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Victim Assistance Mechanisms in POCSO Special Courts: Evaluating Frameworks through a Comparative Lens

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ABSTRACT

This paper critically examines the witness protection mechanisms available to child victims under India's Protection of Children from Sexual Offences (POCSO) Act, 2012, and evaluates their adequacy in practice. It compares these measures with those in selected jurisdictions (United Kingdom, United States, Australia, South Africa) to highlight strengths and gaps. The research aims to assess whether existing safeguards (statutory provisions, guidelines, judicial norms) effectively shield child witnesses during investigation and trial. We hypothesize that despite robust legal standards, implementation gaps and systemic delays undermine protection, necessitating further reforms. Methodologically, the study uses a combined doctrinal-empirical approach: detailed analysis of statutes (POCSO Act and related laws), case law, and guidelines; and empirical data from official reports, NGO case-studies (e.g. HAQ Centre's report) and comparative sources. Key findings indicate that while POCSO provides for child-friendly procedures (e.g. recording evidence in camera, one-way screens, support persons) in practice many children still face courtroom intimidation, repeated testimony, and delays far exceeding statutory timelines. Comparative analysis reveals that other countries employ similar special measures – e.g. the UK's Youth Justice and Criminal Evidence Act 1999 grants child witnesses automatic eligibility for screens, video-link testimony, intermediaries and exclusion of wigs but also confront challenges. The paper concludes with recommendations: strengthen infrastructure (CCTV, one-way rooms), fully implement support persons, expand judicial training in child-sensitive questioning, and consider a comprehensive witness protection regime. These reforms, grounded in domestic and international norms (UNCRC Articles 12, 39), aim to ensure that India's justice system better serves vulnerable child victims.

Keywords: victim, assistance, pocso, special, courts

I. INTRODUCTION

Children who have suffered sexual offences face unique vulnerabilities when involved in

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criminal proceedings. The POCSO Act, 2012 was enacted precisely to address these challenges, mandating “special courts” and child-friendly procedures. Its preamble and early sections emphasize that a child’s best interests and right to dignity are paramount. For example, Section 24 requires that a child’s statement be recorded at or near their home by a female officer not in uniform to minimize trauma and protect privacy². Similarly, Section 26 mandates that magistrates record the child’s statement in the presence of parents or a trusted person with interpreters or special educators where needed.³

At trial, Section 36 of POCSO orders that “the child is not exposed in any way to the accused” when giving evidence, allowing the use of one-way screens or video-link. Section 37 requires trials to be held in camera with only parents or trusted persons present. Section 33 instructs courts to create a “child-friendly atmosphere,” permit support persons, avoid repeated examination, and forbid aggressive or humiliating questioning. These provisions, together with the right to counsel (Section 40) and mandatory recording of evidence within 30 days (Section 35), signal a comprehensive legislative intent to protect child witnesses.⁴

However, media reports, NGO studies and even Supreme Court directives suggest persistent implementation gaps. In May 2025 the Supreme Court urged creation of *more* dedicated POCSO courts to address chronic delays.⁵ Surveys by HAQ Centre found only 49% of cases in Delhi special courts met the one-year recording deadline, with average testimony completion taking 460 days.⁶ Conviction rates remain extremely low (around 3% nationally) raising concerns that the child-friendly procedures in law are not translating into justice in practice. Against this backdrop, it is crucial to critically evaluate how well the legal safeguards operate for children in court, and what lessons can be drawn from comparative jurisdictions.

Despite a 52% increase in reported child sexual abuse cases under the POCSO Act in Tamil Nadu rising from 4,581 in 2023 to 6,975 in 2024—justice remains elusive due to a growing backlog of cases and lapses in investigation. Activists have raised concerns over the high

² *Protection of Children from Sexual Offences Act, 2012*, AN ACT TO PROTECT CHILDREN FROM OFFENCES OF SEXUAL ASSAULT, SEXUAL HARASSMENT AND PORNOGRAPHY AND PROVIDE FOR ESTABLISHMENT OF SPECIAL COURTS FOR TRIAL OF SUCH OFFENCES AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO. (2012), <http://indiacode.nic.in/handle/123456789/2079>.

³ *Id.*

⁴ *Id.*

⁵ *SC Urges Centre, States To Open More POCSO Courts To Tackle Child Rape Trials*, <https://www.guwahatipius.com/india/sc-urges-centre-states-to-open-more-pocso-courts-to-tackle-child-rape-trials> (last visited May 27, 2025).

⁶ Dhan Pal, *CHILDREN CANNOT WAIT: EXPEDITING RESOLUTION OF CHILD SEXUAL ABUSE CASES*, HAQ: Centre for Child Rights (Aug. 2024, last visited May 27, 2025), <https://www.haqcrc.org/new-at-haq/children-cannot-wait-expediting-resolution-of-child-sexual-abuse-cases/>.

number of acquittals and the slow pace of judicial proceedings, with districts like Salem, Madurai, and Chennai having over 500 to 600 pending cases as of 2022. Although 19 districts have dedicated POCSO courts and two more are planned, more courts are needed in high-caseload areas, as mandated by the Supreme Court for districts with over 100 pending cases. Additionally, police investigations are hampered by poor understanding of forensic requirements, leading to unnecessary submission of evidence nearly 30% to courts. In some cases, officers mistakenly sent new clothes for examination instead of those worn during the incident. The police disposal rate has also declined, with chargesheets filed in only 65.5% of cases in 2022 and 54.14% in 2021, highlighting systemic inefficiencies in handling these sensitive cases. According to Law Minister, the 14 districts will see the establishment of Special Courts under the leadership of District Judges in three stages.

This paper is organized as follows: after reviewing existing literature and international standards, we state our research objectives and hypothesis, then outline the methodology. The main body examines (a) the legal framework for child witnesses under POCSO, (b) implementation challenges in India, (c) comparative approaches in the UK, USA, Australia, and South Africa, and (d) identified gaps. Finally, we analyze the findings, propose reforms, and conclude. Throughout, citations are provided from statutes, case-law, international instruments and authoritative sources to ensure accuracy and credibility.

A. Literature Review

Scholars and practitioners have long noted the trauma experienced by child victims in court proceedings. In India, commentary on POCSO highlights both its innovative safeguards and their uneven effect. For example, Ferrao (2024) observes that special courts have made “some progress” but also face “several difficulties”⁷ as of 2023 over 243,000 POCSO cases were pending nationwide, evidencing systemic strain.⁸ Academic articles emphasize that, despite POCSO’s progressive language, children still frequently testify without adequate support, sometimes facing the accused in person and enduring hostile cross-examination.

