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The Juxtaposition of POCSO in Various Countries

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ABSTRACT

Child sexual abuse is widespread around the world, not only in India. These crimes against children are particularly common in developing or underdeveloped nations such as Pakistan, the Philippines, India, Kyrgyzstan, and many more. Sexual abuse does not have to entail any kind of penetration, force, pain, or contact. Sexual assault is defined as any act committed at a minor with the purpose of obtaining sexual enjoyment. The abuser might be of any age, gender, or socioeconomic background. This includes online behaviour directed towards minors. This research paper attempted to highlight key fundamental elements of the law protecting minors from sexual assault that require substantial revision.

Keywords: POSCO Act, Child Abuse, Foreign Countries violence norms.

I. INTRODUCTION

Child sexual assault has been a long growing, widespread and hidden problem prevailing in Asian countries. Children are often abused by the folks well-known to them like relatives, neighbours, family friends and not often by strangers. The proportion of sex crimes against children by strangers is extremely low. These paedophiles often possess a charming and outgoing personality which attracts children and assures the trust of the parents of victim. There is lack of faith in legal establishments and a concern for social stigma existing in society and this prevents the reporting of such cases. The government of India came up with an initiative to deal with this matter by the POCSO Act (Protection Of Children from Sexual Offences) however correct and strict implementation of such policies and laws is required to curb social menances like child abuse, untouchability or divorce. “Studies recommend that over seven, 200 youngsters, alongside infants, square measure raped each year; specialists believe that a great deal of cases go unreported. Violence against children anywhere effects all nations making child abuse global issue”

“At least 3 out of 4 of the world’s children (1.7 billion) have experienced violence, abuse or cruelty in their daily lives in the previous year, regardless of whether they lived in rich countries

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or poor. The annual costs of physical, sexual and psychological violence against children, using sensitivity analysis, in the highest scenario, can go up to 8 per cent, or about US \$7 trillion.”²

“Based on approximate estimate, 20 percent of young girls and 5 to 10 percent of boys are victims of sexual assault.”³ Violence and sexual assault violates the dignity and rights of children, Childhood violence also disrupts the formation of feelings of joy and safety, and imposes huge costs on individuals and societies.

II. MAIN TYPES OF CHILD ABUSE

- Physical - Physical abuse includes different types of ill-treatment that has led to physical injury or endangers the life of the child
- Neglect - Neglect is the most common type of abuse that has features of both physical and emotional abuse. Still, as the researcher’s state, Neglect is not only the most common kind of maltreatment; it can be equally lethal as physical abuse.
- Emotional - Emotional abuse includes close confinement, humiliation, and verbal assault.
- Sexual - Child sexual assault (CSA) is a form of abuse in which an adult or any older adolescent abuses a toddler for sexual stimulation. It refers to the participation of a child in a sexual act aimed towards the physical gratification or the financial profit of the person committing the act.

Some Common stereotypes of CSA are as follows: -

- o It's only sexual abuse if it involves touching. –
- o My child is safe as they stay away from strangers or safe in home.
- o It happens in lower income groups.
- o This can't happen to MY child.
- o ‘he’ or ‘she’ cannot do this to my child.

People need to open a channel of communication with children and ensure that they trust you to assist them in any adversity, especially any violation, you need to empower them to recognise sexual threats and act in their own safety. By doing so, the adults can prepare themselves to identify threats and communicate it openly with children about their safety.”

III. PSYCHOLOGICAL EFFECTS OF ABUSE

- Childhood sexual assault is highly correlated with depression, guilt, anxiety , shame, self-blame, denial, eating disorders, somatic concerns, repression, dissociative patterns,

² Ending Violence In Childhood Global Report 2017

³ Summary Report ISPCAN 2012

sexual problems, and relationship problems. Depression is found to be common long-term symptom among survivors. Survivors may have difficulty to convey the abuse, thus thinking negatively about themselves.”

