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HOSTILE PROSECUTRIX IN POCSO CASES: Evidentiary Value, Statutory Presumptions and the Standard of Proof

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ABSTRACT: A recurring and practically decisive difficulty in the trial of offences under the Protection of Children from Sexual Offences Act, 2012 arises when the child complainant — the prosecutrix — does not support the prosecution case at trial: she may resile from her earlier statements, decline to identify the accused, minimise or deny the incident altogether, or give a version materially at variance with what she told the police under Section 161 of the Code of Criminal Procedure or the Magistrate under Section 164. Empirical studies place the incidence of such hostility at alarming levels in several States, and it is consistently identified as the single largest contributor to the low conviction rates that continue to characterise the POCSO docket nationally. This paper offers a practitioner-oriented analysis of the law governing hostile prosecutrix testimony in POCSO trials. It traces the multi-stage testimonial pathway through which a child's account is generated and tested — from the first information report through the Section 161 and Section 164 statements to examination-in-chief and cross-examination — and examines the distinct evidentiary status the law assigns to each stage. It then analyses the interaction between a hostile or retracting prosecutrix and the statutory presumptions of guilt and culpable mental state under Sections 29 and 30 of the Act, drawing on the Supreme Court's clarification that these presumptions operate only once the prosecution has independently established the foundational facts of the offence. The paper further examines the judicial techniques — the sterling witness standard, the doctrine of partial reliance, and corroboration through medical, forensic, and documentary evidence — that courts deploy to salvage a conviction, or correctly decline to do so, when the principal witness turns hostile. It concludes with concrete, courtroom-facing guidance for prosecutors, defence counsel, and trial judges, and with recommendations for legislative and institutional reform aimed at reducing the incidence and consequences of hostility in this class of cases.

Keywords: hostile witness, prosecutrix, POCSO Act, Section 29 presumption, Section 164 CrPC statement, sterling witness, corroboration, standard of proof, child sexual abuse trials, foundational facts doctrine.

1. Introduction

Few evidentiary problems arise with greater frequency, or carry greater practical consequence, in the trial of offences under the Protection of Children from Sexual Offences Act, 2012 ("the POCSO Act" or "the Act") than the child complainant's failure to support the prosecution case at trial. A prosecutrix who has narrated an assault to her parents, to the police under Section 161 of the Code of Criminal Procedure, 1973 ("CrPC"), and to a Judicial Magistrate under Section 164 CrPC, not infrequently arrives at the trial stage and denies the incident, declines to identify the accused, minimises what occurred, or offers an account materially different from her earlier versions. When this happens, the public prosecutor is ordinarily compelled to seek the court's permission to cross-examine his own witness — to treat her, in the language of Section 154 of the Indian Evidence Act, 1872 (now Section 157 of the Bharatiya Sakshya Adhiniyam, 2023), as "hostile."

The frequency of this phenomenon is not marginal. A study conducted by the Centre for Child and the Law at the National Law School of India University, Bengaluru, examining the disposal of POCSO cases in two districts of Andhra Pradesh, found that witnesses turned hostile in over three-quarters of the cases examined, and that acquittal followed in every one of those cases. The same programme of research, examined in Section 7 below, records child-victim hostility rates ranging from 32 per cent of cases in Assam to 94 per cent in three districts of Karnataka, and an overall conviction rate in the Andhra Pradesh districts studied of barely eleven per cent, with hostile testimony repeatedly identified by researchers and practitioners as the principal cause. For the prosecutor, the defence counsel, and the trial judge alike, the doctrinal and practical questions that arise when the prosecutrix turns hostile are accordingly not peripheral but central to the day-to-day conduct of POCSO litigation.

This paper addresses those questions with a particular orientation towards practitioners. It begins, in Section 2, by clarifying what the law means by a "hostile" witness and distinguishing hostility from the related but distinct concept of an "unfavourable" witness. Section 3 maps the multi-stage pathway through which a child's account is generated in a POCSO case — the first information report, the Section 161 statement to the police, the Section 164

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statement before a Magistrate, and the examination-in-chief and cross-examination at trial — and identifies the point, or points, at which hostility characteristically emerges. Section 4 examines the distinct evidentiary status the law assigns to each of these prior statements once the prosecutrix resiles from them at trial, a question of considerable practical importance given the frequent confusion, even among practitioners, over what a Section 164 statement can and cannot do once its maker turns hostile. Section 5 turns to the interaction between hostile testimony and the statutory presumptions of guilt and culpable mental state under Sections 29 and 30 of the POCSO Act, situating the analysis within the settled principle, established by the Supreme Court in the context of reverse-burden provisions generally and applied by the High Courts to the POCSO Act in particular, that these presumptions can operate only once the prosecution has independently established the foundational facts of the offence. Section 6 examines the standard of proof and the judicial techniques — the sterling witness standard and the doctrine of partial reliance chief among them — that Indian courts have developed to evaluate a case in which the principal witness has turned hostile. Section 7 sets out the empirical scale of the problem and its principal drivers. Sections 8 and 9 close the paper with concrete guidance for practitioners and a set of proposals for legislative and institutional reform.

