



THE CREDIBILITY OF CHILD WITNESS

By Jahnavi Sharma

From Symbiosis Law School, Pune

ABSTRACT:

The present paper addresses the unique bearing of a child witness in criminal proceedings in India, both as a victim as well as a witness in a criminal trial. The goal of the research paper is to draw attention to the admissibility, weightage and significance of the testimony of a child in connection to the relevant statutory provisions applicable and pertinent case laws. The Judiciary has, over the years, interpreted the position of children as focal points of evidence, and the same shall be looked into in the paper. The reliability of child witnesses' deposition and the necessity of corroborative evidence to sustain the same is also examined. The author has enlisted some suggestions and reforms in dealing with child witnesses in criminal trials so as to make it child friendly and fruitful. The paper concludes with the author's remarks on the same.

INTRODUCTION:

In common terms, a witness is a person who has knowledge of certain incident or person or issue you and who vouches for the same under an oath or affirmation orally or by written deposition.¹ Section 118 of the Indian Evidence Act 1872 is the guide for persons who are qualified to testify in proceedings.

Under the section every person is competent to do so unless the court considers otherwise based on his or her rational/age slash disease of the body or mind or any other cause. The very nature of the section is negative in the sense that it is disqualifactory in nature.² This entails that even a person under the age of 18 for a child is also qualified to be a competent witness under the act unless the court due to reasons of not being able to comprehend or rationally respond to the questions put to him or her disqualify him or her from being a competent witness.³ Over the years there has been a plethora of cases wherein a conviction has taken place majorly based on the testimony of a child. This discretion solely rests on the court.⁴

'VOIR DIRE' TEST :

In a case where a child appears as a witness, the court generally determines if he or she comprehends the meaning of an oath has enough intelligence to give credible evidence and has the rationale to differentiate between right and wrong. The courts generally overcome challenges during this determination, however a commonly accepted test to do so is the 'Voir Dire' test. The words literally mean that which is. The test, is basically a set of questions, unconnected to the case at hand, aimed at comprehending the intellectual maturity and understanding of a child in everyday life so as to gauge the truthfulness in his or her accountability in the case at hand.⁵ If the child cannot satisfactorily answer questions asked, it impacts his credibility as a witness.

¹ Blacklaw Dictionary, pg 1153

² Allan Gledhill, "The Credibility of a child witness", 2. J.I.L.I. 241 at 266 (1959-60).

³ Kulshreshtha, V. D. "Report On Credibility of Child Witness In India: An Evaluation." Journal of the Indian Law Institute, vol. 8, no. 3, 1966, pp. 413-427.

⁴ State v. Yenkappa (2003) CRI LJ 3558

⁵ Kulshreshtha, V. D. "Report On Credibility of Child Witness In India: An Evaluation." Journal of the Indian Law Institute, vol. 8, no. 3, 1966, pp. 413-427.



This is not a hard and fast rule, but a commonly accepted practice when it comes to child witnesses.

JUDICIAL INTERPRETATION:

The courts have in a plethora of cases founded a strong faith in the credibility of child witnesses. Although corroboration is given special weight is under the Indian Evidence Act, 1872, the court has held in a plethora of cases that if the evidence deposit by a child confidence in the court that there is an impress of truth in it, the fact that it the witness is a child cannot be impediment in treating the evidence as credible. Corroboration, therefore, was a rule of prudence and nothing more.⁶

Although the courts follow the Voir Dire test, to test the competency of the minor, or is not a matter of rule but of procedure and the court can examine a child in the interest of justice irrespective of whether the child performed satisfactorily in the test.⁷ A landmark in the legal arena of credibility of child witnesses is the case of *Suresh Vs. the state of U.P.*⁸ where in the testimony of a five-year old was considered as credible as long as the child was able to you understand the issue in the given case and recall the same with sufficient veracity. this case established that there is no minimum age for credibility of witness and the significant question is whether the person can provide sufficient recalling of the facts so as to evoke the confidence of the court.⁹

ANALYSIS:

It is of utmost importance that a child witness must be able to comprehend the weightage of

the testimony that he or she delivers in the court. The consequences of a testimony of a child might result in the acquittal or conviction of a person and the child must be intellectually mature to understand the same. A child due to his very age and vulnerability maybe a playable witness and maybe tutored into to swaying the direction of truth so as to favour the influential accused. If the child explains accordingly the chain of events, which is further corroborated by other evidence on record, and if such deposition inspires confidence then by no stretch of imagination such evidence should be excluded.

