



SUGGESTIONS TO THE JUSTICE VERMA COMMITTEE

Seeking reforms in the criminal justice system for protection of women and children

Global March Against Child Labour

Global March Against Child Labour (hereforth, Global March) is a worldwide coalition of civil society, teacher and trade union organization united in their determination to protect and promote the rights of all children, in particular the right to receive a free, meaningful and good quality education, to be free from economic exploitation and from performing any work that is likely to be harmful to their physical, mental, spiritual, moral or social development.

Global March began its journey to raise awareness of the prevalence of child labour through a physical march launched in Manila, Philippines, on 17 January 1998. The torch was taken up by organizations in over 100 countries on all continents and the march travelled 80,000 kilometres across the globe before arriving in Geneva, Switzerland, in June 1998. At that time, the annual conference of the International Labour Organization (ILO) initiated discussions on what was to become ILO Convention No. 182 on eliminating the Worst Forms of Child Labour as a priority for the international community.

The march marked a turning point in the fight against child labour, bringing together like-minded organizations, institutions and individuals in a worldwide movement of national coalitions. These coalitions have sustained efforts in their countries to raise public awareness, support policy changes, foster partnerships and enhance knowledge to help reduce the exploitation of children.

Since 1998, Global March and its partners have focused on promoting universal ratification and implementation of the ILO Convention No. 182 and 138 on the Minimum Age of Employment which sets the benchmark for the elimination of all forms of child labour, as well as the application of the UN Convention of the Rights of the Child (UN CRC), achievement of the Millennium Development Goals (MDG) and other international instruments related to the protection of children, in violence of sexual nature.

Gender violence is one of the world's most common human rights abuses. Women worldwide ages 15 through 44 are more likely to die or be maimed because of male violence than because of cancer, malaria, war and traffic accidents combined. The World Health Organization has found that domestic and sexual violence affects 30 to 60 percent of women in most countries.

Furthermore, large numbers of child labourers are also victims of trafficked into forced labour, commercial sexual exploitation and other forms of exploitation. Across the world, Global March notes that sexual violence is used as means of control, dominance and enslavement of children. Children under 18 years of age are trafficked, and often subjected to sexual violence – it takes the form of sexual harassment, rape, sexual exploitation in prostitution or pornography. WHO estimates suggest that 150 million girls and 73 million boys under 18 years experienced forced sexual intercourse or other forms of sexual violence involving physical contact. Millions more are likely to be exploited in prostitution or pornography. Most children and even their families do not report cases of abuse and exploitation because of stigma, fear and lack of trust in the authorities. Social tolerance and lack of awareness also contribute to under-reporting. Coupled with under-reporting is the low prosecution and conviction of the culprits/perpetuators, creating a culture of silence and impunity.

India perhaps has more women and children trafficked into modern-day slavery than any other country in the world, without a criminal justice mechanism and protection framework to deal with the issue. With the official numbers of child labourers, trafficked and missing children in India being grave, the unofficial estimates are daunting. It all draws attention to the ineffective policy and legal framework, poor care and protection mechanisms and insufficient political will and resources to address a veritable time-bomb.

Global March is making this suggestion in the backdrop of heightened extent and intensity of violence exerted on women and children is alarming, especially in light of the recent incident of barbaric sexual assault and murder of a woman in New Delhi. Measures to end violence must be massively strengthened and expanded in order to effectively put an end to these practices which jeopardize women's rights, children's development and gender justice and social equality.

The search in cases of rape in the country has grown up by more than ten times in the last 40 years as per the National Record Bureau statistics. It would also not be exaggeration to say that the number of unreported cases a day have also increase number of times.

