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## Evidentiary value of Testimony of Child witness

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*The witness is an important piece of evidence in legal proceedings. One who testifies or gives evidence in front of a court is referred to as a witness. A child witness is one who is under the age of 18 at the time of their testimony. Indian law recognizes the child as a qualified witness. Whenever a witness's capacity to appear in court and give testimony is not legally constrained, that witness is regarded as competent. The biggest problems with juvenile witnesses are their appropriateness and credibility. It is now widely acknowledged that a child witness' testimony need not be completely disregarded.<sup>1</sup> Any witness testimony is significant evidence in a court case and aids the judge in reaching a decision. However, there is a fundamental requirement that a witness must meet to give testimony, namely that they be of sound mind and qualified to do so. In the past, we have frequently seen a youngster who was present at the incident as one of the important witnesses, though the admissibility of his testimony was not always certain. The Indian Evidence Act and other pertinent judgments have also supplied the Indian judicial system with certain guidelines for determining the admissibility of a juvenile witness' evidence.<sup>2</sup>*

**Keywords:** *witness, voir dire, testimony, dacoity.*

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<sup>1</sup> Adv K Rajasekharan, 'Child witness: Reliability of his/her Evidence' (*Lawyers Club India*, 15 January 2018) <<https://www.lawyersclubindia.com/articles/child-witness-reliability-of-his-her-evidence-8715.asp>> accessed 14 November 2022

<sup>2</sup> Eklavya Malvai, 'Admissibility of a child witness in the court of law' (*iPleaders*, 29 October 2015) <<https://blog.iplayers.in/admissibility-child-witness-court-law/>> accessed 14 November 2022

## INTRODUCTION

Everyone who wishes to testify must be of legal age unless the court determines that their extreme age a physical or mental illness, or another similar factor prevents them from understanding the questions asked of them or from responding to them rationally. Unless his insanity prevents him from comprehending the questions asked of him and providing sane responses, a lunatic is not incompetent to testify.<sup>3</sup> According to the Act, anyone can testify in a court of law as long as they can understand the questions asked of them and respond to them logically. Since the Act makes no provisions regarding the minimum age of a witness, even a kid may testify following this Act. However, s.4 (1) of the Oaths, Act, of 1969 states that an oath cannot be given to a witness who is younger than 12 years old. Any youngster who passes the competence test and comprehends that they must tell the truth can testify under Section 118 of the Act. The Privy Council ruled in the matter of *Emperor v Kusha Yamaji Sutar*<sup>4</sup> that: "the ignorance of a child on such a matter as the nature of a solemn affirmation is not necessarily equivalent to an inability to understand ordinary questions and give rational answers."

The limitations outlined in this section apply to a person's ability to grasp the issues that are being posed to them, not only their age or infirmity. A prima facie reading of the clause also reveals that the court has the discretion to decide whether a witness is competent. A person must be competent to testify as a witness before being administered an oath or affirmation, and this competency is separate from his credibility after being administered the oath or affirmation. By asking the right questions, the Court is free to determine whether a witness can give a deposition. The best technique possible must be used to determine whether, given the scope of his intellectual capacity and comprehension, he is capable of providing a rational explanation of what he has observed or heard on a given occasion.<sup>5</sup>

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<sup>3</sup> Indian Evidence Act 1872, s 118

<sup>4</sup> *Emperor v Kusha Yamaji Sutar* 15 Bom L.R. 551

<sup>5</sup> Siddhant Nanodkar, 'Admissibility of Child Witness in the Court of Law Reflections on Some Legal Concerns' (*Academia*, 2018)

<[https://www.academia.edu/38126372/Admissibility\\_of\\_Child\\_Witness\\_in\\_the\\_Court\\_of\\_Law\\_Reflections\\_on\\_Some\\_Legal\\_Concerns](https://www.academia.edu/38126372/Admissibility_of_Child_Witness_in_the_Court_of_Law_Reflections_on_Some_Legal_Concerns)> accessed 15 November 2022

In *Himmat Sukhadeo Wahurwagh v State of Maharashtra*<sup>6</sup>, a 13-year-old child had helped his father and uncle, the two deceased parties in the case; plow the fields where the incident occurred. The boy hurried home and told the other family members what happened after hiding until the area was safe. The Apex Court decided that he grasped the full ramifications of what he was saying and that nothing could be shown to refute his testimony despite a stern cross-examination. In addition, the Court upheld the conviction based on the child's testimony, even though there was minimal supporting evidence.

### VOIR DIRE TEST

The term "Voir dire Test" relates to the "Oath to Tell the Truth," and it is borrowed from the Anglo-Norman language. In this context, the French term voir (or voire), which means "that which is true," is used. The test is used to determine whether a juvenile witness is competent to testify. The court typically grills the young witness to determine his credibility and to ensure that the facts are developing in accordance with the supporting facts. This examination is a preliminary step in establishing a child's maturity and capacity to handle the full potential of a witness to testify in front of a judge; as a result, the judge may question the youngster inanely. His name, the name of his father, or his residence are a few instances of possible test questions. This is done to determine the kid witness's absolute fitness, which may be limited in scope.<sup>7</sup>

The Rajasthan High Court ruled in *Rameshwar S/o Kalyan Singh v The State of Rajasthan*<sup>8</sup>, that under Section 118 of the Indian Evidence Act, every person is competent to testify in a court of law unless he is unable to comprehend the question put to him. Because young children's capacity for understanding is more likely to depend on and be formed by what others say and represent, a child's testimony is more likely to be affected or altered.

