
Opening Statement by Additional Solicitor General Indira Jaising to the Verma Committee

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Scholars in Washington, DC:*

Addressing Violence Against Women in the Post-2015 Development Agenda, What Next After Nirbhaya in India?

*The event was hosted by the Global Women's Leadership Initiative,
the Middle East Program and the Asia Program.*

About the Global Women's Leadership Initiative:

The Global Women's Leadership Initiative (GWLI) is a unique platform for change - connecting current and emerging leaders, raising the profile of critical issues, advancing inclusive policies, and bringing new research to the forefront. The flagship program of the GWLI is the Women in Public Service Project (WPSP) which moved to the Wilson Center in June of 2012. The WPSP strives to inspire a new generation of women leaders to realize the goal of at least 50 percent women in positions of political, public, and civic leadership by 2050.

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Please note: Articles have only been edited for clarity and not for language.

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On 16 December 2012, a 23-year-old woman was brutally gang raped by six men on a bus in Delhi. She was traveling with a male friend who was also assaulted. The victim's unconscious bodies were thrown out of the moving bus, found, and taken to a nearby hospital. Mass protests against previous government inaction on behalf of rape victims erupted in the capital leading to the death of a police officer on 25 December. The female victim was airlifted to Singapore on 26 December and succumbed to her injuries on 29 December during an emergency medical procedure. She lived long enough to describe the events and give the names she had heard during the attack. The assailants were caught and their trial has been part of a worldwide discussion about rape, violence against women, and the steps governments need to take to ensure existing laws are enforced. It is India's policy not to release the names of rape victims; she will be known forever as Nirbhaya, the fearless one.

Introduction

Rangita de Silva de Alwis

Director, Women in Public Service Project and Global Women's Leadership Initiative

Nirbhaya in India, like Malala in Pakistan, stands as an emblem of courage and hope. Even at the end, fighting for her life, she said fearlessly, "I want to live, not die of shame." She changed the way the world looks at rape- from blaming the victim to focusing on addressing the violence that claims the life of so many Nirbhayas around the world.

Hillary Clinton said recently at the Women in the World Summit, "women are not victims, we are agents of change, drivers of progress, we are makers of peace-all we need is a fighting chance." Nirbhaya achieved all of that in her short life, glowing with promise. Her legacy of courage spawned a social movement the likes of which had never seen before; women and men in India, the South Asian region, and throughout the world, have united to say enough is enough.

Soon after Nirbhaya's death, the Indian government appointed the Verma Committee led by former Chief Justice and much respected jurist, Chief Justice Jagdish Sharan Verma. The Committee heard from "the representatives of several stakeholders, particularly the women's social action groups and experts in the field," in order to "look into possible amendments of the Criminal Law to provide for quicker trial and enhanced punishment for criminals committing sexual assault of extreme nature against women." (Page ii and cover letter of "Report of the Committee on Amendments to Criminal Law")

The Verma Committee's 630 page report titled "Report of the Committee on Amendments to Criminal Law" made the recommendation, among others, for stiffer punishments for sexual crime and included crimes by the armed forces. However, the Committee stopped short of suggesting the death penalty for rape or changing the parameters under the Juvenile Justice Act of prosecutions for juveniles who commit heinous sexual crimes.

It was fitting that one of the most powerful opening statements to the Verma Committee was by Additional Solicitor General Indira Jaising. Jaising, a Global Fellow of the Woodrow Wilson Center for International Scholars, is hailed as a crusader for justice who was one of the first in India to articulate violence against women as a crime. An architect of the current domestic violence law in India, she has represented women in some of the landmark cases in Indian jurisprudence. Jaising has left her mark on every major case on gender equality litigation and built an enduring corpus of equal protection jurisprudence in India.

We are proud to highlight Jaising's comments to the Verma Committee. These recommendations help shape the new generation of development goals-the post 2015 development agenda. Freedom from violence against women and girls must be the centerpiece of any future development framework.

Testimony to The Verma Committee

Indira Jaising

Additional Solicitor General, India

19th January, 2013

To,

The Honorable Members of the Commission,

At the outset, I would like to thank you for giving me the opportunity. I also appreciate this open discussion and the desire to interact with civil society. This sets a precedent of how a commission of enquiry should be conducted.

