

Nipun Saxena vs Union Of India Ministry Of Home Affairs on 11 December, 2018

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL/CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 565 OF 2012

NIPUN SAXENA & ANR.

...PETITIONER(S)

Versus

UNION OF INDIA & ORS.

...RESPONDENT(S)

WITH

W.P. (Crl.) No. 1 of 2013

W.P. (C) No. 22 of 2013

W.P. (C) No. 148 of 2013

SLP (CRL.)CRLMP. No.16041/2014

W.P. (C) No. 568 of 2012

JUDGMENT

Deepak Gupta, J.

1. How and in what manner the identity of adult victims of rape and children who are victims of sexual abuse should be protected so that they are not subjected to unnecessary ridicule, social ostracisation and harassment, is one of the issues which arises in these cases.

2. We are dividing this judgment into two parts. The first part deals with the victims of the offence of rape under the Indian Penal Code, 1860 (for short 'IPC') and the second part deals with victims who are subjected to offences under the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO').

3. In this judgment any reference to "media" will include all types of media including press, electronic and social media etc.. Ist Part

4. Unfortunately, in our society, the victim of a sexual offence, especially a victim of rape, is treated worse than the perpetrator of the crime. The victim is innocent. She has been subjected to forcible sexual abuse. However, for no fault of the victim, society instead of empathizing with the victim, starts treating her as an 'untouchable'. A victim of rape is treated like a "pariah" and ostracised from society. Many times, even her family refuses to accept her back into their fold. The harsh reality is that many times cases of rape do not even get reported because of the false notions of so called 'honour' which the family of the victim wants to uphold. The matter does not end here. Even after a case is lodged and FIR recorded, the police, more often than not, question the victim like an accused. If the victim is a young girl who has been dating and going around with a boy, she is asked in intimidating terms as to why she was dating a boy. The victim's first brush with justice is an unpleasant one where she is made to feel that she is at fault; she is the cause of the crime.

5. If the victim is strong enough to deal with the recriminations and insinuations made against her by the police, she normally does not find much succour even in court. In Court the victim is subjected to a harsh cross-examination wherein a lot of questions are raised about the victim's morals and character. The Presiding Judges sometimes sit like mute spectators and normally do not prevent the defence from asking such defamatory and unnecessary questions. We want to make it clear that we do not, in any manner, want to curtail the right of the defence to cross-examine the prosecutrix, but the same should be done with a certain level of decency and respect to women at large. Over a period of time, lot of effort has been made to sensitise the courts, but experience has shown that despite the earliest admonitions, the first as far back as in 1996, the Courts even today reveal the identity of the victim.

6. Section 228A was introduced in the IPC vide Amendment Act No. 43 of 1983 with effect from 25.12.1983 and reads as follows:

"228A. Disclosure of identity of the victim of certain offences etc.-

(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A,

section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is-

(a) by or under the order in writing of the officer-

in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or

(b) by, or with the authorisation in writing of, the victim; or

(c) where the victim is dead or minor or of State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 unsound mind, by, or with the authorisation in writing of, the next of kin of the victim:

Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation. Explanation.-For the purposes of this sub-section, "recognised welfare institution or organisation" means a social welfare institution or organisation recognised in this behalf by the Central or State Government. (3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such Court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Explanation.-The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section."

7. We may also refer to Section 327 of the Code of Criminal Procedure, 1973 (for short 'CrPC') which provides that Courts should be open and normally public should have access to the Courts. Sub-section (2) of Section 327 was inserted by the same Amendment Act No.43 of 1983. Section 327, as amended, reads as follows:-

"Section 327. Court to be open.-

(1) The place in which any criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

(2) Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860) shall be conducted in camera:

Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the Court: Provided further that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate.

(3) Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the Court:

Provided that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.”

8. Vide the Amendment Act of 1983 cases of rape, gang rape etc. were excluded from the category of cases to be tried in open Court. Later other similar offences were included vide Amendment Act of 2013.

9. Sub-section (1) of Section 228A, provides that any person who makes known the name and identity of a person who is an alleged victim of an offence falling under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E commits a criminal offence and shall be punishable for a term which may extend to two years.

10. What is however, permitted under sub-section (2) of Section 228A IPC is making known the identity of the victim by printing or publication under certain circumstances described therein. Any person, who publishes any matter in relation to the proceedings before a Court with respect to such an offence, without the permission of the Court, commits an offence. The Explanation however provides that printing or publication of the judgment of the High Courts or the Supreme Court will not amount to any offence within the meaning of the IPC.

