



**GUIDELINES OF THE HIGH COURT OF
DELHI FOR RECORDING OF EVIDENCE
OF VULNERABLE WITNESSES**

**A SIDE-BY-SIDE COMPARISON OF
FORMER AND CURRENT GUIDELINES**

Introduction

On 20 May 2024, the Delhi High Court introduced the "Guidelines of the High Court of Delhi for Recording of Evidence of Vulnerable Witnesses," replacing the earlier version. Overall, the modifications demonstrate an enhancement in sensitivity, inclusivity, and attentiveness to the needs of vulnerable witnesses. To understand what has been amended, added, and removed from these guidelines, iProbono has created this side-by-side comparative resource which colour-codes the changes.

Some highlights of what is new in these guidelines:

- A **gender-neutral and broad interpretation of "vulnerable witness,"** acknowledging that vulnerability can stem from various factors, such as the nature of the crime, threats, age, disability, and lack of support. Besides this, clarity is provided for all other key definitions, including courts and support persons.
- **Detailed provisions to maintain the privacy, dignity and safety of vulnerable witnesses** throughout the legal process, including their physical and psychological comfort. There are significant additions to ensure a supportive and non-intimidating environment including a more comprehensive list of stress-causing factors and specific expectations for courts.
- **Adherence to all relevant guidelines and Standard Operating Procedures** affirmed by the Supreme Court during recording evidence is also mandated.
- **Holistic measures for accommodating witnesses with disabilities,** such as access to courts, allocating adequate time for witnesses using communication boards, recording testimony in braille, using amplification devices and document magnifiers, providing accessible formats for notices, utilising video and audio guides, and engaging sign language interpreters.
- **An annual review of their implementation** involving independent research bodies, reputed academic institutions, or a multi-disciplinary committee of experts. Recommendations are to be promptly addressed, and updates to be made based on legal developments.

How to read this document?

To understand the types of revisions made to the previous guidelines, we provide a colour-coding system, as outlined below.

- **Amendments** are marked up as **yellow highlights** and are shown alongside text from the earlier set of guidelines marked up in red italics.
- **Fresh additions** to the text are marked up as **green highlights**.
- **Deletions** to the text are marked up in **blue italics**.

We hope this resource serves as a crucial tool by enabling the effective implementation of these guidelines and empowering vulnerable witnesses to provide their best evidence in criminal proceedings.

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HIGH COURT OF DELHI: NEW DELHI

Guidelines of the High Court of Delhi for Recording of Evidence of Vulnerable Witnesses

Preamble

The purpose of this protocol is to present guidelines and recommendations to improve the response of the justice dispensation system towards *(previously: to)* vulnerable witnesses.

This protocol prescribes guidelines while recording depositions of vulnerable witnesses in order to enable them to give their best evidence in criminal proceedings. Each witness is unique and is to be addressed *(previously: handled)* accordingly. The vulnerability of a witness may emerge from a range of circumstances which include, but are not limited to - nature of crime, threats and intimidation, fear of reprisal, age, developmental levels, gender identity, sexual minorities, ethnicity, religious identity, caste, physical and/or mental disability, lack of infrastructural support, language barriers, geographical location etc. Some of the most challenging cases before *(previously: handled by)* judges during the course of their careers are those involving vulnerable witnesses such as children, victims of sexual offences or domestic violence, persons with disabilities, and witnesses experiencing threats to their life and property, among others. *(previously: as, what happened to or was witnessed by them, impact significantly on their quality of deposition and potentially outcome of a trial.)* Vulnerable witnesses find their interaction with the legal process, especially the criminal justice process intimidating, particularly the courtroom experience *(previously: Vulnerable witnesses, find the criminal justice system intimidating, particularly the courtroom experience)*. Under these circumstances, unless adequate support is provided, a vulnerable witness may not feel safe to provide robust testimony *(previously: Under these circumstances, a vulnerable witness may be a poor witness, providing weak testimony and contributing less information than should have been elicited)*. Further, the lengthy process of navigating the adversarial criminal justice system or the civil justice system can affect the vulnerable witness' psychological well-being in significant and long-lasting ways *(previously: Further, the lengthy process of navigating the formal and adversarial criminal justice system can affect the vulnerable witnesses psychological development and disable this sensitivity in significant and long-lasting ways)*.

To respond effectively to the needs of vulnerable witnesses, the justice system needs to respond proactively with sensitivity in an enabling and age-appropriate manner, so that the judicial process is less traumatic and secondary victimisation can be minimised. *(previously: To respond effectively to the needs of vulnerable witnesses the criminal justice system needs to respond proactively with sensitivity in an enabling and age appropriate manner, so that the trial process is less traumatic for them)*. Sensitive engagement and suitable modifications of existing procedures (within the framework of the law), while ensuring the rights of the accused or the opposite party, can significantly impact the quality of deposition by vulnerable witnesses and potentially the outcome of a trial. *(previously: Judges have to strike a balance between protecting the accused's right to a fair trial, and ensuring that witnesses who give evidence in the case are enabled to do so, to the best of their ability)*.

These Guidelines have been developed in furtherance of the Supreme Court's directions in

*Smruti Tukaram Badade v. State of Maharashtra*¹ and have been drawn from the Guidelines for recording of evidence of vulnerable witnesses in criminal matters prepared by the Delhi High Court and the *Protocol for Recording Evidence of Vulnerable Witnesses* notified by the Jammu and Kashmir High Court, as well as relevant statutory provisions, judgments, and international standards relevant to vulnerable witnesses.

(Removed: The UN Model Law on Justice in Matters involving Child Victims and Witnesses of Crime published by the UN Office on Drugs and Crime, Vienna, UN, New York 2009 has provided valuable insight and has been a major reference in formulating these guidelines and to enable compliance with international standards on the subject.)

Objectives of these Guidelines

1. To enable vulnerable witnesses to depose freely before any court in a safe and secure environment. *(previously: To elicit and secure complete, accurate and reliable evidence from vulnerable witnesses);*
2. To minimize harm or secondary victimization of vulnerable witnesses in anticipation and as a result of participation in the criminal justice system.
3. To ensure that the rights of all the parties in the judicial processes are effectively implemented. In the context of the criminal process- the accused's right to a fair trial and due process, the right of the victim to take part effectively in the proceedings, to be treated sensitively and not be subject to secondary victimization, and the protection of the rights of a vulnerable witness (who may not necessarily be a victim), are effectively implemented. *(previously: To ensure that the accused's right to a fair trial is maintained).*

Applicability

1. Short Title, extent and commencement-

- a. These guidelines shall be called, "Guidelines of the High Court of Delhi for Recording of Evidence of Vulnerable Witnesses". *(previously: These guidelines shall be called, — Guidelines for recording evidence of vulnerable witnesses in criminal matters).*
- b. Unless otherwise provided, these guidelines shall govern the examination of vulnerable witnesses who are victims² or witnesses in any case. *(previously: Unless otherwise provided, these guidelines shall govern the examination of vulnerable witnesses during criminal trial who are victims or witnesses to crime).*
- c. These guidelines shall apply to the High Court of Delhi and to the Courts, Tribunals, Juvenile Justice Boards or forum over which it has supervisory jurisdiction. *(previously: They shall apply to every criminal court in Delhi).*

(Removed: Their application shall commence from the date notified by Delhi High Court)

2. Construction of the guidelines-

These guidelines shall be liberally construed and interpreted, in view of the extant laws, to uphold the interests of vulnerable witnesses and to promote their maximum accommodation without prejudice to the right of the accused to a fair trial and due process.

¹ *Smruti Tukaram Badade v. State of Maharashtra*, 2022 LiveLaw (SC) 80.

² Code of Criminal Procedure 1973, Section 2 -(wa).

