

**Speech of Justice Gita Mittal on 26<sup>th</sup> April, 2016 on the Inauguration of the Vulnerable Witness Court Room at Tis Hazari Courts, Delhi.**

1. Access to justice, a human right, recognized as a fundamental right under the Constitution of India, is basic to the rule of law. That procedure is important to justice delivery, is encapsulated in the phrase “*procedure is the handmaiden of justice*”.

2. Much has been written about how equal access to the legal system is not about putting everyone through the same procedure, but is also about designing procedures that accommodate special factors such as risks, harms, secondary traumatisation, disability etc., to enable a meaningful participation of special groups. This is essential to enable not only equal outcome, but also for dispensation of justice.

3. So far as the criminal justice system is concerned, a uniform procedure for trial of all offences and examination of all victims or witnesses does not necessarily result in equal access to justice. Rather it may severally impede the same, especially in cases concerning sexual violence as I shall illustrate in a moment.

4. The **Vulnerable Witness Project**, an initiative of this Committee of the **Delhi High Court** – is an example of what **judicial intervention** and **judicial leadership** can achieve in this regard. It is a vital response, which recognizes and **addresses the several barriers to the effective participation of victims of sexual violence in the criminal justice system**. Simply put, it can be termed as a Witness Assistance Programme.

5. This **traumatisation is compounded** as the **witness is completely without support in an alien court room**; where **men outnumber women**. And more importantly, because of the **presence of the accused person**.

6. Once incident bears out some stark realities. In February, 2012, Ms.Suzette Jordan, a 38 year old single mother of two girls, was brutally gang raped in a car in Kolkata and then thrown out. This incident came to be termed as Kolkata's Park Street rape. The incident sparked a furor She was, initially, even labeled a liar who was trying to make the government look bad. Suzette also started receiving threatening telephonic calls asking her to withdraw her case. Her house was also *gheraoed* by the angry mob. Tired of hiding her identity in an extremely hostile atmosphere, she came out in the open and publicly proclaimed that her name was Suzette and that she did not want to be known any longer as the victim of Calcutta's Park Street rape. She claimed that she was tired of society's rules & regulations. Suzette was able to get over the fear and stigma attached to said incident and started a helpline of victims of sexual and domestic violence. A real path breaker, Suzette did much to heal the sufferings of other similarly situated survivors of rape who, at times, unnecessarily feel suffocated by maintaining complete silence out of societal stigma. It was a real loss when Suzette's voice was silenced by the cruel hand of fate as she succumbed to meningitis on 13<sup>th</sup> March, 2015 while her trial was still pending.

7. On the 10<sup>th</sup> of December, 2015, Suzette received justice when the Additional District and Sessions Judge, 2<sup>nd</sup> Fast Track Court, Kolkata found three accused persons, Nishat Alam, Md. Nashir Khan and Sumit Bajaj guilty of committing offence of gang rape upon her and sentencing each of them to suffer RI of 10 years and fine of Rs.1 lakh each in default to suffer SI for six months.

Two of the accused (Nishat Alam and Md. Nashir Khan) were also found guilty for committing the offence of criminal conspiracy for which they have suffered SI for 6 months and to pay fine of Rs.10,000/- each, and, in default to suffer further SI for one month. They were also found guilty of voluntarily causing hurt to Suzette in furtherance of their common intention and sentence to

suffer SI for 6 months and to pay fine of Rs.1,000/- each i.d. to suffer further SI for one month. For commission of the offence of criminal intimidation of the victim, they were sentenced to SI for 4 months and a fine of Rs.500/- each and in default to suffer SI for 15 days. The sentences were directed to run concurrently and the period of their custody was directed to be set off.

As Suzette died during the pendency of the case, the learned Judge has directed that the fine amount be given to her two daughters in equal proportion.

Unfortunately two accused persons Md. Kadir and Md. Ali Khan absconded and proclamation against them was duly published.

8. Let us hear in her words her experience in the court.

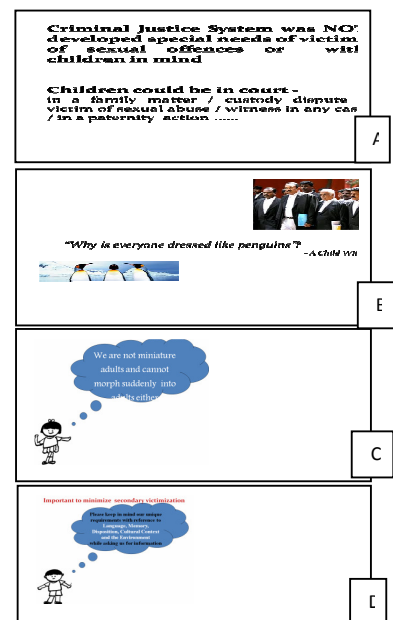
**[Suzette’s piece] – video**

9. Suzette is just one category of victims. Imagine a Suzette who is aged 5 or 6 years of age or 8 or 13. The court justice system was not designed with children in mind.

