

# **Providing Support, Ensuring Dignity and Securing Best Evidence in Cases of Sexual Crimes**

**Consultation between Stakeholders**

Organised By



Govt. of Maharashtra

**RAIIAT**

Socio-legal Support for Victims-Survivors of Sexual Violence  
Collaboration between Department of Women and Child  
Development and Majlis Legal Centre.

Sahyadhri Guest House, Mumbai. 12<sup>th</sup> September, 2013

# RAHAT

Socio-legal Support for Victims-Survivors of Sexual Violence  
Collaboration between Department of Women and Child  
Development and Majlis Legal Centre.

Faced with multiple vulnerabilities and challenges, victim-survivors of sexual violence find it difficult to approach formidable institutions like police, hospitals and courts. They need support, reassurance, empathy and guidance at every stage.

**RAHAT** is a collaboration between Department of Women and Child Development and Majlis Legal Centre to offer Socio-legal support to victim-survivors of sexual violence. Through a convergence model involving Judiciary, Police, Medical, Shelter Homes, Legal Aid, NGOs and Civil Society we ensure that the survivor is not re-victimised. This programme will:

- Help the survivor to access services she is entitled to like medical, trauma counseling, shelter, educational assistance and any other support she may need from time to time.
- Help the survivor negotiate the criminal justice system by providing legal assistance during investigation and trial.
- Create awareness in the community and among state agencies about rights, procedures, best practices to be followed
- Evolve protocols, guidelines and document best practices, to place these before state agencies so as to build consensus and ensure its implementation.

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Pilot Project in Mumbai

# **Providing Support, Ensuring Dignity and Securing Best Evidence in Cases of Sexual Crimes**

## **Consultation between Stakeholders 12<sup>th</sup> September, 2013**

### **KEY RECOMMENDATIONS**

#### **MUMBAI POLICE**

The Mumbai Police has drafted a circular with the help of RAHAT team regarding procedures to be followed while dealing with cases of sexual offences as prescribed under the Criminal Law Amendment (Cri.LA) Act, 2013, the Protection of Children from Sexual Offences (POCSO) Act, 2012, the Criminal Procedure Code and the Police Manual --- while registering an FIR, providing medical aid and treatment, recording statements of victims, and providing immediate care and protection to child victims. The same has been sent to all 93 police stations in Mumbai (city and suburbs).

The Joint Commissioner of Police (Law and Order) and the Crimes Against Women Cell with the help of RAHAT team members will conduct zonal consultations in all police zones, for senior officers, investigating officers, women officers and women PC, from each police station to familiarize them with the new legal definitions of sexual offences, and the procedures to be followed in cases of sexual offences as per this circular. The aim is to highlight the role and responsibilities of police officials as envisaged by these enactments and to help them to shed inhibitions while lodging an FIR / recording statement of victims for greater accuracy.

The Mumbai Police will coordinate with the RAHAT team to ensure that in every case where an FIR is lodged under S. 376, 372(2) and 376 (A to E) of the Indian Penal Code (IPC), (as amended by the Cri.LA Act, 2013) and under POCSO Act, 2012, information regarding the lodging of the FIR will be sent immediately to the RAHAT team on the contact number that has been provided, so that a team member can meet the victim to provide immediate socio-legal support. The police will also inform the RAHAT team members when the charge sheet is filed.

The RAHAT team members will meet the Joint Commissioner of Police (Law and Order) once a month to share their observations recorded while working with the Mumbai Police.

The Civil Surgeon, Police Hospital, Mumbai, along with RAHAT team members shall prepare a document stating the problems faced by Mumbai police while accessing Public

Hospitals and the precautions that need to be taken as well as recommendations for setting up a 'One Stop Centre' unit in selected hospitals.

## **PUBLIC PROSECUTORS**

The Secretary, Department of Law and Judiciary, along with the Director of Prosecution and RAHAT team members, will draft guidelines and protocols that are to be followed by all prosecutors designated as special public prosecutors or additional public prosecutors for cases of sexual offences in Sessions Courts and conduct trainings to familiarize them with these guidelines and protocols, new legal definitions, the role and responsibilities for prosecutors prescribed by the new enactments as well as the positive rulings of the Hon'ble Supreme Court and other High Courts.

## **PUBLIC HOSPITALS**

The Municipal Corporation of Greater Mumbai (MCGM) will set up six 'One Stop Centres' for medical examination and treatment of survivors of sexual violence. (KEM, Nair, Sion, Cooper, Rajawadi and Bhagwati.)

The MCGM, along with Director of Teaching Hospitals, Mumbai Police and RAHAT team will prepare guidelines and protocols, to be followed the 'One Stop Centres' while dealing with cases of sexual offences as per the mandate of the various statutes and the protocol and guidelines issued by the Department of Public Health by its Government Regulation (GR) of 10<sup>th</sup> May, 2013 regarding medical examination of survivors of sexual assault. The rules and guidelines shall be framed after considering recommendations from all other stakeholders.

The Director of Teaching Hospitals along with the RAHAT team will conduct training of doctors and other staff of the centre, to familiarize them about their roles and responsibilities as per the new rules, protocols and guidelines.

The RAHAT team will meet Director, Teaching Hospital once a month to share their observations recorded while working with 'One Stop Centre' in Mumbai.

## **FORENSIC SCIENCE LABORATORIES**

Procedures have been stipulated for collection of samples for cases of sexual assault by the Department of Public Health by its GR dated 10<sup>th</sup> May, 2013 which need to be followed by hospitals and sent without any loss of time so that the chemical examination can be carried out. A report on the efficacy in collection of samples (e.g. inadequate volume of samples which makes the entire process of chemical examination redundant) or delay on the part of either the public hospital or the investigating officers in sending the samples within the

stipulated timeframe must be prepared by Forensic Department so that lapses can be remedied.

