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Navigating the Changing Terrain of Evidential Aspects in Adjudication: A Critical Analysis

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ABSTRACT

The evolution of legislation concerning “evidential aspects” in adjudication has been marked by a dynamic trajectory, from the exclusive focus on evidence in "The Indian Evidence Act, 1872" to the nuanced inclusion in contemporary statutes like the POCSO Act. This paper explores the transformative landscape shaped by new laws and schemes enacted by the parliament, encompassing diverse forms of evidence, including the Data Protection Act and a meticulously crafted Witness protection scheme by the Central Government in 2018. In addition to that we are conducting a critical analysis comparing the inquisitorial and adversarial systems in the United States and India respectively. While recognizing the advancements made, the paper also explores challenges, including the intricate matter of determining age under the POCSO Act and the reluctance to fully embrace technology in a continuously changing environment. This paper examines the intricacies of the current legislation and its profound implications on the domain of “evidential aspects” during adjudication in general and the effectiveness of its implementation in particular. However, it has not been without setbacks, such as the threatening issue of “age determination” of minors under the POCSO Act. We also believe that we have all the necessary pieces of legislation to tackle any issue that can be a hindrance to evidential aspects during adjudication. This paper was developed through doctrinal research, utilizing primary and secondary sources like statutes, cases, articles, journals, and books. This paper recommends the need for the government to provide adequate resources to make the facilitation of security of all the evidential aspects in the court of law more conducive, and we also call for the funding and training of IOs to be under the purview of the NCPCR. This alignment aims to ensure that the NCPCR fulfils its primary purpose and objectives effectively. Finally, in advocating for comprehensive reform, this paper underscores the imperative of facilitating access to justice.

Keywords: Access to Justice, Evidential aspects, POCSO Act, Indian Evidence Act, 1872, Witness protection.

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I. INTRODUCTION

Presenting evidence in a legal case is akin to displaying relevant pieces of a puzzle to the judge and jury. Each piece must have relevance to the case, just like it wouldn't make sense to introduce a puzzle piece about the weather when accused of breaking a window. "Judicial notice" allows the judge to acknowledge certain basic facts without requiring proof, such as knowing Delhi is in India. However, not all facts are subject to judicial notice; they must be legally significant to the case at hand, avoiding irrelevant details like the color of a neighbor's cat unless it pertains to the issue, such as the broken window.

Judicial notice has been subject to a lot of misconceptions.³ Its conception has been narrowed down to mean something close to an 'assumption', but in reality, it would mean whether the court of law can assume a certain fact without proof, and the question of what it can do with it when it is assumed.⁴ Judges while dealing with evidence do not exercise any sort of philosophical inquiry or an academic exercise.⁵ And it is important to see the fact that the 'search for truth' and judging matters for how it happened and according to its merits is merely an *accident* or something *that happens by chance*. So, their ability to use a fact when it is proved or admitted is limited by their main business – awarding justice according to the rules of law and the established forms.

The competency and protection of witnesses, a long-debated legal issue, led to the establishment of the Witness Protection Scheme in 2018. This scheme aims to safeguard individuals involved in assisting criminal law enforcement agencies, enhancing the overall administration of justice. Regarding child witnesses, trial courts now recognize their competency under Section 118 of the Evidence Act, 1872, allowing their testimony unless the court finds them unable to comprehend or respond coherently due to their age.⁶ This recognition extends to specific provisions in acts like POCSO, addressing both the testimony and protection of minors in legal proceedings.

(A) Literature review

A. Linda Hamilton Kreiger, *The Burdens of Equality: Burdens of Proof and Presumptions in Indian and American Civil Rights Law*, The American Journal of Comparative Law, Oxford

³ Thayer, James B. "Judicial Notice and the Law of Evidence." *Harvard Law Review*, vol. 3, no. 7, 1890, pp. 285–312. *JSTOR*, <https://doi.org/10.2307/1322294>. Accessed 20 Dec. 2023.