3. Definitions-

a. **Vulnerable Witness** - For the purpose of these guidelines, "vulnerable witness" means and includes-

- (i) any child victim or witness who has not completed 18 years of age; *(previously: is a child who has not completed 18 years of age).*
- (ii) any victim of an offence under the POCSO Act, 2012
- (iii) any victim of an offence under Sections 376(1), 376(2), 376A, 376AB, 376B, 376C, 376D, 376DA, 376 DB, 376E, 354, 354A, 354B, 354C, 354D and 377 of the Indian Penal Code;
- (iv) any person with disability as defined under Section 2(s) of the Rights of Persons with Disabilities Act, 2016 and considered to be a vulnerable witness by the concerned court;
- (v) any witness suffering from "mental illness" as defined under Section 2(s) of the Mental Healthcare Act, 2017 read with Section 118 of the Indian Evidence Act, 1872;
- (vi) any witness deemed to have a threat perception under the Witness Protection Scheme, 2018 of the Union Government as approved by the Supreme Court in *Mahender Chawla v. Union of India*³; and
- (vii) any other witness deemed to be vulnerable by the concerned court,⁴ [including Family Courts, Children's Courts, Juvenile Justice Board, civil and criminal courts, or any tribunal or forum.]

b. **Support Person** - Means and includes Support Persons assigned by the Child Welfare Committee under the POCSO Rules, 2020 to render assistance to the child through the process of investigation and trial, or any other person assisting a child in the pre trial or trial process in respect of an offence under the POCSO Act⁵, support person or para legal volunteer provided by the Legal Services Authority under the Juvenile Justice (Care and Protection of Children) Model Rules, 2016⁶ or any other person appointed by the court to provide support including psycho-social support, accompany and assist the vulnerable witness, whether minor or major, to testify or attend judicial proceedings. *(previously: Support Person – Means and includes guardian ad litem, legal aid lawyer, facilitators, interpreters, translators and any other person appointed by court or any other person appointed by the court to provide support, accompany and assist the vulnerable witness to testify or attend judicial proceedings).*

c. **Best Interests of the Child** - means the basis of any decision taken regarding the child, to ensure fulfilment of the child's basic rights and needs, identity, social well being and physical, emotional and intellectual development.⁷ *(previously: Best Interests of the Child – Means circumstances and conditions most congenial to security, protection of the child and most encouraging to his physical, psychological and emotional development and shall also include available alternatives for safeguarding the growth and development of the child).*

d. **Development Level** - Development level refers to the specific growth phase in which most individuals are expected to behave and function in relation to the advancement of

³ *Mahender Chawla v. Union of India*, (2019) 14 SCC 615.

⁴ *Smruti Tukaram Badade v. State of Maharashtra*, 2022 Live Law (SC) 80; *Sakshi v. Union of India*, AIR 2004 SC 3566 para 34.

⁵ POCSO Rules 2020, Rules 2(1)(f), 4(8) and 5(6).

⁶ Justice (Care and Protection of Children) Model Rules 2016, Rule 54(14).

⁷ Juvenile Justice (Care and Protection of Children) Act 2015, Section 2(9).

their physical, mental, socio economical, cognitive and moral abilities.

e. **In-Camera Proceedings** - means proceedings wherein the court allows only those persons who are necessary to be present while hearing the witness deposing in the court.⁸ *(previously: In-Camera Proceedings – means criminal matters or part thereof wherein the public and press are not allowed to participate, for good reason as adjudged by the court).*

f. **Concealment of identity of witness** - Means and includes any legislative provision or judicial ruling prohibiting the disclosure of the name, address, school, family, relatives, neighbourhood or any other information which may lead to the identification of a vulnerable witness in print, electronic, social media, etc or made known to the public at large during investigation, trial and post-trial stage.⁹ *(previously: Concealment of Identity of witness – Means and includes any condition prohibiting publication of the name, address and other particulars which may lead to the identification of the witness).*

g. **Comfort Items** - Comfort items mean any article of choice of the vulnerable witness which may *(previously: shall)* have a calming effect on vulnerable witness at the time of deposition and may include stuffed toy, blanket or book.

h. **Court House Tour** - means a pre-trial tour of the courtroom and court complex by the Support Person or a para-legal volunteer, as the case may be, to familiarize a vulnerable witness with the environment and the basic process of adjudication and roles of each court official.¹⁰

i. **Court** - means and includes High Court of Delhi and Courts, Tribunals, Juvenile Justice Boards or forum over which High Court of Delhi has supervisory jurisdiction.

j. **Live Link** - 'Live link' means and *includes* a live television link, audio-video electronic means or other arrangement whereby a witness, while not being physically present *in (previously: absent from)* the courtroom¹¹ is nevertheless present in the courtroom by remote communication using technology to give evidence and be cross-examined.

k. **Special Measures** - means and includes the use of legislative provisions, and any mode, method and instrument, etc, considered necessary for providing assistance in recording deposition of vulnerable witnesses.

l. **Testimonial Aids** - means and includes screens; single visibility mirrors, curtains,¹² live links, image and/or voice altering devices;¹³ or any other technical devices, facilities and equipment.

⁸ The definition has been adapted from Witness Protection Scheme 2018, Clause 2(f).

⁹ POCSO Act 2012, Section 33(7); JJ Act 2015, Section 74; Indian Penal Code 1860, Section 228A; *Nipun Saxena v. Union of India*, (2019) 2 SCC 703; Witness Protection Scheme 2018, Clause 2(b); Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, Section 15A(8)(a)(b).

¹⁰ Juvenile Justice (Care and Protection of Children) Model Rules 2016, Rule 54(14); Alternative Pre-trial and Trial Processes for Child Witnesses in New Zealand's Criminal Justice System, Issue Paper, Min. of Justice, New Zealand Govt. 2010.

¹¹ Sec 275 Cr.P.C; Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, CJSHI, UK.

¹² POCSO Act 2012, Section 36(2).

¹³ Witness Protection Scheme, 2018, Clause 7(1); *Mahender Chawla v. Union of India*, (2019) 14 SCC 615.

m. **Secondary Victimization** - means victimization that occurs not as a direct result of a criminal act but through the response of institutions and individuals to the victim.¹⁴

n. **Revictimization** - Means a situation in which a person suffers more than one criminal incident over a period of time.¹⁵

o. **Waiting Room** - A safe place for vulnerable witnesses where they can wait. *(previously: Waiting Room - A safe place for vulnerable witnesses where they can wait. It shall have toys, books, TV, etc. which can help them lower their anxiety).*

p. **Special Measures Direction** - The concerned court shall direct as to which special measure will be used to enable a vulnerable witness to depose freely and in a safe, accessible, and comfortable environment. Directions may be discharged or varied during the proceedings, but normally continue to be in effect until the proceedings are concluded. *(previously: Special Measures Direction - The court shall direct as to which, special measure will be used to assist a particular eligible witness in providing the best evidence. Directions may be discharged or varied during the proceedings, but normally continue in effect until the proceedings are concluded, thus enabling the witness to know what assistance to expect).*

(Removed:

h. Competence of a vulnerable witness – Every vulnerable witness shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions due to tender years, disease, either of body or mind, or any other cause of the same kind. Explanation: A mentally ill person may also be held competent unless he is prevented by his lunacy to understand questions.

j. Descriptive Aids – A human figure model, anatomically correct dolls or a picture or anatomical diagrams or any other aids deemed appropriate to help a vulnerable witness to explain an act or a fact.)

4. Applicability of guidelines to all vulnerable witnesses- For the avoidance of doubt, it is made clear that these guidelines shall apply to all vulnerable witnesses as defined in Rule 3(a) of these Guidelines *(previously: any vulnerable witness including a child party)*, regardless of which party is seeking to examine the witness.

5. No inference of prejudice to be drawn from special measures- The fact that a witness has had the benefit of a special measure to assist them in deposition, shall not be regarded in any way whatsoever as being prejudicial to the position of the other side and this should be made clear by the judge at the time of passing order in terms of these guidelines to the parties when the vulnerable witness is examined. *(previously: No adverse inference to be drawn from special measures. The fact that a witness has had the benefit of a special measure to assist them in deposition, shall not be regarded in any way whatsoever as being adverse to the position of the other side and this should be made clear by the judge at the time of passing order in terms of these*

¹⁴ UN Model Law on Justice in Matters involving Child Victims and Witnesses of Crime, 2009.

¹⁵ UN Model Law on Justice in Matters involving Child Victims and Witnesses of Crime; 2009.

guidelines to the parties when the vulnerable witness is examined and when the final judgment is pronounced.)

