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BY EMAIL, To: "justice.verma@nic.in"

Kind attn of : Chief Justice (Retd) Verma and his co-members of the Committee appointed to advise the Government of India on amendment of laws to safeguard women.

Sub: Response on behalf of India Against Corruption Jan Andolan to a Public Notice issued by DAVP in various newspapers on 25.12.2012 inviting public engagement (objections, comments, suggestions, experiences, knowledge etc.) with your Committee.

Background:

India Against Corruption ("IAC") is an apolitical national people's movement of socially aware public spirited citizens and inter-linked organisations. For ready reference, the Charter of the movement is attached as **ANNEXURE-1**. It is pertinent that the IAC's Core Committee is mandated by its membership to pursue issues including

- a) "legal processes including judicial reform and police reform/systems",
- b) "Citizen's participation in public processes",
- c) "Societal and religious reform" etc.

On or about 25.12.2012 the IAC was informed that the Govt. of India has constituted the three member Justice Verma Committee to look into **"advising the Govt on the need for reviewing the present laws so as to provide for speedier justice and enhanced punishment in cases of aggravated sexual assault"**. That further, the public at large, including legal experts, professionals, and civil society, has been requested by the Govt to **"share"** with this Hon'ble Committee their **"ideas, knowledge and experience so as to suggest possible amendments in the criminal laws and other relevant laws to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault of extreme nature against women."**

Accordingly, on 25.12.2012 itself, the IAC's Core Committee considering the urgency of the matter and the short time granted, constituted a sub-committee of interested persons and experts from its primary membership (conveyed via a mailing list with over 25,000 subscribers) to invite, formulate and aggregate suggestions for submission to this Hon'ble Committee, and also based on PIB's report that this Hon'ble Committee at its first meeting has interpreted its mandate to widely encompass women's emancipation and issues generally

Hence this response.

Most humbly submitted,

- 1) At the outset, the IAC condemns the gruesome incident which occurred on night of 16th December 2012 in Delhi which has shocked the nation causing for introspection on whether amendments to India's laws are needed to safeguard and secure its citizens from such aggravated sexual assault.
- 2) That the IAC believes that the existing body of laws in force evolved over at least 5,000 years of India's History and Tradition (and encompassing the widest variety of rule by the World's major religions) are sufficient to protect India's women and ensure their safety, and are therefore best left untouched. That, if at all, only a few minor amendments, as mentioned hereafter may be required.
- 3) That the IAC believes the existing criminal laws (not only limited to crimes against women) must instead be simplified for their better understanding and enforcement.

The IAC stresses that the failure is not in the law but in its enforcement, and there must be clear and identifiable methods for monitoring and establishing accountability of State actors who fail to report, investigate or prosecute such offences expeditiously.

That the ordinary citizens, including the victims or their families must have independent and effective remedies in law to ensure public servants, including the judiciary, deliver speedy justice.

- 4) That the IAC considers the existing general criminal laws such as the Indian Penal Code 1860 ("IPC"), and The Code of Criminal Procedure ("CrPC") to be time tested laws which are more than sufficient to tackle cognisable "crimes against women", provided
 - (a) information disclosing their commission is promptly registered and investigated by the Police, and
 - (b) the offenders are prosecuted and tried properly by the judiciary and the legal system.
- 5) That IAC recommends a cool and calibrated approach to balance the rights of all parties as is proper in a Constitutional democracy rather than rushing through it in a frenzy for purely political reasons.

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That the IAC believes the reporting of the gruesome incident and its aftermath by electronic communication and persistent news television barrage chasing TRPs are responsible for this lynch mob mentality to amend India's criminal laws.

- 6) As submitted above the IAC stands for simpler stronger and fewer laws.

It is curious that on 4.12.2012 the Hon'ble Union Home Minister had introduced in the Lok Sabha a bill described as "The Criminal Laws (Amendment) Bill 2012" or suchlike. This Bill purports to amend the Criminal laws such as the IPC and CrpC for protection of women and children, especially against the crime of rape.

The IAC sub-Committee has carefully studied the contents of this Bill and forcefully opposes it generally and *in-toto*. This Bill seems to be based on the 172nd report of the Law Commission of India dating from 2000, and which was in cold storage for over a decade due to its confused and overly complex drafting, and which poor drafting has found its way into the Bill.

The IAC also notes its concern that a senior member of this Hon'ble Commission had participated in the drafting of the Law Commission report in 2000.