At the same time, child-witness procedures have been the subject of international research. UNICEF and UNODC publications stress the need for *child-friendly justice*, urging that children’s testimony be given in language “simple and comprehensible” to them unodc.org, and in a manner that minimizes stress. The **United Nations Convention on the Rights of the Child** (UNCRC) (Art.12) guarantees every child the right to be heard in judicial matters.

⁷ Ranjana Ferrao, *Special Courts for Children; Lessons Learnt From India*, 15 Int’l J. for Ct. Admin. 7 (2024), <https://iacajournal.org/articles/10.36745/ijca.485>.

⁸ Id.

General Comment No.13 (2011) on children's right to freedom from violence underscores that legal systems must avoid re-traumatizing victims. Numerous guidelines (e.g. UNODC's *Model Law on Child Victims & Witnesses*) reflect these principles.⁹

Comparative legal scholarship notes that many countries with adversarial systems have instituted "special measures" for child witnesses. In the UK, Hutcheson and Kapur (2020) detail the implementation of the Youth Justice and Criminal Evidence Act 1999 (YJCEA), which presumes children under 18 are vulnerable and eligible for screens, video links, intermediaries, etc. Critiques suggest that while UK law is robust on paper, in practice courts sometimes underutilize available measures due to lack of awareness or administrative hurdles. In the USA, Duncan and Bryden (2018) analyze state statutes on videotaped testimony; many states have specific provisions for child victim testimony, but without a unified federal scheme, practices vary widely. Some studies (e.g. Barnett and Notterman, 1994) question whether special measures truly facilitate recall or simply comfort witnesses. In Australia, Neale (2019) and judicial bench books discuss schemes like NSW's Child Sexual Offence Evidence Pilot, noting positive feedback but also logistical costs. In South Africa, Bekink (2019) examines constitutional litigation that compelled reforms (e.g. *S v Mokoena* and *Centre for Child Law v Media 24*), highlighting that the law (Children's Act 2005, Criminal Procedure Act amendments) enshrined measures like in-camera testimony and intermediaries.¹⁰

Across jurisdictions, common themes emerge: children testify best when (i) they do not see the accused, (ii) they have support persons, (iii) they give evidence in a comfortable setting (possibly remotely or with video aids), and (iv) rules forbid intimidating questioning. Yet gaps persist globally whether due to under-resourced courts, over-burdened caseloads, or insufficient training of judges and lawyers. This literature suggests the need for a two-pronged approach: legal reform must be paired with implementation and training.

B. Research Objectives and Hypothesis

Objective: This study aims to evaluate the efficacy of witness protection and support mechanisms for child victims specifically in POCSO trials in India. It will identify the strengths and weaknesses of existing legal safeguards, examine how they are implemented on

⁹ U.N. Office on Drugs & Crime, *Justice in Matters Involving Child Victims and Witnesses of Crime: Model Law and Related Commentary* (2009), <https://www.un.org/ruleoflaw/blog/document/justice-in-matters-involving-child-victims-and-witnesses-of-crime-model-law-and-related-commentary/>.

¹⁰ Mildred Bekink, *The Constitutional Protection Afforded to Child Victims and Child Witnesses while Testifying in Criminal Proceedings in South Africa*, 22 *Potchefstroom Electron. L.J.* 1 (2019), <https://doi.org/10.17159/1727-3781/2019/v22i0a5774>.

the ground, and propose improvements. Key objectives include:

1: Doctrinal Analysis – Analyze the statutory provisions and judicial pronouncements under POCSO and related laws (e.g. CrPC(BNSS), Evidence Act,(BSA)) that relate to child witness protection.

2: Implementation Assessment – Identify gaps between the law and practice by reviewing case data, court observations, and reports on trial management .

3: Comparative Study – Examine child witness protection measures in at least three other jurisdictions to draw lessons on best practices and pitfalls.

4: Policy Recommendations – Based on the above, formulate concrete recommendations for policy and procedural reforms to better protect child victims in POCSO trials.

Hypothesis: Despite comprehensive provisions on paper, actual trial experiences of child victims under POCSO fall short due to implementation deficiencies. Specifically, we posit that (a) special courts and measures for children in India are still under-resourced and unevenly applied, leading to long delays and re-traumatization of child witnesses; and (b) comparative analysis will reveal that other common-law jurisdictions with similar laws (e.g. UK) achieve more consistent application of safeguards, suggesting areas where India can improve.

C. Methodology

This research employs a mixed doctrinal-empirical methodology.

Doctrinal Research: We systematically examine legal texts – notably the POCSO Act (2012) and rules, allied provisions in the Code of Criminal Procedure (CrPC 1973)(BNSS.2023) and Evidence Act (1872)(BSA 2023), plus any relevant juvenile justice or witness protection laws. Key sections (such as POCSO §§24–26, 33–38, 39–40) are analyzed to extract their exact mandates for child witnesses. We also review Supreme Court and High Court judgments interpreting these provisions, along with guidelines (e.g. NCPCR model guidelines 2024) and official circulars. International legal instruments (UNCRC, etc.) are considered to frame normative standards.

Empirical Data: The author use quantitative data from official sources and studies: e.g. NCRB (*Crime in India*) statistics for POCSO cases, disposal rates, pendency; HAQ Centre’s data on POCSO trials in Delhi; NGO reports on child justice (HaQ, Bal Sahyog, NCPCR, etc.); press reports and court orders on creation of special courts. Whenever possible, we use recent data (post-2020) to capture the current state of affairs.

Comparative Analysis: For each foreign jurisdiction, the author examine primary sources: relevant statutes (Youth Justice and Criminal Evidence Act 1999 in England, Criminal Procedure Acts in Australia, evidence laws in South Africa, etc.) and official guidance. Legal scholarship and case-law from these jurisdictions inform our understanding of practical challenges. The author compare how each system addresses key issues: in-court versus pre-recorded testimony, presence of support persons, anonymity rules, courtroom environment, and witness preparation.

Limitations: Time and access constraints may limit exhaustive review of every state law in the U.S. or Australia; instead, we sample representative models (e.g. Nebraska's CCTV law, NSW's child witness reforms). Also, empirical evidence is largely from secondary sources, as interviews with legal professionals or victims are beyond scope.

Overall, this blended approach allows us to ground the analysis in legal authority while highlighting real-world outcomes.