Though there is a timeframe for filing a charge sheet, there is no timeframe for submitting the reports of the chemical examinations or DNA tests that have been conducted. This causes delay in commencing the trial. Since these reports are critical to the prosecutors to evolve its strategy and line of arguments, filing a charge sheet prior to examining the CA or DNA reports often turns out to be counter productive. In view of this there is a need for laying down a time frame for submitting the CA / DNA reports and the same needs to be strictly complied with.

## **DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT AND RAHAT TEAM**

To roll out the **Manodhairya** scheme and ensure its smooth and effective implementation and to set up the District Compensation Boards as per the guidelines provided by the Government Resolution on this issue.

To create a central e-tracking system which can be used and shared by all stakeholders so that a case can be closely monitored from the stage of FIR till the final judgement.

To conduct a feasibility study of contributing financially to the 'One Stop Centres' set up by MCGM for sexual assault cases.

The Principal Secretary, WCD to meet the Chief Justice, Bombay High Court, in order to frame protocols and guidelines that must be followed by all sessions courts designated as Special Courts for sexual offences against women and children. Further to request the Chief Justice to make available to the RAHAT Team copies of all judgements in cases of sexual offences passed by the sessions courts in Mumbai (Fort and Dindoshi) in order to study them for comments made on each agency and document best practices and share the same with concerned stake holders for compliance and further action.

The Principal Secretary, WCD to meet the Principal Judges of Sessions Court in Mumbai (Fort and Dindoshi) regarding reorganization of the Courts designated as the special POCSO Court, as per the stipulations under the POCSO Act and for allocation of a waiting room where victims of sexual assault can wait before their deposition in court so that their confidentiality is maintained, and also to facilitate the court familiarization visits for victims by RAHAT Team members. Once the space for a waiting room is allotted, the Department of WCD will take the responsibility of setting it up in a child friendly manner.

To meet Director, Maharashtra Judicial Academy to discuss training of Sessions Court Judges on the law, their role and responsibility while presiding over these cases and to evolve suitable guidelines and protocols for these courts.

Currently the prosecutors who are designated to courts which adjudicate over cases concerning sexual offences are under two different departments i.e. the Director of Prosecution (Home Department) and the Department of Law and Judiciary. The terms and conditions of employment / assignment as well as their remuneration also vary. This makes monitoring and evaluation of their functioning difficult. The Department of Women and Child Development will conduct a feasibility study for bringing all public prosecutors in sessions courts who appear in cases dealing with sexual offences under one authority in order to make it easier to evolve protocols and guidelines for effective functioning and monitor and evaluate their performance.

To hold consultations with NGOs and Civil Society Organizations in Mumbai in order to map what services can be offered by them to victims of Sexual Violence and to bring out a resource directory accordingly.

To hold consultations with media agencies on protocols and guidelines to be followed while reporting cases of sexual violence as per the legal provisions.

To create awareness and conduct training modules to change mindsets of both boys and girls on the issue of sexual violence

To prepare a plan and budget to conduct programmes in schools, colleges and community level.

#### **MAHILA ARTHIK VIKAS MAHAMANDAL (MAVIM)**

To prepare a plan on special livelihood programme for victims of sexual offences and acid attacks.



L to R: Hon'ble Minister of State, WCD, Smt Fauzia Khan, Hon'ble Minister WCD, Smt Varsha Gaikwad.  
Principal Secretary WCD, Shri Ujjwal Uke

The next consultation meeting will be held in March 2014 to review and plan further.

## REPORT OF THE DELIBERATIONS

“**Support, Dignity, Care and Treatment**” will be the new clarion call while responding to sexual crimes in the state of Maharashtra, proclaimed the Hon’ble Minister for Women and Child Development (WCD), Ms. Varsha Gaikwad, at the meeting of stake holders held on 12<sup>th</sup> September, 2013. The timing of the meeting was apt, as just a day earlier the state cabinet had approved the **Manodhairya Yojana**, a scheme for compensation and support services to survivors to help them to overcome the trauma. The Hon’ble Minister also emphasized that financial support is only a small part of the overall support a victim needs to help her become a ‘survivor’.

The meeting was organized by the Department of Women and Child Development (WCD) and Majlis Legal Centre, a legal rights NGO working in Maharashtra. The high level consultation was attended by senior officials of all concerned departments mandated to play a role in combating sexual violence – the police, the prosecutors, the public health officials, as well as officials from the department of WCD.



### **Inaugural Session**

Welcoming the participants to the day long deliberations, Mr. Ujjwal Uke, Principal Secretary, Department of WCD, explained that while each ministry is concerned with performing its specific role, the Department of WCD is concerned with the over-arching task of providing care and protection to all women and children in the state. Hence the need to hold the consultations to evolve a well coordinated response of all state agencies to sexual violence, based on a convergence model. He urged all departments to identify the challenges they face from other departments, so that loopholes can be plugged. He emphasized that it should not be an exercise in “blame game” or “one-upmanship” between departments, but a sincere effort in evolving a model for convergence between stake holders. He highlighted the need of looking into the preventive aspects along with post facto issues.

Ms. Fauzia Khan, Minister of State, WCD, expressed her concern about the rise in reported cases of sexual violence which is tarnishing the image of India in international forums, as this has become the focus of media reportage. Hence, constantly, while travelling abroad one is



confronted with questions about the safety of women in India and more particularly, in Mumbai, which has the reputation of being a safe city for women. The low rate of conviction in Maharashtra, as compared to other states, is an additional cause of concern. Sexual violence during riots was pointed out as an area needing attention. The Hon'ble Minister emphasized that there is a need to conduct a research study on how the legal system operates in states with high conviction rates and identify the gaps within our own system to improve conviction rates which will act as a deterrent.