2. Conceptual Framework: Identifying the "Hostile" Witness

2.1 The Statutory Basis: Section 154 of the Evidence Act and Section 157 of the BSA

Indian law ordinarily forbids a party from cross-examining, discrediting, or impeaching the credit of its own witness. Section 154 of the Indian Evidence Act, 1872, carved out an exception to this rule, empowering the court, in its discretion, to permit the party calling a witness to put questions to that witness which might be put in cross-examination by the adverse party. The corresponding provision under the new evidentiary code, Section 157 of the Bharatiya Sakshya Adhiniyam, 2023, preserves this discretion in substantially unchanged form. Neither the former Evidence Act nor the BSA defines the term "hostile witness"; the concept is a judicial gloss developed to describe the circumstance in which the court considers it necessary, in the interests of justice, to permit the calling party to test and, where appropriate, discredit its own witness.

2.2 Hostile versus Unfavourable Witness

Indian courts have long distinguished a "hostile" witness from a merely "unfavourable" one. An unfavourable witness is one whose testimony simply fails to advance, or is inconsistent with, the case of the party calling him, without any indication of an intention to injure that case or of active partisanship towards the opposite side. A hostile witness, by contrast, is one who, from the manner of deposing, the content of the testimony, or a demonstrated unwillingness to speak the truth, betrays an interest or a partisanship adverse to the party who called him. The distinction matters in practice because the grant of permission under Section 154 (now Section 157 BSA) is not automatic merely because a witness's testimony diverges from an earlier statement or falls short of what the prosecution had hoped to prove; a prosecutor must be able to point to features of the testimony or the witness's demeanour that justify treating the witness as hostile rather than merely disappointing.

2.3 The Special Character of Prosecutrix Testimony in POCSO Trials

The general law on hostile witnesses applies to a POCSO prosecutrix with several important qualifications born of the Act's protective architecture. First, the prosecutrix is very often the sole direct witness to the offence, so that her hostility, unlike the hostility of a peripheral or corroborating witness, frequently removes the entire direct evidentiary foundation of the prosecution's case rather than merely weakening it. Second, the child's testimony is generated under a set of special procedural protections — in-camera proceedings, the presence of a support person, the prohibition on aggressive or intimidating cross-examination, and, in many cases, testimony recorded through video-conferencing to avoid confrontation with the accused — that shape both the reliability and the vulnerability of that testimony to external influence. Third, and most significantly for the purposes of this paper, Section 22(2) of the POCSO Act exempts the child from prosecution for making a false complaint or providing false information, a protective measure that, whatever its independent justification, removes the ordinary deterrent of a perjury prosecution against a child who resiles from an earlier true statement under family or community pressure, a point examined further in Sections 4.4 and 7.2 below.

3. The Multi-Stage Testimonial Pathway of a POCSO Prosecutrix

Understanding where and why hostility arises requires tracing the several distinct stages at which a POCSO prosecutrix's account is recorded, each of which carries a different evidentiary status and is governed by different procedural safeguards. Figure 1 below sets out this pathway schematically; the discussion that follows examines each stage in turn.

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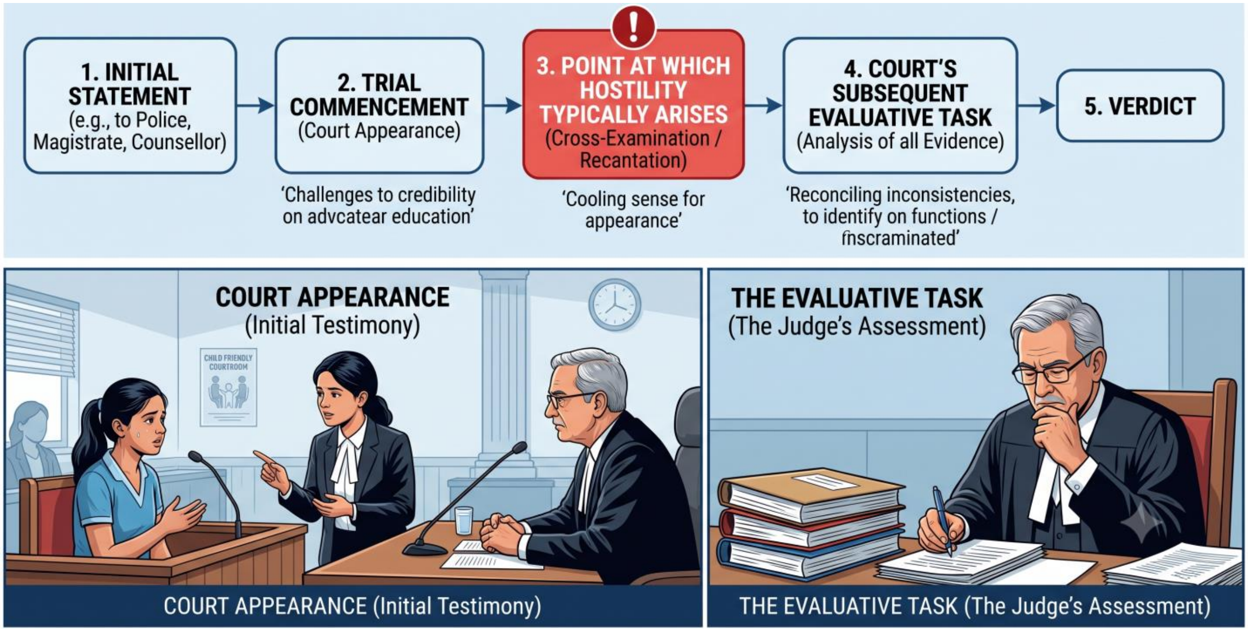

Figure 1: The testimonial pathway of a POCSO prosecutrix, showing the point at which hostility typically arises and the court's subsequent evaluative task.