⁴ *Id*

⁵ *Id*

⁶ Hutchins, Robert M., and Donald Slesinger. "Some Observations on the Law of Evidence. The Competency of Witnesses." *The Yale Law Journal*, vol. 37, no. 8, 1928, pp. 1017–28. *JSTOR*, <https://doi.org/10.2307/790531>. Accessed 20 Dec. 2023.

University Press

The study delves into burdens of proof and presumptions in Indian and American civil rights law, drawing lessons from the Indian legal experience to inform ongoing debates in the U.S. The article critically compares adversarial and inquisitorial systems, with a focus on witness protection provisions not covered in the work.

B. *Protecting Witnesses*, Economic and Political Weekly, Vol. 39, No. 46/47 (Nov. 20-26, 2004), p. 4948,

The article underscores challenges in achieving justice in the Best Bakery trial, emphasizing the complexities in politically charged cases, the absence of a comprehensive witness protection program, and the difficulties in ensuring security outside the court.

C. Kumari, Ved, and Ravinder Barn. *SENTENCING IN RAPE CASES: A CRITICAL APPRAISAL OF JUDICIAL DECISIONS IN INDIA*, Journal of the Indian Law Institute, Vol. 59, No. 1 (JANUARY-MARCH 2017), pp. 1-25

The article examines high court judges' perspectives on rape and sentencing in India, highlighting an urgent need for comprehensive training for criminal justice practitioners in both trial and appellate courts.

D. Tahir Mahmood, *PRESUMPTION OF LEGITIMACY UNDER THE EVIDENCE ACT: A CENTURY OF ACTION AND REACTION*, in Journal of the Indian Law Institute, SPECIAL ISSUE : 1972 (1972), pp. 78-89 (12 pages) <https://www.jstor.org/stable/43950174>

The work analysed the historical judicial pronouncements related to the various provisions of the evidence act and the same was used to structure the suggestions and the recommendations put forth by the work and the same was incorporated into the provisions of POCSO Act to construct a defined analysis.

(B) Statement of research problem

The existing gap intended to be filled in this paper is the evaluation of evolving legislation on evidential aspects in adjudication, focusing on effectiveness, challenges, and comparative systems. It also advocates for comprehensive reforms, emphasizing resource allocation and aligning Investigating Officers' training under the NCPCR for improved implementation.

(C) Methodology

This research adopts a qualitative approach, delving into primary sources like working papers and statutes for critical analysis. Secondary sources such as books, journals, and case studies are utilized to address challenges, critique technological reluctance, and provide reform

recommendations within the nuanced landscape of evidential aspects during adjudication.

(D) Objectives

1. Analyse the influence of recent laws and schemes, such as the Data Protection Act and the 2018 Witness Protection Scheme, on the landscape of evidential aspects during adjudication.

2. Conduct a concise analysis comparing the inquisitorial system in the United States with the adversarial system in India, outlining key similarities, differences, and implications for adjudication.

3. Explore challenges within current legislation, with a specific focus on issues like age determination under the POCSO Act and the hesitancy to adopt technology, evaluating their impact on the effectiveness of evidential aspects.

4. Propose targeted policy recommendations, emphasizing the allocation of sufficient resources for securing evidential aspects in court proceedings and advocate for funding and training of Investigating Officers (IOs) under NCPCR oversight, aiming for more effective fulfillment of its objectives.

(E) Research questions

1. What influence do the Data Protection Act and the 2018 Witness Protection Scheme have on evidential aspects in adjudication?

2. In comparing the U.S. inquisitorial system to India's adversarial system, what are the key similarities, differences, and implications?

3. How do challenges in current legislation, especially regarding age determination, technology adoption, and presumption of legitimacy affect evidential aspects?

4. What specific policy recommendations can enhance resources for securing evidential aspects, and how can funding and training of Investigating Officers under NCPCR oversight be improved?