- “Therapists mostly deal with the more general psychosocial problems before treating the sexual problems of survivors. This is due to the sensitive and vulnerable nature of physical relationship. Survivors are more likely to experience success in relations after resolving feelings about the abuse and gaining skills in areas like assertiveness, self-love and self-awareness.”
- It is important for research to continue on the subject of the long-term effects of sexual assault in childhood. The severity of this problem and the further significant implications it has on the lives of survivors is well established.
- “A way to by-pass the issues posed by the adversarial legal systems the establishment of specialist courts, the key aspects of such courts being case management practices for early disposition of cases and specialization at the prosecutorial and the judicial levels. In South Africa, for example, the Wynberg Sexual Offences Court is a dedicated criminal court which deals exclusively with sexual offences.

IV. INDIA AND CHILD ABUSE

“Historically, child sexual abuse (CSA) has been a hidden problem in India, largely ignored by public and by the criminal justice system. Until recently, CSA was not acknowledged as a criminal offence; rape was the main, if not the only, specific sexual offence against children recognised by law in India. In the absence of specific legislation, a range of offensive behaviours such as child sexual assault (not amounting to rape), harassment, and exploitation for pornography were never legally sanctioned.

“Sexual abuse doesn't need to involve penetration, force, pain, or perhaps touching. Any act directed towards a child with an intention of getting sexual gratification is sexual assault. The abuser can be of any age, any gender and socio-economic class. This also includes the behaviour directed towards children on the internet. Indian law recognises and punishes sexual assault of kids online, which incorporates but isn't limited to making, storing, sharing and viewing child pornography.” The issue of child sexual assault is widespread across India, impacting children of all ages, socio-economic classes and genders. “Nearly half of the country’s children face some form of sexual abuse, with 21% having faced severe sexual abuse. Boys account for around 53% and girls for 47% of all children, reporting abuse.”⁴

⁴ Child Abuse Report, Women and Child Development India, 2007

“The highest number of child rapes were recorded in Maharashtra at 2,832 followed by Uttar Pradesh at 2023 and Tamil Nadu at 1457. Priti Mahara, Director of Policy Research and Advocacy at CRY - Child Rights and You [CRY] said that while on the one hand, the increasing numbers of crimes against children are extremely alarming, it also suggests an increasing trend in reporting which could be a positive sign because it effects people's faith in the system.”

In India, a child is understood to be any person below the age of 18. Under the Protection of Children from Sexual Offences Act 2012 [POCSO], people under the age of 18 years i.e. children cannot legally consent to sexual relations. It is an adult responsibility to not offend. “Children of all ages, gender and class are vulnerable to sexual assault. According to the National study on Child Abuse in India, over 53.2 % of all children in India are sexually abuse, out of which 52.94% are boys, while 47.06% girls.”⁵

In most cases, the abuser is known, to the kid and even the family. Many times the abuser is the family. By learning the first warning signs and the way to effectively step in and speak up, sexual assault can be stopped before it starts and a toddler is harmed. As adults, it is our primary responsibility to prevent child sexual abuse from happening by addressing any concerning or questionable behaviour which may pose a risk to a child’s safety. The first step towards prevention is awareness and education.

Child sexual assault laws in India are enacted as a part of the child protection policies of India. The Parliament of India, passed the 'Protection of youngsters Against Sexual Offences Bill, 2011' regarding child sexual assault on 22 May 2012 into an Act. The rules formulated by the govt. in accordance with the law have also been notified on the November 2012 and therefore the law has become ready for implementation. There have been many calls for more stringent laws. India has one of the largest population of children in the world - Census data from 2011 shows that India includes a population of 472 million children below the age of eighteen. Protection of kids by the state is guaranteed to Indian citizens by an expansive reading of Article 21 of the Indian constitution, and also mandated given India's status as signatory to the UN Convention on the Rights of the Child.

V. POCSO ACT: CONCEPT

“POCSO or The Protection of Children from Sexual Offences, (Amendment) Bill, 2019, seeks to provide for a strict punishment to those engaging in sexual abuse of children, providing the

⁵ Standard, B., 2021. What is POCSO Act | POCSO Act news | POCSO Act Punishment | POCSO Act Summary. [online] Business Standard. Available at: <<https://www.business-standard.com/about/what-is-pocso>> [Accessed 3 August 2021].

perpetrator with a death penalty in cases of aggravated sexual assault, levying fines and imprisonment.”