I will begin with a discussion of the Constitution of India, 1950.

1. Any discussion on violence against women must begin with the right to equality for women and the right not to be discriminated on grounds of sex alone. Hence an understanding of Articles 14, 15 and 16 of the Constitution of India what we may call the golden triangle of fundamental rights for women.

“Article 14 Equality before law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

*“Article 15.1 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth:
(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.*

(3) Nothing in this article shall prevent the State from making any special provision for women and children.”

“Article 16(3) Equality of opportunity in matters of public employment:

(4) Nothing in this article shall prevent State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the state, is not adequately represented in the service under the State.”

2. There is indeed a striking difference between Article 15 and Article 16. I looked at Constitution Assembly debate on Article 15(3) and found no guidelines on what was meant by “special provisions for women and children”. I, however, have come to the conclusion that the special provision in the contemplation of the Constituent Assembly related to matters, in the private domain such as family, marriage, adoption, custody. In contrast Article 16(4) uses the words “reservation of appointments or posts” in favor of backward classes of Scheduled Castes, Scheduled Tribes and after 1990 other backward classes. It is striking that there is no mention of women in Article 16(4) leading me to the conclusion that somehow somewhere affirmative action in the form of reservation in the public employment was not considered necessary for women. My attention has been invited to the fact that members of the “other backward class” do include women. Yet this does not take away from the fact that there is no mention of women in Article 16(4) of the Constitution.
3. It seems to me that the deep divide that we inherited from our colonial history between the “public domain” and the “private domain” is reflected in these two Articles of the Constitution as well.
4. Add to this the fact that guarantee of non-discrimination based on sex is available only against the state and not against non-State actors. We have not articulated a jurisprudence of lateral application of the doctrine of equality to non-State actors leaving them free to discriminate on grounds of sex. Nor do we have legislation,

which outlaws discrimination based on sex in the Private sector. This leads me to believe that the missing link in all our discussions on violence against women is equality, a law on non-discrimination based on sex. I await the day when such a law will be passed and earnestly hope that this Commission makes such a recommendation. Violence against women after all is only a manifestation of their being less than equal.

5. The significance of this moment in history is not lost on me. The wide scale protests in Delhi after the gang rape on 16th December 2012 reflect a complete loss of confidence in the police and in the judiciary and in governance. The cry “we want justice” is addressed to all these institutions. We heard the protesters say “justice delayed is justice denied”, this is a reminder to the judiciary that it has become dysfunctional and may soon become irrelevant to the people of the country who can look elsewhere for the delivery of justice. We could either ignore this moment or use it as a transformative moment to restore confidence in the people that justice will be done to one and all and done promptly.
6. In order to do this we must understand how discrimination manifests itself as institutional bias.
7. To date the best known definition of institutional bias is in the context of race and comes from the Macpherson Commission set up more than 20 years ago in the United Kingdom. The Commission was set up to enquire into the death on the 22nd April, 1993 of Stephen Lawrence who was stabbed to death outside a bus stop in South London in an unprovoked, racist attack. How poignant it is that bus stops all over the world seemed to be danger zones. The police were criticized for their conduct and no one was convicted for the crime. After years of campaigning by Stephen’s parents, the then Home Secretary announced a judicial inquiry in July 1997 to be led by Sir William Macpherson. The report was published on 24th February, 1999 and came to the conclusion that the police investigation was “marred by a combination of professional incompetence, institutional racism and a failure of leadership by senior officers.”¹
8. The findings and recommendations of the Commission changed the course of history in the UK in the matter of addressing racism in the country. A new Police Reforms Act 2002 was passed, the Race Relations Act was amended to make it applicable to the police in the matter of delivery of services, an independent complaints commission was set up to entertain complaints of serious misconduct by the police.
9. I believe that this Committee too has the potential to change the course of history for the women of this country; in so far their unequal status is concerned,
10. The term institutional racism was defined as follows:

“The collective failure of an organization to provide an appropriate and professional service to people because of their color, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behavior which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and stereotyping which disadvantage minority ethnic people.”
11. What is striking about this definition is that it can be adapted to define institutional bias against women by simply adding the word “sex” to read as follows “because of their sex, colour, culture, or ethnic origin.

