



RESEARCH PAPER

**Comparative Study of Admissibility and Credibility of Child Witness
under Law and Practice in Pakistan and India**

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ABSTRACT

The object of present research is to compare the credibility of child witness in Pakistan and India and to determine how to determine and solve the issues of competency and admissibility of testimony of child witness is dealt in Pakistan and India with reference to international Human rights laws. Under Qanun-e-Shahadat, Article 3, the question of "who may testify" and the definition of a witness are covered. The article states categorically that everyone is competent to witness, with the exception of those whom the court determines are too young, infirm, or otherwise unable to grasp the questions asked of them or respond to them rationally. This article's clause makes it very plain that the presiding judge must only address the issue of a child's competency. This study is done by employing Doctrinal method and relied upon case laws and research articles written by scholars. Researcher drawn result that due to certain reasons during investigation and trial child witness is ignored. Researcher recommended that there may be a legal mechanism which provides a proper cover to child witness and during investigation a child witness could not be ignored and worth may be given to him/her.

KEYWORDS Child Witness, Corroboration, Court, Qanun-E-Shahadat, Rational Answers

Introduction

Witness is a vital constituent of the management of justice. By giving proof linking to the fee of the offence the witness plays a sacred responsibility of helping the courtroom docket to find out the fact. This is the purpose why earlier than giving proof he/she both takes an oath with-inside the call of God or makes a solemn confirmation that he/she can be able to communicate the fact, the entire fact and not anything however the fact. The witness plays a critical public responsibility of supporting the courtroom docket in selecting the guilt or in any other case of the accused with-inside the case. The witness plays a critical public responsibility of supporting the courtroom docket in selecting the guilt or in any other case of the accused with-inside the case. The witness has to consequently be handled with exceptional appreciate and attention as a visitor of honor. There are two vast factors to the want for witness protection. the first is to make sure that evidence of witnesses that has already been accumulated at the level of investigation is not allowed to be destroyed by way of witnesses resiling from their statements even as deposing on oath earlier than a court docket. This phenomenon of witnesses turning `adversarial' because of the failure to `protect' their evidence is one issue of the trouble. The other thing is the physical and mental vulnerability of the witness and to the looking after his or her welfare in diverse respects which name for physical protection of the witness at all ranges of the criminal justice procedure till the conclusion of the case. this can be finished by means of the creation of witness protection program, but what happens if such witness is child?

Literature Review

Definition of Child: A child is a person who is below the age of eighteen years or it usually refers to lone who is not major or who is below the age of majority.

According to Article 1 of the United Nations Convention on the rights of the children “ the child includes every human lone below the age of majority that is eighteen years of old unless the child's applicable law says otherwise, the age of majority must be reached first”.

Competency and Admissibility of a Child Witness under QSO 1984

The term “child witness” is nowhere used in the Qanun-e-Shahadat. However synonymous term “tender age” is used. Under Qanun-e-Shahadat, Article 3, the question of "who may testify" and the definition of a witness are covered. The article states categorically that everyone is competent to witness, with the exception of those whom the court determines are too young, infirm, or otherwise unable to grasp the questions asked of them or respond to them rationally. In the event that a youngster is unable to testify, there is therefore a limited incompetency. Every witness must be assessed on two criteria: his credibility and competency. A juvenile witness is subject to the same guidelines. The article's language makes it clear that anybody under the age of 18 is qualified to testify, barring the court's determination that they lack the mental capacity to comprehend the questions asked of them or to respond to them logically. This article's clause makes it very plain that the presiding judge must only address the issue of a child's competency. Even though the law does not forbid the right to object, the court, not the parties, has the last say about a child witness's competency. The level of intellectual development and his use of reason when testifying are key indicators of a kid witness's credibility. The Judge may accept him as a credible witness if he is convinced of these facts. The issue of the kid witness test is then raised. The law does not specify a particular test-taking process. It is a factual collateral matter that must be taken into account by the judge. By conducting a preliminary examination of the kid and documenting the judge's conclusion, this collateral question may be resolved. On these matters, the case law is not unanimous. The "test" question comprises two issues: first, whether the preliminary inquiry should be required or not, and second, whether the preliminary inquiry should be recorded. The Qanun-e-Shahadat makes no mention of any kind of preliminary examination or its protocol. However, there are opposing viewpoints. One holds that if the court determines during the actual examination that a child witness' testimony is incomprehensible, it may disregard it for lack of competency. According to the second viewpoint, the judge should first conduct a preliminary investigation by asking the kid a few questions, record their answers, and, if pleased with the child's competency, proceed to the actual examination. However, the presiding judge is not legally required to conduct any preliminary inquiries or to record them in light of Article 3's requirement. It has been stated that although if it is not legally enforceable, it should nonetheless be adhered to as a guideline of good judgement, and that appears to be the proper perspective. A kid witness is not in the least bit disqualified by their little age or years. The ability to comprehend the question and provide a reasoned response determines a child's level of competency. The court should reject to examine the youngster if it is uncertain about his competence to testify.