3.1 The First Information Report

The process typically begins with a first information report, frequently lodged not by the child but by a parent or guardian who has learned of the incident. Because the child is often not the informant, and because a first information report is, in any event, not substantive evidence of the facts it records, this stage is of limited direct evidentiary significance to the eventual assessment of the prosecutrix's credibility, though it establishes the earliest timeline against which later statements are measured for consistency and promptness.

3.2 The Section 161 CrPC / Section 180 BNSS Statement to the Police

The investigating officer records the prosecutrix's statement under Section 161 of the CrPC, now Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"). This statement is not signed by the maker, is not taken on oath, and — critically for practitioners — does not constitute substantive evidence capable of proving the truth of its contents. Its use at trial is confined to two purposes: it may be used by the defence to contradict the witness under Section 145 of the Evidence Act (now Section 148 of the BSA) where her trial testimony departs from it, and, more narrowly, it may in limited circumstances be used to corroborate the witness under Section 157 of the Evidence Act (now Section 160 of the BSA). A prosecutrix's departure from her Section 161 statement, standing alone, therefore does not of itself establish hostility in any legally significant sense, since that statement was never evidence in the first place; what matters is the departure, if any, from her Section 164 statement and, more importantly still, the internal coherence and corroboration of her trial testimony itself.

3.3 The Section 164 CrPC / Section 183 BNSS Statement before a Magistrate

The POCSO Act's special procedural architecture requires the prosecutrix's statement to be recorded before a Judicial Magistrate under Section 164 of the CrPC (now Section 183 of the BNSS) as soon as the commission of the offence is brought to the notice of the police, and Sections 24 and 26 of the POCSO Act impose further safeguards on how this statement is to be taken: as far as practicable in the presence of a parent or other person the child trusts, in a manner that does not expose the child to the accused, and, wherever feasible, through audio-video means to create a contemporaneous record. Unlike the Section 161 statement, the Section 164 statement carries a distinct and more significant evidentiary status: it may be used, again under Section 157 of the Evidence Act (Section 160, BSA), to corroborate the maker's testimony at trial, and — as discussed further in Section 4.2 below — has been the subject of sustained judicial and law-reform commentary urging that it be accorded still greater evidentiary weight given the safeguards attending its recording and the proximity in time to the alleged offence.

3.4 Examination-in-Chief at Trial

Section 33 of the POCSO Act requires the Special Court to ensure that the child is not exposed in any way to the accused at the time of recording evidence, while also ensuring that the accused has the opportunity to hear and instruct on the child's statement, and permits the child's evidence to be recorded through a single-visibility mirror,

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curtain, or video-conferencing where necessary. Examination-in-chief conducted under these child-friendly conditions, in principle, should replicate the account given in the Section 164 statement; in practice, this is the stage at which the first indications of a change of position frequently surface, particularly where a substantial period has elapsed between the recording of the Section 164 statement and the trial, or where the family has, in the interim, reached an accommodation with the accused's family.

3.5 Cross-Examination and the Point of Declared Hostility

It is most commonly during cross-examination, though sometimes already apparent from examination-in-chief, that a material and irreconcilable departure from the prosecutrix's earlier statements becomes evident, prompting the public prosecutor to seek the court's leave under Section 154 of the Evidence Act (Section 157, BSA) to cross-examine his own witness. The grant of this leave formally marks the witness as hostile for the purposes of the trial record, but — as Section 4 below explains — it does not, by itself, resolve any question about the weight her testimony, taken as a whole, is ultimately to be given.

4. Evidentiary Value of Prior Statements When the Prosecutrix Turns Hostile

4.1 The Section 161 Statement: Contradiction, Not Substantive Evidence

As noted in Section 3.2, a Section 161 statement is not substantive evidence under any circumstance, whether or not the maker later turns hostile. Its function when a prosecutrix turns hostile is limited to enabling the defence to highlight, through the mechanism of Section 145 of the Evidence Act (Section 148, BSA), material contradictions between what she told the investigating officer and what she has said at trial. Practitioners should note that this is a two-edged sword: while the defence may use such contradictions to impugn the reliability of the trial testimony, the prosecution is equally entitled to draw the court's attention to consistency between the Section 161 statement and the substance of the earlier, corroborated parts of the trial testimony, even though the Section 161 statement itself remains inadmissible as proof of the facts it records.

