
CHILD WITNESS COMPETENCY WITH PSYCHIATRIC MORBIDITY UNDER POCSO & BSA: INTERMEDIARIES, SPECIAL PROCEDURES, AND RELIABILITY ASSESSMENTS (INDIA)

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ABSTRACT

This paper builds a practical, rights-compatible framework for receiving and evaluating testimony from **child witnesses with psychiatric or neurodevelopmental conditions** in Indian criminal courts. Anchored in the **Bharatiya Sakshya Adhiniyam, 2023** (competency: s.124), **POCSO, 2012** (Special Court powers and safeguards: ss.33, 36–38; Rules 2020 on support persons), and **BNSS, 2023** (recording at a place of choice with interpreters/special educators and videography: s.173), it clarifies that diagnosis does **not** entail incompetence and that competency is a low, functional threshold—understanding questions and giving rational answers—with the **Oaths Act, 1969** permitting testimony without oath for very young children. The paper operationalizes **intermediaries by function** (special educators, interpreters, support persons, live-link and other testimonial aids through Vulnerable Witness Guidelines), sets out structured **reliability assessments** (tutoring screens, developmental appropriateness, consistency, trauma-informed analysis), and explains **digital-evidence** handling under BSA ss.57–63. It integrates **RPwD Act, 2016 s.12** to ground reasonable accommodations and reconciles these measures with the accused’s fair-trial rights by routing questions through the judge, limiting recall, and maintaining in-camera, identity-protected proceedings. The result is a bench-ready protocol that maximizes evidentiary value while minimizing re-traumatization.

Keywords: child witness competency, POCSO, Bharatiya Sakshya Adhiniyam, intermediaries and special measures, psychiatric morbidity

1) Introduction and scope

This paper takes a practitioner-facing view of how Indian courts should assess and receive testimony from child witnesses who also present with psychiatric or neurodevelopmental conditions (e.g., intellectual disability, autism spectrum conditions, ADHD, PTSD, major depression, psychosis). It anchors in

- (i) The Protection of Children from Sexual Offences Act, 2012 (POCSO) and its 2020 Rules,
- (ii) The Bharatiya Sakshya Adhiniyam, 2023 (BSA), and
- (iii) Allied frameworks including the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), the Mental Healthcare Act, 2017 (MHCA), and the Rights of Persons with Disabilities Act, 2016 (RPwD).

Where helpful, it integrates binding and persuasive judicial guidance (Supreme Court and High Court “vulnerable witness” protocols) and leading Indian case law on child-witness appreciation. The organizing question is: what is the correct test of competence, what accommodations are legally available (or required), and how should reliability be evaluated—without compromising the accused’s fair-trial rights?

POCSO is child-centred and prescriptive about how statements are to be recorded and evidence received; the BSA provides the general law of evidence, including the competence rule and the expanded place of electronic/digital evidence; BNSS supplies recording-of-statement machinery (e.g., videography, interpreters/special educators) that assists vulnerable witnesses. Together, they enable a principled, disability-accommodating approach that is fully consistent with due process.

2) The legal test of competency for a child witness with psychiatric morbidity

2.1 Statutory baseline under BSA

Section 124 BSA states that all persons are competent to testify unless the court considers they are prevented from understanding questions or giving rational answers by reason of tender years, disease of body or mind, or other similar cause; its Explanation adds that a person with

“mental illness” is not incompetent per se. This replicates and modernises the old §118 Evidence Act test and fits neatly with MHCA’s rights-based lens.

Practice point. Competency is a low threshold capacity filter (understanding questions / giving rational answers), not a merits or credibility finding. Psychiatric diagnosis ≠ incompetency; the inquiry is functional and task-specific (can this child, with supports, understand and answer?).

2.2 Oath/affirmation with very young children

Under the Oaths Act, 1969, courts may examine a child under 12 without oath if the child understands the duty of speaking the truth but not the nature of an oath; omission of an oath does not invalidate evidence (s.7). The court should still record a brief satisfaction note after a preliminary competency voir dire.

2.3 Competency in practice—Supreme Court guidance

The Supreme Court has repeatedly held that a child is a competent witness and conviction can rest on such testimony if the court is satisfied about capacity and finds the account trustworthy after careful scrutiny against tutoring/suggestion (e.g., **Rameshwar v State of Rajasthan; Dattu Ramrao Sakhare v State of Maharashtra; Panchhi v State of U.P.**). Recent decisions (2024–25, **Madhab Chandra Pradhan; State of M.P. v Balveer Singh**) reiterate the duty to conduct a preliminary assessment and to value child testimony on its own merits, using caution rather than suspicion.

3) Child-friendly procedures that double as accommodations for psychiatric morbidity (POCSO + BNSS + Vulnerable Witness Guidelines)

3.1 At the reporting/investigation stage

Place, manner, and videography. BNSS §173(1) (second proviso) requires that where the informant/victim is temporarily or permanently mentally or physically disabled (and for certain sexual offences), information is recorded at the victim’s residence or place of choice in the presence of an interpreter or special educator, and videographed; the police must seek early judicial recording of the statement by a Magistrate.

