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*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

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*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## **Avinash Kumar**



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

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# **CHILD PARTICIPATION IN LEGAL PROCEEDINGS IN INDIA AND ROLE OF JUDICIARY**

AUTHORED BY - SHAILY AGRAWAL,  
Unitedworld School of Law, Karnavati University

The involvement of minors in legal proceedings in India is a complicated and diverse matter that necessitates a sophisticated comprehension of diverse legal frameworks, policies, and guidelines. The Indian legal system has come a long way in valuing children's protection and well-being, acknowledging their rights, and encouraging their involvement in court proceedings.<sup>1</sup>

The Indian Constitution, which is the ultimate law of the land, offers a solid framework for the defence of children's rights and their involvement in the legal system. The Constitution lays out a number of principles and provisions that serve as the cornerstone for guaranteeing children's rights and welfare, including their representation and involvement in legal proceedings, even though it does not specifically mention children's participation in court proceedings.

## ***1. Fundamental Rights***

- a) Article 14 - Right to Equality:
  - Providing children with equal protection under the law without discrimination
  - fostering equal opportunities and a culture free from discrimination in court
- b) Article 15(3) - Special Provisions for Children:
  - Giving the State the authority to create special provisions for kids
  - Permitting the creation of laws and regulations to safeguard kids' interests
- c) Article 21 - Right to Life and Personal Liberty:
  - Maintaining children's development and well-being throughout the legal system
  - Interpreting the right to life with dignity and protecting childhood;
- d) Article 21A - Right to Education:
  - Ensuring that children, including child witnesses and victims, have access to education

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<sup>1</sup> Kunal Ambasta, 'Constitutional Protection of Children's Rights in India' (2020) 4 IJLMH 1.

- Fostering knowledge and comprehension of legal rights and procedures
- e) Article 23 – Prohibition of Traffic in Human Beings and Forced Labour:
  - Enabling legal mechanisms to address cases of child labor and trafficking
  - safeguarding children from exploitation and trafficking;
- f) Article 24 – Prohibition of Employment of Children in Hazardous Occupations:
  - Preserving the rights of children and avoiding their exploitation
  - Offering legal redress for those who break laws against child labor

## ***2. Directive Principles of State Policy***

- a) Article 39(e) - Protection of Childhood and Youth:
  - Directing the State to safeguard children from maltreatment and guarantee their healthy growth
  - Endorsing child welfare policies and initiatives as well as legal protections
- b) Article 39(f) - Ensuring Opportunities and Facilities for Children:
  - Making facilities for kids' healthy development a priority
  - Making legal aid, support services, and kid-friendly processes accessible;
- c) Article 45 - Provision for Early Childhood Care and Education:
  - Educating and caring for young children in order to support their holistic development
  - facilitating knowledge and comprehension of legal rights and procedures
- d) Article 47 - Raising the Level of Nutrition and Standard of Living:
  - Improving children's diet and quality of life
  - Creating an environment that supports healthy growth and development in children

## ***3. Fundamental Duties:***

- a) Article 51A(k) - Duty to Renounce Practices Derogatory to Women and Children:
  - Encouraging children to be treated with respect and dignity in society
  - creating an atmosphere that makes it possible for children to participate in court proceedings;

#### ***4. Constitutional Safeguards and Provisions:***

- a) Article 15(3) - Enabling Positive Discrimination for Children:
  - Permitting the State to establish unique plans for the development of children
  - Encouraging child-friendly legal procedures and systems of assistance
  
- b) Article 39(f) - Ensuring Children's Opportunities and Facilities:
  - Encouraging the provision of facilities for kids' healthy development
  - Facilitating access to support services, legal representation, and kid- friendly practices
  
- c) Entry 44 in the Concurrent List - Legal Proceedings:
  - Allowing laws and policies to be enacted that promote children's involvement in legal proceedings
  - empowering the Union and State Governments to enact laws pertaining to legal proceedings

#### ***5. Institutional Mechanisms and Initiatives:***

- a) National Commission for Protection of Child Rights (NCPCR):
  - Keeping an eye on how laws and child rights are being applied
  - Supporting awareness campaigns and legal procedures that are kid- friendly
- b) State Commissions for Protection of Child Rights (SCPCRs):
  - Ensuring state-level implementation of child rights
  - addressing local issues and encouraging child involvement in legal proceedings
- c) Legal Services Authorities (LSAs):
  - Offering children free legal aid and representation
  - Organizing child-friendly courtroom procedures and support services

A number of domestic laws have been passed by the Indian legal system to support and protect children's rights, including the ability to participate in court proceedings. With the help of these laws, it will be possible to guarantee children's best interests and facilitate their effective involvement and representation in the legal system. This lengthy response will examine the main domestic laws that are pertinent to children's involvement in Indian

court proceedings.<sup>2</sup>

## ***6. Juvenile Justice (Care and Protection of Children) Act, 2015:***

- Consolidating and reforming India's juvenile justice system
- Ensuring that children receive the proper care, protection, and treatment
- Advocating for restorative justice and rehabilitation
- Forming Child Welfare Committees (CWCs)
- Forming Juvenile Justice Boards (JJBs)
- Ensuring that children have the right to be heard and to express opinions
- Appointing legal aid counsel and support personnel for children
- Encouraging child- friendly procedures and environments
- Stressing rehabilitation and reintegration of children
- Offering counselling, education, and vocational training
- Promoting a restorative justice approach.