4.2 The Section 164 Statement: Corroborative Value and the Case for Enhanced Status

The Section 164 statement occupies a more contested position. Under the general law of evidence, it too is, strictly speaking, not substantive evidence in the sense of independently proving the facts stated, but Section 157 of the Evidence Act (Section 160, BSA) permits it to be used to corroborate the maker's testimony where that testimony is otherwise given at trial, and courts have increasingly emphasised its heightened reliability in the specific context of child sexual offences given the safeguards attending its recording — the presence of a Magistrate, the requirement of contemporaneity, and the procedural protections under Sections 24 and 26 of the POCSO Act discussed in Section 3.3. Reported commentary on recent High Court decisions has recorded judicial calls for legislative amendment to enhance the evidentiary status of the Section 164 statement of a POCSO victim, precisely because of the practical difficulty that arises when that carefully safeguarded statement is reduced to a mere corroborative aid once the maker resiles from it at trial, several years after the statement was recorded. Until such legislative change occurs, however, practitioners must work within the existing framework: the Section 164 statement remains available to corroborate a truthful portion of the trial testimony and to found cross-examination under Section 145 (Section 148, BSA) where the trial testimony departs from it, but it cannot, without more, substitute for sworn testimony as the primary evidentiary foundation of a conviction.

4.3 The Effect of a Hostility Declaration on the Trial Testimony Itself

A point of considerable practical importance, and one on which trial courts have sometimes erred, is that the grant of permission to cross-examine one's own witness does not operate to strike the witness's testimony from the record, nor does it render the entirety of that testimony worthless. The Supreme Court has repeatedly reaffirmed, across a long and unbroken line of authority running from Bhagwan Singh v. State of Haryana, (1976) 1 SCC 389, and Rabindra Kumar Dey v. State of Orissa, (1976) 4 SCC 233, through Khujji alias Surendra Tiwari v. State of Madhya Pradesh, (1991) 3 SCC 627, Balu Sonba Shinde v. State of Maharashtra, (2002) 7 SCC 543, and Gagan Kanojia v. State of Punjab, (2006) 13 SCC 516, to C. Muniappan v. State of Tamil Nadu, (2010) 9 SCC 567, and Ramesh Harijan v. State of Uttar Pradesh, (2012) 5 SCC 777 — that the evidence of a hostile witness is not wholly effaced from the record merely by the grant of leave to cross-examine, and that the court remains free, indeed obliged, to consider such parts of that testimony as inspire confidence and are corroborated by other reliable material. The task facing the trial court on a declaration of hostility is accordingly not to discard the prosecutrix's testimony wholesale, but to undertake the more exacting task of sifting the reliable from the unreliable portions of what she has said, a task examined further in Section 6 below.

4.4 Section 22(2) of the POCSO Act and the Absence of a Perjury Deterrent

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A structural feature of the Act bears directly on the practical dynamics of hostility: Section 22 of the POCSO Act penalises the making of a false complaint or the furnishing of false information with the intent to defame or humiliate a person, but Section 22(2) expressly exempts the child concerned from any such punishment. This exemption is a deliberate and defensible protective measure, ensuring that a genuine child victim is never deterred from approaching the authorities by the fear of prosecution should her account later be disbelieved. Its practical consequence, however, as reporting on Delhi's POCSO trial courts has documented, is that a child who has been tutored, pressured, or persuaded — whether by her own family, the accused's family, or an intermediary — to depart from an earlier true statement faces no criminal jeopardy for doing so, removing a deterrent that operates against adult witnesses and thereby, in the view of several trial-level practitioners, contributing to the ease with which family or community pressure can be translated into a change of testimony at trial.

5. Statutory Presumptions under Sections 29 and 30 and the Foundational Facts Doctrine

5.1 The Text and Design of Sections 29 and 30

Section 29 of the POCSO Act provides that where a person is prosecuted for committing, abetting, or attempting to commit an offence under Sections 3, 5, 7, or 9 of the Act, the Special Court shall presume, unless the contrary is proved, that such person has committed the offence. Section 30 creates a parallel presumption of culpable mental state, again rebuttable by proof to the contrary, and clarifies that a fact is said to be proved only when the court believes it to exist beyond reasonable doubt rather than merely on a preponderance of probability. Together, these provisions reverse the ordinary incidence of the burden of proof once their preconditions are met, requiring the accused, rather than the prosecution, to displace the presumption of guilt.

