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Lex Valorem: Indian Journal of Law and Contemporary issues is a peer reviewed law journal that aims to provide a platform to all the budding lawyers, researchers and advocates for their original work. The journal follows the principle “Where value is law” and the members of the journal work towards striving value in all fields of law.

Lex Valorem is not just confined to the walls of publishing research papers but also legal updates, case analysis and other areas of legal interest.

**COMPETENCY AND CREDIBILITY OF WITNESS-
ANALYSIS OF CHILD WITNESS**

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ABSTRACT

Witness has been a main participant in pursuing the distribution of justice throughout the centuries. The fundamentals of democracy require the quintessence of democracy to be the reality and impartiality. This gives an onlooker or third party's position as a testimony in confirming or reporting the components of the event to criminal justice organizations. The sanctity of the claims produced by the judge as they are produced under oath is regarded right and accurate. Hence the function of testimony in helping the process of law was of crucial significance. All individuals are fitted to witness, unless the Court believes that, because of their youthful era, exceptional seniority, disease, they are not prepared to understand the questions they are being asked about and to provide sound responses. Indeed, even a lunatic can witness if his lunacy does not keep him from knowing his questions and offering them meaningful answers.

INTRODUCTION

The term "*competence*" refers to somebody's negligible abilities to be a testimony. Bearing in mind the ultimate objective of being a testimony, an individual other than a professional has to satisfy seven basic needs. Take some kind of commitment to be tidy. Have a working memory and transmitting ability. Not all of these preconditions are equal in importance. Never end up with the original three. Without regulating the vow, no judge will offer a defendant an opportunity to sit strong. Witness has been a main participant in pursuing the distribution of justice throughout the centuries. No lawyer will deliberately call a witness in his or her right personality who has no memory or is unable to convey, what's more, on the off chance they're doing, you won't resist.

1. WITNESS- A HISTORICAL ASPECT

Witness has been a main participant in the search for justice transmission throughout the centuries. The fundamentals of democracy demand that the pith of law must be truth and impartiality. This takes a passerby or outsider's portion as a testimony to assert or answer the aspects of the event to criminal justice headquarters. The part of the testimony subsequently played a basic role in supporting the course of fairness. The *Ancient Hindu Law of Evidence* also preferred documentary proof over verbal proof, much the same as in display days where documentary proof is preferred over verbal proof. The Hindu Law providers were probably aware of the documentary evidence's shortcomings as opposed to conceivable forgery. Witness competency relies on their reading precision and credibility. They have set out rules for ensuring the report's legitimacy. In Ancient Hindu Law, any record made by kids, insane person(s), ladies or persons under dread was considered to be vitiated. Additionally, there were causes for checking report legitimacy by referring to penmanship examination, particularly in circumstances where executors are deceased.

2. CATEGORIZATION OF WITNESS AND THEIR CREDIBILITY

Oral testimony can be categorized into three main categories, namely “*wholly reliable*”, “*neither wholly reliable*” nor “*wholly unreliable*”.

The court should face no complications in any case getting to its decision in the primary category of evidence; it could convict or make it apparent on the basis of a lonely person that it is found to be unquestionably true or doubt worthy.

3. CHILD WITNESS

A child as young as 5 years is chosen to extract proof in the case that he understands the requests and answers in an appropriate and sensible manner. The court must satisfy itself that a child's proof is reliable and untouched. Any training reference will create the proof as the one being presented in the case of *Changan Dam v. State of Gujarat*¹ in the hon'ble high court of Gujarat. If the court is fulfilled, it may convict an individual without seeking the child witnesses' combined undertaking. A number of times it has been articulated that helping the proof of a child should be a guide of judgment and is exceptionally attractive. A baby testimony is a preferred testimony and a pledge may not have to be presented.

