

NGO Report - Apne Aap Women Worldwide

[Apne Aap Women Worldwide](#) is a grassroots organization working to empower girls and women to resist and end sex trafficking in India.

Our vision is to see a world where every woman and girl can realize her full potential. We are inspired by the twin Gandhian principles:

Ahimsa (non-violence) - is resisting violence to the self and to the other.

Antodaya (upliftment of the last woman) - last person is the prostituted girl or woman.

Since 2002, we have formed 150 self-empowerment groups in brothels, red light districts, slums and villages. We have found a community-centered solution that transforms the most marginalized girls and women into leaders. By 2016, we plan to scale our model to link 10,000 women and girls with the access to vocational and educational opportunities.

We believe that prostitution is not a choice but the absence of it. The sex trafficking industry takes advantage of women and girls' lack of meaningful options due to gender, caste and class discrimination and economic policies that fail to ensure universal access to education, sustainable livelihoods and human rights. The most effective solutions come from small groups of women organizing themselves in self-empowerment groups to collectively access their rights at the local and national level.

The tragic gang rape on 16 December 2012, in New Delhi triggered a nationwide collective public protest against violence against women. India has been in the desperate need of laws that took strong action against those who subjugated women in any form of violence, including trafficking: a demand which AAWW had been pursuing for years. It has to be understood in the context of India that the women's movement in India is dominated by the pro-legalization lobby who aggressively oppose any organization that takes a contrary stand. During our advocacy for Article 370 (Indian Penal Code) for the first time we pushed the anti-trafficking and anti-legalization of prostitution agenda to the forefront and established our presence.

The Ministry of Home Affairs (Government of India) appointed on December 23, 2012 a three member Committee called the Verma Committee, to recommend amendments to the Criminal Law, so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. Of the recommendations made by the Verma Committee and pressing public demand, the Government withdrew the pending Criminal Law (Amendment) Bill, 2012, and replaced it with another Bill that incorporated provisions of the Ordinance as well as other recommendations of the Verma Committee report. On 3 April, the President criminalized the entire process of trafficking from recruitment, transportation, transfers, harbor and receipt, with severe punishment for all involved as part of the new Criminal Law (Amendment) Act 2013.

The following is a brief analysis of the positive aspects and key gaps/ lacunae in the proposed Criminal Law Amendments with regard to rape/sexual assault.

POSITIVE ASPECTS

1. Section 375: Adoption of a gender neutral definition with respect to victim, while retaining a gender specific (male) definition with respect to accuse.
2. Section 370 and 370-A: Trafficking definition included in the law for the first time.
3. Strict punishments for rape/sexual assault and also for trafficking
4. Voyeurism: Proposed Section 354C
5. Stalking: Proposed Section 354D

GAPS /LACUNAE in the proposed amendments

1. **Strict implementation of the law with regard to minors:**

The law has provided for very stringent punishments with regard to sexual assault and sexual exploitation of minors, and further Section 375 defines sexual intercourse with a minor as statutory rape, where the question of consent or lack of consent becomes irrelevant.

Although the law does not permit an accused to argue in his defence that he had no 'knowledge' of a victim's age, or that he was 'mislead' about her being above 18 years of age, the reality is that very often even the FIR is not registered on this ground, even though it is completely extraneous to the law.

While the Courts in India do not permit such a defence to avert a conviction, the defence of 'lack of knowledge' has many times been used as 'extenuating circumstance' to reduce sentence. Sometimes this defence is used to reduce sentences even below the statutory minimum.

We feel that it is very important to address this problem directly, and ensure that a clear message is sent out from Parliament both to law enforcement officials and to the people at large that sexual abuse and exploitation of children is not tolerable under any circumstances, and just because an accused was unaware or was misled about the age of the child, the heinousness of the crime is not diminished in any way.

Toward this end, the following additions to the proposed amendments are crucial:

Section 375. Sexual assault.- A person is said to commit "sexual assault" if that person-

- (a) Penetrates....
- (b) Inserts...
- (c) Manipulates...
- (d) Applies....
- (e) Touches....

Xxxx

Sixthly- With or without the other person's consent, when such other person is under eighteen years of age, irrespective of whether the person committing the assault

believed, or acted on that person's or a third party's representation, that the person was at the time of the assault eighteen years of age or older.

Section 370. Trafficking of a person. (1) Whoever, for the purpose of exploitation.....

Xxxx

Explanation 3.---

Lack of knowledge of the age of the victim by the accused, when the victim is below the age of 18 years, is immaterial in determining the offence of trafficking.

These two simple additions will close an important loophole in the law which is being presently exploited to the hilt by sexual predators of minor children.