- 7) That the IAC believes the appropriate body for the matters this Hon'ble Committee is tasked to deal with is the Law Commission of India.

However, it appears from the website of the Law Commission, that although the 20th Law Commission was constituted in September 2012, it still has no Chairperson or members and is non-functional.

We therefore conclude the Government is not serious about legal reform.

- 8) The IAC opposes and condemns subversion of the democratic rights of the ordinary individual citizens for whom the corrupt police and judiciary is fact of life, and whose voice will go unheard.

This stems from recent media reports quoting the Union Home Minister having said that the function of this Hon'ble Committee is

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to collate suggestions from the public, especially the political parties and legal experts to convey to the Parliamentary Sub-Committee for the aforesaid Bill.

The statements of the Union Home Minister show the Government's intentions about inviting suggestions from the public at large to genuinely consider them.

- 9) That the IAC notes that the Union Ministry of Home Affairs ("MHA") is evidently not serious about its constituted Committees, to the extent that there was no updation on its website link for "Commissions/Committees" since March 2010 and has no RTI disclosure either. It was only on 03.01.2013 that on protest from IAC's subscribers the bare notification and address of this Hon'ble Committee was uploaded by the MHA on the website

Citizens had little information on this Hon'ble Committee including its Terms of Reference, powers and other mandatory information. This is a gross contravention of the citizen's fundamental rights to express freely and participate in public processes after complete transparency and self-disclosure as mandated under the Constitution of India and also the Right to Information Act 2005.

It is hoped that the first effective act of this Hon'ble Committee would be to summon the concerned Additional Secretary of the MHA to rectify this information drought and allow the IAC to expand or amend its submissions thereafter.

- 10) In the circumstances of inadequate information disclosure on how this Hon'ble Committee was constituted, its terms of reference and the procedure followed in selection of its subscribers and several other matters, the IAC must convey the strong feelings and objections of its subscribers, expressed, to the factum of existence of this Committee as follows:-
- (a) The IAC perceives this Hon'ble Committee to be an ineffectual body of handpicked long retired judges (now aged in their eighties) and a controversial former government law officer, constituted in a rush and shrouded in secrecy.

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The IAC therefore apprehends that in the face of submissions from political parties, NGOs and so-called eminent jurists, the public's submissions to it shall be overlooked, and also that the Committee's final report will be a farcical hollow formality to meet hidden agendas.

- (b) The IAC is concerned that submissions to the Committee are to be served only by email and/or fax, and no address has been intimated in the public notice where written communications in hard-copy may be formally served on your Committee by the affected/concerned citizens.

This also leads the IAC to apprehend the following:-

- i) That the Govt/Committee, not willing to record and maintain written submissions in person by the citizens, will destroy or render them inaccessible
 - ii) That the responses to the public notice shall largely be from the literate, computer savvy, urbanized (so called *buddhi-jeevi*) sections of society
 - iii) The affected less visible victims in rural India, in remote villages and backward districts, for whom rape is a fact of life and a tool of oppression, will be deprived of participation in framing of legislation by virtue of non-service of notice on them by any means.
 - iv) That this Committee could subvert the democratic rights of citizens and bring in fascist/repressive laws under the garb of manipulated public outrage.
- (c) Also, and with respect, the IAC is concerned that Justice J.S. Verma is also Chairperson of the News Broadcasters Association ("NBA") in-house "fast track" irregular Complaints Council whose membership are instrumental in fanning and feeding the public protests against the Delhi gangrape with persistent and distorted coverage which has caused this Committee to be set up. Hence, the IAC perceives there to be a clear conflict of interest and IAC respectfully requests that Justice Verma

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may kindly recuse himself from this Commission and/or from dealing with IAC's submissions.

(d) That a copy of this representation is also being sent separately by email to the Secretary Ministry of Home Affairs, Govt of India ("MHA") for advance notice of the grievance of IAC's subscribers concerning the Committee. The IAC is also aggrieved that this Committee has been set up by the MHA to divert and cover up the MHA's own failures concerning the roles of the Lieut. Governor of Delhi and the Delhi Police, under the MHA, in this incident.

11) That IAC's membership perceives the police forces to be generally corrupt at all levels, and/or hand-in-glove with the lower judiciary and advocates to delay matters and compel female victims to compromise or resile from their complaints.

Suitable procedural steps may be taken on a nation- wide basis by the Home Ministries and departments to curb the corrupt practices, without amending the laws.

