

**R.O.C.No.15447/2023/F1**



**NOTIFICATION NO. 26 / 2024**

It is hereby informed that pursuant to the order of the Hon'ble Supreme Court of India in M.A.No.1852 of 2019 in Criminal Appeal No.1101 of 2019, dated 11.01.2022, the High Court, Madras, hereby notifies the guidelines given overleaf for recording of evidence of Vulnerable Witnesses for Madras High Court, for strict compliance.

//By Order//

HIGH COURT, MADRAS  
DATED: 29 .01.2024.

Sd/-M.JOTHIRAMAN  
REGISTRAR GENERAL

To:

1. All the Principal District Judges/District Judges in the State of Tamil Nadu. }
  2. The Principal Judge, City Civil Court, Chennai. }
  3. The Chief Judge, Court of Small Causes, Chennai. }
  4. The Chief Judge, Puducherry. }
  5. The District Judge, Karaikal. }
  6. The District Judge-cum-Chief Judicial Magistrate, The Nilgiris. }
  7. The Director, Tamil Nadu State Judicial Academy, R.A.Puram, Chennai-28. (with a request to communicate the copy of guidelines to Regional centres in Coimbatore and Madurai.) }
  8. The Court Manager, High Court, Madras (with a request to communicate the copy of guidelines to all the Court Managers in Tamil Nadu and Puducherry through e-mode.) }
  9. The Section Officer, D Section (D2 Seat), High Court, Madras. }
  10. The Section Officer, "F" section, Madurai Bench of Madras High Court, Madurai. }
  11. The Record Keepers, A.D. Records, High Court, Madras & Madurai Bench of Madras High Court, Madurai. }
- } With a direction to  
} communicate the copy  
} of guidelines to all the  
} courts under your  
} jurisdiction.



**MADRAS HIGH COURT**

**GUIDELINES FOR  
RECORDING OF EVIDENCE OF VULNERABLE  
WITNESSES**

**BY**

**THE HON'BLE RULE COMMITTEE (CRIMINAL)**

# **GUIDELINES 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 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. The dignity of every witness has to be maintained in every Court proceeding. The vulnerability of a witness may emerge from a range of circumstances which include, but are not limited to, the nature of crime, the threats and intimidation, the fear of reprisal, their age, their developmental levels, their gender identity, and on the basis of sexual minorities, ethnicity, religious identity, caste, physical and/or mental disability, lack of infrastructural support, language barrier, geographical location, to cite a few. Some of the most challenging cases before judges are those involving vulnerable witnesses such as children, survivors and victims of sexual offences or domestic violence, persons with disabilities, and witnesses experiencing threats to their life and property. Vulnerable witnesses find their interaction with the legal process, especially the criminal justice process, intimidating, particularly with their court room experience. Under these circumstances, unless adequate support is provided, a vulnerable witness may not feel safe to provide testimony with confidence. Further, the lengthy process of navigating the adversarial criminal justice system or the civil justice system can affect their psychological well-being in long-lasting and significant ways.

To respond to the needs of vulnerable witnesses in an effective manner, the justice delivery 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 is minimized. 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 ensure confidence during deposition by vulnerable witnesses impacting the outcome of every trial.

These Guidelines have been developed in furtherance of the directions of the Supreme Court in *Smruti Tukaram Badade v. State of Maharashtra*<sup>1</sup>, and have been drawn from the Guidelines for recording of evidence of vulnerable witnesses in criminal matters prepared by High Courts and by the Vulnerable Witness Deposition Committee constituted vide Order dated 11.01.2022 in *Smruti Tukaram Badade*, chaired by Hon'ble Ms. Justice Gita Mittal, as well as drawing reference from relevant statutory provisions, judgments, and international standards relevant to vulnerable witnesses.

### **Objectives**

1. To enable vulnerable witnesses to depose with confidence before any court in a safe and secure environment.
2. To address any presumed harm or secondary victimization of vulnerable witnesses as a result of participation in the justice system.
3. To ensure that the rights of all the parties in the judicial processes are effectively upheld. In the context of the criminal process they would include the right of the accused to 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 vulnerable witnesses (even if they are not a victim).

