

Position of Child Witness under Indian Evidence Act, 1872 – An Analytical Study

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ABSTRACT

A witness is a person who provides testimony before some tribunal. Section 118 of the Indian Evidentiary Act, 1872 describes witness integrity. Therefore, according to this clause, a tender-age child should be allowed to testify if he has analytical capacity to comprehend questions and have logical responses to them. No absolute age is fixed by law in which they are specifically excluded from providing evidence on the ground that they do not understand enough. A child witness's evidence needs to be evaluated more carefully and with greater scrutiny because a child is susceptible to being swayed by what others are telling them and thus a child witness is an easy pickings to tutoring. This article defines witness importance and competency under the Indian Testimony Act. In this paper, the expertise of child witness and the interest of such child witness are addressed analytically with agreed case laws. Lastly, some interesting recommendations for making this arrangement more successful are brought forward.

Keywords

Child witnesses, Competency of witness, Corroboration, evidence, Voir dire

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Introduction

Society's history portrays that there have been certain means of testing human actions at any point. Every society has its own standards of ethics from ancient times to the present day, and has imposed it with certain laws, appointed to bring and preserve peace. The fundamental tradition of Criminal jurisprudence holds that the accused is innocent unless proved guilty and the accused has the right to a fair trial. Under the other provisions of the Constitution, a law which prescribes a fair and rational process for curtailing Article 21 of the Constitution of India still has to face a potential challenge. In criminal affairs, prosecution is the first and primary method for investigating violence. The omissions and lapses on the part of investigative officers are usually found. In the face of reliable evidence from multiple sources, such omissions and lapses are to be overlooked. Such inquiry is granted credibility such that people's confidence and trust in the Law enforcement department. No doubt a fair jury will rule the accused, the defendant or the victims equally. Prosecution in a court case has a chance to drive the facts first. The cross of the defendant tests the complainant of the indictment to avoid their veracity. According to **Bentham**, "*Witnesses are the eyes and ears of justice*". Bentham rightly, the great intellectual and thoughter of his day, stressed the importance of witnesses. However, in Criminal Justice System, the witnesses are disturbed and abused and it's an open secret that needs no second thought. Unnecessary adjournment in order to document the witness testimony makes them abuse. The witnesses not only face abuse due to prolonged adjournment for recording their testimony, but also face shame and embarrassment, particularly in the case of sexual offenses. Under **Section 3 of the Indian Evidence Act, 1872**, the word "Proof" implies and comprises two kinds of facts, i.e., witness testimony and photographic evidence. But that doesn't mean then there is no other sort of weird proof.

The Hon'ble Supreme court of India in *Sivrajban V. Harchangiri* held;

"The word evidence in connection with Law, all valid meanings includes all, except agreement which prove or disprove, any fact, or matter whose truthfulness is presented for judicial investigations. At this stage, it will be proper to bear in mind that where the parties and the other party don't get an opportunity to cross-examine, the statement to ascertain the truth, then in a such a condition this party's statement is not Evidence".

Evaluating facts and making rulings in court trials is a tremendous duty. The integrity of any witness who presents proof of the truth for any prosecution or defense is important to the issue. A party may only claim evidence specific to its case and the evidence are bound to be proven only by the party on which the responsibility lies. Where a particular intention is of the essence of the offence, the special intention must be proved in such a way that proof of a different intention is not enough. A witness is, thus, a person who has first-hand knowledge about an incident occurring. A witness' statement and declaration shall be made under oath and shall be obtained as testimony for some reason, whether these comments or claims are made through oral questioning or by deposition or affidavit. The complainant will support the court in conducting justice by attending the trial if possible. As the representative of the court who was actually present at the case, the trial court may call, providing the base of the indictment, whether his evidence is information or eyewitness, or some other representative.

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The importance of witness testimony thus touches upon the subject at hand. In *Ram Chandra Rambux V. Champabai & Ors*:

“It is open to the court to look into surrounding circumstances. In order to judge the credibility of the witness, the court is not confined only to the way, in which the witnesses have deposed or to the demeanor of witnesses, but it is open to look into the surrounding circumstances, as well as the probabilities, so that it may be able to form a correct idea of the trustworthiness of the witnesses.”

If the claimant is being questioned on the subject of whether a text is being properly executed, no doubt shall be raised about the contents. Even if the court offers to speak, it has to disallow him to speak on content. A witness who is expected to be investigated may be a witness of attestation, and may also be a complainant on other related matters. A witness shall never be led to say something about the contested matters between the parties, but he is free to comment about whatever he has awareness of. The complainant shall not be allowed to comment about any subject that is not appropriate when he is being questioned- in-chief or in cross.

Corroboration of a fact are a must in criminal law and failure to corroboration is an exception. However, there are always instances in which the corroboration is rarely dispensed with. Only acknowledged evidence ought to be confirmed and corroborated in court proceedings. If it's direct or witness testimony is needed for the witnesses.

