

**HIGH COURT OF JUDICATURE AT ALLAHABAD
ADMIN. 'G-II' SECTION
NOTIFICATION**

NO. 159 / 2022, Allahabad,

Dated: 11, April 2022

In compliance of the directions issued by Hon'ble Supreme Court vide Judgment dated 11.01.2022 passed in Miscellaneous Application No. 1852 of 2019 in Criminal Appeal No. 1101 of 2019, Smruti Tukaram Badade Vs State of Maharashtra & Anr., the High Court of Judicature at Allahabad is pleased to make the following scheme i.e. "Vulnerable Witnesses Deposition Centres Scheme 2022" for Subordinate Courts of Uttar Pradesh, which shall come in to force with immediate effect.

Vulnerable Witnesses Deposition Centres Scheme 2022

Whereas The Hon'ble Supreme Court of India in *State of Maharashtra Vs. Bandu @ Daulat; (2018) 11 SCC 163* has issued certain directions for setting up Special Centres for examination of vulnerable witnesses in criminal cases so as to facilitate the conducive environment for recording statement of such witnesses and issued directions to all the High Courts to adopt the guidelines framed in this regard by the Delhi High Court with requisite modifications and also keeping in view the judgment dated 11.01.2022 passed by the Hon'ble Supreme Court of India in *Smruti Tukaram Badade Versus State of Maharashtra and Another; Misc. Application No. 1852 of 2019 In Re: Criminal Appeal No. 1101 of 2019* whereby certain directions were issued to all the High Courts pertaining to the establishment, functioning and framing of scheme/guidelines for the establishment and functioning of Vulnerable Witnesses Deposition Centres, following scheme is promulgated/adopted in order to regulate the recording of evidence of the vulnerable witnesses in criminal cases.

OBJECTIVES OF THE SCHEME

1. To elicit and secure complete, accurate and reliable evidence from vulnerable witnesses;
2. to minimize harm or secondary victimization of vulnerable witnesses in anticipation and as a result of participation in the criminal justice system;
3. to ensure that the accused's right to a fair trial is also maintained.

Applicability

Unless otherwise provided, this scheme shall govern the examination of vulnerable witnesses during criminal trial, who are victims or witnesses of crime.

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

This scheme shall be called 'Vulnerable Witnesses Deposition Centre Scheme-2022'. It will apply to all criminal courts in Uttar Pradesh subordinate to The High Court of Judicature at Allahabad. The Scheme shall come into operation w.e.f. the date notified by the High Court of Judicature at Allahabad.

2. **Construction of the scheme.-** This scheme shall be liberally construed to uphold the interests of vulnerable witnesses and to promote their maximum accommodation without prejudice to the right of the accused to a fair trial.

3. **Definitions.-**

- a. **Vulnerable Witness** – Following witnesses shall be regarded as vulnerable witness:-
- I. A witness who has not attained 18 years of age.
 - II. Victims of offences under Sections 354 and 377 IPC.
 - III. Victims of offences under Sections 376, 376A, 376B, 376C and 376D IPC.
 - IV. Victims of offences defined under The Protection of Children from Sexual Offences Act, 2012
 - V. Witnesses suffering from "mental illness" as defined under Section 2(S) of the Mental Healthcare Act, 2017 read with Section 118 of the Indian Evidence Act, 1872.
 - VI. Any speech or hearing impaired person suffering from any other disability rendering such persons, in the opinion of the court, as vulnerable witness.
 - VII. Any witness deemed to have a threat perception under the Witness Protection Scheme, 2018 of the Central Government.
 - VIII. Any other victim or witness deemed to be vulnerable by the concerned court.
- b. **Support Person** - Means and includes guardian *ad litem*, legal aid lawyer, facilitators, interpreters, translators and any other person appointed by court or any other person appointed by the court to provide support, accompany and assist the vulnerable witness to testify or attend judicial proceedings.
- c. **In-Camera Proceedings** - Means proceedings pertaining to criminal matters or parts thereof wherein the public generally or any particular

person may not be allowed to participate, for good reason as provided u/s 327 of the Code of Criminal Procedure.