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<sup>1</sup> *Smruti Tukaram Badade Vs. State of Maharashtra* [Crl.A.No.1101 of 2019, dated 11.01.2022 – SC]

## **1. Short Title, extent, and commencement**

- a. These guidelines shall be called, “**Guidelines for Recording Evidence of Vulnerable Witnesses**”.
- b. Unless otherwise provided, these guidelines shall govern the examination of vulnerable witnesses who are victims<sup>2</sup> or witnesses in any case.
- c. These guidelines shall apply to every court, including Juvenile Justice Boards, to every inquiry and recording of statements/evidence by quasi judicial authorities, tribunals, commissions, and also Alternate Dispute Resolution Proceedings viz., arbitration, conciliation, judicial settlement including settlement through Lok Adalat or mediation, Disciplinary Proceedings, Domestic Enquiries, and also by Investigating Agencies in the State of Tamil Nadu and Union Territory of Puducherry.
- d. These guidelines shall come into force from the date of its notification by the High Court of Judicature at Madras.

## **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.

### **3 (a). Definition of Vulnerable Witness**

**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;
- (ii) any victim of an offence under the POCSO Act, 2012;

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<sup>2</sup> Sec.2(wa), CrPC, 1973

(iii) any victim of an offence under Sections 376(1), 376(2), 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, 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*<sup>3</sup>; and

(vii) any other witness deemed to be vulnerable by the concerned court, [including Family Courts, Children’s Courts, Juvenile Justice Board, civil and criminal courts, or any tribunal or forum.]\*

**\*Subject to clarificatory orders of the Supreme Court.**

### **3 (b). Definition of Support person**

(a) Support Person means and includes guardian ad litem, legal aid lawyer, facilitators, interpreters, translators or any other person appointed by the court to provide support, including psychosocial support, accompany and assist the vulnerable witness to testify or attend judicial proceedings.

(b) Support persons also includes those 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 Act<sup>4</sup>, support person or para legal volunteer provided by the Legal Services

<sup>3</sup> *Mahender Chawla Vs. Union of India*, (2019) 14 SCC 615.

<sup>4</sup> *Smruti Tukaram Badade Vs. State of Maharashtra* [CrI.A.No.1101 of 2019, dated 11.01.2022 – SC]; *Sakshi Vs. Union of India* [(2004) 5 SCC 518]

Authority under the Juvenile Justice (Care and Protection of Children) Model Rules, 2016<sup>5</sup>.

### **3 (c). Definition of Best Interests of the Child**

**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 wellbeing and physical, emotional and intellectual development<sup>6</sup>.

### **3 (d). Definition of Development Level**

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

### **3 (e). Definition of In-Camera Proceedings**

**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.

### **3 (f). Definition of Concealment of identity of witness**

**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<sup>7</sup>.

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<sup>5</sup> Rule 54(14), Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

<sup>6</sup> Rules 2(1)(f), 4(8) and 5(6), POCSO Rules, 2020

<sup>7</sup> Sec.2(9), Juvenile Justice (Care and Protection of Children), 2015.

### **3 (g). Definition of Comfort Items**

**Comfort Items** – Comfort items mean any article of choice of the vulnerable witness which may have a calming effect at the time of deposition and may include stuffed toy, blanket or book.

### **3 (h). Definition of Court House Tour**

Court House Tour means a pre-trial tour of the court room 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<sup>8</sup>.

### **3 (i). Definition of Live Link**

**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 the court room<sup>9</sup> is nevertheless present in the court room by remote communication using technology to give evidence and be cross-examined.

### **3 (j). Definition of Special Measures**

**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.

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<sup>8</sup> Alternative Pre-trial and Trial Processes for Child Witnesses in New Zealand's Criminal Justice System, Issue Paper, Ministry of Justice, New Zealand Government, 2010.

<sup>9</sup> Sec.275, CrPC, 1973; Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, CJSJI, UK.



### **3 (k). Definition of Testimonial Aids**

**Testimonial Aids** – means and includes screens; single visibility mirrors, curtains<sup>10</sup>, live links, image and/or voice altering devices<sup>11</sup>; or any other technical devices, facilities and equipment.

### **3 (l). Definition of Secondary Victimization**

**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<sup>12</sup>.

### **3 (m). Definition of Revictimization**

**Revictimization** – means a situation in which a person suffers more than one criminal incident over a period of time<sup>13</sup>.

### **3 (n). Definition of 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.

### **3 (o). Definition of Special Measures Direction**

The concerned 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.

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<sup>10</sup> Sec. 36(2), POCSO Act.

<sup>11</sup> Clause 7(1), Witness Protection Scheme, 2018; *Mahender Chawla Vs. Union of India*, (2019) 14 SCC 615.

<sup>12</sup> UN Model Law on Justice in Matters involving Child Victims and Witnesses of Crime, 2009.

<sup>13</sup> UN Model Law on Justice in Matters involving Child Victims and Witnesses of Crime, 2009.