The Qanun-e-Shahadat 1984, is silent on the specifics of how to a child witness to tell the truth using various tools, such as modification to the courtroom or the use of contemporary technology. The investigative and judicial systems of Pakistan have not yet adopted any model interviewing procedures free of coercion and suggestion. The

adoption of standard protocol, which may be slightly altered in response to a responding child's age, intelligence, and cultural needs.

Competency and Admissibility of Child Witness in India

Those who swear under oath or present evidence in front of a court are called witnesses. The courts are tasked with using as the foundation for their own decisions. Those who are under the age of eighteen when they testify are considered kid witnesses. In India, there is no particular legal restriction on the minimum age at which a child can be a competent witness; any youngster who can pass the competence test is eligible to testify, and there is no legislation that forbids it.

Section 118 of the Indian Evidence Act, 1872 deals with who may testify in the court as witness. The requirements of section 118 are:

1. A witness needs to be capable of testify.
2. They must be able to comprehend the queries posed to them.
3. By understanding the situation, he or she may come up with a logical response.

The court has the authority to decide whether a witness will testify, according to a first-glance reading of the clause. This brings up the intriguing topic of whether a youngster may be considered a competent witness. In general, the court must scrutinize the kid witness testimony just as other witnesses.

The Indian court has considered and disregarded child witnesses' evidence on several occasions based on the specifics of each incident. Is it feasible to discount a child's testimony because of their age, one could wonder? As they are unable to develop a clear opinion and are too young to understand the issue, children at such a young age cannot be taken as reliable witnesses.

In *Nirmal Kumar v. State of U.P.* 1992, the Supreme Court ruled that a child's testimony should be thoroughly examined and that the court should seek some sort of corroboration because this practice is more common in practical judgement than in legal proceedings.

It is quite possible that the kid witness' evidence will be used for legal purposes, thus it should only be accepted after thorough thought. The youngster may testify to something he hasn't seen due to temptation and fear. The impact of any instruction on the kid witness must be carefully considered by the court. However, given that he is likely to learn due to his tender age, the data should not be discounted.

Voir Dire Test

The term "voir dire" is derived from the Anglo-Norman expression "Oath to tell the truth." In this context, the French term voir (or voire), which means "that which is true," is used. The ability and maturity of a youngster may now be assessed using this exam, though. The court conducts this exam to determine the child's competency by asking several questions irrelevant to the current case. The kid cannot be subjected to additional questioning if it seems to the court that he or she cannot comprehend simple inquiries like the child's name, age, or school. Since an incompetent witness' evidence has no legal weight in a court of law.

Using the voir dire concept, the judge must carefully determine and confirm the kid witness's competency. To guarantee that the kid's testimony is not fabricated, it is also advisable to use a counsellor or other professional individuals who interact with the youngster in a more structured way. Given the importance of witnesses in criminal cases, it is essential to interact with young witnesses in a kind manner.

If a child witness lacks the maturity to testify in court but has extraordinary information that might affect how a judge views a particular crime. The testimony provided by a witness on behalf of the kid must be taken into consideration by the court.

Testimony may occasionally be based solely on his imagination. The testimony of the child witness must therefore be verified, but if there is no decoration or correction, the court may rely on the testimony without it undermining its credibility. Because they can receive tutoring, the child witness' testimony needs to be scrutinized more closely. A child's statement must be partially or completely rejected by the court if there is evidence in the record that the child has received training.

