



CREDIBILITY OF CHILD WITNESS IN LIGHT OF THE INDIAN JUDICIAL SYSTEM – AN ANALYSIS

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ABSTRACT

Increasing numbers of children are testifying in criminal, civil, and family courts. In regard to three issues, potential directions for future investigation on child witnesses are discussed in this article. Children's capacity for correct testimony, the probability of emotional stress for kid witnesses, and the perceived veracity of child testimony. Background knowledge on various legal concerns concerning children testifying in court is intended, including information on the reliability and emotional effects of kid testimony. The objective is to lessen the long-term effects and subsequent traumatization of children who testify about violence they have experienced or observed. Even in this article, the standards the court uses to determine whether a youngster is competent to testify are covered. Additionally, there has been study on how children's testimony is impacted by memory deficiencies, suggestibility, sensitivity to outside influence, emotional arousal, and significant delays.

Keywords – *child witness testimony, admissibility, justice, Indian Evidence Act*

INTRODUCTION

Child witnesses have always been among the most contentious types of witnesses. They are seen as being impressionable, susceptible to instruction, and open to suggestion.¹ However, this does not imply that they are unable to recall anything or that the evidence they have supplied should be disregarded.² According to Section 118 of the Indian Evidence Act of 1872, “*All persons shall be able to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rationale answers to the questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.*”³ In other words, a child's competence is determined by their capacity to comprehend the issues raised, the events that were observed, and their duty to be truthful while testifying in court. A juvenile witness' testimony is admissible and subject to the weight that the appropriate Court gives it. Furthermore, when a child's testimony is otherwise truthful and likely, it is not appropriate to cast doubt on their capacity as an eyewitness.⁴

RESEARCH QUESTION

Through its study, analysis, and understanding, this work aims to provide answers to the following questions:

1. How are child witnesses considered by the Indian legal system?

¹ Nancy Walker Perry, Lawrence S. Wrightsman, *The Child Witness: Legal Issues and Dilemmas*, Sage Publications (1991).

² *Radhey Shyam v. State of Uttar Pradesh*, 1993 Cr LJ 3709.

³ Section 118, *Who may testify*, The Indian Evidence Act, 1872.

⁴ *Niranjan Amratlal v. Uttamran Atmaram*, ILR 1970 Guj 691: 1979 Raj Cr C 15.



2. How have important rulings influenced the development of the acceptability of child witnesses' testimony?
3. How significant is the Suryanarayana v. State of Karnataka case in terms of young witnesses?
4. What steps may be implemented to support the holistic development of future child witness testimony that is relevant?

MEANING – CHILD WITNESS

Children are the most unreliable kind of witnesses because, as common experience has shown us, at a young age they often confuse dreams with reality and glibly repeat what they have heard from others, under the influence of fear of punishment, hope of reward, and desire for renown.⁵ Any juvenile who appears before the Court to testify about what they have seen is considered a kid witness.

Children's involvement in India's adjudication process as competent witnesses has dramatically expanded over the last several years, in large part due to the society's greater awareness of the problem of abuse and the subsequent deletion of various legal obstacles to their testimony. A safe field of interest in children's eyewitness capacity has been created because to the increased connection between youngsters and the criminal system.

⁵ Sheikh Umar Saheb Alias Umra vs Unknown, 1957 CriLJ 919

⁶ Suryanarayana v. State of Karnataka, AIR 2001 SC 482

ACCEPTANCE OF CHILD WITNESS TESTIMONY

The attitude of the Courts towards the acceptance of the testimony of child witnesses has changed as a result of a number of significant decisions in Indian legal history. Unique and individual judgements made by several courts in India modified the dynamics of kid witnesses. Development and acceptance have been facilitated by a number of important rulings. The essential change that can be noticed, despite the fact that the judgments were made at various periods based on different subjects and crimes, is the final admission of child witnesses, often at younger ages due to the credibility and bias such testimony had.

In order to properly appreciate the central issue of Suryanarayana v. State of Karnataka⁶, it is important to look into how three major kinds of judgments have advanced the acceptability of child witness testimony:

- Age.
- Tuition.
- Competence.

AGE

It was noted in State of Uttar Pradesh v. Krishna Master & Ors⁷ that there is no such legal theory that states it is improbable that a little kid of delicate age would be unable to repeat what he or she had experienced from memory. When it comes to unusual and distressing occurrences, a youngster is unquestionably responsive and vigilant, and these kinds of memories often stay intact for

⁷ State of Uttar Pradesh. v. Krishna Master & Ors, (2010) 12 SCC 324.



the remainder of their life. If questioned, there's a good probability the kid will be able to sum up what occurred with absolute accuracy. If the youngster accurately recounts the pertinent events of the incident without adding any embellishments or enhancements, and if this inspires some level of trust in the court, then corroboration is not necessary. A young youngster is practically incapable of growing or harbouring any type of animosity against other people. There has been application of the notion of assessing each case as an individual issue and examining the credibility of the kid witness on a case-by-case basis with respect to the age being set as a criterion for acceptance.

