

## **GUIDELINES FOR EXAMINATION OF A CHILD WITNESS / VICTIM OF A OFFENCE**

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***Virender vs The State Of Nct Of Delhi / IN THE HIGH COURT OF DELHI - Crl.A.No. 121/2008 Date of decision: 29th September, 2009***

It is necessary to consider an important issue relating to the examination of a child witness as well as a one, who is the victim in the offence. There are examinations of a victim by the investigating agency; or in court (A doctor performs a medical examination). Several areas are covered by existing legislation and others by directions and guidelines in binding pronouncements of the Apex Court and this court. Jurisdiction and power conferred by the legislature is not exercised and directions in precedents not followed, having disastrous consequences upon the criminal justice dispensation system. Having regard to the importance of these issues, learned counsels appearing in the case have facilitated examination of the statutory provisions and the judicial precedents noticed hereafter.

The court rooms in the court building are normally crowded places. The occupants include hardened criminals as well. The court room environment is unfamiliar and would definitely be unfriendly to a child who is required to testify as a witness. The trauma if the child witness is a victim as well is only further aggravated. An already apprehensive child in an unfriendly atmosphere is in difficulty even in recounting his or her experience. Such nervous testimony is then exposed to be torn to shreds by a skillful defence lawyer.

The treatment of victims of sexual assault or child witnesses in such cases in court during their testimony has come up for repeated criticism. The defence strategy of repetitive questioning of the prosecutrix as to the details of the occurrence under the pretence of testing her statement for inconsistency in an attempt to secure varying interpretations of the occurrence given by her so as to make them appear inconsistent with her allegations has come up for criticism repeatedly. Faced with the frequency of crimes against women, the Parliament enacted the Criminal Law (Amendment Act) 1983 which was a statutory recognition of the need to make the law of rape more realistic. Sections 375 and 376 were amended and more penal provisions were incorporated for benefiting such custodians who molest a woman in custody and care. Section 114(a) was also added in the Evidence Act for drawing a presumption in certain prosecutions for rape involving such custodians.

Chapter 9 of the Indian Evidence Act, 1872 deals with 'witnesses'. As per Section 118, all persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. An explanation has been incorporated by the legislature to clarify that a lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers. Thus so far as the competency to appear as a witness, the legislature has underlined the basic requirement of a person's understanding of the obligation to speak the truth and to give an accurate impression and possession of the mental capacity at the time of the occurrence concerning which he has to testify and to receive an accurate impression of it. This would be more so in case the witness is a child of tender years. An assessment by the court of the competency of a child who is to appear as the

witness on these issues is essential. It is also necessary to ascertain as to whether the witness had a memory sufficient to retain an independent recollection of the occurrence; capacity to understanding simple questions about it and the capacity to express his/her memory of the occurrence. (Ref : State vs. Allen, 70 Wn,2d 690, 424 P.2d 1021 (1967))

So far as the competency of a child to testify as a witness is concerned, the courts in India have relied on the proposition formulated by Justice Brewer in Wheeler vs. United States 159 US 523 (1895) who had opined that the evidence of a child witness is not required to be rejected per se, but the Court as a rule of prudence considers such evidence with close scrutiny and only on being convicted about the quality thereof and reliability can record conviction, based thereon.....

The reservation expressed with regard to evaluating the 27 testimony of a witness is based on apprehensions that children may be vulnerable and susceptible to be swayed by what others tell and the child witness is an easy pray to tutoring and therefore their evidence must be evaluated carefully and with greater circumspection. (Ref : Panchhi vs. State of U.P. MANU/SC/0530/1998 : 1998 CriLJ 4044.)

It is equally well settled that if satisfied that the testimony of the child witness is a voluntary expression of what transpired and is an accurate impression of the same, no corroboration of the testimony is required. The Supreme Court has repeatedly ruled that there is no rule of practice that the evidence of a child witness needs corroboration and stated that conviction can be based on it. It is only as a rule of caution and prudence that the court may require that it would be desirable to have corroboration from other dependable evidence. (Ref : Dattu Ramrao Sakhare & Ors. vs. State of Maharashtra MANU/SC/1185/1997 : (1997) 5 SCC 341; Suryanarayana vs. State of Karnataka MANU/SC/0001/2001 : 2001 CriLJ 705)

The manner in which evidence is required to be assessed by the courts has been laid down in a catena of decisions from MANU/SC/0037/1952 : AIR 1952 SC 353 Hanumant vs. The State of Madhya Pradesh.

[In Rameshwar vs. State of Rajasthan AIR](#) 1952 SC 54 the Apex Court was concerned with the conviction of the accused for the rape of a 18 year old girl. The Additional Sessions Judge concerned with the appeal has certified that she did not understanding the sanctity of the oath. The evidence of the witness in court was recorded without administering any oath to her. On appeal, the sessions court held that the evidence was sufficient enough to form the basis of a moral conviction but was legally insufficient. This was overruled by the High Court which granted leave to appeal to the Apex Court. The Apex Court observed that the omission to administer an oath goes to the credibility of the witness and not his competency. Section 118 of the Indian Evidence Act makes it clear that there is always competency in effect unless the court considers otherwise and since there was nothing to suggest incompetence, therefore section 118 would prevail.

It was observed that despite the certification that the witness did not understanding the nature of the oath, the court continued to take her evidence which manifested satisfaction of the witness understanding the duty to speak the truth. The accused had also never raised any objection to the same. In this case, the Apex Court had observed that it is desirable that the judge or magistrate should always record their opinion as to whether the child understands his duty to speak the truth and also to state that why they think that otherwise the credibility of

the witness would be seriously effected, so much so that in some cases it may be necessary to reject the evidence altogether.