5.2 The Foundational Facts Requirement

The critical qualification that governs the operation of both presumptions, and one of central importance to any case involving a hostile prosecutrix, is that they do not spring into operation merely upon the framing of a charge or the levelling of an allegation. The governing principle derives from the Supreme Court's treatment of reverse-burden provisions generally. In Noor Aga v. State of Punjab, (2008) 16 SCC 417, decided under the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court held that a statutory presumption of guilt is not absolute, that it must be read in the light of the presumption of innocence and the fair trial guarantee under Article 21 of the Constitution, and that it comes into operation only once the prosecution has itself established the facts forming the foundation of the presumption. The High Courts have applied that reasoning to Section 29 of the POCSO Act with striking consistency, holding that the presumption is triggered only after the prosecution has proved the foundational facts of the case — ordinarily, the age of the victim and the occurrence of an act falling within Sections 3, 5, 7, or 9 of the Act — through cogent and reliable evidence. The Delhi High Court, in Dharmander Singh alias Saheb v. State (Govt. of NCT of Delhi) (2020), examined the legislative intent behind the reverse burden at length and held that the presumption operates only once the prosecution has proved the basic facts of the case, after which the accused may rebut it by discrediting the prosecution witnesses through cross-examination or by demonstrating gaps or improbability in the prosecution's version; the Court added that a reading of Section 29 which applied it before that point would not pass constitutional muster. The Bombay High Court, in Navin Dhaniram Baraiye v. State of Maharashtra, held in the same vein that although the provision directs the Special Court to presume the commission of the offence, the presumption operates only upon the prosecution first proving the foundational facts beyond reasonable doubt, and that a trial court errs in resorting to Section 29 where those facts have not themselves been adequately established. The Tripura High Court and the Kerala High Court have expressed the same principle in comparable terms, the Kerala High Court additionally observing that a literal, mechanical application of Section 29 sits uneasily with the constitutional presumption of innocence and must accordingly be read down to require genuine, independent proof of the foundational facts before the reversed burden takes effect.

5.3 The Constitutional Tension and Its Resolution

The reversal of the ordinary burden of proof under Sections 29 and 30 has attracted sustained constitutional scrutiny, given the tension it creates with the presumption of innocence that Indian courts have recognised as an important, if not always freestanding fundamental, safeguard of a fair trial. The judicial resolution of this tension, evident across the decisions surveyed in Section 5.2, has been to preserve the presumption's constitutional validity while confining its operative scope: the presumption does not relieve the prosecution of the obligation to adduce cogent, admissible evidence establishing the foundational facts of the offence, and it is only once that threshold burden is discharged that the evidentiary onus shifts to the accused to rebut, on a preponderance of probability, the presumption of guilt and culpable mental state that then arises.

5.4 The Specific Effect of a Hostile Prosecutrix on the Presumption's Operation

This foundational facts doctrine has direct and often decisive application where the prosecutrix has turned hostile, since her testimony is frequently the primary, and sometimes the sole, source of the foundational facts the presumption requires. A recurring pattern in the reported decisions illustrates how this plays out where independent corroboration exists: notwithstanding that the child victim and her family members have turned hostile at trial, courts have held the foundational facts to be established through forensic evidence — a DNA match between the accused and biological material recovered at the medico-legal examination, read together with the contemporaneous medical record — such that the Section 29 presumption remained validly triggered and the hostility of the witnesses did not disturb the conviction. Where, by contrast, no such independent corroboration exists and the prosecutrix's hostile testimony leaves the foundational facts unproved, the presumption simply never arises, and the prosecution's case must stand or fall on whatever residual evidentiary value her testimony retains under the doctrines discussed in Section 6 below, together with any other material on record. The practical lesson for prosecutors, examined further in Section 8.1, is that the risk of a prosecutrix turning hostile makes early, independent corroboration — forensic, medical, and documentary — not merely useful but frequently decisive to the survival of the prosecution's case.

6. Standard of Proof and Judicial Techniques for Partial Reliance

6.1 Beyond Reasonable Doubt Notwithstanding the Presumption

It bears emphasis, particularly for practitioners inclined to treat Sections 29 and 30 as dispensing with a rigorous standard of proof, that Section 30(2) of the Act itself defines proof as belief beyond reasonable doubt, not mere probability, and that the presumption operates only as to the fact of commission of the offence and the accused's mental state, not as to the foundational facts that must independently be established to the same exacting standard. The ultimate standard of proof in a POCSO trial, in other words, remains the standard of proof beyond reasonable doubt familiar throughout the criminal law; what the presumption alters is only the incidence of the burden of proof once the foundational facts have been established to that standard, not the standard itself.

6.2 The Sterling Witness Standard

Where a prosecutrix's testimony is internally consistent, natural, and free from any indication of tutoring or embellishment, the Supreme Court's decision in Rai Sandeep alias Deepu v. State (NCT of Delhi), (2012) 8 SCC 21, permits a conviction to rest on that testimony alone, without the need for further corroboration, provided the testimony meets the exacting description of a "sterling" witness: one whose version is of such high quality that the court can accept it at face value without hesitation, and which does not leave room for doubt as to the occurrence, the persons involved, or the sequence of events. Indian High Courts have applied this standard with some regularity in POCSO appeals, both to uphold convictions where the child's testimony met this threshold notwithstanding minor inconsistencies, and to set aside convictions where material improvements or contradictions in the child's account fell short of the sterling witness standard. The obvious corollary, of central relevance to this paper, is that where the prosecutrix's own courtroom testimony is itself hostile or materially inconsistent, it cannot by definition satisfy the sterling witness standard, and the prosecution must then look to corroborative evidence and the doctrine of partial reliance discussed below.

