

VICTIM OR WITNESS?
PROTECTING CHILD WITNESSES IN CRIMINAL TRIALS:
A CRITICAL ANALYSIS OF INDIAN LAW

by

Mr. Skand Gupta

RASHTRIYA RAKSHA UNIVERSITY

ABSTRACT

Indian criminal law has gradually developed a strong framework for protecting children who are victims of crime, particularly through the POCSO Act, 2012, and the provisions now contained in the Bharatiya Nagarik Suraksha Sanhita (BNSS) and the Bharatiya Sakshya Adhiniyam (BSA). However, children who witness a crime without being direct victims, remain ignored. This paper argues that the distinction between child victims and child witnesses has often been blurred in legal and policy discussions. As a result, child witnesses may still have to face repeated summons, aggressive cross-examination and the presence of the accused without protections specifically designed to address their needs.

The paper traces the development of Indian law in this area and examines the contribution of the Law Commission of India, with particular attention to the 14th Report (1958), which addressed facilities for witnesses; the 154th Report (1996), which focused on building witness confidence and protecting witnesses from intimidation; and the 172nd Report (2000), which recommended measures such as recording the testimony of children through video links, providing a support person, and allowing judges to regulate the manner of cross-examination. Although these suggestions influenced safeguards for child victims of sexual offences, but that similar protections were not extended to child witnesses.

To assess India's position in this regard, the paper also undertakes a comparative analysis of the United Kingdom and South Africa. The United Kingdom's Youth Justice and Criminal Evidence Act, 1999, provides special measures for child witnesses without limiting them to categories of offences. South Africa, by contrast, has developed an intermediary system under Section 170A of the Criminal Procedure Act. While this mechanism was an important

development, its use remains largely concentrated in sexual offence cases, reflecting a limitation that is also evident in the Indian framework.

Drawing on these comparative experiences, the paper proposes a more consistent and inclusive approach to the examination of child witnesses in India. It argues for a uniform procedure that recognizes the vulnerabilities of children, as a witnesses, rather than making access to protective measures dependent on whether the child is classified as a victim or merely a witness.

Keywords: Child witness, child victim, Law Commission of India, POCSO Act, comparative criminal law, witness intimidation, courtroom trauma.

I. INTRODUCTION

Criminal trials are exercises in truth-finding that centre around the voices of those who witnessed the crime. It is often the credibility of witness testimony alone that makes or breaks a prosecution's case.¹ And when that witness is a child, the adversarial court room process presents additional challenges that an adult does not face. A child who is called upon to testify, whether about a murder witnessed from a doorway, a case of domestic violence within the family, or an accident on the street, has to face the adversarial court room, unfamiliar legal language, the intimidating presence of the accused, and the possibility of being disbelieved, all while carrying whatever trauma the event itself may have caused. It is this figure, the child witness, that this paper seeks to put at the centre of academic and legal attention.

Indian law has, in recent years, made meaningful progress in protecting child victims of crime. The Protection of Children from Sexual Offences Act, 2012², together with provisions now found under the Bharatiya Nagarik Suraksha Sanhita, 2023³ and the Bharatiya Sakshya Adhiniyam, 2023⁴, reflects a growing legislative sensitivity toward children who have suffered abuse or violence directly. In-camera proceedings, recording of statements at the child's residence, the presence of support persons, and the avoidance of direct confrontation with the

¹Glanville Williams, *The Proof of Guilt: A Study of the English Criminal Trial* 158 (3d ed. 1963).

² The Protection of Children from Sexual Offences Act, No. 32 of 2012, India Code (2012) [hereinafter POCSO Act].

³ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, India Code (2023) [hereinafter BNSS].

⁴ Bharatiya Sakshya Adhiniyam, No. 47 of 2023, India Code (2023) [hereinafter BSA].

accused are now fairly well-established safeguards for child victims, particularly in cases of sexual offence.

The scale of this gap is not merely theoretical. National Crime Records Bureau data for 2023 records that domestic violence accounted for roughly one third of all registered crimes against women that year, a category of offence in which children are frequently present in the household and may later be called upon to testify about what they saw.⁵

However, this same legislative attention has not been extended to children who appear before courts as witnesses rather than victims. A child who has seen a crime but not suffered it personally is technically entitled to no special protection at all under Indian criminal procedure, regardless of age or vulnerability. The law protects the child based on the label attached to their role in the FIR, victim or witness, rather than the psychological reality of what testifying before a court actually demands of a child. This creates a curious asymmetry: two children, equally young and equally frightened, may receive vastly different procedural treatment based on whether the offence charged falls within the protective umbrella of POCSO or not.

This is the research gap that this paper seeks to address. While there has been considerable academic and legislative attention on the child victim, the vulnerabilities of the child witness, susceptibility to intimidation, trauma from repeated court appearances, inadequate examination procedures, and the absence of any distinct statutory recognition, remains largely unexamined in Indian legal scholarship.

1.1 Objectives of the Study

This paper aims to:

Examine the conceptual and legal distinction, if any, between the child victim and the child witness under Indian law;

Trace the historical development of witness protection through Law Commission reports and assess their victim-centric orientation;

Critically examine the existing statutory and judicial framework governing the examination of child witnesses in India; and

⁵ National Crime Records Bureau, *Crime in India 2023: Statistics (Volume I)* (Ministry of Home Affairs, 2024).

Draw lessons from comparative jurisdictions to propose specific reforms for a more child-sensitive, witness-inclusive examination process.

1.2 Research Questions

- (1) Does Indian criminal law adequately distinguish the procedural needs of a child witness from those of a child victim?
- (2) To what extent have Law Commission recommendations addressed the vulnerabilities of child witnesses specifically, as opposed to child victims?
- (3) How do comparative jurisdictions such as the United Kingdom, South Africa, and Australia address the protection of child witnesses, and what can Indian law learn from these models?
- (4) What legislative and procedural reforms are necessary to ensure child witnesses receive protection commensurate with their vulnerability, independent of their formal status as victim or witness?

