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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Assistant professor of Law

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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ADMISSIBILITY OF CHILD WITNESSES IN COURT PROCEEDINGS: ANALYZING LEGAL ISSUES AND FRAMEWORK

Authored By - Aarthy G

Assistant Professor Vinayaka Mission's Law School,
Vinayaka Mission's Research Foundation : aarthy@vmls.edu.in

Co-Author - CM Selvamuthu

Assistant Professor, Saveetha School of Law :
selvamuthu.ssl@saveetha.com

Abstract:

The affirmation of a witness is crucial in court proceedings, aiding in the determination of final judgements. However, the admissibility of child witnesses has been a subject of debate. The Indian legal system provides guidelines to assess the competency of child witnesses, ensuring their understanding and ability to testify. The voir dire test is employed by judges to evaluate a child's competency in the courtroom. Child witnesses require special care and sensitivity due to their young age and limited comprehension abilities, which may differ from the judge's expertise. Their testimony is susceptible to influence and may be distorted. A landmark case established that a 5-year-old child's testimony is admissible if they can understand the subject matter. This study adopts an empirical approach with random sampling of 1583 participants. The independent variables considered are age, gender, qualification, and occupation, while the dependent variables include income, social status, age, and gender. Primary and secondary data are analyzed to investigate the significance of the concept of admissibility of child witnesses. The main objective is to examine the admissibility of child witnesses, analyze associated legal issues, and assess the existing legal framework. This research contributes to understanding the treatment and role of child witnesses in court proceedings, facilitating fair administration of justice.

Keywords: Voir dire test, ability to testify, admissibility, competency, testimony.

Introduction:

During the formative years of a child's development, various factors shape their experiences and perspectives, including the socio-economic conditions they grow up in. In India, a child's testimony can be influenced and manipulated through coercion and torture, making it less reliable and susceptible to external control. The cognitive development of children is delicate and can vary depending on different circumstances. Consequently, understanding the concept of a person's development becomes crucial. Development is subjective, influenced by the individual's upbringing and environment. In a landmark case, **Suresh v. the State of U.P.**, it was established that a 5-year-old child's testimony is admissible as long as the child can understand the subject matter.

Section 118 of the Indian Evidence Act outlines the criteria for determining the competency of witnesses in court. It states that all individuals are considered competent to testify unless they are unable to understand the questions or provide rational answers due to their young age. The court determines the competency of child witnesses based on the circumstances.

The court's concern regarding a child's testimony stems from various factors. Children are perceived as vulnerable and impressionable, and certain experiences can have a lasting impact on their memory and perception. The court must consider various factors, ensuring that the child understands the details of the situation and what led to its occurrence. The rule of "voir dire test" is employed to assess the competence of a child witness. The term "voir dire" is derived from the Anglo-Norman phrase meaning "to speak the truth." This test is conducted to evaluate the child's ability to act as a witness and testify truthfully before the judge. The judge may ask the child unrelated questions to assess their credibility and ensure that the facts align with subsequent information. The "voir dire test" is a precursor to determining the maturity and capacity of the child witness. In the case of **Rameshwar S/o Kalyan Singh v. The State of Rajasthan**, the court held that every individual is competent to be a witness in court, unless they are incapable of understanding the questions presented to them. The ability to comprehend at a young age is often influenced by the perceptions and descriptions of others, leading to potential alterations or modifications in a child's testimony. Consequently, handling child witnesses with utmost care and sensitivity is of paramount importance. The landmark case "**Nivrutti Pandurang Kokate and Ors. v. The State of Maharashtra**" emphasized that the testimony of a

child witness should be scrutinized to ensure it was not given under duress or undue influence and should be corroborated by other evidence. Child witnesses play a significant role in cases of sexual abuse and assault, which have gained increased attention in recent years. A 2007 survey conducted by the Ministry of Women and Child Development revealed that 53% of children in India had experienced sexual abuse. This raises the question of how extensively a child can testify in their own cases of sexual abuse. Children and infants are often victims of such abuse, and they may feel scared and reluctant to disclose the incidents to their parents or peers. The legal framework has responded to public pressure, leading to the passage of laws aimed at addressing these issues. The objective of this paper is to examine the concept of admissibility of child witnesses, analyze the legal issues surrounding their admissibility, and evaluate the existing legal framework in place. By studying these aspects, this research aims to contribute to a better understanding of the treatment and role of child witnesses in court proceedings, ensuring the fair administration of justice.