¹ Home Office, The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny, Cm 4262-I, February 1999, William 46.1

12. In the rest of this address, I will argue that in this country, institutional bias against women not only in “processes, attitudes and behavior” but also in the state of law. Law is after all, a norm setting exercise signaling to the community, behavior which is not acceptable and which amounts to a crime. I venture to suggest that what is at stake here is the very concept of how we see “crime”. It is my belief based on long years of experience and study of the law and its processes, that crime against women is not considered a “crime” but a manifestation of cultural beliefs. This indeed has led to the emergence of Khap Panchayats who sanction “honour killings” as justified on the basis of tradition. In a submission made to the Supreme Court, they say “such love marriage being socially/customary/traditionally prohibited relationship against the age old tradition, the relatives and friends cannot withstand the hostile taunts of their companions and public at large and this aspect forces them to commit such a heinous crime of killing the couple on the pleas of saving the honor of their families”. In a letter to the then Finance Minister Pranab Mukherjee, they asserted the right to adjudicate over deviating from the norms of marriage acceptable by tradition. It is this perceived social sanction for crime against women that needs to change, if we want the law to be implemented. Crime against women is a violation of human rights, nothing more, nothing less. While it may be true that we are not permitted to choose our destiny, it is surely our duty to preserve our inherited destiny to be born into a culture of human rights. What is at stake here is the very survival of those rights and our duty to defend them. This is what we mean why we say women’s rights are human rights.
13. The root cause of many of our problems as women seems to be that marriage is perceived to be the destiny of all women. What is required is to break the link between women and marriage and the link between custom, tradition and the laws. This can only be done by re-conceptualizing the institution of marriage itself and of family as we know it today. We need a redefinition of marriage; we need a redefinition of family. Only those institutions, which nourish the autonomy of all human beings, need to survive, others must go.
14. Stereotyping of women based on prejudice undermines their credibility and enables law enforcement officers to ignore their complaints. We have empirical evidence of this in the way Section 498-A of the I.P.C. has been treated by the police/courts. The institutional response to Section 498-A of the I.P.C. has been “women are misusing the law”. Judges in their judgments offer no data for saying so. From the facts of the case at hand, they do not say, “this woman misused the law” but jump to the conclusion that all “women misuse the law”. The Delhi High Court in *Savitri Devi v. Ramesh Chand and Others*, in Criminal Revision No. 462 of 2002 states “Before parting, I feel constrained to comment upon the misuse of the provisions of Section 498A/406 IPC to such an extent that it is hitting at the foundation of marriage itself and has proved to be not so good for the health of society at length. To leave such a ticklish and complex aspect of proposition as to what constitutes ‘marital cruelty’ and ‘harassment’ to invoke the offences punishable under sections 498A/406 IPC to lower functionaries of police like Sub Inspectors or Inspectors whereas sometimes even courts find it difficult to come to the safer conclusion is to give tools in the hands of bad and unskilled masters.” This is stereotyping based on bias. It must be noted here that when the police, the politicians and the judges say that women are misusing the law, what they mean is women are using the law, and that bothers them. The very act of using the law is subversive to the existence of the institutions of family and not seen as access to justice. In the case of complaints of rape by women, this translates into the belief in the police and the judges that women are making “false” complaints of sexual assault and hence there is no need to register an FIR or to convict. It translates into fear of the sexuality of women and an inability to deal with it in a human manner. Instructions issued in 2009 by the Home Ministry to States direct that based on complaints

received from the public that section 498A is being misused; the police must not register an FIR for cruelty forthwith, but must carry out an investigation into the allegations of the complaint before an FIR is registered. Here we see the state undermining its own laws with impunity. We now have this bias against women sanctified in Section 14 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redresses) Bill, 2012, which imposes sanctions on a woman for making a “false complaint”.