Adv. Flavia Agnes, Director, Majlis Legal Centre, and Consultant, RAHAT, while proposing the vote of thanks explained the genesis of the survivor support programme which had started as an NGO initiative of Majlis around three years ago. While following up a rape case involving a four year old child of illiterate parents, who was raped by a peon in a school in the vicinity of the Majlis office, the glaring lacunae of socio-legal support to survivors of sexual abuse within the criminal justice system, became evident. Systematically following up the case and working closely with the stake holders helped us to secure a conviction even against a high profile criminal lawyer engaged by the school authorities. This boosted our morale and gained us credibility. As we identified the lack of convergence between stake holders, last year, we organized two consultations --one between police and prosecutors, and the other between police, prosecutors and the judiciary, under the aegis of the Maharashtra Judicial Academy. These were much appreciated by the participants.

When the Department of Women and Child Development, under the dynamic leadership of our Hon'ble Minister and Principal Secretary, proposed the creation of RAHAT for providing socio-legal support to survivors, it provided the scope for transforming our limited and sporadic efforts into a full blown project of the Department of WCD. She thanked all present for accepting the invitation of RAHAT and for being present at this historic consultation.



Secretary, Public Health Department, Smt Meeta Rajivlochan

### **Session-I: Challenges Faced by the Police**

The first session on challenges before the police was chaired by Dr. Sadanand Date, Joint Commissioner of Police (Law and Order), Mumbai. In her presentation, Ms. Sharada Raut, DCP in charge of Crimes Against Women Cell, highlighted the fact that in 94% of the cases the accused is known to the victim and most of these crimes occur within the home or immediate neighbourhoods, where the role of police is minimal. She listed 'witnesses turning hostile' as the primary reason for acquittals, where the victim, or other crucial witnesses such



as family members, panchas, etc., do not support the prosecution. The medical and forensic examinations, if done haphazardly, fail to support the prosecution version and this too results in acquittals.



DCP, Crimes against Women Cell, Smt Sharada Raut

Dr. Date added that a large number of cases categorized as ‘promise of marriage cases’ need to be booked under a special category and should not be treated as rape cases under S. 376 of IPC. They could be charged under other relevant sections such as cheating, criminal breach of trust, etc., which would be more appropriate and relevant. However, the police are bound by the Supreme Court ruling on this issue. Hence there may be a need to bring in a state level amendment or issue necessary guidelines.

There are also many cases which are categorized as ‘elopement’ cases, where the parents of a minor girl file charges of rape against the boy even though the girl has eloped of her own free will. In such cases, if the victim is married to another boy of the parent’s choice, then before the trial starts, the family prefers to turn hostile. In some instances, while the case is pending trial, the victim may have turned major and married the accused, who is basically her lover, even against the wishes of her family. He explained that we need to understand contemporary sociological trends to evolve effective and nuanced responses, not just for prosecuting but also for prevention of such crimes.



Joint Commissioner of Police, L&O Mumbai, Shri Sadanand Date

Inspector General, Prevention of Atrocities against Women (IGPAW), Shri Sanjay Kumar Varma explained that after the Delhi Gang Rape incident, reporting of sexual offences has increased many fold. He also explained that though the general conviction rate is low, where

sexual offences against women are concerned the conviction rate is better than many other crimes.



## **Session-II: Challenges Faced by Prosecutors**

The next session dealt with challenges faced by the prosecution and was chaired by Shri S. Bale, Director of Prosecution. Ms. Ujwala Pawar, District Government Pleader from Pune, made a presentation on the difficulties faced by the prosecutors specially in cases where the evidence collected is cursory and insufficient for conviction. Sometimes ingredients of the offence are not clearly brought out in the charge sheet or in the supporting documents, due to which the cases results in acquittals. Before the charge sheet is finalized the police must avail of legal advice so that correct charges are framed, which would make it easier to secure convictions.

She also felt that at times the IO is indifferent to the court proceedings and has to be summoned to court to give evidence. When the officials come to depose, they are not prepared with the facts of the case and hence fumble, making mistakes which prove detrimental to the case. Trainee doctors in public hospitals, who are generally on duty at night when cases are brought in, sign the medical reports. But when the case comes up for trial, they may have completed their internship and might have returned to their native place. Tracking them becomes difficult and proving the medical report without their help is a major problem in court, despite the medical documents supporting the prosecution version. She added that doctors feel intimidated during cross examinations and there is a general fear of courts in the minds of most doctors. Only a few medical officers are well versed with the process of cross examination. The medical reports must also be clear, precise and unambiguous; and the doctor who comes to depose must be able to coherently explain the same to the court.



District Govt. Pleader & Public Prosecutor, Smt Ujwala Pawar, Director of Prosecution, Shri S. Bhale

At times the family forces the victim not to give evidence, especially when the accused is a family member, near relative or an influential person in the community. In such cases, the child has to be taken away from the family members and given confidence to depose truthfully. The overworked APPs do not get sufficient time to prepare the victim or to refresh her memory as she is brought to court on the day of her deposition just about an hour before the trial commences. The victim becomes nervous when she sees the imposing and formidable atmosphere in the court.



Programme Director, Majlis, Ms. Audrey D'mello

### **Session-III: Challenges Faced by Medical Professionals of Public Hospitals**

In the third session which focused on medical and forensic responses, Dr. Suhasini Nagda, Director Teaching Hospitals, under the Municipal Corporation of Greater Mumbai (MCGM), informed that one stop centres to respond to the needs of survivors of sexual assault will be started at Nair, KEM and Sion Hospitals in Mumbai and some initiatives in this direction have already started in these hospitals. These hospitals have the equipment for forensic examination as well as well as for trauma counselling, psychiatric help and treatment, all of which will be provided at one place. However, in order to better equip them with modern machinery and methodology, they need financial assistance from the state government funds. Later the facility can be extended to three peripheral hospitals in the suburbs. Dr. Padmaja Samant, Professor of Gynaecology, K.E.M Hospital commented that though cases of sexual assault are brought to these hospitals, at present they are examined along with emergency cases in the labour ward which can be traumatic for a young girl who has just been subjected to a brutal sexual assault. She emphasized the need for a designated space marked as 'one stop multi disciplinary unit' where experts from various specialized fields can provide treatment to survivors as per their specific needs. Dr. Henal Shah, Dept of Psychology, Nair Hospital felt that in many cases the victim herself and also her family members need counseling to come out of the trauma of rape.