II. DATA COLLECTION

(A) Evolution and Challenges of India's Protection of Children from Sexual Offences Act (POCSO), 2012

India, a signatory to international conventions like the Convention on the Rights of the Child, demonstrated its commitment to child rights. The enactment of the Protection of Children from Sexual Offences Act (POCSO) in 2012, following the ratification of the UN Convention on the Rights of the Child in 1992, aimed to comprehensively address sexual offenses against

children.⁷ While successful in promoting gender neutrality and improving reporting mechanisms, two notable issues persist.

a. Impeding Conviction Rates in POCSO Trials Despite Established Minor Age

An analysis of POCSO Act has found that only 43.44% of trials under POCSO end in acquittals while only 14.03% end in convictions, for every one conviction in a POCSO case, there are three acquittals.⁸ The core issue lies in the presumption aspect, where, unlike the Indian Evidence Act, the POCSO Act obligates courts to presume the accused's guilt.⁹ However, some courts fail to make this presumption, placing an unfair burden on the minor victim to prove sexual abuse despite confirming their age.¹⁰ This creates a worrisome scenario which contradicts the constitutional principles that recognize and protect the vulnerability of minors by presuming their lack of maturity and vulnerability.

b. Gaps in Safeguarding Juvenile Victims under POCSO Act

This issue revolves around the challenge of age determination within the framework of the POCSO Act. The legislation lacks explicit guidelines for age determination, leading courts to heavily rely on investigating officers' reports, particularly referencing school registers for the victim's recorded date of birth.¹¹ Consequently, parents often find themselves unable to substantiate their child's age without a definitive authoritative source. Age determination relying on medical techniques and expert opinions proves imprecise in many cases, introducing the risk of misjudging minors as adults. This discrepancy becomes a significant concern as it diminishes the likelihood of an accused being convicted, especially when factors such as 'consent' and 'lack of injury to private parts' are taken into account.¹²

Not only is this an issue but it is seen that in some cases like *Arnit Das v. State of Bihar*,¹³ where the decision advises against an overly technical approach and suggests a more lenient interpretation in favor of the accused when there are two possible views regarding the evidence

⁷ Roy, E. (2022, November 18). *10 years of POCSO: An analysis of India's landmark child abuse law*. The Indian Express. <https://indianexpress.com/article/explained/explained-law/10-years-of-pocso-an-analysis-of-indias-landmark-child-abuse-law-8276030/>

⁸ *Id*

⁹ *Id*

¹⁰ *Id*

¹¹ Chudgar, Sharma, & Ali. (2019, November). *ISSUES UNDER THE POCSO ACT: A COMPILATION OF LEGAL CASES AND FACTS*. HAQ: Centre for Child Rights, November 2019. Retrieved December 27, 2023, from <https://www.haqcrc.org/wp-content/uploads/2019/12/handbook-for-pps-on-csa.pdf>

¹² *Id*

¹³ (2000) 5 SCC 488

presented, particularly in borderline cases.¹⁴ And this opinion was further reiterated in *Shweta Gulati v. State Govt of NCT of Delhi*,¹⁵ These circumstances have severe repercussions, leading to widening gaps in the protection of juvenile victims under the POCSO Act and enabling numerous wrongdoers to evade punishment.

(B) Section 112 of the Indian Evidence Act and the Unyielding Stand Against Evolution in the Era of the Bharatiya Sakshya Act 2023

Section 112 of the Indian evidence act, 1872, which deems a child born during a valid marriage or within 280 days after its dissolution as legitimate¹⁶, Despite widespread calls for amendment, the Bhartiya Sakshya Act, 2023, remains non-committal on disregarding the importance of modern scientific developments in favor of conventional thinking.

