

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION**

**I.A. No. OF 2013**

**IN**

**WRIT PETITION (CIVIL) NO. 565 OF 2012**

**IN THE MATTER OF:**

NIPUN SAXENA AND ANR. ...Petitioners

VERSUS

UNION OF INDIA AND ORS ... Respondents

**AND IN THE MATTER OF:**

CEHAT (Centre for Enquiry into Health and Allied Themes), Sai Ashray, Aram Society Road, Vakola, Santacruz (East) Mumbai 400 055

... Applicants

**APPLICATION FOR IMPLEADMENT**

To,

THE HON'BLE CHIEF JUSTICE AND  
HIS COMPANION JUDGES OF THE  
SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF  
THE ABOVE NAMED APPLICANT

**MOST RESPECTFULLY SHOWETH**

1. The present application seeks the impleadment of the Applicant Trust in the present Writ Petition, *Nipun Saxena and Anr v. Union of India and Ors*, W.P. (C) 565 of 2012, pending before this Hon'ble Court. By way of an order dated 11.01.2013, this Hon'ble Court was pleased to issue notice to the Respondents in the said Writ Petition. This Hon'ble Court further issued notice on an application for

directions, being I.A. No. 3, filed by the Petitioner. The said Application seeks, *inter alia*, directions from the Court regarding the framing of elaborate guidelines for the medico-legal assistance to be provided to victims of rape and the consideration of the two finger test being against the dignity of women.

2. The Applicant is the research centre of Anusandhan Trust. The Anusandhan Trust was established in 1991 under the Bombay Public Trusts Act, 1950 (Registration No: E-13480), having its registered office at Sai Ashray, Aram Society Road, Vakola, Santacruz (East), Mumbai 400 055. Since its inception, the Applicant has been actively involved in research, action, service and advocacy on health and allied themes. The work of the Applicant includes:

- a. The formulation of a protocol which is in compliance with WHO guidelines (Sexual Assault Forensic Evidence or SAFE kit), to facilitate systematic examination and evidence collection in cases of sexual assault, as part of its work on the theme of investigation and treatment of psycho-social trauma.
- b. Since 2008, the Applicant has piloted projects relating to the WHO-compliant protocols in three Peripheral Municipal Hospitals in Mumbai.
- c. Developing an instructional manual which provides step by step instructions to doctors in conducting examinations in cases of sexual assault.
- d. The Applicant has been involved in crisis intervention in cases of sexual assault at three Municipal hospitals in Mumbai, Maharashtra (responded to more than 100 cases since 2008) as well as assisting doctors with the use of the

sexual assault forensic examination kit. Crisis intervention consisted of providing immediate psychological support and assistance to survivors of sexual assault in undergoing medical examination, besides referral to legal and shelter facilities wherever required. This work has been undertaken in three Municipal general hospitals in Mumbai since 2008.

- e. The Applicant has been working with Safdarjung Hospital, Delhi on the issue of violence against women. The Applicant further seeks to collaborate with the Safdarjung Hospital to set up a comprehensive health care response to sexual assault.
- f. The Applicant, having experience of working for several years on cases of sexual assault at hospitals in Mumbai, has developed a “sexual assault survivor examination proforma” which provides detailed guidelines for examination of survivors of sexual assault. This proforma abides to international standards as stated by the World Health Organisation and has been developed in consultation with forensic experts, gynaecologists and women’s rights advocates. It has also been accepted by the Forensic Laboratory in Mumbai and admissible in the Mumbai courts. The same has been used in more than 100 cases since 2008.

3. Cases of sexual assault result in physical and psychological consequences, like any other form of violence. Health care providers have a dual responsibility in regard to instances of sexual assault. The first is to provide the survivor of sexual assault with medical and psychological and care and the second is to assist in

medico-legal proceedings through the collection of evidence, by way of high quality examination and documentation. However, the public health care system lacks a uniform protocol for the examination, documentation and treatment of a sexual assault survivor across the country.

