# LETTER TO FORMER JUSTICE OF THE SUPREME COURT MARKANDEY KATJU

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## Abstract

*The world has been a better place for Indian women after Upendra Baxi, Vasudha Dhagamwar, Lotika Sarkar and R. V. Kelkar, four professors of Law at Delhi University wrote on 16th September 1979, to the Chief Justice of India about the arrant judgment of the Supreme Court in the infamous Mathura Rape Case.*

*Even after the huge outrage it garnered in the country and subsequent changes to rape law in years 1979 and 2013 both, the law still is too far from immaculate. This is an attempt to analyze what a letter today should seem like if it has to be sent to the giants of law – that could effect a revival of year 1979 today in the year of 2015 and lead to expansion of consciousness towards the suffering India women, especially in the rural areas of the country, resulting in changes of the law.*


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Respected sir,

I, as an Indian citizen and student of law, in the humblest, write this letter to you for drawing your attention towards the veracity and the effect of a decision Hon'ble Justice Gyan Sudha Mishra and Hon'ble yourself have rendered on 27th Feb 2011.

In the case of **Baldev Singh & Ors.** v. **State of Punjab**, the three appellants have raped and beat the prosecutrix and the Hon'ble Supreme Court accepted the same as facts. In your decision, you have awarded the appellants a punishment of only 3 ½ years of imprisonment already undergone, much lesser than what section 376 prescribes as minimum (10 years), invoking the proviso to section 376(2)(g) of adequate and special reasons.

Sir, the reasons you have given are mentioned with no ambiguity in the judgment; but the same are fallacious to be considered as adequate and special in the legal context. The reasons you have given are, that the appellants and the prosecutrix are married (not to each other) and the latter also has two children; the incident being 14 year old; and the parties, wanting to finish the dispute, having entered into a compromise.

While the award of maximum punishment may depend on the circumstances of the case, the award of the minimum punishment generally is imperative. In your reasoning, you say, "*Section 376 is a non-compoundable offence, however, the fact that the incident is an old one, is a circumstance for invoking the proviso to Section 376(2)(g) and awarding a sentence less than 10 years…*" Unfortunately, these reasons seem neither special nor adequate.

*Firstly*, rape under Section 376, as mentioned by you, is a non-compoundable offence. Technically, in light of this, how then can such compounding be considered an adequate and special reason (more so in a gang rape)?

Through such consideration by the Hon'ble court under your hand, the legislative intent, mandate and recognition of social needs and impact in making such a crime a non-compoundable offence is absolutely defeated. The legislative wisdom behind such making is to abstain the accused who would usually exert every possible pressure on the victim to take back the case; to not let money and muscle overpower legal processes. Rape is an offence against the society and not a matter to be left for the parties to compromise and settle.

People are still raking over the ashes of a rape case in Patiala, where even the police have pressurized the victim for a compromise, eventually resulting in victim committing suicide. Shouldn't then a compromise in such cases be a cause to look at them with suspicion? But the Hon'ble Court did not even call the rape-victim to authenticate the truthfulness to ascertain if the compromise is voluntary and genuine.

On your blog Satyam Brayut, answering to the criticism on this case, you say that making the appellants undergo any further imprisonment would not help the victim. But sir, while compensation is to be looked at from the victim's situation, shouldn't punishment be a result of nature of criminal act and gravity of the crime and not essentially from what benefit it is to the victim?

*Secondly*, in more than three crore cases pending in the Indian courts, very less cases have the luxury of reaching the Supreme Court. Naturally, almost all of those cases take long periods of time before the Supreme Court decides them. If 14 years of long period of time can be a special reason, then thousands of such cases pending before the court should be eligible for this proviso. How then can it be called 'special'?

Also, the judgment of Baldev Singh seems to be unreasonably short and cryptic, ignoring previous decisions with precedential value, like the case of *Kammal Kishor* v. *State of Himachal Pradesh*, which clearly stated that occurrence of crime 10 years before is in no way an adequate and special reason. Justice K. T. Thomas goes on to say that both 'adequate' and 'special' are conjunctive; not disjunctive, showing how exceptional a reason should be to qualify under the proviso.

