Representation by “Women Against Sexual Violence and State Repression” to the Justice Verma Commission.

(Women Against Sexual Violence and State Repression (WSS) is a non funded grassroots effort initiated in November 2009, to challenge the violence being perpetrated upon women’s bodies and societies. We are a nationwide network of women from diverse political and social movements comprising women’s organizations, mass organizations, civil liberties, student and youth organizations, mass movements and individuals. We unequivocally condemn state repression and sexual violence on women and girls by any perpetrator(s). We have conducted fact findings and brought out several reports of cases of sexual violence in conflict areas, notably in Jharkhand, Odisha, and Chhattisgarh; and have collaborated with women’s organizations in Kashmir and the North East in their struggles in such situations. We attempt to support women survivors of such violence, approach courts and human rights institutions for redressal, and conduct awareness campaigns.)

WSS notes with concern that the entire public debate arising out of the recent Delhi gang rape incident has centered round the issues of “enacting a strong law” and “prescribing harsher sentence.” It has failed to recognize more basic issues – the enormous social obstacles encountered in registering complaints, in the conduct of thorough investigation, in the protection of witnesses, in fast and efficacious prosecution and in unbiased adjudication – in other words, the issues of implementation of the law, and the functioning of the police and judicial machinery – which necessarily precede sentencing. The debate has also largely failed to take into account the deeply patriarchal character of our social institutions, and law enforcement machinery which render women vulnerable to violence in the family, in the larger community, in their work places and public places.

In particular, in this representation, WSS would like to focus on the even more serious situation that arises when patriarchal attitudes are reinforced by caste, communal and class inequalities or perpetrated by the state, that is, when sexual violence is inflicted as a part of an assault by a dominant community as in a caste attack or communal riot; or when sexual violence is inflicted on women in custody in a police lock-up or jail or state institution; and when sexual violence is perpetrated by the police, security forces or army. Rapes occur daily in this country and adivasi, dalit, working class women, women with disability, hijras, kothi and sex workers are especially targeted based on the knowledge that the system will not support them when they file complaints of rape. In this regard we have the following suggestions:-

A. In regard to Sexual Violence by Police and Security Forces
Defining custodial violence: Any incident of sexual assault by police/security forces or SPOs accompanying them, irrespective of where it occurs, should be treated as custodial violence since the perpetrators exercise power and control over the people of that area owing to their position of authority. Such sexual assault should be considered to be a case of aggravated assault.

Security of women detainees: The lack of women constables (in whose presence women under-trials and prisoners are more likely to be safe), is a serious issue. If there is no woman constable on duty, that particular police station must not be allowed to detain women. Women constables must be present throughout any interrogation of women detainees. Arbitrary or proxy arrests and illegal detention of women and children during search operations in conflict areas, which render women extremely vulnerable, have to stop.

Rule of law: There must be strict adherence to the procedures and safeguards for protecting women in custody and women should be produced before the court at the earliest opportunity, even before the mandatory 24 hours, to be able to disclose original violations as well as further ill-treatment (if any) while in custody of police or jail authorities. Their families also must be intimated within this time period of their whereabouts.

Detention of women: The rules about arresting and detaining women at night should strictly apply to all women and transgender people, including sex workers. Transgender people must be handled only by women police officers and not male police officers, given the history of custodial violence against them.

Judicial recognition: The judiciary must take suo moto cognizance of any irregularity in the arresting procedure and delays in presenting the accused before the magistrate. Any non-compliance of the D.K. Basu guidelines and other provisions of the Criminal Procedure Code should attract strict action and accountability from the Court. Once the woman has been presented before the magistrate, it is the responsibility of the judiciary, to ensure that her dignity and safety are ensured and her complaints of violations of her rights addressed. If any violation of the rights of a woman takes place in police or judicial custody, the judiciary should take the strictest action against the perpetrators in a time bound manner.

Registering cases: The FIR of all victims should be registered, even where the perpetrators are from the Central Armed Police Forces or the Army, and refuge must not be taken under impunity provided under unjust laws such as the Armed Forces Special Powers Act. In particular if a Superintendent of Police receives a complaint that a particular police station has refused to register an FIR, he must be made personally liable to get the FIR registered immediately and to conduct an enquiry against his erring subordinate, with legally enforceable consequences for not doing so within 48 hours of being informed. Furthermore, it cannot be expected that an aggrieved person/family who has been violated by personnel of the police station of her/their area, will go back to report the violation to that very same police station. She should have the option of registering cases in another
district or state, and the case must be investigated by an authority not involving local police if they are the perpetrators. Special guidelines must be evolved for such cases along the lines of the NHRC guidelines for encounter killings.

