ (1994) 2 SCC 220



6. Similarly, in *State of Karnataka v. Puttaraja*¹⁵⁰, the Supreme Court held that:

“The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences against women like the case at hand, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact and serious repercussions on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic a view merely on account of lapse of time or considerations personal to the accused only in respect of such offences will be result wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by the required string of deterrence inbuilt in the sentencing system”.

7. And, in *State of M.P. v. Munna Choubey*¹⁵¹, it was said that the:

“Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se

¹⁵⁰ (2004) 1 SCC 475

¹⁵¹ (2005) 2 SCC 710



require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system”

8. The same was the opinion in *Jugendra Singh v. State of U.P.*¹⁵², where the Supreme Court said that:

“Rape or an attempt to rape is a crime not against an individual but a crime which destroys the basic equilibrium of the social atmosphere. The consequential death is more horrendous. It is to be kept in mind that an offence against the body of a woman lowers her dignity and mars her reputation. It is said that one’s physical frame is his or her temple. No one has any right of encroachment. An attempt for the momentary pleasure of the accused has caused the death of a child and had a devastating effect on her family and, in the ultimate eventuate, on the collective at large. When a family suffers in such a manner, the society as a whole is compelled to suffer as it creates an incurable dent in the fabric of the social milieu. The cry of the collective has to be answered and respected and that is what exactly the High Court has done by converting the decision of acquittal to that of conviction and imposed the sentence as per law.”

9. In fact, it is interesting to note that in *Swami Sharaddananda v. State of Karnataka*¹⁵³, the Supreme Court lamented at paragraph 92 that:

“The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category

¹⁵² (2012) 6 SCC 297

¹⁵³ (2008) 13 SCC 787



and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then should the Court do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death. It needs to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years' imprisonment would amount to no punishment at all".

10. It therefore becomes important to review the punishments provided under our penal laws.
11. Punishments for crimes involving sexual offences can be broadly classified into two categories: term sentences (e.g. imprisonment for 10 years) and life imprisonment. Of course, in appropriate cases, death penalty may be awarded if the evidence indicates that the crime in question falls within the scope of section 302 of the Indian Penal Code.

On term sentences

12. As far as term sentences are concerned, section 376 of the Indian Penal Code currently provides for punishment of either description for a term which shall not be less than 7 years but which may be for life or for a term which may extend to 10 years.



We however recommend that in the proposed Criminal Law Amendment Bill, 2012, the minimum sentence should be enhanced to 10 years with a maximum punishment being life imprisonment.

On life imprisonment

13. Before making our recommendation on this subject, we would like to briefly examine the meaning of the expression “life” in the term “life imprisonment”, which has attracted considerable judicial attention.
14. *Mohd. Munna v. Union of India*¹⁵⁴ reiterates the well-settled judicial opinion that a sentence of imprisonment for life must, prima facie, be treated as imprisonment for the whole of the remaining period of the convict’s natural life. This opinion was recently restated in *Rameshbhai Chandubhai Rathode v. State of Gujarat*¹⁵⁵, and *State of U.P. v. Sanjay Kumar*¹⁵⁶, where the Supreme Court affirmed that life imprisonment cannot be equivalent to imprisonment for 14 or 20 years, and that it actually means (and has always meant) imprisonment for the whole natural life of the convict.
15. We therefore recommend a legislative clarification that life imprisonment must always mean imprisonment for ‘the entire natural life of the convict’.

¹⁵⁴ (2005) 7 SCC 417. See also *Gopal Vinayak Godse v. State of Maharashtra*, (1961) 3 SCR 440

¹⁵⁵ (2011) 2 SCC 764

¹⁵⁶ (2012) 8 SCC 537



On death penalty

16. Justice Stewart in *Furman v. Georgia*¹⁵⁷, seminally noted that:

“The penalty of death differs from all other forms of criminal punishment, not in degree, but in kind. It is unique in its total irrevocability. It is unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice. And it is unique, finally, in its absolute renunciation of all that is embodied in our concept of humanity”.

17. These words have formed the broad foundation for the evolution of modern jurisprudence on ‘death penalty’ and have prompted us to deliberate at length on this issue.

18. The Indian law on punishment with death has been concretized in a few leading judgments which narrow down the award of death sentences to the ‘rarest of the rare’ cases. The criteria for determining whether a given case is so rare can be found in *Bachhan Singh v. State of Punjab*¹⁵⁸, which was later cited with approval in *Macchi Singh v. State*¹⁵⁹, and recently in *Mulla v. State of U.P.*¹⁶⁰. The said criteria are as follows (see *Macchi Singh*):

“I. Manner of commission of murder

*33. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,
(i) when the house of the victim is set aflame with the end in view to roast him alive in the house;*

¹⁵⁷ 408 U.S. 238

¹⁵⁸ (1980) 2 SCC 684

¹⁵⁹ (1983) 3 SCC 470

¹⁶⁰ (2010) 3 SCC 508



(ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death;

(iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner;

II. Motive for commission of murder

34. When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-à-vis whom the murderer is in a dominating position or in a position of trust, or (c) a murder is committed in the course of betrayal of the motherland.

III. Anti-social or socially abhorrent nature of the crime

35. (a) When murder of a member of a Scheduled Caste or minority community, etc. is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorise such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of 'bride burning' and what are known as 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV. Magnitude of crime

36. When the crime is enormous in proportion. For instance when multiple murders say of all or almost



all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

V. Personality of victim of murder

37. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-à-vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.

38. In this background the guidelines indicated in Bachan Singh case [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh case [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] :

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.



(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

39. *In order to apply these guidelines inter alia the following questions may be asked and answered:*

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

40. *If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so."*

19. The philosophy behind the aforesaid tests was also explained in *Macchi Singh*: every member of the community is able to live his/her life because of the protection afforded by the community and rule of law. But, when one member of the community shows 'ingratitude' to the community by killing a fellow member of the community or when the community feels that its very existence is under threat, then for the purposes of self-preservation, the community withdraws its protection. This withdrawal of protection results in imposition of death penalty. The court further elaborated that the community will only do so -

"in rarest of rare cases' when its collective conscience is so shocked that it will expect the holders of the



judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty."

20. The 'rarest of rare' doctrine has been intrinsically linked with the need to mandatorily give 'special reasons' before imposing a penalty as specified under Section 354 (1) of the Cr. P.C. *Bachhan Singh* has clarified the law by saying that 'special reasons' implies 'exceptional reasons' (at para. 161). We also notice that punishment with death is given only in the rarest of rare cases when the alternative option of reformation and rehabilitation of the convict is unquestionably foreclosed.
21. To sum up, the following are the tests for determining whether the accused deserves a death sentence (see *Mulla v. State of U.P.*):
- (a) The gruesome nature of the crime;
 - (b) The mitigating and aggravating circumstances in the case. These must take into consideration the position of the criminal, and
 - (c) Whether any other punishment would be completely inadequate. This rule emerges from the dictum of this Court that life imprisonment is the rule and death penalty an exception. Therefore, the court must satisfy itself that death penalty would be the only punishment which can be meted out to the convict.
22. While we believe that enhanced penalties in a substantial number of sexual assault cases can be adjudged on the basis of the law laid down in the aforesaid cases, certain situations warrant a specific treatment. We believe that where the offence of sexual assault, particularly 'gang rapes',



is accompanied by such brutality and violence that it leads to death or a Persistent Vegetative State (or 'PVS' in medical terminology), punishment must be severe – with the minimum punishment being life imprisonment. While we appreciate the argument that where such offences result in death, the case may also be tried under Section 302 of the IPC as a 'rarest of the rare' case, we must acknowledge that many such cases may actually fall within the ambit of Section 304 (Part II) since the 'intention to kill' may often not be established. In the case of violence resulting in Persistent Vegetative State is concerned, we are reminded of the moving story of Aruna Shanbagh, the young nurse who was brutally raped and lived the rest of her life (i.e. almost 36 years) in a Persistent Vegetative State.

23. In our opinion, such situations must be treated differently because the concerted effort to rape and to inflict violence may disclose an intention deserving an enhanced punishment. We have therefore recommended that a specific provision, namely, Section 376 (3) should be inserted in the Indian Penal Code to deal with the offence of "rape followed by death or resulting in a Persistent Vegetative State".
24. In our considered view, taking into account the views expressed on the subject by an overwhelming majority of scholars, leaders of women's organisations, and other stakeholders, there is a strong submission that the seeking of death penalty would be a regressive step in the field of sentencing and reformation. We, having bestowed considerable thought on the subject, and having provided for enhanced sentences (short of



death) in respect of the above-noted aggravated forms of sexual assault, in the larger interests of society, and having regard to the current thinking in favour of abolition of the death penalty, and also to avoid the argument of any sentencing arbitrariness, we are not inclined to recommend the death penalty.

25. We must therefore end this topic with a note of caution. Undoubtedly, rape deserves serious punishment. It is a highly reprehensible crime in the moral sense, and demonstrates a total contempt for the personal integrity and autonomy of the victim. Short of homicide, it is the “ultimate violation of self.” It is also a violent crime because it normally involves force or the threat of force or intimidation to overcome the will and the capacity of the victim to resist. Rape is very often accompanied by physical injury to the victim and can also inflict mental and psychological damage. We have no doubt that it undermines the communicating sense of security and there is public injury. However, we believe that such offences need to be graded. There are instances where the victim/survivor is still in a position from which she can, with some support from society, overcome the trauma and lead a normal life. In other words, we do not say that such a situation is less morally depraved, but the degree of injury to the person may be much less and does not warrant punishment with death.

26. The Working Group on Human Rights in India and the UN has made a submission before us. We have examined the submission carefully. We have noticed in the said submission that the Group has suggested that there should be no amendment to



the existing law to either provide death penalty and/or chemical castration for the offence of rape or sexual assault.

27. The Group has placed emphasis on Article 6 of the International Covenant on Civil and Political Rights which provides:-

"In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of commission of crime and not contrary to the provisions of the present Covenant...."

28. It has also been observed that death penalty will not be imposed on persons below 18 years and observes that:-

"Nothing in this Article should be invoked to delay or prevent the abolition of capital punishment...."

29. Article 7 of the Covenant provides that:-

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment in particular, no one shall be subjected without his free consent to medical or scientific experimentation."¹⁶¹

30. This Committee is conscious of the provisions of the ICCPR¹⁶², the Universal Declaration of Human Rights¹⁶³, the Convention on the rights of child, Convention against torture and other cruel, inhuman and degrading treatment or punishment and other international Conventions.

¹⁶¹ Article 7, Part 3 ICCPR 1966

¹⁶² Article 6 and 7, ICCPR 1966

¹⁶³ Article 5, UDHR 1948



31. We note that one of the standards before us is that the UN Commission on Human Rights has adopted the four resolutions to impose a moratorium on death penalty until such time as death penalty is fully abolished. The first such resolution is dated 18th December 2007. The resolution calls upon States which still retain the death penalty to “*progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed*”. The abolition of death penalty and the reduction of number of offences in statute books which notify capital punishment are stated to be a part of international customary law. It has also been pointed out that the UN Human Rights Committee in its concluding deliberations on 4th August 1997 observed that:-

“The Committee expresses concern of the lack of compliance of the Penal Code with Article 6, paragraphs 2 and 5 of the Covenant. Therefore, the Committee recommends that the State party abolish by law the imposition of the death penalty on minors and limit the offences carrying the death penalty in the most serious crimes with a view to its ultimate abolition....”

32. We also have noted the report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions with reference to his India mission in 2012.

“It is a matter of concern that the death penalty may be imposed for (seemingly a growing number of crimes that cannot be regarded as the most serious crimes referred to in Article 6 of the ICCPR as internationally understood, namely, crimes involving intentional killing)”¹⁶⁴

¹⁶⁴ (Press Statement – Country Mission to India 2012 available at <http://www.ohcr.org>):-



33. The phrase 'rarest of rare cases' taken from *Bachhan Singh v. State of Punjab* is often used to describe the Indian approach to the death penalty. However, this may create a wrong impression since the list of crimes for which sentence may be imposed is still much wider than the one provided for under international law. Accordingly, he has recommended that India places a moratorium on the death penalty in accordance with General Assembly Resolution 65/206.
34. This Committee is aware that over 150 States in the world have abolished death penalty or do not practice death penalty. The Committee is also aware that several States in the United States of America retain and implement the death penalty. We are aware that there is a movement in the United States of America to impose death penalty for rape. The US Supreme Court has struck down the death penalty for rape as contrary to the US Constitution. We look at the judgment in *Coker v. Georgia*,¹⁶⁵ where the US Supreme Court struck down the sentence of death for a convicted felon who had committed rape holding that the sentence of death for rape was disproportionate, violative of the 8th and 14th Amendments to the US Constitution and was also "barbaric and excessive". It may be noted that this was a case of aggravated sexual assault.
35. We also note the decision in *Kennedy v. Louisiana* where the constitutional validity of a Louisiana statute permitted death penalty for raping a child under 12 years was challenged. It was noted that the crime of the petitioner was one which was repulsive to society and was full of horror and

¹⁶⁵ 433 US 584



hurt. Yet, the US Supreme Court reached a finding that the death penalty for rape of a minor was unconstitutional and violative of the 8th Amendment being in the nature of “cruel and unusual punishment”.¹⁶⁶

36. Kennedy, J. observed that:-

“Evolving standards of decency must embrace and express respect for the dignity of the person, and the punishment of criminals must conform to that rule.....”

As we shall discuss, punishment is justified under one or more or three principal rationales – rehabilitation, deterrence and retribution. It is the last of this retribution that most often can contradict the laws’ own ends. This is of particular concern when the Court interprets the meaning of the 8th Amendment in capital cases. When the law punishes by death, it risks its own dissent into brutality transgressing the constitutional commitment to decency and restraint.

37. Thus, there is a strong case which is made out before us that in India in the context of international law as well as the law as explained in the American Courts, it would be a regressive step to introduce death penalty for rape even where such punishment is restricted to the rarest of rare cases. It is also stated that there is considerable evidence that the deterrent effect of death penalty on serious crimes is actually a myth. According to the Working Group on Human Rights, the murder rate has declined consistently in India over the last 20 years despite the slowdown in the execution of death sentences since 1980. Hence we do take note of the argument that introduction of death penalty for rape may not have a deterrent effect.

¹⁶⁶ 554 US 407 (2008)



However, we have enhanced the punishment to mean the remainder of life.

Castration

38. On the question of chemical castration as a cruel and unusual punishment, we find that chemical castration is an injection for sex offenders with drugs such as Depo-Provera which has the effect of reducing the levels of testosterone and thereby controlling libidinous urges. There are varying groups of drugs that effect libidinous urges, these have been categorized in the following way:

“For patients with obsessive sexual fantasies, antidepressants from the family of SSRIs that includes Prozac, often prescribed to treat obsessive compulsive disorder, can help them control their sexual thoughts. The second and more radical approach is an anti-androgen drug, such as leuprorelin, which reduces testosterone levels to those of a prepubescent boy, and makes the patient impotent.”¹⁶⁷

39. It is important to understand that unlike surgical castration, the effects of chemical castration are temporary and therefore repeated monitored doses at regular intervals is a necessary pre-requisite. It is pointed out before us that 9 States in the United States of America have introduced legislation which has permitted chemical castration of sex offenders, making it discretionary for the first time offenders and mandatory for repeat offenders as a pre-condition for release from imprisonment and/or release on parole. Till date, a challenge to the constitutionality of these

¹⁶⁷ Decca Aitkenhead, *Chemical Castration: The Soft Option*. The Guardian, January 18, 2013. <http://www.guardian.co.uk/society/2013/jan/18/chemical-castration-soft-option-sex-offenders>



laws has not been considered by the US Supreme Court. It is the stand of the Working Group on Human Rights that mandatory chemical castration for sex offenders is unconstitutional as it would violate the fundamental right to privacy and the right to refuse invasive medical treatment and would constitute a violation of the prohibition against “cruel and unusual punishment” contained in numerous international covenants including the ICCPR and CAT.

40. We note that it would be unconstitutional and inconsistent with basic human rights treaties for the State to expose any citizen without their consent to potentially dangerous medical side effects. For this reason we do not recommend mandatory chemical castration of any type as a punishment for sex offenders. For the same reason the government of India also does not prescribe chemical castration as a family planning method.
41. However, we note that in the UK, sex offender treatment programs sometimes offer chemical castration of one of the two types mentioned to convicted sex offenders as a form of psychiatric treatment. This is done in consultation with doctors and psychiatrists with the consent of the sex offender. We recommend further research and study on the matter before commenting on its applicability or effectiveness in the Indian context.
42. We also notice from literature that side effects of chemical substances like Depo-Provera may include osteoporosis, hypertension, fatigue, weight gain, nightmares, muscle weakness and apart from that the long term side effects are still not known. We are further of the opinion that chemical



castration fails to treat the social foundations of rape which is about power and sexually deviant behaviour. We therefore to hold that mandatory chemical castration as a punishment contradicts human rights standards.

43. We, therefore, reject the possibility of chemical castration as a means of punishment. We must take on record a suggestion from a leading doctor for permanent surgical castration. We think that a mutilation of the body is not permitted by the Constitution. 'Death' is a known form of penalty but mutilation has not been recognised in progressive jurisprudence as prescribed punitive action.

Reduction of age in respect of juveniles

44. We have heard experts on the question of reduction of the age of a juvenile from 18 to 16 for the purpose of being tried for offences under various laws of the country. We must confess that the degree of maturity displayed by all the women's organizations, the academics and a large body of thinking people have viewed this incident both in the criminological as well as societal perspective humbles us.
45. Assuming that a person at the age of 16 is sent to life imprisonment, he would be released sometimes in the mid-30s. There is little assurance that the convict would emerge a reformed person, who will not commit the same crime that he was imprisoned for (or, for that matter, any other crime). The attempt made by Ms. Kiran Bedi to reform Tihar Jail inmates was, and continues to be,



a successful experiment. But we are afraid that that is only a flash in the pan. Our jails do not have reformatory and rehabilitation policies. We do not engage with inmates as human beings. We do not bring about transformation. We, therefore, breed more criminals (including juveniles) in our prison and reformatory system by ghettoing them in juvenile homes and protective homes where they are told that the State will protect and provide for them, but which promise is a fruitless one.

46. Children, who have been deprived of parental guidance and education, have very little chances of mainstreaming and rehabilitations, with the provisions of the Juvenile Justice Act being reduced to words on paper.
47. We are of the view that the 3 year period (for which delinquent children are kept in the custody of special home) is cause for correction with respect to the damage done to the personality of the child. We are completely dissatisfied with the operation of children's' institutions and it is only the magistrate (as presiding officer of the Juvenile Justice Board) who seems to be taking an interest in the situation. The sheer lack of counselors and therapy has divided the younger society into 'I' and 'them'.
48. We have also taken note of the fact that considering the recidivism being 8.2% in the year 2010, as against 6.9% during 2011, we are not inclined to reduce the age of a juvenile to 16.



49. It is time that the State invested in reformation for juvenile offenders and destitute juveniles. There are numerous jurisdictions like the United Kingdom, Thailand, and South Africa where children are corrected and rehabilitated; restorative justice is done and abuse is prevented. We think this is possible in India but it requires a determination of a higher order.

50. Further, we Articles 37 and 38 of the Convention on the Rights of Child clearly provide as follows:-

“37. States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality



of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

38. (1) *States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.*

(2) *States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.*

(3) *States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.*

(4) *In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.*

51. We have also taken certain scientific factors into account. Having regard to the development in neurosciences, we are of the view that adolescent brain development is one of the important issues in public policy. We have taken note of the reasons stated by the US Supreme Court for abolishing death penalty for juveniles in *Roper v. Simmons*¹⁶⁸ wherein it was quoted as follows:-

“When a juvenile offender commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity.

¹⁶⁸ 543 U.S. 551 (2005)



... ..

Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity."

52. We have also noted the decision of the US Supreme Court in *Graham v. Florida*¹⁶⁹ as follows:-

A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance. It bears emphasis, however, that while the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society.

53. We must also take note of the neurological state of the adolescent brain. Studies show that adolescence is a period of significant changes in the brain structure and function. There is consensus among developmental neuroscientists on the nature of this change, which is aptly set out

¹⁶⁹ 560 U. S. ____ (2010)



in Laurence Steinberg's 'A Social Neuroscience Perspective on Adolescence Risk-Taking'¹⁷⁰ –

“(i) There is a decrease in grey matter in prefrontal regions of the brain, reflective of synaptic pruning, the process through which unused connections between neurons are eliminated. The elimination of these unused synapses occurs mainly during pre-adolescence and early adolescence, the period during which major improvements in basic cognitive abilities and logical reasoning are seen, in part due to these very anatomical changes.

(ii) Important changes in activity involving the neurotransmitter dopamine occur during early adolescence, especially around puberty. There are substantial changes in the density and distribution of dopamine receptors in pathways that connect the limbic system, which is where emotions are processed and rewards and punishments experienced, and the prefrontal cortex, which is the brain's chief executive officer. There is more dopaminergic activity in these pathways during the first part of adolescence than at any other time in development. Because dopamine plays a critical role in how humans experience pleasure, these changes have important implications for sensation-seeking.

(iii) There is an increase in white matter in the prefrontal cortex during adolescence. This is largely the result of myelination, the process through which nerve fibres become sheathed in myelin, a white, fatty substance that improves the efficiency of brain circuits. Unlike the synaptic pruning of the prefrontal areas, which is mainly finished by mid-adolescence, myelination continues well into late adolescence and early adulthood. More efficient neural connections within the prefrontal cortex are important for higher-order cognitive functions – planning ahead, weighing risks and rewards, and

¹⁷⁰ A social neuroscience perspective on adolescent risk-taking. L. Steinberg - Developmental Review, 2008 – Elsevier.



making complicated decisions, among others – that are regulated by multiple prefrontal areas working in concert.

(iv) There is an increase in the strength of connections between the prefrontal cortex and the limbic system. This anatomical change is especially important for emotion regulation, which is facilitated by increased connectivity between regions important in the processing of emotional information and those important in self-control. These connections permit different brain systems to communicate with each other more effectively, and these gains also are on-going well into late adolescence.

54. We are of the view that the material before is sufficient for us to reach the conclusion that the age of 'juveniles' ought not to be reduced to 16 years.



CHAPTER TEN

PROVISION OF ADEQUATE SAFETY MEASURES AND AMENITIES IN RESPECT OF WOMEN

1. The task of preventing the commission of heinous crimes puts a greater responsibility on the state than what it does to ensure justice is delivered after the crime is perpetrated. Apart from having an efficient and honest law and order machinery, it is necessary that certain basic measures regarding provision of civic amenities be undertaken by the State, so as to minimise opportunities for the perpetrators of the crimes.
2. As a fundamental requirement, we strongly opine that the State should undertake the task of providing well lit roads, streets and other common spaces to the citizens. It is nothing but common sense that crime hides in darkness and eradication of darkness is an easy way to eradicate crime.
3. It has been borne out from recommendations received by us that in rural India, lack of proper sanitation facilities also contribute to the commission of sexual crimes against women. At night women have to get out of their houses to use sanitation facilities and these moments are abused by anti-social elements. We opine that the issue of provision of adequate sanitation facilities in villages and urban areas has to be considered urgently.
4. On the issue of mobility, the State transport systems do not appear to have safety measures to



protect women. Not only are appropriate safety measures not in place, the Committee is shocked to note the large number of directions issued by various High Court and the Apex Court in this regard, which are not being complied with by the Central Government and various State Governments. A prime example would be the directions of the Delhi High Court in *Court on its own motion v. Union of India & others*¹⁷¹ in respect of the use of dark film on car windows, where Swatanter Kumar J. (as he then was) observed:

“7. Despite the fact that all concerned authorities including the police, admit the use of such black filmed vehicles in propagation of major crimes but still they are not able to prevent their user despite the fact that it also offends the provisions of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') and The Central Motor Vehicles Rules, 1989 (hereinafter referred to as 'the Rules')....

... ..

9. Besides that it offends the law, use of black films has a very serious and dangerous consequence even in the field of crime. It is a common knowledge that the cars or vehicles involved in commission of heinous crimes like kidnapping, abducting, rape and other serious offences, normally carry jet black films, thus, totally preventing the offenders from being seen/identified by any person on the road.

10. During the course of hearing, the learned Counsel appearing for the various authorities accepted this position. What is more important is that the Additional Commissioner of Delhi Police, in charge of Traffic, who appeared in the Court, fairly stated that majority of the cars/vehicles involved in commission of crimes use the black films through which it is impossible to see inside

¹⁷¹ 139(2007) DLT 244



the cars even from a very close distance. Lack of will to enforce this condition has resulted in serious prejudice to all concerned though it might have proved as a boon for the criminals.

11. Another aspect of this traffic offence is that the authorities are required to allow use of black films for security reasons, particularly in relation to the persons to whom high security is provided for their protection. This obviously being restricted to a very limited class of society, cannot, therefore, be permitted to defeat the law as well as endanger the life of a common man, particularly the women and children..."

5. This position was subsequently reiterated by the Supreme Court in *Avishek Goenka v. Union of India*¹⁷², where the Court observed:

"1. Alarming rise in heinous crimes like kidnapping, sexual assault on women and dacoity have impinged upon the right to life and the right to live in a safe environment which are within the contours of Article 21 of the Constitution of India. One of the contributory factors to such increase is use of black films on windows/windshields of four-wheeled vehicles..."

2. The use of black films upon the vehicles gives immunity to the violators in committing a crime and is used as a tool of criminality, considerably increasing criminal activities. At times, heinous crimes like dacoity, rape, murder and even terrorist acts are committed in or with the aid of vehicles having black films pasted on the side windows and on the screens of the vehicles. It is stated that because of non observance of the norms, regulations and guidelines relating to the specifications for the front and rear windscreens and the side windows of the vehicles, the

¹⁷² (2012) 5 SCC 321



offenders can move undetected in such vehicles and commit crimes without hesitation....”

Accordingly, the Apex Court issued, inter alia, the following direction:

“27. For the reasons afore-stated, we prohibit the use of black films of any VLT percentage or any other material upon the safety glasses, windscreens (front and rear) and side glasses of all vehicles throughout the country. The Home Secretary, Director General/Commissioner of Police of the respective States/Centre shall ensure compliance with this direction. The directions contained in this judgment shall become operative and enforceable with effect from 4th May, 2012.”

6. A cursory glance on any of India’s roads at any time of day or night will show that these directions of the Supreme Court are being openly flouted by all and sundry. It saddens the Committee to note that the police forces of this country enforce these directions, and indeed law, only when orders are passed by various courts, and then again, only take action for a few days.
7. What is even more shocking is the incapability of the Government of India and of the various State Governments to implement even the most basic safety measures with any amount of efficacy. For example, the Ministry of Home Affairs, Government of India, issued Office Memorandum No. F. NO.15011/48/2009-SC/ST-W dated September 4, 2009, to all State Government and Union Territory Administrations. This Office Memorandum is titled *“Advisory on Crime against Women – Measures needed to curb –regarding”* and takes note of no less than 8 advisories issued by the Central Government to the States and Union



Territories (between 1995 and 2007) in respect of steps to be taken for prevention of crimes and violence against women. The said Memorandum then observes as follows:

"2. These advisories, inter-alia, include gender sensitization of the police personnel, adopting appropriate measures for swift and salutary punishment to public servants found guilty of custodial violence against women, minimizing delays in investigations of murder, rape and torture of women and improving its quality, setting up a 'crime against women cell' in districts where they do not exist, providing adequate counselling centers and shelter homes for women who have been victimized, setting up of special women courts, and improving the effectiveness of schemes developed for the welfare and rehabilitation of women who are victimized with greater emphasis on income generation to make the women more independent and self-reliant.

3. Through the aforesaid advisories, the State Governments were also requested to undertake a comprehensive review of the effectiveness of the machinery in tackling the problem of women and to take appropriate measures aimed at increasing the responsiveness of the law and order machinery. No doubt, some State Governments have taken some measures in this regard, however, the inputs regarding crime against women available with this Ministry indicate that these measures need to be strengthened further, so that the women folk feel secure, enjoy their human rights and live their life with dignity and respect that they deserve. Despite several steps being taken by the State Governments, picture still is very grim and disappointing. Complaints are still being received regarding non-registration of FIRs and unsympathetic attitude of police personnel towards rape victims and victims of violence."



8. The said Memorandum also recommends, *inter alia*, a series of steps for ensuring safety of women. Some of these are:

“xx. For improving the safety conditions on road, the concerned departments of the State Government must take suitable steps to:

- a. Increase the no. of beat constables, especially on the sensitive roads;*
- b. Increase the number of police help booth/kiosks, especially in remote and lonely stretches;*
- c. Increase police patrolling, especially during the night;*
- d. Increase the number of women police officers in the mobile police vans;*
- e. Set-up telephone booths for easy access to police;*
- f. Install people friendly street lights on all roads, lonely stretches and alleys; and*
- g. Ensure street lights are properly and efficiently working on all roads, lonely stretches and alleys.”*

9. This clearly shows that the Executive of this country is fully aware of the bare minimum steps that are required to ensure the safety of women, and has been aware of the same, as will be seen elsewhere in this Report, for several years. Yet, despite numerous recommendations, deliberations, consultations, studies, directions from the judiciary and, most importantly, the protests of civil society, the State continues to fall woefully short of ensuring the safety of women in this country.

10. The Committee is of the opinion that in respect of all public transport vehicles which move after 5.30



pm until 7.30 am, every transport vehicle must have a security person.

11. The Committee divides its suggestions into three parts:-
 - a. Whether it be rural or metropolitan area, the public transport vehicles must be adequately increased and it is the function of the State to make sure that there is adequate means of transport which will increase the level of security in respect of women both during the day as well as night.
 - b. In relation to metropolitan towns, it is necessary that public transport vehicles must be –
 - i. well lit at night;
 - ii. must have drivers who are security vetted and who have an identity card of certification by the police after which alone they will be permitted to drive such vehicles;
 - iii. in relation to vehicles which ply between 5.30 pm and 7.30 am in the morning, it is necessary that each of these vehicles must have either a male or a female constable riding the bus in order to prevent any possibility of an assault on women;
 - c. In rural areas, for each public transport vehicle which will ply between 5.30 pm and 7.30 am, there will be either a male or a female police to be available in the vehicle.
12. Such enforcements have become necessary although they may be a drain on State Exchequer,



but having regard to the shameful incidents of rape which have been witnessed in India over the last five to six decades, it has become necessary to make this recommendation. One of us, while he was the Chief Justice of India had given a direction in the judgment passed in *M.C. Mehta Vs. Union of India*¹⁷³ that:

“Every holder of a permit issued by any of the road transport authorities in the NCR and NCT, Delhi will within ten days from today, file with its RTA a list of drivers who are engaged by him together with suitable photographs and other particulars to establish the identity of such persons. Every vehicle shall carry a suitable photograph of the authorised driver, duly certified by the RTA. Any vehicle being driven by a person other than the authorised driver shall be treated as being used in contravention of the permit and the consequences would accordingly follow.”

13. The above direction must be implemented strictly across the country. Moreover, we recommend that the identities of drivers and other personnel who work in public transport vehicles be vetted by the local Road Transport Authority and there must be a certification of their good character by at least two known persons in the city where they are operating. The local police should have a complete database of information regarding such personnel. We are of the view that every State Government must have a computerised database which would have details of –
 - a. All the vehicles;
 - b. Their real owners (as against *benami* owners);

¹⁷³ (1997) 8 SCC 770



- c. It will be mandatory for the bus owners (or State Road Transport Corporations) to display, in good light, the bus numbers as well as the name, age and address of the drivers along with their photographs and contact numbers. It should be displayed within the bus and should always be visible on the outside of the bus as well;
- d. In all metropolitan towns, CCTV cameras should be installed inside each bus. The CCTV has to be installed in a tamper-proof condition and it will be the duty of the constable (woman or male) who is travelling in the bus to ensure that the CCTV is not tampered with;
- e. In addition, all buses should be fitted with tamper proof GPS systems. In respect of new buses, proposals should be made to engine/chassis manufacturers to build such GPS tracking system into the engine/chassis before delivery to the customer;
- f. In metropolitan areas, the city can be divided into different zones where if there is a deviation of the bus from the allotted route, immediately the centralised system can be set in motion;
- g. The Station House Officer in each area will be responsible for the patrolling of the buses by the PCR vans as and when necessary and also will be personally responsible for the conduct of the



constables who are deputed inside the bus;
and

- h. It is necessary to have simple hotline numbers which can be dialled by passengers when need arises. We also propose that downloadable mobile phone applications may be developed so that citizens can, with one click or touch, send distress signals to the police. Technology may also be developed so as to track the signals or messages sent thus. In this respect, we have, after consultation with experts, suggested a 'Public Emergency Response System' (at **Appendix 6**), which may be considered.

14. We further express our distress that the State has turned a blind eye to poor and destitute women, and women who are victims of domestic violence and who are unable to provide shelter for themselves. This fundamental lack of empathy, understanding and engagement reflects poorly on the State, which has the constitutional responsibility to provide for those who lack access to justice.
15. The Constitution grants every citizen a fundamental right to protection against perpetration of injustice. We would like to remind the State that it is duty-bound to provide safe spaces or safe residences for not only destitute, disabled and abused women, but also for working women who are unable to find suitable accommodation, especially in metropolitan areas.
16. Even though Section 6 of Protection of Women against Domestic Violence Act, 2005, provides



victims of domestic violence to avail of the facility of shelter, we notice that the State has not made any such provision. We opine that the concept of 'shelter homes' under the said Act may be extended to the protection of destitute women. These homes, which serve as 'safe spaces' for destitute women, should not be confused with protection homes and corrective institutions under other statutes.

17. We recommend that the State should take the following actions:

- a) Safe spaces should be completely accessible to persons with disabilities in architectural design, management and provision of services.
- b) Residents of Safe Spaces to be trained and these institutions ought to be managed in a manner where the residents have a participatory role.
- c) Where destitute women have children, concrete linkages to child rights services.
- d) Institutional access to comprehensive health care services.
- e) Physical location of Safe Spaces should be centrally located with public services in close proximity and connected by public transport.
- f) Destitute women should not be institutionalized and sent to protective homes or beggar homes. They should also not to be sent to jails for their safe keeping.



REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW

18. If necessary steps are not taken by the State to provide basic amenities and guarantees in line with the Constitutional mandate, the State runs the risk of alienating its own citizens. We are phrasing this note of caution consciously.



CHAPTER ELEVEN

MEDICO-LEGAL EXAMINATION OF THE VICTIM

1. It is recommended that when a call is made to the sexual assault helpline¹⁷⁴, police personnel and a designated unmarked ambulance attached to a 'Sexual Assault Crisis Centre'¹⁷⁵ (hereinafter referred to as 'the Centre') reach the location and as soon as possible transport the survivor to the Centre. Other injured people, if any, should be taken to the nearest hospital.
2. It goes without saying that the life of the victim is to be preserved before legal formalities are met. In an eventuality that the life of a victim will be better protected by taking him/her to the nearest hospital rather than SACC, the latter option will have to be adopted as an emergency measure. We emphasise that this should be resorted to only in extreme emergencies.
3. The Supreme Court in the case of *Pt. Parmanand Katara Vs. Union of India*¹⁷⁶ has emphasised the paramount, absolute and total obligation of doctors, whether in private or government service

¹⁷⁴ Details on the technology and nature of helpline may be seen at **Appendix 6**.

¹⁷⁵ The Centre should be a specifically and exclusively designated space within the premises of a hospital and should be a reclusive and inconspicuous space. The hospital in question could either be a government or a private hospital. There should be adequate security provided at the place. There should be at least 3 rooms – a waiting room, a medical examination room and a counseling/ consultation room. The examination room should preferably have access to a toilet and a shower. The surroundings should also be child friendly. They should be non-threatening, sanitized and well-lit.

¹⁷⁶ (1989) 4 SCC 286



to extend his/her services with due expertise for protecting the life of the victim without interference from laws of procedure. This duty needs no support from any code of ethics or rule of law. The said decision also casts a duty on the state machinery to abstain from unduly harassing doctors who will have to be witnesses in such cases.

4. The Court directed that this duty be duly published through visual, audio and print media. However, we observe that these directions have not been adequately complied with and doctors, especially in private hospitals, are extremely wary to deal with cases of this nature. In our opinion, the duty of the medical profession to extend unqualified services to victims of such heinous offences should be duly publicised and medical professionals and hospitals who abstain from performing the same ought to be punished in accordance with law.
5. The Centre should be private, discreet and should at all times have all the facilities required to preserve the life of the victim and for her recovery. In particular it should have a female gynaecologist and a professionally qualified counsellor (who is trained to handle medico legal cases and is also female as far as feasible) available on the premises. The counsellor should be professionally qualified to deal with victims who are persons with disabilities also. The Centre should have a sanitised medical examination room with a 'sexual assault investigation kit' available on the premises. Proper refrigeration and storage facilities for preserving forensic evidence including DNA should be available at the Centre.



6. Subject to her physical health and choice, the first interaction of the victim should be with the counsellor and thereafter with the doctor and the police. At the very outset the counsellor must inform the victim about the procedure to ensue and also make her aware of her rights. . There will also be a readily available set of names and telephone numbers of lawyers at the Centre and a lawyer from the list will be contacted by the counsellor to render assistance during recording of her statement by the police.
7. We are also in agreement that the report of the medico-legal examination of the victim in a rape / sexual assault case should, besides containing the usual form of particulars, deal specifically with:-
 - (i) Age of the victim;
 - (ii) Injuries to the body of the victim;
 - (iii) General mental condition of the victim
 - (iv) Counsellors report regarding disabilities of the victim, if any; and
 - (v) Other material particulars
8. We have discussed a model checklist of guidelines in this respect, which shall be henceforth adopted by medical examiners in all rape cases. We assume that necessary circulars, in this regard, will be issued administratively until they are incorporated statutorily in the CrPC.
9. The issue of whether sexual assault occurred is a legal issue and not a medical diagnosis. Consequently, doctors *should not*, on the basis of the medical examination conclude whether rape had occurred or not. Only findings in relation to



medical findings should be recorded in the medical report.

10. It is crucial to underscore that the size of the vaginal introitus has no bearing on a case of sexual assault, and therefore a test to ascertain the laxity of the vaginal muscles which is commonly referred to as the two-finger test must not be conducted. On the basis of this test observations/ conclusions such as 'habituated to sexual intercourse' should not be made and this is forbidden by law.
11. Routinely, there is a lot of attention given to the status of hymen. The “finger test” is also conducted to note the distensibility of the hymen. However it is largely irrelevant because the hymen can be torn due to several reasons. An intact hymen does not rule out sexual assault, and a torn hymen does not prove previous sexual intercourse. Hymen should therefore be treated like any other part of the genitals while documenting examination findings in cases of sexual assault. Only those that are relevant to the episode of assault (findings such as fresh tears, bleeding, oedema etc.) are to be documented.
12. We also are of the opinion that the medico-legal examination report should note the date and time of examination and be sent without delay to the concerned investigating officer. To avoid unnecessary delays, the report must be transmitted to the IO by way of email (as a secure PDF file – digitally signed where possible), in addition to sending by way of regular government post. It is in this background that Section 164A was introduced to the CrPC. The Law



Commission, in its 84th Report, recommended the insertion of Section 164A in the following terms:-

"4.8 We next deal with the victim. In many cases, the report of the medical examiner as to the examination of the female victim is also found to be somewhat cursory and does not give adequate information about the material particulars which are necessary for an adjudication as to the various ingredients of section 375. Further, it is sometimes noticed that the medical examination report is not sent promptly to the investigating officer. As a result, the possibility of tampering with the report remains.

In our opinion, the report of the examination of the victim in a case of rape should (besides containing the usual formal particulars) deal specifically with-

- (i) the age of the victim,*
- (ii) the question whether the victim was previously used to sexual intercourse,*
- (iii) injuries to the body of the victim,*
- (iv) general mental condition of the victim,*
and
- (v) other material particulars in reasonable detail.*

It is also necessary that the report should note the time of examination and be sent without delay to the investigating officer. It is very important that the report should state reasons for the conclusions recorded."

13. Parliament enacted the said Section 164A twenty-five years later as follows:-

"164 A. Medical examination of the victim of rape. - (1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is



proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of a such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent shall, without delay, examine her and prepare a report of his examination giving the following particulars, namely:-

- (i) the name and address of the woman and of the person by whom she was brought;*
- (ii) the age of the woman;*
- (iii) the description of material taken from the person of the woman for DNA profiling;*
- (iv) marks of injury, if any, on the person of the woman;*
- (v) general mental condition of the woman; and*
- (vi) other material particulars in reasonable detail.*

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.



(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay forward the report to the investigation officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

Explanation. – For the purposes of this section, “examination” and “registered medical practitioner” shall have the same meanings as in section 53.”

14. Thus, we note that Parliament has acted in alignment with modern understanding that previous sexual intercourse of woman would be irrelevant.

15. We are also of the opinion that the medical examination of a rape/sexual assault victim must necessarily take place under the supervision of a senior female obstetrician/gynaecologist. In the event an obstetrician/gynaecologist is not available, it shall be a senior female doctor who will examine a rape victim. We also recommend that in order to ensure that there is a consensus of opinion on the medical examination, a board of three doctors must examine a rape/sexual assault victim. We believe it is important that the deliberations of the said board of doctors be recorded as an audio recording, which must be later made available to a court to satisfy itself that



there has been a fair consensus building in relation to the opinion formation as far as the victim is concerned.

16. We are of the opinion that the medical examination of a victim of sexual assault/rape ought to be conducted in the following minimum conditions:
- a) The equipment used in the examination must be adequate for the purpose and must, to the extent possible, conform to international standards;
 - b) The examination room must be well ventilated and well lit with fixed lighting;
 - c) It is better, unless the victim is an adult woman of mature years, to examine orally first the mother or older relative by whom the victim is accompanied. The circumstances in which the offence is alleged to have been committed shall be ascertained from such relative;
 - d) In any event, a trained same-sex support person or trained health worker should be present during the course of the examination;
 - e) The examining doctor, with the help of the victim's relatives / health worker, must explain to the victim each step of the examination and why each such step is important to the examination;
 - f) The victim must be assured that she is in control of the pace, timing and components of the examination and that she will not be forced to undergo any particular step(s) of the examination if she is uncomfortable with the same;



- g) In the event the victim does not consent to the whole or part of the medical examination, the medical examiner should refrain from making any adverse remarks in this regard;
 - h) The victim must be reassured that the examination findings will be kept confidential outside of the knowledge of the IO and the court; and
 - i) The victim must be shown a copy of the report and the contents of the same must be explained to her.
17. We have examined various protocols issued from time to time relating to medical examination of rape / victims of sexual offences by the WHO, and we have also discussed the matter at length with physicians and experts working in this field. Based on our deliberations, we have suggested a set of guidelines for the medical and psychological examination of victims of rape/sexual assault, which can be seen at **Appendices 7 and 8** hereto.
18. We have perused the order dated 23.04.2009 passed by the Delhi High Court in *Delhi Commission for Women Vs. Delhi Police W.P (CrI) No. 696 of 2008* and it is seen that the said order contains a set of comprehensive guidelines to police, hospitals/doctors, Committees, Sessions Courts, Magistrate Courts, Prosecutors and other concerned authorities in order to tackle cases of sexual offences. The said guidelines have comprehensively laid down protocols and procedures to be followed for medical examination of the victim. In our opinion, these guidelines, which are extracted below ought to be the starting point for arriving at a standardised protocol for



medical examination which adheres to international standards. The orders reads as:

“(a) “Crises Intervention Centre” means a recognized agency, appointed by the Delhi Police and the Delhi Commission for Women for responding to calls of sexual assault at the police station to provide counselling and other support services to victims of rape;

(b) “Expert” means a person who is qualified and has experience in dealing with cases of sexual violence;

(c) “Guardian” includes besides the natural guardian, support person or any person appointed by the Child Welfare Committee for a specified period to take care of the victim during the pendency of trial;

(d) “Rape Crises Cell” means a cell established under the Delhi Commission for Women to provide legal assistance in the cases of sexual assault who would coordinate the Crises Intervention Centres and provide legal support to the victim and her family;

(e) “Support person” means a person working in the capacity of a Counsellor working with a recognized and registered Crises Intervention Centres, approved by the Delhi Commission for Women.

(f) The expression “offence” for the purpose of these guidelines shall mean and include offences of rape, attempt to rape and unnatural offences.

(I) POLICE

(a) Every Police Station shall have available round the clock a lady police official/ officer not below the rank of Head Constable.

(b) As soon as a complaint of the offence is received, the duty officer receiving the complaint/ information shall call the lady police official/ officer present at the police station and make the victim and her family comfortable.



- (c) *The duty officer, immediately, upon receipt of the complaint/ information intimate to the "Rape Crises Cell" on its notified helpline number.*
- (d) *After making preliminary inquiry/ investigation, the Investigating Officer along with the lady police official/ officer available, escort the victim for medical examination.*
- (e) *The Assistant Commission of Police shall personally supervise all investigation into the office.*
- (f) *The statement of victim shall be recorded in private, however, the presence of family members while recording statement may be permitted with a view to make the victim comfortable. In incest cases where there is a suspicion of complicity of the family members in the crime such family members should not be permitted.*
- (g) *The Investigating Officer shall bring the cases relating to "child in need of care and protection" and the child victim involving in incest cases to the Child Welfare Committee.*
- (h) *The accused should not be brought in the presence of victim except for identification.*
- (i) *Except the offences which are reported during the night no victim of sexual offence shall be called or made to stay in the police station of NCT of Delhi shall ensure that Superintendents of the Foster Home for Women will provide necessary shelter till formal orders are secured from the concerned authorities.*
- (j) *The Investigating Officer shall endeavour to complete the investigation at the earliest and he shall ensure that in no case the accused gets the undue advantage of bail by default as per the provisions of Section 167, Cr.P.C. It is desirable that in cases of incest the report under Section 173, Cr.P.C. is filed within 30 days.*
- (k) *Periodically Training to deal with rape cases should be provided to the Police Officers, Juvenile Police Officers, Welfare Officers, Probationary Officers and Support Persons. A Training Module be prepared in consultation with the Delhi Judicial Academy;*
- (l) *The Police should provide information to the Rape Crisis Cell regarding the case including the*



arrest and bail application of the accused, the date of filing of the investigation report before the Magistrate;

(m) The Police should keep the permanent address of the victim in their file in addition to the present address. They should advise the victim to inform them about the change of address in future;

(n) Subject to the outcome of the W.P. (C) 2596/2007 titled Rajeev Mohan v. State, pending before this Hon'ble Court in cases where the victim informs the police about any threats received by the accused family, the concerned DCP should consider the matter and fresh FIR must be registered under Section 506 of the Indian Penal Code;

(II) DOCTORS/ HOSPITALS/ HEALTH DEPARTMENT

(a) Special rooms to be set up in all Government hospitals for victims to be examined and question in privacy;

(b) A sexual assault evidence collection kit or sexual assault forensic evidence (SAFE) kit consisting of a set of items used by medical personnel for gathering and preserving physical evidence following a sexual assault should be available with all the Government Hospitals. A sexual assault evidence collection kit should contain commonly available examination tools such as;

- * Detailed instructions for the examiner.*
- * Forms for documentation.*
- * Tube for blood sample.*
- * Urine Sample container*
- * Paper bags for clothing collection*
- * Large sheet of paper for patient to undress over.*
- * Cotton swabs for biological evidence collection*
- * Sterile water.*
- * Glass slides*
- * Unwaxed dental floss.*
- * Wooden stick for fingernail scrapings.*
- * Envelopes or boxes for individual evidence samples.*
- * Labels.*



Other items needed for a forensic / medical exam and treatment that may be included in the rape kit are :

- * Woods lamp
- * Toluidine blue dye.
- * Drying rack for wet swabs and/or clothing.
- * Patient gown, cover sheet, blanket, pillow.
- * Needles/ Syringes for blood drawing.
- * Speculums
- * Post – It Notes used to collect trace evidence
- * Camera (35 mm, digital, or Polaroid), film batteries.
- * Med-scope and/or colcoscope.
- * Microscope
- * Surgilube
- * Acetic acid diluted spray
- * Medications
- * Clean clothing and shower/ hygiene items for the victim's use after the exam.

(c) A detailed description of "Assault/ Abuse History" be mentioned by the attending doctors on the MLC of victim; The doctor must ensure that the complete narration of the history of the case detailed by the victim and her escort is recorded.

(d) After the examination is complete the victim should be permitted to wash up using toiletries provided by the hospital. The hospital should also have clothing to put on if her own clothing is taken as evidence.

(e) All hospitals should co-operate with the police and preserve the samples likely to putrefy in their pathological facility till such time the police are able to complete their paper work for despatch to forensic lab test including DNA.

(III) CHILD WELFARE COMMITTEE

(a) In cases of incest and child in need of care and protection, the child Welfare Committee shall examine the victim to ascertain the nature of support she is getting from her family and initiate steps for ensuring best interests of the child. In such cases the Child Welfare Committee shall



conduct a home study to assess and ensure the safety of the victim.

(b) In cases where the child is placed in the shelter, the Committee shall monitor the condition of the victim closely.

(c) In case of incest, while the victim stays in the foster home the family members should be allowed to meet the victim only in the presence of the support person and care be taken by the staff of the home that the meeting be not used to pressurize/ influence the victim to change for statement;

(d) Child Welfare Committee shall ensure that rehabilitation facilities are provided to the victim in appropriate cases. In cases of a prolonged stay, the victim should be given educational and vocational training in order to enable the victim to support herself after she leaves the foster home. The Social Welfare Department and Child Welfare Committee will develop and implement Foster Care Services within two months.

(e) Before passing any order of restoration of custody of child to the family, the Child Welfare Committee shall conduct an inquiry to assess the suitability of the victim being restored to the family. The custody of the child will be altered by the Child Welfare Committee only after consultation with the stake holders;

(f) Child Welfare Committee shall ensure that the victim is provided with necessary medical and psychological aid during her stay in foster home for the purpose of her rehabilitation;

(g) Child Welfare Committee shall maintain a list of all registered Foster Homes providing residential support, special services and rehabilitation facilities to the victim.

(IV) PROSECUTORS

(a) In cases where the child is placed in a shelter following the orders of the Child Welfare Committee or a Metropolitan Magistrate, the application seeking custody of the child made by the parents/ relatives of the victim should not be acceded to till such time, the Public Prosecutor gets



the status of the applicants verified with the Rape Crisis Cell and also call for the records of the Child Welfare Committee if it is not available.

(V) COURTS

(a) The Magistrate unless there are compelling reasons shall record the statement of the victim under Section 164, Cr.P.C. on the day on which the application is moved by the Investigating Officer. The Magistrate before proceeding to record the statement shall ensure that the child is made comfortable and she is free from the extraneous pressure.

(b) An endeavour shall be made to commit such cases of offence to the Court of Sessions expeditiously and preferably within 15 days.

(c) The Hon'ble Supreme Court in Delhi Domestic Working Women Forum v. Union of India, (1995) 1 SCC 14 and reiterated by this Hon'ble Court in Khem Chand v. State of Delhi, 208 (4) JCC 2497 had directed that the victim be provided with a Counsel. The existing practice of the victims being represented by a Counsel from the Rape Crisis Cell may continue. In cases where the victim has a private lawyer, she may be allowed to retain the private lawyer.

(d) That as far as possible chief examination and cross-examination of the victim must be conducted on the same day;

(e) The Additional Sessions Judge/ District Judge shall maintain a panel of psychiatrists, Psychologists and experts in sign language, etc. who would assist in recording the statement of witnesses as and when requested by the Sessions Courts.

(f) If it is brought the notice of the Court from a support person/ Rape Crises Cell Advocate/ victim, regarding threats received by the victim or her family members to compromise the matter, the Judge shall immediately direct the ACP to look in to the matter and provide an action taken report before the Court within 2 days. The Court must ensure



that protection is provided to the victim and her family.

(g) In cases in which the witness is sent back unexamined and is bound down, the Court shall ensure that at least the travelling expenses for coming to and from for attending the Court are paid.

(VI) SUPPORT SERVICES

(a) A 24 – hour helpline that can be contacted by the victims, police or any member of the public will be created. The Commission shall notify and widely publish its existing telephone number and that number will be used till such time a toll-free number is made available.

(b) The Rape Crisis Cell will have with them accredited support services for shelter, social workers, Counsellors mental health professional, lawyers;

(c) The list of these accredited support services will be provided to the Prosecution Branch, the Commissioner of Police as well as to the Registrar of this Hon'ble Court,"

19. We are also of the opinion that the medical examination report must be prepared, preferably immediately after the examination, but most certainly on the same date as the examination and must be forwarded to the investigating agency forthwith without delay. The DNA and other samples should be sent to the concerned Forensic Science Labs or DNA Profiling Centres within two days of the incident. We are also of the opinion that any dereliction of duty on part of the examining doctor(s) to undertake the medical examination properly and forwarding the report to the IO without any delay, and any dereliction of duty on the part of the investigating agency in collecting the report or causing the victim to be



taken to the nearest hospital for examination, would be punishable as offences (in respect of the investigating agency) and by way of disciplinary proceedings (in respect of the examining doctor).

Evidence and trial of rape / sexual assault cases

20. Section 327 of the CrPC now contains a proviso (enacted pursuant to the 42nd Law Commission Report) which enables the Presiding Judge or Magistrate, for reasons to be recorded, to direct an *in camera* enquiry and trial of rape and allied offences. In this regard, there are two important facets which need to be considered.

21. First, should the entire enquiry and the trial be conducted *in camera*? The Committee feels that, while to protect the testimony of the victim, the examination in chief and cross examination must be done in camera, we believe that unless there are compelling reasons, the remainder of the trial must be attempted to be conducted in open court because it is also important that women's organisations, members of the media and members of the general public should also be able to observe the conduct of the trial. In any event, the victim must have a member of the women's organisation inside to offer moral support.

22. In this context the following extract from the decision of the Supreme Court in *State of Punjab v. Gurmeet Singh*¹⁷⁷ will be a guiding beacon:

"These two provisions are in the nature of exception to the general rule of an open trial. In spite of the amendment, however, it is seen that the trial courts

¹⁷⁷ (1996) 2 SCC 384



either are not conscious of the amendment or do not realise its importance for hardly does one come across a case where the inquiry and trial of a rape case has been conducted by the court in camera. The expression that the inquiry into and trial of rape "shall be conducted in camera" as occurring in sub-section (2) of Section 327 CrPC is not only significant but very important. It casts a duty on the court to conduct the trial of rape cases etc. invariably "in camera". The courts are obliged to act in furtherance of the intention expressed by the legislature and not to ignore its mandate and must invariably take recourse to the provisions of Section 327(2) and (3) CrPC and hold the trial of rape cases in camera. It would enable the victim of crime to be a little comfortable and answer the questions with greater ease in not too familiar a surroundings. Trial in camera would not only be in keeping with the self-respect of the victim of crime and in tune with the legislative intent but is also likely to improve the quality of the evidence of a prosecutrix because she would not be so hesitant or bashful to depose frankly as she may be in an open court, under the gaze of public. The improved quality of her evidence would assist the courts in arriving at the truth and sifting truth from falsehood. The High Courts would therefore be well-advised to draw the attention of the trial courts to the amended provisions of Section 327 CrPC and to impress upon the Presiding Officers to invariably hold the trial of rape cases in camera, rather than in the open court as envisaged by Section 327(2) CrPC. When trials are held in camera, it would not be lawful for any person to print or publish any matter in relation to the proceedings in the case, except with the previous permission of the court as envisaged by Section 327(3) CrPC. This would save any further embarrassment being caused to the victim of sex crime. Wherever possible, it may also be worth considering whether it would not be more desirable that the cases of sexual assaults on the females are tried by lady Judges, wherever available, so that the prosecutrix can make her statement with greater ease and assist the courts to properly discharge their duties, without allowing the truth to be sacrificed at the altar of rigid technicalities while appreciating evidence in such cases. The courts should, as far as possible, avoid disclosing the name of



the prosecutrix in their orders to save further embarrassment to the victim of sex crime. The anonymity of the victim of the crime must be maintained as far as possible throughout. In the present case, the trial court has repeatedly used the name of the victim in its order under appeal, when it could have just referred to her as the prosecutrix. We need say no more on this aspect and hope that the trial courts would take recourse to the provisions of Sections 327(2) and (3) CrPC liberally. Trial of rape cases in camera should be the rule and an open trial in such cases an exception”.

23. Secondly, it is important to have properly sensitized judges to conduct such trials. We have noted disturbing recounts of how rape victims have been actually pulverised *in camera* while suddenly facing a group of men in a hostile environment. The purpose of an *in camera* proceeding is to create an environment for the victim, which is conducive to the conduct of a fair trial. Here, we are of the opinion that judges who actually try rape cases must be carefully chosen by the Chief Justice of the High Court and there must be a very conscientious allocation of work when rape cases are tried by such judges. We are also of the opinion that High Courts *suo motu* issue appropriate guidelines to ensure that there is a friendly and non-hostile environment in such *in camera* proceedings in respect of rape/sexual assault cases. This can be easily undertaken by the Court in the exercise of the High Court’s jurisdiction under Article 235 of the Constitution, and has, in fact, been undertaken by the Delhi High Court in *Virender v. State of NCT of Delhi*¹⁷⁸, where Gita Mittal J. directed that the following

¹⁷⁸ Judgment of the Delhi High Court dated September 29, 2009 in Criminal Appeal No. 121 of 2009.



guidelines be implemented immediately in various courts in Delhi:

"I. POLICE

(i). On a complaint of a cognisable offence involving a child victim being made, concerned police officer shall record the complaint promptly and accurately.

(ii). Upon receipt of a complaint or registration of FIR for any of the aforesaid offences, immediate steps shall be taken to associate a scientist from Forensic Science Laboratory or some other Laboratory or department in the investigations. The Investigating Officer shall conduct investigations on the points suggested by him also under his guidance and advice.

(iii). The investigation of the case shall be referred to an officer not below the rank of Sub- Inspector, preferably a lady officer, sensitized by imparting appropriate training to deal with child victims of sexual crime.

(iv). The statement of the victim shall be recorded verbatim.

(v). The officer recording the statement of the child victim should not be in police uniform.

(vi). The statement of the child victim shall be recorded at the residence of the victim or at any other place where the victim can make a statement freely without fear.

(vii). The statement should be recorded promptly without any loss of time.

(viii). The parents of the child or any other person in whom the child reposes trust and confidence will be allowed to remain present.

(ix). The Investigating Officer to ensure that at no point should the child victim come in contact with the accused.



(x) The child victim shall not be kept in the police station overnight on any pretext, whatsoever, including medical examination.

(xi). The Investigating Officer recording the statement of the child victim shall ensure that the victim is made comfortable before proceeding to record the statement and that the statement carries accurate narration of the incident covering all relevant aspects of the case.

(xii). In the event the Investigating Officer should so feel the necessity, he may take the assistance of a psychiatrist.

(xiii). The Investigating Officer shall ensure that the child victim is medically examined at the earliest preferably within twenty four hours (in accordance with Section 164A Cr.P.C) at the nearest government hospital or hospital recognized by the government.

(xiv). The Investigating Officer shall ensure that the investigating team visits the site of the crime at the earliest to secure and collect all incriminating evidence available.

(xv). The Investigating Officer shall promptly refer for forensic examination clothings and articles necessary to be examined, to the forensic laboratory which shall deal with such cases on priority basis to make its report available at an early date.

(xvi). The investigation of the cases involving sexually abused child may be investigated on a priority basis and completed preferably within ninety days of the registration of the case. The investigation shall be periodically supervised by senior officer/s.

(xvii). The Investigating Officer shall ensure that the identity of the child victim is protected from publicity.



(xviii). *To ensure that the complainant or victim of crime does not remain in dark about the investigations regarding his complaint/FIR, the complainant or victim shall be kept informed about the progress of investigations. In case the complainant gives anything in writing and requests the I.O., for investigations on any particular aspect of the matter, the same shall be adverted to by the I.O. Proper entries shall be made by I.O. in case diaries in regard to the steps taken on the basis of the request made by the complainant. The complainant, however, shall not be entitled to know the confidential matters, if any, the disclosure of which may jeopardize the investigations.*

(xix). *Whenever the SDM/Magistrate is requested to record a dying declaration, video recording also shall be done with a view to obviate subsequent objections to the genuineness of the dying declaration.*

(xx). *The investigations for the aforesaid offences shall be personally supervised by the ACP of the area. The concerned DCP shall also undertake fortnightly review thereof.*

(xxi). *The material prosecution witnesses cited in any of the aforesaid offences shall be ensured safety and protection by the SHO concerned, who shall personally attend to their complaints, if any.*

(xxii). *Wherever possible, the IO shall ensure that the statement of the child victim is also video recorded.*

II. RECORDING OF STATEMENT BEFORE MAGISTRATE

(i). *The statement of the child victim shall be recorded promptly and at the earliest by the concerned Magistrate and any adjournment shall be avoided and in case the same is unavoidable, reasons to be recorded in writing.*



(ii). *In the event of the child victim being in the hospital, the concerned Magistrate shall record the statement of the victim in the hospital.*

(iii). *To create a child friendly environment separate rooms be provided within the Court precincts where the statement of the child victim can be recorded.*

(iv). *The child victim shall not be separated from his/her parents/guardians nor taken out from his/her environment on the ground of "Ascertaining voluntary nature of statement" unless the parents/guardian is reported to be abusive or the Magistrate thinks it appropriate in the interest of justice.*

(v). *Wherever possible, the IO shall ensure that the statement of the child victim is also video recorded.*

(vi). *No Court shall detain a child in an institution meant for adults.*

III. MEDICAL EXAMINATION

(i) *Orientation be given to the Doctors, who prepare MLCs or conduct post mortems to ensure that the MLCs as well as post mortem reports are up to the mark and stand judicial scrutiny in Courts.*

(ii). *While conducting medical examination, child victim should be first made comfortable as it is difficult to make her understand as to why she is being subjected to a medical examination.*

(iii). *In case of a girl child victim the medical examination shall be conducted preferably by a female doctor.*

(iv). *In so far as it may be practical, psychiatrist help be made available to the child victim before medical examination at the hospital itself.*



(v). *The report should be prepared expeditiously and signed by the doctor conducting the examination and a copy of medical report be provided to the parents/guardian of the child victim.*

(vi). *In the event results of examination are likely to be delayed, the same should be clearly mentioned in the medical report.*

(vii). *The parents/guardian/person in whom child have trust should be allowed to be present during the medical examination.*

(viii). *Emergency medical treatment wherever necessary should be provided to the child victim.*

(ix). *The child victim shall be afforded prophylactic medical treatment against STDs.*

(x). *In the event the child victim is brought to a private/nursing home, the child shall be afforded immediate medical attention and the matter be reported to the nearest police station.*

IV. COURT

(i) *To create a child friendly environment separate rooms be provided within the Court precincts where the statement of the child victim can be recorded.*

(ii) *In case of any disability of the victim or witness involving or impairing communication skills, assistance of an independent person who is in a position to relate to and communicate with such disability requires to be taken.*

(iii) *The trials into allegations of commission of rape must invariably be in camera. No request in this behalf is necessary.*

(iv) *The Committal Court shall commit such cases to the Court of Sessions preferably within fifteen days after the filing of the chargesheet.*



(v). *The child witness should be permitted to testify from a place in the courtroom which is other than the one normally reserved for other witnesses.*

(vi) *To minimise the trauma of a child victim or witness the testimony may be recorded through video conferencing or by way of a close circuit television. If this is not possible, a screen or some arrangement be made so that the victims or the child witness do not have to undergo seeing the body or face of the accused. The screen which should be used for the examination of the child witness or a victim should be effective and installed in such manner that the witness is visible to the trial judge to notice the demeanour of the witness. Single visibility mirrors may be utilised which while protecting the sensibilities of the child, shall ensure that the defendant's right to cross examination is not impaired.*

(vii) *Competency of the child witness should be evaluated and order be recorded thereon.*

(viii) *The trial court is required to be also satisfied and ought to record its satisfaction that the child witness understands the obligation to speak the truth in the witness box. In addition to the above, the court is required to be satisfied about the mental capacity of the child at the time of the occurrence concerning which he or she is to testify as well as an ability to receive an accurate impression thereof. The court must be satisfied that the child witness has sufficient memory to retain an independent recollection of the occurrence and a capacity to express in words or otherwise his or her memory of the same. The court has to be satisfied that the child witness has the capacity to understand simple questions which are put to it about the occurrence.*

There can be no manner of doubt that record of the evidence of the child witness must contain such satisfaction of the court.



(ix) *As far as possible avoid disclosing the name of the prosecutrix in the court orders to save further embarrassment to the victim of the crime; anonymity of the victim of the crime must be maintained as far as possible throughout.*

(x) *The statement of the child victim shall be recorded promptly and at the earliest by the concerned Magistrate and any adjournment shall be avoided and in case the same is unavoidable, reasons to be recorded in writing.*

(xi) *The court should be satisfied that the victim is not scared and is able to reveal what has happened to her when she is subjected to examination during the recording of her evidence. The court must ensure that the child is not concealing portions of the evidence for the reason that she has bashful or ashamed of what has happened to her.*

(xii) *It should be ensured that the victim who is appearing as a witness is at ease so as to improve upon the quality of her evidence and enable her to shed hesitancy to depose frankly so that the truth is not camouflaged on account of embarrassment at detailing the occurrence and the shame being felt by the victim.*

(xiii) *Questions should be put to a victim or to the child witness which are not connected to case to make him/her comfortable and to depose without any fear or pressure;*

(xiv) *The trial judge may permit, if deemed desirable to have a social worker or other friendly, independent or neutral adult in whom the child has confidence to accompany the child who is testifying. This may include an expert supportive of the victim or child witness in whom the witness is able to develop confidence should be permitted to be present and accessible to the child at all times during his/her testimony. Care should be taken that such person does not influence the child's testimony.*



(xv) Persons not necessary for proceedings including extra court staff be excluded from the courtroom during the hearing.

(xvi) Unless absolutely imperative, repeated appearance of the child witness should be prevented.

(xvii) It should be ensured that questions which are put in cross examination are not designed to embarrass or confuse victims of rape and sexual abuse.

(xviii) Questions to be put in cross examination on behalf of the accused, in so far as they relate directly to the offence, should be given in writing to the presiding officer of the court who may put them to the victim or witnesses in a language which is clear and is not embarrassing.

(xix) The examination and cross examination of a child witness should be carefully monitored by the presiding judge to avoid any attempt to harass or intimidate the child witness.

(xx) It is the duty of the court to arrive at the truth and subserve the ends of justice. The courts have to take a participatory role in the trial and not act as mere tape recorders to record whatever is being stated by the witnesses. The judge has to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, the court can control the proceedings effectively so that the ultimate objective that is the truth is arrived at. The court must be conscious of serious pitfalls and dereliction of duty on the part of the prosecuting agency. Upon failure of the prosecuting agency showing indifference or adopting an attitude of aloofness, the judge must exercise the vast powers conferred under Section 165 of the Evidence Act and Section 311 of the CrPC to elicit all necessary materials by playing an active role in the evidence collecting process.



(xxi) *The judge is expected to actively participate in the trial, elicit necessary materials from the witnesses at the appropriate context which he feels necessary for reaching the correct conclusion. The judge has uninhibited power to put questions to the witness either during chief examination or cross examination or even during re-examination for this purpose. If a judge feels that a witness has committed an error or slip, it is the duty of the judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross examination.*

(xxii) *The court should ensure that the embarrassment and reservations of all those concerned with the proceedings which includes the prosecutrix, witnesses, counsels may result in camouflage of the ingredients of the offence. The judge has to be conscious of these factors and rise above any such reservations on account of embarrassment to ensure that they do not cloud the truth and the real actions which are attributable to the accused persons.*

(xxiii) *The court should ascertain the spoken language of the witness as well as range of vocabulary before recording the deposition. In making the record of the evidence court should avoid use of innuendos or such expressions which may be variably construed. For instance gandi harkatein or batamezein have no definite meaning. Therefore, even if it is necessary to record the words of the prosecutrix, it is essential that what those words mean to her and what is intended to be conveyed are sensitively brought out.*

(xxiv) *The court should ensure that there is no use of aggressive, sarcastic language or a gruelling or sexually explicit examination or cross examination of the victim or child witness. The court should come*



down with heavily to discourage efforts to promote specifics and/or illustration by any of the means offending acts which would traumatise the victim or child witness and effect their testimony. The court to ensure that no element of vulgarity is introduced into the court room by any person or the record of the proceedings.

(xxv) In order to elicit complete evidence, a child witness may use gestures. The courts must carefully translate such explanation or description into written record.

(xxvi) The victim of child abuse or rape or a child witness, while giving testimony in court should be allowed sufficient breaks as and when required.

(xxvii) Cases of sexual assaults on females be placed before lady judges wherever available. To the extent possible, efforts be made that the staff in the courtroom concerned with such cases is also of the same gender.

(xxviii) The judge should be balanced, humane and ensure protection of the dignity of the vulnerable victim. There should be no expression of gender bias in the proceedings. No humiliation of the witness should be permitted either in the examination in chief or the cross examination.

(xxix) A case involving a child victim or child witness should be prioritized and appropriate action taken to ensure a speedy trial to minimise the length of the time for which the child must endure the stress of involvement in a court proceeding. While considering any request for an adjournment, it is imperative that the court considers and give weight to any adverse impact which the delay or the adjournment or continuance of the trial would have on the welfare of the child.



V. GENERAL

(i) *Effort should be made to ensure that there is continuity of persons who are handling all aspects of the case involving a child victim or witness including such proceedings which may be out of criminal justice system. This may involve all steps commencing from the investigation to the prosecutor to whom the case is assigned as well as the judge who is to conduct the trial.*

(ii) *The police and the judge must ascertain the language with which the child is conversant and make every effort to put questions in such language. If the language is not known to the court, efforts to join an independent translator in the proceedings, especially at the stage of deposition, should be made.*

(iii) *It must be ensured that the number of times that a child victim or witness is required to recount the occurrence is minimised to the absolutely essential. For this purpose, right at the inception, a multidisciplinary team involving the investigating officer and the police; social services resource personnel as well as the prosecutor should be created and utilised in the investigation and prosecution of such cases involving a child either as a victim or a witness. This would create and inspire a feeling of confidence and trust in the child.*

(iv) *The child victim shall not be separated from his/her parents/guardians nor taken out from his/her environment on the ground of "Ascertaining voluntary nature of statement" unless the parents/guardian is reported to be abusive or the Magistrate thinks it appropriate in the interest of justice.*

(v) *Courts in foreign countries have evolved several tools including anatomically correct illustrations and figures (as dolls). No instance of such assistance has been pointed out in this Court. Extensive literature with regard to such aids being used by foreign courts is available. Subject to assistance from experts, it*



requires to be scrutinised whether such tools can be utilised in this country during the recording of the testimony of a child victim witness so as to accommodate the difficulty and diffidence faced. This aspect deserves serious attention of all concerned as the same may be a valuable tool in the proceedings to ensure that the complete truth is brought out.

(vi) No court shall detain a child in an institution meant for adults. This would apply to investigating agencies as well.

(vii) The judge should ensure that there is no media reporting of the camera proceedings. In any case, sensationalisation of such cases should not be permitted."

24. While the Committee is glad to note the directions given by Mittal J. above, a perusal of the judgment in *Virender* clearly points out that these directions have previously been given, from time to time, by various Indian courts (including the Supreme Court) and are being ignored by the police, the prosecutor and by the magistrate alike. In this respect, Mittal J. notes pithily:

"84. The issue with regard to teaching of offences regarding sexual assault and rape itself has been a source of much discussion. I am informed that there are instances of even legal educators being bashful and embarrassed about teaching such subjects. Judges and counsels are products of the legal education. The multi-faceted problem and concerns noticed above are not confined to ensuring gender justice in courts alone. In this background, it is absolutely imperative that these areas of law and the issues which have been raised herein are taken up with all seriousness. Perhaps the programme of continuing legal education needs to take a look on these questions.

85. As noted above, the directions laid down in the aforesaid judgments do not appear to be strictly



followed. Some of the trial courts are either not conscious of their powers and duties as conferred by the Code of Criminal Procedure and recognised by the Indian Evidence Act or hesitant to exercise them. These issues cannot be ignored any further."

25. It is also a matter of experience that the process of adducing evidence in trial of cases involving rape/sexual offences often turns out to be an ordeal for the victim. She is put through considerable mental harassment owing to insensitive handling of the situation by courts and lawyers. The Hon'ble Supreme Court, in *State of Punjab Vs. Gurmeet Singh* (cited supra at page 403) observed anxiously as under:

"The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

There has been lately, lot of criticism of the treatment of the victims of sexual assault in the court during their cross-examination. The provisions of Evidence Act regarding relevancy of facts notwithstanding, some defence counsel adopt the strategy of continual questioning of the prosecutrix as to the details of the rape. The victim is required to repeat again and again the details of the rape incident not so much as



to bring out the facts on record or to test her credibility but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The court, therefore, should not sit as a silent spectator while the victim of crime is being cross-examined by the defence. It must effectively control the recording of evidence in the court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime. A victim of rape, it must be remembered, has already undergone a traumatic experience and if she is made to repeat again and again, in unfamiliar surroundings what she had been subjected to, she may be too ashamed and even nervous or confused to speak and her silence or a confused stray sentence may be wrongly interpreted as "discrepancies and contradictions" in her evidence".

26. The Committee is of the opinion that in cases of rape/sexual assault, additional representation, if sought, is made available to the complainant/victim prior to and during the trial. While the sole responsibility of carriage of prosecuting a crime lies with the State, we consider it necessary to suggest that in rape/sexual assault cases the complainant and/or the victim must have the opportunity to engage his/her own lawyer. The said lawyer would also be permitted to assist the prosecutor, examine witnesses and make submissions to the Court.
27. We have also taken note of proviso to Section 24(8) of the CrPC which empowers the Court to permit the victim to engage an advocate of his/her choice to assist the prosecution under this Section. However, we would like to add that it is necessary



to confer an independent right of representation in favour of the victim. In other words, we wish to make it clear that it should be a statutory right as a part of due process of access to justice that the victim/complainant will be able to engage a lawyer of his or her choice – that is, the victim’s advocate should have a right of audience in his/her own right, and not merely in a support capacity to the prosecutor. The Committee believes that this will add an additional level of oversight in the trial process.

28. The Committee, at this stage, notes the judgment of the Supreme Court in *Delhi Domestic Working Women’s Forum v. Union of India*¹⁷⁹ and others, where the Court strongly emphasised the importance of providing legal counsel to the victim. In this respect, the Court observed:

“15. In this background, we think it necessary to indicate the broad parameters in assisting the victims of rape.

- (1) The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well acquainted with the criminal justice system. The role of the victim’s advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counseling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant’s interests in the police station represent her till the end of the case.*

¹⁷⁹ (1995) 1 SCC 14



- (2) *Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.*
 - (3) *The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.*
 - (4) *A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.*
 - (5) *The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained."*
29. In this respect, we would also like to take note of two circulars issued by the Delhi Police in 2011 and 2012, which are a positive move in this direction. The first circular¹⁸⁰ directs all investigating officers to inform the victim/complainant of the listing of the accused's bail application, so that the victim/complainant may get a chance to oppose such bail application. The circular reads as below:

"It has been observed that the complainant/victim of rape/dowry cases usually complain against the Investigation Officers that they do not inform them about the listing of bail application in the

¹⁸⁰ Circular No.5701-5800/RB/PHQ dated November 15, 2011 issued by the Commissioner of Police, Delhi. (<http://www.delhipolice.nic.in/home/CAW%20Circulars/cawcircular.htm>)



court in their cases, as a result they are not able to oppose bail application of accused and he manages to get benefit/relief from the court. The Investigating Officers are portrayed as if they colluded with the accused party. Though, there is no provision or rule laid down in Criminal Procedure to inform the complainant/victim party regarding the listing of the bail applications of accused in the court, but to keep them informed of the development and to offer an opportunity to defend their case, it is felt necessary to bring transparency in investigation process.