Objective:

- To examine the notion of allowing child witnesses to testify in legal proceedings.
- To analyse the diverse legal challenges concerning child witnesses.
- To evaluate the current legal structure regarding the acceptance of child witnesses in court.

Methodology:

This research employs an empirical approach, utilizing random sampling with a sample size of 1583. The analysis relies on percentage analysis for statistical evaluation. Secondary sources, particularly historical aspects, are extensively referenced. The research adopts a descriptive design to assess awareness and reactions, while an exploratory design is employed to examine the impact. Various sources, including research articles, literature reviews, journals, books, periodicals, and online materials, were analyzed. The data is collected from 50 respondents, achieving a nearly 100% response rate during face-to-face interviews. Statistical tools such as chi-square and correlation, along with graphical representations using SPSS, are utilized. Cross tables are employed for data analysis.

Review of Literature:

(Finkelman 1995), The author provides a comprehensive analysis of the historical and legal aspects of child witnesses in court proceedings. He explores the challenges and considerations associated with the admissibility of child testimony, highlighting the delicate nature of children's psychological development and the potential influence on their statements.

(Coryell et al. 2018; Bales 1987), The authors present a comprehensive examination of the social and psychological factors influencing child witnesses in court cases. Their findings shed light on the impact of trauma, suggestibility, and memory reliability, providing valuable insights into the challenges of assessing the credibility of child testimonies.

(Davies 1992), The author underscores an analysis of the legal and ethical considerations surrounding child witnesses in court proceedings. The research delves into the challenges of obtaining accurate and reliable testimony from children, emphasizing the need for specialized techniques and safeguards. The author's work provides valuable insights into the complexities of child witnesses, making it a valuable contribution to the field.

(Jordan 1985), The author examines the impact of leading questions and suggestive techniques on children's testimonies, highlighting the vulnerability and suggestibility of young witnesses. The author also highlights the importance of cautious and ethical interviewing practices when eliciting evidence from child witnesses.

(Agbozo et al. 2018; Plancher et al. 2018; Crane et al. 2018), The authors collectively provide a comprehensive understanding of child witnesses in legal contexts. Their research explores various aspects such as memory recall, suggestibility, and interviewing techniques, shedding light on the complexities of eliciting reliable testimony from children. The author gives valuable insights for legal professionals and researchers, contributing to the advancement of best practices and the fair treatment of child witnesses in court proceedings.

Analysis and Discussion:

Frequency Table

Gender

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Male	1043	58.7	65.9	65.9
	Female	540	30.4	34.1	100.0
	Total	1583	89.1	100.0	

The frequency table specifically focuses on the gender distribution of the sampled participants. It is observed that the number of male respondents is relatively lower compared to female respondents. Specifically, there were 1043 male responses and 540 female responses, resulting in a total sample size of 1583 for the survey.

Age

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	20 to 30 years	398	22.4	25.1	25.1
	31 to 40 years	562	31.6	35.5	60.6
	41 to 50 years	488	27.5	30.8	91.5
	Above 50 years	135	7.6	8.5	100.0

Total	1583	89.1	100.0	
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A frequency table was generated using responses obtained from multiple participants. The frequency table focuses on the age distribution of the individuals. Within the age group of 20-30 years, there were 398 sample responses, while the age group of 31-40 years contributed 562 sample responses. Additionally, the age group of 41-50 years had 488 sample responses, and the age group above 50 years had 135 sample responses.