4. In addition to the lack of uniform protocols, health institutions have not addressed the training needs of professionals if they are to interface with survivors of sexual assault. Health professionals being from the same social milieu hold biases against survivors of sexual assault, in as much they are seen as falsely reporting cases. As a result of these biases, medical professionals feel that they should exercise caution while carrying out examination in cases of sexual assault.
5. By way of an order dated 23.04.2009, the Delhi High Court in the case of *Delhi Commission for Women v. Delhi Police*, W.P. (Crl.) 696/2008 laid down specific guidelines for responding to survivors of sexual assault for different agencies like the police, hospitals, child welfare committees and courts. The order, *inter alia*, required that a sexual assault evidence kit be available in every Government Hospital. The Applicant submits that order addresses a number of important issues. However, it is humbly submitted that it does not address the role of health professionals in the context of provision of emergency medical aid and comprehensive health care, which is their primary role.
6. This Hon'ble Court has repeatedly held that in cases of rape and other sexual offences, conviction can be made on the sole evidence of the prosecutrix, if her evidence inspires confidence (*State of*

*Maharashtra v. Chandraprakash Kewalchand Jain*, (1990) 1 SCC 550, *State of Punjab v. Ramdev Singh*, (2004) 1 SCC 421). However, there continues to be an over reliance by the Courts on medical evidence in cases of sexual assault, even though in many cases of sexual assault, there may be no visible injuries because a victim may be rendered unconscious, threatened and in state of shock to resist the attack. The experience of the Applicant has shown in a majority of cases, survivors were unable to resist sexual assault for reasons such as being physically restrained, unconscious, drugged, scared and numbed and fear of being killed. In spite of growing evidence of this kind, health professionals continue to overemphasize genital injuries as being the only factor to determine sexual assault.

7. As a result of the issues highlighted above, the medical care and treatment of survivors of sexual assault is not considered important at all. Survivors are treated in a way that violates their personhood, dignity and health guaranteed under the right to life under Article 21 and the right to equality guaranteed under Article 14 of the Constitution.
8. Components of Medical examination related to sexual assault survivors often record details which are irrelevant and do not provide a sound basis for determining whether sexual assault has occurred. The status of the hymen is examined for tears and the degrees of the tear. Emphasis on the status of the hymen only restates the myth that a status of hymen can determine virginity. However a hymen can be torn due to several reasons such as vigorous exercising, cycling, riding etc.

9. Further, the two finger test is used to examine whether a survivor of sexual assault is “habituated” to sexual intercourse. The two finger test is an attempt to determine whether the vaginal opening is broad/narrow and to determine whether the survivor is habituated to sexual intercourse or not. This is used as one of the measures to determine whether sexual assault has taken place. The test is one of the most unscientific methods of examination used in the context of sexual assault and has no forensic value. Whether a victim of sexual assault has had sexual intercourse or is “habituated” to sexual intercourse prior to the assault has absolutely no bearing on the fact of whether she consented when the rape occurred. Therefore, the test has no relevance. Being habituated to sex does not mean that a woman has consented to all sexual activity. Rape is a specific act of sexual assault where the survivor does not consent. The two finger test is based on the premise that if a woman is used to sexual intercourse, then she is a person of easy virtue and must have consented to the sexual assault. Using the past sexual activity of a woman as evidence of the likelihood that she consented to sexual assault and subjecting her to the two finger test is humiliating and degrading and violates her personhood and dignity, protected by Article 21 of the Constitution of India and right to equality guaranteed under Article 14 of the Constitution.
10. This Hon’ble Court has held in *State of Uttar Pradesh v. Pappu*, (2005) 3 SCC 594, *State of Uttar Pradesh v. Munshi*, (2008) 9 SCC 390, *State of Punjab v. Ramdev Singh*, (2004) 1 SCC 421, *Narayanamma v. State of Karnataka*, (1994) 5 SCC 728, *State of Punjab v. Ramdev Singh*, (2004) 1 SCC 421, that the results of the

two finger test cannot be used against the prosecutrix and further whether the victim is habituated to sexual intercourse is not relevant for the purposes of rape. However, such examination continues to be conducted on survivors of sexual assault. It is submitted that the two finger test is unscientific and provides no forensic evidence of rape.

11. Evidence from the records of the Applicant show that persons reporting sexual assault face several forms of sexual assaults, such as, forced peno–anal intercourse, use of fingers and objects, forced masturbation and the like. However, current medical examinations are only geared to concentrate entirely on peno–vaginal sexual assault, completely leaving out other acts.
12. Along with the medico legal examination, health providers have an ethical responsibility in providing best medical care to survivors of such assault. Yet evidence from several parts of the country show that survivors are routinely turned away by hospitals for want of police requisition, often resulting in denial of medical treatment and care. This Hon'ble Court in *State of Karnataka v. Manjanna*, (2000) 6 SCC 188, placed on record its disapproval the practice of Government Hospitals refusing to conduct medical examinations in cases of rape unless the survivor is referred to them by the police. It is also pertinent to note that this Hon'ble Court held in the case of *Parmanand Katara v. Union of India*, (1989) 4 SCC 286, that public and private hospitals and doctors cannot deny emergency medical care to any person.
13. It is submitted that it is essential that the medical examination of a survivor of sexual assault be conducted in a sensitive, dignified and

survivor-centered manner. The main goals of examination of the survivor are:

- a. Immediate medical treatment and therapeutic care;
- b. Medical assessment and treatment of injuries and assessment, treatment and prevention of pregnancy and sexually transmitted diseases;
- c. Collection of forensic evidence;
- d. Crisis intervention and psychosocial support

14. The Applicant submits that in order to treat survivors of sexual assault in a manner which is respectful and dignified, any model for the treatment of survivors of sexual assault must contain the following elements:

- a. the provision of necessary medical support to the survivor of sexual support irrespective of the decision to report the offence;
- b. uniform methods of examination and evidence collection using gender sensitive protocols;
- c. informed consent for examination, evidence collection and treatment which includes informing the survivor of police procedures;
- d. first contact psychological support and validation after the incident
- e. maintaining a clear and fool proof chain of custody to ensure the prevention of tampering and destruction of evidence;
- f. referral to appropriate agencies for further help, like legal support services, shelter services etc.

15. It is submitted that the Applicant developed a gender sensitive systematic examination proforma and evidence collection (SAFE kit) in cases of sexual assault as part of its work. The proforma was developed in consultation with forensic experts, gynaecologists, public health experts and women's rights groups. The Applicant subsequently pilot tested the SAFE kit in two municipal hospitals in Mumbai in 2008-09.
16. The Applicant has also developed a Manual for the Examination of Sexual Assault Survivors with an aim to operationalise a comprehensive health care response. The Manual provides doctors with a step by step approach with what has to be done when a survivor of sexual assault reports to a hospital. The Manual also provides sample proformas and standard operating procedures which could be implemented in hospitals. A true copy of the Manual for Medical Examination of Sexual Assault developed and published by the Applicant is annexed herewith and marked as **Annexure A (pages 13 to 86)**.
17. It is submitted that the Manual developed by the Applicant is in consonance with the guidelines of the WHO. A true copy of the WHO Guidelines for medico-legal care for victims of sexual violence 2003, are annexed herewith and marked as **Annexure B (pages 87 to 235)**. A comparison of the protocols of the Applicant and those recommended by the WHO are annexed herewith and marked as **Annexure C (pages 236 to 246)**.
18. In 2010, the Applicants filed an intervention application in the case of *Dr. Ranjana Pardhi and Anr. v. Union of India and Ors*, Criminal PIL No. 1/2010, before the Nagpur Bench of the Bombay High

Court. The PIL sought directions from the Hon'ble Court to streamline the medico legal response to sexual assault. The existing government proformas for sexual assault are archaic and not in accordance with the international standards or existing laws in the country. The intervention application of the Applicants was allowed. Subsequently, a committee was set up in order to develop comprehensive sexual assault protocols.

19. It is also pertinent to note that by way of an order dated 23.04.2009, the Delhi High Court in the case of *Delhi Commission for Women v. Delhi Police*, W.P. (Crl.) 696/2008 laid down specific guidelines for responding to survivors of sexual assault for different agencies like the police, hospitals, child welfare committees and courts. While the order of the Delhi High Court had addressed important issues relation to the response of different agencies to sexual assault, it does not address a comprehensive response to sexual assault, as there is an emphasis only on evidence collection and the SAFE kit to be used for this purpose.

20. That, in view of the fact that the Applicant has substantial experience in framing and practically implementing the sexual assault examination and treatment protocols, it is necessary and in the interest of justice that the Applicant be impleaded in the present petition. In light of the above, the Applicant seeks leave of this Hon'ble Court to be impleaded in the present petition and assist this Hon'ble Court in the interest of justice.

#### **PRAYER**

In the facts and circumstances as mentioned above, it is most humbly prayed:-

1. That the Applicant be impleaded as a party in the present Writ Petition;
2. Without prejudice to the prayer above, that the Applicant be allowed to intervene in the present petition and assist this Hon'ble Court in the present Writ Petition;
3. Pass such order/orders that this Hon'ble Court may deem fit and proper.

**AND FOR THIS ACT OF KINDNESS THE APPLICANT AS IN  
DUTY BOUND SHALL FOREVER PRAY**

**FILED BY:**

M/s Lawyers Knit

Advocate for the Applicant

New Delhi

Filed on: 30.01.2013