15. Our task therefore is cut out for us, to dismantle the bias, which resides in institutions before we can hope to get justice. This bias is in process, attitude and behavior of the police and the courts in equal measure.
16. As recent as 2009, the Supreme Court in a conviction under Section 376, said, "the prosecutrix appears to be a lady of easy virtues. She had no objection in mixing up and having free movement with any of her known persons, for enjoyment. Thus, she appears to be a woman of easy virtues." ²
17. These attitudes influence the outcome of the prosecution and impact punishment.
18. For instance, in the case of *Sukru Gouda v. State of Orissa*³, in 2004, the High Court of Orissa held that a healthy woman cannot be raped by a single man. Thus, you have to be gang raped to be recognized by law. The underlying assumption here was that she consented. What the judge is saying here is that NO means YES. Judges who give judgments of this kind suffer no sanctions. It is time to call all institutions of society to account.
19. What this discussion indicates is that only a woman who is perceived by the law as a virgin is worthy of protection, not a woman who is “habituated to sexual intercourse”. This automatically leaves out of consideration married women who gets raped, any other woman who had a previous sexual experience and sex workers, and other such categories of women who deviate from the social norm of good women.
20. Next, I will address the issues of substantive laws, to demonstrate how discriminatory they are.
21. The marital rape exemption in section 375 is a poignant reminder of the lowly status given to women in our society, almost akin to chattel. Why else would a crime of rape by a man against his own wife not be an offence? If rape is the violation of human rights then it is equally a violation whether committed by her husband or stranger. Here I would like to relate the history of the origin of the marital rape exemption:

Lord Hale in 1736 laid the ground for the marital rape exemption with his infamous statement that “the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband which she cannot retract”.⁴ This statement in the 17th century led to the marital rape exemption.

*An important development towards recognition of need for deletion of this exemption occurred in 1949 through the case of *R v. Clarke*⁵ where it was stated that a legal instrument of separation served to revoke*

² *Musauddin Ahmed v. State of Assam* MANU/SC/1126/2009 at Para 17.

³ 2004 CriLJ 1566

⁴ Sir Matthew Hale, *History of the Pleas of the Crown* (S.Emlyn ed. 1736) at 629.

⁵ [1949] 2 All ER 448

consent. The next development occurred through the case of R v. Steele⁶ where Lord Lane stated that a non-molestation order was sufficient to revoke consent.

The judiciary in England continued to chip away at the exemption and limited the marital rape exemption to the act of penile-vaginal penetration where the husband was prosecutable for indecent assault and violence associated with sexual intercourse. The next step came in the case of S v. HM Advocate⁷ where it was stated that punishing a husband for violence used in the course of rape, but not for the rape itself, is “repugnant and illogical”⁸ and that the time had come when the exception had eroded the rule. Sir, I submit that the time has come in India where the exception has eroded the rule.

Finally, in 1991, it was held that there was no longer a rule of law that a wife was deemed to have consented irrevocably to sexual intercourse with her husband; and therefore, a husband could be convicted of the rape or attempted rape of his wife where she had withdrawn her consent to that particular act of sexual intercourse.⁹ The UK Law Commission in 1992 reaffirmed this position and stated that it was for the state to determine the rules and obligations in marital contracts and recommend the complete deletion of the marital rape exemption.¹⁰

*This was elaborated in Lord’s Advocate Reference (1 of 2001)¹¹ which says that the basis of rape would be lack of consent and not presence of resistance. It establishes that there has to be active consent to **each act of sexual intercourse**. (emphasis supplied)*

22. I, venture to suggest that there was never any basis for the assumption of consent, given once and for all, at the time of the “I do” ceremony of marriage, nor is there any basis to continue with the marital rape exemption in a country which guarantees the right to life and personal liberty to all citizens, and hence the marital rape exemption, which stands blatant testimony to the bias against women and their social and legal construction as appendages of men, be they fathers or husbands needs deletion. It is no wonder that Supreme Court judges in their judgments refer to live in partners as a “keep” they forget that only chattel can be kept, not humans, the days of slavery are long gone, and no one can be “kept” be it a wife or a live in partner.
23. Having regard to the centrality of consent in an offence for rape it needs to redefine “consent” in as much as that the existing definition of consent in Section 90 of the Indian Penal Code is inadequate. It is in the negative, what we need instead is a positive definition
24. The Criminal Law Amendment Bill, 2012 contains in the definition of sexual assault the term “sexual purpose”. It may be noted that the present definition of rape under Section 375 contains no such phraseology thus eliminating consideration of the existence of any “sexual purpose”. There is, therefore, no need to introduce the words “sexual purpose” which will indirectly or directly introduce a defense to the accused that he did not have a sexual purpose while committing the assault.
25. The other serious issue with the definition in the proposed section 375 is that the offence has been made gender neutral, where both the perpetrator and the victim are gender neutral. This is not acceptable. Rape, as we know, must be characterized as a hate crime, a crime of prejudice, a crime constitutive of patriarchy and

⁶ [1977] Crim L.R. 290

⁷ 1975 SLT 65

⁸ As quoted by Lord Lane in R v. R [1992] 1 A.C. 599 at 609.