Indumathi.M (2019) ponder on the study on admissibility of child witness in view of Indian administration of justice system. He ponder that it is essential to demonstrate the difference between comparability and competence. It has been established that everyone is a compelled witness in any legal proceeding, and it is demonstrated unequivocally that everyone who is compelled is a competent witness to give evidence. However, it has been established that not all qualified witnesses are compelled to testify. As a result, a compelled witness is not free to decline to appear in court or at a hearing just because the testimony he is expected to provide is confidential. He must show up to the meeting to exercise his privilege. His presence in court may be excused, and he may be permitted to withhold certain evidence or documents, but only if the court or tribunal upholds the privilege. A child will be considered competent in a criminal trial if they can understand the questions asked of them and provide clear answers

2011 MLD 873: discussed on the child witnesses in the criminal judicial system of Pakistan. This succinct analysis demonstrates that while the legislative framework to control the area of witnesses is generally weak, in particular, the children's evidence is most ignored and neglected. Legislation must be urgently improved to provide a thorough, safe, and secure procedure for engaging children, testing their competency and ability, and recording their statements in every situation. Reforms are also required to enhance the ways that the police and the prosecution use children as witnesses when it is appropriate to do so.

(zafar, 2018). A Critical Analysis of Precedents on Child Evidence in Child Abuse Cases [*Review of A Critical Analysis of Precedents on Child Evidence in Child Abuse Cases*]. *Pakistan Journal of Islamic Research*. The author discussed in her article that when determining an accused person's guilt or innocence in a criminal trial, the evidence is a useful tool. It's never easy to try instances involving child sexual assault. With few exceptions, the applicable legislation does not restrict a witness's ability to testify; in certain situations, a single witness' testimony is sufficient to establish a case. Although there are various limitations set by the nation's Superior Courts, testifying before a court as a minor is not prohibited by law or tradition. The fundamental need is that the youngster must be able to understand the questions posed to him and be able to respond with reason. Previous cases have shown that a kid witness's young age does not prevent him from testifying. The nation's Superior Court mandates that the trial court conduct certain preliminary inquiries and queries to ascertain the child's competency prior to recording the child's testimony. This practice is grounded on the rule of caution. Previous

cases have shown that the testimony of a minor witness may be trusted to support a conviction; even the victim child's isolated remarks are adequate, but they need to be backed up by an impartial, trustworthy source.

(Roy, Dr. C. 2018) worked on the Position of Child Witness under Indian Evidence Act, 1872 - An Analytical Study. The author in this article ponders that an individual who provides testimony in court is called a witness. The competence of a witness is explained in Section 118 of the Indian Evidence Act of 1872. In light of this, a minor who possesses the mental capacity to comprehend questions and provide thoughtful responses may be permitted to testify. There is no legal minimum age below which they cannot provide testimony on the grounds that they lack the necessary mental capacity. A kid witness's testimony needs to be assessed more cautiously and carefully since they are easily influenced by what other people say to them, making them easy targets for tutoring. The Indian Evidence Act's definition of a witness's competency is covered in this article. This article provides a case law-based analytical discussion on the competence and usefulness of kid witnesses. Finally, several useful recommendations are made to improve the effectiveness of this provision.

The Credibility and Admissibility of Child Witnesses in Pakistan:

There is no denying the importance of witnesses in the administration of justice. The testimony of the witness in the prosecution of the charges made determines whether an accused person is guilty or innocent. Thus, a witness's testimony is regarded as the foundation of a criminal prosecution. But before his testimony is accepted, a witness must pass certain requirements. Evidently, the yardstick for assessing a witness's testimony is relevance and admissibility, but these standards are only utilized once the witness has passed the competence test's (1995 P.Cr.L.J 803).

Pakistan's legal framework is derived from both Islamic and English common law. Common law tends to have more influence on business law, whereas Islamic law has a greater influence on criminal and personal laws. In a later constitution, the repugnance provision from the 1956 original was preserved and reinforced (2003 YLR 806)

Since it contained certain Islamic provisions, such as the requirement that only Muslims be eligible to serve as president and the requirement that all existing laws be changed to comply with Islamic injunctions, the abrogated 1956 constitution was dubbed the "Islamic Constitution." A copy of the 1949 Objective Resolution, adopted by the first constituent assembly, was included in the preamble of this constitution. Even if the preamble was not regarded as a part of the constitution, it unquestionably defined the course, identified the sources of the legislation, and declared the goals to be met, including the protection of minorities' rights.

Appropriate resources and assistance should be given to Muslims so they can "form their lives in accordance with the teachings and requirements of Islam." The state must assist people to live their lives in accordance with the Al-Qur'an and Sunnah, as required by the Directive Principles of State Policy. To this end, Qur'anic education must be made mandatory, Islamic customs must be upheld, and actions that are incompatible with Islam must be discouraged.