In State of Bihar v. Hanuman Koeri⁸, it was noted that an eight-year-old was unable to understand the questions put forward and was thus not regarded as a trustworthy witness. In the 1982 case Padam Singh v. State of Rajasthan⁹, it was determined that a kid under the age of three and a half was not qualified nor credible to testify.

The Court concluded that a child as young as five years old may submit testimony as long as he or she is able to understand what is occurring and be able to respond appropriately. This is an example of how development can be shown. The intellectual abilities must be assessed in each situation rather than the age, which has no bearing. Another incident included a child who was around seven years old who, while playing with her neighbour, lost sight of the neighbour who was also her friend. The Court said that it was erroneous and absurd to

dismiss the kid's testimony on the basis that a youngster, given his or her age, could not possibly recall what had occurred.¹⁰

As a result, rather than being primarily based on the child witness's tender¹¹ age, judgments are now made based on their individual competence, with the child witness's competency still being a significant element but not the only one.

TUTORING

It is well known that one of the most fundamental presumptions made about young witnesses was that they were vulnerable to exploitation. The Supreme Court then said that courts should proceed cautiously where there is a chance that a youngster is receiving tutoring and that such a testimony might be partially or completely dismissed. In Chagan Dame v. State of Gujarat¹², the court ruled that the evidence of a minor witness who was judged to be receiving tutoring was unreliable and needed to be confirmed. The Hon'ble Supreme Court affirmed the conviction of a lady for killing the victim's husband in Satish Kumar Gupta and Ors v. State of Haryana and Ors.¹³ primarily on the evidence of their 12-year-old kid. It was determined that there was no instance of tutoring since the boy had seen the gruesome death of his father by a group of hired killers.

Furthermore, in State v. Yenkappa¹⁴, the defendant had been found guilty of killing his wife based only on the testimonies of his

⁸ State of Bihar v Hanuman Koeri, 1971 Cr.LJ 187 (Pat.).

⁹ Padam Singh v. State of Rajasthan, 1982 Raj, LW 469.

¹⁰ Suresh v. State of Uttar Pradesh, 1981 AIR 1122.

¹¹ Ratansinh Dalsukhbhai Nayak v. State of Gujarat (2004) 1 SCC 64.

¹² Chagan Dame v. State of Gujarat, AIR 1994 SC 454.

¹³ Satish Kumar Gupta and Ors v. State of Haryana and Ors, 2019 SCC Online SC 1478.

¹⁴ State v. Yenkappa (2003) CRI LJ 3558.



children. When the admission of such evidence was contested, the court ruled that while it is important for the court to be watchful to make sure that an innocent person is not punished solely for the testimony of a child witness because they are easily brainwashed, the testimony of the children in this particular case cannot be rejected solely on that basis. The kids' attendance in the home is a regular occurrence, therefore it is not abnormal for them to be present when the event occurs.

In light of this, it is important to realise that evaluating whether a child witness was coached or not now heavily relies on the testimony of children in casual, everyday circumstances. When it comes to the acceptance of the testimony of young witnesses in situations where there is cause for mistrust, there are additional elements that come into play.

COMPETANCY OF CHILD WITNESS

The Indian Courts in India took into consideration **J. Brewer's** observation in the case of **Wheeler v. United States**¹⁵, where he stated that it is not a requirement for the testimony of child witnesses to be rejected per se, but that the Courts as a directive of prudence must evaluate their put forth evidence with intimate analysis. This observation related to the competency of child witnesses to testify.

¹⁵ Wheeler vs. United States, 159 US 523 (1895).

¹⁶ Jagdish v. State of Haryana, 2011 (1) RCR (Criminal) 324 (P&H).

¹⁷ Nancy Walker Perry & Lawrence S. Wrightsman, *The Child Witness: Legal Issues and Dilemmas*, Sage Publications (1991).

¹⁸ Panchhi & Ors. v. State of Uttar Pradesh, AIR 1998 SC 2726.