So far as power of a judge to put questions to a witness is concerned, the same is statutorily founded in section 165 of the Indian Evidence Act, 1872 which enables the judge to do so 'in order to discover or to obtain proper or relevant facts'. The statutory provision reads thus:-

*"165. Judge's power to put questions or order production - The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question: Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:*

*Provided also that this section shall not authorise any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer, or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted."*

The Delhi High Court Rules in Part E prescribe the "Practice in the Trial of Criminal Cases" and lay down therein the manner in which the record of evidence in criminal cases shall be made. Rule 1 mandates that only relevant evidence should be recorded. Rule 2 sets out the duty of the court in the following terms :-

*"2. Duty of Court to elucidate facts -Magistrates should endeavour to elucidate the facts and record the evidence in a clear and intelligible manner. As pointed out in 23 P.R. 1917 a Judge in a criminal trial is not merely a disinterested auditor of the contest between the prosecution and the defence, but it is his duty to elucidate points left in obscurity by either side, intentionally or unintentionally, to come to a clear understanding of the actual events that occurred and to remove obscurities as far as possible. The wide powers given to the Court by Section 165 of the Indian Evidence Act and Section 540 of the Code of Criminal Procedure should be judiciously utilised for this purpose when necessary."* (Emphasis supplied)These rules bind the conduct of trials by the courts in Delhi.

Certain provisions of the Code of Criminal Procedure which deal with the recording of evidence in inquiries and trials require to be considered. Section 273 to 277 in this behalf are noteworthy. Section 280 of the Code enables a court to record remarks regarding the demeanour of the witness.

From the above, it is evident that there is statutory recognition of the necessity for a judge to ask certain questions to discover or obtain proper proof of the relevant facts. This assumes significance in the context of examination of a child witness where the court is first required to satisfy itself about the competency of the child to testify and thereafter to ensure that the complete testimony is brought out on record.

The Supreme Court has criticised the silence of the trial judges who have permitted trials to develop into a contest between the prosecution and the defence resulting in contradictions entered into the trial. In this behalf, the observations of Chinnappa Reddy, J in the case reported at 1981 CriLJ 609 : MANU/SC/0206/1981 Ram Chander vs. State of Haryana reads thus :-

*"The adversary system of trial being what is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive elements entering the trial procedure. If a Criminal Court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth."(Emphasis supplied)*

64. The Apex Court has emphasised the wide powers of the trial court under section 165 of the Evidence Act in the case reported at AIR 1997 SC 1023 : (1997) 6 SCC 162 State of Rajasthan vs. Anil alias Hanif & Ors. which observations read thus :-

*"11. We are unable to appreciate the above criticism. Section 165 of the Evidence Act confers vast and unrestricted powers on the trial Court to put "any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant " in order to discover relevant facts. The said section was framed by lavishly studding it with the word "any" which could only have been inspired by the legislative intent to confer unbridled power on the trial Court to use the power whenever he deems it necessary to elicit truth. Even if any such question crosses into irrelevancy the same would not transgress beyond the contours of powers of the Court. This is clear from the words "relevant or irrelevant" in Section 165. Neither of the parties has any right to raise objection to any such question. 12. Reticence may be good in many circumstances, but a judge remaining mute during trial is not an ideal situation. A taciturn Judge may be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. Criminal trial should not turn out to be about or combat between two rival sides with the judge performing the role only of a spectator or even an umpire to pronounce finally who won the race. A judge is expected to actively participate in the trial, elicit necessary materials from witnesses at the appropriate context which he feels necessary for reaching the correct conclusion. There is nothing which inhibits his power to put questions to the witnesses, either during chief examination or cross-examination or even during re-examination to elicit truth. The corollary of it is that if a judge felt that a witness has committed an error or a slip it is the duty of the judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross-examination. Criminal justice is not to be founded on erroneous answers spelled out by witnesses during evidence collecting process. It is a useful exercise for trial judge to remain active and alert so that errors can be minimised." (Underlining supplied)* It is noteworthy that in this case the court had put questions to PW 3 with regard to certain contradictions in his cross examination. This was objected to by learned counsel for the respondent/accused.

The role of the court is best described in the words of the Supreme Court in the pronouncement reported at AIR 2004 SC 346 : (2004) 4 SCC 158 Zahira Habibulla H. Sheikh & Anr. vs. State of Gujarat & Ors. and there can be no better exposition of the principles than in the words of the Apex Court when it stated as follows :-

"43. The Courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that ultimate objective i.e. truth is arrived at. This becomes more necessary the Court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The Court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and Courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.

44. The power of the Court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e. (i) giving a discretion to the Court to examine the witness at any stage and (ii) the mandatory portion which compels the Courts to examine a witness if his evidence appears to be essential to the just decision of the Court. Though the discretion given to the Court is very wide, the very width requires a corresponding caution. In *Mohan Lal v. Union of India* (1991 Supp (1) SCC 271) this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the word such as, "any Court" "at any stage", or "any enquiry or trial or other proceedings" "any person" and "any such person" clearly spells out that the Section has expressed in the widest possible terms and do not limit the discretion of the Court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow any discretion but obligates and binds the Court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case - 'essential', to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the Section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the Court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.

