
REPEATED SUMMONING OF CHILD WITNESSES IN POCSO TRIALS: ASSESSING ITS IMPACT ON FAIR TRIAL RIGHTS, TESTIMONIAL INTEGRITY, AND JUDICIAL PROCESS

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ABSTRACT

In the framework of the Indian penal system, testimony of child witnesses is at the convergence of evidence, judicial equity, and system structure. Adjudication reliability is an indicator of the child witness summons process determination. It impacts memory, confidence, and narrative integration. It is initiated as an inconvenience leading to summoning at irregular intervals. The Indian judicial system neglects the absence of child testimony and the absence of the judicial process determining the child witness evidence. This advocacy is focused on the interrelationship between the witness's competence and the legal system's vulnerability.

Analysis of Section 33 of the Protection of Children from Sexual Offences Act (2012), Section

124 of the Bharatiya Sakshya Adhiniyam, 2023, Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Supreme Court of India's rulings in the cases of P. Ramesh, Atma Ram, Mahender Chawla, Madhab Chandra Pradhan, and *In Re: Alarming Rise in the Number of Reported Child Rape Incidents*¹ reflect the legal structure's process(s) for child witness testimony. This system requires child witness testimony to be recorded expeditiously to ensure complete testimony, with minimal need for testimony recall. In addition, the examination of child witnesses along with the iterative process of testimony recall results in discrepancies due to the delay, exhaustion, or courtroom apprehension. However, the discrepancies are misinterpreted as indicators of the child's unreliability or weak testimony. The backlog in POCSO courts and Fast Track Special Courts documents the delays attributable to the courts, reinforcing the primary concern and evidencing the structural basis for repetitive child witness testimony. The study found that

¹ Suo Motu Writ Petition (Criminal) No. 1 of 2019, 2025 INSC 695 of 15 May 2025.

process-sensitive adjudication value fair-trial precepts by assigning controls to judges on how to justify, less damaging, alternatives, in her respect cross-examination, and treating the child's dignity as a balance to evidential accuracy while still protecting child dignity.

Keywords: Child witness; POCSO; repeated summoning; witness recall; process-sensitive adjudication; fair trial; vulnerable witness procedure; Indian criminal justice

1.1 INTRODUCTION

The child witness is here positioned as standing in the triangulation of evidence, process, and fairness and it is argued here that the sort of calendaring modality that would facilitate repeated summons, is structurally instrumental to a courtroom practice that would profoundly diminish the quality of justice, her dignity, and the quality of adjudication as well. The child witness in the Indian criminal process is rather a proof source, and a vulnerable participant, whose traversing the whole process from police, prosecutor, defence, and judge can determine whether justice is done or wholly consumes the child on whom the case entirely pivots.² Once that dimension is understood, repeated summons to court is no longer an administrative triviality, but becomes a substantive question around whether systems and processes are predominantly about the evidence or the inertia of the institution. Indeed, the assumption of process-sensitive adjudication originates from the child, and that to distort both justice and the testimonial record, a child witness ought to be available on an endless basis.³

An Indian legal dilemma arises from balancing child witness protections and the defendant's right to a fair trial. The challenge has never been in child witness testimony, but rather how testimony, completed, and later protected and revised, should be undertaken.⁴ The usual phrasing around 'competent' and 'admissible' witness does not address those concerns. A child witness does not deserve to go through a process that is, in any combination, intimidating, repetitive or fractured. The created inconsistencies compounded by exhaustion, time, or renewed exposure are often interpreted as sources of unreliability. Hence, the major challenge is designing appropriate procedures. Courts are tasked with the challenge of how to sustain

² In Re: Alarming Rise in the Number of Reported Child Rape Incidents, *Suo Motu Writ Petition (Criminal) No. 1 of 2019*, 2025 INSC 695 (Supreme Court of India, May 15, 2025).

³ John E. B. Myers, Nancy W. Perry, *Child Witness Law and Practice* 118 (Wiley Law Publications, New York, 1st edn., 1987).

⁴ P. Ramesh v State Rep. by Inspector of Police, *Criminal Appeal No. 1013 of 2019* (Supreme Court of India, July 9, 2019).

meaningful cross-examination as child witness protections are high. This article is a response to that challenge from the perspective of legislation, judicial decisions, and empirical studies.⁵

The Indian law embeds the foundations of a process-sensitive model, which, however, is unevenly applied, and at times, is applied too late within the life of a case. There exists a case to be made that the Protection of Children from Sexual Offences Act, 2012, the contemporary law of evidence, and recent pronouncements of the Supreme Court, taken together, justify an approach which is concerned with child testimony to be taken early, and at the risk of being presumptuous, as completely as possible, with the recall being in the demonstrated necessity to limit.⁶ Such an approach is not an adversarial fairness dilution. It is an embedding of discipline to the adversarial fairness of power that requires the tribunal (court) to purpose the question as to whether the proposed step is actually an imperative, whether, in fact, a less injurious alternative exists, whether the anticipated benefit in terms of probative worth justifies the injury burden on the child. The ensuing discussions will examine the rationale underlying this approach, the specific laws relevant to the framework, the framework's leading and contemporary case law, and the official reports why repeated summons is a frequent occurrence, which, in fact, is a manifestation of a more profound architectural deficit.⁷