**Vulnerability in conflict situations:** There must be a quick and effective response from the district and state administration when a woman shows the courage to make a complaint of sexual violence. Instead, the rape survivor, her family and other witnesses are only further terrorised by the people in authority. The administration should take *suo moto* cognisance of such complaints, whether they come directly, through the media or any other source.

All state-supported private militias and vigilante groups, such as *Salwa Judum* and others in the conflict areas of Central India, Manipur and Kashmir must be disbanded. Action must be taken against the members of these groups accused of sexual violence and other human rights violations as it would apply to the police and security forces, i.e., treating their cases as aggravated sexual assault.

**Criminal prosecution:** Sexual assault by the Central Armed Police Forces or the Army must be brought under criminal law. In cases of sexual offences, the law should clearly state that the Army has no jurisdiction to prosecute the accused member of the armed forces. Laws such as the AFSPA, the Army Act, the Disturbed Areas Act, which give immunity to members of armed forces from facing trial in ordinary criminal courts even in cases of aggravated sexual assault and rape, should be immediately repealed. The accused must be handed over and all investigation must be done by the police strictly in accordance with the law, and supervised by a senior police officer. The requirement of sanction for prosecution under Sec. 197 of the Criminal Procedure Code should be done away with in cases of custodial sexual violence and other human rights violations.

**Facilitating investigation:** Immediate arrest of the accused and suspension of all accused from their posts, once the FIR is registered, is essential. The accused should not be allowed to exercise any authority in the area where the complaint of sexual violence is made, till the final determination of the complaint.

**No Public Honours for Perpetrators:** Armed forces personnel and public servants against whom there are serious charges of violence against women, or who have been named in FIRs alleging violence, should not be considered for national awards and military honours or promotions until their names are cleared.

**Command responsibility:** In cases of sexual assault committed by State personnel, the authorities higher up in the hierarchy (SP and the Collector or any other senior officer in the chain of command of the Central Armed Police Forces) should be held criminally liable for crimes committed by those under their command or within their control. Ignorance or lack of information about sexual violence committed in his/her jurisdiction cannot be an excuse for inaction.
**Sentencing:** The sentences for custodial rape and sexual assault, and for sexual violence committed by members of security forces must be enhanced compared to the sentences for civilian rape and sexual assault, to act as a deterrent for security officers misusing the power they have derived from being officers of the state.

**Speedy investigation:** The responsibility of a proper investigation falls on the investigating agency. Any delay, shoddiness, partisanship and inefficiency in collection of evidence, and lack or delay in medical examination etc should be seen as a criminal offence and negligence of duty, and the concerned officers or personnel should be penalised for negligence or dereliction of duty and/or charged with complicity in the crime.

**Protection of victims and witnesses:** Protection of victims and witnesses has to be ensured, from the pre-trial to post-conviction stages, in accordance with the recent jurisprudential developments, the Law Commission’s 198th Report of August 2006, and decisions of the Supreme Court.

**Liability and damages:** It is the government’s responsibility and duty to protect the rights of women, the responsibility grows manifold when the woman is in the custody of the State. Considering the gravity of the crime, the rape survivor has a right to reparation. While financial compensation cannot erase the pain and suffering caused, it is the duty of the State to pay exemplary damages without any bureaucratic delays.

**Reparative Justice:** The State must be obliged by law to make provisions for free and high quality medical treatment, psychological care, shelter and livelihood in order to overcome possible destitution and social ostracism. Such compensation should not be linked to the criminal trial and prosecution. Schemes include, but are not limited to, the Victims Compensation Scheme (brought about through a 2008 amendment to section 357A of the Cr PC) as well as the National Commission for Women’s scheme for assistance and support services to victims of rape.

### B. In regard to sexual violence against marginalized groups or by dominant groups.

1. While dealing with the violence against women belonging to marginalised groups like Dalits, Adivasis, denotified groups, religious, gender, sexuality and other minorities, the dominant position of the perpetrators must be kept in mind and such cases should be probed under the specific laws applicable to these atrocities. Sexual assault in situations of conflict based on community, ethnicity, caste, religion, gender, sexuality and language, ought to be treated as specific circumstances of aggravated sexual assault.

