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MINOR AS A WITNESS

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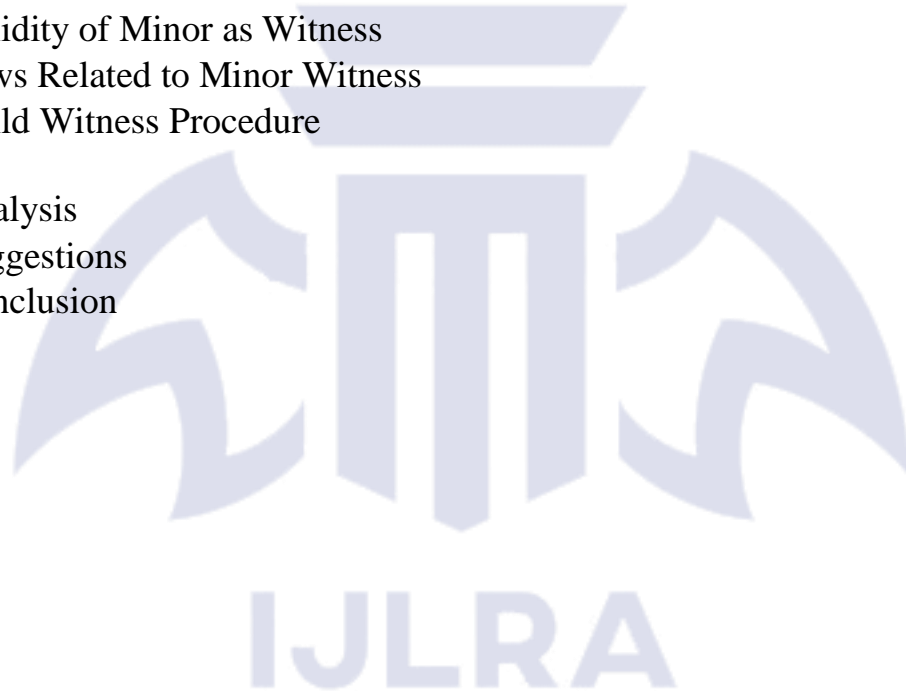
Abstract

A person below the age of 18 years is considered a minor. Our legal system deals with children differently, and there are other laws for minors, known as the juvenile justice act, that regulate minors who commit crimes or are involved in any crime. But have you given a thought about a minor as a witness? A child who is not aware of anything. A child who can manipulate easily just by tutoring him or providing him something. It is tough to justify that a minor witness is reliable in the Court of law. This research paper will answer all these questions in this research paper. Therefore, this research paper will start dealing with the introduction to witness and then proceed with the validity of a minor as a witness, which will be the focus of this paper; this will discuss various case laws to support the reality. The report will focus on the procedure related to minor witnesses. On the ending note, paper provide a few recommendations.

Keywords: Minor, Witness, Evidence, Validity, Law, Child.

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Introduction

We say that our law is blind that is because it provides equal justice to everyone irrespective of caste, religion, sex, and colour and to provide equal justice it is basically based on the facts and issues of the case. The facts and issue can only be proved or disproved based on the Evidence. Evidence means and includes- All such statement which the court allows or needs to be presented before it by the witness in front of the court is called as documentary document. All such documents including any electronic record, presented before the court for inspection is termed as documentary evidence.¹

The word witness is not defined anywhere in the Evidence Law so in terms of layman view a witness can be a person who has seen the crime taking place or was present at the crime scene or has the knowledge of about the crime that occurred but then a person who is a witness of some crime cannot term valid or invalid as per the age. Under the law anyone can be a witness either an old age person, an adult or even a minor.

Section 118 of Indian Evidence Act 1872, talks about who can testify as a witness it says, all person shall be competent to testify unless the court consider that they are prevented from understanding the question put to them, or from giving rational answer to those question, by tender year, extreme old age, diseases, whether of body or mind, or nay cause the4 same kind.