#### **4. Applicability of guidelines to all vulnerable witnesses**

For the avoidance of doubt, it is made clear that these guidelines are to apply to any vulnerable witness as defined in Clause 3(a), 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.

#### **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<sup>14</sup>:

- a. Multiple depositions.
- b. Not using developmentally appropriate language.
- c. Delays and repeated adjournments.
- 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, and lack of convergence with authorities such as Child Welfare Committees, District Child Protection Units, One Stop Centres etc.

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<sup>14</sup> State Vs. 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.

- 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.
- n. Lack of adequate support, witness protection, and victims services.
- o. Sequestration of witnesses who may be supportive to the vulnerable witness.
- p. Placement that exposes the vulnerable witness to intimidation, pressure, or continued abuse.
- q. Lack of preparation to enable 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 court room, particularly for vulnerable witnesses with disabilities.

## **7. Competency of vulnerable witness**

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, 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 and due to illness, or any other cause of the same kind, in accordance with Section 118 of the Indian Evidence Act, 1872.

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

#### **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<sup>15</sup>;
- e. one or more support persons for a child victim or witness;
- f. translator, interpreter, expert or special educator, if necessary<sup>16</sup>;
- g. person familiar with the manner of communication of a vulnerable witness with intellectual or physical disability<sup>17</sup>;
- 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.

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<sup>15</sup> Sec.33(4), POCSO Act 2012.

<sup>16</sup> Sec.38(1), POCSO Act 2012.

<sup>17</sup> Sec.38(2), POCSO Act 2012; Sec.12, Rights of Persons with Disabilities Act 2016.

## **9. Conduct of competence assessment**

The assessment of a person, as to their competence as a witness shall be conducted only by the presiding judge.

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

Vulnerable witnesses shall be allowed a pre-trial court house tour or tour of the civil court or Juvenile Justice Board, etc., along with the support person<sup>18</sup> 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;
- 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, prosecutors and the judge to dispel the fear, trauma and anxiety in connection with the upcoming deposition at court<sup>19</sup>;
- h. demonstration of any special measures applied for and/or granted, for example practicing on the live link and explaining who will be able to see them in the court room, and showing the use of screens (where it is practical and convenient to do so)<sup>20</sup>.

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<sup>18</sup> Rule 54(14), Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

<sup>19</sup> Rule 4(9), POCSO Rules, 2020.

<sup>20</sup> Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, UK, Safeguarding Children as Victims and Witnesses, UK.

## **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.

## **12. Assistance of an interpreter, translator, special educator or expert**

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

(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<sup>21</sup>.

(iii) The concerned court may consider the qualifications prescribed for interpreters, translators, sign language interpreters, special educators and experts in Rule 5 of the 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<sup>22</sup>.

(v) If, in view of the vulnerable witnesses' 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

<sup>21</sup> Sec.38(1), POCSO Act, 2012; Sec.12, Rights of Persons with Disabilities Act 2016; Cl.14, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

<sup>22</sup> Sec. 38(1), POCSO Act, 2012; Rights of Persons with Disabilities Act, 2016.

requires special assistance measures in order to testify or participate in the justice process, such measures shall be provided free of cost.

(vi) If the court appoints an interpreter, translator, special educator or expert, the respective counsel for the parties shall pose questions to the vulnerable witness only through them, 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<sup>23</sup>. Further, any vulnerable witness who falls within the ambit of Section 12 of the 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:

- 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.

### **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) of the 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 court room

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<sup>23</sup> Sec.40, POCSO Act, 2012; Rule 54(19), Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

during the deposition<sup>24</sup>, provided that such support person shall not completely obscure the witness from the view of the accused 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 proceedings<sup>25</sup> and also inform the court if the vulnerable witness needs a break or is feeling stressed or triggered.

(iv) The court shall instruct the Support Person not to prompt, sway, influence or tutor the vulnerable witness during their testimony.

(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.

(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.

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<sup>24</sup> Sec.33(4), POCSO Act, 2012; Rule 4(9), POCSO Rules, 2020; Clause 30(a), ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; Clause 14, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

<sup>25</sup> Clause 6(a), Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.



## 15. Right to be informed

A vulnerable witness, their parents or guardian, 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<sup>26</sup>:

- a. charges brought against the accused, or if none, the stay of proceedings against them<sup>27</sup>;
- b. the progress of the case<sup>28</sup>;
- 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<sup>29</sup>;
- d. existing support mechanisms for a vulnerable witness when participating in proceedings, including services of a Support Person<sup>30</sup>;
- 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<sup>31</sup>;

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<sup>26</sup> Rule 4(15), POCSO Rules, 2020.