POCSO-specific safeguards. POCSO §24–§26 and allied provisions require prompt, child-

friendly recording (at residence or a place of choice; by a woman officer where practicable; without uniforms; without delay), and permit translators/special educators as needed.

Why this matters clinically. For children with PTSD, anxiety, autism, intellectual disability or psychosis, the environmental load (sirens, uniforms, unfamiliar rooms) aggravates cognitive-communicative strain; POCSO/BNSS design minimises that load and enables accurate retrieval and expression.

3.2 During trial—POCSO’s “Special Court” protections

Routing of questions via judge; frequent breaks. POCSO §33(2) mandates that all questions in examination-in-chief/cross-examination of the child be put through the Special Court, not directly. §33(3) authorises frequent breaks. §33(5) requires that a child not be repeatedly called to testify about the same incident, a point emphatically affirmed by the Supreme Court in 2024.

Privacy & shielding. §36 requires in-camera trial and allows physical screens/single-visibility arrangements; §37 reinforces closed court for sexual offences; §33(7) protects identity.

Interpreters, special educators, and experts. §38 expressly permits assistance of translators, interpreters, special educators, and other experts—a statutory analogue to “intermediaries”.

Support person. Under the POCSO Rules, 2020 (r.4–5), the Child Welfare Committee may assign a support person to assist the child through investigation and trial (information, accompaniment, liaison, updates), with payment provisions and registers. Many High Court protocols and Government guidelines emphasise operationalising this role.

3.3 Vulnerable Witness Deposition Centres (VWDCs) and High Court protocols

Following **Smruti Tukaram Badade v State of Maharashtra** (SC, 2022), High Courts have issued/updated Vulnerable Witness Guidelines that: presume competency (echoing BSA s.124), allow live-link testimony, prescribe testimonial aids (screens, image/voice alteration where required), court-house tours, comfort items, and special-measures directions bespoke to the witness. Several sets (e.g., Delhi 2024; Kerala 2024; Meghalaya 2024; J&K 2025 notices) explicitly integrate the new BNS/BNSS/BSA.

4) Competency + Reliability: a structured bench test for child witnesses with psychiatric morbidity

The following five-step template synthesises BSA s.124, Oaths Act, POCSO, BNSS and SC/HC guidance into a courtroom-ready protocol.

Step 1: Pre-test accommodations (before competence check)

Conduct the assessment in a VWDC or child-friendly room; permit a support person and, where indicated by disability/communication profile, a special educator/interpreter. For psychiatric conditions affecting attention/processing (e.g., ADHD, psychosis, PTSD), order short sessions with breaks, neutral language, visual aids, and allow live-link if court attendance escalates symptoms.

Step 2: Competency voir dire (BSA s.124 + Oaths Act)

Use developmentally appropriate questions to evaluate:

- (i) orientation to simple time/sequence,
- (ii) ability to understand simple WH-questions,
- (iii) ability to express experiences,
- (iv) understanding that telling the truth is required. Avoid “general knowledge” trick questions; record reasons for your opinion.

If under 12 and oath not understood, proceed without oath (Oaths Act, s.4 proviso; s.7).

Step 3: Set special measures for testimony

Order that all questions be routed via the judge (POCSO §33(2)), forbid aggressive or age-inappropriate phrasing, and schedule breaks (POCSO §33(3)). Permit screens/seating so the child need not see the accused (POCSO §36).

Step 4: Reliability appraisal (merits)

Apply the **Rameshwar–Dattu–Panchhi** caution: scrutinise for tutoring, internal/external

consistency, spontaneity, and plausibility in context; corroboration is not a rule of law but a matter of prudence. Consider sensory/perceptual distortions that certain psychiatric conditions can cause without equating diagnosis to unreliability.

Step 5: Record-creation & preservation (digital)

BNSS requires videography at multiple stages; BSA now classifies electronic/digital records as primary evidence and recognises statements given electronically as “oral evidence”. Ensure proper custody and any required certification where secondary copies are used.

5) Intermediaries in India: the de-facto architecture

India does not yet have a UK-style statutory “intermediary” scheme. Instead, POCSO §38 (interpreters, special educators, experts), POCSO Rules r.4–5 (support person), BNSS §173 (interpreter/special educator at recording) and Vulnerable Witness Guidelines (live link, testimonial aids, court-ordered “special measures”) constitute a functional equivalent. Courts can and should craft Special Measures Directions on a case-by-case basis to translate expert recommendations (e.g., speech-language pathologist’s communication profile, psychiatrist’s triggers/limitations) into examination protocols.

6) Who is “vulnerable” and what accommodations are mandatory?

“Vulnerable” includes all children and also those with mental illness/disability; High Court protocols (post-**Smruti Tukaram Badade**) make this explicit and integrate BSA §124 and MHCA §2(s).

RPwD Act §12 imposes a duty on governments to ensure access to justice for persons with disabilities, including procedural and reasonable accommodations in courts and tribunals; this statutory obligation supports the grant of live-link, interpreters, special educators, and other testimonial aids.