²Therefore, this research is going to talk about the Minor Witness. A child is termed to be very innocent and its saying that a child always speaks the truth because at their age they will not frame or play with the words. Minor will always speak what he or she has seen and heard.

The question that arises is whether the minor witness is valid or invalid under the Indian Evidence which this paper will be focusing upon. As a child is very easy to be manipulated or they will be made to imagine something that does not exist. Even their wordings can be changed as they are at the stage of learning and when someone repeats something continuously, they tend to speak the same thing. The evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to

¹ Indian Evidence Act pdf. (n.d.). (Accessed April 4, 2022,8:10 PM) URL:
<https://thc.nic.in/Central%20Governmental%20Acts/Evidence%20Act,%201872.pdf>

² Indian Evidence Act pdf. (n.d.). (Accessed April 4, 2022,8:10 PM) URL:
<https://thc.nic.in/Central%20Governmental%20Acts/Evidence%20Act,%201872.pdf>

swayed by what others tell them and thus a child witness is an easy prey to tutoring.³

This research paper will start dealing with the introduction to witness and then proceed with the validity of minor as witness which will be the focus of this paper along with this will discuss various case law to support the validity. Paper will also throw a light on how the minors should be treated while their statement is recorded, or they are called in the court to give evidence. What are the laws related to minor witness will also be covered in the paper? On the ending note few recommendations will be stated with a view of public approach.

Research Problem

The problem that our research paper is dealing with is that a Minor Witness will be considered valid by the Indian Courts or not.

Research Question

As the title of the paper makes it clear that paper is dealing with the minor as a witness and based on this the research questions are framed that are as follows:

- i. Whether a minor witness is valid or not in the Indian Court?
- ii. What are the laws related to the child witness?

Hypothesis

The hypothesis set is that a minor witness should be valid in the court of law and should be considered as evidence.

Scope And Objective

The scope of this research paper is to know the laws related to the child witness and then focus on the validity of the minor witness its admissibility in the court of law which will be supported by the recent case laws.

³Roy, D. C, *Position of child Witness under Indian Evidence Act, 1872*, XOURNALS (Accessed April 4, 2022, 8:25PM) URL: http://www.xournals.com/assets/publications/AJLJ_V01_I01_P24-29_April-2018.pdf

Objectives

- To analysis the validity of the minor witness
- To understand the laws related to the child witness
- To decipher proper approach on the recent case laws dealing with the child witness.

Research Methodology

The research paper is primarily based on doctrinal research method which is followed for conducting research on this topic. The data collected are from various websites and journals, for a clear view on the research paper.

The secondary sources used in the project are:

1. Journals
2. Newsletters.
3. SCC online
4. Bare Act

Literature Review

1. Dr. Caesar Roy, Position of Child Witness under Indian Evidence Act, 1872- An Analytical Study, Academic Journal of Law and Judiciary, Xournals, ISSN: UN |Volume 01|April 2018

In this research paper author has talked about the meaning and competency of witness under the Indian Evidence Act. Competency of child witness and the value of such minor witness is analytically discussed in the research paper along with the case laws, at last certain suggestions are being provided by the author to make this provision more effective.

2. Amanda Elizabeth Wade, The Child Witness and The Criminal Justice Process: A Case Study in Law Reform

This thesis is written by the one of the PhD students at University of Leeds: Department of Law, Centre for Criminal Justice Studies; and Research School of Medicine, Division of Psychiatry and Behavioural Sciences in Relation to Medicine. March 1997. In his thesis he has talked about offers a socio-legal critique of the reforms, analysing the way in which their development and implementation have been ideologically structured. Secondly, he talks about the historical view of the testimony of the child witness.

3. Brinda Nagaraja, Child Witness testimony under the Indian Evidence Act, 1872, Law Circa

In this paper the author throws the light on introduction to who is a witness and answers the question if the Indian Law recognizes Child Witnesses. Then she looks at how the competence of the Child Witness is determined and the admissibility of such testimony. The main research question she focuses on is how the competence of the Child Witness is determined in India and if it is too subjective and do, we need better methods to determine it.