Education

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	High school	172	9.7	10.9	10.9
	Higher secondary	556	31.3	35.1	46.0
	UG	452	25.4	28.6	74.5
	PG	334	18.8	21.1	95.6
	Others	69	3.9	4.4	100.0
	Total	1583	89.1	100.0	

The frequency table focuses on the educational qualifications of the participants. Specifically, among those with a high school degree, there were 172 sample responses. For individuals with a higher secondary degree, there were approximately 556 sample responses. Among those with an undergraduate degree, there were 452 sample responses, and for those with a postgraduate degree, there were 334 sample responses. Additionally, there were 69 responses from individuals with other

Marital status

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Married	618	34.8	39.0	39.0
	Unmarried	965	54.3	61.0	100.0
	Total	1583	89.1	100.0	

It is observed that the number of married person responses is relatively lower compared to unmarried person responses. Specifically, there were 618 responses from married individuals and 965 responses from unmarried individuals, resulting in a total sample size of approximately 1583 for the survey.

Monthly Income

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Married	618	34.8	39.0	39.0
	Unmarried	965	54.3	61.0	100.0
	Total	1583	89.1	100.0	

The frequency table specifically focuses on the monthly income of the sampled participants. Among those with a monthly income of 15,000-30,000, there were 394 sample responses. For individuals with a monthly income of 30,001-40,000, there were approximately 764 sample responses. Among those with a monthly income of 40,001-50,000, there were 310 sample responses, and for those with a monthly income above 50,000, there were 115 sample responses.

Occupation

		Occupation			
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Business	230	12.9	14.5	14.5
	Private company employee	790	44.5	49.9	64.4
	Government job	447	25.2	28.2	92.7
	unemployed	116	6.5	7.3	100.0
	Total	1583	89.1	100.0	

The frequency table specifically focuses on the occupation of the sampled participants. Among those who are self-employed, there were 230 sample responses. For individuals working in the private sector, there were approximately 790 sample responses. Among those with government jobs, there were 447 sample responses, and for the unemployed, there were 116 sample responses.

Crosstab

				39.Do you think the child witness can be used as a primary evidence?		
				Yes	No	Total
Monthly Income	15000 – 30000	Count		241	153	394
		% within Monthly Income		61.2%	38.8%	100.0%
		% within 39.Do you think the child witness can be used as a primary evidence?		26.2%	23.1%	24.9%
	30001 – 40000	Count		438	326	764
		% within Monthly Income		57.3%	42.7%	100.0%

	% within 39.Do you think the child witness can be used as a primary evidence?	47.6%	49.2%	48.3%
40001-50000	Count	180	130	310
	% within Monthly Income	58.1%	41.9%	100.0%
	% within 39.Do you think the child witness can be used as a primary evidence?	19.6%	19.6%	19.6%
Above 50001	Count	61	54	115
	% within Monthly Income	53.0%	47.0%	100.0%
	% within 39.Do you think the child witness can be used as a primary evidence?	6.6%	8.1%	7.3%
Total	Count	920	663	1583
	% within Monthly Income	58.1%	41.9%	100.0%
	% within 39.Do you think the child witness can be used as a primary evidence?	100.0%	100.0%	100.0%

In this analysis, the monthly income serves as the independent variable, while the dependent variable is the opinion of the general public regarding the admissibility of child witnesses as primary evidence. Within this analysis, 394 respondents fell within the income range of 15,000 - 30,000, with 241 respondents selecting "yes" and 153 selecting "no." For the income range of 30,001 - 40,000, there were 764 respondents, with 438 selecting "yes" and 326 selecting "no." Additionally, 310 respondents fell within the income range of 40,001 - 50,000, with 180 selecting "yes" and 130 selecting "no." Lastly, 115 respondents reported an income of 50,001 and above, with 61 selecting "yes" and 54