6.3 The Doctrine of Partial Reliance: Hostile Testimony Is Not Wholly Effaced

As introduced in Section 4.3 above, the line of Supreme Court authority running from Bhagwan Singh v. State of Haryana to C. Muniappan v. State of Tamil Nadu and Ramesh Harijan v. State of Uttar Pradesh, and reaffirmed in Rajesh Yadav v. State of Uttar Pradesh (2022), establishes that a hostile witness's testimony is not wholly discarded from the record, and that a court may, on careful scrutiny, accept and act upon those portions of the testimony that are found to be dependable, even while rejecting the remainder. This doctrine of partial reliance is of considerable practical significance in POCSO trials: even where a prosecutrix has, under family or community pressure, resiled from identifying the accused or from describing the assault in the terms she used at the Section 164 stage, portions of her trial testimony — for instance, an admission that she was in fact taken to a particular place by the accused, or an acknowledgment consistent with the medical findings — may survive scrutiny and combine with independent corroboration to sustain a conviction, provided the court approaches the exercise with the necessary rigour and does not simply treat a declaration of hostility as terminating the inquiry.

6.4 Corroboration through Medical, Forensic, and Documentary Evidence

The class of cases discussed in Section 5.4 above, in which hostility is total rather than partial, is instructive on the

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practical operation of the partial reliance doctrine. Where both the child victim and her mother have turned hostile at trial, courts have nonetheless sustained the conviction because a DNA match obtained from biological material recovered during the medico-legal examination, together with the contemporaneous medical record, independently established the foundational facts that the child's hostile testimony no longer supplied. Courts have further held that a child's inability, at trial, to identify an item of clothing does not neutralise the incriminating value of the forensic evidence, and that delay and other peripheral inconsistencies raised by the defence do not detract from the cogency of scientific corroboration. These decisions illustrate a broader and practically vital point: in the class of cases where hostility is foreseeable or has already manifested at an earlier stage of the proceedings, the availability of independent, non-testimonial corroboration — DNA and other forensic analysis, the medico-legal certificate, contemporaneous complaints to teachers, relatives, or medical personnel, and call detail or digital records where relevant — very often determines the outcome of the trial.

6.5 Judicial Guidelines for Handling an Unsupportive Victim

The authorities surveyed in Sections 5 and 6 above yield, when read together, a structured method for trial courts confronted with a victim who does not support the prosecution. That method, which follows from the foundational facts requirement and the doctrine of partial reliance rather than from any single decision, directs courts to assess with care the degree of support the victim's testimony continues to lend to the prosecution case notwithstanding her hostility, to separately evaluate the evidentiary value of corroborative material independent of the victim's testimony, and to consider the supported portions of the testimony together with such corroborative material in reaching a considered conclusion on guilt, rather than either mechanically applying the Section 29 presumption without proof of foundational facts or mechanically acquitting the accused the moment hostility is declared. This structured approach, consistent with the doctrine of partial reliance and the foundational facts requirement discussed above, equips trial courts for the difficult evaluative task that a hostile prosecutrix presents, and is of direct practical utility to prosecutors and defence counsel alike in framing their respective submissions at the conclusion of trial.

7. The Empirical Dimension: Scale and Drivers of Hostility

The doctrinal framework examined above operates against a backdrop of a hostility problem that is not occasional but pervasive, and understanding its scale and drivers is essential to the practitioner guidance offered in Section 8.

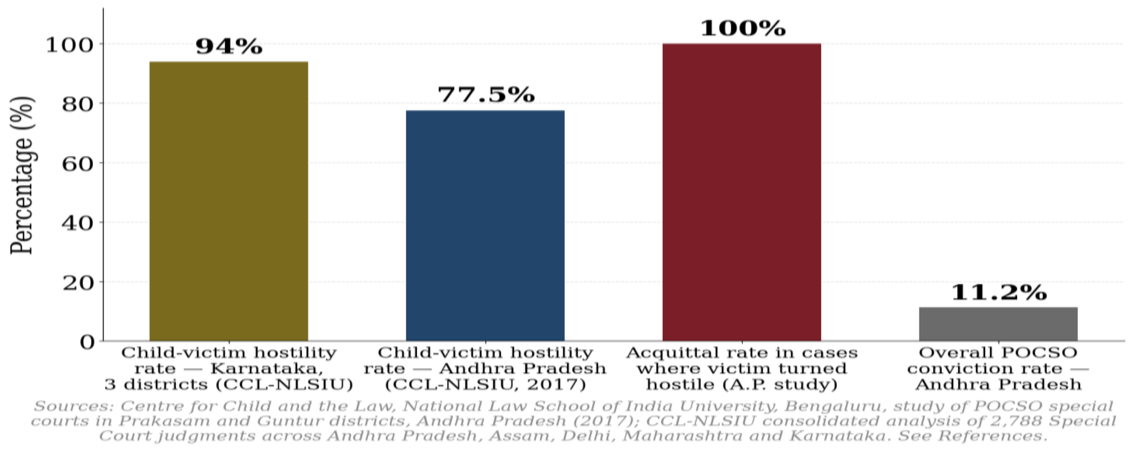

Figure 2: Empirical indicators of the scale of the hostile-witness problem in Indian POCSO trials.