Thus, speaking before a court of law is generally not illegal for anyone, and this also applies to the evidence of a juvenile witness. Since the kid is a direct and primary witness to the abuse, their testimony is far more significant in these cases. The legal

standing of "child witnesses" in the criminal justice system underwent a significant change between 1988 and 1991, and the broad restrictions that had been in place prior to a child witness's testimony were either lifted or softened. The Peshawar High Court stated that the child victim's lone testimony may be used to determine the sentencing, provided that the testimony is credible and backed by both medical and circumstantial evidence (*Hazrat Bilal vs. State*, (2013 PCr.LJ 800). The victim is typically the only witness in cases of sodomy and zina because it is uncommon for the crime to occur in public or in front of other people. As a result, the child victim's testimony is highly sacred and can be used to convict the accused if it inspires confidence.

Evidence of a Child Victim in Child Sexual Abuse Cases

Cases involving child sexual abuse are frequently challenging for the police to handle during their investigations, the public prosecutor to carefully examine the evidence, and the court to decide the case after considering the testimony of witnesses, including the child witness. The laws, current research, and Superior Court precedents that have interpreted the nature, significance, scope, evaluation, and admissibility of child evidence are some of the sources of guidance that should be consulted when discussing and evaluating the issues surrounding a child witness.

In the case of Ahsan Banghash, the Karachi High Court noted that a child's testimony demonstrating that they comprehend questions and have provided thoughtful, reasoned replies cannot be disregarded due to the witness's youthful age (*Ahsan Banghash alias Junaid vs. State*, (2017 Pcr. LJ 509). In Muhammad Abbas's case, the Lahore High Court ruled that a juvenile witness's evidence is relevant to his ability to comprehend the questions and then provide a reasoned response in accordance with Article 3 of the Qanun-e-Shahadat Order, 1984. According to Ekman, a child's suitability as a witness may be assessed based on their level of intelligence, comprehension, capacity to notice, recall, and relate to events, comprehension of the importance of an oath, and recognition of the need to speak the truth. The ability of the youngster to comprehend the questions would be the determining factor in determining a witness's competency, as the legislation has not set a certain age. However, if we closely examine the precedents, we may see that courts just need to consider all relevant evidence and case factors while evaluating the evidence.

Admissibility of child testimony in light of the 1984 Qanun-e- Shahdat Order:

The applicable legislation in Pakistan that controls a witness's competency, including that of a minor witness, is the Qanun-e-Shahadat Order 1984. The concept of admissibility of child testimony has been clarified, and the Lahore High Court established in the Muhammad Boota case that a victim's or child witness's testimony is admissible in evidence provided the court determines that the witness is not allowed to understand the question or provide logical responses. The Lahore High Court established guidelines for the admission of child testimony in Ghulam Farid's case, ruling that a young kid's inexperience did not automatically prevent them from testifying. It is not possible to establish a universally applicable general rule stating that child witness testimony should never be accepted.

Compatibility and Validity of child testimony

The honorable Supreme Court held (2010 SCMR, 247) that although, in theory, a sentence could be based on the testimony of an intelligent child witness, courts had ideally chosen to adhere to the established standard of caution and rule of care associated

with solitary child witness testimony, even in cases where the child provided an intelligent deposition. Based on the examples discussed above, one may conclude that corroboration is independent evidence that comes from a separate source and supports the main evidence. The independent evidence, the medical evidence that is, a doctor's testimony a forensic report, and a DNA report are often considered by the courts as corroborating pieces of evidence. The level of corroboration is another part of the matter; courts have decided that the sole prerequisite is an independent source of the evidence that satisfies the common prudential standard.

The court's satisfaction on a child witness's competency

In a landmark decision concerning child witnesses, age limits, requirements for corroboration, and court satisfaction, the Lahore High Court ruled that a child's testimony can be admitted into evidence as long as the court determines that the child witness is not allowed to understand the questions being asked or to provide thoughtful responses. Whether a kid witness is shielded from comprehending a question because of his young age is something the trial court must determine⁸³. There's no law requiring a juvenile witness to attest to their intellectual capacity in writing; the court must be satisfied, that's the only need.

The Peshawar High Court noted in Abdul Haq's case (2018 (Pcr. LJ)12) that the court is competent to make its observations on the kid witness's intellect and that it is not legally needed to write questions and answers to verify the witness's intelligence.

Therefore, the only prerequisite is the court's satisfaction (the court saw it as a test), which might be attained by asking a few straightforward questions prior to the recoding examination.

