

## EVIDENTIARY VALUE OF THE CHILD DEPOSITIONS AS WITNESS IN POCSO CASES

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**Abstract:** Any person, including a child or an elderly person, is competent to be considered a witness in a court of law if he or she is able to understand or give reasonable answers to the questions that are posed to him, in accordance with Section 118 of the Indian Evidence Act, with the exception of a tender year, extreme old age, a disease, whether of body or mind, or any other similar cause. A child witness is a witness who is under 18 years old when they give their testimony. For example, Indian law does not consider a child's age when determining whether they are competent witnesses. There is no law that forbids youngsters from serving as witnesses, thus any child who passes the competency test can do so in India. This paper studies how the Indian legal system has developed with respect to child witnesses through the lens of Evidence law.

*Keywords:* child witness, competent, legal system, testimony

### INTRODUCTION:

We are all aware that facts and evidence are necessary for the court to move forward in any issue that is brought before it. A witness is someone who testifies in court about what they know or claim to know, either orally or in writing. We will now talk about child witnesses, their importance as witnesses and their believability. A child witness is a person who swears under oath and presents testimony before any judicial institution and is typically younger than 18 years old. Anyone who saw the incident can testify, even a young child. If a child observes a crime or victim of the crime, an occurrence that the court needs to hear about, or anything else, he or she can testify in court, but only after meeting the requirements outlined in section 118 of IEA.<sup>1</sup>

<sup>1</sup> Section 118 of the Indian Evidence Act, 1872”  
All persons 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, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.”

Explanation. -- A lunatic is not incompetent to testify unless he is prevented by his lunacy from

1. They must understand the questions posed to them.
2. They are able to provide a reasoned explanation of what they observed, heard, engaged in or suffered during a specific event.

In India, there is no indication of the minimum age required for a child to be a credible witness, and there is no rule that forbids kids from testifying. Therefore, everyone who meets the aforementioned criteria qualifies as a competent witness.

### CHILD TESTIMONY:

In every family, children talk to their parents about what they did at school or elsewhere. When they describe what they saw and did, they are acting extremely innocently. Due to their ease of instruction, children can be used as puppets by the elderly to provide fabricated evidence in court. Due to temptation and anxiety, the child may testify to things that he hasn't seen. They are susceptible to influence and might be mistreated. Due to all of these problems, it is impossible to punish the accused using the testimony of a juvenile witness. Because of this, the Court frequently neglected to question and hear testimony from the child witness.

understanding the questions put to him and giving rational answers to them.

In the case of *Nirmal Kumar Vs State of Uttar Pradesh*<sup>2</sup>, the Supreme Court held that instead of discrediting a child witness, the courts should take the witness into account and interrogate him or her in order to find some sort of corroboration. As a result, the evidence offered by a child must be carefully considered and cannot be disregarded. It cannot be discharged as the reason for a child's soft age of getting tutored. In the case of *Suresh Vs State of Uttar Pradesh*<sup>3</sup>, If a child can understand the questions and replies in a logical way, a kid as young as five years old can likewise testify. However, each case must be carefully investigated, and evidence should be used with care. One more test, known as the "that which is true" or "Voiur Dire" test, is available for young witnesses.

**Voiur Dire Test:** Before the beginning of the trial, the judge questions the child about topics that are disparate to the case in order to fix whether or not the child is practical and of sound mind. The word 'Voiur' originated from a French word which means "that which is true". The court first asks the child to vow that they will only tell the truth. Second, the court will ask the child questions that have nothing to do with the case, such as their name, father's name, school, date of birth, etc. Thirdly, the judge's discretion will determine whether or not to accept the child's testimony. This test is referred to as Voiur Dire. The Supreme Court ruled that a child witness' testimony needs corroboration and to be examined for duress or undue influence.<sup>4</sup> The importance of the Voiur Dire test is mentioned in many other cases.

### INCOMPETENCY OF A CHILD WITNESS

The main case which states some rules to determine the incompetency of a child witness is *State v. Allen*.<sup>5</sup> It was noted that the party challenging the witness has the burden of proving their incapacity. The court considers five factors when determining a child witness's competency. If any of them go missing, the youngster is unable to give a testimony. 1. Understanding of the obligation to speak the truth.

<sup>2</sup> *Nirmal Kumar v State of UP* (1992) AIR SC 1131.

<sup>3</sup> *Suresh Vs State of UP* (2001) 3 SCC 673

<sup>4</sup> *Nivrutti Pandurang Kokate & Ors Vs State of Maharashtra* (2007) SLP (CrI.) No. 5059/2007.

<sup>5</sup> *State v Allen* (1996) 260 Kan. 107

2. The capacity for comprehending the inquiries.
3. When called to testify, the little witness must be psychologically able to recall the incident precisely in their mind.
4. The capacity to communicate memory.
5. Sufficient memory to remember what happened.