In *M Sugal v. The King*², it was selected that a young lady about ten years old would be able to offer proof of a murder in which she was an onlooker as she could understand the questions and reply them sincerely amid being unwillingly to understand the concept of commitment. No witness shall be automatically declared incapable of testifying due to gender/sex and any baby who is a victim of attacks, sexual assaults or violence should be declared as qualified to testify without previous qualifying. In India, a comparable principle was also linked by *Queen v. Sewa Bhogta*³ and *Prakash Singh v. Territory of MP*⁴.

¹1994 CrLJ. 66 SC.

² (1945 48 BLR 138).

³ (1874 14 BENG).

⁴ "*Criminal Appeal-507/1999*".

4. A VOIRE DIRE TEST

Under this exam, the court earlier assumes the child who does not have any nexus with the situation in certain qualifying investigations, bearing in mind the ultimate objective of knowing the child applicant's competency. With respect to their title, father's title or their location of residence agreement, there may be a few instances of requests requested under this exam. A judge may put up a due request for a few inquiries and document them to display and check the child witness' competency. Also, it can be assumed that this is mandatory in compliance to the law(s) under Sec-118⁵ of the Indian Evidence Act (IEA) 1872, on each of the judges. The judge can also check to see if the child infers harshly about the difference between reality and deception. In the case of *Suresh v. Territory of UP*⁶, it was established that a child who was not ruled over due to his tender age is not needed to offer cognizant or direct responses as a trust worthy witness can provide proof yet this proof should not be completely trusted upon. A trend grew in the nineties when the courts began to record their assumptions that child witnesses had understood their duty to come clean to lend legitimacy to any proof collected from it.

⁵ "All persons shall be competent to testify unless the Court considers that they are prevented from understanding the question put to them, or from giving rational answer to those questions, by tender years, extreme old age, disease, whether of body and mind, or any other cause of the same kind."

⁶1981 AIR 1122.

5. LUNATIC- A WITNESS

In the midst of lunacy, a lunatic can oust. The person can understand and offer meaningful responses in the definite provisional. It is the duty of the court to verify that the witness has the necessary capacity and knowledge to comprehend and respond rationally to the inquiries brought to it.

In *R v. Hill*⁷, a patient in the lunatic shelter gave proof for murder as it was shown that he was a psychiatric, exclusive to his fancies, and otherwise he was a man willing to give ordinary responses.

⁷ 1851 (20) LJM 222.

6. DUMB WITNESS

Sec-119 of the IEA provides that any person “*who is not able to talk can give his proof in some other manner in which he can render it comprehensible, such as by writing*” or by symbols; however, such structure and symbols must be formed in transparent court. Such evidence shall be verbal proof. In addition, no depiction can be 100% accurate, in case the witness is competent, he may also document the corresponding answers. Any person who is capable to provide ordinary answers is not prohibited from affirming or being rationally troubled by the Section. Indeed, even an accessory or a prosecuted person may be qualified prosecutors as discusses in Sec-133 towards the end of this portion. The hon’ble Supreme Court of India in the case of *Ugar Bihar v. Province of Bihar*⁸, held that the aphorism “*falsus in uno, falsus in omnibus*” isn't a control of law or practice, yet it puts a commitment on the legal executive to eliminate the grin from the oddballs purposely. A person who has a private eagerness for conviction of an accused individual or is perceived with the one for get-togethers isn't unsuitable to be a declaration, however his announcement/proof be deliberately analyzed to keep up any unusual life cycle of discipline. The Supreme Court even held that a woman who does not meet the overall public ethics standards is no reason to die of her as an evidence or believe of her as a testimony. The Supreme Court focuses on the significance of preconceived objectives and close evaluation of evidence in each of these circumstances.

⁸ AIR 1965 SC 277.