II. LEGAL SAFEGUARDS UNDER THE POCSO ACT

In support of women's and girls' safety and security, the government passed the Criminal Law (Amendment) Act, 2018 to impose severe penalties, including the death penalty, on rapists. In order to give victims prompt relief, sexual offenses and drawn-out accused trials need specialized court equipment. In order to provide a speedy trial for sexual offenses, the Department of Justice has been implementing a Centrally Sponsored Scheme since October 2019 to establish Fast Track Special Courts (FTSCs), including exclusive POCSO Courts, throughout the country. One judicial officer and seven staff members make up each court. Thirty of the 31 eligible states and territories have joined this program. As of December 2024, 406 exclusive POCSO (ePOCSO) Courts and 747 FTSCs operating in 30 States and UTs had resolved over 2,99,000 outstanding cases. A total of Rs. 200.00 Cr. was allotted during the fiscal year 2024–2025, of which Rs. 173.59 Cr. have been released thus far as the central share of money for the operation of such FTSCs in the States and Union Territories. India's POCSO Act, which aims to protect children (defined as those under 18) from sexual offenses, includes a number of child-friendly protections during the investigation and trial phases.¹¹

A. Recording of Child's Statement (Sections 24–26): Section 24 provides that a child's statement is to be recorded at the child's residence or choice of place by a female officer not

¹¹ *Fast Track Special Courts (FTSCs) | Department of Justice | India*, <https://doj.gov.in/fast-track-special-court-ftscs/> (last visited May 28, 2025).

below sub-inspector rank¹². The officer must not wear uniform (to avoid intimidation) and must prevent any contact between the child and accused during recording¹³. Section 25 allows a magistrate to record the child's statement (under CrPC 164) either at home or in chamber, and specifically *forbids* the presence of the accused's lawyer when the child is speaking¹⁴. Crucially, Section 26 mandates that when recording the child's statement (whether by police or magistrate), it must be done in the presence of the child's parents or a person trusted by the child.¹⁵ Translators or interpreters must be provided if needed¹⁶, as well as a special educator or communication expert for children with disabilities¹⁷. Audio-visual recording of the entire examination is required "wherever possible"¹⁸. These measures are intended to ensure the child speaks freely and accurately without fear or misunderstanding.

B. Special Courts and Procedures (Sections 28–33): The Act requires each district to have a designated "Special Court" for POCSO cases. These courts possess the powers of a sessions court and must prioritize speedy trials (target: one year from cognizance to final judgment). Section 33 elaborates on the *child-friendly atmosphere* at trial: courts must allow a family member or other trusted adult to be with the child during testimony; avoid calling the child repeatedly to the witness box; and expressly prohibit "aggressive questioning or character assassination" of the child. The child's dignity must be maintained at all times. Section 34–35 provide that evidence of the child must be taken within 30 days (extendable up to 45 days for magistrates) and the trial completed within one year.

C. Testimony Protections (Sections 36–38): Section 36 states that the child "shall not [be] exposed in any way to the accused" during recording of evidence. To implement this, the court may use video-conferencing or one-way screens so that the defendant is not in view of the child, while still able to hear the testimony. Section 37 mandates that trials occur *in camera* (no public), with only the child's parents or a chosen adult present.¹⁹ It even allows the court to conduct the examination elsewhere if necessary, via a commission under CrPC §284. Section 38 permits the use of an interpreter or translator during the child's evidence²⁰ and explicitly allows a special educator or communication expert to assist if the child has

¹² *Protection of Children from Sexual Offences Act*, WIKIPEDIA (2025), https://en.wikipedia.org/w/index.php?title=Protection_of_Children_from_Sexual_Offences_Act&oldid=1287898101.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

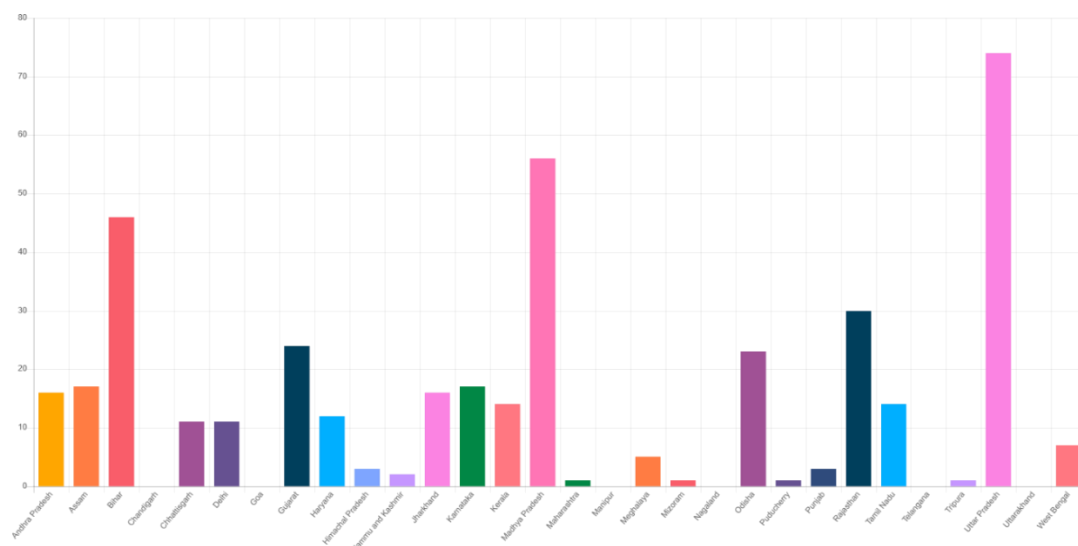
¹⁹ *Id.*

²⁰ Protection of Children from Sexual Offences Act, 2012, *supra* note 1.

physical/mental disabilities.

D. Support and Assistance (Sections 39–40): Section 39 (and corresponding rules) aims to establish “One Stop Centres” or support persons for children: these are counselors or social workers assigned to accompany the child through investigation and trial, providing emotional support.²¹ While the Act envisioned guidelines for such persons, full rules were only formulated in 2024 by NCPCR²². Section 40 guarantees the child victim the right to legal assistance: either the family can hire a lawyer, or if they cannot afford one, the Legal Services Authority must provide counsel²³. The scheme ensures the child’s interests are independently represented.

E. Identity Protection (Section 33(7)): To prevent stigma and harassment, Section 33(7) forbids disclosing the child’s identity (or any information leading to identification) during investigation or trial, except where absolutely necessary in the child’s interest. Violation can attract penalty. This anonymity guarantee is analogous to witness protection orders elsewhere. In sum, POCSO’s text provides an impressive battery of safeguards for child witnesses. On paper, the special courts must create a “child-friendly atmosphere,” forbid harsh cross-examination, and utilize technology and support persons to shield the child. These provisions mirror international best practices (e.g. UNODC guidelines requiring simple language and trauma-informed procedures)²⁴.