Henceforth, all the investigation/enquiry officers shall inform the complainant/victim of Crime Against Women cases through any possible means of communication regarding the listing of bail application in order to facilitate them to put their version before the court, if they so desire."

30. The second circular¹⁸¹ which directs that the counsel for the Delhi Commission for Women be informed of the listing of a bail matter in a rape case, so that the DCW's counsel may appear to oppose said bail. This circular reads as follows:

"1. Whenever a bail matter is listed for a rape accused, the lawyer of the Delhi Commission for Women should be immediately informed at the following numbers of Rape Crisis Cell (RCC) of the Delhi Commission for Women...

... ..

2. The representatives of the Delhi Commission for Women have assured that they would send their lawyers to oppose the bail if timely information is given to them."

The issue of consent:

¹⁸¹ Circular No. 42/2012 dated April 25, 2012 issued by the Special Commissioner of Police (Law & Order), Delhi. (<http://www.delhipolice.nic.in/home/CAW%20Circulars/cawcircular.htm>)



31. The marks of struggle cannot be the only evidence of want of consent. The 84th Law Commission Report observed that:-

“7.9 Such an attitude, though deeply regrettable, has no basis on the statutory provisions constituting the law of evidence in India. In fact, the Indian law of evidence does not, in general, lay down that a particular species of evidence should be insisted upon any proof or disproof of a particular fact. The Evidence Act lays down certain general rules which indicate the nature of facts that can be proved. If a fact to be proved as a fact in issue, its consequences are no doubt relevant. But proof of those consequences or facts is not limited to particular species of evidence. Thus if want of consent is the fact in issue, its consequence, the physical resistance or struggle is no doubt relevant and so is the consequence of that physical struggle, namely, marks on the body. But the law does not lay down that only that piece of evidence can be given.....”

We cannot agree more. This significant passage must be borne in mind at all times by the trial court.

32. We must note that the 42nd Law Commission (in the 84th Report) considered the aspect that a statement made in evidence by the complainant must be regarded as raising a presumption of want of consent. The Commission observed that:-

“We are, therefore, of the view that whether rape is alleged to have been constituted by sexual intercourse without the consent of the woman – in the case contemplated by Section 375, second clause – the court shall presume that there was want of consent, provided the prosecutrix has stated so in her evidence.”



33. The Law Commission, therefore, suggested the insertion of a new provision namely Section 114A in the Evidence Act:-

“In a prosecution for rape or attempt to commit rape where sexual intercourse is proved and the question was whether it was without the consent of the woman and the woman with whom the rape is alleged to have been committed or attempted, states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.....”

34. We find a reflection of the said Section 114A suggested by the 42nd Law Commission as one of the amendments in the Criminal Amendment Bill, 2012.

35. We must also acknowledge the path breaking approach of the Law Commission in rightly concluding that past sexual history is completely irrelevant in determining the nature of sexual relations between the complainant and the accused. The Law Commission observed:-

“Even when a harlot or a prostitute is raped, her consent at the time of the commission of the crime must be proved by evidence aliunde.....”

36. Accordingly, the Law Commission recommended that Section 155(4) needed to be amended to exclude the evidence of sexual relations with persons other than the accused. Although the said recommendation was made in 1980 by the 84th Law Commission, it took 23 years for Parliament to give effect to the amendment. It is unfortunate that Parliament amended Section 155 by omitting sub-section (4) only in the year 2003. We, therefore, are of the opinion that the failure of the State to implement such sound recommendations



made by Law Commissions for decades together depicts a low priority for protecting the rights of women. In fact, one of us, who was an author of the National Vision Legal Document, has suggested that there must be a fully established office of the Attorney General and the Solicitor General which will undertake a review of the pending recommendations of the Law Commission and the relevant laws should be amended to bring them in line with those recommendations. Prompt action in this regard is necessary.

37. We also must notice that the 42nd Law Commission was aware that even if Section 155(4) of the Evidence Act was amended, recourse could be taken to Section 146 of the Evidence Act. The 42nd Law Commission therefore recommended the addition of sub-section (4) to Section 146 to the following effect:-

“In a prosecution for rape or attempt to commit rape where the question of consent to sexual intercourse or attempted sexual intercourse is at issue, it shall not be permissible to adduce evidence or to put questions in cross examination of the prosecutrix as to a general immoral character or as to her previous sexual experience with any person other than the accused for proving such consent or the quality of the consent.....”

38. The 42nd Law Commission then stated that even this was not enough. It would be necessary to amend Section 53 of the Evidence Act and insert Section 53A which says:-

“In a prosecution for rape or attempt to commit rape where the question of consent for sexual intercourse or attempt to sexual intercourse is at issue, evidence of the character of the prosecutrix or a previous sexual



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experience with any person other than the accused shall not be on the issue of such consent or the quality of consent."

39. We recommend the enactment of Section 53A as suggested by the 42nd Law Commission.



CHAPTER TWELVE

POLICE REFORMS

1. In the view of the Committee, a comprehensive body of legislation to deal with sexual offences against women is not in itself sufficient to prevent sexual violence or to bring about gender justice. Government agencies including the police whose primary duty is to ensure the safety and security of all its citizenry, including women, who make up half of the population, must function efficiently in order to ensure that the purposes and objectives of the legislation are complied with. It is only then that issues of gender violence can be dealt with through the mechanism of the law and the Constitution of India. Urgent reform is needed in order for India to attain a standard of policing which is based upon a positive and co-operative relationship between civil society and the police service.
2. The Supreme Court, almost 17 years ago, in *Vineet Narain & Ors Vs. Union Of India & Anr*¹⁸² observed that Government agencies must be duly compelled to perform their legal obligations and to proceed in accordance with law against each and every person involved, irrespective of the height at which he is placed in the power set up. This is vital to prevent erosion of the Rule of Law and to preserve democracy in our country and is a requirement of Article 14, Part III of the Constitution. The committee re-iterates that proper procedure must be followed by the police in

¹⁸² *Vineet Narain & Ors. Vs. Union of India & Anr.* (1996) SCC (2) 199, Page 200 paragraph 2



relation to the filing of each and every complaint by an individual and investigation of the complaint irrespective of the social or economic status of the complainant.

3. The need for police reform was strongly stated by the Supreme Court, six years back, in *Prakash Singh & Ors. Vs. Union of India & Ors*¹⁸³ and in the Committee's perspective ensuring full compliance with this judgment across all of India is of utmost priority to national welfare; including the welfare of women and children and towards the weaker sections of the community. Proper policing can ensure a safer community which is accessible to all for enjoyment; especially women and children without fear of sexual harassment or violence. In *Prakash Singh* the court noted that the then Home Minister, in a letter dated 3rd April, 1997 sent to all the State Governments expressed that "*the time had come to rise above limited perceptions to bring about some drastic changes in the shape of reforms and restructuring of the police before the country is overtaken by unhealthy developments. It was expressed that the popular perception all over the country appears to be that many of the deficiencies in the functioning of the police had arisen largely due to an overdose of unhealthy and petty political interferences at various levels*". The court also noted that all the following Commissions and Committees: National Police Commission, National Human Rights Commission, Law Commission, Ribeiro Committee, Padmanabhaiah Committee and Malimath Committee had broadly come to the conclusion of urgent need for police reforms with agreement on the key areas of focus which are: (a)

¹⁸³ *Prakash Singh & Ors. Vs Union of India & Ors*, (2006) 8 SCC 1, Page 12, paragraph 26



State Security Commission at State level; (b) transparent procedure for the appointment of Police Chief and the desirability of giving him a minimum fixed tenure; (c) separation of investigation from law and order; and (d) a new Police Act which should reflect the democratic aspirations of the people.

4. Despite this, the judgment has not been substantially implemented across India and compliance by most states, as well as the Government of India, remains generally poor. The Supreme Court in *State of U.P v Chhoteylal*¹⁸⁴ observed:

"We are constrained to observe that criminal justice system is not working in our country as it should. The police reforms have not taken place despite directions of this Court in the case of Prakash Singh & Ors vs Union of India & Ors. We do not intend to say anything more in this regard since matter is being dealt with separately by a 3-Judge Bench. The investigators hardly have professional orientation; they do not have modern tools. On many occasions impartial investigation suffers because of political interference. The criminal trials are protracted because of non-appearance of official witnesses on time and the non-availability of the facilities for recording evidence by video conferencing. The public prosecutors have their limitations".

5. The Government has not complied with the letter and spirit of the directions made in *Prakash Singh*. We note that the Commonwealth Human Rights Initiative has undertaken a detailed review of compliance by the Central Government with the

¹⁸⁴ State of U.P V Chhoteylal, (2011) 2 SCC 550, Page 567, paragraph 36



Prakash Singh directions¹⁸⁵. The Committee agrees with the salient points contained in this CHRI report which have been summarized below:

- a) (Directive One) In relation to the State Security Commission two affidavits have been filed which seek clarification and modification. The Government of India has proposed creating a Central Committee for the Union Territory Police instead of a State Security Commission¹⁸⁶. The Governments' proposals mean that instead of a State Security Commission in each union territory, there would be one Central Committee. We also believe that the constitution of the Central Committee for the Union Territory Police does not comply with the directions of the apex court. It is a Governmental body which does not include the leader of the opposition and independent members, whilst the Joint Secretary has been included. This defeats the very objective of independence which the Supreme Court sought to achieve through its directives.
- b) (Directive Two) In relation to the selection and tenure of the DGP the Government of India has expressed reservations about the involvement of the UPSC in selection of the DGP. This is on the basis that if the UPSC is involved in appointment of the DGP, then the UPSC charter and the UPSC (Exemptions from Consultation) Regulations must

¹⁸⁵ *Government of India Compliance with Supreme Court Directives on Police Reform*, http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/state_compliance_analysis/govt_of_india_chri_compliance_analysis.pdf, <http://www.humanrightsinitiative.org/> Commonwealth Human Rights Initiative

¹⁸⁶ Para 16 (iv), page 15, Application for directions on behalf of the Union of India, date 12 February 2007



be amended¹⁸⁷. This committee agrees with the view that this is an attempt to excuse non-compliance with the directive. As CHRI states, no formal legislative amendment process is required since the UPSC can change its own Regulations. In this committee's opinion the rationales of impartiality and autonomy from the Government which lie behind UPSC involvement are urgent in policing today.

With respect to tenure, the Government asserts that to ensure two year fixed tenure irrespective of superannuation would need changing of the All India Service Rules¹⁸⁸. We think in line with the CHRI report, that the All India Service Rules do not have any bearing on the Government discretion to fix tenure for any position. No amendment has been made in the All India Service Rules to guarantee the tenure of police posts such as the Director of the Central Bureau of Investigation and the Director of the Intelligence Bureau. These have been ensured through Government resolutions.

- c) In relation to the tenure of the Chief of the Central Police Organisations; the Government of India has not agreed to ensure two years tenure for Police Chiefs of the Central Police Organisation as suggested in Directive 7 of the Supreme Court. We again also believe that two years tenure is vital for continuity of leadership and good management.

¹⁸⁷ Para 16 (xi), page 17 Affidavit on Behalf of the Union of India in Compliance with the Order dated 22.9.2006, date 3rd January 2007.

¹⁸⁸ Para 16, (x) Affidavit on Behalf of the Union of India in compliance with order dated 22.09.2006, date 3rd January 2007



- d) (Directive Three) In relation to the tenure of police officers on operational duties: Directive 3 of the Supreme Court states that the tenure must be a minimum of two years. We are again concerned with the Central Government's reluctance to comply fully with this provision¹⁸⁹. We take the view that the Supreme Court in its directive intended that in all cases there should be a two year operational tenure of 2 years apart from in cases of misconduct or where disciplinary action is being taken.
- e) (Directive Four) In relation to the separation of investigation from law and order the majority of the Union Territories have not implemented the directive and the two UT's which have, are only partially compliant. We take the view that the Central Government must comply with this directive in full.
- f) (Directive Five) In relation to the Police Establishment Board, the Government of India asserts that the Police Establishment Board (PEB) cannot have the function of an appellate authority since this would dilute the functional control of the police chief¹⁹⁰. We take the view, in agreement with CHRI, that the purpose of the PEB is to ensure that postings, transfers and appointments are made purely by a departmental body so that unwarranted political or extraneous influences are not exercised. For this to be achieved, the appellate function of the PEB is necessary. This committee is of the view that it is vital for police accountability

¹⁸⁹ Para 16 (xii), Page 18, Affidavit on Behalf of the Union of India in compliance order dated 22.09.2006, date 3rd January 2007.

¹⁹⁰ Para 16 (xvi), page 19, Affidavit on Behalf of Union of India in compliance of order dated 22.09.2006, date 3rd January 2007



that there should not be inappropriate political interference in policing matters. The functions of the PEB which were Directed by the Supreme Court are crucial to ensuring that the Government only governs rather than rules the police.

- g) (Directive Six) In relation to the Police Complaints Authority, the Government of India challenges the efficacy of such a complaints authority on the grounds that numerous mechanisms already exist and it would simply add to pre-existing mechanisms without increasing the efficacy of any one of them.¹⁹¹ We agree with the viewpoint that there must be an independent oversight body to ensure the police are fulfilling their obligations and duties in the law. This is vital to improve the relationship between public and police. The Government argument that this would unfairly single out the police for complaints is of no merit. The responsibility of the police to the citizenry requires that every complaint of misconduct is properly investigated. It is absolutely crucial that police conduct should be independently monitored in relation to rape or any attempt to commit rape. In addition we take the view that any sexual offence, attempt to commit a sexual offence or abetment of the commission of a sexual offence including as a result of 'turning of a blind eye' should be serious misconduct into which the Police Complaints Authority must be able to investigate. We also take the view as stated below that the following should count as 'serious misconduct' to allow the Police Complaints Authority to investigate: inordinate delay, fabrication of evidence, death in police action,

¹⁹¹ Para 16, (xviii), page 20, Affidavit on Behalf of the Union of India in compliance with order dated 22.09.2006, date 3rd January 2007



torture which does not amount to grievous hurt or harassment of a complainant who seeks to register a complaint relating to a sexual offence. If these cannot be treated as serious misconduct then we are of the view that the Police Complaints Authority should be able to investigate all misconduct in any case.

- h) (Directive Seven) In relation to the National Security Commission, the Government has created the National Security and Central Police Personnel Welfare (NSCPP). We think that this must carry out the specific functions set out by the Apex Court and that these functions must not be diluted as they presently appear to be¹⁹². The composition of this body should also comply with that indicated by the Apex Court in its seventh directive. The Apex Court stated that the heads of the Central Police Organisation should be members of the NSCPP. We take the view that the NSCPP must not be overburdened with Governmental officials to avoid unwarranted political interferences.

6. State governments also are largely not in compliance¹⁹³. As of 8th November 2010 the

¹⁹² Para 5, Office Memorandum No. 255019/15/2005-PM-II, dated 2nd January 2007.

¹⁹³ Justice K.T Thomas Monitoring Committee Report, Part V, Findings and Conclusions paragraphs 18 - 30 see also Annexure 1 and Annexure 2 of Report.

Police Reforms India, State Wise Compliance with the Supreme Court Directives in the Prakash Singh Case,

Commonwealth Human Rights Initiative

<http://www.humanrightsinitiative.org/>

http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&catid=91%3Ashiva&id=751%3Astate-wise-compliance-with-the-supreme-court-directives&Itemid=98

CHRI, National Compliance Chart :
<http://www.humanrightsinitiative.org/programs/aj/police/india/>



Supreme Court issued notices to the States of Maharashtra, Uttar Pradesh, Karnataka and West Bengal for total non-compliance following the findings of the Monitoring Committee which was set up based on Supreme Court directions¹⁹⁴. The Committee notes that certain states have made attempts to comply with the directives but we feel that mere attempts are not sufficient and total compliance is required. We have enclosed the Commonwealth Human Rights Initiative report on State Compliance with the Directives in the annexure, for reference, this paper studies State compliance in greater detail¹⁹⁵. This Committee does not have the time or capacity to conduct detailed investigation into State compliance. The committee urges all states to fully comply with all six Supreme Court directives in order to tackle systemic problems in policing which exist today.

7. Non-implementation has resulted in deprivation of the benefits which police reforms would bring to the protection of fundamental rights of the ordinary people. The Committee takes the view that the majority of the fundamental rights set out in Part III of the Constitution require an efficient, sensitive and impartial police force for fulfillment in the way the drafters of the Constitution intended. Articles 14, 15, 19 and 21 can only be protected if those who feel that they face the threat of a sexual offence can approach any police officer for protection or those who have been the victim of any sexual offence can register an FIR at the nearest police station/ online and feel that their

¹⁹⁴ Notice issued by Supreme Court 8th November 2010.

¹⁹⁵ Police Reforms India, State wise compliance with the Supreme Court Directives in Prakash Singh case, Commonwealth Human Rights Initiative, <http://www.humanrightsinitiative.org/>



complaint will be properly investigated; without delay, intimidation, harassment or prejudice and irrespective of their economic or social status. After all, the right of a person to complain against violation of his or her dignity by having the FIR properly registered and the complaint properly investigated has to be read into the requirement of life with dignity guaranteed in Article 21.

8. We believe that if the Supreme Court's directions in *Prakash Singh* are implemented, there will be a crucial modernization of the police to be service orientated for the citizenry in a manner which is efficient, scientific, and consistent with human dignity. The Committee believes that this will be reflective of the need of society today and not that of control or suppression as in the colonial era.
9. The committee takes the view that in line with *Prakash Singh*, implementation of the Supreme Court directions need not await the framing of a new Police Act. Until an Act, on the lines of the Model Police Act, proposed by the Sorabjee Drafting Committee, or that which is annexed to the 8th report of the National Police Commission, is passed by Parliament and implemented across the country, the seven directions in *Prakash Singh* must be complied forthwith.
10. To revisit the *Prakash Singh* directions, the Seven Directives are as follows:
 - a. **State Security Commissions:** The State Governments are directed to constitute a State Security Commission in every State to ensure that the State Government does not exercise unwarranted influence or pressure



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on the State police and for laying down the broad policy guidelines so that the State police always acts according to the laws of the land and the Constitution of the country. This watchdog body shall be headed by the Chief Minister or Home Minister as Chairman and have the DGP of the State as its ex- officio Secretary. The other members of the Commission shall be chosen in such a manner that it is able to function independent of Government control. For this purpose, the State may choose any of the models recommended by the National Human Rights Commission, the Ribeiro committee or the Sorabjee Committee, which are as under:

NHRC	Ribeiro Committee	Sorabjee Committee
a. Chief Minister/HM as Chairman;	a. Minister i/c Police as Chairman	a. Minister i/c Police (ex-officio Chairperson)
b. Lok Ayukta, or in his absence, a retired Judge of High Court to be nominated by Chief Justice or a Member of State Human Rights Commission.	b. Leader of the Opposition. c. Judge sitting or retired, nominated by Chief Justice of High Court.	b. Leader of Opposition. c. Chief Secretary. d. DGP (ex-officio Secretary)
c. A sitting or retired Judge nominated by	d. Chief Secretary	e. Five independent Members.



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Chief Justice of High Court.	e. Three non-political citizens of proven merit and integrity.	
d. Chief Secretary	f. DG Police as Secretary	
e. Leader of Opposition in Lower House.		
f. DGP as ex-officio Secretary		

The recommendations of this Commission shall be binding on the State Government. The functions of the State Security Commission would include laying down the broad policies and giving directions for the performance of the preventive tasks and service oriented functions of the police, evaluation of the performance of the State police and preparing a report thereon for being placed before the State legislature.

b. Selection and Minimum Tenure of DGP:

The Director General of Police of the State shall be selected by the State Government from amongst the three senior-most officers of the Department who have been empanelled for promotion to that rank by the Union Public Service Commission on the basis of their length of service, very good record and range of experience for heading the police force. And, once he has been selected for the job, he should have a minimum tenure of at least two years irrespective of his date of superannuation.



The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon any action taken against him under the All India Services (Discipline and Appeal) Rules or following his conviction in a court of law in a criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties.

- c. **Minimum Tenure of I.G. of Police & other officers:** Police Officers on operational duties in the field like the Inspector General of Police in-charge Zone, Deputy Inspector General of Police in-charge Range, Superintendent of Police in-charge district and Station House Officer in-charge of a Police Station shall also have a prescribed minimum tenure of two years unless it is found necessary to remove them prematurely following disciplinary proceedings against them or their conviction in a criminal offence or in a case of corruption or if the incumbent is otherwise incapacitated from discharging his responsibilities. This would be subject to promotion and retirement of the officer.
- d. **Separation of Investigation:** The investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people. It must, however, be ensured that there is full coordination between the two wings. The separation, to start with, may be effected in



towns/urban areas which have a population of ten lakhs or more, and gradually extended to smaller towns/urban areas also.

- e. **Police Establishment Board:** There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The Establishment Board shall be a departmental body comprising the Director General of Police and four other senior officers of the Department. The State Government may interfere with decision of the Board in exceptional cases only after recording its reasons for doing so. The Board shall also be authorized to make appropriate recommendations to the State Government regarding the posting and transfers of officers of and above the rank of Superintendent of Police, and the Government is expected to give due weight to these recommendations and shall normally accept it. It shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotion/transfer/disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State.



- f. **Police Complaints Authority:** There shall be a Police Complaints Authority at the district level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. Similarly, there should be another Police Complaints Authority at the State level to look into complaints against officers of the rank of Superintendent of Police and above. The district level Authority may be headed by a retired District Judge while the State level Authority may be headed by a retired Judge of the High Court/Supreme Court. The head of the State level Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice; the head of the district level Complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him.

These Authorities may be assisted by three to five members depending upon the volume of complaints in different States/districts, and they shall be selected by the State Government from a panel prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission. The panel may include members from amongst retired civil servants, police officers or officers from any other department, or from the civil society. They would work whole time for the Authority and would have to be suitably remunerated for the services rendered by them. The Authority may also need the



services of regular staff to conduct field inquiries. For this purpose, they may utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organization. The State level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody. The district level Complaints Authority would, apart from above cases, may also inquire into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority. The recommendations of the Complaints Authority, both at the district and State levels, for any action, departmental or criminal, against a delinquent police officer shall be binding on the concerned authority.

- g. **National Security Commission:** The Central Government shall also set up a National Security Commission at the Union level to prepare a panel for being placed before the appropriate Appointing Authority, for selection and placement of Chiefs of the Central Police Organisations (CPO), who should also be given a minimum tenure of two years. The Commission would also review from time to time measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper coordination between them and that the forces are generally utilized for the purposes they were raised



and make recommendations in that behalf. The National Security Commission could be headed by the Union Home Minister and comprise heads of the CPOs and a couple of security experts as members with the Union Home Secretary as its Secretary.

11. The Committee takes the view that when a new Police Act is passed by Parliament, it should be consistent substantially with the Model Police Act, 2006 proposed by the Sorabjee Drafting Committee and the Police Act annexed to the 8th report of the National Police Commission. It should clearly set out the duties and responsibilities of the police towards the people. One such duty must be to prevent the harassment of women and children in public places and in public transport which includes stalking, the making of objectionable gestures, signs, remarks or harassment caused in any way. Until the new Police Act is passed and implemented, this duty should in letter and spirit be performed by all police officers across the country. We are aware that the Bureau of Police Research and Development of India has issued guidelines for the training of Sub-Inspectors of police¹⁹⁶: Paragraph 3.3 of these guidelines sets out the 'Duties of the Police towards women, poor persons and general public'. Of these, paragraph 3.3.4 sets out the duty to provide immediate medical aid to victims of road accidents or victims of other crimes or police action and inform their families about the accident or incident. 3.3.4 sets out the duty to advise the victims of road accidents about their rights and privileges and assist accident victims or their heirs or their dependents

¹⁹⁶ Bureau of Police Research and Development, *Training Manual for Police Sub-Inspectors*, Page 6, Section 3.3



with such information and documents as would facilitate compensation claims. 3.3.6 sets out the duty to prevent harassment of women, children and weaker sections of society. 3.5 also states that all the powers of the police are subject to fundamental rights guaranteed in the constitution. We are glad that such guidelines exist but the need is to ensure training of the police personnel to imbibe these duties so that each police man or woman practices them during their patrol.

12. The Committee would like to point out some of the issues it has noted with regards to the Model Police Act, 2006 proposed by the Sorabjee Drafting Committee, in relation to the prevention of sexual offences. We urge that the following points should be taken into account, in relation to the issue of accountability, while drafting the new Police Act. Until such an Act is drafted, these points should be duly taken account of in the constitution and functioning of the Police Complaints Authority directed by the Supreme Court. In the committee's view the observations noted will bring about a transformation in the interaction of the police with the public. These are:
 - a) First, in relation to the functions and powers of the Complaints Authority which is the Police Accountability Commission in Chapter XIII, we take the view that mandatory inquiries into only "serious misconduct" as defined in the Act would be too narrow. This would according to Section 167, Chapter XIII include only any act or omission of a police officer that leads to or amounts to: (a) death in police custody; (b) grievous hurt, as defined in Section 320 of the Indian Penal Code, 1860, (c) rape or attempt to commit rape or (d) arrest or detention without due process of law. All



other cases may only be the subject of inquiry by the commission if referred to by the Director General of Police and if, in the opinion of the commission, the nature of the case merits an independent inquiry. We take the view that serious misconduct should include the commission of or any attempt to commit any sexual offence by any police officer or the abetment of any sexual offence by a police officer. This must include the turning a blind eye of the commanding police officer to the commission of such offences by his subordinates. The committee also feels that all types of misconduct should require mandatory investigation by the Police Accountability Commission. This would include: fabrication of evidence, inordinate delay, death in police action, torture which does not amount to grievous hurt and harassment of a complainant who seeks to register a complaint relating to a sexual offence.

- b) Second, we are concerned that the powers of the Police Accountability Commission in Chapter XIII are too limited. In cases where the complainant alleges bias or is not satisfied with the departmental inquiry process in relation to a complaint, the Police Accountability Commission should be able to call for evidence relating to the departmental inquiry in addition to the police report. The Police Accountability Commission on scrutiny should then have the power to either direct a new inquiry or in cases of inordinate delay order the inquiry to be completed within a reasonable time period or decide to make the inquiry itself in the interests of justice.
- c) Third, we suggest that the powers of the Police Accountability Commission should cover the



power to search police stations and seize relevant documents if the concerned police officers are not co-operating with the Commission and if it has strong reason to believe that evidence relating to the subject matter of the inquiry may be found there. This power will have to be subject to the provisions of Section 100 of the Code of Criminal Procedure, 1973 as far as applicable and will have to be carefully circumscribed to prevent abuse.

13. In addition to the suggestions listed in *Prakash Singh* and the issues raised in relation to accountability of policing we take the view that the following steps in the areas outlined below should also be implemented forthwith across India:

Filing and Registration of Complaints:

- a) This Committee recommends that the guidelines issued for the police by the High Court of Delhi in *Delhi Commission for Women v. Lalit Pandey and another*¹⁹⁷ must be mandatory and immediately followed in relation to all sexual offence complaints across the Country. This is as per Standing Order No. 303/2010 issued by the Delhi Police in the *Guidelines to be Followed by the Police Whilst Investigating Cases of Rape*.

Of these, the guideline that the duty officer, immediately, upon receipt of the complaint/information must intimate the "Rape Crises Cell" on its notified helpline number is especially important. The Rape Crisis Cell must then send to the complainant an appropriately qualified person to provide legal assistance in the filing of the FIR and to provide counseling to the complainant.

¹⁹⁷ Writ Petition (Crl.) No. 696/2008.



- b) All police stations should have CCTV's at the entrance of the police station, in police cells and in the questioning room. All PCR vans should also contain CCTV's.

The CCTV's must not be tampered with and every month an independent expert should ensure that the CCTV footage has not been tampered with. This is an additional method to ensure safety in police stations and that proper procedure is followed in handling complaints, the recording and filing of FIR's and in treatment of those in police custody. We understand that this may not be possible in all rural areas but feel that where possible CCTV's should be installed.

- c) In addition to every individual being able to register an FIR at any police station irrespective of the jurisdiction in which the crime was complained of in writing, every individual must also be able to register his complaint online on a designated website. After this a complaint number should be automatically generated so the complainant can track the FIR.

The same complaint would then be generated at the nearest police station and a copy would also be provided to an ombudsman office located in every district. It will still be the case that an FIR cannot be registered anonymously and the individual who has registered an FIR online will then have to go to any police station to verify his identity and the FIR. The Delhi Police already have the facility for online registration and tracking of FIR. Something of this nature must be replicated and made operational across the country. The FIR should also be recorded on a national online



database for ready accessibility by the complainant.

- d) In this Committee's view every police officer on patrol is under a moral, legal and Constitutional duty to assist the victim of any traffic accident or crime irrespective of the jurisdiction in which the crime occurred or irrespective of the jurisdiction of the police station from which such officers are operating. This is especially important in relation to sexual offences.

The Supreme Court, in *P.T. Parmanand Katara vs Union of India*¹⁹⁸, held that:

"There can be no second opinion; that preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man".

This judgment was given primarily in the context of medical professionals but the court also intended it to apply to police. With regards to the police the court stated:

"There is also no doubt that the effort to save the person should be the top priority not only of the medical professional but even of the police or any other citizen who happens to be connected with the matter or who happens to notice such incident or situation".

According to the Supreme Court, this was a necessary consequence of Article 21 of the Constitution which casts the obligation on the state to preserve life. The members of this committee think that this has to mean that all the agencies of

¹⁹⁸ Parmanand Katara Vs Union of India & Ors, (1989) 4 SCC 286



the State have to do their utmost to preserve life and no other jurisdictional or procedural issue can be more important.

The Supreme Court also went on to dismiss the fear that police officers/members of the public who render assistance would then be treated as wrong doers.

Further, in the Circular issued by the Government of India, Department of Road Transport and Highways on 18th February 2004¹⁹⁹: Paragraph 4 states: *“At times, the District Staff and the PCR vans also delay the removal of the injured to the hospital on account of various jurisdictional formalities or other duties regarding photographs etc...Without waiting for the photographer etc. the injured has to be removed to the hospital by the quickest means”*. Paragraph 5 states: *“Members of the public, who rendered voluntary help to persons injured, should not be unnecessarily questioned and detained at police stations”*. Paragraph 6: *“All concerned people who bring accident victims to hospitals should be treated with utmost courtesy and not harassed in any way”*. This has to be put into practice in all cases.

Amenities in Police Stations

- e. Many crimes of sexual violence or gender violence are facilitated in police stations because of lack of essential and separate amenities for women for example separate lock ups for men and women and separate bathrooms. We also feel that there should be a separate waiting room for visitors to prevent

¹⁹⁹ Government of India Circular, Department of Road Transport and Highways, 18th February 2004, paragraph 4.



intimidation and harassment of those trying to register complaints of sexual violence or trying to harass an accused. Infrastructure in police stations should be improved to provide the amenities which are mentioned.

Scientific Investigation

- f. The investigative branch of the police should have the appropriate scientific equipment and training to be able to conduct the highest standards of investigation in every case. In relation to sexual offences this includes in the collection of forensic, medical and written evidence and preservation and investigation of crime scenes.
- g. The investigative branch of the police should also be appropriately trained to investigate sexual offence cases.
- h. We have noted that under Section 17 of the Model Police Act 2006²⁰⁰ proposed by the Sorabjee Drafting Committee, that there are provisions for Technical and Support Services. This section provides that the State Government shall create and maintain such ancillary technical agencies and services, under the overall control of the Director General of Police, as considered necessary or expedient for promoting efficiency of the Police Service. The Act also provides that the service must create a full-fledged Forensic Science Laboratory at the State-Level, a Regional Forensic Science Laboratory for every Police Range and mobile Forensic Science Unit for every district, with

²⁰⁰ Model Police Act, 2006, Section 17, Parts (1) – (5)



appropriate equipment and scientific manpower, in keeping with the guidelines laid down by the Directorate of Forensic Science or the Bureau of Police Research and Development of the Government of India. The State Government must also ensure regular maintenance of all scientific equipment and regular replenishment of consumables in the forensic laboratories as well as take measures to encourage and promote the use of science and technology in all aspects of policing.

We think that implementation of these recommendations is necessary for the police to be able to carry out their investigative task to the desired standard.

Police Performance Measurement

- i. We are of the view that there need to be substantially improved auditing mechanisms in place to monitor police performance. The current mechanisms are inadequate and are a poor reflection of police performance. This is in the interests of both the general public and duty police officers who are judged primarily based on the number of cases 'solved' and crimes registered. The Committee thinks that police auditing methods need to be urgently reviewed. We suggest that qualitative as well as quantitative measures should be used. This would help to incentivize the improvement of police performance. Such qualitative indicators should be of the following type: overall public satisfaction, perceptions of increased safety and security for women and other vulnerable groups, satisfaction with police treatment whilst registering FIR, approachability, as well



as hard indicators such as prevention of frequent occurrences like communal violence. This will help to bring about police accountability and therefore also tackle institutional bias as well as perceptions of bias.

Police Welfare

- (i) In our opinion better police welfare will facilitate better police performance. The committee notes that the police force is often stretched for resources and personnel.
- (ii) The committee takes the view that as proposed in Section 185 of The Model Police Act 2006, drafted by the Sorabjee Drafting Committee, there must be an establishment of a **Police Welfare Bureau** headed by an officer not below the rank of Deputy Inspector General of Police, in the office of the Director General of Police to advise and assist him in the implementation of welfare measures for police personnel. The Bureau should also have representation from all ranks of the police force including some in advisory capacity.
- (iii) The functions and duties of the bureau must include the administration and monitoring of welfare measures for police personnel including healthcare in respect of chronic and serious ailments and including post-retirement health care schemes for personnel and their dependents. There must also be full and liberal medical assistance to those police personnel who suffer injury in the course of performance of duty. The bureau must ensure financial security of the next of kin of those dying in harness and post retirement financial security plans. As proposed in the Act it is also the



duty of the welfare bureau to provide for group housing and education and training for the dependents of the police personnel. Further there must be appropriate legal facilities for defence of police officers facing court proceedings in relation to *bona fide* discharge of duty. Besides laying down norms and policies relating to police welfare, the Bureau must also act as a monitoring agency for various police units as mentioned in The Model Police Act 2006.

Police Presence and Community Policing:

- j. The total number of police personnel present on the street needs to be increased. It is especially important that the number of female police personnel on patrol and on duty in police stations is increased; so that females feel comfortable in complaining of sexual harassment or threats of a sexual nature to any member of the police.
- k. To augment the police force, there is need to develop community policing by involving the local population. Willing volunteers should be properly and intensively trained before being able to police the community. This would also motivate them to perform their duty as citizens. Respectable persons in each locality could also be appointed Special Executive Magistrates under Section 21, Cr.P.C. and invested power to deal with the traffic offences and other minor offences including eve-teasing. In addition, to assisting the maintenance of law and order in the locality, their presence would inspire greater confidence of safety in their locality.



1. In this regard, the Government may like to also consider maximizing the use of volunteer forces which are already constituted after ensuring proper training of the kind needed to tackle the offences which are the subject of this report. The Committee does not have the capacity to study the training, number or jurisdiction of these forces such as the Home guards in detail and make recommendations but this is something which is left to the Government to consider as an option after further thought and research.

14. The protection of women from harassment and threats of a sexual nature as well as all other sexual offences is dependent on the quality of policing in our country. The people trust the police for prevention and investigation of sexual offences. It is necessary to make systemic changes as suggested. This would inculcate Constitutional values in the police force and the moral vision required for the performance of its statutory duties in a Republican democracy; where the political sovereignty ultimately vests in the people.



CHAPTER THIRTEEN

ELECTORAL REFORMS

1. This committee is of the opinion that electoral reform within India is integral to the achievement of gender justice and the prevention of sexual offences against women. This Committee is concerned about the integrity of the legislative process, in particular with regard to the reform of the criminal justice system, if lawmakers themselves have serious charges - of which cognizance has been taken by a court of competent jurisdiction - pending against them. We have consulted with the Election Commission during the course of the preparation of this Report through various letters addressing queries to them. Specifically, we addressed two letters to them dated 7th January 2013, and subsequently through two more letters dated 11th January 2013 and the 14th January 2013 we sent a further request for information. Each of our letters to the Election Commission form a part of the Appendices of this Report. The Election Commission sent us a response dated 11th January 2013 adverting only to the two letters dated 7th January 2013.
2. By the two letters of 7th January 2013, we had asked the Election Commission of India a number of questions. By our first letter, we had asked the following questions:-
 1. *Does the ECI have/proposes to put in place a policy to deal with electoral candidates who have been accused of, charged with, or convicted of offences of rape and sexual abuse/sexual harassment, under the provisions of the IPC or otherwise? If yes, please*



provide details of such a policy, as well as details of how the same is being implemented.

2. *Please provide details of all persons who have been disqualified by the ECI under Section 8(1)(a) of the RP Act for offences relating to rape and/or cruelty towards a woman by her husband and/or his relatives?*
3. *Please provide details (for the period 01.01.2004 to 31.12.2012) of all such electoral candidates who have disclosed, pursuant to Section 33A(1) of the RP Act, the existence of charges having been framed against them under the following provisions:*
 - (i) *Sections 363 to 369 of the IPC;*
 - (ii) *Sections 371 to 373 of the IPC;*
 - (iii) *Sections 376 to 376 A-D of the IPC;*
 - (iv) *Section 354 of the IPC;*
 - (v) *Section 498A of the IPC;*
 - (vi) *Section 509 of the IPC;*
 - (vii) *Provisions of the Immoral Traffic (Prevention) Act, 1956;*
 - (viii) *Provisions the Protection of Children from Sexual Offences Act, 2012;*
 - (ix) *Provisions of the Indecent Representation of Women (Prohibition) Act,1986; and*
 - (x) *Provisions of the Dowry Prohibition Act, 1961*
 - (xi) *Is the ECI aware as to whether any political parties in India have internal policies/codes of conduct through which they can verify and prevent candidates who are accused of, charged of, or convicted of criminal offences generally, and specifically those set out in paragraph 3(i) to (viii) above? If yes, please provide details of the same.*
 - (xii) *Is the ECI aware of instances where political parties have refused nominations to candidates on grounds of them having been accused of, charged of, or convicted of criminal offences generally, and specifically those set out in*



paragraph 3(i) to (viii) above? If yes, please provide details of the same.

3. By our second letter, we had asked:-

1. *Does the ECI have a handbook or manual prescribing guidelines for appointment of returning officers in elections? If yes, please provide a copy of the same.*
2. *Does the ECI have a handbook or manual for training returning officers in elections? If yes, please provide a copy of the same.*
3. *Does the ECI verify all details contained in disclosure affidavits filed by electoral candidates under the provisions of the RP Act, especially details pertaining to disclosures pertaining to accusations, charges, convictions against candidates under the following provisions of law:*
 - (i) *Sections 363 to 369 of the IPC;*
 - (ii) *Sections 371 to 373 of the IPC;*
 - (iii) *Sections 376 to 376 A-D of the IPC;*
 - (iv) *Section 354 of the IPC;*
 - (v) *Section 498A of the IPC;*
 - (vi) *Section 509 of the IPC;*
 - (vii) *Provisions of the Immoral Traffic (Prevention) Act, 1956;*
 - (viii) *Provisions the Protection of Children from Sexual Offences Act, 2012;*
 - (ix) *Provisions of the Indecent Representation of Women (Prohibition) Act, 1986; and*
 - (x) *Provisions of the Dowry Prohibition Act, 1961*

If yes, what is the process of verification undertaken by the ECI in this respect?

4. The Election Commission in its response has stated that it had sent a recommendation to the Government as far back as 1998 that candidates should be disqualified even prior to conviction for serious offences. The Commission's



recommendation was that a person against whom charges have been framed by a court for an offence punishable with imprisonment of 5 years or more should stand disqualified from contesting election. We have noticed that the said proposal was repeated in 2004 and has clearly been ignored by Parliament.

5. We appreciate that the Commission does not have the legislative powers to add or modify these provisions since these fall within the purview of a law made by Parliament, i.e., Representation of People Act, 1951. However, we would like to recommend an amendment to the Representation of People Act, 1951 by which the spirit of the Election Commission's suggestion is carried out. We are also of the opinion that arguments on framing of charge themselves take a long time in Court. For us, it is sufficient if a charge sheet has been filed and cognizance has been taken by a Court for the person concerned to be disqualified from contesting elections to either House of Parliament or to the Legislature of a State. Accordingly, we suggest that in Section 8(1) of the Representation of People Act, 1951 may be amended as follows:-

"8. Disqualification on cognizance or conviction for certain offences.

(1) A person, in respect of whose acts or omissions a court of competent jurisdiction has taken cognizance under section 190(1)(a),(b) or (c) of the Code of Criminal Procedure, 1973 (Act 2 of 1974) or, has been convicted by a court of competent jurisdiction, with respect to an offence punishable under –

(a) the Indian Penal Code, 1860 (Act 45 of 1860) which are listed in Schedule I ; or



- (b) the Protection of Civil Rights Act, 1955 which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or*
- (c) section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (52 of 1962); or*
- (d) sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or*
- (e) the Foreign Exchange (Regulation) Act, 1973 (76 of 1973); or*
- (f) the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or*
- (g) section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or*
- (h) section 3 (declaration of an association as unlawful) or any offence enumerated in Chapter IV of the (punishment for terrorist activities) of the Unlawful Activities (Prevention) Act, 1967; or*
- (i) any provision of the Prevention of Terrorism Act, 2002; or*
- (j) any offences enumerated in chapter III of the Prevention of Corruption Act, 1988; or*
- (j) section 7 (offence of contravention of the provisions of sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or*
- (k) section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) of clause (a) of sub-section (2) of section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act;[or]*
- (l) section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991, or*
- (m) section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence of*



preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971); or

(n) any law providing for the prevention of hoarding or profiteering; or

(o) any law relating to the adulteration of food or drugs; or

(p) any provisions of the Dowry Prohibition Act, 1961 (28 of 1961); or

(q) any provisions of the Commission of Sati (Prevention) Act. 1987 (3 of 1988),

shall be disqualified from the date of such taking of cognizance under section 190(1)(a),(b) or (c) of the Code of Criminal Procedure, 1973 (Act 2 of 1974) or conviction, as the case may be, and shall continue to be disqualified for a further period of six years from the date of his release upon conviction. It is clarified that, in the event of acquittal of the candidate, disqualification shall continue to operate from the date of taking cognizance under section 190(1)(a),(b) or (c) of the Code of Criminal Procedure, 1973 (Act 2 of 1974) till the date of acquittal."

6. However, we must say that on the second question asking the Commission to provide details of all persons who have been disqualified by the Election Commission under 8(1)(a) for offences relating to rape and or cruelty towards woman by her husband and her relatives, we have received the following answer:-

"Disqualification under Section 8(1) of the Representation of People Act, 1951 is automatic by operation of the provisions therein. The Election Commission is not required to issue any separate orders or bring out any list of persons disqualified under Section 8. Information about persons convicted for various offences would be available with the Home/Police departments of the Governments. The Commission does not have information about cases or convictions."



7. We are unable to subscribe to the suitability of this view of the Election Commission. In the first place, unless and until the Election Commission is informed about a conviction, the creation of a consequential vacancy upon the operation of the disqualification would be left to the faithful reporting of a conviction by the concerned government (Central or State). While the disqualification takes place by operation of law, it is certainly the duty of the Election Commission to take consequential action which may occur on the vacation of the seat caused by such disqualification. We request the Election Commission that henceforth, they must impose a duty forthwith on all candidates against whom charges are pending, to give progress reports in their criminal cases every three months. It is to be noted that such a direction does not require any legislative amendment and hence falls squarely within the purview of the plenary powers of the Election Commission. It will indeed be unfortunate if a person has in fact been convicted and the Election Commission has not been notified and thus such person continues to function as a Legislator. It will be a complete anathema to democracy.
8. On the third question about the electoral candidates who have disclosed in accordance with Section 33A(1) of the R.P. Act, cases in which charges have been framed by a court of competent jurisdiction against them under Sections 363 to 369, 371 to 373, 376 to 376A to D, 354 of the IPC, 498A, 509, provisions of Immoral Traffic Prevention Act, provisions of the Protection of Children from Sexual Offences Act, 2012,



provisions of the Indecent Representation of Women (Prohibition) Act, 1986 and the provisions of the Dowry Prohibition Act, 1961, we have noticed the explanation given by the Commission. According to the Commission, it was pursuant to the judgment of the Supreme Court in Writ Petition No. 490 of 2002 reported as *People's Union for Civil Liberties and anr. v. Union of India and anr.*,²⁰¹ passed on 13th March 2003 that all candidates were directed by an order issued on 27th March 2003 to submit information about their criminal background, assets, liabilities, and educational qualifications in an affidavit to be submitted to the Returning Officers during the period of filing of nomination papers. We must also point out that the said judgment was passed to enforce the electors' right to information regarding candidates who seek their votes in an election, and hence the affidavit sought by the Election Commission was intended to enable electors to obtain information about the background of the candidates. We are of the view that this objective cannot be achieved without displaying copies of the affidavits filed by them at the time of filing of nominations. We may further point out that the Election Commission had on an earlier occasion directed that if any candidate filed false information which was capable of being verified by the Returning Officer by a summary inquiry, the nomination paper of such candidate would be liable to be rejected. However, it is stated by the Election Commission in its response that in, the Supreme Court in *People's Union of Civil Liberties v. Union of India* observed that "the direction to reject the nomination paper for furnishing wrong information or concealing

²⁰¹ AIR 2003 SC 2363



material information and providing for summary inquiry at the time of scrutiny of nominations cannot be justified". Consequently, in the subsequent order issued by the Commission on 27th March 2003, the Commission clarified that the nomination shall not be rejected on the ground of wrong information furnished in the affidavit. We regretfully note the following statement:-

"Therefore, the Returning Officer on receipt of the affidavit, does not conduct any verification about the veracity of the statements in the affidavit. If there is any counter statement filed by anyone challenging any information given in the affidavit, the same is also disseminated by displaying copy thereof on the notice board of the Returning Officer....."

9. It is further stated that whenever there is a false statement in an affidavit, the Commission has directed the Returning Officers to file complaints before the competent magistrate for prosecuting the concerned candidate under Section 177 of the IPC and/or 125A of the Representation of People Act, 1951. We have also examined the circular issued by the Election Commission in this regard. However, it is clear to us if the main purpose of disclosure of information is that the disclosure must present provide accurate information, to then deny power to the Election Commission or the Returning Officer to verify the correctness of the information constitutes a major impediment in law.
10. We are also of the opinion that by not compiling information from the affidavits about cases where candidates were facing charges, the Election Commission has not been able to acquire a suitable database to look at the profile of the candidates



who have contested elections. After all in a democratic country where free and fair elections have to take place, the character of the candidate is relevant. We, therefore, request the Election Commission to compile information from such affidavits in the future and keep it readily available for public access. In fact, we would like the Election Commission to know that certain other non-governmental agencies have collected information and have made available relevant data to the Committee.

11. It must be noted that a free and fair election does not commence only with the filing of nomination papers and declaration of the list of candidates for each constituency. Rather, it also requires intermediate scrutiny by the Election Commission of statements which have been made by candidates on oath. It is entirely conceivable that a person has been convicted but has deliberately omitted disclosure of the same in his affidavit. Or in the alternative, that a person has been convicted but has made the false disclosure that he has been only charged by a competent court or that he has no charges pending. In such circumstances, in our view, the Election Commission has erroneously restrained itself, by being expressing its inability to inquire into the truthfulness and correctness of the allegations in relation to the existence of a criminal case and its stage. We for instance are informed that six MLAs have declared that they have charges of rape against themselves in the affidavit submitted with the Election Commission of India at the time of their election. Similarly, thirty-six (36) other MLAs have declared that they have charges of crimes against women, such as



outraging the modesty of a woman, assault, insulting the modesty of a woman etc.

12. We also have found that political parties have given tickets to twenty-seven (27) candidates who contested the State elections in the last 5 years who have declared that they have been charged with rape. The names of such candidates are not being reproduced in this report but are readily accessible from the information provided by the Association for Democratic Reform from their website.
13. In the Lok Sabha 2009, we are shocked to note that political parties have given tickets to six candidates who declared that they have been charged with rape. Out of these, one is from RPP, one from RCP, one from BSP, one from JMM and two independent candidates. We also notice that thirty-four (34) other contesting candidates of the Lok Sabha 2009 General Elections have declared that they have charges of various crimes that constitute violence against women. We further find that twelve (12) out of these thirty-four (34) candidates are independents, two are BSP candidates, and two each from AITC and CPI (ML) (L).
14. We thus have 2 Lok Sabha MPs who have declared that they have been charged with crimes against women.
15. We request the Election Commission to take corrective measures so that in the future there is an accurate database which is publicly available detailing the candidates in respect of whose offences cognizance has been taken by a court of competent jurisdiction. Indeed, in a democracy



where preambular values of justice, equality and liberty have to be upheld, if candidates have been accused of criminal cases of which cognizance has taken by Courts, we surely believe this constitutes a ground for disqualification.

16. We have dealt extensively with the material which has been made available to us by the Association for Democratic Reforms and, while we have not had time to compare all of these details with the relevant affidavits, we did some random sampling to check the correctness of these figures and we find them to be by and large correct. We find that at least 10,618 candidates in the last 10 years are candidates who have declared criminal cases. Further, out of them, 6,944 candidates are those who have declared heinous crimes. In the data provided to us what is meant by a heinous crime is understood as constituting a charge for any of the following offences:-

- (i) Section 115: Abetment of offence punishable with death or imprisonment for life-if offence not committed
- (ii) Section 120A and 120B: Criminal Conspiracy
- (iii) Section 146 and 147: Rioting and punishment for rioting
- (iv) Section 148: Rioting, armed with deadly weapon
- (v) Section 153A: Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony
- (vi) Section 157: Harboursing persons hired for an unlawful assembly



- (vii) Section 171E: Punishment for Bribery
- (viii) Section 171F: Punishment for undue influence or personation at an election
- (ix) Section 212: Harboursing offender
- (x) Section 216: Harboursing offender who has escaped from custody or whose apprehension has been ordered
- (xi) Section 216A : Penalty for harboursing robbers or dacoits
- (xii) Section 302: Punishment for murder
- (xiii) Section 304: culpable homicide not amounting to murder
- (xiv) Section 304B: Dowry death
- (xv) Section 305: Abetment of suicide of child or insane person
- (xvi) Section 306: Abetment of suicide
- (xvii) Section 307: Attempt to murder
- (xviii) Section 312: Causing miscarriage
- (xix) Section 313: Causing miscarriage without woman's consent
- (xx) Section 314: Death caused by act done with intent to cause miscarriage
- (xxi) Section 315: Act done with intent to prevent child being born alive or to cause it to die after birth
- (xxii) Section 316: Causing death of quick unborn child by act amounting to culpable homicide
- (xxiii) Section 324: Voluntarily causing hurt by dangerous weapons or means
- (xxiv) Section 325: Punishment for voluntarily causing grievous hurt
- (xxv) Section 326: Voluntarily causing grievous hurt by dangerous weapons or means
- (xxvi) Section 343: Wrongful confinement for three or more days



- (xxvii) Section 344: Wrongful confinement for ten or more days
- (xxviii) Section 346: Wrongful confinement in secret
- (xxix) Section 353: Assault or use of criminal force to deter a public servant from discharge of his duty
- (xxx) Section 354: Assault or use of criminal force to a woman with intent to outrage her modesty
- (xxxi) Section 357: Assault or use of criminal force in an attempt wrongfully to confine a person
- (xxxii) Section 363: Punishment for kidnapping
- (xxxiii) Section 363A: Kidnapping or maiming a minor for purposes of begging
- (xxxiv) Section 364: Kidnapping or abducting in order to murder
- (xxxv) Section 364A: Kidnapping for ransom etc.
- (xxxvi) Section 365: Kidnapping or abducting with intent secretly and wrongfully to confine person
- (xxxvii) Section 366: Kidnapping, abducting or inducing woman to compel her marriage, etc.
- (xxxviii) Section 366A: Procuration of minor girl
- (xxxix) Section 366B: Importation of girl from foreign country
- (xl) Section 367: Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.
- (xli) Section 369: Kidnapping or abducting child under ten years with intent to steal from its person



- (xlii) Section 370: Buying or disposing of any person as slave
- (xliii) Section 371: Habitual dealing in slave
- (xliv) Section 372: Selling minor for purposes of prostitution, etc.
- (xlv) Section 373: Buying minor for purposes of prostitution, etc.
- (xlvi) Section 374: Unlawful compulsory labour
- (xlvii) Section 376: Punishment for rape
- (xlviii) Section 376A: Intercourse by a man with his wife during separation
- (xlix) Section 376B: Intercourse by public servant with woman in his custody
- (l) Section 376C: Intercourse by superintendent of jail, remand home etc.
- (li) Section 376D: Intercourse by manager etc. of a hospital with any woman in that hospital
- (lii) Section 384: Extortion and Punishment for extortion
- (liii) Section 385: Putting person in fear of injury in order to commit extortion
- (liv) Section 386: Extortion by putting a person in fear of death or grievous hurt
- (lv) Section 387: Putting person in fear of death or of grievous hurt, in order to commit extortion
- (lvi) Section 388: Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc.
- (lvii) Section 389: Putting person in fear of accusation of offence, in order to commit extortion
- (lviii) Section 392: Punishment for robbery
- (lix) Section 393: Attempt to commit robbery
- (lx) Section 394: Person voluntarily causing hurt in committing or attempting to commit



robbery, or any other person jointly concerned in such robbery

- (lxi) Section 395: Punishment for dacoity
- (lxii) Section 396: Dacoity with murder
- (lxiii) Section 397: Robbery, or dacoity, with attempt to cause death or grievous hurt
- (lxiv) Section 398: Attempt to commit robbery or dacoity when armed with deadly weapon
- (lxv) Section 399: Making preparation to commit dacoity
- (lxvi) Section 400: Punishment for belonging to a gang of persons associated for the purpose of habitually committing dacoity
- (lxvii) Section 401: Punishment for belonging to wandering gang of persons associated for the purpose of habitually committing thefts
- (lxviii) Section 402: Assembling for purpose of committing dacoity
- (lxix) Section 403: Dishonest misappropriation of property
- (lxx) Section 404: Dishonest misappropriation of property possessed by deceased person at the time of his death
- (lxxi) Section 406: Punishment for criminal breach of trust
- (lxxii) Section 409: Criminal breach of trust by public servant, or by banker, merchant or agent
- (lxxiii) Section 413: Habitually dealing in stolen property
- (lxxiv) Section 419: Punishment for cheating by personation
- (lxxv) Section 420: Cheating and dishonestly inducing delivery of property
- (lxxvi) Section 449: House- trespass in order to commit offence punishable with death



- (lxxvii) Section 450: House- trespass in order to commit offence punishable with imprisonment for life
- (lxxviii) Section 451: House- trespass in order to commit offence punishable with imprisonment
- (lxxix) Section 452: House- trespass after preparation for hurt, assault or wrongful restraint
- (lxxx) Section 454: Lurking house- trespass or house- breaking in order to commit offence punishable with imprisonment
- (lxxxi) Section 455: Lurking house- trespass or house- breaking after preparation for hurt, assault or wrongful restraint
- (lxxxii) Section 457: Lurking house- trespass or house- breaking by night in order to commit offence punishable with imprisonment
- (lxxxiii) Section 458: Lurking house- trespass or house- breaking by night after preparation for hurt, assault, or wrongful restraint
- (lxxxiv) Section 459: Grievous hurt caused whilst committing lurking house trespass or house-breaking
- (lxxxv) Section 460: All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them
- (lxxxvi) Section 489A: Counterfeiting currency- notes or bank- notes
- (lxxxvii) Section 498: Enticing or taking away or detaining with criminal intent a married woman



- (lxxxviii) Section 498A: Husband or relative of husband of a woman subjecting her to cruelty
- (lxxxix) Section 505: Statements creating or promoting enmity, hatred or ill- will between classes in place of worship, etc.
- (xc) Section 506: Punishment for criminal intimidation
- (xci) Section 509: Uttering any word of making any gesture intended to insult the modesty of a woman, etc.
- (xcii) Section 511: Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment"

17. As we have stated above, the powers of the Commission in relation to the conduct of elections has always been held to be plenary in character. In *Union of India v. Association for Democratic Reform*²⁰², the Supreme Court in the context of the powers of the Election Commission has held as follows:-

"....The limitation on plenary character of the power is when Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, Article 324 is a reservoir of power to act for the avowed purpose of having free and fair elections. The Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules...."

²⁰² (2002) 5 SCC 294



18. We may also note that the Supreme Court directed that:-

"To maintain the purity of election and in particular to bring transparency to the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have the basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to blind his liberty and property may be enacted."

19. We are also of the opinion that the Supreme Court had directed that there is a right to know about the candidates contesting the elections who are public functionaries. Accordingly, the Supreme Court directed that:-

"The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information in relation to the following aspects in relation to his/her candidature:

- (1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past – if any, whether he is punished with imprisonment or fine.*
- (2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, details thereof.*



- (3) *The assets (immovable, movable, bank balance, etc.) of a candidate and his/her spouse and that of dependants.*
- (4) *Liabilities, if any, particularly whether there are any overdues of any public financial institution.*
- (5) *The educational qualifications of the candidate.*²⁰³

20. In fact, we may add that there was an attempt on the part of Parliament to undo the effect of the judgment of the Supreme Court passed in *Union of India v. Association for Democratic Reforms*. Accordingly, Section 33B of the Representation of People Act was sought to be inserted, which was struck down as unconstitutional by the Supreme Court in *People's Union of Civil Liberties v. Union of India*²⁰⁴.

21. We also note that Section 33A was inserted by Act 72 of 2012 w.e.f. 24th August, 2002 which provided as follows:

- (1) *A candidate shall, apart from any information which he is required to furnish under this Act or the Rules made thereunder, in his nomination paper deliver under sub-section (1) of Section 33, also furnish the information as to whether*
 - (i) *he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the Court of competent jurisdiction;*
 - (ii) *he has been convicted of an offence other than any offence referred to in sub-section (1) or sub-section (2), or covered*

²⁰³ *Id.* at para 48 at 322.

²⁰⁴ *Supra*, n. 1



in sub-section (3), of Section 8 and sentenced to imprisonment for one year or more.

- (2) *The candidate or his proposer, as the case may be, shall at the time of delivery to the returning officer the nomination paper under sub-section (1) of Section 33, shall also deliver to him an affidavit sworn in by the candidate in a prescribed form verifying the information specified in sub-section (1).*
- (3) *The returning officer shall, as soon as he may be, after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to constituency for which the nomination paper is delivered.*

22. From a bare perusal of the judgment of the Supreme Court it is clear to us that direction No.6 clearly provides that:

"The Right to Information provided for by the Parliament under Section 33A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by Court from the ambit of disclosure...."

23. We therefore find that there is an element of contradiction in the position that scrutiny of affidavits will not be necessary, particularly when recourse can be had to Section 125A of the Representation of People Act, 1951. Further, it may be pointed out that a penalty for filing a false affidavit is liable to imprisonment for a term which may extend to six months. In other words, it is punishable as an offence. If it is punishable as



an offence, then in that event upon the conviction of that offence, the candidate ought to be liable to be disqualified. In our view, a disqualification on such conviction must definitely ensue. Thus, it is utterly improper that a legislator can file a false affidavit under Section 33A, thus denying the Election Commission the powers of any inquiry, for which he can only be prosecuted for an offence under Section 125A and/or Section 177 IPC which does not lead automatically to disqualification. This, in our opinion, makes a mockery of the entire provision contained in Section 33A. We think that if an affidavit filed by a candidate is not verified, the mere putting up of that affidavit in the public domain is hardly of any consequence. We therefore suggested the following courses:

- (i) That disqualification will ensue in the event of a conviction under Section 125A of the Representation of People Act, 1951 and the seat would be rendered vacant; and
- (ii) For future elections, we would also suggest that before any candidate certifies the status of a pending case involving him, he must actually get a certificate from the Registrar of the concerned High Court, who will have the opportunity to contact and establish from the database that the averments which have been made in the affidavit are correct and true to judicial record.

24. We are therefore of the opinion that there needs to be an amendment by which there is compulsion on the candidates to disclose truthfully under Section 33A the true facts failing which disqualification will issue. In our opinion, Section 8(1) of the



Representation of People Act, 1951 must contain a provision for disqualification in respect of every case where a person has been accused of the offences listed therein where a the court has taken cognizance.

25. We are indeed surprised that Parliament has chosen not to describe the heinous offences. A list of these offences is produced in the proposed Schedule 1 to the Representation of People Act, 1951, which may be found in the appendices to this report.

26. We also notice the following answer of the Election Commission:

“There are more than 1400 political parties registered with the Election Commission under Section 29A of Representation of People Act, 1951. Under the provisions of the law, there is no requirement that a party should have any in-built mechanism to filter out candidates accused/facing criminal charges. The Commission, therefore, does not have the desired information about the internal policies/code of conduct of political parties in this regard. Also, there is no record of instances where political parties may have refused nomination for candidates on the ground of criminal background. The Commission has, however, recommended to the Govt. that there should be a comprehensive law regulating, inter alia, the internal functioning of political parties”

27. In view of the above, we are of the opinion that a law along the lines of UK Political Parties, Elections and Referendums Act, 2000 should be enacted, with the aim of enforcing the following principles:

- (i) Criteria for admission into the parties.
- (ii) Internal democracy



- (iii) Code of conduct of the political party.
- (iv) Transparency in receiving donations.
- (v) Accounting the expenditure which is spent on political elections
- (vi) Whether the political party will refuse nomination for candidates on the ground of criminal background.

28. The Election Commission has been unable to deal with corruption which may exist through the medium of political parties because of the fact that it does not have any authority in law and nor does any party have any statutory requirement of following certain internal checks and balances. Imposing a barrier upon people who have criminal records from entering politics would be the easiest way to cleanse lawmaking bodies of the present day malady. However, this requires the cooperation of political parties for its translation into an effective law and then into consistent, reliable practice. We can only request political parties to take all steps necessary in this light.

29. In fact, the Commission itself on 15.6.1998 has noted that:

“The whole country is now expressing serious concern over the anti-social and criminal elements entering the electoral arena. Even Parliament in the debates in 50 years of independence and the resolution passed in special session in August, 1997 had shown a great deal of concern about the increasing criminalization of politics. It is widely believed that there is a growing nexus between the political parties and anti-social elements which is leading to criminalization of politics where the criminals themselves are now joining the election fray and often even getting elected in the process. Some of them have even adorned ministerial



berths and thus law breakers have become law makers....”

30. We are of the opinion if this is the opinion of the Election Commission of India - not ours- we need say nothing more. It is clear that a Parliament which consists of persons with criminal records is unlikely to pass any effective Criminal Law Amendment reform. There is a distinct conflict of interest and we do hope that those Members of Parliament who have been charge sheeted of criminal offences specified in the proposed section 8(1) and where cognizance has been taken, will, as a mark of respect for the Parliament and the history of the Indian people, demit their offices as a leading and shining example of transformation. We can do no more than appeal.
31. Further in the analysis which has been made available to us which we have attempted to check and verify the data of the elections which have been held in the last ten years. We asked the Association for Democratic Reforms to make available the information. We were provided with two startling charts that displayed the total number of candidates with criminal records in all Parliamentary and Legislative Assembly elections over the past 10 years, and the total number of elected candidates in such elections, respectively.
1. **Analysis of criminal cases declared by the contesting candidates in most (Parliamentary and Legislative Assembly) of the elections held in past 10 years**



REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW

Electi ons	No. of consti tuenci es (A)	Can dida tes who cont este d elect ions	Can dida tes Anal yzed by ADR (B)	Can dida tes who decl ared Crim inals cases (C)	% cand idat es with crim inal case s (D= C/B)	Can dida tes who decl ared heini ous crim es (E)	% cand idat es with crim inal case s (F=E /B)
Goa 2012	40	215	215	38	18%	17	8%
Gujar at 2012	182	1666	1666	288	17%	49	3%
Hima chal Prad esh 2012	68	459	459	71	15%	21	5%
Mani pur 2012	60	279	274	3	1%	2	1%
Punja b 2012	117	1078	1057	116	11%	79	7%
Uttar Prad esh 2012	403	6839	6722	1322	20%	1013	15%
Uttar akha nd 2012	70	788	766	109	14%	68	9%
Assa m	126	981	962	98	10%	67	7%



REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW

Electi ons	No. of consti tuenci es (A)	Can dida tes who cont este d elect ions	Can dida tes An alyz ed by ADR (B)	Can dida tes who decl ared Crim inals cases (C)	% cand idat es with crim inal case s (D= C/B)	Can dida tes who decl ared heini ous crim es (E)	% cand idat es with crim inal case s (F=E /B)
2011							
Keral a 2011	140	971	433	181	42%	73	17%
Pudu cherr y 2011	30	187	190	26	14%	12	6%
Tami l Nadu 2011	234	2748	738	143	19%	99	13%
West Beng al 2011	294	1792	1333	277	21%	212	16%
Bihar 2010	243	2135	2490	874	35%	612	25%
Andh ra Prad esh 2009	294	3655	3181	398	13%	273	9%
Arun achal Prad	60	157	155	4	3%	1	1%



REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW

Electi ons	No. of consti tuenci es (A)	Can dida tes who cont este d elect ions	Can dida tes An alyz ed by ADR (B)	Can dida tes who decl ared Crim inals cases (C)	% cand idat es with crim inal case s (D= C/B)	Can dida tes who decl ared heini ous crim es (E)	% cand idat es with crim inal case s (F=E /B)
esh 2009							
Hary ana 2009	90	1222	858	92	11%	76	9%
Jhark hand 2009	81	1491	1443	400	28%	284	20%
Maha rasht ra 2009	288	3559	3530	853	24%	548	16%
Oriss a 2009	147	1288	1288	295	23%	222	17%
Sikki m 2009	32	167	167	23	14%	3	2%
Chatt isgar h 2008	90	1066	897	83	9%	43	5%
Delhi 2008	70	875	782	119	15%	85	11%
Jam mu &	87	1354	1041	45	4%	32	3%



REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW

Electi ons	No. of consti tuenci es (A)	Can dida tes who cont este d elect ions	Can dida tes Anal yzed by ADR (B)	Can dida tes who decl ared Crim inals cases (C)	% cand idat es with crim inal case s (D= C/B)	Can dida tes who decl ared heini ous crim es (E)	% cand idat es with crim inal case s (F=E /B)
Kash mir 2008							
Karn ataka 2008	224	2242	1867	235	13%	127	7%
Mad hya Prad esh 2008	230	3179	3049	463	15%	295	10%
Megh alaya 2008	60	338	341	5	1%	3	1%
Mizo ram 2008	40	206	205	6	3%	3	1%
Naga land 2008	60	218	226	4	2%	3	1%
Rajas than 2008	200	2194	2109	243	12%	145	7%
Tripu ra 2008	60	313	309	8	3%	5	2%



REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW

Electi ons	No. of consti tuenci es (A)	Can dida tes who cont este d elect ions	Can dida tes An alyz ed by ADR (B)	Can dida tes who decl ared Crim inals cases (C)	% cand idat es with crim inal case s (D= C/B)	Can dida tes who decl ared heini ous crim es (E)	% cand idat es with crim inal case s (F=E /B)
Goa 2007	40	202	168	30	18%	20	12%
Gujar at 2007	182	1268	583	132	23%	87	15%
Hima chal 2007	68	336	344	63	18%	30	9%
Mani pur 2007	60	308	304	5	2%	5	2%
Punja b 2007	116	1043	527	70	13%	51	10%
Uttar Prad esh 2007	403	6086	1892	526	28%	432	23%
Uttar akha nd 2007	69	785	263	47	18%	26	10%
Assa m 2006	126	997	251	16	6%	11	4%
Keral	140	931	279	125	45%	67	24%



REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW

Electi ons	No. of consti tuenci es (A)	Can dida tes who cont este d elect ions	Can dida tes Anal yzed by ADR (B)	Can dida tes who decl ared Crim inals cases (C)	% cand idat es with crim inal case s (D= C/B)	Can dida tes who decl ared heini ous crim es (E)	% cand idat es with crim inal case s (F=E /B)
a 2006							
Pond icher ry 2006	30	218	148	15	10%	10	7%
Tami l Nadu 2006	234	2586	783	167	21%	93	12%
West Beng al 2006	294	1654	571	133	23%	114	20%
Arun achal Prad esh 2004	60	168	114	2	2%	0	0%
Bihar 2005	243	3523	918	358	39%	253	28%
Hary ana 2005	90	983	179	37	21%	31	17%
Jhark hand	81	1390	148	61	41%	47	32%



REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW

Electi ons	No. of consti tuenci es (A)	Can dida tes who cont este d elect ions	Can dida tes An alyz ed by ADR (B)	Can dida tes who decl ared Crim inals cases (C)	% cand idat es with crim inal case s (D= C/B)	Can dida tes who decl ared heini ous crim es (E)	% cand idat es with crim inal case s (F=E /B)
2005							
Maha rasht ra 2004	288	2678	576	251	44%	160	28%
Oriss a 2004	147	802	163	63	39%	40	25%
<i>Lok Sabh a 2004</i>	543	5435	3290	473	14%	328	10%
<i>Lok Sabh a 2009</i>	543	8070	7811	1160	15%	761	10%
Rajy a Sabh a	243	N.A	336	62	18%	27	8%
Total	8120	8312 5	5840 1	1061 8	18%	7065	12%

2. Analysis of criminal cases declared by the elected members in most of the elections held in past 10 years



REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW

Electi ons	No. of constit uencie s (A)	Cand idate s who conte sted electi ons	Cand idate s Anal yzed by ADR (B)	Elec ted Me mbe rs (MP s & ML As) who decl ared crim inal case s (C)	% Elec ted Me mbe rs (MP s & ML As) wit h crim inal case s (D= C/A)	Elec ted Me mbe rs (MP s & ML As) who decl ared hein ous case s (E)	% Elec ted me mbe rs wit h hei nou s case s (F= E/A)
Goa 2012	40	215	215	12	30%	6	15%
Gujar at 2012	182	1666	1666	57	31%	7	4%
Hima chal Prade sh 2012	68	459	459	14	21%	2	3%
Mani pur 2012	60	279	274	0	0%	0	0%
Punja b 2012	117	1078	1057	22	19%	16	14%
Uttar	403	6839	6722	189	47%	146	36%



REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW

Electi ons	No. of constit uencie s (A)	Cand idate s who conte sted electi ons	Cand idate s Anal yzed by ADR (B)	Elec ted Me mbe rs (MP s & ML As) who decl ared crim inal case s (C)	% Elec ted Me mbe rs (MP s & ML As) wit h crim inal case s (D= C/A)	Elec ted Me mbe rs (MP s & ML As) who decl ared hein ous case s (E)	% Elec ted me mbe rs wit h hei nou s case s (F= E/A)
Prade sh 2012							
Uttar akhan d 2012	70	788	766	20	29%	13	19%
Assa m 2011	126	981	962	13	10%	8	6%
Keral a 2011	140	971	433	69	49%	24	17%
Pudu cherr y 2011	30	187	190	10	33%	5	17%
Tamil	234	2748	738	70	30%	50	21%



REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW

Electi ons	No. of constit uencie s (A)	Cand idate s who conte sted electi ons	Cand idate s Anal yzed by ADR (B)	Elec ted Me mbe rs (MP s & ML As) who decl ared crim inal case s (C)	% Elec ted Me mbe rs (MP s & ML As) wit h crim inal case s (D= C/A)	Elec ted Me mbe rs (MP s & ML As) who decl ared hein ous case s (E)	% Elec ted me mbe rs wit h hei nou s case s (F= E/A)
Nadu 2011							
West Benga l 2011	294	1792	1333	103	35%	92	31%
Bihar 2010	243	2135	2490	141	58%	91	37%
Andh ra Prade sh 2009	294	3655	3181	81	28%	51	17%
Arun achal Prade sh 2009	60	157	155	2	3%	0	0%
Hary	90	1222	858	15	17%	13	14%



REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW

Electi ons	No. of constit uencie s (A)	Cand idate s who conte sted electi ons	Cand idate s Anal yzed by ADR (B)	Elec ted Me mbe rs (MP s & ML As) who decl ared crim inal case s (C)	% Elec ted Me mbe rs (MP s & ML As) wit h crim inal case s (D= C/A)	Elec ted Me mbe rs (MP s & ML As) who decl ared hein ous case s (E)	% Elec ted me mbe rs wit h hei nou s case s (F= E/A)
ana 2009							
Jhark hand 2009	81	1491	1443	60	74%	44	54%
Maha rashtr a 2009	288	3559	3530	146	51%	94	33%
Oriss a 2009	147	1288	1288	48	33%	37	25%
Sikki m 2009	32	167	167	1	3%	0	0%
Chatti sgarh 2008	90	1066	897	9	10%	7	8%



REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW

Electi ons	No. of constit uencie s (A)	Cand idate s who conte sted electi ons	Cand idate s Anal yzed by ADR (B)	Elec ted Me mbe rs (MP s & ML As) who decl ared crim inal case s (C)	% Elec ted Me mbe rs (MP s & ML As) wit h crim inal case s (D= C/A)	Elec ted Me mbe rs (MP s & ML As) who decl ared hein ous case s (E)	% Elec ted me mbe rs wit h hei nou s case s (F= E/A)
Delhi 2008	70	875	782	33	47%	24	34%
Jamm u & Kash mir 2008	87	1354	1041	7	8%	4	5%
Karna taka 2008	224	2242	1867	48	21%	26	12%
Madh ya Prade sh 2008	230	3179	3049	59	26%	41	18%
Megh alaya 2008	60	338	341	1	2%	1	2%



REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW

Electi ons	No. of constit uencie s (A)	Cand idate s who conte sted electi ons	Cand idate s Anal yzed by ADR (B)	Elec ted Me mbe rs (MP s & ML As) who decl ared crim inal case s (C)	% Elec ted Me mbe rs (MP s & ML As) wit h crim inal case s (D= C/A)	Elec ted Me mbe rs (MP s & ML As) who decl ared hein ous case s (E)	% Elec ted me mbe rs wit h hei nou s case s (F= E/A)
Mizor am 2008	40	206	205	4	10%	1	3%
Nagal and 2008	60	218	226	0	0%	0	0%
Rajast han 2008	200	2194	2109	30	15%	21	11%
Tripu ra 2008	60	313	309	3	5%	2	3%
Goa 2007	40	202	168	9	23%	7	18%
Gujar at 2007	182	1268	583	50	27%	34	19%
Hima	68	336	344	28	41%	13	19%



REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW

Electi ons	No. of constit uencie s (A)	Cand idate s who conte sted electi ons	Cand idate s Anal yzed by ADR (B)	Elec ted Me mbe rs (MP s & ML As) who decl ared crim inal case s (C)	% Elec ted Me mbe rs (MP s & ML As) wit h crim inal case s (D= C/A)	Elec ted Me mbe rs (MP s & ML As) who decl ared hein ous case s (E)	% Elec ted me mbe rs wit h hei nou s case s (F= E/A)
chal 2007							
Mani pur 2007	60	308	304	1	2%	1	2%
Punja b 2007	116	1043	527	21	18%	16	14%
Uttar Prade sh 2007	403	6086	1892	148	37%	124	31%
Uttar akhan d 2007	69	785	263	18	26%	8	12%
Assa m	126	997	251	7	6%	6	5%



REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW

Electi ons	No. of constit uencie s (A)	Cand idate s who conte sted electi ons	Cand idate s Anal yzed by ADR (B)	Elec ted Me mbe rs (MP s & ML As) who decl ared crim inal case s (C)	% Elec ted Me mbe rs (MP s & ML As) wit h crim inal case s (D= C/A)	Elec ted Me mbe rs (MP s & ML As) who decl ared hein ous case s (E)	% Elec ted me mbe rs wit h hei nou s case s (F= E/A)
2006							
Keral a 2006	140	931	279	69	49%	39	28%
Pondi cherr y 2006	30	218	148	6	20%	5	17%
Tamil Nadu 2006	234	2586	783	77	33%	38	16%
West Benga l 2006	294	1654	571	45	15%	37	13%
Arun achal Prade sh	60	168	114	2	3%	0	0%



REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW

Electi ons	No. of constit uencie s (A)	Cand idate s who conte sted electi ons	Cand idate s Anal yzed by ADR (B)	Elec ted Me mbe rs (MP s & ML As) who decl ared crim inal case s (C)	% Elec ted Me mbe rs (MP s & ML As) wit h crim inal case s (D= C/A)	Elec ted Me mbe rs (MP s & ML As) who decl ared hein ous case s (E)	% Elec ted me mbe rs wit h hei nou s case s (F= E/A)
2004							
Bihar 2005	243	3523	918	117	48%	82	34%
Hary ana 2005	90	983	179	28	31%	23	26%
Jhark hand 2005	81	1390	148	31	38%	25	31%
Maha rashtr a 2004	288	2678	576	132	46%	81	28%
Oriss a 2004	147	802	163	58	39%	36	24%
<i>Lok Sabh</i>	<i>543</i>	<i>5435</i>	<i>3290</i>	<i>128</i>	<i>24%</i>	<i>88</i>	<i>16%</i>



REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW

Electi ons	No. of constit uencie s (A)	Cand idate s who cont ested electi ons	Cand idate s Anal yzed by ADR (B)	Elec ted Me mbe rs (MP s & ML As) who decl ared crim inal case s (C)	% Elec ted Me mbe rs (MP s & ML As) wit h crim inal case s (D= C/A)	Elec ted Me mbe rs (MP s & ML As) who decl ared hein ous case s (E)	% Elec ted me mbe rs wit h hei nou s case s (F= E/A)
<i>a</i> 2004							
<i>Lok Sabha</i> <i>a</i> 2009	543	8070	7811	164	30%	95	17%
<i>Rajya Sabha</i> <i>a</i>	243	N.A	336	62	0.26	27	0.11
Total	8120	83125	58401	2468	31%	1611	20%

32. The charts produced above clearly shows that out of a total of 7877 constituencies where 83125 candidates contested elections, the record of 58401 was analysed and 2468 elected members had criminal cases. This constitutes 31% of the Electoral College. We are of the opinion that if 31% of the Electoral College has either been charged with or convicted of a criminal offence, a



fundamental attribute of morality which is inherent in discharging public functions stands seriously impaired. We may add that on the definition of heinous cases which list we have supplied, 20% of all elected candidates have a criminal record involving such heinous offences.