1.3 Methodology

This study adopts a doctrinal research methodology, relying primarily on statutory provisions, Law Commission reports, and judicial pronouncements. It is supplemented by a comparative analysis of foreign legislation and commentary to draw workable lessons for reform within the Indian context.

1.4 Chapterisation

Following this introduction, Chapter II lays down the conceptual framework distinguishing the child witness from the child victim and outlines the psychological vulnerabilities unique to child testimony. Chapter III examines the existing Indian statutory framework, both under the repealed and current criminal codes. Chapter IV traces the role of the Law Commission of India in shaping witness protection law. Chapter V analyses the judicial approach to child witness testimony through key case law. Chapter VI undertakes a comparative study of the UK, South Africa, and Australia. Chapter VII critically identifies the gaps, both major and minor, in the current framework, before Chapter VIII proposes specific recommendations, and Chapter IX concludes the study.

II. CONCEPTUAL FRAMEWORK: WHO IS A CHILD WITNESS?

In order to critique the deficiencies in Indian law, it is necessary to first understand who exactly qualifies as a “child witness” and why this category demands treatment distinct from both the ordinary adult witness and the child victim. Surprisingly, despite the frequency with which children appear before Indian courts to testify, the law offers no clear, standalone definition of this term.

2.1 The Absence of a Statutory Category

The Bharatiya Sakshya Adhiniyam, 2023, much like its predecessor the Indian Evidence Act, 1872⁶, defines a “witness” in purely functional terms, a person whose statement is recorded before the court in relation to a fact in issue.⁷ Nowhere does the statute carve out a distinct sub-category for a “child witness” possessing different procedural entitlements. This is in sharp contrast to the POCSO Act, which, being victim-centric legislation, defines a “child” as any person below the age of eighteen years⁸, building an entire procedural architecture around that definition, but only for victims of sexual offences. A child called to testify in a murder trial, a domestic violence case, or a case of communal rioting finds no equivalent definitional anchor to claim similar protection.

This definitional gap is not merely academic. Age thresholds for “child” vary across Indian statutes, eighteen years under POCSO and the Juvenile Justice (Care and Protection of Children) Act, 2015,⁹ while general evidentiary competency under the BSA (as under the erstwhile Evidence Act) recognises no fixed minimum age at all. Instead, competency is left to judicial discretion, assessed on the basis of the child’s ability to understand the questions put to them and to give rational answers. The result is a fragmented landscape where a child’s entitlement to protection depends entirely on which statute happens to govern the offence being tried, rather than on the child’s own vulnerability.

2.2 Competency to Testify

The competency of a child witness to testify has traditionally been governed by the principle that no fixed age determines a child’s capacity to give evidence; what matters is whether the

⁶ The Indian Evidence Act, No. 1 of 1872, India Code (1872) (repealed 2024) [hereinafter IEA].

⁷ BSA, *supra* note 4, § 2.

⁸ POCSO Act, *supra* note 2, § 2(1)(d).

⁹ The Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, § 2(12), India Code (2016).

child possesses sufficient intellectual capacity to understand the questions asked and to communicate rational answers to them.¹⁰ This principle, rooted in Section 118 of the erstwhile Evidence Act¹¹ and carried forward in substance under the BSA, places the burden on the trial judge to conduct a preliminary examination, often informal and inconsistently applied, to determine whether a child is fit to testify. However, this addresses only the threshold question of competency; it says nothing about how that testimony ought to be recorded, or what safeguards should accompany the process once competency is established. It is here, that the heart of the present research gap lies.

2.3 Psychological Vulnerabilities Unique to Child Witnesses

Even where a child is found competent to testify, the process of testifying itself presents distinct psychological risks for children that are different to those faced by adult witnesses.

Suggestibility and memory malleability. Children, particularly those below the age of ten, are more susceptible to suggestive questioning than adults.¹² Leading or repetitive questions posed during investigation and later during cross-examination can subtly distort a child's recollection of events, not out of dishonesty but due to the malleable nature of childhood memory itself.

Fear of the accused and family pressure. Where the accused is a family member, neighbour, or otherwise known to the child, as is frequently the case in domestic violence or community-based offences, the child witness is uniquely exposed to pressure to change or withdraw their testimony. Unlike adult witnesses, children rarely possess social or economic independence to resist such pressure.

Repeated recall and trial delay. Indian criminal trials are notorious for their prolonged timelines, often stretching years between recording of an initial statement and final examination-in-chief. For a child witness, each adjournment demands renewed recall of a distressing event, and with the passage of time, genuine memory may either fade or be contaminated through repeated retelling, well documented in child psychology literature but scarcely acknowledged in Indian procedural law.

¹⁰ Rameshwar v. State of Rajasthan, AIR 1952 SC 54 (India).

¹¹ IEA, supra note 5, § 118.

¹² Stephen J. Ceci & Maggie Bruck, Jeopardy in the Courtroom: A Scientific Analysis of Children's Testimony 45-62 (1995).

Witnessing trauma versus victimisation trauma. It would be a mistake to assume that trauma is the exclusive preserve of the child victim. A child who witnesses a parent being assaulted, or who witnesses a violent crime unfold before them, may carry psychological scars comparable to, if different in kind to, those borne by a direct victim.¹³ Yet Indian law's protective architecture is triggered only by victimhood, not by the act of witnessing itself. This is borne out by Indian research on children who witness, rather than experience, violence directly: a 2022 survey of households in Delhi found that children who witnessed the abuse of a caregiver reported psychological symptoms, including anxiety and withdrawal, that were broadly comparable to those reported by children who were themselves subjected to abuse, lending empirical support to the doctrinal distinction this paper seeks to challenge.¹⁴

2.4 The Fallacy of Treating Child Witnesses as "Smaller Adults"

The cumulative effect of these vulnerabilities is that a child witness cannot and should not be treated as merely a younger version of an adult witness within the trial process. Doing so would ignore well-established findings in developmental psychology regarding memory formation, susceptibility to suggestion, and emotional regulation in children. It is this very oversight that Indian criminal procedure continues to perpetuate by extending elaborate safeguards to child victims alone, leaving child witnesses to navigate an adversarial system built with the adult witness in mind.