10. It needs no elaboration that the purpose of recording witness testimony is to provide the court with such information which will enable the court to ascertain the truth and take a decision on the matter before it. Such information must be extracted from the witness in its most accurate form.

***So what did the Committee do?***

11. While examining the working of the **guidelines** in several judicial pronouncements of the Supreme Court and the High Courts, and engaging with various **stakeholders** including the Police and the Forensic Science Laboratories, we realized that the **task of ensuring compliance with the guidelines** was not only large, but also **difficult**. However, **as judges, it is our first and foremost duty to ensure that access to justice is made easier**. The court must certainly appear as less daunting, especially to those who may be



victims of sexual offence. **We, therefore, made the choice to first traverse the path taken by a victim of a sexual offence in the criminal justice system.**

12. There is a unique challenge in recording the testimony of a victim of sexual violence. The witness is required to depose about the violence to his or her most intimate body parts. Most persons find it difficult to discuss issues involving sexuality in the open. A victim who is recounting probably the worst kind of violence to her or his person and mind is expected to speak about the same to complete strangers not only in an environment which is alien but may even be hostile. The witnesses pain would be compounded manifold by the fact that he or she has to do so in the very presence of the perpetrator of the violence.

**The problems posed by the justice system**

- Having to tell many different people what happened
- Long wait before trial goes to court
- The possibility of having to face the accused
- The use of age-inappropriate language in the court
- The use of cross-examination which is designed to "catch witnesses out".

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13. What does such a witness do if his or her testimony is not completed in the pre-lunch session when it began? Where does a witness go if he or she has to wait for the case to be taken up again after lunch? Sending such person into the public area may have exposed him or her to the accused and pressure from such quarters. We set about providing an option for all these witnesses.

By our small initiative, it is all this as well as pain and trauma which we have tried to mitigate.

14. To begin with, we framed **Guidelines** for operationalising the facility.

Under our **definition of Vulnerable Witness**, we have included:-

- (i) **a child witness;**
- (ii) **a victim or a witness in a cases involving the sexual offence and;**
- (iii) **a victim or witness in a dangerous crime.**

**Guidelines for Recording of Evidence of Vulnerable Witnesses**

- Child witnesses
- Victims of sexual offences
- Victims of violent crimes

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**"Guidelines For Recording of Evidence of Vulnerable Witnesses in Criminal Matters"**

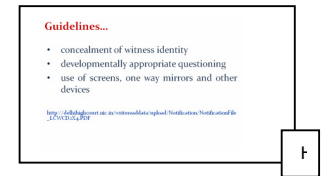
The Guidelines draw from legislations and guidelines from all over the world including the United Nations Guidelines, New Zealand, Australia, Canada, South Africa, UK, USA, Philippines.

Provision has been made inter alia for:

- support person, facilitator, guardian ad litem, legal aid
- pre-trial visit to court complex
- Interaction with judge and prosecutor

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15. We must point out that our initiative in framing these **guidelines** and court preceded the important legislations brought about in 2012 as well as 2013. In fact, the **Criminal law (Amendments) Act, 2013** as well as **Protection of Children from Sexual Offences Act, 2012** (POCSO) have sanctified the procedure being followed for recording the evidence.



16. The task we undertook was not easy as we juggled between **several conflicting interests**. Our resources were limited as we had **no special budgetary allocation**. The **lack of space** in already over crowded courtrooms made our task almost impossible.

17. A wide **consultative process** involving judges, institutions in several countries, psychologists, lawyers, prosecutors etc., was undertaken and **one existing available court room in the Karkardooma District Court Complex was modified to create the first child witness court room in the country**. This was inaugurated on the **16<sup>th</sup> of September, 2012. This was much before the 16<sup>th</sup> December, 2012 Delhi gang rape. It was much before the issue of sexual violence started getting any media attention.** I say this to emphasize the sensitivity that judges bring to the path of justice dispensation, undaunted by the magnitude of the task in hand.