⁹ R v. R [1992] 1 A.C. 599

¹⁰ The Law Commission, “Criminal Law: Rape Within Marriage” (Law Commission Number 205, 1992) at page 18, para 3.64.

¹¹ [2002 SCCR 435](#)

therefore gendered. I, therefore, propose that we retain the definition of sexual assault as crime committed by a man. Having regard to the fact that I also propose deletion of Section 377, the victim may be retained as general neutral enabling homosexual activity without consent between two adults to be a crime. Coupled with the fact that we now have a Protection of Children from Sexually Offence Act, 2012, this will take care of the claimed justification for retention of Section 377, namely, that it will enable prosecution of child sexual abuse. What is more, the High Court of Delhi has already held in *Naz Foundation v. Government of National Capital Territory of Delhi*¹² that to criminalize consensual sexual activity between two adults is unconstitutional and violative of Articles 14, 15 and 21 of the constitution of India, hence its deletion seems inevitable.

26. Further, there is need to retain the age of consent at 16 as it is a widely accepted fact, both psychologically and biologically, that a human beings' sexually instincts are alive at the age of puberty. Therefore, retaining the age of consent at sixteen is essential, as not to do so would criminalize normal human behavior.
27. It is amazing how historical movements such as this one suddenly brings together institutional players and civil society making similar proposals. I was struck by reports of the proceedings of the meeting held on 4th January 2013 by the Home Minister with DGPs from all over the country. One of the recommendations there was:

“Zero tolerance for petty offences as the offender can escalate in the crime ladder and especially for cases of sexual harassment under Section 509 IPC.”
28. While not agreeing with the characterization of Sexual Harassment as a “petty offence”, there is a moment of truth in the fact that to ignore sexual harassment is to breed an atmosphere in which rape becomes acceptable. I therefore, recommend that Sections 354 and 509 be both clubbed to one section of sexual harassment and sexual harassment be defined in terms of the now famous *Vishaka*¹³ case, where any unwanted sexual contact including verbal remarks are defined as a crime with appropriate punishment.
29. Thus, we propose that sexual harassment be defined to include stalking, digital harassment, physical contact and advances; demand or request for sexual favours; sexually coloured remarks; showing pornography; any other form of violation of privacy, any other unwelcome physical verbal or non-verbal conduct of sexual nature.
30. I wish to narrate the case of a major multi-national company, which trains new recruits to bond with each other. The training materials included a video of men urinating in the toilet and talking to each other in a friendly manner. This video was shown to a team, which was being trained, which included women recruits. So insensitive is the system towards women, that one does not know where to begin the process of change.
31. Further, in determining whether a complaint of sexual harassment should be registered as an offence, it is the perception of the women that it constitutes sexual harassment that matters, since the conduct is deemed unwelcome by her.

¹² 160 Delhi Law Times 277.

¹³ *Vishaka and Others v. State of Rajasthan* [AIR 1997 SC 3011].