Indian Journal of Contemporary
Legal and Social Issues

¹³ Law Comm'n of India, Report No. 172, Review of Rape Laws ¶ 3.4 (2000) [hereinafter 172nd Report].

¹⁴ Shakti Shalini, *Childhoods within Domestic Environments of Gender/Sexual Violence: A Quantitative Impact Analysis* (Shakti Shalini, 2022).

III. THE INDIAN LEGAL FRAMEWORK

Having established the conceptual vulnerabilities of the child witness, this section turns to the actual statutory framework governing their examination in India. It examines both the recently repealed procedural codes, whose case law continues to guide courts, and the current framework under the Bharatiya Nagarik Suraksha Sanhita (BNSS) and the Bharatiya Sakshya Adhiniyam (BSA).

A. The Pre-2023 Framework

For over a century, three statutes governed the recording and examination of witness testimony in India: The Code of Criminal Procedure, 1973¹⁵, the Indian Evidence Act, 1872, and, from 2012 onward, the POCSO Act for offences of a sexual nature against children.

Section 164 of the CrPC empowered a Magistrate to record the statement of a witness during investigation¹⁶, a frequently used provision to record a child's account at the earliest possible stage, before memory could fade or be influenced. Section 273 CrPC required that evidence be taken in the presence of the accused, subject to a proviso allowing the court to dispense with this requirement where the witness was a child below the age of eighteen in cases of certain offences¹⁷, a rare instance of the pre-2023 code acknowledging the child witness as a category warranting different treatment, although its application was limited. Section 327 CrPC permitted in-camera trials in specified circumstances¹⁸, including at the discretion of the presiding judge, offering some degree of privacy protection to child witnesses in sensitive matters.

Under the Evidence Act, Section 118 governed competency, as discussed above, while Section 119 addressed witnesses unable to speak¹⁹, and various judicial interpretations of the corroboration requirement under Section 133²⁰ shaped how child testimony was to be evaluated for reliability. Collectively, these provided a loose scaffolding around child testimony, but built for general applicability rather than child-specific procedural protection.

¹⁵ The Code of Criminal Procedure, No. 2 of 1974, India Code (1974) (repealed 2024) [hereinafter CrPC].

¹⁶ CrPC, *supra* note 13, § 164.

¹⁷ CrPC, *supra* note 13, § 273, proviso (inserted by Act 5 of 2009).

¹⁸ CrPC, *supra* note 13, § 327.

¹⁹ IEA, *supra* note 5, § 119.

²⁰ IEA, *supra* note 5, § 133.

B. The Current Framework - BNSS and BSA

Since July 2024, this scaffolding has been carried forward, with modification, into the BNSS and BSA. The equivalent of Section 183 of BNSS continues to permit early recording of statements, while the substance of the Section 308 proviso permitting dispensation of the accused's presence for child witnesses has been retained under the new code, along with express provision for recording evidence through video-conferencing, a facility which gained significant traction during and after the COVID-19 pandemic and now finds clearer statutory footing. The in-camera trial provision too survives in substance under the BNSS.

Section 124 of BSA preserves the substance of the old competency test under Section 118 IEA²¹, without introducing any distinct definitional category for the child witness. In effect, the transition from the old codes to the new ones has been one of continuity rather than reform on the question of how child witnesses, as distinct from child victims, ought to be examined.

Separately, the POCSO Rules, 2020 provide for the presence of a "support person" to assist a child throughout the investigation and trial process²², to offer emotional guidance. This is among the more progressive features of India's child protection framework, but critically it is confined to POCSO proceedings alone.

C. POCSO Act's Witness-Related Provisions

The POCSO Act contains some of the most detailed child-sensitive procedural safeguards found anywhere in Indian law. Section 24 permits the recording of a child's statement at their residence or a place of their choice, as far as practicable by a woman police officer, and mandates that the statement be recorded in a manner that does not expose the child to the accused²³. Section 33 lays down specific examination procedures including the ability of the Special Court to ensure that the child is not called repeatedly to testify, and that aggressive or intimidating questioning is curtailed²⁴. Section 36 goes further, requiring that the child not see the accused at the time of testifying, while still preserving the accused's right to hear the testimony and instruct counsel.²⁵

²¹ BSA, supra note 4, § 124 (competency of witnesses).

²² The Protection of Children from Sexual Offences Rules, 2020, r. 4, Gazette of India, pt. II, sec. 3(i) (Mar. 9, 2020).

²³ POCSO Act, supra note 2, § 24.

²⁴ POCSO Act, supra note 2, § 33.

²⁵ POCSO Act, supra note 2, § 36.

These are precisely the kinds of safeguards this paper argues ought to be available. However, their operation is confined to the four corners of “sexual offences against children” as defined under the Act.

D. The Critical Gap: A Protective Net with Selective Coverage

Herein lies the central doctrinal problem this paper identifies. A child who witnesses their parent being murdered, a child who watches a violent mob attack during communal unrest, or a child present during an act of domestic violence against a sibling – none of these children fall within the protective net woven by POCSO. They remain governed by the general provisions of the BNSS and BSA, which, as shown above, offer only fragmentary and discretionary protection, dependent largely on the sensitivity of the individual presiding judge, rather than any binding statutory mandate. The dividing line that determines whether a child receives careful, trauma-informed examination or is left to face the ordinary rigours of adversarial cross-examination is the nature of the offence charged, not the age or vulnerability of the child testifying.