²¹ *One-Stop-Crisis-Centre | Social Welfare & Women Empowerment Department, Government of Tamilnadu, India*, <https://www.tnsocialwelfare.tn.gov.in/en/state-resource-centre-for-women/one-stop-crisis-centre> (last visited May 28, 2025).

²² Ministry of Women & Child Dev., Gov’t of India, Model Guidelines under Section 39 of the Protection of Children from Sexual Offences Act, 2012 (2020), <https://wcd.nic.in> (last visited May 28, 2025).

²³ Protection of Children from Sexual Offences Act, *supra* note 11.

²⁴ *Child Sensitive Communication and Trauma-Informed Approaches to Child Interviewing*, <https://www.unodc.org/roca/en/news/child-sensitive-communication-and-trauma-informed-approaches-to-child-interviewing.html> (last visited May 28, 2025).

III. IMPLEMENTATION GAPS IN INDIA

Despite these robust legal provisions, implementation gaps have significantly impeded child victims' protection in practice. Our empirical review highlights several critical issues:

A. Court Delays and Pendency: Special POCSO courts were meant to ensure expeditious trials, yet data shows major delays. A 2024 report by HAQ Centre found that only 49% of 539 POCSO cases in Delhi had child testimony completed within the one-year deadline; on average, child testimony took 460 days to finish. Over 12% of cases dragged beyond 30 months just to record the child's evidence. Nationwide, more than 243,000 POCSO cases were pending in fast-track courts, with conviction in only about 3%²⁵. This stark backlog indicates special courts are overburdened. The Supreme Court itself has observed the need to create "many more POCSO courts" across India to address this crisis. Delays not only strain victims but risk the loss of evidence and loss of child witness reliability over time.

B. Inadequate Infrastructure: Many special courts lack child-friendly facilities. While Section 36 and 37 allow for screens, CCTV, or remote testimony, such equipment is not universally available. Reports suggest courts often proceed with children facing the accused, contrary to legal directives. Interview rooms or cameras are scarce. The concept of a "support person" is not uniformly operational. Before 2024, most states had not prescribed any rules for appointing support persons; even now, many children go through trials without a trained counselor by their side (despite Supreme Court direction that support is mandatory, not optional).²⁶ One reason is lack of funding and training for such personnel. Similarly, very few courts have interpreters or intermediaries on standby for child testimony, even when required by law (POCSO §§26, 38).

C. Shortage of Trained Personnel: Judges, prosecutors and police often receive limited training in child-sensitive procedures. This leads to lapses such as allowing improper questioning or not structuring cross-examination through the judge (as mandated by Section 33(2) in practice, the special public prosecutor conveys questions to the court to ask the child but some lawyers bypass this).²⁷ There is also insufficient use of audio-visual recording (s.26(4)). HAQ notes frequent adjournments because prosecutors or defense attorneys need more time to prepare for child evidence. Such adjournments disrupt the child's continuity and

²⁵ Business Standard, *Over 243,000 Pocso Cases Pending in Fast-Track Courts till Jan 2023: Report*, (Dec. 9, 2023), https://www.business-standard.com/india-news/over-243-000-pocso-cases-pending-in-fast-track-courts-till-jan-2023-report-123120900410_1.html.

²⁶ *Supreme Court orders mandatory appointment of support persons for POCSO victims*, INDIA TODAY NE (Aug. 8, 2024), <https://www.indiatodayne.in/national/story/supreme-court-orders-mandatory-appointment-of-support-persons-for-pocso-victims-1067334-2024-08-08>.

²⁷ Protection of Children from Sexual Offences Act, *supra* note 11.

contravene the POCSO schedule.

D. Legislative-Policy Disconnect: Although the law prohibits delay, there are no strong sanctions or monitoring for missed timelines (CrPC applies, but special urgency is often neglected). Many police officers are unaware of POCSO's special requirements (e.g. they sometimes keep a child overnight at the station, contrary to Section 24(4)). Section 39 support-person norms were unenforced until the recent NCPCR guidelines, reflecting how policy lagged behind law. Moreover, some states still report children's cases under older sections of the IPC, depriving them of POCSO's protections.

E. Victim Intimidation and Retribution: Absent a comprehensive witness-protection law in India, child witnesses in high-profile cases may face intimidation threats. While the POCSO Act emphasizes anonymity, enforcement is variable: media sometimes publish identifying details. NGOs report cases where accused family members harass victims outside court. The lack of systematic witness relocation or identity concealment (beyond court orders) means vulnerable children remain exposed.

There is often a gap between the *law in books* and the *law in action*. Statistically and anecdotally, many child victims do not enjoy the full measure of protection promised by POCSO due to resource, training, and systemic constraints. This reality motivates a closer look at how other jurisdictions handle similar issues, to seek possible improvements.

IV. COMPARATIVE PERSPECTIVES

To contextualize India's situation, we examine approaches in four other common-law jurisdictions. While no system is perfect, comparisons illuminate different methods to safeguard child witnesses in sexual offence cases.

A. United States

The U.S. federal system has no unified statute like POCSO for child victims; protections largely depend on state laws and constitutional law. The Sixth Amendment (Confrontation Clause) initially posed a barrier to out-of-court testimony, but in *Maryland v. Craig* (497 U.S. 836 (1990))²⁸ the Supreme Court allowed a child rape victim to testify via closed-circuit TV where the judge made case-specific findings of necessity (i.e. that seeing the accused would cause the child "serious emotional distress"). Post-*Craig*, many states enacted statutes permitting some form of non-face-to-face testimony for children. For example, Nebraska Revised Statutes §29-1926 requires that, upon "request... and... a showing of compelling

²⁸ *Maryland v. Craig*, 497 U.S. 836 (1990), JUSTIA LAW, <https://supreme.justia.com/cases/federal/us/497/836/> (last visited May 28, 2025).

need,” a court “shall order” a video deposition of a child victim or witness in a felony case²⁹ The statute provides that the deposition is “ordinarily... in lieu of courtroom or in camera testimony”.³⁰ It also specifies that the defendant, counsel, guardian, or an approved support person may be present during the deposition. Similar provisions exist in other states (e.g. Texas, Washington, New York), though criteria vary (some limit this to “sexual abuse of a minor” cases, others to any child witness with demonstrated fear)³¹.