1.2 CHILD WITNESSES AND PROCESS-SENSITIVE ADJUDICATION

This section will explore the vulnerable nature of child witnesses as evidentiary actors and procedural subjects and why the law has to move up from the old habit of only asking whether the child can testify and begin asking how the child has to testify in court. In *P. Ramesh v. State Rep.*⁸ by Inspector of Police, the Supreme Court reiterated that a child's age, by itself, does not determine whether a child is competent. While that ruling has value, it does not address the question fully. A child may meet the required age competency, but the child may still be faced with a courtroom that is confusing and/or hostile, and repetitive. Therefore, reliability is not simply a matter of a child, but also of the courtroom and the process by which the evidence is brought forth. A legal system that values truth will address those aspects of the system because

⁵ Nancy W. Perry, Lawrence S. Wrightsman, *The Child Witness: Legal Issues and Dilemmas* 94 (SAGE Publications, Newbury Park, 1st edn., 1991).

⁶ The Protection of Children from Sexual Offences Act, 2012 (32 of 2012).

⁷ Binay Kumar, Indira Prasad, et.al., "Child Sexual Abuse Laws in India; Failure of Implementation – a Case Report", 90 *Medico-Legal Journal* 234 (2022).

⁸ *Supra* note 4.

testimony is always provided within an institution and never in an abstract way.⁹

Summoning children multiple times has legal significance and is understood in the case of child witnesses. Children are placed in potentially traumatic situations each time they are summoned.¹⁰ The summoning process involves the child experiencing the courthouse for the potential of renewed questioning. The child must endure stress waiting for the process to unfold.¹¹ Reliving the trauma is done in an adversarial environment. This experience can lead to the child losing the ability to express, self-confidence and recall. Regarding this, the process itself in this case can become overly burdensome and is legally relevant to describe secondary victimisation. This is an explanation of the process that can lead to criminalisation. Child centred legal approaches require focus on the systemic design and fundamentally not on the child as a witness. The view on summoning as a routine feature of trial management must change and is fundamentally the primary source of evidentiary distortion.

Multitudinous summoning results in a fragmented narrative for testimony. Cross-examination on different dates may diverge significantly from a single unbroken interaction.¹² From the child's perspective, they must reconstruct the setting, emotionally reconfigure, regain self-assuredness, and respond to queries in a different temporal and emotional context from the context of the examination-in-chief or any prior questioning. While the Defence may be tactically optimizing the fragmentation, the more pertinent legal issue is whether this fragmentation serves the interests of the case's just outcome or is merely taking advantage of the procedural slack. The order of the Supreme Court in *Madhab Chandra Pradhan v. State of Odisha*¹³, may be of particular significance as it provides no space to treat recall as available after an opportunity has already been provided. This reasoning is a departure from the entitlement perspective. It is primarily about keeping order in the process and not about the prohibition on all recall. What is objectionable is the repetition and not the recall.¹⁴

Considering what has been stated previously, it can be inferred that people's demands regarding emotionally based judicial processing are based around wanting a certain level of judicial

⁹ Child Sexual Abuse & Harassment in India | POSCO Act | Case Study, *available at*: <https://childlineindia.org/a/issues/sexual-abuse> (last visited on April 9, 2026).

¹⁰ The Protection of Children from Sexual Offences Act, 2012 (32 of 2012), s. 33.

¹¹ The Protection of Children from Sexual Offences Act, 2012 (32 of 2012), s. 33.

¹² *Madhab Chandra Pradhan v State of Odisha*, Special Leave Petition (Criminal) No. 10082 of 2024 (Supreme Court of India, Order dated August 5, 2024).

¹³ Special Leave Petition (Criminal) No. 10082 of 2024, dated 5 August 2024.

¹⁴ Child Protection, *available at*: <https://www.unicef.org/india/what-we-do/child-protection> (last visited on April 8, 2026).

balance. Though it is the case that the accused should be provided some reasonable means through which they can contest the prosecution's case, that, however, does not imply that it should be through the means of physically enduring a presence or enduring the delay that is brought about by an unrestrained revisiting of the case.¹⁵ What the case of *Sakshi v. Union of India*¹⁶, and the more recent case of *Atma Ram v. State of Rajasthan*¹⁷, demonstrate is that Indian legislation has long acknowledged the need for modifications such as the use of screens as well as questions being put through the judge and reasonable breaks for child witnesses.

These modifications do not constitute a violation of the principals of a fair trial. These modifications limit the trauma and embarrassment experienced by the child witnesses without compromising the integrity of their evidence. Once adjustments of this nature are accepted as standard from the judicial process, the child witness cases require a shift in the focus of the court from the role of a passive referee to that of an active director over the conditions of the evidence.

1.3 STATUTORY ARCHITECTURE

This part evaluates how Indian statutory law currently advocates for a child-sensitive approach by decoupling competency from age and considering understanding and communicative and rational responsiveness, as opposed to adult witnesses' benchmark performance, a more focus area for the courts. The Bharatiya Sakshya Adhiniyam, 2023, §124, which is a new provision on the competency of witnesses, maintains the competency of witnesses presumption that all persons are competent to testify unless the court deems the witness incompetent to understand questions or give rational answers due to blame of youth, advanced age, illness, or other similar conditions.¹⁸ This is significant because it removes any doctrinal foundation that would support the view that a child's testimony is considered suspicious. There is, however, a judicial assessment of comprehension that must be performed. Competence is, thus, both inclusive and demanding. It allows the judge to consider communicative ability but also requires the judge to be mindful that the manner and context of interrogating a witness may hide communicative

¹⁵ *Atma Ram v State of Rajasthan*, Criminal Appeal Nos. 656-657 of 2019 (Supreme Court of India, April 11, 2019).