The following are the reasons why the child's evidence is not admissible

When a kid is testifying, the court must determine if the victim/child is able to:

- (1) remember, record, and explain the events accurately;
- (2) distinguish between truth and lies; and

(3) fulfil his or her obligation to tell the truth in court. According to research, children who have experienced sexual abuse may have emotional, shame-related, and motivational aspects that impact their testimony. Additionally, children frequently exclude sensitive information from their depositions.

The testimony of a juvenile witness is delicate, and it is often not safe to depend upon it until it is verified. The Supreme Court said in the case of Farhan Hussain that extreme care should be taken to ensure that the element of coaching is not engaged in the evidence. The Court said, "We feel it would be most unsafe to base the conviction upon the young child's sole testimony."

When discussing the lack of child/victim evidence in a case of child sexual abuse, the court held that the prosecution had not produced a victim child who was five years old to support the accused's claim of sodomy. The victim or child may testify as to the most accurate account of the incident if the court finds them to be a competent witness. It is also noted that despite the fact that the youngster was a direct victim of the horrific crime and was a vital and natural witness, the Trial Court did not even see fit to call him as a witness since there was no evidence to support the claim that the victim child was

not of sound mind. The child's statement may have resolved the matter entirely, and the Court noted that the Qanun-e-Shahadat Order, 1984's Article 3¹⁰³ made no mention of the minimum age required to be an emotionally competent witness. Given the circumstances, the trial court was the most qualified judge to observe the victim's demeanor and should have interrogated her behavior of different witness categories.

Court's Obligations When Recording a Child Witness's Evidence: The trial court must record the testimony of a juvenile witness, and in this case, the trial court is tasked with a number of significant tasks to do and oversee during the recording process. As the Court considered the testimony of the minor/victim, it noted that, in any case, the rule of prudence requires that the child witness's testimony not be relied upon unless it is corroborated". The Trial Court must then carefully and closely examine the child witness's testimony before relying upon it¹⁰⁶. Even if a kid is being examined as a witness, the court is not legally allowed to record evidence if the questions and answers given to him or her are not documented. The Supreme Court established crucial guidelines in 1996 for documenting, allowing, and considering the testimony of minor witnesses. The Court ruled that in order to determine whether or not the minor understands the significance of taking an oath, the judge may question him on topics such as what happens to a liar and whether lying is good or bad¹⁰⁸. Before accepting a juvenile witness's evidence, the court must submit him to a preliminary examination. When interviewing a kid as a witness, two key considerations should be made: first, questions should be addressed in a formal, courteous, and lighthearted way to allow the child witness to respond; second, the child witness should be given enough time to consider their response.

Case Laws on credibility of Child Witnesses of Indian Courts

- **Rameshwar S/o Kalyan Singh v. State of Rajasthan (1952 SCR 377)**
 - **Key Point:** The Supreme Court held that the evidence of a child witness must be scrutinized with care, and it is not necessary to seek corroboration unless the testimony is unreliable.
- **Suresh v. State of U.P. (1981 AIR 1122)**
 - **Key Point:** The Court emphasized that the competency of a child witness depends on their ability to understand questions and give rational answers.
- **Nivrutti Pandurang Kokate v. State of Maharashtra (2008) 12 SCC 565**
 - **Key Point:** The Court upheld the credibility of a child witness, provided the evidence is truthful and trustworthy, even without corroboration.
- **State of Madhya Pradesh v. Ramesh (2011) 4 SCC 786**
 - **Key Point:** The Supreme Court ruled that the testimony of a child witness can form the basis of conviction if it inspires confidence and passes judicial scrutiny.
- **Dattu Ramrao Sakhare v. State of Maharashtra (1997) 5 SCC 341**

- **Key Point:** The Court clarified that competency is determined by the intellectual capacity of the child rather than their age.
- **Panchhi v. State of Uttar Pradesh (1998) 7 SCC 177**
- **Key Point:** The Court reiterated that the child witness's testimony should be approached with caution but can form the basis for conviction if it is credible.
- **Hari Om v. State of Uttar Pradesh (2000) 8 SCC 598**
 - **Key Point:** The Court held that a child's evidence should be carefully assessed in the light of the circumstances and maturity of the child.
- **Ratansinh Dalsukhbhai Nayak v. State of Gujarat (2004) 1 SCC 64**
 - **Key Point:** The Court observed that a child witness's evidence must be evaluated carefully but can be accepted if it is reliable.
- **Kartar Singh v. State of Punjab (1994) 3 SCC 569**
 - **Key Point:** A child witness's testimony, when cogent and credible, does not necessarily need corroboration.
- **State of Rajasthan v. Om Prakash (2002) 5 SCC 745**
 - **Key Point:** The Supreme Court laid down that while a child's evidence must be scrutinized carefully, it is admissible if found reliable.