12) That the police forces, the lower judiciary and officers of the court across the nation need to be gender inclusive and gender sensitized, especially in the rural or backward areas of the country.

It is trite to say that women victims generally feel intimidated against reporting offences committed on them to male dominated and patriarchal police forces compounded by vexatious cross-examination when trials get underway.

Reports of designated senior advocates conspiring to tamper with witnesses and evidence is all too fresh in the public memory as is also the token tap on the wrists administered to them.

The IAC notes with concern that even where the Police departments do take initiatives for community interaction, they are usually doing so through NGOs which are floated by politically aware persons who get financed by State and foreign sources, with no social support extended at ground level.

The IAC suggests that this Hon'ble Committee may also recommend that the collegium of the Supreme Court of India may lead the way by ensuring that at least 33-1/3rd of its judges are women.

- 13) That the experience of some recent well intentioned special laws for women such as "The Domestic Violence Act", various Dowry provision laws, and also section 498A of the IPC, have shown that the laws are badly legislated and prone to misuse.

It is the experience of IAC's members (and in their knowledge) that very often all the female family members (including senior citizens and unmarried sisters) of a male accused are roped in on false complaints and subjected to gross harassment and extortion by corrupt police personnel to exploit certain draconian clauses in these laws.

In many Police districts the "Crime Against Women" cell is look upon as a "wet" posting and the accused as ATM machines to dispense cash.

The IAC is concerned that when innocent persons are charged and arrested under these draconian clauses to extort money by law enforcement officers, there is an inevitable backlash / bias prevalent against these draconian laws which prevent genuine victims from getting their cases registered and prosecuted.

The entire purpose of such beneficial laws is therefore defeated by rampant and unchecked misuse perpetuated by these draconian clauses. Hence the IAC suggests that these laws may be revisited or repealed.

- 14) That the IAC perceives rising crimes against women and their abysmally low prosecution rates to be primarily societal problems signifying a corrupt nation's all round degenerative moral standards, as also the Delivery of Justice (or its failure). To address and remedy the situation the IAC observes and suggests, as "wearers who knows where the shoe pinches", as follows:-

Observations:

The key factors causing the nations' societal decline include:

- Rampant corruption at all levels of government.
- Excessive reservations which seem perpetually embedded into a pro-mediocrity nation's psyche
- Materialist culture and consumerist values imported from abroad.
- Declining quality of education starting with "dumbed down" and "distorted" text-books and lack of proper "sex education".
- Breakdown of joint family systems
- Immature and easily swayed urban youth connected on virtual networks, unaware of ground realities and how India has reached its present state.

The key factors affecting delivery of justice include:

* Decades-long pendency and extremely low rate of convictions, particularly after final disposal. Statistically, a criminal has about 94% chance of getting away with the crime. This escape-rate increases phenomenally if the accused can 'buy' or 'influence' his way out of the mess. In the instant case, already there are allegedly two statements from the victim - one recorded by the lady SDM and second at behest of Delhi Police reportedly due to high level political interference to shield the accused.

* Lack of forensic back-up and poor investigative work by police - often at behest of accused.

* Quantum of punishment. Capital punishment would not be such a deterrent as surety and alacrity of conviction.

Suggestions:

- (a) Compulsory national service in the armed forces, NSS affiliated to regimental training centres, or civil defence or creation of socially relevant projects in backward areas etc. for at least 2 years continuously be mandated for all India youth between the ages of 18 to 25 for purposes of national integration and character/physical building in the face of hardship. Further that males and females may be treated equally and without gender disparity or being separated by sexes to promote mutual respect.

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- (b) That India's large population of retired ex-servicemen may be properly utilised by being designated as "Justices of the Peace - JP" (on application) to maintain moral character and discipline in their respective communities. The IAC submits that such "JPs" designated by the British were able to root and stamp out the menace of Sati from India, first by carefully administered private persuasion and then by legislation, and the relevant records are in the govt archives.
- (c) The IAC points out the reality of floating populations in search of work etc, and also the number of mafia owned expensive brothels such as those openly operating in residential areas of Delhi under cover of guest-houses opened for Commonwealth Games 2010.

The IAC suggests the ancient profession of "prostitution" may, as a first measure, be de-criminalised for both sellers or buyers of such services as soon as possible.

- (d) That the lady members of the IAC are fed up of being deprived of clean and accessible public toilets, and of daily seeing citizens exposing in public for natural functions. The IAC is concerned that huge sums are spent for toilets of privileged public servants which are actually funds diverted from the deprived. IAC observes that when a Govt. treats its citizens like animals, the citizens will respond with animal behaviour.