Validity Of Minor As A Witness

As per our Indian Law minor is not eligible to enter a contract, or is not eligible to file for a suit, many of other circumstances where a minor is barred from doing things in our country. Similarly rule of evidence had discriminated minors from giving witness. Between 1988 and 1991 the position of minor witness within the criminal justice process underwent a profound transformation. Rules of evidence which had placed barriers within the way of children's testimony being put before the courts were abolished, and new procedures were developed which allowed a number of the more stressful features of a court appearance to be circumvented when children give evidence in criminal cases involving violent or sexual offences. Therefore, Indian Evidence Act is now considering the witness of the minor valid but only when it fulfils these criteria. The court allows a child to give witness after taking into certain facts into condition that are:

- ❖ The child must be in a condition to understand the question that is being asked.
- ❖ Child should be of sound mind as to know the difference between what is right and what is wrong.
- ❖ Child should be aware or has the knowledge of the incident.
- ❖ Child's character and his body language is also noticed by the Judge when is called to give evidence.

There is no specific age given under Indian Evidence Act as in who can give witness. Therefore, section 118 of the Indian Evidence Act talks about as in who and all can give evidence.

- all person shall be competent to testify unless the court consider that they are prevented from understanding the question put to them, or from giving rational answer to those

question, by tender year, extreme old age, diseases, whether of body or mind, or nay cause the same kind.

The question of the validity of minor witness has always been very fashionable in isolated cases. There are several courts that have spoken in favour of this question. In sight of the case of **Tehal Singh and Ors. v. The State of Punjab, 1978**⁴, the Supreme Court held that the sense and progress of a witness at the age of 13 could also be like that of a wonderfully rational person. The Court argued that in an agrarian economy like India, a 13-year-old child can't be considered immature, at such an age that children begin working in various fields, farms and within the informal sector.

Case of **Musst. Jarina Khatun v State of Assam, 1991**,⁵ it had been held that by considering the credibility of the juvenile witness, the court may by taking under consideration the very fact that the judge may have the primary and direct conversation with the minor. It enables him to be the simplest evaluator of the child's level of development and comprehension. However, there are certain circumstances and events during which the judiciary must take appropriate precautions when evaluating a child's testimony. the most concern has been the inclination of the minor witness to be tutored by another party who has an interest within the matter, and which hampers the testimony. However, it's always considered within the favour of the witness and therefore the ground on which the evidence is rejected if there's any evidence to prove such tutoring.

In another instance, **Mangoo & Anr. v. State of Madhya Pradesh, 1995**⁶, the Apex Court observed that while there's always a chance to tutor the child, it couldn't be used as a sole basis for concluding that the minor witness had been tutored. The Court must decide whether or not the child was tutored. If there are any indications of tutoring, it's going to be determined by reviewing the evidence and therefore the contents thereof. Even though a minor witness statement has been tutored, it is often relied on if the taught component is often isolated from the untutored half, and therefore the remaining untutored

⁴ *State of punjab v. Tahal Singh | Punjab & Haryana high ...* (n.d.). Retrieved April 13, 2022, from <https://www.casemine.com/judgement/in/56099289e4b0149711399842>

⁵ *Legitquest. legitquest.* (n.d.). Retrieved April 13, 2022, from <https://www.legitquest.com/case/musstjarina-khatun-v-state-of-assam/623BA>

⁶ *Mangoo & Anr.v/s. State of Madhya Pradesh SC 959, (1995)*

part inspires trust. In such a scenario, the untutored component is often believed or at the very least considered for corroborating purposes, as within the case of an adverse witness. Certain case law will explain the validity of child witness.

1. B.A Umesh Reddy Vs State of Karnataka⁷

This case is one of the “rarest of the rare” cases in which minor was considered as the witness. This is one of the famous cases of Karnataka and one that had made fear in the mind of every person who was living in Bangalore. B.A Umesh was a psychopath serial killer who was very difficult to be found and put behind the bars.