¹⁶ (2004) 5 SCC 518.

¹⁷ Criminal Appeal Nos. 656-657 of 2019, which was decided on April 11, 2019.

¹⁸ The Bharatiya Sakshya Adhiniyam, 2023 (47 of 2023), s. 124.

ability, thus, may be seen as a factor that is documented.¹⁹

The competency rule also explains what is not required by law. It does not require an automatic corroboration simply because the witness is a child, nor does it consider the absence of an oath as a fatal defect when the court is satisfied with the child's comprehension and the ability to respond.²⁰ In *P. Ramesh v. State Rep. by Inspector of Police*²¹, the Supreme Court relied upon some of the earlier cases, like *Dattu Ramrao Sakhare v. State of Maharashtra*²², *Panchhi v. State of Uttar Pradesh*²³, and *Nivrutti Pandurang Kokate v. State of Maharashtra*²⁴, to confirm that child evidence can be the sole basis for conviction as long as it is trustworthy and the court is vigilant against tutoring. The bigger picture is crucial for the process. The law, like other disciplines, ought not to be concerned with assumptions of superiority. It ought to be firm in the kind of processes it offers. It ought to be free of speculative collapse, processes that create uncertainty, and then uncertainty itself as evidence of weakness.²⁵

1.3.1 The Protection of Children from Sexual Offences Act, 2012

The statutory centre of process-sensitive adjudication is the Protection of Children from Sexual Offences Act, 2012 because this statute takes a leap from abstract rights language to specific courtroom directives about the atmosphere, questioning, breaks, dignity, and repetition. Particularly Section 33, which is quite the contrary.²⁶ It mandates the Special Court to take measures ensuring the child is not subjected to hostile cross-examination, permits breaks in the child's testimony to be frequent, and states that the child should not be called to testify in a repeated manner. This is a legislative answer to the problem of the process itself. The law acknowledges that the testimony structure is a part of justice and not just the pathway to justice. The Act, in this way, goes beyond the creation of offences and punishments. The Act mandates a particular trial procedure that shows consideration for the child's experience as a factor that justifies the integrity of the evidential process. That legislative choice should guide every

¹⁹ P. S. Narayana, *Commentary on the Protection of Children from Sexual Offences Act, 2012 and Rules 147* (LexisNexis, New Delhi, 2nd edn., 2017).

²⁰ *Supra* note 4.

²¹ Criminal Appeal No. 1013 of 2019, decided on 9 July 2019.

²² (1997) 5 SCC 341.

²³ (1998) 7 SCC 177.

²⁴ (2008) 12 SCC 565.

²⁵ Sonali Swetapadma, Paromita Chatteraj, *Sexual Offences Against Children in India: Understanding the Criminal Justice Responses* 83 (Routledge, London, 1st edn., 2024).

²⁶ The Protection of Children from Sexual Offences Act, 2012 (32 of 2012), s. 33.

consideration concerning adjournment, scheduling, and recall.²⁷

Section 33's imposition of expectations on the Special Court creates an interpretation where it is an affirmative managerial duty. Judges are not merely given the authority to act in a child's best interest; judicial immunity is removed from the orphan who is judicially required to structure the proceedings in a way that allows for evidence, testimony, and statements to be taken as they are, with respect, and without irrelevant and unwanted repetitions.²⁸ This entails a multitude of things, including the establishment of appropriate and relevant dates, an actual and effective avoidance of adjournments, the personal and active readiness of lawyers and legal counsel, the appropriate moderation of the form of questions, and a personal effort to provide an explanation and legal remedy for the completion of evidence. Child friendly statutes are not child friendly if the implementation is rooted in poor scheduling. Neither is the avoidance of testimony on numerous occasions a naive, simplistic or insipid legislative optimism. This provision is directed to alleviate the frustrations realized from the effect of child friendly named statutes and provide a judicially driven approach to the imposition of situationally appropriate and effective child friendly legislative provision; where the judicial provision is not the porous boundary and limitation that are the existing child friendly legislative provisions.

The general criminal procedure expands these directions by acknowledging audiovisual technology at several points, as well as by maintaining, albeit with some limitations, the ability to summon or recall witnesses when the interest of justice demands. With respect to this element, the Bharatiya Nagarik Suraksha Sanhita, 2023, confers upon the court the power, under section 348, to summon a material witness or to summon, recall, and re-examine a witness, who has already been examined, when the evidence is of great importance to the just determination of the case.²⁹ The law at the same time acknowledges the use of audiovisual technology and the presence of several procedural aspects, including the evidence and presence via remote video conferencing. This brings in a new dimension. It demonstrates that necessity and technology are intended to work in tandem. The court should still consider whether the objective of further questioning can be achieved through a more just, less disruptive, and less burdensome means. The existence of audio-visual facilities does not eliminate the burden on

²⁷ Rakesh Kumar Handa, Shivani Goswami, "The Protection of Children from Sexual Offences Act (POCSO), 2012: The Precincts of the Law and Judicial Expositions", 7 *Journal of Victimology and Victim Justice* 191 (2024).

²⁸ The Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023), s. 348.

