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CHILD: A COMPETENT WITNESS

AUTHORED BY - RITIKA SINGH¹

A Child means any person below the age of eighteen years, as per section 2(3) of The Bharatiya Nyaya Sanhita of 2023². According to section 2(12) of The Juvenile Justice (Care and Protection of Children) Act of 2015³, child means a person who has not completed eighteen years of age. The United Nations Convention on the Rights of the Child under Article 1 defines a child as any person under the age of 18. However, The Indian Evidence Act, 1872⁴ and The Bharatiya Sakshya Adhinyam, 2023⁵ does not prescribes any minimum age for a witness. Therefore, the question arises whether a child is a competent witness?

A child can be a competent witness in the eyes of the law, provided that they can understand and answer the questions accordingly and truthfully. General factors of assessing the competency of a child is as follows-

- i. Capacity to Understand- The child must have the mental ability and reasoning to understand the nature of the proceedings.
- ii. Ability to Communicate- The child should be able to express themselves in a clear manner and communicate appropriately.
- iii. Understanding of Truth and Lies- The child must comprehend the importance of telling the truth and the consequences of lying.

Many legal systems do not set a fixed age limit regarding competency but instead, the evaluation is done case-to-case basis. Courts may conduct a preliminary examination to determine if the child is competent to testify. If the child is found to be competent then their testimony is given weightage. Depending on cases and circumstances, courts may required corroboration. In Common Law Countries, there is no fixed age limit as regarding the competency of a child as it is assessed on their ability to understand and respond to the questions. Courts may conduct a preliminary examination to determine whether the child

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² The Bharatiya Nyaya Sanhita 2023, India, available at <https://www.indiacode.nic.in/handle/123456789/20062> (last visited on February 26, 2025)

³ The Juvenile Justice (Care and Protection of Children) Act 2015, India, available at <https://www.indiacode.nic.in/handle/123456789/2148> (last visited on February 26, 2025)

⁴ The Indian Evidence Act 1872, India, available at https://www.indiacode.nic.in/bitstream/123456789/15351/1/iea_1872.pdf (last visited on February 26, 2025)

⁵ The Bharatiya Sakshya Adhinyam 2023, India, available at <https://www.indiacode.nic.in/handle/123456789/20063> (last visited on February 26, 2025)

understands the difference between truth and lies. In some cases, the courts may require additional evidence to support a child's testimony especially in sensitive cases. In Civil Law Countries, Judges have broad authority to determine a child's competency based on age, maturity and ability to communicate. Psychological assessments may be used to determine whether the child can testify reliable. In Islamic Legal System, a child must be of an age where they can understand and relay the events accordingly. Particularly in the criminal matters, testimony of the child can be accepted though a lesser weightage is given or corroboration is required.

In the recent case of *The State of Madhya Pradesh vs Balveer Singh*⁶, it was held by the Honorable Supreme Court of India that Child is a competent witness and thereafter summarized the law on child witness testimony. In this instant case, the respondent was accused of murdering his wife and subsequently cremating her body in a clandestine manner. The Trial Court convicted the respondent under sections 302(Punishment for Murder), 201(Causing disappearance of evidence of offence) and 34(Common intention) of the Indian Penal Code, 1860. The High Court of Madhya Pradesh, however, acquitted him as they found the testimony of the child testimony to be unreliable and tutored. This led to appeal by the State before the Honorable Supreme Court. The Honorable Supreme Court reaffirmed that corroboration of a child's witness testimony is not mandatory if it is found to be credible and consistent.

In *Dattu Ramrao Sakhare vs State of Maharashtra*⁷, the Supreme Court held that as long as a child witness is found to be competent to depose, that is, capable of understanding the questions put to it and able to give rational answers, the testimony of such witness can be considered as evidence irrespective of their tender age or absence of any oath. As according to 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. Similarly, in *Pradeep vs State of Haryana*⁸, the Supreme Court emphasized on the importance of preliminary examination of a child witness so as to ascertain if the child is able to understand the questions put to him and is able to give rational answers to the questions put to him. The questions put to the child in the preliminary

⁶ Criminal Appeal No. 1669 OF 2012

⁷ (1997) 5 SCC 341

⁸ 2023 SCC ONLINE SC 777

examination must also be recorded. In *State of Madhya Pradesh vs Ramesh*⁹, the Supreme Court summarized the principles pertaining to the appreciation of evidence of a child witness. Those principles are-

- i. The child witness must be able to understand the sanctity of giving evidence on oath and the import of the questions that were being put to him. The evidence of such child must reveal that he/she was able to distinguish between what is right and what is wrong. The courts ascertain the suitability of the witness through cross-examination or by putting questions to the child.
- ii. The deposition does not require any corroboration if the evidence of the child explains the relevant events of the crime without any improvements or embellishment thus inspiring the confidence of the courts.
- iii. Even when it is found that the child witness has been tutored, then also the statement of such child witness can be relied upon if the tutored part can be separated or severed from the untutored part and the remaining untutored part inspires confidence.
- iv. The inference as to whether the child has been tutored or not tutored can be drawn from the contents of his deposition. If the deposition of the child witness inspires confidence of the court and there is scope for improvements or embellishments then the Court may rely upon this evidence. The evidence of a child witness must necessarily be evaluated with greater circumspection and in a very careful manner because a child is susceptible to tutoring.

