



Challenges faced by child witnesses in the protection of children from sexual offences act 2012

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Abstract

According to article 15(3) of the Indian Constitution empowers the state to make special provision for child. In 2012' Delhi rape, there was a backlash and it had impact all over India as well as the world. The main objective of this act is to protect the child from offences of sexual assault, sexual harassment and child pornography and provide for establishment of special courts for trial of such offences. But most of the people are trying to avoid the courts proceedings due to the stigma attached to court (passionate). There are difficulties in reporting and testifying about sexual violence and it's becoming Risks of secondary victimisation during the judicial process. In 2011, before parliamentary debate was discussed that the present judicial system was adult-centric. After that realisation the changes comes in judicial process and it becomes process of healing and not that of re- victimisation. The enhancement of the punishment after the amendment in 2019, it has become necessary to defence effectively cross examination to rebuttal the presumption in the Act for fair trial. This research paper analyse the legal regime of the child witnesses and its implications. The effect of evidence act and procedural aspect on judicial pronouncement there under.

Keywords: Child, child witnesses, fair trial, presumptions, protection of children from sexual offences act, 2012.

Introduction

The POCSO Act, 2012, is a landmark law enacted in India on November 14, 2012 to protect the best interest and wellbeing of the children from all forms of sexual offenses such as sexual assault, sexual harassment, using the child for pornographic purpose, and abetment to commit such offense. Under this act, a comprehensive definition is given to all forms of sexual crimes and exploitation against children below the age of 18 years. As a supreme legislation, this act ensures safeguarding the best interest of the child at every stage of the judicial process through its child-friendly mechanisms in terms of reporting, recording of evidence, investigation, and speedy trial of offenses through designated Special Courts.

In Indian culture, children are highly respected as the divine blossoms of God's abode, symbolising the authentic prosperity of the nation. Nevertheless, the advancement of our nation is closely linked to the welfare and empowerment of its children and women. Although the POCSO Act was implemented in 2012 to safeguard children from sexual assault, there are still ongoing difficulties, especially in remote regions with low availability of legal and medical resources. Inadequate education and limited resources frequently impede the administration of justice, resulting in numerous unreported or unresolved instances, which in turn leaves victims and their families feeling powerless. It is crucial that we tackle these systemic problems and guarantee that every child's voice is acknowledged and honoured, offering them the assistance and safeguarding they are entitled to.

Research methodology

The present research paper is based on the study of child victim and procedural aspect of special act with statutory law. To investigate these points, authors have collected literature related to study of special courts under POCSO.

Many articles have been searched, through normal Google search, and Google scholar. The main key words used were POCSO, child witness, presumption, fair trial. All the relevant articles and books were identified and selected for further readings. Each article has been read carefully. The researcher her self work as special public prosecutor in special court designated by POCSO Act, 2012. critically reported all the major points that have come up in the selected articles on POCSO and CSA. All the articles have been closely read and reported in the present paper to reflect the challenges faced by child witness in the POCSO act 2012.

Law of evidence and procedure followed by special court in trial

When offence occurred, the difficulties encountered by child witnesses in sexual abuse cases and deficiencies in the legal system that impede justice for these youngsters. The main provision for reporting of offence in rural communities frequently suffer from a dearth of legal and medical infrastructure, impeding victims' timely access to essential assistance. The delay might result in problems. Reliving the trauma during investigations and court proceedings can be extremely distressing for child victims, exacerbating their psychological harm.

Individuals who have been victimised, particularly children, may develop feelings of shame or fear that prevent them from disclosing the abuse they have endured. The hesitancy to step forward can lead to a decrease in reporting and a scarcity of evidence.

Legal procedures, such as the enactment of laws like the Protection of Children from Sexual Offences (POCSO) Act, aim to protect children. However, the practical issues that arise might impede the effective execution of these laws. In

rural locations, there may be a lack of manpower which makes it difficult for female police to always be able to record statements as required.

Court takes the judicial notice in delayed FIR, The accused filed an appeal against the Additional District Judge, Dehradun's order and judgment. The accused was charged with violating the Protection of Children from Sexual Offences Act, 2012, sections 5 and 6, as well as sections 376, 323, and 506 of the Indian Penal Code. He received a conviction. The High Court addressed the delay in filing the FIR, pointing out that even if it took longer to be registered, the court can nevertheless take cognizance of the fact that family members need time to decide on a course of action when their reputation is on the line. The inconsistencies between the visual and medical data were also scrutinised by the court. The evidentiary value of a witness's ocular testimony is typically higher than medical. However, when the medical evidence makes the oral testimony improbable, it becomes a relevant factor in evaluating such evidence.