7. COMPETENCY- CONCLUSIVE ANALYSIS

Section 118 of the IEA does not solely stipulate who may affirm: “*each person should be able to affirm unless the court believes that they are prevented from understanding the investigation submitted to them, or from providing reasonable answers to those inquiries, by delicate years, exceptional seniority, distress, irrespective of bodily or mind, or any other cause of a comparable nature.*” Clarification to Sec-118 says that a lunatic is not bumbling to affirm, unless he is prevented from knowing and providing meaningful answers to the inquiries put to him by his lunacy. Prima facie, the Section suggests that each is worthy of being a witness as soon as they are worthy to understand and respond to the inquiries put forwards and the Court is dependent on thorough evaluation of the witnesses’ capacity. This Section isn’t made a fuss over the adequacy or authenticity of the proof of the members; it believes gathering competency to be members. The plain and key preliminary of competency is whether an individual can comprehend the requests that are presented before him and answer as needs be. Having the option to avow the charged is truly significant for him to be directed by a vow.

8. CHILD WITNESS- CREDIBILITY OF HIS/HER EVIDENCE

The credibility and reliability of a child witness is something that was always in question at various circumstances. In India, however the Supreme Court is in favor of the child witnesses. In the case of *Tahal Singh v. Punjab*⁹, the Supreme Court exclusively stressed on the expression that the comparative understanding of a witness as young as thirteen years old may be equal to that of a full adult rational person. The court justified that in a rapidly developing nation like India, a child of thirteen years of age cannot be considered immature as in many areas, and children of this age already start working in farmlands and in the informal and rural sector. The credibility of a child witness is best decided upon by the Trial Court Judge itself. This is due to the fact that a judge may have a first-hand communication with the child authorizing him to be the best judge of the level of maturity and understanding of the child witness.

The argument is that there is an opportunity for interested elders influencing children so as to taint the testimony and deposition proceedings to their own side and that there is no specific age bar that the law provides for or can specify when a child shall be gaining maturity and a just understanding of the circumstances and incidents that take place around him. The competency and credibility of child witnesses is generally under the discretion of the courts by observing whether a child can clearly and justly provide an account of incidents and the happening of a particular instance in question without any improvements and embellishments in light of his intellectual and mental capacity and comprehensive abilities.

The judge must be convinced with the mental ability and maturity of the child to do so in order to ensure that the child is competent to testify and undergo deposition proceedings. This is highly dependent on the opinion of the presiding Judge and the ball is in his court to ensure that the child answers all the required preliminary questions put to him before he is the subject of cross examinations and procedure deposition proceedings and testimonies. The test is said to be complete only when the court is fully happy with the mental ability and competency of the child and only after this can the subsequent questions regarding the case be put to the child witness.

⁹(AIR 1979 SC 1347).

In the case of *Himmat Sukhadeo Wahurwagh & Ors. v. State of Maharashtra*¹⁰, The Supreme Court has stated that the child who voluntarily wants to be a witness must and shall be able to differentiate between right and wrong, so as to be a competent and qualified witness. If a contrary fact is perceptible during the cross examination or the answers of the child otherwise are contrary or ironical, he/she may not be a competent witness.

Any evidence related to child is required to be evaluated carefully as he/she is pretty vulnerable to tutoring. And so, the Court should therefore look for adequate and appropriate corroboration from other pieces of evidence in relation to the testimony of the child. However, one should remember that a child of tender age may not be consistent during the depositions and thereafter. The court must be extremely cautious in relying on his/her evidence if it thinks that there is the slightest possibility of the child being tutored.

In the case of *Rameshwar v. State of Rajasthan*¹¹, the Supreme Court made it a point that Judges should record their own opinion with regards to the understanding of the child, the need of speaking the truth along with reasons. If not, then to establish the credibility of the witness shall be a difficult task and in some cases, it may become necessary to reject the evidence altogether.

In the case of *State of Madhya Pradesh v. Ramesh and Anr.*¹², the Supreme Court, in the wake of considering an enormous number of decisions presumed that the declaration of a youngster will require authentication. Be that as it may, if this statement picks up the certainty of the Court, the Court may depend upon this proof. The Court additionally called attention to that the declaration of a kid observer ought to be thought about with extraordinary alert as they fall are prey to coaching. Only in cases wherein there is evidence to show that there been tutoring, the Court can reject the statement partly or fully. The contents of the child's deposition determine whether the child has been tutored or not. However, adequate corroboration is required to rely upon the evidence. The concept of corroboration is essentially of practical wisdom than of law.