33. We therefore would suggest an amendment to the provisions of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 to permit a deeper investigation of assets/liabilities declared at the time of filing a nomination paper or, as soon as may be practical thereafter. The assets and liabilities of each successful candidate - at the very least, if not all candidates - contesting elections to the Parliament/State Legislature may be verified by a division of the Comptroller and Auditor General of India. If this were so, then the law can be amended that a certificate from the office of the Comptroller and Auditor General of India will be necessary which will certify that the assets which have been declared have been correctly declared. This would guarantee probity in public life and would ensure that any candidate who stands for election will have the requisite moral authority to be able to engage the people. We must express our total satisfaction at the representation and positive attitude of the Election Commission during the public hearing. It has fairly conceded that women cannot effectively exercise political rights when candidates who are in the electoral fray have a criminal record.



CHAPTER FOURTEEN

EDUCATION AND PERCEPTION REFORM

Preventing Stereotyping

“Male silence response to female expression of emotions or appeal to group solidarity can also serve to reinforce messages of female inferiority encouraging further female silence...One reason little boys become inexpressive is not simply because our culture expects boys to be that way – but because our culture expects little boys to grow up to hold positions of power and prestige.”²⁰⁵

1. There is a similar expectation upon the girl when we commonly use the phrase that ‘girls mature faster than boys’. This expectation is symbolic of women merely being made aware of their sexuality at an early age and at an age when their male counterparts have relatively more freedom at least physically, while having their freedom of expression curtailed.
2. This process of blinkered acculturation is compounded by the other social hierarchies where the girl child is brought up to believe that she is not just the repository of the ‘honour’ of her own family but also that of her community/ caste etc. False morality is administered from childhood and patriarchy makes women accomplices in its institutionalization and women themselves reinforce patriarchal norms over generations. There is, what Delige explains in a caste context, a culture of ‘replication and consensus’, there certain practices are replicated over generations having being normalized in a society and the consensus

²⁰⁵ Andrew E. Taslitz, Extracts From Rape And The Culture Of The Culture Of The Court Room, New York University Press (1999) P71



on such a normative values is a corollary of the first principle.²⁰⁶

3. Shekhar Seshadri and Viay Chandran, in *Rethinking Masculinities* write about patriarchy and socialisation; “The perpetuation of patriarchy through socialisation begins early on with the celebration of a male child’s birth. Particularly in South Asia, the way children are brought up throws light on how knowledge about gender roles is constructed within families and in society. Children internalise this socialisation and reproduce traditional gender roles. Socialisation also genders children’s play by providing notions of appropriateness, which exclude girls and boys from each other’s experiences. Boys are conditioned to believe that power and violence resides unchallenged in their bodies and girls are brought up to uphold notions of traditional values and virtues to protect family honour. Boys are also expected to protect that honour and control girls and women. The construct of virginity or that purity resides in one part of the female body (that has no scientific, philosophical or biological legitimacy) only enables further control of women’s bodies and female sexuality. All these are constructs of patriarchy, which men use to negotiate power or dishonour somebody else.”²⁰⁷
4. Further, they recommend that one must ensure children’s experiences are not gendered i.e., “a certain way of playing or relating cannot be constructed as masculine or feminine, but merely as an experience. Once socialisation ceases to be about gender-biased

²⁰⁶ Deliege, R. 1992. 'Replication and consensus: Untouchability, caste and ideology in India', *Man*, Volume: 155-73.

²⁰⁷ Andrew E. Taslitz, *Extracts From Rape And The Culture Of The Culture Of The Court Room*, New York University Press (1999) P71



expectations, children's experiences can naturally teach them about inequalities and rights of others."

5. 'Power and entitlement' are also acquired through socialisation processes and later naturalised, rather than vice versa;

*"Everyone experiences power differently in society. Men may be powerful in many contexts, but powerless in situations."*²⁰⁸

6. Here the authors also observe the identities that are built through class or caste and have a direct bearing on 'power' being categorised by hierarchies.

7. Additionally, the experience of power is often about entitlement of power. The construct of entitlement is also part of the socialisation processes. Male children are conditioned to believe that they are entitled to opportunities or access to facilities over female children. This is not challenged, even in later years, but there is very clear knowledge that such an entitlement is being gained at the cost of women. There is a common assumption and 'an oft-repeated public debate' aims at attempting to understand if men are inherently more aggressive than women.

8. *"Nature and biology are consistently blamed for male aggression and uncontrolled raging hormones are blamed for violent outbursts in men. The construct being that men are incapable of controlling these, which is in effect a complete abdication of will and responsibility."*²⁰⁹

²⁰⁸ Ibid

²⁰⁹ Seshadri, S., Chandran, V., Leach, F. and Mitchell, C. 2006. 'Reframing masculinities: using films with male adolescents to address gender-based issues', F. Leach and C. Mitchell (eds.)



9. These ideas emanate from a biased history and reinforce the notion that 'men are always more powerful', assuming them to be able to make better leaders, who indirectly also characterise good leaders as ones who are naturally aggressive, making men appear better decision-makers, and consequently better equipped to be the sole bread-earners.

10. Conflicts arise here because a simple examination of male experience shows that boys are expected to achieve masculinity at all odds to prove their manhood through a process of social or psychological evolution using various messages. "If manhood is biologically ordained, why is there a need to constantly prove it or achieve it? Such exercise of power and violence against women and other men not only structure man-woman relationships, but also among men themselves in society..."²¹⁰ The need, as feminist activism has expressed before us, is to gender every sector in society and explore the ways that institutions discriminate and marginalise women. Institutions, like individual experiences, cannot be dominated on the basis of a perception of biological superiority; *this is simply sexism in practice.*

11. Stereotyping plagues the functioning of a number of social institutions. Professions like law, medicine, politics are considered predominantly male professions and patriarchal structures in these areas remain largely unchallenged. Women's merit is repeatedly questioned with respect to handling responsibilities within these institutions.

²¹⁰ Andrew E. Taslitz 1999



12. The necessity is to not just allow for but also promote alternate forms of masculine expression and encourage expression and engagement with emotions of anger, frustration and other intense feelings. “Constructing tenderness and caring as legitimate emotions across all sectors of society is one such important alternative.” Caring and nurturing attitudes are largely understood as feminine virtues, thus one also has to be careful upholding another stereotype, but this would certainly help deconstruct the culture of superiority that pervades the society and is detrimental to all genders.

Recognising Discrimination

13. A study by Mairead Dunne, Sara Humphreys, Fiona Leach, 2003 is instructive understanding on the evidence of gender based violence in schools and developing countries and also the measures which have been taken to address them. Most often, gender violence is not considered differently from other forms of school violence.²¹¹ As a result, an appropriate gender sensitive framework required to observe and intervene does not exist so that these least desirable aspects of school life are left unreported. Cases of gender based violence in schools can be characterised and reported differently and without reference to gender. Using a gender sensitive frame of reference, gender-based violence can be broadly clustered into two overlapping categories – (a) explicit gender (sexual violence), which includes sexual harassment, intimidation, abuse, assault and rape and implicit

²¹¹ Leach, F. and Humphreys, S. 2007. 'Gender violence in schools: Taking the “girls-as-victims”™ discourse forward', Gender & Development, Volume(1): 51-65.



gender violence, which includes corporal punishment, bullying, verbal and psychological abuse, teachers unofficial use of pupils for free labour and other forms of aggressive or unauthorised behaviour which is gender specific.

14. It is important for us to note that the international efforts to increase participation in schools have tended to assume that the institution of the school is somewhat neutral. However, the Leach study reveals a large number of reports which seem to suggest to the contrary. Thus, the school is an important venue where the development of sexuality, access and participation with students and teachers, curriculum, examinations and teaching quality all play a certain part in gender differentiation. We understand that the school context affords a very dynamic experience and bearing on the extent to which gender violence can be reduced.
15. The school as a social arena is also marked by asymmetrical power relations. In a certain sense, the entire purpose of law is to correct the asymmetry of power. If that asymmetry of power begins in the arena of a school, we need to consider this closely. This asymmetry is enacted not only through gender but through age and authority. Additional social indicators such as ethnicity, disability and language are additional factors contributing to such an asymmetry. These are fundamental to school experiences and the quality of school life. We also therefore notice that within the school, the gender regime is constructed through every day, taken for granted routine practices. In many schools, girls are responsible for cleaning and boys for digging the school



grounds. In some class rooms, girls may sit at the front of the class and boys at the back. The gender boundaries which are drawn within an institution help to construct and reinforce feminine and masculine identities within the school. Thus the school is an important area where 'femininity' and 'masculinity' is attributed. It is necessary that the attribution must take place in a rational, correct, egalitarian and sensible way. We notice that the rights of passage to adulthood are the most critical to students. Transgressions across the boundaries of accepted gender behaviour are discovered through peer pressure, and sometimes by physical assault, intimidation, verbal abuse and deprivation. Among students, violence is perpetrated more often by boys and on both girls and other boys. In other words, violence is perpetrated on boys who do not conform to dominant forms of masculinity and on girls who are not sufficiently modest and retiring in their feminine demeanour. In other words, there is an internal policing which takes place of the boundaries of gender relations in schools.

16. We also notice that by using age/authority, power position, teachers normalise certain aspects of male and female behaviour. We also notice that the use of disciplinary sanctions can sometimes lead to abuse by those in positions of authority. Control through physical strength or economic advantage by male pupils over female pupils or younger male pupils is a case in point. Gender violence which is engaged in schools is sexual abuse. It can be aggressive and intimidating behaviour, unsolicited physical contacts such as touching and groping, assault, coercive sex and rape all of which constitute abuse. In the event of



a teacher forming a sexual relationship with a pupil, the same too constitutes abuse. We also are aware of hostel wardens and other social workers who are alleged to exploit their position of authority and perpetrate sexual abuse.

17. We live in a “cult of masculinity”, a cult of aggression. The term refers not so much to the quantity of aggression, although there is ample evidence that at least physical aggression (violence) is primarily a male dominion, as to the differing meanings men and women give to aggression.

“For most men, aggression, whether physical or verbal is instrumental, a way of controlling others, attaining social or material benefits, dominance, and self-esteem. For most women, aggression is expressive, a release of frustration or anger, viewed as a loss of self-control and a danger to relationships. So conceived, female aggression is more likely to be private, angry and a source of guilt. Male aggression may be unconnected to anger and more often is public; it is necessary prerequisite for attaining self-esteem, social dominance, and closer male bonding. This is not to say that there are no limits on acceptable male aggression. To the contrary, for public aggression to serve as an instrumental means of distributing social and economic resources rather than social chaos, it must be governed by rules. And on overriding rule is that excessive public aggression is directed towards an opponent who has no real chance of winning is bullying and hence unacceptable.”²¹²

18. Education on gender for young men and adults will need to be distinct from education on gender for children. ‘Gender’ (and the associated idea of ‘masculinity’ and ‘femininity’) is a social (not

²¹² Andrew E. Taslitz, Extracts From Rape And The Culture Of The Culture Of The Court Room, New York University Press (1999) p25



biological) construct. By young adulthood perceptions of gender are more fixed.²¹³

19. Touching, harassment and forced intercourse are all seen as normal to masculinity. There is a prevalence of a misplaced belief by young men that a 'real woman' was *meant* to resist sexual advances. *Thus the use of force becomes not only normal, but (if a real woman resists) also essential and ideal.* These notions carry over to sexual relationships, and there combine with notions of masculinity that involve explosive sexuality, sexual success, independent from relationships, physical toughness, and loss of empathy.

20. The most crucial question in the context of child sexual abuse is: why is male perpetration of abuse so high? Abuse cannot be looked at in isolation as one related only to sexual harassment but rather as an issue related to children and to childhood; sex and sexuality, violence and violation; and at a deeper level, power and domination, gender and patriarchy and so on.

"One construct, related to masculinities, is the association of potency and virility with having sex with virgins or children. Resolution: It is important not to essentialise the experience of abuse to the extent that more psychological scarring results from disclosure acknowledging personal abuse experiences. Open dialogues need to be held on abuse and exploitation with children and adults. Children need to be able to have child-friendly environments in which to express openly any abusive experiences. Above all, the experience of abuse does not determine the rest of the individual's life,

²¹³ Verma et al, Challenging and Changing Gender Attitudes among Young Men in Mumbai, India



reclaiming sexual desire after abusive experiences is just as important an agenda in the healing process.”²¹⁴

21. In view of the underreporting of rape or offences against children, it is not possible to have an exactly accurate figure of how many serious offences against children have actually taken place. In the Lancet, a 1998 study of the frequency of rape among a nationally representative sample of 11,735 South African women aged 15-49 found that, of the 159 women who had been the victims of child rape, 33% had been raped by teachers. We are therefore of the opinion that it is not simply enough to speak against child rape but it is important that there must be strong, psychological orientation for teachers to create conditions within the school by which gender mainstreaming is achieved and also to ensure that counselling and corrections take place at the earliest when aberrations are visible. Obviously, this would involve a certain degree of unbiased, mature school teachers who ought to be able to understand the nature of such a sensitive subject.
22. We have noticed that in United Kingdom, the principle against gender violence is based on what is called the marking of zero tolerance. Thus, we need to bear in mind that one of the initial causes for gender violence in schools may also be on account of discriminatory behaviour on the grounds of ethnicity, religion, age or disability as well as gender. This is the first aberration that a teacher must recognise and immediately correct. Once non-discriminatory attitude and

²¹⁴ Andrew E. Taslitz, Extracts From Rape And The Culture Of The Culture Of The Court Room, New York University Press (1999)



temperament is developed in schools, gender equality will follow normally as a matter of course.

23. We are also concerned with implicit gender violence. We need to also consider that gender violence is an important cause of poor performance and drop out. Forms of sexual intimidation, verbal abuse and physical assault can lead to irregular attendance and under achievement of girls. Thus, we need to consider whether there is a manipulation of gender space by boys both inside and outside the classroom which constricts the participation of girls in lessons while boys themselves are distracted by the need to confirm their masculinity by performances of disrupting the lesson and demanding attention and distraction. These are serious issues.
24. Teacher's wide spread use of verbal abuse can generate low-esteem and is more hurtful than corporal punishment. In other words, there is an intrinsic connection between gender identity and self-worth. Gender discrimination violates the evolution of a strong identity. It is true that notwithstanding this generalisation, there are instances of women who have catapulted and overcome adverse circumstances by sheer determination, extraordinary will power and by a tremendous instinct of survival. But these are not the measures by which we judge the fundamental basis of a prevalent climate in society. The exceptions do not prove the rule nor are the exceptions ever supposed to dictate what corrective steps are necessary for attitudinal changes.



25. Dr. Sheshadri summaries the psycho-social effects of child abuse, diagrammatically below:²¹⁵

When abuse occurs, as in the case of child abuse the following would take place.

Experiences - Internal representation/internalisation - Behaviours

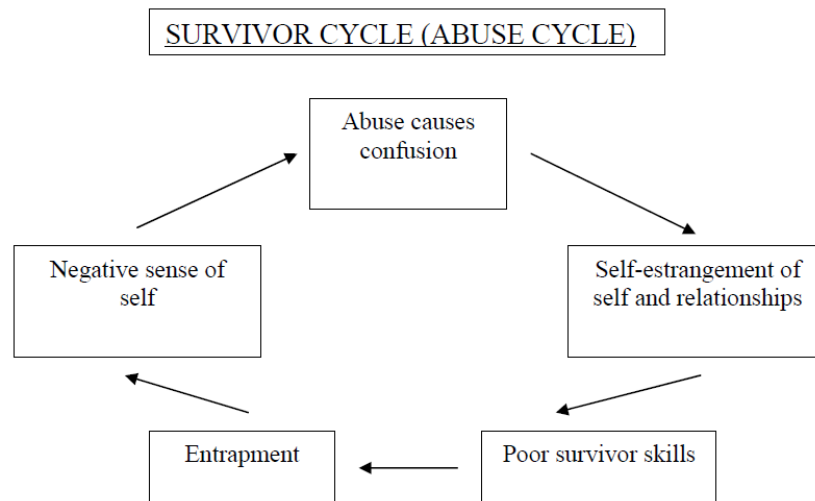
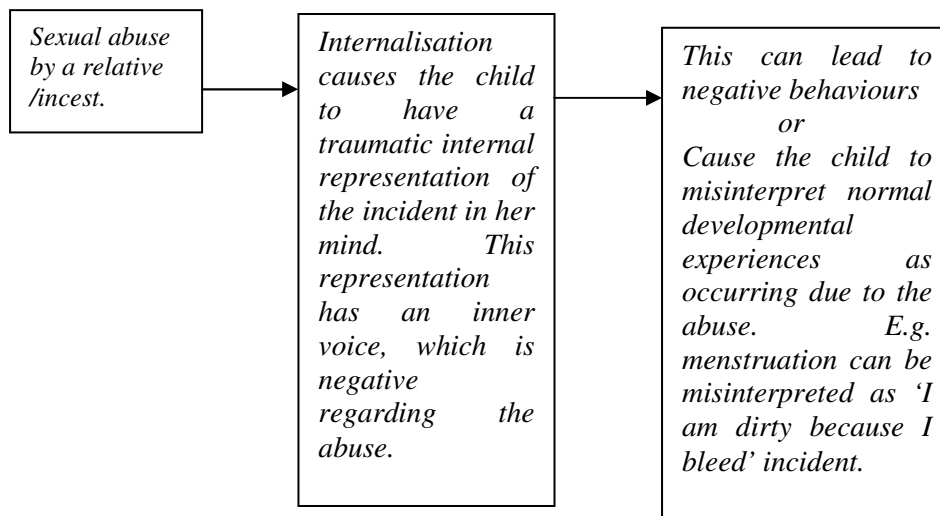


Fig.1

²¹⁵Seshadri, S., Chandran, V., Leach, F. and Mitchell, C. 2006. 'Reframing masculinities: using films with male adolescents to address gender-based issues', F. Leach and C. Mitchell (eds.)



Since the child has no background to understand the abuse, the inner voice which develops (within one day, one week or seventeen years) after the abuse is a negative inner voice, which is stuck/halted.

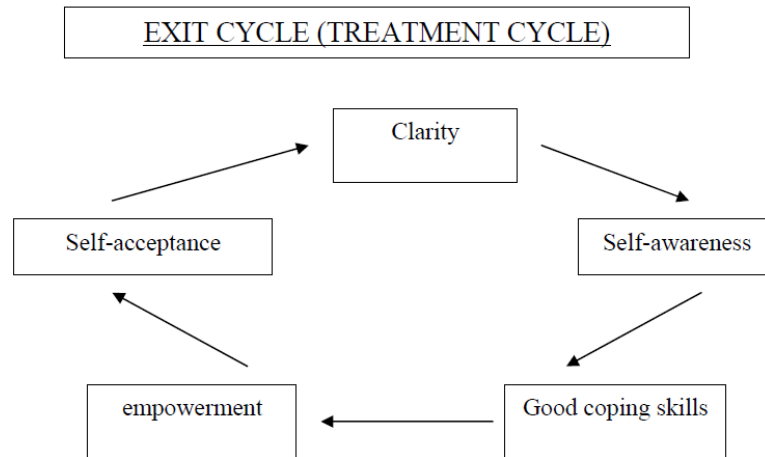


Fig.2¹⁶

26. However, simply acknowledging the social systems that influence child's psychology and even his response to abuse would be insufficient. But rather transforming a child's perceptions of the stereotypes through sensitisation would yield much greater benefits. "Such a rethinking of basic assumptions of male, female or other identities" Sheshadri warns, "is not only useful, but essential."

Building an Alternative Framework

27. Most children's education in South Asia according to findings of Leech et al have focused primarily on lecturing children about what they should do

²¹⁶Women's Research, C. and Bc 1989. Recollecting our lives: Women's experience of childhood sexual abuse. Press Gang Publishers; in Dr. Sheshadri's Submissions to the Committee.



without encouraging them to express their opinions about perceived needs. Kumar (1994) suggests that schools have to act as counter-socialisers to tackle gender bias and discrimination. Therefore, methodologies that can set up such counter-socialisation have to be explored.²¹⁷

28. Dr Shashi Kiran, pertinently observes:

“In India and indeed across the world, the steering of education seems to have shifted from academicians to corporate industrialists.”²¹⁸

29. This corporatisation impinges on the autonomy of education and its functioning. This is accompanied by the decline in standards of education and the promotion of higher education at the expense of primary education, contributing to its neglect. Educational curricula are encouraging ‘cut-throat competition’; newly-emergent information based societies exhibit elitism compounding the existing inequities existing in education. In such an atmosphere, education seems inadequate preparation for developing students’ “capabilities to face, understand and negotiate the complexities of real life situations” This is evidence that schools are not geared to providing an education for life: they do not seem to focus on the realm of ideas and moral dilemmas critical thinking, all factors that influence a child’s development and capabilities.

²¹⁷ Seshadri, S., Chandran, V., Leach, F. and Mitchell, C. 2006. 'Reframing masculinities: using films with male adolescents to address gender-based issues', F. Leach and C. Mitchell (eds.)

²¹⁸ Kiran. S et al, “Development of a life skills program for educationalists using experiential methodologies”, (2007) The International Journal on School Disaffection p22, 23



30. Life skills programmes have been piloted, used, consolidated in different parts of the world by the WHO and crystallized into pragmatic and workable rubrics. Some of these are listed below:²¹⁹
- a. Decision-making (assessing options and what effects different decisions may have)
 - b. Problem solving
 - c. Creative thinking (consequences of both action and non-action, looking beyond direct experience)
 - d. Critical thinking (factors that influence attitudes and behaviour)
 - e. Effective communication (to express not only opinions and desires but also needs and fears)
 - f. Interpersonal skills (to develop and nurture supportive networks, to be able to end relationships constructively)
 - g. Self-awareness (recognition of our self, both the positives and negatives)
 - h. Empathy (understanding unfamiliar situations and diversity, being nurturing and tolerant)
 - i. Coping with emotions
 - j. Coping with stress

Despite these findings, life skills instruction has remained largely theoretical.

31. Schools being one of the primary sites where social conditioning can take place, it is important to engage in discussions about life skills since this broadens horizons and also determines 'comfort levels' between peers as well as between adults

²¹⁹ Ibid



and children. Discussing experiences in such environments help establish life skills; which further provides a window to conflicts and problems; including those specific to gender its construction/practices/ stereotyping; discussing gender provides a window to sexuality and so on. Allied with this, other innovative and creative methods such as group learning and theatre-in-education are being used as teaching methods to facilitate these discussions.

32. Borrowing from the International Journal on School Disaffection, the model below indicates the priorities on which the workshops are modelled:

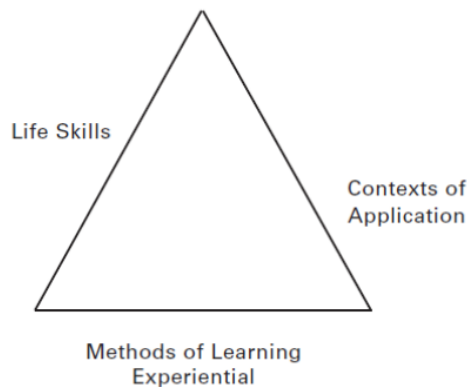


Fig.3²²⁰

“The focus of each workshop was equally distributed between activities and the context for them: feedback, facilitation skills, micro-skills acquisition, process evaluation of logistical problems encountered.”

Such workshops can be used as case studies to be applied in the Indian context.

33. About 26 people took part in the program: secondary school and college teachers, student

²²⁰ Women's Research, C. and Bc 1989. Recollecting our lives: Women's experience of childhood sexual abuse. Press Gang Publishers; in Dr. Sheshadri's Submissions to the Committee.



counsellors, a religious figure, professionals whose work concentrates on the development of interpersonal skills. The common factor between them was that all were engaged in pedagogy in some form or other. The participants had three assignments to complete in between the workshops: process reports, session outlines and program development. Each workshop activity was deconstructed and attempts were made to link them with existing theories of educational psychology and classroom practice. One of the most exciting activities centred on the group giving itself a name, which led to an analysis of issues around identity and self-awareness. At the end of these two days the group wrote a project report to be presented at the next session.

The format for this report was:

1. The group
 2. The gathering of the group and the arranging of physical space
 3. Intention of the sessions
 4. Introductory remarks/lines
 5. Flow of the session and the exercises used
 6. Children's responses – generic and specific
 7. Own experiences
 8. What worked and what did not (outcome and feedback)
 9. Limitations encountered
 10. Powerful moments during the session"
34. The themes varied from geographical location and restrictions in training to the scope, coverage and content of the training, level of training vis-à-vis age, skills to be learnt and contexts etc.

An example of this in relation to abusive situations was discussed.

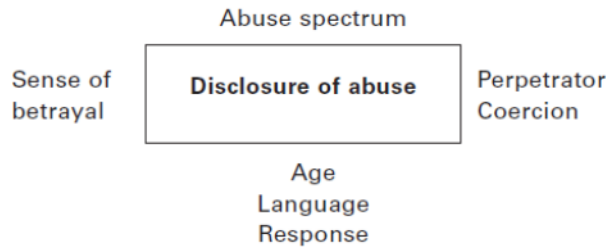


Fig. 4²²¹

35. The complexities of this situation were deconstructed using a windows approach explained earlier. This was arguably the situation where the triangulation process was used to optimum effect. Using this approach, it was possible to explore the process of internalising and expressing experiences both in the generic and personal realms. The framework was 'general experiences contribute to problem experiences'. This was approached by looking at contexts of experience such as school, family etc; institutions in which they occur – family, friendships; and finally, the feelings this evoked.

Sex Education:

36. Sexuality education is the process of assisting young people in their physical, social, emotional and moral development as they prepare for adulthood, marriage, parenthood and ageing, as well as their social relationships in the context of family and society. The need to impart appropriate education on sexuality is an important issue that parents and teachers must acknowledge and

²²¹ Kiran. S et al, "Development of a life skills program for educationalists using experiential methodologies", (2007) The International Journal on School Disaffection p22, 23



address if they want to make sure that their children are well adjusted and safe, and will grow up to be mature and balanced individuals.²²²

Problems with the existing system:

37. Evidence from rural Bangladesh showed getting more girls to school did not necessarily transform attitudes to women, including the objectification of women, or the acceptability of violence against women.²²³ Instead discriminatory attitudes became worse. This is because schools are reproductive, not just productive: they reflect prevailing structures, not only provide vehicles to change them. ²²⁴'Educating' more people means nothing – attitudes will not necessarily transform with 'more education.'

38. Whilst children may not have formed fixed conceptions of gender, 'masculinity' or 'femininity,' it is important to remember adults around them may have, and can and do counteract children being taught things different to 'perceived norms.' Thus training teachers alone may not even be enough. *The school structure allows for, and requires, a more multi-faceted approach:*

1. Teacher training – Demand for teaching far outstrips supply of teachers, causing a tradeoff between teacher quality and quantity. Obvious

²²² Sheshadari. S and Rao .N, 2012 *Parenting The art and science of nurturing*, Byword Books Private Limited.

²²³ Chisanya et al, 2011 Gender and Education for All: Progress and Problems in Achieving Gender Equity, International Journal of Educational Development

²²⁴ Ibid, and Stromquist, 2006 Gender, Education and the Possibility of Transformative Knowledge, A Journal of Comparative and International Education.



solution is for more gender-sensitive training during the training process, but the obvious difficulty lies in ensuring gender-sensitive training is to a high standard.

2. The curriculum - Sexual and personal education (must be taught sensitively to avoid more damage than benefit being done); *stripping out the language of sexism* from books/materials, *eliminating different lessons for girls and boys* (i.e. sewing v sports)
3. Pedagogy - This can involve *practical lessons through running the school*. Bajaj cites example of boys cooking and cleaning in school, which helped them to normalize these activities as gender-neutral.²²⁵
4. Administration - Male dominated: education boards, civil service, and politics. Greater input from women's NGOs needed in developing gender-transformative schools.
5. School leadership - Male dominated, particularly in higher and secondary education.
6. Data-management - e.g. Gender-inequitable need for 'father's details' for school admission.

39. Structural factors:

1. A W.H.O. meta-study, based on an extensive programme review, argues "the existing evidence suggests that social factors explain most variation in men's violence and sexual behaviour".
2. Explanations of sexual violence that resort to the 'depravity' of perpetrators, or explanation of perpetrators as 'aberrations,' are, at best,

²²⁵ Bajaj, 2012 Human Rights Education in Small Schools in India, A Journal of Social Justice.



naïve. We must view perpetrators of sexual violence in the context of social hegemonies and dominant structural pressures.

3. There are statistically significant relationships between individual propensity to sexual violence and: propensity for general violence; lack of 'close' friends or positive support networks; less than twelve months earned income. The relationship between earned income (unemployment) and propensity to sexual violence show that the government must not forget the relationship between inclusive growth and social advancement.

Further it must be noted, from various surveys that that sex is a sensitive issue of discussion in India and other developing countries. The primary concerns seem to be:

- a. Sexuality education leads to children indulging in sexual intercourse at an 'early age';
- b. Sexuality education deprives children of innocence;
- c. Sexuality education is against culture or religion;
- d. It is the role of parents and the extended family, and not of the State or the formal education system, to educate our young people about sexuality;
- e. Parents will object to sexuality education being taught in schools;
- f. Sexuality education may be good for young adults but not for young children.

We find that research does not indicate early sexual initiation on account of sexuality education.



On the contrary, there is better and more responsible sexual behaviour. Secondly, the information being available in a scientifically accurate, non-judgmental, age appropriate and in a carefully phased process is something which will benefit young children. Thirdly, parents and families also play an important role in shaping the identity of children's sexual identity and must create an appropriate environment. We notice that there is adequate basis for the view that there was increased cognition of consequences as a result of which risky sexual behaviour as well as repression could well be avoided. We are of the opinion that on account of repression, the element of increased aggression leading to violent behaviour would be well avoided.

40. Recommendations

1. The Committee is therefore of the opinion that there should be an introduction of sex education in a clinical manner in schools since the processes of growing up as well as absorption of knowledge has increased. The children and young people have to be prepared in order to be able to transition into adulthood. In view of human sexuality and relationships at its core, it is important that the attitudes of society and laws must not stifle discussion of sexuality and sexual behaviour. On the contrary, it is important that sexual and social identities of women must be correctly understood as equal in character. Parents must be able to address the physical and behavioural aspects of sexuality and children need to be informed and equipped with the knowledge and skills to make responsible decisions about sexuality and relations with the opposite sex.



2. In our view, it is the duty of the State to provide clear, well informed and scientifically grounded sexuality education based on the universal values of respect for human rights. We are also of the opinion that the formal curriculum in Indian schools must be drastically revamped, and sex education must be made an integral part of each Indian student's curriculum. It should be delivered by well trained and competent teachers and must necessarily involve the participation of counsellors who are trained in the field of child psychology.

3. We are indeed surprised to note that notwithstanding the outstanding work which had been undertaken by UNESCO, which has compiled a 2-volume "International Technical Guidance on Sexuality Education", the Indian education framework has not adopted any of these salutary practices in being able to propound the introduction and clear transmission of knowledge relating to sex, choices, respect, avoidance of conflicts and understanding of the consequences of choices made by children and young adults. The said UNESCO guidance pithily points out the necessity of imparting sexuality education at an early age to students:

"The challenge for sexuality education is to reach young people before they become sexually active, whether this is through choice, necessity (e.g. in exchange for money, food or shelter), coercion or exploitation. For many developing countries, this discussion will require attention to other aspects of vulnerability, particularly disability and socio-economic factors. Furthermore, some students, now or in the future, will be sexually active with members of their own sex. These are sensitive and challenging issues for those with



responsibility for designing and delivering sexuality education, and the needs of those most vulnerable must be taken into particular consideration.”

4. The Committee further notes that–
 - a. Sexuality is a fundamental aspect of human life;
 - b. It covers physical, psychological, spiritual, social, economic, political and cultural dimensions;
 - c. Sexuality can be diverse; and
 - d. The rules which govern sexual behaviour differ widely across, and within, cultures and individuals.
 - f. Children need to be able to access informed, non-prejudiced sources on sexuality. Challenging the perception of sexuality as being purely heterosexual is an ongoing agenda for lesbian, gay, bisexual and transgender (LGBT) activism and for counter-socialisation efforts. Collaborating or networking with LGBT activists is a beginning to understanding different sexuality experiences.²²⁶

5. We are of the opinion that –
 - a. There must be a reduction of misinformation, be it through internet of misleading advertising;
 - b. Correct knowledge must be disseminated in respect of sexuality and sexual choices, without enforcing gender stereotypes;

²²⁶ Seshadri, S., Chandran, V., Leach, F. and Mitchell, C. 2006. 'Reframing masculinities: using films with male adolescents to address gender-based issues', F. Leach and C. Mitchell (eds.)



- c. The skills of children and young adults to make informed decisions need to be nurtured;
 - d. Perceptions and social norms need to be relooked at and revamped;
 - e. Children and young adults must be encouraged to increase communication with and within peer groups.
 - f. The use of theatrical resources and films in school workshops has proved to be extremely effective in gauging students' responses towards understanding of gender relations and we recommend use of audio-visual material to encourage respect and understand for all genders/sexes.²²⁷
6. We strongly recommend that the Government consider the clear enunciation of young people sexual and reproductive health as contained in Chapter 2.1 of the "International Technical Guidance on Sexuality Education". We also notice that schools provide a practical means of reaching

²²⁷ These workshops focused on assessing whether films were useful for raising issues about gender, masculinity and other concerns with children. All the participants responded enthusiastically in favour of using the films... Though the major focus was on boys, a few girl respondents were also included. Children were drawn both from schools that catered to a wide socio-economic class and from the out-of-school sector, coming from an NGO that worked with children from under-privileged circumstances. After the screening, the facilitator used questions from the discussion guide to elicit children's reactions to the film. At both the workshops, children engaged with the films completely. Given here is an example of their responses to two of the films (Nepal's Listen to the Wind and Bangladesh's Our Boys).

(Extract from response of a fifteen-year-old girl in the workshop)

"I find this movie very useful. It teaches us many things. The boy who is sent to school is very different from other boys. He likes nature, flowers and he is also a quiet boy. We think boys are not so sensitive as girls but now I think there are also boys who are sensitive. I feel everyone should be treated equally since boys and girls can do the same things."



large numbers of young people from diverse backgrounds in ways which are sustainable and their systems can usefully impart age appropriate sexuality education.

7. Further for adult education we feel that community projects were made more effective when occurring alongside a broader engagement e.g. through national government campaigns, which for example made use of celebrity figures of authority.

We acknowledge that adult education schemes would be more complex as the engagement is with individuals who are already fairly routed in existing patriarchal set-ups and therefore these programs will face the following limitations:

- a. Cannot end patriarchy; are, in themselves, only more pragmatic and targeted attempts to make patriarchy more benign.
- b. Difficulties / costs in finding suitably trained /gender-aware facilitators / leaders of the program

Yet we are hopeful that adult literacy programmes are necessary and may have long standing benefit such as:

- a. Gender empowerment may have positive consequences by decreasing family sizes, lowering mortality;²²⁸
- b. Focused adult literacy programmes could account for problems specific to religions communities, since there

²²⁸ Warner, 2012. Girls' Education, Empowerment and Transition to Adulthood, International Centre for Research on Women.



will be a greater awareness of economic resources and prevalent institutions of a region among adults.

A maximal, integrated policy: school programmes, alongside community based programmes for adults and young men, alongside a nationally integrated programme that utilizes figures of authority/entertaining media would truly amount to a collective community effort involving citizens and transforming from within rather than through mere legislations.

41. As E. Andrew suggests:

“Law is naturally conservative; it relies on precedent and background assumptions and seeks interpretations consistent with those assumptions. Legal change is, accordingly, generally incremental. It is just enough reform to look good to large segment of the public, to preserve the system from collapse, and to make everyone feel proud, but not enough reform as to wreak radical change. Because of that, the nature of legal training is likely to perpetuate historically dominant cultural tales that have previously penetrated the law and are a break on rapid change in the master narrative. Patriarchal rape tales will not give up the ghost easily.”²²⁹

42. Thus while placing the onus of social transformation on the society we would also like to state that our Constitution, however, is not simply utopia – it is pragmatic – it is psychological – it promotes attitudes – it promotes equality – it promotes a sense of self – a Constitution which enables a definition of an identity on such rationally strong psychological parameters of the

²²⁹ Andrew E. Taslitz, *Rape And The Culture Of The Court Room*, New York University Press (1999) p42.



‘self’ is indeed an extraordinary sense of achievement.

43. We believe that the Indian Constitution is rightly recognised as the leading Constitution of the world because the concept of dignity, liberty as well as the freedom of thought and choice which is so strongly embedded in the Constitution is a primary respect for the principle of self-autonomy. If self-autonomy is encouraged as a constitutional creed, indeed it is true for all psychologically, liberating and emancipating experiences, we think that such an opportunity must be available for both men and women on equal terms. The ability of educational institutions to be able to adequately filter the truthfulness of information including biological, evolutionary, socio, physical and moral information is vital to true education. We therefore think that transparency and non-discriminatory attitude is indeed vital. We think that right to education under the Constitution includes the right to gender mainstreaming as a part of Article 21A of the Constitution. The right to education means education of quality and substance, and education with a certain degree of transformative potential.



CONCLUSIONS AND RECOMMENDATIONS

In view of the above, we come to the following conclusions and make the following recommendations:

Part I - Conclusions

1. The existing laws, if faithfully and efficiently implemented by *credible law enforcement agencies*, are sufficient to maintain law and order and to protect the safety and dignity of the people, particularly women, and to punish any offenders who commit any crime. This is not to say that the necessary improvements in the law, keeping in mind modern times, should not be enacted at the earliest.
2. Speedy justice is not merely an aspect of the right to life with dignity, but is essential for efficacy of the law and its desired impact, as well as for prevention of its violation.
3. Available personnel of the judiciary and the infrastructure, with a few systemic changes can, at least, reduce half the burden of arrears in courts contributing to delays in enforcing the law of the land. Judge strength can be increased in phases without diluting their quality. Our suggestion of eminent retired judges being appointed as ad hoc judges will solve this problem.
4. More effective control of the subordinate judiciary by the responsibility vested in the High Courts would ensure improved performance of the subordinate judiciary, which is the cutting edge of the justice delivery system. The High Courts have the pivotal role in the administration of justice by



virtue of Article 235 of the Constitution. They have to lead by practice in addition to precept. The restatement of values of judicial life is a charter of faith for every judicial functionary at all levels.

5. Police reforms that are recommended and directed for the autonomy and better quality of the police force must be urgently implemented for the preservation of the rule of law, which is a basic feature of our Constitution²³⁰.
6. Law enforcement agencies must be insulated from any political or other extraneous influence, which impedes their performance. Law enforcement agencies must not become tools at the hands of political masters.
7. Transparency in the performance by all institutions of governance is necessary to enable the 'people' to discharge their participatory role in governance of the republic, and to enforce accountability of the public functionary when needed.
8. Performance appraisal for career progression must be objective, i.e. based on commitment to the constitutional values and to prevent the upward mobility of the undeserving.
9. Practically every serious breach of the rule of law can be traced to the failure of performance by the persons responsible for its implementation. The undisputed facts in public knowledge relating to the Delhi gang rape of December 16, 2012 unmistakably disclose the failure of many public functionaries responsible for traffic regulation, maintenance of law and order and, more

²³⁰ See, *infra* Police Reform.



importantly, their low and skewed priority of dealing with complaints of sexual assault.

10. Disputes relating to the jurisdiction of the police over the area of the crime are often a cause of delay in initiating the process of taking cognizance of the crime and providing medical aid to the victim.
11. Delay in giving the necessary medical aid to the victim/injured person in a medico-legal case is also because of the practice of approaching only a government hospital and not the nearest available hospital. This continues in spite of the clear duty of every medical doctor (even a private practitioner) to attend to an injured person and to save such person's life.
12. The peculiarity of the Government of NCT of Delhi not having any control over the police force, which control vests only in the Ministry of Home Affairs of the Government of India (through the Lieutenant Governor) is the reason given publicly by the Chief Minister of Delhi for the absence of responsibility of her government. This ambiguity must be removed forthwith so that there is no divided responsibility in Delhi in respect of maintenance of law and order. Such a step is also essential to maintain accountability.
13. The apathy of civil society is evident from the inaction of passers-by and bystanders, who failed in their citizenship duty of rendering help to the victim of the December 16 gang-rape and her companion, who were both lying badly injured and disrobed on the roadside for a considerable amount of time. The misbehaviour of the police towards any samaritan is often the cause for such apathy. But this must not deter citizens from doing



their duty. A change in the behaviour of the citizenry will also improve the conduct of the police. This effort must be promoted.

14. It is clear that denial of political rights to women will cast a shadow on democratic right to a free and fair election.
15. The nation has to account for all its missing children.
16. The lathi charge on peaceful demonstrators after the December 16 gang rape has scarred the Indian democracy.
17. The brutalities of the armed forces faced by residents in the border areas have led to a deep disenchantment, and the lack of mainstreaming of such persons into civil society. Serious allegations of persistent sexual assault on the women in such areas and conflict areas are causing more alienation.
18. The nation has to account for the tears of millions of women and other marginalized sections of the society which has been ignored owing to institutional apathy. At this closing juncture we wish to reiterate the promise of a 'tryst with destiny' that Pandit Nehru made to the nation on the eve of independence:

"Freedom and power bring responsibility. The responsibility rests upon this Assembly, a sovereign body representing the sovereign people of India. Before the birth of freedom, we have endured all the pains of labour and our hearts are heavy with the memory of this sorrow. Some of those pains continue even now. Nevertheless, the past is over and it is the future that beckons to us now. That future is not one of ease or resting but of incessant striving so that we might fulfil the pledges we have so often taken and the One we shall



take today. The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us but as long as there are tears and suffering, so long our work will not be over."

19. Unless the promises made at the birth of the nation are fulfilled, the India that our founding fathers dreamt of will never become a reality. Recent events indicate that the patience of the disillusioned youth is running out.

Part II - Recommendations

1. The equality of women, being integral to the Constitution, its denial is a sacrilege and a constitutional violation. Sustained constitutional violations mean that governance is not in accordance with the Constitution. *A fortiori*, all limbs of the State - the executive, the legislature as well as the judiciary - must respect women's rights and must treat them in a non-discriminatory manner.
2. As a primary recommendation, all marriages in India (irrespective of the personal laws under which such marriages are solemnised) should mandatorily be registered in the presence of a magistrate, which magistrate will ensure that the marriage has been solemnised without any demand for dowry having been made and that the marriage has taken place with the full and free consent of both partners.



3. The manner in which the rights of women can be recognised can only be manifested when they have full access to justice and when the rule of law can be upheld in their favour. The proposed Criminal Law Amendment Act, 2012, should be modified as suggested, and to secure public confidence, be promulgated forthwith. Since the possibility of sexual assault on men, as well as homosexual, transgender and transsexual rape, is a reality the provisions have to be cognizant of the same.
4. In respect of certain categories of cases, such as those where the victim is in custody of persons in authority including police and armed personnel, certain statutory presumptions must apply under Section 114A of the Indian Evidence Act, 1872. Every complaint of rape must be registered by the police and civil society should perform its duty to report any case of rape coming to its knowledge.
5. Any officer, who fails to register a case of rape reported to him, or attempts to abort its investigation, commits an offence which shall be punishable as prescribed. We have also taken into account offences of eve teasing, voyeurism, stalking as well as sexual assault and unsolicited sexual contact.
6. A special procedure for protecting persons with disabilities from rape, and requisite procedures for access to justice for such persons is also an urgent need. Amendments to the Code of Criminal Procedure, which are necessary, have been suggested.
7. The protocols for medical examination of victims of sexual assault have also been suggested, which



we have prepared on the basis of the best practices as advised by global experts in the fields of gynaecology and psychology. Such protocol-based, professional medical examination is imperative for uniform practice and implementation.

8. The insensitivity of the police to deal with rape victims is well known. The police respect a patriarchal form of society, and have been unable to deal with extraordinary cases of humiliation and hardship caused by the *khap panchayats*, as is evident from various judgments of the Supreme Court. The police are involved in trafficking of children (including female children) and in drug trade. To inspire public confidence, it is necessary that there must not only be prompt implementation of the judgment of the Supreme Court in *Prakash Singh*, but also police officers with reputations of outstanding ability and character must be placed at the higher levels of the police force. In the present context, and in view of the facts revealed to us, it is necessary that every police commissioner and director general of police of this country must be selected in accordance with the directions of the Supreme Court in *Prakash Singh's* case, who can lead by example. The leader makes all the difference. As such, all existing appointments need to be reviewed to ensure that the police force has the requisite moral vision.
9. It is settled law that every policeman is bound to obey the law and any order of a superior officer, which is contrary to law, is no defence for his illegal action, which may be a punishable offence. Accordingly, any political interference or extraneous influence in the performance of the



statutory duty by a policeman cannot be condoned. This principle has to be clearly understood by every member of the police force - their accountability is only to the law and to none else in the discharge of their duty. Dereliction of this duty has to be punished according to the service rules and applicable law.

10. Authentic figures of missing children in India are not available for obvious reasons of the complicity of law enforcement agencies. Children have been driven into forced labour, sex abuse, sexual exploitation as well as made victims of illegal organ trade. Our report includes the testimonies of children (whose identities have been concealed for their safety) to verify facts from their personal experience. As a small gesture, this Committee has (at its own cost) taken necessary steps for proper rehabilitation and education of one of these children, payment of the minimum wages due to the said child, her safe passage and reintegration with her family, psychotherapeutic intervention, and to fulfil her educational aspirations. The Committee expects similar treatment by the State of all such deprived children.
11. Every District Magistrate is responsible for carrying out a census of missing children within his district. Having regard to the apathy shown by the district magistrates and the police in the matter of missing children, evident from advisories issued by the Ministry of Home Affairs as late as on 30th January 2012, this issue needs immediate attention. This is necessary also for the credibility of the political establishment.



12. The judiciary has the primary responsibility of enforcing fundamental rights, through constitutional remedies. The judiciary can take *suo motu* cognizance of such issues being deeply concerned with them both in the Supreme Court and the High Court. An all India strategy to deal with this issue would be advisable. The Chief Justice of India could be approached to commence appropriate proceedings on the judicial side. The Hon'ble Chief Justice may consider making appropriate orders relating to the issue of missing children to curb the illegal trade of their trafficking etc. Social activists involved in curbing this menace could assist the court in the performance of this task. The question of award of compensation and rehabilitation could also be considered in such cases by the court.
13. Juvenile homes in the country, i.e. child homes, and observation homes, are not being run in a manner consistent with the spirit of the Juvenile Justice Act. To ensure that the constitution of the Child Welfare Committee, Juvenile Justice Board, the infrastructural facilities in a home, the quality of food, the quality of counselling and psychotherapy required for a child to wipe out the scars of abuse and deprivation in early childhood and to mainstream him/her in society and to educate him/her fully requires a deeper and profound engagement of the State and civil society. This is the primary duty of the State, which is found wanting. We are shocked to note that so many of these children have been forced into bonded labour and beggary, which is in violation of Article 23 of the Constitution. India should not permit cheap child labour to be an



incentive for foreign investment to boost our economy.

14. It is time for the judiciary to step in to discharge the constitutional mandate of enforcing fundamental rights and implementation of the rule of law. In performance of this obligation, the Chief Justice of the High Court in every State could devise the appropriate machinery for administration and supervision of these homes in consultation with experts in the field. For the safety and physical security of children, women, persons with disabilities, inmates of mental homes and widows, monitoring by the judiciary is necessary. The immediate and ultimate guardianship of such persons has to be with the court, founded on the principle of *parens patriae*.
15. To augment the police force, there is a need to develop community policing by involving the local gentry, which would also motivate them to perform their duty as citizens. Respectable persons in each locality could also be appointed Special Executive Magistrates under Section 21, Cr.P.C. and invested with powers to deal with the traffic offences and other minor offences. In addition, to assisting the maintenance of law and order in the locality, their presence would inspire greater confidence of safety in the locality.
16. Street lighting everywhere would provide more safety since dark areas are more prone to facilitate crimes. There is great wisdom in the words of the American Judge Louis Brandeis, that "*Sunlight is said to be the best of disinfectant; electric light the most efficient policeman*".



17. Street vending should be encouraged to make the bus stops and footpaths safe for communities and pedestrians, in addition to providing street food for the common man.
18. We recommend the creation of a new constitutional authority akin to the Comptroller and Auditor General for education, non-discrimination, in respect of women and children.
19. Reforms in respect of the political establishment:
 - (a) Reforms are needed in the Representation of People Act, 1951 to deal with criminalisation of politics and to ensure true representation of people by elimination of those with criminal antecedents. This is also essential to avoid any conflict in the discharge of their legislative functions.
 - (b) Having regard to the fact that there is no verification of the affidavits which are filed by candidates under Section 33A of the Representation of People Act, 1951, we have suggested amendments to the said Section 33A requiring the making of a declaration about the pendency of any criminal case, whether cognizance has been taken of it. A certificate from the Registrar of the High Court should be necessary for the validity of the nomination.
 - (c) We also suggest that, in the event cognizance has been taken by a magistrate of an offence mentioned in Section 8(1) of the Representation of People Act, 1951, the candidate ought to be disqualified from participating in the electoral process.



- (d) We further suggest that Section 8(1) of the Representation of People Act, 1951 be amended and should include all heinous offences as suggested.
- (e) A candidate who fails to disclose a charge or the commission of an offence should be disqualified subsequently. It is alleged that a minister of the Andhra Pradesh Cabinet had failed to disclose an offence and there is presently a complaint pending against such minister under Section 125A of the Representation of People Act, 1951. We request the Chief Minister of Andhra Pradesh to dismiss the minister immediately from the Cabinet if it is correct that he did not disclose the offence for which he was charged.
- (f) Scrutiny and verification of the disclosures made by candidates in respect of their assets may be made by the CAG with necessary follow up action in the case of such disclosures being found to be incorrect or false. Such discrepancies should be a ground for subsequent disqualification under the Representation of People Act, 1951.
- (g) If all those in Parliament and State Legislatures, who have any criminal case pending against them in respect of heinous offences, vacate their seats as a mark of respect to Parliament and to the Constitution (which they have sworn to uphold), it would be a healthy precedent and would raise them in public esteem. This would be consistent with the principle of institutional integrity emphasised



by the Supreme Court in the *P.J. Thomas* case judgment²³¹.

- (h) It is the least to expect that political parties do not nominate any candidates for election who have any criminal antecedents. Failure to do so is likely to set in motion social urges of inestimable dimensions. It has been established in the oral interactions of the Committee with the stakeholders that the fielding of such candidates leads to women being deterred from exercising their right to vote.
- (i) Legislation be enacted for compulsory registration of all political parties as indicated earlier.

20. Even though the scope of the terms of reference of this Committee was to look at all criminal laws including laws relating to aggravated sexual assault, we have also studied the related laws which have a bearing upon the administration of criminal justice, including the exercise of enacting legislation.

21. These recommendations are to be read along with the various other recommendations contained in the body of the report relating to specific matters.

22. The recommendations made in this report, unless urgently implemented, will end the exercise conducted by this Committee in futility.

²³¹ *Centre for PIL & Another v. Union of India*. Judgment dated March 3, 2011 in Writ Petition (C) No. 348 of 2010.



REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW

We pay our tribute to the departed soul of Nirbhaya
which has occasioned this exercise.

Leila Seth
(Member)

J. S. Verma
(Chairman)

Gopal Subramaniam
(Member)

New Delhi
January 23, 2013

APPENDICES



भारत का राजपत्र

The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 2493]

नई दिल्ली, सोमवार, दिसम्बर 24, 2012/पौष 3, 1934

No. 2493]

NEW DELHI, MONDAY, DECEMBER 24, 2012/PAUSA 3, 1934

गृह मंत्रालय

MINISTRY OF HOME AFFAIRS

(संघ-राज्य-क्षेत्र प्रभाग)

(UT DIVISION)

अधिसूचना

NOTIFICATION

नई दिल्ली, 23 दिसम्बर, 2012

New Delhi, the 23rd December, 2012

का.आ. 3003(अ).—हाल ही में हुई घटना के आलोक में, यौन उत्पीड़न के गंभीर मामलों में अपेक्षाकृत शीघ्रता से न्याय तथा अपेक्षाकृत अधिक दंड दिए जाने का प्रावधान करने के क्रम में सरकार ने मौजूदा कानूनों की पुनरीक्षा की आवश्यकता पर गंभीरता से विचार किया है। उपर्युक्त विषय पर सिफारिशें करने के उद्देश्य से संघ सरकार ने दंड विधि में संभावित संशोधनों पर विचार करने के लिए प्रतिष्ठित विधिवेत्ताओं की एक समिति गठित करना तय किया है ताकि महिलाओं का गंभीर यौन उत्पीड़न करने वाले अपराधियों, अभियुक्तों के मामलों का और अधिक तत्परता से विचारण करने और उन्हें अपेक्षाकृत अधिक दंड देने का प्रावधान किया जा सके।

S.O. 3003(E).—In the light of the recent incident, the Government have given their anxious consideration to the need for reviewing the present Laws so as to provide for speedier justice and enhanced punishment in cases of aggravated sexual assault. In order to give recommendations on the above, it has been decided by the Union Government to constitute a Committee of eminent Jurists to look into possible amendments of the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals, accused of committing sexual assault of extreme nature against women.

उपर्युक्त समिति निम्नानुसार गठित की जाएगी—

The Committee shall be as under—

- माननीय न्यायमूर्ति (सेवानिवृत्त) जे. एस. वर्मा, भारत के पूर्व मुख्य न्यायाधीश —अध्यक्ष
- माननीय न्यायमूर्ति (सेवानिवृत्त) लीला सेठ, हिमाचल प्रदेश की पूर्व मुख्य न्यायाधीश —सदस्य
- श्री गोपाल सुब्रमणियम, भारत के पूर्व सॉलिसीटर जनरल, बार काउंसिल ऑफ इंडिया के पूर्व अध्यक्ष तथा प्रतिष्ठित विधिवेत्ता —सदस्य

- Hon'ble Justice (Retd.) J. S. Verma, Former Chief Justice of India —Chairman
- Hon'ble Justice (Retd.) Leila Seth, Former Chief Justice of HP —Member
- Shri Gopal Subramaniam, Former Solicitor General of India, Former Chairman of Bar Council of India and Eminent Jurist —Member

उपर्युक्त समिति अपनी रिपोर्ट, 30 दिन के भीतर प्रस्तुत करेगी। गृह मंत्रालय का संघ राज्य क्षेत्र (यू टी) प्रभाग इस समिति को सचिवालय संबंधी सहायता प्रदान करेगा।

The Committee shall submit its Report within 30 days. The UT Division of the Ministry of Home Affairs shall provide secretarial assistance to the Committee.

[फा. सं. 14011/144/2012-यूटीपी]

[F.No.14011/144/2012-UTP]

के.के. पाठक, संयुक्त सचिव(यू.टी.)

K.K. PATHAK, Jt. Secy. (UT)

4766 GI/2012

APPENDIX 2

LIST OF PERSONS INTERACTED WITH BY THE COMMITTEE

1. Akkai Padmashali (Sangama).
2. Albertina Almeida, Lawyer.
3. Amarjeet Kaur (National Federation of Indian Women).
4. Amod Kanth (Prayas).
5. Amba Salelkar (Inclusive Planet Centre for Disability Law and Policy).
6. Anand Grover (UN Special Rapporteur for Mental Health)
7. Anil Bairwal (ADR).
8. Prof. Anita Ghai (Jesus & Mary College).
9. Anju Talukdar (MARG, Delhi)
10. Prof. Anup Surendranath (NLU, New Delhi)
11. Anuradha Kapur (Swayam, Kolkata)
12. Arvind Narrain (Alternative Law Forum).
13. Asha Kotwal (NCDHR).
14. Atiya Bose (Aangan India).
15. Prof. Ayesha Kidwai (JNU).
16. Babloo Loitongbam (Human Rights Alert, Manipur).
17. Bhuwan Ribhu (Bachpan Bachao Andolan).
18. Bikramjeet Batra, Law Researcher.
19. Bondita Acharya (WinG, Assam).
20. Chayanika Shah (FAOW/LABIA, Assam).
21. Colin Gonsalves, Senior Advocate.
22. D. Nagasaila, Advocate (People's Union for Civil Liberties, Chennai).
23. Prof. David Wilkins (Harvard Law School).
24. Prof. Diane Rosenfeld (Harvard Law School).
25. Farah Naqvi, Writer.
26. Flavia Agnes (Majlis, Mumbai).
27. Gagan Sethi (Centre for Social Justice, Ahmedabad)
28. Prof. Hameeda Nayeem (Kashmir University, Srinagar)
29. Harshita Yalamarti (Saheli, Delhi)
30. Haseena Khan (Aawaz-e-Niswaan, Mumbai).
31. Helam Haokip (WinG, Manipur)
32. Her Excellency Navanethem Pillay (Office of UN High Commissioner for Human Rights).
33. Prof. Ilina Sen (Tata Institute of Social Sciences, Mumbai).
34. Indira Chakraborty (WSS)
35. Indira Jaising, Additional Solicitor General of India.
36. Indu Aghniotri (AIDWA, New Delhi)
37. Indu Prakash (Action Aid / SHELTER).

38. Dr. Jagdish Reddy (CEHAT).
39. Jasjit Purewal, Lawyer.
40. Dr. Kalpana Kannabiran (Council for Social Development/ Asmita Collective, Hyderabad)
41. Kalpana Vishwanath (Jagori, New Delhi)
42. Kavita Srivastava (People's Union for Civil Liberties, Rajasthan).
43. Kavitha Krishnan (AIPWA-Agricultural Workers)
44. Kiran Bedi (ex-IPS officer).
45. Kriti Singh (AIDWA).
46. Prof. Laura Hoyano (Oxford University)
47. Lenin Vinober (JNUSU).
48. Madhu Bhushan (Vimochna, Bangalore).
49. Madhu Kishwar (Manushi/ CSDS).
50. Madhu Mehra (Partners for Law in Development).
51. Maharukh Adenwalla, Lawyer.
52. Maja Daruwala (CHRI).
53. Manohar Elavarthi (Sangama, Bangalore).
54. Mary John (CWDS, Delhi).
55. Meena Sheshu (National Network of Sexworkers).
56. Michael Kirby (former justice, High Court of Australia).
57. Monisha Behal (North East Network, Delhi).
58. Murlidharan.
59. Mukund Upadhyay (ex-IPS officer).
60. Naina Kapur, Lawyer.
61. Prof. Nandini Sundar, Delhi University.
62. Nitya Ramakrishnan, Advocate.
63. Nawaz Kotwal (CHRI, Delhi).
64. P.M. Nair, ex-IPS officer.
65. Padma Deosthali, (CEHAT).
66. Poonam Natarajan (National Trust).
67. Prasad Sirivella, (NCDHR)
68. Prof. Pratiksha Baxi, (JNU)
69. Praveen Swamy, (The Hindu)
70. Prof. Ved Kumari, Delhi University
71. Pushpa, (Vanangana, Uttar Pradesh)
72. R Vaigai, (Forum for Judicial Accountability)
73. Rajeev Ratur (HRLN)
74. Ranjana Kumari (Centre for Social Research)
75. Rebecca John, Advocate.
76. Rita Manchanda (SAFHR)
77. Roma (NFFPFW)
78. Rosemary Dzuvichu (Naga Mothers Association, Nagaland)

79. Ruchira Sen (JNUSU)
80. Ruth Manorama (NAWO)
81. Dr. Sagarpreet Hooda, IPS.
82. Sameer Malhotra (AIIMS, New Delhi).
83. Sandra Fredman (Oxford University).
84. Saptarishi Mondal (National Platform for the Rights of Disabled Persons).
85. Schlomit Wallerstein (Oxford University).
86. Seema Baquer Disability Rights Activist.
87. Seema Misra (AALI, Lucknow).
88. Shamim Modi (TISS, Mumbai).
89. Shampa Sengupta (Sruti Disability Rights Centre).
90. Sheeba George (Saharwaru, Ahmedabad).
91. Dr. Shekhar Sheshadri (NIMHANS).
92. Dr. Shobana Sonpar, Clinical Psychologist.
93. Suneeta Dhar (Jagori).
94. Tapan Bose (SAFHR).
95. Trupti Panchal (TISS).
96. Uma Chakravarti, Feminist Historian.
97. Usha Ramanathan, Advocate.
98. Vahida Nainar, (WRAG, Mumbai).
99. Vrinda Grover, Advocate.
100. Dr. Yatan Balhara (AIIMS, New Delhi).

LIST OF GOVERNMENT INSTITUTIONS INTERACTED WITH BY THE COMMITTEE

1. Election Commission of India.
2. Chief Secretary, Delhi Government.
3. Commissioner of Police, Delhi, (Mr. Siddharth Luthra, Additional Solicitor General).
4. Director, Central Bureau of Investigation.
5. Ministry of Health and Family Welfare (Jagdish Prasad).
6. Ministry of Home Affairs, (J.N. Chugh).
7. Ministry of Women and Child Development, (Prem Narain).
8. National Commission for Protection of Child Rights, (Shanta Sinha).
9. National Commission for Women (Kirti Singh, Advocate).

APPENDIX 3

Bill of Rights

Statement of Objects and Reasons

A charter to set out the rights guaranteed to women under the Constitution of India, and to provide for justiciability of the various rights;

And in consideration of India's commitment to international conventions including Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Civil and Political Rights.

And to recognize the historical distinctions, exclusions and restrictions on the basis of gender, while also taking note that certain practices including cultural, social, political, religious and customary norms are patriarchal and impair the agency, dignity and equality of women.

And being firmly convinced that any practice that hinders or endangers the normal growth and affects the physical and psychological development of women and girls should be condemned and eliminated;

And being determined to ensure that the rights of women are promoted, realised and protected in order to enable them to enjoy fully all their human rights;

Part I

Right to Life, Security, and Bodily Integrity

1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of violence, exploitation, cruel, inhuman or degrading punishment and treatment targeting women are prohibited.
2. Every woman as the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.
3. Every woman has the right to be respected as an independent person and to the free development of her personality.
4. Every woman has the right to express and experience complete sexual autonomy including with respect to her relationships and choice of partners.

5. Every woman has the right not to be subjected to medical or scientific experiments without her informed consent; with an exception in the case of an emergency;
6. The State shall ensure to every woman protection from all forms of violence whether the violence takes place in private or public, including unwanted or forced sexual intercourse or activity;
7. The State shall protect, rescue and rehabilitate every woman who is at the risk of or has been a victim of trafficking and all other forms of such treatment.
8. The State shall promptly provide effective mechanisms and accessible services for information, redressal, rehabilitation and reparation of every woman being a victim of violence.

Part II
Democratic and Civil Rights

9. Every woman should have the right to participative governance through participation without discrimination in all elections; representation at all levels in electoral processes; equal opportunity for partnership in decision making and implementation of development and economic programs.
10. Every woman has the right to freedom of thought, conscience, religion, and belief, including the right to adopt, convert, and to hold opinions without interference.
11. Every woman has the right to manifest that person's religion or belief in worship, observance, practice, teaching, ideas, or opinions of her own choosing, either individually or in community with others, both, in public or private.
12. Every woman has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.
13. Every woman has the right to freedom of peaceful assembly.
14. Every woman has the right to freedom of association.

Part III
Equality and Non- Discrimination

15. Every woman shall have the right to equality before the law and equal protection of all the laws.
16. No woman shall be unfairly discriminated on grounds of gender including-
 - (1) Preventing women from inheriting family property.
 - (2) (b) Any practice including traditional, customary or religious practice that impairs dignity of women and undermines equality between women and men, including the undermining of the dignity and wellbeing of the girl child.
 - (3) Any policy or conduct that unfairly limits access of women to land rights and finance and other resources
 - (4) Discrimination on grounds of pregnancy
 - (5) Limiting access to health care, education and other social welfare.
 - (6) Denying access to opportunities including services or contractual opportunities or failure to accommodate diversity.
 - (7) Systematic inequality in access of labour, contractual opportunities etc.
 - (8) Systemic inequality to opportunities by women as a result of sexual division of labour.
 - (9) Or discrimination by virtue of a woman belonging to another sub-sect of caste, religion, region or race.
17. Every woman shall have the freedom to marry any person of her choice and be regarded as an equal partner in the marriage.
18. Every woman shall have the same rights in case of separation, divorce and annulment of marriage.
19. Every woman shall have the Right to Free Education until under-graduate level.
20. Every woman especially the girl-child must be protected from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices;
21. Every woman who suffers abuses and sexual harassment must have access to counseling and rehabilitation services to women who suffer abuses and sexual harassment;
22. Every woman shall have the Right to Reproductive and Sexual Health.

23. Every woman shall have the right to nutritious and adequate food as well as access to clean drinking water.

Part IV
Right to Secured spaces

24. Every woman shall have the right to equal access to housing/shelter and to acceptable living conditions in a healthy environment.
25. Every woman, whatever her marital status has access to adequate housing/shelter.
26. Every woman should have access to Public Transport facilities without fear of the risk of violation of her dignity in any form by means of teasing, molestation, stalking etc.

Part V
Special protections

27. Every elderly woman must have specific measures commensurate with her physical, economic and social needs as well as her access to employment and professional training;
28. Every elderly woman must have the right to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity.
29. Every woman with disability must have special protection and specific measures commensurate with their physical, economic and social needs to facilitate their access to employment, professional and vocational training as well as their participation in decision-making;
30. Every woman with disability must have freedom from violence, including sexual abuse, discrimination; and the right to be treated with dignity.

Part VI
Special Protection of Women in Distress

31. Every woman below poverty line; and women heads of families including women from marginalized population groups must be able to fulfil their special physical, economic and social needs;
32. Every pregnant or nursing women or women in detention must be provided with an environment which is suitable to their condition and should be guaranteed the right to be treated with dignity.

APPENDIX 4

The Committee has taken note of the Criminal Law (Amendment) Bill, 2012, which was tabled in the Lok Sabha on December 4, 2012.

The Criminal Law (Amendment) Bill, 2012 uses the term sexual assault in lieu of rape to cover a wider gamut of offences including penetrative sexual assault which has thus far been called rape in the Indian Penal Code. However, the Committee found that the Protection of Children from Sexual Offences Act (PoCSOA), 2012 defines the term sexual assault in a limited context. Section 7 of the said Act confines sexual assault to acts that involve physical contact without penetration. Hence if rape were to be redefined as 'sexual assault' in relation to the IPC then there would be a clear contradiction between them and the PoCSOA. Hence the Committee recommends that the term rape be retained in the IPC to denote the highest categorisation of sexual assault, i.e. penetrative sexual assault. This and other modifications in the Bill as being suggested are as under:

CHAPTER 1 : PROPOSED AMENDMENTS TO THE INDIAN PENAL CODE

1. Section 100 of the Code shall be modified as follows:

When the right of private defence of the body extends to causing death:

The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:-

Firstly, Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly, Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault, which shall include a crime punishable under Section 326A of the Indian Penal Code.

Thirdly, An assault with the intention of committing rape

Fourthly, An assault with the intention of gratifying unnatural lust;

Fifthly, An assault with the intention of kidnapping or abducting;

Sixthly, An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

2. Addition of Section 166A:

After section 166 of the Indian Penal Code the following section shall be inserted, namely:—

“166A. Public Servant knowingly disobeying direction of law

Whoever, being a public servant,—

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or

(c) in relation to an offence punishable under Section 354, Section 354A, Section 354B, Section 354 C(2), Section 376(1), Section 376(2), Section 376(3), Section 376A, Section 376B(1), Section 376B(2), Section 376C, Section 376D or Section 376F does not record information given to him under Section 154(1) of the Code of Criminal Procedure

shall be punished with imprisonment for a term which may extend to five years rigorous imprisonment and fine.

3. After section 326 of the Penal Code, the following sections shall be inserted, namely:—

‘326A. Voluntarily causing grievous hurt through use of acid etc:

Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables any part, or parts of the body of a person, or causes grievous hurt, by throwing acid on, or administering acid to that person, or by using any other means to achieve a similar purpose and effect, with the intention of causing, or with the knowledge that he is likely to cause such injury, or hurt, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to life, and shall also be liable to pay compensation to the victim, adequate to meet at least the medical expenses incurred by the victim.

Explanation 1: “Permanent or partial damage” for the purposes of this section shall include forced circumcision of a female or mutilation of her genitalia.

Explanation 2: For the purposes of this section, permanent or partial damage or deformity shall not be required to be irreversible.

326B. Voluntarily throwing or attempting to throw acid etc.

Whoever throws, or attempts to throw acid on any person, or attempts to administer acid to any person, or attempts to use any other means to achieve the purpose of causing permanent or partial damage to any part or parts of the body of a person, shall be punished with rigorous imprisonment for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to pay compensation to the victim adequate to meet at least the medical expenses incurred by the victim.

Explanation 1: –For the purposes of sections 326A and 326B, “acid” includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2: “Permanent or Partial Damage” includes deformity, or maiming, or burning, or disfiguring, or disabling any part or parts of the body of a person. Irreversibility will not be a precondition for damage or deformity to be considered as permanent or partial damage.

4. Section 354 of the Indian Penal Code shall be replaced by the following:

354. Sexual Assault and Punishment for sexual assault

(1) The following acts shall constitute the offence of sexual assault:-

- (a) Intentional touching of another person when such act of touching is of a sexual nature and is without the recipient’s consent;
- (b) Using words, acts or gestures towards or in the presence of another person which create an unwelcome threat of a sexual nature or result in an unwelcome advance.

Explanation: For the purposes of this section, ‘acts’ shall include the display and dissemination of pornographic material.

(2) Any person who commits the offence described in sub-clause (a) of sub-section (1) above shall be punishable with rigorous imprisonment that may extend to five years, or with fine, or both.

(3) Any person who commits the offence described in sub-clause (b) of sub-section (1) above shall be punishable with imprisonment of either description that may extend to one year, or with fine, or both.

5. After Section 354, the following new sections shall be introduced:

354A. Assault or use of criminal force to woman with intent to disrobe her -

Whoever assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked in any public place, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

354B. Voyeurism -

Whoever watches a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator, or by any other person at the behest of the perpetrator shall,

be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but may extend to three years, and with fine, and

be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but may extend to seven years, and also with fine.

Explanation 1: 'Private act', in the context of this provision, is an act carried out in a place which, in the circumstances, would reasonably be expected to provide privacy, and where the victim's genitals, buttocks or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the person is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2: If the victim consented to capture of the images or other material, but not to their dissemination to third persons, such dissemination shall be considered an offence within this section.

354C (1) - Stalking: Whoever follows a person and contacts, or attempts to contact such person to foster personal interaction repeatedly, despite a clear indication of disinterest by such person, or whoever monitors the use by a person of the internet, email or any other form of electronic communication, or watches or spies on a person in a manner that results in a fear of violence or serious alarm or distress in the mind of such person, or interferes with the mental peace of such person, commits the offence of stalking.

Provided that the course of conduct will not amount to stalking if the person who pursued it shows:

- i. that it was pursued for the purpose of preventing or detecting crime and the person accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the state; or,

- ii. that it was pursued under any enactment or rule of law, or to comply with any condition or requirement imposed by any person under any enactment; or,
- iii. that in the particular circumstances the pursuit of the course of conduct was reasonable

(2) Whoever commits the offence described in Section 354C(1) shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to three years, and shall also be liable to fine.

6. Section 370 shall be replaced with new Sections 370 and 370A, defining and punishing the offence of trafficking, and the offence of employing a trafficked person, respectively.

Section 370: Trafficking of a Person

(1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers or (e) receives, a person or persons, by

Firstly, using threats, or

Secondly, using force, or any other form of coercion, or

Thirdly, by abduction, or

Fourthly, by practising fraud, or deception, or

Fifthly, by abuse of power, or

Sixthly, by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received,

commits the offence of trafficking.

Explanation I: The expression 'exploitation' shall include, prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation II: The consent of the victim is immaterial in a determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and also with fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and also with fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life.

(5) Where the offence involves the trafficking of more than one minor at the same time, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years but which may extend to imprisonment for life.

(6) When a public servant or a police officer is involved in the trafficking of a minor then such public servant shall be punished with imprisonment for life, which shall mean the rest of that person's natural life.

(7) If a person is convicted of the offence of trafficking of minors, on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the rest of that person's natural life.