32. Rape by the police or the armed forces acquires the character of institutional rape and has the tendency to repeat itself i.e. be persistent and pervasive. There is adequate evidence to show that the Armed Forces have indulged in this form of rape in areas of conflict. To rape a woman means to punish the community to which she belongs. Thus, the act of rape cannot be protected and seen as being committed in purported exercise of duty by a member of the armed forces or any public servant. Therefore, no public servant including a member of the armed forces, can be protected by the State by the need to obtaining sanction for the prosecution of the accused under section 197 of the Code of Criminal Procedure, 1973, and under section 6 of the Armed Forces (Special Powers) Act, 1958, and section 7 of the Jammu and Kashmir (Special Powers) Act, 1990. Thus, the crime of rape must be universally acknowledged to be abhorrent and must be prosecuted in ordinary criminal court by making it clear that in such prosecutions the question of sanction would not be required. They must also be prosecuted by ordinary criminal courts, and sections 69 and 70 of The Army Act, 1950 and similar sections of the Navy Act and the Armed Forces Act will not apply.
33. Similarly, the provision for sanction under Section 45 of the Code of 1973, which prevents arrest of members of the Armed Forces, must contain an explanation that the provision would not apply to offences under section 376 of Indian Penal Code.
34. Further, sexual violence is often used as a strategy for terrorizing women based on their communal affiliation. Such violence needs to be given legal recognition and punished as aggravated sexual assault under section 376(2) of the Indian Penal Code.
35. Presumptions are made when a course of conduct is established. In the case of sexual offences, we have ample evidence of bias against women in operation and hence it is necessary to make presumptions to undo this bias. One such major presumption has been made in Section 114A of the Indian Evidence Act, 1872. Unfortunately, it is confined to offences under section 376, subsections (2) (a), (b), (c), (d), (e) and (g), these being mainly custodial situations. I suggest that these presumptions should operate in case of all the offences under section 376.
36. Lastly, lawmakers must be free from all taint of criminality. Without this pre-condition, it seems there is no hope for law reforms for women. Hence, it is necessary to ensure that no person against whom an FIR is lodged for a sexual offence or for that matter under the Protection of Children from Sexual Offences Act, 2012 or the Prevention of Corruption Act, 1988 will be allowed to contest an election to the State Assembly or Parliament or to any Panchayat.

Hate Crimes, Impact Crimes

I would now like to say a few words about hate crimes and impact crimes,

37. Rape and other forms of sexual abuse have been described as “hate crimes” and “impact crime” meaning thereby that ignoring them will have an impact beyond the affected individual by eroding the confidence of the community at large in the functioning of the police and the judiciary just as ignoring racial crime will erode the confidence of the coloured community at large. It is clear, therefore, that the response of the nation at this moment should be one aimed at restoring confidence of community in the functioning of all our institutions of governance. This requires several measures to be undertaken aimed at changed methods of investigation of crime, primarily directed at supporting the victims and the family, transparency in the method of functioning, sharing with the victim information at each stage of investigation, addressing the issue of

recruitment of women at senior levels within the police and the judiciary, putting in place an independent complaints mechanism for misconduct by the police and a permanent method of monitoring and evaluating the levels of confidence in the community in the system by creating appropriate indicators. Hence, my recommendations would be –

- A Family Liaison Officer should be provided for each case under section 376 who will act as the bridge between the investigation team and the survivor and her family. These Officers will be responsible for providing the affected persons all possible information about the status of investigation. It also serves an ancillary and equally crucial purpose ensuring that the victim does not drop out of the trial. Further, the Liaison Officer is, in a majority of cases, able to capture better evidence than an Investigating Officer. The statistics on the Macpherson Report asserts that London has a conviction rate of 90% in racial murder cases and a large part of this success has been attributed to the role of Liaison Officers.
- It is necessary to establish a National Centre for Research, which will attempt to understand the roots of gendered violence as well as analyze its manifestation in the public domain and private domain. This lack of understanding is evidenced even at the highest echelons of leadership. Thus, a program can be created which imparts awareness and gives senior officials the know-how to deal with issues around gender bias.
- There is need for practice directions to be issued on a regular basis by the judiciary. It is possible to arrive at a more just outcome in a trial through such directions. The guidelines for recording evidence of vulnerable witnesses in criminal matters, issued by the Delhi High Court Committee, for the examination of child witness are a case of point. Similar guidelines need to be issued in relation to dos and don'ts for Judges, Defense Lawyers, and Prosecutors in any trial for violence against women. These must acquire statutory force.
- There is need to provide easily accessible rape crisis centers and help lines.
- There is need to establish a monitoring and evaluation mechanism which includes performance indicators focusing on measures in place to encourage reporting of crime- some suggested methods are allowing reporting without having to visit police stations and allowing reporting 24 hours a day; statistics on recorded gendered crimes and detection levels; coordination between the government, the police and the judiciary to ensure quick and effective responses. Further, there is need to monitor the handling of gendered crimes by the police with respect to registration of FIR, the nature of information recorded; the treatment of the victim in the police station.
- The Judiciary also requires intense scrutiny. One way to achieve this end is by publishing all the orders and judgments relating to crime against women so that the finding is subject to public scrutiny. 58% of the court has now digitized the data is ready to go on line, but this has not happened as yet. The national arrears grid has not been created as yet. Separate initiatives to reform the various institutions that participate in the justice delivery system have been taken, but the approach has been in silos. An integrated approach could reduce the delays in our justice system and will support the recommendation of the commission. The Courts of Tomorrow of the National Innovation Mission could be implemented.
- There is a need to focus on increasing employment and retention of women in all institutions of public life. The institutional commitment to eradicating gender bias needs to reflect in their selection criteria both for promotion as well as recruitment wherein any person with a history of complaints regarding gendered crimes will not be considered. Further, all proven sexist acts should lead to disciplinary proceedings and dismissal.