¹⁰(AIR 2009 SC 2292).

¹¹(AIR 1952 SC 54).

¹²[(2011) 4 SCC 786].

In the case of *Mangoo v State of Madhya Pradesh*¹³ the Supreme Court observed that there is always scope to tutor the child. However, the same cannot be the reason to draw a sufficient conclusion that the child must have been educated before-hand. Therefore, it is upon the Trial Court to find out whether the child witness had been tutored or not.

In the case of *Nivrutti Pandurang Kokate and Ors. V. State of Maharashtra*¹⁴, while dealing with the child witness, the Court observed that the decision of judgment rests with the Trial Judge as to whether or not the child witness has primary intelligence so as to suffice for the same, and the Judge has an absolute right to make the child witness undergo any kind of test in order to disclose the capacity and intelligence of the child witness.

However, no law states that the testimony of the child which is not reliable shall be rejected.

The Supreme Court, however in the above mentioned same case of *Nivrutti Pandurang Kokate and Ors. V. State of Maharashtra*¹⁵, cautions that child witness is a vicious witness as there is always a chance of the witness being tutored and so it is difficult to rely upon the same as the child witness can be molded and influenced. Notwithstanding, if the Court during the affidavit feels that there is truth in the declaration at that point nothing can prevent the Court from tolerating the testimony as a solid proof.

Anyway, a kid observer is a favored observer. The believability of the youngster witness is contrasts from case to case and is reliant on the realities and conditions of each case.

The child witness cannot be blame did he or she doesn't have the capacity to distinguish between right and wrong. Conviction can take place based solely on the basis of the deposition of the child witness, however, only if he/she is found to be a competent witness and if it gains the confidence of the Court.

¹³(AIR 1995 SC 959).

¹⁴(AIR 2008 SC 1460).

¹⁵(AIR 2008 SC 1460).

9. CORROBORATIONS OF CHILD WITNESS TESTIMONIES

Despite assertions by the Supreme Court in various cases and circumstances, the contents of Sec-114¹⁶ of the IEA call for “*certain amount of corroboration of witness testimonies. Given the risks and concerns so deeply related with child witness testimonies, the threshold for corroboration is slightly higher and required in this regard.*” This is a larger and more essential part of how child witness testimonies must be scrutinized more cautiously than other witness depositions and extra effort must be put whilst basing convictions on such evidence. If in case a child is able to recollect and explain the details of an incident without improvements or developments, the requirement of a stronger corroborative evidence is lower. This is as yet emotional in nature to the trial of simply comprehension of issues and thusly significant, honest and complete reactions.

Confirmation is basic as it will prompt the acknowledgment of a kid observers' affidavit. In the event that in the event that through further examination it is discovered that the kid has been impacted or guided, the testimony may not be totally dismissed. The part that has been spoiled, as long as it is recognizable from the rest, might be the main aspect of the declaration not depended upon or dismissed inside and out. Confirmation is required as an extra affirmation of the declaration as is reciprocal in nature. Although it isn't an absolute deciding concept in terms of acceptance; in this aspect, it assists in a great way in granting credibility to the same.

¹⁶ “*The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustrations the Court may presume.*”

10. CONCLUSION

A child witness is also a witness, just like any other witness. There is no minimum age restriction for being a witness. Indian legal systems have repeatedly reassured and emphasized that child witness depositions are also valid evidence and the same is acceptable. The only challenge is if the child can really and properly understand the responsibility and necessity to speak the truth and justly understand the questions asked to him. It is the discretion and up to the Judge to see whether or not the child witness can be relied upon and be accepted for being a qualified witness. The competence and credibility of a child witness may and shall be determined using the “*Voir Dire*” test. The credibility of such evidence has a higher threshold with corroboration and must otherwise also be relied upon and accepted with due caution.

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