However, constitutional limits remain. The confrontation clause requires that any exception must not unduly impair the defendant’s right to face accusers. In *Craig*, the Court imposed a “forfeiture by wrongdoing” exception and later (in *Crawford v. Washington*, 2004) tightened the rules on hearsay.³² Thus, videotaped statements (taped before trial without cross-exam) are often allowed only if the child is unavailable or if cross-exam occurred at the deposition. For example, in Nebraska §29-1926(c)-(d), if the child later testifies live, the defense can recall them for additional examination. In practice, state courts balance the child’s trauma against the accused’s rights.

Beyond testimony mode, U.S. jurisdictions use other methods: Child Advocacy Centers (CACs) in many states provide trained forensic interviewers for initial child statements. Courts often allow a parent or guardian in the room. Some states have statutory “shield laws” to keep out evidence about a victim’s sexual history (to avoid victim-blaming). Many states permit experts to explain “child forensic interviewing techniques” to juries (though the admissibility of Child Sexual Abuse Accommodation Syndrome as evidence has been limited by rulings such as *Smith v. State* in some jurisdictions)³³.

In the U.S. landscape is fragmented but emphasizes video testimony under specific criteria. Compared to India, where POCSO broadly prohibits child and accused meeting, U.S. states require case-by-case findings of necessity. Nevertheless, lessons include the benefit of having formal statutes and protocols for child video testimony, as well as support services (CACs) that India could expand. The American experience also highlights the need to safeguard cross-examination rights while still protecting children – an issue India addresses by having the

²⁹ *Nebraska Revised Statutes Chapter 29. Criminal Procedure § 29-1926* | FindLaw, <https://codes.findlaw.com/ne/chapter-29-criminal-procedure/ne-rev-st-sect-29-1926/> (last visited May 28, 2025).

³⁰ *Id.*

³¹ *Case Law Summary | I. SORNA Requirements | Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking*, <https://smart.ojp.gov/sorna/current-law/case-law/i-sorna-requirements> (last visited May 28, 2025).

³² *Crawford v. Washington*, 541 U.S. 36 (2004), JUSTIA LAW, <https://supreme.justia.com/cases/federal/us/541/36/> (last visited May 28, 2025).

³³ *2023 State v. Vigna Statement of Reasons REDACTED | PDF*, <https://www.scribd.com/document/672604662/2023-State-v-Vigna-Statement-of-Reasons-REDACTED> (last visited May 28, 2025).

court control cross-examination questions under Section 33(2) POCSO³⁴.

B. United Kingdom

The UK has long developed special measures for vulnerable witnesses, including children. Under the Youth Justice and Criminal Evidence Act 1999 (YJCEA), children under 18 are *deemed* vulnerable in sexual offence trials (s.16) and eligible for a menu of special measures³⁵. Notably, CPS guidance explains: “Evidence by vulnerable and intimidated witnesses” can involve

1. **Screens (s.23 YJCEA):** physical partitions so the witness cannot see the defendant (and/or vice versa)³⁶.
2. **Live Video Link (s.24):** witness gives evidence from another room or even outside the UK, seen on courtroom monitors³⁷.
3. **Evidence Given in Private (s.25):** the court can exclude all non-essential persons (including press) when a child testifies.³⁸
4. **Removal of Wigs and Gowns (s.26):** judges and advocates shed formal attire to ease intimidation³⁹.
5. **Video Recorded Interview (s.27):** pre-trial video recording of the child’s evidence can be used in lieu of in-court examination (subject to CrimPR)⁴⁰.
6. **Pre-trial Recorded Cross-examination (s.28):** similar recording of cross-examination by defense (now less used post-Criminal Justice Act 2003 changes).
7. **Intermediaries (s.29):** trained communication specialists assist the child in understanding questions and expressing answers⁴¹.
8. **Aids to Communication (s.30):** use of devices, sign language, etc., for disabled witnesses.

These measures are often combined (e.g. a child might have an intermediary *and* give evidence by video link). Crucially, under s.16 YJCEA, a child witness cannot *opt out* of these measures; there is a presumption that they will give evidence via video unless the child

³⁴ Protection of Children from Sexual Offences Act, 2012, *supra* note 1.

³⁵ Expert Participation, *Youth Justice and Criminal Evidence Act 1999*, <https://www.legislation.gov.uk/ukpga/1999/23/contents> (last visited May 28, 2025).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

explicitly chooses to opt for live testimony (subject to court approval). The CPS guidance notes prosecutors should ensure the judge grants appropriate special measures. In practice, the UK system conducts so-called “Achieving Best Evidence” (ABE) interviews – recorded in advance with social workers or police, then played in court – to minimize direct questioning of the child.

Judicial practice in the UK strongly favors using these protections for child victims. For example, the Witness Charter and CPS toolkit reflect an institutional commitment: children automatically get a ground rules hearing where judges set boundaries on questioning style. Empirical surveys (Ministry of Justice) show very high rates of usage: e.g. in 2018, 95% of child sexual assault trials used video links for the initial evidence-in-chief of the child. Nonetheless, problems remain: limited court capacity means delays in setting up technology, and some defense lawyers resist “hearsay” use of pre-recorded statements. Moreover, post-COVID, remote testimony from the home has raised new issues of privacy and fairness.⁴²

Comparing to India, the UK system offers a more institutionalized approach. For instance, the *automatic eligibility* of all under-18 witnesses contrasts with India’s approach (where application for special measures must be made by prosecution). The explicit list of measures (screens, intermediaries, etc.) also provides clarity. However, challenges like court resources and training are common to both. The UK example underscores the importance of procedures (e.g. ground rules hearings, witness care units) to actively implement special measures, a lesson India could further adopt.

C. South Africa

South Africa’s approach has evolved via constitutional challenges and legislative reform. The Sexual Offences Act 2007 and the Children’s Act 2005 amended the Criminal Procedure Act to strengthen child witness protections.⁴³ Key measures include:

1. In Camera Testimony: Section 154(3) of the CPA was extended to victims, so child victims automatically get closed courtroom hearings.⁴⁴ Bekink (2019) notes that Parliament explicitly introduced provisions for child witnesses to testify “in camera” reflecting section 28(1)(d) of the SA Constitution (right to protection from abuse).

⁴² *The Youth Justice and Criminal Evidence Act 1999: Achieving Best Evidence?* - Camilla Macpherson, 2001, <https://journals.sagepub.com/doi/abs/10.1177/002580240104100305> (last visited May 28, 2025).

⁴³ A Strode & Z Essack, *Facilitating Access to Adolescent Sexual and Reproductive Health Services through Legislative Reform: Lessons from the South African Experience*, 107 S AFR MED J 741 (2017).