11. Neither the IPC nor the CrPC define the phrase ‘identity of any person’. Section 228A IPC clearly prohibits the printing or publishing “the name or any matter which may make known the identity of the person”. It is obvious that not only the publication of the name of the victim is prohibited but also the disclosure of any other matter which may make known the identity of such victim. We are clearly of the view that the phrase “matter which may make known the identity of the person” does

not solely mean that only the name of the victim should not be disclosed but it also means that the identity of the victim should not be discernible from any matter published in the media. The intention of the law makers was that the victim of such offences should not be identifiable so that they do not face any hostile discrimination or harassment in the future.

12. A victim of rape will face hostile discrimination and social ostracisation in society. Such victim will find it difficult to get a job, will find it difficult to get married and will also find it difficult to get integrated in society like a normal human being. Our criminal jurisprudence does not provide for an adequate witness protection programme and, therefore, the need is much greater to protect the victim and hide her identity. In this regard, we may make reference to some ways and means where the identity is disclosed without naming the victim. In one case, which made the headlines recently, though the name of the victim was not given, it was stated that she had topped the State Board Examination and the name of the State was given. It would not require rocket science to find out and establish her identity. In another instance, footage is shown on the electronic media where the face of the victim is blurred but the faces of her relatives, her neighbours, the name of the village etc. is clearly visible. This also amounts to disclosing the identity of the victim. We, therefore, hold that no person can print or publish the name of the victim or disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.

13. Sub-section (2) of Section 228A IPC makes an exception for police officials who may have to record the true identity of the victim in the police station or in the investigation file. We are not oblivious to the fact that in the first information report (for short 'FIR') the name of the victim will have to be disclosed. However, this should not be made public and especially not to the media. We are of the opinion that the police officers investigating such cases and offences should also as far as possible either use a pseudonym to describe the victim unless it is absolutely necessary to write down her identity. We make it clear that the copy of an FIR relating to the offence of rape against a woman or offences against children falling within the purview of POCSO shall not be put in the public domain to prevent the name and identity of the victim from being disclosed. The Sessions Judge/Magistrate/Special Court can for reasons to be recorded in writing and keeping in view the interest of the victim permit the copy of the FIR to be given to some person(s). Some examples of matters where her identity will have to be disclosed are when samples are taken from her body, when medical examination is conducted, when DNA profiling is done, when the date of birth of the victim has to be established by getting records from school etc.. However, in these cases also the police officers should move with circumspection and disclose as little of the identity of the victim as possible but enough to link the victim with the information sought. We make it clear that the authorities to which the name is disclosed when such samples are sent, are also duty bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court. There can be no hard and fast rule in this behalf but the police should definitely ensure that the correspondence or memos exchanged or issued wherein the name of the victim is disclosed are kept in a sealed cover and are not disclosed to the public at large. They should not be disclosed to the media and they shall also not be furnished to any person under the Right to Information Act, 2015. We direct that the police officials should keep all the documents in which the name of the victim is disclosed in a sealed cover and replace these documents by identical documents in which the name of the victim is

removed in all records which may be scrutinised by a large number of people. The sealed cover can be filed in the court along with the report filed under Section 173 CrPC.

14. As far as clause (b) of sub-section (2) of Section 228A IPC is concerned, if an adult victim has no objection to her name being published or identity being disclosed, she can obviously authorize any person in writing to disclose her name. This has to be a voluntary and conscious act of the victim. There are some victims who are strong enough and willing to face society even after their names are disclosed. Some of them, in fact, help other victims of rape and they become a source of inspiration to other rape victims. Nobody can have any objection to the victim disclosing her name as long as the victim is a major.

15. Coming to clause (c) of sub-section (2) of Section 228A IPC, we are of the opinion that where the victim is a minor, Section 228A will no longer apply because of the enactment of POCSO which deals specifically with minors. In fact, the words 'or minor' should for all intents and purposes be deemed to be deleted from clause (c) of sub-section (2) of Section 228A IPC.

16. The vexatious issue which troubles us is with regard to the next of kin of the victim giving an authority to the Chairman or the Secretary of recognized welfare institutions or organizations to declare the name. As per the materials placed before us till date neither the Central Government nor any State Government has recognized any such social welfare institutions or organizations to whom the next of kin should give the authorization.

