

Special address by Hon'ble Mr. Justice R.K. Gauba on the occasion of inauguration of Vulnerable Witness Deposition Complex at Tis Hazari Court

Hon'ble Mr. Justice Madan B. Lokur, Judge Supreme Court of India, Hon'ble Justice Ms. G. Rohini, Chief Justice, Delhi High Court, Hon'ble Ms. Justice Gita Mittal, my senior colleague on the bench, my colleague judges from the High Court, Justice Teji, Justice Mehta, Justice Sehgal and District Judges.

Mr. Khosla, Mr. Nasir, Mr. Abhijat and other members of the Bar Association. Fellow judges from the district judiciary. Ladies & Gentleman.

Mr. Chawla, when he introduced all of us, reminded me of 1980s when I joined the judiciary - 1982 & 1983 to be precise - witness rights and witness protection were only theories one would hear in the seminars or conferences. For recording depositions of rape survivors, minors, kidnapped or rescued girls, abductees in ransom cases or all dangerous offences - The courts would struggle to extract the necessary information, from the witnesses who were harassed, who were traumatized. The hostile atmosphere of the court, the crowded court halls, no segregation for such vulnerable sections of the society, no guidance, no support system, the defence glaring at them - it did not help. The only guiding factors that we had during those days were what the law said - to hold in-camera proceedings. In the name of in-camera proceedings what we would do is turn everybody out. But yes, some were essential features of the court trial, they would remain in. In the name of screen, we would somehow procure some day that hospital

curtain kind of thing, green curtain, if it was available. Indecent, scandalous questioning are barred but it would be a struggle. It would be a kind of effort on your part to actually make the defence refrain from putting such questions. The minors, when they would come to the court for their testimony, whether in the ongoing trial or under 164, the testing of the competence of the witness to testify was a mere formality. 164 statements - it all depended on the individual efforts of the judge or the magistrate. Some would make efforts for making the child comfortable in one's own little ways. It was more of a trial and error. It depended on the individual's sensitivity, sensibility or the constraints of time. The inept or insensitive handling of such cases in court hurts even more - the mind, the psyche, the soul.

Indeed, we have come a long way. The High Court of Delhi can proudly proclaim it has been the pioneer in framing these detailed guidelines on which Justice Gita Mittal has spoken. They are based, *inter alia*, on the judicial dicta and handed down to us by the Supreme Court and in various judgments of the High Court. It has put in position certain court practices that ensure – hopefully - the dignity and welfare of the vulnerable witnesses. To ensure, they are insulated from the intimidatory treatment - to ensure conducive and friendly environment. There is a system in position now, at least in those complexes where we have this vulnerable witness court programme going on - where we have a support system for the witnesses, pre and post deposition.

The idea is to ensure that there is no secondary victimization, no direct contact. So the victim feels cared for. Yet, the guidelines balance the right of the accused for fair trial and give him effective opportunity and fair procedure. The protocol that was introduced and

enforced by the High Court aims to secure complete, accurate and reliable evidence, which is most essential need in the quest for justice.

The guidelines are instructions for the trial courts given by the High Court. Therefore, they are binding. These directions give direction - a “direction” to the whole procedure. Justice Gita Mittal, of course, has been the driving force behind these guidelines and has arranged those training programmes which she has elaborately discussed.

We have felt in the trial courts - in my experience as a trial court judge and first appellate court, and now in the High Court, I can say we have often felt there is a hiatus between the promise of law and delivery. Probably, the experience of working the Juvenile Justice Act comes as an easy illustration. Who knows it better than Justice Lokur! When he was in the High Court, he was heading the juvenile justice committee. I also had the privilege to assist him in some of the inspections of institutions under the Juvenile Justice Act. The legislature gives us a document aiming at reforms. But, at times, the enforcement is poor. Bare minimum infrastructure required for such reforms to actually show their result, show their impact, is missing. It required a lot of effort under the Juvenile Justice Act to give a push, and cajole the governments to provide those basic facilities. Efforts are still under way.

This initiative, initiative of Vulnerable Witness Deposition Complex - this sets a new paradigm for the government agencies to follow. The High Court, while introducing these reforms through the guidelines, has introduced the requisite infrastructure along side. The trial courts can now apply these guidelines in true letter and spirit. The

Vulnerable Witness Court Complex, as was mentioned earlier, was first started at Karkardooma Courts some years ago and, at Saket, during my tenure there, w.e.f. 11.09.2014. The data which has been passed on to me shows that, in Karkardooma Court complex, till date we have examined 1105 witnesses in the Vulnerable Witness Deposition Complex. As against this, Saket has taken the lead and has examined so far, in the last less than two years, 1160 witnesses. The witnesses mostly have been from the age group of 13 to 18, where the percentage remains constant on both sides - over 60%. And in the age group of 6 to 12 - 32 or 30 percent. In Saket, the witnesses include those even below five years, to the extent of 1.22 percent.

The experience has been very encouraging and has shown qualitative improvement. The greater satisfaction is in the fact that we have built confidence amongst the stake holders.

Let's hear some of those who have actually had the advantage of this system.