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46. Ultimately, as noted above, ad nauseam the duty of the Court is to arrive at the truth and subserve the ends of justice. Section 311 of the Code does not confer any party any right to examine, cross-examine and re-examine any witness. This is a power given to the Court not to be merely exercised at the bidding of any one party/person but the powers conferred and discretion vested are to prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice. Recourse may be had by Courts to power under this section only for the purpose of discovering relevant facts or obtaining proper proof of such facts as are necessary to arrive at a justice decision in the case." (Emphasis supplied) In view of the above, the courts are bound to act in exercise of powers under section 165 of the Evidence Act and undertake a participatory role in a trial. They are expected to

*act fairly especially in a trial involving possibility of a witness being bashful or embarrassed with regard to the occurrence about which she or he is required to depose, and it is the duty of the court to ensure that the complete truth is brought out is even more stringent.*

66. In *Zahira Habibulla H. Sheikh & Anr. vs. State of Gujarat & Ors.* the purpose of a trial has been stated by the court in paras 38, 39 and 40 thus :-

*"38. A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at judgment on an issue as a fact or relevant facts which may lead to the discovery of the fact issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial and not by an isolated scrutiny.*

*39. Failure to accord fair hearing either to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the concept of due process of law, that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty stage-managed, tailored and partisan trial.*

*40. The fair trial for a criminal offence consists not only in technical observance of the frame and 6 forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice."*

So far as witnesses are concerned, in para 41 of the judgment, the Apex Court has quoted Bentham who described witnesses as the eyes and ears of justice. The Apex Court observed the importance and primacy of the quality of the trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their bench men and hirelings, political clouts and patronage and innumerable other corrupt practices ingenuously adopted to smother and trifle truth and realities coming out to surface rendering truth and justice, to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression, and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the Court and justice triumphs and that the trial is not

reduced to mockery. The State has definite role to play in protecting the witnesses to start with at least in sensitive cases involving those in power, who has political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in court the witness could safely depose truth without any fear of being haunted by those against whom he has deposed. Some legislative enactments like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short the "TADA Act") have taken note of the reluctance shown by witnesses to depose against dangerous criminals-terrorists. In a milder form also the reluctance and the hesitation of witnesses depose against people with muscle power, money power or political power has become the order of the day. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense<sup>38</sup> of making the proceedings before Courts mere mock trials as are usually seen in movies.

Despite the several pronouncements of the Apex Court as well as the High Courts, it is to be noted that the trial courts have failed to comply with the same. The present case throws an imperative issue with regard to the duty of the court so far as recording of the statement of the child witness is concerned. The statement under section 164 of the CrPC was recorded by a magistrate during the course of investigation. It would appear that individual sensibilities clouded the proceedings resulting in a camouflage of the evidence so much so that complete truth has not been brought out. This in fact defeats the statutory mandate and would be a failure to comply with the binding directions noticed herein. This aspect has a direct and immediate impact on society. For decades, the Apex Court has expressed concerns on the rate at which sexual crime is increasing especially in the context of children.

It was on a consideration of the sensitivities of the child that courts acted on a complaint received by it and laid down guidelines with regard to the investigation, medical examination and recording of a statement by the magistrate as well as appearance before the trial court which have been reported at (2007) 4 JCC 2680 Court on Its own Motion vs. State & Anr.

A very sensitive pronouncement on some of the issues noticed herein is found in the judgment reported at 62 (1996) 39 DLT 563 : 1998 CriLJ 2428 Sudesh Jhaku vs. K.C.J. & Ors. when the court observed that it was high time when a fresh look was taken and principles evolved which, while protecting the child, do no harm to the defence. This statement by itself emphasises the careful balance which is to be drawn by the court and the solemn duty cast on it to ensure that while emphasising the value of the child's feelings, it is necessary to ensure that the rights of the defence are not obscured. In this case, the main argument was made to expand the definition of rape to mean sexual penetration of any bodily orifice. Certain observations by the court in para 38 on the care which is required to be taken by the judge recording testimony of a child are relevant for the purposes of the issue being considered and read thus :-

*"38. I hope that while the child is in the witness box every effort will be made by the learned trial Judge to lessen her ordeal and that he will take care that nothing is said or done which causes unnecessary distress to her. The Prosecutor in his zeal might undervalue the child's feelings. There is need to keep a check on it. The defense counsel undoubtedly have a primary duty to their clients but they owe a duty towards the court and the judicial system also. They are expected to avoid needless abuse and harassment of the witness. If the court notices any departure from this course of conduct, it should rise to the occasion promptly and effectively. Chief sexual abuse being one of the most serious and damaging criminal offences, the trial*

*Judge shall handle the proceedings with considerable sensitivity and ensure that the trial is fairly conducted. He should take care that questions asked are not complex or confusing. Questions containing a negative or double negative should be better avoided. The feasibility of giving breaks during questioning may also be kept in mind though such breaks need not be long. If the prosecution establishes to the satisfaction of the court that to obtain a full and candid account from the child witness the use of a screen would be necessary, the court may be inclined favourably to provide such a screen. I may notice that the reason for such a step may not necessarily be a fear of the accused. It may be of the court room itself. However, here is a word of caution. Since demeanour of a witness is always of some importance, the screen, if provided, should not come in the way of trial Judge to notice it. One thing more before I draw the curtain. It relates to child support persons in the court room. On that Mr. Jaitely had drawn my attention to the Report of the Special Advisor to the Minister of National Health and Welfare on Child Sexual Abuse in Canada Reaching for Solutions, 1991. In fact that the guidelines delineated above have drawn inspiration from the said Report and as regards the child support this is what it states :*

*"There are situations in which it is desirable to have a social worker or other friendly but "neutral" adult visible to the child, or even sitting beside a young child who is testifying. While some judges have permitted this, others have not. There have been cases where the Judge has ordered supportive persons to leave the court room, along with other members of "the public."*

*I am leaving the matter to the good sense of the learned trial Judge. However, one thing is certain. The proceedings have to be in camera." (Underlining supplied)*