<sup>27</sup> Model Guidelines under Sec.39, POCSO Act, 2012.

<sup>28</sup> Model Guidelines under Sec.39, POCSO Act, 2012.

<sup>29</sup> Clause 19(b), ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; Clause 6(a), Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

<sup>30</sup> Clause 19(a), ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

<sup>31</sup> Clause 19(d), ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

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, 1860<sup>32</sup>, or under the POCSO Act<sup>33</sup>.

## **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, if any, is separate from waiting areas used by other persons<sup>34</sup>. 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<sup>35</sup>. 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<sup>36</sup>. 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

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<sup>32</sup> Sec.439(1-A), CrPC, 1973.

<sup>33</sup> Reena Jha Vs. Union of India [W.P.(C) 5011/2017, dated 25.11.2019 (Delhi High Court)]; Miss G Vs. NCT of Delhi [Crl.M.C.No. 1474/2020 (Delhi High Court)]; Arjun Kishanrao Malge Vs. State of Maharashtra [PIL.No.5/2021, dated 08.04.2021 (Bombay High Court)]; Akash Chandrakar Vs. State of Chhattisgarh [Crl.A.No.101/2021, dated 19.01.2022 (Chhattisgarh High Court)]; Rohit Vs. State of U.P. [Bail No. 8227/2021, dated 06.08.2021 (Allahabad High Court)].

<sup>34</sup> Clause 31(b), ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

<sup>35</sup> Sec.12, Rights of Persons with Disabilities Act 2016.

<sup>36</sup> Rule 54(12), Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

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 deportment of all persons in the court room including the parties, their counsel, vulnerable witnesses, Support Persons, guardian ad litem, facilitator, and court personnel<sup>37</sup>.

(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 court room is accessible to persons with disabilities.

(iv) The vulnerable witness may be allowed to testify from a place other than the witness chair. The witness chair or other place from which the vulnerable witness testifies may be turned to facilitate their testimony but the accused or the opposite party and their counsel must have a frontal or profile view of the vulnerable witness even by a video link, during the testimony of the vulnerable witness. The witness chair or other place from which the vulnerable witness testifies may also be rearranged to allow the vulnerable witness to see the accused or the opposite party and their counsel, if the vulnerable witness chooses to look at them, without turning their 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 accused<sup>38</sup> and that the

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<sup>37</sup> Clause 30(d), ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

<sup>38</sup> Sec.273, CrPC, 1973.

accused is in a position to hear the statement of the child and communicate with their advocate<sup>39</sup>.

(vi) While deciding to make available such an environment, the judge may be dispensed with from wearing their judicial robes<sup>40</sup>.

### **18. Directions for Judges of Criminal Courts, Children's Courts and Juvenile Justice Boards**

(i) Vulnerable witnesses shall receive high priority and shall be dealt with as expeditiously as possible, minimizing unnecessary delays and adjournments to avoid repeated appearances of the witness in the Court<sup>41</sup>. (Whenever necessary and possible, the court schedule will be altered to ensure that the testimony of the vulnerable 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 court room and recording of the testimony. For instance, judges should use developmentally appropriate language, schedule hearings for the record of testimony bearing in mind 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<sup>42</sup>. 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 of IPC, where the

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<sup>39</sup> Sec.36(1), POCSO Act, 2012; Rule 54(18)(xi), JJ Model Rules, 2016.

<sup>40</sup> Virender Vs. State of NCT Delhi [Crl.A.No.121/2008, dated 29.09.2009 (Delhi High Court)].

<sup>41</sup> Sec.33(5), POCSO Act, 2012; Proviso to Sec.309(1), CrPC, 1973; Sec.14(3), Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989; Clause 30(c), ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; Clause 6(e), Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

<sup>42</sup> Sec.12, Rights of Persons with Disabilities Act, 2016; Article 13, UN Convention on the Rights of Persons with Disabilities.

victim is mentally or physically disabled, either temporarily or permanently, their statement under Section 164(5-A) shall be considered as a statement in lieu of examination-in-chief<sup>43</sup>.

(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 of the 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 formats; use of video and audio guides; engagement of sign language interpreters; enabling wheelchair access in the court premises, court room 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 are ashamed of what happened to them<sup>44</sup>.

(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<sup>45</sup>.

(viii) Judges should be flexible in allowing the vulnerable witnesses to have a Support Person present while testifying and should guard against unnecessary

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<sup>43</sup> Sec. 164(5A)(b), CrPC, 1973.