The major issue that lies with this section is the way by which it presumes ‘Sexual intercourse’ as a key component for the conception of a child in a woman’s womb.¹⁷ Now, this brings along with it an array of issues relating to this ‘presumption of legitimacy’. Increased focus has shifted towards ‘Genetic science’ and with the DNA tests considered handy in such paternity or maternity claims, the lack of the same seems to leave behind a huge void which remains to be filled. This is more alarming in cases where it is seen that presumption makes a *prima facie* case for the party in whose favour it exists.¹⁸

Section 4 of the Act,¹⁹ describes three forms of presumptions namely – ‘*may presume*’, ‘*shall presume*’, ‘*Conclusive proof*’. Out of these the presumption of legitimacy under section 112 is done on the basis of an irrefutable presumption of legitimacy; so as to say that the Birth during marriage, comes under conclusive proof of legitimacy.²⁰

Section 112, in its current iteration, was established in 1872 in response to the widespread practice of polygamy in Indian society.²¹ The primary objective was to shield women from exploitation and societal scrutiny by presuming legitimacy when a man had the capacity and opportunity for sexual relations with his wife.²² Despite the prevalence of polygamy in 1872,

¹⁴ *Id*

¹⁵ 2018 SCC OnLine Del 10448

¹⁶ Indian Evidence Act, 1872, § 112, No. 01, Imperial Legislative Council, 1872 (India).

¹⁷ Roy, Caesar. “PRESUMPTION AS TO LEGITIMACY IN SECTION 112 OF INDIAN EVIDENCE ACT NEEDS TO BE AMENDED.” *Journal of the Indian Law Institute*, vol. 54, no. 3, 2012, pp. 382–99. JSTOR, <http://www.jstor.org/stable/44782478>. Accessed 26 Dec. 2023.

¹⁸ *Id*

¹⁹ Indian Evidence Act, 1872, § 4, No. 01, Imperial Legislative Council, 1872 (India).

²⁰ *Supra* note 12

²¹ See Singh, S., & Singh, S. (2020, March 23). *An Explanation to S.112 IEA : Whether a child is legitimate or illegitimate? - Article*. *Singh Law Associates*. <https://singhlawassociates.in/2020/03/23/an-explanation-to-s-112-iea-whether-a-child-is-legitimate-or-illegitimate/>

²² *Id*

contemporary legal norms prohibit it, and monogamy is now the accepted standard.

(C) Evidential Security: Revisiting Government's Role in NCPCR Establishment, Funding, and Training

The National Commission for Protection of Child Rights (NCPCR) role is to ensure that all laws, policies, programs and administrative systems conform to the vision of the rights of the children between the age of 0-18 as enunciated in the Constitution of India as well as international conventions such as the United Nations Convention on the Rights of the Child.²³

However, it is not unusual that the NCPCR had lapsed in its duties. In May, 2023 a report was submitted by Governor R.N. Ravi alleging 'forced virginity tests' – two fingers test – which were held to be unconstitutional in 2013 on minor girls from the Dikshitar community in Chidambaram.²⁴ The existing strain on NCPCR underscores the urgent need for an inquiry into its functioning, especially concerning the contentious issue of whether funding and training for investigating officers should fall under its purview.

The same stems from regards to the incident that took place in Kotagiri where the NCPCR chairman Priyank Kanoongo conducted investigation against police personnel for handcuffing a minor victim of sexual of abuse, however the officials denied these allegations.²⁵ The point that is to be made right now, relates itself to Mr. Kanoongo conducting an inquiry with the investigating officers and getting a reply which was 'disconcertedly' not in favour of his contention.²⁶ This raises the question of whether a separate cell should be set for the investigating officers in NCPCR exclusively for their purpose and in their purview for training and funding.

(D) Exploration of the Prospects and Challenges of India's Witness Protection scheme, 2018

On December 6th, 2018, the Supreme Court granted approval for the Draft Witness Protection Scheme. This scheme, developed with input from 18 States/Union Territories, as well as insights from various sources, including police personnel, judges, and civil society, underwent

²³ National Commission for Protection of Child Rights (NCPCR), *About NCPCR*, OFFICIAL WEBSITE OF NCPCR. (Dec. 21, 2023, 11:53 AM), <https://ncpcr.gov.in/about-ncpcr>.