Jayashri a widow who use to live with her son aged (7years old) in a rented house in Bangalore. She usually used to take her son to the school in morning and bring him back in the afternoon. On 28.2.1998, following the same schedule after her son was back from the school, he went to play outside that time Jayashri was all alone, and when the son Suresh returned home, he saw the accused in the hall and who introduced himself as "Venkatesh Uncle" and informed that his mother was possessed by ghost/devil and therefore, he has tied her and he is going out to bring a doctor and so saying, the accused left the house with a bag full of articles. Suresh went inside the room and saw that her mother's hands were tied together with one end of a sari and another end was tied to the window bar. He stated that he saw blood on the floor and the mother was not responding. Umesh came with an intention to rob the house and after that he killed Jayashri and rapped her.

The main argument in this case was regarding the child witness as when the incident happened Suresh was of 7 years old and at the time when he was giving witness, he was 14 years old still he was minor and considering a minor witness was challenging for the court. Defence counsel also look at the point that the minor cannot give a witness as he was tutored, and witness given by a minor cannot be the reliable one⁸. Looking at the address circumstances the court held that minor witness can be valid as the son was the first person to witness the incident.

Hence, this case is considered to be the rare of the rarest case as for the first time depending upon the minor witness the High Court announced for the death penalty of the accused.

⁷ Legitquest. legitquest., Retrieved April 10, 2022, from <https://www.legitquest.com/case/registrar-general-high-court-of-karnataka-bangalore-v-ba-umesh/D8E33>

⁸ B.A Umesh Reddy Vs State of Karnataka (2018)

2. On 26th May 2017, the Supreme Court in **Satish Kumar Gupta and etc. v/s. State of Haryana and Ors.**⁹ etc confirmed the conviction of a women for the murder of her husband based on the sole testimony of her 12-year-old son, who witnessed the murder. The son testified that his mother was present while two assassins killed his father, and he was asked by his mother to go away the space on the word of one of the assassins. Both the court and therefore the appeals court found that the testimony of the kid was reliable and admissible. The 12-year-old son identified both the assassins who were there at the scene of the crime. The apex court found no reason in interfering with the conviction and upheld the decision. The apex court thus reiterates that the only child witness, who inspires confidence, are often relied upon in convicting an accused.

3. **State v. Yenkappa (2003)**¹⁰

Here the accused was convicted for the murder of his own wife on the idea of the statements of his children who were adolescents. Admission of such statement was challenged on appeal. during this regard the accused produced some evidence on the very fact that minor children are tutored and thus their evidence must be rejected. In this case SC observed that it's the settled law that simply because the witness happens to be minor witness his evidence couldn't be rejected in toto thereon score. However the court must take care enough to ascertain that an innocent isn't punished solely acting upon the testimony of minor witness , because the children are very easily suspect able for tutoring, if one think of the circumstances of the case then , it'll be found that the presence of those witnesses within the home is the traditional situation and their witnessing the incident can't be considered unusual or unnatural. therefore, their evidence inspires confidence and can need to be acted upon.

⁹ *Satish Kumar Gupta etc. ETC vs state of haryana and ...* (n.d.). Retrieved April 13, 2022, from <https://indiankanoon.org/docfragment/104547475/?formInput=acquisition%20of%20land%20by%20kiadb>

¹⁰ State v/s. Yenkappa CRI LJ 3558, (2003)

4. **In State v Allen, (1967)**¹¹ it had been observed that the burden of proving incompetence is on the party opposing the witness. Courts consider 5 factors when determining competency of a minor witness. Absence of any of them renders the minor incompetent to testify. They are as follows:
- (1) an understanding of the requirement to talk the reality on the witness stand;
 - (2) the brain at the time of the occurrence concerning which he's to testify, to receive an accurate impression of it;
 - (3) a memory sufficient to retain an independent recollection of the occurrence;
 - (4) the capacity to precise in words his memory of the occurrence; and
 - (5) the capacity to know simply questions on it.