## ***7. Protection of Children from Sexual Offences (POCSO) Act, 2012:***

The Indian government enacted the Protection of Children from Sexual Offences (POCSO) Act, 2012, which established a legal framework to protect children from sexual assault, harassment, and pornography, among other things, while also protecting their interests throughout the legal system. This was achieved by incorporating child- friendly mechanisms for reporting and recording evidence, investigating, and expeditiously trying cases through designated Special Courts. The National Commission for Protection of Child Rights (NCPCR) has been tasked with overseeing the POCSO Act, 2012's implementation.<sup>3</sup>

It is the right of a child, regardless of age, gender, or maturity level, to participate in proceedings before the POCSO Special Courts. According to POCSO Act, 2012, Section 32, the State must designate a Special Public Prosecutor for each Act-mandated special court in order to handle cases under the Act's provisions.

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<sup>2</sup> Kunal Ambasta, 'Constitutional Protection of Children's Rights in India' (2020) 4 IJLMH 1.

<sup>3</sup> Tindwani M, 'POCSO 2012: A Critical Analysis | LawFoyer' (LawFoyer | A daily doze for inquisitors) <<https://lawfoyer.in/pocso-2012-a-critical-analysis-of-indias-child-sexual-abuse-laws/>> accessed 24 January 2024

The POCSO recognizes the guardian or family of the child's right to retain legal counsel in Section 40. According to Section 40, the Legal Services Authority is required to assign a lawyer to the child's guardian or family if they are unable to pay for one. The designated legal representative will handle all proceedings on behalf of the child and handle any concerns pertaining to the child, such as matters of compensation and the child's particular needs. In addition to the legal proceedings, he will be concerned with other legal rights of the child, such as those pertaining to compensation and individual care plans.

### **8. *Indian Penal Code (IPC) and Criminal Procedure Code (CrPC):***

- Provisions for the appointment of interpreters and special educators for children
- Age- appropriate communication and comprehension of legal proceedings
- Provisions for recording statements and testimony of child witnesses
- Measures to ensure privacy, confidentiality, and protection of child witnesses
- Provisions for the recording of statements and testimony of child witnesses

### **9. *Indian Evidence Act:***

- Child- friendly questioning and examination techniques
- Provisions for support persons and trauma -minimization measures
- The competence of child witnesses to testify
- The processes for recording and admissibility of child testimony
- The requirements for verification and evaluation of child testimony
- The promotion of children's effective participation in legal proceedings

## **HOW DOES THE CHILD PARTICIPATE IN COURT PROCEEDINGS?**

In court proceedings conducted in camera under the POCSO Act, the child appears before the judge directly. In addition, Section 40 of the POCSO Act guarantees a child's right to represent themselves in court with the assistance of legal counsel, presumably to facilitate more effective and efficient participation. According to Section 33(2), the child may only be subjected to an examination-in-chief, cross-examination, or re- examination by the Special Public Prosecutor or the accused's attorney through the Special Court, which will pose the questions to the child. The child must thus testify in court, but the court also has to make sure the child is not called in to

testify more than once. In accordance with Section 37, the Special Court must issue a commission in accordance with Section 284 of the CrPC if it determines that the child needs to be examined somewhere other than the court. In order to foster a child-friendly environment during the examination process, the court should permit a family member, guardian, friend, or relative who the child feels comfortable and confident in to attend.<sup>4</sup> The child may testify via video link rather than in person, and they are free to ask for help from an interpreter, special educator, or other professional during their testimony.<sup>5</sup> The child is entitled to the services of support personnel, in addition to the attorney and Special Public Prosecutor, who are required to offer the child support and assistance during the pre-trial and trial phases.

If the Court determines that further action is required, it may also grant suo moto assistance in the form of an interpreter, special educator, or psychological counsellor. As per Section 39 of the Guidelines, the support person functions as a “guardian ad litem”<sup>6</sup> for the child and can serve as a valuable mediator between the child and the authorities.