- d. **Concealment of Identity of witness** - Means and includes any condition prohibiting publication of the name, address and other particulars of the vulnerable witness, which may lead to the identification of the witness.
- e. **Comfort Items** - Comfort items mean any article which shall have a calming effect on a vulnerable witness at the time of deposition.
- f. **Competence of a Vulnerable Witness** - Every vulnerable witness shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions due to tender age, disease, either of body or mind, or any other cause of the same kind.
Explanation: A mentally ill person may also be held competent unless he/she is prevented by his/her lunacy to understand questions.
- g. **Court House Tour** - A pre-trial tour of court room to familiarize a vulnerable witnesses with the environment and the basic process of adjudication and roles of each court official.
- h. **Descriptive Aids** - A human figure model, anatomically correct dolls or a picture or anatomical diagrams or any other aids deemed appropriate to help a vulnerable witness to explain an act or a fact.
- i. **Live-Link** - 'Live-link' means and includes a live television link, audio-video electronic means or other arrangement whereby a witness, while absent from the courtroom is nevertheless present in the court room by remote communication using technology to give evidence and be cross-examined.
- j. **Special Measures** - Means and includes the use of any mode, method and instrument etc. considered necessary for providing assistance in recording deposition of vulnerable witnesses.
- k. **Testimonial Aids** - Means and includes screen; live-links, image and/or voice altering devices; or any other technical devices.
- l. **Secondary Victimization** - Means victimization that occurs not as direct result of a criminal act but through the response of institutions and individuals to the victim.
- m. **Revictimization** - Means a situation in which a person suffers more than one criminal incident over a period of time.
- n. **Waiting Room** - A safe place for vulnerable witnesses where they can wait. It may have toys, books, T.V. etc. which can help in lowering the anxiety of such witnesses.

✓

4. **Special Measures.-** The court may direct as to which, special measure will be used to assist a particular eligible witness in providing the best evidence.

5. **Applicability of Scheme to all Vulnerable Witnesses.-**

For the avoidance of doubt, it is made clear that this scheme shall apply to all vulnerable witnesses, regardless of which party is seeking to examine the witness.

6. **No adverse inference to be drawn from special measures.-**

The fact that a witness has had the benefit of a special measure to assist them in deposition, shall not be regarded in any way whatsoever as being adverse to the position of the other side and this should be made clear by the Judge at the time of passing order in terms of this scheme to the parties when the vulnerable witness is examined and when the final judgment is pronounced.

7. **Identification of stress causing factors of adversarial Criminal Justice System.-**

Factors which cause stress on vulnerable witness, rendering them further vulnerable and impeding complete disclosure by them shall, amongst others, include:

(i) **Using in appropriate language during examination in chief, cross examination or re examination.**

(ii) Delays and continuances.

(iii) Testifying more than once.

(iv) Prolonged/protracted hours of court proceedings.

(v) Lack of communication between professionals including police, doctors, lawyers, prosecutors, investigators, psychologists etc.

(vi) Fear of public exposure.

(vii) Lack of understanding of complex legal procedures.

(viii) Face-to-face contact with the accused.

(ix) Practices which are insensitive to developmental needs.

(x) Inappropriate and prolonged cross-examination.

(xi) Lack of adequate support and victims services.

(xii) Sequestration of witnesses who may be supportive to the child.

(xiii) Placement that exposes the vulnerable witness to intimidation, pressure, or continued abuse.

- (xiv) Inadequate preparation for fearless and robust testifying.
- (xv) Worry about not being believed especially when there is no evidence other than the testimony of the vulnerable witness.
- (xvi) Formalities of court proceedings and surroundings including formal dress of members of the judiciary and legal personnel.

8. Competency of Vulnerable Witness.-

- (i) Every vulnerable witness shall be presumed to be qualified as a witness unless prevented by the following:
 - (a) Age.
 - (b) Physical or mental disability leading to recording a finding of doubt regarding the ability of such witness to perceive, remember, communicate, distinguish truth from falsehood or appreciate the duty to tell the truth, and/or to express the same.

Explanation: The court shall conduct a competency assessment before recording the testimony of such witness on an application of either prosecution or defence or *suo motu*.

9. Persons allowed at competence assessment.-

Only the following, in the discretion of the court, may be allowed to attend the competence assessment:

- (i) The Judge and such court personnel deemed necessary and specified by order of the Judge concerned;
- (ii) the counsel for the parties;
- (iii) the guardian *ad litem*;
- (iv) one or more support persons for the child; and
- (v) the accused, unless the court determines that competence requires to be and can be fully evaluated in his absence.
- (vi) Any other person, who in the opinion of the court can assist in the competence assessment.