²⁹ Miss "A" v State of Uttar Pradesh and Another, Criminal Appeal No. 659 of 2020 (Supreme Court of India, October 8, 2020).

the child, but it lessens the previous assumption that a hearing would be effective only if the child was physically present in an intimidating courtroom.³⁰

The sensitivity model offers another layer of protection for confidentiality during the investigation stage. In the case of *Miss "A" v. State of Uttar Pradesh and another*³¹, the Supreme Court asserted that statements taken during the investigation, especially those made pursuant to Section 164 of the Code of Criminal Procedure, cannot be provided at an early stage, and cited with approval the case of the *State of Karnataka, by Nonavinakere Police v. Shivanna alias Tarkari Shivanna*³², to draw attention to the various dangers that may arise during the investigation, with respect to the safety of the victim and the protection of the witness.³³ This argument goes beyond the mere disclosure doctrine. It indicates a more comprehensive and balanced judicial perspective of the proceedings involving child sexual abuse that highlights the need for the mechanics of the proceedings to be designed for the purpose of avoiding unrestrained, untimely, and unguarded exposure and the potential to influence and intimidate. Thus, protection is not only the moment a witness stands to give their oral testimony. It begins before the trial and is designed to regulate the flow of materials and how the participants are organised in the courtroom. A process-sensitive model must consider all these elements holistically.

Courtroom design and witness protection services follow the same reasoning. Protection of witnesses as part of the administration of justice was acknowledged by the Supreme Court in *Mahender Chawla v. Union of India*³⁴, as the first case to approve the Witness Protection Scheme, 2018.³⁵ Although the case does not concern child witnesses specifically, it is of great significance. A child's participation in a neutral process is undermined when they have to enter unprotected, hostile, or fearful spaces. There is a close alignment of protective obligations in this decision and the design logic of vulnerable witness deposition centres and other child-sensitive measures crystallized in later collapsed institutional practices. The justice system's failure to protect a child's dignity, safety, and the completeness of their testimony in

³⁰ Harshini Manohar, Eesha Sharma, et.al., "Preparation of Children for Deposition in the Court in POCSO Cases: Insights from Children's Perspectives", 19 *Journal of Indian Association for Child and Adolescent Mental Health* 313 (2023).

³¹ Criminal Appeal No. 659 of 2020, decided on October 8, 2020.

³² (2014) 8 SCC 913.

³³ *Mahender Chawla v Union of India*, Writ Petition (Criminal) No. 156 of 2016 (Supreme Court of India, December 5, 2018).

³⁴ Writ Petition (Criminal) No. 156 of 2016, dated December 5, 2018.

³⁵ *Supra* note 4.

a timely manner, means that protection has been provided far too late. Protection has to be an integral part of the process from the very beginning.

1.4 JUDICIAL DEVELOPMENT

The shift in case law from a strict legal acceptability of child evidence toward a more complex discourse concerning the commandability, the protection, and the institutional support, coupled with the judicial responsibility to moderate the credibility assessments with due diligence. The older Supreme Court Authorities, and most of the subsequent case law, reject both extremes.³⁶ They reject the child testimony as inherently unreliable and, at the same time, they reject a phenomenon characterized by the absence of caution and critical consideration to the tutoring, the consistency, the circumstantial surrounding, and so forth. What stands out is that these cases allow for a form of judicial cognizance that is actually quite in tune with a contextual and process-driven approach to the law in question. If the court is to determine whether answers are within the realm of being spontaneous, rational, and non-directed, the constellation of the child's examination will evidence a great deal. The child's reliability is not measured by merely reviewing the transcript. It is measured by the circumstantial evidence of the milieu from which the transcript originated. The legal rudiments of this approach are already found in the existing jurisprudence concerning child witnesses.³⁷

The most recent case law warns against overly interpreting minor inconsistencies in children's testimony. Courts have been consistent in acknowledging that a child witness testimony is not expected to achieve the storyline consistency of an adult witness.³⁸ In addition, some inconsistency in testimony because of the child witness' acceptable memory variation, should not be an automatic ground to assail the child witness' credibility. This consideration is especially important in scenarios where there is a considerable time lag between the examination and cross-examination, or where the testimony is given in several different occasions. In this regard, process-sensitive adjudication is refinement and deepening of this two-way consideration by asking an earlier question: Were recording conditions such that they would have likely amplified the natural human variation of the child witness? If they were, then the inconsistency ought to be evaluated in light of recorded variations. The law's caution

³⁶ Supra note 15 at 158.

³⁷ A Decade of POCSO: Developments, Challenges and Insights from Judicial Data, *available at*: <https://vidhilegalpolicy.in/research/a-decade-of-pocso-developments-challenges-and-insights-from-judicialdata/> (last visited on April 7, 2026).