It is worth noting, however, that the judiciary has begun to address part of this gap outside the POCSO framework, albeit through case-management directions rather than substantive statutory reform. Acting on its own earlier directions concerning vulnerable witnesses, the Supreme Court in January 2024 directed every High Court to ensure that Vulnerable Witness Deposition Centres were functional in all districts by 30 April 2024, having earlier clarified that the category of “vulnerable witness” entitled to use such centres is not confined to victims of sexual offences but extends to any witness, including a child witness, who may otherwise be exposed to a hostile courtroom environment, and covers civil, family, and juvenile justice proceedings as well as criminal trials. While this development meaningfully qualifies the claim that non-POCSO child witnesses receive no institutional protection whatsoever, its reach depends on administrative compliance by individual High Courts and District Courts rather than on a binding legislative entitlement, so the doctrinal gap this paper identifies persists in substance even as physical infrastructure catches up.²⁶

²⁶ ‘Supreme Court Directs High Courts To Set Up Vulnerable Witness Deposition Centres By April 30’ (LiveLaw, 18 January 2024) <<https://www.livelaw.in/top-stories/supreme-court-directs-high-courts-to-set-up-vulnerable-witness-deposition-centres-by-april-30-247037>> accessed 23 September 2026; ‘Supreme Court Extends Use Of Vulnerable Witness Deposition Centres To All Jurisdictions Including Civil, Family Cases’ (LiveLaw, 19 April 2022) <<https://www.livelaw.in/top-stories/supreme-court-extends-use-of-vulnerable-witness->

E. A Brief Note on the Juvenile Justice Act

The Juvenile Justice (Care and Protection of Children) Act, 2015, while comprehensive in addressing children in conflict with law and children in need of care and protection, offers only limited overlap with witness protection concerns. Its focus remains mainly on the child as an accused or as a victim requiring institutional care, rather than on procedural treatment of a child appearing before a criminal court purely in the capacity of a witness. This further illustrates the lack of a single, coherent statutory home for child witness protection in Indian law.



Indian Journal of Contemporary
Legal and Social Issues

IV. ROLE OF THE LAW COMMISSION OF INDIA

Much of the statutory architecture examined in the preceding section did not emerge in a vacuum. It owes its existence largely to the recommendations of the Law Commission of India, whose reports over several decades have periodically drawn attention to the plight of witnesses in the criminal justice system. This section traces that trajectory, and demonstrates how even here, the child witness has remained on the periphery of reform.

4.1 The 14th Report (1958): The Earliest Acknowledgment

The 14th Report of the Law Commission, which related to reform of judicial administration, was amongst the first to acknowledge that witnesses in Indian courts underwent “inconveniences and hardships” due to lack of waiting arrangements and repeated adjournments forcing them to make multiple journeys to the courthouse²⁷. The Report did not mention children as a specific category of witnesses, but it was nevertheless important in that it formalized, for the first time, the proposition that the interests of witnesses were legitimately worthy of consideration by the courts.

4.2 The 154th Report (1996): Witness Confidence and Intimidation

The next significant contribution came with the 154th Report on the CrPC, which addressed the issue of witnesses yet again, noting that witnesses often withdrew their depositions or gave false evidence due to their “lack of confidence in the protection” offered by the State against the accused²⁸. This was the first time that the problem of intimidation of witnesses was explicitly linked to their reluctance to testify truthfully, and the solution proposed by the Commission (a witness protection scheme) reflected this link.

4.3 The 172nd Report (2000): The Central Turning Point

The most important Report of all came in 2000 with the 172nd Report on the CrPC, which responded to the Supreme Court’s direction in *Sakshi v. Union of India*²⁹ that the Commission consider amendments to rape laws as well as related procedures. The recommendations made in this Report formed the basis of Sections 24, 33, and 36 of the POCSO Act, which govern the testimonial obligations of child victims/ survivors. The Supreme Court’s intervention in *Sakshi*

²⁷ Law Comm’n of India, Report No. 14, Reform of Judicial Administration, vol. II, ch. 26 (1958).

²⁸ Law Comm’n of India, Report No. 154, The Code of Criminal Procedure, 1973, vol. I, ch. XI (1996).

²⁹ *Sakshi v. Union of India*, (2004) 5 SCC 518 (India).

v. Union of India was based upon the finding that children were often unable to give coherent evidence in court due to the trauma of the offence and the intimidating courtroom environment. The 172nd Report recommended that the evidence of children be recorded at the earliest opportunity, in the presence of a judge and a support person and suggested that closed-circuit television (CCTV) be used for recording the evidence of child witnesses and survivors³⁰.

It further recommended that cross-examination be conducted through written questions, to be read out by the judge, with breaks in between, and that Section 273 of the CrPC be amended to provide that a child need not be made to see the accused while testifying, so as to avoid trauma, while ensuring that the accused had the right to effective counsel.

The 172nd Report went on to become the most influential of all Law Commission Reports on the subject of child-friendly courts in India. However, as discussed in this paper, it must also be noted that these recommendations were made in the context of a child victim or survivor of a sexual offence, and that the 172nd Report does not mention, anywhere, the possibility that children may have to testify in other types of criminal proceedings as witnesses. It is this lacuna that this paper attempts to address: an exploration of whether children who appear as witnesses in criminal courts, and not as victims, have specific needs that ought to be addressed by the legislature.

4.4 The 198th Report: Witness Protection More Broadly

The 198th Report of the Law Commission, about witness identity protection and the development of a witness protection programme, is relevant to the current discussion as well³¹. The Report highlighted the risk that witnesses would face intimidation or threaten to withdraw their depositions if they were testifying against politically powerful individuals or criminal organisations. It recommended the development of a Witness Protection Scheme, which was eventually enacted in the form of the Witness Protection Scheme, 2018³². The 198th Report is relevant to the current paper's subject in that it deals with similar issues of intimidation, though without addressing the specific vulnerability of child witnesses.

4.5 Critical Synthesis

³⁰ 172nd Report, supra note 12, ¶¶ 3.1-3.5.

³¹ Law Comm'n of India, Report No. 198, Witness Identity Protection and Witness Protection Programmes (2006).

³² Ministry of Home Affairs, Witness Protection Scheme, 2018, approved in Mahender Chawla v. Union of India, (2019) 14 SCC 615 (India).