Section 370A: Employing a Trafficked person

(1) Whoever, despite knowing, or having a reason to believe that a child has been trafficked, employs such child in any form of labour, commits the offence of forced labour of a trafficked child, and shall be punished with rigorous imprisonment for a term which shall not be less than five years but may extend to seven years, and with a fine.

(2) Whoever, despite knowing, or having a reason to believe that an adult has been trafficked, employs such adult for labour, commits the offence of forced labour of a trafficked adult, and shall be punished with rigorous imprisonment for a term which shall not be less than three years but may extend to five years.

7. Section 375 shall be replaced as suggested below:

Section 375: Rape

375. A man is said to commit rape if he –

(a) penetrates the vagina or anus or urethra of a person with –

(i) any part of his body including his penis or,

(ii) any object manipulated by him, except where such penetration is carried out for proper hygienic or medical purposes; or,

(b) manipulates any part of the body of a person so as to cause penetration of the vagina or anus or urethra of another person; or,

(c) engages in “cunnilingus” or “fellatio”,

under the circumstances falling under any of the following six descriptions:—

Firstly.— Against the person’s will; or,

Secondly.— Without the person’s consent; or,

Thirdly, With the person’s consent, where such consent has been obtained by putting the person, or any other person in whom the person is interested, in fear of death or of hurt; or,

Fourthly.— With the person’s consent, when the man induces the person to consent to the relevant act by impersonating another man to whom the victim would have otherwise knowingly consented to; or,

Fifthly, With the person’s consent, when at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by the man personally or through another of any stupefying or unwholesome substance, the person is unable to understand the nature and consequences of the action to which he/she gives consent; or,

Sixthly, When the person is unable to communicate consent either express or impliedly.

Explanation I.— For the purposes of this section, “penetration” means penetration of the vagina, anus or urethra to any extent.

Explanation II.—For the purposes of this section, “vagina” shall also include labia majora.

Explanation III: Consent will not be presumed in the event of an existing marital relationship between the complainant and the accused.

Explanation IV. - Consent means an unequivocal voluntary agreement when the person by words, gestures or any form of non-verbal communication, communicates willingness to participate in the specific act.

Provided that, a person who does not offer actual physical resistance to the act of penetration is not by reason only of that fact, to be regarded as consenting to the sexual activity.

8. In place of the existing section, Section 376 will be amended in the following manner:

376. (1) Punishment for Rape

Whoever, except in the cases provided for by sub-section (2), commits the offence of rape shall be punished with rigorous imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable

to pay compensation to the victim, which shall be adequate to meet at least the medical expenses incurred by the victim.

(2) Whoever, —

(a) being a police officer, whether on duty or otherwise, commits rape —

(i) within the limits of the police station to which such police officer is appointed; or,

(ii) in the premises of any station house; or,

(iii) on a person in such police officer's custody, or in the custody of a police officer subordinate to such police officer; or,

(b) being a member of the armed forces is in the area by virtue of deployment by the Central or a State government, and commits rape; or

(c) being a public servant, commits rape of a person in his custody or in the custody of a public servant; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a patient in that hospital; or

(f) commits rape on a woman knowing her to be pregnant; or

(g) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the person assaulted, commits rape; or

(h) commits rape, where the person assaulted is incapable of giving consent including in circumstances defined under Section 375 *Thirdly, Fifthly and Sixthly*.

(i) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of the person assaulted; or

(j) commits rape repeatedly on the same person,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to pay compensation to the victim which shall be adequate to meet at least the medical expenses incurred by the victim.

Explanation 1.—For the purposes of this Section, "rape" shall mean any of the acts mentioned in clauses (a) to (c) of section 375.

Explanation 2.—For the purposes of this Section, “women’s or children’s institution” includes an institution, whether called an orphanage or a home for neglected women or children or a widow’s home or an observation home, beggar home or a halfway home or an institution called by any other name, which is established and maintained for the reception and care of women or children;

Explanation 3.—For the purposes of this Section, “hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

Explanation 4: In sub-clause (a) of clause (2), “police officer” shall have the same meaning as the word “Police” under The Police Act, 1861.

Explanation 5: For the purposes of this section ‘custody’ includes any form of physical, mental or psychological restraint to inhibit the exercise of free will by the person in custody.

Explanation 6: For the purposes of this section, ‘armed forces’ means the naval, military and air forces and includes any member of the Armed Forces enumerated in the Schedule, including the paramilitary forces and any auxiliary forces that are under the control of the Central or State Government.

9. A new Section, Section 376(3) providing for increased punishment for death caused in the course of committing rape shall be added

Section 376(3): Punishment for causing death or a persistent vegetative state in the course of committing rape

Whoever, commits an offence punishable under Section 376(1) or Section 376(2) and in the course of such commission inflicts an injury which causes the death of the person or causes the person to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but may be for life, which shall mean the rest of that person’s natural life.

10. Section 376A shall be repealed

11. Sections 376B, C and D shall be replaced as follows:

Section 376A: Intercourse by a person in authority, public servant etc.

Whoever being,—

- (a) in a position of authority or in a fiduciary relationship or
- (b) a public servant ; or

(c) a superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution, an observation home, beggar home, or an institution called by any other name, which is established and maintained for the reception and care of women or children; or

(d) on the management of a hospital or on the staff of a hospital,

abuses such position or fiduciary relationship to induce any person in their custody to have sexual intercourse with them, the act not amounting to rape, shall be punished with rigorous imprisonment for a term which shall not be less than five years but which may extend to ten years and shall also be liable to a fine.

Explanation 1.—In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (c) of section 375.

Explanation 2.—“Superintendent”, in relation to a jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

Explanation 3.—For the purposes of this Section, “women's or children's institution” includes an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an observation home, beggar home or a halfway home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

Explanation 4.—For the purposes of this Section, “hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

12. A new Section 376B defining and punishing rape of an underage person shall be added:

Section 376B(1): Rape of an underage person: If a man has sexual intercourse with a person below sixteen years¹ of age with or without that person's consent, he shall be

¹ The Preamble to The Protection of Children from Sexual offences Act, 2012 states “And whereas, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all State Parties in securing the best interests of the child...and whereas the State Parties to the Convention on the Rights of the Child are required to undertake all appropriate national, bilateral and multilateral measures to prevent - (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; (c) the exploitative use of children in pornographic performances and materials; That further to the above, the Parliament earmarked eighteen as the age of consent for the purposes of Section 375, thereby achieving the result of criminalising all sexual activity whether

deemed to have committed rape of an underage person, and shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life.

Provided that the existence of a marital relationship between the accused and the underage person shall not be a valid defence.

Explanation: For the purposes of this section, sexual intercourse shall mean any of the acts specified in Section 375 (a) to (c).

Section 376(B)(2): Punishment for causing death or a persistent vegetative state in the course of committing rape of an underage person.

Whoever, commits an offence punishable under Section 376B(1) and in the course of such commission inflicts an injury which causes the death of the person, or causes the person to be in a persistent vegetative state shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but may be for life, which shall mean the rest of that person's natural life.

13. The offence of gang rape shall be defined and punished by a new Section 376C

376C. Gang rape

Where a person is raped by one or more in a group of persons acting in furtherance of a common intention, each of these persons shall be deemed to have committed the offence of gang rape, regardless of their gender, and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life and shall also be liable to pay compensation to the victim which shall be adequate to meet at least the medical expenses incurred by the victim.

Explanation: For the purposes of this section, imprisonment for life shall mean imprisonment for the rest of that person's natural life.

14. A new offence of Gang Rape causing death or a persistent vegetative state shall be added:

376D. Gang Rape followed by death or a persistent vegetative state

Whoever commits gang rape, and in the course of such commission inflicts injury upon the victim which causes the victim's death or causes the victim to be in a persistent vegetative state, shall be punished with imprisonment for life.

consensual or non-consensual where one person is below the age of eighteen. That the above Convention was aimed *inter alia* to protect children from sexual assault and abuse and not to criminalise consensual sex between two individuals even if they are below eighteen years of age. That on the basis of the interpretation of Article 34 of the Convention along with the representation made by various groups this Committee recommends that the age of consent be reduced to sixteen, and necessary amendments be made in the Protection of Children from Sexual Offences Act, 2012 (No. 32 of 2012), in order to avoid contradictions with the Indian Penal Code.

Explanation: For the purpose of this section “imprisonment for life” shall mean imprisonment for the rest of that person’s natural life.

15. A new section providing for increased punishment for offenders with a prior conviction for rape shall be added:

376E: Punishment for repeat offenders: Whoever has been previously convicted of an offence punishable under Section 376 (1), or Section 376 (2), or Section 376(3), or Section 376 A, or Section 376B(1), or Section 376B(2) or Section 376C or Section 376D and is subsequently convicted of an offence punishable under any of these sections shall be punished with imprisonment for life, which shall mean the rest of that person’s natural life.

16. A new section defining and punishing the offence of breach of command responsibility shall be added:

Section 376F: Offence of breach of command responsibility:

(1) Whoever, being a public servant in command, control or supervision of the police or armed forces, as defined in Explanations 1 and 2 to this section, or assuming command whether lawfully or otherwise, fails to exercise control over persons under his or her command, control, or supervision and as a result of such failure offences under Section 354, Section 354A, Section 376(1), Section 376(2)(a), Section 376(2)(b), Section 376(2)(c), Section 376(2)(d), Section 376(2)(e), Section 376(2)(h), Section 376(2)(i), Section 376(2)(j), Section 376(3), Section 376B(1), or Section 376B(2) or Section 376C or Section 376D of the Indian Penal Code are committed, by persons under his or her command, control or supervision, shall be guilty of the offence of breach of command responsibility, where:-

- (i) such public servant either knew or owing to the circumstances should have known that the persons under his or her command, control or supervision would commit such offences; and
- (ii) such public servant failed to take necessary and reasonable measures within his or her power to prevent or repress the commission of the said offences.

(2) Whoever is guilty of the offence of breach of command responsibility shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but may extend to ten years.

Explanation 1: For the purposes of this section, “police officer” shall have the same meaning as the word “Police” under The Police Act, 1861.

Explanation 2: For the purposes of this section, ‘armed forces’ means the naval, military and air forces and includes any member of the Armed Forces enumerated in the Schedule, including the paramilitary forces and any auxiliary forces that are under the control of the Central or State Government.

17. Section 509 of the Indian Penal Code shall be repealed.

Schedule

(See Explanation 2 to Section 376F)

Armed Forces and Security Forces Constituted Under

- (a) The Air Force Act, 1950 (45 of 1950)
- (b) The Army Act, 1950 (46 of 1950)
- (c) The Assam Rifles Act, 2006 (47 of 2006)
- (d) The Bombay Home Guard Act, 1947 (3 of 1947)
- (e) The Border Security Force Act, 1968 (47 of 1968)
- (f) The Central Industrial Security Force Act, 1968 (50 of 1968)
- (g) The Central Reserve Police Force, 1949 (66 of 1949)
- (h) The Coast Guard Act, 1978 (30 of 1978)
- (i) The Delhi Special Police Establishment Act, 1946 (25 of 1946)
- (j) The Indo-Tibetan Border Police Force Act, 1992 (35 of 1992)
- (k) The Navy Act, 1957 (62 of 1957)
- (l) The National investigation Agency Act, 2008 (34 of 2008)
- (m) The National Security Guard Act, 1986 (47 of 1986)
- (n) The Railway Protection Force Act, 1957 (23 of 1957)
- (o) The Sahastra Seema Bal Act, 2007 (53 of 2007)
- (p) The Special Protection Group Act, 1988 (34 of 1988)
- (q) The Territorial Army Act, 1948 (56 of 1948)
- (r) The State Police Forces (Including Armed Constabularies) constituted under the State laws to aid the civil powers of the State and empowered to employ force during internal disturbances or otherwise including armed forces as defined in clause (a) of Section 2 of the Armed Forces (Special powers) Act, 1958 (28 of 1958)

CHAPTER II
AMENDMENTS OF THE CODE OF CRIMINAL PROCEDURE, 1973

1. The following amendment shall be made to Section 39(1) of the Code:

Clause (vb) that reads as follows to be added:

Sections 326A, 326B, 354, 354A, 354B, 354 C, 376(1), 376(2), 376A, 376 B(2),376C, 376D or 376F of the Indian Penal Code.

2. Section 40A that reads as follows shall be added:

Every officer employed in connection with the affairs of a village, and every person who is part of a village *panchayat* shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police station, whichever is nearer, any information that he may possess in respect of the commission of, or intention to commit an offence punishable under Sections 326A, 326B, 354, 354A, 354B, 354 C, 376(1), 376(2), 376(3), 376A, 376 B(1), 376B(2), 376C and 376D of the Indian Penal Code.

3. Amendment to Section 54A:

The following proviso shall be added to Section 54A:

Provided that, if the person identifying the arrestee is mentally or physically disabled, such process of identification shall take place under the supervision of a Judicial Magistrate who shall take appropriate steps to ensure that such person identifies the arrestee using methods that the person is comfortable with.

Provided further, that if the person identifying the person arrested is mentally or physically disabled, the identification process shall be videographed.

4. The following proviso shall be introduced to Section 154 of the Code of Criminal Procedure, 1973.

Proviso to Section 154: “Provided that if the information is given by a woman against whom an offence under Section 354, Section 354A, Section 354B, Section 354 C, Section 376(1), Section 376(2), Section 376A, Section 376B(1), or Section 376 C of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, as far as possible, by a woman police officer and such woman shall be provided legal assistance and also the assistance of a healthcare worker, and/ or women’s organisation.

Provided further that:

(1) in the event that the person against whom an offence under Section 354, Section 354A, Section 354B, Section 354 C, Section 376(1), Section 376(2), Section 376A, Section 376B(1) or Section 376C of the Indian Penal Code is alleged to have been committed or attempted is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of a special educator or an interpreter, as the case may be.

(2) The recording of such information shall be videographed.

(3) The police officer shall get the statement of the person recorded by a Judicial Magistrate under Section 164(5)(a) of this Code as soon as possible.

5. Amendment to the proviso to section 160.

The proviso to section 160 of the Code of Criminal Procedure, shall be amended as follows: Provided that no male person under the age of eighteen years or above the age of sixty five years, a woman or a physically or mentally disabled person shall be required to attend at any place other than the place in which the person or woman resides.

6. Amendment to Section 164 Cr.P.C

Sub-sections (5)(a) and (5)(b) shall be added. It shall read as follows:

Section 164(5)(a):

In cases punishable under Section 354, Section 354A, Section 354B, Section 354C(2), Section 376(1), Section 376(2), Section 376A, Section 376B(1), or Section 376C of the Indian Penal Code of 1860, a Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5) of this Section, as soon as the offence is brought to the attention of the police.

Provided that if the person making the statement is temporarily or permanently physically or mentally disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement.

Provided further that if the person making the statement is temporarily or permanently physically or mentally disabled, the statement made by the person, with the assistance of an interpreter or special educator, shall be videographed.

Section 164(5)(b)

A statement recorded under Section 164(5)(a) of a person who is temporarily or permanently physically or mentally disabled shall be considered a statement in lieu of examination-in-chief, as prescribed in Section 137 of the Indian Evidence Act, 1872 such

that the maker of the statement can be cross-examined on such statement, without the need for re-asserting the same at the time of trial.

7. Amendment to Section 197(1):

The following amendment shall be made to Section 197(1) of the Code:

“When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with sanction of the Government, is accused of any offence, alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, except offences punishable under Section 354, Section 354A, Section 354B, Section 354C(2), Section 376(1), Section 370, Section 376(2), Section 376(3), Section 376A, Section 376B(1), Section 376B(2), Section 376C, Section 376D and Section 376F and Section no Court shall take cognizance of such offence except with the previous sanction ...”

8. Insertion of Section 198B:

No Court shall take cognizance of an offence under Section 376(1) of the Indian Penal Code where the persons are in a marital relationship, except upon a police report of the facts which constitute an offence or a complaint having been filed or made by the wife against the accused husband.

9. Amendment to Section 273

In section 273 of the Code of Criminal Procedure, before the *Explanation*, the following proviso shall be inserted, namely: – “Provided that where the evidence of a person below the age of eighteen years who is alleged to have been subjected to an offence punishable under Sections 354, Section 354A, Section 354B, Section 354C(2), Section 376(1), Section 376(2), Section 376A, Section 376B(1), Section 376C or Section 376F, is to be recorded, the court may take appropriate measures to ensure that such person is not confronted by the accused while at the same time ensuring the right of cross examination of the accused.”.

10. Amendment to Section 327

In section 327 of the Code of Criminal Procedure, in sub-section (2), for the words, figures and letters “trial of rape or an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code”, the words, figures and letters "trial of an offence punishable under Sections 354, Section 354A, Section 354B, Section 354C(2), Section 376(1), Section 376(2), Section 376A, Section 376B(1), or Section 376C " shall be substituted.

11. Amendment to Section 357

Sub-section(4) shall be added to Section 357 and the existing sub-sections (4) and (5) shall be renumbered as (5) and (6). The new Section 357(4) shall read as follows:

(4) When a Court imposes a sentence in a case punishable under Section 326B, Section 376(1), Section 376(2), Section 376B(1) or Section 376C, the Court shall when passing judgment order the convicted person to pay by way of compensation an amount adequate to meet at least the medical expenses incurred by the victim.

12. Amendments to the First Schedule

The First Schedule to the Cr.P.C. shall be modified to incorporate the effect of the amendments proposed. All offences defined and made punishable by virtue of this Amendment Bill shall be cognizable and non-bailable.

CHAPTER III

AMENDMENTS OF THE INDIAN EVIDENCE ACT, 1872

1. Addition of Section 53A

After section 53 of the Indian Evidence Act, 1872 the following section shall be inserted, namely:—

“53A. In a prosecution for an offence under Section 354, Section 354A, Section 354B, Section 354C, Section 376(1), Section 376(2), Section 376A, Section 376B(1) or Section 376C of the Indian Penal Code or for attempt to commit any such offence, evidence of the character of the victim or of his or her previous sexual experience with any person shall not be relevant.

2. Amendment to Section 114A

For section 114A of the Evidence Act, the following section shall be substituted, namely:—

‘114A. (1) In a prosecution for rape under sub-section (2) of section 376 or for gang rape under Section 376C of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the other person alleged to have been raped and such other person states in his/her evidence before the court that she or he did not consent, the court shall presume that she or he did not consent.

Explanation.—In this section “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (c) of section 375 of the Indian Penal Code.

3. Amendment to Section 119

In section 119 of the Act the term “dumb witness” shall be substituted by “persons who are unable to communicate verbally.”

The following proviso shall be added:

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of a special educator or interpreter in recording the statement, and such statement shall be videographed.

4. Amendment to Section 146

In section 146 of the Evidence Act, for the proviso, the following proviso shall be substituted, namely:—

“Provided that in a prosecution for an offence under Section 376(1), Section 376(2), Section 376A, Section 376B(1) or Section 376C or for attempt to commit any such offence, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to his or her general moral character, or as to his or her previous sexual experience with any person.

CHAPTER IV

AMENDMENT TO THE ARMED FORCES (SPECIAL POWERS) ACT, 1958

1. The following amendment shall be made to Section 6 of the Armed Forces (Special Powers) Act, 1958:

No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.

Provided that, no sanction shall be required if the person has been accused of committing an offence under Section 354, Section 354A, Section 354B, Section 354C, Section 376(1), Section 376(2), Section 376(3), Section 376A, Section 376B, Section 376C, Section 376D, Section 376D or Section 376E of the Indian Penal Code, 1860.

APPENDIX 5

PROPOSED AMENDMENTS TO THE REPRESENTATION OF PEOPLE ACT, 1951

The following amendments shall be made to the Representation of the People Act, 1951.

1. A new sub-section (e) shall be introduced in section 4 (Qualifications for membership of the House of the People) as follows:
"(e) in all cases, if prior to the conduct of the election he is found to be disqualified under Chapter III."
2. A new sub-section (d) shall be introduced in section 5 (Qualifications for membership of a Legislative Assembly) as follows:
"(d) in all cases, if prior to the conduct of the election he is found to be disqualified under Chapter III."
3. A new sub-clause (e) shall be introduced in sub-section (1) of section 5A (Qualifications for membership of Legislative Assembly of Sikkim) as follows:
"(e) in all cases, if prior to the conduct of the election he is found to be disqualified under Chapter III."
4. Further, a new sub-clause (e) shall be introduced in sub-section (2) of section 5A (Qualifications for membership of Legislative Assembly of Sikkim) as follows:
"(e) in all cases, if prior to the conduct of the election he is found to be disqualified under Chapter III."
5. In place of section 8 (Disqualification on conviction for certain offences), a new section 8 shall be introduced as follows:

"8. Disqualification on cognizance or conviction for certain offences.

(1) A person, in respect of whose acts or omissions a court of competent jurisdiction has taken cognizance under section 190(1)(a),(b) or (c) of the Code of Criminal Procedure, 1973 (Act 2 of 1974) or, who has been convicted by a court of competent jurisdiction, with respect to an offence punishable under –

(a) the Indian Penal Code, 1860 (Act 45 of 1860) listed in Schedule I ; or

(b) the Protection of Civil Rights Act, 1955 which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or

(c) section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (52 of 1962); or

(d) sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or

(e) the Foreign Exchange (Regulation) Act, 1973 (76 of 1973); or

(f) the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(g) Section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(h) Section 3 (declaration of an association as unlawful) or any offence enumerated in Chapter IV of the (punishment for terrorist activities) of the Unlawful Activities (Prevention) Act, 1967; or

(i) any provision of the Prevention of Terrorism Act, 2002; or

(j) any offences enumerated in chapter III of the Prevention of Corruption Act, 1988; or

(j) section 7 (offence of contravention of the provisions of sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or

(k) section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) of clause (a) of sub- section (2) of section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act;[or]

(l) section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991 , or

(m) section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971); or

(n) any law providing for the prevention of hoarding or profiteering; or

(o) any law relating to the adulteration of food or drugs; or

(p) any provisions of the Dowry Prohibition Act, 1961 (28 of 1961); or

(q) any provisions of the Commission of Sati (Prevention) Act. 1987 (3 of 1988),

shall be disqualified from the date of such taking of cognizance by a court of competent jurisdiction under section 190(1)(a),(b) or (c) of the Code of Criminal Procedure, 1973 (Act 2 of 1974) or conviction, as the case may be, and shall continue to be disqualified for a further period of six years from the date of his release upon conviction. It is clarified

that, in the event of acquittal of the candidate, disqualification shall continue to operate from the date of taking cognizance under section 190(1)(a),(b) or (c) of the Code of Criminal Procedure, 1973 (Act 2 of 1974) till the date of acquittal.

(2) A person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (1) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years from his release.

(3) Notwithstanding anything to the contrary in any law for the time being in force, a disqualification under either sub-section (1) or (2) of this section 8 shall, in the case of a person who on the date of the taking of cognizance by a court of competent jurisdiction under section 190(1)(a),(b) or (c) of the Code of Criminal Procedure, 1973 (Act 2 of 1974), or on the date of conviction as referred to in either sub-section (1) or (2) of section 8, is a member of Parliament or the Legislature of a State, take effect immediately upon the taking of cognizance, or upon conviction as referred to in sub-section (1), or conviction as referred to in sub-section (2), as the case may be.

Explanation. – In this section, –

(a) "law providing for the prevention of hoarding or profiteering" means any law, or any order, rule or notification having the force of law, providing for –

(i) the regulation of production or manufacture of any essential commodity;

(ii) the control of price at which any essential commodity may be bought or sold;

(iii) the regulation of acquisition, possession, storage, transport, distribution, disposal, use or consumption of any essential commodity;

(iv) the prohibition of the withholding from sale of any essential commodity ordinarily kept for sale;

(b) "drug" has the meaning assigned to it in the Drugs and Cosmetics Act, 1940 (23 of 1940);

(c) "essential commodity" has the meaning assigned to it in the Essential Commodity Act, 1955 (10 of 1955);

(d) "food" has the meaning assigned to it in the Prevention of Food Adulteration Act, 1954 (37 of 1954)."

6. A new section 8B. Disqualification for false declaration as to assets and liabilities shall be introduced as follows:

"8B. Disqualification for false declaration as to assets and liabilities

(1) Upon the receipt of a report from the Comptroller and Auditor General by the Election Commission of India under Chapter III-A of the Comptroller and Auditor General Act, 1971, the case of every person who is found to have provided false information under section 75A(1) as per the said report, shall be submitted by the Election Commission of India to the President for the taking of consequential action of disqualification;

(2) Before giving his decision on any question mentioned in sub-section (1), the President shall obtain the opinion of the Election Commission of India on the consequential action of disqualification to be taken and shall act according to such opinion.

Provided that the period for which any person may be disqualified under this section shall in no case exceed six years from the date on which the President conveys the decision to disqualify such person."

6. In sub-section (1) of section 11A. (Disqualification arising out of conviction and corrupt practices) after the words "*for a period of six years from the date of the conviction or from the date on which the order takes effect*" the words "*whichever is later in time,*" shall be inserted
7. A new sub-section (2A) shall be introduced in section 33 (Presentation of nomination paper and requirements for a valid nomination) as follows:

"(2A) Where the candidate stands disqualified under the provisions of section 8, section 8-A or section 8-B and the period of disqualification under any of the applicable aforementioned sections has not elapsed, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission of India certifying that the period of disqualification under any of the applicable aforementioned sections has elapsed or that the said candidate has been acquitted.

Provided that prior to the issuance of a certificate as prescribed by sub-section (2A) in respect of disqualification under section 8, the Election Commission of India shall first receive a certificate from the Registrar of the concerned High Court within whose territorial jurisdiction any trial in relation to offences referred to in section 8 is being conducted against such candidate. The certificate to be provided by the Registrar shall state the date on which cognizance under section 190(1)(a),(b) or (c) of the Code of Criminal Procedure, 1973 (Act 2 of 1974) was taken or the date on which such candidate was convicted in respect of any offence referred to in sub-section (2) of section 8 or the date of acquittal, as may be applicable."

7. A new sub-clause (i) shall be introduced after sub-clause (h) in sub-section (7) as follows:

"(i) in the case of election to either House of Parliament or Legislature of a State where a declaration on affidavit is made or ought to have been made in respect of offences referred to in section 8, without a certificate by the Registrar of the concerned High Court within

whose territorial jurisdiction any case is pending in relation to the offences referred to in section 8 against such candidate. Such certificate shall state the date on which cognizance under section 190(1)(a),(b) or (c) of the Code of Criminal Procedure, 1973 (Act 2 of 1974) was taken in respect of any offence referred to in sub-section (1) of section 8 or the date on which such candidate was convicted in respect of any offence referred to in sub-section (1) or (2) of section 8 or the date of acquittal, as the case may be."

8. A new sub-clause (iii) in sub-section 1 of section 33A (Right to information) shall be introduced as follows:

"(iii) a court of competent jurisdiction has taken cognizance under section 190(1)(a),(b) or (c) of the Code of Criminal Procedure, 1973 (Act 2 of 1974), or a conviction has occurred, in respect of the offences referred to in sub-section (1) of section 8."

9. In sub-section (1) of section 75A (Declaration of assets and liabilities) after the words *"Every elected candidate for a House of Parliament"* the words *"or any Legislature of a State"* shall be inserted. Further after the words *"to the Chairman of the Council of States or the Speaker of the House of the People, as the case may be"* the words *"and to the Election Commission of India"* shall be inserted.

10. A new sub-section (6) shall be introduced in section 75A (Declaration of assets and liabilities) as follows:

"(6) The Election Commission of India shall forward all information it receives under sub-section (1) in respect of each candidate seeking to contest any election for either House of Parliament or Legislature of a State to the Comptroller and Auditor General of India for the preparation of a report in accordance with Chapter III-A of the Comptroller and Auditor General of India Act, 1971, which report shall be submitted to the Election Commission of India in accordance with Chapter III-A of the Comptroller and Auditor General of India Act, 1971. The findings of the report received by the Election Commission of India from the Comptroller and Auditor General of India shall be binding on the Election Commission of India in respect of the matters that it covers, including for the purpose of giving its opinion to the President in accordance with the provisions of section 8-B."

11. A new sub-section (ii) shall be introduced in section 125A (Penalty for filing false affidavit, etc.) shall be introduced as follows:

"(ii) fails to furnish information relating to sub-section (1) of section 75A"

12. 13. In sub-section (iii) of section 125A (Penalty for filing false affidavit, etc.) after the words *"in his affidavit which is required to be delivered under sub-section (2)*

of section 33A” the words “or in the information to be provided under sub-section (1) of section 75A” shall be inserted. Further, in sub-section (iii) of section 125A (Penalty for filing false affidavit, etc.) after the words “for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both” the words “and shall forthwith stand disqualified from nomination for an election to either House of Parliament or Legislature of a State or from the membership of either House of Parliament or Legislature of a State, as the case may be.” shall be inserted.

13. A new Schedule I shall be introduced at the end of the Act as follows

“SCHEDULE I

See Section 8(1) (a)

Note: Section titles and numbers include suggestions for amendment to the Indian Penal Code made by the Justice J. S. Verma Committee.

1. Section 115: Abetment of offence punishable with death or imprisonment for life- if offence not committed
2. Section 120A and 120B: Criminal Conspiracy
3. Section 146 and 147: Rioting and punishment for rioting
4. Section 148: Rioting, armed with deadly weapon
5. Section 153A: Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony
6. Section 157: Harboursing persons hired for an unlawful assembly
7. Section 171E: Punishment for Bribery
8. Section 171F: Punishment for undue influence or personation at an election
9. Section 212: Harboursing offender
10. Section 216: Harboursing offender who has escaped from custody or whose apprehension has been ordered
11. Section 216A : Penalty for harboursing robbers or dacoits

12. Section 302: Punishment for murder
13. Section 304: culpable homicide not amounting to murder
14. Section 304B: Dowry death
15. Section 305: Abetment of suicide of child or insane person
16. Section 306: Abetment of suicide
17. Section 307: Attempt to murder
18. Section 312: Causing miscarriage
19. Section 313: Causing miscarriage without woman’s consent

20. Section 314: Death caused by act done with intent to cause miscarriage
21. Section 315: Act done with intent to prevent child being born alive or to cause it to die after birth
22. Section 316: Causing death of quick unborn child by act amounting to culpable homicide
23. Section 324: Voluntarily causing hurt by dangerous weapons or means
24. Section 325: Punishment for voluntarily causing grievous hurt
25. Section 326: Voluntarily causing grievous hurt by dangerous weapons or means
26. Section 326A: Voluntarily causing grievous hurt through use of acid etc.
27. Section 326B: Throwing or attempting to throw acid etc.
28. Section 343: Wrongful confinement for three or more days
29. Section 344: Wrongful confinement for ten or more days
30. Section 346: Wrongful confinement in secret
31. Section 353: Assault or use of criminal force to deter a public servant from discharge of his duty
32. Section 354: Sexual Assault
33. Section 354A: Assault or use of criminal force to woman with intent to disrobe her
34. Section 354B: Voyeurism
35. Section 354C: Stalking
36. Section 357: Assault or use of criminal force in an attempt wrongfully to confine a person
37. Section 363: Punishment for kidnapping
38. Section 363A: Kidnapping or maiming a minor for purposes of begging
39. Section 364: Kidnapping or abducting in order to murder
40. Section 364A: Kidnapping for ransom etc.
41. Section 365: Kidnapping or abducting with intent secretly and wrongfully to confine person
42. Section 366: Kidnapping, abducting or inducing woman to compel her marriage, etc.
43. Section 366A: Procreation of minor girl
44. Section 366B: Importation of girl from foreign country
45. Section 367: Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.
46. Section 369: Kidnapping or abducting child under ten years with intent to steal from its person
47. Section 370: Buying or disposing of any person as slave
48. Section 371: Habitual dealing in slave
49. Section 372: Selling minor for purposes of prostitution, etc.
50. Section 373: Buying minor for purposes of prostitution, etc.
51. Section 374: Unlawful compulsory labour
52. Section 376: Punishment for rape

53. Section 376A: Intercourse by a person in authority, public servant etc.
54. Section 376B: Rape of an underage person
55. Section 376C: Gang rape
56. Section 376D: Gang rape followed by death or persistent vegetative state
57. Section 376E: Punishment for Repeat Offenders
58. Section 376F: Offence of command responsibility
59. Section 384: Extortion and Punishment for extortion
60. Section 385: Putting person in fear of injury in order to commit extortion
61. Section 386: Extortion by putting a person in fear of death or grievous hurt
62. Section 387: Putting person in fear of death or of grievous hurt, in order to commit extortion
63. Section 388: Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc.
64. Section 389: Putting person in fear of accusation of offence, in order to commit extortion
65. Section 392: Punishment for robbery
66. Section 393: Attempt to commit robbery
67. Section 394: Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery
68. Section 395: Punishment for dacoity
69. Section 396: Dacoity with murder
70. Section 397: Robbery, or dacoity, with attempt to cause death or grievous hurt
71. Section 398: Attempt to commit robbery or dacoity when armed with deadly weapon
72. Section 399: Making preparation to commit dacoity
73. Section 400: Punishment for belonging to a gang of persons associated for the purpose of habitually committing dacoity
74. Section 401: Punishment for belonging to wandering gang of persons associated for the purpose of habitually committing thefts
75. Section 402: Assembling for purpose of committing dacoity
76. Section 403: Dishonest misappropriation of property
77. Section 404: Dishonest misappropriation of property possessed by deceased person at the time of his death
78. Section 406: Punishment for criminal breach of trust
79. Section 409: Criminal breach of trust by public servant, or by banker, merchant or agent
80. Section 413: Habitually dealing in stolen property
81. Section 419: Punishment for cheating by personation
82. Section 420: Cheating and dishonestly inducing delivery of property
83. Section 449: House- trespass in order to commit offence punishable with death
84. Section 450: House- trespass in order to commit offence punishable with imprisonment for life

85. Section 451: House- trespass in order to commit offence punishable with imprisonment
86. Section 452: House- trespass after preparation for hurt, assault or wrongful restraint
87. Section 454: Lurking house- trespass or house- breaking in order to commit offence punishable with imprisonment
88. Section 455: Lurking house- trespass or house- breaking after preparation for hurt, assault or wrongful restraint
89. Section 457: Lurking house- trespass or house- breaking by night in order to commit offence punishable with imprisonment
90. Section 458: Lurking house- trespass or house- breaking by night after preparation for hurt, assault, or wrongful restraint
91. Section 459: Grievous hurt caused whilst committing lurking house trespass or house-breaking
92. Section 460: All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them
93. Section 489A: Counterfeiting currency- notes or bank- notes
94. Section 498: Enticing or taking away or detaining with criminal intent a married woman
95. Section 498A: Husband or relative of husband of a woman subjecting her to cruelty
96. Section 505: Statements creating or promoting enmity, hatred or ill- will between classes in place of worship, etc.
97. Section 506: Punishment for criminal intimidation
98. Section 511: Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment”

APPENDIX 6

PUBLIC EMERGENCY RESPONSE SYSTEM

History:

In India historically we have had different numbers to call police, fire and ambulatory services namely 100,102,103. This system was designed at the time of a regulated telecom sector with only one telecom provider across India and one in each metro. Hence any call to these emergency numbers were routed to a dispatcher of that particular emergency service and handled by the emergency service themselves more so the system was not designed for emergency response but as an emergency contact.

Over time in response to changing environment the three services have tried to evolve the emergency contact into an emergency response system with mixed results also additional numbers have been provided for specific emergency situations which are not routed to a central emergency response dispatcher. Thus leading to a lot of confusion in the minds of the public at large.

Need:

The need of the hour is to have a system that puts accountability of the emergency response on to the Police and other ER services. The system should be auditable and have a public oversight to see its effectiveness and rectify the shortcomings of the system.

Solution:

It is recommended that we have a one central ER number so that there is no burden on an average person on the street to remember different numbers for different kinds of ER situations. This is necessary in the context of India as a lot of our population is not adequately literate but they are telephony users.

The system envisages a central ER control centre for a geographical cell which will manage all ER within that cell. We should eventually have multiple Geo cells across India. One Geo cell should typically cover one metropolitan city.

The ERCC will handle all the ER situations within the Geo cell like police, fire, ambulatory etc. All calls to the ER number made by a user of any telephony service provider for all kinds of telephony services will mandatorily be routed to the ERCC designated for that Geo cell. While such a call is forwarded the telephony service provider will also forward the triangulated location of the handset or the GPS coordinates of the handset in the case of any wireless telephony service. In the case of a fixed line call the current installed address of the Landline will be forwarded. With all calls irrespective of telephone service type the KYC information of the originator has to be forwarded, this will help in two ways 1.) The ERCC worker can cross check the caller's id and location for the ER services to reach them 2.) Prank callers can be kept at bay as hoax calling can lead to punitive action thus not overburdening the system.

To ensure that the Police and other ER services respond, the ERCC will have to be given overall control of the Police patrolling vehicles, fire engines and ambulances etc. All

vehicles which are earmarked for ER services will mandatorily have to be GPS hot-jacked and given identification numbers which are clearly and boldly printed and displayed on the vehicle for easy identification of the ER unit. This GPS data with the specific ER unit number will be made available to the ERCC on geospatial map data. This data will be in real-time be plotted on to a central Geo cell map so displaying all the ER unit locations.

The control of the ERCC over these vehicles will only be with respect to dispatch of the ER unit and closing the ER call.

Thus in case of an emergency call the ERCC worker at the time of receiving the call routed from the telephony provider will have the location of the caller which will be plotted onto the same Geospatial map data which has the ER units plotted. Based on the type of emergency the ERCC worker can dispatch the closest ER unit to assess the situation and report back to the ERCC for appropriate action or the ERCC worker can dispatch a suitable ER service unit.

The ERCC should be run as an independent service as a civil contracted agency which does not report to the Police but to the civil administration of the city. The ERCC should be monitored and audited every month to ascertain its effectiveness in redirecting and dispatch of the ER units. The ER units of the ER services providers should in turn maintain their own logs and dairies which can be correlated to the data of the ERCC. The ERCC audit data should be published every month in terms of statistical data for the knowledge of the public.

A possible funding for this PERS could come from a nominal surcharge on the existing and future telephony users thus not burdening the exchequer.

APPENDIX 7

SUGGESTED GUIDELINES FOR MEDICAL EXAMINATION OF SEXUAL ASSAULT SURVIVOR

PART A: CHECKLIST/PRINCIPLES FOR FORENSIC EVIDENCE COLLECTION

1. Based on Locard's principle of exchange there may be a possibility of exchange of bodily evidence between accused and survivor.
2. Before you begin, make an assessment of the case and determine what evidence needs to be collected. This procedure cannot be done mechanically and will require some analysis. This assessment will have to be made on a case-to-case basis.
3. The nature of forensic evidence collected will be determined by three main factors - nature of assault, time lapsed between assault and examination and whether the survivor has bathed/washed herself since the assault.
4. If a woman reports within 96 hours (4 days) of the assault, all evidence including swabs must be collected without fail, in keeping with the history of assault.
5. The likelihood of finding evidence after 72 hours (3 days) is greatly reduced, however it is better to collect evidence upto 96 hours in case the survivor may be unsure of the number of hours lapsed since the assault.
6. Please keep in mind that spermatozoa can be identified only upto 72 hours after assault. So if a survivor has suffered the assault more than three days ago, please refrain from taking swabs for spermatozoa and instead only take swabs for semen. In such cases swabs should only be sent to FSL for tests for identifying semen.
7. Evidence on the outside of the body and on materials such as clothing can be collected even after 96 hours.
8. The nature of swabs taken is determined to a large extent by the nature of assault and the history that the survivor provides. The kinds of swabs taken should be consistent with the history. For example, if the survivor is certain that there is no anal intercourse, anal swabs need not be taken.
9. Request the survivor to stand on a large sheet of paper, so as to collect any specimens of foreign material e.g. grass, mud, pubic hair or scalp hair etc. which may have been left on her person from the site of assault or from the accused. This sheet of paper is carefully folded and preserved in a bag to be sent to the FSL for trace evidence detection.
10. Clothes that the survivor was wearing at the time of the assault are of evidentiary value² if there are any stains/tears/trace evidence on them. Hence they must be preserved. Please describe each piece of clothing in a table.

² Kindly ensure that the person is offered hospital robes. Absence of alternate clothing should not be a ground to delay medical testing.

11. Presence of stains - semen, blood, foreign material etc - should be properly noted. Also note if there are any tears or other marks on the clothes. If clothes are already changed then the survivor must be asked if s/he has the clothes that were worn at the time of assault and these must be preserved.
12. Always ensure that the clothes and samples are air dried before storing them in their respective packets.
13. Ensure that clothing is folded in such a manner that the stained parts are not in contact with unstained parts of the clothing.
14. Pack each piece of clothing in a separate *paper* bag, seal and label it duly.
15. If a woman reports with a pregnancy resulting from an assault, she is to be given the option of undergoing an abortion, and protocols for MTP are to be followed. The products of conception (PoC) may be sent as evidence to the forensic lab (FSL) for establishing paternity / identifying the accused.
16. The products of conception (PoC) may be collected under appropriate medical protocols, and handed over immediately to the police, or preserved at -4 degree Celsius. It is to be transported by the police to a forensic lab in an ice-box, maintaining the temperature at sub-zero at all times.
17. All the envelopes containing the samples should be labelled.

PART B: PATIENT INTERVIEW³

1. The date, time and location of the assault, including a description of the type of surface on which the assault occurred;
2. Number of assailants (if more than one);
3. The nature of the physical contacts and detailed account of violence inflicted;
4. Whether weapons and restraints were used;
5. Whether medications/ drugs/ alcohol/ inhaled substances (if known) were used;
6. Information on activities like bathing, washing genitals (in all cases) and rinsing mouth, drinking, eating (in cases of oral sexual assault);
7. History of injury marks that the survivor may state to have left on the assailant's body as it can be matched eventually with the findings of the assailant's examination.
8. Whether physical violence was inflicted;
9. Whether verbal threats were issued with respect to the survivor or her near and dear ones. (Threats to divulge information regarding occurrence of the assault to others will also amount to a threat).
10. Information regarding attempted penetration or completed penetration by penis/ finger/object of vagina/anus or penis of mouth should be properly recorded along with information about emission of any bodily fluid.

³ In case of children, illustrative books, body charts or a doll can be used if available, to elicit the history of the assault. When it is difficult to elicit history from a child, please call an expert.

11. Information regarding other acts such as oral sex by the assailant on the survivor or sucking, licking, biting, kissing of body parts etc.
12. Information about emission of bodily fluids outside the orifices but on her person or clothing.
13. Whether condom was used during the assault.
14. Whether sexual intercourse, other than the one for which the survivor is being examined had taken place in 96 hours⁴ preceding the assault?⁵
15. Was the survivor was menstruating at the time of the examination?⁶
16. Whether the survivor bathed, douched, defecated, urinated, used spermicide after the assault.⁷
17. Details of any symptoms that have developed since the assault, including: genital bleeding, discharge, itching, sores, or pain; urinary symptoms; anal pain or bleeding; abdominal bleeding.

PART C: FORENSIC EVIDENCE GATHERING CHECKLIST

- Collect oral swab for detection of semen and spermatozoa⁸.
- Collect loose scalp and pubic hair by combing. Intact scalp and pubic hair is also collected from the survivor so that it can be matched with loose hair collected from the accused. All hair must be collected in the catchment paper which is then folded and sealed.
- Examine nail scrapings and nail clippings for epithelial cells. Clippings and scrapings must be taken for both hands and packed separately.⁹
- Collect blood and urine for grouping, matching blood stains with the scene of crime and detection of drugs/alcohol.
- To test for seminal deposits on the pubic hair of the woman, clip an appropriate portion of the pubic hair¹⁰, allow to dry in the shade and place in an envelope.
- Pubic hair of the survivor is then combed for specimens of the offender's pubic hair. A comb must be used for this purpose and a catchment paper must be used to collect and preserve the specimens. Cuttings of the pubic hair are also taken for the purpose of comparison or to serve as control samples.

⁴ Page 43 WHO guidelines states that semen traces remain upto 96 hours post sexual intercourse.

⁵ While seeking such history, explain to the survivor why this information is being sought, because the survivor may not want to disclose such history as it may seem invasive.

⁶ If the survivor is menstruating at the time of examination then a second examination is required on a later date in order to record the injuries clearly. Some amount of evidence is lost because of menstruation. Hence it is important to record whether the survivor was menstruating at the time of assault/ examination.

⁷ Some amount of evidence is lost because of the activities named. Hence it is important to record whether any of them took place.

⁸ Oral swabs should be taken from the posterior parts of the buccal cavity, behind the last molars where the chances of finding any evidence are highest.

⁹ Ensure that there is no underlying tissue contamination while clipping nails.

¹⁰ If pubic hair has been shaved the same may be noted as the reason for absence of this evidence.

- Take two swabs from the vulva, vagina, anal opening for ano-genital evidence.¹¹
- One vaginal smear is to be prepared on a glass slide provided, air-dried in the shade and placed in an envelope. This extra wet smear prepared should be examined for spermatozoa under the microscope.
- Relevant swabs must be taken for detection of lubricant in the event of penetration with finger or object.
- Other pieces of evidence such as tampons (if in use by the survivor at the time) should be preserved.
- Swabs for microbiological tests for infections may be sent as per institutional policy and availability.
- Always ensure that all the envelopes containing the samples are labelled.
- In the case of any suspected seminal deposits on the pubic hair of the woman, clip that portion of the pubic hair, allow to dry in the shade and place in an envelope.
- Pubic hair of the survivor is then combed for specimens of the offender's pubic hair. A comb must be used for this purpose and a catchment paper must be used to collect and preserve the specimens. Cuttings of the pubic hair are also taken for the purpose of comparison or to serve as control samples. If pubic hair has been shaved, do not fail to make a mention of it in the records.
- Take two swabs from the vulva, vagina, anal opening for ano-genital evidence.
- Swabs must be collected depending on the history and examination. Swabs from orifices must be collected only if there is a history of penetration. One vaginal smear is to be prepared on a glass slide provided, air-dried in the shade and placed in an envelope. This extra wet smear prepared should be examined for spermatozoa under the microscope.
- Relevant swabs must be taken for detection of lubricant in cases of penetration with finger or object.
- Other pieces of evidence such as tampons (if being used by the survivor) should be preserved.
- Swabs for microbiological tests for infections may be sent as per institutional policy and availability.

PART D: GENERAL EXAMINATION

- General Mental Condition of the Survivor: Restless/Agitated/Numb/Anxious.¹²

¹¹ Swabs must be collected depending on the history and examination. Swabs from orifices must be collected only if there is a history of penetration. Swabs must be air dried, not dried in direct sunlight. Drying of swabs is absolutely mandatory as there may be decomposition of evidence which can render it un-usable.

¹² A doctor can also record her feelings in her words for ensuring accuracy.

Note: Survivors may respond in different ways to such traumatic events. Please note that observations such as "the patient is indifferent, detached or controlled" should not be used.

- Are there any signs of intoxication, either by ingestion of alcohol or drugs: Yes/No.
- Are there bruises, scratches, bites, and injuries on the body of the survivor, specifically on the face, neck, shoulders, breasts, upper arms, buttocks, and thighs of the survivor?¹³
- Note and describe injuries: Abrasions, Lacerations, Incisions etc.¹⁴
- Possible weapon used to inflict injuries: Hard, Blunt, Rough, Sharp etc.
- Actual measurements, site, shape, with time since injury should be described. Time since injury calculation is as follows:¹⁵

Abrasion:

Fresh Bright Red

12 to 24 hours Reddish scab

2 to 3 days Reddish brown scab

4 to 7 days Brownish black scab

After 7 days Scab dries, shrinks and falls off from periphery

Contusion:

Fresh Red

Few hours to 3 days Blue

4th day Bluish-black to brown (haemosiderin)

5 to 6 days Greenish (haematoidin)

7 to 12 days Yellow (bilirubin)

2 weeks Normal

Note: This is a reference chart only, as many external and internal factors contribute in the healing of injuries.

If there is deep bruise or contusion, signs of injury will usually show after 48 hours. In case you see signs of injury on the follow-up, please record them and attach the documentation to medico legal case papers.¹⁶

¹³ **Note:** Absence of injuries does not imply consent. Doctors should not conclude that since injuries are absent, consent is implied. Absence of injuries or negative laboratory results may be due to:

- Inability of victim to offer resistance to the assailant because of intoxication or threats
- Delay in reporting for examination
- Healing of injuries with passage of time

¹⁴ If survivor consents, photographs shall be taken. Injuries shall also be marked on a body chart.

¹⁵ **Note:** This is a reference chart only, as many external and internal factors contribute in the healing of injuries.

¹⁶ Please do not mention old scars as they are identification marks rather than new injuries due to assault. If mentioning those seems pertinent, add a note on when they were acquired.

Laceration: It becomes difficult to estimate exactly the time since injury based on the size and contamination. However a rough estimate can be done based on signs of healing.

Incised injury:

Fresh Haematoma formation

12 hours Edges - red, swollen

24 hours Scab of dried clot covering the entire area

After this rough estimate can be based on signs of healing.

- Note the stains on the body:
 - Describe the type of stain - blood, semen, lubricant, etc.
 - Describe the actual site and size and colour.
 - Mention the number of swabs collected and their sites.

PART E: GENITAL EXAMINATION¹⁷

- A careful observation of the perineum is to be made for evidence of injury, seminal stains and stray pubic hair.
- The vulva, labia, fourchette, hymen and introitus are inspected likewise and recent injuries, swelling and bleeding (insofar as they appear to arise out of the act complained of) documented.
- Bleeding/swelling/tears/discharge/stains/warts around the anus and anal orifice must be documented.
- Per-rectal examination to detect tears/stains/fissures/haemorrhoids in the anal canal must be carried out and relevant swabs from these sites should be collected.
- Bruises, redness, bleeding and tears, which may even extend into the perineum should be noted.
- If there is vaginal discharge, comment on the characteristics ie. texture, colour, odour, etc.
- As with general examination, genital findings must also be marked on body charts and numbered accordingly.

¹⁷ The examination and treatment as needed may have to be performed under general anaesthesia in case of minors and when injuries inflicted are severe.

APPENDIX 8

PSYCHOLOGICAL INTERVENTIONS IN SEXUAL ASSAULT/ RAPE

- A. The Committee has recommended that a counselor be present during the interview/ medical examination of the person assaulted/ rape. This is to ensure that the trauma that has already occurred is not compounded and to also set the pace for a subsequent counseling/ psychological intervention session. The counselor should ensure that the medical examiner follows a semi-structured interview which begins with an open-ended question-e.g., "Please tell us in your own words what happened".
- B. At the beginning of the interview a rapport must be developed with the survivor. The interviewer must listen carefully to the description of the incident and use follow-up questions to detail specific aspects of the assault through the relevant questions which are included in the medical protocol. The counselor should ensure this and also observe the nonverbal cues of the survivor.
- C. It is most important that the interviewer be non-judgmental. The crucial approach is to avoid blaming the victim and to prevent the survivor from blaming herself/ himself for the attack. The counselor's most important job is to ensure this.
- D. There should be an independent witness present as a patient advocate. This individual will be concerned with the manner in which the survivor is treated. The report has recommended the presence of a health worker/ social organization worker with the survivor if there is no next friend/ family available. The survivor should always be treated with respect.
- E. It should always be remembered that survivors have varying ways of coping with sexual assaults, and survivors who do not appear distressed may be in denial or use forgetting as a coping mechanism. Research has shown that there may be many diverse physical and psychological effects of rape. Physical consequences may include physical injuries, pain, substance abuse, and sleep disruptions among other symptoms. Common psychological consequences include clinical depression, generalized anxiety, panic disorders and posttraumatic stress disorders (PTSD). Some of these symptoms, particularly PTSD, develop over a long time, so survivors should receive treatment for short-term and long-term consequences.
- F. The emotional experience of rape and sexual assault – the following range of reactions could occur in the event of a rape/ sexual assault:
 - Fear
 - Distress
 - Pain

- Anger
- Sadness
- Anxiety
- Feeling Violated
- Shame
- Grief
- Confusion
- Feeling Dirty
- Powerlessness
- Embarrassment

2. Psychological reactions to Rape – The psychological responses vary from the time of the rape

A. Acute phase or initial phase – is the time period immediately after the rape

- Shock/disbelief/numbness are the immediate psychological responses
- Recurrent flashbacks are also something that the woman tries to deal with
- Shame & guilt are major reactions
- Increased fear & anxiety
- Depressed
- Feeling suicidal
- Loneliness
- Confusion
- Anger
- Loss of memory
- Feeling dirty or contaminated by the rape

B. Subsequent reactions – second phase – is the weeks & months that follows the rape/sexual assault:

- Somatic symptoms reflecting effects of physical violation & emotional trauma

- Fear is pervasive
- Some experience it in all situations, while for others the experience of fear is more in particular situations
- Fear about being re-victimized
- Anxiety, mood swings, feelings of depression
- Recurrent flashbacks, dreams with violent content, pre-occupation with thoughts of assault
- Survivor avoids intrusive demands which may again make her feel vulnerable
- “Why me” response is prevalent
- Suicidal ideation
- Self-blame/guilt about not having tried enough to resist the attempt starts setting in now
- There is also a struggle to discover the reason for assault
- Attempt is made by survivor to do things that will give her/ him a sense of control
- Un-accepting, criticizing attitudes of others around will increase the distressed psychological responses rather than help in coping

3. A cluster of reactions experienced by a survivor who experienced rape is called **Rape Trauma Syndrome**. The various phases of this are:

1. **ATTACK** – these are responses like flight, fight or freeze that the survivor exhibits during the attack to survive.
2. **ACUTE REACTIONS** – these are responses that occur after the rape. Some of the symptoms are shock, disbelief, pain/irritation, crying spells, withdrawn, confusion, tension.
3. **REORGANIZATION REACTIONS** – these are symptoms exhibited by the survivor when they are working on re-building themselves after the rape - Symptoms include intrusive thoughts, images, flashbacks, panic attacks, avoiding thinking about the incident, feeling depressed, withdrawal, difficulty in everyday functioning, confusion, hyper vigilance, disturbances in sleep & appetite, startle responses, muscle tension, anger/rage

4. The most common mental health issues faced by survivors after rape/ sexual assault are:

- Post traumatic stress disorder

- Depression
- Generalized anxiety
- Phobic anxiety
- Sexual dysfunction
- Substance use/abuse

The counsellor should be able to assess for symptoms of these disorders

5. The counsellor should provide psychological safety – by reassuring the survivor that s/he is safe:

- The counsellor should be calm & respectful of the survivor
- Validate the emotions that the survivor is going through
- Provide information about the hospital procedures, medical examination results & provide options for the her to make appropriate decisions
- Assure the survivor that it is not their fault
- Clarify any misattributions that the s/he may have
- Be empathetic
- Allow them to talk
- Educate the person about the symptoms he/she may experience because of the rape
- The counselor should always have a non-judgmental attitude & unconditional support

6. Specific medical information post rape/ sexual assault when the survivor is female:

- She needs to be educated about the risk of pregnancy & importance of emergency contraception
- It is also essential to inform her that a risk of pregnancy may also be there even after emergency contraception
- The more the delay in receiving emergency contraception the more the chances of pregnancy

7. General medical information on HIV, prophylaxis, STDs post rape/ sexual assault irrespective of the gender of the survivor:

- Pre-test counseling – benefits of taking the test, implication of positive/negative result
- Post-test counseling:-

- If positive – psychosocial support, clinical assessment, treatment plan, precaution to be taken
 - If negative – preventive counseling, emotional support, preventive measures to be taken in future, post-exposure prophylaxis (PEP), safe sex, education about use of condoms
 - Care has to be taken to inform survivor about side effects of post-exposure prophylaxis
8. When should the survivor be referred to a mental health professional?
- When Suicide risk is high
 - Presence of any major mental disorders
 - Prolonged grief reaction
 - Post Traumatic Stress Disorder
 - History of mental illness prior to the rape
9. Discussing triggers that cause the person to re-experience trauma:
- Crossing the place where the incident occurred
 - Specific time/day/date when the incident occurred
 - If the abuser works in the same place or is someone known
 - Programs or reports of similar incidents in the media
 - Any other stressful situation that can evoke similar responses
 - Frequent dreams/flashbacks about the incident
 - If somebody talks to her about the incident
10. Discussing relationship issues with the survivor's partner or family:
- Helping the family/partner understand that the rape is not the fault of the survivor
 - Educating the family/partner about her symptoms to avoid them from misinterpreting her/ his behaviour
 - Discuss areas that the family/partner can help the survivor with in the process of recovery
 - Helping the family/partner to deal with their emotions/distress because of the rape

- Involving the family/partner in the treatment process

4. The Rape Trauma syndrome
5. Assessment of mental health- what should the counselor look for
6. The role of a counselor in the acute stage or immediately after rape -
 - a. Psychological Safety -support, ventilation, validation
 - b. Information about emergency contraception
 - c. Information about Post exposure HIV prophylaxis, STDs
 - d. Sensitive Discussion about medical and forensic examination
7. Education and preparation for the police report, physical examination
8. How women may respond to a physical exam or intense probing/police interview?
9. Handling the acute consequences of trauma - believe what the patient says, educate about normal reactions, reassure that she is not at fault, reassure that she is not going crazy, encourage normal activities, encourage interaction with family, decrease shame and guilt
10. When should the survivor be referred to a mental health professional?- severe emotional reactions, dissociation, psychosis, suicidality, substance use, earlier history of a mental health problem
11. Discussing triggers of re experiencing trauma
12. Discussing relationship issues including sexual relationships
13. Working with friends and relatives
14. Ongoing counselling- support in reintegration, healing and recovery; emotional support during court appearances
15. Handling special situations- sexual assault in women with physical, intellectual and psychological disabilities
16. Training, Supervision and support for staff handling sexual assault and the importance of working in a team
17. Helping health facilities in developing mental health intervention services for trauma

APPENDIX 9

TRANSCRIPT OF INTERVIEW OF A TRAFFICKED GIRL

- Q: बेटा आपका क्या नाम है?
- Girl: गंगा (name changed)
- Q: तो आपकी है।
- Girl : हाँ जी।
- Q: और में बेटा तुम कहाँ के हो।
- Girl: में मेंरा गॉव का नाम मेरे है।
- Q: वो कहाँ के पास है।
- Girl: नहीं, की साईड में हैं।
- Q: -----का मतलब ये के पास।
- Girl: नहीं मैं तो.... की हूँ लेकिन ज्यादा घुमी फिरी नहीं हूँ।
- Q: फिर तो तुम्हे मालूम भी नहीं है।
- Girl: नहीं मालूम नहीं है। इतना ही पता है कि थाना कहा पडता है ये जिला कहाँ पडता है ये ही सब पता है।
- Q: इतना पता है। जिला क्या है?
- Girl: -----
- Q:अच्छा अच्छा
- Q: तो बेटे तुम्हारे मतलब माता पिता है?
- Girl: हाँ जी।
- Q: और तुम्हारे भाई बहन है।
- Girl: हाँ जी।
- Q: कितने भाई है बेटा?
- Girl: हमारे तो चार भाई चार बहन है।
- Q: चार भाई व चार बहन।
- Girl: हाँ जी।
- Q: और बेटा पिताजी क्या करते है?
- Girl: लोहे का काम करते है।
- Q: है?
- Girl: लोहे का काम करते है।
- Q: लोहे का।
- Girl: जी।
- Q: लोहे का मतलब वो खरिदते है लौहा। लोहे का काम मतलब लौहार का काम करते है।
- Q: तो बेटा अब मुझे ये बताओ कि जब तुम घर में जब थी छोटी बच्ची थी तब बताव तुम्हारे माँ बाप का तुम्हारे प्रति कैसा था बेटा?
- Girl: अच्छे लगते थे।
- Q: अच्छे करते थे?
- Girl: हाँ जी।
- Q: और फिर तुम स्कूल गई?
- Girl: हाँ जी स्कूल जाती थी।
- Q: स्कूल भी जाती थी। अच्छा कौन से स्कूल में गई बेटा?
- Girl: मैं सरकारी स्कूल में पढ़ती थी।
- Q: सरकारी स्कूल में पढ़ती थी।
- Girl: गॉव में ही था एक स्कूल।
- Q: गॉव में ही था?

Girl: जी।

Q: अच्छा मुझे बताओं वहाँ पे आपके जो टीचर थे या अध्यापक थे वो कैसे लगे तुम्हें? अच्छे लगे।

Girl: अच्छे लगे।

Q: अच्छे लगे?

Girl: हूँ।

Q: अच्छा वहाँ खूब खेलती थी तुम?

Girl: नहीं पढ़ाई भी करते थे।

Q: पढ़ाई भी करती थी बहुत अच्छी बात है। और पढ़ाई सुनो तुमने कौन सी कक्षा तक पढ़ाई करी बेटा।

Girl: **** कक्षा तक पढ़ी पर अभी सब भूल जा रही हूँ। मेरे को तीन चार साल हो गये दिल्ली में इसलिए मेरे को थोड़ा सा लिखने के लिए भी हाथ हिलता है।

Q: कोई बात नहीं बेटा अब तुम बिल्कुल ठीक हो जाओगी। अब तुम देखो पढ़ाई ऐसी करोगी। सुनो

Girl: जी

Q: जो तुम्हारी जो भी आकांक्षायें हैं जो भी अभिलाषायें हैं सभी पूर्ण होगी ठीक है। ठीक है? और फिर जब तुम्हें, जब तुम्हें नौकरी लग जाएगी और तुम बहुत, जब तुम्हारा नाम होगा तब हमें याद रखना। ठीक है।

Girl: हाँ जी।

Q: अच्छा अब मुझे बताओं तुम छठी कक्षा में थी तो क्या हुआ बेटा तुम अपने घर से बाहर कैसे गयी?

Girl: मैं स्कूल पढ़ते पढ़ते स्कूल अचानक से छोड़कर इधर मेरे को दिल्ली लेने के लिए आ गए ना इसलिए मैं।

Q: नहीं नहीं, आपको स्कूल से किसने छोड़ा, मतलब छुड़वाया।

Girl: छुड़वाया नहीं। मैं ही स्कूल नहीं गयी।

Q: तुम्ही नहीं गयी।

Girl: मेरे को उन लोग बहकाए ना दिल्ली चलो।

Q: कौन, किन्होने कहा बेटा?

Girl: किसी ने बोला था गाँव का ही तो मैं एक बार आई थी 2008 में, फिर 2009 में

Q: नहीं नहीं तुम धीरे धीरे बताओ कि सबसे पहले गाँव के किसी लड़के ने कहा।

Girl: हाँ जी। वो लड़की लाता है ना गाँव से।

Q: अच्छा जो लड़की लाते हैं गाँव से और वो भी तुम्हारे पास आया पूछने के लिए।

Girl: हमारे घर आया था।

Q: वो घर आया था?

Girl: हाँ जी।

Q: और आपके माता पिता से पूछा?

Girl: हाँ जी।

Q: और माता पिता से क्या कहा उसने?

Girl: कहा कि मैं दिल्ली ले जाऊँगा फिर ये काम करेगी एक साल और उसके बाद मैं घर पहुँचा दूँगा बोला।

Q: और उसने कुछ पैसे दिये आपके माँ- बाप को?

Girl: नहीं पैसे नहीं दिये।

Q: पैसे नहीं दिये?

Girl: नहीं

Q: और तो आपके माता पिता ने क्या सोचा कि भई तुम्हें दिल्ली क्यों भेजें?

Girl: मैं जाऊँगी दिल्ली बोली इसलिए। नहीं भेजोगे। उन लोग बोले दिल्ली चलो। तो मेरा आने का भी मन था दिल्ली की एक साल काम करने के लिए जाऊँगी। या फिर दिल्ली कैसा है मैं भी देखूँगी।

Q: अच्छा, तो तुम दिल्ली देखोगी और तुम्हें मालूम भी होना चाहिए कि दिल्ली क्या है,

Girl: हाँ जी,

Q: तो तुम्हें, उसने मतलब क्या बोला क्या काम करोगी तुम उसने क्या बोला?

Girl: मुझे भी नहीं पता था और उन्होने भी नहीं बोला था बस काम करने के लिए बोला था।

Q: बस काम करने के लिए बोला था?

Girl: जी,

Q: जब तुम वहाँ से काम करने के लिए गई बेटा तो तुम्हें ये कहा कि तुम्हें जो है वहाँ पे अच्छे पैसे

मिलेंगे। अच्छी जगह रहने को मिलेगी।

Girl: हाँ जी।

Q: अच्छी जगह मिलेगी, अच्छे कपड़ें मिलेंगे, अच्छे साथी मिलेंगे ऐसा कुछ कहा?

Girl: हाँ जी, उन लोग मतलब सब घर में ही सब कुछ काम करना पड़ता है घर में ही रहना पड़ता है सब लोग अच्छे लोग रहते हैं। सब लोग ऐसा बोला।

Q: ऐसा बोला, अच्छा तो फिर ये बेटा ये जो आदमी है। इसका नाम बता सकती हो तुम।

Girl: जो मेरे को दिल्ली से लेके आया है,

Q: नहीं

Girl: जो मेरे को गाँव से लेके आया है। उसका तो विक्रम नाम है।

Q: विक्रम नाम है?

Girl: हाँ जी।

Q: और ये विक्रम मतलब तुमको लेके गया या और भी लड़कियों को लेके गया?

Girl: और भी लड़कियों को लगाया था पर मेरे को दिल्ली आने के बाद में वो लड़की लाता है पता चला मुझे।

Q: मतलब, तुमको वो अकेले लेके आया।

Girl: हाँ जी। वहाँ से मुझे अकेले लेके आया।

Q: अच्छा तो गाँव से तुमको वो अकेले लेके आया तो क्या ये रेल में लेके आया?

Girl: हाँ जी।

Q: ट्रेन में।

Girl: *** दिन लगते हैं ट्रेन में।

Q: हाँ..... ये तो लम्बा सफर है।

Girl: हाँ जी।

Q: हाँ तो तुमने रास्ते में खाना वाना खाया या नहीं।

Girl: खाना वाना तो खिलाया उन लोग ने।

Q: उन लोगो ने मतलब वो अकेला था या और भी लोग थे?

Girl: उनके साथ में एक लड़का भी था।

Q: कौन वो विक्रम के साथ?

Girl: विक्रम के साथ पता नहीं उसका भतिजा था, क्या था उसको मैं नहीं जानती कौन था। लेकिन साथ में था वो लड़का।

Q: लड़का?

Girl: हाँ जी।

Q: अच्छा विक्रम और ये जो भतिजा जो है। रेल में जब आपको ले आ रहे थे तो तब क्या कोई बुरी बर्ताव वगैरह किया इन लोगो ने।

Girl: नहीं। कुछ बुरा नहीं किया पर आते टाइम जिस दिन हमने दिल्ली आने के लिए ट्रेन पकड़ना था उस दिन ट्रेन छूट गया और हम लोग वहाँ स्टेशन पर रुके थे वहाँ पे उनके रिश्तेदार लोग रहते थे। वो लड़का का दीदी लोग रहते थे। तो उसके घर में रुके थे फिर सुबह उठ के हम लोग दूसरी ट्रेन पकड़ के आये।

Q: अच्छा। जब दिल्ली आये फिर क्या हुआ?

Girl: दिल्ली लाके उन्होने मेरे को ऑफिस नहीं छोड़ा "" के घर पे छोड़ा।

Q: ""?

Girl: हाँ जी।

Q: "" क्या करता है?

Girl: ऑफिस प्लेसमेंट चलाता है।

Q: अच्छा प्लेसमेंट एजेंसी है उसकी?

Girl: हाँ जी। उसका सगा छोटा भाई है।

Q: कौन?

Girl: विक्रम का।

Q: अच्छा अच्छा विक्रम का छोटा भाई "" है। और "" जो है प्लेसमेंट एजेंसी दिल्ली में चलाता है।

Girl: हाँ जी, दिल्ली में नही (गुडगाँवा) में चलाता है।

Q: (गुडगाँवा) में चलाता हैं? तो बेटा वो "" ने तुमसे क्या पूछा?

Girl: मेरे को कुछ नहीं पूछा उन्होने बस काम लगाया था।

Q: वो काम कहा पे लगाया बेटा तुम्हें?

Girl:**** में लगाया था।

Q: **** ये है कहाँ दिल्ली में?

B: ये "" के पास हैं।

Q: "" के पास?

Girl: मुझे नहीं पता।

Q: अच्छा अच्छा चलों। "" में बेटा क्या काम था तुम्हारा किस काम पे लगाया? कौन लेके गया तुमको वहाँ पे? ""।

Girl: "" ने वहाँ पे छोड़ने के लिए गया फिर वहाँ से कमिषन पैसे लेके आया। फिर वहाँ.....

Q: मतलब जब वहाँ पे गया, उसने तुमको वहाँ पे छोड़ दिया. और उनसे पैसे ले लिए?

Girl: हाँ वहाँ पे उन लोग वो मैडम लोग पूछें के काम करेगी या नहीं करेगी। मैं इतना दूर से आई हूँ गाँव से तो काम तो करूँगी ना। तो मैं बोली हाँ मैं काम करूँगी।

Q: अच्छा वो मैडम थी।

Girl: हाँ जी। वहाँ पे जो काम करने के लिए रख रहे थे।

Q: अच्छा अच्छा वो मैडम थी।

Girl: हाँ जी।

Q: अच्छा वो मैडम मतलब वो क्या करती थी काम मैडम।

Girl: मैडम कुछ काम नहीं करती थी, साहब करते थे।

Q: साहब क्या काम करते थे?

Girl: वो तो मुझे नहीं पता। सुबह वो 10.00 बजे चले जाते थे रात को आते थे।

Q: अच्छा। रात को आते थे।

Girl: हाँ जी।

Q: फिर तुम वहाँ पे क्या काम करती थी घर में, घर में काम करती थी?

Girl: हाँ जी।

Q: अच्छा घर में क्या काम करती थी तुम बेटा?

Girl: डस्टींग, झाड़ू पोया और कपड़े मशीन से धोती थी।

Q: और....

Girl: कपड़े आयरन करती थी।

Q: है?

Girl: कपड़े आयरन करती थी।

Q: आयरन करती थी? तो तुम्हें ये सब मालूम था काम या वहाँ पे सीखा?

Girl: सीखा।

Q: वहाँ पे?

Girl: हाँ जी।

Q: किसने सीखाया?

Girl: धीरे धीरे सीख गई। बस एक हफता तो लगता है कोई भी काम को करने में।

Q: बस सिर्फ एक हफते में सीख गई फिर तो तुम बहुत चतुर हो। हैं बहुत चतुर हो बेटा। और फिर एक हफते सीख के तुम्हे जो है वो खाना वाना देते थे या नहीं।

Girl: खाना वाना तो देते थे। जब उन लोग खाते थे तो उसी टाईम पे देते थे।

Q: उसी टाईम पे देते थे?

Girl: हाँ जी।

Q: और खाना तुम्हें कम देते थे या ठीक देते थे?

Girl: खाना तो देते थे उन लोग ऐसा कोई बात नहीं। देते थे पर दोबारा नहीं पूछते थे और खायेगी नहीं खायेगी।

Q: हूँ

Girl: देते थे बस एक बार उन लोग डाल के देंगे और बस।

Q: और बस, और तुम्हें अलग जगह पे बिठा के किचन में या....

Girl: हाँ जी, किचन में बैठाते थे। बाहर बैठती थी लेकिन वो लोग तो अपने ड्राईंग रूम में बैठते थे ना।

Q: हाँ हाँ तो तुम बाहर बैठ के खाती थी।

Girl: हाँ जी।

Q: तो फिर तुम अपने धो देती थी बर्तन?

Girl: बर्तन तो अलग से धोती थी बाकी सारा घर तो धोना पड़ता था।

Q: उनके बर्तन तुम धोती थी?

Girl: हाँ जी, डस्टींग झाड़ू पोचा, बर्तन...

Q: सब तुम करती थी?

Girl: हाँ जी।

Q: तो तुम्हें कितने पैसे महिने के लिए उन्होंने रखा।

Girl: वहाँ का तो मैं भूल जा रही हूँ लेकिन वो चार आस पास लगाया था उन लोग।

Q: है? 4000 के आस पास।

Girl: 4000 लगाया था ऐसा लग रहा है लेकिन मैं वहाँ वाला भूल जा रही हूँ। कितना मैं लगाया था और...

Q: लेकिन तुम्हें कुछ भी पैसे दिये या नहीं दिया.?

Girl: नहीं वाला एक भी पैसा नहीं दिया।

Q: एक भी नहीं।

Girl: नहीं

Q: और वो. वो. जो

Girl: मेरे सामने उन्होंने जाके, मेरे सामने उन्होंने जाके लेके आया बोला के मेरे को काम है जरूरी काम है बोल के लाता था। दो, तीन बार लेके आया फिर...

Q: नहीं नहीं मतलब। सबसे पहले की बात बताओं जिस घर में तुम थी।

Girl: हाँ हाँ उसी घर की बता रही हूँ।

Q: वहाँ पे मतलब तुम्हे तो तुम्हे तो ये लगता होगा महिना हो गया मुझे पैसे मिलेंगे। तो तुमने पूछा नहीं माता जी से। कि माता जी पैसे कब दोगी।

Girl: वो तो बोलती थी मैडम के सारे पैसे इक्टठे ले जाईयों। अगर पैसे दे दूंगी तो भागने का डर होता है ना उन लोग को षक करते है कि लडकी को पैसे दे देंगे तो भाग जायेगी। इसलिए उन लोग मेरे को पैसे नहीं देते थे महिने में।

Q: तो कहते थे कि सब इक्टठे करके लेके जाओं।

Girl: हाँ जी।

Q: एक साथ जब जाओगी तब दे देंगे।

Girl: हाँ जी। जब जाओगी तब देंगे।

Q: तब देंगे?

Girl: हाँ जी।

Q: लेकिन तुम्हें दिया ही नहीं?

Girl: मैडम लोग तो साहब लोग तो दिये थे। सारे पैसे देंगे बोले थे पर "" मेरे सामने तीन बार के चार बार लेके आया मेरे सामने पैसे।

Q: वो जो तुम्हारे पैसे थे वो "" ले गया।

Girl: हाँ जी।

Q: और लेकिन वो तुम्हें कुछ नहीं दिया?

Girl: नहीं दिया।

Q: तो तुम्हे बुरा लगा होगा?

Girl: वो तो भुगतना ही पडा।

Q: भुगतना पडा ना?

Girl: जी।

Q: तो वो "" ने तुमसे क्या कहा कि मैं ये पैसे तुमको दे दूंगा?

Girl: दे दूंगा बोला।

Q: कि जब तू जायेगी वहाँ पे तब मैं दे दूंगा?

Girl: उस टाईम पे सारे पैसे नहीं लाया था। तीन बार मेरी सेरली उठा के लाया था।

Q: क्या?

Girl: तीन बार जाके सेरली उठा के लाया था मेरा।

Q: सेरली मतलब?

B: Salary..

Q: Salary लेके आ जाता था?

Girl: वो मेरा महिने के पैसे।

Q: लेकिन तुम्हें नहीं दिया?

Girl: नहीं दिया और मेरे को निकाला 10 महिने के बाद। 10 महिने मे मेरे को निकाला।

Q: किसने?

Girl: "" ने और...

Q: निकाल दिया?

Girl: निकाला वहाँ से और

Q: वो मतलब ये जो मैडम और वो थे उन्होने नहीं निकाला?

Girl: नहीं उन लोग छुट्टी दे दिया बोला निकाल रहे है तुमको।

Q: किन्होने बोला?

Girl: "" ने मुझे वहा। उन लोग मैडम ने छुट्टी दे दिया ना मुझे। तो मै दिल्ली आ गई। मतलब मैं आफिस आ गई।

Q: मतलब वो छुट्टी दिया उन्होने तुमको आज्ञा....