18. Let me briefly show you the facility which has been created. The **provision of the dedicated entry** from outside the building to this facility shall enable the witness to stay away from the formidable court environment. The witness has also been provided **facility to wait**, if I may say so, to catch his/her breath, before, during and after making his or her deposition and also partake refreshments, if she or he feels the need.

19. This programme manifests the **recognition that following a uniform procedural approach** in a **typical court room** may result in a **casualty** in

cases involving sexual offences. If special treatment is not accorded, the system results in re-victimisation of the victims. This may result because of the close **proximity with the accused** and the **formidable environment** where they are required to **recount the violence** they have experienced, some times repeatedly.

20. We have used **available material and simple technology** to carve out this facility. **Minor modifications to available court rooms** have enabled us to make it possible for the witness to **testify on a video link** from a room adjacent to the court room where the prosecutor, accused as well as his counsel shall remain.

21. Society has wide expectations from judges. The victims perceive the judge as one who will take away all the pain that they have experienced. For this reason, they want to tell what they have experienced or seen to the judge himself or herself. For such witnesses we have created a facility so that the **witness shall depose in the court room**, while the **accused is in the adjacent room** with a one-way viewing glass so that he can view and hear the court proceedings. We have provided an audio link to him so he can give confidential instructions to the defence lawyer.

<p><b>Objective of the Programme</b></p> <ul style="list-style-type: none"><li>• securing best interests of the witness.</li><li>• ensuring confidentiality and security of the witness</li><li>• eliciting complete, accurate and reliable evidence.</li><li>• minimizing harm or secondary traumatization of witness.</li><li>• ensuring rights of the accused to fair trial.</li></ul>	I
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Much of the apprehension which a person nurtures with regard to making a deposition would stand relieved by the impact of the comforting environment which has been provided.

To ensure all rights of the accused, we have made available this facility to vulnerable witnesses appearing for the defence as well.

22. Let me show you what we created -



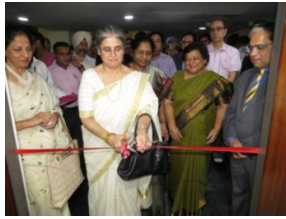
### Facilities at Karkardooma Court Complex



23. On the **11<sup>th</sup> of September, 2013**, a second court room was inaugurated at the Karkardooma District Courts again created from available facilities.



24. A **second milestone** in this programme of the High Court was achieved on **17<sup>th</sup> September, 2014** when we inaugurated the Vulnerable Witness Deposition Complex in the **Saket District Courts**, a major step forward. These court rooms are much in demand and are in great use.



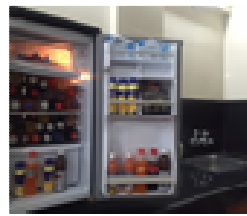
### Facilities at Saket Court Complex



25. Today (26<sup>th</sup> April, 2016) we achieve the **third milestone** as we inaugurate the facility in **Tis Hazari Courts**.



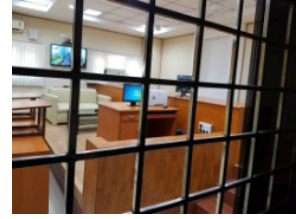
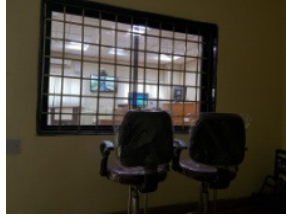
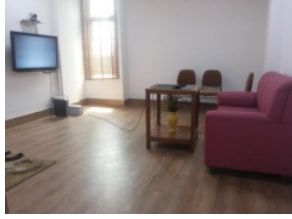
### Tis Hazari facilities



Dedicated Entrance

Waiting Area

Pantry



Room of Accused

View from Accused's Room

Trainings.....

26. **But is this enough?** Architectural changes in the court room are not sufficient to address the problem. To make the path less traumatic for the witnesses and the victims, it has to be accompanied by a **sensitized judiciary; compassionate prosecutors and more ethical defense lawyering**. We have recognised that all these pieces together make legal procedure more just, and that the resulting mosaic creates the necessary sensitized environment.

27. **Technical training** has been given to all judges on how to use the court room.

28. **Facilitators** have been interviewed and **selected** in all the court complexes.

29. We have simultaneously undertaken a sensitization **training programme** captioned '**Making Courtroom Practices Responsive Towards Victims of Sexual Offences**' for sensitization of all judges as well as some prosecutors, police officials and legal aid lawyers. By now **500 judges, 75 prosecutors, 135 legal aid lawyers, 150 police officials** have undertaken the programme held in **seven batches**.

