

## **Forensic Psychological :: Psychological analysis of Child as Witness.**

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### ***Introduction ::***

The competency of a witness is the condition precedent to the administration of oath or affirmation, and is a question distinct from that of his creditability when he has been sworn or has been affirmed. Under section 118 of the Indian Evidence Act, every person is competent as a witness unless the Court considers that he is prevented from considering the question put to him or from giving reasonable reason because of the factor of age i.e.; tender or extreme age. This prevention is based on the presumption that children could be easily tutored and therefore can be made a puppet in the hands of the elders. In this regard the law does not fix any particular age as to the competency of child witness or the age when they can be presumed to have attained the requisite degree of intelligence or knowledge.

### ***Voir dire test:***

Under this test the court puts certain preliminary questions before the child which have no connection with the case, in order to know the competency of the child witness. Some examples of the questions asked under this test can be that regarding their name, father's name or their place of residence. When the court is fully satisfied after hearing the answers to these preliminary questions, as to the capability of the child to understand these questions and to give rational answers thereto.

Psychology of child as Witness :

### **Psychological Evaluation of Child Witnesses**

When children are witnesses in criminal matters, there are many factors that affect the reliability of their testimony, that are less important for adult witnesses.

- *First, children are more easily influenced by adult questioners, and respond more to leading questions.*
- *Second, young children may blend fantasy and reality, or opposing counsel will make the claim that they are blending fantasy and reality.*
- *Third, the cognitive functioning of a child is more important to testimony than with an adult witness, because of development. A child who is intellectually delayed will be less reliable than an adult with the same delay.*
- *Fourth, juries may be less inclined to believe a child, so psychological testimony regarding the developmental capabilities of a child witness can affect credibility.*
- *Fifth, child victims of abuse may have psychological problems that influence their testimony, and children with psychological disturbances are less likely to make good witnesses in any criminal proceeding.*

A psychological evaluation of a child witness may be ordered to assess credibility. Beyond that, psychologists may be asked to testify regarding the reliability of child witnesses, or concerning the affects of leading questions, or the presence of psychological problems on credibility.

The supreme court in **Tahal Singh v. Punjab (AIR 1979 SC 1347)** observed:

*In our country, particularly in rural areas it is difficult to think of a load of 13 year as a child. A vast majority of boys around that age go in fields to work. They are certainly capable of understanding the significance of the oath and necessity to speak the truth. in this regard a very important observation has been made in Jarina Khatun v. State of Assam 1992 Cr LJ 733, that the Trial Court is the best judge in the matter of deciding the competency of such a witness as there, the child himself appears before the court. Therefore it has opportunity to see him, notice his demeanors, record his evidence and thereafter on scrutiny accepted his testimony.*

**Rameshvar Vs. State of Rajsthan**, Here the accused was convicted for the rape of a 8 yrs. Old girl. The basis of this conviction was the statement made by the victim to her mother. On appeal the sessions court held that the evidence was sufficient enough to form the basis of a moral conviction, but was legally

insufficient. when the matter reached to the high court, it was held that no doubt the law requires corroboration but here this statement itself is legally admissible as corroboration. Later the H.C. granted leave to appeal and therefore the matter reached to *Supreme Court, where it made following observations:*  
**"...Admissibility as an Evidence ::**

*The assistant sessions judge certified that she did not understand the sanctity of an oath. But there was nothing to show whether the child understood her duty to speak the truth. The apex court observed that the omission to administer an oath goes only to the credibility of the witness and not his competency. Section 118 of the IEA makes it very clear that there is always competency in fact unless the court considers otherwise and since there is nothing as to suggest incompetence, therefore section 118 would prevail.*

*It is desirable that the judge or magistrate should always record their opinion as to whether the child understands his duty to speak the truth and also to state that why they think that ,otherwise the credibility of the witness would be seriously affected, so much so, that in some cases it may be necessary to reject the evidence altogether.*

*In the situations where the judge or the magistrate doesn't make any express statement as to this effect then inferences has to be collected from the circumstances of the case. here, the assistant sessions judge omitted to administer the oath to the child as she could not understand its nature, but still continued to take her evidence , shows his intention to the fact that he was satisfied that the child understands her duty to speak the truth. Moreover, the accused also never raised any objection as to the same, at that stage.*

#### **Corroboration with other evidences ::**

*Though section 114 of IEA requires that every statement of an compliance must be corroborated but a vast majority of cases show that it is not a very hared and fast rule, specially in rape cases and that too of a child of tender year. There is difference between what the rule is and what has been hardened into a rule of law. In such cases the judge must give some indication that he has had this rule of caution in mind and should proceed to give reasons for considering it unnecessary to require corroboration on the facts of the particular case before him and show why he considers it safe to convict without corroboration in that particular case. It was held that on the basis of the above observations the SC affirmed the decision of the HC..."*

#### **Incompetency of a child witness:**

In *State v Allen*, 70 Wn.2d 690, 424 P.2d 1021 (1967) it was observed that the burden of proving incompetence is on the party opposing the witness. Courts consider 5 factors when determining competency of a child witness. Absence of any of them renders the child incompetent to testify. They are;

- (1) an understanding of the obligation to speak the truth on the witness stand;
- (2) the mental capacity at the time of the occurrence concerning which he is 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 express in words his memory of the occurrence; and
- (5) the capacity to understand simply questions about it.