Girl: जाने के लिए बोल दिया।

Q: कि तुम अब जाओं?

Girl: तुम जाओं नहीं, वो लेने के लिए आया था "" लेने के लिए आया था घर

Q: अच्छा, घर?

Girl: हाँ जी।

Q: ओ अच्छा, तुम्हें घर वापस ले जाने के लिए जैसे?

Girl: नहीं, ऑफिस ले आने के लिए। कोठी गया था मुझे ऑफिस ले आने के लिए

B: "" basically इसको घर से निकाल के कहा कि मैं इसको वापस एजेंसी ले जा रहा हूँ प्लेसमेंट एजेंसी।

Q: लेकिन प्लेसमेंट एजेंसी मतलब इसकी **employment** वो अंक्ल अॉटी से खत्म हो गई।

B: अंक्ल अंटी मतलब इनका एक सिस्टम होता है कि मै ये लडकी दे रहा हूँ और मै इसको बदल भी सकता हूँ और ये मेरी गारन्टी है अगर ये बदल गई तो मै दूसरी लडकी दे दूँगा। **Like contract labour**

Q: ठीक मतलब बदल गई तो मै दूसरी दे दूँगा। तो उन्होने कहा होगा कि पसन्द नहीं हैं।

B: नहीं नहीं ऐसा नहीं हुआ सर।

Q: ऐसा नहीं हुआ?

B: इसके केस मे क्योकि लगभग एक साल होने लगा था।

Q: हाँ

B: तो इसलिए वो ये कहके लाया कि

Q: की भई जै से ये वापस लेके जा रहा है।

B: हाँ जी। **As we will progress we will also narrate that he had said that I am taking you home but he didn't take her**

Q: हा मैं समझ गया, ऐसे कि इनको कि जैसे तुम वापस घर जाओगी, तो इसलिये वो तुमको वहाँ लेकर आया एजेंसी मे

Girl: हाँ जी।

Q: एजेंसी में लेके आया। बोलो।

Girl: मेरे को वहाँ से लेके आया ऑफिस में।

Q: ऑफिस में।

Girl: जी।

Q: गुडगाँवा में।

Girl: गुडगाँवा में लेकर आया फिर मैंने बोला के मुझे घर जाना है। मुझे पैसे दे दो। तो बोला कि अभी हम लोग गाँव जाएँगे कटठा मतलब एक महिने बाद हम सारे घर जा रहे है। तो तुम भी एक महिने काम कर लो फिर सारे घर जायेंगे तुम भी हमारे साथ चली जाना।

Q: सारे मतलब और भी थे तम्हारे जैसे बहुत लोग।

Girl: नहीं, उनका बीवी बच्चे थे ना।

Q: अच्छा अच्छा, ऐसे कहा था उन्होने।

Girl : हाँ, तो बीवी बच्चे थे उन लोग, सारे जाएँगे हम लोग तो तू भी एक महिना काम कर लें फिर तुम्हे भी ले जाएँगे हम हमारे साथ में।

Q: ठीक है। फिर क्या हुआ?

Girl: फिर मेरे को एक महिने बोल करके काम लगाने के लिए पंजाब ले गया।

Q: वो पंजाब ले गया?

Girl: हाँ जी।

Q: सिर्फ एक महिने के लिए।

Girl: एक महिने के लिए। मेरे को बोला एक महिने काम लगाऊँगा। मैंने भी बोला कि एक महिने के लिए काम लगा रहे हो मेरे को तो मेरे को गुडगाँव के अन्दर ही काम लगा दो मैं आपको कोई शिकायत नहीं पहुँचाऊँगी।

Girl: तो उन्होने बोला कि ठीक है मैं गुडगाँवा के अन्दर ही लगा दूँगा। पहचान में ही लगा दूँगा बोला। और मेरे को वहाँ पंजाब ले गया।

Q: पंजाब

Girl: हाँ जी, मुझे नहीं पता था कि उन्होने मेरे को पंजाब लेकर जा रहे है।

Q: अच्छा, तो तुम मतलब रेल में गई या बस में?

Girl: बस में।

Q: और फिर पंजाब में कहाँ गई?

Girl: बस में गये, वहाँ अम्बाला बोलते है।

Q: अम्बाला।

Girl: हाँ जी, वहाँ स्टेशन है वहाँ उतरे थे, वहाँ रात हो गई फिर मेरे को रस्ते पे जंगल में सुलाया था रात को फिर.....

Q: कौन "" ने?

Girl: "" ने। फिर सुबह उठके 4.00 बजे मेरे को कोठी पहुँचाया जालंधर।

Q: जब जंगल में सुलाया तो "" ने कुछ तुम्हारे साथ बलात्कार या कुछ ऐसे करने की कोषिष की?

Girl: कोषिष नहीं उन्होने किया। गलत किया।

Q: गलत किया! कौन "" ने?

Girl: "" ने,

Q: खुद।

Girl: जी

Q: हूँ। और तुम कुछ कह नहीं पाई।

Girl: मैं तो अकेली थी और अगर कुछ बोलती तो वो कुछ कर देता तो मुझे तो डर था।

Q: हाँ, हाँ। और फिर तुम को रात को ये करने के बाद जो है फिर वो सवेरे कोठी कहीं ले गया?

Girl: जालन्धर।

Q: जालन्धर

Girl: जी। गुजराल नगर।

Q: हैं? गुजराल नगर।

Girl: हाँ

Q: अच्छा। और ये गुजराल नगर में फिर बेटा किस कोठी में तुम्हे लगाया, क्या काम?

Girl: मकान नम्बर तो.....

Q: याद नहीं है...

Girl: याद नहीं है, लिख के रखा हुआ है घर पे ऑफिस में।

Q: अच्छा,

Girl: मतलब भैया के घर में।

Q: भैया के पास।

Girl: हूँ जी तो डायरी में लिखा हुआ है। अभी याद नहीं आ रहा है नम्बर कितना था।

Q: हूँ। और फिर तुम वहाँ पे जब उस घर में क्या वहाँ पर कौन रहते थे उस घर में।

Girl: उस घर में अक्ल अंटी और दो भैया और दो भाभी एक बच्चा था।

Q: अच्छा और पूरा काम तुम्हे करना था घर का काम।

Girl: मैं डस्टिंग और छोटा मोटा काम करती थी बाहर से डस्टिंग मैं खुद करती थी। वो कभी आती थी पोचा लगाने वाली और कभी नहीं आती थी तो सारा काम कभी मुझे ही करना पड़ता था।

Q: अच्छा और खाना-वाना।

Girl: खाना वाना वो लोग खुद करते थे।

Q: अच्छा... वो तुम्हें खाना खिलाते थे?

Girl: हाँ जी,

Q: अच्छा तो वहाँ पे उस घर में तुम्हारे साथ कोई बलात्कार कुछ ऐसे हुआ।

Girl: नहीं, वहाँ अच्छे थे।

Q: अच्छे थे।

Girl: जीं

Q: अच्छा

Q: फिर क्या हुआ बेटा, वहाँ पे कोई बात हुई?

Girl: नहीं वहाँ कोई बात ऐसे नहीं हुआ है। वहाँ मैं अच्छे से काम किया। अच्छे से एक साल काम किया। अच्छे से काम किया।

Q: एक साल..... कितना?

Girl: एक साल।

Q: एक साल।

Girl: हॉ जी,

Q: और वहाँ पे कितने पैसे दिये थे

Girl: 3000.00

Q: पैसे तुम्हे देते थे वे लोग?

Girl: नहीं उन लोग इक्ठठे देंगे बोले। वहाँ का तो सारा पैसा मेरे सामने गिनती करके वो "" के हाथ में पैसे पकड़ाए।

Q: मतलब पहले ही पकड़ा दिये।

Girl: पहले नहीं जब साल पूरा हुआ तो।

Q: एक साल के बाद वो इक्ठठा दे दिया।

Girl: हॉ जी।

Q: और तुम... तो तुम सवेरे कितने बजे उठती थी बेटा।

Girl: 8.00 बजे।

Q: 8.00 बजे से काम करती थीं?

Girl: उन लोग लेट उठते थे ना इसलिए।

Q: अच्छा, और रात को कितने बजे तक काम करती थी बेटा?

Girl: 11.30 बजे तक।

Girl: कभी 12.00 भी बज जाता था। लेट खाना खाते थे तो 12.00 बज जाता था।

Q: अच्छा जो ये भैया भैया थे उनकी क्या उम्र थी वहाँ पे?

Girl: एक तो मेरे जाने के बाद शादी हुआ। मैं गई उसी महीने शादी हुआ और दूसरा का एक बच्चा था ढाई साल का।

Q: अच्छा, तो वो जो दोनो भैया थे वो तुम्हारे साथ कोई बुरा बर्ताव नहीं किया।

Girl: नहीं,

Q: वो अच्छे थे।

Girl: अच्छे थे। मेरा तो बड़ा वाला जो बेटा था मतलब जिसका बेटा था वो ही मेरा साहब बना हुआ था।

Q: अच्छा अच्छा

Girl: हाँ,

Q: जिसका बच्चा था?

Girl: हाँ

Q: उस बच्चे की भी देखभाल तुम ही करती थी?

Girl: नहीं, हाँ कभी कभी देखती थी लेकिन उसका देखना मेरा काम नहीं था।

Q: अच्छा

Q: अच्छा जब एक साल खत्म हो गया फिर क्या हुआ?

Girl: फिर एक साल खत्म हो गया मेरे को लेने के लिए गया "" आया

Q: गया "" ।

Girl: जी।

Q: तो फिर "" ने क्या किया?

Girl: "" ने वहाँ से सारे पैसे उसी टाईम गिनवा के, सारे पैसे गिनवा के उन्होंने हाथ में ले लिया।

Q: अपने हाथ में?

Girl: अपने हाथ में ले लिया। मेरे को साहब ने बोला कि पता नहीं ये आदमी देगा कि नहीं देगा तो 6000 तुम दो महिने का 6000 तू अपने हाथ में रख ले। इसे मत बताना कि तेरे हाथ में 6000 पैसे हैं।

Q: अच्छा अच्छा तो तुमने अपने पास रख लिया।

Girl: अपने पास 6000 पैसे रख लिए दो महिने का। फिर बाकी पैसे "" के हाथ में गया।

Q: ठीक है फिर क्या हुआ?

Girl: फिर उन्होंने मेरे को लेके आया। गुडगॉवा।

Q: वापस एजेंसी में।

Girl: जी, एजेंसी में।

Q: अच्छा तो तुम जैसे गये वैसे ही आये।

Girl: जी। जैसे गये वैसे ही आये।

Q: फिर रूकना पड़ा रास्ते में कहीं।

Girl: नहीं आते टाईम कहीं भी नहीं रुकना पड़ा।

Q: अच्छा तो सीधे आ गए।

Girl: जी, सीधे आ गए।

Q: फिर गया हुआ गुडगाँवा में?

Girl: फिर गुडगाँवा, मेरे को गुडगाँवा में कोठी से निकाला और उस टाईम उन्होंने जानबूझ करके भेज दिया था अपने बीवी बच्चे को घर फिर ऑफिस में मैं अकेली थी। गुडगाँवा में मतलब घर पे मैं अकेली थी और कोई भी नहीं थे।

Q: तो तब क्या करते थे ये?

Girl: मैं उनके घर पे 17 दिन थी। 17 दिन में से 10 दिन के करीब मेरे साथ उन्होंने गलत किया।

Q: 10 दिन?

Girl: जी।

Q: हर रोज, कौन ये "" ने?

Girl: जी "" ने।

Q: और ये एक बार करता था रात को या 2-3 बार? कोई घबराओं नहीं इसमें क्या बात है। क्या शर्म की बात है ऐसे मत घबराओं, हिम्मत रखो।

B: हम उसे जेल भेजेंगे। ठीक है। तुम चिन्ता ना करो बिल्कुल।

Q: तुम चिन्ता ही ना करो। इन सबको तो सबक सीखाना है ना। तुम बताओं बेटा 2-3 बार करता था।

Girl: जी

Q: और फिर कहता था कि चुप रहो किसी को बताना नहीं।

Girl: जी, कहता था कि अगर किसी को बताएगी तो मैं तुम्हें घर भी नहीं पहुँचाऊँगा तुम्हें पैसे नहीं दूँगा। ऐसे बोलता था।

Q: डराता था?

Girl: डराता था।

Q: फिर क्या हुआ 17 दिन के बाद।

Girl: फिर 10 दिन के बाद उसकी बीवी को मैंने फोन करके बताया सारी बात के ऐसे ऐसे कर रहा है बोल के। तो उसकी बीवी तो गाँव से आ गई।

Q: वो आ गई।

Girl: जी, गाँव से आ गई। फिर उसके बाद मे दोनो मिल करके मेरे को लड़ाई करते थे। उनकी बीवी गलत सोचती थी मुझे कि मेरे पति को तुम अपनी तरफ खींच रहे हों। ऐसे बोल के वो मारपीट करती थी।

Q: तुम्हें।

Girl: मुझसे फिर उसके बाद में जब बीवी आ गई। उससे पहले भी "" ने मुझे, उनके साथ मैं लडती थी ना मेरे साथ गलत करता था तो मैं लडती थी उनसे तो मेरे को धमकी देता था कि कहीं पे मार दूंगा या तुम्हारे घर जाओगी तो... भेज नहीं... पहुँचने नहीं दूंगा। बोलता था। पहुँचने नहीं दूंगा।

Q: फिर क्या हुआ?

Girl: फिर उसकी बीवी आ गई। फिर 10 दिन छोड़ के बाकी रोज लडी वो मुझ से रोज मारपीट चलता था हमारे तीनों के बीच। उन दोनों मिया बीवी एक साईड हो जाएँगे मुझे मारपीट करते थे। उसके बाद में मैं एक दिन छत में गई थी। तब....

Q: छत में?

Girl: जी, एक दिन उनके घर पे मेहमान आये हुये थे। तो उसका छोटे वाला बच्चा था तो उसको गोद में लेकर मैं ऊपर गई। फिर मैं रो रही थी कि मुझे घर जाना है मुझे घर भेजो। रोज रोज ऐसे मारपीट कर रहे हो मुझे। इससे अच्छा है मुझे मर जाना चाहिए। तो उन्होने बोला कि मरने का षौक है तो तुम्हें अभी धक्का देके। धक्का दे दूंगा तो अभी गिर के मर जाएगी। ऐसे बोला था। मुझे हाथ लगाया था पर धक्का नहीं दिया था।

Q: फिर क्या हुआ?

Girl: फिर मेरे को बोला की जाओ नीचे मेहमान आये है तो नीचे सबको खाना बनाके खिलाओं। मैंने कहाँ मैं नहीं बनाऊँगी खाना मेरा रिश्तेदार नहीं है आपका रिश्तेदार है। मेरे को खाना नहीं बनाना और ना ही खाना मुझे। तो उन्होने हाथ मेरे को पकडा और कहा कि जाओ खाना बनाने के लिए। फिर मैं नीचे आ गई खाना बनाया। उसके दूसरे तीसरे दिन उन लोग रोज लडाई झगडा देख के उन लोग चले गये जो मेहमान आये थे तो उन्होने मेरे को बोला कि तुम यहाँ से चली क्यों नहीं जाती है रोज रोज लडाई झगडा में कैसे रह रही है तू इनके यहाँ। तो मुझे तो जाना है पर मैं कैसे जाऊँगी? मेरा दो साल का पैसा खाया हुआ है। फिर मेरे को पैसे नहीं देगा मैं कहाँ जाऊँगी। मेरे को दिल्ली लेके आये है मेरे को ना जगह का पता है ना जाने का पता है कुछ भी मुझे नहीं पता है। मुझे नहीं पता है कहाँ जाऊँगी क्या करूँगी। तो उन लोग बोले कहाँ की रहने वाली है तू? मैं बोली मैं तो (राज्य का नाम)की रहने वाली हूँ। तो उन लोग भी बोले हम लोग भी (राज्य का नाम)के है तो हमारी जगह कुछ रोज काम करेगी। फिर हम साथ में घर जाएँगे। उन लोग भी ऐसे बोले। फिर फोन नम्बर दिये बोले कि "" को मत बताना कि हमारे फोन नम्बर तुम्हारे पास है। फिर हमारे पास आ जाना ऐसे बोले थे। तो ठीक है मैं आ जाऊँगी। मैं आ जाऊँगी बोली। फिर फोन नम्बर दिये थे उसको छुपा के रखी थी "" से बचा के। फिर मैं एस.टी.डी. से कॉल किया तो उसकी बीवी ने पीछे पीछे गई उस दिन कॉल नहीं कर पाई। पता नहीं कौन सा त्योंहार था तब उन्होने बोला कि चलो घूमने ले जाता हूँ "" ने। तो मेरे को भागना था वहाँ से कि उन लोग बुलाए थे ना हमारे इधर आ जाने के लिए। तो ठीक है उधर जाने के लिए मैं बोली घूमने नहीं जाऊँगी घर पे रहूँगी उन लोग को बोली। तो समझ गया "" ने कि भागेगी। और बाहर से मुझे ताला मार के अपनी बीवी, अपने बीवी बच्चे को घुमाने इण्डिया गेट की तरफ ले आया था। फिर शाम हो गया था फिर मैं अन्दर ही थी कमरे के अन्दर। आके दरवाजा खोले। उसके 2-3 दिन हो गये के 4-5 दिन हो गये। फिर मैंने एस.टी.डी. से कॉल किया कि मेरे को जाना है यहाँ नहीं रहना है। तो उन लोग ने बोला कि ठीक है फिर हमारे तरफ आ जाओ। उस दिन "" ने मेरे को सुबह सुबह ज़िद किया की चलो पंजाब चलते है। वो जहाँ जाता था वहाँ ले जाता था कि जहाँ लडकी छोड़ने जाएगा तो उसके साथ मे ले जाएगा। और

Q: यानी के बहुत ऐसे लडकियों को करता था ये ही काम?

Girl: मेरे को तो नहीं पता पर एक लडकी थी उससे भी ऐसे ही करने की कोषिष कर रहा था। पर मुझे नहीं पता क्या करता था।

Q: नहीं नहीं पर वो काम ये ही करता था कि लडकियो को ले आना काम पे लगाना?

Girl: जी,

Q: लडकियो को ले आना काम पे लगाना उनके पैसे हडप लेना और फिर उनको ऐसे बलात्कार करना?

Girl: जी,

Q: फिर क्या हुआ फिर क्या हुआ?

Girl: फिर मैंने मना किया कि आज तो मैं पंजाब नहीं जा पाऊँगी तो आज मैं घर पे रहूँगी आज मैं। कपड़े वपड़े धोऊँगी आज मैं घर पे रहूँगी। कहीं भी नहीं जाऊँगी बोली उनको तो मुझे 10 रुपये पैसे देके जाओं तो मेरे हाथ मैं पैसे नहीं देता था ना। तो 10 रुपये पैसे देके जाओं मुझे घर में ही रहना है कुछ खाना है मुझे बिस्कुट वगैरह। तो फिर 10 रुपये मैंने उसके हाथ से किसी तरह निकाल लिया। फिर उसी 10 रुपये से मैंने एस.टी.डी. से कॉल किया उधर मुझे जाने के लिए। मैं उधर जाऊँगी बोल करके। एस.टी.डी से तो उन लोग ने मुझ से कहाँ कि आ जाओ हम लोग षंकर चौक में रहेंगे। तो षंकर चौक वहाँ तक है रिक्शा में आ जाओ। तो मैं रिक्शा में चली गई वहाँ पे षंकर चौक के पास।

Q: फिर क्या हुआ?

Girl: फिर "" का साला.... फिर मैं घर से निकली ना गुडगाँव से निकली तो उस टाईम को गुडगाँव के आस पास के सारे लोग मुझे देखे। और जो "" का साला था उन्होंने मेरे को टोका उन लोग मेरे को टोका कि क्यों जा रही है मत जा अकॅले कहा जाएगा। आज घर पे "" नहीं है अगर नहीं चाहती हो तो मत बताना "" को कि मैं जा रही हूँ कहाँ जा रही हूँ उसको मुझे नहीं पता पर मैं जा रही हूँ। "" को नहीं बताना अगर मैं रोज रोज ऐसे करती रहूँगी तो मैं घर भी नहीं पहुँच पाऊँगी। और "" को बताओगे तो मेरे को फिर से ले आएगा और फिर पता नहीं कितने साल रखेगा। फिर मैं चली गई वहाँ से मैं षंकर चौक मे बैठी थी और उन लोग को कॉल किया। मेरे हाथ मे मोबाईल था तो उन लोग से छुपा के रखी थी।

Q: मोबाईल किसने दिया?

Girl: "" ने दिया।

Q: तुम्हें मोबाईल दिया।

Girl: जी।

Q: अच्छा इस मोबाईल से तुम अपने माँ बाप से बातचीत कर सकती थी?

Girl: नहीं

Q: क्योंकि उनके पास कोई मोबाईल नहीं था।

Girl: नहीं मम्मी पापा के पास कोई मोबाईल नहीं था। और कोई फोन भी नहीं आता था मैंने दो साल काम किया लेकिन ..पंजाब में एक बार के दो बार आया था मम्मी लोग का फोन और नहीं आया।

Q: तो फिर ये मोबाईल से तुम किससे बात करती थी फिर.?

Girl: "" से बस उसी का नम्बर था मोबाईल पे और किसी का नम्बर नहीं था। हर एक.... कहीं भी जाएगा तो कॉल करता रहेगा हर एक सैकेण्ड के बाद। अगर सामने आएगा तो बार बार मोबाईल से चैक करता रहेगा। वैसे छोड़ता नहीं था। बाथरूम जाएगा तो बाथरूम साथ लेके जाता था बाहर मुझे खडा करे फिर वो अन्दर जाएगा। फिर कहीं भी दुकान जाएगा दूध लेने, कुछ लेने, सब्जि लेने जाएगा तो भी साथ लेके जाएगा। एक एक सैकेण्ड के लिए मुझे नहीं छोड़ता था। साथ हमेशा घुमाता था।

Q: फिर क्या हुआ?

Girl: फिर मैं षंकर चौक....

Q: "" ने तुमसे कभी..... "" ने तुमसे कभी ये कहा कि मैं तुमसे षादी करना चाहता हूँ?

Girl: जी कहा।

Q: कहाँ।

Girl: जी कहा

Q: बहुत बार कहा?

Girl: उन्होने बोला कि मैं षादी करूँगा और जब हमारे एक बच्चा हो जाएगा तब मैं तुम्हे घर जाने दूँगा बोला। मेरे को तुमसे षादी नहीं करना है। मुझे घर जाना है मेरे को पैसे दे दो। वो बोला कि मैं तुमको पैसे नहीं दूँगा जब तक षादी नहीं करगी तब तक मैं तुम्हे पैसे नहीं दूँगा और षादी नही करेगी तो मैं तुम्हे ना तो षादी करने दूँगा किसी और से और ना किसी और का नाम तुम्हारे माथे पर सिन्दूर लगाने दूँगा। अगर ऐसे करेगी तो मैं तुम्हे मार दूँगा, नहीं तो काट के फेंक दूँगा, नहीं तो तुम्हारे घर को जला दूँगा मैं। मैं तो एम.सी.सी. वाला हूँ मैं तुम्हें छोड़ूँगा नहीं। अब तक वो दूँढता है मुझे मारने के लिए बोलता है जहाँ मिलोगे वहाँ गोली चला दूँगा।

Q: वो कहता है वो एम.सी.सी. वाला है

Girl: जी, पार्टी वाला हूँ एम.सी.सी. वाला हूँ ऐसे बोलता है।

Q: एम.सी.सी. पार्टी वाला है।

Girl: वो तो क्या है मुझे नहीं पता।

Q: अच्छा वो कहता है ऐसे।

Girl: जी कहता है।

Q: फिर क्या हुआ? फिर तुम षंकर चौक आ गई।

Girl: फिर मैं षंकर चौक आ गई और वहाँ से उनके... रंजीत नाम का था "" का साला उन्होने मेरे को बोला कि "" को बता दिये है कि तू भाग रही है। मतलब लोग झूठ बोले मेरे से। "" को किसी ने नहीं बताया था पर उनका साला रंजीत मेरे को जाकर बोला कि "" को बता दिये है ये लोग ने और तुम्हे दूँढ रहा है "" । अगर मिल जाएगी तो वहाँ पे मारने के लिए बोला है नहीं तो घर ले आके ताला बन्द करने के लिए बोले है तो क्या करेगी। अगर यहाँ हम अकेले छोड देंगे तुम्हे तो यहाँ लडका लोग उठाएँगे। फिर तुम्हे मारपीट करेँगे रस्ते मे तो क्या फायदा होगा। घर ले जाके तुम्हे ताला लॉक करेँगे फिर "" आएगा तुम्हे मारेगा इसलिए इससे अच्छा तो हमारे साथ चलो। हम तुम्हे हमारे साथ ले जाएँगे। उन्होने गाडी में बैठाया तो मैने कहा मुझे नहीं मैं आप लोग के साथ नहीं जाऊँगी। मुझे उधर से लेने आ रहे है बोले की 5 मिनट में पहुँचने वाले है षंकर चौक। तो मैं उधर जाऊँगी लेने के लिए आ रहे है। तो उन्होने रंजीत ने बोला कि नहीं उन लोग के पहुँचते पहुँचते तो इधर से पहुँच जाएँगे। फिर उन लोग आ रहे है तो ठीक है आने दो उनको बोल देंगे कि हम धौला कुँआ में पहुँच गए है। धौला कुँआ बुलाएँगे उन लोग को बोले। रंजीत ने बोला ऐसे। तो ठीक है धौला कुँआ बुलाएँगे तो मेरे को उन लोग का रंजीत का बात सुनके धौला कुँआ आ गई।

Q: रंजीत के साथ गई तुम?

Girl: "" का साला था ना। भाग के निकली।

Q: जब भाग रहीं थी.....

Girl: तो देखा उन लोगो ने...

Q: तो रंजीत अपने साथ लेके गया तुम्हें?

Girl: साथ में नहीं मैं धौला कुँआ में बैठी थी।

Q: बैठी थी।

Girl: जी, फिर इधर से मेरे को लेने के लिए आ रहे थे कि हमारी तरफ आ जाना।

Q: अच्छा फिर?

Girl: जी

Q: फिर क्या हुआ।

Girl: फिर वो बोले तो तो मैं उनका इन्तजार कर रही थी उनका धौला कुँआ में। तो ये लोग मेरे पीछे से इन लोग रंजीत लोग आ गए।

Q: फिर क्या हुआ?

Girl: फिर ये लोग मेरे को बोले की "" को बता दिए है तुम्हे मार पीट करेगा।

Q: फिर क्या हुआ? फिर क्या हुआ?

Girl: फिर मैं उसका इन्तजार करूँगी। मैं आप लोग के साथ में नहीं जाऊँगी।

Q: फिर क्या हुआ?

Girl: फिर बोला कि उन लोग के पहुँचते पहुँचते बहुत टाईम भी हो जाएगा तो बोला चलो धौला कुँआ में **Sorry** क्या बोलते है। धौला कुँआ में चलो वहाँ पे हम बैठेंगे उनको बुलाएँगे कि हम धौला कुँआ में बैठे है। तो ठीक है उन लोग का बात सुनके मैं आ गई धौला कुँआ। धौला कुँआ में आधा— एक घण्टा बैठे थे फिर मैंने फोन मिला के उन लोग से बात किया कि हम तो धौला कुँआ पहुँच गए है। तो फिर पूछा कि हम लोग तो धौला कुँआ पहुँच गए है तुम कहा पर है सॉरी षंकर चौक पहुँच गए है तुम कहाँ पर हो। तो मैंने बोला कि मुझे तो इधर लेके आए है धौला कुँआ में। तो धौला कुँआ में आ जाओ मैं यहाँ पर हूँ तो मैंने रंजीत से बात कराया ये लो मुझे तो नहीं पता धौला कुँआ कौन सा जगह बोलते है। तो आप बात करो उनसे मैंने फोन मिलाया तो उसको बात करा उनसे तो रंजीत को बात करने के लिए दे दिया। फिर रंजीत ने फोन काट के दूसरा नम्बर मिलाया। उससे जिससे बात करने के लिए दिया उससे बात नहीं किया फिर दूसरा नम्बर डायल करके उन्होंने दूसरा लोग से बात किया। फिर एक गाडी आया तो उस गाडी मे मुझे बैठा करके कोठी ले गए।

Q: कोई और कोठी?

Girl: कोई और कोठी ले गए।

Q: कौन रंजीत ?

Girl: जी।

Q: ----और वो जो दूसरे आदमी थे।

Girl: जी।

Q: अच्छा वो कैसी गाडी थी?

Girl: व्हाईट कलर का माराती थी।

Q: मारुती थी।

Girl: जी

Q: और कौन सी कोठी कहा थी याद है तुम्हें

Girl: वसन्त, वसन्त विहार थी

Q: वसन्त विहार

Girl: की सरिता विहार, पता नहीं है।

Q: अच्छा कोई बात नहीं बेटा, फिर क्या हुआ?

Girl: फिर कोठी पहुँचाए वो लोग मेरे को बोले कि काम करेगी मैडम लोग मेरे को पूछें कि क्या तू काम करेगी। नहीं रास्ते में मुझे सबसे पहले मेरे से सवाल किए कि तुम्हारा घर कहाँ है रंजीत लोग। तुम्हारा घर कहाँ है? मैंने सारा बता दिया फिर उन लोग मेरे को पेपर में भर के कोठी पहुँचाए और फिर मेरे को मैडम ने पूछा की काम करेगी। तो हाँ तो बोल दिया फिर तुम्हारा क्या नाम, बताया मेरा ये नाम है गंगा। तो कितने साल काम किया है। दो साल काम किया दिल्ली। कहाँ कहाँ काम किया? ये सवाल किया उन्होंने के क्या क्या काम किया, कहा कहा काम किया, तो मैंने बोला मैंने पंजाब में किया और दयानन्द विहार में किया। तो क्या क्या काम जानती है वो भी मैंने बता दिया। फिर उन लोग मैडम रखने को मुझे तैयार हो गई फिर। उन्होंने पूछा कि तेरे हाथ में मोबाईल हैं। मैंने बोला कि हाँ मेरे हाथ में तो मोबाईल भी है और मेरे पास 8000 रुपये हैं बोली। तो 8000 रुपये हैं और मोबाईल है तो पास रुपये और मोबाईल दोनों रहेंगे मेरे पास तो मैं काम करूँगी। और मोबाईल और रुपये नहीं रहेगा तो मैं काम नहीं करूँगी बोली। तो इन लोग को रंजीत लोग को भी मैं विष्वास नहीं करती थी ना क्यों अगर उन लोग को मैं मोबाईल रुपये दे दूँगी.....

Q: अच्छा।

Girl: मैंने मना किया रुपये और मोबाईल नहीं छोड़ूँगी तो मैडम इंकार किया मैडम काम पे नहीं रखी।

Q: फिर?

Girl: फिर उन लोग ने मेरे को फिर से घुमा फिर कर गाडी में कहा कहा घुमाये पता नहीं मुझे नहीं पता। कहा कहा घुमाएँ। फिर रात को 12.30—1.00 बजे मेरे को एक घर में छोड़े थे। एक घर में छोड़े और उन लोग ने बोले कि सुबह। नहीं रास्ते में जाते टाइम मैंने बोला कि मुझे घर जाना है काम नहीं करना है तो मैंने जिद किया कि मेरे पास इतने रुपये हैं तो जाने के लिए मैं ही किराया दूँगी आपको लेकिन मुझे घर छोड़ दो (राज्य का नाम) छोड़ दो मुझे। तो उन लोग ठीक है मान गए फिर एक घर में लेके गए रात को 12.30 —1.00 बज गया था। तो उस घर में दोनो रंजीत का बीवी भी था और उसके साथ में एक आदमी भी था रंजीत के साथ में। तो उन लोग मुझे वहाँ पे उस घर में छोड़ के गए वहाँ पे एक मिया बीवी थे और एक बच्चा था। उस घर में मेरे को छोड़ के उन लोग बोले कि....

Q: कौन लोग बोले? रंजीत।

Girl: रंजीत। उन्होंने बोला कि हम (राज्य का नाम)तुझे छोड़ने तो जाएँगे। लेकिन हमारे पास तो बैग खरिदने के लिए रुपये नहीं है तो हमें 1000.00 रुपये चाहिए। रंजीत ने बोला। तो मैंने बोला 1000 में तो बैग नहीं आता है वो तो 2—3 सौ में आ जाता है तो मैं तो आपको 1000 नहीं 500 रुपये दूँगी बोला। फिर मैंने रंजीत को 500 रुपये दिया, 1000 नहीं दिया। फिर उन्होंने बोला कि सुबह 6.00 बजे उठ कर तैयार हो जाना 8.00 बजे ट्रेन है बोले उन लोग ने रंजीत ने। तो ठीक है मैं सुबह उठ जाऊँगी 8.00 बजे तैयार हो जाऊँगी। फिर उन लोग बोले कि हम आ जाएँगे जल्दी 6.00 बजे तक तैयार रहना है। नहीं तो 8.00 बजे का ट्रेन निकल जाएँगा फिर हम किस ट्रेन में जाएँगे। तो ठीक है मैं सुबह... उन लोग मुझे छोड़ कर चले गए गुडगाँवा, गुडगाँवा में ही रहते थे ना वो लोग, रंजीत लोग। तो मिया बीवी चले गए और मैं यहाँ पर थी घर पे, किसी के घर में छोड़ा था। तो सुबह मैं उठ के देख रही हूँ 6.00 बजे तो कोई आया ही नहीं। ये लोग मुझे छोड़ गए, मुझे डर लग रहा है मुझे छोड़ के कहाँ चले गए। आया नहीं।

Q: उस समय उस घर में कोई था नहीं?

Girl: दो जन थे ना मिया बीवी थे और एक बच्चा था।

Q: फिर क्या हुआ? सवेरे कोई आया नहीं।

Girl: सवेरे 6.00 बजे कोई आया ही नहीं रंजीत भी नहीं आया उसकी बीवी भी नहीं आये। फिर 8.00 बजे आए उन लोग ने। फिर 8.00 बजे मेरे को बोला कि अभी तक तैयार नहीं हुई है। तो मैंने बोला कि मैं तो तैयार तो हो गई थी। पर हुई हूँ। पर आप लोग आये नहीं सुबह 6.00 बजे मेरे को बुलाए थे। तो जल्दी चलो ट्रेन निकल जाएगा 8.00 तो बज ही गए। तो उन लोग मेरे को स्टेशन ले गए। स्टेशन में वो लोग मेरे को जाते जाते बोले कि अभी तो बहुत टाइम हो गया ट्रेन तो निकल गई हम किसमें जाएँगे बोले। फिर तो मेरे लिए तो कोई रास्ता ही नहीं दिख रहा है। ट्रेन भी निकल गया और मैं काम पर भी नहीं

लगी हूँ। उन लोग गुस्सा भी कर रहे हैं। अब मैं कहीं लौट भी नहीं सकती कहीं जा नहीं सकती। फिर उन लोग ने हम 12.00 बजे का ट्रेन है तो हम टिकट करने के लिए जा रहे हैं। बोले। तो मैं और उसकी बीवी गाड़ी में थे, गाड़ी में थे।

Q: रंजीत की बीवी?

Girl: जी।

Q: रंजीत की बीवी और वो गाड़ी में थे तुम।

Girl: मैं और उस रंजीत की बीवी गाड़ी में थे।

Girl: फिर उन लोग ने उस ड्राइवर और रंजीत दोनो चले गए टिकट काटने के लिए। तो मेरे को तो बोले थे (राज्य का नाम) ले जाएंगे। (राज्य का नाम) छोड़ देंगे तो मुझे लगा (राज्य का नाम) जाने के लिए टिकट काट रहे होंगे। लेकिन उन लोग ने मेरे को, मेरे को और उस ड्राइवर एक जो था उसके साथ बम्बई भेजने के लिए टिकट काटा और दोनो अपने मिया बीवी के लिए (राज्य का नाम) जाने के लिए टिकट काटा। फिर टिकट हो गया है बोले। फिर उसके दूसरे दिन मतलब टिकट तो हो गया था वहीं स्टेशन पे भैया मिले। फिर भैया ने मेरे स पूछा कि कहाँ यहाँ कहाँ घूम रही है। भैया को जानती हूँ ना वहाँ हमारे गाँव के रिश्ते के ...

Q: कौन से भैया?

Girl: जो अभी बैठे थे अंकल

Q: वो कौन थे

Q: अच्छा तो वो भैया आपको मिले।

Girl: जी

Q: तो फिर क्या हुआ?

Girl: भैया उसको जानते थे होंगे ना – रंजीत को तो उन लोग भी भैया लोग से बात किये होंगे। कि उन लडकी को हम बम्बई भेज रहे हैं तो बताना नहीं। लेकिन भैया ने मुझे बता दिया कि तुम्हें तो बम्बई भेज रहे हैं। तुम्हें तो कुछ पता नहीं है अगर बचना है तो मेरे कहना मानना। कि मैं नहीं जाऊंगी बोम्बे मुझे (राज्य का नाम)जाने के लिए बोलके बोम्बे भेज रहे हो ऐसे बोलना है। नहीं तो बोम्बे भेजेंगे तो पता नहीं 8-10 साल उधर ही रहेगी। फिर मेरे को भैया ने बोला ऐसे मेरे को पता लग गया कि मेरे को बोम्बे भेज रहे हैं वो लोग। तो मैं नहीं गई मुझे नहीं जाना मुझे बोम्बे भेज रहे हो तो मैं भैया के घर चली गई उस दिन। और भैया ने मुझे सारा बता दिया जो भैया को बोले थे। वो रंजीत और वो आदमी भैया से जो बोले थे। मेरे को नहीं बताने के लिए कि मेरे को बोम्बे भेज रहे हैं।

Q: जी।

Q: आपस में बात कि मेरे को भेजने के लिए।

Q: फिर क्या हुआ।

Girl: फिर भैया ने मुझे।

Q: फिर जब भैया आपको लेके गए तब रंजीत ने झगडा किया भैया से?

Girl: नहीं।

Q: आपको जाने दिया।

Girl: मेरे को भगा रहे थे ना तो मेरे को पता चल गया तो कैसे झगडा करेगा वा ।

- Q:** नहीं तो मतलब वो भैया के साथ झगडा कर सकता था ना रंजीत । कोई जबरदस्ती नहीं की फिर ।
- Girl:** जबरदस्ती नहीं की। उन लोग ने तो मैं भैया के घर आ भी गई उस दिन उन लोग ने टिकट कटाई में और ड्राइवर जाना था ना बम्बई। और उन मिया बीवी का टिकट उन लोग तो निकल गये (राज्य का नाम)।
- Q:** अच्छा अच्छा ।
- Girl:** उन लोग निकल गये (राज्य का नाम) और मैं ।
- B:** He was not there.
- Q:** Only the driver was there.
- B:** This fellow basically sold her to this other gentleman the driver.
- Q:** He sold her to the driver?
- B:** Actually
- Q:** for a certain sum of money.
- B:** actually as per our understanding, because he was a driver, she was told that he was going to (Name of State)
- Q:** घबरा नहीं बेटा ।
- B:** actually being taken to Mumbai the same principle as she was earlier taken to Punjab and then she said that i am not going to go with you then at the Railway Station it was very difficult for him to say, that is how it was.
- Q:** That is how she went with that guy?
- B:** Yes
- Q:** : And then उसके साथ चली गई। and then he protected her.
- B:** Yes
- Q:** And then once he protected her, then फिर जब इनके भैया के घर में चली गई बेटा । सुनो गंगा फिर क्या हुआ?
- Girl :** फिर मैं। उस ड्राइवर ने आया था भैया के घर में बोला कि चलो बॉम्बे मतलब टिकट तो हो गया है तो हमें तो जाना है। तो मुझे नहीं जाना है। मैं तो आपको जानती भी नहीं हूँ कौन हो कहाँ के रहने वाले हो आप ।
- Girl:** किसी भी ड्राइवर के साथ मैं ऐसे ही थोड़े ना चली जाऊंगी। उन लोग तो मेरे को बोले रंजीत लोग की (राज्य का नाम)छोड़ेंगे फिर उन लोग कहाँ। तो उन लोग तो चले गए उस आदमी ने जो ड्राइवर था। उन लोग तो (राज्य का नाम)चले गये। तो मेरे को बाद में पता चला कि मुझे क्यों नहीं बताया कि मुझे बॉम्बे भेज रहे हो ।
- Q:** और जो ये रंजीत का जो ड्राइवर था वो कौन था?
- Girl:** वो इधर संगम विहार में रहता है। चन्दन नाम का आदमी ।

Q: वो आदमी क्या करता है?

Girl: पता नहीं।

Q: तो चन्दन का पता नहीं है क्या है।

Girl: नहीं पता।

Q: अच्छा अच्छा। फिर क्या हुआ बेटा?

Girl: फिर मैं नहीं गई तो चन्दन भी गुस्सा हुआ कि टिकट भी इतना का हो गया तो मैं पंजाब में ही कहा कि रंजीत मुझे छोड़ने के लिए जाना था ना रंजीत ओ सोरी चन्दन ने। वो फिर मुझे छोड़ने के लिए जाना था तो मैं नहीं ना चन्दन तो उसका भी कैंसल हुआ टिकट दोनो का फिर सारे पैसे इतना सारा टिकट काट के कैंसल करवाये बोल के उन्होंने मेरे को गुस्सा कर रहा था मुझे मारुंगा मुझे थप्पड़ से मारुंगा। तो भैया ने, भैया थे तो कैसे मारता वो, मुझे थप्पड़। फिर वो कुछ नहीं कर पाया। उसके बाद मैं मैं भैया के घर में रही। फिर बीच में वहाँ लुधियाना में मेरे भैया भाभी रहते ना। पंजाब में ही तो वहाँ बीच में चली गई थी और अभी मैं वो घर से लौट के भैया के पास में हूँ।

Q: मतलब तुम, फिर। तुम्हारे भाई और भैया लुधियाना में रहते हैं?

Girl: जी।

Q: वो भी ऐसे ही जो तुम्हारी स्थिति है जो तुम्हारी परिस्थिति है वैसी ही उनकी भी है।

Girl: नहीं।

Q: वो क्या करते हैं लुधियाना में?

Girl: भैया बाहर ड्यूटी जाते हैं ना वो फैक्ट्री में काम करते हैं। बड़े भैया।

Q: Its like child labour and फिर वो जो बेबी इनकी दीदी।

B: भाभी।

Q: भाभी, अच्छा षादीषुदा है।

Girl: जी, उनके तो बच्चे हैं। लडकी है।

Q: तो तुम उनके पास गई।

Girl: जी गई।

Q: तो कैसे गई तुम यहाँ दिल्ली से लुधियाना अकेले गई।

Girl: नहीं

Q: फिर?

Girl: तो लेने के लिए आये थे ना आधा दूर तक मैं भी गई थी।

Q: क्या?

Girl: आधा दूर तक लेने के लिए आये थे न लोग भी और मैं गई थी। मुझ छोड़ने के लिए आधा दूर तक गये थे।

Q: कौन?

Girl: भैया, तो मैं चली गई थी। तो वहाँ कुछ दिन थी, कुछ महिना थी फिर वहाँ से आके मैं भैया के घर पे रही और उन्होंने इतना एक। एक साल हो गया भैया के यहाँ पर आये हुए। मतलब गुडगाँव से भागे हुए मुझे एक साल हो गया। तो एक साल के अन्दर मैंने 12 SIM चेंज किया फोन का। 12 सिम चेंज किया लेकिन 12 सिम में एक एक सिम का नम्बर "" के पास पता कैसे चलता था वो मुझे नहीं पता। वो मुझे फोन.. नम्बर उसके पास पहुँचता था। मुझे कॉल करके बोलता था कि तुम कहीं पर हो बता दो मैं लेने के लिए आजाऊंगा तो मैं बोलती थी उसका कि लेने के लिए क्यों आओगे। मेरे को तो मारपीट करके भगाए हो तो मैं अब क्यों आऊ आपके घर। मुझे तो पैसा चाहिए था तब तूने मेरा 2 साल का पैसा भी खाया अब क्या काम नहीं पूरा हो रहा है जो मुझे फोन करके परेशान कर रहे हों। मैं तुम्हे रखना चाहता हूँ मैं तुम्हे षादी करूँगा। तुम्हारे सिवा किसी और तुम्हारे सिवा। मतलब तुम्हे मेरे सिवा किसी और से षादी करने नहीं दूँगा ऐसे बोलता था। तो मैं षादी नहीं करूँगी तो बोलता था कि ठीक है फिर मैं गाँव जाऊंगा तो तुम्हारे माँ बाप को माँ बाप को मारूँगा, ये करूँगा। अगर तू मेरे से षादी नहीं करेगी तो। बोलता था कि तुम्हारे। एक बार बोला था कि तुम्हारे पिता जी को जंगल पे बाँध के रखा हुआ है देखना है तो आ जाओ नहीं तो उसे मार के खत्म कर देंगे। तुम्हारा घर को जला देंगे। तुम्हारा जितना भी भाई है बहन है सब लोग जल जायेंगे मर जायेंगे। तो तम अकेली रह जायेगी मर जायेगी, कहा रहेगी। इससे अच्छा आ जाओ। मुझे नहीं आना अगर हिम्मत है तो जला के देखो बोली थी मैं। तो तुम, बहुत लडाई होता था फोन पे। वो तो बोलते थे कि जहाँ मिलोगी तो वहाँ मार दूँगा तो तुम मेरे को छोड़ के क्यों गई किसके साथ में रह रही है ऐसे बोलता था। उने लगता था कि मैं किसी लडका के साथ में हूँ- "" बोलता था। तो नहीं मैं किसी के साथ में नहीं हूँ मैं एक भैया के घर में रहती हूँ लेकिन मैं आपको नहीं बताऊँगी कि कहीं रहती हूँ क्या करती हूँ। और कोई आपको मतलब जानने का कोई वो नहीं बनता है आपको पूछताछ करने के लिए। तो वो आदमी कौन है उसका नाम बता दो उस आदमी को भी हम मार के खत्म कर देंगे जहाँ मिलोगे वहाँ जिसके घर में रहते हो उसका घर भी नहीं छोड़ेंगे हम उस आदमी को भी मार देंगे। तुम्हे भी मार देंगे। इक्ठे खत्म कर देंगे दोनो को ऐसे बोल रहा था। तो मैंने उसको अलग अलग जगह बताती थी। फोन में फोन, परेशान करता था तो सिम को तोड़ देती थी। मेरा नम्बर उनके पास पहुँचता था तो मैं सिम तोड़ देती थी। फिर दूसरा नया नम्बर निकाल के वो चलाती थी वो भी 1-2 महिने बाद। फिर से उसके पास नम्बर पहुँचता था। पता नहीं कैसे पहुँचता था मुझे नहीं पता।

Q: How did it reach to him?

B: There are two possibilities Sir, The first and the easier option is that he contact the people in the village, the actual persons in the village who able to find out from the family or the parents, somehow from the village. The other option is that she has not changed the hand set yet.

Q: IMEI Number

B: IMEI Number से

Q: तो उसने वहाँ उसने कोई टेलिफोन कम्पनी की उसको मालूम होगा कौन सा कम्पनी का है और वहाँ से उसने पता लगाया।

B: जी वहाँ से वो पता करा लेता है। और अभी इसका अभी हमने कल ही इसको ये समझाया था कि आप फोन, फोन का ये instrument और सिम दोनो बदल दो। और अब जब भी जाओगे। Delhi Commission for Woman में इसका केस लेकर जाना है। ये ही इकवीपमेंट है हमारे। तो वहाँ से उसके बाद जब कोई Protection की बात होगी तो।

Q: तो अच्छा बेटा ये बताओ अभी तुम यहाँ पे भैया के यहाँ पे हो।

Girl: जी।

Q: तो वहाँ पर तुम कुछ काम करते हो उनके घर में।

Girl: अभी मैं काम लगी हूँ वहाँ तुगलकाबाद में करती हूँ।

Q: तुगलकाबाद में।

B: She is basically staying in ***** which is next to ***** तो ***** और ***** एक दूसरे के सामने है। Like left and right

Girl: हाँ आमने सामने है।

Q: वहाँ क्या काम करती हों?

Girl: वहाँ भी ये ही काम करती हूँ।

Q: क्या घर का काम।

Girl: जी।

Q: तो वो लोग पैसे दे रहे है या नहीं।

Girl: वो...तो "" जैसे तो वो तो भैया तो नहीं होंगे तो वहाँ तो मैं हर महीने पैसे लूँगी बोली हूँ हर महीने उठाऊँगी।

Q: अभी पुरु किया इसका मतलब।

Girl: जी अभी तो पुरु हुआ है।

B: अभी पुरु किया है और ये ये.... मतलब के... एक नई चीज निकल के आ रही है Its very very fast moving organized plan I was also talking to this gentleman who was sitting here yesterday. 2008 में ये कह रहे है कि जब इनकी पोस्टिंग इस इलाके में थी षकूर पुर के इलाके में तो वहाँ पे कोई प्लेसमेंट एजेंसीज नहीं थी और इका दूका पुरु हुई थी। आज वहाँ पे 500-700 से ज्यादा प्लेसमेंट एजेंसिज है।

Q: In Shakurpur Basti

B: जी षकूरपुर बस्ती

Q: Because that is an area where they all being stuffed.

B: Yes, and they are all sourced from pretty much the same area.

Q: Very much the same area

Girl: षकूर पुर का एक लडकी मैं वहाँ दयानन्द विहार में काम कर रही थी ना तो उस टाइम को षकूरपुर की एक लडकी वहाँ पे मेरे से ऊपर काम कर रही थी। मैं नीचे कर रही थी ना। तो वो लडकी उपर काम कर रही थी। वो लडकी मुझे भगा के षकूरपुर ले गई थी। फिर बाद में वो लडकी उपर कर रही थी दोनो मुझे भगा के ले गई वो लडकी। लडकी भी नहीं हैं मैं भी नहीं हूँ तो मेरे मैडम लोग और उपर वाले मैडम साहब लोग जाके षकूर पुर ढूँढने के लिए। मैं तो मिल गई षकूर पुर में तो आके मेरे को पूछ रहे कैसे आई, क्यो आई। तो मुझे तो ये लडकी ने बोला तो मैं मुझे तो भागना भी नहीं आता कभी भगा नहीं तो मुझे पता नहीं था ये लडकी जो बोली मैंने वो ही किया। फिर मेरे को फिर से वहाँ षकूर पुर ऑफिस से लोटा के कोठी पे, कोठी में कर रही थी। वो लडकी मुझे भगा के ले गई थी ना, कोठी से।

Q: तो बेटा फिर आप जो काम कर रही हो, ।

Girl: जी।

Q: यहा पे काम कर रही हो ये ***** या जो घर पे काम कर रही हो वहाँ लोग कैसे है ठीक है। अच्छे है?

Girl: जी अभी तो पुरु। पुरु पुरु तो सभी लोग ठीक ही रहते है। तो 3-4 महीने या 5-6 महीने के बाद ही उन लोग मतलब।

Q: असली असली।

Girl: असली नजर आता है।

Q: असली रंग बाहर आता है।

Girl: हाँ जी।

Q: है। तब उनका असली असली।

Girl: तब तो उन लोग कैसे है हम भी अच्छी तरह से जानते है। जान जाते है ना कि कैसे उठते बैठते कैसे खाते पीते हैं। क्या करते है उनको भी हमे अच्छी तरह से पता चल जाता है और तब तक हम भी पुराने हो जाते है उन लोग भी हमें अच्छी तरह से जान जाते है कि कैसे कर रही है मतलब लडकी लोग जैसे कि कोई तो फोन में चिपकी रहती है फोन में लगे रहते है बात करने में तो कई तो भागने में रहते है। कई चोरी करने में रहते है तो उन लोग भी जान जाते है अच्छी तरह से इतने दिन के अन्दर की लडकी कैसी है।

Q: अच्छा अब ये बताओ बेटा कि तुम अब तुम वहाँ पे काम कर रही हों।

Girl: जी।

Q: अब तुम क्या चाहती हो और अब क्या होगा।

Girl: अब मै तो ये चाहती हूँ कि ये जो उन्होने ये किया मुझे पैसे नहीं दिया, मेरे मारपीट किया, मेरे माँ-बाप को धमकी दिया। बोला गाँव में की गंगा तो मर गई है। गाँव मे बोला था मम्मी पापा को फिर मैने एक बार फोन किया था तो बोला कि "" ने तो बोला कि तुम तो मर गई है। तो फोन कैसे ये सब कैसे तो मम्मी पापा को ये ऐसे ऐसे बोल के बताई। तो मम्मी पापा लोग भी कुछ नहीं कर सकते। अभी गाँव जाता है "" ने तो उधर सब को मतलब मम्मी, पापा तो थोडा षराब पीते है ना तो पापा तो उसको तो पिला देंगे। पापा तो ऐसे बूढे हो गये उन्हे मुझे डर है कि वो कुछ भी इतना धमकी दे रहा है लोगो को मैडम सब को तो वो हमारे घर जाके वो कुछ भी कर सकता है तो इसलिए मुझे डर लगता है उस आदमी का। और मैं अब चाहती हूँ कि इतना सारा सबको धमकी दिया कि मैं मर गई हूँ और अब तो मै तो जिन्दा हूँ और मम्मी पापा को बोल दिया कि मर गई हैं। और मार पीट किया उसके लिए उन्हे कडी सजा मिले। सजा मिले तो भी उसके लिए कम ही होगा। और मैं मेरा जितना भी पैसा उन्होने खाया है वो सारे पैसे मेरे हाथ में आएँ मैं घर पे पहुँचाऊ सारे पैसे और गाँव पहुँचाऊ। मैं बस ये चाहती हूँ।

B: बेटा दो बात और बता दो।

Girl: जी।

Q: तुम लेकिन वापस जाना चाहती हो घर बेटा।

Girl: जी। घर जाना चाहती हूँ लेकिन अब मुझे कोई मतलब कोई "" ये "" का कलेष खत्म हो जायेगा तो मुझे डर खत्म हो जायेगा। मेरा डर खत्म हो जायेगा। मै तो भैया भी हमारे गाँव की तरफ के है अब मै। भैया के पास आ गई हूँ तो अब मुझे कोई डर नहीं है ऐसे। बस मुझे इसी बात का डर है "" का और मुझे कोई डर नहीं है।

Q: तुम तो इतनी हिम्मत वाली हो, हैं। तुम्हारी हिम्मत पे तो मै इतना हैरान हूँ कि मै तुम्हें। इतनी अच्छी बोलती हो तुम। तुम पढ़ाई करती तो तुम क्या क्या नहीं कर सकती थी।

Girl: वो तो मै दिल्ली के चक्कर मे आ गई ना नहीं तो पढ़ाई करने का तो मुझे अभी भी मन करता है कि पढ़ाई करूँ।

Q: मन करता है?

Girl: मन तो करता है।

Q: तो बेटा तुम्हारी उम्र क्या है।

Girl: अभी तो मेरा बोलते है 17 चल रहा है पर मै तो सब जगह कोठी में लिखवाती हूँ 18 साल। इसलिए सारी जगह बोलती हूँ 18 साल।

Q: लेकिन हो तुम उससे बहुत कम। असलियत में 17 भी हो या उससे भी कम हो।

Girl: मुझे नहीं पता।

Q: तुम तो मुझे 15 साल की दिखती हो।

Girl: नहीं मै तो 14 साल में यहाँ आई थी।

Q: 14 साल में आई थी।

Girl: नहीं 14-15 साल में आई थी दिल्ली 2009 में। तो 2009 से अभी तक मै। घर नहीं गई।

Q: तो 4 साल हो गये।

B: सर 17 चल रहा है।

Q: 17 चल रहा है।

B: यानी 16 की है वो अभी। तो इसने अभी तक **basically** 5वी तक 6ठी तक षायद पढाई भी की है। तो इसका स्कूल का रिकार्ड भी रहा।

Q: स्कूल रिकार्ड भी है।

B: तो इसका 16 साल की है। 17 चल रहा है। लेकिन 18 ही लिखवाती है सब जगह।

Q: अच्छा तो अभी 18 की हुई नहीं है।

B: ये वही से इसको समझाया गया है कि 18 ही लिखवाना है और 18 ही बोलना है ये एक बात है।

B: अच्छा एक बात और बताओं। एक बात और बता दो बेटा।

Girl: जी।

B: ये "" जब तुमको लेके जाता था जगह जगह।

Girl: जी

B: अलग अलग जगह जब लडकी छोडता था।

Girl: जी।

B: लगभग कितनी लडकिया छोडता होगा। 1,2,...10

Girl: नहीं इतना से तो उसके पास ज्यादा लडकियाँ होंगी। गिनती तो नहीं कर पाऊँगी लेकिन कम से कम 150 से उपर होंगी लडकियाँ उसके पास।

Q: अच्छा सब वहीं की है। (राज्य का नाम)की या कहीं कहीं से लाता था।

Girl: कहीं कहीं से आते है वो तो मुझे नहीं पता था ना जगह जगह से आते है लडकियाँ तो।

B: तुम्हारे गाँव के तरफ के कहा से लेके है ना

Girl:का भी आता है, उडिसा का भी आता है, छत्तिसगढ का भी आता है जगह जगह के आते है ना।

- Q:** अच्छा अच्छा
- B:** बहुत बढ़िया, बढ़िया
- Girl:** जी।
- Q:** अब बताओ गंगा।
- Girl:** जी।
- Q:** तुम क्या करना चाहती हो बेटा।
- Girl:** क्या करना चाहती हूँ।
- Q:** समझ लो यहा पे **Now she is working at this moment, if suppose she is placed, let us say in a protective home the so called protective home. she will again reach there.**
- B:** **There is very big probability because this will not help forthcoming after the protective home as well. so.....**
- Q:** **Protective Home** यहाँ पे इन जैसे बच्चो के लिए क्या वो..... वाला।
- B:** सर वाला है वाला है दोनो एक ही है। एक ही तरह के है बिल्कुल**is also bigger one.**
- Q:** ----- is also the bigger one----
- B** **It is also have an observation home, it is also a..., it is big, Tihar Jail के बगल में बना है। यहाँ पे सब तरह के बच्चो का घाल मेल हो रहा है और सब तरह की प्रोब्लम हो रही है।**
- Q:** **She can't go to any proper home at all?**
- B** **No, she can't go और ये जो है हमने इसका अभी because she just came in contact with us. So we are trying, she is not working as full time employer, So we are trying from whatever little we know, to get and collect as such information as possible and then most probably with the next week we will be starting with the legal formalities.**
- Q:** **What is the legal formalities?**
- B:** **Sir, There are two things that are possible, as the things stands today. There is a Judgment in one of our cases that empowers the Delhi Commission for Women for Adults and the Child Welfare Committee for children to actually recover the minimum wage from the employer.**
- Q:** ठीक है
- B** तो एक तो **Minimum Wage** का है। दूसरा we want to take this case in particular to the **Delhi Commission for Women** also so that we can direct for sexual assault. They can say that this man should be tried for sexual assault:

- Q:** You mean to say that if this Girl was to go and make the statement in the Delhi Police Station it will be impossible to get the FIR registered. Correct?
- B:** Sir,
- Q:** Now I have understood the picture.
- B:** Yes Sir. It is not one she is not one we deal with 100s of cases.
- Q:** No. no, she is very young Girl, goes either in Gurgaon. First of all Gurgaon may have the territorial jurisdiction.
- B:** We were actually in these cases what we try and do, is that we say that this is a case of abduction, for illicit intercourse, so that the territorial jurisdiction
- Q:** Territorial jurisdiction is in Delhi.
- B:** Yes
- Q:** पर अब दिल्ली ... but who will listen in Delhi.
- Q:** This Girl, who I see here who will listen to her in Delhi and which National Commission for women is going to listen to this child---
- Q:** बेटा ये तुम्हारे लिए है अरे लो ये तुम्हारे लिए है।
- B:** एक नहीं दो खा के दिखाओ जल्दी से।
- Q:** हॉ गंगा और तुम इतनी अच्छी बोलती हो। हिन्दी इतना अच्छा बोलती हो मै तो बडा, मैं बहुत मैं बहुत ही खुष हूँ लो खाओं। अब हम बिस्कुट ले आएँ है बेटा खाओं खाओं। चाय पियो हम भी, हम भी खायेंगे। फिर अब Now
- B** Sir,
- Q:** तो ये बात है तो So what is the justice this Girl will get in this legal system.
- B** No no ...Our entire idea of justice unfortunately even our idea of justice....
- Q:** is also very weak.. even your idea of justice with great respect is very very weak. It is very watery, it is looking like and
- B** If i will actually going to say weak is also an under statement. I was going to say that we have narrowed it down to such a level that we cannot get hope to go beyond the back wages. We cannot even hope that we will get more than that.
- Q:** I mean, if a child like this is trafficked. She is trafficked
- B:** Yes
- Q:** Correct?
- B:** Yes,
- Q:** The traffic plus identity is low and I am sure that there are abounding like this in so many places.
- B** Absolutely sir, in every cluster of 2-3 villages in Jharkhand, Chhatisgarh, West Bengal and the North Eastern parts.
- Q:** So this applies to North East, Jharkhand, Chhatisgarh and Orissa

- B** Yes Sir,
- Q:** Jharkhand and
- B** Orissa also.
- Q:** Orissa
- B** Yes Sir, for Girls specially, So this is the very serious situation sir and the Girls are being taken to South India, to Bangalore, to Tirupur, to...
- Q:** For what in Tirupur
- B** For garment industry as well as domestic
- Q:** और तुम तो ये चाय मे जो तुम चीनी मिला रही हो मुझे बड़ा अच्छा लग रहा है। तुम तो बहुत अच्छे तरिके से खूबसूरती से तुम इतना अच्छा। बहुत सुन्दर बहुत सुन्दर। अच्छा बेटा देखो अब तुम घबराना नहीं। सबसे पहले तो ये तुम्हे पैसे तो हम दिलवायेंगे ही..... **this is I am very shocked,**
- Girl** जब मैं वहाँ पे गुडगाँव मे थी ना तो बीच में जब मैं वहाँ से पंजाब से लौटा के लाये। ना तो उसका भाई मुझे लेने के लिए आया था जिन्होने गाँव से लेके आया था। विक्रम ने मुझे यहाँ दिल्ली लेने के लिए आया था तो उन्होने मुझे बोला कि चलो मैं तुम्हे लेने के लिए आया हूँ तो मैंने बोला कि अभी तक तो मुझे दो साल तो हो गया लेकिन दो साल के अन्दर मुझे पैसे नहीं दिया है "" ने तो मुझे पैसे मांग दो। उसका भाई था ना। तो मुझे अपने भाई से पैसे मांग दो मुझे पैसे चाहिए तब मैं घर जाऊंगी। तो उसके भाई ने गुस्सा हुआ कि अब तक कि उन्होने अपने आपस में दोनो भाई के बीच पता नहीं किस बात को लेकर लड़ाई हो गई मेरे बारे में ही बात होता था उन लोगो में। उसका बड़ा भाई गुस्सा हो गया। फिर उन्होने मेरे हाथ में पैसे था 100 रुपये था ज्यादा नहीं था। तो मेरे हाथ से छिन लिया 100 रुपये पैसे और उन्होने उसके अपने भाई से किराया पैसा लेके चला गया मुझे थप्पड मार के।
- Q:** कौन विक्रम?
- Girl:** उसका भाई वो भी मुझे थप्पड मारके गया। मुझे लेने आया था वो मुझे लेने छोड के मुझे
- Q:** थप्पड मारके वो गया?
- Girl:** थप्पड मार के 100 रुपये, हाथ से पैसे 100 रुपये था उसे छिन के उसने थप्पड मार के चला गया। अब तो मेरे को ले जाने वाला भी कोई नही और इधर "" भी ऐसे बर्ताव कर रहा था। तो मेरे को भागने का रास्ता और कोई दिखाई नहीं दे रहा था तो इसलिए मैं गई और उधर भी मिल गये कि हमारी तरफ आ जाओ कि हम भी (राज्य का नाम)के है।
- Q:** कौन?
- Girl:** वो उसके "" का रिश्तेदार थे उसको तो मैं नही जानती। लेकिन "" के ऐसे...
- B** The person who basically said you come to my place, ran away from Gurgaon,
- Q:** लेकिन वो भी वो भी We don't know they may also be of the same type of as Manoj and Ranjeet
- B** बिल्कुल बिल्कुल ये सर। अगर इसको थोडा सा इसी को इसी केस को अगर हम देखे वो जो आदमी Trafficker है वो एक आदमी है। यहाँ पे जिसके यहाँ पे रख रहा है वो दूसरा आदमी है।
- Girl:** क्योंकि मुझे गुडगाँवा से जहाँ जाता था वहाँ पे ले जाता था लेकिन वो तो बीच बीच में पार्क में ले जाता था। पार्क भी जे जाता था। पार्क में गलत तो नही करता था लेकिन बैठा के दारू पिलाता था।
- Q:** कौन
- Girl:** "" ने,
- Q:** तुमको?

Girl: जी तो वो डॉटता था ना के मारूँगा तो पीना तो पडता था तो मेरे को जबरदस्ती पिलाता था तो पीती थी फिर नषा तो बहुत चढ़ जाता था।

Q: बहुत जल्दी चढ़ जाता था?

Girl: क्योंकि वो मैने कभी पीया नहीं था ना और वो अचानक से पीलाता था इसलिये ।

Q: तो

Girl: तो फिर रास्ते में गिरते गिराते गुडगाँवा आते थे। मै नही जाऊंगी गाडी में मेरे जब नषा चढ़ जाता था ना तो उस टाईम बोलती थी। मुझे तो घर जाना है। मुझे छोड दो घर मुझे किसी गाडी में नहीं बैठना है किसी आटो में नहीं बैठना है।

Q: बेटा तुम्हे सबसे पहले तो हम जल्दी से जल्दी जो है ये पैसे दिलवायेंगे आपको

Girl: जी, वो तो अब तक मुझे ढूँढ रहा है। उसी के डर से मै कहीं घूम.. बाहर भी नहीं आती हूँ। कुछ नहीं।

Q: नहीं अब तुम कहीं बाहर नहीं जाना। **Can we say tell me something B -These Young children all right they have escaped and there is a Bhैया, the gentleman who came and who will, there are you see if we see ordinary people looking in ***** or in ***** what kind of, it is not that they are man with authority who will protect these children.**

B Sir, just a few days ago, less than a month ago a very similar incident happened with another such Girl, who is 18 years old and who has been trafficked at 15, at 12 actually and some gentleman wrote letters to 19 dignitaries across the country including the Prime Minister and the Chief Justice of India that a Girl who have been in our protective care for a few days for four days and then we have taken her to one of the missionaries homes in South Extension where such Girls are because she had become an adult and stay with other young Girl like her and we put her in this missionary home and these people did not know that the Girl is still in our protective care and she thought, they must have thought that the Girl has gone back, her case is going on before DCW. They wrote a letter that she has been raped and her body has been disposed off cut into pieces. Three days after this whole thing happened in Vasant Vihar so they are so shrewd and smart that they can make use of the environment that is going on in the country and write this letter to the 17 people in the country that the Girl has been killed. Thankfully the Girl was here, if the Girl has gone back home.

Q: This is another matter

B Its a big racket, the whole trafficking syndicate is working in such a manner that they can think of that there is an environment against sexual violence and things like this so they can write the letters to the Prime Minister and Chief Minister, Chief Justice of Delhi and Chief Justice of India, they are so smart, the Lieutenant Governor, the Crime Branch of Delhi Police, and 17 such people saying that the Girl has been assaulted and disposed of. The body has been disposed of ...

- Q:** And how do they know that it has been assaulted and disposed off.
- B:** They said that, the letter claim that the
- Q:** They have reliably learnt.
- B:** No no it is from the Girl's mother, it has a thumb impression saying that I am the Girl's mother and they did not know that the Girl was still in Delhi and her case is still going on.
- Q:** O.....Ohh....
- B:** So they thought that the Girl must have gone back home after deposing before Delhi Commission for Women. The Girl was froma Village inand we would not have even able to go to this place, but the person who was fighting for. The main man he would have gone to jail for assault and disposing off the body because the Girl could not be found and they could have easily done anything back home. So its a very serious problem.
- Q:** So there is multiple problem here.
- B:** Yes Sir,
- Q:** which is the traffic itself here is an offence
- B:** Yes
- Q:** more importantly the safety of these children.
- B:** Yes
- Q:** I am now getting even more alarmed when we are talking about safety of women. Women at least can use at least pepper spray. What can this young Girl do...
- B:** No., No, they are the worst situations that they are slaves. They are in absolutely slavery. They have no right of anything and they actually cannot go anywhere, they cannot seek justice. Their idea of justices is no longer there, they don't understand something wrong has happened.
- Q:** Ya.. i think the only.... बेटा गंगा समझों कि
- Girl:** जी सर
- Q:** हम तुमको ये जो पैसे दिलवाके ये जो रंजीत है या जो भी है। इससे हम तुम्हारा पैसे दिला के तुम्हारा तनखाह जो दो साल का है फिर तुम गाँव जाओगी?
- Girl:** मैं एक साल कर लूँगी काम फिर जाऊँगी। अभी मैं काम लगी हूँ ना तो मैं साल उसका करूँगी।
- Q:** लेकिन तुम्हारे माता पिता को मम्मी पापा को तुमने देखा ही नहीं इतने साल।
- Girl:** जाऊँगी तो देख लूँगी।

Q: नहीं, तुम जाके आ जाओं पहले जाके पैसे देके आ जाओं।

Girl: हाँ वो भी ठीक है पर मैं एक साल करके जाऊँगी अभी जो कर रही हूँ ना उसे पूरा करके ही जाऊँगी।

Q: क्यों तुम्हें ऐसे क्यों लग रहा है कि तुम्हें पढ़ना भी तो है बेटा।

Q: तुम तो इतनी।

Girl: पता नहीं अभी जाके पढ़ावेंगे या नहीं पढ़ावेंगे।

Q: क्यों क्यों तुम ऐसे अपनी हिम्मत को क्यों...जब तुम इतनी हिम्मत वाली एक लड़की हो और इतनी अच्छी तरह से बोलती हो **I mean her coherence is startling. She is such an intelligent Girl. She is so intelligent.** मैं तो बेटा समझ लो ये पैसे दिला दे। वापस तुम ये जो वो एक बार जाके घर में। किसी को सुरक्षा के साथ किसी को भेज के और वो जाके तुम्हें लेके जाके और वो पैसे भी दिला के तुम 3-4 दिन 5-6 दिन मम्मी पापा के साथ रह के फिर जो स्कूल या जो अच्छा सा स्कूल है उसमें। **can't she be admitted to a school.**

B Sir, what we do...

Girl: भैया बोले है ना। भैया बोले है ना वो तो हमारे गाँव की तरफ के है वो भैया तो साथ में जायेंगे।

B: वो तो जाएँगे ही। हम इसके साथ भी और ऐसी जो दूसरी लड़किया है जो 17-18 साल की है। हम लोग अपनी तरफ से कोषिष करते है कि या तो इनको ऐसी ट्रेनिंग मिल जाएँ जिससे ये सीधा रेस्ट्रान्ट या किसी **proper job** में जा सके **vocational training type** की। या ऐसी कोई जो इनके गाँव में काम आ सके। अगर कोई गाँव में ही रहना चाहे तो क्योंकि ये जो **Age** हैं सर इसमें वापस छठी कक्षा दाखिल होना बड़ा मुष्किल हो जाता है। जो इससे कम उम्र की लड़कियाँ है।

Q: ये देखिये बात ऐसी है कि **this is a, you know solution** कि भई ठीक हैं **Like restaurant job which you are saying or for a matter of fact that temporary job here and there. You see this is also not a correct solution in my opinion. You follow what i mean we have to have a system see we have to follow correct solution by ...**

B: **Actually what my parents are doing for last 10 years. She is probably from the same village. She has been trying for the last 4 & 5 years. My parents are paying her fees and all that. There is an open school we think. You have to go for weekly classes or something you have to go for examinations.**

B **The parents are poor, parents are not able to afford, and the shelter homes through out the country are full of such children who are not able to go back home. Full of such children and the biggest issue you being talking about shelter home ofand all these things even the kids who were here yesterday . The bigger question that arises for care takers including the people who are working with them me, you, everybody. Is that how are we encouraging these children to come out the situation and go back home. The main stream integration will take place, where they come from and even as NGOs**

Q: **No that is not only do they have to go back home they would have to be connected to their roots and plus from there they have to move forward.**

B **Absolutely**

- Q:** In a very systematic, progressive, uplifted society.
- B:** Absolutely sir absolutely.
So when you are talking about the NGOs. My concern that I kept in the back of my mind was that it is the NGOs for what ever racket of their own. They are not taking any concrete such steps to actually send any of these children back. there is
- Q:** Which means is it possible
- B:** Sir...
- Q:** That there is some kind of a racket.
- B:** Yes
- Q:** Between the NGOs and placement agencies also.
- B:** 100% sir 100% most definitely there is. Most definitely there is. There is absolutely no doubt to the extent that how these Placement Agency people become so smart that they have make registered with the such and such societies and become NGOs.
- Q:** That means the placement agencies themselves have become NGOs.
- B:** Yes, Yes- They are saying I am an NGO and i am providing... this the vocational training center.
- Q:** So these children are entitled to only Vocational Training only, they are entitled to lesser training, they are not entitled to anything which is guaranteed under the constitution. They will not be able to study, this Girl is so intelligent.
- B:** Sir the biggest question is not a question of what they are entitlement. But when organized crimes starts taking the shape of the main stream society in such a manner that they are incorporating themselves as trust and societies and getting away with it, that is the big problem.
- Q:** No No this is a very serious... it is very clear to me now
- B:** Yes Sir,
- Q:** That the de-sensitization and de-humanization has taken place in such a profound manner in society that the presence of these young Girls. Now suppose what would happen if this young Girl is seen loitering in Jama Masjid in that park,
- B:** Absolutely sir,
- Q:** What will happen. Let us, ask her, just ask whether she has ever seen anyone being picked by, her observation I want to see, just see policeman or anyone, just ask her I want to know.
- B:** बेटा ये बताओं

Girl: जी

B: जहाँ ये तुम रहते थे कभीमें, जहाँ तुम रहते थे ओ सोरीमें। जहाँ तुम रहते थे जब एक आध दिन इधर उधर रहे।मे कोई पुलिस वाला आता था उससे मिलने "" से।

Girl: नहीं

B: कभी जहाँ तुम रहते थे किसी पुलिस वाले का कोई जिक्र हुआ हो कभी ऐसा तुमने देखा हो कि कोई सम्बंध हो पुलिस वालो से या। वो "" कुछ लोगो को पैसा देता था कभी देखा तुमने "" को पैसा देते हुए लोगो को।

Girl: नहीं, नहीं देखा।

B: चलो कोई बात नहीं। क्योंकि हम ये जानना चाहते थे केवल कहीं ऐसा तो नहीं कि हम अगर वहीं जाएं और पता चले कि "" कि उनसे दोस्ती हो। पुलिस वालो से।

Q: हो सकता है।

B: कहाँ कुछ उसने ऐसा।

Q: नहीं।

B: नहीं कहा।

Q: पुलिस वाले का कभी नाम नहीं लिया?