Secretary, Public Health Department, Dr. Meeta Rajivlochan, who was present at the inaugural session assured the full cooperation of her department to evolve a convergent model. Dr. S.D. Nanandkar, Head of the Forensic Dept. of Grant Medical College and J. J. Hospital, explained the new protocols that have been introduced in Maharashtra for conducting medical examination of a survivor, and for collecting evidence. The two finger test which has met with severe criticism from women's groups as well as international human



rights organizations is now banned. (Apart from being very painful, these tests also have a moral undertone as the doctors comment on the past sexual history of the victim in their reports, if two fingers could easily be inserted into the victim's vagina.) He also stated that it has now become mandatory to obtain the consent of the survivor before external and internal examinations are conducted.



Chairperson, Child Rights Commission, Shri A. N. Tripathi; Director, Teaching Hospitals, Mumbai, Smt Suhasini Nagda, Majlis Legal Centre, Adv. Pooja Kute; Dy Secretary, Women, WCD, Shri Hazari

Dr. S. M. Patil, Chief Surgeon, Nagpada Police Hospital, where the police usually take survivors for medical examination in Mumbai explained the difficulties they face due to an insufficient number of female doctors to conduct the examinations. Further, most women doctors are reluctant to go to court and face cross examination. The ACPs who were present explained that they do not refer cases to other public hospitals because when a case comes before the court, the doctors from these hospitals do not come forward to give evidence.



Head of Forensic, Grant Medical College, Dr. S. D. Nanandkar, Chief Surgeon Police Hospital, Dr. S. M, Patil

Three forensic experts – Dr. Mohite, Nair Hospital, Dr. Pathak, K.E.M. Hospital and Dr. Dere, Sion Hospital – explained the relevance of forensic evidence which helps a great deal in securing convictions. The teeth marks, the matching of the soil or body fluids on the clothes of the victim with that of the scene of the crime, preserving of the DNA of the aborted foetus for matching with the sample of the accused, etc., are clinching circumstantial evidence. They stressed that forensic evidence can never turn hostile. Dr. M. K. Malve, Director, Forensic Science Laboratory (FSL), Kalina Mumbai explained the causes of delay in submitting Chemical Analysis (CA) reports to the police. However since recently they have been given additional resources, the process will be hastened.



H.O.D, Forensic, KEM, Dr. Harish Pathak, Director, FSL, Mumbai, Dr. M. K. Malve

The Collector of Mumbai City, Shri Chandrasekhar Oak, who joined the deliberations for the last session explained that District Boards were set up in 2011 and regular meetings were held under his guidance. But while around 75 applications are pending, since funds were not received, the official business of disbursing the funds to the claimants could not be performed and it became a frustrating experience to hold the meetings, as they served no purpose. Hence the meetings had to be discontinued. He welcomed the news that **Manodhairya Yojana** has now been launched and funds would be made available soon. The Principal Secretary, WCD, clarified that the scheme would be applicable prospectively and not retrospectively.



Among the other dignitaries who attended the meeting were Joint Director, Public Health Services, Dr. Archana Patil, Chairperson, Maharashtra State Child Rights Commission, Shri A.M. Tripathi, Vice Chairperson and, Managing Director of Maharashtra Arthik Vikas Mahamandal (MAVIM), Smt. Sonali Vayangankar, Secretary, Savitribai Phule Gender Resource Centre (SPGRC) of MCGM, Dr. Kamakshi Bhate, and Chairperson, Child Welfare Committee, Mumbai City, Smt. Vijaya Murti. In addition, Assistant Commissioners of Police (ACPs) of 10 divisions, Deputy Commissioner, Women and Deputy Commissioner, Child, from WCD Commissionerate at Pune, 15 Public prosecutors and additional public prosecutors from Thane, Kalyan and Pune, and District WCD officers of Mumbai city and Mumbai Suburbs, Thane and Konkan, and representatives of Childline India Foundation, an NGO partner of RAHAT, were also present.

During the deliberations, it was evident that there was an urgent need for monitoring and accountability. If different stake holders offer similar services but are governed by different authorities, monitoring would pose further obstacles. For example, both district hospitals and MCGM hospitals offer medical examination and treatment. Some public prosecutors are

under the Director of Prosecution, while others are appointed by the Law and Judiciary Department as Additional Public Prosecutors (APP) on a piece rate basis. Evolving a harmonious coordination between the different tiers and layers of stake holders would be a major challenge in evolving a well coordinated and specialized response mechanism.

There was a general consensus that in future, members of the judiciary must also be invited to participate in these deliberations, since their role is critical in ensuring dignity and fairness in rape trials.



### **Intervention: Challenges faced by the Victim/Survivor**

While challenges for evolving inter departmental convergence dominated the deliberations throughout the day, towards the end Adv. Flavia Agnes as well as RAHAT team members of Majlis Legal Centre foregrounded some challenges faced by victims.

**Doubting the Victim's Credibility:** Though each agency is supposed to work in the interest of the victim, right from the police constable at the entry point in a police station upwards, the IO, the senior officers, and even the constable who accompanies the victim to a hospital, the clerical staff at the reception desk in hospital, to doctors and nurses and the public prosecutor – each one becomes a judge, and interrogates the victim in a derogative manner and doubts her credibility. She is treated as an accused rather than a victim of the crime. There is no one in the entire system who speaks for her or stands by her side. She is intimidated by even the lowest rung of the state machinery though the primary mandate of these stake holders is to respect her, protect her dignity and provide her care and support. This is the first hurdle that the present criminal justice system needs to tackle. The first challenge in evolving a responsive mechanism is to evolve an attitudinal change and a



commitment to follow the law in its true letter and spirit. Also a monitoring system must be established to ensure that provisions of law are strictly adhered to.