The judgment of this court was assailed before the Apex Court and was heard alongwith a writ petition filed by Sakshi, an NGO. The pronouncement of the Apex Court is reported at AIR 2004 SC 3566 : (2004) 5 SCC 518 Sakshi vs. UOI & Ors. On the issue being considered, the court has noticed a judgment of the Canadian Supreme Court in Her Majesty, The Queen, Appellant vs. D.O.L., Respondent and the Attorney General of Canada, etc. (1993) 4 SCR 419 wherein the Supreme Court took note of some glaring features in cases of sexual abuse which included the innate power imbalance which exists between the abuser and the abused child; a failure to recognise that the occurrence of child sexual abuse is one intertwined with the sexual abuse of all women, regardless of age; and that the court cannot disregard the propensity of victims of sexual abuse to fail to report the abuse in order to conceal their plight from institutions without the criminal justice system which holds stereotypical and biased views about the victimisation of women. It was observed that "system induced trauma: often ultimately serves to re-victimise the young complainant". These observations were made in the context of Section 715.1 of the Criminal Code of Canada which permitted video taping made within a reasonable time after the alleged offence in which the complainant describes the act complained of, to be admissible in evidence, if the complainant, while testifying, adopts the contents of the video tape. The Canadian Supreme Court observed that this provision acts to remove the pressure placed on the child victim of assault when the attainment of truth depends entirely on her ability to control her fear, her shame and the horror of being face to face with the accused when she must describe her abuse in a compelling and coherent manner. It was also observed that rules of evidence have not been constitutionalised into unaltered principles of fundamental justice. Neither they should be interpreted in a restrictive manner which may essentially defeat their purpose of seeking truth and justice. Rules of evidence, as much as the law itself, are not cast in stone and will evolve with time.



[In Sakshi vs. UOI](#) (supra) the Supreme Court though did not accept the prayer for expanding the definition of rape, however made many valuable observations especially with regard to the proceedings in the trial court in which a child victim has to testify. These observations deserve to be considered in extenso and reads thus :-

*"31. The whole inquiry before a Court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment. Section 273 Cr.P.C. merely requires the evidence to be taken in the presence of the accused. The Section, however, does not say that the evidence should be recorded in such a manner that the accused should have full view of the victim or the witnesses. Recording of evidence by way of video conferencing vis-a-vis Section 273 Cr.P.C. has been held to be permissible in a recent decision of this Court in [State of Maharashtra v. Dr. Praful B Desai MANU/SC/0268/2003](#) : 2003CriLJ2033 . There is major difference between substantive provisions defining crimes and providing punishment for the same and procedural enactment laying down the procedure of trial of such offences. Rules of procedure are hand-maiden of justice and are meant to advance and not to obstruct the cause of justice. It is, therefore, permissible for the Court to expand or enlarge the meanings of such provisions in order to elicit the truth and do justice with the parties.*

*32. The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation he or she may not be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused. Often the questions put in cross-examination are purposely designed to embarrass or confuse the victims of rape and child abuse. The object is that out of the feeling of shame or embarrassment, the victim may not speak out or give details of certain acts committed by the accused. It will, therefore, be better if the questions to be put by the accused in cross-examination are given in writing to the Presiding Officer of the Court, who may put the same to the victim or witnesses in a language which is not embarrassing. There can hardly be any objection to the other suggestion given by the petitioner that whenever a child or victim of rape is required to give testimony, sufficient breaks should be given as and when required. The provisions of Sub-section (2) of Section 327 Cr.P.C. should also apply in inquiry or trial of offences under Section 354 and 377 IPC." (Emphasis supplied)*

[In Sakshi vs. UOI](#) (supra), the Apex Court had observed that these legislature had failed to take note of the offences and had omitted to mention section 354 and 377 of the Indian Penal Code which are also embarrassing to recount in section 327 (2) and (3) of the Criminal Procedure Code.

In AIR 1996 SC 1383 : (1996) 2 SCC 384 State of Punjab vs. Gurmit Singh & Ors., the Apex Court had observed that these two provisions are in the nature of exception to the general rule of an open trial. It was observed that the provisions are mandatory and cast a duty on the court to conduct the trial of rape cases etc invariably 'in camera'. The courts are obliged to act in furtherance of the functions expressed by the legislature and not to ignore its mandate and must invariably take recourse 44 of these provisions and hold trial of rape cases in camera. The Apex Court observed that this would enable the victim of crime to be a little comfortable and answer the questions with reater ease in not too familiar a surroundings. Trial in camera would not only be in keeping with the self respect of the victim of crime and in tune with the legislative intent but is also likely to improve the quality of the evidence of a

prosecutrix because she would not be so hesitant or bashful to depose frankly as she may be in an open court, under gaze of public. The improved quality of her evidence would assist the courts in arriving at the truth and sifting truth from falsehood.

In the case of *State of Punjab vs. Gurmit Singh & Ors.*(supra), the Apex Court had stated that wherever possible it may also be worth considering whether it would not be more desirable that the cases of sexual assaults on the females are tried by lady Judges, wherever available, so that the prosecutrix can make her statement with greater ease and assist the Courts to properly discharge their duties, without allowing the truth to be sacrificed at the altar of rigid technicalities while appreciating evidence in such cases. Some activists have suggested that in addition, as far as possible, the staff in a court room who is concerned with such cases, should as far as possible be of the same gender. This is not to denigrate or make any observation on the sensitivity of male judges and staff but only a consideration<sup>45</sup> towards the embarrassment and the natural reticence which is faced by a victim of sexual assault to recall such a traumatic occurrence fuelled by the feeling of guilt and humiliation which is felt by the victim by what has happened to her in the presence of strangers and gender of the judge may put the victim at ease.

The present case illustrates the extent of divergence in the perceptions and approach of two learned judges, one being the magistrate who recorded the section 164 statement and the other being the judge who recorded the testimony of the child witness in court. While the magistrate has put a couple of questions in an attempt to ascertain the understanding level of the prosecutrix, the testimony in court does not say so. It is well settled that the trial court is required to be satisfied and ought to record its satisfaction that the child witness understands the obligation to speak the truth in the witness box. She clearly stated in her statement under section 164 of the CrPC that she did not understand the oath. This is not to be found in her court deposition.