³⁸ Supra note 12 at 212.

about tutoring is a good starting point to balance the concern about procedural distortion. Otherwise, asymmetry arrives, where the focus is mostly on the potential impact of external actors, while institutional influence is neglected. This imbalance creates the unfair attributing of the most burden to the child witness and the court's truth-seeking process.³⁹

1.4.1 Protective Courtroom Procedure

The most important part of the *Sakshi case v. Union of India*, which was also cited in the case of *Atma Ram v. State of Rajasthan*⁴⁰, is framing the technique of the Court as a matter of constitutional and evidential concern rather than a matter of convenience. There are certain specific jurisprudential guidelines that support the use of screens and other arrangements that do not allow direct contact, that the judge should ask questions in writing and direct them to the child in appropriate language, and that there should be breaks to relieve the child from the tension of fatigue and harassment.⁴¹ These arrangements are often called 'child friendly,' but in fact, the more accurate description would be that these arrangements enhance reliability. A child who is protected from unnecessary humiliation is likely to provide a more articulate and comprehensive answer. Protective procedural law is, therefore, not anti-adversarial. It improves adversarial practice so that it does not eliminate the meaningfulness of evidence. Within Indian jurisprudence, this illustrates that the performance of justice is not merely a function of the questions, but also of the way these questions are posed.⁴¹

The recent Supreme Court increased focus on the infrastructure, timelines, and implementation of child-centred adjudication adds to the procedural turn. *In Re: Alarming Rise in the Number of Reported Child Rape Incidents*⁴², the Court once more connected child protection to specialized courts, forensic assistance, and child-sensitive design.⁴³ The significance of that judgment for the current issue is in the refusal to regard delays as merely administrative. Delays are significant as they undermine the legal framework in which child-centred adjudication resides. A system that is purported to be child-centred, but takes several years to move and further requires the child to attend court multiple times, is not merely slow. It is a system that

³⁹ Law Commission Submits Report on Age of Consent under POCSO Act, *available at*: <https://prsindia.org/policy/monthly-policy-review/september-2023> (last visited on April 6, 2026).

⁴⁰ *Supra* note 17 at 138. ⁴¹

Supra note 2.

⁴¹ Kevin Smith, Steve Tilney, *Vulnerable Adult and Child Witnesses* 126 (Oxford University Press, Oxford, 1st edn., 2007).

⁴² *Supra* note 1.

⁴³ National Crime Records Bureau, "Crime in India 2022: Statistics, Volume I" ch. 3, tbl. 3A.4 (2022).

is not in compliance with the purpose and spirit of the statute. The judgment supports the position that process-sensitive adjudication is not a form of judicial empathy; it is a constitutional imperative that must be imposed by the child protection system itself.⁴⁴

1.4.2 Recall, Adjournment, and Necessity

The most recent authority on repeated summons is *Madhab Chandra Pradhan v. State of Odisha*⁴⁵, where the Supreme Court dealt with a recall request after the child victim was crossexamined three times. The Court ruled that the section 33(5) of the Protection of Children from Sexual Offences Act, 2012 is not a complete prohibition of recall, but in this case, did not allow re-opening the witness after extensive time was given.⁴⁷ It is a revised and important formulation. A complete prohibition could be detrimental to the accused's fair trial rights in truly extraordinary situations. In fact, a case-by-case approach would radically deprive section 33(5) of its essence. The Court's interpretation suggests that the special statute and general recall power should be construed together with the principle of restraint. Recall is legally permitted but not for the sake of convenience, tactical considerations, or for a later cross-examination regret. This is the most descriptive and analytical formulation of process-sensitive balancing of the competing rights in Indian law.⁴⁶

Pradhan's reasoning is consistent with the Supreme Court's interpretation of recall being applied to the case at hand without due consideration. Subsequent courts, when relying on *State (National Capital Territory of Delhi) v. Shiv Kumar Yadav*⁴⁷, have echoed the sentiment that recall is not to be used to justify the absence of prior opportunities.⁴⁸ This is more pertinent to child witnesses, as the burden of repetition is not just institutional, but personal. Each adjournment or renewed appearance should lead to a consideration of whether the defence is seeking the fundamental or just the peripheral. This distinction is crucial because in criminal procedure it does not offer the accused every tactical advantage, but rather a fair opportunity to defend the case. Once courts appreciate this distinction, the routine practice of recall "just in case" will be difficult to justify, especially where the witness is a child, and the statute disallows

⁴⁴ Helen Dent, Rhona Flin, *Children as Witnesses* 102 (Wiley, Chichester, 1st edn., 1992).

⁴⁵ *Supra* note 13 at 212. ⁴⁷

Supra note 44 at 103.

⁴⁶ Robyn Fivush, April Schwarzmüller, "Say It Once Again: Effects of Repeated Questions on Children's Event Recall", 8 *Journal of Traumatic Stress* 555 (1995).

⁴⁷ (2016) 2 SCC 402.

⁴⁸ *Supra* note 44 at 71.

repetition.⁴⁹

The position on this doctrinal point is reasonably well-founded. Indian law embraces a fragmented approach concerning the recall of child witnesses.⁵⁰ The court must first identify a specific and concrete justification with regard to the potential repercussions involved in the subsequent examination. The court must then determine whether the aforementioned issue can be resolved with a legally less injurious alternative and more so, to avoid harm, the court can take a position on the record, the court can utilize video or audio alternatives and be legally on record. Lastly, if the recall is deemed necessary, the judge must be responsible for determining the extent, time, and technique for which the child witness is to be subjected to repeating the questions. This is in keeping with the 2012 Protection of Children from Sexual Offences Act, the recall authority contained in normal Criminal Procedure, and the protective principles laid down in *Sakshi*, *Mahender Chawla* and *In Re: Alarming Rise In The Number of Reported Child Rape Incidents*⁵³. It is also the most practical way to balance the right to a fair trial with the rights of the child.