As can be seen from the Reports discussed in this section, each subsequent Report built upon previous discussions of the difficulties of child witnesses. However, even the most comprehensive of these, the 172nd Report, only addressed the concerns of children who were victims of sexual offences, and not children who appeared as witnesses. None of these Reports addressed the issue of child witnesses as a separate category deserving of specific legal protection. In fact, not one of these Reports addressed this issue at all, and this paper's thesis is based upon the assertion that this silence on the part of the Law Commission is evidence of a research gap that needs to be addressed.



Indian Journal of Contemporary
Legal and Social Issues

V. JUDICIAL APPROACH TO CHILD WITNESSES

While the laws that touch upon the issues of child witnesses have been framed by Parliament and the Law Commission, it falls to the judiciary to interpret them, and to lay down guidelines that are followed by courts in assessing the testimony of child witnesses. This section studies the judiciary's approach to such witnesses through a review of relevant case law. The discussion reveals a broad consensus on the competency of child witnesses, but little or no guidance on the manner in which such witnesses must be examined in order to obtain their testimony in a manner that is not traumatic to them, especially in contexts outside the child sexual abuse paradigm.

5.1 Competency and Credibility of Child Testimony

The Supreme Court's decision in *Rameshwar v. State of Rajasthan* represents the first major pronouncement on the competence and credibility of child witnesses. The Court ruled that the testimony of a child, even if he were too young to understand an oath, could not be rejected solely on that ground, provided that the trial court was satisfied that the child had a sufficient level of comprehension and was otherwise competent to testify³³. This finding has since been expanded upon in subsequent judgments, which found that competency was a matter of degree and not an absolute yes-or-no proposition. The Court in *State of Punjab v. Gurmit Singh*³⁴ further stated that corroboration of the testimony of a child (or a woman) was a rule of prudence, not of law, and that such corroboration was not necessary when the credibility of such a witness could not be reasonably questioned or when there was otherwise satisfactory proof of the allegations.

Similarly, the Court in *Panchhi v. State of U.P.*³⁵ held that the testimony of a child witness should not be rejected by the trial court simply on the grounds of his age, unless there was a finding that such a child had been coached or tutored. Taken together, these pronouncements constitute a broad consensus that the testimony of a child witness cannot be summarily rejected, although the Courts have consistently held that such testimony is to be viewed with caution and evaluated for credibility on a case-by-case basis. However, these statements say little about how a child should be examined in order to obtain satisfactory proof of the allegations. The

³³ *Rameshwar v. State of Rajasthan*, AIR 1952 SC 54, ¶ 9 (India).

³⁴ *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384 (India).

³⁵ *Panchhi v. State of U.P.*, (1998) 7 SCC 177 (India).

competency-related aspects of a child's evidence before the Court, in other words, appear to be largely governed by the same standards that apply to adult witnesses.

5.2 Trauma, Hostility, and the Limits of Judicial Recognition

Indian trial courts have long grappled with the phenomenon of “hostile children,” wherein children refuse to testify at trial despite having submitted a favorable deposition to the police at the time of the crime's investigation. Courts have identified instances where the child was pressured by family members to change their testimony or where the child appeared to be threatened, particularly in cases of domestic or communal offences, but there is little consistency in the way such pressure was addressed or in the procedural safeguards offered to the child. This was a particular issue in cases of sexual assault of children, where the accused were often influential members of the community and could exert pressure on the child and his family to withdraw the complaint. Courts responded by directing that wherever there was an apprehension that a child was likely to change his statement from the investigation or from the police commission to the trial court, the trial court should conduct an inquiry into the matter before recording the child's evidence. However, this was the exception rather than the norm, and there was no general judicial guideline on the issue.

5.3 Sakshi v. Union of India: The Catalyst for Reform

No discussion of the judiciary's engagement with this issue would be complete without reference to *Sakshi v. Union of India* the writ petition that formed the direct impetus for the 172nd Report of the Law Commission and, by extension, for many of the procedural reforms that constitute the subject-matter of this paper. The Supreme Court held that trial courts should make practical arrangements to allow the child witness to give evidence in such a manner and such an ambiance as would cause him the least trauma, including, for cases of sexual assault, the installation of screens so that the child could not see the accused and the direction that the cross-examination be held in a broken manner³⁶. This ruling represented the first time the Indian judiciary mandated specific steps to be taken by courts to safeguard a child who had to testify in court, but again, these steps were limited to children who were victims of an offence.

5.4 The Compounding Effect of Trial Delay

³⁶ *Sakshi v. Union of India*, (2004) 5 SCC 518, ¶¶ 32-34 (India).

As a concluding observation, it must be noted that the phenomenon of excessive trial delay that afflicts Indian criminal courts has a differential impact on child witnesses. Where a trial commences years, sometimes decades, after the commission of the crime, children who are required to testify find their recollection impaired and their memories clouded by time. Courts have often attempted to discount such evidence when the accused challenged its credibility, but these challenges are not always straightforward. Delay also has a psychological impact, as children are often forced to re-live the trauma of the crime when testifying in court. The effect of long delays on a child's recollection and psychological state, however, has not received much attention in either scholarly or judicial writings and deserves further consideration.

5.5 Concluding Observation

As becomes evident from this review of case law, the judiciary's engagement with the issue of the competency and credibility of child witnesses is broadly similar to the engagement of Parliament and the Law Commission. In most cases, the Courts have addressed this issue within the confines of the child sexual offence paradigm, focusing solely on how such victims should testify, with a few Courts going so far as to recommend specific arrangements for such witnesses. However, children do not only appear as victims in criminal courts: those who appear as witnesses, particularly in cases of family or domestic disputes, are also vulnerable and deserving of special procedural considerations. The Courts have offered little guidance on such situations, at best suggesting that children should be subjected to the same formalities as witnesses of tender age, with little or no consideration of how such formalities may affect the child's mental state.

VI. COMPARATIVE ANALYSIS

Having identified the research gap that forms the basis of this paper within the context of Indian law, it is now useful to turn to a discussion of relevant comparative law. This section serves a dual function: first, in identifying possible sources of inspiration for Indian lawmakers who wish to develop a comprehensive child witness protection law, and second, in identifying potential pitfalls to be avoided in the drafting of such a law.

