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POCSO| Judges Must Remember That Children May Use Different Vocabulary For Sex Abuse : CJI DY Chandrachud

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The Chief Justice of India Dr. D. Y. Chandrachud today gave a keynote speech at the inaugural ceremony of the two-days National Annual Stakeholders Consultation on Child Protection organised by the Supreme Court Committee on Juvenile Justice which is headed by Justice S. Ravindra Bhat.

The Chief Justice of India started his address by quoting Nelson Mandela that, "There can be no keener revelation of a society's soul than the way in which it treats its children. If we are to introspect there is much in our souls that needs attention."



He expressed that, "There is much truth to this statement world over. Children are the voiceless victims of the physical, emotional and sexual violence and India is no exception to this phenomenon. The enactment of the Prevention Of Children from Sexual Offences Act in 2012 was a watershed moment in the history of child rights in India because it finally provided a specialised mechanism for the adjudication of sexual crimes concerning children while prioritising the best interest of the child."

Culture of silence about child sexual abuse

Chief Justice Chandrachud showed concern over the prevailing situations where POCSO cases are not reported because of social stigma.

"The families of child victims are immensely hesitant to file a complaint with the police so we must be very careful about entrusting excessive powers to the police. The slow pace of the criminal justice system is undoubtedly one of the reasons for this but other factors play a significant role as well, issues concerning the sexual abuse of children continue to be plagued by immense stigma."

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"There exists a culture of silence which stems from shame and conceptions of family honour which we too so often confront in our courts. Two harmful stereotypes contribute to entrenching this culture of silence, the first is the stereotype that only the girl child can or is likely to be sexually abused, the second stereotype is that the perpetrator is a stranger. Researchers consistently demonstrated both that boys are at equal risk of sexual abuse and that the perpetrator is known to the victim in an overwhelming number of cases and may be an immediate family member, caretaker or neighbour. The sexual abuse of children therefore remains a hidden problem, if the parents of the child do not wish to report the issue the child is left without a voice"

. He also pointed out that there are also children who do not have any parental support because they are pretty much left on the streets where they have no protectors.

"While the mandatory reporting requirement in the POCSO Act is aimed at addressing the issue of under reporting it is essential to ensure that this does not prevent access to healthcare.

Therefore, in my judgment for the Supreme Court I recognised this principle in *X vs The Principle Secretary Health and Family Welfare Department of the NCT of Delhi* where we ruled that registered medical practitioner need not immediately disclose the name of the minors to the authorities in case of the minor seeks an abortion but does not wish to be involved with the criminal justice process until access to health care is received."

Counselling services for victim-child to overcome trauma

Chief Justice Chandrachud also addressed the fact that the victims of sexual violence at an early age deal with severe trauma which impairs cognitive development. It has lifelong ramifications and limits the fullness with which the child could have lived his life. He expressed that, "The long-lasting implications of the child sexual abuse make it imperative for the state and other stakeholders to create awareness regarding the prevention of child sexual abuse, its timely recognition and the remedies available in law. Children must also be taught the difference between safe touch and unsafe touch"

He further stated that, "The use of professional counselling services must also be encouraged especially because many parents are unaware that this can help the child deal with trauma. Above all there is an urgent need to ensure that the so-called honour of the family is not prioritised over the interest of the child. The state must encourage family to report cases of abuse even where the perpetrator is a family member."

Courts must be sensitive, children may not have same vocabulary as adults

The research project conducted by the Centre for Child Rights and Juvenile Justice of the National Law University Delhi had revealed that judges assigned to the POCSO Courts have reported insufficient infrastructure and low availability of trained support personnel. He also stated that the report revealed that many FIRs evaluated in the research project showed that incorrect provisions of the POCSO Act were invoked which concerned less serious offences than the one which was complained of and that the compensation of financial assistance was not provided in a majority of cases.

"The revelations of this report suggest an urgent need for all branches of the state to ensure that the police and support personnel are properly trained that the adequate infrastructure is available and that compensation is disbursed in a timely fashion. To this end model guidelines for vulnerable witnesses' deposition centres were circulated to all the High Courts as directed by the Supreme Court in *Smruti Tukaram Badade vs State of Maharashtra and Anr.* Vulnerable witnesses' deposition centres are in the process of being setup across the country. The installation of these centres is in line with the UN guidelines in justice in matters involving child victims and witnesses of crimes 2005 which recognises that child sensitive procedures such as these centres form a part of the child's right to be protected from hardship during the justicing process."

"As judges we must also remember that children may not have the same vocabulary that adults do and may not be able to discuss the details of abuse in the same way that adults do but this does not mean that they do not know what the perpetrator has done to them. Children of different ages may discuss themselves differently but the essence of what they are communicating must be understood especially during the examination in chief and cross examination. Their contact with the criminal justice system must suit their needs as a vulnerable class of people".

Mere increase of courts won't help without the supporting infrastructure

He also pointed out that very often when there is a special legislation the number of courts, number of judicial officers are increased but that in itself is not going to be adequate unless particularly in an area as sensitive as this other infrastructural issues including psychological support and counselling and expert care within the pressings of the court room are attended to.

Chief Justice Chandrachud also addressed the role that technology can play in the further fortifying the implementation of the POCSO provisions. He stated that with video conferencing facilities from within the courtroom which are being implemented to put children at ease while testifying, use of mechanisms such as one-way mirrors, separate entrances for the child and her parents and child friendly waiting rooms etc it is his hope that every court in the country can someday call itself a child friendly court.

Re-victimization of POCSO victims

He also talked about the dangers of revictimization of the victims under POCSO Act and pointed out that revictimization can happen at the stage of investigation, at the stage of trial by the kind of practices that are followed during the course of examination or cross examination, at the stage of rehabilitation or it can happen due to the delay in the process involved. He stated that, "We must looking forward think about innovative means and move away from conventional methods of course consistent with the rule of law. The curriculum of schools, of police and the judicial academies have to be evolved and we must have a national model particularly for the state judicial academies. Child psychologies and techniques for communication must be focused upon when we train our own judges and public prosecutors."

Age of consent to be revisited

He also addressed the topic of "romantic cases" or cases where consenting adolescents engage in sexual activities which come before the POCSO Courts. Speaking on the issue he said that, "As you are no doubt aware the POCSO Act criminalises all sexual activities for those under the age

of 18 regardless of whether consent is factually present between the two minors in a particular case because the presumption of the law is that there is no consent in the legal sense below the age of 18. In my time as a judge, I have observed that this category of cases possesses difficult questions for judges across the spectrum. There is a growing concern surrounding this issue which must be considered by the legislature in view of reliable research by experts in adolescent health care"

Chief Justice Chandrachud believed that the collaborative partnership between different stakeholders would be fruitful in alleviating the problem which were perceived and assured that the Supreme Court will extend every form of support whether in terms of jurisprudence or in terms of administrative care for ensuring the success of the mission over the next year.