In addition to the above, the court is required to be satisfied about the mental capacity of the child at the time of the occurrence concerning which he or she is to testify as well as an ability to receive an accurate impression thereof. The court must be satisfied that the child witness has sufficient memory to retain an independent recollection of the occurrence and a capacity to express in words or otherwise his or her memory of the same. The court has to be satisfied that the child witness has the capacity to understand simple questions which are put to it about the occurrence. There can be no manner of doubt that record of the evidence of the child witness must contain such satisfaction of the court. There is no such material on the record. The order sheet does not indicate that the proceedings were in camera. The name of the prosecutrix is clearly mentioned on the record even, in the charge framed and the evidence recorded.

Children who are victims of sexual assaults and rape carry a huge burden of unwarranted guilt and violations for which they are not responsible. The humiliation, shame and embarrassment which cloud their emotions because of the worst kind of violation they have suffered which get aggravated when required to recount the same to strangers in formal surroundings. The trauma of a child victim is only multiplied as he or she is required to repeatedly recapitulate her ordeal to the investigating agencies, prosecutors and then in court.

In the instant case, the evidence recorded by the learned Metropolitan Magistrate under section 164 of the CrPC and by the court appears to suggest embarrassment of the court to put questions of any kind to the prosecutrix and witness so as to elucidate the complete truth

from her resulting in, not contradictory but incoherent testimony of the child victim who has concealed the essential ingredients of the offence. Use of appropriate language would enable the necessary decency to be maintained in the proceedings and the record. A judge is required to be mindful that the edifice on which the entire structure of the evidence of the prosecution stands is the trustworthiness of the testimony of the witness. Therefore, the manner and the language in which the evidence is recorded is of extreme importance.

India is a country where several languages are spoken. The Constitution recognises several of these while the number of dialects which are prevalent and in use in different parts of the country run into hundreds. Delhi is home to people from every corner of the country and the world. In this background, a communication with the child witness has added dimensions so far as this city is concerned. The court has to ascertain not only the comprehension of the child witness but also the extent of the child's vocabulary before proceeding to record a deposition. This assumes even more importance inasmuch as the same word may have different connotations and meanings in different languages and regions. The child is also being called upon to make a deposition with regard to events which may be way beyond her/his knowledge and comprehension.

The above discussion in no uncertain terms reiterates a hard reality that the requisite care and caution which investigation, examination and trial into sexual offences involving child victim and child witnesses may not receive the necessary attention from the trial courts and the other concerned agencies.

Certain guidelines were laid down by R.C. Chopra, J in a judgment reported at 115 (2004) DLT 174 : MANU/DE/1088/2004 Sh. Mahender Singh Chhabra vs. State of N.C.T. Of Delhi & Ors. with regard to investigation and trial of cases involving commission of offences of murder under section 302; culpable homicide not amounting to murder under section 304; death of a woman under suspicious circumstances within seven years of marriage under section 304B; rape under section 376 and decoity with murder punishable under section 396 IPC were laid down. The court observed that radical improvements are required with a view to nail the real culprits and save victimisation of innocents so that the faith of general public in the criminal investigation system is not eroded. In para 9 of the judgment, the learned Judge observed that criminal investigation and trial is a journey to discover the truth. The conviction of an innocent or acquittal of a guilty is an inexcusable shame to the system. These salutary guidelines deserve to be implemented and followed to the letter. 83. It therefore needs no further elaboration that the care which is required, whether the child is victim of the offence or is one who has witnessed the occurrence would remain the same.

It is also evident that on different aspects of investigation, medical examination and trial relating to commission of offences including sexual offences wherein either the victim is a child or a child is required to appear as a witness in support of the prosecution, directions have been made and guidelines have been laid down in different judgments which have not received the attention they deserve. It would be in the interests of justice to therefore compile the same to facilitate their implementation. Upon hearing learned counsel for the parties in the present case and on a consideration of the several judgments placed by Mr. Manoj Ohri, learned APP for the state, certain additional requirements have been also noticed and set out in the preceding paragraphs. For the sake of convenience, the directions and guidelines laid down by the Apex Court and this court so far as case involving a child victim or child witness which are required to be mandatorily and urgently implemented are culled out as follows:-

## I. POLICE

(i). On a complaint of a cognisable offence involving a child victim being made, concerned police officer shall record the complaint promptly and accurately.(Ref: Court On Its Own Motion vs. State & Anr.)

(ii). Upon receipt of a complaint or registration of FIR for any of the aforesaid offences, immediate steps shall be taken to associate a scientist from Forensic Science Laboratory or some other Laboratory or department in the investigations. The Investigating Officer shall conduct investigations on the points suggested by him also under his guidance and advice.(Ref : Mahender Singh Chhabra vs. State of N.C.T. Of Delhi & Ors.)

(iii). The investigation of the case shall be referred to an officer not below the rank of Sub-Inspector, preferably a lady officer, sensitized by imparting appropriate training to deal with child victims of sexual crime.(Ref: Court On Its Own Motion vs. State & Anr.)

(iv). The statement of the victim shall be recorded verbatim.(Ref: Court On Its Own Motion vs. State & Anr.)

(v). The officer recording the statement of the child victim should not be in police uniform.(Ref: Court On Its Own Motion vs. State & Anr.)

(vi). The statement of the child victim shall be recorded at the residence of the victim or at any other place where the victim can make a statement freely without fear.(Ref: Court On Its Own Motion vs. State & Anr.)

(vii). The statement should be recorded promptly without any loss of time.(Ref: Court On Its Own Motion vs. State & Anr.)

(viii). The parents of the child or any other person in whom the child reposes trust and confidence will be allowed to remain present.(Ref: Court On Its Own Motion vs. State & Anr.)

(ix). The Investigating Officer to ensure that at no point should the child victim come in contact with the accused.(Ref: Court On Its Own Motion vs. State & Anr.)

(x) The child victim shall not be kept in the police station overnight on any pretext, whatsoever, including medical examination.(Ref: Court On Its Own Motion vs. State & Anr.)