- The existence of a permanent body to interact and communicate with the police can only help in instilling a sense of confidence in the public. Official and non-official visitors committee has become an integral part of the jail administration and the Delhi Prisons (Visitors of Prisons) Rules, 1988, governs such committees. There is need for a similar non-official visitor's team to look into the functioning of the police and function as a forum of complaint mechanism to deal with grievances of the public regarding police inaction, police accountability, command responsibility and ensure compliance of law by police personnel.
- There is a need to reintegrate the survivor of violence into society. Often, women are re-victimized by their family and community. Thus, the focus should be on enabling the woman to gain a sense self-esteem and self-confidence. The emphasis should be on delinking the crime from the perceived stigma, which is attached to it. The public policies of the state need to reflect this
- The creation of a high level post of a special rapporteur for violence against women drawn from independent members of civil society to make thematic and fact-finding reports to parliament would go a long way in achieving accountability of all public institutions and keep the nation aware of the status of women in society.
- There needs to be gender awareness introduced very actively in every sphere - be it education, through schools and colleges, during job trainings and especially for personnel who work in the public sphere. There is need for an overhaul of the school and college syllabi as it exists presently, as the core tools of learning are based in patriarchal notions of femininity.
- Gender roles need to be redefined and gender sensitization and respect and equality need to be taught right from kindergarten. This is especially important when the UNICEF Global Report Card on Adolescents, 2012 tells us that 57% of the boys aged between 15-19 years believed that wife-beating is justified. Thus, effectively these boys believe that their fathers are justified in beating their mothers.
- We need to understand the intricate linkages between media and society, where we imbibe what we see on screen and inadvertently use that as cues for our social behavior. The media bears a heavy responsibility for spreading a culture of violence and must be called to account.

38. All this and more is required to dismantle institutional bias from our systems of governance.

39. I must acknowledge that many of these suggestions are borrowed from the Macpherson's Report. I had the opportunity to interact with the Counsel for Stephen Lawrence and am assured that these suggestions have worked. They are tried and tested.

CONCLUSION

40. Finally we need to guard against inevitable backlash. It is already upon us in the form of the demand for death penalty, castration of the offender and reducing the age of juvenile from the 18 years to 16 years. These are reactionary forces, which would have us believe that these are the magic formula, which would transform our lives and enable us to live in a land of freedom. We must reject these if we wish to make long-term progress. Our salvation lies not in punitive measures but in our capacity for compassion no matter how repugnant the crime. We must recognize that all of us have the capacity to commit crime; we are saved from it only by rational thought and circumstances. Death penalty defeats the very essence of justice, which is to invite reform. Justice should provide the criminal an opportunity for reform, even if he fails to reform.

41. This commission, as I see it, is not just about redefining rape, it is faced by a civilizational question, the women's question. We are stuck in early medieval thought, its' dead hand prevents independent thought. We cannot deny the young responsibility and freedom from the dead hand of history. Every generation has the right to interpret the constitution in contemporary terms. This generation has chosen to interpret the right to life as the guaranteed right to autonomy, which includes sexual autonomy, which alone can make them truly human, capable of taking responsibility for themselves. The goal of all law is to sustain life not to support its destruction. We are in search for a new constitutional morality and I hope this commission will go some way in pointing the direction.
42. Before I end, I would like to acknowledge that I have been assisted in this presentation by the entire team of Lawyers Collective and particularly Ms. Maitreyi Gupta, Ms. Jhuma Sen and Mr. R. Gopal, Advocate.