**Problems Faced while Lodging the FIR:** A victim is asked to wait for several hours before an FIR is recorded and while she is waiting in the open several officers become curious and ask her irrelevant questions. She is not sent to medical examination until the FIR is recorded. The FIR is recorded only after the victim is interrogated several times. Efforts go on to dissuade her from lodging the FIR and she is warned that registering a complaint will be detrimental to her. Sometimes the accused is brought face to face with the victim and he is allowed to intimidate her or dissuade her from lodging the complaint. The accused invariably makes accusations against the victim's character which the police tend to accept. The norm of filing a zero FIR in cases where there is doubt about jurisdiction is not followed and the victim is shunted from one police station to the other. Even though it is mandatory to record the statement of a child under POCSO at the residence of the victim or at a place where she is comfortable, the police insist that the victim should be brought to police station and is interrogated before a complaint is filed to ensure her credibility. Due to this, often, the victim does not register the complaint and is sent back despite the fact that non registering of the complaint of sexual violence is a punishable offence under the IPC.



Inspector General, PAW, Shri Sanjay Varma,



Director, Medical, K.E.M Hospital, Dr. Kamkshi Bhate

**Refusal to Provide Treatment until FIR is Lodged:** Several times, a victim may not wish to lodge a complaint but may wish to only avail of treatment in a public hospital. But most public hospitals refuse treatment unless the case is converted into a medico legal case (MLC). Consent of the victim is not taken before she is examined both externally and internally though the law mandates this, and the process of undressing and examination can be very humiliating as strict privacy is not maintained.

**Hostile Court Environment:** Most often the summons is served just a day or two prior to the date of hearing and there is hardly any time for the victim to mentally prepare herself for the court hearing. The PP meets the victim only half an hour before the hearing. A little child who has never seen a court in her life is suddenly put into the witness box. She is



RAHAT Team L to R: Adv. Jacinta Saldanha, Adv. Shruti Jadhav, Ms. Farhat Jahan and Adv. Persis Sidhva

oblivious of the role of each person and fails to grasp who is for her and who is against her, and gets intimidated by everyone in the court room. There is hardly anytime to prepare the witness for cross examination or to refresh her memory. Most young victims are illiterate and even if a copy of the statement or FIR is shown to them they are not able to comprehend its contents and are intimidated by the formal atmosphere in a court room. Even the PP talks to her in a derogatory manner and doubts her credibility. In such a hostile environment the victim cannot depose and this prevents the best evidence from coming before the court.

**Disregarding Guidelines under POCSO during Trial:** Though special courts under the POCSO Act have been designated, the designation is only on paper but not in spirit. Court rooms continue to be formidable with the judge on a high podium and the small child witness far below where her voice is barely audible to the judge. Although four out of the five cases under POCSO resulted in conviction, in none of the cases was the dignity of the victim maintained. This is the primary duty of the prosecutor and also of the trial judge. Though the trial was held ‘in camera’ the victim was asked to enter into a full court room where everyone could see her and only thereafter was the court vacated before starting the deposition. This is a clear violation of the provision of maintaining confidentiality.



**Lack of a Waiting Room and Absence of Court Familiarization Visits:** There is no waiting room where the victim can wait before the matter is called out as is required under the statute. Also, no court familiarization visits are conducted prior to the deposition of a child witness as mandated by the statute.

**Accused in Full View of the Victim while Deposing:** Though POCSO Act requires that the victim should not be in full view of the accused while deposing in court, the victim is asked to depose in full view of the accused. A screen was put up in the sessions court at Fort only a week ago after the repeated insistence of RAHAT team members. Also, identification of the accused takes place right at the beginning of the deposition and not after the victim settles down. This unnerves the victim and she is not able to depose coherently as she is scared.

**Guidelines for Cross Examination of the Child not Followed:** Under Guidelines issued by the Supreme Court in Sakshi v. Union of India in 2004 (AIR 2004 SC 3566), where a child witness is concerned, the questions have to be given in writing to the judge, who in turn should put them to the child witness. Instead, the child witness is subjected to lengthy cross examination by defence lawyers and asked to come to court several times to give evidence. Sometimes the child is precariously placed on the railing of the witness box in order for the judge to be able to see and hear the answers given by the child. This tends to violate the basic dignity of the child witness.

**Need for Ouster Injunctions in cases sexual assault by Family Members:** Adv. Pooja Kute of Majlis made an important observation that in all cases concerning rapes by family members, the usual practice is to send the child to a shelter home, while the accused is given bail and is set free within a few days. In such situations it is important for the PP to make an application under the Protection of Women from Domestic Violence Act (PWDVA) and obtain civil injunction restraining the entry of the accused person into the home, so that the child need not be placed in custodial care where she is subjected to further trauma. It is possible to move such an application even in cases under Section 376 of IPC, POCSO read with Section 26 of the PWDVA. The public prosecutors must be made aware of this.

### **Concluding Session**

Ms. Audrey D’Mello, Programme Director of Majlis, explained the modalities of the **RAHAT** project– to provide socio-legal support to victim-survivors of sexual violence. The initiative is a collaboration between the WCD and Majlis Legal Centre in Mumbai. The Mumbai Police will ensure that in every case registered under Rape, Child Sexual Abuse or Acid Attack, the victim-survivor will be introduced to the RAHAT and then the team members will help her access support services she needs, and also be by her side, during her depositions in court.

The RAHAT team will also coordinate with all stake holders to evolve a convergence model and closely monitor the obstacles in its implementation. It will also provide training to all stake holders as and when the need arises, and organize frequent meetings between stake holders for finetuning of the model. She also explained that the RAHAT-Police collaboration has resulted in the issuing of an important circular about the procedures stipulated under POCSO 2012, and Criminal Law Amendment Act 2013. Currently zone wise trainings are being conducted in all zones for police officers across rank and seniority, to familiarize them with the procedural guidelines under these new enactments.



