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Eastern Region Consultation on 'Review of Criminal Law – Improvement of Status of Women'

organised by

Centre for Women and Law
National Law University Odisha

in association with

National Commission for Women, New Delhi

Date: 17th February, 2022

Venue: Conference Hall, NLUO

**One-day Eastern Region Consultation on 'Review of Criminal Law
– Improvement in Status of Women' on 17th February 2022 at
NLUO Cuttack, Odisha**

About the Consultation:

Centre for Women and Law, National Law University Odisha is holding a One-Day Eastern Region Consultation on "Review of Criminal Law – Improvement in the Status of Women" on the request of National Commission for Women, India on **17th February 2022 from 09:00 am to 06:00 pm at NLUO Cuttack, Odisha (Hybrid Mode)**. The NCW has already held two Consultations on the theme on online mode and has now decided to hold four regional Consultations in physical mode. This Eastern Region Consultation seeks to bring experts from the States of Odisha, West Bengal,

Chhattisgarh, Bihar and Jharkhand. The live consultation is limited to the invited delegates, however, we are open to receive comments on the issue from everyone through email.

This consultation would contribute to making holistic recommendation recognizing women as human beings with their own life experiences, responses, and perspectives in the criminal laws. Many women-specific provisions have been included in the criminal law and they continue to be subject of critical scrutiny by women groups as well men's groups who accuse women of misusing those law. However, there can be no denial that gender neutral laws also apply to women. Still, there has been little examination of how the gender-neutral laws exclude women's experiences in the way they are formulated. Hence, we believe that there is need to have a holistic view of Criminal Law's conceptualization of women.

Most of the gender specific laws are focused on women as victims of crimes. As offenders, they are dealt with in the same manner as men and their conduct is judged by the standard of "reasonable man" which sometimes excludes gender in its construction and is either a 'male standard' or a 'double standard'. The circumstances in which women commit crime are very different from those of men. For example, in the well celebrated case of *Kiranjeet Ahluwalia* from England, she was subjected to long term violence by her husband whom she killed one night. The first criminal court held her guilty of murder, but the appellate court held her guilty of culpable homicide on the ground of diminished responsibility recognizing that battered women suffer from slow burn syndrome. This case had opened many academic discussions about how the male standard of behaviour, experiences and reactions form the basis of various definitions of offences. In India, however, this discussion is yet to begin.

The key Points for Discussion has been formulated by the NCW and it includes very pertinent questions which require to be reviewed in the contemporary times. The important issues highlighted by NCW which would be deliberated upon are as follows:

I. Sexual Offences:

1. *Should sexual offences be classified as:*
 - a. *A subset of offences against the human body; or,*
 - b. *A subset of gender-discrimination offences; or,*
 - c. *An independent category of offences?*
2. *Other than rape, the sexual offences listed in the IPC are-*
 - *Obscene Acts and Songs (s. 294)*
 - *Assault or Criminal Force to Woman with Intent to Outrage her Modesty (s.*

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- *Sexual Harassment (s. 354A)*
- *Assault or Criminal Force to Woman with intent to disrobe (s. 354B)*
- *Voyeurism (s. 354C)*
- *Stalking (s. 354D)*
- *Unnatural Offences (s. 377)*
- *Word, Gesture or Act Intended to Insult the Modesty of a Woman (s. 509)*

Is there a need to reform in this classification of sexual offences by adding/ deleting/ modifying any offences?

3. *What should be the standard of consent under s. 375 of the I.P.C.?*
4. *Should the grounds of vitiation of such consent be expanded to include cases where*
 - a. *The victim has been put in fear of injury other than physical hurt or death; and,*
 - b. *The perpetrator is impersonating any other person (and not just the husband as currently provided in s. 375) that the victim would otherwise knowingly have consented to?*
5. *Should the marital rape exception (Exception 2) under s. 375 of the I.P.C. be deleted?*
6. *Should sexual offences be defined by employing gender-neutral terms for the offender and the victim?*
7. *Should sexual violence during armed conflict be expressly penalised as a sexual offence?*
8. *Barring generally applicable aggravating and mitigating factors (gravity of offence, recidivism, age, socio-economic background, etc.), which other factors should be taken into account during sentencing in sexual offences?*

II. Offences Relating to Marriage

1. *In the light of contemporary discourse on constitutional morality, individual autonomy and gender neutrality in laws, should ss. 493 and 498 be repealed or modified?*
2. *Should live-in relationships be deemed to be a relationship in the nature of marriage for the purpose of s. 494?*

III. Cruelty by Husband and Relatives of Husband

3. *In light of the Law Commission's 243rd Report, should s. 498A be amended with respect to its scope, punishment, cognizability, bailability and compoundability?*
4. *In light of the Law Commission's 243rd Report, should any pre-arrest or other procedural safeguards be added specifically with reference to s. 498A?*

IV. Procedural Law

5. *In what manner should the provisions pertaining to arrest, search and seizure be modified in order to account for the needs of gender and sexual minorities (e.g., gender minorities being provided the right to demand search by a non-male police officer)?*
6. *Should Victim-Impact Statements be considered at the time of sentencing?*

V. Orders for Maintenance of Wives, Children and Parents

15. *Should the grounds for refusal of maintenance in sub-sections (4) and (5) of s. 125 modified?*
16. *Should s. 125(2) be modified to make the amount of maintenance be payable only from the date of application by the claimant?*
17. *In the light of issues relating to inexpediency and inefficiency of enforcement procedures under s. 125, should magistrates be given further powers to ensure the timely enforcement of such orders? If yes, please suggest suitable remedies or modifications in present procedures for the same.*
18. *Should the limitation period for going to the court for issuance of warrant under sub-section (3) of s. 125 be modified?*
19. *Should s. 125 be amended to provide for a right to appeal against an order passed by the magistrate?*
20. *Should factors such as those enumerated in s. 20 of the Protection of Women Against Domestic Violence Act, 2015 (eg. the maintenance amount being adequate, fair and reasonable and consistent with the standard of living to which the claimant is accustomed; inclusive of medical expenses, if any; etc.) also be expressly listed in s. 125 for computation of maintenance? If yes, please suggest appropriate factors.*
21. *Should the presumption as to absence of consent under s. 114 A of the Indian Evidence Act be extended to include - a) S. 376 (1) of the I.P.C.?*
22. *If Exception 2 to s. 375 I.P.C. is repealed, should there be any special procedures or standards of evidence in relation to marital/ spousal rape which deviate from general procedures / evidentiary standards? Please specify the special procedures/ standards of evidence, if any.*

This consultation will surely focus on the points of discussion as listed by the NCW, but it may go much beyond it. We hope that it will result in recommendations taking a holistic view of Criminal Laws to incorporate women's perspective, experiences, and responses in its framing of specific provisions and will not be only limited to suggesting piecemeal changes. We are holding the Consultation in a **hybrid mode**, i.e., delegates would participate both physically as well as through virtual medium. We shall have participation from different sectors such as NCW, SWC, Academicians, Lawyers, NGO, Police Officials and Prison Officials of the five eastern states.

NOTE: *The live Consultation is limited to the invited delegates. However, we invite everyone to E-mail their comments on the issues to cwl@nluo.ac.in . We will pass on the information to National Commission for Women, New Delhi.*