Event Summary

Samaa Ahmed

Research Assistant, Global Women's Leadership Initiative

Indira Jaising, renowned women's rights lawyer, a Wilson Center Global Fellow, and the first woman Additional Solicitor General of India, discussed the aftermath of the groundbreaking Nirbhaya gang rape case in New Delhi in December 2012, and the impact it has had on the South Asian region and the world.

On October 15, the Global Women's Leadership Initiative at the Woodrow Wilson Center, with the Middle East Program and the Asia Program, held a meeting on "Addressing Violence Against Women in the Post-2015 Development Agenda." Jaising talked about the new legislation in India that was borne out of the public outcry following Nirbhaya's case, and the practical challenges in implementing violence against women (VAW) legislation in international jurisprudence. **Rangita de Silva de Alwis**, Director of the Global Women's Leadership Initiative at the Wilson Center, provided opening remarks and moderated the event.

De Silva de Alwis began by highlighting the structural impact of VAW as a development goal, and the ways in which tackling VAW is necessary for women's capabilities and leadership to be realized. She described the passage of the Domestic Violence Act in India, spearheaded by Jaising, as a landmark bill in South Asia.

Jaising began her discussion by giving a summary of and background information to the Nirbhaya case. Jaising posed two over-arching questions; firstly, why did this particular case garner so much attention, and secondly, what is the meaning of justice for women? In India, in the aftermath of the incident, the Justice JS Verma Committee was constituted to recommend amendments to existing Indian laws relating to crimes against women, provide quicker trials (instituting "fast-track courts"), and enhanced punishments for offenders. Jaising cautioned that amending legislation was only addressing half the issue, noting that there cannot be successful prosecution of sexual violence while institutional biases persist in law enforcement and the judiciary. Currently, women's rights continue to be marginalized and victims of gender-based violence (GBV) are denied due process.

Jaising broadened the scope of the discussion to talk about the international impact of the case. While Nirbhaya's case gained a lot of attention in the international media, Jaising criticized the Eurocentrism in many reports by Western news sources. She described the double standard applied by news outlets which made it seem "as if rape was a particularly Indian phenomenon, as if VAW had been transcended in the U.S." Jaising contrasted this to the sympathetic tone towards the perpetrators of the Steubenville rape case, which was taking place in Ohio around the same time. She also highlighted how domestic violence cases are given low priority all over the world by using the case of Jessica Gonzalez in the U.S. This helped to put the public outcry that was sparked by Nirbhaya's case into perspective, showing that VAW is a universal issue, and has systemic roots that pervade every society.

Citing best practices from around the world, Jaising described the importance of ensuring that legislation is diligently enforced. Newly drafted Indian laws address the structural imbalance of power between victims and perpetrators of GBV, which helps to address domestic violence and was also integrated into the Protection of Children from Sexual Offenses Act, passed in 2012. The restriction that limited sexual violence by armed forces to be tried by court-martial has been lifted, which allows such crimes to be prosecuted more easily in a civilian court. Rape in cases of communal violence is also recognized in the Indian penal code. Since March 2013, budgets have been specifically allocated to the prevention of GBV, and one stop crisis centers for women have been set up across India.

While there continue to be contested issues between recommendations from the women's movement and what has been drafted into law, there has been a surge in activity in the judiciary, and increased awareness about VAW across all segments of Indian society. Jaising pointed to the importance of education, and working with communities, to help dismantle harmful cultural stereotypes and institutional biases that portray women as

responsible for their own victimization. Prevention starts from education girls and boys in school about GBV and changing curricula in school. There has been debate about the ways in which women in the media are portrayed in India, and the influence of Bollywood films in propagating stereotypes. There has been a call to reject forms of culture that valorize VAW, such as banning a local rapper from performing misogynist lyrics.

To conclude, Jaising explained why Nirbhaya's case resonated with the Indian population so strongly. The narrative was compelling as Nirbhaya was "everywoman" – she was from a migrant middle class family, and was pursuing her education to be a doctor. The extent to which she was brutalized was also shocking. This case also pointed to the unresolved problems of urbanization in India and a need to address the systemic nature of VAW in India and all over the world.