10. Conduct of competence assessment.-

The assessment of a child as to his/her competence as a witness shall be conducted only by the Judge.

11. Developmentally appropriate questions.-

The questions which may be asked to assess the competency of the vulnerable witness shall be appropriate and commensurate to the age and

developmental level of the vulnerable witness; shall not be related to the issues at trial; and shall focus on the ability of the vulnerable witness to remember, communicate, distinguish between truth and falsehood and appreciate the duty to testify truthfully.

12. **Continuing duty to assess competence.-**

The court shall have a duty of continuously assessing the competence of the vulnerable witnesses throughout their testimony and to pass appropriate orders, as and when deemed necessary.

13. **Pre-trial visit of Witnesses to the Court.-**

Vulnerable witness shall be allowed a pre trial tour of the court, along with the support person to enable such witnesses to familiarize himself with the layout and atmosphere of the court; and may also include visit to and explanation of the following:

- (i) The location of the accused in the dock;
- (ii) court officials (what their roles are and where they sit);
- (iii) who else might be in the court, for example those in the public gallery;
- (iv) the location of the witness box;
- (v) a run-through of basic court procedure;
- (vi) the facilities available in the court;
- (vii) discussion of any particular fears or concerns with the intermediaries, Prosecutors and the Judge to dispel the fear, trauma and anxiety in connection with the prospective deposition at court; and
- (viii) demonstration of any special measures applied for, and granted, for example practising on the live-link and explaining who will be able to see them in the courtroom and showing the use of screens (where it is practical and convenient to do so).

14. **Meeting with the Judge.-**

The Judge may meet a vulnerable witness, *suo motu*, on reasons to be recorded or on an application of either party in the presence of the prosecution and defence counsels or in their absence as the case may be, before they give evidence, for explaining the court process in order to help them in understanding the procedure and giving their best evidence.

15. **Appointment of Guardian *ad litem*.-**

The court may appoint any person as guardian *ad litem* as per law to a witness who is a victim of, or a witness to a crime having regard to his/her best interests after considering the background of the guardian *ad litem* and his/her familiarity with the judicial process, social service programs, giving preference to the parents of the child, if qualified. The guardian *ad litem* may also be a

member of bar/practicing advocate, except a person who is a witness or informant in any proceeding involving the vulnerable witness.

16. Duties of Guardian ad litem.-

It shall be the duty of the guardian *ad litem* so appointed by court to:

- (i) Attend all depositions, hearings, and trial proceedings in which a vulnerable witness participates.
- (ii) Make recommendations to the court concerning the welfare of the vulnerable witness keeping in view the needs and impact of the proceedings on such witness.
- (iii) Explain in the language understandable to the vulnerable witness, all legal proceedings, including police investigations, in which the witness is involved.
- (iv) Assist the vulnerable witness and his/her family in coping with the emotional effects of crime and subsequent criminal or non-criminal proceedings in which the witness is involved.
- (v) Remain with the vulnerable witness while the vulnerable witness waits to testify.

17. Legal assistance.-

A vulnerable witness may be provided with legal assistance by the court either at the request of the support person, if one has been designated or pursuant to an order of the court on its own motion, if the court considers the assignment of a lawyer to be in the best interests of the vulnerable witness, throughout the trial.

18. Court to allow presence of support persons.-

- (a) A court shall allow *suo motu* or on request, verbal or written, of the vulnerable witness testifying at a judicial proceeding to have the presence of one person of his own choice to provide him support who shall remain within his/her view and if the need arise may accompany such witness to witness stand, provided that such support person shall not completely obscure the child from the view of the opposing party or the Judge.
- (b) The court may allow the support person to hold the hand of the vulnerable witness or take other appropriate steps to provide emotional/moral support to the vulnerable witness in the course of the proceedings.
- (c) The court shall instruct the support persons not to prompt, sway, or influence the vulnerable witness during his/her testimony. The support person shall also be directed that he/she shall under no circumstances discuss the evidence to be given by the vulnerable witness.

19. The testimony of support person to be recorded prior.-

A testimony of the support person, if he/she also happens to be a witness, shall be recorded, ahead of the testimony of the vulnerable witness.