30. Our initiative manifests the **recognition that things need change, that change is possible**. The VWC is the visible face of the change we aspire for. It is part of a resolve that we need to change at multiple levels, that we must not be restricted to legislative

**Some barriers to an enabling witness experience**

- Law teachers, judges, prosecutors and defence lawyers are all from the same social-cultural milieu and carry with them stigma, bias, discomfort, etc.
- Understanding of the dynamics of violence, trauma and development is not given the attention/importance it warrants.
- Training of judges and prosecutors is inadequate to address lacunae - e.g. to assess competency of a vulnerable witness - child or a witness with disabilities.

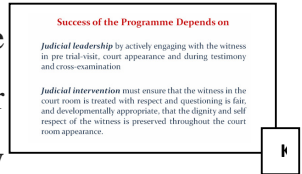
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Intimidating experience for witness and compromises justice dispensation

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**reform alone or to principles in judicial precedents to achieve justice. It would also make the justice processes accessible.**

31. Before parting, I would like to say that I do share the concerns of the millions that just this **third** complex means nothing for the large numbers out there. I can say that in Delhi at least, we are doing our best, with all the limitations, **to replicate this facility in as many court complexes as possible.** Similar court rooms are under creation in the **Rohini and Dwarka District Court Complexes** as well.



32. With the encouragement of our Chief Justice, support from our colleagues, judges of Delhi Higher Judicial Services and Delhi Judicial Services, the PWD, Police, Prosecutors, our learned friends from the Bar, the court staff and facilitators from the public, this Committee hopes to make the path of a witness or victim in a case involving sexual violence as trauma-free as possible.

33. This Committee wants to place on record its deep appreciation of the dedication with which Mr.A.K. Chawla and Ms. Rekha Rani, District Judges at the Tis Hazari District Courts and their teams who have undertaken this project. The support and efficiency displayed by the PWD in executing the work has been commendable. We recognize their commitment and record our appreciation. I must place before all of you also the deep commitment and efficiency displayed by Mr. Dinesh Sharma, ADJ, Director DJA and Mr.Sanjay Garg, ASJ who heads the Tis Hazari Vulnerable Witnesses court team, as well as his fellow judges in completion of this project as well as the trainings.

34. In our roles as adjudicators, lawyers, teachers, students and the public, we have been beneficiaries of the sensitive jurisprudence which has flowed from the pen of Justice Madan B. Lokur. An expert in criminal law, he has led from the forefront in right based adjudication. We are truly fortunate that Justice Lokur has today inaugurated the VWC and given his blessings to our work.

35. An effort to humanize the criminal justice, we hope that this initiative will ease the path of all victims of sexual offences through the Tis Hazari courts. And that by our efforts, we can be role models that the other stakeholders as doctors, police personnel, forensic experts can emulate.

36. My learned brother Justice R.K. Gauba will share with you the experiences of working these court rooms as well as those of witnesses.

Thank you

## About the sensitization programmes .....

### **Resource Persons**

37. Our sensitization and training programmes were led by around 32 experts and victims. They include Justice R.K. Gauba, Mr.Dinesh Kumar Sharma, Prof. Mrinal Satish, Ms.Madhu Mehra, Mr.Sidharth Luthra, Mr.Dayan Krishnan, Mr.Siddharth Aggarwal, Mr.Sumeet Verma, Ms.Sonali Mukerjee, Ms.Kiran Deshmukh, Ms.Laxmi Narain Tripathi, Mr.Anis Ray Chaudhari, Prof.Ved Kumari, Ms.Rebecca J. Mammen, Dr.Jagadeesh Naryan Reddy, Ms.Sangeeta Rege, Ms.Aparna Bhatt, Ms.Vidya Reddy, Ms.Geeta Ramaseshan, Ms.Seema Misra, Dr.Achal Bhagat, Mr.George Abraham from The SCORE Foundation, Mr.Arun Rao, Ms.Namrata Patro from The Deaf Way, Mr.Gautam Bhan, Dr.Anita Ghai, Ms. Anu Mukerjee, Prof. Aparna Chandra, Dr. Padma Deosthali, Judge Sandra, Mr. Veerendra Mishra, Ms. Vrinda Grover and Ms. Suzette Jordan.

38. It is not possible to share the depth, width and wisdom of our learned resource persons in the given time. However, we do so want to share with you, some of the very powerful statements made by technical experts as well as those from marginalized communities who have faced sexual violence. Ms.Paridhi Gupta and Mr.Puneet Nagpal, trainee judges from the DJS shall present to you as a sample some of these Voices from the Margins as well as those empowered.