When it comes to the perception of a child, the same set of facts or an incident may be perceived differently by different children due to various factors ranging from age to their growth environment, intellectual capacity et cetera therefore it becomes excessively important to understand the subject features affecting a child's perception of a particular event especially when it comes to the question of conviction or acquittal of an individual.¹⁰ A child's memory capacity, psychological development, complexity of the event emotional impact on the child of that event past experiences etcetera affect a child's recollection of an event. A child or a person in his years of development is often subject to certain conditions, depending upon the conditions he lives in and nurtured in, keeping in mind the socio-economic contrasts every person is brought up, in

⁶ Tapan Majumder v. State of Tripura, 2019SCC (25) Tri

⁷ Kelly v. State, 75 Ala. 21

⁸ Suresh v. the State of U.P (1978) Crim. LR 435

⁹ Mirajul Islam Sheik v. State of Kerala, 2017 SCC Ker 24

¹⁰ Allan Gledhill, "The Credibility of a child witness", 2. J.I.L.I. 241 at 266 (1959-60).



India.¹¹ These factors affect the child testimony even though he or she has not been tutored in to delivering a certain narration. Although in certain cases these factors may create a aversions, it has not discouraged quotes in India from allowing children to testify.¹²

The very nature of children is such that they are not self-authoritative and incapable of self-assessment. It was held in “*Nivrutti Pandurang Kokate &Ors. v. The State of Maharashtra*”¹³ that the child testimony must be scrutinized so as to ensure that it was not delivered under any circumstance of coercion and undue influence. It must be noted that the burden of proof of establishing that the testimony given by the child is inadmissible due to incompetence of the child or corruption, lies on the person contesting it. In *Tahal Singh v. Punjab*,¹⁴ the apex court while discussing the maturity of a 13 year old lad, observed that in India, a country where young children go to the fields everyday, work until dusk, meet new people and encounter small businesses, it cannot be out rightly pronounced that they are not capable of judgement of right and wrong and hence their testimony instantaneously renounced. As a matter of course, the testimony of a child might require corroboration, but if his deposition evokes the confidence of the Court and there is no exaggeration or

development in it, the Court may rely upon his evidence.¹⁵

It is true that children are vulnerable and their memories are capable of distortion. Nonetheless, when an abnormal incident surfaces, a child may be well able to understand the chronology and structure of the incident, if not fully comprehend the technicalities of the same.¹⁶ He also will not forget the same for the rest of his life. In cases where children are the sole eye witnesses to the event, dismissing the testimony solely on the aspect that the witness is a child may prove fatal to administration of justice. A child at tender age is incapable of having any malice or ill-will against any person, and may just prove to be the most truthful and accurate source of evidence in the case.¹⁷

While receiving testimony from a child, the courts must also give due regard to ensuring that the child realises his/her obligation to speak the truth under oath, and that the questions asked are in a language understandable to the child.¹⁸ Recently, the Supreme Court of the United States of the America, in its landmark judgement, *Ohio Vs. Clark*¹⁹ made it easier for prosecutors to bring child-abuse cases without young children having to testify, allowing jurors to hear from teachers whose students told them they were abused.²⁰ Any child is bound to face some level of hesitation and/or

¹¹ Kulshreshtha, V. D. “Report On Credibility of Child Witness In India: An Evaluation.” *Journal of the Indian Law Institute*, vol. 8, no. 3, 1966, pp. 413–427.

¹² *Mirajul Islam Sheik v. State of Kerala*, 2017 SCC Ker 24

¹³ *Nivrutti Pandurang Kokate &Ors. v. The State of Maharashtra* AIR 1952 SC 54

¹⁴ *Tahal Singh v. Punjab* AIR 1979 SC 1347

¹⁵ *Ibid.*

¹⁶ Anupama Chandra, *Child Witness: A Critical Analysis*, (2018)

http://shodhganga.inflibnet.ac.in/bitstream/10603/12841/10/10_chapter%204.pdf

¹⁷ *Satish Kumar Gupta And Ors vs State Of Haryana And Ors.* 2016 Cr.757

¹⁸ *State v Allen* 70 Wn.2d 690, 424 P.2d 1021 (1967)