20. **Court to appoint facilitator.-**

- (i) To assist the vulnerable witnesses in effectively communicating at various stages of trial and or to coordinate with the other stake holders such as police, medical officer, prosecutors, psychologists, defence counsels and courts, the court may allow use of facilitators.
- (ii) The court may, *suo motu* or upon an application presented by either party or a support person of vulnerable witnesses may appoint a facilitator, if it determines that such witness is finding it difficult to understand or respond to questions asked.

Explanation: (i) The facilitator may be an Interpreter, a Translator, Child Psychologist, Psychiatrist, Social Worker, Guidance Counselor, Teacher, Parent, or relative of such witness who shall be under oath to pose questions according to meaning intended by the counsel.

(ii) If the court appoints a facilitator, the respective counsels for the parties shall pose questions to the vulnerable witness only through the facilitator, either in the words used by counsel or, if the vulnerable witness is not likely to understand the same, in words or by such mode as is comprehensible to the vulnerable witness and which convey the meaning intended by counsel.

21. **Right to be informed.-**

A vulnerable witness, his or her parents or guardian, his or her lawyer, the support person, if designated, or other appropriate person designated to provide assistance shall, from their first contact with the court process and throughout that process, be promptly informed by the court about the stage of the process and, to the extent feasible and appropriate, about the following:

- (a) Procedures of the criminal justice process including the role of vulnerable witnesses, the importance, timing and manner of testimony, and the ways in which proceedings will be conducted during the trial;
- (b) existing support mechanisms available for a vulnerable witness when participating in proceedings, including making available appropriate person designated to provide assistance;
- (c) specific time and places of hearings and other relevant events;
- (d) availability of protective measures;
- (e) relevant rights of child victims and witnesses pursuant to applicable laws, the Convention on the Rights of the Child and other international legal instruments, including the Guidelines and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations General Assembly in its resolution 40/34 of 29 November 1985;

A

- (f) the progress and disposition of the specific case, including the apprehension, arrest and custodial status of the accused and any pending changes to that status, the prosecutorial decision and relevant post-trial developments and the outcome of the case.

22. Language, interpreter and other special assistance measures.-

- (a) The court shall ensure that proceedings relevant to the testimony of a vulnerable witness or victim are conducted in a language that is simple and comprehensible to such witness.
- (b) If a witness needs the assistance of interpretation into a language or mode that he/she understands, an interpreter may be provided, free of charge.
- (c) If, in view of the age, level of maturity or special individual needs, which may include but are not limited to disabilities if any, ethnicity, poverty or risk of revictimization, the child requires special assistance measures in order to testify or participate in the justice process, such measures may be provided free of cost.

23. Waiting area for Vulnerable Witness.-

The courts shall ensure that a waiting area for vulnerable witnesses with the support person, lawyer of the witness facilitation, if any, is separate from waiting areas used by other persons. The waiting area for vulnerable witnesses should be furnished so as to make a vulnerable witness comfortable.

24. Duty to provide comfortable environment.-

It shall be the duty of the court to ensure comfortable environment for the vulnerable witness by issuing suitable directions and also by supervising, the location, movement and deportment of all persons in the courtroom including the parties, their counsels, witnesses, support persons, guardian *ad litem*, facilitator, and court personnel. The witness may be allowed to testify from a place other than the witness chair. The witness chair or other place from which the vulnerable witness testifies may be turned to facilitate his/her testimony but the opposing party and his/her counsel must have a frontal or profile view of the witness even by a video-link, during the recording of testimony of the such witness. The witness chair or other place from which the child testifies may also be rearranged to allow the child to see the opposing party and his/her counsel, if he/she chooses to look at them, without turning his/her body or leaving the witness stand. While deciding to make available such environment, the Judge may be dispensed with from wearing his judicial robe.

25. Testimony during appropriate hours.-

The court may order that the testimony of the vulnerable witness may be recorded at a particular time of the day within court hours, when the vulnerable witness is well-rested.

26. Recess during testimony.-

The vulnerable witness may be allowed reasonable periods of breaks while undergoing depositions as often as necessary depending on his developmental need.