17. Before dealing with this technical aspect as to whom the authorisation is to be given, we feel that a word of caution is needed with regard to the right of the next of the kin of the victim. A person of unsound mind is as much a citizen of the country as a sane person. A person of unsound mind who is also subjected to such a heinous sexual offence suffers a trauma which is unimaginable. The issue for consideration is – in what circumstances the next of kin should be permitted to authorize the naming and identification of the victim? It was urged before us that in certain matters the name of the victim should be permitted to be disclosed or published because the name and face of the victim can then become a rallying point to prevent other such sexual offences. The victim becomes a symbol of protest or is treated as an iconic figure. We are not at all impressed with this argument. Should the person who is dead or who is of unsound mind be permitted to become a symbol if such person herself might not want to be a rallying point? We are also of the considered view that it is not at all necessary to disclose the identity of the victim to arouse public opinion and sentiment. This is a serious issue dealing with victims of heinous sexual offences and needs to be dealt with sensitivity. Furthermore, all of us are fully aware that without disclosing her true identity 'Nirbhaya' became the most effective symbol of protest the country has ever known. If a campaign has to be started to protect the rights of the victim and mobilise public opinion it can be done so without disclosing her identity.

18. We may also add that in this modern age where we have dealt with cases where daughters have been raped by their fathers, where victims of rape especially minor victims are very often subjected to this heinous crime either by family members or friends of the family, it is not unimaginable that the so called next of kin may for extraneous reasons including taking money from a media house or

a publishing firm which wants to publish a book, disclose the name of the victim. We do not, in any manner, want to comment upon the role of the parents but we cannot permit even one case of this type and in the larger interest we feel that, as a matter of course, the name of the victim or her identity should not be disclosed even under the authorization of the next of the kin, without permission of the competent authority.

19. It has been urged on behalf of the Union of India that the words “next of kin” will have to be given the same definition as is contemplated under the Indian Succession Act, 1925. We do not want to enter into this dispute. As pointed by us, in certain cases, the interest of the next of kin may not be the same as the interest of the victim. In such circumstances, the applicant may not be the next of kin, but the “next friend” of the child, who may be entitled to move such an application. It will be for the Court or the competent authority to decide who is the “next friend”.

20. As pointed out above, neither the Central Government nor any State Government has recognized any such welfare institution or organization. No guidelines have been laid down in the IPC as to what will be the nature of such organisation and what will be the qualifications of the persons who are made the Chairman or Secretary of such organisation. These matters cannot be left indeterminate.

21. There may be cases where the identity of the victim, if not her name, may have to be disclosed. There may be cases where a dead-body of a victim is found. It is established that the victim was subjected to rape. It may not be possible to identify the victim. Then, obviously her photograph will have to be published in the media. Even here, we would direct that while this may be done, the fact that such victim has been subjected to a sexual offence need not be disclosed. There may be other situations where the next of kin may be justified in disclosing the identify of the victim. If any such need should arise, then we direct that an application to authorise disclosure of identity should be made only to the Sessions Judge/magistrate concerned and the said Sessions Judge/magistrate shall decide the application on the basis of the law laid down by us. We are exercising power under Article 142 of the Constitution in this regard because the Government has not identified any social or welfare institution/organisation and the law as laid down cannot be administered. We direct that if the Government wants to actually act under Section 228A (2) (c) IPC, it must before identifying such social welfare institution or organisation clearly lay down some rules or clear cut criteria in this regard. What should be the nature of the organisation? How should the application be made? In what manner that application should be dealt with?. A clear cut procedure must be laid down. Till that is done, our directions shall prevail.

22. As far as sub-section (3) of Section 228A IPC is concerned, we would like to make it clear that the IPC clearly lays down that nobody can print or publish any matter in relation to any proceedings falling within the purview of Section 228A and in terms of Section 327(2) CrPC. These are in camera proceedings and nobody except the presiding officer, the court staff, the accused, his counsel, the public prosecutor, the victim, if at all she wants to be present or the witness shall be there. It is the bounden duty of all of them to ensure that what happens in court is not disclosed outside. This is not to say that there can be no reporting of such cases. The press can report that the case was fixed before Court and some witnesses were examined. It can report for what purpose the case was listed

but it cannot report what transpired inside the court or what was the statement of the victim or the witnesses. The evidence cannot be disclosed. We are not elaborating and dealing with the issue of publication in press in greater detail since this issue is engaging our attention in Nivedita Jha's case² but it is clear that nobody can be permitted to violate Section 327(3) CrPC, the language of which is very clear and unambiguous.

23. Sub-section (3) of Section 228A IPC makes printing or publication of any matter in relation to such proceedings before a court an offence unless its publication is made with the previous permission of such court.

24. This Court, more than two decades back in Gurmit Singh's case (supra) raised a note of caution. It found that sexual crimes against women were rising. This court held that victims of sexual abuse or assault were treated without any sensitivity during the course of investigation and trial. The Court further held that trial of rape cases in camera should be the rule and open trial an exception. Though the Court did not refer to Section 228A IPC, the following observations are pertinent:

“21. Of late, crime against women in general and rape in particular is on the increase. It is an irony that Nivedita Jha v. State of Bihar, SLP(C) No. 24978 of 2018 while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault — it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity.....