(xi). The Investigating Officer recording the statement of the child victim shall ensure that the victim is made comfortable before proceeding to record the statement and that the statement carries accurate narration of the incident covering all relevant aspects of the case.(Ref: Court On Its Own Motion vs. State & 51 Anr.)

(xii). In the event the Investigating Officer should so feel the necessity, he may take the assistance of a psychiatrist.(Ref: Court On Its Own Motion vs. State & Anr.)

(xiii). The Investigating Officer shall ensure that the child victim is medically examined at the earliest preferably within twenty four hours (in accordance with Section 164A Cr.P.C) at

the nearest government hospital or hospital recognized by the government.(Ref: Court On Its Own Motion vs. State & Anr.)

(xiv). The Investigating Officer shall ensure that the investigating team visits the site of the crime at the earliest to secure and collect all incriminating evidence available.(Ref: Court On Its Own Motion vs. State & Anr.)

(xv). The Investigating Officer shall promptly refer for forensic examination clothings and articles necessary to be examined, to the forensic laboratory which shall deal with such cases on priority basis to make its report available at an early date.(Ref: Court On Its Own Motion vs. State & Anr.)

(xvi). The investigation of the cases involving sexually abused child may be investigated on a priority basis and completed preferably within ninety days of the registration of the case. The investigation shall be periodically supervised by senior officer/s.(Ref: Court On Its Own Motion vs. State & Anr.)

(xvii). The Investigating Officer shall ensure that the identity of the child victim is protected from publicity.(Ref: Court On Its Own Motion vs. State & Anr.)

(xviii). To ensure that the complainant or victim of crime does not remain in dark about the investigations regarding his complaint/FIR, the complainant or victim shall be kept informed about the progress of investigations. In case the complainant gives anything in writing and requests the I.O., for investigations on any particular aspect of the matter, the same shall be adverted to by the I.O. Proper entries shall be made by I.O. in case diaries in regard to the steps taken on the basis of the request made by the complainant. The complainant, however, shall not be entitled to know the confidential matters, if any, the disclosure of which may jeopardize the investigations.(Ref : Mahender Singh Chhabra vs. State of N.C.T. Of Delhi & Ors.)

(xix). Whenever the SDM/Magistrate is requested to record a dying declaration, video recording also shall be done with a view to obviate subsequent objections to the genuineness of the dying declaration.(Ref : Mahender Singh Chhabra vs. State of N.C.T. Of Delhi & Ors.)

(xx). The investigations for the aforesaid offences shall be personally supervised by the ACP of the area. The concerned DCP shall also undertake fortnightly review thereof. (Ref : Mahender Singh Chhabra vs. State of N.C.T. Of Delhi & Ors.)

(xxi). The material prosecution witnesses cited in any of the aforesaid offences shall be ensured safety and protection by the SHO concerned, who shall personally attend to their complaints, if any. (Ref : Mahender Singh Chhabra vs. State of N.C.T. Of Delhi & Ors.)

(xxii). Wherever possible, the IO shall ensure that the statement of the child victim is also video recorded.(Ref: Court On Its Own Motion vs. State & Anr.)

## **II RECORDING OF STATEMENT BEFORE MAGISTRATE**

(i). The statement of the child victim shall be recorded promptly and at the earliest by the concerned Magistrate and any adjournment shall be avoided and in case the same is unavoidable, reasons to be recorded in writing.(Ref: Court On Its Own Motion vs. State & Anr.)

(ii). In the event of the child victim being in the hospital, the concerned Magistrate shall record the statement of the victim in the hospital.(Ref: Court On Its Own Motion vs. State & Anr.)

(iii). To create a child friendly environment separate rooms be provided within the Court precincts where the statement of the child victim can be recorded.(Ref: Court On Its Own Motion vs. State & Anr.)

(iv). The child victim shall not be separated from his/her parents/guardians nor taken out from his/her environment on the ground of "Ascertaining voluntary nature of statement" unless the parents/guardian is reported to be abusive or the Magistrate thinks it appropriate in the interest of justice.(Ref: Court On Its Own Motion vs. State & Anr.)

(v). Wherever possible, the IO shall ensure that the statement of the child victim is also video recorded.(Ref: Court On Its Own Motion vs. State & Anr.)

(vi). No Court shall detain a child in an institution meant for adults.(Ref: Court On Its Own Motion vs. State & Anr.)

### **III MEDICAL EXAMINATION**

(i) Orientation be given to the Doctors, who prepare MLCs or conduct post mortems to ensure that the MLCs as well as post mortem reports are up to the mark and stand judicial scrutiny in Courts.(Ref : Mahender Singh Chhabra vs. State of N.C.T. Of Delhi & Ors.)

(ii). While conducting medical examination, child victim should be first made comfortable as it is difficult to make her understand as to why she is being subjected to a medical examination.

(iii). In case of a girl child victim the medical examination shall be conducted preferably by a female doctor.(Ref: Court On Its Own Motion vs. State & Anr.)

(iv). In so far as it may be practical, psychiatrist help be made available to the child victim before medical examination at the hospital itself.(Ref: Court On Its Own Motion vs. State & Anr.)

(v). The report should be prepared expeditiously and signed by the doctor conducting the examination and a copy of medical report be provided to the parents/guardian of the child victim.(Ref: Court On Its Own Motion vs. State & Anr.)

(vi). In the event results of examination are likely to be delayed, the same should be clearly mentioned in the medical report.(Ref: Court On Its Own Motion vs. State & Anr.)

(vii). The parents/guardian/person in whom child have trust should be allowed to be present during the medical examination.(Ref: Court On Its Own Motion vs. State & Anr.)

(viii). Emergency medical treatment wherever necessary should be provided to the child victim.(Ref: Court On Its Own Motion vs. State & Anr.)