6. Identification of Stress causing factors of adversarial Criminal Justice System-

The Court shall consider the following factors which cause stress, especially but not only limited to child witnesses, rendering them further vulnerable witnesses, and impeding complete disclosure, and take necessary steps to mitigate or minimize the stress. The factors include, amongst others:¹⁶ *(previously: Factors which cause stress on child witness, rendering them further vulnerable witnesses, and impeding complete disclosure by them shall, amongst others, include)*

- a. Multiple depositions
- b. Not using developmentally appropriate language
- c. Delays and repeated adjournments *(previously: Delays and continuances)*
- d. Testifying more than once
- e. Prolonged/ protracted court proceedings
- f. Lack of communication between professionals including police, doctors, lawyers, prosecutors, investigators, and mental health practitioners *(previously: psychologists, etc.)*, and lack of convergence with authorities such as Child Welfare Committees, District Child Protection Units, One Stop Centres etc.
- g. Fear of public exposure
- h. Anxiety about threats from the accused and/ or their associates
- i. Confusion and guilt about testifying against a family member or relative
- j. Lack of understanding of complex legal procedures
- k. Face-to-face contact with the accused
- l. Practices insensitive to developmental needs
- m. Aggressive and inappropriate cross-examination, including asking irrelevant questions *(previously: Inappropriate cross-examination)*
- n. Lack of adequate support, witness protection, and victims services
- o. Sequestration of witnesses who may be supportive to the vulnerable witness *(previously: child)*
- p. Placement that exposes the vulnerable witness *(previously: child)* to intimidation, pressure, or continued abuse
- q. Lack of preparation to enable *(previously: Inadequate preparation for)* fearless and robust testifying
- r. Worry about not being believed especially when there is no evidence other than the testimony of the vulnerable witness.
- s. Worry about being yelled at, ridiculed, or getting into trouble for testifying
- t. Worry about retaliation or repercussions for themselves or their family
- u. Worry about not being understood or being able to communicate effectively
- v. Formality of court proceedings and surroundings including formal dress of members of the judiciary and legal personnel
- w. Inaccessibility of the courtroom, particularly for vulnerable witnesses with disabilities

7. Competency of vulnerable witness-

¹⁶ *State v. Sujeet Kumar, 2014(4) JCC 2718* (High Court of Delhi); Breaking the Cycle of Violence: Recommendations to Improve the Criminal Justice Response to Child Victims and Witnesses, US Dept. of Justice.

Every vulnerable witness shall be presumed to be competent to testify as a witness, unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions due to tender years, disability, either of body or mind, and illness, or any other cause of the same kind, in accordance with Section 118 of the Indian Evidence Act, 1872.¹⁷

Explanation: A mentally ill person may also be held competent unless the person is prevented by the illness to understand questions. ⁴

When conducting the competency examination, the court shall not use "general knowledge" or "current affairs" questions to adjudge competence. Similarly, philosophical questions, such as, what truth means should be strictly avoided.

(previously: Competency of vulnerable witness:-

(i) Every vulnerable witness shall be presumed to be qualified as a witness unless prevented by the following-

(a) age

(b) physical or mental disability leading to recording a finding of doubt regarding the ability of such witness to perceive, remember, communicate, distinguish, truth from falsehood or appreciate the duty to tell the truth, and/or to express the same.

Explanation: The court shall conduct a competency examination before recording the testimony of such witness, or on an application of either prosecution or defence or suo motu.)

8. Persons allowed at competence assessment-

Only the following may be allowed to attend the competence assessment:

- a. the judge and such court personnel deemed necessary and specified by order of the judge concerned;
- b. the counsel for the parties;
- c. the guardian *ad litem*;
- d. non-offending parent, guardian, friend, relative of a child victim or a person in whom the child has trust or confidence;¹⁸
- e. one or more support persons for a child victim or witness;
- f. translator, interpreter, expert or special educator, if necessary;¹⁹
- g. person familiar with the manner of communication of a vulnerable witness with intellectual or physical disability;²⁰
- h. the accused, unless the court determines that competence requires to be and can be fully evaluated in their absence; and
- i. any other person, who in the opinion of the court can assist in the competence assessment.

9. Conduct of competence assessment-

The assessment of a person (*previously: a child*), as to their (*previously: his*) competence as a witness shall be conducted only by the presiding judge.

(Removed: 12. Continuing duty to assess competence – The court has the duty of continuously assessing the competence of the vulnerable witnesses throughout their testimony and to pass appropriate orders, as and when deemed necessary).

¹⁷ Indian Evidence Act 1872, Section 118.

¹⁸ POCSO Act 2012, Section 33(4); Juvenile Justice (Care and Protection of Children) Model Rules 2016, Rule 54(18)(i).

¹⁹ POCSO Act 2012, Section 38(1).

²⁰ POCSO Act 2012, Section 38(2); Rights of Persons with Disabilities Act 2016, Section 12.

10. Pre-trial visit of Witnesses to the Court-

Vulnerable witnesses shall be allowed a pre-trial court house tour or tour of the court or Juvenile Justice Board, etc., *(previously: court visit)* along with the support person²¹ or para-legal volunteer, as the case may be, to enable such witnesses to familiarise themselves with the layout, and may include visit to and explanation of the following:

- a. the location of the accused in the dock;
- b. court officials (what their roles are and where they sit);
- c. who else might be in the court; *(previously: who else might be in the court, for example those in the public gallery)*
- d. the location of the witness box;
- e. a run-through of basic court procedure;
- f. the facilities available in the court which may include the waiting room, toilet, separate passage for entry and exit, and testimonial aids;
- g. discussion of any particular fears or concerns, including concerns regarding safety in relation to the accused, with the support person, *(previously: with the intermediaries)* prosecutors and the judge to dispel the fear, trauma and anxiety in connection with the upcoming *(previously: prospective)* deposition at court;²²
- h. demonstration of any special measures applied for and/or granted, for example practising on the live link and explaining who will be able to see them in the courtroom, and showing the use of screens (where it is practical and convenient to do so).²³

11. Meeting the judge-

The Judge may meet a vulnerable witness suo motu on reasons to be recorded or on an application of either party in the presence of the prosecution and defence lawyer, or in their absence before the witness gives their evidence, for explaining the court process in order to help them to understand the procedure and give their testimony, free of fears and concerns. *(previously: and giving their best evidence.)*

12. Assistance of an interpreter, translator, special educator or expert- *(previously: Language, interpreter and other special assistance measures)*

(i) The court shall ensure that proceedings relevant to the testimony of a vulnerable witness *(previously- child victim)* or witness are conducted in language that is simple and comprehensible to the witness. *(previously- child)*

(ii) Wherever necessary, the court may, suo motu or upon an application presented by either party or a Support Person of vulnerable witnesses take the assistance of a qualified and experienced interpreter, translator, special educator or expert, to enable recording of evidence of vulnerable witnesses, and on payment of such fees as may be prescribed by the State Government or authority concerned.²⁴ *(previously: 12 (ii)-if a child needs the assistance of interpretation into a language or mode that the child understands, an interpreter shall be provided free of charge and 20 (ii)-The court may, suo motu or upon an application presented by either party or a support person of vulnerable witnesses appoint a facilitator if it determines that such witness is finding it difficult to understand or respond to questions asked. Explanation: (i) The facilitator*

²¹ Juvenile Justice (Care and Protection of Children) Model Rules 2016, Rule 54(14).

²² POCSO Rules 2020, Rule 4(9).

²³ Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, UK; Safeguarding Children as Victims and Witnesses, UK.

²⁴ POCSO Act, Section 38(1); Rights of Persons with Disabilities Act 2016, Section 12; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, clause 14.

may be an interpreter, a translator, child psychologist, psychiatrist, social worker, guidance counselor, teacher, parent, or relative of such witness who shall be under oath to pose questions according to meaning intended by the counsel.)

- (iii) The concerned court may consider the qualifications prescribed for interpreters, translators, sign language interpreters, special educators and experts in Rule 5, POCSO Rules, 2020 or any other laws, rules, or judgments of the High Court or Supreme Court in this regard.
- (iv) The court may also take the assistance of a person familiar with the manner of communication of a vulnerable witness with physical or intellectual disability while recording evidence.²⁵
- (v) If, in view of the vulnerable witnesses' (*previously: child*) age, level of maturity or special individual needs of a witness, which may include but are not limited to disabilities (if any), ethnicity, poverty or risk of revictimization, the witness (*previously: the child*) requires special assistance measures in order to testify or participate in the justice process, such measures shall be provided free of cost. (*previously: charge*).
- (vi) If the court appoints an interpreter, translator, special educator or expert, (*previously: a facilitator*) respective counsel for the parties shall pose questions to the vulnerable witness only through them (*previously: the facilitator*), either in the words used by counsel or, if the vulnerable witness is not likely to understand the same, in words, signs, or by such mode as is comprehensible to the vulnerable witness and which conveys the meaning intended by the counsel.

