



India must take prompt steps to address concerns of UN Special Rapporteur on violence against women:

Amnesty International written statement to the 23rd session of the UN Human Rights Council (27 May – 14 June 2013)

AI Index: ASA 20/026/2013
17 May 2013

Amnesty International welcomes the initial findings¹ by the United Nations (UN) Special Rapporteur on violence against women, its causes and consequences (the Special Rapporteur) upon finalizing her visit to India that took place from 22 April to 1 May 2013. We urge the Indian authorities to promptly take steps to address her concerns.

The Special Rapporteur observed that violence against women and girls in India manifests itself in numerous ways, including through “sexual violence, domestic violence, caste-based discrimination and violence, dowry related deaths, crimes in the name of honour, witch-hunting, sati, sexual harassment, violence against lesbian, bisexual, and transgender people, forced and/or early marriages, deprivation of access to water and basic sanitation, violence against women with disabilities, sexual and reproductive rights violations, sex selection practices, violence in custodial settings and violence in conflict situations, among others.”²

Amnesty International shares the Special Rapporteur’s assessment of the recent amendments made to Indian criminal law on violence against women and is concerned that these amendments, in the Criminal Law (Amendment) Act, 2013, fall short of the recommendations of the judicial committee (the Verma Committee) which the Indian government set up to review existing legislation on rape and other forms of sexual violence and to make proposals for amendments to improve the law.

Amnesty International has previously commented publicly that the Criminal Law (Amendment) Act, 2013, while positive in some aspects, was deficient in many respects and does not meet India’s international law obligations.³ The organisation welcomes the fact that the Act criminalizes several forms of violence against women including acid attacks, stalking and voyeurism, that it is more sensitive to the needs of disabled persons, provides for certain victim-friendly evidentiary

¹Special Rapporteur on Violence against women, its causes and consequences finalises country mission to India, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13291&LangID=E>

² <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13282&LangID=E>

³Amnesty International, 22 March 2013, AI Index: PRE01/146/2013, available at: <http://www.amnesty.org/en/for-media/press-releases/india-new-sexual-violence-law-has-both-positive-and-regressive-provisions-2>

Amnesty International, India: vote for a new law on violence against women in India 11 March 2013, AI Index ASA 20/011/2013 <http://www.amnesty.org/en/library/info/ASA20/011/2013/en>

See also Amnesty International, Submission to the Justice Verma Committee, 4 January 2013, AI Index 20/002/2013, available at: <http://www.amnesty.org/en/library/asset/ASA20/002/2013/en/26fed035-db4a-4873-afbd-b23eceb11fd0/asa200022013en.pdf>

procedures and removes the requirement of government permission for prosecution of public servants accused of rape and some forms of sexual violence.

However, the law is seriously deficient in other respects: it fails to criminalize a wide range of violence against women such as marital rape and sexual assault by security forces; sets the age of consent too high at 18; and reduces victims' access to health care and legal assistance. The Act fails to take forward the good work set in motion by the Justice Verma Committee in a number of respects. For instance, the Act introduces the death penalty for certain sexual violent offences. The new law also ignores certain key Verma Committee recommendations, especially on police accountability and framing sexual violence as a violation of a woman's right to bodily integrity. The Act fails to meet international human rights standards in several other ways as well. It does not criminalize the full range of sexual violence, or provide punishments that match the gravity of the acts that it does criminalize. It includes vague and discriminatory provisions contrary to fundamental rule of law principles; and it introduces capital punishment for some cases of sexual assault, even where these would not meet the threshold of "most serious crimes" under international law, which requires intentional killing. The Act also retains effective legal immunity for members of state security forces accused of sexual violence, and defines "trafficking" in a way that might conflate it with adult consensual sex work.

The new Act continues the legal immunity that members of security forces accused of sexual violence effectively enjoy under special laws like the Armed Forces (Special Powers) Act. The Verma Committee had noted that these laws legitimize impunity for systematic or isolated sexual violence by making government permission necessary before security forces can be prosecuted for criminal offences. Since permission is rarely granted, these provisions in effect put security forces above the law, violating victims' rights under international law to justice and a remedy.⁴

The Special Rapporteur, in her recommendations, has called for the repeal of the Armed Forces (Special Powers) Act, the Jammu and Kashmir Public Safety Act, the Armed Forces (Jammu and Kashmir) Special Powers Act, and the National Security Act as they perpetuate impunity and are widely used against human rights defenders.⁵ This is in line with the recommendations made by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the situation of human rights defenders during their recent visits to India.