<sup>44</sup> Akshay Sarma Vs. State of Assam [(2017) 2 GLR 121 (Gauhati High Court)].

<sup>45</sup> Model Guidelines under Sec. 39, POCSO Act, 2012.

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<sup>46</sup>.

(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 court room 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<sup>47</sup>.

(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<sup>48</sup>.

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<sup>46</sup> Model Guidelines under Sec. 39, POCSO Act, 2012.

<sup>47</sup> Akshay Sarma Vs. State of Assam [(2017) 2 GLR 121 (Gauhati High Court)].

<sup>48</sup> 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 has approved by the Supreme Court in *Mahender Chawla v. Union of India* [(2019) 14 SCC 615].

## **19. Allowing proceedings to be conducted in camera**

(i) When a vulnerable witness testifies, the court may order the exclusion from the court room 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 determines on the record that requiring the vulnerable witness to testify in open court would cause psychological harm to him, hinder the ascertainment of truth, or result in 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 witness, the nature of the crime, the nature of his testimony regarding the crime, his relationship to the accused and to persons attending the trial, his desires, and the interests of his parents or legal guardian.

(iii) The court may, motu proprio, exclude the public from the court room 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 be taken in a room outside the court room and be televised to the court room by live-link television<sup>49</sup>.

(ii) In order to take a decision of usage of a live-link the judge may question the vulnerable witness in chambers, or in some comfortable place other than the court room, 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 about testifying in the court room.

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<sup>49</sup> Proviso to Sec.275, CrPC.

(iii) 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 counsel or the prosecutor as the case may be or if the vulnerable witness is likely to be traumatised by exposure to the accused.

(iv) The order granting or denying the use of live-link television shall state the reasons therefore and may 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;
- (c) any physical, emotional, or psychological harm related to the case on hand or trauma experienced by the vulnerable witness;
- (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 with the accused or adverse party;
- (g) the reaction of the vulnerable witness to any prior encounters with the accused/opposite party in court or elsewhere;
- (h) the reaction of the vulnerable witness prior to trial when the topic of testifying was discussed 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 family regarding the events about which the child 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.

(v) 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 survivor 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<sup>50</sup>. It should be explained that the judge or magistrates can always see the vulnerable witness over the live video link even when the witness cannot see the judge or magistrates<sup>51</sup>.

(vi) 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.

(vii) Judges shall ensure that the Standard Operating Procedure affirmed by the Hon'ble Supreme Court of India in *In Re: Children in Street Situation*<sup>52</sup> 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.

## **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 court room in such a manner that the vulnerable witness cannot see the accused/opposite party while testifying and at the same time ensuring that the

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<sup>50</sup> Model Guidelines under Sec.39, POCSO Act, 2012.

<sup>51</sup> Model Guidelines under Sec.39, POCSO Act, 2012.

<sup>52</sup> *In Re Children in Street Situations* [2022 SCC OnLine SC 189].

opposite party/accused is in a position to hear the statement of the vulnerable witness and communicate with their advocate<sup>53</sup>. The court shall issue an order in writing stating the reasons and describing the approved court room arrangement in the judgment.

## **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 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 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;
- c. any physical, emotional, or psychological harm related to the case on hand or trauma experienced by the vulnerable witness;
- 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 with the accused or adverse party;
- g. the reaction of the vulnerable witness to any prior encounters with the accused/opposite party in court or elsewhere;
- h. the reaction of the vulnerable witness prior to trial when the topic of testifying was discussed by parents or professionals;

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<sup>53</sup> Sec.36(1), POCSO Act 2012; Sec.273, CrPC, 1973; Clause 31(c) ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

- 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 family regarding the events about which the child 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.

### **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 that questions are kept simple and stated in a form appropriate to the comprehension and developmental level of the vulnerable witness;

b. protecting 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<sup>54</sup>;

c. avoiding 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 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.

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<sup>54</sup> Sec.33(6), POCSO Act 2012; Secs.53A, 148, 151, 152 and Proviso to Sec.146, Indian Evidence Act, 1872; *State of Punjab Vs. Gurmit Singh* [(1996) 2 SCC 384]; *Akshay Sarma Vs. State of Assam* [(2017) 2 GLR 121 (Gauhati High Court)].

f. in cases involving sexual offences against child victims, ensuring that questions are put to the child victim only through the court<sup>55</sup>.

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

(iii) The court should 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<sup>56</sup>. The court must not allow the question carrying words capable of multiple 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<sup>57</sup>.

(iv) Given the developmental level of vulnerable witnesses, 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.