1.5 DATA, DELAY, AND INSTITUTIONAL CAPACITY

This section shifts from doctrinal analysis to factual data, demonstrating that repeated summons are mainly attributed to systemic issues rather than isolated problems, such as case backlogs, fragmented time tabling, uneven court resources, and the persistent gap between policy and practice. The data from the National Crime Records Bureau illustrates the proliferation of registered cases pertaining to the Protection of Children from Sexual Offences Act, 2012, with the numbers climbing from 47,221 in 2020 to 63,414 in 2022.⁵¹ Concurrently, the cases adjudicated by the courts increased from 9,622 to 28,850, and the number of pending trials rose from 170,271 to 239,188 during the same period. These statistics are important as the volume of pending trials in the system increases the likelihood of repeated summons. When case backlogs exist, hearings are often adjourned to different dates, advocates are less ready for multiple examinations, and the Special Court's ability to complete a child's testimony in a single uninterrupted sequence is further compromised. Thus, the table below is not to be interpreted as mere background statistics, but as a procedural map illustrating the reasons for the persistent

⁴⁹ Fiona Jack, Rachel Zajac, "The Effect of Age and Reminders on Witnesses' Responses to Cross-Examination Style Questioning", 3 *Journal of Applied Research in Memory and Cognition* 1 (2014).

⁵⁰ Lok Sabha Secretariat, "Unstarred Question No. 1104" Annexure IV (December 8, 2023).⁵³

Supra note 1.

⁵¹ Supra note 52 at 284.

child witness issues.⁵²

Year	Cases registered	Cases charge sheeted	Cases disposed by courts	Cases convicted	Cases pending trial at year end
2020	47,221	44,709	9,622	3,686	170,271
2021	53,874	51,129	16,477	5,156	205,034
2022	63,414	59,766	28,850	8,909	239,188

Table 1: National statistics for the years 2020 to 2022 on new cases registered, cases disposed of, convictions, and pending trials under the Protection of Children from Sexual Offences Act.⁵³

The table indicates improvements in disposals, but pending trials increased significantly, indicating that output did not match the volume of incoming cases. In the child witness context, the gap means more overcrowded dockets, more adjourned hearings, and a higher likelihood that testimony will be given on separate days rather than be completed in a sequenced, controlled manner.⁵⁴

The state-level pendency illustrates that the problem is geographically inequitable and, thus, requires specific institutional responses. Materials submitted to Parliament in December 2023, state that pendency of exclusive cases under the Protection of Children from Sexual Offences Act, 2012, increased in the country from 122,617 in March 2022 to 131,886 in March 2023.⁵⁸ This official response also included state-wise, cumulative disposal, and pendency figures for exclusive courts. Several jurisdictions, such as Uttar Pradesh, Bihar, Madhya Pradesh, Andhra Pradesh, and Odisha, demonstrated excessive pending loads. The burden on a specific court significantly impacts the ability to honour the statutory commitment that a child should not be called to testify repeatedly. Therefore, the extent to which process-sensitive adjudication is

⁵² Brief of POCSO Tracking Portal, *available at*: <https://ncpcr.gov.in/baalswaraj/login?c=POCSO> (last visited on April 5, 2026).

⁵³ *Supra* note 52 at 154.

⁵⁴ Rajya Sabha, "Unstarred Question No. 2030" Annexures I and II (Department of Justice, December 12, 2024).

⁵⁸ The Protection of Children from Sexual Offences Act, 2012 (32 of 2012), s. 33.

realistic is determined by the burden on a court. When dockets are so overloaded that the court cannot allocate time for continuous, well-managed hearings, the legal protection for the child becomes a mere formality. The following table presents selected high-pendency states in a format that can be represented as bar charts, pie charts, or comparison graphs.

State	Cumulative cases disposed up to March 2023	Cases pending as of March 2023
Uttar Pradesh	20,329	48,630
Bihar	6,710	15,733
Madhya Pradesh	14,940	8,922
Andhra Pradesh	2,389	8,389
Odisha	5,154	7,991
Rajasthan	6,670	5,575
Gujarat	5,947	5,429
Tamil Nadu	4,984	5,057
All India total	100,248	131,886

Table 2: Disposals and Pendency Status of Exclusive Protection of Children from Sexual Offences Act

Cases by State, March 2023.⁵⁵

The table demonstrates that backlog is not an isolated phenomenon with respect to a particular

⁵⁵ 59 Supra note 2.

jurisdiction; instead, it points to a systemic issue that multiple large states have, making it extremely challenging for child-sensitive scheduling without dedicated judicial time, trained personnel, and better management of adjournments by the judiciary.

The latest available official data on the capacity of courts also supports this. An answer in the Rajya Sabha dated 12 December 2024, stated that 750 Fast Track Special Courts, including 408 exclusive courts of the Protection of Children from Sexual Offences Act, were operational in 30 states and union territories, and more than 287,000 cases have been disposed of since the starting point, of which 203,786 were rape and Protection of Children from Sexual Offences Act cases, which were pending in those courts. The point, however, is not that Fast Track Special Courts have not succeeded. On the contrary, they have been successful in terms of the number of cases disposed of. The challenge is that the gains from the disposal still exist alongside the very high pendency. Under these circumstances, the summoning of witnesses is likely to be repetitive, and unless courts put in place measures to promote contiguous evidence and consistent recall, audio-visual measures where they are deemed appropriate, and early protective measures for child witnesses, the data substantiates the doctrinal assertion of this article that process-sensitive adjudication is an ideal that needs to be realized.