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<sup>6</sup> *Himmat Sukhadeo Wahurwagh & Ors v State of Maharashtra* (2009) SC 2292

<sup>7</sup> Vivek Maurya, 'Analysing the credibility of child witnesses in the Indian legal system' (*iPleaders*, 06 October 2021) <<https://blog.ipleaders.in/analysing-the-credibility-of-child-witnesses-in-the-indian-legal-system/>> accessed 15 November 2022

<sup>8</sup> *Rameshwar S/o Kalyan Singh v The State of Rajasthan* (1952) SC 54

Consequently, how you handle a young witness is crucial. This was also addressed in the historic case *Nivrutti Pandurang Kokate v State of Maharashtra*<sup>9</sup>, in which the Supreme Court ruled that a child witness' testimony needed to be carefully examined to make sure it wasn't given under duress or unreasonably strong influence and it also needed to support other evidence.

The "Voir Dire" test is used by the court to determine if a kid is competent to serve as a witness. This test determines whether a youngster is of a rational and sound mind by having the judge personally ask those questions that are irrelevant to the issue before the hearing is even started. The name of the child, residence and date of birth, school, and other details are among the inquiries made by the court. He is permitted to testify as a witness in court if the justice's bench is completely satisfied with the answers he provided and the results of their investigation.<sup>10</sup> In a recent case, it was decided that the court could re-examine the child witness if there were good reasons and that the subsequent finding that contrasted the earlier result regarding the child's competence was valid.<sup>11</sup>

## RECENT JUDGMENTS

In *P Ramesh v State*<sup>12</sup>, the daughter was eight years old and the son was six. Both the deceased and the accused were young. They came to court to provide details regarding the events leading up to their mother's passing. The trial court judge, however, questioned them about their familiarity with the judges they were coming before to assess their competency. Given that they responded negatively, the judge concluded that they were there. The High Court gave instructions to objectively evaluate the children's capacity after declaring that this approach to determining competence was flawed. The Supreme Court upheld this directive and found that

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<sup>9</sup> *Nivrutti Pandurang Kokate & Ors v State of Maharashtra* (2008) SC 1460

<sup>10</sup> Kaushal B Shah, 'Admissibility of Evidence of child witness: A Judicial Analysis' (*Latest Laws*, 10 November 2019) <<https://www.latestlaws.com/articles/admissibility-of-evidence-of-child-witness-a-judicial-analysis-by-kaushal-shah>> accessed 15 November 2022

<sup>11</sup> *Mirajul Islam Sheik v State of Kerala* (2017) SCC online Ker 24107

<sup>12</sup> *P Ramesh v State* (2019) 20 SCC 593

a kid must comprehend the issue posed and provide a reasoned response to be considered competent. A youngster cannot be deemed incompetent if this is not the case.

In *Hari Om v State of UP*<sup>13</sup>, the accused reportedly killed 6 individuals in October 2007 while engaging in dacoity, with a 5-year-old being the lone eyewitness. The court ruled that a kid witness' testimony needed to be carefully examined and that a conviction might be reached based solely on it if the child could withstand cross-examination without a flaw. Although it is not required, it is common practice to have children verify the evidence to be cautious. Additionally, since kids are easily influenced, the evidence they present needs to be taken more seriously. Although there were a few flaws in the testimony, numerous other elements supported the child's claim. However, the testimony that the child had related the incidents to three other people was not supported by evidence, so the court declined to use this testimony alone to find the accused guilty due to the benefit of the doubt.

In *Satish Kumar v State of Haryana*<sup>14</sup>, the deceased's and appellant-accused Anita's son, Sahil, was 12 years old. The young victim of the assault went to tell Sunita, a neighbour, about what was happening. The forensic investigation indicated that the murder was preceded by a serious assault. The Supreme Court confirmed the High Court's ruling that the testimony of a juvenile witness may be used as evidence for conviction provided it is credible. As a result, the mother and other appellants were certain they had committed murder.

## CONCLUSION

Just like any other witness, a child witness is likewise a witness. There is no restriction on how old a witness can be. The validity and admissibility of child witness testimony have been frequently upheld by Indian legal systems. The only prerequisite is that the youngster sincerely and correctly understands his obligation to answer inquiries honestly and rationally. Whether or whether the youngster is barred from testifying is up to the judge's discretion. The "Voi Dire"

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<sup>13</sup> *Hari Om v State of UP* (2021) 4 SCC 345

<sup>14</sup> *Satish Kumar v State of Haryana* (2018) 11 SCC 300

test can be used to gauge a young witness's credibility. Such evidence must be used with proper caution and only after it has been corroborated to strengthen its credibility.

A judge must determine and confirm whether the youngster is competent to testify in court using the principles of the voir dire test. What must be recognized is that small infants require special care and sensitivity, which may not be the judge's area of expertise in this case. To ensure that the child's testimony is not altered in any way, trained individuals and counselors must collaborate with the court and be able to deal with the youngster in a specified manner. The court analyses the expert testimony based on input from several professionals. The criminal statute that addresses child sexual abuse must also be changed to include specific language and be more gender-neutral. In cases when a child is not able to testify and understand what happened, the court must also consider the testimony provided by a person on behalf of the kid and the degree to which it can be deemed credible.<sup>15</sup>

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<sup>15</sup> Dinesh Kumar 'Admissibility of Evidence of Child Witness' (*DK Legal Solution*, 14 August 2021) <<https://dklegalsolution.co.in/law-notes/admissibility-of-evidence-of-child-witness/>> accessed 15 November 2022