2. Definition of child/ minor at 18 years:

The Parliamentary Standing Committee has made a very important recommendation that the age of consent under Section 375 IPC be fixed at 18 years. This recommendation is in conformity with the Convention on the Rights of the Child, which India has ratified, which states in Article 1 that “a child means every human being below the age of eighteen years”. Parliament has already adopted this basis in the definition of “child” under section 2(d) of the Protection of Children from Sexual Offences Act, 2012 (POCSO). On the one hand the age of majority for a myriad of civil rights is fixed at 18 years under Indian law, including the right to vote, the right to enter into a contract and obtaining a driving license, among others. The age of criminal liability is also fixed at 18 years under the Juvenile justice (Care and protection of Children) Act, 2000.

However, it is believed that there is every possibility that the age of consent is likely to be reduced to 16 years. Such a move would be counter-productive to the protection of young girls of a tender age from sexual exploitation, on the specious ground that they ‘consented’.

In support of such reduction in the age of consent is the argument that it is necessary to protect the rights of young persons between the age of 16 and 18 years to engage in consensual sexual activity.

However, these rights, such as they are, have to be balanced against the rights of those myriad children who are being subjected to sexual exploitation, assault and abuse and are unable to seek the protection of the law enforcement machinery. It is an impossibly heavy burden for a child of 16 or 17 years to prove that she did not consent to a sexual assault, in order to sustain a charge of rape. Surely their right to a healthy and wholesome childhood, untainted by the menace of sexual predation which seems to have become a pervasive menace in our society, means something.

In this regard, we draw attention to the Suryanelli rape case, where a schoolgirl of just over 16 years who “eloped” with a male friend and was thereafter sexually assaulted repeatedly for over 40 days by as many men, and transported like a lump of meat from one guest house to another. The Kerala High Court had acquitted the rape accused on the ground that this child had “consented” to the sexual encounters, having willingly eloped with her male friend. After 16 years, the Supreme Court remanded the case back to the High Court for re-hearing.

While arguing the right to consensual sex of young persons, let us not forget the mind-set of the law enforcement machinery which implements this law. In such a scenario, it is incomprehensible that 16 years as the age of consent under the IPC can be acceptable. The purpose of the law- to protect children of tender years from sexual abuse and exploitation— must remain paramount.

Therefore, in order to protect consensual sexual activity between young persons between the age of 16 years and 18 years, while at the same time providing for protection from abuse of power by ensuring that the age different between such consenting parties is never more than 24 months, we propose the following *Exception* be incorporated at the end of Section 375, as follows:

Section 375.- Sexual assault.-

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Exception 2.- Consensual sexual acts when both persons are aged between 16 years and 18 years are not sexual assault.

3. Stricter penalties are not enough

It is a well known fact that only a small percentage of sexual crimes are reported to the police, due to the enormous social stigma attached to the crime. Even more tragic is that three-fourths of the cases which are registered end in acquittals. The National Crime Records Bureau records that the rate of conviction for sexual offences is 26%, which is way below the national average for all crimes (41%).

It is not enough to provide for stricter penalties. One of the key reasons for the increasing graph of sexual crimes is that it is a crime of impunity, where perpetrators are confident that they will be able to get away without detection or punishment. It is this mentality that needs to be most urgently addressed by the criminal justice system, and the amendments make a powerful beginning in this direction. The most important deterrent to the sexual predator is the certainty of conviction and jail time.

The provision of death penalty is, however, counter-productive. It is a well known fact that judges are loath to impose the death sentence, and in cases where the death penalty is a possibility, demand a much higher standard of proof from the prosecution. Thus the imposition of death penalty may have the unwitting effect of reducing conviction rates, and increasing the culture of impunity which surrounds sexual crimes in the country. (See also Verma Committee report page 240 to 250).

4. Prevention of abuse of law

Concerns have been voiced regarding the potential misuse and abuse of the proposed amendments to the criminal law, in that there is a possibility that women may file false cases motivated by vendetta or other extra-legal considerations.

It is important to state that the registration of false cases is always a risk under the criminal law, and this is the reason that investigation and adjudication of crimes is not left to the devices of private individuals. Instead, all crimes are investigated by the state through its Police department and prosecuted through its Directorate of Prosecutions, while private parties play the limited role of witnesses. The Criminal Procedure Code provides for a delicate, but

powerful, balance between the police, the prosecution, and the judiciary and lays down a system of checks and balances to ensure that the criminal justice system is not perverted.