In *Nivrutti Pandurang Kokate v. State of Maharashtra*, the Supreme Court addressed the issue of a child witness and noted that the trial judge, taking into account the child witness's demeanor, apparent intelligence, and capacity, would be the primary decision-maker. The trial judge may also use any kind of examination that would tend to reveal the child witness's intelligence and comprehension of the oath. However, if it is evident from the records that the trial court reached an incorrect conclusion, the higher court may overturn the lower court's ruling. This safety measure is required because young witnesses are receptive to instruction and frequently inhabit a fantasy world. Even though it is a well-established principle that child witnesses are dangerous because they are easily influenced, shaped, and molded, it is also a widely accepted norm that if a court determines after carefully reviewing the child witness's evidence that there is compelling evidence to support the claim, then there should be no barriers to the proof being accepted.

Within the case of *Himmat Sukhdeo Wahurwagh v. State of Maharashtra*, the Supreme Court ruled that a child's testimony needed to demonstrate that he was able to distinguish between good and wrong, and that the court may ascertain through cross-examination if the defense attorney was unable to do so.

It is within the court's power to determine whether he is a suitable witness by asking him questions. In the event that no questions are asked, the evidence he provides

can still be used to determine whether he fully understood the implications of what he was saying and whether he looked untrustworthy when questioning him hard. A minor testifying must be able to comprehend the significance of the questions being asked of him as well as the sacredness of testifying under oath.

The Supreme Court noted in *Ratansinh Dalsukhbhai Nayak v. State of Gujarat*¹¹⁸ that the trial judge, who observes the child witness's manners and apparent intelligence or lack thereof, is ultimately responsible for determining whether the child witness has sufficient intelligence. The trial judge may use any kind of questioning that tends to higher Court may, however, overturn the trial court's verdict if it is evident from the records that he reached an incorrect conclusion. Child witnesses are susceptible to teaching and frequently inhabit a world of make-believe, so this precaution is vital. Even though it is well-established that children who testify are dangerous witnesses because they are easily swayed, shaken, and moulded, it is also standard practise that if the court determines after carefully considering the child witness's testimony that there is a genuine impression in it, there should be no barriers to the testimony of the child witness.

The learned trial judge in *Baby Kandayanathil v. State of Kerala*, asked each witness a series of preliminary questions to ensure that they were responding to the inquiries in an informed and fearless manner. After receiving this assurance, the judge continued to record the evidence. To say "Voir dire" is to tell the truth. A judge or attorney will question a potential juror informally in order to determine whether or not they are qualified and appropriate to serve on a jury.

When considering a child's evidence in *Mangoo v. State of M.P.*, the Supreme Court noted that there was always opportunity to train the youngster, but this does not prove that the kid witness received instruction. Whether or not the youngster has received tutoring is a matter for the court to decide. If there are any indications of coaching, it may be determined by looking through the material and reading its contents. The capacity of a witness to testify is not the same as their reliability; until a minor is deemed competent to testify, their testimony cannot be used as evidence. Therefore, before a child's statement may be admitted, he or she must be a competent witness. After then, a careful examination of the kid witness's testimony must determine whether or not to accept him as a witness. Only the youngster may be accepted as a trustworthy witness if it is determined that they are trustworthy. The rest of the prudence rule, which has been dubbed the legislation, states that it is often dangerous to depend on a child witness's account since kids are readily intimidated, coerced, or coached into speaking in a certain way by others. Therefore, it is necessary to closely scrutinize the kid witness's statement to ensure that he was not instructed.

As the Supreme Court ruled in *Rameshwar v. State of Rajasthan*, failing to administer an oath to a witness even an adult only calls into question the witness's credibility rather than his ability. The Evidence Act's section 118 addresses the issue of competency. If the court determines that a witness is incapable of comprehending the questions posed to him or providing logical responses due to advanced age, physical or mental illness, or any other similar cause, then all witnesses are considered competent. It is further held that magistrates and judges should always document their belief that the child understands the responsibility to speak the truth and explain why they believe that, in any other case, the witness's credibility may be seriously impacted, possibly to the point where it becomes necessary to reject the evidence entirely. The Supreme Court also stated in *Dattu Ramrao Sakhare v. State of Maharashtra*, that a juvenile witness's testimony may be taken into consideration under section 118 of the Evidence Act even in

the absence of an oath, given that the witness is competent to comprehend the questions and answers.