Laws Related To Minor Witness

There are different kinds of laws that governs the children, in this paper we are looking at the few laws of the children and the one which are specifically related to the child witness.

❖ **Convention on the Rights of the Child, 1989:** it states that any actions concerning to the children under any law either public or private should be held in the best interest of the child. With this certain guideline were provided in respect to Child Witness they are as follows:

- i. Authorities should treat the children in a most caring and sensitive way, with interview techniques that will help to minimise the distress or trauma to children.
- ii. A person who is dealing with the children should be trained enough in regard to how to be caring and loving while interviewing.
- iii. The investigator shall, to the extent possible, avoid repetition of the interview during the justice process in order to prevent secondary victimisation of the child.

Relevant Indian Laws related to the children:

1. **Article 39(f) of the Indian Constitution:** The state shall, in particular, direct its policy towards securing that child are given opportunities and facilities to develop in a healthy

¹¹ Wikimedia Foundation. (2022, January 24). *State v. Allen*. Wikipedia. Retrieved April 17, 2022, from https://en.wikipedia.org/wiki/State_v._Allen

manner and in conditions of freedom and dignity which childhood and youth are protected against exploitation and against moral material abandonment.

2. **Juvenile Justice Act:** The primary legislation in the country pertaining to the children is the Juvenile Justice (Care and Protection of Children) Act, 2015. This act does not provide any guidelines regarding the child witness, few necessary points are there that are to follow by the advocates.

- There should be a child friendly approach while dealing with them this is basically for police that they should not be in their uniform while dealing with a child.
- Special Juvenile Police Unit: children interview should be conducted by a special unit of police who are trained to sensitively deal with them.
- Provides for the Child Welfare Committee, in every district to take cognisance of any violations by the authority in their handling of children.

3. **POSCO Act:** This act has specific guidelines regarding to interviewing of child witness, though the guidelines pertain to child sexual abusive victims.

- It should be conducted in safe, child-friendly environment, including allowing for them to be done at home.
- Child should not recount the incident in question multiple times.
- Act also allows for a support person, who is trained in counselling, to be present with the child to reduce his stress.

4. It is an internationally recognized proven fact that giving testimony during a court of law are often traumatic for minor due to the intimidating the court's environment.

UNO in Article 25 of the Universal Declaration of Human Rights, 1948 has given that children need special care and assistance.

In its guidelines for **Justice minor Victims and Witnesses of Crime, 2005 UN** has stated that :

Child victims and witnesses should be treated during a caring and sensitive manner throughout the justice process, taking under consideration their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity. Every child should be treated as a private together with his or her individual needs, wishes, and feelings.

Interference within the child's private life should be limited to the minimum needed at an

equivalent time as high standards of evidence collection are maintained so as to make sure fair and equitable outcomes of the justice process. In order to avoid further hardship to the child, interviews, examinations and other kinds of investigation should be conducted by trained professionals who proceed during a sensitive, respectful and thorough manner. All interactions described in these Guidelines should be conducted during a child-sensitive manner during a suitable environment that accommodates the special needs of the kid, consistent with his or her abilities, age, intellectual maturity, and evolving capacity. They ought to also happen during a language that the kid uses and understands. In the case of **Virender Vs. The State of NCT of Delhi, 2008** Delhi supreme court further has given the rules on the way to examine minor witness of an offence. These guidelines are as follows:

- The statement of the victim shall be recorded verbatim,
- The officer present shall not be in police uniform,
- The statement shall be recorded at an area where minor can speak freely,
- A person whom minor trusts shall remain present,
- At no point should minor be available for contact with the accused,
- Questions put to minor in cross-examination shouldn't be designed to embarrass or confuse them; and
- Courts must carefully translate gestures into the written records.

