

Statement by women's and progressive groups and individuals condemning sexual violence and opposing death penalty

DECEMBER 24, 2012

tags: Delhi Gang Rape, violence against women Delhi

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On 16 December, 2012, a 23-year old woman and her friend hailed a bus at a crossing in South Delhi. In the bus, they were both brutally attacked by a group of men who claimed to be out on a 'joy-ride'. The woman was gang raped and the man beaten up; after several hours, they were both stripped and dumped on the road. While the young woman is still in hospital, bravely battling for her life, her friend has been discharged and is helping identify the men responsible for the heinous crime.

We, the undersigned, women's, students' and progressive groups and concerned citizens from around the country, are outraged at this incident and, in very strong terms, condemn her gang rape and the physical and sexual assault.

As our protests spill over to the streets all across the country, our demands for justice are strengthened by knowing that there are countless others who share this anger. We assert that rape and other forms of sexual violence are not just a women's issue, but a political one that should concern every citizen. We strongly demand that justice is done in this and all other cases and the perpetrators are punished.

This incident is not an isolated one; sexual assault occurs with frightening regularity in this country. Adivasi and dalit women and those working in the unorganised sector, women with disabilities, hijras, kothis, trans people and sex workers are especially targeted with impunity – it is well known that the complaints of sexual assault they file are simply disregarded. We urge that the wheels of justice turn not only to incidents such as the Delhi bus case, but to the epidemic of sexual violence that threatens all of us. We need to evolve punishments that act as true deterrents to the very large number of men who commit these crimes. Our stance is not anti-punishment but against the State executing the death penalty. The fact that cases of rape have a conviction rate of as low as 26% shows that perpetrators of sexual violence enjoy a high degree of impunity, including being freed of charges.

Silent witnesses to everyday forms of sexual assault such as leering, groping, passing comments, stalking and whistling are equally responsible for rape being embedded in our culture and hence being so prevalent today. We, therefore, also condemn the culture of silence and tolerance for sexual assault and the culture of valorising this kind of violence.

We also reject voices that are ready to imprison and control women and girls under the garb of 'safety', instead of ensuring their freedom as equal participants in society and their right to a life free of perpetual threats of sexual assault, both inside and outside their homes.

In cases (like this) which have led to a huge public outcry all across the country, and where the perpetrators have been caught, we hope that justice will be speedily served and they will be convicted for the ghastly acts that they have committed. However, our vision of this justice does not include death penalty, which is neither a deterrent nor an effective or ethical response to these acts of sexual violence. We are opposed to it for the following reasons:

1. We recognise that every human being has a right to life. Our rage cannot give way to what are, in no uncertain terms, new cycles of violence. We refuse to deem 'legitimate' any act of violence that would give the State the right to take life in our names. Justice meted by the State cannot bypass complex socio-political questions of violence against women by punishing rapists by death. Death penalty is often used to distract attention away from the real issue – it changes nothing but becomes a tool in the hands of the State to further exert its power over its citizens. A huge set of changes are required in the system to end the widespread and daily culture of rape.

2. There is no evidence to suggest that the death penalty acts as a deterrent to rape. Available data shows that there is a low rate of conviction in rape cases and a strong possibility that the death penalty would lower this conviction rate even further as it is awarded only under the 'rarest of rare' circumstances. The most important factor that can act as a deterrent is the certainty of punishment, rather than the severity of its form.

3. As seen in countries like the US, men from minority communities make up a disproportionate number of death row inmates. In the context of India, a review of crimes that warrant capital punishment reveals the discriminatory way in which such laws are selectively and arbitrarily applied to disadvantaged communities, religious and ethnic minorities. This is a real and major concern, as the possibility of differential consequences for the same crime is injustice in itself.

4. The logic of awarding death penalty to rapists is based on the belief that rape is a fate worse than death. Patriarchal notions of 'honour' lead us to believe that rape is the worst thing that can happen to a woman. There is a need to strongly challenge this stereotype of the 'destroyed' woman who loses her honour and who has no place in society after she's been sexually assaulted. We believe that rape is tool of patriarchy, an act of violence, and has nothing to do with morality, character or behaviour.

