

A-45012/1/2010-LC
Government of India
Ministry of Law and Justice
Department of Legal Affairs
Law Commission of India

Indian Law Institute Bldg,
Bhagwan Das Road,
New Delhi-110 001
Dated: 17.06.2010

Shri Arnab Ganguly

Sub: Information under the Right to Information Act 2005

Please refer to your letter dated 28.05.2010 seeking information on the ten points in respect of which information is as under:

1. Please see paragraph 2.2.1 of the 172nd report on 'Review of Rape Laws' (March 2000) reproduced below in paragraph 3 of this reply; the full form of AIDWA is All India Democratic Women's Association.

2. In this regard above website of the Commission can be seen; the contents under title - 'How Does the Commission Function' give the procedure for consultations etc.

3. The details of approaching AIDWA for holding consultation are given in paragraph 2.2.1 of the 172nd report which read as follows:

"2.2.1. Views invited.- A copy of the said draft was forwarded to Sakshi on 27.8.99 and they were invited for discussion on 13.9.99. It was indicated that the discussion would not only be with respect to the draft prepared by the Law Commission but that they shall be free to put forward their other suggestions and ideas, if any, and further they could also bring representations of other women's organisations, along with them, for discussion. Accordingly, three persons, namely, Ms Naina Kapur (Director, Sakshi), Ms Jasjit Purewal (Director, Interventions for Support, Healing and Awareness - IFSHA) and Ms Kirti Singh (All India Democratic Women's Association - AIDWA) participated in the discussion, on behalf of their respective organisations. All the three organisations have also put forward their suggestions in writing - apart from what Sakshi had filed before the Supreme Court.

We may mention that hereafter whenever we speak of or refer to Sakshi, it means not only the Sakshi, but also the two other women's organisations, namely IFSHA (Interventions for Support, Healing and Awareness) and AIDWA (All India Democratic Women's Association) as well as the National Commission for Women (NCW), who were also heard on the proposals contained herein."

4. The above information at paragraph 3 may be referred.

5. The above information at paragraph 3 may be referred.


6. Ms Kirti Singh represented the AIDWA and in this regard paragraph 3 above may be referred to and views of AIDWA are at Annexure - D of the report (copy enclosed). No other document/file noting of the same was prepared/is available in this regard.

7. No payment was made to AIDWA in this regard.

8. No such record is maintained by the Law Commission. However, all the reports forwarded by the Law Commission of India are available on its above web site and you may like to search the relevant information as you wish

9. As per 172nd report, no men's NGOs or NGOs other than Women NGOs were invited by the Law Commission for consultation on the subject. As is evident from chapters one and two of the said 172nd report, the subject was taken up on a reference received from the Supreme Court vide its Order dated 09.8.1997 made in W.P.(CrI.) No.33 of 1997 and the Commission finalized the report in the manner stated in these two chapters. The said report is on the website of the Commission (<http://lawcommissionofindia.ni.in>).

10. Calling/not calling particular NGOs/persons was/is decided by the Commission while examining the particular law to make recommendations. However, no record was prepared by the Commission to show specific reasons in this regard.


(A K Upadhyay)

Deputy Law Officer &
Central Public Information Officer

The Chairperson
Law Commission of India
Shastri Bhawan
Gate #2
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9/13/99

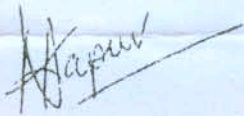
Dear Justice Reddy,

As requested by the Commission, please find enclosed recommendations to be considered by the Law Commission regarding amendments to investigation, procedure and evidence in Sexual Assault cases.

We do have some additional concerns which we would like to clarify with the Commission at the time of our next meeting. This includes examining implications of a "gender neutral" law.

Once again, we wish to express our sincere gratitude for the time, co-operation and serious concern shown by the Commission on this issue.