2. Since there are specific kinds of sexual violence documented to be specifically perpetrated against dalit women, such as parading naked, groping, tonsuring of hair and mutilation; against minority community women during communal riots such as mutilation the genitals and womb, cutting breasts; against transgender women like...
stripping, burning or mutilating the genitals, forcibly cutting hair, stripping and/or redressing in clothes to fit assigned gender, confinement, rape by insertion of objects – all of which are intended to sexually assault, degrade or humiliate women who are so targeted, these specific offenses should be defined along the scale of aggravation with specific punishments which are not dependent on the discretion of the judge.

3. Acts like the Karnataka Police Act and the Hyderabad Eunuch Act that place the entire transgender community under suspicion like the colonial Criminal Tribes Act, and demand their routine reporting to the police act as a vehicle for police harassment and sexual violence against transgender women. These should be immediately repealed.

4. Khap Panchayats, casteist-communal organizations and other kinds of vigilante groups are responsible for spreading and normalizing misogyny. The perpetrators of honour killings, honour-related crimes and other moral policing, including those who abet this brutal crime, must be promptly prosecuted and awarded severest punishment.

C. In regard to the definition of sexual assault

**Expansion of definition of sexual assault:** The expansion of the definition of penetrative sexual assault under Sec. 375 IPC, beyond peno-vaginal penetration (rape) as proposed in the Criminal Law Amendment Act is a step in the right direction. It is imperative that the definition of sexual assault is broad enough to include anal, oral rape, rape with objects etc. and also includes sexual assault against transgender people.

**Gap in law of sexual offences:** However, there continue to be serious gaps in the codification of crimes of non-penetrative sexual assault. The gap between ‘outrage of modesty’ (S. 354 IPC) and ‘penetrative sexual assault’ remains large. We believe that sexual crimes form a continuum, and that the graded nature of sexual assault should be recognized, based on concepts of harm, injury, humiliation and degradation, and by using the well-established categories of sexual assault, aggravated sexual assault, and sexual offences.

‘Outraging modesty of a woman’ to be replaced with ‘violation of bodily integrity’ S.354 and S. 509 IPC, which contain archaic notions of ‘outrage of modesty’, ought to be repealed, and a clear gradation of offences and punishment as mentioned above should be inserted. We believe that ‘sexual assault’ should rest firmly on the concept of violation of bodily integrity and dignity, and sexual harassment should be defined as it is in the Vishaka Guidelines.

**New sexual offences to be defined:** New crimes need to be formulated to punish acts of stripping, parading naked, tonsuring of hair and mutilation which are intended to sexually assault, degrade or humiliate women who are so targeted. Further stalking, blackmailing as well as sexual harassment must be codified as crimes under the rubric of sexual offences.
These should include any electronic and other forms of technology which promote rape as a game, promote electronic stalking or forced viewing of pornography, etc. We welcome the introduction of a specific offence for acid attack.

**Gender neutral sexual assault:** The formulation of the crime of sexual assault as gender neutral in all circumstances, as proposed in the Criminal Law Amendment Act, makes the perpetrator/accused also gender neutral, i.e. a woman or man can be accused of sexual assault. We believe that the perpetrator has to remain gender-specific and limited to men as perpetrators, as there is no empirical evidence to support a finding to the contrary. Across the country women are facing severe sexual violence and we strongly oppose the gender-neutrality clause in relation to perpetrators under Sec. 375 IPC.

**Gender neutrality of the victim:** The survivor of sexual assault should be treated as gender neutral with respect to the law, even if the perpetrator is still defined as male. With respect to all forms of violence, the victims/survivors should not be described just as women, but as ‘person’, as transgender people face immense targeted sexual assault and in some cases of state and custodial violence the victims can also include men. In cases of abuse of children also children of all genders are targeted.

**Consent:** Consent must be clearly defined as verbal agreement which can be withdrawn at any point during sexual activity. Initiation of sexual activity or sex work is not an invitation to rape or sexual assault and battery. The lack of marks on the body can not be used as evidence of consent because sedation, rape based on threats of retaliatory violence, and rape where the perpetrator holds economic, caste, communal, custodial or state power over the survivor can all be perpetrated without leaving signs of force.