A. United Kingdom: The Youth Justice and Criminal Evidence Act, 1999

Of the various jurisdictions that have developed legislative frameworks to address the needs of child witnesses, the United Kingdom offers the most comprehensive model. The framework is formed by the Youth Justice and Criminal Evidence Act, 1999 (YJCEA), which contains detailed provisions regarding the rights of child witnesses. Section 16 of the Act requires that all witnesses below the age of 18 be entitled to apply for “special measures”, a list of which is provided elsewhere in the Act.³⁷

These special measures apply to children who testify in court in both civil and criminal proceedings. They range from the relatively simple (e.g., the child giving evidence from an intermediary) to the complex (e.g., the ability to give evidence via video-link in circumstances where the child has been placed in a secure unit) and include the use of screens to conceal the accused from the view of the child witness.

Crucially, the YJCEA makes no distinction between children who testify in sexual offence cases and children who testify in other kinds of cases. In other words, the “special measures” regime outlined in the Act applies to all child witnesses irrespective of the nature of the offence or the status of the accused. This is the single most important difference between the UK regime and the one that has been contemplated in India thus far (and, if the recommendations of the Law Commission are to be heeded, will be implemented in the near future). As discussed in Chapter III, the provisions governing special measures for child witnesses in India, Section 36 of the POCSO Act, apply exclusively to children who are victims of sexual offences. By contrast, in the UK, such protections are available to all children who testify in court, irrespective of the nature of the offence or the status of the accused. This, in turn, has important implications for the practical procedures available to the child witness in terms of giving evidence. For example, in India, the child witness may be granted special measures only if the

³⁷ Youth Justice and Criminal Evidence Act 1999, c. 23, § 16 (UK).

child has been subjected to sexual assault, but not if the child is required to testify in a case of, say, cheating or harassment.³⁸

The UK's approach to the cross-examination of child witnesses is also particularly noteworthy. Section 28 of the YJCEA provides that the entire cross-examination and re-examination of a child witness may, subject to certain conditions, be recorded on video before the trial commences and that this video-recorded evidence may then be shown to the jury instead of the live cross-examination taking place in front of the court³⁹. The UK's approach to cross-examination, which is particularly relevant to the concerns raised in Chapter V, is worth adopting in India as well.

B. South Africa: The Intermediary System under Section 170A

South Africa is another country that has developed a fairly comprehensive set of procedures relating to child witnesses. Section 170A of the Criminal Procedure Act, 1977, which was amended in 1991⁴⁰, provides that, where a child is likely to be required to testify and is likely to suffer undue mental stress as a result, an intermediary may be appointed by the court to assist the child in giving evidence. The intermediary, who is appointed on a case-by-case basis and is typically a social worker or another person with relevant qualifications, may conduct the evidence of the child in a separate room, linked to the courtroom by means of closed-circuit television.⁴¹

The intermediary conveys questions from the judge, the prosecutor, and the defence counsel to the child in a manner appropriate to the child's level of comprehension without altering the substance of the questions, and ensures that answers are passed on to the courtroom. This approach, which is similar in principle to the intermediary model in the UK, was pioneered by the South African Law Commission, which conducted extensive research on the issues affecting child witnesses. The procedures outlined in Section 170A have since been adopted, with modifications, by several other jurisdictions in the region, including Namibia and Zimbabwe.

³⁸ Crown Prosecution Serv., Legal Guidance: Safeguarding Children as Victims and Witnesses (UK) (2023).

³⁹ Youth Justice and Criminal Evidence Act 1999, c. 23, § 28 (UK).

⁴⁰ Criminal Procedure Act 51 of 1977 § 170A (S. Afr.), as inserted by Criminal Law Amendment Act 135 of 1991.

⁴¹ S. Afr. Law Comm'n, Report on Sexual Offences: Process and Procedure, Project 107 (2002).

However, South Africa's approach to the rights of child witnesses suffers from the same limitation that also affects the approach in India: the procedures available to child witnesses are primarily designed for children who testify in sexual offence cases, and there are no particular procedures in place for other child witnesses. It is therefore worth noting that South Africa too faces the same doctrinal challenge that this paper has identified in the context of Indian law. This limitation appears to be one of practice rather than of drafting: Section 170A itself applies, on its face, to any witness under the age of eighteen and is not restricted to sexual offences, so that a child who has witnessed the murder of a parent falls within its literal scope. The concentration of intermediary appointments in sexual offence trials therefore seems to reflect how the court's discretion has been exercised in practice rather than a limitation written into the statute itself, a distinction worth bearing in mind if India adopts a similarly worded provision.⁴²

C. Australia: Intermediary and Communication Partner Schemes

A few Australian states also have procedures in place for dealing with child witnesses. These procedures generally fall under what is known as the communication partner or intermediary schemes and are primarily designed to assist child and vulnerable witnesses in giving evidence in police interviews and court proceedings. They are based on similar principles as the intermediary system in South Africa, and are administered by speech and language therapists, psychologists, and educators who work with vulnerable witnesses.

However, in the case of Australia, the policies have been inconsistently implemented at the state level. The communication partner scheme, which was introduced in South Australia in 2016 as part of a broader Disability Justice Plan for children and people with disabilities interacting with the criminal justice system, had its dedicated state funding withdrawn in the 2018 State Budget and moved to a fee-for-service model from March 2020, rather than being discontinued outright, a change that itself reduced access for the lower-income families who had relied on it most.⁴³ This highlights an important lesson for Indian lawmakers: even the most

⁴² 'Guide to the Role of Intermediary in South Africa' (NamibLII, 12 December 2022) <<https://namiblii.org/akn/za/doc/guide/2022-12-12/guide-to-role-of-intermediary-in-south-africa>> accessed 23 September 2026.