“The POCSO Bill proposes to protect the interest of vulnerable children in times of distress and ensure their safety and dignity. The Bill has been approved by Parliament — the Rajya Sabha on July 29, 2019 and the Lok Sabha passed it on August 1, 2019.”⁶

The POCSO Bill, 2019, was moved for consideration and passage by Women and Child Development Minister Smriti Irani. She said “the Bill provided for levying fines and imprisonment to curb child pornography and prostitution. The Bill seeks to amend the (POCSO) Act, 2012, which is a comprehensive law to protect the children from offences like child sexual assault, child pornography and harassment, it safeguards the interests of the child at every stage of judicial process by incorporating child-friendly mechanisms for reporting, investigation, recording of evidence and speedy trials of offences through designated special courts.”

“According to the recently released NCRB data, 32,608 cases were reported in 2017 while 39,827 cases were reported in 2018 under the Protection of Children from Sexual Offences Act (POCSO). According to data by the National Crime Record Bureau, a total of 109 children were sexually abused every day in India in 2018, which showed a 22 per cent jump in such cases, from the previous year. POCSO Act, 2012 is a comprehensive, law to provide for the protection of children from offences of sexual assault, sexual harassment and pornography. It requires special treatment of cases relating to child sexual abuse such as setting-up of special courts, special prosecutors, and support persons for child victims.”⁷

“This Act also demands for mandatory reporting of sexual offences. This imposes a legal duty upon a person who had the knowledge that a child was sexually abused to report the offence: if he denies or fails to do so, he may be punished with six months of imprisonment and/or a fine.”

VI. SOME DISTINCTIVE FEATURES OF POCSO

“POCSO 2012 does not use the term ‘rape’ more commonly used and also does not confine penetrative sex to penile penetration. Instead, it broadens the offence termed ‘penetrative sexual

⁶ Wcd.nic.in. 2021. Model Guidelines under Section 39 of The Protection of Children from Sexual Offences Act, 2012. [online] Available at: <<https://wcd.nic.in/sites/default/files/POCSO-ModelGuidelines.pdf>> [Accessed 3 August 2021].

⁷ NDTV.com. 2021. 22% Jump In Cases Of Child Sexual Abuse In 2018, Says Report. [online] Available at: <<https://www.ndtv.com/india-news/22-jump-in-cases-of-child-sexual-abuse-in-2018-says-report-2162716>> [Accessed 3 August 2021].

assault' (section 3) to include oral sex, as well as, insertion of any object into anus, mouth or vagina, in addition to penile penetrative sex. In *State vs Pankaj Choudhary 2011*, (pre-POCSO) the accused could only be prosecuted for 'outraging the modesty of a woman' for digital penetration of the anus and vagina of a 5 year old child. The prosecution was unsuccessful in proving rape as the High Court ruled that digital penetration was not recognised as an offence under the India Penal Code (Delhi High Court 2011). The addition to the definition of penetrative assault has increased the cover of protection for children."

"POCSO also criminalises a range of behaviours as being sexual assaults, short of penetration (section 7). Additionally, the offences of 'aggravated' penetrative and non-penetrative sexual assault is made more serious and attract stronger penalties (sections 5, 9) when committed, by a specified range of perpetrators, in a wide array of situations or conditions, and/or has a severe impact on the victim. This includes sexual assault committed by persons in authority, or position of power with respect to a child, committed by persons in a shared household with the child, in conditions such as: gang rape, causing grievous bodily harm, threatening with firearm or corrosive substances, during communal or sectarian violence, assaulting a child under 12 years of age, or one who is physically or mentally disabled, causing a child to become pregnant, or knowingly assaulting, a pregnant child, or infecting the child with HIV, repeated assaults, or accompanied by public degradation. The definition is very comprehensive and covers a range of possible scenarios".⁸

"POCSO is also forward thinking in many aspects, in that, the definition of sexual harassment includes repeatedly or constantly following, watching or contacting a child either directly, electronically or through other means [section 11(iv)]—thus, covering incidents of child harassment via sexting or sexual cyberbullying. However, the interpretation of what might constitute 'repeatedly' or 'constantly' following or contacting a child with sexual intent (with the law specifying sexual intent being a 'question of fact') is unspecified in POCSO 2012 and consequently is potentially contestable.

The Act is quite distinctive in that it penalises abetment of or attempt to commit any of the offences listed in the preceding sections (section 16). Another 'extraordinary clause' (section 29) in the Act is the presumption of guilt of the accused, until proven innocent.