22. There has been lately, lot of criticism of the treatment of the victims of sexual assault in the court during their cross-examination. The provisions of Evidence Act regarding relevancy of facts notwithstanding, some defence counsel adopt the strategy of continual questioning of the prosecutrix as to the details of the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on record or to test her credibility but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The court, therefore, should not sit as a silent spectator while the victim of crime is being cross-examined by the defence. It must effectively control the recording of evidence in the court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime. A victim of rape, it must be remembered, has already undergone a traumatic experience and if she is made to repeat again and

again, in unfamiliar surroundings what she had been subjected to, she may be too ashamed and even nervous or confused to speak and her silence or a confused stray sentence may be wrongly interpreted as “discrepancies and contradictions” in her evidence.” Dealing with Section 327 CrPC this Court held as follows:-

24.....It would enable the victim of crime to be a little comfortable and answer the questions with greater 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 the gaze of public. The improved quality of her evidence would assist the courts in arriving at the truth and sifting truth from falsehood.....The courts should, as far as possible, avoid disclosing the name of the prosecutrix in their orders to save further embarrassment to the victim of sex crime. The anonymity of the victim of the crime must be maintained as far as possible throughout. In the present case, the trial court has repeatedly used the name of the victim in its order under appeal, when it could have just referred to her as the prosecutrix. We need say no more on this aspect and hope that the trial courts would take recourse to the provisions of Sections 327(2) and (3) CrPC liberally. Trial of rape cases in camera should be the rule and an open trial in such cases an exception.”

25. Bhopinder Sharma v. State of Himachal Pradesh³ is one of first cases where specific reference was made to Section 228A IPC. This Court held as follows:-

“2. We do not propose to mention the name of the (2003) 8 SCC 551 victim. Section 228-A of the Indian Penal Code, 1860 (in short “IPC”) makes disclosure of the identity of victims of certain offences punishable. Printing or publishing the name or any matter which may make known the identity of any person against whom an offence under Sections 376, 376-A, 376-B, 376-C or 376-D is alleged or found to have been committed can be punished. True it is, the restriction does not relate to printing or publication of judgment by the High Court or the Supreme Court. But keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the judgments, be it of a High Court or a lower court, the name of the victim should not be indicated. We have chosen to describe her as “victim” in the judgment.” This Court held that the bar imposed under Section 228A IPC did not in term apply to the printing or publication of judgments of the High Courts and the Supreme Court because of the Explanation to Section 228A. However, keeping in view the social object of preventing the victims or ostracising of victims, it would be appropriate that in judgments of all the courts i.e. trial courts, High Courts and the Supreme Court the name of the victim should not be indicated. This has been repeated in a large number of cases and we need not refer to all.

26. The Kerala High Court in the case of Aju Varghese v. State of Kerala⁴ held as follows:-

“8. The statutory provision as explained by the Supreme Court clearly shows that the provision was specifically intended to ensure that the victim is not exposed to further agony by the consequent social victimization or ostracism pursuant to disclosure of her identity. It is clear that, it is intended to protect her from psychological and sociological torture or mental agony, that may follow the unfortunate incident of sexual violence. Society has a duty to support the victims of sexual violence and to ensure that they come back to normalcy and start leading a normal life. Victims of such violence are not denuded of their fundamental right to privacy and are liable to be insulated against unnecessary public comments. Definitely, it serves an avowed social purpose and has an element of public interest involved in it. Section is so clear, unambiguous and the consequence of breach of it is inescapable and the question whether the disclosure was intended, bonafide or without knowledge of law has not relevance. Hence, the provision of section 228A IPC prohibiting the disclosure of the name by an accused is absolute and cannot be diluted.”

27. Before parting with this aspect, we would like to deal with a situation not envisaged by the law makers. As we have held above, Section 228A IPC imposes a clear cut bar on the name or identity of the victim being disclosed. What happens if the accused is acquitted and the victim of the offence wants to file an appeal under Section 372 CrPC? Is she bound to disclose her CrI. MC No.5247 of 2017 decided on 27.09.2018 name in the memo of appeal? We are clearly of the view that such a victim can move an application to the Court praying that she may be permitted to file a petition under a pseudonymous name e.g. ‘X’ or ‘Y’ or any other such coded identity that she may choose. However, she may not be permitted to give some other name which may indirectly harm another person. There may be certain documents in which her name will have to be disclosed; e.g., the power of attorney and affidavit(s) which may have to be filed as per the Rules of the Court. The Court should normally allow such applicant to file the petition/appeal in a pseudonymous name. Where a victim files an appeal we direct that such victim can file such an appeal by showing her name as ‘X’ or ‘Y’ along with an application for non-disclosure of the name of the victim. In a sealed envelope to be filed with the appeal she can enclose the document(s), in which she can reveal her identity as required by the Rules of the appellate court. The Court can verify the details but in the material which is placed in the public domain the name of the victim shall not be disclosed. Such an application should be heard by the Court in Chambers and the name should not be reflected even in the cause-list till such matter is decided. Any documents disclosing the name and identity of the victim should not be in the public domain. IIInd Part

