

Pakistani judge humiliates teenage rape victim in open court

(Edited text of statement issued by the Asian Human Rights Commission: AHRC-STM-075-2009)

Court spectators and prosecutors expressed outrage at the behaviour of Additional District and Sessions Judge Nizar Ali Khawaja on 25 March 2009 in Karachi, when he allowed the case of a teenage gang rape victim, Ms Kainat Soomro, to become a spectacle in his courtroom. His conduct raises serious questions regarding the training of the country's judiciary.

While the 15-year-old victim was expecting an in-camera trial in the judge's private chambers, she was instead asked by the judge to describe and even demonstrate her rape, in detail, in front of the accused, Messrs Shahban Sheikh, Sheikh Ehsan, Roshan Aleem and Kaleemullah, all influential men who have reportedly threatened and bribed Soomro's family to settle out of court. According to journalists, at least 80 spectators were also present. Although public prosecutor Mr Maroof requested that anyone unrelated to the case be told to leave, the judge sided with the defense counsel, who argued that there were no legal obligations to bar citizens from an open court.

According to journalists and the prosecution, the defense counsel and the judge asked a string of invasive questions regarding the rape, which the teenager, who has had a sheltered, conservative upbringing, struggled with. She was asked when certain items of clothing were removed, exactly what actions were done to her, and when. In a few instances Kainat replied that she couldn't remember and felt out of her senses, having fainted; the judge then harshly berated her. Witnesses noted that he appeared to enjoy the invasive nature of the questions and Kainat's humiliation.

The Daily Dawn newspaper reported that objections from the prosecutor and assisting lawyers triggered an argument with the defense, which the judge simply quelled with a warning and adjourned the hearing to a later date.

In the two years leading up to the trial, Kainat's family have been forced to leave their home town due to threats, and have fought fiercely to get the case this far—the police originally refused to register the FIR. The trial of March 25 was undoubtedly an intensely traumatic experience for the teenager, and will do little to encourage other rape victims into court.

On April 11 Justice Khawaja is scheduled to hear the case of Nasima Lubano, 18, another young victim of gang rape. The Sindh High Court has already transferred her case from Mirpur Mathelo to Karachi due to death threats reported by the family.

The role of a judge requires that he be balanced, human and able to protect the dignity of vulnerable plaintiffs in court. In this last case Khawaja addressed the young victim with sarcasm, he expressed a strong gender bias and he humiliated her further in front of her attackers. He should not be given the chance to put another victim of rape through the same ordeal.

Since the Women's Protection Act in 2006 reformed the law surrounding rape cases, more women have been encouraged to use the legal system, but the experience continues to be harrowing, partly due to the attitudes of those within it. Pakistan is largely a harsh, patriarchal environment for women, and the country's courts are no different.

“Judges have not been trained or sensitized to gender issues,” says former Supreme Court Judge Nasir Aslam Zahid, who now runs the Legal Aid Office for women and children in prison in

Sindh. “The law has been made by men, courts are men, police are all male and when a court case involves a woman, everything is against that woman.” Such attitudes mean that judicial and police figures are often unresponsive to female victims reporting crimes. In addition, figures for the physical abuse of women in custody are high, even though most of these go unreported. Female victims of rape or domestic violence are frequently too scared to go to court or seek redress. Soomro’s case is just another warning, reminding Pakistani women not to expect justice or fair treatment in court.

The cabinet of President Asif Ali Zardari considers itself committed to women’s issues, but true commitment requires proper assessment of the issues followed by bold, effective remedies. Just as police should be taught to deal professionally with sexual and gender-based violence, judges clearly need training to abandon old prejudices and act humanly towards victims. This is in fact the government’s obligation rather than choice. States are duty bound to protect and promote the rights of women and children under international human rights law. Pakistan has ratified both the UN Convention on the Rights of the Child, as well as the Convention on the Elimination of All Forms of Discrimination against Women, which among other things, obliges it to protect those under the age of 18 “from all forms of physical or mental violence... negligent treatment, maltreatment or exploitation”, and to “take appropriate and effective measures to overcome all forms of gender-based violence, give adequate protection to all women and respect their protection and dignity”.

When a judge cannot or does not show himself able to do this in his court for the most vulnerable of plaintiffs, one wonders what he is doing in the profession in the first place.