The provision of Special Courts (section 35) where trial proceedings may be conducted in a more sensitive manner with the victim's testimony given either 'in camera' (i.e. privately), via

⁸ Belur, J., Singh, B.B. Child sexual abuse and the law in India: a commentary. *Crime Sci* 4, 26 (2015). <https://doi.org/10.1186/s40163-015-0037-2>

video-link, or behind curtains or screens, is intended not only to reduce trauma but also protect the identity of the child. The Special Court plays a pivotal role in how the law and they evidence may be interpreted.

“Implementation of POCSO 2012 involves various criminal justice, state and third sector agencies and is very resource intensive. Various problems arising from resource scarcity and lack of appropriate training which affect how investigations, prosecution and medical examinations are conducted in cases of CSA in have been identified by stakeholders in a state wide consultation in Maharashtra (Maharashtra State Consultation 2014). Instead of revisiting those problems which impact the implementation of the Act, this paper focuses on three issues—namely, age of consent, obligatory reporting and age determination—embedded in the provisions of the Act that might cause unintended negative consequences individually and in combination.”⁹

“In the case of **State vs Pankaj Choudhary** the Hon’ble Delhi High Court in 2011 prosecuted the accused only for ‘outraging the modesty of a woman’ for digital penetration of the anus and vagina of a 5-year-old child since digital penetration was not recognised as an offence under the India Penal Code. The decision was delivered before the enactment of POCSO Act. However the addition of penetrative assault under the POCSO, 2012 has increased the cover of protection for children.”¹⁰

VII. PAKISTAN AND CHILD ABUSE

Pakistan, officially the Islamic Republic of Pakistan, is a country in South Asia. It is the world's fifth-most populous country. In 2015, 24.3% of the population lives below the national poverty line. With such high poverty rates and low incomes to sustain, children are often made to work, the pressure of work and home at such young ages leads them to leave their homes. These runaways are called street children.

“Islamabad: Findings of the annual report on child sexual abuse titled ‘Cruel Numbers 2017’ shows that in the year 2017, total 3,445 child abuse cases (CSA) were, reported with an average of nine cases per day. The statistics shared, in the report reflects that out of the total reported cases, (2077) 60 per cent victims were girls and (1,368) 40 per cent were boys.”

Street children (mostly male children under 17) in Pakistan are often drug abused as drugs are

⁹ Belur, J., Singh, B.B. Child sexual abuse and the law in India: a commentary. *Crime Sci* 4, 26 (2015). <https://doi.org/10.1186/s40163-015-0037-2>

¹⁰ Legalserviceindia.com. 2021. Child Sexual Abuse And The Law In India. [online] Available at: <<http://www.legalserviceindia.com/legal/article-809-child-sexual-abuse-and-the-law-in-india.html>> [Accessed 3 August 2021].

readily available (even though illegal they are as easily available as candy on streets) and often introduced to these kids so as to keep them under control or under a leader. The drug dealers believe, that even if this work is not moral their own children have to continue this legacy of drug dealing and selling. After getting addicted to drugs these street kids are ready to do anything to pay for drugs and a place to sleep.

They generally sleep in rented mattresses on the railway stations or truck stops. This is where these kids are mostly sexually abused by the truck drivers, drivers often keep 2-3 boys with them to help them with work as well as to sexually abuse them. The drivers have no sign of remorse for raping boys as small as 14 or 15. These young innocent boys are not fully aware of the consequences of sexual abuse and drug abuse that is happening with them every day. The boys going through this all their lives tend to believe its normal and people can simply do this for money so they force small kids into this often forcing themselves on the kids or raping them.

Drivers believe that they have no choice in hand but to use these boys as a sexual outlet , “men are like gold and women are like cloth , once torn cannot be brought back to same “ (referring to virginity) Pakistan has unsaid division of work between men and women .women have to do household or hotpot work and look after kids and the men have to get the earnings , women are Pakistan are mostly kept inside the house , forced to marry at young ages such as 16 or 17 and go through sexual abuse by much older husbands .

The abusers kidnap young children, use drugs, sexually abuse, make videos, and sometimes even murdered them, commercial sexual abuse of children and trafficking is now a million-dollar business globally. The amended Article 142(b) empowers the Centre to legislate criminal law procedure and evidence while Article 25(3) empowers the State to make special provisions for the protection of women and children.