The Policy Environment

With regards to amendment of the law to provide for speedy justice and enhanced punishment for sexual offences against women and children, the Global March's suggestions are based on the principle that *no violence against children and women is justifiable; all violence against children and women is preventable.*

Furthermore, Global March holds that *primary prevention, through public health, education, social services and other approaches, of all forms of violence is of paramount importance.*

Evidence has shows that male dominance causes rape (aggravated sexual assault). Men dominate women in society politically, economically and socially, thus women suffer rape. Whether accompanied by violence or not, rape is, more than anything else, the complete violation of a woman's self-respect and dignity. Her sense of humiliation and utter powerlessness at the time leaves mental scars that are far more difficult to heal than the scars on her body.

Therefore, to scrutinize sexual offenses only in terms of a criminal justice framework would treat the symptoms, and not address the underlying and deep-rooted causes of rising sexual offenses and violence against women and children. The need is to create a political, social and economic environment that not only deters sexual violence against women and children, but also fosters an enabling setting that promotes gender and child rights.

To create an enabling environment, Global March recommends social and legal awareness on gender and child rights from the very grassroots – from the smallest villages to the sprawling metropolitan cities, from primary schools to colleges, through a range of mass awareness and public education media.

The law enforcement agencies should reach out to the common citizens in the public education and mass awareness and include representatives of Panchayati Raj Institutions and the community at large. This will enable the community to get fully involved along with the law enforcement agencies in not only supporting identification and arrest of accused persons, but also promote engagement of the law enforcement agencies with the common citizens, break the barriers of hesitation and instil confidence in the law enforcement agencies and the duty bearers.

Community awareness programmes on the issue of gender justice, zero tolerance for sexual offenses, rights of the children, human trafficking, missing children, right to education, etc are also part of an enabling environment.

The Legal Framework

There are numerous gaps in the criminal justice framework relating to sexual offenses which prevents the delivery of justice in a time-bound and swift manner, these are gaps in policy as well as in enforcement at all levels.

The issue of juvenile justice is another minefield that needs to be negotiated. In the said case, a minor has been identified as an offender, and raises many concerns regarding both the care and protection of children, and children in conflict with law. The said minor was reported to have been trafficked for child labour and reported missing from his home. Moving from one employer to another, he was working as a bus helper when he joined five other persons in brutalizing the woman. The minor was a missing child himself, trafficked and working in a series of hazardous work, and by brutalizing the woman, transitioned from a position of vulnerability and victimization, to a position of power and became a sexual offender. While there are many strong proponents for lowering the age of juvenile to 16 years, it must be borne in mind that the

Article 1 of UNCRC stipulates that a '*child*' is a person below the age of 18, and Global March **strongly opposes** any move towards lowering the age.

The complete failure of the provisions of care and protection of children are bared through this case –

- A missing child is not reported nor any action initiated to trace the child;
- A child is trafficked and no action is initiated against the trafficker and the child is not recovered from the trafficking syndicate;
- A child is forced to work in illegal and hazardous conditions, and no effort is made towards removal of the child from these circumstances;
- A child's fundamental right to an education is violated, and there is no reparation mechanism.

At all levels the system of care and protection and the duty bearers have failed.

Some of these gaps in the criminal justice system requiring the urgent intervention are:

1. Definition of rape is still outdated and defined as intentional, unlawful sexual intercourse with a woman without her consent. The essential elements of this definition are 'sexual intercourse with a woman' and 'the absence of consent'.

Rape should be defined under "Sexual assault" and covers the range of sexual offenses committed against the body of a person.

Though it is high time that the Government contemplates the formation of a "The Protection of Women from Sexual Offences Act" the different forms of sexual offences against women need to be defined and the enforcement thereof ascertained. The recent legislation of Protection of Children from Sexual Offences Act, 2012 provides for detailed explanations of various **sexual offences** including:

- Penetrative Sexual Assault and punishment therefor
- aggravated, penetrative sexual assault and punishment therefor
- sexual assault and punishment therefore

- aggravated sexual assault and punishment therefor
- sexual harassment and punishment therefor
- using a child (may be amended to include women) for pornographic purposes (by force or without consent) and punishment therefor.

These may be used/ amended to provide protection to women and children in the policy domain.