Child witnesses have always been among the most contentious and hazardous¹⁶ types of witnesses.¹⁷ They are seen as being impressionable, susceptible to instruction, and open to suggestion. Given the difficulties that are so often linked with kid witnesses and the evidence they provide, the degree of substantiation is typically higher in such cases.¹⁸

As contrast to other witnesses¹⁹, their testimony has to be reviewed much more carefully and thoroughly since they are more susceptible to brainwashing and coaching.²⁰

Children are unquestionably not unfit witnesses. The court said in its ruling in the case of **Radhey Shyam Capt.**²¹ Their testimony is not always to be dismissed. They are susceptible to coaching, however, so that must be taken into account. Children often begin to believe that the same discourse is the truth and begin imagining for it to be real when it is spoken and repeated to them by their elders. It has been said that their innocent brains are like blank sheets that can keep anything written over them and can retain anything written over them via repeated communication.

==[[Furthermore, it was noted in **Nivrutti Pandurang Kokate & Ors.**²² that a child's ability to comprehend facts at a young age is typically more dependent on the people around them and that their opinions and imagination are typically based on other people's perceptions, which is why a child's

¹⁹ State of Uttar Pradesh. v. Krishna Master & Ors., AIR 2010 SC 3071

²⁰ Digamber Vaishnav v. State of Chhattisgarh, (2019) 4 SCC 522

²¹ Radhey Shyam Capt. v. State of U.P., (1994) 1 D.M.C 260(ALL).

²² Nivrutti Pandurang Kokate & Ors. v. The State of Maharashtra, AIR 2008 SC 1460.



proof has a higher likelihood of being modified. Prior to this change, a child's age was used to determine whether or not they were a competent witness. Only a few witnesses under the age of ten were permitted, and none under the age of nine could be admitted or taken into consideration.²³ However, during the last several years, the judiciary's position has changed. The role of a kid witness has continuously changed and progressed. The Indian legal system addresses this problem by applying a certain amount of judicial wisdom to the testimony of a young witness.²⁴ The "**test of competence**" is relevant in cases involving minor witnesses, the Apex Court of India confirmed.²⁵ Age is no longer cited as a factor²⁶ in the opinion that children are no longer acceptable as witnesses. Age is not a legitimate result; what has to be assessed are a child's intellectual abilities. No witness is to be deemed ineligible to testify because of their age.

VOIR DIRE CONCEPT

An infant may take an oath in a criminal trial if the court determines after a thorough examination that the child has a sufficient understanding of the nature and implications of the oath. In other words, the court must determine from the witness' responses whether the child understands the peril and impropriety of lying.²⁷

Only in situations when it is obvious that the witness does not grasp the ethical obligations of taking an oath or affirming something, or

the repercussions of providing false testimony, can an oath or affirmation be provided. The deposition will be acceptable if the judge purposefully chooses not to give affirmation on the justification that the youngster cannot comprehend its nature.²⁸

CRITICAL ANALYSIS

The court must determine the child witness's level of intellect, competence, knowledge, and ability to provide thoughtful responses about the incident. A child, however, is a privileged witness because the court will determine the child's competence depending on the specifics of each case.

The wording of *Section 118 of the Evidence Act* is unfavourable. The testimony provided by a witness who does not comprehend the subject of the inquiry would not be taken into consideration by the court. However, in cases where there is no record, the court must continue to record the evidence while taking competence into account. In other words, if a young witness can tell the difference between good and wrong, his evidence shouldn't be disregarded. If a 13-year-old eyewitness has family ties to the victim, his evidence cannot be disregarded.

Depending on the specifics of the case, each kid witness's credibility will be put to the test. However, ignoring a child's evidence will prevent him from exercising his right to utilise any and all tools to establish justice. Sec. 118 gives judges a great deal of discretion in assessing whether a party is

²³ I Phill Evidence, (4) 10th Edn., 2011.

²⁴ Rameshwar S/o Kalyan Singh v. The State of Rajasthan, AIR 1952 SC 54.

²⁵ Ratanlal and Dhirajlal, The Indian Evidence Act, 1872, Central Law Agency, 19th Edn, (2010).

²⁶ Goulla Appaiah v. State of Andhra Pradesh, 2009 CriLJ 4377.

²⁷ Nafar v. R 18 CWN 147

²⁸ R v. Campbell 1956 2 All ER 27



competent, but one must remember that judges are still fallible human beings, and their judgments will vary from case to case.

By using the *voir dire* concept, a court must meticulously determine and confirm the competence of the juvenile witness. To guarantee that the kid's testimony is not fabricated, it is also recommended to use a counsellor or other professional people who deals with the youngster in a more structured way. Given the importance of witnesses in criminal trials, it is essential to interact with young witnesses in a kind manner.

If a juvenile witness lacks the maturity to testify in court but has extraordinary knowledge that might affect how a judge views a specific crime. The evidence provided by a witness on behalf of the kid must be taken into consideration by the court. Due to the degree of subjectivity and idiosyncrasy involved, various jurisdictions have varied standards for when a child witness is deemed to be old enough to understand the question put to him during the trial.