As, sexual intercourse out of wedlock or without a wedding is prohibited in Pakistan, there is no specific legal age of sexual consent. The Child Marriage Restraint Act, 1929 states that marriage can take place over 16 years for a female and over 18 years of age, for a male. Under these ages, marriage is a punishable offence with imprisonment and fines but the law does not invalidate the marriage. So, in Pakistan it is a very common, practice for a male parent or guardian contracting the minor in a marriage without her or his consent. “Once a girl is promised in a marriage and this act is registered, the girl is regarded as formally married and hence sexual intercourse can happen legally. Marital rape of a girl over 12 is not criminalised

by Pakistani laws”.¹¹ Marital rape is recognised when the girl(wife) is under 12 years of age, in which case section 376 of the Penal Code provides imprisonment of maximum 2 years and a fine.”

“Pakistan’s parliament passed a new law against child abuse, two years after the rape and murder of a seven-year-old girl that shocked the country. The nation’s first national child abuse law will introduce a penalty of life imprisonment for child abuse, Pakistan’s human rights minister, Shireen Mazari .”

VIII. PHILIPPINES AND CHILD ABUSE

The Philippines, officially known as the Republic of the Philippines, is an archipelagic country in Southeast Asia. It is Situated in the western Pacific Ocean. The Philippines, which has never filtered any online activity, has passed an act that outlaws a long list of offences including cybersex and libel, at the same time handing the govt. powers to dam site access. President Benigno Aquino III has signed Cybercrime Prevention Act of 2012 – this criminalises a larger range of cyber activities from hacking & identity theft to cybersquatting and cyber prostitution.

“Cybersex crimes, which could end in imprisonment of between six and ten years or a fine of between around £3,000 and £15,000, are defined as: ‘The wilful engagement, maintenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or Sexual activities, with the help of a, computer system, for favour or consideration’. There are a few problems with the terms used here. This a part of the act (which also covers child pornography) is intended to combat the Philippines' huge problem with people trafficking and individuals being forced into cybersex activities, for the profit.”

Republic Act No. 10175, or the Cybercrime Prevention Act of 2012, was signed by President Aquino on Sept. 12, 2012. Its Original goal was to penalize crimes like cybersex, child pornography, unsolicited electronic communication in the country and fraud. RA 10175 punishes content-related offenses like cybersex, child pornography and libels which can be committed through a computing system. It also penalizes unsolicited commercial communication or content that advertises or sells products or services. Child pornography via computer carries a penalty one degree higher than that provided by RA 9775, or the Anti-Child Pornography Act of 2009. Under RAO9775, those who produce, disseminates or publish child pornography will be fined (P50,000 to P5 million) and a maximum jail term of 20 to 40 years.

In addition to child cybersex or pornography being a serious problem in the country, teen

¹¹ Refworld.org. 2021. Rights of the Child in Pakista. [online] Available at: <<https://www.refworld.org/pdfid/46c190b40.pdf>> [Accessed 3 August 2021].

pregnancies are increasing at a high rate from as small as 12-year-old girls getting, pregnant. “At the Dr. Jose Fabella Memorial Hospital in the Philippines' capital, Manila, an infant is born every 12 minutes. Many of the new mothers are teenagers, some just 13. This devoutly Catholic nation, where abortion is unlawful, is the only Asian country where teenage pregnancy, has increased within the last 20 years. Authorities say they want to reduce the birth rate, but the fight to make contraception readily available has been plagued by setbacks”¹²

The state does not allot funds to sex education and contraception even after high rates of teen pregnancies and has banned abortions of any kind and hence leaving people with no other choice. Sex education is clearly not provided to people and contraception is considered a taboo or” bad for the uterus”.

Most of these girls are involved with much older men and are often forced or raped leading to unwanted pregnancies. Most of these crimes are left unreported. After having the baby it’s only considered right to live with their partner as then the family gets once less mouth to feed.