Concluding the day long deliberations, Principal Secretary, Department of WCD, Mr. Ujjwal Uke, reaffirmed that training modules will be evolved, training material will be generated, trainings to all concerned stake holders will be conducted and further awareness programmes will be held periodically. The ground work of evolving a workable convergence model will start as soon as the **Manodhairya Yojana** is launched next month. Stake holder meetings will be a regular feature to assess the impact of the action points which emerged out of this first consultation meeting. He reaffirmed that the important take away of the meeting was a paradigm shift from the earlier framework of ‘investigation, prosecution and conviction’, to “**support, dignity, care and treatment**”. Ending on a positive note, Mr. Uke gave the assurance that Maharashtra, which has already made a beginning in this directions, will soon

become a trend setter in shaping this new approach instate responses to sexual violence against women and children, and offer a model for other states to emulate.

# INVITATION

## GOVERNMENT OF MAHARASHTRA

**No.WCD-2013/C.R.348/Desk-2**

Women and Child Development Dept.

New Administrative Bldg., 3<sup>rd</sup> floor,

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Date: 4<sup>th</sup> September , 2013

### **Consultation between Stakeholders Providing Support, Ensuring Dignity and Securing Best Evidence in Cases of Sexual Crimes**

Date: 12<sup>th</sup> September, 2012. 9.30 am - 5 pm. Venue: Conference Hall, Sahyadri Guest House

To,

The Women and Child Development Department, Government of Maharashtra invites you to a consultation on effective ways of dealing with sexual offences against women and children.

The Department has entered into a collaboration with Majlis Legal Centre to provide socio-legal support to victims of sexual assault through a programme called **RAHAT**. A pilot initiative has been launched in Mumbai. RAHAT will be convergence involving Judiciary, Police, Health Services and Shelter Homes to ensure that a survivor of sexual assault is not re-victimised.

The consultation will help us gain an in-depth understanding of the specific challenges faced by each stake holder while responding to cases of sexual offences. The need for the consultation has arisen in the context of an increase in reported cases of sexual crimes against women and children as well as the low rate of convictions, despite the prevalence of stringent statutory provisions and procedural guidelines.

This platform for interaction will help understand gaps within the system and identify mechanisms to plug loopholes and areas of convergence. Once we evolve a workable model for Mumbai it can be replicated in all districts of Maharashtra.

The day long deliberations will be held from **9.30 am on Thursday, 12<sup>th</sup> September, 2013** at **Sahyadri Guest House**, B G Kher Marg, Malabar Hill, Mumbai-400006. A session will be devoted to each stake holder to make presentations about the roles, responsibilities, challenges, as well as best practices and innovative interventions they have evolved. Each presentation will be of 20 minutes followed by discussions.

As a nodal agency, the Department of Women and Child Development is confident that if all our expertise and resources are used effectively and in a well coordinated manner, it will be possible to evolve a sensitive and integrated response in all cases of sexual crime. I therefore request you to be present in person and contribute to this extremely important issue.

Thank you for your cooperation.

Yours sincerely

(Ujjwal Uke)  
Principal Secretary,  
Women and Child Development

**Enclosed:** Programme

**RSVP & Coordination**

Mr. D. V. Hirvale, Dy Commissioner, Women and Child Development, Pune,  
09822930921 Email: [dy.commissionerwcd@yahoo.com](mailto:dy.commissionerwcd@yahoo.com)

Ms. Audrey D'mello, Programme Coordinator, RAHAT, Mumbai  
09820633222 Email: [teamrahat@gmail.com](mailto:teamrahat@gmail.com)



## **PROGRAMME**

**Registration and Breakfast:** 9.30 – 10.00 a.m.

### **Session I: 10.00 – 11.15 a.m. Inaugural Session**

**Introductory Address:** Principal Secretary Women and Child Development

**Key Note Address:** Ms. Varsha Gaikwad, Hon'ble Minister, Women and Child Development

Ms. Fauzia Khan, Minister of State, Women and Child Development

**Vote of Thanks:** Adv. Flavia Agnes, Consultant, RAHAT

### **Session I: 11.15 – 12.15 p.m. Challenges before the Investigating Agency**

Chair: Mr. Sadanand Date, Joint Commissioner of Police, Mumbai

Presentation: Ms. Sharada Raut, Deputy Commissioner of Police (Crimes Against Women Cell), Mumbai.

### **Session II: 12.15 – 1.15 p.m. Challenges before the Prosecuting Agency**

Chair: Mr. S D Bhale, Director of Prosecution

Presentation: Ms. Ujjwal Pawar, District Government Pleader, PUNE

**Lunch: 1.15 – 2.15 p.m.**

### **Session III: 2.15 – 3.15 p.m. Challenges before the Medical Services (Aid and Examination)**

Chair: Ms. Meeta Rajivlochan, Principal Secretary, Public Health Services

Presentation: Dr. S. Nagda, Director, Teaching Hospitals, Municipal Corporation Greater Mumbai.