Girl: पुलिस वालो का कभी नाम नहीं लिया है और लोगो से तो ये ही सुनी हूँ कि "" ने सबका ही हमारा इतना पैसा खाया, उतना पैसा खाया। हम केस करेंगे, ये करेंगे। तो सबके जिसके जिसके मुँह से सुना तो "" के बारे में जो "" को जानते तो सारे बोलते के हमारे इतने पैसे लिए हमारे उतने पैसे लिए है हम केस करेंगे।

B: गंगा ।

Girl: जी।

B: बाकी लडकी लोग जो बोलते है केस करेंगे आपको पता है किसी ने केस किया है?

Girl: आज तक तो किये नही है अगर किसी ने किये है तो मुझे नही मालूम, पर बोलते है ऐसे । सभी "" को ऐसे बोलते है।

Q: अच्छा बताओं गंगा तुम्हारे जैसे ऐसे बहुत सारे बच्चे ऐसे है।

Girl: "" के पास?

Q: "" नहीं। तुमने ऐसे बहुत सारे देखे होंगे?

Girl: जी देखा है।

Q: ये कहा देखा है बेटा तुमने ऐसे? सब जगह तुम ऐसे देखते हो बच्चो को ।

Girl: सब जगह नही मतलब कि "" ने ही जहाँ काम लगाया था वहाँ अगल बगल में जो रहते थे उन लोग भी बोलते थे कि काम तो लगाता था तो ऐसे उनके मतलब उनके बगल मेंमें उनके घर के अगल बगल में जो रहते है पडौस। तो उन लोग बताये कि "" तो ऐसे ऐसे गलत काम करता है। तो जो मेरे से भी छोटी थी तो उसका भी ऐसे उनके भी कपडे उतारने की कोषिष कर रहा थी। तो बच्ची रो रही थी बाहर बैठी तो रात को तो ऐसे बता रहे थे लोग। तो ये सुनके तो अच्छा तो नहीं लगता है। कि वो बच्ची के साथ में किसी एक से करे तो चलो करें एक जन को किया वो तो बाकी अंटी लोग मतलब

बुढ़ी लोग भी रहेंगें उनको भी साडी खींचा खींची ऐसे करते है |ऐसे मतलब बाहर के लोग बताते थे मुझे ऐसे।

B: Pathological

Q: No No No No No

B: Nothing to do with Pathological, it is a thing it is a state of mind where this man is in absolute control and is getting access to Girls, unlimited number of times.

Q: Unlimited number of times

B: Yes

Q: Unlimited Girls, and unlimited number of times

B: And there is absolutely no way that he can be brought to justice.

Q: I think that... I personally think that I am trying to see what can I do for this Girl which can give her immediate relief. What I would suggest is that please give her, I am not sure there is any person I can think of, you sure this gentleman is secure.

B: Sir, this is actually right next to our office also, so we are right there, she actually stays 200 meters from my house and 300 meter from the office. So I am, she is not the only one there are others like her are there. So I, I mean we are dealing with 3-4 of such cases simultaneously in the last 4 days.

Q: See you do one thing you take care of her.

B: Yes

Girl: जब मेरे का ***** छोडने के लिए काम छोडने के लिए गये थे उन लोग ने तो रंजीत लोग को भी पता नहीं था कि मेरे बैग में पैसे है 8000। तो मैडम को।

Q: अच्छा वो 8000 पैसे वो मैडम ने रख लिया।

Girl: नहीं। मैं वहाँ पे काम पे नही रही ना।

Q: तो अब भी है तुम्हारे पास वो 8000। जी मैने "" को नहीं बताया था।

Q: अभी तुमने कहा रखा है वो 8000?

Girl: उसको। जब मैं कोठी पे बताई मैडम लोग। तो रंजीत लोग को पता नहीं था कि मेरे पास पैसे है। तो उस टाईम मैने कोठी पे रहने के चक्कर में मैडम के पास बता दिया कि मेरे पास 8000 पैसे है और मोबाईल है तो पैसे और मोबाईल रहेगा तो काम करूंगी और नहीं तो नही। तो मैडम ने बोला कि हमारे पास पैसे छोड दो और जब जाएगी तो जाएगी तो ले जाना। तो एक साल बाद पता नहीं कैसे करेंगे क्या करेंगे। ना यहाँ से मैं फोन कर पाऊंगी और ना किसी को बता पाऊंगी।

Q: हाँ लेकिन अभी वो 8000 तुम्हारे पास है?

Girl: हाँ बता रही हूँ।

Q: हाँ बताओं बताओं बताओं

Girl: तो वहाँ से मैं काम नही करूंगी बोली ना तो उन लोग को पता चल गया मेरे पास 8000 पैसे है रंजीत लोग को। तो वहाँ से आते आते रास्ते में बहुत धूप था गर्मी था। तो भैया भी मिल गये थे उसी दिन जिस दिन वो लोग मेरे को स्टेशन में भैया मिले तब थोडा सा बात करने के लिए गाडी से नीचे आये तो पेट्रोल डलवाना था ना गाडी में खत्म हो गया था तो भैया बोले की बहुत लाईन लगा हुआ है। रंजीत सब से बोले की बहुत लाईन लगा हुआ है तू पेट्रोल डाल के आ, हम थोडा सा छाया में इसको ले जाता हूँ भैया ने बोले। फिर उसी जगह भैया ने सारी बात मेरे से पूछा कैसे कैसे आ रही है। कहा कहा पर थी तो सारा मैने खोल के बता दिया जो अभी बताया वैसे ही।

Q: ये भैया को?

Girl: हाँ जी भैया, को बता दिया। तो बाद में वो उतनी बस थोडा सा देर में वो पैसे को बैग के अन्दर था ताला मारी थी। रंजीत और ड्राईवर दोनो मिलकर मेरे बैग को फाड कर उसमें से 4500 पैसे भी चुरा लिए। उस, बस थोडा सा के लिए नीचे उतरी और उतने में उन लोग पैसे ले लिए।

Q: वो 8000 भी गया।

Girl: गया।

Q: तुम कह रही हो 4500।

Girl: जी, 8000 में से उन लोग को 4500 मिला अलग अलग किया था ना तो चार साढ़ें चार अलग अलग था। 4 अलग अलग था तो।

B: **She is obviously very smart. She stick the money at variously places so that could only find four and half.**

Girl: एक ही बैग के अन्दर था लेकिन उन लोग।

Q: तो अब तुम्हारे पास 4000 बचे है।

Girl: जी मेरे पास सिर्फ 4000 बचे है। उन लोग को 4500 मिला वो भी नहीं मिला, 4 भी नहीं मिला नहीं तो वो भी नहीं बचता।

Q: अभी फोन है तुम्हारे मम्मी पापा के पास वहाँ।

Girl: नहीं।

Q: बातचीत हुई मम्मी पापा की।

Girl: नहीं अभी तो 6-7 महिने से बात नहीं हुआ है।

Q: नहीं लेकिन तुम्हे बात करना है तो बात कर सकती हो यहाँ से।

Girl: मै तो, नम्बर होता तो मै खुद कर लेती। अभी तो मेरे मोबाईल है। मतलब हाथ में मोबाईल है ना।

Q: **The committee is asking its giving you a direction that you please give a report in respect of this child.**

B: Yes Sir

Q: We will find out. Please now find out that..

APPENDIX 10

TRANSCRIPT OF INTERVIEW OF FOUR TRAFFICKED CHILDREN WHO ARE ALSO VICTIMS OF SEXUAL VIOLENCE AND DRUG ABUSE

B: बच्चे ऐसा है यहाँ पे कि साहब तो अपने मित्र है। अभी सरकार ने एक कमिटी बनाई है जिसमें कि वो जानना चाह रहे है पूरे देश में लोगो से और खास तौर पे आप जो यहाँ पे आज आये हो कि वो जो अभी दिल्ली में आये हो। जो अभी दिल्ली में हुआ था वो लडकी के साथ बस के अन्दर वो सब – समझते हो ना पूरा।

Child-1 हॉ

B: तो बेटा ऐसा था कि ये चीज केवल लडकियो के साथ ही नहीं होता है बच्चो के साथ भी होता है।

Child-1: लडको के साथ भी होता है।

B: हम लोग जो फुटपाथ पे देखते रहे है काम करते रहे है ये शिकायत हमको हमेशा बच्चो से लडको से लडकियो से सबसे मिलती थी ये। तो आज हम लोग जो यहाँ बैठे है वो आप लोगो से भी जानना चाहता है आप लोगो को अगर कोई experience वो share करना आप अपने बारे में जो अनुभव है वो बताना आप। साथ में ये कुछ जो है जैसे आप प्रयास गये थे ना remember वो जो छोटे लोग भाग के आ गए थे और बच्चो को भी लेके आ गए थे साथ में हम एक छोडते थे तीन बाहर आते ए थे तीन बाहर भागे थे। So this is used to be one they came out with 3. वो क्या था कैसा था क्यो भागते थे वहाँ पे क्या हुआ था हम बेटे वो सब जानना चाहेंगे आपसे। ठीक है यहाँ पर ज्यादातर ना हम पुराने साथी है हम लोग।

Q: ठीक है। बेटा।

Child-1: हॉ ठीक है।

Q: आप बिल्कुल बेफिक्र रहियें। हॉ बिल्कुल बिना किसी डर के, बिना किसी भय के और आप ये भी समझ लो कि भई हम ये इसलिये पूछ रहे है क्योकि एक तो जो है पूछने से सही चीज पता चलती है और फिर जो मतलब जो जुल्म होता है लोगो के साथ वो फिर कभी नहीं होगा और फिर इतना ही नहीं हम ये करने वाले है कि जो जिन्होने हमको यह दिया है हो सके तो तो हम जो ये समय लिजिये कि आप जैसे चार लोग है और आपने हमे यह बात बताई तो हम बाद में ये recommendation भी देंगे कि भई कोई ना कोई किसी ना किसी तरह आपको एक नियुक्ति कही पे कोई जोब कोई चीज हम ऐसी करेंगे इसलिये ताकि आपने हिम्मत दिखाई आपने सत्य बताया और आपको

हम किसी तरह से वो भी करेंगे। तो मैं आपको स्पष्ट आज बताना चाहता हूँ। समझ गये तुम सब। अब तुम बताओं। खुल के बताओं, यार क्या बात है? तुम शुरू पहले तुम हो कहों के? के हो?

Child 1: मैं का हूँ

Q में कौन सी जगह के हो बेटे?

Child-1 : से।

Q से

Child-1 के पास एक है उसका हूँ।

Q और फिर।

Child-1 वहाँ से मैं अपने मम्मी पापा के साथ ही आया था।

Q कहाँ पे।

Child-1 दिल्ली में।

Q कौन से साल में आये तुम?

Child-1 काफी छोटा था मैं तब आया था दिल्ली मम्मी पापा के साथ में। काफी छोटा था तब आया था मैं।

Q कितनी उम्र थी तुम्हारी उस समय जब आये थे।

Child-1 उस समय मैं 8 साल का था।

Q अच्छा अच्छा मम्मी पापा क्या करते थे।

Child-1 पापा की दुकान थी।

Q कहाँ दिल्ली में?

Child-1 हाँ, दिल्ली में

Q क्या करते थे दिल्ली में?

Child-1 दिल्ली में मार्किट सब्जि मण्डी।

Q हाँ हाँ वहाँ,

Child-1 वहाँ पे शाप थी।

Q क्या करते थे?

Child-1 सब्जि बेचते थे।

Q सब्जि बेचते थे?

Child-1 मम्मी मतलब हाउवसवार्ड्फ थी मतलब घर पेरहती थी। तो वो यहाँ पे लेके आये और उसके बाद जब मैं। बडा हुआ 7-8 साल का हुआ जब। तब मेरे जो पापा है उन्होने दूसरी शादी की।

Q दिल्ली में की

Child-1 नहीं, से लेके आये थे। तो यहाँ शादी की। तो वो था कि मेरी मम्मी का तलाक हो गया था पहली वाली का। जो मेरी सगी मम्मी है उनका तलाक हो गया अब वो अलग रहने लग गई। हम जब मम्मी के पास जाते थे तो पापा बहुत मारते थे हम लोगो को।

Q जरा दुबारा बताइयें जब आप, जब आप।

Child-1 मम्मी से मिलने जाते थे।

Q आप?

Child-1 हाँ

Q तो जब आप पुरानी मम्मी के पास जाते थे

Child-1 अपनी सगी मम्मी के पास जाते थे।

Q हाँ। तब वो पिटाई करते थे।

Child-1 मुझे भी मारते थे और मेरी मम्मी को भी मारते थे। कि क्यो मिलता है जब नाता तोड़ दिया है उसने तो क्यो जाता है मिलने के लिए। तो वहाँ से वो लेके आ जाते थे। यहाँ पे जब लेके आते थे। इस मम्मी के पास लेके आते थे तो क्या होता था कि कुछ भी खाने के लिए मॉगता था कुछ भी चीज के लिए खाना मंगाया दो रोटी दे दी थोड़ी सी सब्जि। उतने में पेट नहीं भरता था। खालिया, खेल के आते फिर दोबारा से रोटी मांगी उठाया कुछ भी डण्डा वण्डा उठाया बहुत मारा।

Q किसने?

Child-1 सोतेली माँ ने।

Q ठीक है फिर?

Child-1 उसके बाद जो है ऐसे चलता रहा चलता रहा। मैं बोलता मम्मी ये पापा मुझे खाना नहीं देती है ये है वो है। उल्टा सीधा बोलता था मैं क्योकि बहुत गुस्सा आता था।

Q बिल्कुल जायज है।

Child-1 तो वैसे ही बडा हो गया था मैं 10 साल के करिब। 10 साल का हो गया था मैं। तो क्या हुआ कि मेरी बहन। हम चार बहन भाई है। एक बहन है और तीन भाई है। एक जो बहन है वो सबसे बडी है। मेरा भाई है मेरे से बडा हैं। उसके बाद मैं हूँ। मेरे से छोटा एक और है। तो मेरी बहन रोटी बना रही थी। रोटी बना रही थी तवे पे तो उन्होने क्या कि। मेरा वो जो सोतेला भाई है उसने उसपे उंगली रखदी तो उसकी उंगली जो है वो थोड़ी सी जल गई थी। तवे से जल गई थी तो उसने देखा मम्मी ने। उंगली जला दी मेरे बेटे की। हाथ ऐसे रखा उठाया और तवे पे रख दिया उसका। सोतेली माँ ने। मेरी बहन का।

Q फिर

Child-1 शाम को मै आया मैने देखा पूछा क्या हुआ। मुझे आया गुस्सा। मुझे भी सुनाने लगी मुझे भी करने लगी। इतना बडा तो था नही मै। मुझे भी मारने लगी कि तू कौन होता है ये है वो है

मेरी मर्जी मैं कुछ भी करूँ। तो मेरे को कुछ भी दिखाई नहीं दिया। तो मैंने उठाया पत्थर ईट फेंक के मारा।

Q सही किया। फेंक दिया।

Child-1 पूरा फोड़ दिया।

Q फोड़ दिया।

Child-1 हँ। सर वर फोड़ दिया पूरा खून वून निकल गया तो वहाँ से भागा तो उत्तम नगर में मैं रहता था अपने दोस्तों के साथ में।

Q जब भागे।

Child-1 तो उत्तम नगर में मैं अपने दोस्तों के साथ में 3 हफते रहा था। वहाँ से फिर मेरे पापा आए मुझे फिर से पकड़ के ले गये घर पर।

Q फिर उन्हें पता कैसे चला तुम वहाँ हो?

Child-1 बता दिया दोस्तों ने।

Q दोस्तों ने फिर।

Child-1 दोस्तों ने बता दिया ये है यहाँ पे है। फिर मारा पकड़ के। बहुत मारा कि तू ये सर फोड़ कर क्यों मारा तूने। क्यों फाडा सर तूने क्या गलति कर दी थी इसने? पापा पूछते हैं।

Q हों।

Child-1 फिर मैंने बोला कि मम्मी ने हाथ जला दिया ये कम था। तो फिर उस टाईम से मुझे घर मे

Q रहने की इच्छा ही नहीं हुई।

Child-1 हों इच्छा ही नहीं हुई,

Q लगा के छोड़ दो उस जगह को?

Child-1 हों, कभी रहने को वो लोग कुछ भी नहीं महसूस नहीं होता था कि कोई अपना है।

Q हूँ हूँ

Child-1 मतलब भागने का बहुत शोक होता था उस दिन से मेरे को एक और शोक लग गया कि मैं शादी पार्टी गया। शादी पार्टी में गया।

Q घुस गये।

Child-1 घुस गये और खाने पीने की चीजें लेके आ गया। कभी हनुमान मन्दिर कभी कहीं कहीं। हरि नगर में, हरि नगर घण्टा घर में एक संतोषी माता मन्दिर है। मैं। हर फ्राईडे वहाँ पे जाता था खाना खाने के लिए। वहाँ पे गया खाना वाना खाया। वहाँ पे भी तीसरी बार नहीं दूसरी बार। मेरे पापा वहाँ पे आए मुझे पकड़ा फिर लेके आए। मेरे दोनो हाथ बँधे। हण्टर से मुझे मारा।

Q हूँ

Child-1 और धमकी दी कि अबकी भागा तो तेरी टांगे कटवा दूँगा।

Q ठीक है।

Child-1 फिर उसके बाद मैं घर पे रहा एक महिना ज्यादा से ज्यादा। उसके बाद मैं फिर भागा उत्तम नगर गया। अपने दोस्तों के साथ। दोस्तों के पास गया। दोस्तों के पास गया और वहाँ से एक मेरा दोस्त था। जिगरी दोस्त था तो वो मुझे वहाँ लेके आया। गुरुद्वारे। गुरुद्वारे।

B बंगला साहिब

Child-1 बंगला साहिब गुरुद्वारे लेके आया तो। फर्स्ट टाइम था मेरा गुरुद्वारे में। मैंने देखा अच्छा है यहाँ तो रोटी खिलाते हैं सब कुछ करते हैं यहाँ पे रहते भी हैं। अच्छी जगह है ये और काफी दूर भी है तो वहाँ से बस पकड़ता था उत्तम नगर से तो यहाँ पे आता था। तो मेरा मन कहा कि यार रोज रोज आने जाने से फायदा क्या है यही रहते हैं ना। गुरुद्वारे पे रहा दो हफते। वहाँ पे रहा तो उनके जो वहाँ पे सेवा जो करते हैं।

Q सेवादार।

Child-1 उन्होंने मार के भगा दिया। कि यहाँ सोना नहीं है।

Q हूँ।

Child-1 फिर वहाँ पे गया। तो वहाँ पे मुझे पता लगा कि यहाँ पे पास में हनुमान मन्दिर है। तो वहाँ देखा मैंने। वो भी मुझे अच्छा लगा कि सबके साथ शनि का काम करते हैं। शनि की देहाड़ी लगाते हैं। शनि का मतलब तेल होता है शनि के उपर डालते हैं और जो तेल होता है और बत्ती होती है उसकी वो 15 रू0 की होती है एक दीये में। मैंने सोचा था कि अच्छी बात है इतने रूपये बस जरा सी चीज के लिए मिल रहे हैं अच्छी बात है ना। तो उसी ने किसी ने मुझे उसी चीज पे रख लिया मुझे।

Q क्या?

Child-1 शनि की देहाड़ी पर मतलब।

Q मतलब वो

B दुकान पे रख लिया।

Q दुकान पे रख लिया।

Child-1 दुकान पे मेरे को दीये लगाने हैं और तेल डालना है बस।

Q ठीक है।

Child-1 वो फिर किया मैंने। पूरी का भी काम किया।

Q हूँ?

B कचौरी के यहाँ दुकान पे।

Child-1 पूरी सब्जि।

Q सब्जि भी बनाते थे।

Child-2 नहीं जैसे।

Q बॉटना।

B जैसे दुकान होता है और गरिब लोग को बॉटते है ना।

Q अच्छा, फिर

Child-1 उसके बाद। काफी दिन बीत गये। मैं 5 साल हो गये मुझे रहते रहते। मतलब काफी कुछ बहुत सारी चीजे देखी वहाँ पर।

Q वहाँ पे जो चीजे देखी आपने। जैसे कि उन चीजे में। छोटा सा मसला दे रहा हूँ आपको।

Child-1 हूँ।

Q आप मुझे बता सकते है कि ये था या नहीं था।

Child-1 हूँ।

Q हम सब लोगो को मालूम है कि वहाँ तो नशा होता भी थोडा बेचते भी हैं।

Child-1 सुलेशन,

B Eraser, fluid,

C They put it on the cloth and they smell it.

Child-1 आता हूँ। आता हूँ। उसी पे आता हूँ।

C Its the cheapest form of drug. You know white fluid.

B Correction fluid.

C Ya ya correction fluid. That comes in two bottles, one is the white fluid other thinner. When it thickens you use the thinner, they use the thinner to get high, what happens you don't always use the thinner, so people throw it. When fluid gets over so that's how it starts, you find the thinner on road then you put drops of it on your clothes and inhale.

B That gives you a high.

C Those who graduate to next level, use smack.

B All cushioned by police, all supplied by police.

Child-1 मेरा एक दोस्त था करन नाम का। करन नाम का। करन नाम का एक दोस्त था मेरा। करन नाम का एक दोस्त था मेरा। तो जब मैं पहले पहली बार आया था यहाँ पर हनुमान मन्दिर में तो मुझे पता नहीं था कि क्या चीज होती है। तो बस मुझे पता था कि सिगरेट होती है बीडी होती है और कुछ पता ही नही था। कुछ सुलेशन भी कुछ चीज होती है। तो जब मैं हनुमान मन्दिर पे आया तो कुछ लडके गोलदारा बनाके। व्हाईट फ्लूड जो होती है। फ्लूड को कपड़े में डाल के ऐसे सूँघते थे।

Child-2 चूना पानी और पानी।

Child-1 तो मैं देखा ये क्या कर रहे है। मैं उनके पास गया बोला के क्या कर रहे हो? मतलब अपनी मस्ती में मस्त है। अजिब अजिब सा कर रहे थे मैंने कहाँ पागल तो नही हो गये हो तुम। पता नहीं क्या कर रहे है।

C Lady story talks.

Child-1 तो फिर उसने बोला, तू सही है। कहा से आया। अबे कैसे बात कर रहा है ये। बता ना। यही का रहने वाला है तू क्या। हॉ यही पे हूँ बहुत दिन से यही पे रह रहा हूँ। तेरे को देखा नहीं मैंने। अब बोला साथ में त भी चल काम करयों हमारे साथ। रख लिया। अब एक बार उसने मेरे को क्या दिया पीने के लिए दिया। ये लगा ले कुछ नहीं होगा। पियेगा तो अच्छा होगा। जब लगाया तो चकरा खा गया। पूरा बहुत सिर में दर्द और उल्टि उल्टि हो गई । मैंने कहा मैं नहीं पियूंगा। पर पता नहीं क्या हुआ एक तडप सी होती है हुडक सी होती है वो फिर चालू यार कर दिया। क्या मुँह लग गया मेरे । फिर डाला औरपीना चालू। पीया। वहाँ पे एक लडका और था राहूल नाम का लडका । तो वो मेरा खास फ्रेंड था मेरा । तो हम लोग। वो लेकर आता था उसके इण्डिया गेट से। इण्डिया गेट से जो आफिस काम होते है वहाँ पर । बिसलेरी बेच रहे होते है। वहाँ पर फलूड लेके आता था। वैसे तो 22 रूपये की आती थी। पर जो कचरे मे फेंकने वाला होता था वो 2 रू0 की एक शीशी देता था। तो उससे खरिद लेते थे हम। काफी दिन ऐसे ही करके मुझे मुम्बई घुमने का बहुत शोक था। हरिद्वार भी घुमने का बहुत शोक था। इसलिए देखने के कारण मैं। पहली बार हरिद्वार गया।

Q वहाँ पर भी बेटे नशा काफी होता है।

B हॉ

Child-1 वहाँ पे ये सब चीज तो होती है पर वहाँ पे सबसे ज्यादा।

B पत्ती।

Child-1 गॉजा।

B पत्ती भांग की।

Child-1 भाँग और गॉजा पीते है। क्योकि सारे के सारे बाबा लोग होते है ना इसीलिए।

Q तो ये बाबा लोग भाँग और गॉजा पीते है।

Child-2 चरस

Child-1 चरस, गॉजा।

Child-2 हाथ मार के निकालते है।

Child-1 तो मैं वैसे तो पीता था। तो हमको एक बाबा मिला। हरिद्वार में । वो गोता लगाता था।

Child-2 गोताखोर।

Child-1 गोता लगाता था।

Child-2 हॉ हॉ गोताखोर।

Child-1 गोता लगाता था और पैसे ढूँढता था। पैसे निकालता था।

C What they people do.....

Child-2 जैसे रस्सी बाँध लिया, चैन बाँध लिया पकडा और कूद गये और हाथ डाल के निकाल लिया जो आया हाथ में। ऐसे करते है।

Child-1 तो उसके बाद उसने। उसी के साथ मैं। रहा। उसके बाद फिर दिल्ली आया। तब ऐसा था मेरा की गर्मी गर्मी मैं हरिद्वार में होता था क्योंकि वहाँ ठण्ड होती है। ठण्ड में अच्छा भी लगता था नाहने में उपर से गर्म धूप और हर की पौडी में जाओं गंगा में नहाओं नहालो। फिर बाहर निकलो फिर गर्मी लगे तो गंगा में। ऐसे अच्छा लगता था। फिर मैं गया। मेरा एक दोस्त था। मेरो को एक ना। हरिद्वार में मेरा एक दोस्त बन गया था। मोटा सा लडका था। वो मेरे को बोला की तू कहाँ पे रहता है। उसको सब कुछ बताया कि ये ये है। बोला की तू मेरे साथ मुम्बई चलेगा। मुम्बई बहुत अच्छा है। मैं बोला ठीक है चलूँगा। घुमना भी है। मुम्बई में तो चलं मैं तेरे को लेके चलता हूँ वो मेरे को लेके मुम्बई चल दिया। मेरे पास पैसे नहीं थे कुछ भी नहीं था तो उसने क्या किया कि गाडी का जो ज्वाइंट होता है ना। तो उसपे एक चददर बिछी होती है। उससे लेके गया मुझे वहाँ लेके गया।

C मतलब।

Child-2 जैसे मैडम ज्वाइंट होता है थोडा सा खुला रहता है।

Child-2 हॉ हॉ ट्रेन की बात कर रहे हॉ हॉ हॉ। अच्छा अच्छा।

Child-1 जैसे ज्वाइंट होता है ना

C हॉ समझ गई।

Child-1 ज्वाइंट होता है ना उसके पास जो चददर बिछी होती हैं वहाँ पे बैठ के गया। वहाँ पे देखा ये ट्रेन चल रही है ये कहा पे लेके जा रहा है मैंने कहाँ कि यार मुझे कहीं और नहीं ले जाना मुझे कहीं नहीं जाना।

C यह स्टोरी मुझे भी नहीं पता थी। हॉ फिर।

Child-1 उसके बाद फिर मैं गया मुम्बई गया। वहाँ पे रहा में। पहले दिन जब गया तो उसने मुझे मुम्बई बस घुमाया घुमाया। बहुत सारी जगह घुमाई। जुहू चौपाटी लेके गया। माहिम लेके गया। और हाजी अली ले के गया। और चर्च गेट ले गया, बांद्रा सब कुछ घुमाया। दूसरे दिन क्या हुआ उसके साथं। उसका एक दोस्त था बाबा था। उसने क्या किया वो उसके साथ मे रहता था। और उसी के साथ में सोता था

Q वो लडका।

Child-1 वो लडका और वो भी वहीं सोता था मैं। भी वहीं सोता था और वो भी वहीं सोता था। तो बात होने लगी उसको ज्यादा नशा कराया लडके को।

Q उसको?

Child-1 उसको लडके को मोटे को ज्यादा कराया। मतलब

B बाबा ने नशा कराया उसको।

Child-1 मतलब बहुत कुछ करा दिया उसको।

Child-2 ड्रिज, त्रिज, सुलोशन, सिरिज।

Child-1 नहीं सिरिज नहीं।

B नशा कराया।

Child-1 सुलोशन, भॉग, गॉजा वगैराह पीला दिया उसको फुल कर दिया उसको।

B हूँ।

Child-1 इस तरफ मैं सोया हुआ था, उस तरफ वो सोया हुआ था और इधर मैं सो रहा था और जैसे ही आँख खुली मेरी तो। तो उसके साथ बाबा गन्दा काम कर रहा था।

B हँ।

Q तो बाबा मतलब वो क्या स्वामी था या

Child नहीं ऐसे ही, ऐसे ही नाम उसका था

B दाढी बढाया हुआ होगा थोड़ा। हल्का सा दाढी बढा लेते है।

Q हूँ हूँ।

Child-1 गन्दा काम करता था। मैंने कहाँ अरे ये क्या हो रहा है। तो फिर उसके बाद मैं ऐसे किया अपना दबा कर। अपना बोरा बिस्तरा दबा कर मैं सो गया। फिर सुबह उसको पूछा क्या हो रहा था रात को। तो मुझे क्या पता क्या हो रहा था।

B ये तो

Child-1 फिर मैंने बताया ऐसे ऐसे बात हो रही थी तेरे साथ तो। तो बोला के – अच्छा! उसने लड़के ने क्या किया गाली वाली सुनाई उस बाबा को। हाथ भी उठाया उस बाबा पर।

Q उस बाबाकी क्या उम्र थी?

Child-1 बाबा की तो होगी 40–45 के साथ।

Q फिर क्या हुआ?

Child-1 उसके बाद फिर उसने बोला कि इसको मार डालूँगा मैं। मतलब धमकी दी, बहुत कुछ बोला उसने। तो उसके बाद बोला कि चल।

Q निकलते है यहाँ से?

Child-1 हाँ। तो अपना वो जो सोने का समान था जो भी हम सोते थे बिस्तरा विस्तरा। उसको उठाया और लेके चल दिए। चर्चगेट पहुँचें। चर्चगेट पे तो वहाँ पे एक दरगाह है।

Another child दरगाह है तो वहाँ पे भी ये.....

B मालूम है मुझे जगह

Child-1 दरगाह है। वहाँ पे वो वटाटा वडा खाते है। वो पाव पाव।

B पाव भाजी।

Child-1 पाव भाजी नहीं मिलती है। वो एक बडा सा

C वडा पाव होता है।

Child-1 वो मिलता है तो वहाँ पे खाया पिया। उसके बाद हम जूहू चोपाटी आये। उसी के रास्ते में पडता है वो स्टेशन। तो वहाँ पे सुबह सुबह वो इडली सांबर मिलते है। कोई बॉटने आता है। तो ईडली सांबर बॉटने आया— हमने खाया। तो हमको उस पार जाना था जहाँ पत्थर पत्थर लगे हुए है ना। तारे सितारे वाले पत्थर तो उस पार जाना था हमको। तो आपने देखा होगा एक ऐसे रोड आ रहा है और नीचे से भी एक रोड आ जाता है। सीधे जो जाता है। तो क्या हुआ है कि पहले ही मैंने पार कर लिया था। पहला रोड मैंने पार कर लिया था जो सीधा सीधा जाता है। दूसरा भी मैंने पार कर लिया। तो उसने क्या किया उसने एक गन्दी पता नहीं किसी की सिगरेट पी और एक रोड पार कर लिया तो दूसरी रोड पार कर रहा था तो उपर से जो गाडी आ रही थी बहुत स्पीड पे थी। बहुत स्पीड में गाडी थी तो वो भागा। जैसे ही भागा लाल गाडी ने उडा दिया। वही चीत हुआ वही बेहोश हो गया। पता नहीं मर गया पता नहीं क्या हुआ। वहाँ से मैं भाग गया। वो सिविल वाले पूछने लगे क्या है। किसके साथ मे है ये। मुझे नहीं पता। उस दिन मैं क्या करता। मुझे नहीं पता। फिर मैं आ गया। फिर जब वो, अब मैं भी कहॉ जाऊ। मैं वहाँ पे नया हूँ। मेरे को भी नहीं पता क्या है क्या नहीं है। तो मैं वहाँ गया उसी बाबा के पास। बहुत सारा समान था मेरे पास। उस लडके का जो समान था ओढ़ने वाला और दो-दो कंबल मेरे पास थे अपने। मैंने कहॉ इतने सारे समान का क्या करूँगा उसको बाबा को ही दू दूँगा। मैं वहा गया देके वो बोला कि वो कहा गया जो मोटा लडका था कहा गया वो। तो मेने बोला कि वो तो मर गया पता नहीं कहॉ है। गाडी वाले उठा ले गये उसको। तो पागल है उसको वहीं छोड के आ गया। तेरे को पैसे भी मिलते। पैसे भी। मैंने कहॉ के पैसे मिलते वो तो लाठीया चार्ज कर रहे थे कि किसके साथ आया ये किसके साथ आया बहुत मारते। तो वहाँ से आ गया और फिर मैं गया माहिम वो हाजी अली पे।

Q हाजी अली पे।

Another Child जी हाजी अली दरगवाह।

Child-1 हाजी अली पे तो वहाँ पे गया तो वही पे रहने लगा मैं वही दरगाह पे। अब पता नहीं किसने मेरे देखा तो शिमनी जो होती है काम पे बताशे और शिमनी जो होती है वो फूल वूल से ...

Q चढ़ावा करते हैं

Child-1 हाँ, चढ़ावा, वो बाँधने का मुझे काम पे रख लिया। चददर वो सब कुछ बाँधने का मेरे को रख लिया। और धीरे धीरे काफी जान पहचान हो गई। करिबन 6-5 महिने रहा हूँगा मैं वहाँ पर। उसके बाद एक लडका मेरा दोस्त बन गया। जो मछली पकड़ता था। उसी के पास में मछली पकड़ता था। उसने भी मेरे को अच्छी जान पहचान हो गई। उसके साथ में मच्छी पकड़ने जाता था मैं। किसी ने किसी के हाजी अली के रास्ते मे चलो तो 4.00 बजे के बाद 4.30 बजे के बाद पानी बहुत बढ़ जाता है उपर तक आ जाता है।

B हाँ भर जाता है।

Child-1 और क्या होता है कि जो भी चलता है उसकी चप्पल डूबती नहीं है बह जाती है। अब वो उसकी चप्पल पकड़ो तो पैसे मिलते हैं। मतलब तैर के।

Q समझ गया।

Child-1 निकालो दो तो पैसे मिलते हैं। तौ मैंने जब उस लडके को देखा कि वो ये करता था पानी में कूदा चप्पल पकड़ी वापस ले के आ गया। एक चप्पल के वो 40-45 रुपये लेता था। और हमेशा चप्पल किसी ना किसी की डूबती थी। तो मैंने भी ये काम शुरू कर दिया। मेरा क्या हुआ कि उसी में एक लहर आई और मुझे डूबो दिया और पानी मैंने पी लिया था। पानी पी लिया, बहुत मतलब बहुत ज्यादा पानी पी लिया। और बहुत उल्टिया आई और बहुत ज्यादा तबियत खराब हो गई मेरी। अब मैं क्या करूँ बोला कहा जाऊ, क्या करूँ कोई जानने वाला है ही नहीं। पर इतनी हेल्प नहीं कर सकता मेरी। मेरा दोस्त था इतनी भी मदद नहीं कर सकता कि दवाई दिला दे। मैं क्या करता तब मैं फिर से दिल्ली आ गया। बहुत पतला हो गया था मैं मतलब दिल्ली आया हनुमान मन्दिर। कंबल जो ओढ़ रखा था मैंने उसी टाईम दिल्ली आए ये लोग सब आए वहाँ देखा मुझे तो मुझे वहाँ लेके गये '.....', लेके गये। और वहाँ पे मेरा ईलाज हुआ और उसके बाद पूरा ईलाज वहाँ पे कराया सब कुछ कराया मैंने। वहाँ पे एक साल के करीब रहा हूँगा मैं।

Q वहाँ आपके साथ क्या तर्जुबा क्या हुआ,

B वो बता, वो बता दे बेटा।में क्या होता था क्या नहीं होता था, वो सुनना चाहेंगे वो बता दे बेटा।

Child-1 वहाँ पे।

Q ***** में क्या होता था?

Child-1 ***** में वो ही खाना खिलाते थे। खाना देते थे और पढ़ाते थे हमें। मेरा एडमिशन भी करा दिया था।

Q किसमें?

Child-1 स्कूल में। स्कूल में एडमिशन भी करवा दिया था मेरा और दूसरी क्लास तक, मतलब मैं गया रेगुलर गया।

Q वो स्कूल कहाँ है। उसी बिल्डिंग में?

Child-1 नहीं नहीं, उसके साईड में। ***** है, ***** के साईड में एक स्कूल था गर्वमेंट का। उसमे मेरा एडमिशन करा दिया। उसमें मैं वहाँ गया। अब क्या हुआ कि जो भी कुछ फंक्शन होता था मुझे लेके जाते थे। और वहाँ पे क्या होता था जो भी समान आता था कुछ भी आता था रख लेते थे देते नहीं थे बच्चे लोगो को।

B पूरा का पूरा रख लेते थे वो? कौन रख लेते थे वो?

Child-1 वहाँ का स्टाफ ।

D वहाँ का स्टाफ, आप लोगो के लिए आता था रखते थे वो लोग । कभी भी नहीं देते थे आपको ।
जैसे क्या करते थे?

Child-1 जैसे उस दिन वो, फंक्शन हुआ और फंक्शन में मुझे एक छतरी मिली थी और एक ना बड़ा
गुलस्ता मिला था इतना बड़ा ।

D काँच का ।

C अच्छा ।

Child-1 इतना बड़ा काँच का वो मिला हुआ था । वो रख लिया । जब मैंने जब— काँच का मिला तो
ऊपर एक अन्टी रहती थी । अन्टी ।

D हूँ ।

Child-1 उनके पास रहता था । और उनसे मैंने माँगा कि ये मेरा है । बहुत सारा समान जो दीदी भी देके
जाते थे मुझे ।

D शीला दीदी ।

Child-1 हाँ, दीदी भी देके जाते थे वो ले लेते थे ।

C तुमने तो कभी बताया नहीं मुझे ।

Child-1 क्या बताता वो फिर ..मारते ।

D- मारते ।

Child-1 हाँ,

D मारते थे वो ।

B वो सब जानना चाहेंगे ।

Q कौन मारते थे वो जो अन्टी?

Child-1 नहीं नहीं सर,

B जो सर थे ।

Child-1 हाँ

D कौन था बेटा क्या नाम है उनका?

Q थे कौन वो?

Child-2 जी (one man)

Child-1 नहीं नहीं ।

Child (other name), (Other name)

Child-1 नहीं वो,ऐसे कोई नाम था उसका ।

Q अच्छा ।

C

Child-1याऐसे ही कुछ नाम था उसका।

B हॉ।

Child-1 ऐसे ही निजामुददीन या निजाम नाम था तो वो मारते थे हमे।

D मारते थे कैसे हाथ वाथ मारते थे पूरा।

Child-1 हॉ मतलब।

Child-2 डण्डा मारते थे।

D है? किसको डण्डा मारते थे?

Child-2 सबको जो भी बात नहीं सुनता ना। डण्डा ज्यादा मारता है वो।

D कहाँ हाथ पे।

Child-2 हॉ, मैं खुद रहा के। एक दिन रहा, भाग गया मौका देखके।

Q कोन ये निजामुददीन मारते थे?

Child-2 हॉ,

Q और मतलब ये क्यो, कि भई, वो किसलिए मारते थे?

Child-2 जैसे थोडा सा, उसका थोडा सा बात भी नहीं सुनोगे ना सर तो मार देते थे।

D जैसे कौनसा बात नहीं माना उसका?

Child-2 जैसे कह दिया कि ये उठा के रखदे और नया नया आया है समझ मे तो नही आयेगा। वो आया लिया डण्डा!भट!। मार देंगे।

D तो हाथ पे मारेंगे कहीं आगे पीछे कहीं भी मार देंगे?

Child-2 कहीं भी मार देंगे। हाथ पे भी मार देते थे डण्डा।

D सिर पे भी, हाथ पे भी, पीठ पे भी?

Child-2 हॉ।

Child-1 एक तो मेरा था घुमने का लत्त। मैं शौकिन था। घर में नही रहा। मैं खुल्ला माहौल चाहता था मैं। जब मैं ठीक हो गया। अब मैं खुल्ला माहौल चाहता था कि यार कब तक बॉध के रखूंगा मैं। कब तक ये दरिया और ये सब कुछ।

D घुटन होता था?

Child-1 हॉ घुटन होता था।

B (name of organization) में।

Q लेकिन क्लास में जैसे मे समझ लो तुम सवेरे उठ गये।

Child-1 हॉ।

Q तो मतलब वहाँ पे कोई टाईम टेबल जैसे कुछ होता था या नही?

Child-1 हॉ टाईम टेबल होता था। सुबह उठते थे.....

Another child 6.00 बजे उठते थे।

Child-1 5.00 बजे

D 5.00 बजें।

Q अच्छा फिर?

Child-1 5.00 बजे उठाते थे, नाश्ता कराते थे। नाश्ता होता था।

Another child 8.30

Child-1 नहीं नहीं, 7.30 बजे के करिब

Q साढ़े.....?

Child-1 साढ़े 7 बजे,

C 5.00 से 7.30 बजे तक क्या करते थे?

Child-1 7.30 बजे नाश्ता करते थे क्योंकि बहुत सारे बच्चे होते थे ना। बाथरूम भर जाता था।

Q और उसके बाद नाश्ता क्या देते थे आपको?

Child-1 पौहा, दलियाँ और पूरी सब्जि। सण्डे के दिन तो पूरी सब्जि खिलाते थे।

Q फिर वो जो खाना देते थे वो क्या बासी खाना था या सही खाना था?

Child-1 सही होता था,

D सही होता था।

Child-1 बना के लाते थे। साथ में बेकरी भी थी।

Q फिर उसके बाद?

Child-1 उसके बाद पढ़ाई होती है।

Q वो पढ़ाई कहाँ पे होती है।

Child-2 कुछ लोग। पहले क्या होता था, अन्दर पढ़ाते थे।

Child-1 अन्दर बहुत सारी क्लास थी। एक दीदी पढ़ाती थी और एक इस साईड में मतलब 3-4 क्लासे थी।

Q लेकिन बाद में वो सब छूट गये।

Child-1 हॉ, वो जे है बाहर जने लग गये थे।

Q अच्छा। फिर उसके बाद।

Child-1 उसके बाद इनका फिर, फिर खाना खाते, खाना खाके फिर इनका कुछ, वो होता था। खेलने का टाइम होता था। खाने के बाद खेलना। खेलने के बाद फिर से वो, जो भी कुछ मिलता था उसको पूरा करने के लिए जैसे कि काम हुआ, क्या करना है। उसको वो कराते थे क्योंकि रात को करोगे तो फिर सोओगे कब। इसीलिए कराते थे। काम कराया उसके बाद। फिर से कैंटिन पहुँच जाओँ। ब्रेकफास्ट लेने के लिए वो चाय और बिस्कुट, स्नेक्स। उसके बाद ये भी मुझे अच्छा नहीं लगता था।

Q लेकिन आपके साथ वहाँ पे समझ लिजिए कि कितने लोग थे उस सेंटर में, जैसे कि?

Child-1 बहुत, मतलब बहुत सारे बच्चे थे।

D कितने थे

C सौ के करिब थे।

D फिर भी नम्बर के हिसाब से गिने जाएं तो।

Child-2 उपर थे।

C हूँ।

Child-2 सौ से भी उपर थे।

C हॉ वो ही कह रही हूँ सौ से भी उपर थे। उनकी गैदरिंग सौ से उपर थे।

Q और सौ से उपर सब?

Child-2 जैसे 150

Q और ये 150 बच्चेही देखता था।

Child-1 नहीं नहीं और भी बहुत सारे स्टाफ थे।

Q स्टाफ थे। लेकिन यदि ये, ये जो थे, ये जो स्टाफ थे जो आपने मारपीट की बात बताई। लेकिन जैसे किसी ने मतलब समझ लो छोटा लडका है किसी के साथ कोई मतलब जैसे गन्दा काम, काम करने की ये भी कोशिश कुछ होती होंगी। कुछ हुई किसी के साथ?

Child-2 नहीं वहाँ पे नहीं होता था।

Child-1 वहाँ पे सब अलर्ट रहते थे।

Child-2 क्योंकि ड्यूटी पे ड्यूटी पे जो होते है ना रात को ड्यूटी पे, वो घूमते रहते है चक्कर मारते रहते है।

Child-1 चक्कर मारते है कौन सोया है कौन नहीं सोया है।

Q नहीं नहीं आप हमारी बात नहीं समझें।

Child-1 हॉ

Q आपस में नही करते थे वो बात अलग है। जो बच्चे थे वो आपस में नही करते थे। लेकिन कोई जो ये जैसे किथे या उसका जो और कोई केयरटेकर था या कोई ऐसा स्टाफ था। उसने कोई बेअदबी करने की कोशिश की।

Child-2 नहीं ऐसा कुछ नहीं।

Q तो फिर क्या हुआ?

Child-1 उसके बाद, वो बिस्कुट विस्कुट देते थे। और शाम को बस खेलना होता था। खेलो जो भी।

Q और फिर।

Child-1 बैट बॉल, कुछ भी होता था।

Child-2 अंताक्षरी

Q और फिर उसके बाद।

Child-1 नहीं 7.00 बजे खाना होता था।

Q फिर

Child-1 उसके बाद रूम में कुछ भी करो, खेलो कूदो सो जाओ। 8.00 बजे सो जाते थे।

Q फिर। तो फिर आपको वहाँ पे क्या चीज बुरी लगी?

D एक बात सर मै पूछना चाहूँगा। जो सर पूछ रहे थे अभी आपके साथ ना हुआ हो।

Q किसी और के साथ हुआ हो?

D किसी और का सुना था क्या कभी था ऐसा कुछ।

Child-1 नहीं नहीं।

Q किसी के ऊपर जबरदस्ती की।

Child-1 नहीं नहीं।

D इस रूम में किसी और रूम में कुछ ऐसा।

Child-1 नहीं नहीं।

Child-2 मैं ***** में भी रह चुका हूँ।

D जी बेटा।

Child-3 *****होम में, मंजीत है, हीरा सिंह है और ठाकुर सर है, अयंका मैडम है, मीता मैडम है। मीता मैडम के पास मेरी फाईल था। दूसरा....

Q लेकिन कुछ उन्होंने किया नहीं, मतलब वो जबरदस्त

Child-2 मेरे को वो भेज दिया था पटना। वहाँ फँसा रह गया था। 4 साल रहा था दिल्ली के ***** में बंद।

Q वो बन्द क्यों किया था वहाँ अलीपुर में।

Child-2 वो मेरा अलग केस था।

Q अच्छा मैं अभी देखता हूँ। अच्छा अब आप बताओं आगे क्या हुआ?

Child-1 उसके बाद। ये ही चीज मुझे अच्छी नहीं लगती थी टाईम टेबल से चलना पडता है।

Q और फिर।

Child-1 उसके बाद मेरे दो एक दोस्त थे, दो तीन दोस्त थे मेरे। उसने कहाँ यहाँ से निकलते हैं।

Q और फिर, भागे।

Child-1 वहाँ से भाग आये

Q फिर भाग के कहाँ आये।

Child-1 फिर हनुमान मंदिर पे।

Child-2 फिर वहीं पर, दुबारा वहीं पर।

Child-1 अरे भैया अच्छा नहीं लगता है।

Q अच्छा फिर।

Child-1 फिर भेज दिया।

Q फिर

Child-1 फिर भाग आया।

Q फिर

Child-1 ऐसे करके 4-5 बारी भागा।

Q फिर

Child-1 वो परेशान हो गए। वो परेशान हो गए कि हम नहीं रखेंगे।

Q मैं आपसे ये पूछना चाह रहा था कि जैसे ये छोटे बच्चे है इनकी उम्र के है इनके साथ मतलब कभी कभी भी जो है। आप। मतलब इस तरह की जबरदस्ती जो की जाती है जो सेक्स वेक्स करते है। ऐसे में, इसमें कभी आपको कुछ पता चला।

Child-4 No Sir, नहीं हुआ है।

Q है।

Child-4 No Sir,

Q आप लोगो के साथ किसी के साथ ऐसा हुआ नहीं है। न ही आपने किसी के दोस्त के या किसी बारे में सुना है ऐसे।

D बेटा अगर सुना है तो ये जानना जरूरी है हम लोगो के लिए बेटा।

Child-1 एक बारी अभी 2000 कुछ की बात है।

D हॉ

Child-1 2000 हॉ 2000 की बात है

Child-2 नहीं 2000 से पहले कि बात है।

D हूँ।

Child-1 जामा मस्जिद पे एक गैंग रेप हुआ था।

Q हॉ

Child-1 बच्ची के साथ।

Q जी।

D हॉ हॉ

Child-1 12 साल की लडकी थी

Q जी।

Child-1 उसके साथ में हुआ था गैंग रेप।

D कौन किया था बेटे ये।

Child-1 मटियामहल के लडके थे वो 4-5 लोग

Child-3 मटियामहल के 6 लोग थे बहुत से लोग थे।

Child-4 मच्छुआरे।

Child-1 वो ही।

D वो लोग किये थे।

Child-1 हॉ वो तब बस क्या नाम था उसका।

Q लेकिन तुम जो ये हनुमान मन्दिर। मतलब हम आपसे ये पूछना चाह रहे थे जैसे कि ये नशा वशा करते थे। इसमें क्या कुछ पुलिस वालो का भी हाथ था?

C पुलिस वाले ही तो Pimps थे।

Child-1 पुलिस वाले ही तो मेन है।

Q है?

Child-1 पुलिस वाले ही तो मेन है।

D कैसे मेन है, जरा बताना जरा बताना बेटे कैसे?

Child-2 जैसे सर हम लोग नशा करते है

D जी।

Child-2 जो चोरी करने लगे या कुछ करने लगे। तो पुलिस वाले हमसे पैसे लेते है।

Q मतलब तुम नशा करते हो तो पुलिस वाले तुमसे पैसे लेते है?

Child-2 हॉ पकड लिया

Q ठहरो ठहरो। फिर नशा पुलिस देता है या

Child-2 नही नशा तो हम लेकर आते है कहीं ओर से।

Q अच्छा जब नशा करते हो तो पुलिस वाले तुमसे पैसे लेते है?

Child-2 हॉ

Q कि भई तुमको पीटेंगें या अन्दर बन्द कर देंगे।

Child-2 जैसे पकडा गये तो समझाने के बजाए ना पैसे लेते है और छोड देंगे। जैसे पैसे लिया चल निकल जा पतली गली से दोबारा इधर मत आईयों, उधर जा।

Q और उसके बाद।

Child-3 और जो हमे बेचता था उससे भी पैसे लेते थे।

D हॉ, ये बात है।

Child-3 जामा मस्जिद में भी कितने लोग बेचते रहते है। पुलिस वाले एस.एच.ओ, वेस.एच.ओ सब जाते रहते है देखते है खुले आम बिक रहा है। फिर भी कुछ नहीं बोलते है।

Q पैसे लेते है।

B ला दे, ला दे,

D ला दे, ला दे, पैसा ला दे। पैसे पैसे। है। हफता दे दे

Child-4 और पुलिस वाले लोग ही सताते है।

C ...और एक चीज बता। उस टाईम पे जहाँ तक मुझे याद आ रहा है। पुलिस में एक कोई था जो स्मैक देता था।

D ये तोहुआ करते थे।

Child-4 हॉ.....

D हॉ वो ही था ना जो मारता था बच्चो को, सबको करता था ना वो ही सब काम ना वो तो।

Child-1 हॉ, हॉ।

C वो जो बच्चो को मारता था। उसके एगेंस्ट केस दर्ज हुआ था। वो स्मेक देता था तुम्हें बच्चों को।

Child-2 वो स्मेकियों के साथ मिला हुआ था।

C मिला हुआ था।

D वो स्मेकियों के साथ मिला हुआ था।

C मिला हुआ था। I think that's a point

Q अब जैसे कि समझ लो कि स्मैक जो देते थे उससे भी पैसे लेते थे जो आप बता रहे है।

Child-1 हॉ

Q और फिर और फिर मतलब हम ये पता लगाना चाह रहे है यह समझ लो कि जैसे जो पुलिस वाले है आप जैसे बच्चे है किसी के साथ जबरदस्ती वगैरह कोई कुछ कोशिश की?

Child-1 तब भी वो कुछ नहीं करते देखते है निकल जाते है।

Q है?

C नहीं कभी पुलिस वालो ने कभी कुछ करने की कोशिश की।

Child-1 कभी कुछ करते ही नहीं है।

Q आप मेरी बात समझ गएँ जैसे वो बाबा ने किसी को नशा वशा पीला के फिर उसके साथ किया, ऐसे कोई पुलिस वालो ने भी किया आप लोगो के साथ?

Child-1 नहीं साहब।

Q मतलब आप लोगो के या किसी दोस्त के साथ

D कभी सुना है आप लोगो ने ऐसी बात।

C मतलब हनुमान मन्दिर याजामा मस्जिद में जो

D कहीं हुआ होगा?

Child-2 मारते है भगा देते है हम लोग को, नशा करते थे। और जैसे हम इंजेक्शन लगाते थे। मै। इंजेक्शन गोली वाली करता था

Child-3 और सर जो वो जामा मस्जिद पे करते है ना वो देखते है और सीधे चले जाते है। जैसे कोई परदेशी आ गया सो रहा है बैग में उसके पैसे वैसे है उसको कोई चोरी करता है तो पुलिस वाले वो लोग देखते रहते है।

Child-2 उसी का गेम करवा देते है।

Child-3 वो निकल जाता है और आगे जाके उसे पकडते है बोलते है आधा माल मुझे दे। नहीं तो चल अन्दर तू।

Child-2 हॉ हफता।

D बेटा अभी ये पूछ रहे थे कि पुलिस वाले अगर लडको के साथ नहीं तो लडकियो के साथ तो करते होंगे उल्टा काम ये।

Child-2 करते तो होंगे ये। ड्रिंक करते है चौकी में। ऐसा लेडिस के साथ भी करते है वो।

D हॉ

Q किन के साथ?

Child-2 लेडिस के साथ जैसे बाहर घुमती रहती है।

B उसको पकड लेते है।

Child-1 उसको पटा के लाया पैसे दिया ओर कर लेते है।

Q कहाँ कर लेते है?

Child-2 चौकी में कौन देख रहा है। गया काम बन गया।

Q कहाँ चौकी मे ले गये।

Child-2 चौकी में भी

Q लडकी को?

Child-2 और क्या, मीना बाजार में बहुत ऐसे ही होता रहता है।

Q मतलब वो , वो जो पुलिस वाला है वो पैसे लेता है, वो पैसे देता है या वो वैसे ही वो वो..

Child-2 पैसे देता है वो जैसे हो गया 100-50 दे दिया।

Q वो जो लडकी को।

Child-2 हॉ।

Child-3 अगर कोई छोटी लडकी रहती है उसे ले जाते है। गलत काम करवाते है।

Q मतलब उसको जबरदस्ती ले जाते है।

Child-3 पैसे का लालच दिखा के।

D पुलिस वाले ले जाते है।

Child-3 हॉ, पैसे का लालच दिखा के।

Q पुलिस वाले पैसे का लालच दिखाके उसको लेके जाते है। और फिर उसको, उसको फिर उसके साथ गलत काम करके उसको छोडते है?

Child-3 हाँ। पैसे तो मांगती है अगर वो बोलती मुझे इस काम के लिए लाए थे और ये करा रहे हो वो मना करती है तो फिर उसको मार के भगा देते है। 100 रुपये दे देते है उसे कभी 10 रु.

Child-4 उसका कोन अकीन करेगा क्योकि वो है बाहर रहने वाले। वो है पुलिस वाला वर्दी का रोब जमाता है।

Q तो कभी तुम्हे ये मतलब जैसे कि तुम्हे ऐसा लगा जैसे लडकियो को पटा के ले आते है चौकि में, ऐसे कभी लडको को भी,छोटे लडको को भी करते थे कभी कभी।

Child-3 लडको को तो ज्यादा ये लोग नही करते है। बाहर के कंगले लोग हो गया जैसे ये रहते है नशा करते है इंजेक्शन जैसे तो साथ में जैसे इंजेक्शन लेते है जब करते है।

Q मतलब पुलिस वाले इंजेक्शन लेते है?

Child-4 नहीं पुलिस वाले नहीं।

C other homeless people

D Other homeless people might be doing.

Q अच्छा कभी ये ऐसे भी होता था कि छोटी लडकी जैसे दिख गई,

Child-4 हाँ।

Q पुलिस वाला चौकी ले गया या वो उसको थाने ले गया?

Child-4 हाँ ये भी होता है

Q कभी कभी थाने भी ले जाते होंगे।

Child-4 हाँ

Q कभी कभी थाने ले जाते होंगे और वहाँ पर उसके साथ जो भी मतलब गलत काम है करक फिर उसको कभी कभी ऐसा भी हुआ कि वो लडकी बाहर नहीं आई उसको कहीं पे जैसे कि समझ लो कोई वैश्या के घर में या जो कि क्या कहते है वो...What do you call.

D जी.बी.रोड, जी.बी.रोड

Q हाँ, वहाँ पे भिजवा देते है।

Child-4 हाँ, ऐसे भी करते है पुलिस वाले।

Q है?

Child-4 हाँ, हाँ करते है।

Child-3 जी.बी.रोड है ना वहाँ से पैसे खाते है वो लोग, जो अन्दर जाते है ना उनसे पैसे भी ले लेते है वो लोग।

Q जो मतलब जो अन्दर जाता है।

Child-3 हाँ, गलत काम करने के लिए तो उनसे पैसे ले लेते है वो लोग

Q पैसे, पुलिस वाला लेता है?

Child-3 हाँ

Q अच्छा, और कभी, नहीं, जैसे कि समझ लो जामा मस्जिद में छोटी लडकी है उसको सडक से उठा लिया पहले उसको उसको लालच दिखा दी। ले गया वहाँ पुलिस स्टेशन। उसके साथ गलत काम कर लिया। बाद में वो सीधा जी.बी.रोड भेज देता है।

Child-3 हाँ बहुत जन कर देते है बिचवा देते है

Q बिचवा देते है?

Child-4 मेरी आँखो के सामने.....

Child-3 हाँ, बिचवा देते है.....

Child-4 ये बिचवा देते है और पुलिस वाले ही जो है वो बच्चो को बिचवा देते है।

Child-3 नहीं तों अपना जैसे जो बन्दा है। पुलिस वालो का जो मुखबिर होता है वो दूसरे दलाल के हाथ मे दिया। दलाल पैसा उसको दिया मुखबिर को। मुखबिर ने पुलिस वाले को दिया। दलाल तो कभी भी जाके बेच देगा जैसे हो गया जयपुर, मेरठ।

Q अच्छा बेटा आराम से बताओं। बेटे धीरे धीरे बताओं।

D हाँ।

Q कि पहले जो है पुलिस वाला लडकी को उठा लेता है।

Child-3 हाँ।

Q मतलब ये जो लडकी है जो वहाँ पे वो जो बच्ची है वहाँ पे।

Child-3 हाँ।

Q मतलब उसका वहाँ पे जामा मस्जिद पे कोई है ही नही। लाचार है वो?

Child-3 हाँ, समझो जैसे उसका कोई नही है, लेडिस, लडकी के

Q हाँ।

Child-3 तो वो बाहर आई, पुलिस वाला किया पहले गलत, करके....

Q वो कहाँ करता है गलत, वो चौकी पे?

Child-3 चौकी पे भी कर सकता है और जहाँ सुनसान सी हो, वहाँ पे भी कर सकता है।

Q हाँ, हाँ और फिर करने के बाद।

Child-3 अपने मुखबिर को जाके देता है वो

Q है?

Child-3 मुखबिर मुखबिर

D मुखबिर मतलब इनफार्मर। जो इनफार्मर होते है इनके पुलिस के ना..

Q हाँ।

Child-3 क्योकि, वो वर्दी में जायेगा तो सबको।

Q हाँ, हाँ।

Child-3 मीडिया वाले, तब सबको पता चल जायेगा।

Q हाँ।

Child-3 तो इसलिए वो अपने मुखबिर को देता है उसका पता भी नहीं चलेगा किसी को।

D मुखबिर इज इनफार्मर, who inform the police कि भई ये हो रहा है वो हो रहा है ऐसे police keeps informers with them.

Q हाँ, तो मुखबिर को बताता है।

Child-3 देता है handover कर देता है।

Child-4 हाँ handover लडकी को।

Child-3 कि अब तू अब दलाल के हाथ मे दे के आ।

Q इस लडकी को तू दलाल के हाथ मे दे के आ।

Child-3 हाँ।

Q और दलाल कहाँ रहता है?

Child-3 दलाल, रहता ही है उनके साथ रहता है वो तो पुलिस वालो के हफता तक में साथ रहता है।

Q वो दलाल,

Child-3 हाँ,

Q वो दलाल फिर उस लडकी को उठा के, दृ

Child-3 हाँ, दूर दूर बेच देता है।

Child-4 अभी की अभी की बात है। हमारे सेन्टर में अंटी काम करती है।

Q तुम्हारी कौन सी सेंटर है

Child-4

C Where they work now, they works with the children there.

Q ओ अच्छा।

E This shelter sir that we are running voluntary without govt. support or all.

Q हाँ वहाँ पे क्या हुआ बताओं?

Child-4 उनकी लडकी है, तो उसने क्या कि वो एक आदमी उसको मिला। हूँ। आदमी मिला, उसने क्या किया उसको बेच दिया। कहाँ पे बेचा— हरियाणा में।

Q कौन मतलब जैसे कि ये जो आप बता रहे है।

Child-4 हाँ, नहीं।

Q नहीं नहीं, जैसे की।

Child-4 पुलिस ने नहीं।

Q हाँ

Child-3 और कोई भी करते है ना,

Q हाँ

Child-4 किसी ने, मतलब एक आदमी था जानने वाला।

Q हैं?

Child-3 लेडिस भी करती है ना,

Q है?

Child-4 लेडिस भी करती है जेन्ट्स भी करता है और

Q मतलब ये बेचने बाचने का काम

Child-4 हाँ,

Child-1 जैसे और कोई भी होता है, मैं बताता हूँ, जैसे और कोई होता है बाहर में लेडिस रहती है तो उसको मालूम है कि यहाँ पे मेरे को बेचने से पैसे मिलेगा।

Q हूँ।

Child-1 उसको काम के बहाने से ले गया कि ये काम करना है झाड़ू पोचा, 350 मिलेगा, 500 मिलेगा महिना तो उसको क्या पता। वो तो गई काम करने के लिए सोचा पैसा मिलेगा। वहाँ पे छोड़ के आ रहे है बेचके।

Child-4 वो ही, वो ही उसके साथ में वो ही हुआ। वो गई। है। उसके साथ में गई, उसने शादी कर ली, उसके साथ में शादी कर ली। उसने कहा कि यहाँ पे काम है काम कर ली, किसी घर में। उसने पैसे ले लिए। मतलब 50, वो बता रही थी 80,000 रुपये उसने आदमी से ले लिए थे।

Q किसने?

Child-1 वो आदमी ने।

Child-4 उस दूसरे आदमी से, उससे उससे ले लिए थे। अब वो क्या करता था कि रूम में बंद करके रखता था वो।

Q हाँ

Child-4 हमेशा रूम में बंद करके रखता था।

Child-1 बाहर नहीं निकलने देता था, क्योंकि बाहर निकल जायेगी तो भाग जायेगी, तो पुलिस वाले सब को फँस जायेगा।

Child-1 कोई ना कोई तो पुलिस वाला ईमानदार होता है

Child-4 जैसे गये वो क्या हुआ कि बालकोनी थी। बालकानी में बंद करके रखा था। पता नहीं कैसे खोल लिया उसने। वो जो लडकी थी वो पाईप के सहारे नीचे उतरी और भाग के आ गई। आके बताती है वो— उसको जो है हो गया था। तीन महिने। तीन महिने बाद आई थी ये लडकी अपनी माँ के पास। वो बहुत मतलब आँख में गढ़ढे पड़ गये थे। मोटी लडकी थी बिल्कुल पतली हो गई थी।

Q लेकिन आप वो जैसे बता रहे है पुलिस वाले भी ये बेचन बाचन करते थे?

Child-1 हाँ बहुत जन करते है।

Child-4 तो उससे पूछा गया कि कैसे कैसे क्या हुआ? तो उसने बताया कि एक आदमी मिला। मैंने उससे शादी कर ली और उसने मुझे वहाँ पे बेच दिया।

Child-3 उसको जला दिया। मतलब पैर वैर जला दिया

Child-4 पैर वैर जला दिया उसका।

Q मतलब इसमें मैं ये पूछना चाहता हूँ कि जो ये दलाल है वहाँ पे जो ये समझ लो जो लडकियों का अपहरण करते है। छोटे छोटे बच्चो का अपहरण करते है।

Child-4 लडका तक को बेचते है।

D लडका को भी बेचते है?

Q लडका को भी बेचते है?

Child-4 हाँ, यहाँ साहरनपुर के आगे चले जाओ। एक साहरनपुर का बाजार लगता है एक जगह पे।

Q हाँ

Child-4 वहाँ पर लडका लडकी सब बिक जाएगा। सर समझो मैं खड़ा हूँ वहाँ पे बाजार में खड़ा हूँ। कोई देखेगा पीछे से ये है लडका देख लो आके। देख लिया। हैं। दाम लगा देगा। जैसे दाम लगा देगा।

Q हूँ।

Child-4 कि ये है ना, 30 लाख का है।

Q हूँ।

Child-4 ठीक है। गाडी। पैसा दिया सामने से गाडी लेगा। फटे से नी अन्दर भरेगा ओर मुँह बन्द करके रख देगा उसको।

Q तो ये तो साहरनपुर कि बात हुई ना।

Child-4 हाँ

Q लेकिन वहाँ पर भी पुलिस वाला देखता है।

Child-4 वहाँ पे बाजार ही लगता है। वहाँ क्या।

Q वहाँ, पे बाजार लगता है?

Child-4 हाँ, बहुत बड़ा बाजार।

Q तो मतलब वहाँ पे बाजार में बच्चो को बेच रहे है?

Child-4 बच्चा हो, लेडिस हो कोई भी हो।

Q वहाँ पर साहरनपुर में।

Child-4 हाँ वहाँ पे।

Q तो वहाँ पे पुलिस देखती नही है देखती नही है ये सब।

Child-4 बाजार मे जा भी नही सकता। पैसे मिलते है ना।

Q कौन?

Child-4 पुलिस वाले को पैसे मिलते हैं तो क्या जायेगा।

Q मतलब देखो, मतलब दो चीजे हैं। एक तो है कि दलाल बेचता है?

Child-4 हाँ

Q और वो हफता या कुछ पैसा देता है पुलिस वाले को?

Child-4 हाँ

Q दूसरा है कि पुलिस वाला जो है वो खुद बेचता है मतलब दलाल के जरिये। मतलब वो पकडता है।

Child-4 हाँ

Q मतलब दो तरिके हुऐ।

Child-4 हाँ

Q एक है कि भई किसी ने खरिद लिया है या बेचा और उसने पैसे उसको दिये पुलिस वाले को।

Child-4 एक चीज और होता है।

Q सुनो, एक तो उसने पुलिस वाले को दिये।

Child-4 हाँ

Q दूसरा है कि पुलिस वाला बच्चे को पकड लेता है और फिर वो जाके दलाल के हाथो में पहुँचाता है। दोनो चीज होती है?

Child-4 हाँ,

Q दोनो चीज होती है?

Child-4 हाँ सर।

Q तो मतलब पुलिस वाले भी ये उठाकर बेचते है?

Child-4 हा

D पुलिस वाले मतलब काम के नही है मतलब जो है हमारे जो है।

Child-4 नहीं नहीं।

D है?

Child-4 कोई काम के नही है।

D है?

Child-4 आधे से ज्यादा जो है।

Child-3 मिले होते है बहुत सारे।

Child-4 ईमानदार भी होते है ज्यादा हफता खाने वाले होते है।

Q मतलब जो ईमानदार है वो भी हफता खाने वाले बन जाते है।

Child-4 हाँ उसके साथ रहते रहते वो भी बन जाता है।

Q वो भी बन जाता है, लेकिन इसमें से जो आधा है वो तो वो तो बेटा बेचने बाचने में लग जाता है।

Chlid-4 हाँ।

Q आधा तो बेचने बाचने में करता है।

Chlid-1 मैं बताता हूँ जब मैं छोटा था जब मैं अपने दोस्ते के साथ रहता था।के पास ये...

D में...

Chlid-4 Area, place of worship.

C Area, place of worship.

Chlid-1 Area, place of worship.

C नहीं वो तो area में है। He could have in----

Chlid-4 (area), में जो एक मन्दिर पडता है मन्दिर के सामने एक बहुत सारी जगह खाली है। मतलब खण्डर ही खण्डर है।

Q हाँ, हाँ

Chlid-4 तो मेरे को उसने बताया, मुझे पता नहीं था क्या हो रहा है। उसने बताया कि बस तू देख कुछ मत बोलियों।

Q अच्छा ठीक है।

Chlid-4 तो एक गाडी आई। एक लडकी बैग लेके जा रही थी तो पुलिस वाले ने पकड ली।

D लडकी को

Chlid-4 हाँ लडकी को पूछा ताछा क्या क्या पता नहीं। उसको बिठा लिया।

D किसने?

Chlid-4 पुलिस वालो ने।

D अपनी गाडी में?

Chlid-4 हाँ, और जहाँ पे जंगल था, जंगल के अन्दर गाडी घुसेड दी।

Q है?

Chlid-4 सभी देखने लगे क्या कर रहे है, हम उसके पीछे पीछे गऐ देखा तो लडकी चिल्ला रही है और एक ने मुँह दबा रखा है और।

Q नहीं नहीं पुरी बात बताओं।

D पुरी बेटा, पुरी बात बताओ।

Q पुरी बात बताओं। इसमें कोई ऐसे मतलब नहीं है।

D हाँ, हाँ

Q देखों इसमें शर्म मत करो। इसमें शर्म मत करो।

Chlid-4 तीन लोग थे।

- Q सुन लो बेटे। इसमें शर्म मत रखो। पुरी बात बताओ। कोई दिक्कत नहीं है।
- D हाँ, हाँ।
- Q पुरी बात बताओ।
- Child-4 तीन पुलिस वाले थे। एक ड्राइवर था और दो और थे।
- Q हाँ।
- D पुलिस की गाड़ी थी पी.सी.आर वैन होती है।
- Child-4 हाँ,
- D पी.सी.आर वैन सर।
- Q पी.सी.आर और ये पी.सी.आर वैन जो है वो लेके गए लडकी को
- D जंगल में।
- Child-4 जंगल में ले के गए और हम भी उसके पीछे पीछे गये।
- Q हाँ।
- Child-4 देखने के लिए।
- Child-2 देखने के लिए।
- Child-4 जो ड्राइवर था।
- Child-2 जो पी.सी.आर का ड्राइवर था।
- Child-4 तो उसने मुँह दबा रखा था और जो दो थे वो उसका रेप कर रहे थे।
- Q है?
- Child-4 वो उसे रेप कर रहे थे।
- Q वो रेप कर रहे थे?
- Child-4 रेप कर रहे थे।
- Q हाँ। और फिर
- Child-4 मतलब फिर जो लडका था। वो मुझे भी देखे जो मैंने उसको देखा तो मैं भी बहुत डर गया कि पुलिस वाले है अगर कुछ भी
- Child-3 पकड लिया तो।
- Child-4 अगर शोर भी मचा दिया तो हमको तो मार...
- Q बिल्कुल मार देंगे तुम्हे जान से।
- Child-4 हाँ, मार डालेंगे क्योंकि पुलिस वाले है।
- Q हाँ।
- Child-4 तो उसने मेरे को बोला कि जो भी देख रहा है बस तू अपने सीने में रखियों किसी को बताईयों मत। नहीं तो अगर। अभी पता चल गया ना इनको। कि हमने। तो यही पे गोली मार देंगे।
- Q और फिर उसने उसके साथ बलात्कार किया।

Child-4 बलात्कार किया।

Q और फिर।

Child-2 देखते रहे मतलब वो 9.00 बजे की बात थी। रात को। 9.00 बजे से उनके हो गये 11.00 – 11.30 बजे।

Q मतलब 9.00 से 11.30 बजे तक इन्होंने जो है ये लडकी के साथ काम किया। फिर ड्राइवर ने भी किया होगा।

D तीनो ने किया होगा।

Child-4 तीनो ने किया। उसके बाद उसने वो पता नहीं लडकी को क्या दिया। पता नहीं क्या किया। लडकी को वो नीचे फेंक दिया। उससे गाडी से। गाडी से नीचे फेंका

Child-4 फिर उसके बाद वो गाडी उसने मुडाई और

Child-3 भाग गया।

Child-4 पीछे चला गया।

Q मतलब गाडी लडकी के उपर नहीं चढ़ाई।

Child-4 नहीं।

Q लेकिन वो लडकी एक तरह से बेहोश हो गई।

Child-4 पता नहीं क्या दे दिया उसको।

Child-3 एक चीज डाल दिया। हल्का हल्का डाल दिया।

Q मतलब उसके मुँह में कुछ डाल दिया होगा।

Child-3 मुँह के अन्दर नहीं जैसे कोई चीज होता है पानी हो गया। पानी के अन्दर एक गोली आता है कटेस्टरेम नशे की गोली आती है।

Q क्या है कटेस्टरेम?

Child-3 हाँ, वो दे दिया तो पूरा बेहोश हो जायेगा।

Child-4 अगर एक गोली खाली।

Child-3 हाँ, उसको एक 10 नम्बर भी होती है उसका एक डुप्लीकेट के जैसा भी होता है वो भी ज्यादा पावर करता है।

Q और तुरन्त वो बेहोश हो जाते है।

Child-3 इंजेक्शन में डालते है वो

Child-4 अब वो लडकी बेहोश हो गई। पता नही क्या हुआ। उसने बोला अब यहाँ रुकना नही है।

Q है?

Child-4 अब यहाँ रुकना नही है। तू भी चल, निकल लेते है यहाँ से

Q हाँ।

Child-3 अब वो वहाँ दिन भर पडी रहेगी रात में

Child-4 हम छोटे छोटे रहे मतलब।

Q अब तुम ये बताओ कि ये जो तुमने हादसा देखा। ऐसा आपने और भी देखे कहीं?

Child-4 नहीं। एक देखा थ।

Q लेकिन वो जो तुम्हारे दोस्त ने कहा कि अब तू देखियों जब उसने कहा तुमसे तो उसने पहले कभी ये चीज देखी होगी।

Child-4 देखी होगी जरूर देखी होगी।

Child-3 हाँ। देखी होगी बचपन में।

Q उसने भी देखी होगी कि जंगल में ये जा रहे है पुलिस वैन में

D कितनी बार देखा और?

Q काफी बार देख होगा, तभी तो तुम को लेके गया।

Child-3 तभी तो।

Q मतलब जो तुम कह रहे हो कि पुलिस वाले समझ लो मतलब मोटा मोटी मैं अपनी भाषा मे पुछू की समझ लो कोई लडकी इनको कहीं मिल जाए तो।

Child-4 मौका देख के मौका का फायदा उठा लेंगे।

Q मतलब मोटा मोटी बात है कि लडकी कहीं इनको दिख जायें तो उसको—उसको हडपने में इनको देरी नही लेगीगी।

Child-4 देर नही लगेगी।

Q ये सही बात है कि गलत बात है।

Child-4 सही बात है।

Child-2 पुलिस वाले का तो गलत बात है।

Child-4 वो ही पता है पूछताछ करेंगे। कहाँ से आई है? क्या है? इतनी रात को कहाँ गई थी? ये है, वो है। फँसायेंगे मतलब बातो बातो में फँसा लेंगे वो लोग। उसके बाद कहेंगे दिखा अपना प्रूफ दिखा ये दिखा वो दिखा।

Child-2 हाँ

Child-4 गाडी में बुलाया गाडी चालू की।

Q मतलब उसको धकेलते है या क्या?