1.6 CONCLUSION

This conclusion synthesizes the doctrinal, statutory, and empirical strands of the discussion and argues that Indian law must now shift from the general aspiration of child witness protection to a definitive rule of process discipline pertaining to the scheduling, questioning, recalling of child witnesses, and courtroom design. The most reasonable interpretation of the existing law is that a child witness is not merely a person whom the judge must allow to speak, but rather a legal subject whose testimony must be elicited through a process that is dignified and avoids needless injury. This is the position to be taken based on s. 33 of the Protection of Children from Sexual Offences Act 2012, the competency jurisprudence as restated in *P. Ramesh v.*

*State Rep. by Inspector of Police*⁵⁶, the procedural directions that accompany *Sakshi v. Union of India*⁵⁷ and *Atma Ram v. State of Rajasthan*⁵⁸, and the more recent case of *Madhab Chandra Pradhan v. State of Odisha*⁶³, which warns against mechanical recall. These cases do not create

⁵⁶ Supra note 21.

⁵⁷ Supra note 16.

⁵⁸ Supra note 17 at 194. ⁶³
Supra note 13 at 104.

a complete bar to further examination and should not be read in that manner. However, they do make it clear that repetition requires justification, and that justification must be weighed against the statute's protective purpose rather than the typical judicial economy. A child-sensitive criminal process presupposes that evidence should be taken as early and as fully as possible without the witness having to face the court repeatedly.⁵⁹

The most compelling form of operationalising this conclusion is to design a methodology that incorporates a structured test for each iteration, or for each situation that is likely to entail recurrent calling. To begin with, a court should ask whether a particular step, as proposed, is important to that just result or decision, as opposed to being beneficial to one party. Secondly, a court is likely to consider whether that same goal can be achieved without unnecessary injury through a combination of better case preparation, controlled questioning by the court, scheduling, audio and video arrangements, and so on, where permitted by the law. If an appearance is to be required, the court should cast the net narrowly on the reasons, define the scope of questioning, provide breaks, guard against harassment, and complete the task as soon as possible on the nearest date that is contiguous. If this model is adopted, the design of Indian statute law, which is protective of children and adjudication, along with the witness protection design endorsed by other statutory mechanisms, the Mahender Chawla case, the design of process concerns in the case of the alarming rise to the number of reportable incidences of child rape, and the design of substantive child rape law, will improve the quality of evidence by addressing, in a positive way, the procedural inequities that govern the outcome of a case. Process-sensitive adjudication, in that sense, it is neither a soft option nor a departure from fairness. In an equally appropriate sense, it is the defensible and legally justifiable way to balance the competing interests of the Indian criminal justice system in relation to child protection, dignity, and the defendant's rights.⁶⁰

1.7 SUGGESTIONS

Given the concerns raised in this study, child witness adjudication would become significantly

⁵⁹ Gail S. Goodman, Bette L. Bottoms, Child Victims, *Child Witnesses: Understanding and Improving Testimony* 164 (Guilford Press, New York, 1st edn., 1993).

⁶⁰ Bette L. Bottoms, Cynthia J. Najdowski, et.al., *Children as Victims, Witnesses, and Offenders: Psychological Science and the Law* 209 (The Guilford Press, New York, 1st edn., 2009).

clearer and more humane if the following measures were to be adopted.⁶¹

1. Adopt a one-block testimony rule for child witnesses. Trial courts in POCSO cases should generally allocate a fully contiguous time slot for examination-in-chief and cross examination on the same or next day. Any exception should be justified in writing with genuine impossibility, and not simply routine listing constraints.
2. Mandate recall requests be reasoned based on necessity. Any application for recall in the case of child witnesses must be justified with the specific unanswered question, why the question is critical to the case, and why this question could not have been addressed earlier. Courts should dismiss requests for “further cross-examination” that are vague and are merely seeking a new tactical opportunity.
3. Implement a pre-testimony preparedness hearing. Prior to the child entering the witness box, the court should ascertain that the prosecution, defence counsel, interpreter, support person, and recording arrangements are ready to ensure that the evidence is uninterrupted. This should reduce unproductive adjournments resulting from poor substantive preparedness.
4. Increase use of testimony via video-link or with a screen. Courts should use video-links or shielded testimony (where legally permissible) more often. This is particularly for testimony from a child who would otherwise face repeated hardship in travel or direct exposure to the courtroom. These arrangements maintain cross-examination and avoid confrontation, thereby reducing stress, and delay.
5. Standardise questioning instructions from judges. Special Courts should set a standard prior to cross-examination. Initial instructions should be: no repetition, no intimidation, no character attacks, and no unnecessary language. Having a brief rule-setting script will help with the enforcement of the provisions of section 33 in a timely manner.
6. Instigate a register within Special Courts for tracking child witnesses. This register will note the date of the initial testimony, how many appearances they have made, what the reasoning for deferral was, and if a recall was requested or not. This will allow Higher

⁶¹ Ranjana Ferrao, "Special Courts for Children; Lessons Learnt From India", 15 *International Journal for Court Administration* 7 (2024).

Courts to recognize where there is a pattern of repeated summoning due to administrative practices and not because the case is complex.