**Tea: 3.15 – 3.30 p.m.**

### **Session IV: 3.30 – 4.30 p.m. Challenges before Commissions and Committees**

Chair: Principal Secretary, Women and Child Development

Presentation: Mr. C V Oak, Collector, Mumbai City

### **Concluding Session: 4.30 – 5.30 pm The Way Forward**

Chair: Ms. Flavia Agnes, Consultant RAHAT

## LIST OF PARTICIPANTS

| <b>Designation</b>                                     | <b>Name</b>              |
|--|--------------------------|
| <b>I. Dignitaries and Senior Officials</b>             |                          |
| 1 Hon'ble Minister WCD                                 | Smt Varsha Gaikwad       |
| 2 Hon'ble Minister of State, WCD                       | Smt Fauzia Khan          |
| 3 Principal Secretary WCD                              | Shri Ujjwal Uke          |
| 4. Secretary, Public Health Services                   | Smt Meeta Rajivlochan    |
| 5 Inspector General, PAW                               | Shri Sanjay K Varma      |
| 6 Member Secretary, Child Rights Commission            | Shri A. M. Tripathi      |
| 7 Director of Prosecution                              | Shri S. Bhale            |
| 8 Joint Director, Health Services                      | Dr Archana Patil         |
| 9 Collector, Mumbai City                               | Shri Chandrasekhar Oak   |
| 10 Jt Commissioner of Police, L&O Mumbai.              | Shri Sadanand Date       |
| 11 Vice Chairman & Managing Director, MAVIM            | Smt Sonali P Vayangankar |
| 12 Director, Teaching Hospitals, Mumbai                | Smt Suhasini Nagda       |
| 13 Director, Majlis Legal Centre & Consultant, RAHAT   | Adv Flavia Agnes         |
| <b>II. Mumbai Police</b>                               |                          |
| 14 DCP, Crimes Against Women Cell                      | Smt Sharada Raut         |
| 15 DCP   | Shri B.T Pokharkar       |
| 16 Police Inspector                                    | Shri Pandurang Shinde    |
| 17 ACP, Deonar Div, East, Zone 6                       | Shri S. K. Dhage         |
| 18 ACP, Samta Nagar, North, Zone-12                    | Shri. Deepak Bhawsar     |
| 19 ACP, Airport Division                               | Shri Madhukar Sankhe     |
| 20 ACP, Matunga Division                               | Shri R.C Khandagle       |
| 21 ACP   | Shri Bharat E. Tambe     |
| 22 Police Inspector, CAWC                              | Shri Z. M. Shaikh        |
| 23 Police Inspector, CAWC                              | Smt Neeta Phadle         |
| 24 Police Inspector, CAWC                              | Smt Sangita Patil        |
| 25 Police Inspector, Detection Crime                   | Smt Jyotsna Vilas Rasam  |
| <b>II Public Prosecutors</b>                           |                          |
| 26 District Govt. Pleader & Public Prosecutor, Pune    | Smt Ujwala Pawar         |
| 27 Asst. Govt Pleader & Adl. Public Prosecutor, Thane  | Smt Sangita Phad         |
| 28 Asst. Govt Pleader & Adl. Public Prosecutor, Kalyan | Smt Jyoti S. Lohokar     |
| 29 Asst. Govt Pleader & Adl. Public Prosecutor, Thane  | Smt Hemalata Deshmukh    |

|    |   |                        |
|----|---|------------------------|
| 30 | Director of Prosecution (Office)              | Shri V V Joshi         |
| 31 | Thane, APP under Director of Prosecution      | Shri A. K. Khamkar     |
| 32 | Vikhroli, APP under Director of Prosecution   | Smt. S. A. Kamble      |
| 33 | APP, under Director of Prosecution            | Shri Pagar Deelip      |
| 34 | Dindoshi 9, APP under Director of Prosecution | Shri Ramdas Chavan     |
| 35 | APP & ACP, Vasai District, Thane              | Smt Ujwala P. Moholkar |

### **III Public Hospitals**

|    |  |                     |
|----|--|---------------------|
| 36 | Director, FSL, Mumbai  | Dr. M. K. Malve     |
| 37 | Assistant Director, FSL, Mumbai                              | Dr. S. H. Lade      |
| 38 | Chief Surgeon Police Hospital                                | Dr. S. M, Patil     |
| 39 | Head of Forensic, Grant Medical College                      | Dr. S. D. Nanandkar |
| 40 | Dean, KEM Hospital   | Dr S. R. Parkar     |
| 41 | Prof. Psychiatry, KEM Hospital                               | Dr. A. S. Nayak     |
| 42 | Director, Medical, K.E.M Hospital & Secretary<br>SPGRC, MCGM | Dr. Kamakshi Bhate  |
| 43 | Prof. & Head, Forensic Medicine, Nair Hospital               | Dr. Shailesh Mohite |
| 44 | Prof & Head (Per) KEM Hospital                               | Dr. Mukesh Agrawal  |
| 45 | HOD, Forensic, KEM   | Dr. Harish Pathak   |
| 46 | Professor (Addl) and Asst. Dean, Sion Hospital               | Dr Rajesh Dere      |
| 47 | Asst. Director (Public Health Department)                    | Dr. Nagaonkar       |
| 48 | Prof. of Pediatrics, TNMC & Nair Hospital, Mumbai            | Dr. Radha Ghildiyal |
| 49 | Prof Psychiatry, TNMC & BYC Nair Hospital, Mumbai            | Dr. Henal Shah      |
| 50 | Director, M.E & M.H., M.C.G.M                                | Dr. S. J. Nagde     |
| 51 | Consultant, SPGRC  | Smt Sneha Khandekar |

### **IV. Department, Women and Child Development**

|    |                                     |                      |
|----|-------------------------------------|----------------------|
| 52 | Dy Secretary, Women, WCD            | Shri M. B. Hazari    |
| 53 | Dy Commissioner, Women, WCD         | Shri D. V. Hirvale   |
| 54 | Dy Commisioner, Child, WCD          | Shri Rahul More      |
| 55 | DWCD Mumbai Suburbs                 | Shri Devere          |
| 56 | DWCD Thane                          | Shri S. S. Chavan    |
| 57 |                                     | Smt. Surekha Gurkhe  |
| 58 | Protection Officer, Mumbai City     | Smt Ashwini Dighe    |
| 59 | Protection Officer, Mumbai Suburban | Smt Kalpana Khambait |
| 60 | Protection Officer                  | Smt Ashwini Tambde   |
| 61 | Law Officer, Mumbai Suburbs         | Shri C. Rahul        |
| 62 | Law Officer, Mumbai City            | M.R.Bhandange        |
| 63 | Probation Officer DWCD City         | Shri Pardesi         |

|     |  |                         |
|-----|--|-------------------------|
| 64  | Probation Officer, WCD                       | Jyoti M. Ganve          |
| 65  | Probation Officer, WCD                       | Nitin                   |
| 66  | Probation Officer, WCD                       | Vyankat Devkar          |
| 67  | Probation Officer, WCD                       | Sandip Kowe             |
| 68  | Probation Officer, WCD                       | Jyoti Ramrao            |
| 69  | Probation Officer, WCD                       | Kamini K. Patil         |
| 70  | Probation Officer                            | Jawale V. G.            |
| 71  | Probation Officer, DWCD, Thane               | G. N. Padghan           |
| 72  | Probation Officer, Bhiwandi                  | A.S. Thorat             |
| 73  | Probation Officer, Bhiwandi                  | S. M .P                 |
| 74  | Chairperson, CWC, Mumbai City                | Smt Vijaya Murti        |
| 75. | Member, Child Welfare Committee, Mumbai City |                         |
| 76  | Member, Child Welfare Committee              | Adv Jayashree M. Londhe |