#### **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.

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<sup>55</sup> Sec.33(2), POCSO Act, 2012; Sakshi Vs. Union of India [AIR 2004 SC 3566].

<sup>56</sup> Akshay Sarma Vs. State of Assam [(2017) 2 GLR 121 (Gauhati High Court)].

<sup>57</sup> Virender Vs. State of NCT Delhi [Crl.A.No.121/2008, dated 29.09.2009 (Delhi High Court)].

(b) To specifically state if the witness does not remember or has forgotten something.

(c) To clearly ask when the question is not understood.

A gesture by a vulnerable witness to explain what had happened shall be appropriately interpreted and recorded in the vulnerable witness' 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<sup>58</sup>.

## **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<sup>59</sup>.

## **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;

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<sup>58</sup> Sec.119, Indian Evidence Act, 1872.

<sup>59</sup> Secs.357, 357A, CrPC, 1973; Sec.33(8), POCSO Act, 2012 and Rule 9, POCSO Rules, 2020; NALSA's Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes-2018; *Ankush Shivaji Gaikwad Vs. State of Maharashtra* [AIR 2013 SC 2454]; *Nipun Saxena Vs. Union of India* [W.P.(C) No.565/2012, dated 11.05.2018 (Supreme Court of India)]; *Suresh Vs. State of Haryana* [2014 SCC OnLine SC 952]; *Bodhisattwa Gautam Vs. Subhra Chakraborty* [AIR 1996 SC 922]; Clause 12, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

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 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.

(ii) Recording 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, or any part thereof unless they sign a written affirmation that they have received and read a copy of the protective order; that they submit to the jurisdiction of the court with respect to the protective order; and that in case of violation thereof, they will be subject to the penalties provided by law.

(iv) Any recording, 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 audio and/or video electronic recordings and videotapes and audiotapes or any of its portion shall be made, given, loaned, 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 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 name, address, telephone number, school, and other information that could endanger their physical safety or that of their family. The court may, however, require the vulnerable witness to testify regarding personal identifying information in the interest of justice.

### **29. Destruction of audio and/or video electronic recordings and videotapes and audiotapes**

Any video or audio recording of a vulnerable witness produced under the provisions of these guidelines or otherwise made part of the court record shall be destroyed as per rules framed by the High Court of Judicature at Madras.

### **30. Protective measures**

At any stage in the justice process where the safety of a vulnerable 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 or refer the matter to the Competent Authority under the Witness Protection Scheme, 2018<sup>60</sup>. Those measures may include the following:

- a. prohibiting direct or indirect contact between a vulnerable witness and the accused/opposite party at any point in the justice process<sup>61</sup>;

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<sup>60</sup> *Mahender Chawla Vs. Union of India [(2019) 14 SCC 615]*; Clause 6(d), Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

<sup>61</sup> Clause 34(a), ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of crime.

- b. restraint orders<sup>62</sup>;
- c. direct continuation of bail conditions during trial<sup>63</sup>;
- d. protection for a vulnerable witness by the police or other relevant agencies and safeguarding the whereabouts of the vulnerable witness from disclosure<sup>64</sup>;
- 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 High Court of Judicature at Madras 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.

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<sup>62</sup> Clause 34(b), ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of crime.

<sup>63</sup> Clause 34(c), ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of crime.

<sup>64</sup> Clause 34(d), ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of crime.



### **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 familiarity with the judicial process, social service programs, and human development, giving preference to the parents of the child, if qualified.

### **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 of the vulnerable witness keeping in view the needs of the witness and observing the impact of the proceedings on the witness.
- 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 is involved;
- d. assist the vulnerable witness and their 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;
- 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 should be taken during a time of day when such witness is well-rested and does not clash with his/her routine activities like meal and sleep timings, attending school/exams or other activities specific to that witness<sup>65</sup>.

### **36. Frequent breaks during testimony**

The child witness or child victim may be allowed reasonable periods of relief and breaks while undergoing depositions, as often as necessary, depending on their age, disability, and developmental need.

### **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 courts, may be adapted for the purpose of balancing confidentiality and judicial data accessibility and transparency.

(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:

(a) concealing from the public record any names, addresses, workplaces, professions or any other information that could lead to the identification of the

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<sup>65</sup> Clause 30(d), ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

child survivor or witness in orders, judgments, or any case records accessible to the public<sup>66</sup>. Where the accused is related to the child survivor/victim, care shall also be taken to redact the identity of the accused before making the order or judgment accessible to the public<sup>67</sup>;

(b) prohibiting the defence lawyer and persons present in the court room 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;

(c) protecting the identity of child victims and permitting disclosure in accordance with relevant statutory provisions and judicial precedents.