7.1 The Scale of the Problem

The study conducted by the Centre for Child and the Law at the National Law School of India University, Bengaluru, examining the disposal of POCSO cases in the Prakasam and Guntur districts of Andhra Pradesh, found that witnesses turned hostile in 395 of 509 cases examined — a rate of 77.5 per cent — and that acquittal followed in every one of the cases in which the victim turned hostile. Convictions were recorded in only 57 of those 509 cases, a conviction rate of 11.19 per cent and a corresponding acquittal rate of 88.81 per cent. The study attributed Andhra Pradesh's particularly high hostility rate to a severe lack of support for victims and witnesses during the investigation and trial process. The wider programme of research of which it formed part, which analysed 2,788 Special Court judgments across Andhra Pradesh, Assam, Delhi, Maharashtra and Karnataka, found the same phenomenon at varying intensities in every State examined — child victims turned hostile in 94 per cent of the

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cases studied in three districts of Karnataka, 78 per cent in Andhra Pradesh, 67.5 per cent in Delhi, 47 per cent in Maharashtra and 32 per cent in Assam — and concluded that the principal reason for acquittal across all five States was that the victim did not support the prosecution at trial. The researchers linked this directly to the absence of institutional support: no State other than Delhi operated a victim and witness protection system, and panels of support persons to assist the child during investigation and trial had not been constituted in a majority of the districts visited, so that most children and their families navigated the criminal process entirely on their own. Reporting from Delhi's Tis Hazari courts, based on interviews with POCSO prosecutors, corroborates this pattern at the level of individual case experience, with one senior prosecutor describing hostility as a problem "in most cases" and noting instances in which a child's Section 164 statement itself was later found to reflect tutoring by an intermediary rather than the child's own independent account.

7.2 Drivers of Hostility

The drivers of this pattern, as documented across the empirical and journalistic literature, are reasonably consistent. Delay between the recording of the Section 164 statement and the trial — frequently running into years, as the delays documented across the district-level studies above attest — provides an extended window during which family circumstances change, financial or social pressure from the accused's family can be brought to bear, or the family's own initial resolve to pursue the complaint weakens. Family and community pressure, particularly where the accused is a relative, neighbour, or person of some social or economic standing relative to the victim's family, is repeatedly cited as a proximate cause of a change in testimony. Out-of-court settlement, whether motivated by financial compensation, marriage (in cases converging with the adolescent-relationship pattern discussed in comparable POCSO scholarship), or a desire to avoid continued social stigma and repeated court appearances, is a further recurring driver. Finally, as the Delhi prosecutor's account illustrates, allegations of tutoring — in some instances alleged to have occurred at the hands of the very support organisations meant to assist the child — introduce a further, more troubling category of hostility, in which the trial testimony, rather than the earlier statement, may be the version that has been influenced, complicating the ordinary assumption that the earliest statement is invariably the most reliable one.

8. Practitioner Guidance

8.1 For Prosecutors

The analysis above yields a clear practical priority for the prosecution: because a prosecutrix's hostility cannot always be prevented, the survival of the case should not depend on her testimony alone wherever independent corroboration can be secured. Prosecutors should ensure that the medico-legal examination is conducted promptly and thoroughly, that biological and forensic samples are collected and sent for analysis without delay, and that the resulting reports are placed on record well before the trial reaches the evidence stage. Contemporaneous documentary evidence — school records, hospital records, any complaint made to a teacher, relative, or counsellor prior to the police complaint — should be identified and proved independently of the prosecutrix's oral testimony. Prosecutors should also press, wherever the facts permit, for the expeditious recording of the child's evidence to minimise the delay identified in Section 7.2 as a principal driver of hostility, invoke the full range of protective measures available under Section 33 of the Act and the POCSO Rules, 2020, to shield the child from pressure at the point of testimony, and, where a witness does turn hostile, be prepared to identify with precision the portions of her testimony that remain consistent with corroborative material so as to found a partial-reliance submission along the lines of the structured approach set out in Section 6.5.

8.2 For Defence Counsel

Defence counsel confronted with a prosecutrix who has not turned hostile, but whose account nonetheless suffers from material inconsistencies across the Section 161, Section 164, and trial stages, should focus cross-examination on establishing that the foundational facts required to trigger the Section 29 and 30 presumptions have not been independently and reliably proved, since the absence of such proof forecloses the presumption altogether rather than merely weakening it. Where a witness does turn hostile, defence counsel should resist any suggestion that a court may proceed directly to the Section 29 presumption on the strength of a Section 164 statement standing alone once its maker has resiled from it at trial, and should press the point, consistent with the authorities discussed in Section 5, that the presumption requires proof, not mere allegation, of the foundational facts. At the same time, defence counsel should recognise, and prepare to meet, the doctrine of partial reliance discussed in Section 6.3: a declaration of hostility is not, without more, a route to acquittal, and where independent corroboration — particularly forensic or medical evidence of the kind considered decisive in the decisions discussed in Section 6.4

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— exists on the record, the defence must engage with that evidence on its own terms rather than resting solely on the fact of the prosecutrix's hostility.