#### **V Child Protection Programme**

|    |   |                         |
|----|---|-------------------------|
| 77 | Programme Manager (Child Protection), WCD     | Shri Mahendra Singh     |
| 78 | DCPO, Thane                                   | Shri Parmeshwar Dhasade |
| 79 | DCPO  | Shri Prabhakar Mane     |
| 80 | DCPO  | Shri Atul Phadteree     |
| 81 | DCPO  | Shri Shakil Shaikh      |
| 82 | Prog. Manager, Training                       | Shri Roshan V. Maisar   |
| 83 | Asst. Director,                               | Shri Akash Jagdane      |
| 84 | CM Office                                     | Shri Vinaykumar Awale   |
| 85 | General Manager, MAVIM                        | Smt. Kusum Balsaraf     |
| 86 | Western Head, Childline India Foundation      | Mr. Caryle Pereira      |
| 87 | Programme Manager, Childline India Foundation | Ms. Ashwini Shejwal     |

#### **VI Majlis Legal Centre & RAHAT Team**

|    |                             |                       |
|----|-----------------------------|-----------------------|
| 88 | Programme Director          | Ms. Audrey D'mello    |
| 89 | Programme Manager           | Adv. Persis Sidhva    |
| 90 | Legal Consultant            | Adv. Pooja Kute       |
| 91 | Counsellor & Support Person | Ms. Farhat Jahan      |
| 92 | Counsellor & Support Person | Ms. Anisha Thomas     |
| 93 | Counsellor & Support Person | Adv. Shruti Jadhav    |
| 94 | Coordinator                 | Adv. Jacinta Saldanha |
| 95 | Researcher                  | Adv. Neha Thomar      |

# MANODHAIRYA

(Providing Financial Assistance and Rehabilitation)

Launched by Department of Women and Child Development, Government of Maharashtra

## Who can apply for compensation under the scheme?

All incidence which occur from 2<sup>nd</sup> October, 2013 onwards

Victims of Rape (S. 376, S. 376 (2), S. 376 A, B C, D E) or their legal heirs

Victims of Child Sexual Assault (POCSO Act, 2012 S. 3, S.5) or their legal heirs

Victims of acid attack or their legal heirs (S. 326, S. 326A)

## What is the amount of compensation to be awarded?

| No. | Offence  | Minimum       | Maximum       |
|-----|--|---------------|---------------|
| 1   | Rape   | Rs 2,00,000/- | Rs 3,00,000/- |
| 2   | Child Sexual Assault                                 | Rs 2,00,000/- | Rs 3,00,000/- |
| 3   | Acid Attack (face destroyed or permanent disability) | Rs 3,00,000/- | Rs 3,00,000/- |
| 4   | Other injuries of Acid Attack                        | Rs.50,000/-   | Rs.50,000/-   |

## When will the amount be given to the victim?

| No | Offence                       | Time   |
|----|-------------------------------|--|
| 1  | Rape and Child Sexual Assault | Not later than 15 days of receiving information. |
|    | Aggravated Cases              | Immediately                                      |
| 2  | Acid Attack                   | Not later than 15 days of receiving information. |

## Who will implement the scheme?

District Criminal Injuries Relief and Rehabilitation Board set up in each district.

## Composition of the District Criminal Injuries Relief and Rehabilitation Board?

|    |   |                  |
|----|---|------------------|
| 1. | District Collector  | Chairperson      |
| 2. | ACP nominated by Superintendent of Police (rural) or Commissioner of Police (urban)               | Member           |
| 3. | District Civil Surgeon  | Member           |
| 4. | District Government Pleader and Chief Public Prosecutor   | Member           |
| 5. | An expert (preferably woman) worked for empowerment of women and children, from the social field. | Member           |
| 6. | District Women and Child Development Officer  | Member Secretary |

## What is the procedure for distributing the amount?

| No | Offence                 | Time  |
|----|-------------------------|---|
| 1. | Rape                    | 75% will be kept as fixed deposit for a period of three years and 25% will be given to the victim / guardian to be used for expenses.                       |
| 2. | Acid Attacks            | 75% of the amount for treatment and 25% will be kept in fixed deposit.  |
| 3. | Child victim illiterate | Amount to be used for development of the child. District Board to decide amount to be deposited in the child's minor account.                               |
|    | Minor victim            | 75% of the amount will be kept in Fixed Deposit and given to the child attaining the age of 18 years. 25% of the amount can be used for the child's welfare |

### **About the District Trauma Team**

To aid and assist the rape and acid attack victim and their families in order to overcome the trauma caused by the assault. The team would provide immediate medical relief, emotional counseling, assistance in filing of FIR and follow up. Besides, the cell would also act as the co-coordinating agency for the services like, medical, mental health, shelter, vocational training, financial assistance to the victims. Free legal service will be provided to the victim from the time the complaint is lodged in the police station. The lawyer would help in opposing bail applications of the accused and also assist the Public Prosecutors in the preparation of charge sheet and arguments etc. They would also help the victim by preparing her to face court proceedings.

### **Members of the District Trauma Team**

Support Person (Child – DCPU / Probation Officer and Adult – District Protection Officer):

The support person will be the point of contact for the victim and shall assist the victim through the process of investigation and trial and provide support, reassurance and guidance.

Police Officer

Medical Officer (Representative from District Government Hospital)

Counsellor

Legal Aid Lawyer







Govt. of Maharashtra