**Marital Rape:** Rape within marriage should be recognized and should be strictly penalized. The punishment should be the same irrespective of whether the perpetrator is married to the survivor of rape or not.

**Age of consent:** The age of consent should be kept at 16 years of age, to prevent criminalization of sexual expression by young persons, often against the wishes of their parents.

**Consent during sex work:** Rape during sex work must be recognized explicitly as a sexual offence. Sex work should be decriminalized so that what takes place without consent can be clearly distinguished from the specific acts the sex worker is paid for and has consented to.

**D. In regard to pre-trial, trial and evidence procedures.**

1. SOPs like those of Delhi police should be reviewed to ensure that they reflect a gender sensitive and meticulous approach to investigation and officially adopted by all police departments in states and UTs, and should be made publicly accessible.
2. The two finger test and checking of old tears hymen which are widely used during medical examination of the rape victims to determine whether they are ‘habituated to sexual intercourse’ or not, must be explicitly barred and only fresh damage relevant to the sexual assault in question should be recorded. Police personnel and all state officers who deal cases of sexual assault must undergo compulsory sensitization about handling these cases, so that they do not traumatize the survivor of assault with irrelevant and traumatic questions or statements of judgment or dismissal. They must also be sensitized specifically to deal sensitively with survivors of sexual assault who are dalit, adivasi, religious minority, transgender women, sex workers, and women with disabilities.

3. Women police officers should be available and visible at a women’s help desk in every police precinct for each step of processing a sexual assault or harassment complaint, although no survivor should be turned away for lack of a female police officer. For their retention, proper housing, women’s toilet, and training facilities as well as a cell to address sexual harassment complaints within the police force must be made available. A minority of policewomen deployed to ensure safety for women prisoners are not able to be effective if they are pressured by a male majority in their workplaces.

4. Trials in rape cases should be concluded within a 90 day period, with trials postponed only to the next working day and without any unnecessary delays. All pending cases of rape should be dealt with by specially constituted courts with both rural and urban accessibility within 90 days.

5. Many sexual offenders are let off, or face reduced penalties, due to poor prosecution. The Department of Public Prosecution should be made accountable for providing the prosecutrix with the appropriate, effective and diligent prosecution.

6. Trials pertaining to sexual offences should be conducted as far as possible by women judges.

7. There should be specific provisions for recording the testimony of disabled survivors of assault or witnesses. Cases involving sexual assault against disabled women often end in acquittal as their testimony is either not recorded at all, or is recorded without the help of independent interpreters.

8. In trials of sexual offences, the complainant/victim/survivor, her family members or members of women’s organizations representing the complainant should ordinarily be permitted to engage a counsel of her choice to assist the prosecution. In addition free legal, medical, psychological and rehabilitative services should be made available to enable working class women to pursue legal justice.

9. Even in an in-camera trial, on the request of the complainant/victim/survivor, her representatives, or any person in whom she has trust, should be permitted to remain
present. Such provisions exist in trials for child victims of sexual violence under the Protection of Children from Sexual Offences Act, 2012

10. Guidelines must be laid down for the cross examination of a survivor of sexual violence, particularly highlighting the changes in the CrPC sections which now do not allow character assassination or looking at past history of the survivor. The pending cases against security forces, police and wardens of Nari Niketans and other protective homes for girls and women must be dealt with on a priority basis so that instead of inflicting further violence these institutions play their role of providing thorough investigation and appropriate support.

11. The chosen gender of a transgender or intersex person should be respected during trial. Transgender people are often punively raped for crossing the boundaries of assigned gender and the rape trauma is compounded by their bodies and minds being handled in ways to remind them of their assigned gender. The trial should not further increase that aspect of the trauma.

E. In regard to punishment for rape.

WSS does not support death penalty or chemical castration as a punishment for rape. We need to evolve punishments that act as true deterrents to the very large number of men who commit these crimes. Cases of rape have a conviction rate of as low as 26% showing that perpetrators of sexual violence enjoy a high degree of impunity, including being freed of charges. Our vision of justice does not include death penalty, which is neither a deterrent nor an effective or ethical response to 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. 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 there is 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 and economically weaker sections 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 a 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, husbands, workplace superiors 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. 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. In cases of sexual assault where the perpetrator is in a position of power (such as in cases of custodial rape or marital rape or caste and religious violence), conviction is notoriously difficult. The death, penalty, for reasons that have already been mentioned, would make conviction next to impossible.