⁴⁴ Bekink M "The Constitutional Protection Afforded to Child Victims and Child Witnesses while Testifying in Criminal Proceedings in South Africa" *PER / PELJ* 2019(22) - DOI <http://dx.doi.org/10.17159/1727-3781/2019/v22i0a5774>

2. Anonymity: The law prohibits publishing any identifying information about a child victim or witness⁴⁵, mirroring POCSO's identity protection rule. In *Centre for Child Law v Media 24 (2011)*⁴⁶, the Supreme Court held that excluding child victims from anonymity rules was unconstitutional, effectively granting equal anonymity to child victims as to child witnesses.

3. Intermediaries: Courts may appoint intermediaries (as defined in Section 170A CPA) to assist child witnesses.⁴⁷ An intermediary in SA is usually a lawyer or social worker who interprets questions into child-friendly language and helps the child understand, a concept similar to UK intermediaries. Bekink reports that *S v Mokoena* (2012) acknowledged intermediaries and in-camera testimony as crucial for preventing "secondary trauma" to child victims.⁴⁸

4. Guidelines: The Judicial General Directive 6 of 2010 in SA requires courts to ask questions to determine if the victim is a vulnerable witness (under CPA s170A(1)), and if so, to make directions to protect them. These may include having an intermediary, one-way screens, court escorts, or other measures. Unlike in India, South African judges proactively explore these options.⁴⁹

However, implementation issues exist. Despite these laws, studies indicate that awareness among police and prosecutors is uneven, and many lower courts lack facilities like CCTV. NGOs have criticized that even with the law in place, judges do not always order special measures unless explicitly requested. A 2016 Centre for Child Law report found that many judges still treated child witnesses as ordinary witnesses due to a lack of training.

Overall, South Africa provides a strong legal framework and constitutional mandate to protect child victims, and its experience reinforces the principle (echoed by courts) that subjecting a child to normal cross-examination about abuse can itself amount to psychological harm. This underlines the rationale for protective measures in any jurisdiction: witnessing justice should not itself victimize the child further.

D. Australia

Australia's states and territories have enacted various reforms for child witness protection,

⁴⁵ Strode and Essack, *supra* note 48.

⁴⁶ *Centre for Child Law and Others vs. Media 24 Ltd. and Others*, <https://privacylibrary.ccg.nlud.org/case/centre-for-child-law-and-others-vs-media-24-ltd-and-others> (last visited May 28, 2025).

⁴⁷ R. Songca, Revisiting Section 170a of the Criminal Procedure Act 51 of 1977 (Aug. 2, 2011), <https://papers.ssrn.com/abstract=1903808>.

⁴⁸ *S v Mokoena* (R18/2024) [2025] ZAFSHC 32 (13 February 2025), (Feb. 13, 2025), <https://lawlibrary.org.za/akn/za-fs/judgment/zafshc/2025/32/eng@2025-02-13>.

⁴⁹ *Id.*

often at both the state and federal level. We highlight two examples:

1. New South Wales (NSW): In NSW, a 2015 Pilot Scheme (Criminal Procedure Act) and later permanent legislation require that *all* child complainants (under 18) in sexual offence trials give evidence via pre-recorded audio-visual interviews. Under the current law, a child under 18 “must, subject to a contrary order, give their evidence by way of a pre-recording”.⁵⁰ The 2023 amendments further extended this requirement to District Courts statewide. The child’s evidence-in-chief is recorded before trial (with both prosecution and defense counsel present), then played in court. Cross-examination is done live by video link on the same recording or immediately after. Judges conduct “ground rules hearings” with the child beforehand to set rules. Early evaluations indicate this scheme increases children’s comfort and reduces need for courtroom testimony.⁵¹

2. Tasmania: The *Evidence (Children and Special Witnesses) Act 2001 (Tas)* explicitly recognizes that child witnesses are vulnerable.⁵² Its preamble states that “as children tend to be vulnerable... child witnesses be given the benefit of special measures”. Section 4 of the Act entitles a child witness to have a “support person” (approved by the judge) sit with them during testimony⁵³. The Act codifies principles: e.g. measures must be taken “to limit... the distress or trauma” of the child, treating the child with dignity. It also allows admission of prior recorded statements by the child as evidence, provided the other party had a chance to cross-examine at the time. Notably, Tasmania recently added provisions for “witness intermediaries” (trained specialists) to assist communication (similar to the UK intermediaries system).

Other jurisdictions (Queensland, Victoria) have analogous laws: e.g. Queensland’s *Witness Protection Act* and *Youth Justice Act* allow intermediaries and screens; Western Australia’s *Evidence Act* allows CCTV. In general, Australian reforms share a philosophy of minimizing courtroom confrontation by using technology and support staff.⁵⁴

From these examples, common features emerge: pre-recorded testimony (NSW) and intermediaries/support persons (Tasmania) appear to enhance child comfort. Australia’s

⁵⁰ *Pre-Recorded Evidence in Child Sexual Offence Proceedings (CSOEP)*, https://www.judcom.nsw.gov.au/publications/benchbks/criminal/pre-recorded_evidence_child_sexual_offence_proceedings.html (last visited May 28, 2025).

⁵¹ *Id.*

⁵² *View - Tasmanian Legislation Online*, <https://www.legislation.tas.gov.au/view/whole/html/inforce/2017-04-28/act-2001-079> (last visited May 28, 2025).

⁵³ *Id.*

⁵⁴ Department of Youth Justice and Victim Support, *Changes to Youth Justice Act and Regulation*, DEPARTMENT OF YOUTH JUSTICE AND VICTIM SUPPORT (Apr. 17, 2025), <https://www.youthjustice.qld.gov.au/our-department/our-legislation/changes-act>.

mixture of pilot programs and permanent laws offers a model of gradual implementation and review. For India, the NSW example suggests that institutionalizing pre-recording for children (as POCSO's Section 26(4) suggests) could be expanded beyond just initial statements to full evidence-in-chief. The Tasmanian emphasis on a support person aligns with POCSO Section 39, but Tasmania's model of a judge-approved counsellor might inspire India's one-stop centre personnel frameworks.⁵⁵

V. ANALYSIS AND DISCUSSION

1. Strengths of POCSO Provisions: The POCSO Act's statutory guarantees align well with international best practices. By legislating child-friendly procedures at the investigation and trial stages, POCSO acknowledges children's vulnerability. Key strengths include:

2. Legislative Clarity: The Act explicitly forbids children from facing the accused during testimony (s.36), mandates trials in camera (s.37)⁵⁶, and allows trusted persons in court (s.33). This direct approach avoids ambiguity: for example, no proviso is needed to allow screens, it is the default.