Child-2 नहीं उसको ऐसे तरिके से ले जाते है।

D हाँ।

Child-2 नहीं जैसे समझो हम तीन पुलिस वाले है दिख गया रात के समय। तो पूछेगा कि प्रेफ कहाँ है । कहाँ से आई है क्या करने गई थी। इतना देर कैसे हुआ। प्रुफ ब्रुफ दिखा नहीं तो थाने चल। दिखा। ऐसे करते करते गाडी में बंद करेगा और उसको जंगल के साईड में ले जायेगा।

Q तो मतलब ऐसी चीज जो तुम कह रहे हो पुलिस वालो की मतलब ये, मतलब ये

Child-2 हाँ।

Q कोई खास बात नहीं है दिल्ली में।

Child-2 नहीं आम है, आम है ये

Q आम है करते है

Child-2 हाँ

Q ये मतलब बड़े शोक से।

Child-2 हाँ।

Q मतलब तो ये जो रात को जो पुलिस वैन सब ये पी.सी.आर घुमती है । जैसे कि भई सबकी सुरक्षा कर रही है

Child-2 हाँ

Q कहीं इनको लडकी दिखजायें.....

Child-2 तो ये भी मार लेते है।

Q हैं?

Child-2 मौका का फायदा मार लेते हैं।

Q मौका का फायदा मारते है।

Child-2 हाँ

Q तो कभी कभी ये पुलिस वाले ऐसे भी करते है कि जैसे पीसीआर जैसे कि समझ लो कि लोगो की बस्ती है। निजामुददीन जैसा ईलाका है। बस्ती है। लोगो की बस्ती है। कई ऐसे है जैसे बंगलादेशी औरते वगैराह। ये समझ लो की कहीं जो फलाई ओवर के नीचे जो मजदूर है

Child-2 हाँ हाँ

Q वहाँ पे जो औरते आती हैं लेटी रहती है। तुम समझ गये

Child-2 हाँ, हाँ।

Q कि मतलब ये जो है ना कंस्ट्रक्शन वर्क का काम करती है। ये जो ...टेले हो गया।

Child-2 हाँ, हाँ, वज़न उठाने का काम करते है, जैसे सीमेन्ट उठाना ये सब....

Q वो करते है।

Child-2 हाँ, हाँ।

Q जैसे सीमेन्ट उठाना ओर जो है वहाँ पे भी जाके ये पुलिस वाले जाके उनको पकड़ लेते है।

Child-2 पकड़ तो नहीं सकते ऐसे पर जब देखा कोई नहीं है। एक ही जन है तब वो फायदा उठाते है।

Q मतलब थोड़ा सा वो देखते है।

Child-2 देख लेते है।

Q समझ लो कि समझ लो जैसे वो आदमी जो है वो सो रहा है बात समझ गये ना।

Child-2 हाँ, हाँ।

Q आदमी सो रहा है लेकिन वो उन्होंने प्लान बना लिया कि भई ये औरत यहाँ पे लेटी है उसको थोडा सा उठा के उसको नशा देगे फटक से जीप में बिठा लेते है। ये भी होता है?

Child-2 हाँ, बिल्कुल

Q हूँ।

Child-2 हा सर।

Child-3 Yes Sir होता है।

Child-3 हमने बहुत देखा है इधर।

Q कहाँ देखा है बेटा तुमने।

Child-3 बवाने बवाने की साईड ना जो रास्ते मे जो मांगने वाले लोग होते है ना।

Q कौन से माँगने वाले?

Child-2 जो....

Child-3 वो बवाने की साईड सो जाते है इधर उधर सडको पे तो जगह है वहाँ पे तो कारई घूमता नही सब मांगने वाले सोते रहते है।

Q हाँ, हाँ।

Child-3 जितने जो आम पब्लिक लोग होते है नशे वशे मे होते है तो जो औरते और बच्चे वच्चे होते है नशे करके उनके साथ गलत हरकत कर देते है। हम एक बार जब अपने पापा के साथ जा रहे थे ना। चार बजे सुबह जाते है। तो हमने देखा था एक बच्चे को, एक बच्चा चिल्ला रहा था वो आदमी बच्चे का मुँह दाबा हुआ था शौचालय में।

Q शौचालय में?

Child-3 हाँ,

Q पुलिस वाला।

Child-3 पुलिस वाला नहीं था कोई आम आदमी था।

Q आम आदमी था। लेकिन पुलिस वाले भी ये करते है

Child-3 वो उधर से पुलिस की भी गाडी

Q पुलिस वाले भी ऐसे करते है।

Child-4 हाँ, हाँ बिल्कुल।

Child-3 पुलिस की भी गाडी जा रही थी सर तो उन्होंने आवाज सुना। 2-3 मिनट गाडी रोका फिर भी कुछ नही बोला चले गये वो सीधा।

C बताओं।

D That should be issue.

Q मतलब जब पुलिस वाले ने देखा कि ये गलत हो रहा है तब भी वो आगे देख के भाग के गया।

Child-3 वो देखा जैसे गाड़ी खड़ी है।

Child-3 तो रात का टाईम था हमें तो डर लग रहा था। पापा थे मैंने बोला पापा यहाँ पर रुको मत चलो।

Q तो मुझे बताओं कि जैसे ये मतलब ये जो बच्चे को बेचना, लड़की को बेचना, लड़के को बेचना। इन सब में पुलिस का हाथ है।

Child-2 हाँ, हाँ।

Q इन कामों में।

D Drug supply में सर।

Q है?

D Drug supply में इनका खास हाथ है।

Q मतलब ये नशा भी.....

D नशा भी बेचते हैं ये....

Child-2 अभी पता है अभी अभी

Q हैं?

Child-2 अभी, जो अभी आज ही की बात है कि अभी अभी जामा मस्जिद के आगे। जो स्मैक की जो पुडिया होती है।

Q हाँ, हाँ।

Child-2 उसका भी हफ्ता लेते हैं और जो गॉजा होता है। गॉजा पे भी वो हफ्ता लेते हैं। जो भी ये बेचता है। जितने भी लोग हैं। जो ये सुलोसन बेचता है नशा बेचता है और ये... . इन सबसे हफ्ता लेते हैं ये लोग।

Child-4 और जैसे कोई बड़ा सर आ गया ना सर।

Q हैं?

Child-4 जैसे कोई बड़े कोई सर आ गये ना तो बोलेगा यहाँ से जल्दी हटा लो। 5-6 मिनट के लिए हटा ले। आ रहे हैं बड़े सर। फिर घपला करके कोई जमीन के नीचे खोद दिया। मिट्टी में

Q मैं समझ गया। तो ये जो लड़की बेचना या लड़का बेचना या ये जो बेचने की जो प्रक्रिया है। इसमें पुलिस का या हफ्ता लेने का है या नहीं तो ये खुद बेच देते हैं।

Child-2 मुखबिर से ज्यादा करके करवाते हैं।

Q हाँ मतलब मुखबिर से। हाँ लेकिन ये जो है पकड़ लेते हैं।

Child-2 हाँ, हाँ।

Q जो लाचार है वो पकड़के इसकी बजाये कि उसकी मदद करें उसको बेच देते हैं।

Child-2 हाँ, हाँ।

Q उसको बुला लेते हैं कि ले लो जा।

Child-2 हाँ, हाँ।

Q क्या मोटा मोटी बात सही है या गलत है?

Child-2 सही है सर।

Child-4 सही है सर।

Q तो समझ लो कि ये मतलब बेटे मतलब ये बेटे ये के कितने मतलब। समझ लो के ये कितनी परसेन्ट या कितना प्रतिशत ऐसे होता होगा।

Child-2 बहुत होता है।

Q बड़ा खुलम खुला होता है।

Child-3 सर खुलम खुला होता है। ऐसे मीना बाजार में भी ऐसे लडकी वडकी घुमती है ना।

Q हाँ, हाँ।

Child-3 उनको बोलते है आओ चले। इतने रूपये दूँगा। एक रात के लिए चलो।

Q हा फिर

Child-3 कोई जामा मस्जिद का भी बहुत स्टाफ होगा ना। वहाँ लडकी लोग को बोलता है इतने रूपये दूँगा। चलो मेरे घर पे।

Q हाँ, हाँ।

Child-3 उनसे भी मैने बहुत लोगो से सुना है।

D स्टाफ कौन बेटा पुलिस स्टाफ?

Child-3 नहीं।

Child-2 ड्यूटी करने वाले। जैसे सेन्टर में कोई ड्यूटी करते है ना वो भी आज कल हो रहा है।

Q सेन्टर में मतलब।

Child-2 एन.जी.ओ में।

Q हाँ वो भी करते है?

Child-2 हाँ, पार्क के एन.जी. ओ में जैसे हो गया। तो वहाँ पे ड्यूटी करने वाले भी

Child-3 सर वो जो पार्क में अभी होस बना है ना ब्लू कलर का।

D हाँ,

Child-3 उन लोग में ज्यादा होता है। ऐसे ही लडकीयों से वो मस्ती लेते रहते है। गलत हरकत भी करते रहते है।

Q Which Park?

D Sir, this is Urdu Park. Urdu Park में There is a shelter for homeless

Q Urdu Park हाँ, हाँ।

Child-2में रहता हूँ सर मैं अभी।

Q हाँ, हाँ। वहाँ पे?

Child-2 वहाँ पे हमारे जो हमारा है। वहाँ पे नहीं होता है सर ये अभी। मैं कभी कभी में आता हूँ।

Q हाँ,

Child-2 पहले मतलब में ही रहता था मै।

Q तो मतलब ऐसे भई ऐसे काफी चीजे होती है।

Child-2 हाँ।

Q अब जैसे की रैन बसेरा है वहाँ पे भी होता है?

Child-2 हाँ।

Q ये जो रैन बसेरा है।

D सर जो बता रहे है वहाँ की बात बताओं जो स्टाफ है। तो रैन बसेरा का स्टाफ तुम बता रहे हो उपर जो दो है बने हुए। वहाँ पे करते है गलत काम?

Child-3 नहीं कहीं और ले जाके करते है।

D लेकिन उसके लोग करते है वहाँ पे।

Q कुछ लोग वहाँ पे आके करते भी है।

Child-3 हाँ। कुछ लोग करते है जैसे रजाई के अन्दर करते है।

Q हाँ, समझ गया।

Child-2 और जैसे सर एक और बात होती है। जैसे सुलेसन पीती है लडकी स्मैक पीती है। तो उन लोग को भी ज्यादा करके शिकार बनाते है। पहले से शिकार बनना रह जाता है फिर और बना देते है शिकार।

Q तो मतलब तुमने कभी ऐसे भी देखा है कि जहाँ पे मतलब अच्छे घर की लडकी है। कोई जैसे आपने बताया कि वो जो लडकी जो ब्रिज के नीचे जा रही थी उस दिन वो जो।

D पुलिस ने पकड लिया।

Q वो मतलब तुम्हे ऐसे कोई वो गलत टाईप की लडकी तो तुम्हे दिखी नहीं।

Q मतलब हैण्ड बैग के साथ जो जा रही थी।

Q हाँ।

Child-2 मतलब बैग लटका रखा था जिन्स पहन रखी थी और ब्लू कलर की टीशर्ट पहन रखी थी।

Q हाँ। वो मतलब वो मतलब ऐसे नहीं लग रही थी कोई गलत हों।

Child-2 नहीं नहीं नहीं।

Q वो बस चल रही थी।

Child-2 हाँ

Q और इन्होने वो जो है गाडी में उठा ली।

Child-2 रोजी और ले के पूछताछ की और उसके बाद चलो अन्दर चलो और ले के गए अंदर।

D थाने के बहाने।

Q थाने के बहाने करके और ले के वो जंगल में ले के और फिर ये किया।

Child-2 हाँ।

Q तो मतलब ऐसे है कि तुम और तुम्हारे साथी जब हो जो है आपस में तो बातचीत होती ही है कि ये पुलिस वाले करते क्या है तो आप लोगो को ये ऐसे मतलब लगता है?

Child-2 हाँ

Q मतलब पुलिस वाले ये ऐसे शैतानी में चूकते नहीं है।

Child-2 नहीं नहीं

Q है?, यह जहाँ तक ये लडकी वाला मामला है?

Child-2 हाँ।

Q मतलब दो चीजे है एक तो है कि वो जो है जंगल में लेके गए और रेप किया।

Child-2 हाँ।

Q या जो किया, दूसरा है कि तुमने छोटी लडकी को उठाया, किसी के हाथ दिया, के भई बेचो या जी.बी. रोड में भेज दो।

Child-2 ये करते है।

Q मतलब ये सब भी करते है। जी.बी.रोड के जो सप्लायर है। आप समझ रहे है जो सप्लायर करते है वहाँ वे जो बच्चे वच्चे?

Child-2 हाँ।

Q तो उसमें जो है ये मेन इनकी पुलिस वाले है? ये है?

Child-2 हाँ।

Q ये ही है जो सप्लायर करते है?

Child-2 हाँ।

Child-3 Yes Sir.

Q है जो उठा के

Child-2 हाँ।

Q तो मतलब इतना तो देखो? तुमके हो?

Child-2 हाँ।

Q तुम काय जिले के हो?

Child-2 मैं,जिला का।

Q तुमके हो?

Child-3से हम है।

Q और तुम? तुम भीके हो?

Child-3 हाँ।

Q और तुम बेटा?

Child-4जिला,

Q तुमके हो?

Child-4 हाँ।

Q और आप

Child-1

Q अच्छा तुम के हो?

D

Q अच्छा अब आप मुझे ये बतियाओ कि ये जो पुलिस वाले है यहाँ के, समझ लो बच्चे बाहर से आके उनको शिकार बना रहे है तो उनको ये भी तो कोई ना कोई तो इत्तलाह होगी। मतलब बाहर के पुलिस वाले से या उनका जो कोन्टेक्ट मैन होगा बाहर के पुलिस वाले का के भई यहाँ पे ये बच्चा घुम रहा है झपटों?

Child-2 हाँ।

Q मतलब ऐसे थोडी है कि वो वाकिंग कर रहा है पुलिस वाला और एक बच्चे को झपट के वो उठा के ले के जायेगा?

Child-2 ऐसे तो नही है। उसको मतलब ब्लैकमेल करे

Q ऐसे नही है, उसको मतलब

Child-2 प्लेनिंग करके

Q है?

Child-2 प्लेनिंग के साथ....

Q प्लेनिंग के साथ करता है और उसको पहले ही मालूम होता है कि ये दूसरा पुलिस वाला जो है वहाँ का दूसरा स्टेट का या जो भी है, वो कहता है ये बच्चा यहाँ पे..., उसको पता नही या उसको मालूम होगा कि वो यहाँ घूम रहा है या शायद जो उसका जो जहाँ पे छोडा है। जैसे समझ लो जामा मस्जिद के पार्क में छोडा है।

Child-2 हाँ

Q तो फिर जो छोडता है वो इनफार्म करता है?

Child-2 हाँ

Q पुलिस वाले को, ये बच्चा यहाँ पे घुम रहा है, या ये लड़की यहाँ पे घूम रही है।

C Sir generally the beat policeman.---

Q नहीं इन्हे, इन्हें वन सेकेण्ड, ये ऐसे होता है।

Child-2 हाँ, ऐसे भी होता है सर, ज्यादा करके देखो।

Q ज्यादातर कैसे होता है?

Child-2 हाँ, जैसे गाडी में घुम रहे है वैन लेके।

Q हाँ

D पुलिस वाले?

Child-2 हाँ, तो कोई घुमता हुआ नजर आ गया लडका जैसे जा रहा है ये क्या काम करता है क्या है,

Child-3 उसका पीछा करने लग जाते है।

Child-2 पीछा करके फिर, अपने पास पहले बुलाएगा। तो वो तो डर के मारे तो आएगा ही आएगा।

आएगा ना लडका कि पुलिस वाला है नहीं तो बिगैर फालतू में बन्द करेगा। फिर बोलेगा क्या है। बोलेगा क्या करता है कहाँ रहता है। तू वो ही तो नही है जो चोरी करके भागा है।

Q और फिर।

Child-2 फिर बोलेगा हाँ हाँ तू वो ही लग रहा है चल बन्द करता हूँ। ऐसे ले जाते है।

Q और फिर उस लडके को क्या करते है?

Child-2 गलत भी करते है बेच बाच भी.....

Q नहीं गलत भी करते है लडको के साथ?

Child-2 हाँ

Q पुलिस वाले?

Child-2 और क्या..

Q है?

Child-2 हाँ

Q और फिर उसको भी, उसको भी बेहोश करके छोड़ देते है।

Child-2 हाँ, अब जैसे। नहीं तो....

Q उसको भी वो बेहोश करके छोड़ देते है?

Child-2 हाँ

Child-3 Yes Sir,

Q हैं?

Child-2 हाँ

Q वो जो जैसे उस लडकी का किया? है?

Child-2 हाँ

Q उसको भी बेहोश करके छोड़ देते है लडके को? है?

Child-2 हाँ, बिल्कुल, सर

Child-4 ऐसे तो करते हैं

Child-3 और सर कित्ते पुलिस वाले तो ये भी करते है जैसे कि

Child-2 नहीं तो पैसे होंगा ना पैसे, पैसे

D बेटा एक मिनट वो कुछ कह रहा है। हाँ।

Child-2 जैसे पैसे होता है ना पैसे।

C जो तुम्हे पता है सही वो ही बताओं। सिर्फ

Child-2 हाँ हाँ।

Q तुमने खुद जो देखा हों?

C जो देखा है वो ही बताओं। खुद जो देखा है सिर्फ ये ही बोलना।

Child-2 हाँ, जैसे पैसे वैसे होते है तो पैसे भी ले लेते है। ऐसे नही तो पैसे के उपर ज्यादा करके।

Q उसको झपट लेते है?

Child-2 जैसे पैसे लिया। तो बोलता है।

Q हाँ

Child-2 भाग जा अब आईयों मत ईधर। तो फिर बच गया वो।।

Q तो वो बेचारा बच गया लेकिन जो है उसके साथ बलात्कार हो गया काम

Child-2 नही पैसा होता है ना तो पैसा होके भी छोड देते है।

Q वो कभी कभी ऐसे भी करते है?

Child-2 हाँ

Child-3 कित्ते बच्चो को ना अस्पताल में भी बेच देते है जो किडनी विडनी ऑत वॉत निकाल लेते है।

Child-2 हाँ

Child-3 मतलब कि जो बडे बडे अस्पताल होते है ना।

Q हाँ, हाँ।

Child-3 अस्पताल में भी बेच देते है पुलिस वाले के वो जो होते है। अस्पताल में बेच देते है तो किडनी विडनी निकाल लेते है डाक्टर लोग।

Q तो मतलब, ये अस्पताल में ये बच्चे मतलब। जैसे कि वो नाटक करता है पुलिस वाला कि भई मैं बच्चे को अस्पताल लेके जा रहा हूँ।

Child-2 हाँ

Q कि भई मैं इसकी देखभाल के लिए इसको लेके जा रहा हूँ।

Child-2 थाने से ले जा रहा हूँ

Q वो थाने से, जैसे वो मेडिकल इगसामिनेशन जो होता है और फिर वहाँ पे उसकी सेटिंग होती है?

Child-2 हाँ

Q डाक्टर के साथ।

Child-2 हाँ

Child-3 उसकी एक किडनी निकलवा देते है किसी की आँख कटवा देते है आँख निकलवा देते है।

Q हाँ

C तुम्हे पता है कि ऐसे ही बोल रहे हो।

Child-2 हाँ, yes

Child-3 सर, हमारे जो दोस्त लोग है ना ये लोग बहुत लोग बोलते है कि ऐसे ऐसे....

C अगर किसी को सचमुच पता है तो देखो.....

Q नहीं बेटा तुम बोलो, तुम बोलो, हम सुनेंगे पूरी तरह से कोई दिक्कत नहीं है।

Child-3 उनकी किडनी विडनी निकल वा देते है बेचवा देते है। बोलते है इत्ते की किडनी बिकेगी। इतने लाख रूपये में। इतने हजार रूपये मुझे दो। इतने आँख के इतने रेट है इतने मे से इतने मुझे दे दो तुम।

Q तो यहाँ दिल्ली में समझ लो किसी आदमी को किडनी की जरूरत हों या कोई आँख की जरूरत हो कोई बात हो। मतलब पुलिस वालो कि मतलब उनकी स्टॉल है। मतलब उनकी शॉप है मतलब उनका दुकान है।

Child-2 हाँ

Child-2 नहीं मतलब, कुछ, कुछ पुलिस वाले कुछ कुछ करते होंगे।

Child-4 ऐसे.....

C नहीं हम सबका नहीं कह रहे है।

Q नहीं हम ऐसे नहीं कह रहे है।

Child-2 डाक्टर भी मिले होते हैं

Q लेकिन बेचने बाचने का है जो लडकियों का या लडको का।

Child-2 ये मेन है।

Q ये मेन है

Child-4 हाँ।

D सर दिल्ली में कोई भी क्राईम पुलिस की नोलेज के बिना नहीं होता है। सर

C बिल्कुल।

Q अच्छा, दूसरी बात ये बताओं जो ये भीख मांगते है जो ये बैगर होम जाते है।

Child-2 हाँ

Q उनके साथ भी बलात्कार होता है।

Child-2 हाँ बिल्कुल हो जाता है सर।

Q ये जो पुलिस वाले कराते है।

Child-2 हाँ

C सर ये जो बिट पुलिस है जो... .. वहाँ जो होता है...एक एक एरिया का

Q नहीं, नहीं नहीं, बैगर वाले, तुम समझ गये ना?

Child-2 हाँ

Q उनको भी वहाँ पे वो उनके साथ करते है

Child-2 हाँ, आधे से ज्यादा जो सुधरे होते है जो गलत नही करना चाहते। जैसे थाने में बंद करना। जैसे दूसरे का लम्बा केस है उसको केस बनवा देना ज्यादा कि जैसे चोरी मैने किया इसके उपर फँसा दिया।

Q हाँ

Child-2 ये होता है भी ऐसे भी।

Q इसमें भी वो पैसे लेते है।

Child-2 हाँ, कि जैसे मैने मर्डर किया और इसके उपर नाम आ गया।

Q वो तो अलग बात हो गई। लेकिन हम जो सोच रहे है दो चीजों में सोच रहे है।

Child-2 हाँ

Q एक तो क्या पुलिस वाले, लडकी समझ लो कहीं पे जाती है वो कोई भी टाईप की हों।

Child-2 हाँ

Q समझ लो कि वो गलत टाईप की हो किस टाईप की भी हो वो। तो मौका वो छोडते नही।

Child-2 हाँ, नहीं छोड़ते।

Q यदि वो मौका थोडा भी दिखे तो वो लाईन मारते है।

Child-2 हाँ, बिल्कुल सर

Q लाईन मारते है वो? है?

Child-2 हाँ

Child-1 कभी कभी जो है ऐसा भी होता है कि जैसे कुछ लडकी दिख गई और साथ में पुलिस वाले है और अगर एक ईमानदार है, एक ईमानदार है और दो बेईमान है जोकि

Q करना चाह रहे है।

Child-1 गन्दी नजर देखते है

Q हाँ

Child-1 तो वो क्या करेंगे कि तू उसको पहले देखेंगे कि ये लडकी जो रोज यही से जाते है। जब इसके साथ हमारी ड्यूटी नही होगी ना। तब इसको दबोच लेंगे।

Child-2 तब मौका का फायदा उठायेंगे।

Q तब मौका उठायेंगे। जब वो ईमानदार पुलिसमैन नही होगा तब मौका का फायदा उठायेंगे।

Child-2 हाँ

- Q लेकिन तो इसका मतलब ये है कि लडकी जो जाती है जो समझ लो कि हमने जो है बस में भी पुलिस वाले को बिठा दिया कि भई कोई बलात्कार ना हो। समझ लो जैसे हम कमेटी है सुझाव दे रहे है कि वो बस है वो डी.टी.सी बस है द्वारका जा रही है, रोहिणी जा रही है पता नही किस जगह जा रही है। है लडकी वहाँ पे समझ लो अकेली एक लडकी पैसंजर है। ड्राईवर है। और वो पुलिसमैन एक बैठा है। तो वो मौका छोडेगा या उसकी सुरक्षा करेगा।
- Q मौका छोडेगा नहीं?
- Child-2 जैसे डी.टी.सी में, अकेला है, डी.टी.सी वाला है बस वाला है तो फिर वो कुछ नहीं कर पाएगा,
- Q लेकिन जब पी.सी.आर वैन है
- Child-2 हाँ
- Q तब तो वो कर सकता है?
- Child-2 हाँ बिल्कुल।
- Q है या नहीं?
- Child-2 हाँ
- Q तो ये जो तुमने। इस तरह से जो रात को जो ये पी.सी.आर वैन जो घुमते है।
- Child-2 हाँ।
- Q ये मतलब दिखने में तो घुमते है कि सुरक्षा के लिए
- Child-2 हाँ सुरक्षा कर रहे है।
- Q लेकिन थोडी बहुत ये अपनी इसके लिए भी लडकी वडकी पटाने के लिए भी उठाते है?
- Child-4 पैसे कमाने के लिए भी।
- Q पैसे कमाने के लिए भी?
- Child-1 सर, मेरे साथ भी ऐसा हुआ है। जब मैं हनुमान मन्दिर पे रहता था छोटा था। फिल्म देखने जा रहा था।
- Q अच्छा यार एक ये पूछना था। किजो ये तुम्हे जो ये स्मैक वमैक दिलाते थे तो मतलब ये पुलिस वाले खुद दिलाते थे? या
- Child-2 नहीं फलूड जो होता है, जो व्हाईटनर। सुलोशन
- Q हाँ, हाँ
- Child-2 सुलोसन, तो वो मार्किट जो है ना शाप जो होती है।
- Q जो बेचता है, लेकिन उससे वो पैसे लेते है?
- Child-4 पैसे लेते है.....
- Q नहीं, मेरी बात समझ लो मैं ये समझना चाह रहा हूँ। कि ये पुलिस वालो कि मतलब। ये पुलिस वाले जैसे कि समझ लो कि पुलिस वाले ने वो माल दुकानदार को दिया कि जो ये 200 डिब्बीया है।

Child-2 नहीं, ऐसे नहीं।

Child-1 नहीं ऐसे नहीं वो क्या करते है कि जैसे हमारे शॉप होती है। कॉपी, पेन्सिल, रबड की जो शॉप होती है।

Q हाँ

Child-1 हाँ

Child-4 मिटाने वाला होता है।

Child-1 उसमें फलूड तो उसके डिब्बे होते हे। अब लेआ हमने, हमने नशा किया, अब उसको कुछ नहीं देना होता है। वो तो कुछ नहीं जानता क्योकि वो तो मेटिरियल बेच रहा है कॉपी पेन्सिल का क्योकि वो स्टेशनरी शॉप है, उसपे हम केस तो कर नही सकते। कि क्या कर रहा है क्या कर रहा है ये। क्योकि वो तो

Child-1 उसमें काम आ रहा है।

Q हाँ समझ गया।

Child-1 तो हमने एक चीज ये भी किया कि क्यो ना हम सुलोसन को ही बन्द करा दे।

Gs एक तो ये है, लेकिन जैसे पुलिस वाला है उसको मालूम ही नही की सुलोसन से.... ये बिक रहा है और फिर ये लोग नशा कर रहे है तो फिर वो उससे हफता लेता है

Child-2 हाँ

Q उससे पैसा लेता है दुकानदार से

C नहीं, नहीं नहीं

Child-2 जैसे.....

C Sir what happens is the scrap dealers

Child-1 कबाड़ी वाले

C क्या होता है कि when people throw it, like you know the Govt. buildings or what when they through it, excess gets thrown with the scrap, so what happens sir the rag pickers picked them up, right,

Q हाँ मैं समझ गया।

C So these guys buy from the rag pickers, they not buy from the shop for 20 RS.

Q हाँ ठीक है मैं समझ गया। लेकिन वो

C Rag pickers says, I mean so if there is a rag picker वहाँ से क्या होता है it gets sorted, then there comes a middleman, from the middle man either they get it directly from the rag picker or there is middle man who gets the solution, so every one knows that this person has access to solution, the policeman takes हफता from the middleman.

Q हा अच्छा वो हफता मतलब मिडल मैन, वो दलाल मतलब वो जो बेचता है।

C No one get the solution, so that is the guy who will be selling smack at the other higher level.

Q तो मतलब जो भी कहते है कि चरस है गॉजा है।

Q तो मतलब तो ऐसा भी होता है समझ लो जैसे तुमने बताया कि पी.सी.आर वैन है

Child-2 हाँ, हूँ

Q तो जैसे कि वो लडकी मिली। झपटा उसपे,। जंगल में ले गया बलात्कार किया तो रात के टाईम जो ये पी.सी.आर वैन जो घूमते है । इन सबका मतलब ये पैसे वैसे इस तरह से लेने का। या फिर जो लडकी वडकी घूमती है उसको उठा लेता है। या नही तो जहाँ जैसे तुमने बताया बेचने के लिए ये उठा के फिर वो जो उसको क्या बताया तुमने....

Child-2 दलाल दलाल,

Q दलाल के हाथ पहुँचाना। वो मतलब सेटिंग होती है।

Child-2 हाँ,

Q सेटिंग तो पूरी होती है, या हफता लेने में या बेचने में, दोनो में?

Child-2 तीन चीज में।

Q तीन चीज मे, कौन से तीन चीज में बेटे।

Child-2 जैसे हो गया एक तो रपटना एक हफता लेना।

Q रपटना मतलब जो रेपिस्ट है।

Child-2 हाँ,

Child-2 या जो दलाल के हाथ में देना तीन चीज

Q रपटना, और

D हफता लेना।

Q हफता लेना नहीं तो बेचना, और तो जो अस्पताल में ये जैसे कि समझ लो

Child-2 किडनी बेचनी।

Q किडनी—विडनी

Child-2 ये चौथे में आता है

Q ये चौथे में आता है।

Child-2 हाँ,

Q कि भई किडनी उसकी निकाल लो। जबकि उस बच्चे को मालूम भी नहीं होगा कि ये किडनी निकल रही है।

Child-2 क्योंकि ये

D बेहोश कर देते है।

Q बेहोश कर देते है सुन कर देते है।

Child-2 क्योंकि जैसे ये वहाँ जाकर, हॉस्पिटल जब पहुँचते हैं। तो एक इंजेक्शन होता है। तो वो यहाँ लगायेगा यहाँ बॉडी पे तो वो पूरा फैल जाता है बदन में। तो अब उसको नीन्द आने लगेगा। सुन्न हो जायेगा। उसको कुछ भी करेगा कुछ पता नहीं लगेगा।

Q हाँ, अच्छा।

Child-2 उसमें से, एक ऑपरेशन ब्लेड आता है। चाकू के जैसा छोटा सा होता है।

Q हाँ,

Child-2 वो पूरा बदन के सीने में घोंपते हैं वो चीर देते हैं।

Q और फिर

Child-2 दिल, कलेजी, फेफड़ा, वेफड़ा देखते हैं कौन सही है, जो सही वाला है उसको बेचते भी हैं।

Q जबकि अच्छा जबकि ये जो लडका है, जिसको ये मेडिकल एग्जाम के लिए। अच्छा फिर उसको। Stitch करके ब होश में आजाता है तो दोबारा लेके जाता है।

Child-2 हाँ,

Q और वो जो बच्चा है उसको मालूम तक नहीं होता है क्या हुआ है उसके साथ।

Child-2 नहीं, कुछ नहीं मालूम चलेगा उसे।

Q उसको ये ही नहीं मालूम होगा कि भई मेरी एक किडनी चली गई?

Child-2 हाँ, और उसके फिर ऐसे होने लगेगा कि फिर नशा वशा करा करेगा, तो बाहर दम भी तोड़ सकता है।

Q अच्छा नशा वशा?

D करेगा तो

Q करेगा तो हर्ट अटैक हो सकता है।

Child-2 तो किसी को शक भी नहीं होगा कि ऐसा हुआ है।

Q अच्छा तो फिर ये नशा कौन देगा?

Child-2 नशा जैसे वो करता था। बस तब भी वो नया नया... नशा

Q मैं समझ रहा हूँ लेकिन जो ये पुलिस वाले लेके जाते हैं वहाँ पर अस्पताल में तो जो ये बच्चे हैं जिनके ये आँख या जो चीज ये निकालते हैं। तो ये वो बच्चे होते हैं जो मतलब क्राईम वाले हैं जिन्होंने कोई गुनाह किये हुए हो उसके लिए उनको Medical Exam को लेके जाते हैं ?

Child-2 नहीं जैसे।

Child-1 नहीं ऐसे तो कभी सुना नहीं है के मेरे को काफी साल हो गये स्ट्रीट पे मैने ऐसा कभी सुना नहीं है। पर एक चीज सुनी है मैने जैसे जिस किसी का भी ऐक्सिडेंट हुआ। जैसे ऐक्सिडेंट हुआ।

Q हाँ हाँ।

Child-2 तो उसका तो निकालते हैं।

Child-1 तो गया लेके। तो उनका जो डाक्टर है वो फिक्स होता है।

Q डाक्टर के साथ फिक्सिंग होती है

Child-1 फिक्सिंग होती है वो कहता है कि अब क्या करे यार इसका तो काम होने वाला है।

Child-2 जो बचने वाला होता है

Child-1 जो निकल रहा है निकाल ले

Q जो निकल रहा है निकाल लेते है।

Child-1 क्योंकि नाम तो फिर जो कुछ अगर निकाल लेते है तो वो तो ...

Q हैं?

Child-2 वो तो एक्सिडेंट में ही आयेगा ना।

Q हैं?

Child-2 जैसे कुछ हो गया तो वो सारा चीज तो एक्सिडेंट में ही आयेगा ना।

Q मतलब एक्सिडेंट में ही निकल गया, हैं?

Child-2 हाँ

Q ओ हो, अच्छा अच्छा अच्छा....

Child-2 तो ये होता है।

Q अच्छा जब एक्सिडेंट होता है तब ऐसे होता है

Child-2 हाँ।

Child-1 ऐसा नहीं है कि कोई उठाया बच्चे को और उठा के होस्पिटल लेके गया और...ऐसा कुछ नहीं होता।

Child-2 वैसे करवा भी देते भी है...

Q अच्छा करवा भी देते है।

Child-2 हाँ, जैसे करवाते....

Q ये जो बलात्कार बात हुई ना पी.सी.आर वैन वाली जैसे लडकी दिखी हैण्ड बैग वाली दिखी, Jeans पहनने वाली थी और उन्होने पूछताछ कुछ की। और फिर उसको धकेला, बिठाया और फिर वहाँ जंगल में लेके गए। ड्राईवर ने मुँह हाथ लगाया और फिर तीनों ने काम किया

Child-2 हाँ

Q फिर उसको बेहोश करके छोड दिया।

Child-2 क्योंकि उसका चेहरा तो नजर सामने नहीं है ना नशे में है

Q और फिर जब नशा उतर जायेगा। वो बेचारी लडकी तब उठके जायेगी वो जहाँ जायेगी।

Child-2 अगर थाने जायेगी तो बेशर्म, इज्जत उसका जायेगी।

Q किसकी?

Child-2 लडकी की इज्जत जायेगी ना।

Q हाँ, मतलब ये चीज पुलिस वालो को मालूम होती है।

Child-2 हाँ

Q कि भई कोई भी लडकी जो है तुम जो चाहे करो उसके साथ। उसकी हिम्मत होगी ही नहीं कि भई वो जाके पुलिस में रिपोर्ट कराये।

Child-2 दोबारा कराये।

Q रपट कराये।

Child-2 हाँ

Q अच्छा कभी ऐसा भी होता है कि समझ लो कि ये धमकी भी देते है पुलिस वाले लडकी को

Child-2 हाँ

Gs कि भई तुमने मुँह खोला। तो सुन लो जब जैसे कि बेहोश नहीं किया लेकिन समझ लो, मुँह कहीं तुमने खोला खत्म कर देंगे तुमको।

Child-2 हाँ हाँ।

Child-1 पंजाब, मैं बताता हूँ। अभी मैंने कुछ दिन पहले की बात है मैंने में एक वो देखी थी, न्यूज देखी थी कि एक पुलिस वाले ने उसके घर जाके लडकी के घर जाके रेप किया तो उसने पूरे परिवार को धमकी दी कि अगर किसी से भी तुमने बताया ना तो पूरे परिवार को खत्म कर डालूंगा। काट डालूंगा। तो उस लडकी ने हिम्मत करके उसके खिलाफ कम्प्लेंट लिखी।

Q रिपोर्ट लिखी।

Child-1 और वो अभी जेल में।

Q वो लडकी जेल में है?

D नहीं वो आदमी जेल में है।

Q जब हिम्मत दिखायें तब तो। लेकिन अब समझ लो जब लडकी को ढूँढते है जैसे कि जिनके ऊपर ये जो बलात्कार करने के लिए वो किस तरह की लडकी के उपर निशाने पे रखते है जैसे कि समझ लो जैसे कि पढी लिखी मतलब यूनिवर्सिटी में जो जैसे लडकिया जाती है या समझ लो जो कोई भी लडकी हुई या जो गरिब लडकी है वो ज्यादा आसान है।

Child-2 जैसे सर गरिब में ज्यादा करके हो जाता है।

Child-1 जैसे सर जो हाई फाई साोसाईटी की लडकियाँ होती है। उसमें क्योंकि उनका उपर तक जान पहचान होगी।

Child-2 हाँ

Child-1 हाई प्रोफाईल की जो लडकिया है वो सवाल जवाब करेगी। है?

Q हाँ

Child-1 आज कल की जो लडकियाँ जो नेम प्लेट पढ़ लेती है और जो मिडिल क्लास की जो लडकी है वो

- Q मिडिल क्लास की जो लडकी है वो डेंजर में है
- Child-2 हाँ, अब जैसे सर ये जो जॉब करते है रात के टाईम इधर जाते है
- Child-1 जो कॉल सेन्टर में काम करती है
- Q हाँ हाँ
- Child-2 कोई कही दूसरी जगह जॉब करते है कहीं दूसरी जगह जॉब करते है। तो उनका भी आगे पीछे वाले होते है कोई मिले भगत भी होते है कि ऑफिस में जो काम कर रहे है उधर से भी हो जाते है।
- Q मतलब मिली भगत होती है।
- Child-2 हाँ
- Q मतलब आफिस में से वो बता देता है पुलिस वाले को?
- Child-2 हाँ कोई दुश्मनी भी बना लेता है ना।
- Q है?
- Child-2 दुश्मनी भी बना लेते है कि बदला लेके छोडूंगा। इसने मेरे थप्पड मारा और वो करा। ये भी होता है।
- Q तो तब जब ये जब उसने थप्पड मारा और ये करा उसका बदला लेने के लिए उसको उसके साथ बलात्कार करते है। पुलिस वाले।
- Child-2 पुलिस वाले नहीं आम...
- Q आम आदमी।
- Child-2 हाँ
- Q नहीं लेकिन ये जो है बलात्कार जो है पुलिस वाले ये खासकर ये जो पीसीआर वैन वाले ही करते है या मोटर साईकिल पे जो चलाते है ये वाले भी करते है?
- Child-2 ये भी करते है
- Q अच्छा, मोटर साईकिल में?
- Child-2 हाँ
- Q अब जैसे लेकिन वो मोटर साईकिल में लडकी को कहाँ बिठाकर लेके जायेंगे।
- Child-2 मोटर साईकिल में जैसे बोलेगा थाने ले जा रहा हूँ। थाने में कहा ले जायेगा सीधा। सोच रहा होगा थाने लेके जा रही है डर वर गया।
- Q नहीं वो मोटर साईकिल में थाने लेके जाते है लडकियों को?
- Child-2 जैसे जंगल।
- Q नहीं वो पुलिस वाला कभी मोटर साईकिल मे देखा है पुलिस वाले को, लडकी को लेके जा रहा है।
- Child-2 हाँ ऐसे बहुत बार देखा, सर मैं इण्डिया गेट की तरफ घुमता रहता था। पहले नशा करता था।

Q हाँ

Child-2 तो मैंने बहुत देखा स्कूटर पे मोटर साईकिल पे बैठाके कभी इधर ले जा रहे कभी उधर। पार्क मे घुस गये पटावटा के।

Q अच्छा पार्क में फिर वो बलात्कार करता है।

Child-2 हाँ काम वाम किया, वहाँ तो इण्डिया गेट पे ज्यादा रोक टोक भी नहीं था। अब है रोक टोक हो रहा है।

Q लेकिन वो लडकी जो जाती है मतलब उसको धमका देता है।

Child-2 हाँ

Q धमका देता है या वो पैसे के लिए करती है?

Child-2 धमका देते भी है। पैसे के लिए भी करती है बहुत जन। ऐसे होता है शायद।

Q लेकिन ये बेचने वाली बात पे आप ये कह रहे है कि इनकी खास हाथ है?

Child-2 हाँ

Q इनके बिना तो कोई चीज चल ही नहीं सकती।

Child-2 नहीं

Q या हफता दे या ये खुद।

Child-2 हाँ

Q अच्छा समझ लो जैसे मैंने लडकी का कहाँ जामा मस्जिद में ऐसा होगा कि कहीं वो जो, जो उसको पुलिस वाले को कहीं से खबर आई होगी कि भैया ये लडकी हमने यहाँ छोड दी है इस पार्क के पास है?

Child-2 हाँ, यहाँ पे आ जाईये।

Q यहाँ पे आ जाईयें, ठीक है ना।

Child-2 तो वो भी पकडाता है। तो लडकी अब जैसे। सर ऐसे भी बहुत होता है, ऐसे भी सर बहुत होता है घर से जैसे लडकी भाग के आती है। कोई अपने घर से भाग के आ गई या कोई परेशानी हुई। वो नया नया आया तो नशे वाले के हाथ में गया तो नशे मे करके बलात्कार वलात्कार कर देते है अगर कोई ऐसे पुलिस वाले के हाथ में पड गई तो वो भी करके छोड दिया। अब डर के मारे वो क्या कर सकती है क्योकि वो घर को छोड के आई है। दूर से। जैसे हो गया कोई कहाँ से आई। कोई समझो की कोई लोनी की है। कोई वहाँ का है। कोई उत्तराखण्ड का है। इधर इधर से भी घर से भाग के आती है। नशे परेशानी बताई। नशे मे पड गई। किसी साथी संगत में पड गई। कोई अच्छे हाथ में पड गई तो शादी शुदा भी हो गया अच्छा बन गई।

Q लेकिन लडकियाँ ऐसे भाग के क्यो आती है अपने घर से?

Child-2 परेशानी होती है

Q परेशानी की वजह से?

Child-1 प्रोब्लम में है बहुत सारी।

Q तो भई इसीलिए कि भई जैसे आपके साथ हुआ के भई कोई ना कोई कहीं कुछ काम मिल जाऐ।

Child-2 जॉब मिल जाऐ।

Q या कहीं मजदूरी मिल जाऐ।

Child-1 कहीं नौकरी मिल जाऐ।

Q तो जो ये लाचारी है औरत की जो ऐसे ये मतलब पुलिस वाला पीसीआर वैन मे उसको झपट के और फिर उसकी नजर.....

Child-2 हाँ, ज्यादा करके, अभी भी चॉदनी चौक है, बंगला साहिब गुरुद्वारा उधर के साईड ज्यादा आता है भाग के लडकी लोग।

Q उधर?

Child-2 हाँ उधर के साईड अभी भी बहुत आती है लडकी लोग भाग के।

Q घर से।

Child-2 हाँ,

Q और वहाँ पे ये उठा लेते है।

Child-2 हाँ और वहाँ पे से मुखबिर भी है एकमुखबिर। अब तो पता नही कहा रह रहा है।

Q हाँ

Child-2 वो ज्यादा करके मुखबरी पुलिस वाले का था। वो ज्यादा करके बताता था।

Q तो इसका मतलब मुँहखोरी।

D मुखबरी मुखबरी। informer

Q Informer मतलब दलाल।

Child-2 हाँ पुलिस वाले का दलाल।

C Dalal is the next stage after मुखबीर।

Q हाँ लेकिन मुखबर जो है पुलिस वाले का होता है।

Child-2 हाँ

Child-1 सर ऐसे मुखबर का मतलब हुआ चेला। पुलिस वाला गुरु हो गया और मुखबर जो है चेला हो गया।

Q चेला।

Child-2 हाँ, तो उसको मुखबीर कहते है। वो पुलिस वाले का मुखबरी कर रहा है कि वहाँ पे ये ये बात है वहाँ पे वो लडकी आई है भाग के। उससे ये मै करवा रहा हूँ वहाँ पे मुझे इतना पैसा मिल रहा है आधा तुम्हरा सर आधा मेरा है ये बात है।

Child-2 हूँ। ये बात है।

Q ये बात है।

Child-3 कुछ दिन की बात है नवम्बर के सण्डे की बात है हम थे। मैं था, इसका भाई था और एक और है हमारा एक दोस्त। हम ना सण्डे को मोबाईल लेने गये थे। मोबाईल बिकते है चोर बाजार लगता है। सण्डे बाजार।

Child-2 सण्डे बाजार में भी बहुत होता है।

Child-3 हम वहाँ पे मोबाईल लेने गये तो मेरे पास कुछ पैसे जैसे कुछ भी नहीं थे । ये दोनो भाई के पास पैसे थे तो इन दोनो ने बैट्री देखी मोबाईल की बैट्री नहीं थी। तो इन्होंने जब बैट्री ली ना तो पुलिस का कोई था वो पुलिस को पैसा खिलाता था। तो उसने सर पकड लिया गाली देने लगा बोला गाली देने लगा इसे बोला तुम चोर हो मैं तुम्हारी इतने दिन से तलाश कर रहा था। वो कर रहा था और इनका मोबाईल छिन लिया पैसा छिन लिया। इसके भाई को धमकी देने लगा मैं वो कर दूँगा चाकू मार दूँगा वो कर दूँगा। तो फिर हम डर गये थे हम चले गये भैया के पास तो हम अपने भैया को बुला के लाये राजू भैया को। कि भैया देखो इन्होंने हमारे पैसे छिन लिए मोबाईल छिन लिये और ये दे नहीं रहे है। तो पुलिस भैया ने पुलिस को फोन किया और पुलिस वाले जब आये तो हमे लेके गए थाने में तो वहाँ पे उस आदमी को ना...

Q थाने भी ले के गये।

Child-3 हाँ

Q कौन थाने में ले के गये बेटा?

Child-3 वो जो पुलिस वाले छोटे मोटे होते है। तो ...

Q वो थाने में लेके गये।

Child-3 हाँ

Q किसको इसको और इसके भाई को?

Child-3 हाँ

Q और तुम भी साथ गये?

Child-3 हाँ, और हम भी साथ गये और इसे भी लेके गये। तो हम सब जो ने था भैया लोग। हमे अलग भेज दिया और जो वो आदमी था। जो एस.एच.ओ है उसके पास उसको खडा कर दिया। उससे पैसे जैसे खा लिया तो इसलिए हमने बोला हमारा पैसा वैसा छिना है तो उसने कुछ भी नहीं बोला उल्टा हमारे भैया को डाँट रहे थे वो। बोला तुम मत बोलो बोलो वो मत करो। तुम अपने बच्चे का ध्यान नहीं रखते हो वो नहीं करते हो। उल्टा वो हमारे भैया को डाँटने लग गये थे।

Q आप पूछों कुछ।

E नहीं सर।

- Q नहीं आप पूछो आप कुछ पूछ रहे थे। ये तो हमने पूछ लिया ना मतलब तुम्हारी भी नहीं नहीं तुम सुनो you can ask those specific questions which will be enlightening for us मतलब जो हम नहीं पूछ पाये मतलब because of lack of knoweldge. तुम थोडा सो पूछो।
- E वो मै बस ये ही पूछना चाहता हूँ।
- Q आप पूछ लो पूछ लो बे झिझक पूछो यार। ये सब हमारे ही भाई है।
- E वो जो पीसीआर वाली बात है ना उसको थोडा सा इस तरहा से बताओ कि जो आपने खुद देखा हो। ठीक है ना।
- D इन्होने इन्होने।
- D ये बतायेगा, ये बतायेगा।
- E पी.सी.आर वाला। क्योंकि ये जो पैसे वाला है। पैसे छिने पुलिस वालो ने थाने में वो तो हम सभी को मालूम है कि पुलिस वाले ले जाते है। और आपकी शिकायत नहीं सुनते। और इसमें जो उनका आप कह रहे है ना मुखबिर है या दलाल है उसी का प्रयोग करते है। और उससे भी पैसे लेते है ये तो हमे सबको मालूम है ये जो बच्चे को उठाके किसी आगे दलाल को देनी वाली बात पीसीआर के स्टाफ, क्योंकि पीसीआर का स्टाफ रात को रहता है और उनके पास गाडी भी वो है लेके जा सकते है। एक तो ये थोडा सा हकिकत जो आपने देखी है।
- D आपने देखी है...
- C आपने जो देखी है।
- Q पहले आप बताओं, फिर आप बताओं, फिर आप बताओं।
- Child-1 मैं बहुत छोटा था 11, 11 साल का था और मेरे साथ एक लडका रहता था मेरे से बडा। तो हम लोग जो है।
- Dकी तरफ
- Child-1की तरफ जो साईड में जो हनुमान, एक मन्दिर पडता है साईड में। इस साईड में बहुत सारी वो खाली जगह पडी हुई है। जंगल जंगल है वहाँ पे। तो हम लोग उसी रेड लाईट पे, वहीं पे रहते थे उसी रेड लाईट के पास में। तो वहाँ पे हमने देखा कि एक वैन खडी हुई थी पुलिस वाले कि उसमें तीन लोग थे। तो एक लडकी बैग टॉगे हुई थी और ब्लू जिन्स की पेन्ट और यूलो कलर की टी. शर्ट पहनी हुई थी तो उससे कुछ पूछताछ की। पता नहीं क्या बात की ये पता नहीं बहुत बाते बताई। हम देखते रहे। मैं भी नशा करता था तो देखा।
- Q लेकिन तुम्हारे दोस्त ने कहा कि अब तू देखियो?
- Child-1 हाँ
- Q उसने पहले देखा हुआ है?
- Child-1 नहीं, सुलोसन पीया था मैने उसने भी पीया था कि अब देख क्या होता है। देखता रहा देखता रहा देखता देखता। उसने क्या किया पुलिस वाले ने। लडकी को अन्दर बिठाया अब उसके

बाद गाडी घुमाई और जो रास्ता था वो जो जंगल जंगल था उसमें गाडी लेके गये। हम भी पीछे पीछे गये उसके। पीछे पीछे गये। मतलब काफी दूर अन्दर अन्दर तक ले गया था काफी अन्दर। वहाँ ले गया। हम पीछे पीछे उसके डर डर के गये अन्दर कि क्या होगा, हम देखने गये। अब देखा तो जो मेरा वो साथ वाला था उसने बोला बस चुप चाप देख कुछ मत बोलियों। अगर बोल दिया ना तो वो गोली ये गोली मार देगा हमको बस देखता रह। तो जो एक ड्राईवर था ना आगे वाला उतरा। उसने लडकी का मुँह दबा लिया। उसने लडकी का मुँह दबा लिया। और जो दो पुलिस वाले थे उन्होंने उसके कपडे वपडे फाडे ओर जो भी किया काम कर। बलात्कार किया। बलात्कार करके। फिर जो दूसरा लडका था जो आदमी था। जिसने पकड रखा था उसने किया। फिर उसने पता नहीं क्या किया की लडकी को धकेल दिया नीचे पटक दिया, फेंक दिया नीचे गाडी से। गाडी से नीचे फेंका वो बेहोश पता नहीं क्या मर गई थी या पता नही उसके बाद उस लडके ने जो मेरा दोस्त था उसने बोल दिया चलते है। अब ज्यादा देर रूकना नही अब।

Q अब तुम्हे ये भी नहीं मालूम होगा। वो मरी या बेहोश थी ये भी नहीं कह सकते।

Child-1 नहीं सर। क्योंकि सर पास में नहीं था बहुत। मैं बहुत डर गया था मतलब कि क्या हो रहा है मेरे साथ देख रहा हूँ मैं कि कर क्या रहे है ये लोग।

E Shock में थे आप। अच्छा बच्चे को कहीं देने वाली बात। कि किसी को आगे हैंडओवर कर दिया इस तरह की कोई बात।

Q आप बताओं बेटा। जैसे की बच्चे को कैसे देते है। बच्चे को पहले कैसे निशाना करते है।

Child-2 जैसे सर, एक बार मै था ये अजमेर की साईड में। मैं आगे जाता था सलवार शरिफ दरगाह की तरफ।

Q कहाँ पे।

Child-2 ये अजमेर शरिफ से आगे है सलवार शरिफ।

Q अच्छा अच्छा।

Child-2 उधर की साईड मैं एक दिन जा रहा था पैदल दरगाह जाते है हम 6-7 कि.मी. पैदल जाते है तो एक आया पहले एक पुलिस वाला आया तो देखा कि एक आदमी। आया पुलिस वाला।

Q है?

Child-4 बच्चे लोग।

Child-2 हाँ, तो पुलिस वाला आया बोला कहाँ जा रहा है क्या कर रहा है और फिर गाडी में बिठा के पता नहीं किधर की साईड ले गया फिर जंगल की साईड से करके। फिर एक आदमी एक और था उसके साथ। आगे खडा कर रखा था फिर उसके हाथ में दिया। और हाथ बाँध के चेपी चिपका के हम दूर से देख रहे थे।

Q चेपी मतलब?

Child-2 टेप टेप,

Q अच्छा

Child-2 है। फिर हाथ बांध के फिर ले गया दूसरी जगह पता नहीं कहाँ ले गया, क्या किया।

Child-4 वो बेचने ही ले गया होगा हमारे हिसाब से वो।

Q बेचने ले गया।

Child-2 हमारे हिसाब से तो क्योंकि साथ वाला दूसरा जो था तो उसके हाथ में हैण्डओवर किया। ये बात है।

Q ये अजमेर की बात है।

Child-2 सलवार शरिफ, सलवार शरिफ।

Q सलवार शरिफ तो राजस्थान में है।

Child-2 राजस्थान से आगे है थोड़ा सा। 62 कि०मी०

Q 62 किलोमीटर। राजस्थान की बात है।

Child-2 हाँ

E यहाँ भी इस तरह का कुछ।

Child-2 वही भी घटना देखा था। इधर ऐसे भी बहुत हुआ है। ऐसे तो हम लोग। बचपन से 5 साल की उम्र से मैं नशा कर रहा हूँ। ये मेरा पुराना फ्रेंड था। तो मैं। ये मेरे साथ में रहा है। बस मैं अपना हालत। ड्रग्स भी लेता था, इंजेक्शन विंजेक्शन, सब कुछ का नशा किया मैंने। ऐसा नहीं है जो चीज जो मैंने छोड़ा हो। मेरी बस एक ही नफरत है घर से कि बचपन में जब मेरी बहन गुजर गई थी। तब से मुझे घर से नफरत हो गया है। जब से कभी भी मेरी अम्मी पकड के ले जाती थी मैं घर से भाग जाता था। विडियो गेम खेलता था ये सब करता था हम लोग। कभी दूर दूर जैसे बम्बई वम्बई इधर उधर जाता था। अलीपुर मेरे को चार साल बंद करके रखा।

E बलराम पुर वाले में।

Child-2 अलीपुर वाले में, गोल चक्कर वहाँ पे बंद करके रखा। तो अच्छा खासा रह रहा था बाहर जाता था आता था। हरमीत था। हरमीत था। वहाँ का देखो मंजीत का जिसको चेला बनाता था उससे पॉव दबवाता था। हरमीत अभी भी है। पॉव दबवाता था।

E अच्छा ये बताओं कि जैसे आप दिल्ली में कई साल रहे हों।

Child-2 मेरा पैदाईश दिल्ली की है। मछली वाला होस्पिटल

E कई साल से रह रहे हो।

Child-2 हाँ मैं हर होम में रहा हूँके होम में भी रहा हूँ।

E तो जो होम है वहाँ पे किस तरह का व्यवहार होता है।

Child-2 वोही बता रहा हूँ सर।

Q बताओ बताओ बेटे।

E पैर दबवाता था।

Child-2 हरमीत नाम का था पैर दबवाता था। एक रामपाल नाम का था। ये नशा मुक्ति। उसमे रामपाल नाम का था, एक पप्पू नाम का अभी भी नशा करता है। ये पुस्ते के अन्दर ही जहाँ हम रहते है तो उससे अपना पॉव दबवाते दबवाते गलत करना चाहा तो उसने पूरा बता दिया था।

E किसने करवाना चाहा जो वहाँ पे उसका मैनेजर था वो या कोई दूसरा आदमी ऐसे करता था।

D स्टाफ

Child-2 नहीं स्टाफ का आदमी था।

E वहाँ से बच्चो को कहीं बाहर भी भेजते थे रात को।

Child-2 नहीं, बाहर तो मैं ही जाता था। काम से जब पानी डालना होता था फूल पौधे मे तो मैं ही जाता था। सारे बच्चे से। नया आया था तब भी। क्योकि मेरे को इतना छूट मिल गया था कि मैं हर कभी भागने का नहीं सोचा। जहाँ टिकता था। मैं ईमानदारी से रहता था। बस वहाँ से मेरे को मैं आया था 9 महिने का नाम लेके। इसको भिजवा दिया था मैंने जल्दी मैंने सात-साढ़ें सात महिने में नशा मुक्ति से।

Q बेटा तुम्हारा। तुमने कुछ देखा तो बताओ बेटे।

Child-2 नहीं ये कुछ नहीं देखा। ये मेरे साथ ही रहता था। छोटा भाई मानता हूँ इसको। फूफु का लडका है

Q और तुम बेटे।

Child-2 और ये मेरा गॉव का लडका है।

Q तुम बताओं तुम काय चीज देखे हो बताओं।

Child-3 अरे ऐसे तो होता रहता है मीना बाजार में बहुत चीज।

Child-2 सुलेशन का बहुत है।

D इन्हे बताने दो।

Child-3 सबसे ज्यादा तो सर।

Child-2 अभी मैं रहता था जमना बाजार में।

Child-3 सबसे ज्यादा तो सर पैसे मांगते है। इधर पुलिस बैठती है इधर सुलेसन बिकता है। ये 2 नम्बर गेट है ना जामा मस्जिद का तो इस साईड पटरी पे जितने लोग बैठते है ना ये सब सुलेसन बेचते है।

Child-2 ये रहा सर हमारे वो एन.जी.ओ का।

E और ये.....

Child-2 जिसमे मैं रहता हूँ अभी।

E कितने बच्चे रहते है उसमें।

Child-2 ये नम्बर है वहाँ का।

Child-3 बहुत लोग रहते है।

Child-2 क्योंकि मैं होस्पिटल वोस्पिटल भी जाता हूँ हर जगह जाता हूँ।

Child-3 तो सर वहाँ पे चारी बहुत होती है।

Q तो तुम बेटे कहाँ पे रहते हो?

Child-3 मैं अपने पापा के साथ रहता हूँ।

Q अच्छा

Child-2मेंमें।

Eमें।

Child-3 पहले बाहर सोते थे ना। तो मैं रात को बहुत गलत हरकत सब देखता रहता था। जो मांगने वाले हैके जो वो लोग आते थे वहाँ के।

Child-2 और कुछ सर मजबूरी से भी करवाती है लडकी। मजबूरी से भी करवाती है कोई कोई लडकी।

E हूँ।

Child-2 ऐसा होता है जहाँहै उपर के साईड। तो सोते है ना रजाई गददा ले के तो रात को लडकी भी आ जाती है।

E हूँ।

Child-2 बिस्तर में।

D कहाँ से आती है?

Child-2 जैसे नशा करने वाली आई। घुस गई गददे में। अब कोई

E छिना झपटी भी होती है उधर

Child-2 हॉ।

E आपस में, नशा करने के बाद।

Child-2 हॉ, चीराफाडी, चीरा फीरा। सब कुछ होता है। चलता है। कोई ब्लेड मार देता है कोई क्या कर देता है। जेब कतरे भी बहुत है।

Q तो ये जोहै इसमे तो तुमने ऐसा नही देखा?

Child-2 नहीं ऐसा नहीं है। बस मेरे को दो ही सेंटर दिखा है। एकमें, एकमें।

Q दोनो जगह।

Child-2 हॉ।

Q हरकत है।

Child-2 हॉ, ऐसे तो मै बहुत होम मे रहा हूँ शहर का नाम, औरका जेल मे रहा हूँ। वहाँ बच्चे को चिल्लर कहते है। वहाँ का भाषा है कहाँ से आया है बे, खडा कर देगा यहाँ पे। पंच वंच मार देगा। का रे ये कर इधर आ। मेरे दोस्त यार थे। मेरे दोस्त का घर भी है वहाँ पे।

Q हूँ।

Child-2 नशा वशा मैं भी बहुत ही करने लगा था ऐसा नहीं ड्रग्स तक लिया दोस्त यार के साथ मैं।छोडा ये इस बार छोडा है।

Q लेकिन ड्रग्स ब्रग्स तुमने जहाँ से भी खरिदा है वहा तुम्हे मालूम था कि ये पुलिस वाला हफता ले रहा है।

Child-2 हाँ।

Q मतलब उसको मालूम है कि ये ड्रग ले रहा है स्मैक है चीज है।

Child-2 तो वो हमारे से नहीं लेता है ना। जो बेचता है ना।

Q हाँ हाँ जो बेच रहा है उससे लेता है।

Child-2 तो हम तो जाते थे दुबक के जैसे देखा हाँ पुलिस वाला अभी उधर देख रहा है। हम गये दिये पैसे और ले आये। 2-3 हजार 4 हजार का ऐसा लाते थे।

D और वो पुलिस वाला।

Child-2 पुलिस वाले उससे लेते थे। क्योंकि हम लोग तोमें दोस्त यार के चक्कर में पंच वंच भी रखते थे हम। पंच भी रखते थे। ये भी हमने रखे।में खुल्ला रहते थे डरते नहीं थे किसी से।

Q भई तुम्हारी ख्वाहिश क्या है जिन्दगी में बताओं क्या करना है? भैया क्या तुम्हारी ख्वाहिश है जिन्दगी में तुम क्या चाहते हो बताओ। अरे हमको बतियाओं क्या करना है?

C क्या करना है।

Child-2 मैं सर बच्चे की मदद करना चाहता हूँ।

Q है।

Child-2 मै, सर शेलटर में रहना चाहता हूँ

Q नहीं लेकिन तुम पढ़ाई भी करना चाहते हो या नहीं।

Child-2 मेरे को सर पढ़ाई करने जब चाहता हूँ तो मेरे सर पे जोर सा लगता है।

Q नहीं वो कोई दिक्कत नहीं है धीरे धीरे सब सीख जाते है बेटे। कोशिश करोगे तो.... तुम क्या चाहते हो।

Child-1 सर मै बस एक ही चीज चाहता हूँ। वैसे तो मेरा जो ड्रिमस था।

Q वो है फिल्म में जाने का....

Child-1 नहीं फिल्मस का नहीं। वो ड्रमर बनना था। मैं ड्रम बजाता भी हूँ।

Q हाँ हाँ।

Child-2 गाना आवाज निकालता है अलग अलग तरिके की

C He is amazing, he is amazing mimic artist. He is amazing.

Child-1 मैं अभी ये सोच रहा हूँ। मेरा जो ड्रिम्स था वो मैंने चेंज कर दिया है।

Q हाँ, हाँ

Child-1 मैं जो, जहाँ पर हूँ। मैं सोच रहा हूँ कि मैं अपनी एक ओरगेनाइजेशन खोलूँ और उन्ही बच्चों को साथ में लेकर चलूँ जोकि स्ट्रीट पर है। अभी

Q हाँ,

Child-1 और मैंने डिजाईड कर लिया है अगले महीने से 3-4 महीने में मैं खोल लूँगा। मुझे सर्पोटर भी मिल गये है। और मेरी जो एन.जी.ओ है उसका नाम है।

Q वाह बहुत बढ़िया, और तुम क्या बनना चाहोगे।

Child-4 मैं सेन्टर में हेल्प करना चाहता हूँ।

Q और तुम।

Child-5 मैं पढाई करना चाहता हूँ।

Q और तुम, स्कूल में भर्ती हो गई तुम्हारी।

Child-5 नहीं सर, मुझे पढना आता ही नहीं ना।

Q तुम क्या करना चाहते हो बेटा?

Child-3 अभी तो मेरे सेकेण्ड्री स्कूल में एडमिशन करा दिया प्राइवेट में। और मुझे ड्रम सीखा रहे है। ड्रम बजाना सीखा रहे है।

Child-2 जामा मस्जिद इलाके में मतलब सारी एन.जी.ओ सर्पोर्ट करती है सारे बच्चों को। पर मैंने देखा है जो स्ट्रीट के जो बैगिंग जो चिल्ड्रन है जो चाँदनी चौक के इलाके में। उनको मैं सर्पोर्ट करूँगा और उन्ही को साथ में लेकर जो भी उनका उम्मिद है जो भी कुछ है। वो मैं करना चाहूँगा।

Q Thank you अच्छा भैया बहुत शुक्रिया।

Child-2 Thank You Sir, अ

Q आपने जो है बडी हमारी मदद की बिना कोई हिचक दिये।

Child-3 Thank You Sir,

Q और आपका क्या नाम? हैं?

Q तो बडे खुश रहो। और उम्मिद जरूर रखिये और जो आपने बताई।

Child-2 सर मैं पेन्टिंग भी बनाता हूँ।

Q हाँ तो बनाओ, खूब बनाओ। हम आपके बहुत शुक्रगुजार है कि तुम आये और तुमने हकिकी बातें बताई क्योकि जो एसे है कि हकिक की बात करता है और झूठ नहीं बोलता। किसी में तो इतनी हिम्मत होनी चाहिये कि मैं नशा में था मैंने ये किया और आपने सब बातें बताई। इससे ये पता चलता है कि आपके अन्दर कितना होसला है कितना ईमान है। और यदि किसी आदमी

में ईमान हो तो ये बहुत ही बड़ी बात है। आप समझ रहे हैं। सबसे बड़ी बात जो है ईमान है। ईमान जो है ये बहुत बड़ी बात है। आप लोग हमको बहुत पसन्द आए। हम आपके बहुत शुक्र गुजार है। और इतना ही नहीं जो भी हमसे हो सकेगा।

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नई दिल्ली - 110003



Justice Verma
Committee on Amendments
to Criminal Law,
E-mail : justice.verma@nic.in
Vigyan Bhawan Annexe,
New Delhi-110003

Justice (Smt.) Leila Seth
Member

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

January 6, 2013

The Commissioner of Police
Delhi Police
P.O. Box No. 171
G.P.O., New Delhi – 110001
Fax: +91 11 2372 2052
Email: cp.neerajkumar@nic.in

Re: Request for data on violence against women in Delhi and connected matters

Dear Sir,

I write to you on behalf of, and upon the instructions of, the Committee set up under the Chairpersonship of Hon'ble Mr. Justice J. S. Verma (Retd) ("**Committee**"). During its deliberations of January 6, 2012, the Committee, after receiving the views of several stakeholders, seeks the following information and data from the Delhi Police:

1. A status report of the case of gang rape/sexual assault on a medical student on 16.12.2012 in the National Capital Territory of Delhi ("**NCT**"), including a copy of the charge-sheet filed against the accused before the concerned magistrate;
2. The additional steps that have been taken by the Delhi Police to safeguard the safety of women in the NCT after the said incident of 16.12.2012;
3. How many cases of rape and other crimes against women have been reported in the NCT for the period 01.01.2007 to 31.12.2012. Data in respect of each such crime be provided separately;
4. What is the present status of the investigation/prosecution of the cases referred to in (1) above as per the records maintained by the Delhi Police;
5. How many cases of rape and other crimes against women have been reported in the NCT wherein one or more of the accused person(s) are police personnel for the period 01.01.2007 to 31.12.2012. Data in respect of each such crime be provided separately;

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Justice (Smt.) Leila Seth
Member

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

6. How many cases of rape and other crimes against women have been reported in the NCT wherein one or more of the accused person(s) are medical personnel / staff of hospitals, or where the offence has taken place within the premises of a hospital for the period 01.01.2007 to 31.12.2012. Data in respect of each such crime be provided separately;
7. How many cases of rape and other crimes against women have been reported in the NCT wherein one or more of the accused person(s) are jail staff, or where the offence has taken place within the premises of a jail for the period 01.01.2007 to 31.12.2012. Data in respect of each such crime be provided separately;
8. How many cases of rape and other crimes against women have been reported in the NCT wherein one or more of the accused person(s) are staff of protective homes for women, or where the offence has taken place within the premises of a protective home for women for the period 01.01.2007 to 31.12.2012. Data in respect of each such crime be provided separately, along with a list of such protective homes in the NCT as well as the names and qualifications of the superintendents of such protective homes;
9. How many cases of rape and other crimes against children have been reported in the NCT wherein one or more of the accused person(s) are staff of protective homes/juvenile homes for children, or where the offence has taken place within the premises of a protective homes/juvenile homes for children for the period 01.01.2007 to 31.12.2012. Data in respect of each such crime be provided separately, along with a list of such protective homes / juvenile homes in the NCT as well as the names and qualifications of the superintendents of such protective/juvenile homes;
10. For the period 01.01.2007 to 31.12.2012, how many cases of rape/sexual assault have taken place where the offence has been compromised/compounded by (i) the accused compensating the victim, and/or (ii) the accused marrying the victim;
11. Whether the Commissioner of Police, Delhi, is aware of the destitute homes in and around the NCT. If so, what steps are being taken by the Delhi Police to identify and rehabilitate destitute women in such homes?

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Justice J. S. Verma
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Gopal Subramaniam
Member

12. What is the general basis on which a charge for outraging the modesty of a woman is determined by the Delhi Police?
13. Has the Commissioner of Police, Delhi, framed or issued any guidelines for dealing with the offences of rape and sexual assaults and the victims thereof during the period 01.01.2007 to 31.12.2012? If so, who has drafted such guidelines? What is the status of their implementation?
14. What are the helplines set up by the Delhi Police for dealing with crimes against women? Details of each such helpline, together with transcripts and recordings of complaints be provided.

The Committee has instructed that the aforesaid information/data be provided in the manner of an affidavit duly affirmed and attested by the Commissioner of Police, Delhi.

As you will appreciate, the protection of women and children from sexual assaults is a matter that requires urgent redress, and, therefore, the Committee requests you to provide the aforementioned data, in affidavit form, within a period of 5 days from the receipt of this letter.

I would also request you to kindly acknowledge receipt (via email) of this letter.

Kind regards,

(Abhishek Tewari)
Advocate
Counsel to the Committee

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आपराधिक कानूनों के
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Gopal Subramaniam
Member

January 9, 2013

The Commissioner of Police
Delhi Police
G.P.O., New Delhi
Fax: +91 11 2372 2052
Email: cp.neerajkumar@nic.in

Re: Request for data on violence against women in Delhi and connected matters

Dear Sir,

I write to you on behalf of, and upon the instructions of, the Committee set up under the Chairpersonship of Hon'ble Mr. Justice J. S. Verma (Retd) ("**Committee**"), and in furtherance of my letter dated January 6, 2013. In addition to the information sought in the said letter, please also provide the following additional information:

1. Has the Delhi Police conducted any study/studies on the offences of rapes and other sexual assaults, including those on incidents of rape where the accused is known / not known to the victim? If yes, please provide the Committee with copies of such studies; and
2. Has the Delhi Police, in the past, been instructed by the Ministry of Home Affairs, Government of India, on employing civil defence / home guard personnel for maintenance of law and order in the NCT of Delhi? If such instructions have been issued, please provide the Committee with copies of such instructions, and please also provide the Committee with the status of such instructions, i.e., are they still in force, have they been amended/modified/recalled?
3. Please provide the Committee with details of the "Community Oriented Policing Services 2009" and/or any other community policing scheme/program which the Delhi Police has initiated and if the same are presently operative;
4. What are the number of women constables, sub-inspectors and inspectors that the Delhi Police currently employs? Does each police station in NCT have one woman constable, SI, inspector attached to it?

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Member

Notwithstanding the above, please provide details of deployment of women constables, SIs, inspectors in NCT;

5. Please provide the Committee with copies of all the orders/circulars/instructions issued by/for the Delhi Police in order to prevent possible interrogative harassment of 'good Samaritans' who help victims of accident/violence by taking them to hospitals etc. by the police.

The information sought above is in addition to the information sought in my letter dated January 6, 2013. The Committee trusts that the information sought in the letter dated January 6, 2013 is being compiled, and it is requested that all the information sought be provided to the Committee, in the form of an affidavit, affirmed by the Commissioner of Police, Delhi, by January 12, 2013.

I would also request you to kindly acknowledge receipt (via email) of this letter.

Kind regards,

Abhishek Tewari
Advocate
Counsel to the Committee

जस्टिस वर्मा
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Justice (Smt.) Leila Seth
Member

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Member

January 14, 2012

The Commissioner of Police
Delhi Police
G.P.O., New Delhi
Fax: +91 11 2372 2052
Email: cp.neerajkumar@nic.in

Re: Request for data on violence against women in Delhi and connected matters

Dear Sir,

I write to you on behalf of, and upon the instructions of, the Committee set up under the Chairpersonship of Hon'ble Mr. Justice J. S. Verma (Retd) ("Committee"), and in furtherance of my letters dated January 6 and 9, 2013. The Committee has received your affidavit dated January 12, 2013 and the same is being reviewed. The Committee seeks the following further information from the Delhi Police:

1. Please inform the Committee whether you are aware that children (including female children) have been missing in Jahangir Puri and Narela in Delhi?
2. How many such children are missing? When were cases registered in respect of such missing children and what is the current stage of trial in respect of those cases?
3. According to the website of the Delhi Police (Zipnet), it is stated that 346 children are missing from Jahangir Puri. The Committee assumes that 346 FIRs must have been registered and the accused must have, by now, been apprehended and either the case is at the stage of conclusion of investigation or at the stage of trial. Details may be provided in respect of the same.
4. In addition, please provide details of missing children who have been recovered / repatriated between 1.1.2007 and 31.12.2012. Please also indicate the names of all the investigating officers who investigated such crimes in the respective police stations right from the zonal in-charge and downwards.

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5. In the event the Commissioner of Police is satisfied that there has been dereliction of duty as a result of non-investigation or non-apprehension of the accused, how many police officers have been suspended or dismissed from service till date in respect of cases involving missing children?
6. Have any officers of the Delhi Police till date from 1.1.2007 upto 31.7.2012 been arrested in connection crimes involving missing children (in particular female children)?

The Committee calls upon you to provide the above information in the form of an affidavit affirmed by the Commissioner of Police, Delhi, by January 16, 2013.

I would also request you to kindly acknowledge receipt (via email) of this letter.

Kind regards,

Abhishek Tewari
Advocate
Counsel to the Committee

From: Justice Verma [<mailto:justice.verma@nic.in>]
Sent: Wednesday, January 09, 2013 9:45 PM
To: 'cp.neerajkumar@nic.in'
Cc: 'abhishek@atlaw.co.in'
Subject: Further Request from Justice Verma Committee
Importance: High
Sensitivity: Confidential

Dear Sir,

Further to my letter dated January 6, 2013 (attached), please find my attached letter dated January 9, 2013 for your urgent action.