27. Measures to protect the privacy and well-being of Vulnerable Witness and victims.-

- (1) At the request of the victim or vulnerable witness, his or her parents or guardian, his or her lawyer, the support person, other appropriate person designated to provide assistance, or the court on its own motion, taking into account the best interests of the witness, may order one or more of the following measures to protect the privacy and physical and mental well-being of the vulnerable witness and to prevent undue distress and secondary victimization:-
- (a) Expunging from the public record any names, addresses, workplaces, professions or any other information that could be used to identify the witness;
 - (b) forbidding the defence lawyer and persons present in court room from revealing the identity of the witness or disclosing any material or information that would tend to identify the witness;
 - (c) ordering the non-disclosure of any records that identify the witness, until such time as the court may find appropriate;
 - (d) assigning a pseudonym or a number to a witness, in which case the full name and date of birth of the witness shall be revealed to the accused within a reasonable period for the preparation of his or her defence;
 - (e) efforts to conceal the features or physical description of the witness giving testimony or to prevent distress or harm to the witness, including testifying:
 - (i) behind screen;
 - (ii) using image-or voice-altering devices;
 - (iii) through examination in another place, transmitted simultaneously to the courtroom by means of video-link; and
 - (iv) through a qualified and suitable intermediary, such as, but not limited to, an interpreter for witness with hearing, sight, speech or other disabilities;
 - (f) holding closed sessions;
 - (g) if such witness refuses to give testimony in the presence of the accused or if circumstances show that the witness may be inhibited from speaking the truth in that person's presence, the court shall give orders to temporarily remove the accused from the courtroom to an adjacent room with a video-link or a one-way mirror visibility into the court room. In such cases, the defence lawyer shall remain in the courtroom and may question the witness, and the accused's right of confrontation shall thus be guaranteed; and


(h) taking any other measure that the court may deem necessary, including, where applicable, anonymity, taking into account the best interests of the witness and the rights of the accused.

(2) Any information including name, parentage, age, address, etc. revealed by the victim or vulnerable witness which enables identification of the person of the witness, shall be kept in a sealed cover on the record and shall not be made available for inspection to any party or person. Certified copies thereof shall also not be issued. The reference to the child victim or vulnerable witness shall be only by the pseudonym assigned in the case.

28. Directions for Subordinate Court Judges.-

- (a) Vulnerable witnesses shall receive high priority and shall be handled as expeditiously as possible, minimizing unnecessary delays and continuances. (Whenever necessary and possible, the court schedule will be altered to ensure that the testimony of the vulnerable witness is recorded on sequential days, without delays).
- (b) Judges and court staff should ensure that the developmental needs of vulnerable witnesses are recognized and accommodated in the arrangement of the courtroom.
- (c) Separate and safe waiting areas and passage thereto should be provided for vulnerable witnesses.
- (d) Judges should ensure that the developmental stages and needs of vulnerable witnesses are identified recognized and addressed throughout the court process by requiring usage of appropriate language, by timing hearings and testimony to meet the attention span and physical needs of such vulnerable witnesses by allowing the use of testimonial aids as well as interpreters, translators, when necessary.
- (e) Judges should be flexible in allowing the vulnerable witnesses to have a support person present while testifying and should guard against unnecessary sequestration of support persons.
- (f) Hearings involving a vulnerable witness may be scheduled on days/time when the witness is not inconvenienced or is not disruptive to routine/regular schedule of such witness.

29. Allowing proceedings to be conducted in camera.-

- (a) When a vulnerable witness testifies, the court may order the exclusion from the courtroom of all persons, who do not have a direct interest in the case including members of the press. Such an order may be made to protect the right to privacy of the vulnerable witness, or if the court determines on the record that requiring the vulnerable witness to testify in open court would cause psychological harm to him, hinder the ascertainment of truth, or result in his inability to effectively communicate due to embarrassment, fear, or timidity. 

- (b) In making its order, the court shall consider the developmental level of the vulnerable witness, the nature of the crime, the nature of his/her testimony regarding the crime, his/her relationship to the accused and to persons attending the trial, his/her desires, and the interests of his/her parents or legal guardian.
- (c) The court may, *motu proprio*, exclude the public from the courtroom if the evidence to be produced during trial is of such character as to be distressing, personal, offensive to decency or public morals.

30. Live-link television testimony in criminal cases where the Vulnerable Witness is involved.-

- (a) The prosecutor, counsel or the guardian *ad litem* may apply for an order that the testimony of the child be taken in a room outside the courtroom and be televised to the courtroom by live-link television.
- (b) In order to take a decision of usage of a live-link the Judge may question the child in chambers, or in some comfortable place other than the courtroom, in the presence of the support person, guardian *ad litem*, prosecutor, and counsel for the parties. The questions of the Judge shall not be related to the issues at trial but to the feelings of the child about testifying in the courtroom.
- (c) The court on its own motion, if deemed appropriate, may pass orders in terms of (a) or any other suitable directions for recording the evidence of a vulnerable witness.