Child Witness Procedure

VOIR DIRE TEST

The term comes from an Anglo-Norman word sense "oath to speak the truth." during this context, the term voir (or voire) originates from French and means "that which is true". The trial is held with the intention of determining the merits of the child witness. Usually, the judge questions the child witness to see his or her honesty and to determine if the facts are constructed with the progress of the facts that accompany it. This test could also be a precursor to determining a child's maturity and skill to affect the entire potential of a witness to testify before a judge and, therefore, the judge may examine minor by asking some irrelevant questions. Some samples of questions asked during this test could even be related to his name, father's name, or place of residence. This is often often done to assess absolutely the fitness of minor witness, which may be restricted in nature.

In **Rameshwar S/o Kalyan Singh v. The State of Rajasthan, (1951)**¹², the Rajasthan supreme court decided that, under Section 118 of the Indian Evidence Act, every individual is competent to be a witness during a court of law unless incapable of understanding the question placed before him. Capability to understand at a young age is more likely to be dependent and to be formed at the opinion and perception of what others say and portray, because of which the testimony of minor is more likely to be modified or altered.

Hence, handling minor witness is of key importance. This was also addressed within the landmark case **Nivrutti Pandurang Kokate Ors. v. The State of Maharashtra, (2008)**¹³ during which the Supreme Court held that minor witness' testimony must be scrutinised to form sure that it had been not given under duress or undue influence which it must also corroborate other evidence.

EVIDENCE OF MINOR WITNESS WITHOUT OATH

Under section 4 of the Oaths Act, 1969 all witnesses are to need oaths or affirmation. The proviso says that sections 4 and 5 of the said Act shall not apply to minor witness under 12 years aged. The proviso to section 4 of the Oaths Act, 1969 must be read alongside section 118 of the Indian Evidence Act and section 7 of Oaths Act. An omission to administer an oath, even to an adult, goes only to the credibility of the witness and not his competency. The question of competency is addressed, in section 118 of the Evidence Act. Every witness is competent unless the court considers he's prevented from understanding the questions put to him, or from giving rational answers, by reason of tender years, extreme adulthood, disease whether of body or mind or the opposite explanation for an equivalent kind. Therefore, unless the Oaths Act adds additional grounds of incompetency, it's evident that section 118 of the Evidence Act must prevail.

¹⁴The Oaths Act doesn't affect competency. **Bhagwania v. State of Rajasthan,**¹⁵ it had been held that an omission to administer oath under the Oaths Act, 1969 doesn't affect the

¹² Rameshwar S/o Kalyan Singh v. The State of Rajasthan, SC 54, (1951)

¹³ Nivrutti Pandurang Kokate vs. State of Maharashtra S.W.C 1460, (2008)

¹⁴ Rameshwar S/o Kalyan Singh v. The State of Rajasthan, SC 54, (1951)

¹⁵ *Shri Bhagwan v. state of Rajasthan . . .* (n.d.). Retrieved April 15, 2022, from <https://www.casemine.com/judgement/in/5609ada8e4b0149711411eec>

admissibility of evidence unless the judge considers the witness to be otherwise incompetent.

In **Ghewar Ram v. State of Rajasthan**¹⁶, it had been held that when minor witness is found competent, his inability to read or understand oath or omission in administering it, neither invalidates the proceedings nor renders his evidence inadmissible.

In **Rameshwar v. State of Rajasthan**¹⁷, the Supreme Court held that an omission to administer an oath, even to an adult, goes only to the credibility of the witness and not his competency. The question of competency is addressed in section 118 of the Evidence Act. Every witness is competent unless the court considers he's prevented from understanding the questions put to him, or from giving rational answers by reason of tender years, extreme adulthood, disease whether of body or mind, or the opposite explanation for the same kind. It's further held that judges and magistrates should record their opinion that the child understands the duty of speaking the truth and state why they think that, otherwise the credibility of the witness could even be seriously affected, such as so, that in some cases it's going to be necessary to reject the evidence altogether.