Best Regards,



For:

Naina Kapur
(Director, Sakshi)

Jasjit Purewal
(Director, IFSHA)

Kirti Singh
(AIDWA)

RECOMMENDED CHANGES FOR INTERROGATION, INVESTIGATION, MEDICAL EXAMINATION, EVIDENCE AND TRIAL PROCESSES IN CASES RELATING TO SEXUAL ASSAULT

The Law Commission in its 84th report has made several suggestions for the interrogation, investigation and medical examination in cases relating to rape and sexual assault against women. The suggestions with some modifications should be incorporated in the law. Certain other amendments to the law of Evidence which will facilitate the trial of a complainant of sexual assault are also being suggested.

1. The Law Commission has suggested that where the statement of a victim girl child below 12 years of age is to be recorded it should be done by a woman Police Officer or by a woman who belongs to an organisation interested in the cause of women or children.

Our Recommendation:

- i. The statement of any complainant of sexual assault should only be recorded by a woman police officer or by any other women interested in the cause of the women or children.
- ii. The statement of a complainant of sexual assault should be made in the presence of a relative or friend of the complainant's choice.
- iii. The interrogation of a complainant should only be carried out at her home or place of her choice and necessary clarification to Section 161 should be made as suggested by the Law Commission.

In view of the above we suggest the following changes:

- I. A new sub-section 3 to section 160 of the Code of Criminal Procedure be added as under:

"(3) Where under this Chapter, the statement of a complainant of a sexual offence is to be recorded such statement shall be recorded either by a woman police officer or by a woman social worker, in the absence of a woman police officer."

"(4) a) Where the woman police officer is not available to record the statement of the complainant of sexual assault, the officer in charge of the police station shall, to facilitate recording of the statement, forward a written request to a social worker who shall upon completion submit the same to the officer in charge. "

b) Should the said statement require further clarification or amplification, the officer-in-charge may seek the same from the complainant either in person or through the social worker."

(5) a) The statement of the girl recorded and forwarded under sub-sections (3) and (4) above shall for the purpose of the law relating to the admissibility in evidence of statements made by any person, be deemed to be a statement recorded by a police officer."

ii. The following proviso shall be substituted for the present proviso of Section 160(1):

"Provided that no male person under the age of 16 years or woman, shall be required to attend at any place other than his or her home or place of his or her choice."

iii. The following sub-section should be inserted after Section 166 of the I.P.C. to punish a police officer who fails to record a statement as stated above

"166. Whoever being a public servant:

(A) disobeys any direction of the law prohibiting him from requiring the attendance at any place of any person for the purpose of investigation into an offence or other matter, or

(B) disobeys any other direction of the law regulating the manner in which he shall conduct such investigation, to the prejudice of any person,

"shall be punished with imprisonment for a term which may extend to one year or with fine or with both."

IV. A new Sub-section (6) should be inserted to Section 160 of the Code of Criminal Procedure:

"(a) Where, under this Chapter, the statement of a male person under the age of 16 years or of a woman is recorded by a police officer, either as first information of an offence or in the course of an investigation into an offence, a relative or friend of such male person or woman, and also a social worker of the complainant's choice shall be allowed to remain present throughout the period during which the statement is being recorded "

(6) To ensure that the offence relating to sexual assault is promptly recorded the following section should also be added to the I.P.C. as recommended by the Law Commission with slight variations:

"167A: 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 to record such information shall be punished with imprisonment of either description for a term which may extend to one year and with punitive fine."

(11A) When a person is accused of sexual assault...

V. As regards the medical examination of the victim and the accused we recommend the following the following sections should be inserted in the Code of Criminal Procedure:

"164(A) Where a case of sexual Assault is reported to any police person, the complainant is reported to any police person, the said police person shall without any delay have the complainant medically examined by a registered medical practitioner.

(B) The registered medical practitioner(s) to whom such person is brought shall without delay examine the complainant and prepare a report specifically recording the result of the complainant, examination and giving the following details:

- i) the name and address of the victim and of the person by whom she was brought
- ii) the age of the person
- iii) the general mental and emotional condition of the complainant
- iv) any signs of sexual assault to the mouth, anus, genitalia
- v) any marks on or injuries to the body
- vi) other material particulars in reasonable detail"

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

(D) The report shall specifically record that the consent of the victim or of some person competent to give such consent on her behalf to such examination has been obtained.