(ix). The child victim shall be afforded prophylactic medical treatment against STDs.(Ref: Court On Its Own Motion vs. State & Anr.)

(x). In the event the child victim is brought to a private/nursing home, the child shall be afforded immediate medical attention and the matter be reported to the nearest police station.(Ref: Court On Its Own Motion vs. State & Anr.)

#### IV COURT

(i) To create a child friendly environment separate rooms be provided within the Court precincts where the statement of the child victim can be recorded.(Ref : Court On Its Own Motion vs. State & Anr)

(ii) In case of any disability of the victim or witness involving or impairing communication skills, assistance of an independent person who is in a position to relate to and communicate with such disability requires to be taken.

(iii) The trials into allegations of commission of rape must invariably be "in camera" . No request in this behalf is necessary. (Ref : [State of Punjab vs. Gurmit Singh](#))

(iv) The Committal Court shall commit such cases to the Court of Sessions preferably within fifteen days after the filing of the chargesheet. (Ref: (2007 (4) JCC 2680 Court On Its Own Motion vs. State & Anr.)

(v). The child witness should be permitted to testify from a place in the courtroom which is other than the one normally reserved for other witnesses.

(vi) To minimise the trauma of a child victim or witness the testimony may be recorded through video conferencing or by way of a close circuit television. If this is not possible, a screen or some arrangement be made so that the victims or the child witness do not have to undergo seeing the body or face of the accused. The screen which should be used for the examination of the child witness or a victim should be effective and installed in such manner that the witness is visible to the trial judge to notice the demeanour of the witness. Single visibility mirrors may be utilised which while protecting the sensibilities of the child, shall ensure that the defendant's right to cross examination is not impaired. (Ref : [Sakshi vs UOI](#)).

(vii) Competency of the child witness should be evaluated and order be recorded thereon.

(viii) The trial court is required to be also satisfied and ought to record its satisfaction that the child witness understands the obligation to speak the truth in the witness box. In addition to the above, the court is required to be satisfied about the mental capacity of the child at the time of the occurrence concerning which he or she is to testify as well as an ability to receive an accurate impression thereof. The court must be satisfied that the child witness has sufficient memory to retain an independent recollection of the occurrence and a capacity to express in words or otherwise his or her memory of the same. The court has to be satisfied that the child witness has the capacity to understand simple questions which are put to it about the occurrence. There can be no manner of doubt that record of the evidence of the child witness must contain such satisfaction of the court.

(ix) As far as possible avoid disclosing the name of the prosecutrix in the court orders to save further embarrassment to the victim of the crime; anonymity of the victim of the crime must be maintained as far as possible throughout.

(x) The statement of the child victim shall be recorded promptly and at the earliest by the concerned Magistrate and any adjournment shall be avoided and in case the same is unavoidable, reasons to be recorded in writing. (Ref : Court On Its Own Motion vs. State of N.C.T. Of Delhi)

(xi) The court should be satisfied that the victim is not scared and is able to reveal what has happened to her when she is subjected to examination during the recording of her evidence. The court must ensure that the child is not concealing portions of the evidence for the reason that she has bashful or ashamed of what has happened to her.

(xii) It should be ensured that the victim who is appearing as a witness is at ease so as to improve upon the quality of her evidence and enable her to shed hesitancy to depose frankly so that the truth is not camouflaged on account of embarrassment at detailing the occurrence and the shame being felt by the victim.

(xiii) Questions should be put to a victim or to the child witness which are not connected to case to make him/her comfortable and to depose without any fear or pressure;

(xiv) The trial judge may permit, if deemed desirable to have a social worker or other friendly, independent or neutral adult in whom the child has confidence to accompany the child who is testifying (Ref Sudesh Jakhu vs. K.C.J. & Ors). This may include an expert supportive of the victim or child witness in whom the witness is able to develop confidence should be permitted to be present and accessible to the child at all times during his/her testimony. Care should be taken that such person does not influence the child's testimony.

(xv) Persons not necessary for proceedings including extra court staff be excluded from the courtroom during the hearing.

(xvi) Unless absolutely imperative, repeated appearance of the child witness should be prevented.

(xvii) It should be ensured that questions which are put in cross examination are not designed to embarrass or confuse victims of rape and sexual abuse (Ref : [Sakshi vs UOI](#)).

(xviii) Questions to be put in cross examination on behalf of the accused, in so far as they relate directly to the offence, should be given in writing to the presiding officer of the court who may put them to the victim or witnesses in a language which is clear and is not embarrassing. (Ref : [Sakshi vs. UOI](#))

(xix) The examination and cross examination of a child witness should be carefully monitored by the presiding judge to avoid any attempt to harass or intimidate the child witness.

(xx) It is the duty of the court to arrive at the truth and subserve the ends of justice. The courts have to take a participatory role in the trial and not act as mere tape recorders to record whatever is being stated by the witnesses. The judge has to monitor the proceedings in aid of



justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, the court can control the proceedings effectively so that the ultimate objective that is the truth is arrived at. The court must be conscious of serious pitfalls and dereliction of duty on the part of the prosecuting agency. Upon failure of the prosecuting agency showing indifference or adopting an attitude of aloofness, the judge must exercise the vast powers conferred under section 165 of the Evidence Act and section 311 of the CrPC to elicit all necessary materials by playing an active role in the evidence collecting process. (Ref : [Zahira Habibulla H. Sheikh & Anr. vs. State of Gujarat & Ors.](#))

(xxi) The judge is expected to actively participate in the trial, elicit necessary materials from the witnesses at the appropriate context which he feels necessary for reaching the correct conclusion. The judge has uninhibited power to put questions to the witness either during chief examination or cross examination or even during re-examination for this purpose. If a judge feels that a witness has committed an error or slip, it is the duty of the judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross examination. (Ref: AIR 1997 SC 1023 (para 12) [State of Rajasthan vs. Ani](#) alias Hanif & Ors.)