28. In this part of the judgment we shall deal with the issues which relate to non-disclosure of the name and identity of a victim falling within the purview of the POCSO. At the outset, we may note that the reasons which we have given in Ist Part of the judgment dealing with the adult victims, apply with even greater force to minor victims.

29. A minor who is subjected to sexual abuse needs to be protected even more than a major victim because a major victim being an adult may still be able to withstand the social ostracization and mental harassment meted out by society, but a minor victim will find it difficult to do so. Most crimes against minor victims are not even reported as very often, the perpetrator of the crime is a

member of the family of the victim or a close friend. Efforts are made to hush up the crime. It is now recognised that a child needs extra protection. India is a signatory to the United Nations Convention on the Rights of Child, 1989 and Parliament thought it fit to enact POCSO in the year 2012, which specifically deals with sexual offences against all children. The Act is gender neutral and whatever we say in this Part will apply to all children.

30. Chapter VI of POCSO deals with procedure relating to recording the statement of a child. Section 24 deals with the statement recorded by the police. For our purpose sub-section (5) of Section 24 is relevant which reads as follows:

“Section 24 - Recording of statement of a child.-

xxx	xxx	xxx
xxx	xxx	xxx

(5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.” Section 25 POCSO states that statements of the child recorded under Section 164 CrPC which permits an advocate to be present will not be applicable in the case of children. Trials under POCSO are conducted by the Special Court which is expected to be child friendly and specifically provides that the Special Court shall not permit aggressive questioning or character assassination of the child. Sub-section (7) of Section 33 which is relevant reads as follows:

“Section 33 - Procedure and powers of Special Court.-

xxx xxx xxx (7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial:

Provided that for reasons to be recorded in writing, the Special Court may permit such disclosure, if in its opinion such disclosure is in the interest of the child. Explanation.-For the purposes of this sub-section, the identity of the child shall include the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed.” Section 37 provides that all trials under POCSO are to be conducted in camera unless otherwise specifically decided for reasons to be recorded by the Special Court. A bare reading of Section 24(5) and Section 33(7) makes it amply clear that the name and identity of the child is not to be disclosed at any time during the course of investigation or trial and the identity of the child is protected from the public or media. Furthermore, Section 37 provides that the trial is to be conducted in camera which means that the media cannot be present. The entire purpose of the POCSO is to ensure that the identity of the child is not disclosed unless the Special Court for reasons to be recorded in writing permits such disclosure. This disclosure can only be made if it is

in the interest of the child and not otherwise. One such case where disclosure of the identity of the child may be necessary can be where a child is found who has been subjected to a sexual offence and the identity of the child cannot be established even by the investigating team. In such a case, the Investigating Officer or the Special Court may allow the photograph of the child to be published to establish the identity.

It is absolutely clear that the disclosure of the identity can be permitted by the Special Court only when the same is in the interest of the child and in no other circumstances. We are of the view that the disclosure of the name of the child to make the child a symbol of protest cannot normally be treated to be in the interest of the child.

31. It is contended by the learned amicus curiae that interest of the child has not been defined. We are of the view that it is neither feasible nor would it be advisable to clearly lay down what is the meaning of the phrase “interest of the child”. We have, however, given some examples hereinabove and we do not want to tie down the hands of the Special Court, who may have to deal with such cases. Each case will have to be dealt within its own factual scenario.

Section 23 of POCSO contains provisions which relate to procedure for media. It reads as follows:

“Section 23 - Procedure for media.-

(1) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.

(2) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child:

Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

(3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.

(4) Any person who contravenes the provisions of sub-

section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.” Sub-section (1) of Section 23 prohibits any person from filing any report or making any comments on any child in any form, be it written, photographic or graphic without first having

complete and authentic information. No person or media can make any comments which may have the effect of lowering the reputation of the child or infringing upon the privacy of the child. Sub-section (2) of Section 23 clearly lays down that no report in any media shall disclose identity of a child including name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to the disclosure of the identity of the child. This clearly shows that the intention of the legislature was that the identity of the child should not be disclosed directly or indirectly. The phrase 'any other particulars' will have to be given the widest amplitude and cannot be read only ejusdem generis. The intention of the legislature is that the privacy and reputation of the child is not harmed. Therefore, any information which may lead to the disclosure of the identity of the child cannot be revealed by the media. The media has to be not only circumspect but a duty has been cast upon the media to ensure that it does nothing and gives no information which could directly or indirectly lead to the identity of the child being disclosed.