13. Legal assistance and legal aid-

The concerned court shall facilitate the right of a child victim under the POCSO Act to take assistance of a legal counsel of their choice.²⁶ Further, any vulnerable witness who falls within the ambit of Section 12, Legal Services Authorities Act, 1987 or any other laws, rules, or policies that recognise their right to free legal aid may be provided with legal aid by the court either:²⁷

- a. based on a request by or on behalf of the vulnerable witness; or
- b. pursuant to an order of the court on its own motion.

(previously: Legal assistance

A vulnerable witness may be provided with legal assistance by the court, if the court considers the assignment of a lawyer to be in the best interests of the child, throughout the justice process in the following instances:

- (a) at the request of the support person, if one has been designated;*
- (b) pursuant to an order of the court on its own motion.)*

14. Court to allow presence of Support Persons-

- (i) The court shall inform vulnerable witnesses that they may take the assistance of a Support Person during the trial. In cases under the POCSO Act, 2012, the concerned court shall take into consideration the role of the Support Persons as provided in Rule 4(9), POCSO Rules, 2020.
- (ii) The court shall allow *suo motu* or on request, verbal or written, the presence of a Support Person of the choice of the vulnerable witness in the courtroom during the

²⁵ POCSO Act, Section 38(2); Rights of Persons with Disabilities Act 2016, Section 12.

²⁶ POCSO Act, Section 40; Juvenile Justice (Care and Protection of Children) Model Rules 2016, Rule 54(19).

²⁷ Delhi Domestic Working Women's Forum v. Union of India, 1995 1 SCC 14 (Supreme Court).

deposition,²⁸ provided that such a support person shall not completely obscure the witness from the view of the accused or the judge. *(previously: A court shall allow suo motu or on request, verbal or written, to child testifying at a judicial proceeding to have the presence of one person of his own choice to provide him support who shall within the view and if the need arise may accompany the child to the witness stand, provided that such support person shall not completely obscure the child from the view of the opposing party or the judge.)*

- (iii) The court may allow the Support Person to take appropriate steps to provide emotional support to the vulnerable witness in the course of the proceedings²⁹ and also inform the court if the vulnerable witness needs a break or is feeling stressed or triggered. *(previously: The court may allow the support person to hold the hand of the vulnerable witness or take other appropriate steps to provide emotional support to the vulnerable witness in the course of the proceedings.)*
- (iv) The court shall instruct the Support Person not to prompt, sway, influence or tutor the vulnerable witness during their testimony. *(previously: The court shall instruct the support persons not to prompt, sway, or influence the vulnerable witness during his testimony. The support person shall also be directed that he/she shall in no circumstances discuss the evidence to be given by the vulnerable witness.)*
- (v) Where no other suitable person is available, and only in very rare cases should another witness in the case, whose deposition has already been completed in all respects, be appointed as a Support Person. The court shall ordinarily appoint a neutral person, other than a parent, as a Support Person. It is only in exceptional circumstances keeping the condition of the vulnerable witness in mind, that the court should appoint a parent as a Support Person. In POCSO cases, however, care shall be taken to ensure that the provisions of the POCSO Rules, 2020 regarding engagement of Support Persons are adhered.
- (vi) The court shall allow Support Persons to coordinate with the other stakeholders such as police, Special Juvenile Police Unit (SJPU), medical officer, prosecutors, mental health professionals, Child Welfare Committee, Juvenile Justice Board, defence counsels and courts. *(previously: To assist the vulnerable witnesses in effectively communicating at various stages of trial and or to coordinate with the other stakeholders such as police, medical officer, prosecutors, psychologists, defence counsels and courts, the court shall allow use of facilitators.)*
- (vii) As far as possible, the concerned court shall ensure the continuity of the same Support Person during the deposition.
- (viii) If the Support Person is also a witness in the case, their testimony shall be recorded, ahead of the testimony of the vulnerable witness. *(previously: The testimony of support person to be recorded prior: A testimony of such support person if he also happens to be a witness shall be recorded, ahead of the testimony of the child.)*

15. Right to be informed-

A vulnerable witness, their *(previously: his or her)* parents or guardian, *(removed: his or her)* lawyer, the Support Person, if designated, or other appropriate person designated to provide assistance shall, from their first contact with the court process and throughout that process, be promptly informed by the Court about the stage of the process and, to the extent feasible and appropriate, about the following:³⁰

²⁸ POCSO Act 2012, Section 33(4); POCSO Rules 2020, Rule 4(9); ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, clause 30(a); Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Clause 14.

²⁹ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Clause 6(a).

³⁰ POCSO Rules 2020, Rule 4(15).

- a. charges brought against the accused, or if none, the stay of proceedings against them;³¹
- b. the progress of the case;³²
- c. procedures of the criminal justice process including the role of vulnerable witnesses, the importance, timing and manner of testimony, and the ways in which proceedings will be conducted during the trial;³³
- d. existing support mechanisms for a vulnerable witness when participating in proceedings, including services of a Support Person;³⁴ *(previously: including making available appropriate person designated to provide assistance;)*
- e. schedule of court proceedings that the vulnerable witness is either required to attend or is entitled to attend and the specific time and place of hearings and other relevant processes;*(previously: events)*³⁵
- f. right of the informant or person authorised by the informant to be present at the time of hearing of the bail application of an accused under Sections 376(3), 376AB, 376DA, or 376DB of the Indian Penal Code, 1860³⁶ or under the POCSO Act.³⁷
- g. right of vulnerable victims and their dependents to reasonable, accurate and timely notice of court proceedings and bail proceedings under the Scheduled Castes and Scheduled Tribes (prevention of Atrocities Act), 1989;³⁸
- h. right of vulnerable victims and their dependents to be heard during proceedings of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing under the Scheduled Castes and Scheduled Tribes (prevention of Atrocities Act), 1989;³⁹
- i. availability of public and, private emergency, and crisis services, including shelters;
- j. availability of protective measures;
- k. availability of victim's compensation benefits;
- l. availability of legal aid;⁴⁰
- m. availability of institutional and non-institutional care under the juvenile justice system for vulnerable witnesses who may come under the ambit of a "child in need of care and protection";
- n. relevant rights of child victims and witnesses under the POCSO Act and Rules, JJ Act, 2015 and other applicable Rules/laws, *(previously: pursuant to applicable laws)* as well as the United Nations Convention on the Rights of the Child and other international legal instruments, including the Guidelines and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in its resolution 40/34 of 29 November 1985;

³¹ Model Guidelines Under Section 39 of The Protection of Children from Sexual Offences Act, 2012.

³² Model Guidelines Under Section 39 of The Protection of Children from Sexual Offences Act, 2012.

³³ ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Clause 19(b). Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Clause 6(a).

³⁴ ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, clause 19(a).

³⁵ ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, clause 19(d).

³⁶ Code of Criminal Procedure 1973, Section 439(1-A).

³⁷ *Reena Jha v. Union of India, W.P.(C) 5011/2017* decided by the Delhi High Court on 25.11.2019; *Miss G v. NCT of Delhi*. CrI.M.C. 1474/2020 (High Court of Delhi); *Arjun Kishanrao Malge v. State of Maharashtra, PIL No. 5/2021* decided by the Bombay High Court on 08.04.21; *Akash Chandrakar v. State of Chhattisgarh, Criminal Appeal No. 101 of 2021* decided by the Chhattisgarh High Court on 19.01.22; *Rohit v. State of U.P., Bail No. 8227/2021* decided by the Allahabad High Court on 06.08.21.

³⁸ Scheduled Castes and Scheduled Tribes (prevention of Atrocities) Act 1989, Section 15A (3).

³⁹ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, Section 15A (5); ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Clause 21.

⁴⁰ ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Clause 19(a).

- o. the progress and disposition of the specific case, including in a criminal case the apprehension, arrest and custodial status of the accused and any pending changes to that status, the prosecutorial decision and relevant post-trial developments and the outcome of the case and sentence imposed;
- p. all decisions, or at least those decisions affecting the interests of the victim or vulnerable witness;⁴¹
- q. the process for appeal against the order of the court.