²⁴ Mariappan, J. (2023, May 29). *NCPCR submits report of "forced virginity test" to governor Ravi*. The Times of India. <https://timesofindia.indiatimes.com/city/chennai/ncpcr-submits-report-of-forced-virginity-test-to-governor-ravi/articleshow/100606124.cms>

²⁵ Express News Service Editorial Board (2023, Nov 22). *NCPCR Chairman instructs police to submit report on allegations of minor being handcuffed in Kotagiri*. (2023, November 28). The Hindu. <https://www.thehindu.com/news/cities/Coimbatore/ncpcr-chairman-instructs-police-to-submit-report-on-allegations-of-minor-being-handcuffed-in-kotagiri/article67584291.ece>

²⁶ *Id*

a thorough review by the National Legal Services Authority (NALSA) before being finalized. Justices A.K. Sikri and S. Abdul Nazeer, comprising the bench, emphasized the importance of protecting the witness's rights to testify, aligning with Article 21 of the Constitution. They expressed concern about the current challenges to the right to testify freely in courts without any undue pressure or threats. The bench declared that the inability to testify due to such pressures would constitute a violation of Article 21. Furthermore, the bench classified the scheme as a 'law' within the purview of Article 141/142 of the Constitution, mandating adherence by the central and state authorities until specific legislation on the same subject is enacted.

Witness protection, a crucial rule of law, safeguards rights from threats and intimidation. The Supreme Court, in cases like *Zahira Habibulla H. Sheikh v. State of Gujarat*²⁷, stressed its significance. The Law Commission and Mahamath Committee highlighted witness protection needs. The 14th Law Commission Report initiated discourse, with subsequent reports emphasizing protection from the accused. The 198th Report urged extending protection to all serious offenses. The UN General Assembly outlines objectives: access to justice, fair treatment, restitution, compensation, and assistance. The 2018 Witness Protection Scheme provides measures like separation, unlisted numbers, CCTV, identity alteration, and financial aid. Despite aiding witnesses, challenges emerge due to state resource constraints, and the absence of central government financial commitments is concerning.

**(E) Comparison of the inquisitorial and adversarial systems in the US and India:
Analysing the evidential aspects**

Laws function very differently in each legal system around the world, and the risks to their effective mobilisation and enforcement vary greatly. There are several instances in the annals of contemporary Indian legal history where new legal regulations formally replace customary practices, however, analysing and comparing the adversarial system of the law with the inquisitorial system in the US grants a new outlook to the earlier mentioned statement.

In an inquisitorial system, the job of a judge is clearly to find the truth, rather than, as in a common law system, to resolve a dispute according to procedural norms. The distinction is significant. American sentence, in particular, frequently bears the fundamental characteristics of inquisitorial procedure. The truth is meant to emerge from the respective interpretations of the facts offered by the prosecution and the defence before a neutral judge in an adversarial

²⁷ Appeal (crl.) 446-449 of 2004

system, like in India and has abolished the system of jury trials.²⁸ The Federal Rules of Evidence do not provide a burden-shifting mechanism comparable to the Indian Evidence Act's Section 4 presumption of law, nor do they provide a more flexible instrument such as that made available in suicide cases by Section 113-A.²⁹ According to a precise reading of Rule 301, only Congress, and never the courts, can re-allocate burdens of persuasion in federal civil or criminal actions. However, this is not the case. The federal courts have frequently assigned burdens of persuasion in ways that are compatible with stated policy aims.

III. DATA ANALYSIS

(A) Unveiling Challenges in POCSO: Erosion of Justice for Juvenile Victims and Impediments in Conviction Rates

The decision and procedure used in the above-mentioned *Shweta Gulati Case* to come to a conclusion was outrageous. In the present case, since no document was available to ascertain the age of the victim, a 'bone ossification' test was used in which the age was estimated to be in the range of 17 to 19 years.³⁰ While the child welfare committee (CWC) and the trial court upheld the victim's age to be that of 17, the Delhi high court reversed the decision upholding the age to be 19 thereby giving the benefit of doubt to the accused.³¹ Examining this decision, it is argued that the benefit of doubt in age determination should favour the prosecution. This approach ensures the distinction between the POCSO Act and the Indian Penal Code (IPC) remains intact, aligning with the principles of protecting children's rights.