Nevertheless, there are instances of false cases and attempts to abuse the process of law. The mechanism to deal with such instances is inbuilt in the Indian Penal Code and the Criminal Procedure Code. The Indian Penal Code in Section 177 and 182 penalizes furnishing of false information to a public servant, which results in harm to a third person. The entire Chapter XI (section 191 to 229) relates to “Of False Evidence and Offences Against Public Justice” and includes such offences as giving false evidence (section 191), dishonestly making false claim in Court (Section 209), and false charge of offence made with intent to injure (section 211), all of which invite serious punishments. The Criminal Procedure Code in Chapter XXVI lays down the “Provisions as to offences affecting the administration of justice” including the provision for summary trial for giving false evidence.

The Courts in India have taken a serious view of litigants/ complainants who have taken the legal system for a ride by filing false complaints, and there is no reason to believe that a complainant, who makes a false or vexatious complaint of sexual assault/rape, would escape the provisions of law which are available to duly punish such person.

Therefore, there are adequate safeguards in the existing law to protect persons against false, vexatious and motivated complaints, and there is no need to make any further provision in the proposed amendments. On the contrary, such a provision will deter women and children, already under tremendous social and psychological pressure not to report the sexual assault they have been subjected to. Surely, this is not the desired effect of the proposed amendments to the law relating to rape/sexual assault in India.

5. Definition of exploitation in Section 370 must include “forced labour and services”:

The definition of exploitation in Section 370 on trafficking in persons must include “forced labor and services” in order to address fully the cyclical nature of sexual exploitation, abuse and trafficking for prostitution. Our experience is that a girl or woman is often first trafficked for domestic, construction or farm work, and subsequently sexually exploited as well. At the time of recruitment, the trafficker normally says he is taking her for work or for marriage. Having

agreed to this, the girl or woman finds herself sucked into prostitution or other forms of sexual exploitation.

Therefore, it is important to include “forced labor and services” as a form of exploitation in the definition of trafficking in persons, to ensure that the recruiter can be punished for even tricking or deceiving women and girls for forced labor or services. This will help prevent the eventual sexual exploitation. The tribal girls from Jharkhand who testified before the Verma Committee also described how they were initially trafficked by the first recruitment agency for domestic work, after which the employer sexually assaulted them and finally they wanted to sell one of them to a brothel in Mumbai.

6. Police Reform and police accountability

No law can be implemented without police cooperation. The first point of contact for a female trying to access justice after a sexual assault is the police station, where at best she can meet an insensitive police officer, who will send her back to her abusive environment, at home or in a brothel, and at worst a corrupt police officer who will not write the compliant or not carry out the investigation properly, resulting in eventual failure of the case in the Courts and acquittal of the accused.

Failure to register or investigate a case in a gender sensitive manner or evidence of miscarriage of justice by the police should lead to an investigation of the police officer by an independent authority and the responsible police personnel held accountable. It is not sufficient that an enquiry be held within the police department itself.

7. Changes in the Immoral Trafficking Prevention Act (ITPA), 1956

While we commend the inclusion of the ‘trafficking’ in the Criminal Amendment Act 2013, we strongly believe that recognition of the problem of trafficking needs to be taken forward through enacting the long-pending amendments proposed by the Ministry of Women and Child Development as well as the Inter Ministerial Group, as approved recently by the Cabinet, to amend the Immoral Trafficking Prevention Act (ITPA), 1956.

Desired changes required in ITPA, 1956:

- The ITPA should reflect all changes brought in with the new Criminal Law (Amendment) Act 2013 in spirit and word, for example in defining trafficking, pimping, touting and punishments for traffickers and brothel owners and so on.
- It is desired that stricter penalties are provided for repeat offenders, as also for those who sexually exploit minors for the purpose of prostitution, i.e. amendments in Section 5 of the ITPA, 1956.
- The deletion of provisions (penalties for solicitation in Section 8 of ITPA, 1956) where the criminalization of prostituted victims is taking place. Rather, the provision of the bill itself should make it obligatory on the part of courts to offer the rehabilitation to victims.
- Section 20 of the ITPA has been thoroughly misused to deny victims their constitutional/fundamental rights (housing , family, companionship of family)
- Parallel amendments must be made in Section 22 of the ITPA to ensure that the burden of proof is shifted from the minor to the accused.
- The demand side of this epidemic must be addressed and there should be a legal strategy to deal with the johns who create the need in the flesh trade industry.
- Requisite changes in the existing laws must be introduced to address the growing incidents of violence in pornography, in particular child pornography.

It is desired that all related laws and case laws, which deal directly or indirectly with violence against women and children, should be brought into a harmonious convergence. The criminal law regime should reflect a victim-friendly approach that ensures rehabilitation and justice to all trafficked women and children. We hope that political parties, across the political spectrum, will show their commitment to the cause of safety and security towards women by including the above in their individual political manifestos for the coming 2014 elections.