

**National Consultation on
Access to Justice, Relief and Rehabilitation of rape victims**

(New Delhi – March 7, 2010)

Address by Hon'ble Mr. K.G. Balakrishnan, Chief Justice of India

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And Ladies and Gentlemen,

I felt that it was my duty to attend the inaugural session of this national-level consultation on issues related to sexual offences. There can be no gainsaying that our criminal justice system will continue to face a lot of criticism until decisive steps are taken to deter sex offenders by investigating and prosecuting these cases expeditiously and to protect the victims of sexual offences from social stigma and further intimidation by the perpetrators.

The regrettably high incidence of violence against women is a sad comment on the state of affairs in our society. Even though women are gaining an increasing foothold in the domain of education, employment and public life, retrograde social attitudes continue to be a serious hurdle in the pursuit of gender-justice. In fact, some people would even argue that the increased mobility of women also exposes them to a higher risk of physical and sexual abuse. However, I strongly disagree with such reasoning because it is the task of the criminal justice system to prevent and punish the offenders rather than pointing fingers towards the victims. Contrary to popular beliefs,

empirical studies have established that in most cases of rape, molestation or child sexual abuse - the perpetrator is usually someone known to the victim. This clearly debunks the claim that women's participation in public life exposes them to a higher likelihood of harm since they are vulnerable in their private lives as well. It is in recognition of this pervasive problem that we must turn our attention to the shortcomings and the scope for reforms in our criminal justice system.

The lacunae begin from the stage of investigation since most victims of rape or molestation are either hesitant or reluctant to report the commission of these crimes. This is primarily due to fears about social stigma and disapproval. There is a very real phenomenon described as 'secondary-victimisation' wherein the victim of a crime faces additional harassment and humiliation in the course of investigation and trial. Especially when the perpetrators are in a position of power over the victims, there is a strong distrust of the credibility of the investigation itself. Some recent cases highlighted in the press have shown how the investigative machinery can often be manipulated to protect influential persons, howsoever reprehensible their crimes may be.

Even in cases where charges are framed and a trial commences, the dice is often loaded against the victim. In some cases the perpetrators of sex-related offences engage in particularly gruesome behaviour by murdering their victims to destroy the physical evidence of their crimes. In most other cases, the evidence-

gathering and recording of testimonies is often inadequate for successfully prosecuting the accused persons. In this context, the investigators, prosecutors and defence counsels must exhibit an appropriate degree of sensitivity to the victims. Especially during the trial proceedings, judges need to be proactive in order to restrain the aggressive cross-examination of rape victims. It must be recognised that when a rape victim is called on as a witness, her testimony can trigger the memories of the attack on her personal dignity. In recognition of this problem, the Indian Evidence Act was amended some years ago and a provision was inserted to ensure that the past sexual history of a victim cannot be given weightage in a trial for the offence of rape. What is needed now is for judges and lawyers to internalize the principle that facts relating to the past sexual history of a victim should not even be brought up in the first place, since the purpose of a trial is to decide whether or not an offence took place as alleged.

Many of you would recall the **Mathura case** (in 1979) which had attracted a lot of criticism. The lesson that we should learn from that mobilization is that there is no place for social stereotypes and prejudices to be given any room when courts are dealing with offences such as rape and molestation. We must bear in mind that in a majority of cases the victim who has pursued the case to the trial stage is someone who has overcome apprehensions about the social stigma attached to sex-related crimes. Some recent decisions of the Supreme Court have laid down that in the absence of any other eye-witnesses to the commission of a rape, the uncorroborated testimony

of a rape victim should be given due weightage. It would be fair to say that in a vast majority of cases, no one in their right mind will make false allegations about having been raped. In the minute number of cases where such false allegations could have been made, investigators can now rely on physical evidence such as blood, semen and DNA samples among other bodily materials to test the veracity of the allegations.

On the legislative front, demands have been made for the creation of some offences that will adequately deter child sexual abuse as well as physical abuse that falls short of sexual act. For instance, some activists have argued that the punishment prescribed for the offence of 'outraging the modesty of a woman or child' (under Section 354 of the Indian Penal Code) is inadequate and that it should be considerably increased in order to serve the purpose of deterrence. While the quantum of punishment should bear a correlation to the serious nature of an offence, I must reiterate here that it is the certainty of punishment which acts as an effective deterrent. The Law Commission of India in its 172nd Report published in 2000 had suggested that the offence of rape should be replaced with the offence of 'sexual assault' which would have a wider amplitude. It was pointed out that the present definition of rape concentrates on the sexual act and hence it is not appropriate for framing charges and prosecuting other forms of sexual abuse such as inappropriate physical contact.

While issues pertaining to the reporting of sex-related crimes and evidence-gathering need to be given prominence, there is also an interest in conducting the trials in an expeditious manner. The Union Minister for Law and Justice has announced a bill which contemplates the creation of fast-track courts to try sex-related offences. While this is a laudable measure, we must also keep in mind that the interests of the victim are not protected by punishing the offenders alone. Adequate attention should also be drawn to suggestions for compensatory remedies and the rehabilitation of rape victims through the provision of shelter, counseling services, medical and legal aid. It must be kept in mind that an act of rape or molestation can have long-lasting consequences such as mental trauma, physical disability and frustration of prospects for marriage and employment. It is especially in this context, that there must be a robust discussion about the 'Victims Compensation Scheme' that is proposed to be inserted in the Code of Criminal Procedure. It is also noteworthy that the Ministry of Women and Child Development has come out with a proposal for a comprehensive 'Scheme for Relief and Rehabilitation of Victims of Rape'. Judges, lawyers and social activists should also ensure that they do not take an overtly paternalistic approach when they have to make decisions for the welfare of rape victims. Due regard must be given to their personal autonomy since in some cases the victim may choose to marry the perpetrator or choose to give birth to a child conceived through forced intercourse. It is not possible for policy-makers and judges to prescribe a 'one-size fits all approach' and we must make honest

efforts to build the institutional capacity needed for the proper rehabilitation of rape victims.

With these words, I would like to thank the Ministry of Women and Child Development for taking the lead in organizing this National-Level Consultation for the various stakeholders. I hope that all of you will use this forum to take the decisive steps that are needed to protect the interests of those who have faced the trauma of rape and sexual assault.

Thank You!