The Supreme Court in **Dattu Ramrao Sakhare v. State of Maharashtra**,¹⁸ further held that even within the absence of oath the evidence of minor witness is often considered under section 118 of the Evidence Act as long as the witness is in a position to understand the answers there of. The evidence of minor witness and credibility thereof would depend upon the circumstances of each case. The sole precaution which the court should bear in mind while assessing the evidence of minor witness is that the witness must be a reliable one like other competent witness and there is no likelihood of being tutored.

¹⁶ *Ghewar Ram vs state of Rajasthan on 2 May, 2001*. (n.d.). Retrieved April 15, 2022, from <https://indiankanoon.org/doc/475742/>

¹⁷ *Rameshwar S/o Kalyan Singh v. The State of Rajasthan*, SC 54, (1951)

¹⁸ *Dattu Ramrao Sakhare and ors vs state of Maharashtra on 8 ...* (n.d.). Retrieved April 11, 2022, from <https://indiankanoon.org/doc/153654/>

Analysis

As per the hypothesis set before starting of the research paper is termed to be prove correct that is a minor witness in the Indian Court as per the Indian Evidence Act is valid and, in many cases, it has been held that where the minor is the sole witness the court is left with no option but to consider it by following all the procedures. It's a saying that every coin has 2 sides similarly sometimes cases are there where the minor witness is rejected looking at the facts and circumstances that the child was tutored to speak the things.

To support this statement many recent case laws are there which makes the analysis applicable based on the judgment held in those cases. All the laws related to child witness are explained along with the guidelines provided by that Act or Law.

Suggestions

- ❖ Child victims and witnesses should be treated during a caring and sensitive way throughout the justice process.
- ❖ Every child should be treated as a private together with his or her own needs, wishes and feelings.
- ❖ People who investigate a criminal offense should spend only the quantity of your time with the kid that's necessary to seek out what happened.
- ❖ People that interview a minor victim or witness should be specially trained in order that they ask questions correctly and during a respectful way. they ought to believe what the kid needs and treat the kid fairly and respectfully.
- ❖ Everyone who has contact with minor victim or witness should consider the child's needs, thoughts, and feelings. they ought to ask the kid during a place where the kid feels comfortable and safe. they ought to talk during a language that the kid uses and understands

Conclusion

A criminal case requires testimony of the witnesses who have the primary hand information of the crime to fill the barren of the investigation process and ease the task of the judiciary in dispensing justice. The Indian Evidence Act provides provisions on who are often a witness and what might be the admissibility of testimonies of all kinds of witnesses.

The court must ascertain the extent of intelligence of kid witness, his capacity, understanding and therefore the way he can give rational answers concerning the event. However, minor may be a privileged witness because the competency is to be decided by the court supported the circumstances of every case. Section 118 of the Evidence Act has been worded negatively. The Court wouldn't consider the evidence which has been furnished by an individual who doesn't understand the character of the question. Yet, where the record is absent, the Court has got to proceed to record the evidence while considering the competency. during a nutshell, the testimony of minor witness shouldn't be frowned upon if he can discern between right and wrong. If an eyewitness of 13 years aged is said to the victim, his testimony can't be ignored.

The credibility of a toddler witness are going to be tested in each case counting on the facts and circumstances of an equivalent. However, neglecting a child's testimony will deprive him to use his right to avail all kinds of instruments to determine justice. The determining power of competency is very bestowed upon the judge under Sec.118, but at the top of the day, one shouldn't forget that they're humans and their decisions will differ from case to case. A judge must cautiously ascertain and verify the competency of minor witness by using the principle of voir dire. it's also advisable to deploy counsellor or trained personnel who affect the kid during a more prescribe manner to make sure the testimony of an equivalent isn't doctored. A witness during a criminal trial may be a most significant element and hence one should affect child witness during a friendlier environment.

If minor witness isn't competent enough to testify in court but holds incredible information which may influence the reasoning of a judge towards a specific crime. The court must take under consideration the testimony given by an individual on behalf of minor.