7. Tie adjournment control to responsibility of counsel. If the defence or prosecution is seeking multiple postponements after the child has already given evidence, the court should or record this in the case file and, in cases of serious concern, refer the case for administrative review. This would counter what has been observed in recall litigation, where especially in adjournment litigation, the used options were not used.
8. Improved facilities for taking testimony from vulnerable witnesses in the most backlogheavy states. Those states with particularly poor performance on the POCSO backlog should construct dedicated deposition rooms, outside entry points, and properly trained ancillary staff, before slapping a court label on existing staff or adding one. This should be targeted to jurisdictions where the excessive backlog is likely to create a cycle of repeated appearances.
9. Integrate the efforts to protect witnesses from the first hearing. Judges need to aim to protect the child from anonymity-related issues, along with protected movement, livelink testimony, or with a trusted person. Protective measures need to be incorporated as evidence is about to begin, so as to avoid leaving other harm creating procedural damage before the essential protective measures are introduced.
10. Allocate exclusive POCSO time according to the pendency data, not just extra labels. Where exclusive courts exist but the backlog remains high, High Courts must reserve protected weekly blocks for child testimonies and track completion rates. Scheduling reform linked to measurable outcomes is likely to achieve more than formal designation.

BIBLIOGRAPHY

PRIMARY SOURCES

1. Statutes

- The Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023).
- The Bharatiya Sakshya Adhiniyam, 2023 (47 of 2023).
- The Protection of Children from Sexual Offences Act, 2012 (32 of 2012).

SECONDARY SOURCES

2. Books

- Bottoms, B. L.; Najdowski, C. J., et al., *Children as Victims, Witnesses, and Offenders: Psychological Science and the Law* (The Guilford Press, New York, 1st edn., 2009).
- Dent, H.; Flin, R., *Children as Witnesses* (Wiley, Chichester, 1st edn., 1992).
- Goodman, G. S.; Bottoms, B. L., *Child Victims, Child Witnesses: Understanding and Improving Testimony* (Guilford Press, New York, 1st edn., 1993).
- Myers, J. E. B.; Perry, N. W., *Child Witness Law and Practice* (Wiley Law Publications, New York, 1st edn., 1987).
- Narayana, P. S., *Commentary on the Protection of Children from Sexual Offences Act, 2012 and Rules* (LexisNexis, New Delhi, 2nd edn., 2017).
- Perry, N. W.; Wrightsman, L. S., *The Child Witness: Legal Issues and Dilemmas* (SAGE Publications, Newbury Park, 1st edn., 1991).
- Smith, K.; Tilney, S., *Vulnerable Adult and Child Witnesses* (Oxford University Press, Oxford, 1st edn., 2007).
- Swetapadma, S.; Chatteraj, P., *Sexual Offences Against Children in India:*

Understanding the Criminal Justice Responses (Routledge, London, 1st edn., 2024).

3. Articles

- Ferrao, R., "Special Courts for Children; Lessons Learnt From India", 15 *International Journal for Court Administration* 7 (2024).
- Fivush, R.; Schwarzmüller, A., "Say It Once Again: Effects of Repeated Questions on Children's Event Recall", 8 *Journal of Traumatic Stress* 555 (1995).
- Handa, R. K.; Goswami, S., "The Protection of Children from Sexual Offences Act (POCSO), 2012: The Precincts of the Law and Judicial Expositions", 7 *Journal of Victimology and Victim Justice* 191 (2024).
- Jack, F.; Zajac, R., "The Effect of Age and Reminders on Witnesses' Responses to Cross-Examination-Style Questioning", 3 *Journal of Applied Research in Memory and Cognition* 1 (2014).
- Kumar, B.; Prasad, I., et al., "Child Sexual Abuse Laws in India; Failure of Implementation - a Case Report", 90 *Medico-Legal Journal* 234 (2022).
- Manohar, H.; Sharma, E., et al., "Preparation of Children for Deposition in the Court in POCSO Cases: Insights from Children's Perspectives", 19 *Journal of Indian Association for Child and Adolescent Mental Health* 313 (2023).

4. Reports

- Lok Sabha Secretariat, "Unstarred Question No. 1104" Annexure IV (December 8, 2023).
- Miss "A v State of Uttar Pradesh and Another, Criminal Appeal No. 659 of 2020 (Supreme Court of India, October 8, 2020).
- National Crime Records Bureau, "Crime in India 2022: Statistics, Volume I" ch. 3, tbl. 3A.4 (2022).
- Rajya Sabha, "Unstarred Question No. 2030" Annexures I and II (Department of

Justice, December 12, 2024).

5. Websites

- A Decade of POCSO: Developments, Challenges and Insights from Judicial Data, *available at:* <https://vidhilegalpolicy.in/research/a-decade-of-pocso-developmentschallenges-and-insights-from-judicial-data/> (last visited on April 7, 2026).
- Brief of POCSO Tracking Portal, *available at:* <https://ncpcr.gov.in/baalswaraj/login?c=POCSO> (last visited on April 5, 2026).
- Child Protection, *available at:* <https://www.unicef.org/india/what-we-do/childprotection> (last visited on April 8, 2026).
- Child Sexual Abuse & Harassment in India | POSCO Act | Case Study, *available at:* <https://childlineindia.org/a/issues/sexual-abuse> (last visited on April 9, 2026).
- Law Commission Submits Report on Age of Consent under POCSO Act, *available at:* <https://prsindia.org/policy/monthly-policy-review/september-2023> (last visited on April 6, 2026).