7) Reliability with psychiatric comorbidity: a principled checklist

Courts should record that psychiatric diagnosis is neither a competency bar nor a blanket credibility discount (BSA §124; MHCA). A structured reliability note can track:

- **Opportunity to observe/experience** (was the child present; sensory limitations);

- **Encoding & recall** (effect of trauma, dissociation, medication; whether breaks/supports improved clarity);
- **Expression & comprehension** (need for interpreter/special educator; whether leading/complex syntax was avoided);
- **Consistency** (within statement; across police/Magistrate/court; accounting for clinically expected fluctuation);
- **Telltale signs of tutoring** (phraseology beyond developmental level; sudden sophistication after coaching).

Key authorities: **Rameshwar, Panchhi, Balveer Singh**; Vulnerable Witness Guidelines.

8) Cross-examination ethics & limits under POCSO

Questions are to be filtered through the judge (s.33(2)); frequent breaks permitted (s.33(3)); the child must not be recalled repeatedly (s.33(5)). The Supreme Court has reminded trial courts to decline re-summoning where this would defeat POCSO's protective purpose. Courts should additionally deploy Vulnerable Witness Guidelines to prevent aggressive or developmentally inappropriate questioning and to set time-boxing for hostile cross-examinations that risk dysregulation in psychiatric conditions.

9) Electronic evidence & remote testimony—new opportunities under BSA/BNSS

BSA 2023 recognises statements given electronically as “oral evidence” and treats electronic/digital records as primary evidence (subject to custody/authenticity). High Courts' Vulnerable Witness Guidelines define “live link” and encourage remote testimony from trusted sites. BNSS and e-Courts practice rules complete the pipeline (e.g., videography at source; transmission to court). This is particularly valuable for children whose psychiatric status deteriorates with in-person confrontation.

10) Putting it together: a courtroom flow for POCSO cases with psychiatric morbidity

Intake: Police follow BNSS s.173 (place of choice; interpreter/special educator; videography) and promptly seek Magistrate recording. POCSO §24–§26 safeguards applied.

Pre-trial case management: Special Court appoints/recognises support person (POCSO Rules), orders any expert assessments (communication profile; psychiatric report limited to functional capacities), fixes special measures (Vulnerable Witness Guidelines).

Competency hearing: Brief, developmentally appropriate questioning; record reasons (BSA §124; Oaths Act).

Trial: Route all questions via judge; limit recall; allow breaks; use testimonial aids and live-link where appropriate; maintain in-camera setting and identity protection.

Appreciation of evidence: Apply **Rameshwar–Dattu–Panchhi** caution; avoid disability stereotyping; weigh corroboration prudently, not mechanically.

Record-keeping: Ensure chain-of-custody for video; if using copies, meet any BSA certification/secondary-evidence requirements.

11) Fair-trial equilibrium

These accommodations do not prejudice the defence: Vulnerable Witness Guidelines instruct courts to make clear that special measures carry no adverse inference. Defence retains full confrontation rights—only the modality changes (questions via the judge; structured phrasing; timing), and these are statutorily grounded in POCSO and BSA.

12) Policy & practice recommendations

- **Codify intermediaries:** Consider amending POCSO/Rules to formally recognise “forensic communication intermediaries” with accreditation standards; until then, use §38 experts + support-person architecture.
- **Universal VWDC coverage:** Implement the Supreme Court’s mandate for district-level VWDCs with live-link rooms, separate waiting areas, and child-friendly design.
- **Bench tools:** Circulate a one-page competency checklist and questioning-style crib-sheet drawn from HC protocols for all POCSO courts; embed in e-Courts.
- **Training:** Regular joint trainings for judges, prosecutors, defence counsel, police, and support persons on neurodiversity-informed interviewing and POCSO/BNSS/BSA

updates.

13) Conclusion

Indian law already contains a coherent, rights-consistent pathway to receive the best evidence from child witnesses with psychiatric morbidity. The competence threshold in BSA §124, the child-centred architecture of POCSO (especially §33, §36–§38 and the 2020 Rules), the accessibility obligations under RPwD §12, and the BNSS recording machinery combine to deliver reasonable accommodation without diluting adversarial testing. The jurisprudence from **Rameshwar** to **Balveer Singh** clarifies that child testimony can, with care, be decisive. The task for courts and counsel is to operationalise these tools consistently—through VWDC infrastructure, special-measures orders, judicious competency assessments, and clinically informed reliability analysis.

Appendix: Ready-to-use bench order template (extract)

Competency recorded under BSA s.124: The Court, after preliminary questions appropriate to the child's developmental level, is satisfied that the witness understands simple questions and can give rational answers.

Oath: [Administered / dispensed with under Oaths Act, 1969, s.4 proviso; s.7].

Special Measures Direction: (a) questions routed via the Court (POCSO §33(2)); (b) frequent breaks (POCSO §33(3)); (c) in-camera with screen so child does not see accused (POCSO §36); (d) testimony by live-link from VWDC; (e) presence of support person; (f) assistance of special educator/interpreter (POCSO §38; BNSS §173).

Identity protection & records: Compliance with §33(7)/§37; video custody per BSA s.57–63.

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