16. Waiting area for vulnerable witness-

The courts shall ensure that a waiting area for vulnerable witnesses with the support person, and the lawyer of the vulnerable witness (*previously: witness facilitation*), if any, is separate from waiting areas used by other persons.⁴² Care shall be taken to ensure that the waiting room is used only by the vulnerable witness and the non-offending family members and support persons. The waiting area should be accessible to all vulnerable witnesses, including those with disability.⁴³ The waiting area for vulnerable witnesses should be furnished so as to make a vulnerable witness comfortable. This may include, but not be limited to, being furnished and equipped with toys, books, games, drawing and painting materials and other such activities, TV, etc which can help lower the anxiety of the witness.⁴⁴ It could include a place for very young child witnesses to rest or sleep. Accessible toilets and drinking water facilities should also be available inside the waiting room or within close proximity. The approach to the waiting area shall be in such a way that allows the witness to access it with ease and without having to confront other litigants, police, or the accused and their associates. The waiting area needs to be equipped with a digital "Case Number Display Monitor" that shows the case being called in the court. Arrangements for the vulnerable witness to depose from the waiting area, which may include monitors and screens for recording of the evidence of the child shall be made available.

17. Duty to provide comfortable environment-

- (i) It shall be the duty of the court to ensure a comfortable environment for the vulnerable witness by issuing directions and also by supervising the location, movement and department of all persons in the courtroom including the parties, their counsel, vulnerable (*previously: child*) witnesses, Support Persons, guardian *ad litem*, facilitator, and court personnel.⁴⁵
- (ii) Separate and safe waiting areas and passage thereto should be provided for vulnerable witnesses.
- (iii) Care shall be taken to ensure that the vulnerable witness courtroom is accessible to persons with disabilities.
- (iv) The vulnerable witness (*previously: child*) may be allowed to testify from a place other than the witness chair. The witness chair or other place from which the vulnerable witness (*previously: child*) testifies may be turned to facilitate their (*previously: his*) testimony but the accused or the opposite (*previously: opposing*) party and their (*previously: his*) counsel must have a frontal or profile view of the vulnerable witness (*previously: child*) even by a video link, during the testimony of the vulnerable witness (*previously: child*). The witness chair or other place from which the vulnerable witness (*previously: child*) testifies may also be turned to allow the vulnerable witness

⁴¹ Model Guidelines Under Section 39 of The Protection of Children from Sexual Offences Act, 2012.

⁴² ECOSOC Resolution 2005/120, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Clause 31(b).

⁴³ Rights of Persons with Disabilities Act 2016, Section 12.

⁴⁴ Juvenile Justice (Care and Protection of Children) Model Rules 2016, Rule 54(12).

⁴⁵ ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Clause 30(d).

(previously: child) to see the accused or the opposite (previously: opposing) party and their (previously: his) counsel, if the vulnerable witness (previously: he) chooses to look at them, without turning their (previously: his) body or leaving the witness stand.

- (v) In case of a victim of a sexual offence, care should be taken to avoid exposure of the victim to the accused at the time of recording the evidence, while ensuring the right of cross-examination of the accused⁴⁶ and that the accused is in a position to hear the statement of the child and communicate with their advocate.⁴⁷
- (vi) While deciding to make available such an environment, the judge may be dispensed with from wearing their judicial robes.⁴⁸
- (vii) Access to creche facilities within the court premises should be enabled for vulnerable witnesses who may require child care facilities on the date of their deposition.

18. Directions for Judges of Criminal Courts, Children's Courts and Juvenile Justice Boards¹² - (previously: Directions for Criminal Court Judges)

- (i) Vulnerable witnesses shall receive high priority and shall be dealt with (previously: handled) as expeditiously as possible, minimizing unnecessary delays and adjournments (previously: continuances) to avoid repeated appearances of the witness in the Court.⁴⁹ (Whenever necessary and possible, the court schedule will be altered to ensure that the testimony of the vulnerable witness (previously: child victim or witness) is recorded on sequential days, without delays.)
- (ii) Judges and court administrators should ensure that the developmental needs of vulnerable witnesses are identified, recognized and accommodated in the arrangement of the courtroom and recording of the testimony. For instance, judges should use developmentally (previously: ensure that the developmental stages and needs of vulnerable witnesses are identified recognised and addressed throughout the court process by requiring usage of) appropriate language, schedule hearings for the record of testimony bearing in mind the (previously: by timing hearings and testimony to meet the) attention span, physical needs and exam schedules of young vulnerable witnesses, and allow the use of testimonial aids as well as interpreters, translators, when necessary.
- (iii) The judges should ensure that vulnerable witnesses with disability are able to exercise their right to access the court without discrimination on the basis of disability.⁵⁰ In case of a victim under Sections 354, 354A, 354-B, 354-C, 354-D, 376(1), 376(2), 376-A, 376-B, 376-C, 376-D, 376-E, or 509, IPC, where the victim is temporarily or permanently mentally or physically disabled, their statement under Section 164(5-A) shall be considered as a statement in lieu of examination-in chief.⁵¹
- (iv) Additional measures may be taken to enable the recording of evidence of vulnerable witnesses with disability. For instance, steps can be taken to record witness testimony in compliance with Section 278, Cr.PC in Braille to ensure a vulnerable witness is not dependant on another person to read their testimony out; use of amplification devices/ document magnifiers/ ensuring that all notices that require a response or an action to be taken (e.g. summons, orders) are available by accessible means and in accessible

⁴⁶ Code of Criminal Procedure 1973, Section 273.

⁴⁷ POCSO Act 2012, Section 36(1); JJ Model Rules 2016, Rule 54(18)(xi).

⁴⁸ *Virender v. State of NCT Delhi*, Cr.L.A No. 121108 dt. 29.09.09 decided by the High Court of Delhi.

⁴⁹ POCSO Act, 2012, Section 33(5); Code of Criminal Procedure 1973, proviso to Section 309(1); Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, Section 14(3); ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Clause 30(c). Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Clause 6(e).

⁵⁰ Rights of Persons with Disabilities Act 2016, Section 12; UN Convention on the Rights of Persons with Disabilities, Article 13.

⁵¹ Code of Criminal Procedure 1973, Section 164(5A) (b).

formats; use of video and audio guides; engagement of sign language interpreters; enabling wheelchair access in the court premises, courtroom and witness box. Adequate time should be given to vulnerable witnesses using communication boards during evidence.

- (v) The Court should be satisfied that a victim or vulnerable witness is not scared and that they are able to reveal what happened to them when they are subjected to an examination during recording of evidence. The Court must ensure that the victim or vulnerable witness is not concealing any portion of evidence for the reason that they were ashamed of what happened to them.⁵²
- (vi) The Court shall ensure that adequate time and opportunity is given to refresh the memory of vulnerable witnesses.
- (vii) In cases of sexual offences, judges should avoid asking the vulnerable witness to demonstrate intimate touching on their own body, during the recording of the testimony and vulnerable witnesses can instead be asked to point to a body outline diagram.⁵³
- (viii) Judges should be flexible in allowing the vulnerable witnesses to have a Support Person present while testifying and should guard against unnecessary sequestration of Support Persons or any other persons permitted to be present during the testimony of the witness.
- (ix) Judges should encourage the victim or vulnerable witness to let the court know if they have a problem, do not understand a question or if they may need a break.⁵⁴
- (x) Judges should ensure that steps are taken to ensure the atmosphere is comfortable and not intimidating. For instance, the court may consider allowing a limited number of defence lawyers to be present in the courtroom during the deposition of a vulnerable witness or not allowing counsel to ask questions in an intimidating tone or interrupting the witness.
- (xi) Judges shall carefully monitor the examination and cross examination of the victim or vulnerable witnesses to avoid any harassment or intimidation to the victim or vulnerable witness.⁵⁵
- (xii) Judges may allow a vulnerable witness to carry a comfort item during the deposition.
- (xiii) Judges may provide transport or transportation cost for the vulnerable witness in accordance with the guidelines prescribed by the concerned High Court in this regard.
- (xiv) Judges shall ensure that the requisite guidelines and Standard Operating Procedures affirmed by the Hon'ble Supreme Court in respect of recording of evidence of vulnerable witnesses is followed.⁵⁶

(Removed: (vi) hearings involving a vulnerable witness may be scheduled on days/time when the witness is not inconvenienced or is not disruptive to routine/ regular schedule of child.)