(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. 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;

(f) through examination in another place, transmitted simultaneously to the court room by means of video link; through a qualified and suitable facilitator, such as, but not limited to, an interpreter for vulnerable witness with hearing, sight, speech or other disabilities;

(g) holding in-camera trials;

(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 in that person's presence, the court shall give orders to

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<sup>66</sup> Sec.33(7), POCSO Act, 2012; Sec.74, JJ Act, 2015; Sec.228A, Indian Penal Code, 1860; Nipun Saxena Vs. Union of India [(2019) 2 SCC 703]; Clause 2(b), Witness Protection Scheme, 2018; Section 15A(8)(a)(b), Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; Clause 27, ECOSOC Resolution 2005/20, Guidelines on Justice in Matters involving Child victims and Witnesses of Crime.

<sup>67</sup> 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.

temporarily remove the accused from the court room to an adjacent room with a video link or a one-way mirror visibility into the court room. In such cases, the defence lawyer shall remain in the court room and question the vulnerable witness, 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.

(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**

The Standard Operating Procedures as per the Madras High Court Video Conferencing in Court Rules, 2020 as notified in the Tamil Nadu Government Gazette No.29, Part-III Section 2, dated 15.07.2020 and the Gazette of Puducherry, Extraordinary No.110, Part-I, dated 03.08.2020, as in force and as amended from time to time, shall govern the recording of evidence and the other Standard Operating Procedures earmarked for the court may also be applied *mutatis mutandis* and the principles governing the physical examination of the witness in court shall also apply *mutatis mutandis*.

### **39. Interim Arrangement**

Till a permanent Vulnerable Witness Deposition Centre is established and made functional, an exclusive court room be prepared/identified in every District Court establishment (or additional Sessions Court establishment) preferably at ADR Centre, having Video Conferencing System/Audio-Video Linkage for smooth and proper recording of deposition of the Vulnerable Witnesses.

#### **40. Booking a slot for examination of vulnerable witness in VWDC**

On receipt of requisitions from different Courts relating to the examination of Vulnerable Witnesses in the Vulnerable Witness Deposition Centre, the Officer-in-charge of the VWDC shall book date and time slot for such examination, enter the slot booking in a register to be maintained by him and communicate the same to the concerned courts well in advance.

#### **41. Manpower required for smooth and efficient running of VWDC**

##### **(a) Officer-in-charge:**

Officer-in-charge shall be appointed by the State Government in consultation with the High Court in every District Court establishment (or additional Sessions Court establishment) on adhoc/contract/temporary/permanent basis and he shall ensure management and regulation of the affairs of the VWDC including keeping and maintaining of Records and Data etc.

Till the said arrangement be made, the Secretary, District Legal Services Authority shall function as Officer-in-charge of the VWDC.

##### **(b) Technical Assistant-cum-coordinator:**

Technical Assistant shall be appointed by the State Government in consultation with the High Court in every District Court establishment (or additional Sessions Court establishment) on adhoc/contract/temporary/permanent basis who shall apart from providing technical support at all ends in smooth and effective running of the VWDC shall assist the Officer-in-charge of the VWDC in managing and regulating the affairs of the VWDC.

Wherever applicable, he shall also function as Remote Site Coordinator under the Madras High Court Video Conferencing in Courts Rules, 2020.

Till the said arrangement be made, the System Officer/System Assistant/District System Administrator shall function as Technical Assistant of the VWDC.

#### **42. Rules for Video Conferencing for Courts to apply**

Wherever applicable or in case of any ambiguity, the Madras High Court Video Conferencing in Courts Rules, 2020 as notified in the Tamil Nadu Government Gazette No.29, Part-III, Section 2, dated 15.07.2020 and the Gazette of Puducherry, Extraordinary No.110, Part – I, dated 03.08.2020, as in force and as amended from time to time, shall apply.