32. No doubt, it is the duty of the media to report every crime which is committed. The media can do this without disclosing the name and identity of the victim in case of rape and sexual offences against children. The media not only has the right but an obligation to report all such cases. However, media should be cautious not to sensationalise the same. The media should refrain from talking to the victim because every time the victim repeats the tale of misery, the victim again undergoes the trauma which he/she has gone through. Reportage of such cases should be done sensitively keeping the best interest of the victims, both adult and children, in mind. Sensationalising such cases may garner Television Rating Points (TRPs) but does no credit to the credibility of the media.

33. Where a child belongs to a small village, even the disclosure of the name of the village may contravene the provisions of Section 23(2) POCSO because it will just require a person to go to the village and find out who the child is. In larger cities and metropolis like Delhi the disclosure of the name of the city by itself may not lead to the disclosure of the identity of the child but any further details with regard to the colony and the area in which the child is living or the school in which the child is studying are enough (even though the house number may not be given) to easily discover the identity of the child. In our considered view, the media is not only bound not to disclose the identity of the child but by law is mandated not to disclose any material which can lead to the disclosure of the identity of the child. Any violation of this will be an offence under Section 23(4).

34. The learned amicus curiae urged that child for purposes of publication should only mean a living child. Her contention appears to be that when the child is dead then the name and identity of child can be disclosed. Her submission is based on the assumption that if the name and identity of the child is disclosed, public sentiment can be generated and a movement can be started to get justice for the child. According to her, it is difficult to garner such support if the name of the deceased child victim is not disclosed. We are not at all in agreement with this submission. The same reasoning which we have given above for victims will apply to dead victims also. In the case of dead victims, we have to deal with another factor. We have to deal with the important issue that even the dead have their own dignity. They cannot be denied dignity only because they are dead.

35. Though in this case we are dealing with cases of victims but we may make reference to Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which reads as follows:-

“Section 74. Prohibition on disclosure of identity of children.-

(1) No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published:

Provided that for reasons to be recorded in writing, the Board or Committee, as the case may be, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child.

(2) The Police shall not disclose any record of the child for the purpose of character certificate or otherwise in cases where the case has been closed or disposed of.

(3) Any person contravening the provisions of sub-

section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both.”

36. The name, address, school or other particulars which may lead to the identification of the child in conflict with law cannot be disclosed in the media. No picture of such child can be published. A child who is not in conflict with law but is a victim of an offence especially a sexual offence needs this protection even more.

37. The Sikkim High Court in Subash Chandra Rai v. State of Sikkim⁵ dealing with this issue held as follows:-

“27.....The mandate of the provision requires no further clarification. Suffice it to say that neither for a child in conflict with law, or a child in need of care and 2018 CriLJ 3146 protection, or a child victim, or witness of a crime involved in matter, the name, address, school or other particulars which could lead to the child being tracked, found and identified shall be disclosed, unless for the reasons given in the proviso extracted hereinbefore. The Police and Media as well as the Judiciary are required to be equally sensitive in such matters and to ensure that the mandate of law is complied with to the letter.”

38. In the case of Bijoy v. State of West Bengal⁶, the Calcutta High Court has given a detailed judgment setting out the reasons while dealing with the provisions of POCSO and held that neither

during investigation nor during trial the name of the victim should be disclosed.

The Calcutta High Court has also given other directions to ensure that the provisions of the law are followed in letter and spirit, and the fundamental rights of a child victim and other basic human rights are protected. We are in agreement with all these directions. Though some of the issues dealt with in these directions do not strictly arise in this case, keeping in view the fact that we are dealing with the rights of children, we are annexing the directions issued by the Calcutta High Court as Annexure-1 to this judgment. We request all the Chairpersons 2017 CriLJ 3893 and Members of all the Juvenile Justice Committee of all the High Courts in the country to go through the judgment of the Calcutta High Court and the directions issued therein and they may issue similar directions, keeping in view the particular needs of each High Court/State.

39. Before parting we would like to emphasize the need to have child friendly courts. POCSO mandates setting up of child- friendly courts. Though some progress has been made in this regard, a lot still requires to be done.