(E) The exact time of the 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 complainant and the investigating officer. The investigation officer shall forward it to the Magistrate (referred to in Section 173(5)(a) as part of the documents.

(F) Nothing in this Section shall be construed as rendering lawful any examination without the consent of the victim or of any person competent to give such consent on her behalf."

VI. The following sections should be added to Section 53A of the Code of Criminal Procedure as recommended by the Law Commission:

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

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

(1B) The registered medical practitioner conducting the 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) other material particulars including traces of blood, semen, and evidence of any recent sexual activity in reasonable detail and
- iv) any other marks of injury, if any, on the person of the accused.

(1C) The report shall state precisely the reasons for such conclusion arrived at

(1D) 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 Section 173 as part of the documents referred to in clause (a) of sub-section (5) of that Section."

VII. While granting bail to an accused in a sexual assault case, the accused shall be restrained from being in proximity of the child from in any manner whatsoever. The onus should be placed on the accused to show compliance with this restriction.

VIII. In a case of sexual assault there shall be no interference with or disturbance of the complainant's natural habitat by/ through the criminal justice process.

IX. The investigation and trial of all sexual offences should be time bound and not take more than 6 months at the most. Particular care should be taken to address the memory needs of children who have been sexual abused.

X. It should be clarified that the "social worker" described above should be a woman interested in/working for the cause of women and/or children and familiar with issues of violence.

Our Recommendations for changes to the Indian Evidence Act, 1872

1) Section 114 of the Evidence Act s shall be amended to read as follows:

"114A In a prosecution for aggravated sexual assault under Section _____ where sexual intercourse (as defined thereunder) is proved and the question is

whether it was without the consent of the complainant and she states in her evidence before the Court that she did not consent, the court shall presume that she did not consent."

2) Section 155(4) of the Evidence Act which allows questions regarding the "general immoral character of a prosecutrix in a trial for 'rape' or 'attempt to ravish'" must be deleted.

3) The following clause 4 will be added to section 146 of the Evidence Act:

"4 In a prosecution for sexual assault - or attempt to commit sexual assault where the question of consent is at issue, it shall not be permissible to adduce evidence or to put question in the cross-examination of the complainant as to her previous sexual history, character and conduct for providing such consent or the quality of consent."

4) Given the existing reality and limitations of accessing proper health care systems, a special provision should provide that the absence of a medical report in a case of sexual assault shall not be used against the complainant.

SPECIAL PROVISIONS FOR CASES OF CHILD SEXUAL ABUSE

We strongly feel that a minor complainant of sexual assault should not have to give her/his oral evidence in the presence of the accused, as this will certainly traumatize the minor. Appropriate changes in the law to prevent a minor witness from being traumatized by court procedure should therefore be introduced.

While steps are essential to reduce "system abuse" of child complainants, it will be very difficult to totally eliminate this. Nevertheless, the use of the criminal justice system to its fullest extent must be an important part of the strategy for dealing with child sexual abuse.

The co-ordination and use of both social and legal interventions is necessary to minimize unnecessary interference with or disruption of the child complainant, to help create a safe environment in which the child can recover, and to provide maximum leverage for the control and treatment of the offender.

SUGGESTIONS

In this regard we wish to suggest the following for redress of child sexual abuse cases:

1. A minor's testimony in a case of child sexual abuse should be recorded in court at the earliest possible opportunity in the presence of a judge and child support person i.e. this may include a family/friend, relative or social worker that the minor person trusts.

For this purpose the court should take steps to ensure at least one of the following:

- i. permitting use of a videotaped interview of the child's statement by the judge (in the presence of a child support person)
- ii. allow a child to testify via closed circuit television or from behind a screen to obtain a full and candid account of the acts complained of.
- iii. The cross-examination of a minor should only be carried out by the judge based on written questions submitted by the defense upon perusal of the testimony of the minor.
- iv. Whenever a child is required to give testimony, sufficient breaks should be given as and when required by the child.

2) All cases of sexual assault must be tried by Special Courts with court personnel including judges, prosecutors, counselors, specially trained/sensitised to issues of sexual assault.