An administrative anomaly or laxity should not in any case be a pressure thrust upon a victim of a crime, especially in one as heinous as rape, one that reduces a man to an animal. Such thrusting by giving scarce punishments, I feel, would neither do justice to the victim nor would deter the criminals from such acts in future, the primary and avowed object of law.

*Thirdly*, in the case of Karnataka v Krishnappa, socio-economic status, religion, race, caste or creed of accused were rendered irrelevant to the sentencing policy. Justice A. S. Anand says that penalization should rather depend upon conduct of the accused, gravity of the criminal act and the state and age of the sexually assaulted female.

In light of the above, marriage and conceiving of children by the victim, by no stretch of imagination seems to be a special and adequate reason. It is in fact true that marriage of rape-victims is usually deeply affected and people fear of STDs, pregnancies, and psychological, emotional and spiritual disorders. However, such victims' subsequent marriages do not lessen the seriousness of the crime and cannot by themselves be construed as adequate and special reasons.

Further, in such long periods of time as 14 years, it is very common for people to get married. Is the court implying, by using this as a special and adequate reason, that the victims of rape keep suffering and not cope so as to eligible themselves for justice; so as to punish the criminal? Sir, a crime as serious as rape should not be restricted to restorative principles of justice but should be looked at from ex ante view too, to prevent such acts in future.

Many studies on the sentencing practices followed in India revealed that subjectivity of the judge plays a crucial role in the decision making process. For this reason, Article 142 of the Indian Constitution allows the Supreme Court substantial discretion in deciding cases. But, if I am allowed the liberty to say, discretion oriented sentencing is done in idealistic spirit to enable courts to individualize punishment; not to degrade into liberalization of punishment.

In the words of Justice P. K. Balasubramaniam, in the case of *State of M. P.* v. *Bala,* "*adequate and special reasons are to be used very sparingly and not indiscriminately and routinely.*" However, judgment of *Baldev Singh* v. *State of Punjab* seems to interpret the proviso in a casual and cavalier manner.

This more or less an assertion of mine is tremendously supported by the then Chief Justice of India, P. Sathasivam in his judgment of the case *Shanbhu* v. *State of Haryana* where he mentions explicitly that *Baldev Singh* cannot be cited as a precedent and should be confined to that case only.

But, what Justice Sathasivam also must not have realized in entirety is the magnitude of the rupture caused by Baldev Singh's judgment to subsequent legal judicial processes. Just about two years after the Supreme Court judgment in *Baldev Singh* v. *State of Punjab,* Justices M. Y. Eqbal and Pinaki Chandra Ghose have decided upon the case of **Ravindra v State of Madhya Pradesh** on the same lines of faulty reasoning in Baldev Singh case's judgment by considering the factual incident being 20 year old, parties having married, and

they having entered into compromise with each other, as special and adequate reasons. For this outcome, ***Baldev Singh v State of Punjab*** *has been used as a* ***precedent****.*

Respected sir, you are widely accepted as an epitome of judicial conscience and a bastion of human rights and civil liberties. Your fine sense of judgment and assurances to the general public through your blog and other media to protect our rights warrants us of a strong and well-directed judiciary of the future. But a judgment such as Baldev Singh v State of Punjab negates all that assurance, at least to hundreds of law students and professors who find the judgment nothing less than threatening to the quality of the present day judicial decision making process.

What can we say now! Reconsidering the case and deciding on it by the Hon'ble Supreme Court again is an idea too farfetched.

Sir, with the highest respect that I hold towards you, I appeal before you, requesting you to come forward and announce to the judiciary as well as the general public about the fault in the judgment and warn loud against using it as a precedent in any future case; so that, if not your statement, at least the publicity it would garner would work as a conscience for judges while deciding on similar cases.

The above made appeal of mine might seem unruly and disoriented. But I appeal so in order to not let further silencing of women's voices as they have always been – through systematic use of patriarchal power and authority. If an organ as trustworthy as judiciary tolerates violence against women, what pursues is nothing less than cultural devaluation, negation of human rights and intensified militarism against women by the country's society chauvinistic as it already is.

Most respected sir, with this view I plead, do the needful before this judgment comes to worse ends.

*Better late*

*Than never!*