31. Provision of screens, one-way mirrors, and other devices to facilitate Vulnerable Witness.-

The court may, *suo motu* or on an application made by the prosecutor or the guardian *ad litem*, order that the chair of the vulnerable witness or that a screen or other device be placed in the courtroom in such a manner that the child cannot see the accused while testifying. The court shall issue an order stating the reasons and describing the approved courtroom arrangement.

32. Factors to be considered while considering the application under Guidelines 30 & 31.-

The court may order that the testimony of the vulnerable witness be taken by live link television if there is a substantial likelihood that the vulnerable witness would not provide a full and candid account of the evidence if required to testify in the presence of the accused, his/her counsel or the prosecutor as the case may be.

The order granting or denying the use of live-link television shall state the reasons therefore and shall consider the following:

- (a) The age and level of development of the vulnerable witness;
- (b) his/her physical and mental health, including any mental or physical disability;

- (c) any physical, emotional, or psychological harm related to the case on hand or trauma experienced by the witness;
- (d) the nature of the alleged offence and circumstances of its commission;
- (e) any threats against the vulnerable witness;
- (f) his/her relationship with the accused or adverse party;
- (g) his/her reaction to any prior encounters with the accused in court or elsewhere;
- (h) his/her reaction prior to trial when the topic of testifying was discussed with him by parents or professionals;
- (i) specific symptoms of stress exhibited by the vulnerable witness in the days prior to testifying;
- (j) testimony of expert or lay witnesses;
- (k) the custodial situation of the child and the attitude of the members of his/her family regarding the events about which he/she will testify; and
- (l) other relevant factors, such as court atmosphere and formalities of court procedure.

33. Mode of questioning.-

To facilitate the ascertainment of the truth the court shall exercise control over the examination-in-chief, cross-examination and re-examination of vulnerable witness in following manner-

- (a) Ensure that questions are stated in a form appropriate to the developmental level of the vulnerable witness;
- (b) protect vulnerable witness from harassment or undue embarrassment, prolong cross examination; and
- (c) avoid waste of time by declining questions which the court considers unacceptable due to their being improper, unfair, misleading, needless, repetitive or expressed in language that is too complicated for the witness to understand.
- (d) The court may allow the child witness to testify in a narrative form.
- (e) Questions shall be put to the witness only through the court.

34. Rules of and law with regard to the deposition to be explained to the Witnesses.-

The court shall explain to a vulnerable witness to listen carefully to the questions and to tell the whole truth, by speaking loudly and not to respond by shaking head in 'yes' or 'no' and also to specifically state that the witness does

not remember where he/she has forgotten something and to clearly ask when the question is not understood.

A gesture by a child to explain what had happened shall be appropriately translated and recorded in the child's deposition.

35. **Objections to questions.-**

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

36. **Allow questions in simple language.-**

The court shall allow the questions to be put in simple language avoiding slang, esoteric jargon, proverbs, metaphors and acronyms. The court must not allow the question carrying words capable of two-three meanings, questions having use of both past and present in one sentence, or multiple questions which is likely to confuse a witness. Where the witness seems confused instead of repetition of the same question, the court should direct for its re-phrasing.

Explanation: (i) The reaction of vulnerable witness shall be treated as sufficient clue that question was not clear so it shall be rephrased and put to the witness in a different way.

(ii) Given the witness developmental level, excessively long questions shall be required to be rephrased and thereafter put to witness.

(iii) Questions framed as compound or complex sentence structure; or two part questions or those containing double negatives shall be rephrased and thereafter put to witness.

37. **Testimonial aids.-**

The court shall permit a child to use testimonial aids as defined in the definition clause.

38. **Protection of privacy and safety.-**

(a) **Confidentiality of records-** Any record regarding a vulnerable witness shall be confidential and kept under seal except upon written request and order of the court, the record shall only be made available to the following:

(i) Members of the court staff for administrative use;

(ii) the Public Prosecutor for inspection;

(iii) defence counsel for inspection;

(iv) the guardian *ad litem* for inspection; and

(v) other persons as determined by the court.

