

11 December 2020

To
The Hon'ble Chief Minister
And Minister for Law and Judiciary
Hon'ble Home Minister,
Hon'ble Minister for Women and Child Development
State of Maharashtra

Subject: Objections to the Maharashtra Shakti Bill, 2020 and the Special Courts and Machinery for the Implementation of the Shakti Bill, 2020

Sirs/Madam,

We write to you with regard to the Maharashtra Shakti Bill, 2020 and the accompanying Special Courts and Machinery for the Implementation of the Shakti Bill, 2020. These Bills have been recommended by the 4-Member Special Committee appointed by the State Government, on similar lines of the Andhra Pradesh Disha Act, 2019, and propose amendments to the existing criminal laws including the Indian Penal Code, 1860 (IPC), the Code of Criminal Procedure, 1973 (CrPC) and the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

We are shocked that such a draconian legislation is being introduced in the name of curbing the widespread violence against women and girls. Some of the provisions are not only anti-women, but negate the very offence of rape. The effect of this Bill will completely deny women any hope of justice. Hence, we are addressing this letter requesting you to not table the Bill till there is a larger consultation with activists, lawyers and academicians who are working on these issues.

The copy of the Bill came to us only on the 10th of December, 2020 and we have been informed that the same is to be tabled in the present session of the legislature which gives us no time for a detailed review and critique of the Bill. However, as the Bill goes against some of our fundamental principles and beliefs as feminists, we are presently addressing these core issues and if given time will send a more detailed critique of the Bill.

Presumption of Consent: The Amendment which seeks to add Explanation 3 to section 375 i.e. where parties are adults and the conduct of such parties from all circumstances surrounding the same appears that there was consent or implied consent a presumption of consent will be made, negates the entire definition of consent under section 375 and the offence of rape itself. This is a step back for women's rights after the 2013 amendments wherein the taking into consideration the Verma Committee report the definition of consent was added.

While the Act is said to be made for justice to women it feeds into the patriarchal construction of consent and conduct of women. It goes against the statement and object of this Bill. In a lot of cases of rape, the accused take the plea of consent with such an explanation added it will become impossible for the prosecution to establish rape. Such an explanation negates and nullifies the very offence of rape.

This explanation will have to be deleted if this government genuinely wants to work in the interest of women.

Death Penalty: The proposed enhancement in the punishment for rape, gang rape (Sections 376, 376D, 376DA, 376DB and 376E) and penetrated sexual assault against children (Sections 4 and 6 of the POCSO Act) to include death penalty will be counter-productive to women and contrary to the statement and object of the law. It is the certainty of investigation, trial and punishment that works as a deterrent rather than the severity of punishment.

Numerous studies have questioned the potency of the death penalty as a deterrent in preventing crimes. Further, women and child-rights activists and scholars have repeatedly stated that the death penalty reduces the already-abysmal conviction rates as well as the rates of reporting in cases of sexual offences.

Studies have shown that more than half of the total offences under the POCSO Act are committed by persons known to the children. In such cases, the possibility of the accused person being awarded the death sentence multiplies the conflict and the trauma faced by the victims and is most likely to prevent the reporting of such crimes. Even in cases of adult woman, if she is related to the accused and has an apprehension that he would be awarded the death penalty, the family of the victim and her relatives would not support her in reporting the case and on the contrary would actively dissuade her or even turn hostile during the trial.

In light of this, it is evident that the death penalty is nothing but a barrier to ensuring women's safety and bringing down the rates of violence faced by women. We, therefore, urge you to withdraw the introduction of the death penalty as a punishment for sexual offences against women and children.

Dangerous for rape survivors: The provision of Death Penalty would in fact result in endangering lives of survivors as we have seen recently that several incidents of rapes are followed by the rapists killing the victim, as there is no difference between the sentence for rape and that for murder. Also very dangerous is the fact that this sends a totally wrong and lethal message to the survivors of rape. The message it sends is that after an incident like rape her life is as good as over; she is as good as dead. That women and girls are not valued in themselves. This is what women like Savitribai Phule and many others after her have fought against all their lives.

False cases: Section 12 of the Special Courts and Machinery for the Implementation of Shakti Act, 2020 punishes filing "false complaints" or providing "false information" regarding sexual and other offences against women solely with the intention to humiliate, extort, threaten or defame the accused.

We believe that this provision is concerning, as it perpetuates the patriarchal notions of viewing women with suspicion, as unworthy of being believed and likely to incriminate men in false cases for unscrupulous purposes. Further, it disincentivizes complaining or providing information regarding sexual offences and has the alarming effect of lowering the already low reporting rate for sexual offences. Most often the prosecution is unable to prove the case due to faulty investigation, with such a provision the possibility of counter cases being filed against women is immense.

We strongly believe that this provision is contrary to the object of improving women's safety. The existing criminal law already has provisions to deal with false complaints and hence there is no necessity for such a section within this law

Time frame for Investigation and Trial: We believe that the existing mechanisms laid down for the purpose of speedy and effective disposal of sexual offences are sufficiently effective, and if they were to be followed, the same would go a long way in achieving the purpose of curbing violence against women, rather than this legislation. For instance, the recently amended Section 309 of the CrPC sets the time limit to dispose of a rape case as 60 days (two months) from the filing of the chargesheet. Similarly, Section 35 of the POCSO Act provides that cases under the Act must be disposed of within one year from taking cognizance. However, it is commonly seen that these timelines are rarely adhered to.

The time frame suggested by this Bill of 15 days for investigation and 1 month for trial will result in more botched up investigation and unjust trials. The said time frame will not be sufficient for gathering of all evidence and will only become an excuse for the police to not conduct a proper investigation. Further, a hurried investigation and trial would more often than not lead to miscarriage of justice.

Neither the Police nor the Courts have an infrastructure to comply with these time frames and the same will only result in unfair trials and more acquittals.

Section 35(2) of the POCSO Act stipulates that the special court shall complete the trial within one year which the courts are failing to do. This has led to insurmountable delays and added to the pendency of cases our judiciary is infamous for. We, therefore, feel that fulfilling the obligations under the existing laws is an imperative first step towards women's safety and far more important than rolling out new laws which merely add to the existing catena of unimplemented legislations.

Already existing laws: We would like to point out that the proposed amendments seem to have been recommended without considering similar, already-existing provisions in the criminal laws. For instance, the proposed insertion of Section 354E (Harassment of Women by any mode of communication) to the IPC is targeted at punishing the intimidation of women through electronic media and platforms. The same is already punished under Sections 354A to 354D of the IPC and Sections 66E, 67 and 67A of the Information Technology Act, 2000 (IT Act), which comprehensively cover all the acts aimed to be punished under the new Section.

Similarly, the proposed insertions of Sections 166A (d), Section 166C to the IPC are aimed at punishing public servants for failure to assisting in the investigation or performing their assigned duties. Whereas, Sections 166, 166A, 166B and 167 of the IPC sufficiently punish such acts of public servants conducted in contravention to the law or disobedience of their orders and duties. Hence, in effect, these proposed amendments are merely nugatory. We, therefore, fail to see the provision of this blanket legislation, except for the purpose of making a strong statement.

It is on these principal grounds that we convey our opposition to the proposed legislation and request you to not table these Bills without larger discussions with lawyers, activists, academicians, and other stakeholders.

Sincerely,

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