In *State of U.P. v. Krishna Master*¹⁰, this Court held that there is no principle of law that it is inconceivable that a child of tender age would not be able to recapitulate the facts in his memory. A child is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child may be able to recapitulate carefully and exactly when asked about the same in the future. In case the child explains the relevant events of the crime without improvements or embellishments, and the same inspire confidence of the court, his deposition does not require any corroboration whatsoever. The child at a tender age is incapable of having any malice or ill will against any person. Therefore, there must be something on record to satisfy the court that something had gone wrong between the date of incident and recording evidence of the child witness due to which the witness wanted to implicate the accused falsely in a case of a serious nature.

⁹ (2011) 4 SCC 786

¹⁰ (2010) 12 SCC 324

In *Ratansinh Dalsukhbai Nayak vs State of Gujarat*¹¹, it was held by the Supreme Court that although child witness are considered as dangerous as they are pliable and influenced, shaped and moulded easily yet after careful scrutiny if their testimony is found to inspire confidence and truthful. In *Panchhi vs State of Uttar Pradesh*¹², the Supreme Court held that the evidence of a child witness should not be outrightly rejected so long as if it is evaluated carefully and with greater circumspection. The evidence of a child witness who has withstood the test of cross examination should not be rejected if it is free from any infirmity¹³. If a child's testimony is found to be reliable then it can form the sole basis for conviction¹⁴.

It is important to understand what is a tutored testimony and thus there is test for determining or ascertaining a tutored testimon. There are two broad effects in this type of testimony where there has been tutoring of any witness- the first is, improvisation and the second is, fabrication. Improvisation refers to the instances where the tutored witness in question adds on new details, alters the facts or provides an inconsistent version of events that were not previously stated in the initial statements. The principle of Law in this regard is that the witness who has improvised its testimony must be first confronted with that part of its previous statement that omits or contradicts the improvisation by bringing it to its notice and give the witness an opportunity to either admit or deny the omission or contradiction. Where the allegation of tutoring pertains to fabrication that refers to certain portions of both the testimony and the previous statement of a particular witness are doctored or falsified, then, in such type of circumstances there are two conditions which has to be proved- first, possibility or opportunity of the witness being tutored and second, the reasonable likelihood of the tutoring. The first condition states that the possibility or opportunity of the witness being tutored can be established by demonstrating or laying down certain foundational facts that suggest the probability that a part of the testimony of the witness might have been tutored. This can be done by showing that either there was a delay in recording the statement of such witness or the presence of such witness was doubtful, or by imputing any motive on such witness's part to depose falsely, or susceptibility of such witness in falling prey to tutoring. The second condition that is reasonable likelihood of tutoring states that the foundational facts established in the first step be further proven or cogently substantiated before any portion of the witness's testimony can be deemed tutored. This may be done by leading evidence to prove a strong and palpable motive to depose falsely that was

¹¹ (2004) 1 SCC 64

¹² (1998) 7 SCC 177

¹³ *Suryanarayana vs State of Karnataka*, (2001) 9 SCC 129

¹⁴ Criminal Appeal No. 992-993 of 1999

imputed to the witness, or by establishing that the delay in recording the statement is not only unexplained but is indicative and suggestive of some unfair practice by the investigating agency for the purpose of falsely supporting the case of the prosecution, or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural.

Irrespective of whether the testimony of a witness is tutored or not, generally this is classified into three categories-

- i. Wholly reliable
- ii. Wholly unreliable
- iii. Neither wholly reliable nor wholly unreliable.