A support person may be designated by the Child Welfare Committee (CWC)<sup>7</sup> or by the child and his or her family members, according to Rule 4(8) of the Protection of Children from Sexual Offences Rules, 2020 (POCSO Rules). One or more professionals working in the fields of child rights or child protection, officials in children's homes or shelters with custody of the child, or staff members of the District Child Protection Unit (DCPU) may be designated as such by the CWC. Notification of the appointment and termination of support persons must be reported to the police and the Special Court in accordance with POCSO Rules, 2020, Rules 4(8) and (10).

This suggests that the support person should be present each time the child is required to attend court proceedings and that they have a role to play before the Special Court. The support person has an obligation to inform the child, their guardians, or anyone else they feel comfortable and confident in about the case's developments. The child also communicates to the appropriate authorities through the Support Person their concerns regarding their safety and how they would like to testify. The Section 39 Guidelines stipulate that “the support person may be called upon

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<sup>4</sup> Protection of Children from Sexual Offences Act, 2012, s 33(4)

<sup>5</sup> Guidelines for the Use of Professionals and Experts under the POCSO Act, 2012

<sup>6</sup> Defined in the UN Office on Drugs and Crime, Justice in Matters involving Child Victims and Witnesses of Crime: Model Law and Related Commentary(2009)

<[https://www.unodc.org/documents/justice-and-prison-reform/Justice\\_in\\_matters...pdf](https://www.unodc.org/documents/justice-and-prison-reform/Justice_in_matters...pdf)> accessed on 21<sup>st</sup> February 2024

<sup>7</sup> Juvenil Justice (Care and Protection of Children) Act, 2015, s 27(1)

by the Special Court to ascertain information about the child, such as whether the child is in a safe and protective environment, preferences of the child in a given situation.”<sup>8</sup> Rule 4 of the POCSO Rules outlines the responsibilities of the support persons. There is always a risk of traumatization or re-victimization because the child must testify before the Special Court. For this reason, support personnel need to be trained in basic communication skills and assistance with children of various ages and backgrounds in order to reduce the possibility of secondary victimization. In accordance with Section 39 of the Guidelines, the support person is also required to possess knowledge of the legal and procedural aspects of handling a case under the POCSO Act, 2012.

It is not necessary for the child to physically appear in front of the judge in order to participate in proceedings, though, if he is not very compliant. In accordance with POCSO Act Section 37, the Special Court must issue a commission in accordance with Section 284 of the CrPC if it determines that the child needs to be examined somewhere other than the court. According to Section 284, a commission may be established in order to examine a witness if it is essential for the pursuit of justice but the witness's presence cannot be secured.

In *Virender v. State of the NCT of Delhi*<sup>9</sup>, the Delhi High Court released more detailed rules that special courts should abide by to facilitate the child's participation in court proceedings. One of these is the potential for a child's testimony to be captured via closed-circuit television or video conferencing in order to reduce trauma. The trial judge may also allow a social worker or any other amiable, impartial, or independent adult that the child feels comfortable with to accompany the child witnessing. These individuals could be a professional who is encouraging to the survivor child witness, someone the witness can grow to trust, and who is allowed to be present and available to the child at all times during his or her testimony.

But caution should be exercised to ensure that this person doesn't sway the child's testimony. Additionally, as was previously mentioned, the child's support person can inform the court of the way the child wishes to testify. A child may also be "unable or unwilling to express a view or in any way guide representation" in accordance with the Guidelines' Section 39, or "a child is: i) by virtue of his/her age, maturity, or disability, unable to express a view; or ii) able to express a view but his/her age, maturity, or disability are such that any view should be treated with caution."

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<sup>8</sup> Guidelines for the Use of Professionals and Experts under the POCSO Act, 2012

<sup>9</sup> *Virender v State NCT of Delhi*, 2009 SCC Online Del 3083

In these situations, the child's attorney should follow these guidelines when defending the client:

i) the older the child, the greater importance should be placed on the advice of the child. The more representation that is given to a child, the more it should be in their best interests and welfare. ii) The attorney has an obligation to ensure that the court is presented with all relevant information regarding the welfare and best interests of the child. iii) The lawyer must consider the idea that decisions affecting the child should be made and carried out in a timeframe that is appropriate to the child's sense of time when evaluating what best serves the child's welfare and best interests. iv) Unless there are special circumstances that prohibit it, the attorney appointed to represent the child must meet with the child. The lawyer should decide on the time and location of this meeting as well as any future ones. To ensure that the child's opinions are current for the hearing and can be considered by the court, the lawyer must meet with the child at a time that is convenient for them. v) Generally speaking, the attorney will follow the child's instructions, bringing them before the court through direct testimony if at all possible, calling witnesses as needed to carry them out, questioning and cross-examining them, and making submissions on the child's behalf. vi) The Act stipulates that the Special Court may grant the child compensation under Section 33(8). In accordance with Rule [9] (of the POCSO Rules), the attorney must make sure the child and his or her family are aware of this and submit the proper applications for interim and final compensation.