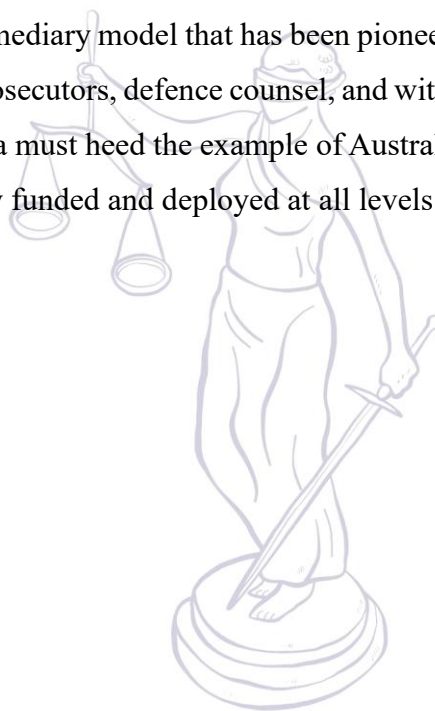
⁴³ Sarah Hoff et al., When Good Intentions Are Not Enough: Professionals' Perceptions of the South Australian Communication Partner Scheme, 57 Austl. J. Soc. Issues 3 (2022).

carefully designed procedural reforms cannot be successfully implemented without consistent funding and personnel support across all levels of the judiciary.

D. Synthesis: Lessons for India

Based on a review of the laws and procedures in these three jurisdictions, it is possible to outline certain tentative recommendations for India.

First, India must adopt a regime similar to the one in the UK, which makes special measures available to children who testify in both criminal and civil proceedings, with eligibility for such measures being based on the age of the witness rather than the nature of the offence. Second, India must adopt the intermediary model that has been pioneered in South Africa, which would require training judges, prosecutors, defence counsel, and witnesses in how such intermediaries function. And finally, India must heed the example of Australia in ensuring that such measures and personnel are properly funded and deployed at all levels of the judiciary.



Indian Journal of Contemporary
Legal and Social Issues

VII. CRITICAL ANALYSIS: IDENTIFYING THE GAPS

The previous sections of this paper have highlighted, in detail, the various ways in which the law has failed child witnesses in India. This section synthesizes the preceding discussions in order to identify, with specificity, the gaps that ought to be addressed by lawmakers.

7.1 Major Gaps

(i) Absence of a statutory category of “child witness”. As established in Chapter II of this paper, Indian law contains no specific statutory category for the “child witness.” Every protection mechanism discussed in this paper has been implemented as a measure applicable to child victims of sexual offences and not as a separate framework that applies to all children who testify in court. Such child witnesses, in other words, are currently treated merely as witnesses who happen to be children. This, as this paper argues, must change.

(ii) Protection tied to the nature of the offence, not the vulnerability of the child. A direct consequence of the problem identified above is that Indian law asks the wrong question when determining whether a child who testified in court requires special protection. At present, the law asks, “is this offence one to which POCSO applies?” and not “is this a child, and does this child require protection?” The comparative analysis in Chapter VI demonstrates that there is no necessity for such a distinction to be made.

(iii) Witness intimidation and the child-blind Witness Protection Scheme, 2018. The Witness Protection Scheme, 2018, contains no specific provisions in relation to children. Children who are witness-intimidated must rely on the general provisions of the Witness Protection Scheme, 2018, which do not make any distinction between vulnerable witnesses and other witnesses. Independent review of the scheme’s rollout supports this concern: a 2021 analysis found that only a handful of States had adopted the Witness Protection Scheme, 2018 in its letter and spirit, with many others yet to take any concrete implementation step at all, meaning that even the general protections nominally available to a child witness under the scheme are, in practice, unevenly accessible depending on the State in which the trial is held.⁴⁴

(iv) Child witnesses who appear in court as hostile witnesses. As discussed in Chapter V, Indian courts are confronted with hostile children who refuse to testify at trial despite having given

⁴⁴ Shankey Verma and Akshaya Krishnakumar, ‘Towards a Witness Centric Approach: Analysis of Witness Protection Scheme, 2018’ (2021) 75(5) *Crime, Law and Social Change* 433.

favorable deposition to the police at the time of the investigation. Courts have issued various directions in such cases, noting that such children are often coerced by family members or threatened by the accused. However, there is no consistent procedure in place that addresses such situations, and the few directions that exist apply only to children who testify in sexual offence cases.

(iv) Delay in trial and its cumulative effect on child testimony. As is discussed in Chapters II and V, the long timelines of Indian criminal trials have a disproportionate effect on the reliability and consistency of child testimony. No mechanism currently exists, besides the fast tracking available to POCSO's Special Courts, to prioritise or expedite trials specifically as a result of a witness, as opposed to the accused, being a child. The value of dedicated fast-tracking is illustrated by POCSO's own recent trajectory: after pendency climbed to roughly 2.62 lakh cases by 2023, Special Courts disposed of more POCSO cases than were freshly registered for the first time in 2025, a turnaround attributed largely to focused monitoring and case-management measures specific to that class of trial. The absence of any comparable mechanism for child witnesses outside POCSO suggests that similar gains could be available to them too, were their trials treated with the same administrative urgency.⁴⁵

7.2 Minor, But Not Insignificant, Gaps

(i) No requirement for training. There is no training requirement for judges, prosecutors, or defence counsel handling a trial in which a child appears merely as a witness to a non-sexual offence.

(ii) No practice on breaks, familiarisation, or simplified language. The measures endorsed in Sakshi are confined in practice to POCSO trials, with no codified practice direction of general application.

(iii) No follow-up or psychological support. Indian law makes no provision for structured follow-up or psychological care once a child witness has finished their role in the trial, whether under POCSO or otherwise.

⁴⁵ 'Beyond "tareek pe tareek": India's POCSO Courts Turned the Corner this Year' The Week (20 December 2025) <<https://www.theweek.in/news/india/2025/12/20/law-beyond-tareek-pe-tareek-2025-india-pocso-courts-turned-the-corner-stats-disposal-rate.amp.html>> accessed 23 September 2026.

(iv) Inconsistent High Court guidelines and the absence of a binding standard. Several High Courts have issued practice directions concerning the recording of child testimony, but these vary considerably from one to another, in the absence of a binding Supreme Court ruling or statutory provision of general application.