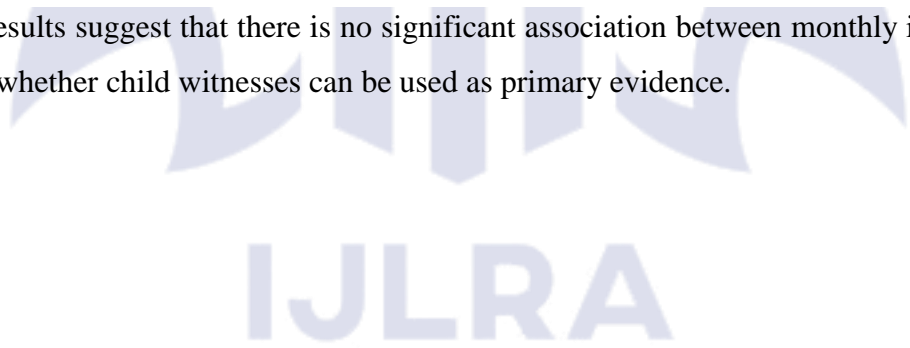
selecting "no." Overall, a total of 1583 respondents participated in the survey, with 920 accepting the statement and 663 rejecting it.

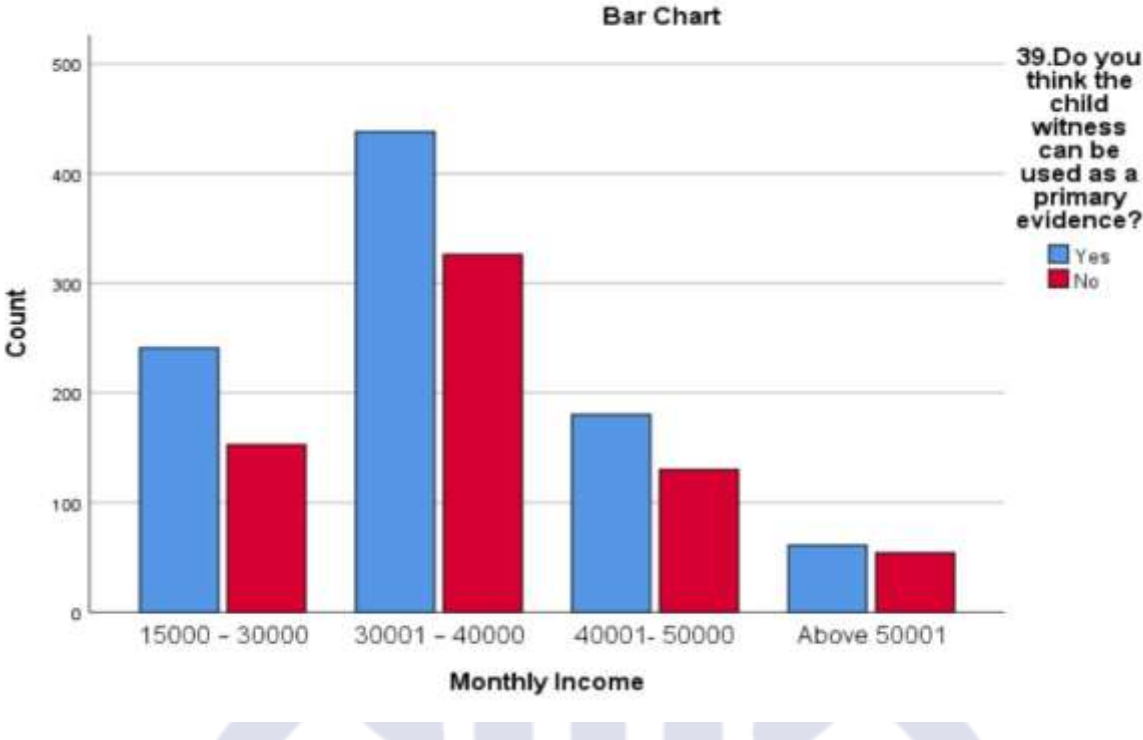
Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	2.917 ^a	3	.405
Likelihood Ratio	2.917	3	.405
Linear-by-Linear Association	2.030	1	.154
N of Valid Cases	1583		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 48.16.