The India Child Protection Fund's recent report highlights a disconcerting scenario: only 3% of POCSO Act cases led to convictions in 2022. Fast Track Special Courts, on average, disposed of only 28 cases each, despite an expenditure of Rs 2.73 lakh per case.³² This declining conviction trend raises substantial concerns about the act's effectiveness.

(B) Loopholes of Indian Evidence Act, 1872: Resistance Amidst the Changing Landscape in the Era of the Bharatiya Sakshya Act 2023

One should not be considered too bold to claim to be extremely critical of this very provision.

²⁸ Deshmukh, K. (2020, January 15). *Adversarial and Inquisitorial Models of Criminal Justice System: A Comparative Analysis*. INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION [ISSN 2581-9453]. Retrieved December 27, 2023, from <https://www.ijlsi.com/wp-content/uploads/Adversarial-and-Inquisitorial-Models-of-Criminal-Justice-System-A-Comparative-Analysis.pdf>

²⁹ *Id*

³⁰ *Supra* note 16

³¹ *Id*

³² A. M., & A. M. (2023, December 9). *Only 3% of POCSO cases in 2022 saw convictions: Report*. Deccan Herald. <https://www.deccanherald.com/india/over-243-lakh-pocso-cases-pending-in-fast-track-courts-till-jan-2023-3-conviction-rate-in-2022-report-2804200>

An excuse can be made to the former act considering it was an act made during the colonial era and during a time where there weren't significant developments in the field of science or technology. However, it is erroneous on the part of the legislators to disregard the same in its revision in the form of the 'Bharatiya Sakshya Act, 2023', where the provision had been read out verbatim without any changes under section 116. This is seen to be a move that lacks proper consideration and adaptation to the contemporary landscape of science and technology.

The presumption in Section 112's non-access clause, asserting that if a man couldn't have feasibly engaged in sexual intercourse, he can't be the child's father, faces challenges from modern technological advancements.³³ Despite eliminating the need for physical proximity, this colonial law, not aligned with contemporary realities, yields absurd results in modern times.

This could be seen through the judicial observations of these modern advancements as applied to section 112 of the act. While holding the scope of permitting the husband to avail of blood test for the presumption of legitimacy and paternity arising outside the section in *Gautam Kundu V. Shaswati Kundu*,³⁴ To the highest court of the land recognizing that the scientific reliability of DNA tests despite their accuracy, their results alone cannot challenge the conclusive nature of Section 112 of the Indian Evidence Act in *Smt. Kanti Devi v. Poshi Ram*,³⁵ things at the most seem very bleak at the moment. Therefore, a comprehensive revision of this section is deemed necessary.

(C) Addressing Challenges in Child Rights Protection: Evaluating the Role of NCPCR and Proposing Reforms

It is a thing of utmost necessity that the coordination between the government and the NCPCR is facilitated and made more conducive. It is important to ensure that the NCPCR is effective in its role of protecting the rights of children. The reported instances of forced virginity tests and alleged coordination challenges between the government and the National Commission for Protection of Child Rights (NCPCR) and lack of coordination between the government and the NCPCR are serious issues that need to be addressed for protecting the rights of children in India. The establishment of a separate cell for investigating officers could be a step in the right direction to ensure that the rights of children are protected and that the NCPCR is effective in its role.³⁶

³³ *Supra* note 15

³⁴ Criminal Revision No. 800 of 1992

³⁵ AIR 2001 SC 2226

³⁶ Venkatesan, T. S. (2023, October 7). *Tamil Nadu: NCPCR orders probe following the revelations of Governor Ravi over forced Virginity Test on teen girls*. Organiser. <https://organiser.org/2023/05/06/172630/bharat/tamil-nadu-ncpcr-orders-probe-following-the-revelations-of-governor-ravis-over-forced-virginity-test-on-teen-girls/>

The credibility of the NCPCR may be compromised if it does not effectively address such issues.³⁷ Proposing a specialized cell within NCPCR for investigating officers with dedicated training and funding to enhance independence, coupled with advocating for an independent inquiry to ensure transparency and effectiveness in safeguarding minors' rights. Policymakers should consider dedicated cells for investigating officers to strengthen the commission's ability in handling child rights cases.