Child witnesses encounter obstacles in the judicial setting, which can be daunting and foreign to them. They may encounter difficulties comprehending court proceedings and may provide contradictory or erroneous testimony. When child witness at age of 5 yr old who unable to speak due dumb since birth, its challenge for all stakeholder to take evidence as per law. In case decided by Bombay High court which was under Section 325 of the Indian Penal Code, Section 4 of the Protection of Children from Sexual Offence Act, 2012, and Section 3(2)(v) of the Schedule Caste Schedule Tribes (Prevention of Atrocities) Act, 1989 were the legal bases for the offence brought against the accused. The victim in the case in question was five years old and a member of the schedule caste. Since infancy, the victim had been dumb. By enticing the victim with orange fruits, the accused took her away and sexually attacked her. She sustained severe external and internal injuries to her intimate areas. When the victim was sent to see a child psychologist and expert, it was discovered that the victim could not recall any specifics of what had happened. It was discovered that, despite the child-friendly environment, the victim was not answering any questions from the prosecution before the learned special court.

The experienced special session judge noted that the victim appeared emotionless and absolutely blank. Even the knowledgeable special session court found the accused to be guilty. The high court determined that the results of the chemical investigation would demonstrate that certain garments had bloodstains, learnt session judge Sadly, at the time of recording the appellant's statement, this circumstance was not brought up with the appellant. But none of the witnesses can read or write. The victim's expression was expression less when she faced the learning session judge, but this does not imply that there was no sexual assault against her, especially in light of the compelling medical evidence.

Despite provisions for child-friendly procedures in the POCSO Act, in practice, many courts and police stations may not have adequate facilities or trained personnel to handle child witnesses sensitively. Children, particularly those below the age of 10, may struggle to understand the objective of cross-examination or re-examination, resulting in confusion and potentially inaccurate testimony, but here it is material to note that defend should be given the opportunity to cross-examine the child for fair trial. The

theory of innocence is not applicable in said act on the contrary to prove it.

Children may feel intimidated by the formal environment of the courtroom, the presence of the accused, or aggressive questioning by defence lawyers. This can affect their ability to testify clearly and confidently. In my over all observations while working in special court as special public prosecutor, procedure not followed by special court including me also. The lengthy judicial process can be particularly burdensome for children, who may have to miss school and endure prolonged stress and uncertainty. Due to which Prolonged Legal Proceedings. The child and his guardian are not aware of rights of child.

Insufficient knowledge among both witnesses and law enforcement authorities leads to the mishandling of cases. Witnesses may lack comprehension of the gravity of the event or encounter difficulties in successfully conveying information owing to linguistic obstacles.

Providing testimony in a court of law can have a significant emotional toll on child witnesses, which can impair their capacity to accurately remember and recount specific information.

Child victims often face stigmatisation and social ostracism from their communities, which can deter them from coming forward or continuing with legal proceedings.

There may be a lack of adequate psychological support, legal aid, and rehabilitation services for child witnesses, making it harder for them to cope with the legal process and its aftermath.

Children or those with disabilities may struggle to communicate effectively during testimony, leading to challenges in presenting their evidence accurately. Communication Barriers leads to acquittal of the culprit.

Insensitive handling by police, lawyers, or even medical professionals can result in secondary victimisation, where the child feels violated again by the process meant to deliver justice.

In 2011, the National Commission for Protection of Children's Rights (NCPCR) argued in the Protection of Children from Sexual Offences Schedule (POCSO) Bill that the current legal system is adult-centric. The system was designed to handle cases involving adults and has been largely silent on the problems children encounter with the law. This NCPCR review aims to bring about a change in the way child witnesses of sexual violence report and acknowledge, register their presence in the legal space. The NCPCR strongly emphasised that in cases involving child victims of sexual crimes, the legal sentencing process should be one of healing, not re-victimisation.

A three-year-old girl was victimised, while she was playing in front of her house. The defendant, who was a co-tenant, called her and put his finger on her private part, after heard screamed, her mother saw him naked and the victim was undressed. When trial begin victim could not coherently narrates the incident in court. court observe that "what more can be expected of a three year old child who suffers secondary victimisation in court of being compelled to recount and narrate the utter trauma of his sexual violence which befell her at such age? There were so many contradictions and variations in his mother's version, but the court found that due to a bad summary and it did not affect the grounds of the prosecution. The court directed the state to pay compensation to the victims of serious crimes and directed the state to pay a public compensation of Rs 5,000

to the victim to ensure his proper education and rehabilitation. Based on this, the Supreme Court directs both the administration and the District Legal Service Office to widely publicise the said scheme "Victim Assistance Scheme/Sexual Violence/Survivors of Other Crimes 2019" between the public and the legal fraternity..

To tackle these challenges, a comprehensive strategy is needed that includes better availability of legal and medical services in rural regions, enhanced education and awareness initiatives, specialised training for law enforcement and judicial staff, and measures to provide support and safeguard child witnesses during legal proceedings. Furthermore, it is imperative to exhibit sensitivity and empathy when handling child victims in order to guarantee that their voices are acknowledged and that justice is achieved.