### CHILD EVIDENCE IN CASES OF SEXUAL ABUSE:

In the cases of child sexual abuse, the children can testify and its acceptability needs to be examined. In the case of *Rameshwar v. State of Rajasthan*<sup>6</sup>, A 8-year-old girl was raped by the defendant, who was found guilty. The basis for this conviction was the victim's confession to her mother. Although the evidence was sufficient to support a moral judgement, the Sessions Court came to the conclusion that it was insufficient legally. The High Court ruled that even if the law in this situation does require corroboration, the statement itself is recognised as such by the law. The Supreme Court heard the matter after the High Court granted permission for an appeal, at which point it issued comments on the statement's admissibility. The court continued to hear her testimony despite the fact that the youngster in this case does not understand the notion of an oath because the judge was certain that she understood her need to tell the truth. The accused didn't raise any objections to the same at that time either, in addition. The High Court's decision to sentence the accused based on the child's testimony was ultimately upheld by the Supreme Court. Younger children are thus more likely to receive tutoring in sexual assault instances, but this does not mean that the child's testimony should always be considered suspiciously and rejected.

### RELIABILITY AND NEED FOR CORROBORATIVE EVIDENCE:

In so many cases, the Courts have spoken in favour of the credibility of a child witness. In the case of *Tehal Singh and Ors. V. State of Punjab*,<sup>7</sup> the Supreme Court stated that a witness's maturity and common sense at the age of thirteen may be

<sup>6</sup> *Rameshwar Vs State of Rajasthan* (1952) AIR 54.

<sup>7</sup> *Tehal Singh & Ors. Vs State of Punjab*(1979) AIR SC 1347

comparable to that of a fully rational individual. In a number of situations and scenarios, the justice must exercise proper caution while considering a child's testimony. Additionally, the court must consider whether the testimony of a child witness needs to be corroborated. However, corroboration is not always necessary and the court can convict someone if it is convinced of their guilt based simply on a child's testimony.

The law relating to evidence of child witness was concisely stated by the Supreme Court in the decision *Dattu Ramrao Sakhare Vs State of Maharashtra*<sup>8</sup> in the following terms: "A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In witness can be considered under Section 118 of the Evidence Act provided that such a witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and the credibility thereof would depend upon the circumstances of each case. The only precaution that the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one his/her demeanor must be like any other competent witness and there is no likelihood of being tutored. The decision on the question of whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness." This view is considered in so many cases by various High Courts

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<sup>8</sup>Dattu Ramrao Sakhare Vs State of Maharashtra, (1997) 5 SCC 341

In the case of *State of MP v. Ramesh*<sup>9</sup> it was decided that even if a child's statement was tutored, the untutored portion of the testimony might still be trusted if it provided certainty. If necessary, at least the untutored portion can be utilised to corroborate. Hence, the credibility and admissibility of a child witness can be decided by the court based on the circumstances in that particular case, however, the court must keep in mind that it has to take some corroborative evidence from the child witness.

In *Mohan Kumar Vs State (NCT of Delhi)*<sup>10</sup>, the appellant was found guilty of crimes covered by Sections 10 of the POCSO Act and 354 of the Penal Code from 1860. The young victim admitted during her test that the claimed event happened between 9 and 9.30 a.m. She had gone to purchase some produce. The appellant, who was standing on the ground level, grabbed her in a corner and began kissing her as soon as she returned to her home. He also began to take her pants off. Her younger brother arrived at the scene in the interim. When she shouted, her mother ran down to the ground floor. Her father called the police, and her mother caught the appellant. The little victim correctly identified the appellant as the accused during the course of the examination. Bench stated that it is well accepted that courts may rely on the testimony of a victim of sexual assault. The law governing the victim's evidence is also well summarised. The High Court acknowledged the young victim's testimony and found it to be reliable, consistent, and truthful. Her testimony was admissible against the appellant as evidence since she was a competent witness.

"Under Section 29 of the POCSO Act, there is also a presumption regarding the guilt of an accused. As a result, the prosecution has to lay down and prove the fundamental facts regarding the guilt of the accused but the burden of proof on the prosecution is not of 'beyond reasonable doubt'. Once the facts are proved, the onus is on the accused to lead evidence to rebut the presumption raised under Section 29 of the POCSO Act. "

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<sup>9</sup> State of MP Vs Ramesh (1999) Criminal Appeal No. 1023/1999.

<sup>10</sup> Mohan Kumar v. State (NCT of Delhi), 2021 SCC OnLine Del 4380, Retrieved from: <https://www.sconline.com/blog/post/2021/09/16/c-hild-victims-testimony-2/>

It was noted that the appellant failed to remove the statutory presumption as stated above. Therefore, the appeal was dismissed, and the conviction and sentence awarded to the appellant was maintained.

The Court noted that a six-year-old girl cannot have the intention to implicate anybody. Further, the testimony of the witnesses clearly establishes that the informant was not at home and the victim was playing outside the house. She has narrated all the facts in her examination-in-chief. On the day of the incident, she says that she had come along with her grandmother. Though she has stated that her grandmother had told her what she should state before the Court, she denied that she is deposing the same thing at the insistence of her grandmother. Thus, only based on a stray statement, it cannot be stated that her testimony is the outcome of tutoring<sup>11</sup>

#### **CONCLUSION:**

India has made significant progress by allowing children to serve as witnesses in court. It has evolved significantly, and as time goes on, legal rulings have been broadening its use. The court must determine the child's credibility and competence, which can vary from case to case, as well as whether the child is a separate witness. Hence, a child witness has to be examined properly before taking his evidence into consideration. In particular for crimes against children, increasing the number of child witnesses can help increase reporting and conviction rates.

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<sup>11</sup> Retrieved from  
<https://www.scconline.com/blog/post/2023/07/18/ombay-high-court-upholds-conviction-of-46-year-old-for-raping-6-year-old-medical->