Discussion

Definition of witnesses:

In a court trial a witness plays a crucial role in deciding the outcome of the prosecution. Nowhere in the Code of Criminal Practice has the term “witness” been described. A witness may be described as one who gives testimony to any party in a trial, as an impartial person, sworn to tell the truth, the entire truth and nothing but the truth.

According to **Black's Law Dictionary**, “Witness is one who sees, knows or vouches for something or one who gives testimony, under oath or affirmation in person or by oral or written deposition, or by Affidavit”.

According to **Bentham**, “Witnesses are the eyes and ears of justice”.

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The word ‘witness’ means a person who may provide evidence by depositing information on specific facts, by oral or written testimony, made or issued in court or otherwise. A ‘witness’ is generally assumed to be impartial until it originates from sources that are known to be tainted, so this typically means that, as the witness claimed, it has grounds to bear such enmity to the accused as to concern him wrongly.

Witnesses are often described as individuals, having sensitive knowledge regarding criminal prosecutions under different international laws. This requires Judicial Officers Experts and those who have offered to provide some details about an alleged crime.

Procedure for examination of witnesses in criminal trials:

Section **135 of the Indian Evidence Act, 1872**, specifies the Order of Performance and Review of Witnesses: -The manner in which witnesses are generated and examined shall, for the present being, be controlled by the law and procedure relevant to the criminal and civil cases and, in the existence of any such rule, by the court’s definition. Section 137 of the Indian Evidence Act applies to the court prosecution method for questioning a witness

Witnesses shall be examined first — in-chief, then cross-checked, then re-examined if the party calling him so desire. The investigation and cross-examination may refer to actual evidence, but it is not necessary to confine the cross-examination to the details testified by the defendant on his trial-in-chief. The re-examination shall be aimed at the clarification, in cross-examination, of the matters referred to; and if new subject is added in re-examination with the approval of the court, then the detrimental party could further cross-examine the subject. It does not contend with the admissibility of evidence, but simply points out three procedures for a witness to be submitted to, in order to extract his full testimony from him. The Testimony Act follows the common law protocol for examining witnesses in English. He is first questioned by the party calling the witness, and this is called the head test. Then the witness’s honesty and veracity was checked by the opposing party and this is called the cross check. After that, the party calling the witness again has the right to query the witnesses in order to allow the witness to clarify something that may have been brought on cross examination. The review of witnesses is completed in this way before the group leading the testimony is called to the next witness. Public prosecutor has the right to have the defendant investigated. Especially, whose review is important for the prosecution case to unfold. Also those witnesses whose questioning is appropriate for the presentation of the trial story are expected to be investigated.

Kinds of witnesses:

According to **Black's Law Dictionary** the term ‘Witness’ means:-

1. Person who sees a document signed
2. Person called to court to testify and give evidence.

In *Sampath Kumar V. Inspector of Police*, Krishnagiri, It was held that there will be three types of witnesses: I entirely accurate witnesses; (ii) totally unreliable witnesses; and (iii) completely unreliable witnesses. In either way the court has little trouble in drawing the judgment in the first case. Whether it is considered to be entirely credible, it will prosecute or acquit the accused after the testimony of a sole witness. There’s always no challenge in getting in the second group, at a fitting end.

There is no question of placing any reliance on wholly inaccurate witness testimony.

Therefore, there are various classes of witnesses who assist to conclude the trial for the deliverance of justice. They are as below:-

- Child Witness
- Interested Witness
- Eye Witness
- Hostile Witness
- Related Witness
- Independent Witness
- Solitary Witness
- Material Witness
- Trap Witness
- Expert Witness
- Official Witness

Child witness:

“Children are most untrustworthy class of witnesses for whom of a tender age as common experience teaches us, they often mistake dreams of reality repeat glibly as of their own knowledge what they have heard of other and greatly influenced by fear of punishment, by hope of reward and derive of notoriety”.

The Indian Proof Act of 1872 does not recommend a fixed age as a deciding factor in recognizing witnesses as qualified ones. In the opposite, Section 118 of the Evidence Act calls for all people to be eligible to appear, unless the court finds that they are prohibited from knowing the issue due to tender years, serious old age, disability, state of mind or any other cause. A crispy-age child can indeed be allowed to testify if he has the intellectual capacity to comprehend questions and gives rational answers to them. Brewer J had explained this philosophy in a succinct way. In the United States of Wheeler V 159 US 523. A child witness's testimony is not necessary to be discarded *per se*, but as a rule, the court scrutinizes such testimony closely. If persuaded of the accuracy and authenticity there, it will report conviction. The only precaution the court can keep in mind is that, like any other qualified witness, the testimony provided by the child witness is accurate.

here is no requirement in statute to raise qualitative questions to test the willingness of child witnesses to testify as a path to be followed, but it has always been seen to be safe. The best test of his ability, if the child is examined as a witness, is the evidence itself as well as the manner in which it is given.