¹⁹ *Ohio Vs. Clark* 17 US 2d 641

²⁰ Allan Gledhill, “The Credibility of a child witness”, 2. *J.I.L.I.* 241 at 266 (1959-60).



discomfort while testifying the horrific facts that took place in front of strangers in a strange atmosphere. Hence, it is excessively important that they are dealt with extreme care and sensitivity.²¹

SUGGESTIONS:

Below are certain suggestions that can be followed while dealing with child witnesses:

1. The court room can be arranged such that the child does not have to see the accused or even the crowd gathered in the court room.
2. The different aspects of a child mental and physical development, atmosphere and other factors that influence the child's narration must be taken into consideration while entertaining his or her testimony.
3. To make the child less conscious and more comfortable, the examination may be conducted in a separate room and be played via camera in the court room.
4. The child behaviour, facial expression and language must play an influential role in asserting the credibility of the child.
5. Training program and grid must be created to help judges and prosecution staff in dealing with child witnesses so as to help understand a child's psychology and appropriate mannerisms to deal with children.
6. The advocacy and professional conduct rules incorporated in the Advocates Act 1961, Bar Council of India rules, State Bar Council Rules should specifically proscribe

intimidating and harassing questioning of child witnesses.

CONCLUSION:

In a case where children are the primary witnesses, it poses a challenge in the trial proceeding. However, in cases where such evidence come in directly after the commission of a crime it holds a great value as it becomes a part of Res Gestae.²² The courts have to put in Greater attention in such cases as their witnesses are gullible and vulnerable and have the capacity to evade the quote from the truth.²³ It became excessively important question skilfully and appropriately and only when the story that they recount fits into the matrix of the case can the witness be considered as credible. Suggestive, leading, coercive may often lead the child in a direction that an advocate wants the child to follow, creating a risk eliciting false statement from the child.²⁴ Children often tend to be submissive due to the pressure and the tension surrounding the entire scenario, and the entire judicial proceedings can take a toll on a sensitive mind, leading to breakdown and change in testimony.²⁵ Hence, the court needs to take care of intricate aspects, making sure that the child's testimony is not affected in any way.²⁶

²¹ Suresh v. the State of U.P (1978) Crim. LR 435

²² Anupama Chandra, Child Witness: A Critical Analysis, (2018)

http://shodhganga.inflibnet.ac.in/bitstream/10603/12841/10/10_chapter%204.pdf

²³ Kulshreshtha, V. D. "Report On Credibility of Child Witness In India: An Evaluation." Journal of the Indian Law Institute, vol. 8, no. 3, 1966, pp. 413–427.

²⁴ State v. Yenappa (2003) CRI LJ 3558

²⁵ Allan Gledhill, "The Credibility of a child witness", 2. J.I.L.I. 241 at 266 (1959-60).

²⁶ Anupama Chandra, Child Witness: A Critical Analysis, (2018)

http://shodhganga.inflibnet.ac.in/bitstream/10603/12841/10/10_chapter%204.pdf



BIBLIOGRAPHY:

BOOKS REFERRED:

1. K.D Gaur, *Indian Evidence Act, 1872* (Universal Law Publications ltd.) 7th Edition.
2. Batuk Lal, *The Law Of Evidence*, (Central Law Agency Publications) 11th Edition.
3. Lawrence S. Wrightsman, *The Child Witness: Legal Issues and Dilemmas* (Bloomsbury Publications ltd.) 1st Edition.

INDIAN STATUTES REFERRED:

1. The Indian Evidence Act, 1872
2. The Juvenile Justice Act 2016
3. The Code Of Criminal Procedure, 1872

ONLINE DATABASE REFERRED:

1. www.sconline.com
2. www.manupatra.com
3. www.indiankanoon.org

OTHER SOURCES:

1. Anupama Chandra, *Child Witness: A Critical Analysis*, (2018) http://shodhganga.inflibnet.ac.in/bitstream/10603/12841/10/10_chapter%204.pdf
2. Aditya Bhattacharjea, *Testimony of a child* 449 (2012).
3. Kulshreshtha, V. D. "Report On Credibility of Child Witness In India: An Evaluation." *Journal of the Indian Law Institute*, vol. 8, no. 3, 1966, pp. 413–427.
4. Allan Gledhill, "The Credibility of a child witness", 2. *J.I.L.I.* 241 at 266 (1959-60).