19. Allowing proceedings to be conducted in camera-

⁵² *Akshay Sharma v. State of Assam*, (2017) 2 GLR 121 (Gauhati High Court).

⁵³ Ministry of Women and Child Development, Model Guidelines Under Section 39 of The Protection of Children from Sexual Offences Act, 2012, p.69.

⁵⁴ Model Guidelines Under Section 39 of The Protection of Children from Sexual Offences Act, 2012.

⁵⁵ *Akshay Sharma v. State of Assam*, (2017) 2 GLR 121 (Gauhati High Court).

⁵⁶ For instance, the SOP laid down in *In Re Children in Street Situations*, 2022 SCC OnLine SC 189 (Supreme Court of India) is to be followed in all criminal trials where the child witnesses do not reside near the court where the trial is conducted and where the child witnesses are examined virtually, not physically, in these courts where the trial is conducted. Judges should also comply with the Witness Protection Scheme 2018 which was approved by the Supreme Court in *Mahendra Chawla v. Union of India* (2019) 14 SCC 615 (Supreme Court of India).

- (i) The mandatory requirement of in camera trials as per section 327 CrPC and Section 37 of the POCSO Act shall be ensured and recorded in the orders passed in such cases. In all other cases, the court may, at the time of testimony of a vulnerable witness, order in writing the exclusion from the courtroom of all persons, *(previously: when a vulnerable witness testifies, the court may order the exclusion from the courtroom of all persons)* who do not have a direct interest in the case including members of the press. Such an order may be made to protect the right to privacy of the vulnerable witness or if the court is of the opinion *(previously: determines)* that requiring the vulnerable witness to testify in open court would cause psychological harm to them *(previously: him)*, hinder the ascertainment of truth, or result in their *(previously: his)* inability to effectively communicate due to embarrassment, fear, or timidity.
- (ii) In making its order, the court shall consider the developmental level of the vulnerable child witness, the nature of the crime, the nature of testimony regarding the crime, the relationship of the child witness *(previously: his relationship)* to the accused and to persons attending the trial, their wishes *(previously: his desires)*, and the interests of their parents or legal guardian.

(Removed: (iii) The court may, motu proprio, exclude the public from the courtroom if the evidence to be produced during trial is of such character as to be distressing, personal, offensive to decency or public morals).

20. Live-link television testimony in criminal cases where the vulnerable witness is involved-

- (i) Any party in the case, the prosecutor, counsel or the guardian *ad litem* may apply for an order that the testimony of the vulnerable witness *(previously: child)* be taken in a room outside the courtroom and be televised to the courtroom by live-link television.¹³
- (ii) In order to take a decision of usage of a live-link the judge may question the vulnerable witness *(previously: child)* in chambers, or in some comfortable place other than the courtroom, in the presence of the support person, guardian *ad litem*, prosecutor, and counsel for the parties. The questions of the judge shall not be related to the issues at trial but to the feelings of the vulnerable witness *(previously: child)* about testifying in the courtroom.
- (iii) The court on its own motion, if deemed appropriate, may pass orders in terms of (i) or any other suitable directions for recording the evidence of a vulnerable witness.

21. Provision of testimonial aids to prevent exposure of vulnerable witness to the accused-

The court may *suo motu* or on an application made even by the vulnerable witness, prosecutor or counsel or the guardian *ad litem* order testimonial aid such as screens, one-way mirror, curtains or other devices to be placed in the courtroom in such a manner that the vulnerable witness cannot see the accused/opposite party while testifying and at the same time ensuring that the opposite party / accused is in a position to hear the statement of the vulnerable witness and communicate with their advocate.⁵⁷ The court shall issue an order in writing stating the reasons and describing the approved courtroom arrangement in the judgement. *(previously: Provision of screens, one-way mirrors, and other devices to vulnerable witness from accused. The court may suo motu or on an application made even by the prosecutor or the guardian ad litem may order that the chair of the vulnerable witness or that a screen or other device be placed in the courtroom in such a manner that the child*

⁵⁷ POCSO Act 2012, Section 36(1); Code of Criminal Procedure 1973, Section 273; ECOSOC Resolution 2005120, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, clause 31 (c).

cannot see the accused while testifying. The court shall issue an order stating the reasons and describing the approved courtroom arrangement)

(Removed: 37. Testimonial aids: The court shall permit a child to use testimonial aids as defined in the definition clause).

22. Factors to be considered while considering the application under Guidelines-

(i) The court may order that the testimony of the vulnerable witness be taken by live-link television if there is a substantial likelihood that the vulnerable witness would not provide a full and candid account of the evidence if required to testify in the presence of the accused/opposite party, their *(previously: his)* counsel or the prosecutor as the case may be or if the vulnerable witness is likely to be traumatised by exposure to the accused.

(ii) The order granting or denying the use of live-link television shall state the reasons therefore and *may (previously: shall)* consider the following:

- a. the age and level of development of the vulnerable witness;
- b. the physical and mental health, including any intellectual or physical disability of the vulnerable witness; *(previously: mental or physical disability)*
- c. any physical, emotional, or psychological harm related to the case on hand or trauma experienced by the vulnerable witness; *(previously: child)*
- d. the nature of the alleged offence/case and circumstances of its commission;
- e. any threats against the vulnerable witness;
- f. the relationship of the vulnerable witness *(previously: his relationship)* with the accused or adverse party;
- g. the reaction of the vulnerable witness *(previously: his reaction)* to any prior encounters with the accused/ opposite party in court or elsewhere;
- h. the reaction of the vulnerable witness *(previously: his reaction)* prior to trial when the topic of testifying was discussed *(removed: with him)* by parents or professionals;
- i. specific symptoms of stress exhibited by the vulnerable witness in the days prior to testifying;
- j. testimony of expert or lay witnesses;
- k. the custodial situation of the child and the attitude of the members of the child's *(previously: his)* family regarding the events about which the child *(previously: he)* will testify;
- l. the wishes of the vulnerable witness on the manner in which they would like to render the testimony; and
- m. other relevant factors, such as court atmosphere and formalities of court procedure.

(iii) The court shall ensure ahead of time that the equipment is working, recordings can be played and that camera angles will not permit the witness to see the defendant. The court shall not wait until the victim or vulnerable witness is in the live link room to run checks: delays and malfunctions can be disruptive to the vulnerable witness. Where a live link is being used during the vulnerable witness's testimony, ensure that they are able to see all of the questioner's face.⁵⁸ It should be explained that the judge or magistrates can always see the vulnerable witness over the live video link even when

⁵⁸ Model Guidelines Under Section 39 of The Protection of Children from Sexual Offences Act, 2012.

the witness cannot see the judge or magistrates.⁵⁹

23. Mode of questioning-

(i) To facilitate the ascertainment of the truth the court shall exercise control over the questioning of vulnerable witnesses and may do so by:

- a. ensuring (*previously: ensure*) that questions are kept simple and stated in a form appropriate to the comprehension and developmental level of the vulnerable witness;
- b. protecting (*previously: protect*) vulnerable witness from harassment or undue embarrassment, character assassination, aggressive questioning, and ensure that dignity of the witness is maintained at all times during the trial;⁶⁰
- c. avoiding (*previously: avoid*) waste of time by declining questions which the court considers unacceptable due to their being improper, unfair, misleading, needless, unconnected to the case, repetitive or expressed in language that is too complicated for the witness to understand;
- d. allowing the vulnerable (*previously: the court may allow the child*) witness to testify in a narrative form;
- e. in cases involving multiple accused persons or defendants, take steps to minimize repetition of questions, and the court may require counsels for different parties to provide questions in advance from all the counsels;
- f. in cases involving sexual offences against child victims, ensuring that questions are put to the child victim only through the court.⁶¹ (*previously: questions shall be put to the witness only through the court*).

(ii) Objections to questions should be couched in a manner so as not to mislead, confuse, frighten a vulnerable witness.