A child witness is like any other witness without the likelihood of being tutored by interested elders to produce a vivid story they like. Being readily tutable by persuasion and able to send out the account, through their skill, to recall and repeat the facts of such a witness, must be viewed carefully against the likelihood of such risk. If this risk is omitted, which only provides a code of warning to the court, the testimony has greater sanctity than that of the elders, due to innocence, tender age, malicious incapacity and consequent concoctions. The law of vigilance and prudence is perfect because there is the child witness as the only witness and the risk of being guided by strangers. If the proof does not include either of these limitations, it must be corroborated by other references. There's simply no reason

for denying the proof, by suggesting a pure tutoring probability.

The Law's only provision being that, until basing a verdict on the child witness's single testimony, the maxim of caution that depending on such testimony being dangerous will be established in the court's mind until corroborated by certain proof. The rule of law does not state that, under all conditions, a child witness' testimony cannot be trusted. The court will document in question and answer form the statements of a child witness, even though there is no method for recording the child witness' testimony.

Competency and Compellability of a Child Witness:

A child witness, if considered qualified to report, may be the source of evidence if it is truthful to the facts. In other words, the evidence of a child witness can be regarded U / s 118 Indian Evidence Act even in the apparent lack of oath, assuming that such witness can recognize the answers.

A child witness, if considered qualified to report, may be the source of evidence if it is truthful to the facts. In other words, the evidence of a child witness can be regarded U / s 118 Indian Evidence Act even in the apparent lack of oath, assuming that such witness can recognize the answers. A simple logical theory has been introduced and children's maturity is now judged not by their age but by the degree of comprehension they seem to possess.

A child can be a credible witness to provide testimony in court if it appears that she is able to comprehend the questions posed to her and can provide reasonable answers to. **In Gian Singh V. J&K**, the court held that:

*"Evidence of child witness not to be rejected *per se* court as a rule of prudence must consider the evidence of child witness with close scrutiny."*

Credibility of Child Witness under English Law:

In R.V. Campbell, Lord Goddard, C.J. pronounced the verdict of the court stating that: A child's unconvicted testimony must be corroborated with sworn proof; since otherwise the only testimony involving the perpetrator is that of unconvicted children the judge will end the prosecution.

If there is no distinction if the child's testimony applies to an attack on him or herself or any other allegation, e.g. where an unsworn child appears to be the guilty person who robbed an item.

A child's sworn testimony does not need to be corroborated as a rule of fact, but a jury should be advised, not because they need to find corroboration, but that there is a danger of acting on the uncorroborated testimony of young boys or girls, whether they need to provide help, but that there is a danger of acting on the uncorroborated evidence of young boys or girls.

Such notice should also be issued if a young boy or girl is required to independently verify either another child's proof, whether sworn in oath or expunction or an adult's.

The law provides for the granting of unsworn testimony to a child of tender years. It expressly allows for such proof to be provided for any offence in any proceedings against any citizen.

Acceptability of evidence of child witness:

Child witnesses are tutable, who frequently exist in a world of perception formation. This is, however, an accepted fact that children's witnesses are hazardous witnesses. They are pliable and can be quickly manipulated, formed and molded. But, it's also an established practice that if the court came to the decision after carefully scaling their proof, there's an illusion of fact inside it. There is, then, no barrier in acknowledging child witness evidence.

In **Zafer V. State of UP**, It was held if there are different variations of the scene of the crime, combined with other questionable attributes, so the accused is entitled to acquittal. It was held if there are different variations of the scene of the crime, combined with other questionable attributes, so the accused is entitled to acquittal. A complainant shall be questioned on oath or affirmation, but section 13 states that a "omission to take some oath or make some affirmation," or some other irregularity in the nature of an oath or affirmation, shall not invalidate some prosecution or render some proof inadmissible. The testimony of a child witness needs to be acknowledged only when the court determines that he knows the questions posed to him and is willing to provide fair answers and there is no risk of tutoring the complainant. Rejection per se is not the law of prudence until it is corroborated by other recorded evidence.

Conclusion And Suggestions

The question in which his integrity rests in the case of child witness is how he can understand and offer an explanation that was posed to him. The child's proof has to be closely analyzed because he's an easy victim to tutoring. And depending on the child's evidence without corroboration would be dangerous, but it's not the law but a measure of care and prudence. Several ideas are being brought forward to make child victim laws more successful. When any person being questioned is a child, the court should duly comply with section 118 of the Evidence Act, i.e. the court should use its discretion to determine whether the child is able to comprehend the question posed to him and offer reasonable answers. Child education and child conduct would be well trained for lawyers, military, correctional officers. They will undergo appropriate instruction to handle situations in which children are potential victims and witnesses to abuse.

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