Result: The results suggest that there is no significant association between monthly income and the perception of whether child witnesses can be used as primary evidence.





Crosstab

			40. Whether the child can admit his witness?		
			Yes	No	Total
Monthly Income	15000 – 30000	Count	90	304	394
		% within Monthly Income	22.8%	77.2%	100.0%
		% within 40. Whether the child can admit his witness?	19.4%	27.2%	24.9%
30001 – 40000	Count	231	533	764	
	% within Monthly Income	30.2%	69.8%	100.0%	

	% within 40.Whether the child can admit his witness?	49.8%	47.6%	48.3%
40001-50000	Count	83	227	310
	% within Monthly Income	26.8%	73.2%	100.0%
	% within 40.Whether the child can admit his witness?	17.9%	20.3%	19.6%
Above 50001	Count	60	55	115
	% within Monthly Income	52.2%	47.8%	100.0%
	% within 40.Whether the child can admit his witness?	12.9%	4.9%	7.3%
Total	Count	464	1119	1583
	% within Monthly Income	29.3%	70.7%	100.0%
	% within 40.Whether the child can admit his witness?	100.0%	100.0%	100.0%

In this analysis, the independent variable was taken as monthly income, while the dependent variable was the public's opinion on whether a child can provide witness testimony. Among the respondents in the income range of 15000 - 30000, 394 individuals provided their responses. Out of those, 90 people answered "yes" and 304 people answered "no". Similarly, in the income range of 30001 - 40000, 764 people gave their responses, with 231 people choosing "yes" and 533 people choosing "no". For the income range of 40001 - 50000, there were 310 respondents, with 83 people selecting "yes" and 227 people selecting "no". Finally, in the income range of 50001 and above, 115 people responded, with 60 people choosing "yes" and 55 people choosing "no". Overall, a total of 1583 people provided their responses, with 464 individuals accepting the statement and 1119 individuals denying the statement.

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	38.246 ^a	3	.000
Likelihood Ratio	35.863	3	.000
Linear-by-Linear Association	20.662	1	.000
N of Valid Cases	1583		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 33.71.

Result: The Pearson chi-square value is found to be smaller than 0.05. There is significant association between monthly income with the concept of whether the child can admit his witness.

Conclusion:

In accordance with the voir dire test standards, it is the responsibility of the judge to assess the competency of a child to testify in the courtroom. It is crucial to recognize that young children require utmost care and sensitivity, which may not always be within the judge's expertise. Trained professionals and advocates should collaborate with the court to guide the child's participation in a manner that ensures the integrity of their testimony. The court takes into account expert opinions from various professionals and analyzes them accordingly.

The enactment of the Protection of Children against Sexual Offences Act (POCSO) on Children's Day, November 14, 2012, continues to raise concerns about its applicability, considering that children and infants may not be adequately prepared to comprehend and articulate their experiences. Recently, the Supreme Court of the United States delivered a significant verdict in *Ohio v. Clark* (van Gemert et al., 2018), facilitating the prosecution of child abuse cases without requiring young children to

testify directly.

This ruling allows jurors to hear testimony from teachers who were informed by their students about incidents of abuse (Ceci and Hembrooke, 2001). The unanimous decision stemmed from a case involving a 3½-year-old Ohio child whose injuries were evident to daycare center teachers (Ogeil et al., 2018). Since the child was too young to testify, the court permitted the teachers to testify on his behalf, as the child promptly reported the abuse to them (Ogeil et al., 2018; van Gemert et al., 2019). While the accuracy of a child's statement is always subject to scrutiny, alternative mechanisms need to be developed to validate such testimony, ensuring it remains unaffected by external factors and is treated with utmost care and caution. Additionally, there is a need for specific legislation and amendments to criminal law addressing child sexual abuse, which should strive for impartiality. The court must also consider the admissibility and validity of testimony given on behalf of a child when they are unable to testify or fully comprehend their experiences.