The POCSO Act's Model Guidelines under Section 39, entitled "Guidelines for the Use of Professionals and Experts under the POCSO Act, 2012" (Guidelines under Section 39)<sup>10</sup>, have been prepared in this regard by the Ministry of Women and Child Development. As per the aforementioned guidelines, the responsibilities of the Legal Aid Services lawyer or the private attorneys designated by the child and/or their family encompass "defending the child, assisting in determining the type and degree of maltreatment, pinpointing accountable individuals, and obtaining compensation to ease the victim's recovery."

The guidelines also state that even though the attorney is obligated by the court to represent the child's interests, the attorney may not force the child to voice an opinion if that is not what the child wishes to say. The attorney is not obliged to present to the Court any opinions that were

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<sup>10</sup> Ministry of Women and Child Development, Model Guidelines under Section 39 of The Protection of Children from Sexual Offences Act, 2012: Guidelines for the Use of Professionals and Experts under the POCSO Act, 2012 <<https://wcd.nic.in/sites/default/files/POCSO-ModelGuidelines.pdf>> accessed on 21<sup>st</sup> February 2024

communicated to him in confidence. The child must be represented on their own behalf, particularly if the accused offenders are their parents, relatives, or caretakers.

## ROLE OF JUDICIARY

### **Arjun Kishanrao Maglev vs. State of Maharashtra<sup>11</sup>**

The court stated that: “We are thus of the clear opinion that the POCSO Act read with Rules 4(13) and 4(15) of the POCSO Rules recognizes a statutory entitlement to the assistance of and representation by legal counsel for the family or the guardian of the child and entitlement to be present and to participate in proceedings in accordance with the said provision. As a necessary corollary, there is also an entitlement of such persons to be made aware of the filing of applications and the hearings scheduled on such applications at the various stages of the proceedings.” This case concerns the guidelines to ensure the effective participation of the child witness and his or her family, parent, or guardian in all proceedings (including bail).

The child's participation is guided by two fundamental rights: the right to information and the right to express opinions and concerns as well as to be heard. These principles are outlined in the guidelines as follows:

“The right to information: There are two parts to the right to information for witnesses and child victims. The first, and more general, aspect involves educating child witnesses and victims about their rights to support, the structure of the legal system, and their potential involvement in the proceedings, should they choose to do so. The second aspect pertains to specific details about the specific case that the child is involved in. This includes being informed about the case's progress, the proceedings' schedule, the expectations placed on the child, the decisions made, the offender's status, and other relevant information.

The right to voice opinions and concerns and to be heard: Every child has the right to have their voices heard when it comes to issues that directly affect them. A child has the right to participate in all aspects of the process, including being informed, expressing an opinion, having that opinion taken into consideration, and making decisions alone or in concert with others. When a child's needs and expectations are not met for any legitimate reason, the child must be given a child-friendly explanation of the reasons behind decisions made, the inclusion or exclusion of particular facts or elements from court proceedings, and the disregard for particular points of

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<sup>11</sup> Arjun Kishanrao Malge vs The State Of Maharashtra And Ors, AIR ONLINE 2021 BOM 624

view.

Respect should be shown for details that a child feels are significant to their story, even if they are not necessary as proof.”

### **Rohit v. State Of U.P<sup>12</sup>**

The court handling this case explains to the child's family or guardian the significance of keeping them informed and offering them legal support when needed for all proceedings, including the accused's bail requests. The court decided that the complainant must be implicated, and if the complainant is not the child's guardian or family member, the child's guardian or family member must be included as an opposing party in the bail applications submitted to this court with the complainant. After reading the POCSO Act and Rules of 2020, one can see that everyone connected to the case, even the courts, has an obligation to create an environment and conditions that make the victim child and his family feel safe and comfortable. Giving the victim child and his family full access to the court proceedings and the chance to participate in them would be a positive step toward helping them feel safe and secure and maintaining their faith in the social justice system.

### **Nipun Saxena v Union of India<sup>13</sup>**

In this instance, the court addresses a child's right to file without revealing their identity. In order to prevent further humiliation for the victim of the crime, the court is required to refrain from revealing the prosecutrix's name in court orders and judgments. The victim's anonymity and other details, such as her place of residence, parents' names, and her school, must be preserved.

And according to the proviso of Section 372 of the CrPC, a child has the right to file an appeal against a decision that clears the offender, finds them guilty of a lesser crime, or orders them to pay insufficient compensation. Additionally, the Delhi High has stipulated that the minor does not have to reveal their identity in order to file an appeal.

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<sup>12</sup> Rohit Singh V. State of U.P. 2024:AHC-LKO:1768

<sup>13</sup> Nipun Saxena v Union of India, 2018 SCC OnLine SC 2439