IX. KYRGYZSTAN AND CHILD ABUSE

Kyrgyzstan officially known as the **Kyrgyz Republic** is a country in Central Asia. “**Ala kachuu** is a form of bride kidnapping still very common in Kyrgyzstan and Kazakhstan. This term applies to a variety of actions, ranging from a consensual elopement to a non-consensual or forced kidnapping. Some sources suggest that currently at least a third of Kyrgyzstan's brides are taken against their will.”¹³

Kyz ala kachuu means "to take a young woman and run away". This typical non-consensual way of marriage involves a young man abducting a woman either by force or by guile, often accompanied by friends or male relatives. They then take her to his home, where she is kept locked in a room until the man's female relatives convince her to put on the scarf of a married woman as a sign of acceptance (which is mostly forced). Sometimes, if the woman resists the persuasion to marriage and maintains her wish to return home, her side of relatives try to convince her to agree to the marriage (as it is considered a custom).

The rise of non-consensual bride kidnapping or *Ala kachuu* is an increasing problem in the southern regions of Kazakhstan and Kyrgyzstan. Paradoxically, young women who are kidnapped against their will stay in these marriages to avoid the shame and stigma of returning home (they are not even allowed in their own homes after running away from marriage). Although non-consensual bride kidnapping can be considered an act of violence against

¹² www.aljazeera.com

¹³ Smith, Craig S. (April 30, 2005). "Abduction, Often Violent, a Kyrgyz Wedding Rite". *The New York Times*.

women, the international development community has not yet responded to this issue. Even though bride-kidnapping is illegal in Kyrgyzstan it is still widely practiced, the government has been accused of not taking proper steps to protect women from this practice.

The laws are so weak that a piece of land or property is better protected than a woman. The family of the kidnapped wife often does not report her missing as this is considered a tradition. A tradition so misleading that the family of the groom is mostly disappointed if the new bride is not kidnapped. These women are often young (merely 16) and often commit suicide soon after marriage. (marriage such as *ala kachuu* sabotages and destroys the future aspirations of a girl often leading to suicide)

If she manages to run away from her husband's house she is not taken back at her home as the parents believe that a girl cannot spend even a night at someone's house and if she does (even by force) she is not pure and is not welcomed at her own home. This is the mental pressure and excruciating pain that a young girl has to go through if by any chance she is kidnapped.

In 2009 the police received about 596 reports about theft of private property but surprisingly only 1 report about kidnapping of a girl. The laws are such that by stealing livestock a person can end up in jail for 11 years but for kidnapping a girl he can end up in jail for only 3-4 years.

The law formulation and enforcement needs to tighten its belt; it's time people of Kyrgyzstan understand that kidnapping women or "bride" is a crime more than a tradition.

X. CONCLUSION AND SUGGESTIONS

This research paper has made an attempt to highlight certain substantive aspects of the law protecting minors against sexual assault which needs a serious overhaul.

Child sexual abuse is something which is prevalent in not only India but the whole world. These crimes against children are mostly seen in developing or under developed countries such as Pakistan, Philippines, India, Kyrgyzstan and many more countries with similar conditions. These countries not only house the highest population of children but also a high rate of poverty and unemployment which makes it a perfect environment for such crimes against humanity, crimes involving the most vulnerable section of our society.

The POCSO Amendment Bill in India provides for strict punishments for many crimes against all those below 18 years of age (minors). The POCSO Amd. Bill also aims at making offences against children *gender neutral*. The POCSO Act seeks to provide strong punishment in cases of drugs being administered to children to bring about early sexual maturity (drug abuse is common in prostitution market).

Countries like Kyrgyzstan and Pakistan need to amend some laws as well as make the enforcement stricter.

Philippines has a stable law for cybersex crimes but education and contraception both are not easily available and comes along with some taboos.

Whole set of countries come with similar problems regarding to child sexual abuse, which has devastating psychological effects on the future generations. These problems demand to be looked at, the law enforcement demands to be stricter.

In dealing with the procedural and evidentiary aspects of the criminal law, we have suggested that every case of child sexual abuse must necessarily be dealt with by multidisciplinary teams, comprising child advocacy groups, psychologists, social workers and law enforcement officials, from the inception of the case. Secondly, we have also suggested that specialist courts be set up to cater exclusively to cases of sexual abuse of both children and adults or cases of all kinds of abuse against children. Because of the practical problems associated with it and the opposition it is likely to face, we have suggested that in the alternative, legal representatives be appointed for the child by the court who shall ease the rigours of the adversarial system and promote the best interests of the child.