The facts of each case would determine the weight and veracity of a child witness's testimony. The sole safety measure that the court needs to take when considering the testimony of a minor witness is to ensure that the witness is trustworthy and that there is no chance that they are being taught.

Need for corroboration

Since of their immaturity, children are the most hazardous witnesses since they frequently confuse dreams for reality. They can readily retain information and duplicate it. They relate what they know to what they have heard from others and are motivated by a desire for renown, a hope of reward, and a fear of punishment. Therefore, it is dangerous to trust a child's uncorroborated account. The case of *Mohamed Sunal v. King*, established that in England, if there is a mechanism for the receipt of unsworn testimony from minors, the testimony must always be supported by substantial details that implicate the accused. However Indian Acts do not have such a clause and allow evidence to be admitted regardless of whether it is corroborated. The court can take action after evidence is accepted. In practical application, it is a good idea to follow the rule of caution rather than the law when it comes to acting upon uncorroborated testimony from minors, whether they are sworn or not. The Supreme Court ruled in *Gagan Kanojia v. State of Punjab*, that a child witness's statement, even if it has been coached, may be relied upon if the tutored portion can be distinguished from the untaught portion and the remaining untaught portion gives rise to trust. In such a situation, the untaught portion can be accepted as true, or at the at least, taken into account to provide confirmation, much like in the case of a hostile witness.

The Supreme Court noted in *Arbind Singh v. State of Bihar*, that as it is widely established that a juvenile witness is susceptible to coaching, the court should seek confirmation, especially if there is evidence of tutoring. In addition, the Supreme Court noted in *Bhagwan Singh v. State of M.P.* that although the law acknowledges children as competent witnesses, a child whose incapacity to comprehend the nature of the incident prevents them from being regarded by the court as a witness whose testimony alone can be trusted in the absence of additional supporting evidence. The child's evidence has to be carefully considered since he is a prime candidate for tutoring.

As a result, the court constantly searches for sufficient support for his testimony from other sources. However, the Supreme Court ruled in *Suryanarayan v. State of Karnataka*, that corroboration of a child witness's evidence is a precautionary measure rather than a mandate. It is not acceptable to reject a kid witness's evidence due to inconsistencies in their account.

Inconsistencies in the deposition, if not in significant details, would support the evidence of a juvenile witness who, in ordinary circumstances, would prefer to confuse what they actually saw with what they believe they saw. Courts must rule out the likelihood that the youngster is receiving tutoring while also considering the child witness's testimony. The courts are left with little choice but to rely on the evidence of a juvenile witness who inspires trust in order to determine whether or not the accused is guilty, provided there is no accusation of instructing the witness or exploiting them for ulterior prosecution goals.

In Pakistan children do not enjoy their rights according to the emerging international trends in favor of recognition of those rights with emphasis on criminal justice system. The Qanoon-e-Shahadat 1984, is silent on the specifics of how to compel a child witness to tell the truth using various tools, such as modification to the courtroom or the use of contemporary technology. The investigative and judicial systems of Pakistan have not yet adopted any model interviewing procedures free of coercion and suggestion. The adoption of standard protocol, which may be slightly altered in response to a responding child's age, intelligence, and cultural needs.

Material and Methods

This study follows doctrinal method of research on the topic “the credibility of child witness in Pakistan and India: A comparative study with reference to the international Human rights law”. The main object of this proposed research is to appraise the credibility of child witness in both countries by applying the internationally recognized human right laws and.

Results and Discussion

The study critically examines the admissibility and credibility of child witnesses in cases of child sexual abuse within Pakistan's legal system, supplemented with references to Indian and international perspectives. Several key findings emerge:

Legislative Framework and Judicial Precedents in Pakistan: The Qanun-e-Shahadat Order, 1984, governs the admissibility of child witness testimony in Pakistan. Judicial precedents, such as *Hazrat Bilal vs. State* and *Muhammad Boota's case*, emphasize that a child's testimony is admissible if the court determines the child is competent to understand and answer questions logically. Competency is assessed through informal questioning to gauge the child's ability to distinguish between truth and lies.