(iii) The court should (*previously: to*) allow the questions to be put in simple language avoiding slang, esoteric jargon, proverbs, metaphors and acronyms. The court should ascertain the spoken language of the victim or vulnerable witness and the range of their vocabulary before recording the evidence.⁶² The court must not allow the question carrying words capable of multiple meanings, (*previously: two-three meanings*), questions having use of both past and present in one sentence, or multiple questions which is likely to confuse a witness. Where the witness seems confused, instead of repetition of the same question, the court should direct its re-phrasing.

Explanation: The reaction of a vulnerable witness shall be treated as sufficient clue that the question was not clear so it shall be rephrased and put to the witness in a different way.⁶³

(iv) Given the developmental level of vulnerable witnesses (*previously: witness development level*), excessively long questions shall be required to be rephrased and thereafter put to witness.

(v) Questions framed as compound or complex sentence structure; or two part questions or those containing double negatives shall be rephrased and thereafter put to witness.

⁵⁹ Model Guidelines Under Section 39 of The Protection of Children from Sexual Offences Act, 2012.

⁶⁰ POCSO Act 2012, Section 33(6); Indian Evidence Act 1872, Sections 53 A, 148, 151, 152 and the proviso to Section 146; *State of Punjab v. Gurmit Singh* (1996) 2 SCC 384; *Akshay Sharma v. State of Assam*, (2017) 2 GLR 121 (Gauhati High Court).

⁶¹ POCSO Act 2012, Section 33(2); *Sakshi v. Union of India*, AIR 2004 SC 3566 (Supreme Court of India).

⁶² *Akshay Sharma v. State of Assam*, (2017) 2 GLR 121 (Gauhati High Court).

⁶³ *Virender v. State*, CrI.A. No.12/08 decided by the Delhi High Court on 29.9.09.

24. Rules of deposition to be explained to the Witnesses-

The court shall explain to a vulnerable witness to:

- (a) Carefully listen to the questions posed and to tell the court the true version of events and, as far as possible (except in the case of very young children) not to respond by shaking their head to mean yes or no, when answering, *(previously: Listen carefully to the questions and to tell the whole truth, by speaking loudly and not to respond by shaking head in yes or no)*.
- (b) To specifically state if *(previously: that)* the witness does not remember or *(removed: where he)* has forgotten something,
- (c) To clearly ask when the question is not understood.

A gesture by a vulnerable witness *(previously: child)* to explain what had happened shall be appropriately interpreted *(previously: translated)* and recorded in the vulnerable witness' *(previously: child's)* deposition. Assistance of an interpreter or special educator shall be taken if the witness is unable to communicate verbally and such statement should be videographed.⁶⁴

25. Compensation-

The court shall apply its mind to the question of award of compensation in every case involving a victim who is a vulnerable witness, having regard to the applicable laws and schemes.⁶⁵

26. Protection of privacy and safety-

Orders and judgments pertaining to cases involving vulnerable witnesses shall be made available on e-courts or on the official portal of the court after redacting identifying information of vulnerable witnesses. Any record containing identifying information regarding a vulnerable witness shall be confidential and kept under seal. Except upon written request and order of the court, the record shall only be made available to the following:

- a. Members of the court staff for administrative use;
- b. The Public Prosecutor for inspection;
- c. Defence counsel for inspection;
- d. The guardian *ad litem* for inspection;
- e. Other persons as determined by the court.

27. Protective order-

The depositions of the vulnerable witness recorded by video link shall not be video recorded except under reasoned order requiring the special measures by the judge. However, where any video or audio recording *(previously: videotape or audiotape)* of a vulnerable witness is made, it shall be under a protective order that provides as follows:

- (i) A transcript of the testimony of the vulnerable witness shall be prepared and maintained on record of the case. Copies of such transcript shall be furnished to the parties of the case.

⁶⁴ Indian Evidence Act 1872, Section 119.

⁶⁵ Code of Criminal Procedure 1973, Sections 357, 357A. POCSO Act 2012, Section 33(8) and POCSO Rules 2020, Rule 9; NALSA's Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes -2018; *Ankush Shivaji Gaikwad v. State of Maharashtra*, AIR 2013 SC 2454 (Supreme Court of India); *Nipun Saxena v. Union of India*, Writ Petition(s)(Civil) No(s).565/2012 order of the Supreme Court dated 11.05.2018; *Suresh v. State of Haryana*, 2014 SCC OnLine SC 952 (Supreme Court of India); *Bodhisattwa Gautam v. Miss Subhra Chakraborty*, AIR 1996 SC 922 (Supreme Court of India); Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Clause 12.

- (ii) Recording (*previously: Tapes*) may be viewed only by parties, their counsel, their expert witness, and the guardian *ad litem* in the office of the court, following a procedure similar to inspection of documents.
- (iii) No person shall be granted access to the recording (*previously: tape*), or any part thereof unless they (*previously: he*) sign a written affirmation that they have (*previously: he has*) received and read a copy of the protective order; that they (*previously: he*) submit to the jurisdiction of the court with respect to the protective order; and that in case of violation thereof, they (*previously: he*) will be subject to the penalties provided by law (*previously: contempt power of the court*)
- (iv) Any recording (*previously: Each of the tapes*), if made available to the parties or their counsel, shall bear the following cautionary notice:

"This object or document and the contents thereof are subject to a protective order issued by the court in (case title), (case number). They shall not be examined, inspected, read, viewed, or copied by any person, or disclosed to any person, except as provided in the protective order. No additional copies of the tape or any of its portions shall be made, given, sold, or shown to any person without prior court order. Any person violating such protective order is subject to the contempt power of the court and other penalties prescribed by law."

- (v) No recording (*previously: tape*) shall be given, loaned, sold, or shown to any person except as ordered by the court. This protective order shall remain in full force and effect until further order of the court.

28. Personal details during evidence likely to cause threat to physical safety of vulnerable witness to be excluded-

A vulnerable witness has a right at any court proceeding not to testify regarding personal identifying information, including their (*previously: his*) name, address, telephone number, school, and other information that could endanger their physical safety or that of their (*previously: his*) family. The court may, however, require the vulnerable witness to testify regarding personal identifying information in the interest of justice.

29. Destruction of videotapes and audiotapes-

Any video or audio recording (*previously: videotape or audiotape*) of a vulnerable witness (*previously: child*) produced under the provisions of these guidelines or otherwise made part of the court record shall be destroyed as per rules formed by the Delhi High Court.

30. Protective measures-

At any stage in the justice process where the safety of a vulnerable witness (*previously: the child victim or witness*) is deemed to be at risk, depending upon the intensity of the threat perception, the court shall *suo motu* arrange to have protective measures put in place for the vulnerable witness (*previously: child*) or refer the matter to the Competent Authority under the Witness Protection Scheme, 2018.⁶⁶ Those measures may include the following:

- a. prohibiting (*previously: avoiding*) direct or indirect contact between a vulnerable witness (*previously: child victim or witness*) and the accused/ opposite party at any point in the justice process;⁶⁷

⁶⁶ *Mahender Chawla v. Union of India*, (2019) 14 SCC 615 (Supreme Court of India); Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Clause 6(d).

⁶⁷ ECOSOC Resolution 2005/120, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Clause 34(a).

- b. restraint orders;⁶⁸
- c. direct continuation of bail conditions during trial;⁶⁹ (*previously: a pretrial detention order for the accused or with restraint or “no contact” bail conditions which may be continued during trial*)
- d. protection for a vulnerable witness (*previously: child victim or witness*) by the police or other relevant agencies and safeguarding the whereabouts of the vulnerable witness (*previously: child*) from disclosure;⁷⁰
- e. any other protective measures that may be deemed appropriate, including those stipulated under the Witness Protection Scheme, 2018.

31. Review and Monitoring. –

The implementation of the guidelines shall be reviewed annually and for this purpose the Delhi High Court shall engage independent research bodies or organisations, reputed academic institutions or Universities or constitute a multi-disciplinary Committee including experts having the experience of working with vulnerable witnesses. The recommendations received shall be promptly acted upon and the guidelines may also be updated based on relevant legal developments.