40. Any litigant who enters the court feels intimidated by the atmosphere of the court. Children and women, especially those who have been subjected to sexual assault are virtually overwhelmed by the atmosphere in the courts. They are scared. They are so nervous that they, sometimes, are not even able to describe the nature of the crime accurately. When they are cross-examined in a hostile and intimidatory manner then the nervousness increases and the truth does not come out.

41. It is, therefore, imperative that we should have courts which are child friendly. Section 33(4) POCSO enjoins on the Special Court to ensure that there is child friendly atmosphere in court. Section 36 lays down that the child should not see the accused at the time of testifying. This is to ensure that the child does not get scared on seeing the alleged perpetrator of the crime. As noted above, trials are to be conducted in camera. Therefore, there is a need to have courts which are specially designed to be child friendly and meet the needs of child victims and the law.

42. These courts need not only be used for trying cases under the POCSO but can also be used as trial courts for trying cases of rape against women. In fact, it would be in the interest of children and women, and in the interest of justice if one stop centres are also set up in all the districts of the country as early as possible. These one stop centres can be used as a central police station where all crimes against women and children in the town/city are registered. They should have well trained staff who are sensitive to the needs of children and women who have undergone sexual abuse. This staff should be given adequate training to ensure that they talk to the victims in a compassionate and sensitive manner. Counsellors and psychiatrists should also be available on call at these centres so that if necessary the victims are counselled and in some cases it would be appropriate if the counsellors question the victims in a manner in which they have been trained to handle the victims of such offences. These one stop centres should also have adequate medical facilities to provide immediate medical aid to the victims and the medical examination of the victims can be conducted at the centre itself. These one stop centres should also have video conferencing facility available where the statement of the victims to be mandatorily recorded under Section 164 CrPC can be recorded using video conferencing facilities and the victims need not be produced in the court of the

magistrate. There should be court room(s) in these one stop centres which can be used for trial of such cases. As far as possible these centres should not be situated within the court complex but should be situated near the court complex so that the lawyers are also not inconvenienced. Resultantly, the victims of such offences will never have to go to a court complex which would result in a victim friendly trial. Once such centre which has already been set up is “BHAROSA” in Hyderabad. This can be used as a model for other one stop centres in the country.

43. In view of the aforesaid discussion, we issue the following directions:-

1. No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.
2. In cases where the victim is dead or of unsound mind the name of the victim or her identity should not be disclosed even under the authorization of the next of the kin, unless circumstances justifying the disclosure of her identity exist, which shall be decided by the competent authority, which at present is the Sessions Judge.
3. FIRs relating to offences under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of IPC and offences under POCSO shall not be put in the public domain.
4. In case a victim files an appeal under Section 372 CrPC, it is not necessary for the victim to disclose his/her identity and the appeal shall be dealt with in the manner laid down by law.
5. The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinised in the public domain.
6. All the authorities to which the name of the victim is disclosed by the investigating agency or the court are also duty bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court.
7. An application by the next of kin to authorise disclosure of identity of a dead victim or of a victim of unsound mind under Section 228A(2)(c) of IPC should be made only to the Sessions Judge concerned until the Government acts under Section 228A(1)(c) and lays down a criteria as per our directions for identifying such social welfare institutions or organisations.
8. In case of minor victims under POCSO, disclosure of their identity can only be permitted by the Special Court, if such disclosure is in the interest of the child.

9. All the States/Union Territories are requested to set up at least one 'one stop centre' in every district within one year from today.

44. A copy of this judgment be sent to the Registrar General of all the High Courts so that the same can be placed before the Chairpersons of the Juvenile Justice Committee of all the High Courts for issuance of appropriate orders and directions and also to ensure that sincere efforts are made to set up one stop centres in every district.

45. In view of the above, we dispose of these petitions as far as issues dealt with hereinabove are concerned.

.....J. (MADAN B. LOKUR)J. (DEEPAK GUPTA) New Delhi
December 11, 2018 ANNEXURE – 1 (Directions issued by the Calcutta High Court in the case of Bijoy v. State of West Bengal, 2017 Cri.L.J.3893)

1. Police Officer or the Special Juvenile Police Unit receiving complaint as to commission or likelihood of commission of offence under the Act shall forthwith register the same in terms of Section 19 of the Act and furnish a copy free of cost to the child and/or his/her parents and inform the child or his/her parents or any person in whom the child has trust and confidence of his/her right to legal aid and representation and if the child is unable to arrange for his/her legal representation, refer the child to the District Legal Services Authority for necessary legal aid/representation under section 40 of the Act. Failure to register First Information Report in respect of offences punishable under sections 4, 6, 7, 10 & 12 of POCSO shall attract penal liability under section 166-B of the Indian Penal Code as the aforesaid offences are cognate and/or pari materia to the Penal Code offences referred to in the said penal provision.