Practical challenges suffered judicial pronouncements

When examining child witnesses, some crucial practical aspects that

Courts are responsible for assessing a child ability to testify, which involves determining if the child comprehends the significance of telling the truth and is capable of presenting precise testimony. This evaluation takes into account the child's chronological age, level of emotional and cognitive development, intellectual capacity, and comprehension of the legal proceedings. Furthermore, the reliability of child witnesses may be examined, including aspects such as the coherence of their statements, behaviour, and any prejudices.

Child witnesses may necessitate certain arrangements to guarantee their ease and proficiency in communication. This may involve utilising age-appropriate vocabulary, incorporating intervals of rest throughout the presentation of evidence, or permitting the accompaniment of a carer, such as a parent or advocate. Courts may employ other ways of testimony, such as closed-circuit television or pre-recorded interviews, to reduce the child's stress and suffering.

Stakeholder are responsible for interrogating child witnesses, including law enforcement officers, social workers, and psychologists, must utilise suitable methods to obtain precise information without influencing or pressuring the child. Open-ended inquiries, nonverbal signals, and techniques for establishing a connection are frequently employed to enhance communication and obtain dependable evidence.

Child witnesses often have a history of trauma or abuse, which can affect their capacity to remember and express their experiences. Stakeholder that work with these children must possess emotional sensitivity and utilise a trauma-informed strategy to reduce the risk of re-traumatise and safeguard their well-being during the legal proceedings. The one of the POCSO case which was conducted by me resulted in acquittal on various counts. the case is that,

The defendant arrived at the residence of the 8-year-old victim, summoned her, had her sit on his lap, inserted his hand into her undergarments, and touched her intimate area. The special Court determined that the victim was a minor and therefore, since there were no other witnesses besides the child, her testimony must be scrutinised with caution. The court determined that the witnesses' testimonies contained contradictions. There was also uncertainty about the whereabouts of the informant during the incident. No explanation was given for the delay in

filing the First Information Report (FIR). As a result, the accused was given the benefit of the doubt and found not guilty of the offence.

Child witnesses are afforded legal protections through the existence of laws and regulations that aim to secure their well-being and uphold their rights. These rules may encompass safeguards for privacy, anonymity, and limitations on cross-examination methods that may pose harm or intimidation to the child.

Consulting specific statutes, regulations, or scholarly publications on child witnesses can offer a more comprehensive understanding of recommended approaches and legal factors to consider. In addition, case studies and empirical research can provide practical examples and assistance for professionals who work with child witnesses in different legal settings.

Conclusion

The issue on child witnesses in situations of sexual abuse, specifically in relation to the Protection of Children from Sexual Offences (POCSO) Act of 2012, brings attention to numerous significant challenges and legal intricacies. Despite the implementation of laws to safeguard children, there are substantial obstacles in guaranteeing justice for victims. A notable challenge is the limited availability of legal and medical facilities, especially in remote regions, which obstructs the reporting and legal action against perpetrators. This constraint is exacerbated by a deficiency in education and awareness among both witnesses and law enforcement officials, resulting in mishandling of cases and unreliable testimony. The reluctance and embarrassment experienced by victims, particularly children, often hinder them from disclosing their abuse, which contributes to a low rate of reporting. The legal process is made more complex by legal procedures, challenges in the courtroom, and cross-examination. This can be especially difficult for child witnesses who may have difficulty comprehending or properly expressing them inside the judicial system.

Various case examples demonstrate the intricacies involved in pursuing offences under the POCSO Act. Occasionally, discrepancies in witness accounts or procedural shortcomings have resulted in acquittals, which prompt doubts on the dependability of the legal system. Nevertheless, court rulings like *State of Punjab v. Gurmit Singh* underscore the significance of giving priority to the victim's testimony and demonstrating empathy while dealing with cases of sexual offences, especially those involving children.

Although there are legal safeguards in place, such as specific arrangements for child witnesses and measures to protect privacy, maintain anonymity, and limit cross-examination methods, it is imperative to implement comprehensive reforms to tackle systemic problems and guarantee justice for victims. This encompasses the enhancement of accessibility to legal and medical services, the augmentation of education and awareness, and the provision of specialised training for professionals engaged in the management of situations related to child sexual abuse.

To summarise, although the POCSO Act is a notable advancement in safeguarding minors from sexual offences, there are still obstacles in successfully executing the legislation and securing justice for victims. To tackle these difficulties, it is necessary to adopt a comprehensive

approach that gives utmost importance to the rights and welfare of children. This approach should also focus on enhancing legal and institutional frameworks to effectively address the issue of child sexual abuse.

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