Additional Guidelines specific to child victims and witnesses

32. Developmentally appropriate questions for child witnesses-

The questions asked to assess the competency of a child witness shall be appropriate to the age and developmental level of the child; shall not in any manner be related to the issues at trial; and shall focus on the ability of the child to remember, communicate, distinguish between truth and falsehood, and appreciate the duty to testify truthfully.⁷¹

33. Appointment of Guardian *ad litem* -

The court may appoint any person as guardian *ad litem* as per law to a vulnerable child witness who is a victim of, or a witness to a crime having regard to their best interests, after considering the background of the guardian *ad litem* and their (*previously: his*) familiarity with the judicial process, social service programs, and human development (*previously: child development*), giving preference to the parents of the child, if qualified. The guardian *ad litem* may be a member of bar/practising advocate, except a person who is a witness in any proceeding involving the vulnerable witness. (*previously: the child*)

34. Duties of guardian *ad litem*-

It shall be the duty of the guardian *ad litem* of the vulnerable child witness so appointed by court to:

- a. attend all depositions, hearings, and trial proceedings in which a vulnerable witness participates.
- b. make recommendations to the court concerning the best interest (*previously: welfare*) of the vulnerable witness keeping in view the needs of the witness (*previously: child*) and observing the impact of the proceedings on the witness (*previously: child*).

⁶⁸ ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Clause 34(b).

⁶⁹ ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Clause 34(c).

⁷⁰ ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Clause 34(e).

⁷¹ *State v. Rahul*, 2013 IVAD 745 (High Court of Delhi); *State v. Sujeet Kumar*, 2014(4) JCC 2718 (High Court of Delhi).

- c. explain in a language understandable to the vulnerable witness, all legal proceedings, including police investigations, status and progress of the trial, child-friendly measures and rights, and witness protection measures, in which the vulnerable witness (*previously: child*) is involved;
- d. assist the vulnerable witness and their (*previously: his*) family in coping with the emotional effects of participating in any case/proceedings, especially the crime and subsequent criminal or non-criminal proceedings in which the vulnerable witness is involved; (*previously: crime and subsequent criminal or non-criminal proceedings in which the child is involved*)
- e. remain with the vulnerable witness while the vulnerable witness waits to testify.

35. Testimony during appropriate hours-

The court may order that the testimony of the child witness or child victim (*previously: vulnerable witness*) should be taken during a time of day when the vulnerable witness is well-rested and does not clash with their routine activities like meal and sleep timings, attending school/ exams or other activities specific to that witness.⁷²

36. Frequent breaks (*previously: Recess*) during testimony-

The child witness or child victim (*previously: vulnerable witness*) may be allowed reasonable periods of relief and breaks while undergoing depositions, as often as necessary, depending on their age, disability, and development need.⁷³

37. Measures to protect the privacy and well-being of child victims and witnesses-

(i) Confidentiality of vulnerable witnesses and judicial transparency are not mutually exclusive and vulnerable victims'/witnesses' right to information and access to court records in their own case shall not be restricted in the name of protecting their privacy and confidentiality. It is possible for courts to maintain anonymity of vulnerable witnesses through simple name suppression measures which would then enable the release of court documents without endangering their privacy. Best practices from various countries and international tribunals and courts may be adapted for the purpose of balancing confidentiality and judicial data accessibility and transparency.⁷⁴

(ii) To ensure the privacy and physical and mental well-being of a child victim and to prevent undue distress and secondary victimization, taking into account the best interests of the vulnerable witness, the court may order one or more of the following measures to protect the privacy and physical and mental well-being of the vulnerable child witness or victim:⁷⁵ (*previously: At the request of a child victim or witness, his or her parents or guardian, his or her lawyer, the support person, other appropriate person designated to provide assistance, or the court on its own motion, taking into account the best interests of the child, may order one or more of the following measures to protect the privacy and physical and mental well-being of the vulnerable witness child and to prevent undue distress and secondary victimization:*)

⁷² ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Clause 30(d).

⁷³ POCSO Act 2012, Section 33(3). ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Clause 30(d).

⁷⁴ HAQ Centre for Child Rights, *Balancing Children's Confidentiality and Judicial Accountability: A Cross-Country Comparison of Best Practices Regarding Children's Privacy in the Criminal Justice System*, <<https://www.haqrcr.org/new-at-haqbalancing-childrens-confidentiality-and-judicial-accountability>>.

⁷⁵ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Clause 6(d).

- a. concealing (*previously: expunging*) from the public record any names, addresses, workplaces, professions or any other information that could lead to the identification of the child (*previously: be used to identify the child*) victim or witness in orders, judgments, or any case records accessible to the public.⁷⁶ Where the accused is related to the child victim, care shall also be taken to redact the identity of the accused before making the order or judgement accessible to the public;⁷⁷
- b. prohibiting (*previously: forbidding*) the defence lawyer and persons present in the courtroom from revealing the identity of the vulnerable witness or disclosing any material or information that would lead to the identification of the vulnerable witness in the media; (*previously: tend to identify the child*)
- c. protecting the identity of child victims and permitting disclosure in accordance with relevant statutory provisions and judicial precedents;⁷⁸ (*previously: ordering the non-disclosure of any records that identify the child, until such time as the court may find appropriate*).
- d. assigning a pseudonym or a number to a child victim in cases of sexual offences, in which case the full name and date of birth of the child shall be revealed to the accused for the preparation of their defence. (*previously: within a reasonable period for the preparation of his or her defence;*) In other cases, a pseudonym may be assigned as per request of the parties;
- e. avoiding exposure to the accused by using screens or single visibility mirror; (*previously: efforts to conceal the features or physical description of the child giving testimony or to prevent distress or harm to the child, including testifying:*
 - (i) behind screen;
 - (ii) using image- or voice-altering devices;
- f. through examination in another place, transmitted simultaneously to the courtroom by means of video link; through a qualified and suitable facilitator (*previously: intermediary*), such as, but not limited to, an interpreter for vulnerable witness (*previously: children*), with hearing, sight, speech or other disabilities;
- g. holding *in-camera* trials; (*previously: closed sessions*)
- h. if the child victim or witness refuses to give testimony in the presence of the accused or if circumstances show that the child may be inhibited from speaking freely (*previously: the truth*) in that person's presence, the court shall give orders to temporarily remove the accused from the courtroom to an adjacent room with a video link or a one way mirror visibility into the courtroom. In such cases, the defence lawyer shall remain in the courtroom and question the vulnerable witness (*previously: child*), and the accused's right of confrontation shall thus be guaranteed.
- i. taking any other measure that the court may deem necessary to advance the right to privacy, including, where applicable, anonymity, taking into account the best interests of the child witness and the rights of the accused.

⁷⁶ POCSO Act 2012, Section 33(7); JJ Act 2015, Section 74; Indian Penal Code 1860, Section 228A. *Nipun Saxena v. Union of India*, (2019) 2 SCC 703. Witness Protection Scheme, 2018, Clause 2(b). Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 15A(8)(a)(b). ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, clause 27.

⁷⁷ For instance, in cases of incest where the accused is the father, the child becomes identifiable immediately if the name of the father appears in the judgment copy available on e-courts or any other publicly accessible domain.

⁷⁸ POCSO Act, 2012, Section 33(7); Indian Penal Code 1860, Section 228A (2); Code of Criminal Procedure 1973, Section 327(3); *Nipun Saxena v. Union of India*, (2019) 2 SCC 703 (Supreme Court of India).

(iii) Orders and judgments pertaining to cases involving vulnerable child witnesses shall be made available on e-courts or on the official portal of the court after suppressing their identifying information.

38. Standard Operating Procedure to be followed during virtual examination of child witnesses-

Judges shall ensure the child Standard Operating Procedure affirmed by the Hon'ble Supreme Court of India in *In Re Children in Street Situation*⁷⁹ is adhered to in all criminal trials where the child witness does not reside near the court where the trial is conducted and where the child witness is examined virtually, not physically, by the court in which the trial is conducted.

39. Application of High Court of Delhi Rules of Video Conferencing for Courts 2021-

Wherever required, the "High Court of Delhi Rules of Video Conferencing for Courts 2021" shall apply.

40. Residual Clause-

Where no provision is made regarding an issue concerning the applicability of these Guidelines, the same shall be decided by the concerned Court consistent with the interest of the vulnerable witness and without prejudice to the rights of the accused to a fair trial.

41. Repeal-

"Guidelines for recording of evidence of vulnerable witnesses in criminal matters" are hereby repealed.

However, provisions of above guidelines shall apply to actions and proceedings commenced before these guidelines came into force.

⁷⁹ *In Re Children in Street Situations*, 2022 SCC OnLine SC 189 (Supreme Court of India).