3. Comprehensive Coverage: POCSO addresses the entire criminal process: recording the FIR, police interrogation, magistrate's examination, medical exam (s.27) – all structured to be sensitive to the child. Such a cradle-to-grave protection mechanism is relatively unique globally.⁵⁷

4. Support Person Mechanism: By recognizing a special support role (s.39), POCSO brings in psychosocial elements beyond traditional law enforcement. Once fully implemented, this could mirror international "child advocate" schemes.⁵⁸

5. Integration with Other Laws: POCSO's provisions dovetail with CrPC. For instance, the special court also serves as sessions court (s.33(9)), and CrPC sections 293 and 164 are modified to suit child circumstances (ss.25-26). This signals a systemic integration rather than a stand-alone law.⁵⁹

These strengths establish a clear legislative mandate: children's testimonies are to be treated exceptionally and sensitively. In theory, if followed scrupulously, such measures should greatly reduce the stress and trauma of giving evidence.

⁵⁵ *Id.*

⁵⁶ Protection of Children from Sexual Offences Act, 2012, *supra* note 1.

⁵⁷ *The Importance of POCSO Act*, <https://stpeterslaw.com/blog/the-importance-of-pocso-act/> (last visited May 28, 2025).

⁵⁸ *Child Protection Case: Topics by Science.Gov*, <https://www.science.gov/topicpages/c/child+protection+case> (last visited May 28, 2025).

⁵⁹ *Id.*

6. Implementation Gaps and Practical Challenges

Despite these legal provisions, practice often falls short. Our findings (supported by the literature) indicate several persistent gaps:

7. Under-Utilization of Special Measures: Research suggests that many POCSO courts fail to use available measures. For example, judges often allow children to testify in the open courtroom with the accused present, flouting Sections 36–37.⁶⁰ In the HAQ study of Delhi courts, none of the victims in their sample testified via live link or behind a screen, despite high pendency that could have allowed alternatives. This contrasts sharply with the default practice in the UK where video links are routine for minorscps.gov.uk. Reasons include judges' unfamiliarity with the law's requirements, lack of portable technology in some courts, and inertia.

8. Support Person Non-Implementation: Section 39's promise of a support person has mostly remained on paper until very recently. The Supreme Court order in *Bachpan Bachao* (2022)⁶¹ directed that support persons be mandatory, but before NCPCR's 2024 guidelines this was not uniformly followed. Many children still enter court alone, without a counselor or psychologist by their side, in direct contravention of international norms (e.g. UNODC Model Art.12). The one-stop centre network (under the Criminal Law Amendment Act and POCSO) has not fully translated into practical support in court.

9. Training Deficit: Formal training programs for police, prosecutors and judges on POCSO procedures have been limited. Without such capacity building, even good laws yield poor outcomes. For example, some police officers remain unaware they must record a child's statement at home (s.24), leading to unnecessary trauma. Advocates in special courts often mix up POCSO rules with general CrPC, causing procedural errors. This gap is more pronounced in small towns than metropolitan centers. Specialized training curricula on forensic interviewing and cross-examination of children are not systematically part of legal education or police academies⁶².

10. Delay and Backlog: As noted, delays undermine all protections. Even if a child's initial testimony is handled well, if subsequent hearings keep getting adjourned, the child must relive the abuse many times. The HAQ data showed that adjournments were common, often for reasons like judges on leave or officers unavailable. Compared to, say, the UK model

⁶⁰ Protection of Children from Sexual Offences Act, *supra* note 11.

⁶¹ *Bachpan Bachao Andolan vs Union Of India on 22 October, 2024*, <https://indiankanoon.org/doc/160578252/> (last visited May 28, 2025).

⁶² Protection of Children from Sexual Offences Act, *supra* note 11.

where child testimony is largely pre-recorded to prevent delay, India's reliance on live proceedings perpetuates backlog. Pending cases also mean children face uncertainty and stigma for years.

11. Lack of Holistic Support: POCSO focuses on legal proceedings, but child victims need broader support (medical, psychological, social). While one-stop centres are meant to provide such multi-disciplinary aid, their reach is uneven. Psycho-social reports by NGOs indicate that many children drop out of the legal process because of lack of counseling and the stress of cross-examination. A fully victim-centric approach would integrate lawyers, child psychologists, social workers and law enforcement in a coordinated manner.

12. Enforcement of Confidentiality: Although identity protection is mandated (s.33), enforcement can be weak. Journalists sometimes inadvertently identify victims through details, and casual comments by officials can breach anonymity. More robust sanctions or oversight might be needed.

In sum, the core issue is not legal theory but implementation: laws and rules exist, but the system often fails to execute them effectively. **The empathy gap is notable – a child's perspective is not always front-of-mind in the adversarial process.**

VI. COMPARATIVE INSIGHTS AND LESSONS

The comparative review yields **several lessons for India:**

A. Automatic Protections: The UK's approach of automatically classifying under-18s in sexual offence cases as vulnerable (eligible for measures) removes discretion, ensuring broad coverage. India could consider explicitly presuming that all child victims in POCSO cases qualify for the available safeguards, rather than requiring a case-by-case application. This echoes the Supreme Court's insistence that support persons are mandatory ncpcr.gov.in.

B. Use of Technology: NSW's mandatory pre-recording of child testimony demonstrates how procedural reform can embed protection. POCSO's language (s.36) already allows video; India could pilot or expand schemes where children under a certain age give evidence first via video, reducing live court time. The Tasmanian model of admissible prior recorded statements (s.5A) is also instructive for allowing early statements as evidence, subject to cross-exam, to spare the child repetitive testimony.

C. Intermediaries and Support Persons: The UK system of certified intermediaries (s.29 YJCEA) helps bridge communication gaps. POCSO's support persons concept is similar, but India could formalize an accreditation system for such persons (like Nigeria did

with “trained forensic interviewers”). Judges should be empowered (as in SA’s s.170A) to appoint an intermediary if the child struggles to understand questions. This requires expanding Section 39 into a fully operational scheme with clear criteria and training.

D. Courtroom Environment: Jury trials in the UK still place the child on the stand; in contrast, some continental systems (e.g. parts of Europe) prefer closed panels for sex offences. While India has no jury, the demeanor of judges and lawyers can have a profound impact. In the UK and Australia, “ground rules hearings” are mandatory to set how a child will be questioned. Introducing similar practice nationwide – with judges directly informing the child of procedures and limiting repetitive/complex questioning – could help.