IAC suggests an immediate plan be put in place for better facilities to be implemented in cities, towns and villages.

- (e) That the IAC forcefully opposes lynch-mob demands to have death penalty for rapists as is being agitated in the media especially the news Television channels, as an amendment.

The existing graded penalties, ie. 7 years to life, are adequate deterrents if they are enforced swiftly and surely.

It may be legislated, however, that all such sentences awarded must run consecutively and not concurrently. That further, there must be no remission or commutation of such sentences, and that the offence, in all its forms and varieties, is always cognizable and non-bailable.

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IAC opposes commutation of any sentence without consent of aggrieved party to the extent that not even the President of India should have the right to unilaterally commute the punishment of a wrong not against the state but a person unless the State compensates the victims or their heirs in real and substantial terms.

- (f) That, however, for the offence of aggravated rape against women or children finally established to committed by serving members of a police force, the defence forces, a custodian, a legislative body, a municipal council, a panchayat or the judiciary (including advocates); a penalty of death by lethal injection (a humane means suggested by IAC for all capital offences as even dogs are put to sleep in this way) may be added.

These provisions may be incorporated into the IPC and various Police Acts, Armed Forces Acts, High Court Rules etc. In the case of the armed forces, the trials may be conducted under the general law and not under court martial.

- (g) That the minimum age of consent, voting, consumption of alcohol, and marriage should be made uniform throughout the territory of India, and fixed at 25 years for males and 21 years for women in accordance with that fixed by the Special Marriages Act. All personal laws may also be modified accordingly.
- (h) Juveniles convicted of rape or other aggravated sexual assault should undergo a minimum Rigorous Imprisonment of 3 years when they attain age of consent.
- (i) That, it is observed that the offence of Rape punishable u/s 375, 376 IPC is not included as a crime sufficiently serious to be compulsorily reported by citizens immediately to the nearest Police officer u/s 39 of the CrPC. This apparent oversight needs re-examination to balance the privacy rights of the victim against the need to punish offenders to prevent similar repeat offences.
- (j) That the IAC firmly opposes “fast track” courts for trying offenders for rape or aggravated sexual assault.

The responsibility for fast trials of all cases lies squarely on the judiciary and especially on the Trial Judge/Appellate Courts.

- (i) The IAC does not view rape as crimes/offences more serious than murder, manslaughter, kidnapping, counterfeiting, sedition etc which are all specified as heinous crimes u/s 39 CrPC - unlike rape.
- (ii) The IAC observes there is inadequate data available for comparison between sentences confirmed in appeal for conventional trials versus those from occasional fast track courts on a nation-wide basis.
- (iii) The IAC holds that “fast track” courts are often converted into “trials by media” and the accused, if actually innocent, is prejudiced and deprived of his right to a fair trial.
- (iv) IAC opposes, in principle, any legal provision which offers a ‘tatkal’ option to benefit the rich and famous who are tried rapidly whereas ordinary accused are harassed by trials which last even beyond the maximum sentence for the offence.
- (v) The IAC feels that all cases should be tried by courts on day-to-day basis in a time-bound manner. The onus for completion of trial for all offences listed u/s 39 CrPC within a stipulated time - 6 months or 1 yr - must be on the sitting judge.

If some lawyers or police try to delay or impede the case, the judge should punish them for abetment of the crime.

A short time stipulation should apply to appeals as well. If convicted by the lower court, and the prosecution decides to appeal, there should be no bail during pendency of appeals, as this

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would incentivise all parties to complete the trial speedily.

- (k) That IAC shares that the various Commissions for Women (Both National and State) are hardly functional except as places to lodge political appointees and generate media photo opportunities for its members.

Accordingly IAC suggests that the Acts and Laws regulating these ineffective Commissions may be amended to mitigate this menace, or else these bodies should be scrapped.

The IAC is concerned that many of these Commission have turned into dens of corruption, and the only reason women are initially entertained here is that their complaints are used as pretexts to extort money from the opposite parties.

There are many documented instances of attitudes of Women's Commissions undergoing a sea-change against the victims and their even accusing victims of drawing the crimes upon themselves. The IAC attributes these instances to rampant corruption in the Commissions.

- (l) IAC is concerned about the gray area in what is known as "marital rape".