2. Provisions for various forms of sexual violence are scattered and construed under the notion of honour and modesty of a woman. The use of the anarchic language such as ‘outraging the modesty of a woman’ (Sec 354 IPC) or ‘insulting the modesty of a woman’ (Sec 509 IPC), which introduces subjective interpretations of morality into essentially a crime of sexual nature are disturbing and detrimental.

The subjective interpretations of morality should be removed from ‘**Sexual Harassment**’ and it should be defined uniformly and objectively to protect women and children from sexual harassment and promote gender justice.

3. **Compulsory Registration of FIR** in every complaint of sexual harassment, sexual assault or other similar crimes against women and children.
4. Making all sexual offences against women and children, a **non-bailable offence**, with bail being granted in all cases of sexual assault only after completion of the trial/announcement of the verdict. Also, a minimum quantum of punishment fixed for every offence. With repeat offenders punished to the maximum quantum of punishment to drive with force the deterrence inherent in the law.
5. Issuing guideline to ensure **time-bound trials** in all cases of sexual offences against women through fast track courts at the District levels. All cases of sexual assault must be dealt with in a time-bound manner, with the cases being completed from filing of chargesheet to trial, and announcement of the verdict within three months.

6. **Provisions of rehabilitation and compensation** by law for victims of sexual assault, including medical and psychological rehabilitation, and compensation for recovery and re-integration into mainstream society.
7. Issuing **guidelines for victim and witness protection** during and if necessary after trial.
8. **Trafficking for sexual exploitation** is another sexual crime and is silent on the topic of 'rape'. Trafficking is not defined in India, and sexual offenses do not include the systematized rape of sex trafficking and in other forms of trafficking where rape is used as a tool of dominance and enslavement.
9. The **Legal Services Authority** at the district level may be made responsible to ensure the speedy delivery of justice and all that is necessary to provide counselling, support, legal aid and assistance for the same.
10. Taking necessary steps to increase the **police public rapport** as well as the confidence of women in coming forward and reporting such crimes. This may be done through –
 - Ensuring that the complaints of sexual offences against women are recorded, and as far as possible investigated, or overseen by women police officers.
 - Sensitizing the law enforcement machinery towards crime against women by way of well-structured training programmes, meetings and seminars etc., for police personnel at all levels as well as other functionaries of the criminal justice system. Such programmes may be incorporated in the syllabus of various Police Training Academies at all levels.
 - State Governments must take concrete steps to increase awareness by making standard operating procedures for the police regarding sexual offences against women, and take steps not only to tackle such crimes but also deal sensitively with the ensuing trauma.

11. Organize **legal literacy and legal awareness education** for improving general awareness on legislations protecting women and children, and mechanisms in place for safety and protection of women and children.
12. **Sensitisation and training** of all levels of society such as care givers, service providers, law enforcers, duty bearers, judicial officers, private enterprise officials, etc for protection and promotion of the rights of women and children, particularly the right to be protection from sexual offenses and the operational mechanisms for dealing with cases of sexual offenses.
13. Provide for **accountability mechanisms** at all levels of criminal justice delivery system for Police, Public Prosecutors, Judiciary as well as other relevant government departments including the women and child development, etc., on the various existing legislations and policies providing protection to the women and children. All reports of the accountability and monitoring mechanisms should be in the public domain for scrutiny.

While Global March Against Child Labour is pleased with the announcement of the Sex Offenders Registry in the country, it holds that the culture of silence and impunity must be broken to ensure delivery of justice in cases of sexual offenses. Last but not the least, is to situate the responsibility of all law and policy makers, law enforcement agencies, duty bearers, administrative authorities, civic bodies, non-government and community organizations, educational institutions, private enterprises and the citizens in building and maintaining a social, political and economic culture that ensures 'zero tolerance' for crimes against women and children, and simultaneously promotes a society that values all its citizens equally and makes swift and efficient reparations to deter any crimes.

New Delhi, 15 January 2013