E. Monitoring and Accountability: The UK publishes statistics on special measures usage and conviction rates; this transparency drives accountability. India should strengthen data collection on POCSO trials (e.g. how often special courts meet timelines, usage of measures, conviction vs acquittal rates). Periodic oversight by the National Commission for Protection of Child Rights (NCPCR) or state commissions could ensure compliance with POCSO mandates, similar to how some US states require reporting on child abuse case outcomes.

F. Rights Balancing: All jurisdictions balance child protection with fair trial rights. India’s explicit procedural scheme (judge as gatekeeper, counsel involvement, etc.) shows awareness of this balance. Comparative experience suggests that rigorous judicial findings (as *Craig* requires in the US) are one way to justify exceptions. Indian courts may sometimes be overcautious (letting accused see child) or understaffed. Training in comparative jurisprudence (e.g. *State v. Mokoena*, *Maryland v. Craig*)⁶³⁶⁴ can sensitize judges to appropriate applications.

Overall, these perspectives indicate that while India’s laws are in line with global standards, more proactive enforcement is needed. Emulating practices like mandatory video testimony or certified intermediaries could move protections from discretionary to systematic.

VII. RECOMMENDATIONS

Based on the analysis, we propose the following recommendations for policy and procedural improvements:

A. Increase Special Court Capacity: As per the Supreme Court’s directive, states must

⁶³ *Mokoena v S* (A117/2016) [2024] ZAGPPHC 52 (8 January 2024), <https://www.saflii.org/za/cases/ZAGPPHC/2024/52.html> (last visited May 28, 2025).

⁶⁴ *Maryland v. Craig*, 497 U.S. 836, [HTTPS://WWW.APA.ORG, https://www.apa.org/about/offices/ogc/amicus/maryland](https://www.apa.org/about/offices/ogc/amicus/maryland) (last visited May 28, 2025).

urgently designate more special POCSO courts or trained judges, ensuring each district has adequate courts dedicated to child cases. Mobile courts or court clusters could share technology resources.

B. Implement Support Person Scheme Fully: States should adopt NCPCR's model guidelines (2024) into rulebooks immediately. A roster of trained counselors or social workers (e.g. drawn from women/child welfare departments) should be empanelled as mandatory support persons under Section 39. Courts must proactively appoint them in every case, as SC held their availability cannot be left to parents' whim.

C. Mandate Pre-recorded Evidence for All Under-18s: Amend CrPC/POCSO rules so that all complainant children (and perhaps all prosecution witnesses under 18) give their chief evidence via video deposition (audio-visual recording) before trial. Live link or video playback should be the norm for their testimony, unless the court finds a contrary reason, mirroring NSW's approach. This would minimize traumatic courtroom appearances and reduce adjournments.

D. Strengthen Judicial and Police Training: Introduce compulsory training modules on POCSO child-witness procedures for all judges, prosecutors, and police officers. Topics should include trauma-informed questioning, use of technology (video link, court room setup), and legal obligations (e.g. ss.24–26). For example, officers must learn to record statements at home (s.24) and explain shield laws. Annual refresher courses could be overseen by the High Courts or NCPCR.

E. Enhance Court Infrastructure: Equip all special courts with the necessary facilities: separate child waiting areas, CCTV cameras, one-way mirrors or screens for testimony, and video conferencing. Where feasible, allocate child rooms (adjacent booths) with two-way audio/visual links to the courtroom. This physical upgrade will actualize Sections 36–37's allowances for private testimony.

F. Use Judicial Monitoring and Reporting: Implement performance indicators for POCSO courts, such as case disposal times and usage of special measures. Courts could be required to file periodic compliance reports with High Courts or child rights commissions. Consider empowering NCPCR or State Child Rights Commissions under Section 44 (monitoring) to audit a sample of trials for adherence to child-protection provisions. Publicizing such data (analogous to NCRB statistics) will create pressure for compliance.

G. Legislate a Witness Protection Program: Though primarily for criminal threats, an expanded *Witness Protection Scheme* (like a strengthened Section 43 CrPC or separate

Witness Protection Bill) should expressly cover vulnerable child witnesses. This could provide, for instance, safe housing or identity change for victims at risk. At minimum, guidelines for anonymity must be strictly enforced (breach of Section 33(7) should lead to contempt).

H. Integrate Multi-Disciplinary Support: Formalize cooperation between legal institutions and child welfare agencies. For example, authorize police to immediately refer POCSO cases to child care organizations for counseling even before trial. Encourage one-stop-crisis centers (POCSO Section 39A) to liaison with courts. Allocate budget for free legal aid and trauma therapy for victims and families.

I. Law Reform and Clarification: Consider legislative amendments to clarify any ambiguous points. For instance, explicitly criminalize cross-examining the child in a harassing manner (perhaps as contempt). Ensure that POCSO sections 24–26 (statements) are routinely integrated with Evidence Act amendments (e.g. allowing prior statements under Section 161 to be used as evidence, as Tasmanian s.5 suggests).

J. Public Awareness and Sensitization: Finally, launch awareness campaigns about child-friendly procedures. Courts should inform parents/guardians of their child's rights under POCSO (including to support persons) in simple language at the first hearing. Engage civil society groups to educate communities on the importance of protecting child witnesses.

By adopting these recommendations, India can move closer to ensuring that a child's trial under POCSO is truly conducted with all possible care and speed.

VIII. CONCLUSION

This comprehensive discussion reveals that while India's POCSO Act provides a wide array of legal safeguards for child victims, significant gaps in implementation have compromised their effectiveness. Statutory measures like in-camera trials, non-confrontational testimony, support persons, and expeditious disposal are on par with international standards. Yet data from NGOs and courts indicate children often endure delays, inadequate facilities, and insensitive questioning. Comparative study shows that other countries face similar challenges but have piloted innovative solutions (e.g. mandatory video testimony, formal intermediary schemes) that India could emulate.

The hypothesis is thus supported i.e. the shortfall lies not in the absence of laws, but in systemic deficiencies – court backlogs, infrastructure shortages, and insufficient training. The analysis underscores that effective child witness protection requires both sound laws and

robust execution. The recommendations offered are aimed at strengthening the procedural framework (more courts, technology, personnel) and at institutional accountability (training, data tracking). These reforms, if implemented, could greatly reduce the additional harm children experience in seeking justice.

In conclusion, India stands at a juncture where legislative intent aligns with global child-rights norms, but where renewed focus is needed to translate intent into reality. By learning from comparative models and rigorously applying POCSO's mandates, India can ensure that its most vulnerable citizens – child victims of sexual crimes – are truly protected, heard, and given a fair chance at justice.

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