As this is a vast and complex subject requiring great sensitivity IAC suggests a nation wide debate on this issue if and when a Uniform Civil Code is implemented and a Law Commission is functional.

The IAC is especially concerned with widespread reports of underage marriages being consummated, and forcefully demands that such consummation be deemed to be "rape" and punished accordingly.

The IAC also condemns the practice in particular communities of marrying young girls to males of advanced years who are already married, and demands that this practice should also be deemed as "rape".

- (m) In addition to the punishment of sexual offenders under the criminal laws, there should also be provisions in law for immediate and substantial financial reparation to the victim

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by the State or under the powers of the judiciary to impose fines.

- (n) Conversely, IAC is concerned that often false charges of rape are filed to vex, defame or extort valuable consideration. A special section of law in the IPC may be inserted to deal with this misuse.

IAC notes with concern the recent case of a noted film director of Mumbai who was ultimately acquitted by the Supreme Court.

IAC feels that such delayed delivery of justice clearly shows that the laws of India are only meant for the rich and powerful, and ordinary citizens, victims or accused, are regularly deprived of their Fundamental Rights.

- (o) The IAC suggest a uniform “Good Samaritan” law so that bystanders willing to help and report offences are not harassed by Police or compelled to appear as witnesses.
- (p) The IAC perceives that the Indian Boards for Film Certification are dominated by politics and corruption. All manner of obscene and lascivious films, portrayals and music videos with double meaning lyrics are being routinely cleared for broadcast by foreign financed media channels which tend to arouse and inflame passions of the viewers.

IAC suggests that the IPC be suitable amended to punish the members of such Boards or Tribunals for ruining India’s culture on fit complaint.

- (q) IAC notes that very often aggravated sexual assaults against women take place under the offence of alcohol and/or narcotics. Such intoxicants are also administered to the female victims in social situations where the girl is under intense peer pressure to fit in. Often the offenders are let off or let off lightly due to their alleged intoxication or the “consent” of the intoxicated victim. The IPC must be amended to prevent such instances
- (r) The IAC observes the State Govts and UTs are promoting the easy sale of liquor to boost their empty coffers, which contributes to all manner of criminal activity including

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aggravated sexually assaults. Such moral bankruptcy ought not to be tolerated, and IAC suggest that the Directive Principle of State Policy to impose prohibition throughout India be immediately and strictly enforced to show that the Govt is indeed serious about controlling crime.

- (s) IAC notes with concern that the child sex ratio has been dropping alarmingly for the last three decades and is currently (2011 Census) at its lowest at 914 girls per 1000 boys.

We urge the Committee to advise the government to take measures in this regard including a review of the existing laws on abortion. The Medical Termination of Pregnancy Act 1971 actually encourages a medical practitioner to terminate even the first healthy pregnancy of a married woman on grounds of contraceptive failure.

The IAC demands that adequate and immediate attention be given by the Government to all citizens, especially children and infants, who die each day from completely preventable causes.

- (t) IAC is concerned to learn from the media about inadequacy and under-manning of police which is grossly under-equipped and under-resourced to tackle new forms of crime and terrorism who are often better equipped and motivated than them.

IAC was dismayed to learn that senior Police officers have publicly expressed they have no police for night duty, and their vehicles are obsolete and constantly breaking down, leading to delays in even responding to PCR calls to "100".

In these circumstances the IAC is concerned about excessive diversion of police resources to unproductive areas like VIP security leaving the citizenry to their own fate.

The IAC therefore recommends that citizens should have the unrestricted right to private defence including the right to purchase, store, possess and use arms and ammunition; and that obsolete colonial laws like the Arms Act be repealed.



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(u) Public's Right to Know:

In order to encourage better law enforcement, the status of all FIRs registered throughout India should be disseminated in real time in accordance with section 4 of the Right to Information Act 2005, showing date and place of occurrence; name and particulars of accused; name of SHO/IO; trial court and progress of case/ appeal till final disposal.

A summary of all cases by districts and the rate of conviction in each as well as in a State, should follow. An officer not below a Secretary (in State Government), should by name be required to maintain the web-site with updation at least every fortnight and be accountable for no-compliance.

Transparency and comparisons should hopefully lead to a better rate of conviction besides pin-pointing errant officials.

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These are only a few of the observations & suggestion received and put forward from IAC's subscribers. IAC requests the opportunity for its individual subscribers to be heard in person once this Hon'ble Committee commences its business.

Submitted by the following individuals on behalf of the IAC collective.

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