In the first category, the Courts have no difficulty in concluding either way- either convict or acquit on the testimony of a single witness; if found to be beyond approach or suspicion of interestedness, incompetence or subordination. In the second category, the Courts has no difficulty in coming to its conclusion. In the third category, the Courts has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

Therefore, in the case of *The State of Madhya Pradesh vs Balveer Singh*¹⁵, the Court found the accused guilty based on circumstantial evidence. The court heavily relied on the child witness testimony and thereafter summarized the law regarding witness testimony of a child-

- i. The Indian Evidence Act 1872 and The Bharatiya Sakshya Adhiniyam 2023 does not prescribes any minimum age for a witness. Therefore, a child witness is a competent witness and such evidence so obtained cannot be rejected outrightly.
- ii. Before the evidence of the child witness is recorded, it is important to conduct preliminary examination by the trial court so as to ascertain if the child witness is capable of understanding the sanctity of giving evidence and the import of the questions that are being put.
- iii. The Trial Court must, before recording the evidence of the child witness, record their opinion and satisfaction that the child witness understands the duty of speaking the truth

¹⁵ Criminal Appeal No. 1669 OF 2012

and must clearly state why he is of such opinion. The questions that were put to the child in the preliminary examinations and the demeanour of the child and the ability to respond to the questions coherently and rationally must be duly recorded by the Trial Court. The correctness of the opinion so framed by the Trial Court as to why it is satisfied may be done by the Appellate Court by either scrutinizing the preliminary examination so conducted by the Trial Court or from the testimony of the child witness or the demeanour of the child during the deposition and cross-examination as was recorded by the Trial Court.

- iv. The testimony of a child witness would be admissible in evidence when it is found to be competent to dispose (capable of understanding the questions put to it and able to give coherent and rational answers).
- v. The Trial Court must necessarily record the demeanour of the child witness during the deposition and cross-examination and whether the evidence obtained is the child's voluntary expression and not out of anyone's influence.
- vi. A child witness who exhibits the demeanour of any other competent witness and the evidence inspires confidence which can be relied upon without any further need for corroboration and can form sole basis for conviction then there is no requirement or condition that the evidence of a child witness must be corroborated before it has to be taken into consideration if the evidence of such child explains the relevant events of the crime without any improvements or embellishments.
- vii. Corroboration of the evidence of the child witness may be done by the Courts as a measure of caution and prudence when the evidence of the child is found to be either tutored or is riddled with material discrepancies or any contradictions. Corroboration would depend on peculiar facts and circumstances of each case as there is no hard and fast rule if it is desired or required.
- viii. If the witness are pliable and liable to be influenced, shaped or moulded easily then the courts must rule out the possibility of tutoring. Such child witnesses are considered ad dangerous. If the courts after a careful scrutiny finds that there is no tutoring and no attempt to use the child witness for ulterior purposes by the prosecution then in determining the guilt or innocence of the accused, the Courts must rely on such witness's confidence inspiring testimony.
- ix. The evidence of a child is considered tutored if their testimony is shaped or influenced at someone else's instance, by way of Improvisation or Fabrication. Improvisation in testimony refers to the facts that has been altered or new details are added inconsistent

with the events which were not stated previously. This must be eradicated by first confronting the witness with the part of previous statement that omits or contradicts the improvisation by bringing notice and giving an opportunity to the witness to either admit or deny the omission or contradiction. If such contradiction or omission is admitted, then there is no further need to prove the contradiction. If such contradiction or omission is denied then it has to be proved in the deposition of the investigating officer by proving that part of the police statement of the witness in question. Thereafter, Improvisation may be discarded or such omission or contradiction may be relied upon as evidence. Where the evidence of a child witness which is alleged to be tutored or doctored then such evidence may be discarded as being unreliable only when two factors are established, that is, when there is opportunity of tutoring of the child witness in question or when there is reasonable likelihood of tutoring.

- x. The testimony of a child witness cannot be discarded merely because such witness is found to be repeating certain parts of what was asked if it is found that what is in substance being deposed by the child witness is something that has actually been witnessed by the child. A child witness who withstood the cross-examination at length and is able to describe the scenario implicating the accused in detail as the author of crime then minor discrepancies will not by itself affect the credibility of such child witness.
- xi. If the tutored part can be separated from the untutored part in case such remaining untutored or untainted part inspires confidence then such part of the statement of the child witness can be relied upon. The untutored part of the evidence of the child witness can be thus believed and can be taken into consideration or for corroboration as the case maybe.

Indian Law does not sets a minimum age for a witness. Instead, the competency of a child is determined based on their intellectual capacity, ability to recall the facts and understanding of truthfulness. Section 118 of the Indian Evidence Act,1872 states that all persons shall be competent to testify unless they are prevented from understanding the questions that are put to them or from giving rational answers due to tender years, extreme old age, disease or any other cause. This means that even a very young child can be competent witness if they are intelligent enough to understand and respond correctly. To assess the child's ability, a preliminary examination is conducted by the court so to understand the child's understanding to distinguish between truth and falsehood. According to section 4 of The Oaths Act of 1969, when the witness is a child under twelve years of age and the court or the person having authority to

examine such witness is of opinion that though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation then the child witness may or may not be required to take an oath or affirmation. The absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor shall it affect the obligation of the witness to state the truth. Lack of an oath or affirmation does not invalidates their testimony if the court finds it to be reliable. Therefore, it is concluded that a child is a competent witness subject to the above mentioned conditions and principles.