*In State v. Yenkappa (2003) CRI LJ 3558 :: Here the accused was convicted for the murder of his own wife on the basis of the statements of his children who were adolescents. Admission of such statement was challenged on appeal. in this regard the accused produced some evidence as to the fact that the children have been tutored and therefore their evidence must be rejected. The idea to evaluate the child witness psychologically is to give credibility to their testimony.*

*Here the SC observed that it is the setteled law that just because the witness happens to be a child witness his evidence could not be rejected in toto on that score.*

*If one look upon the circumstances of the case then , it will be found that the presence of these witnesses in the house is the normal situation and their witnessing the incident cannot be regarded as unusual or unnatural. therefore, their evidence inspires confidence and will have to be acted upon.*

In many cases child witnesses are most vulnerable factor of criminal justice system. Easily tutored, inferenced, intimidated and emotional at times. In such cases, it is the judicial system who has to take care of the same, when child witnesses are star witnesses. There are many hurdles in testifying childs witness.

Children's increased participation in the legal system has brought considerable attention not only to children's memory and suggestibility but also to the emotional impact of testifying. Courtrooms are austere, formal settings, capable of intimidating adults, not to mention children. What do children know about the legal system, how does participation in litigation affect children, and what can be done to aid children while, at the same time, preserving the rights of accused.

## Preparing Children to Testify

Most children, have limited knowledge of the legal system and the role of judge, advocates and others. Not all children knows what a Court is and how it works. Considering the fact that children know little about the legal system, and that what they learn from school and television may be misleading or incomplete, the assumption that child witnesses are largely unprepared for testimony is probably correct. Outside the legal arena, preparing children for novel or stressful experiences is routine. Indeed, preparation is expected. Many a times, child witnesses may be a victim himself or a witness who has been traumatized by the events he had witnessed. The preparation would play an important role.

*In many foreign country, "Court-School", is a part of curriculum. Where they meet the Judge on one to one basis. Whereas, we do not have such activities except Law Schools. Hence, testifying in court is difficult for many Preparing children to testify serves three inter-related goals.*

**First**, preparation may reduce children's stress to more manageable levels. **Second**, preparation appears to increase some children's capacity to answer questions, promoting a situation in which children can perform optimally. **Third**, preparation helps children understand the nature and seriousness of the proceeding. It goes without saying that preparation does not include teaching a child-or any other witness-what to say in court.

It is time here to say that as an emerging factor related to Judicial System, forensic psychologist would be helpful in getting prepared the child as witness or as party prosecuting to or for, in criminal, civil or custodial cases. With the technique called forensic evaluation, where subject is interviewed in normal circumstances, more likely to be a meeting. Where on the basis of behavioural reactions, the expert would come to the conclusion that whether a person is acquainted with events they are testifying or witnessed, whether they are involved or influenced, whether they are turtored or intimidated. Which finally helped the court to find a conclusion regarding reliability of testimony of child witness. Therefore, what role should the court play in preparing children to testify? Needless to say, the court should avoid favoritism toward a particular witness, including a child. Ensuring that children are adequately prepared, however, is not favoritism or bias. Children who are prepared are in a better position to testify fully and honestly, thus assisting the search for truth. And a forensic expert in behavioural science, would be a best option for Court in concurring the truth.

### Conclusion ::

Experts on interviewing generally agree that interviewers should begin by building rapport with children. Children should be made to feel as comfortable as circumstances allow. Children are more likely to perform well when the interviewer is kind. Young children may actually be less suggestible when the interviewer is friendly and supportive, yet professional. Children who were interviewed in a warm, supportive environment were more likely to resist misleading suggestions than were those who were interviewed under intimidating circumstances. Social support did not lead to the increase in suggestibility feared by some critics of socio-emotionally supportive interviewing techniques. Although the interviewer strives for an objective, neutral stance toward the veracity of the allegations, there is no evidence to suggest that an effective interviewer cannot be kind and understanding towards the child. This is why the forensic psychological evaluation would be helpful in justifying the testimony of a child as witness in court of law.

### References and acknowledgements ::

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