

"In the Bidar school sedition case, spotlight has fallen on reports that police questioned children . What are the international conventions for questioning children? What do Indian laws say on this, and on child witnesses?"

In the two weeks since police slapped sedition charges on a school in Bidar, Karnataka, where a play critical of the Citizenship Amendment Act (CAA) had been staged, much of the spotlight has been on reports that the police questioned the children.

The Karnataka State Commission for Protection of Child Rights has pulled up the district police for violations, including repeated questioning of the children. Additionally, a public interest petition has been filed in the Karnataka High Court seeking a departmental inquiry against the policemen who allegedly questioned the children of Shaheen School, aged between 9 and 12, without the consent of their parents or guardians, and also video-recorded them without consent. The PIL referred to a statement by the Shaheen Alumni Association to say that the children were questioned by policemen carrying guns, which created an "intimidating and fearful environment".

The PIL has asked for guidelines to be issued to police regarding interrogation of minors in criminal proceedings in accordance with the Juvenile Justice Act and United Nations resolutions. How do the law in India and resolutions of the UN address the issue of questioning children? What are the safeguards for children being made witnesses?

What are the international conventions on children in these situations?

India has been a signatory to the Convention on the Rights of the Child since 1992, which was adopted by the General Assembly of the United Nations in 1989. "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," the Convention states.

In 2009, the 'United Nations: Justice in Matters involving Child Victims and Witnesses in Crime: Model Law' provided a more specific set of guidelines in the context of child witnesses. These guidelines recommend that authorities treat children in a caring and sensitive manner, with interview techniques that "minimise distress or trauma to children".

They recommend specifically that 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.

Child rights activists say that children repeatedly questioned by authorities while in police uniform, without the presence of their parents, can lead to such trauma.

How do Indian laws address the issue of child witnesses?

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 deposed before trial courts in cases of sexual abuse. 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. A child is usually asked questions like their name, the school they study in, and the names of their parents to determine their competency. If the child is very young and does not understand the significance of taking an oath to speak the truth — which is administered to each witness before testimony — the judge or the staff explain to the child that he or she should speak the truth, thinking of whichever God they believe in.

Trials involving children as witnesses have primarily been in cases of child sexual abuse. Other criminal cases where children are examined as witnesses have included those where a parent is the victim of violence at home, in the sole presence of the child.

Have courts dealt with how child witnesses are to be treated?

The Delhi High Court has come up with guidelines for recording of evidence of vulnerable witnesses in criminal matters. A vulnerable witness is defined as anyone who has not completed 18 years of age.

Focusing primarily on child witnesses giving testimonies that are recorded in court, the Delhi High Court guidelines underline the importance of the criminal justice system needing to respond proactively, sensitively, and in an age-appropriate manner when dealing with children. “The lengthy process of navigating the formal and adversarial criminal justice system can affect the vulnerable witnesses’ psychological development,” the guidelines say. They allow for a facilitator for a vulnerable witness to be appointed by a court for effective communication between various stakeholders including the police.

In 2016, the Delhi High Court said that while children can be pliable, their testimony can be considered after careful scrutiny.

What are the laws pertaining to the questioning of children?

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 of children as witnesses. The Act’s very preamble, however, says that a “child-friendly approach in the adjudication and disposal of matters in the best interest of children” must be adhered to. This means adhering to general guidelines pertaining to the juvenile justice system — for instance, for the police to not be in their uniform while dealing with children. It also requires that interviews of children be done by specialised units of police who are trained to sensitively deal with them.

The Act prescribes that a Special Juvenile Police Unit is to be constituted by the state government in each district and city, headed by a police officer not below the rank of Deputy Superintendent of Police, and including two social workers, at least one of whom must be a woman, and both of whom should be experienced in the field of child welfare. Their work includes coordinating with the police towards sensitive treatment of children. The Act also 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: Apart from the Juvenile Justice Act, The Protection of Children from Sexual Offences (POCSO) Act, 2012 has specific guidelines regarding interviewing children as witnesses. While it pertains to child sexual abuse victims, child rights activists say the guidelines are a framework for all children who are being interviewed by the police

as witnesses. The Act states that 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.

In 2018, the Bombay High Court had pulled up the police for repeatedly summoning a three-year-old to the police station for recording his statement in a case of alleged sexual abuse of his classmate; a school trustee was an accused in the case.

Expected Questions (Prelims Exams)

Q. Consider the following statements:

1. India has been a signatory to the guidelines of the United Nations Convention on the Rights of the Child in 1989 since 1992.
2. The Indian Evidence Act, 1872 has determined the minimum age for witnesses.
3. Under the Protection of Children from Sexual Offences (POSCO) Act, 2012, children can also be interviewed as witnesses at their home.

Which of the above statements is / are correct?

- (a) 1 and 2 (b) Only 2
(c) 2 and 3 (d) Only 3

Note: Answer of Prelims Expected Question given on 15 Feb., is 1 (b)

Expected Questions (Mains Exams)

"witnesses is an important tool in the confirmation of a crime, but the testimony given by the children is attached by many rules and regulations." Critically analyze the provisions for child witnesses in India as well as internationally. (250 words)

Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC main examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.