2. The Police Officer on registration of FIR shall promptly forward the child for immediate emergency medical aid, whenever necessary, and/or for medical examination under section 27 of the Act and ensure recording of the victim's statement before Magistrate under Section 25 of the Act. In the event, the Police Officer or the Special Juvenile Police Unit is of the opinion that the child falls within the definition of "child in need of (sic) care and protection" as defined under Section 2(d) of the Juvenile Justice (Care and Protection of Children) Act, 2000, [as suitably modified by the Juvenile Justice (Care and Protection of Children) Act, 2015 (sic)] the said Police Officer or the Special Juvenile Police Unit shall forthwith forward the child to the jurisdictional Child Welfare Committee for providing care, protection, treatment and rehabilitation of the child in accordance with law.

3. Whenever a registration of FIR is reported to the Special Court, the Special Court shall make due enquiries from the investigating agency as to compliance of the aforesaid requirements of law as stated in (1) and (2) above and pass necessary orders to ensure compliance thereof in accordance with law, if necessary.

4. Officer-in-Charge of the police station and the Investigating Officer in the case including the Special Juvenile Police Unit shall ensure that the identity of the victim is not disclosed in the course

of investigation, particularly at the time of recording statement of the victim under section 24 of the Act (which as far as practicable may be done at the residence or a place of choice of the victim or that of his/her parents/custodian, as the case may be), his/her examination before Magistrate under section 25 of the Act, forwarding of the child for emergency medical aid under section 19(5) and/or medical examination under section 27 of the Act.

5. The Investigating Agency shall not disclose the identity of the victim in any media and shall ensure that such identity is not disclosed in any manner whatsoever except the express permission of the Special Court in the interest of justice. Any person including a police officer committing breach of the aforesaid requirement of law shall be prosecuted in terms of section 23(4) of the said Act.

6. Trial of the case shall be held in camera in terms of section 37 of the Act and evidence of the victim shall be promptly recorded without unnecessary delay and following the procedure of screening the victim from the accused person as provided in section 36 of the Act. The evidence of the victim shall be recorded by the Court in a child friendly atmosphere in the presence of the parents, guardian or any other person in whom the child has trust and confidence by giving frequent breaks and the Special Court shall not permit any repetitive, aggressive or harassive questioning of the child particularly as to his/her character assassination which may impair the dignity of the child during such examination. In appropriate cases, the Special Court may call upon the defence to submit its questions relating to the incident during cross-examination in writing to the Court and the latter shall put such questions to the victim in a language which is comprehensible to the victim and in a decent and non-offensive manner.

7. In the event, the victim is abroad or is staying at a far off place or due to supervening circumstances is unable to physically attend the Court to record evidence, resort shall be taken for recording his/her evidence by way of video conference.

8. The identity of the victim particularly his/her name, parentage, address or any other particulars that may reveal such identity shall not be disclosed in the judgment delivered by the Special Court unless such disclosure of identity is in the interest of the child.

9. The Special Court upon receipt of information as to commission of any offence under the Act by registration of FIR shall on his own or on the application of the victim make enquiry as to the immediate needs of the child for relief or rehabilitation and upon giving an opportunity of hearing to the State and other affected parties including the victim pass appropriate order for interim compensation and/or rehabilitation of the child. In conclusion of proceeding, whether the accused is convicted or not, or in cases where the accused has not been traced or had absconded, the Special Court being satisfied that the victim had suffered loss or injury due to commission of the offence shall award just and reasonable compensation in favour of the victim. The quantum of the compensation shall be fixed taking into consideration the loss and injury suffered by the victim and other related factors as laid down in Rule 7(3) of the Protection of Children from Sexual Offences Rules, 2012 and shall not be restricted to the minimum amounts prescribed in the Victim Compensation Fund. The interim/final compensation shall be paid either from the Victim

Compensation Fund or any other special scheme/fund established under section 357A of the Code of Criminal Procedure, 1973 (sic) or any other law for the time being in force through the State Legal Services Authorities or the District Services Authority in whose hands the Fund is entrusted. If the Court declines to pass interim or final compensation in the instant case it shall record its reasons for not doing so. The interim compensation, so paid, shall be adjusted with final compensation, if any, awarded by the Special Court in conclusion of trial in terms of section 33(8) of the Act.

10. The Special Court shall ensure that the trial in cases under POCSO is not unduly protracted and shall take all measures to conclude the trial as expeditiously as possible preferably within a year from taking cognizance of the offence without granting unreasonable adjournment to the parties in terms of section 35(2) of the Act.