The **R v. Norbury**²⁹ decision is one of the early rulings that constituted a turning point and is regarded as a crucial precedent for common law nations.

In this instance, the testimony of a little kid who had seen the horrible crime of rape first hand was accepted and acknowledged. Regarding the child's competency, the Privy Council ruled that even though a child may not be able to understand the oath itself, if he or she is able to attest and understand the questions asked while giving thoughtful

answers, then such a testimony is to be accepted and no sort of corroboration is necessary.

Moving forward, it was argued in **Jarina Khatun v. State of Assam**³⁰ that the Trial Court is the best judge to determine a child's competence. In these situations, the court has the potential chance to watch the youngster, examine their demeanors, record their testimony, and, after thorough examination, accept such testimony.

Thus, even in terms of competence, it was established that such instances are arbitrary and must be decided based on the specific facts and skills of each kid concerned. It can be concluded that with regard to age, tutoring, and competency the Courts moved towards a more holistic approach acknowledging alternative factors and analysing the child's capabilities when determining whether to accept/reject their testimonies. Rather than simply following a standardised approach.

In the case of **Mukesh Nut v. State**³¹, where the competency and trustworthiness of the witness were emphasised, two key issues involving juvenile witnesses were brought forth. It was noted that although a child's innate capacity to provide the Court an honest and truthful response is trustworthy and crucial, the perception of trustworthiness is just as significant. It is also crucial to ascertain if the youngster is able to explain and keep an accurate recall of the crime they observed as a child.³²

Keeping this in mind, it was said that courts should exercise caution when relying only on

²⁹ R v. Norbury, (1978) Crim. LR 435.

³⁰ Jarina Khatun v. State of Assam, 1992 Cr LJ 733.

³¹ Mukesh Nut v. State, 2011 (7) RCR (Cri) 319 (Allahabad) (DB).

³² State v. Allen, 70 Wn2d 690, 424 P.2d 1021 1967.



the evidence of a youngster. It is necessary to pay close attention in order to completely rule out the possibility that the youngster is being instructed to provide a certain testimony.³³ It has also been established that no supporting evidence is needed if the court determines that a child's testimony is a voluntary representation of what they saw, that there are no signs of coercion, and that it accurately describes what happened. Corroboration's need is only a prudential guideline that a court may or may not follow.³⁴

In Mangoo & Anr. v. State of Madhya Pradesh³⁵, the Supreme Court acknowledged that there would always be room for someone to lead youngsters astray, but this is not sufficient justification to ignore kid witnesses. The Court has the responsibility to decide whether or not the youngster is a tutoring victim. Such a conclusion may be made by carefully reviewing the substance of the evidence.

It is now known that a kid witness' testimony must get sufficient corroboration before it can be believed. However, this is a decree of practical wisdom rather than a rule of law.

CONCLUSION AND SUGGESTIONS

In conclusion, it is determined that the function of a child witness has unquestionably changed since they first became involved in legal proceedings. There has been progress since they were fully rejected under Section 118 in terms of the weight given to the child witness's age, their fear of tutoring, and their competence. When

this is recognised by the Court, as it was in Suryanarayana v. State of Karnataka, children play a crucial part in the resolution of a criminal issue.

Indian courts have been practising the notion of evaluating each kid witness and each case separately and have been sympathetic to the idea. There is no recognised standard, and no such standard is observed. The courts advocate for individual analysis and will accept a child's testimony if it is seen to be trustworthy, reasonable, and sensible.

It's crucial to recognise the kid witness's protection nevertheless. They need a little more protection and the proper tools to heal from trauma, whether or not they are victims. The child's wellbeing must be given first attention. Several suggestions for fostering the same include: It is important to take steps to make sure the youngster receives counselling to help him or her cope with the trauma they have experienced. The youngster should be permitted to bring a confidant with them to court and sit next to them when they provide testimony. It is necessary to provide training programmes and sessions to support not only the Judges and Magistrates but also the other courtroom participants when it comes to handling kid witnesses. There should be no intimidating or harsh questioning of the youngster. Advocates must acknowledge and reduce the likelihood of the same. In order to provide the child witnesses with a pleasant atmosphere while also ensuring the safety from attorneys, the defendant, adversarial parties, and even the media, a separate waiting area is to be

³³ State of Madhya Pradesh v. Ramesh & Anr. (2011) 4 SCC 786.

³⁴ Dattu Ramrao Sakhare & Ors. v. State of Maharashtra, (1997) 5 SCC 341.

³⁵ Mangoo & Anr. v. State of Madhya Pradesh, AIR 1995 SC 959



established. Age-appropriate material that explains what will happen to the kids in the simplest terms possible is required for their consumption. It is essential to take all required precautions to keep the kid from suffering in any way.

