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### For a victim-centric approach

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Court proceedings are generally held in open courtrooms to ensure transparency under the maxim, “not only must justice be done, it must also be seen to be done.” The recent trend of in-camera trial has evolved contrary to this maxim to ensure confidentiality and to lessen the trauma and stigma caused to a victim. It also provides protection from voyeuristic intrusion by the media.

A judge is duty-bound to maintain the delicate balance between the rights of an accused for a fair trial and the rights of a victim for protection against the violation of her dignity. Closed-door proceedings place an additional responsibility on the presiding judge to ensure this, as these proceedings are not open to public scrutiny. Within this constraint, the innovative survivor support programme of Majlis in Mumbai provides a ringside view of rape trials. It becomes an important social responsibility to share these insights with a wider readership in the hope of letting in a breath of fresh air within these cloistered spaces.

### Double trauma

Apart from the actual incident of rape, what rape victims fear the most is the courtroom ordeal. What comes to mind is a slogan coined during the anti-rape campaign in the early 1980s in the context of the acquittal of two policemen. They were charged with the rape of a 16-year-old tribal girl, who was poor, in a police station, and had termed her a liar as there were no marks of injury on her body. “She was raped twice, first by the police and then by the courts.” This still holds true for many victims, despite the introduction of statutory changes and positive rulings of the Supreme Court. Within the hostile environment of a criminal court, the victim looks up to the judge to get the wrinkles out of what is a gruelling process. It is the sensitivity displayed by the judge which alone can save the situation.

On this subject, trial court judges try to pass the buck on to defence lawyers saying that it is they who need to be sensitised. However, it is entirely up to the judge to take control of the situation. A confident judge well-versed in statutory provisions and positive rulings will be in a commanding position to maintain the dignity and decorum of the court; only those who lack in confidence will allow themselves to be cowed down by the intimidating tactics of defence lawyers.

### Issue of victim's past

As an example, let me discuss the case of 16-year-old K, a victim of gang rape which happened in the pre-amendment era. She was dragged out of her paying guest accommodation in a slum to a vacant room down the street and brutally raped by five men until she fell unconscious. The first information report (FIR) could be lodged after about a month, and after the Herculean efforts of a social worker. The plea by the defence was that K was the daughter of a sex worker. And as she had a boyfriend, she herself was of questionable character. This background provided ample scope for her humiliating cross-examination by five astute lawyers. However, the presiding judge remained firm, relying on the path-breaking Supreme Court ruling in *Gurmit Singh* (1996), and did not permit any questions regarding the victim's past sexual history.

In that case, while overturning the verdict of the two lower courts, which had acquitted the accused in a case of the gang rape of a 16-year-old schoolchild who had been kidnapped from her examination centre, the Supreme Court had ruled: “Even in cases where there is some acceptable material on record to show that the victim was habituated to sexual intercourse, no such inference like the victim is a girl of ‘loose moral character’ is permissible to be drawn from that circumstance alone. No stigma, like the one as cast in the present case can be cast against such a witness, for after all, it is the accused and not the victim of sex crime who is on trial in the court.”

The trial court judge ruled that questions regarding the credibility of the witness, or her past sexual history can no longer be entertained after this ruling. She further commented that it was not a case of a complaint of sexual assault arising out of a love affair, but was a case of gang rape. The judge ensured that the deposition of the victim was concluded on the same day, even if it meant a sitting beyond the court timings. The case finally ended in a conviction, despite the lapses.

### On child victims

Let us contrast this with the case of an eight-year-old who lived in a lower class tenement, and sexually abused by a neighbour, a 26-year-old man. The incident lasted barely 10 minutes as the child heard her mother calling out to her and began to scream. The girl experienced great trauma and could not describe the incident even to her mother for two days.

During the trial, the child was cross-examined by a reputed criminal lawyer over three court dates, where her parents and she had to travel a distance of two hours each way. The busy lawyer either came late or pleaded his inability to complete the cross-examination as he had other matters to attend to. The court gave in to his request, disregarding the hardship being caused to the family of meagre means. The trial was in the designated Special Court, constituted under the Protection of Children from Sexual Offences (POCSO) Act, 2012, which stipulates special child-friendly trial

procedures.

Throughout her deposition, the child, of a small build, was precariously perched on the ledge of the witness box, so that the presiding judge could see her and listen to her scared and muffled voice. This case too ended in conviction. The manner in which the two trials were conducted shows that there is a world of difference.

The Sakshi Guidelines (2004) stipulate that in cases concerning children, the defence lawyer must first submit the questions in writing to the judge, and the judge, at his/her discretion, ask only those questions which are relevant to the incident. But these guidelines are seldom followed.

We have also witnessed shocking instances of judges, under the compulsion of having to complete the trial within the stipulated time frame, and in the absence of the defence lawyer, asking the accused to come forward and conduct the cross-examination. This is in total violation of the stipulation that the victim should not ever be made to face the accused during her deposition, and that a screen or a one-way mirror should be installed to shield her from the intimidating gaze of the accused.

### **Monitoring courts**

Due to the presumption that a victim of sexual abuse would feel more at ease deposing before a lady judge, there is a stipulation that, as far as possible, only lady judges should be assigned to special courts. However, the belief that all lady judges are equally sensitive to victims, and that as a class, lady judges are more sensitive to victims of sexual crimes than men is not substantiated. It is not biology which determines sensitivity. Judges assigned to these courts must be specially exposed not only to statutory provisions but also to the mandatory protective measures that are required to be diligently followed before their assignment to these courts.

There is also a need to monitor the functioning of these courts and provide mechanisms of redress, in case of lapses. Closed-door trials cannot be construed as sacrosanct spaces beyond the scope of a social audit. Campaigners who were instrumental in bringing about these changes cannot abdicate their responsibility once the statute is enacted. The enactments are only the beginning of a long-drawn and challenging process.

Sessions courts are formidable and intimidating spaces meant for the police, criminals and their lawyers. To turn them into child-friendly spaces would require special ingenuity which those in charge of structuring these spaces usually lack. They need to be stripped of their high podiums, musty air and black coats and the space needs to be redesigned from the perspective of victims, especially children and those with disabilities.

Within their limitations, some judges have been using simple measures such as the setting up of a temporary screen or placing a cupboard in a manner so as to shield the victim during the deposition and allowing frequent breaks during the gruelling process of cross-examination. (We have come across instances where victims have fainted during the deposition.) Some judges also permit the victim to enter from the entrance meant for judges and allow them to wait in their own chambers until the matter is called out. These are small but significant gestures which will help ease the trauma of the victim.

While Delhi has successfully set up special courts for vulnerable witnesses, for the rest of the country, this is still a far cry.

*(Flavia Agnes is a women's rights lawyer and consultant to RAHAT, a collaboration between the Department of Women and Child Development, Maharashtra, and the Majlis Legal Centre to provide support to survivors of sexual violence.)*

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***Closed-door proceedings place an additional responsibility on a judge to ensure that he or she is duty-bound to maintain the delicate balance between the rights of an accused for a fair trial and the rights of a rape victim for protection against the violation of her dignity***

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