Regards,
Abhishek Tewari
Counsel to the Committee

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Monday, January 14, 2013 10:26 PM
To: 'cp.neerajkumar@nic.in'
Cc: 'abhishek@atlaw.co.in'; 'Justice Verma'
Subject: RE: Direction from Justice Verma Committee
Attachments: CP 14 1 2013.pdf

Importance: High
Sensitivity: Confidential

Dear Sir,

Please find attached a letter from the Committee for your urgent action.

Yours faithfully,
Abhishek Tewari
Counsel to the Committee

From: Justice Verma [mailto:justice.verma@nic.in]
Sent: Monday, January 14, 2013 1:01 PM
To: 'cp.neerajkumar@nic.in'
Cc: 'abhishek@atlaw.co.in'; 'Justice Verma'
Subject: Direction from Justice Verma Committee
Importance: High
Sensitivity: Confidential

Commissioner of Police
Delhi

Sir,

I am writing to you upon directions of and on behalf of the Justice J.S. Verma Committee headed by Hon'ble Mr. Justice J.S. Verma (a former Chief Justice of India), and has Hon'ble Ms. Justice Leila Seth (a former High Court judge) and Mr. Gopal Subramaniam, Senior Advocate.

As you are aware that the Justice Verma Committee constituted, consequent to the widespread expression of public protest, is proposing to *inter alia* review the existing laws and all other ancillary matters which are connected with the offences of rape and sexual assault on women. We have viewed, in our internal deliberations, that the terms of reference are sufficiently wide for us to consider what additional amendments need to be made, so that laws which may have a bearing on the rights of women could be revisited to promote non-discrimination and gender justice.

In this context, we call upon you to appear before the Committee, preferably through counsel, to make submissions, on 18th of January 2013 (at 9 am) at Vigyan Bhawan Annexe, New Delhi.

Yours faithfully,
Abhishek Tewari
Counsel to the Committee

Sent by Taron 11/1/13 12:02 pm

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Monday, January 14, 2013 1:01 PM
To: 'cp.neerajkumar@nic.in'
Cc: 'abhishek@atlaw.co.in'; 'Justice Verma'
Subject: Direction from Justice Verma Committee

Importance: High
Sensitivity: Confidential

Commissioner of Police
Delhi

Sir,

I am writing to you upon directions of and on behalf of the Justice J.S. Verma Committee headed by Hon'ble Mr. Justice J.S. Verma (a former Chief Justice of India), and has Hon'ble Ms. Justice Leila Seth (a former High Court judge) and Mr. Gopal Subramaniam, Senior Advocate.

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In this context, we call upon you to appear before the Committee, preferably through counsel, to make submissions, on 18th of January 2013 (at 9 am) at Vigyan Bhawan Annexe, New Delhi.

Yours faithfully,
Abhishek Tewari
Counsel to the Committee

From: Justice Verma [mailto:justice.verma@nic.in]
Sent: Wednesday, January 09, 2013 9:45 PM
To: 'cp.neerajkumar@nic.in'
Cc: 'abhishek@atlaw.co.in'
Subject: Further Request from Justice Verma Committee
Importance: High
Sensitivity: Confidential

Dear Sir,

Further to my letter dated January 6, 2013 (attached), please find my attached letter dated January 9, 2013 for your urgent action.

Regards,
Abhishek Tewari
Counsel to the Committee

जस्टिस वर्मा
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Justice (Smt.) Leila Seth
Member
January 14, 2013

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

The Director
Central Bureau of Investigation
Plot No 5-B, CGO Complex,
Lodhi Road,
New Delhi-110003
Email: dcbi@cbi.gov.in

Re: Request for data by the Justice J. S. Verma Committee

Dear Sir,

I write to you on behalf of, and upon the instructions of, the Committee set up under the Chairpersonship of Hon'ble Mr. Justice J. S. Verma (Retd) ("Committee"). During the course of its deliberations, the Committee has sought the following information from the Director, Central Bureau of Investigation ("CBI"):

1. Please provide the Committee with details of the cases of rape or gang rape which have been entrusted for investigation/prosecution to the CBI by orders of Courts or State Governments during period of 1.1.2007 up to 31.12.2012.
2. Please give details of orders of the court(s), date(s) of registration of cases and the stage of trial or the conviction of the accused, if any, in respect of the above-mentioned cases.
3. Please also inform the Committee whether any cases involving rape by officers belonging to the armed forces have been investigated by the CBI during the aforementioned period viz 1.1.2007 to 31.12.2012. It is assumed that sanction to investigate and prosecute is not necessary in such cases. Please confirm if this is correct. Please also provide the Committee with details of the stages of trial and convictions in respect of such cases, if any.
4. Are you, as the head of the CBI, aware of trafficking in children in India?
5. Is there a separate division in the CBI which deals with offences of trafficking in children?
6. Have you supervised any cases relating to the afore-mentioned anti-human trafficking unit?
7. Please furnish the number of complaints received of trafficking of children in India during the period 1.1.2007 up to 31.7.2012.

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Member

8. How many such complaints pertain to female children?
9. Please provide the Committee with the current status of the completion of investigation and the trial of the offenders in respect of these cases and whether any convictions have been secured and if so, on what dates?
10. Has the CBI appointed a Special Public Prosecutor exclusively to deal with trafficking cases?
11. Does the CBI Manual contain any special provision(s) for detection of trafficking of children?
12. Are there any officers in the CBI who have any expertise in detecting crimes in relation to trafficking of women and children?
13. Please provide the Committee with details of any gangs apprehended by the CBI from 1.1.2007 up to 31.12.2012, which have been involved in the trafficking of women and children.
14. Are you aware of the Transplantation of Human Organs Act, 1994? Have you/the CBI received complaints during the period 1.1.2007 to 31.12.2012 in relation to extraction and sale of human organs?
15. If you have received such complaints, please inform the Committee how many of them were in respect of female children?
16. Please provide the Committee with details of cases have been investigated by the CBI where organs of children have been sold?
17. Please furnish copies of all complaints which the CBI has received between 1.1.2007 up to 31.12.2012 in relation to complaints of organ trade or doctors illicitly removing organs from bodies of patients for organ trade.
18. Has the CBI received any complaints during 1.1.2007 and 31.12.2013 where victims, who were taken for treatment of injuries caused by an accident, have lost organs during medical examination and assistance? If so, was any case registered in respect of any of them?
19. Are you aware of any complaint which has been received by the CBI on 4.4.2012 with reference to 85 missing children from Badarpur/Jaitpur area of Delhi? If so, has an RC been registered and whether the accused have undergone / are undergoing trial?

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Gopal Subramaniam

Member

Chairman

Member

20. Has the CBI received any complaints of a bazaar in western UP where children (particularly female children) are bought and sold?

21. Does the CBI have a regional office in UP?

22. During the period 1.1.2007 to 31.12.2012 has any joint director, or concerned head of the CBI posted at the branch headquarters at Lucknow, reported either the holding of such bazaar or for that matter of fact the sale of children?

The Committee has instructed that the aforesaid information/data be provided in the manner of an affidavit duly affirmed and attested by the Director of the CBI.

As you will appreciate, the protection of women and children from sexual assaults is a matter that requires urgent redress, and, therefore, the Committee requests you to provide the aforementioned data, in affidavit form, within a period of 3 days from the receipt of this letter.

I would also request you to kindly acknowledge receipt (via email) of this letter.

Kind regards,

Abhishek Tewari
Advocate
Counsel to the Committee

From: Justice Verma [<mailto:justice.verma@nic.in>]
Sent: Monday, January 14, 2013 1:13 PM
To: 'dcbi@cbi.gov.in'
Cc: 'abhishek@atlaw.co.in'
Subject: from Justice Verma Committee
Importance: High

**Director,
Central Bureau of Investigation
New Delhi
Fax: +91 11 24362437**

Sir,

I am writing to you upon directions of and on behalf of the Justice J.S. Verma Committee headed by Hon'ble Mr. Justice J.S. Verma (a former Chief Justice of India), and has Hon'ble Ms. Justice Leila Seth (a former High Court judge) and Mr. Gopal Subramaniam, Senior Advocate.

As you are aware that the Justice Verma Committee constituted, consequent to the widespread expression of public protest, is proposing to *inter alia* review the existing laws and all other ancillary matters which are connected with the offences of rape and sexual assault on women. We have viewed, in our internal deliberations, that the terms of reference are sufficiently wide for us to consider what additional amendments need to be made, so that laws which may have a bearing on the rights of women could be revisited to promote non-discrimination and gender justice.

In this context, we call upon you to appear before the Committee, preferably through counsel, to make submissions, on 18th of January 2013 (at 9 am) at Vigyan Bhawan Annexe, New Delhi.

Yours faithfully,
Abhishek Tewari
Counsel to the Committee

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Tuesday, January 15, 2013 11:45 PM
To: 'dcbi@cbi.gov.in'
Cc: 'abhishek@atlaw.co.in'
Subject: RE: from Justice Verma Committee

Importance: High

January 15, 2013

Dear Sir,

I am writing to you upon directions of and on behalf of the Justice J.S. Verma Committee headed by Hon'ble Mr. Justice J.S. Verma (a former Chief Justice of India), and has Hon'ble Ms. Justice Leila Seth (a former High Court judge) and Mr Gopal Subramaniam, Sr. Advocate.

As you are aware that the Justice Verma Committee constituted, consequent to the widespread expression of public protest, is proposing to inter alia review the existing laws which are connected with the offences of rape and sexual assault on women.

In this context, I request that the following information may kindly be **provided to the Committee within 2 days of delivery of this email:**

- (1) Is the Director, CBI, aware of an advisory circular No. F.NO.15011/60/2011 dated January 31, 2012 issued by the Ministry of Home Affairs, Government of India in respect of missing children?
- (2) Has the CBI taken any steps pursuant to the said circular?
- (3) Please furnish details of registration of offences, prosecution and convictions obtained by the CBI pursuant to the aforementioned circular.
- (4) Is the CBI aware of a raid carried out in June 2012 at "Apna Ghar" – a children's home in Rohtak, Haryana in respect of a complaint of abuse of girl children at the said home? Has the CBI been requested / instructed to investigate the same? If yes, please provide details of the investigations carried out by the CBI

Please note that failure to provide documents/information shall be treated as non-cooperation..

Yours faithfully,
Abhishek Tewari
Counsel to the Committee

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Monday, January 14, 2013 10:54 PM
To: 'dcbi@cbi.gov.in'
Cc: 'abhishek@atlaw.co.in'; 'Justice Verma'
Subject: RE: from Justice Verma Committee
Attachments: CBI 14 1 2013.pdf

Dear Sir,

Please find attached a letter from the Committee for your urgent action.

Yours faithfully,
Abhishek Tewari
Counsel to the Committee

From: Justice Verma [mailto:justice.verma@nic.in]
Sent: Monday, January 14, 2013 1:13 PM
To: 'dcbi@cbi.gov.in'
Cc: 'abhishek@atlaw.co.in'
Subject: from Justice Verma Committee
Importance: High

Director,
Central Bureau of Investigation
New Delhi
Fax: +91 11 24362437

Sir,

I am writing to you upon directions of and on behalf of the Justice J.S. Verma Committee headed by Hon'ble Mr. Justice J.S. Verma (a former Chief Justice of India), and has Hon'ble Ms. Justice Leila Seth (a former High Court judge) and Mr. Gopal Subramaniam, Senior Advocate.

As you are aware that the Justice Verma Committee constituted, consequent to the widespread expression of public protest, is proposing to *inter alia* review the existing laws and all other ancillary matters which are connected with the offences of rape and sexual assault on women. We have viewed, in our internal deliberations, that the terms of reference are sufficiently wide for us to consider what additional amendments need to be made, so that laws which may have a bearing on the rights of women could be revisited to promote non-discrimination and gender justice.

In this context, we call upon you to appear before the Committee, preferably through counsel, to make submissions, on 18th of January 2013 (at 9 am) at Vigyan Bhawan Annexe, New Delhi.

Yours faithfully,
Abhishek Tewari
Counsel to the Committee

also sent by fax on 14/1/13 at 1:35pm JLV

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Monday, January 14, 2013 1:13 PM
To: 'dcbi@cbi.gov.in'
Cc: 'abhishek@atlaw.co.in'
Subject: from Justice Verma Committee

Importance: High

**Director,
Central Bureau of Investigation
New Delhi
Fax: +91 11 24362437**

Sir,

I am writing to you upon directions of and on behalf of the Justice J.S. Verma Committee headed by Hon'ble Mr. Justice J.S. Verma (a former Chief Justice of India), and has Hon'ble Ms. Justice Leila Seth (a former High Court judge) and Mr. Gopal Subramaniam, Senior Advocate.

As you are aware that the Justice Verma Committee constituted, consequent to the widespread expression of public protest, is proposing to *inter alia* review the existing laws and all other ancillary matters which are connected with the offences of rape and sexual assault on women. We have viewed, in our internal deliberations, that the terms of reference are sufficiently wide for us to consider what additional amendments need to be made, so that laws which may have a bearing on the rights of women could be revisited to promote non-discrimination and gender justice.

In this context, we call upon you to appear before the Committee, preferably through counsel, to make submissions, on 18th of January 2013 (at 9 am) at Vigyan Bhawan Annexe, New Delhi.

Yours faithfully,
Abhishek Tewari
Counsel to the Committee

जस्टिस वर्मा
आपराधिक कानूनों के
संशोधन संबंधी समिति
विज्ञान भवन एनैक्सी
नई दिल्ली - 110003



Justice Verma
Committee on Amendments
to Criminal Law,
E-mail : justice.verma@nic.in
Vigyan Bhawan Annexe,
New Delhi-110003

Justice (Smt.) Leila Seth
Member

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

January 12, 2013

The Chairperson
The National Commission for Protection of Child Rights
5th Floor, Chandernagore Building, 36, Janpath, New Delhi - 110 001
Fax: +91 11 23724026, +91 11 23731584 (Fax)
Email: shantha.sinha@nic.in

Dear Madam,

DIRECTION TO PRODUCE DOCUMENTS AND TO FURNISH INFORMATION

On behalf of, and upon the instructions of, the Committee set up under the Chairpersonship of Hon'ble Mr. Justice J. S. Verma (Retd) ("**Committee**"), I call upon you to produce the following documents and / or provide the following information, namely:

1. The date on which the National Commission for Protection of Child Rights ("**NCPCR**") was constituted and the date on which it became functional.
2. The name, designation and qualifications of each of the members of staff of NCPCR.
3. The details of cases that have been reported to NCPCR, including the details of
 - a. Nature of complaint;
 - b. Age and sex of the victim;
 - c. who was the Complainant;
 - d. Steps taken by NCPCR;
 - e. Details of visits made by any member to the place where victim had been found or to any other place in connection with the case, if any;
 - f. Whether any child had been interviewed and if so qualification of the person interviewing the child;
 - g. Whether the authorities under the Juvenile Justice Act, 2000 provide any assistance in form of interviews etc to the victims;
4. In respect of cases reported to NCPCR, how many have been investigated by NCPCR and how many cases were resolved.
5. (i) Provide us details of child abuse cases (state-wise (especially Delhi)) for the following years:
 - a. 2009-2010
 - b. 2010-2011
 - c. 2011-2012

जस्टिस वर्मा
आपराधिक कानूनों के
संशोधन संबंधी समिति
विज्ञान भवन एनैक्सी
नई दिल्ली - 110003



Justice Verma
Committee on Amendments
to Criminal Law,
E-mail : justice.verma@nic.in
Vigyan Bhawan Annexe,
New Delhi-110003

Justice (Smt.) Leila Seth
Member

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

(ii) Please provide to us with the copies of FIR in respect of the above including status of the proceedings.

6. Number cases of successful and attempted instances of juveniles escaping the juvenile/protection homes have been brought to the notice of the NCPCR.
7. Please confirm the following statistics:

"One child goes missing every eight minutes in our country, or seven children every hour, 331 children went missing in India's capital between 1 June – 18 July 2011, according to the zonal integrated police network" (MISSING CHILDREN OF INDIA: A PIONEERING STUDY BY BACHPAN BACHAO ANDOLAN, (VITASTA PUBLICATIONS, 2012))

As you will appreciate, the protection of women and children from sexual assaults is a matter that requires urgent redress, and, therefore, the Committee requests you to provide the aforementioned data, within a period of 2 days from the receipt of this letter by fax/email. Please take note that failure to comply with the present directions shall be treated as non-cooperation.


(Abhishek Tewari)

Advocate
Counsel to the Committee

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Thursday, January 17, 2013 12:13 AM
To: 'shantha.sinha@nic.in'
Cc: 'dixit.dipa@yahoo.com'; 'chaukhat@yahoo.com'; 'prasad.vandana@yahoo.com'; 'nayaknina@gmail.com'; 'saumya1601@gmail.com'; 'abhishek@atlaw.co.in'
Subject: RE: RE: URGENT: from Justice Verma Committee
Attachments: RE: Sub-Poena from Justice Verma Committee; Sub-Poena from Justice Verma Committee

Dear Mrs. Singh,

Thank you for your response.

The Committee appreciates NCPCR's endeavour to have it represented through the Chairperson herself in the hearing. It is however not possible to re-schedule the hearing. Therefore, NCPCR may be represented through counsel to make submissions before it.

May I take this opportunity to gently remind that information requested by attached emails dated 12.1.2013 and 15.1.2013 remain outstanding.

Warm regards,

Abhishek Tewari

Counsel to the Committee

From: shantha.sinha@nic.in [mailto:shantha.sinha@nic.in]
Sent: Wednesday, January 16, 2013 2:06 PM
To: Justice Verma
Cc: dixit.dipa@yahoo.com; chaukhat@yahoo.com; prasad.vandana@yahoo.com; nayaknina@gmail.com; saumya1601@gmail.com; abhishek@atlaw.co.in
Subject: Re: RE: URGENT: from Justice Verma Committee

Dear Sir,

I am directed to inform you that Ms. Dipa Dixit, Dr. Vandana Prasad and Ms. Nina Nayak, Members, NCPCR have been deputed by the Hon'ble Chairperson, NCPCR to attend the hearing that is proposed to be held on 19th January, 2013.

I am further directed to say that the Hon'ble Members of NCPCR deputed to attend the hearing are tied up/engaged with prior commitments/engagements. Hence, it will not be possible for them to attend the hearing on 19th Jan/20th Jan, 2013.

In view of the above, it is humbly requested that the hearing be held any time on 17th, 18th or on 22nd January, 2013.

Yours faithfully,

Kanchan Singh,
Principal Private Secretary to the Chairperson, NCPCR
Tel. No.23731583, Fax: 23724026

----- Original Message -----

From: Justice Verma <justice.verma@nic.in>

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Thursday, January 17, 2013 12:38 AM
To: 'Justice Verma'; 'police@hry.nic.in'; 'adgp.caw-hry@nic.in'; 'adgp.laworder@hry.nic.in'
Subject: RE: URGENT LETTER FROM JUSTICE JS VERMA COMMITTEE

Importance: High

Re: Request for data on missing children and connected matters

Dear Sirs,

I write to you on behalf of, and upon the instructions of, the Committee set up under the Chairpersonship of Hon'ble Mr. Justice J. S. Verma (Retd) ("**Committee**"). During its deliberations the Committee, after receiving the views of several stakeholders, seeks the following information and data from various High Courts across the country:

1. Please provide information in respect of number of cases of missing children that have been reported in your State, in respect of (a) children aged between 0-12 years; and (b) children aged between 12-18 years.
2. Further to point no.1 above, please apprise the Committee in how many of the aforesaid was the child rescued.
3. Further to the point no.1 above, please apprise the Committee as to the number of children that had been (a) kidnapped; (b) trafficked; (c) rescued and united with the family; (d) rescued and sent to protection home.
4. Whether any gang known to be involved in trafficking of children in your State has been busted by the Police, if yes, please provide details.
5. Whether the instances of trafficking have been reported by you to the State Government, and whether any steps had been taken by the State Government(s).

As you will appreciate, the protection of women and children from sexual assaults is a matter that requires urgent redress, and, therefore, the Committee requests you to provide the aforementioned data within a period of 3 days from the receipt of this letter.

I would also request you to kindly acknowledge receipt (via email) of this letter.

Kind regards,

Abhishek Tewari
Advocate
Counsel to the Committee

Date: Tuesday, January 15, 2013 5:46 pm

Subject: RE: URGENT: from Justice Verma Committee

To: 'Justice Verma' <justice.verma@nic.in>, abhishek@atlaw.co.in, secy.wcd@nic.in, shantha.sinha@nic.in, hshso@nic.in, ncw@nic.in, secyhfw@nic.in

Cc: saumya1601@gmail.com, abhishek@atlaw.co.in

Sirs:

You are kindly advised to make a note that the hearing has now been re-scheduled to January 19, 2013 (at 9am) at Vigyan Bhawan Annexe, New Delhi.

Yours truly,
Abhishek Tewari
Counsel to the Committee

From: Justice Verma [<mailto:justice.verma@nic.in>]

Sent: Monday, January 14, 2013 12:49 PM

To: 'secy.wcd@nic.in'; 'shantha.sinha@nic.in'; 'hshso@nic.in'; 'ncw@nic.in'; 'secyhfw@nic.in'

Subject: URGENT: from Justice Verma Committee

Importance: High

Secretary
Ministry of Home Affairs
Government of India

Secretary
Women & Child Development
Government of India

Secretary
Health and Family Welfare
Government of India

Chairperson, National Commission Protection of Child Rights

Chairperson, National Commission for Women

Dear Sir/ Madam,

I am writing to you upon directions of and on behalf of the Justice J.S. Verma Committee headed by Hon'ble Mr. Justice J.S. Verma (a former Chief Justice of India), and has Hon'ble Ms. Justice Leila Seth (a former High Court judge) and myself as its members.

As you are aware that the Justice Verma Committee constituted, consequent to the widespread expression of public protest, is proposing to inter alia review the existing laws which are connected with the offences of rape and sexual assault on women. We have viewed, in our internal deliberations, that the terms of reference are sufficiently wide for us to consider what additional amendments need to be made, so that laws which may have a bearing on the rights of women could be revisited to promote non-discrimination and gender justice.

In this context, we call upon you to meet with the Committee in a hearing scheduled in the morning of the 18th of January 2013 at Vigyan Bhawan Annexe, New Delhi, to make submissions on behalf of your Ministry/

Commission, preferably through your counsel.

Yours faithfully,
Abhishek Tewari
Counsel to the Committee

also sent by fax at 23724026 on 14/1/13 at
1339 hours.

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Monday, January 14, 2013 12:49 PM
To: 'secy.wcd@nic.in'; 'shantha.sinha@nic.in'; 'hshso@nic.in'; 'ncw@nic.in'; 'secyhfw@nic.in'
Subject: URGENT: from Justice Verma Committee

Importance: High

Secretary
Ministry of Home Affairs
Government of India

Secretary
Women & Child Development
Government of India

Secretary
Health and Family Welfare
Government of India

Chairperson, National Commission Protection of Child Rights

Chairperson, National Commission for Women

Dear Sir/ Madam,

I am writing to you upon directions of and on behalf of the Justice J.S. Verma Committee headed by Hon'ble Mr. Justice J.S. Verma (a former Chief Justice of India), and has Hon'ble Ms. Justice Leila Seth (a former High Court judge) and myself as its members.

As you are aware that the Justice Verma Committee constituted, consequent to the widespread expression of public protest, is proposing to inter alia review the existing laws which are connected with the offences of rape and sexual assault on women. We have viewed, in our internal deliberations, that the terms of reference are sufficiently wide for us to consider what additional amendments need to be made, so that laws which may have bearing on the rights of women could be revisited to promote non-discrimination and gender justice.

In this context, we call upon you to meet with the Committee in a hearing scheduled in the morning of the 18th of January 2013 at Vigyan Bhawan Annexe, New Delhi, to make submissions on behalf of your Ministry/ Commission, preferably through your counsel.

Yours faithfully,
Abhishek Tewari
Counsel to the Committee

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Saturday, January 12, 2013 4:58 PM
To: 'shantha.sinha@nic.in'
Cc: 'abhishek@atlaw.co.in'
Subject: Sub-Poena from Justice Verma Committee
Attachments: letter dt. 12.1.2013 to Chairperson NCPCR.pdf

Importance: High
Sensitivity: Confidential

Dear Ma'am,

Please find attached a direction from the Committee for your urgent action.

Regards,
Abhishek Tewari
Counsel to the Committee

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Tuesday, January 15, 2013 11:43 PM
To: 'Justice Verma'; 'abhishek@atlaw.co.in'; 'shantha.sinha@nic.in'
Subject: RE: Sub-Poena from Justice Verma Committee

Sensitivity: Confidential

January 15, 2013

The Chairperson
The National Commission for Protection of Child Rights
5th Floor, Chanderlok Building, 36, Janpath, New Delhi - 110 001
Fax: +91 11 23724026, +91 11 23731584 (Fax)
Email: shantha.sinha@nic.in

Dear Madam,

I am writing to you upon directions of and on behalf of the Justice J.S. Verma Committee headed by Hon'ble Mr. Justice J.S. Verma (a former Chief Justice of India), and has Hon'ble Ms. Justice Leila Seth (a former High Court judge) and Mr Gopal Subramaniam, Sr. Advocate.

I also refer to the email below.

As you are aware that the Justice Verma Committee constituted, consequent to the widespread expression of public protest, is proposing to inter alia review the existing laws which are connected with the offences of rape and sexual assault on women. We have viewed, in our internal deliberations, that the terms of reference are sufficiently wide for us to consider what additional amendments need to be made, so that laws which may have a bearing on the rights of women could be revisited to promote non-discrimination and gender justice.

In this context, I request that the following information may kindly be **provided to the Committee within 2 days of the receipt of this email:**

- (1) Is the NCPCR aware of a raid carried out in June 2012 at "Apna Ghar" – a children's home in Rohtak, Haryana in respect of a complaint of abuse of girl children at the said home? If yes, please provide details of the same.
- (2) If such a raid has indeed occurred, have any FIRs been registered in respect of the said offence? Please provide details of the same.
- (3) Have NCPCR officers visited the said institution (Apna Ghar) prior to the said raid, as well as post such raid to ascertain the conditions of the children living in the home? If this has not been done, please provide reasons.
- (4) Is the NCPCR aware that a media channel reported the involvement of certain police officers in the aforementioned offence? If yes, please provide details of such police officers and whether any cases have been registered against them.

From: Justice Verma [mailto:justice.verma@nic.in]
Sent: Saturday, January 12, 2013 4:58 PM
To: 'shantha.sinha@nic.in'
Cc: 'abhishek@atlaw.co.in'
Subject: Sub-Poena from Justice Verma Committee
Importance: High
Sensitivity: Confidential

Dear Ma'am,

Please find attached a direction from the Committee for your **urgent** action.

Regards,
Abhishek Tewari
Counsel to the Committee

जस्टिस वर्मा
आपराधिक कानूनों के
संशोधन संबंधी समिति
विज्ञान भवन एनैक्सी
नई दिल्ली - 110003



Justice J. S. Verma
Chairman

Justice Verma
Committee on Amendments
to Criminal Law,
E-mail : justice.verma@nic.in
Vigyan Bhawan Annexe,
New Delhi-110003
Gopal Subramaniam
Member

Justice (Smt.) Leila Seth
Member
January 7, 2013

The Chief Election Commissioner
Election Commission of India
Nirvachan Sadan
Ashoka Road, New Delhi 110001
Fax: +91 11 2371 1023
Email: vs.sampath@eci.gov.in

Re: Request for data on persons disqualified under provisions of the Representation of Peoples Act, 1951 ("RP Act") for on grounds of being accused in offences of rapes and other sexual offences and connected matters

Dear Sir,

I write to you on behalf of, and upon the instructions of, the Committee set up under the Chairpersonship of Hon'ble Mr. Justice J. S. Verma (Retd) ("Committee"). During its deliberations of January 6 and 7, 2012, the Committee, after receiving the views of several stakeholders, seeks the following information and data from the Election Commission of India ("ECI"):

1. Does the ECI have / proposes to put in place a policy to deal with electoral candidates who have been accused of, charged with, or convicted of offences of rape and sexual abuse/sexual harassment, under the provisions of the Indian Penal Code, 1860 ("IPC") or otherwise? If yes, please provide details of such a policy, as well as details of how the same is being implemented.
2. Please provide details of all persons who have been disqualified by the ECI under Section 8(1)(a) of the RP Act for offences relating to rape and/or cruelty towards a woman by her husband and/or his relatives.
3. Please provide details (for the period 01.01.2004 to 31.12.2012) of all such electoral candidates who have disclosed, pursuant to Section 33A(1) of the RP Act, the existence of charges having been framed against them under the following provisions:
 - (i) Sections 363 to 369 of the IPC;
 - (ii) Sections 371 to 373 of the IPC;
 - (iii) Sections 376 to 376 A-D of the IPC;
 - (iv) Section 354 of the IPC;

जस्टिस वर्मा
आपराधिक कानूनों के
संशोधन संबंधी समिति
विज्ञान भवन एनैक्सी
नई दिल्ली - 110003



Justice Verma
Committee on Amendments
to Criminal Law,
E-mail : justice.verma@nic.in
Vigyan Bhawan Annexe,
New Delhi-110003

Justice (Smt.) Leila Seth
Member

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

- (v) Section 498A of the IPC;
- (vi) Section 509 of the IPC;
- (vii) Provisions of the Immoral Traffic (Prevention) Act, 1956;
- (viii) Provisions the Protection of Children from Sexual Offences Act, 2012;
- (ix) Provisions of the Indecent Representation of Women (Prohibition) Act, 1986; and
- (x) Provisions of the Dowry Prohibition Act, 1961

4. Is the ECI aware as to whether any political parties in India have internal policies / codes of conduct through which they can verify and prevent candidates who are accused of, charged of, or convicted of criminal offences generally, and specifically those set out in paragraph 3 (i) to (viii) above? If yes, please provide details of the same.
5. Is the ECI aware of instances where political parties have refused nominations to candidates on grounds of them having been are accused of, charged of, or convicted of criminal offences generally, and specifically those set out in paragraph 3 (i) to (viii) above? If yes, please provide details of the same.

The Committee has instructed that the aforesaid information/data be provided in the manner of an affidavit duly affirmed and attested by the Secretary to the ECI, under the orders and instructions of the Chief Election Commissioner, ECI.

As you will appreciate, the need to decriminalise politics, especially in respect of the protection of women and children from sexual assaults, is a matter that requires urgent redress, and, therefore, the Committee requests you to provide the aforementioned data, in affidavit form, within a period of 5 days from the receipt of this letter.

I would also request you to kindly acknowledge receipt (via email) of this letter.

Kind regards,

Abhishek Tewari
Advocate
Counsel to the Committee

also sent by fax at 23724026 on 14/1/13 at
1339 hours.

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Monday, January 14, 2013 12:49 PM
To: 'secy.wcd@nic.in'; 'shantha.sinha@nic.in'; 'hshso@nic.in'; 'ncw@nic.in'; 'secyhfw@nic.in'
Subject: URGENT: from Justice Verma Committee

Importance: High

Secretary
Ministry of Home Affairs
Government of India

Secretary
Women & Child Development
Government of India

Secretary
Health and Family Welfare
Government of India

Chairperson, National Commission Protection of Child Rights

Chairperson, National Commission for Women

Dear Sir/ Madam,

I am writing to you upon directions of and on behalf of the Justice J.S. Verma Committee headed by Hon'ble Mr. Justice J.S. Verma (a former Chief Justice of India), and has Hon'ble Ms. Justice Leila Seth (a former High Court judge) and myself as its members.

As you are aware that the Justice Verma Committee constituted, consequent to the widespread expression of public protest, is proposing to inter alia review the existing laws which are connected with the offences of rape and sexual assault on women. We have viewed, in our internal deliberations, that the terms of reference are sufficiently wide for us to consider what additional amendments need to be made, so that laws which may have bearing on the rights of women could be revisited to promote non-discrimination and gender justice.

In this context, we call upon you to meet with the Committee in a hearing scheduled in the morning of the 18th of January 2013 at Vigyan Bhawan Annexe, New Delhi, to make submissions on behalf of your Ministry/ Commission, preferably through your counsel.

Yours faithfully,
Abhishek Tewari
Counsel to the Committee

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Saturday, January 12, 2013 4:58 PM
To: 'shantha.sinha@nic.in'
Cc: 'abhishek@atlaw.co.in'
Subject: Sub-Poena from Justice Verma Committee
Attachments: letter dt. 12.1.2013 to Chairperson NCPDR.pdf

Importance: High
Sensitivity: Confidential

Dear Ma'am,

Please find attached a direction from the Committee for your urgent action.

Regards,
Abhishek Tewari
Counsel to the Committee

जस्टिस वर्मा
आपराधिक कानूनों के
संशोधन संबंधी समिति
विज्ञान भवन एनैक्सी
नई दिल्ली - 110003



Justice Verma
Committee on Amendments
to Criminal Law,
E-mail : justice.verma@nic.in
Vigyan Bhawan Annexe,
New Delhi-110003

Justice (Smt.) Leila Seth
Member

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

January 11, 2013

The Chief Election Commissioner
Election Commission of India
Nirvachan Sadan
Ashoka Road, New Delhi 110001
Fax: +91 11 2371 1023
Email: vs.sampath@eci.gov.in

Re: Further request for information.

Dear Sir,

I write to you on behalf of, and upon the instructions of, the Committee set up under the Chairpersonship of Hon'ble Mr. Justice J. S. Verma (Retd) ("Committee"), and in furtherance of my letters dated January 7, 2013 and January 10, 2013. In addition to the information sought in the said letters, the Committee also seeks the following information from the Election Commission of India ("ECI"):

1. Has the ECI / the Chief Election Commissioner ("CEC") carried out any studies in respect of the criminalisation of politics. If yes, please provide the Committee with copies of the same;
2. The Committee understands that former CEC, Shri S. Y. Quraishi, had recommended that persons, against whom chargesheets had been filed in criminal offences, ought not be nominated / permitted to stand for elections. Was the said recommendation ever forwarded by the ECI to the Government of India? If yes, was such recommendation accepted by the Government of India?
3. Does the ECI require candidates to affirm that the wealth / assets disclosed by candidates have been lawfully acquired / not from the commission of any offence and have been duly declared in such candidates' books of accounts and have also been declared to the relevant tax authorities? If yes, please provide details of such mechanism.
4. In the event of a currently elected candidate having shown increased wealth in the next election, is there any procedure adopted by ECI to verify whether the increase in wealth is from legitimate sources, or whether such increase in wealth is from illegal means / from undetected sources? If yes, please provide details of such procedure.
5. Has the ECI ever proposed to the Government of India that there must be a verification of the increase in assets of candidates? If yes, what has the Government of India's response been on the same?

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नई दिल्ली - 110003



Justice Verma
Committee on Amendments
to Criminal Law,
E-mail : justice.verma@nic.in
Vigyan Bhawan Annexe,
New Delhi-110003

Justice (Smt.) Leila Seth
Member

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

6. Has the ECI proposed a verification machinery of facts relating to judicial proceedings declared by candidates under provisions of the RP Act? If yes, please provide details of such machinery.
7. Can the ECI explain why its website does not specify details of convictions of candidates?
8. Does the ECI mandate that a candidate, who is undergoing trial, to intimate the ECI in case the said trial concludes along with the outcome of such trial?
9. Has the ECI attempted to verify / investigate whether particular candidates have suppressed material information from the ECI while making disclosures under the RP Act?
10. Has the ECI recommended to the Government of India that there be a statute akin to the Political Parties, Elections and Referendums Act, 2000, which is in force in the United Kingdom, or similar legislation on the financing and financial accountability of political parties?
11. Has the ECI ever called for, from a political party, the details of actual expenditure incurred by such political party in respect of a particular candidate?
12. What precautionary steps are taken by the ECI in respect of polling booths in constituencies where candidates with criminal records / having charges of criminal offences are contesting elections?
13. What precautions does the ECI take to ensure that women are able to freely exercise their right to franchise?
14. Has the ECI come across instances where women voters have voted en bloc in a suspicious manner just before closing of polling booths? Please provide details of the same.
15. Has the ECI recommended to the Government of India / taken steps to ensure that in the event any corporate house / private individual contributes to a political party, an intimation and details of such contribution be disclosed to the ECI?
16. Is the ECI aware of any political party which has an internal constitution/charter providing for transparency in respect of the process by which persons are nominated as electoral candidates / accepted as members of such party?
17. Has the ECI made any recommendation that electoral law must be amended to provide that where a sitting Member of Parliament / Legislative Council / Legislative Assembly refuse to participate in / absents himself/herself from more than 1/3rd sitting days of Parliament/ Legislative Council / Legislative Assembly,

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Member

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

then such Member can be penalized or expelled from the concerned house of legislature?

18. Has the ECI ever made a recommendation that, in the event electoral candidates are found unsuitable by voters, then ECI must have an option of declaring that no fit candidate has been nominated for election in a particular constituency? Has this ever been internally discussed within the ECI? If yes, please make details of such discussions/deliberations.

19. Would the ECI like to have a division of the office of the CAG attached to it for verification of financial information submitted by candidates? Would the ECI like rules in place that mandate candidates to submit, with their nomination form, a certificate of fitness by the CAG?

The information sought above is in addition to the information sought in my letters dated January 7, 2013 and January 11, 2013. Since the Committee is of the opinion that the question of electoral reform is integral to the reform of sexual assault laws the Committee would like to provide the ECI an opportunity to appear before the Committee (through counsel, if necessary) to present its views during the public hearings of the Committee proposed to be held on January 18, 19, and 20, 2013.

I would also request you to kindly acknowledge receipt (via email) of this letter.

Kind regards,

Abhishek Tewari
Advocate
Counsel to the Committee

जस्टिस वर्मा
आपराधिक कानूनों के
संशोधन संबंधी समिति
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New Delhi-110003

Justice (Smt.) Leila Seth
Member

January 14, 2013

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

The Chief Election Commissioner
Election Commission of India
Nirvachan Sadan
Ashoka Road, New Delhi 110001
Fax: +91 11 2371 1023
Email: vs.sampath@eci.gov.in

Re: Further request for information.

Dear Sir,

I write to you on behalf of, and upon the instructions of, the Committee set up under the Chairpersonship of Hon'ble Mr. Justice J. S. Verma (Retd) ("Committee"). The Committee notes the letter dated January 11, 2013 of Shri K. F. Wilfred enclosing certain of the information previously sought by the Committee. The same is being reviewed by the Committee. The Committee now seeks the following further information from the Election Commission of India ("ECI"):

1. The Committee wishes to know whether the ECI, which is a constitutional authority, is concerned not only with the current capable electors but, would also like to predict what would be the future voting population of India.
2. In this regard, is the ECI in touch with the Registrar of Births and Deaths to ascertain the increase in population and consequently a forecast of the likely age of candidates?
3. Does the ECI ascertain, while making electoral rolls for various states and union territories, the number of missing persons in each such region?
4. Whether the ECI is generally aware of complaints of missing persons/missing children in India?
5. Till date, has any political party addressed any communications to the ECI that large numbers of missing children as well as persons may impact the demographic profile of a constituency, including the exercise of political rights of such persons? Please provide details of the same, if any.

Please provide the above information by January 16, 2012. I would also request you to kindly acknowledge receipt (via email) of this letter.

Kind regards,

Abhishek Tewari
Advocate
Counsel to the Committee

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Monday, January 14, 2013 10:42 PM
To: 'vs.sampath@eci.gov.in'
Cc: 'abhishek@atlaw.co.in'; 'Justice Verma'
Subject: RE: From Justice Verma Committee
Attachments: CEC 14 1 2013.pdf

Importance: High
Sensitivity: Confidential

Tracking:	Recipient	Read
	'vs.sampath@eci.gov.in'	Read: 1/15/2013 10:09 AM
	'abhishek@atlaw.co.in'	
	'Justice Verma'	

Sirs:

Please find attached a letter from the Committee for your urgent action.

Yours faithfully,
Abhishek Tewari
Counsel to the Committee

From: Justice Verma [mailto:justice.verma@nic.in]
Sent: Monday, January 14, 2013 1:54 PM
To: 'vs.sampath@eci.gov.in'
Cc: 'abhishek@atlaw.co.in'
Subject: From Justice Verma Committee
Importance: High
Sensitivity: Confidential

Election Commission of India
New Delhi

Sir,

I am writing to you upon directions of and on behalf of the Justice J.S. Verma Committee headed by Hon'ble Mr. Justice J.S. Verma (a former Chief Justice of India), and has Hon'ble Ms. Justice Leila Seth (a former High Court judge) and Mr. Gopal Subramaniam, Senior Advocate.

As you are aware that the Justice Verma Committee constituted, consequent to the widespread expression of public protest, is proposing to *inter alia* review the existing laws and all other ancillary matters which are connected with the offences of rape and sexual assault on women. We have viewed, in our internal deliberations, that the terms of reference are sufficiently wide for us to consider what additional amendments need to be made and measures need to be taken,

so that laws which may have a bearing on the rights of women and children, could be revisited to promote non-discrimination and gender justice.

In this context, we request you to appear before the Committee, preferably through counsel, to make submissions, on 18th of January 2013 (at 9 am) at Vigyan Bhawan Annexe, New Delhi.

A gentle reminder that the information requested from you has not been provided till date.

Yours faithfully,

Abhishek Tewari

Counsel to the Committee

Sent From 14/1/13 at 2:02 pm

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Monday, January 14, 2013 1:54 PM
To: 'vs.sampath@eci.gov.in'
Cc: 'abhishek@atlaw.co.in'
Subject: From Justice Verma Committee

Importance: High
Sensitivity: Confidential

Election Commission of India
New Delhi

Sir,

I am writing to you upon directions of and on behalf of the Justice J.S. Verma Committee headed by Hon'ble Mr. Justice J.S. Verma (a former Chief Justice of India), and has Hon'ble Ms. Justice Leila Seth (a former High Court judge) and Mr. Gopal Subramaniam, Senior Advocate.

As you are aware that the Justice Verma Committee constituted, consequent to the widespread expression of public protest, is proposing to *inter alia* review the existing laws and all other ancillary matters which are connected with the offences of rape and sexual assault on women. We have viewed, in our internal deliberations, that the terms of reference are sufficiently wide for us to consider what additional amendments need to be made and measures need to be taken, so that laws which may have a bearing on the rights of women and children, could be revisited to promote non-discrimination and gender justice.

In this context, we request you to appear before the Committee, preferably through counsel, to make submissions, on 18th of January 2013 (at 9 am) at Vigyan Bhawan Annexe, New Delhi.

☞ *A gentle reminder that the information requested from you has not been provided till date.*

Yours faithfully,
Abhishek Tewari
Counsel to the Committee

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Thursday, January 10, 2013 8:17 PM
To: 'vs.sampath@eci.gov.in'
Cc: 'abhishek@atlaw.co.in'; 'talha.ar@gmail.com'
Subject: Request from Justice Verma Committee
Attachments: lt dt 7.1.13 - CEC.pdf

Importance: High

Categories:	Info Sought by the Commission	
Tracking:	Recipient	Read
	'vs.sampath@eci.gov.in'	Read: 1/11/2013 11:08 AM
	'abhishek@atlaw.co.in'	
	'talha.ar@gmail.com'	Read: 1/10/2013 8:19 PM

Dear Sir,

Please find a letter from Justice JS Verma Committee on Criminal Law Amendment for your urgent action.

Regards,
Abhishek Tewari
Counsel to the Committee

जस्टिस वर्मा
आपराधिक कानूनों के
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Justice Verma
Committee on Amendments
to Criminal Law,
E-mail : justice.verma@nic.in
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Justice (Smt.) Leila Seth
Member

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

January 10, 2013

1. The Principal Secretary to the Lieutenant Governor of Delhi
Lieutenant Governor's Secretariat
New Delhi
Fax: +91 11 23920225
2. The Secretary to the Government of India
Ministry of Home Affairs
New Delhi
Email: hshso@nic.in
Fax: +91 11 23093003
3. The Chief Secretary
Government of NCT of Delhi
New Delhi
Fax: + 91 11 23392102

**Re: Steps proposed to be taken by the Government of India and Delhi
Government for safety of women in Delhi**

Dear Sirs,

I write to you on behalf of, and upon the instructions of, the Committee set up under the Chairpersonship of Hon'ble Mr. Justice J. S. Verma (Retd) ("**Committee**").

The Committee understands from reports in the press and media that, pursuant to meetings between His Excellency, the Lt. Governor of Delhi, the Hon'ble Union Minister for Home Affairs, and the Hon'ble Chief Minister of Delhi, the following directions have been issued by a 'Special Task Force' to the Delhi Police / Government of Delhi:

1. To increase the number of telephone helpline numbers for citizens;
2. The number of lines for the 100 helpline number be increased from 60 to 100;

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Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

3. The 1091 Helpline will be converted into a distress helpline for women. The number of lines for this number will be increased from two to ten, and only women police officers will attend calls on this number;
4. The number of PCR vans in Delhi will be increased;
5. Each passenger bus plying on Delhi roads will be GPS-enabled;
6. Each bus plying in Delhi will have CCTV cameras installed in them by the end of January 2013;
7. Staff on each bus plying in Delhi will mandatorily carry photo identity cards, which will be issued after stringent police verification. This process will be completed by the end of January 2013. Any buses, for which these procedures have not been completed, will not be allowed to run from February 1, 2013;
8. Schools will not be allowed to hire any bus to transport students till the owner and the staff of each such bus are verified and given police clearance by the end of January 2013;
9. Delhi police will identify 'vulnerable' bus routes and will deploy plain-clothed policemen on buses plying on these routes during day and night;
10. All 'vulnerable' roads and pedestrian pathways will be identified and lit up properly;
11. The Delhi Transport department has been asked to re-verify permits of all buses;
12. Discotheques, either stand-alone or in five-star hotels, have been asked to stop playing music by 12.30 am and close by 1 am.

The Committee would be grateful if it could receive confirmation of the accuracy of the aforementioned press reports. Notwithstanding the same, the Committee is pleased that the Central Government and the Delhi Government have taken the initiative to implement the above steps, which were also being considered to be implemented by the Committee. The

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Member

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

Committee trusts that the aforementioned steps will be implemented and strictly enforced, not only by the timeline proposed (i.e. by January 31, 2013), but also for all times thereafter.

The Committee would, however, like some clarifications in respect of the aforementioned press reports, namely:

1. Who are the members of the 'Special Task Force' mentioned in the said press reports?
2. What is the mandate of the said 'Special Task Force'? and
3. What is the basis for earmarking a particular bus route or road as being 'vulnerable'?

The Committee has instructed that the aforesaid confirmation and information/data be provided to the Committee no later than January 12, 2013.

Kind regards,

Abhishek Tewari
Advocate
Counsel to the Committee

sent by fax on 14/1/13 at 1.40 pm

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Monday, January 14, 2013 1:15 PM
To: 'csdelhi@nic.in'
Cc: 'abhishek@atlaw.co.in'
Subject: from Justice Verma Committee

Importance: High

Chief Secretary
Government of NCT Delhi

Sir,

I am writing to you upon directions of and on behalf of the Justice J.S. Verma Committee headed by Hon'ble Mr. Justice J.S. Verma (a former Chief Justice of India), and has Hon'ble Ms. Justice Leila Seth (a former High Court judge) and Mr. Gopal Subramaniam, Senior Advocate.

As you are aware that the Justice Verma Committee constituted, consequent to the widespread expression of public protest, is proposing to *inter alia* review the existing laws and all other ancillary matters which are connected with the offences of rape and sexual assault on women. We have viewed, in our internal deliberations, that the terms of reference are sufficiently wide for us to consider what additional amendments need to be made and measures need to be taken, so that laws which may have a bearing on the rights of women and children, could be revisited to promote non-discrimination and gender justice.

In this context, we call upon you to appear before the Committee, preferably through counsel, to make submissions, on 18th of January 2013 (at 9 am) at Vigyan Bhawan Annexe, New Delhi.

Yours faithfully,
Abhishek Tewari
Counsel to the Committee

जस्टिस वर्मा
आपराधिक कानूनों के
संशोधन संबंधी समिति
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Justice Verma
Committee on Amendments
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Justice (Smt.) Leila Seth
Member

January 14, 2013

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

The Principal Secretary to the Lieutenant Governor of Delhi
Lieutenant Governor's Secretariat
New Delhi
Fax: +91 11 23920225

Re: Information sought by the Justice J. S. Verma Committee

Dear Sir,

I write to you on behalf of, and upon the instructions of, the Committee set up under the Chairpersonship of Hon'ble Mr. Justice J. S. Verma (Retd) ("Committee"). As you might be aware, the Committee is examining various laws pertaining to sexual assault / sexual violence in India, and to that end, seeks the following information from your office:

1. Is the Hon'ble Lieutenant Governor aware of the problem of missing children in India? Being an administrator with vast experience, is he aware of the problem existing in Delhi?
2. Have any written directions been issued to the Delhi Police / Commissioner Police, Delhi by the Hon'ble Lieutenant Governor's office to trace such missing children? Kindly make copies of the same available to the Committee.

The Committee would be extremely grateful for your assistance in gathering information in this matter, and awaits your early response.

Kind regards,

Abhishek Tewari
Advocate
Counsel to the Committee

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Justice Verma
Committee on Amendments
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E-mail : justice.verma@nic.in
Vigyan Bhawan Annexe,
New Delhi-110003

Justice (Smt.) Leila Seth
Member

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

January 14, 2012

Ms. Sheila Dixit
Hon'ble Chief Minister, NCT of Delhi
Level 3, A Wing,
Delhi Secretariat
New Delhi 110002
Email: cmdelhi@nic.in
Fax: +91 11 23392111

Re: Information sought by the Justice J. S. Verma Committee

Dear Chief Minister,

I write to you on behalf of, and upon the instructions of, the Committee set up under the Chairpersonship of Hon'ble Mr. Justice J. S. Verma (Retd) ("Committee"). As you might be aware, the Committee is examining various laws pertaining to sexual assault / sexual violence in India, and to that end, seeks the following information from your office:

1. The Committee would like to know if any of the chief secretaries / labour secretaries of the Government of NCT of Delhi, who have held office during your tenure as Chief Minister, have brought to your notice details of children trafficked from Delhi and into Delhi?

The Committee would be extremely grateful for your assistance in gathering information in this matter, and awaits your early response.

The Committee would also be grateful if you could look into its letter dated January 10, 2013, addressed to, *inter alia*, the Chief Secretary, Government of NCT of Delhi, seeking clarifications in respect of certain press reports. A copy of the said letter is enclosed for ease of reference.

Kind regards,

Abhishek Tewari
Advocate
Counsel to the Committee

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Justice (Smt.) Leila Seth
Member

Justice J. S. Verma
Chairman

Justice Verma
Committee on Amendments
to Criminal Law,
E-mail : justice.verma@nic.in
Vigyan Bhawan Annexe,
New Delhi-110003
Gopal Subramaniam
Member

January 17, 2013

To

Mr. V. Dinesh Reddy,
Director General of Police,
Andhra Pradesh
Fax: 040-23296565

Mr. Shrinivas Vashisht
Director General of Police,
Haryana
Fax: 0172-2567267

Mr. Nandan Dubey
Director General of Police,
Madhya Pradesh
Fax: 0755-2443501

Mr. J.K. Sharma,
Director General of Police
(Temp. Charge),
Arunachal Pradesh
Fax: 0360-2211433

Mr. Ishwar Dev Bhandari
Director General of Police,
Himachal Pradesh
Fax: 0177-2626945

Mr. Sanjeev Dayal,
Director General of Police,
Maharashtra
Fax: 022-22840598

Mr. J.N. Chaudhary,
Director General of Police,
Assam
Fax: 0361-2525397

Mr. Ashok Prasad
Director General of Police,
Jammu & Kashmir
Fax: 0194-2443010

Mr. Y. Joy Kumar,
Director General of Police,
Manipur
Fax: 0385-2449825

Mr. Abhayanand
Director General of Police,
Bihar
Fax: 0612-2217877

Mr. Ashok Prasad,
Director General of Police,
Jammu & Kashmir
Fax: 0191-2430871

Mr. N. Ramachandran,
Director General of Police,
Meghalaya
Fax: 0364-2220839

Mr. Ram Niwas,
Director General of Police,
Chhattisgarh
Fax: 0771-4240077

Mr. G.S. Rath,
Director General of Police,
Jharkhand
0651-2400738

Mr. Alok Kumar Verma,
Director General of Police,
Mizoram
Fax: 0389-2334310

Mr. Kishan Kumar,
Director General of Police,
Goa
Fax: 0832-2428073

Mr. Lala Rukkuma Pachau,
Director General of Police,
Karnataka
080-22211803

Mr. O. Alem,
Director General of Police,
Nagaland
Fax: 0370-2244274

Mr. Chitrnanjan Singh
Director General of Police,
Gujarat
079-23246329

Mr. K.S. Balasubramanian,
Director General of Police,
Kerala
Fax: 0471-2726560

Mr. Pesesayo Kezo,
Director General of Police,
Orissa
Fax: 0671-2304033

जस्टिस वर्मा
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Vigyan Bhawan Annexe,
New Delhi-110003

Justice (Smt.) Leila Seth
Member

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

Mr. Sumedh Singh Saini,
Director General of Police,
Punjab
Fax: 0172-2740757

Mr. S.B. Deol,
Director General of Police,
Andaman & Nicobar Islands
Fax: 03192-230262

Mr. H.C. Meena,
Director General of Police,
Rajasthan
Fax: 0141-2607926

Mr. R.P. Upadhyaya,
Director General of Police,
Chandigarh
0172-2741652

Mr. Jasbir Singh,
Director General of Police,
Sikkim
Fax: 03592-202341

Mr. Rajesh Khuma,
Inspector General of Police,
Dadra & Nagar Haveli
Fax: 0260-2220076

Mr. Ramanujam K.,
Director General of Police,
Tamil Nadu
Fax: 044-28447703

Mr. Rajesh Khuma,
Inspector General of Police,
Daman & Diu
Fax: 0260-2220076

Mr. Sanjay Sinha,
Director General of Police,
Tripura
Fax: 0381-2324970

Mr. Neeraj Kumar,
Commissioner of Police,
Delhi
Fax: 23722052

Mr. A.C. Sharma,
Director General of Police,
Uttar Pradesh
Fax: 0522-2206120

Mr. Ajay Kumar,
Superintendent of Police,
Lakshadweep
Fax: 04896-262624

Mr. Satyavrat,
Director General of Police,
Uttarakhand
Fax: 0135-2712080

Mr. R.S. Krishnia
Inspector General of Police,
Puducherry
Fax: 0413-2336149

Mr. Naparajit Mukherjee,
Director General of Police,
West Bengal
Fax: 033-22145486

Mr. Rakesh Maria,
ATS Chief
Mumbai
022-23053158

जस्टिस वर्मा
आपराधिक कानूनों के
संशोधन संबंधी समिति
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Committee on Amendments
to Criminal Law,
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Vigyan Bhawan Annexe,
New Delhi-110003

Justice (Smt.) Leila Seth
Member

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

Re: Request for data on missing children and connected matters

Dear Sirs,

I write to you on behalf of, and upon the instructions of, the Committee set up under the Chairpersonship of Hon'ble Mr. Justice J. S. Verma (Retd) ("Committee"). During its deliberations the Committee, after receiving the views of several stakeholders, seeks the following information and data from various High Courts across the country:

1. Please provide information in respect of number of cases of missing children that have been reported in your State, in respect of (a) children aged between 0-12 years; and (b) children aged between 12-18 years.
2. Further to point no.1 above, please apprise the Committee in how many of the aforesaid was the child rescued.
3. Further to the point no.1 above, please apprise the Committee as to the number of children that had been (a) kidnapped; (b) trafficked; (c) rescued and united with the family; (d) rescued and sent to protection home.
4. Whether any gang known to be involved in trafficking of children in your State has been busted by the Police, if yes, please provide details.
5. Whether the instances of trafficking have been reported by you to the State Government, and whether any steps had been taken by the State Government(s).
6. In respect of the "Office Memorandum" bearing No. F.NO.15011/60/2011 dated 31.1.2012, please apprise the Committee
 - (a) Of the steps that have been taken at your step in implementation of the aforesaid "Office Memorandum".
 - (b) With the details of the Nodal Officers that have been appointed at your end including details of their appointment orders.
 - (c) With the minutes of the meetings of the various meetings where the issue of missing children had been discussed especially at periodic crime review meetings
 - (d) With the details of number of offences registered, their status and details of gangs busted between 31.1.2012 to 31.12.2012.
 - (e) With the details of complaints of sexual abuse receive from care & protection homes meant for juveniles, women, children and destitute.

जस्टिस वर्मा
आपराधिक कानूनों के
संशोधन संबंधी समिति
विज्ञान भवन एनैक्सी
नई दिल्ली - 110003



Justice Verma
Committee on Amendments
to Criminal Law,
E-mail : justice.verma@nic.in
Vigyan Bhawan Annexe,
New Delhi-110003

Justice (Smt.) Leila Seth
Member

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

As you will appreciate, the protection of women and children from sexual assaults is a matter that requires urgent redress, and, therefore, the Committee requests you to provide the aforementioned data within a period of 2 days from the receipt of this letter. Please note that failure to provide the same shall be construed as non-cooperation.

Kind regards,

Abhishek Tewari
Advocate
Counsel to the Committee

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Wednesday, January 16, 2013 12:16 AM
To: 'police@hry.nic.in'; 'adgp.caw-hry@nic.in'; 'adgp.laworder@hry.nic.in'
Subject: URGENT LETTER FROM JUSTICE JS VERMA COMMITTEE

Importance: High

Attn: DGP, Haryana, ADGP (CAW), Haryana, ADGP (LAW & ORDER), Haryana

Dear Sirs:

I am writing to you upon directions of and on behalf of the Justice J.S. Verma Committee headed by Hon'ble Mr. Justice J.S. Verma (a former Chief Justice of India), and has Hon'ble Ms. Justice Leila Seth (a former High Court judge) and Mr Gopal Subramaniam, Sr. Advocate.

As you are aware that the Justice Verma Committee constituted, consequent to the widespread expression of public protest, is proposing to inter alia review the existing laws which are connected with the offences of rape and sexual assault on women.

In this context, I request that the following information may kindly be **provided to the Committee within 2 days of the delivery of this email:**

- (1) Are the Government of Haryana / office of the Director General of Police, Haryana aware of a raid carried out in June 2012 at "Apna Ghar" – a children's home in Rohtak, Haryana in respect of a complaint of abuse of girl children at the said home? If yes, please provide details of the same.
- (2) If such a raid has indeed occurred, have any FIRs been registered in respect of the said offence? Please provide details of the same.
- (3) The Committee understands that Additional DGP, Shri M. S. Mann, has submitted an investigation report in respect of the aforesaid incident in Rohtak. Please provide the Committee with a copy of the same.
- (4) Have NCPCR officers visited the said institution (Apna Ghar) prior to the said raid, as well as post such raid to ascertain the conditions of the children living in the home? If this has not been done, please provide reasons.
- (5) Is the NCPCR aware that a media channel reported the involvement of certain police officers in the aforementioned offence? If yes, please provide details of such police officers and whether any cases have been registered against them.

- (6) Please furnish testimonies, if any, of the abused girl children from Apna Ghar in respect of the abuse suffered by them.
- (7) In respect of MHA's Advisory dated 4.1.2013 on missing children-measures needed to prevent trafficking and trace the children sent by Addl Secretary Smt B Bhamati, when has the same been received in your office and what steps have been taken to give effect to the same.

Please note that failure to provide information as sought shall be treated as non-cooperation.

Yours faithfully,
Abhishek Tewari
Counsel to the Committee

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Tuesday, January 15, 2013 11:58 PM
To: 'cs@hry.nic.in'
Cc: 'abhishek@atlaw.co.in'
Subject: URGENT LETTER from Justice JS Verma Committee on Criminal Law Amendment

Importance: High

CHIEF SECRETARY
4th Floor, Haryana Civil Secretariat,
Sector-1, Chandigarh.
Phone/ Fax: 0172-2740118
Email: cs@hry.nic.in

Dear Sirs:

I am writing to you upon directions of and on behalf of the Justice J.S. Verma Committee headed by Hon'ble Mr. Justice J.S. Verma (a former Chief Justice of India), and has Hon'ble Ms. Justice Leila Seth (a former High Court judge) and Mr Gopal Subramaniam, Sr. Advocate.

As you are aware that the Justice Verma Committee constituted, consequent to the widespread expression of public protest, is proposing to inter alia review the existing laws which are connected with the offences of rape and sexual assault on women.

In this context, I request that the following information may kindly be **provided to the Committee within 2 days of the delivery of this email:**

- (1) Are the Government of Haryana / office of the Director General of Police, Haryana aware of a raid carried out in June 2012 at "Apna Ghar" – a children's home in Rohtak, Haryana in respect of a complaint of abuse of girl children at the said home? If yes, please provide details of the same.
- (2) If such a raid has indeed occurred, have any FIRs been registered in respect of the said offence? Please provide details of the same.
- (3) The Committee understands that Additional DGP, Shri M. S. Mann, has submitted an investigation report in respect of the aforesaid incident in Rohtak. Please provide the Committee with a copy of the same.
- (4) Have NCPCR officers visited the said institution (Apna Ghar) prior to the said raid, as well as post such raid to ascertain the conditions of the children living in the home? If this has not been done, please provide reasons.
- (5) Is the NCPCR aware that a media channel reported the involvement of certain police officers in the aforementioned offence? If yes, please provide details of such police officers and whether any cases have been registered against them.

- (6) Please furnish testimonies, if any, of the abused girl children from Apna Ghar in respect of the abuse suffered by them.

Please note that failure to provide information as sought shall be treated as non-cooperation.

Yours faithfully,
Abhishek Tewari
Counsel to the Committee

जस्टिस वर्मा
आपराधिक कानूनों के
संशोधन संबंधी समिति
विज्ञान भवन एनैक्सी
नई दिल्ली - 110003



Justice Verma
Committee on Amendments
to Criminal Law,
E-mail : justice.verma@nic.in
Vigyan Bhawan Annexe,
New Delhi-110003

Justice (Smt.) Leila Seth
Member

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

January 9, 2013

The Registrar General
Allahabad High Court
Allahabad, Uttar Pradesh
Email: rg@up.nic.in

The Registrar General
Karnataka High Court
Bengaluru, Karnataka
Email: rghck@kar.nic.in

Registrar General
Andhra Pradesh High Court
Hyderabad, Andhra Pradesh
Email: aphc@ap.nic.in

The Registrar General
Kerala High Court
Ernakulam, Kerala
Email: hckerala@nic.in

The Registrar General
Bombay High Court,
Mumbai, Maharashtra
Email : hcbom.mah@nic.in

The Registrar General
Madras High Court
Chennai, Tamil Nadu
Email: regrgenl@tn.nic.in

The Registrar General
Calcutta High Court
Kolkata, West Bengal
Email: cj-wb@nic.in

The Registrar General
Madhya Pradesh High Court
Jabalpur, Madhya Pradesh
Email: mphcjb@sancharnet.in

The Registrar General
Chhattisgarh High Court
Bilaspur, Chhattisgarh
Email: highcourt.cg@nic.in

The Registrar General
Orissa High Court
Cuttack, Orissa
Email: highcourt@ori.nic.in

The Registrar General
Delhi High Court
New Delhi
Email: delhihighcourt@hub.nic.in

The Registrar General
Patna High Court
Patna, Bihar
Email: hcpat-bih@nic.in

The Registrar General
Guwahati High Court
Guwahati, Assam
Email: hicourtg@rediffmail.com

The Registrar General
Punjab & Haryana High Court
Chandigarh
Email:
highcourtchd@indianjudiciary.gov.in

The Registrar General
Gujarat High Court
Ahmedabad, Gujarat

The Registrar General
Rajasthan High Court
Jodhpur, Rajasthan

जस्टिस वर्मा
आपराधिक कानूनों के
संशोधन संबंधी समिति
विज्ञान भवन एनैक्सी
नई दिल्ली - 110003



Justice Verma
Committee on Amendments
to Criminal Law,
E-mail : justice.verma@nic.in
Vigyan Bhawan Annexe,
New Delhi-110003

Justice (Smt.) Leila Seth
Member

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

Email: rg-hc-guj@nic.in

Email: hc-rj@nic.in

The Registrar General
Himachal Pradesh High Court
Shimla, Himachal Pradesh
Email: hicourt-hp@nic.in

The Registrar General
Sikkim High Court
Gangtok, Sikkim
Email: hc-sik@hub.nic.in

The Registrar General
Jammu & Kashmir High Court
Jammu, J&K
Email: hcjmu-jk@nic.in

The Registrar General
Uttarakhand High Court
Nainital, Uttarakhand
Email: highcourt-ua@nic.in

The Registrar General
Jharkhand High Court
Ranchi, Jharkhand
Email: jhc@nic.in

Re: Request for data on crimes against women and connected matters

Dear Sirs,

I write to you on behalf of, and upon the instructions of, the Committee set up under the Chairpersonship of Hon'ble Mr. Justice J. S. Verma (Retd) ("**Committee**"). During its deliberations the Committee, after receiving the views of several stakeholders, seeks the following information and data from various High Courts across the country:

1. How many cases of rape and other crimes against women have been reported within the jurisdiction of your High Court for the period 01.01.2007 to 31.12.2012? Data in respect of each such crime be provided separately;
2. What is the present status of the investigation/prosecution of the cases referred to in (1) above as per the records maintained by your High Court?;
3. How many cases of rape and other crimes against women have been reported within the jurisdiction of your High Court wherein one or more

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आपराधिक कानूनों के
संशोधन संबंधी समिति
विज्ञान भवन एनैक्सी
नई दिल्ली - 110003



Justice Verma
Committee on Amendments
to Criminal Law,
E-mail : justice.verma@nic.in
Vigyan Bhawan Annexe,
New Delhi-110003

Justice (Smt.) Leila Seth
Member

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

of the accused person(s) are police personnel for the period 01.01.2007 to 31.12.2012? Data in respect of each such crime be provided separately;

4. How many cases of rape and other crimes against women have been reported within the jurisdiction of your High Court wherein one or more of the accused person(s) are medical personnel / staff of hospitals, or where the offence has taken place within the premises of a hospital for the period 01.01.2007 to 31.12.2012? Data in respect of each such crime be provided separately;
5. How many cases of rape and other crimes against women have been reported within the jurisdiction of your High Court wherein one or more of the accused person(s) are jail staff, or where the offence has taken place within the premises of a jail for the period 01.01.2007 to 31.12.2012? Data in respect of each such crime be provided separately;
6. How many cases of rape and other crimes against women have been reported within the jurisdiction of your High Court wherein one or more of the accused person(s) are staff of protective homes for women, or where the offence has taken place within the premises of a protective home for women for the period 01.01.2007 to 31.12.2012. Data in respect of each such crime be provided separately;
7. How many cases of rape and other crimes against children have been reported within the jurisdiction of your High Court wherein one or more of the accused person(s) are staff of protective homes/juvenile homes for children, or where the offence has taken place within the premises of a protective homes/juvenile homes for children for the period 01.01.2007 to 31.12.2012. Data in respect of each such crime be provided separately;
8. For the period 01.01.2007 to 31.12.2012, how many cases of rape/sexual assault have taken place within the jurisdiction of your High Court where the offence has been compromised/compounded by (i) the accused compensating the victim, and/or (ii) the accused marrying the victim;

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नई दिल्ली - 110003



Justice Verma
Committee on Amendments
to Criminal Law,
E-mail : justice.verma@nic.in
Vigyan Bhawan Annexe,
New Delhi-110003

Justice (Smt.) Leila Seth
Member

Justice J. S. Verma
Chairman

Gopal Subramaniam
Member

As you will appreciate, the protection of women and children from sexual assaults is a matter that requires urgent redress, and, therefore, the Committee requests you to provide the aforementioned data within a period of 5 days from the receipt of this letter.

I would also request you to kindly acknowledge receipt (via email) of this letter.

Kind regards,

Abhishek Tewari
Advocate
Counsel to the Committee

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Wednesday, January 09, 2013 4:30 PM
To: 'rg@up.nic.in'; 'rghck@kar.nic.in'; 'aphc@ap.nic.in'; 'hckerala@nic.in'; 'hcbom.mah@nic.in'; 'regrgenl@tn.nic.in'; 'cj-wb@nic.in'; 'mphcjb@sancharnet.in'; 'highcourt.cg@nic.in'; 'highcourt@ori.nic.in'; 'delhihighcourt@hub.nic.in'; 'hcpat-bih@nic.in'; 'hicourtg@rediffmail.com'; 'highcourtchd@indianjudiciary.gov.in'; 'rg-hc-guj@nic.in'; 'hc-rj@nic.in'; 'hicourt-hp@nic.in'; 'hc-sik@hub.nic.in'; 'hcjmu-jk@nic.in'; 'highcourt-ua@nic.in'; 'jhc@nic.in'
Cc: 'abhishek@atlaw.co.in'
Subject: URGENT: Letter from Justice Verma Committee on Amendments to Criminal Law
Attachments: Letter to Registrars of High Courts - 9.1.13.pdf

Importance: High
Sensitivity: Confidential

Tracking:	Recipient	Read
	'rg@up.nic.in'	
	'rghck@kar.nic.in'	
	'aphc@ap.nic.in'	
	'hckerala@nic.in'	
	'hcbom.mah@nic.in'	
	'regrgenl@tn.nic.in'	
	'cj-wb@nic.in'	
	'mphcjb@sancharnet.in'	
	'highcourt.cg@nic.in'	
	'highcourt@ori.nic.in'	
	'delhihighcourt@hub.nic.in'	
	'hcpat-bih@nic.in'	Read: 1/10/2013 4:00 PM
	'hicourtg@rediffmail.com'	
	'highcourtchd@indianjudiciary.gov.in'	
	'rg-hc-guj@nic.in'	
	'hc-rj@nic.in'	
	'hicourt-hp@nic.in'	
	'hc-sik@hub.nic.in'	
	'hcjmu-jk@nic.in'	Read: 1/11/2013 11:37 AM
	'highcourt-ua@nic.in'	
	'jhc@nic.in'	
	'abhishek@atlaw.co.in'	
	hc-sik@nic.in	Read: 1/15/2013 2:37 PM

Dear Sirs,

Please see the attached letter under instructions from the Justice J. S. Verma Committee for your urgent action.

Best regards,
Abhishek Tewari
Advocate
Counsel to the Committee

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Tuesday, January 15, 2013 3:53 PM
To: 'ncw@nic.in'
Cc: 'abhishek@atlaw.co.in'
Subject: From Justice Verma Committee

Importance: High

Tracking: Recipient Read
'ncw@nic.in' Read: 1/16/2013 1:04 PM
'abhishek@atlaw.co.in'

Chairperson, National Commission for Women

Dear Sir/ Madam,

I am writing to you upon directions of and on behalf of the Justice J.S. Verma Committee headed by Hon'ble Mr. Justice J.S. Verma (a former Chief Justice of India), and has Hon'ble Ms. Justice Leila Seth (a former High Court judge) and Mr Gopal Subramaniam, Sr Advocate.

As you are aware that the Justice Verma Committee constituted, consequent to the widespread expression of public protest, is proposing to inter alia review the existing laws which are connected with the offences of rape and sexual assault on women. We have viewed, in our internal deliberations, that the terms of reference are sufficiently wide for us to consider what additional amendments need to be made, so that laws which may have a bearing on the rights of women could be revisited to promote non-discrimination and gender justice.

In this context, I request that the following information may kindly be **provided within 2 days**:

- (1) Please provide to the Committee copies of the report(s) prepared by NCW in respect of sexual assault of "Women in Conflict" by State and non-State actors.
- (2) Whether NCW has been made aware of any instance of sexual assault of a woman in protection home, and what action has been taken by NCW.
- (3) Whether NCW has advocated change in curriculum of teaching to include sex education and other subjects for gender mainstreaming. Please provide details.

Yours faithfully,
Abhishek Tewari
Counsel to the Committee
Justice JS Verma Committee
Room No. 213, Vigyan Bhawan Annexe
New Delhi

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Tuesday, January 15, 2013 5:43 PM
To: 'jsut@mha.gov.in'; 'jsut@nic.in'; 'jsg_82@yahoo.co.in'
Subject: Information - CWG

Importance: High

Tracking:	Recipient	Read
	'jsut@mha.gov.in'	Read: 1/16/2013 9:29 AM
	'jsut@nic.in'	
	'jsg_82@yahoo.co.in'	

Sirs,

The Committee had requested for information concerning recruitment of police force (25,000 or so) in CWG, 2010, and also acquisition and deployment of vehicles including personnel and vehicle's deployment. Also the Committee had requested for files pertaining to the above, and any audit having been recommended and action taken thereon.

The Committee notes that it is unfortunate that the information requested has not been provided as yet. The Committee once again requests you to provide the same. Please note the failure to provide the documents by 12.noon on Jan 17, 2013 shall be construed as non-cooperation.

Yours truly,
Abhishek Tewari
Counsel to the Committee

Justice Verma

From: Justice Verma [justice.verma@nic.in]
Sent: Tuesday, January 15, 2013 11:43 PM
To: 'Justice Verma'; 'abhishek@atlaw.co.in'; 'shantha.sinha@nic.in'
Subject: RE: Sub-Poena from Justice Verma Committee

Sensitivity: Confidential

January 15, 2013

The Chairperson
The National Commission for Protection of Child Rights
5th Floor, Chanderlok Building, 36, Janpath, New Delhi - 110 001
Fax: +91 11 23724026, +91 11 23731584 (Fax)
Email: shantha.sinha@nic.in

Dear Madam,

I am writing to you upon directions of and on behalf of the Justice J.S. Verma Committee headed by Hon'ble Mr. Justice J.S. Verma (a former Chief Justice of India), and has Hon'ble Ms. Justice Leila Seth (a former High Court judge) and Mr Gopal Subramaniam, Sr. Advocate.

I also refer to the email below.

As you are aware that the Justice Verma Committee constituted, consequent to the widespread expression of public protest, is proposing to inter alia review the existing laws which are connected with the offences of rape and sexual assault on women. We have viewed, in our internal deliberations, that the terms of reference are sufficiently wide for us to consider what additional amendments need to be made, so that laws which may have a bearing on the rights of women could be revisited to promote non-discrimination and gender justice.

In this context, I request that the following information may kindly be **provided to the Committee within 2 days of the receipt of this email:**

- (1) Is the NCPCR aware of a raid carried out in June 2012 at "Apna Ghar" – a children's home in Rohtak, Haryana in respect of a complaint of abuse of girl children at the said home? If yes, please provide details of the same.
- (2) If such a raid has indeed occurred, have any FIRs been registered in respect of the said offence? Please provide details of the same.
- (3) Have NCPCR officers visited the said institution (Apna Ghar) prior to the said raid, as well as post such raid to ascertain the conditions of the children living in the home? If this has not been done, please provide reasons.
- (4) Is the NCPCR aware that a media channel reported the involvement of certain police officers in the aforementioned offence? If yes, please provide details of such police officers and whether any cases have been registered against them.

(5) Please furnish testimonies, if any, of the abused girl children from Apna Ghar in respect of the abuse suffered by them.

Please note that failure to provide the documents/information shall be treated as non-cooperation.

Yours faithfully,
Abhishek Tewari
Counsel to the Committee

From: Justice Verma [<mailto:justice.verma@nic.in>]
Sent: Saturday, January 12, 2013 4:58 PM
To: 'shantha.sinha@nic.in'
Cc: 'abhishek@atlaw.co.in'
Subject: Sub-Poena from Justice Verma Committee
Importance: High
Sensitivity: Confidential

Dear Ma'am,

Please find attached a direction from the Committee for your **urgent** action.

Regards,

Abhishek Tewari

Counsel to the Committee