5. An overwhelming number of women are sexually assaulted by people known to them, and often include near or distant family, friends and partners. Who will be able to face the psychological and social trauma of having reported against their own relatives? Would marital rape (currently not recognised by law), even conceptually, ever be looked at through the same retributive prism?

6. The State often reserves for itself the 'right to kill' — through the armed forces, the paramilitary and the police. We cannot forget the torture, rape and murder of Thangjam Manorama by the Assam Rifles in Manipur in 2004 or the abduction, gang rape and murder of Neelofar and Aasiya of Shopian (Kashmir) in 2009. Giving more powers to the State, whether arming the police and giving them the right to shoot at sight or awarding capital punishment, is not a viable solution to lessen the incidence of crime.

Furthermore, with death penalty at stake, the 'guardians of the law' will make sure that no complaints against them get registered and they will go to any length to make sure that justice does not see the light of day. The ordeal of Soni Sori, who had been tortured in police custody last year, still continues her fight from inside a prison in Chhattisgarh, in spite of widespread publicity around her torture.

7. As we know, in cases of sexual assault where the perpetrator is in a position of power (such as in cases of custodial rape or caste and communal violence), conviction is notoriously difficult. The death penalty, for reasons that have already been mentioned, would make conviction next to impossible.

We, the undersigned, demand the following:

Greater dignity, equality, autonomy and rights for women and girls from a society that should stop questioning and policing their actions at every step.

Immediate relief in terms of legal, medical, financial and psychological assistance and long-term rehabilitation measures must be provided to survivors of sexual assault.

Provision of improved infrastructure to make cities safer for women, including well-lit pavements and bus stops, help lines and emergency services.

Effective registration, monitoring and regulation of transport services (whether public, private or contractual) to make them safe, accessible and available to all.

Compulsory courses within the training curriculum on gender sensitisation for all personnel employed and engaged by the State in its various institutions, including the police.

That the police do its duty to ensure that public spaces are free from harassment, molestation and assault. This means that they themselves have to stop sexually assaulting women who come to make complaints. They have to register all FIRs and attend to complaints. CCTV cameras should be set up in all police stations and swift action must be taken against errant police personnel.

Immediate setting up of fast track courts for rape and other forms of sexual violence all across the country. State governments should operationalise their creation on a priority basis. Sentencing should be done within a period of six months.

The National Commission for Women has time and again proved itself to be an institution that works against the interests of women. NCW's inability to fulfil its mandate of addressing issues of violence against women, the problematic nature of the statements made by the Chairperson and its sheer inertia in many serious situations warrants that the NCW role be reviewed and audited as soon as possible.

The State acknowledges the reality of custodial violence against women in many parts of the country, especially in Kashmir, North-East and Chhattisgarh. There are several pending cases and immediate action should be taken by the government to punish the guilty and to ensure that these incidents of violence are not allowed to be repeated.

Regarding the Criminal Law (Amendment) Bill 2012, women's groups have already submitted detailed recommendations to the Home Ministry. We strongly underline that the Bill must not be passed in its current form because of its many serious loopholes and lacuna. Some points:

- There has been no amendment to the flawed definition of consent under Sec 375 IPC and this has worked against the interest of justice for women.
- The formulation of the crime of sexual assault as gender neutral makes the identity of the perpetrator/accused also gender neutral. We demand that the definition of perpetrator be gender-specific and limited to men. Sexual violence also targets transgender people and legal reform must address this.
- In its current form, the Bill does not recognise the structural and graded nature of sexual assault, based on concepts of hurt, harm, injury, humiliation and degradation. The Bill also does not use well-established categories of sexual assault, aggravated sexual assault and sexual offences.
- It does not mention sexual assault by security forces as a specific category of aggravated sexual assault. We strongly recommend the inclusion of perpetration of sexual assault by security forces under Sec 376(2).