F. In regard to the urgent need for making workplaces and homes of women more safe.

1. The Committees against Sexual Harassment which are to be constituted in various state and private establishments, including informal sector worksites, houses where domestic workers work, construction sites, homes where women gather to do piece-work or beedi/agarbati rolling, sex work sites, and NGOs as per the Vishakha judgment, should be constituted with priority and urgency. The said Committees should function independently and effectively, and create an atmosphere of no tolerance to sexual harassment. This would go a long way in ensuring dignity and empowering women at their workplace.

2. It is a common observation that the Domestic Violence Act is poorly implemented in most States with government servants being given additional charge of Protection Officer, lack of proper Shelter Homes for women victims of domestic violence, abuse within those shelter homes and on the streets for those rendered homeless by domestic
violence, and poor understanding of judicial officers of the powers of civil injunctions and specific reliefs available to them.

3. Women employees working in night and early morning shifts should be provided safe transport facilities, and public transport must be effectively monitored for safety. There should be an expansion of the public transport system and the government should bring a public-transport-for-women-on-demand facility for any neighborhood with a number of working women coping without public transport, including dispersed adivasi settlements and urban slums.

4. The number of affordable working-women’s hostels to ensure safe accommodation for single working women must be increased. All out-station girl students studying in colleges must be provided cheap and safe accommodation by their respective institutions.

5. Due to its impact on physical and mental health and a high degree of mortality, rape is also a public health issue. The public health workforce (ASHA and ANM workers) need to be trained in sensitizing at the family and community level in destigmatizing rape-survivors, enabling them to file FIRs and access legal provisions, providing medical care and counseling, and encouraging women to speak out and seek justice. All public hospitals must be equipped to immediately file an FIR and conduct a preliminary medical exam on behalf of patients who have survived rape.

6. Effective and 24 hour functional women helpline and other emergency services should be provided round the clock and should be well advertised. Emergency telephones to this helpline must also be available at all bus and train stations. Calls should be addressed around the clock by enough specially trained staff to meet the demand.

7. The state should take over agencies provide women domestic workers, the conditions of service of domestic workers must be laid down and effectively implemented, and complaints of sexual violence made by them promptly redressed.

8. Institutions such as the National Human Rights Commission (NHRC), National Commission for Schedule Castes (NCSC), National Commission for Scheduled Tribes (NCST), National Commission for Minorities (NCM), National Commission for Women (NCW) and the corresponding State Commissions, created for safeguarding constitutional provisions and protection of vulnerable groups must be more proactive. They should be made to respond to all complaints lodged with them in a time-bound manner. There should be systematic and regular review processes put into place to audit the work of these institutions.

9. The system of shelters for women should be greatly expanded, and every state-based shelter home for women, nari niketans, remand homes, juvenile delinquent homes, shelters for disabled children, orphanages, as well as schools, prisons and areas under
army patrolling or combing operations should have a schedule of inspections to probe for ongoing sexual harassment or assault by committees whose members are independent of the government.

10. The current policy of clearing the streets of vendors, closing shops by a specific hour of night and chasing away other people who occupy public space at night makes the street more unsafe for women. This policy should be stopped as a greater presence of people and well-lit public areas at night are essential in reducing the danger to women traveling to and from work as well as homeless women. Women should be given priority in being given vendor licenses and employment in public transport.

11. Women should not be forced to comply with gender specific dress codes and women employees should be able to choose their dress code.

1. All those persons against whom charge sheets have been filed for rape cases must be tried and either cleared of those charges, or sentenced and barred from contesting elections for public bodies by the Election Commission.

2. Advertisements, movies and public materials and media that condone, trivialize or misrepresent violence against women and sexual harassment should be severely discouraged.

3. Women have been carrying out powerful movements against liquor which is found to be connected to increase in domestic violence and incidents of sexual assault. The demands made by women in their local areas must be responded to by local authorities, who must act against the liquor mafia.

4. Restrictions on movements and intimidation of women’s groups and democratic rights groups, while conducting fact-findings of incidents of sexual and other forms violence in conflict areas, have to stop.

5. Repression, labeling and intimidation of women activists and human rights defenders must end.

G. In regard to Discouraging Patriarchal Culture.

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