#### **43. Residual Provisions**

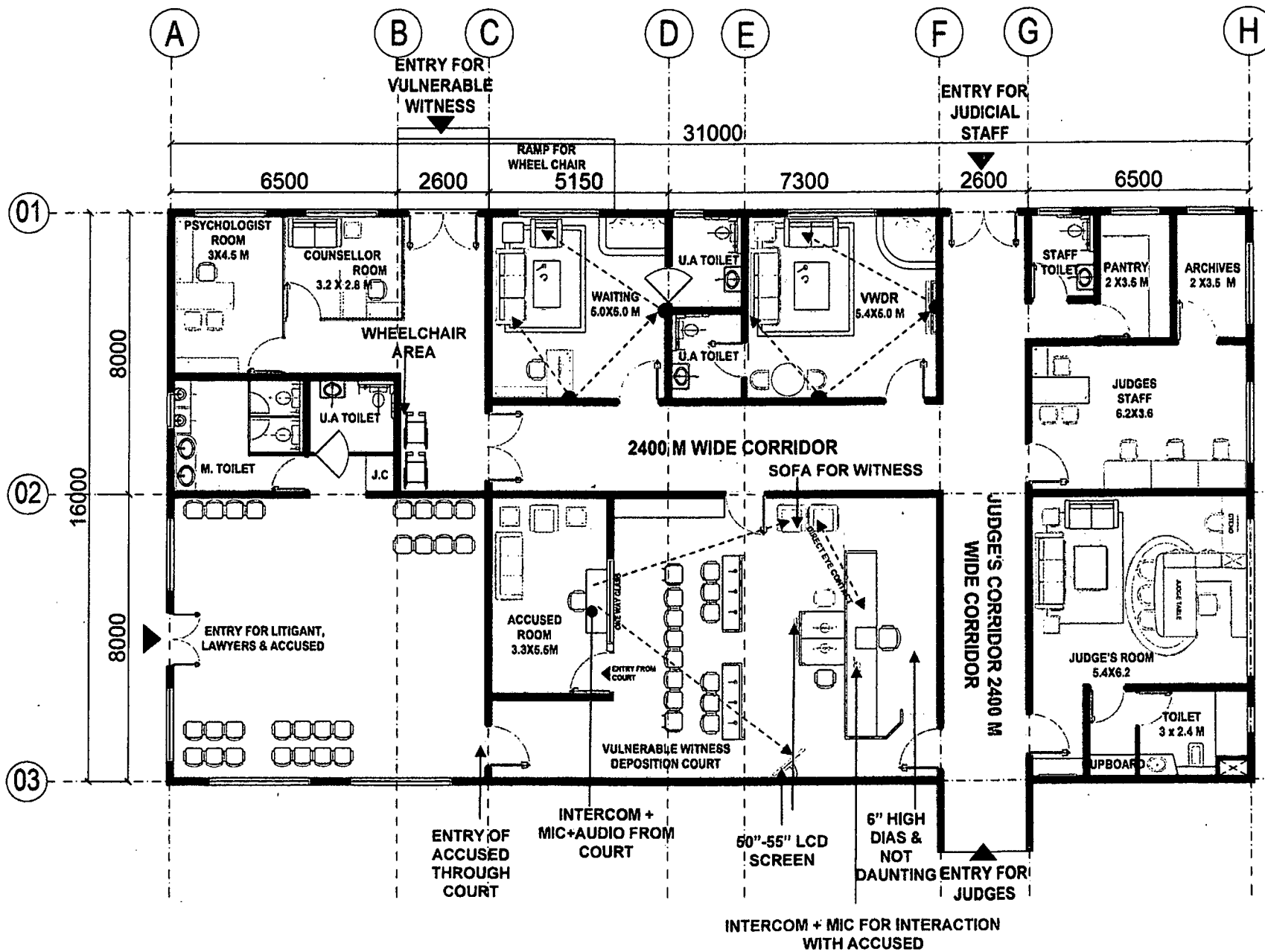
Matters concerning for which no provision is made in this Guidelines shall be decided by the court consistent with the interest of the Vulnerable Witnesses without prejudice to the rights of the accused to a fair trial.

#### **44. Establishment of Vulnerable Witness Deposition Centre**

(i) In every District Court establishment (or additional Sessions Court establishment), there shall be a permanent Vulnerable Witness Deposition Centre (VWDC).

(ii) The VWDC shall be equipped with features and functionalities as mentioned in the Prototype Drawings and Guidelines as prepared under the directions of Hon'ble Ms. Justice Gita Mittal, the Chairperson of the Vulnerable Witness Committee constituted by the Supreme Court vide order dated 11.01.2022 in Smruti Tukaram Badade v. State of Maharashtra & Anr (Crl. App. No. 1101/2019). The said Prototype Drawings has been annexed as Appendix-'A' and the same shall be in conformity with any decision of the Vulnerable Witness Deposition Centre Committee, High Court of Madras.

# VULNERABLE WITNESS DEPOSITION COURT (SUGGESTED PROTOTYPE PLAN)



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# 3D VIEW

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