7.3 Concluding Observation

Taken together, these major and minor gaps indicate a pattern consistent with the findings of every preceding chapter of this paper: Indian law's approach to child witnesses is neither lacking nor negligible, but is derivative, borrowed piecemeal from a framework designed for child victims of sexual offences, rather than conceived independently around the distinct needs of the child witness as such.



Indian Journal of Contemporary
Legal and Social Issues

VIII. RECOMMENDATIONS

Building on the gaps identified in the preceding chapter, and the comparative lessons drawn in Chapter VI, this chapter sets out specific, actionable recommendations for reform. These are deliberately posed to be feasible within the existing structure of the BNSS, BSA, and allied statutes, rather than requiring a wholesale reimagining of Indian criminal procedure.

8.1 Statutory Recognition of “Child Witness” as a Distinct Category

The foremost recommendation is the introduction of a clear, standalone definition of “child witness” under the BSA, applicable to all criminal proceedings, regardless of the nature of the offence charged. This should adopt the age of eighteen, consistent with POCSO and the Juvenile Justice Act, and should explicitly clarify that the protective measures discussed below apply to the witness’s age and vulnerability, rather than to the category of offence being tried.

8.2 Extending POCSO-Style Protections to All Child Witnesses

Drawing on the United Kingdom's offence-neutral model discussed in Chapter VI, this paper recommends that the substantive protections currently confined to POCSO, namely the presence of a support person, the option of video-recorded testimony, and screening from direct visual confrontation with the accused, be incorporated as general provisions within the BNSS, available to any child witness upon a simple judicial finding that they would assist the child in giving reliable testimony.

8.3 A Statutory Intermediary System, Broadened in Scope

Adapting South Africa’s Section 170A model discussed in Chapter VI, India should consider formalising a statutory intermediary system, building on the currently informal “support person” concept of the POCSO Rules. Intermediaries should be trained professionals, drawn from backgrounds in child psychology, social work, or education, and should be certified and empanelled by an appropriate judicial or state authority.

8.4 Amending the Witness Protection Scheme, 2018

The Witness Protection Scheme, 2018, should be amended to include a distinct threat-assessment protocol for child witnesses, taking account of the particular pressures arising from familial or community relationships to the accused. This might include provisions for temporary relocation of the child's family in high-risk cases, confidentiality safeguards specific

to school and community settings, and monitoring for signs of tampering or coercion during the pendency of trial.

8.5 Mandatory Training for Judicial Officers, Prosecutors, and Police

Reflecting the Australian lesson on implementation discussed in Chapter VI, this paper recommends mandatory training modules, administered through judicial academies and police training institutions, on child-sensitive examination techniques for all officers likely to encounter a child witness, not merely those posted to POCSO Special Courts.

8.6 Fast-Track Mechanisms for Trials Involving Child Witnesses

This paper recommends that trials in which a child under a specified age is a material witness, regardless of the nature of the offence, be administratively prioritised for early listing and continuous hearing, similar to the fast-track mechanism already available under POCSO's Special Courts. The infrastructure needed for such prioritisation may already exist in embryonic form: the nationwide network of Vulnerable Witness Deposition Centres discussed in Chapter III, which the Supreme Court has directed every district to establish, offers a ready administrative channel through which listing priority for child witnesses could be operationalised without requiring the creation of new institutions from scratch.⁴⁶

8.7 A Fresh, Dedicated Law Commission Study

Given the finding in Chapter IV that no Law Commission report has ever undertaken a focused, standalone study of the child witness as distinct from the child victim, this paper recommends that the Law Commission of India be tasked precisely to such a study, explicitly extending their inquiry beyond sexual offences to cover all categories of criminal trial in which children are involved.

⁴⁶ 'Supreme Court Directs High Courts To Set Up Vulnerable Witness Deposition Centres By April 30' (LiveLaw, 18 January 2024) <<https://www.livelaw.in/top-stories/supreme-court-directs-high-courts-to-set-up-vulnerable-witness-deposition-centres-by-april-30-247037>> accessed 23 September 2026.

IX. CONCLUSION

This paper set out to examine a question that, on the surface, may seem narrow, but which, in closer study, reveals a significant and unaddressed gap in Indian criminal law: the distinction Indian law makes, often unconsciously, between the child victim and the child witness. That distinction, this paper has argued, does not reflect any meaningful difference in the vulnerability a child experiences when required to testify before a criminal court. A child who has witnessed violence has no less a burden than a child who has experienced it directly, but Indian law, as it currently stands, provides careful, trauma-informed procedural protection to the latter, while leaving the former to navigate an adversarial system built without children in mind at all.

The trajectory traced through this paper, from the conceptual vulnerabilities of childhood testimony, through the fragmented statutory framework under the BNSS, BSA, and POCSO Act, through the Law Commission's consistently victim-centric recommendations, to the judiciary's rich but narrowly focused jurisprudence, indicates a consistent pattern. Every instance of reform in this area has occurred through the specific lens of sexual offences against children, leaving the child witness in every other category of crime almost entirely unprotected by design.

The comparative study undertaken in this paper, however indicates that this need not be the case. The United Kingdom's offence-neutral model of special measures, South Africa's pioneering, if imperfectly extended, intermediary system, and Australia's cautionary experience with implementation all point towards a workable, administratively achievable path forward, one that does not compromise the fair trial rights of the accused, but simply asks Indian law to ask the right question: what does this child, as a witness, need to testify truthfully and without unnecessary harm?

Ultimately, this paper contends that the label attached to a child's role in a criminal case, either victim or witness, should not dictate the degree of dignity and protection they receive from the legal system. Trauma, intimidation, and the fragility of childhood memory do not consult the FIR before taking hold. Until Indian law recognises this simple truth through clear, offence-neutral statutory reform, the child witness will remain, as this paper's title suggests, caught in an unresolved and largely unexamined space between victim and witness, protected in name by the promise of justice, but too often unprotected in practice by the very system meant to deliver it.



Indian Journal of Contemporary Legal and Social Issues

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Indian Journal of Contemporary
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