(xxii) The court should ensure that the embarrassment and reservations of all those concerned with the proceedings which includes the prosecutrix, witnesses, counsels may result in camouflage of the ingredients of the offence. The judge has to be conscious of these factors and rise above any such reservations on account of embarrassment to ensure that they do not cloud the truth and the real actions which are attributable to the accused persons.

(xxiii) The court should ascertain the spoken language of the witness as well as range of vocabulary before recording the deposition. In making the record of the evidence court should avoid use of innuendos or such expressions which may be variably construed. For instance "gandi harkatein" or "batamezein" have no definite meaning. Therefore, even if it is necessary to record the words of the prosecutrix, it is essential that what those words mean to her and what is intended to be conveyed are sensitively brought out.

(xxiv) The court should ensure that there is no use of aggressive, sarcastic language or a grueling or sexually explicit examination or cross examination of the victim or child witness. The court should come down heavily to discourage efforts to promote specifics and/or illustration by any of the means offending acts which would traumatise the victim or child witness and effect their testimony. The court to ensure that no element of vulgarity is introduced into the court room by any person or the record of the proceedings.

(xxv) In order to elicit complete evidence, a child witness may use gestures. The courts must carefully translate such explanation or description into written record.

(xxvi) The victim of child abuse or rape or a child witness, while giving testimony in court should be allowed sufficient breaks as and when required. (Ref : [Sakshi vs. UOI](#))

(xxvii) Cases of sexual assaults on females be placed before lady judges wherever available. (Ref: State of Punjab vs. Gurmit Singh) To the extent possible, efforts be made that the staff in the courtroom concerned with such cases is also of the same gender.

(xxviii) The judge should be balanced, humane and ensure protection of the dignity of the vulnerable victim. There should be no expression of gender bias in the proceedings. No humiliation of the witness should be permitted either in the examination in chief or the cross examination.

(xxix) A case involving a child victim or child witness should be prioritised and appropriate action taken to ensure a speedy trial to minimise the length of the time for which the child must endure the stress of involvement in a court proceeding. While considering any request for an adjournment, it is imperative that the court considers and give weight to any adverse impact which the delay or the adjournment or continuance of the trial would have on the welfare of the child.

## V GENERAL

(i) Effort should be made to ensure that there is continuity of persons who are handling all aspects of the case involving a child victim or witness including such proceedings which may be out of criminal justice system. This may involve all steps commencing from the investigation to the prosecutor to whom the case is assigned as well as the judge who is to conduct the trial.

(ii) The police and the judge must ascertain the language with which the child is conversant and make every effort to put questions in such language. If the language is not known to the court, efforts to join an independent translator in the proceedings, especially at the stage of deposition, should be made.

(iii) It must be ensured that the number of times that a child victim or witness is required to recount the occurrence is minimised to the absolutely essential. For this purpose, right at the inception, a multidisciplinary team involving the investigating officer and the police; social services resource personnel as well as the prosecutor should be created and utilised in the investigation and prosecution of such cases involving a child either as a victim or a witness. This would create and inspire a feeling of confidence and trust in the child.

(iv) The child victim shall not be separated from his/her parents/guardians nor taken out from his/her environment on the ground of "Ascertaining voluntary nature of statement" unless the parents/guardian is reported to be abusive or the Magistrate thinks it appropriate in the interest of justice.(Ref : Court On Its Own Motion vs. State of N.C.T. Of Delhi)

(v) Courts in foreign countries have evolved several tools including anatomically correct illustrations and figures (as dolls). No instance of such assistance has been pointed out in this court. Extensive literature with regard to such aids being used by foreign courts is available. Subject to assistance from experts, it requires to be scrutinised whether such tools can be utilised in this country during the recording of the testimony of a child victim witness so as to accommodate the difficulty and diffidence faced. This aspect deserves serious attention of all concerned as the same may be a valuable tool in the proceedings to ensure that the complete truth is brought out.

(vi) No court shall detain a child in an institution meant for adults.(Ref : Court On Its Own Motion vs. State of N.C.T. Of Delhi). This would apply to investigating agencies as well.

(vii) The judge should ensure that there is no media reporting of the camera proceedings. In any case, sensationalisation of such cases should not be permitted. The issue with regard to teaching of offences regarding sexual assault and rape itself has been a source of much discussion. I am informed that there are instances of even legal educators being bashful and embarrassed about teaching such subjects. Judges and counsels are products of the legal education. The multi-faceted problem and concerns noticed above are not confined to ensuring gender justice in courts alone. In this background, it is absolutely imperative that these areas of law and the issues which have been raised herein are taken up with all seriousness. Perhaps the programme of continuing legal education needs to take a look on these questions.

As noted above, the directions laid down in the aforementioned judgments do not appear to be strictly followed. Some of the trial courts are either not conscious of their powers and duties as conferred by the Code of Criminal Procedure and recognised by the Indian Evidence Act or hesitant to exercise them. These issues cannot be ignored any further.

The Delhi Legal Services Authority and the Delhi High Court Legal Services Committee are taking several initiatives so far as access to and dispensation of justice is concerned. The directions of the courts as culled out above are intended to ensure justice to both the victim and the accused.

It is further directed that a copy of this judgment be sent to the Secretary, Delhi Legal Services Authority and Secretary, Delhi High Court Legal Services Committee for further action so as to ensure the implementation of the directions and guidelines laid down in para

Copy of this judgment be also sent to the Director, Delhi Judicial Academy so that the several issues raised may be also addressed.

GITA MITTAL (JUDGE) September 29, 2009

**GUIDELINES FOR EXAMINATION OF A CHILD WITNESS / VICTIM OF A OFFENCE - Compiled by [NATIONAL LEGAL RESEARCH DESK](#) – A LEGAL INITIATIVE OF [SHAKTI VAHINI](#)**