(b) **Protective order-** The depositions of the vulnerable witness recorded by video-link shall be video recorded except under reasoned order requiring the

special measures by the Judge. However where any videotape or audiotape of a vulnerable witness is made, it shall be under a protective order that provides as follows:

- (i) A transcript of the testimony of the vulnerable witness shall be prepared and maintained on record of the case. Copies of such transcript shall be furnished to the parties of the case.
- (ii) Tapes may be viewed only by parties, their counsel, their expert witness, and the guardian *ad litem*.
- (iii) No person shall be granted access to the tape, or any part thereof unless he/she signs a written affirmation that he has received and read a copy of the protective order; that he submits to the jurisdiction of the court with respect to the protective order; and that in case of violation thereof, he/she will be subject to the contempt power of the court.
- (iv) Each of the tapes, if made available to the parties or their counsel, shall bear the following cautionary notice:

"This object or document and the contents thereof are subject to a protective order issued by the court in (case title), (case number). They shall not be examined, inspected, read, viewed, or copied by any person, or disclosed to any person, except as provided in the protective order. No additional copies of the tape or any of its portion shall be made, given, sold, or shown to any person without prior order of the court. Any person violating such protective order is subject to the contempt power of the court and other penalties as prescribed by law."

- (v) No tape shall be given, loaned, sold, or shown to any person except as ordered by the court.
- (vi) This protective order shall remain in full force and effect until further order of the court.
- (c) **Personal details during evidence likely to cause threat to physical safety of vulnerable witness to be excluded** - A vulnerable witness has a right at any court proceeding not to testify regarding personal identifying information, including his/her name, address, telephone number, school, and other information that could endanger his/her physical safety or his/her family. The court may, however, require the vulnerable witness to testify regarding personal identifying information in the interest of justice.
- (d) **Destruction of videotapes and audiotapes**- Any videotape or audiotape of a child produced under the provisions of these guidelines or otherwise made part of the court record shall be destroyed as per rules to be framed by the High Court Of Judicature at Allahabad later on.

39. Protective measures.-

At any stage in the justice process where the safety of a victim or vulnerable witness is deemed to be at risk, the court shall arrange to have protective measures put in place for the victim or vulnerable witness, as the case may be. Those measures may include the following:-

- (a) Avoiding direct or indirect contact between a child victim or witness and the accused at any point in the justice process;
- (b) restraint orders;
- (c) a pretrial detention order for the accused or with restraint or "no contact" bail conditions which may be continued during trial;
- (d) protection for a child victim or witness by the police or other relevant agencies and safeguarding the whereabouts of the child from disclosure; and
- (e) any other protective measures that may be deemed appropriate.

40. Savings.-

In case of any confusion in the interpretation of any clause of the scheme, mentioned herein above, the order of the presiding Judge shall be final and conclusive unless such order has been challenged at any higher forum.

By Order of the Court

**(Ashish Garg)
Registrar General**

No. **4472** /2022 Allahabad,

Dated: 11, April 2022

Copy forwarded for information & necessary action to:

1. All the Registrars/Joint Registrars/Deputy Registrars/ Assistant Registrars-cum-Private Secretary attached to the Hon'ble Judges of the High Court, Allahabad as well as Lucknow Bench, Lucknow for information of Their Lordships.
2. The Senior Registrar, Lucknow Bench, Lucknow.16
3. All the District Judges, Principal Judges Family Courts, Presiding Officers MACTs/ LARRAs/Commercial Courts subordinate to the High Court of Judicature at Allahabad.
4. The Registrars/Joint Registrars/Deputy Registrars/ Assistant Registrars-cum-Private Secretary attached to Registrar General.
5. All the Judicial Officers on deputation to this Hon'ble Court.
6. The Director, Institute of Judicial Training and Research, Vineet Khand, Gomti Nagar, Lucknow.
7. The Director, Printing & Stationery, U. P., Allahabad with the remark that he will get the notification published in the next issue of the Official Gazette of the Uttar Pradesh and 10 copies of so published Gazette notification be provided to the Hon'ble Court.
8. I/C Computer Centre for updating the 'Vulnerable Witnesses Deposition Centres Scheme 2022' on official web site of the Court
9. The Chief Documentation Officer cum Chief Librarian, High Court of Judicature at Allahabad.
10. Section Officer, Admin 'H' Section (Administrative Record Room).

Ashish Garg
11/4/2022
Registrar General