(D) Assessing the Opportunities and Challenges in India's Witness Protection Framework: An In-Depth Analysis

In cases involving influential individuals or corrupt politicians in India, key witnesses often turn hostile, undermining the rule of law. While Sections 151 and 152 of the Indian Evidence Act, 1872, prohibit indecent and offensive questions, there's a notable absence of specific provisions safeguarding witnesses from threats or intimidation. Conditions imposed on accused individuals, like not tampering with evidence or approaching witnesses, are insufficient for witness protection. In-camera trials and video-conferencing are employed, yet a dedicated legal provision for protective measures is lacking both before and after the trial. The three-month duration of the Witness Protection Order poses challenges for prolonged protection, especially in cases with extended legal proceedings or ongoing threats. Concerns also arise about the assignment of responsibilities, with the head of the police potentially facing external pressures in high-profile cases.

(E) Analyzing the Inquisitorial and Adversarial Legal Systems: A Comprehensive Cross-Country Comparison between the United States and India

The adversarial system, requiring a higher burden of proof for conviction, is criticized for not actively seeking the truth but focusing solely on the prosecution's ability to prove charges. Dr. R. Venkataraman, former President of India, viewed the adversarial system as contrary to ancient justice ethos, where truth-seeking was emphasized. The Supreme Court of India, in various judgments, has echoed concerns about the non-dynamic nature of adversarial adjudication. In the case of *Ram Chandra vs. State of Haryana*³⁸, the Court expressed disapproval of trials becoming contests between prosecution and defence, highlighting the distortion caused by combative elements. The importance of seeking the truth and administering justice beyond a mere contest between parties is emphasized in *State of Rajasthan vs. Ani Alias Hanif and Mohanlal vs. Union of India*. The court asserts its duty to actively participate in

³⁷ *Id*

³⁸ 1981 AIR 1036

proceedings, ensuring justice is not only done but seen to be done.

IV. CONCLUSIONS/ RECOMMENDATIONS

These case studies offer valuable insights into navigating the complex landscape of child protection laws in India. A comprehensive evaluation reveals both strides and hurdles in safeguarding the rights of minors. The Protection of Children from Sexual Offences Act (POCSO), despite commendable efforts, grapples with challenges like impeding conviction rates and gaps in age determination. The persistence of archaic provisions, as seen in Section 112 of the Indian Evidence Act, reflects a resistance to evolution, hindering justice in the face of modern scientific advancements. The National Commission for Protection of Child Rights (NCPCR) faces credibility issues, necessitating a closer look at its structure and coordination with investigating officers. Based on our meticulous analysis, here are some recommendations:

1. Establish clear and uniform guidelines for age determination under the POCSO Act, prioritizing a presumption in favour of the prosecution to align with the Act's intent of safeguarding children's rights and well-being.
2. Comprehensively revise Section 112 of the Indian Evidence Act, 1872, aligning it with modern scientific advancements. Amend the provision to accommodate technological progress, acknowledging the inadequacies of presuming legitimacy solely based on traditional notions of sexual intercourse.
3. Establish a dedicated cell within NCPCR for investigating officers, providing focused training and funding to enhance their independence, mitigate biases, and contribute to more effective handling of child rights violation cases.
4. Strengthen India's Witness Protection Scheme through centralized funding, regular evaluations, and clear legal provisions for high-stakes cases.
5. Promote collaboration with focused legal training, encourage scholarly comparative studies for refining evidential aspects, and facilitate policy exchange between legal institutions in the US and India for a harmonized global legal framework.