Amnesty International has also documented the impact on women and girls of operations against armed insurgency. Women are often the targets for sexual violence, and face challenges while seeking access to justice.⁶ This is true of the situation in the state of Jammu and Kashmir and the north-eastern states of India, which have experienced several years of insurgency. In 2003, Amnesty International reported the widespread and systematic rape of women by all sides in Jammu and Kashmir, particularly by members of India's armed forces.⁷

One of the most serious failings of the new law is the fact that marital rape is not criminalized in all cases. Thus, the Act discriminates against women based on their marital status and denies them equal protection before the law. Under section 375 of the amended Penal Code, wives cannot bring a charge of "sexual assault" against husbands except under extremely narrow grounds: where she is "living separately under a decree of separation or under any custom or usage."⁸ India has ratified treaties and supported declarations that uphold the right to sexual autonomy as a matter of

⁴ Amnesty International, 22 March 2013, <http://www.amnesty.org/en/for-media/press-releases/india-new-sexual-violence-law-has-both-positive-and-regressive-provisions-2>

⁵ Amnesty International has consistently demanded the repeal of the Armed Forces (Special Powers) Act and the Jammu and Kashmir Public Safety Act.

⁶ Amnesty International, *Casualties of War: Women's Bodies, Women's Lives*, AI Index: ACT 77/072/2004.

⁷ Amnesty International, *Casualties of War: Women's Bodies, Women's Lives*, AI Index: ACT 77/072/2004, at page 5.

⁸ Amnesty International, 22 March 2013, AI Index: PRE01/146/2013, available at: <http://www.amnesty.org/en/for-media/press-releases/india-new-sexual-violence-law-has-both-positive-and-regressive-provisions-2>

women's equality, including the right to decide freely whether to have sex. Non-consensual sexual activity must be criminalized in all circumstances, regardless of who the perpetrator is. Therefore, the criminal law must provide protection from marital rape under all circumstances.

The government has also failed to repeal section 377 of the Indian Penal Code, which criminalizes consensual same-sex relations among adults. In 2009, the Delhi High Court ruled that criminalizing consensual same-sex relations among adults was a violation of their constitutionally guaranteed rights to equality, non-discrimination, and the right to life with dignity and privacy. It will be important for this to be reflected in the final report of the Special Rapporteur. The Indian authorities must make the necessary legislative changes so that the government meets its international obligations.

Amnesty International welcomes the Special Rapporteur's call to the government to expeditiously enact the proposed Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 with the incorporation of: sexual and gender-based crimes, including mass crimes against women perpetrated during communal violence; a comprehensive system of reparations for victims of such crimes; and gender-sensitive victim-centered procedural and evidentiary rules. Amnesty International also welcomes her call to ensure that inaction or complicity of State officials in communal violence be urgently addressed under this legislation.

The Special Rapporteur has also dedicated special attention to violence as a result of caste-based discrimination. She noted that "women from the Dalit, Adivasi, other Scheduled castes, tribal and indigenous minorities, are often victims of a multiplicity of forms of discrimination and violence. Despite protective legislative and affirmative action laws and policies, the reality is that they are subjected to discrimination and oppression in all spheres of life - political, economic and social - thereby perpetuating their socio-economic vulnerability across generations. They are often forced to live in displacement settings, are subjected to forced labour practices, trafficking, and intra-community violations of rights."⁹

Amnesty International commends the UN Special Rapporteur's efforts in positively engaging the Indian authorities and larger civil society. The organisation urges the Indian government to constructively engage with the Special Rapporteur and implement her recommendations without delay.

Amnesty International also urges the Indian government, which has extended a standing invitation to the UN Special Procedures since September 2011, to facilitate the visits of other Special Procedures including the long standing request from the UN Special Rapporteur on Torture made in 1993 and since then twice renewed, and the Working Group on Arbitrary Detention, as agreed in November 2011.

⁹<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13282&LangID=E>