



Treating a Child Witness

 drishtiias.com/printpdf/treating-a-child-witness

Why in News

A **Public Interest Litigation (PIL)** has been filed in the Karnataka High Court, asking for guidelines to be issued to police regarding interrogation of minors in criminal proceedings in accordance with the Juvenile Justice Act and United Nations (UN) resolutions.

Relevant UN Resolutions

- **Convention on the Rights of the Child, 1989:** It states that ‘in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration’.

India has been a signatory to this Convention since 1992.

- **Guidelines with respect to Child Witnesses (2009)**
 - Authorities should treat children in a **caring and sensitive manner**, with interview techniques that “minimise distress or trauma to children”.
 - An investigator specially trained in dealing with children be appointed to guide the interview of the child, using a **child-sensitive approach**.
 - The investigator shall, to the extent possible, avoid repetition of the interview during the justice process in order to **prevent secondary victimisation of the child**.

Secondary victimisation is defined as victimisation that occurs not as a direct result of a criminal act, but through the response of institutions and individuals to the victim.

Age of Witnesses in India

- **Definition:** Any person who appears before a court or tribunal so as to give evidence or testimony, for or against any person involved is called a witness.

- **Age:** Under **Section 118 of the Indian Evidence Act, 1872**, there is no minimum age for a witness. Children as young as three years old have been witnesses before trial courts in cases of sexual abuse.
 - Any person may be a witness who can understand the questions put to him and rationally answer them.
 - The nature of the section is disqualificatory in nature, meaning, that it disqualifies any person from testifying in the event that person is unable to comprehend or rationally respond to the questions put to them.
- Usually during a trial, the court, before recording the testimony of a child witness, determines his or her competency on the basis of their ability to give rational answers.

Relevant Indian Laws Related to Children

- **Article 39 (f) of the Constitution:** The State shall, in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
- **Juvenile Justice (JJ) Act:** The primary legislation in the country pertaining to children is **the Juvenile Justice (Care and Protection of Children) Act, 2015**. The Act **does not provide guidelines specifically** relating to questioning or interviewing children as witnesses. However, it advocates for the following:
 - **Child-friendly approach** in the adjudication and disposal of matters. This implies, for the police to not be in their uniform while dealing with children.
 - **Special Juvenile Police Unit:** Interviews of children are done by specialised units of police who are trained to sensitively deal with them.
 - Provides for a **Child Welfare Committee** in every district to take cognisance of any violations by the authorities in their handling of children.
- **POCSO Act: The Protection of Children from Sexual Offences (POCSO) Act, 2012** has specific guidelines regarding interviewing children as witnesses, though the guidelines pertain to child sexual abuse victims.
 - Interviews should be conducted in a safe, neutral, child-friendly environment, including allowing for them to be done at homes.
 - It says a child should not be made to recount the incident in question multiple times.
 - The Act also allows for a support person, who could be trained in counselling, to be present with the child to reduce stress and trauma.

Way Forward

- The Delhi High Court has come up with guidelines for recording evidence of vulnerable witnesses in criminal matters. A vulnerable witness is defined as anyone who has not completed 18 years of age.
- The guidelines underline the importance of the criminal justice system needing to respond proactively, sensitively, and in an age-appropriate manner when dealing with children.

Source: IE