8.3 For Trial Judges

Trial judges occupy the pivotal position in this analysis, since it is their evaluative judgment, applying the sterling witness standard, the foundational facts doctrine, and the doctrine of partial reliance in combination, that ultimately determines the outcome of a case involving a hostile prosecutrix. The guidance emerging from the authorities surveyed in this paper counsels against two equal and opposite errors: the error of applying the Section 29 presumption mechanically, on the strength of the charge alone or of a Section 164 statement from which the maker has since resiled, without independent proof of the foundational facts; and the equally serious error of treating a declaration of hostility as automatically terminating the inquiry and requiring acquittal, without the careful, portion-by-portion assessment of the testimony and the available corroborative material that the structured approach in Section 6.5 and the doctrine of partial reliance require. Trial judges should also make a considered record of the circumstances surrounding a witness's hostility — the timing of the change in testimony relative to the initiation of any settlement discussions, any indication of tutoring or pressure elicited during the Section 154 (Section 157, BSA) cross-examination, and the demeanour of the witness — since this record often proves decisive on appellate scrutiny of whether the trial court's evaluative exercise was properly conducted.

9. Recommendations for Reform

9.1 Enhancing the Evidentiary Status of the Section 164 Statement

Consistent with judicial commentary noted in Section 4.2, Parliament should consider amending the POCSO Act to accord the Section 164 statement of a child victim, recorded with the full complement of safeguards under Sections 24 and 26, a more robust evidentiary status than the purely corroborative role it presently occupies under the general law of evidence — for instance, by permitting it to be read into evidence as the child's examination-in-chief, subject to the defence's full right of cross-examination, in appropriate cases where the child affirms its correctness at trial, thereby reducing the practical significance of a change in testimony that occurs years after the statement was first recorded.

9.2 Reducing Trial Delay

Given the clear empirical association between delay and the incidence of hostility documented in Section 7, the existing statutory mandate under Section 35 of the POCSO Act requiring evidence to be recorded within thirty days of cognizance and trial to be completed within one year requires far more robust institutional support to be made a practical reality, including the appointment of the additional Special Courts and prosecutors that the delay and pendency documented in the district-level studies indicate are urgently required, and the prioritisation of POCSO trials on court calendars consistent with the Act's protective purpose.

9.3 Strengthening Witness Protection and Reducing the Incentive to Settle

A dedicated witness protection framework for POCSO complainants and their families, going beyond the general witness protection scheme, should be developed to reduce the vulnerability to external pressure that the empirical literature identifies as a principal driver of hostility, alongside more robust and promptly disbursed victim compensation under the applicable compensation schemes, which would reduce the financial incentive for families to accept private settlements from an accused in lieu of pursuing prosecution.

9.4 Addressing the Tutoring Risk

The reported instances of children being tutored — whether by family members seeking to protect the accused or, troublingly, by support persons or intermediaries associated with the prosecution — call for clearer standards and oversight governing the role and conduct of support persons appointed under the POCSO Rules, 2020, together with mandatory training for police officers and Magistrates in techniques for detecting signs of coaching or undue influence at the Section 164 stage, so that the statement recorded at that stage more reliably reflects the child's own independent account.

9.5 Data Collection and Monitoring

Finally, the National Commission for Protection of Child Rights and State Crime Records Bureaux should institute standardised, periodic reporting on hostility rates, their association with case outcomes, and their underlying causes across all States, building on the model of the Centre for Child and the Law's five-State and district-level studies discussed in Section 7, so that the scale and drivers of the problem can be tracked over time and reform measures evaluated against reliable, comparable data rather than isolated studies.

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10. Conclusion

The hostile prosecutrix is not a peripheral evidentiary curiosity in the trial of POCSO offences but, on the evidence examined in this paper, one of the central determinants of whether such trials result in conviction or acquittal. The law has developed a reasonably coherent, if demanding, framework for handling this difficulty: prior statements carry evidentiary value calibrated to the safeguards attending their recording, the statutory presumptions of guilt and culpable mental state under Sections 29 and 30 operate only once the prosecution has independently established the foundational facts of the offence, and a witness's hostile testimony is neither wholly effaced from the record nor, without careful scrutiny, sufficient on its own to sustain either a conviction or an acquittal. Applying this framework with rigour — assessing foundational facts with genuine care, identifying and relying upon the dependable portions of a hostile witness's testimony, and according appropriate weight to independent forensic, medical, and documentary corroboration — allows courts to do justice in the individual case even where the difficulty of a resiling or retracting witness cannot be avoided.

But doctrine alone cannot resolve a problem that is, on the evidence examined in Section 7, substantially structural: a hostility rate reaching 94 per cent of cases in one State study and exceeding three-quarters in another, with acquittal following in every single case in which the victim turned hostile, cannot be addressed through appellate correction of individual trial court errors alone. The recommendations advanced in Section 9 — enhancing the evidentiary status of the safeguarded Section 164 statement, reducing the delay that gives family and community pressure time to operate, strengthening witness protection and compensation to reduce the incentive to settle, and addressing the specific risk of tutoring that the Act's own exemption of the child from perjury liability leaves unchecked — are directed at that structural problem. Until such measures are adopted and take practical effect, the burden of managing the hostile prosecutrix will continue to fall, case by case, on prosecutors who must build a case that does not depend on testimony alone, on defence counsel who must hold the prosecution to its foundational burden, and on trial judges who must resist both the temptation of a mechanical presumption and the equally mechanical response of acquittal the moment a child, for reasons the record may or may not fully disclose, no longer says in court what she once said to the Magistrate.

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