Significance of Corroboration: Courts have consistently emphasized the need for corroboration to ensure the reliability of a child's testimony, especially in sensitive cases such as sodomy or *zina*. Independent evidence, such as medical reports, DNA analysis, or circumstantial evidence, is considered essential to substantiate the child's account.

Challenges to Admissibility: The testimony of child witnesses is often viewed with skepticism due to the potential for coaching, susceptibility to intimidation, and difficulty distinguishing between reality and imagination. Emotional and psychological factors stemming from abuse further complicate the credibility of their testimony.

Judicial Approach in Child Witness Cases: Pakistan's superior courts have provided clear guidelines for trial courts to ensure fair treatment of child witnesses. These include initial assessments of the child's intelligence and understanding of an oath, careful questioning to avoid leading or intimidating responses, and corroboration of evidence to uphold the integrity of judgments.

International Perspectives: Indian and global judicial systems also demonstrate cautious yet accepting approaches to child witness testimony. Cases like *Mangoo v. State of M.P.* and *Panchhi v. State of U.P.* reveal a similar emphasis on corroboration, coupled with safeguards against undue influence or coaching. Dr. Henry Gross's assertion that children's testimony is both valuable and prone to imagination aligns with the need for careful judicial scrutiny.

Conclusion

The results highlight a nuanced approach to child witness testimony, reflecting a balance between safeguarding children's rights and ensuring fair trial standards for the

accused. The legal frameworks and judicial practices in Pakistan and other jurisdictions underscore the importance of procedural diligence in such cases.

Balancing Credibility and Competency: While the absence of a minimum age for testimony under Pakistan's Qanun-e-Shahadat Order, 1984, offers flexibility, it also necessitates meticulous scrutiny. The trial court's responsibility to assess a child's ability to comprehend questions and understand the significance of speaking truthfully remains paramount.

Role of Corroborative Evidence: Corroboration serves as a safeguard against potential coaching and fabrication. The findings affirm that courts often lean on medical, forensic, and circumstantial evidence to validate a child's account, ensuring that judgments are rooted in reliable and multi-dimensional evidence.

Vulnerability to Coaching: The results underscore that children's susceptibility to influence necessitates caution. Guidelines, such as those in *Farhan Hussain's case*, urge courts to meticulously examine testimony for signs of external manipulation. However, excessive reliance on this factor could potentially disadvantage genuine victims.

Comparative Insights: The parallels between Pakistan, India, and international practices reveal a global consensus on the cautious treatment of child witnesses. For instance, *Rameshwar v. State of Rajasthan* and *Suryanarayan v. State of Karnataka* advocate prudence but also affirm that reliable child testimony, even when uncorroborated, can be credible if assessed thoroughly.

Judicial and Social Implications: The study highlights the judiciary's role in not only evaluating testimony but also shaping societal attitudes towards child sexual abuse cases. Judicial decisions, such as those in *Ahsan Banghash* and *Abdul Haq*, underscore the significance of protecting vulnerable witnesses while ensuring procedural fairness for all parties.

Conclusion: The admissibility and credibility of child witnesses in cases of abuse and other sensitive matters pose unique challenges for the justice system. While the competency of a child witness is not determined by age but rather by their ability to comprehend questions and provide rational answers, the courts are tasked with exercising prudence to ensure the reliability of their testimony. Precedents from both domestic and international courts underline the necessity of corroboration and careful evaluation to safeguard against coaching or manipulation.

Child witnesses, owing to their vulnerability and impressionability, require the courts to adopt a cautious approach. At the same time, their testimonies, when credible and supported by corroborating evidence, play a crucial role in administering justice, particularly in cases where the child is the sole witness. The Qanun-e-Shahadat Order, 1984, along with landmark judgments, emphasizes that a child's evidence should not be dismissed solely on account of their age but must be rigorously assessed for consistency and reliability.

Globally, legal systems recognize the delicate balance between protecting the rights of the accused and ensuring justice for victims, especially in cases of child sexual abuse. The guidelines for recording and evaluating child testimony, including preliminary questioning and careful scrutiny of the demeanor and responses of the child, aim to uphold this balance.

In conclusion, while child witnesses present unique evidentiary challenges, their testimony remains a critical component of the justice system. By adhering to established legal principles and adopting measures to validate the testimony, courts can ensure fair trials and uphold the integrity of the legal process, ensuring justice for vulnerable victims

while protecting against wrongful convictions.

It is concluded by researcher that not only in Pakistan but also in India child witness is ignored during investigation and trial. Statement of child is not given weightage as required. Therefore, researcher gives following suggestions for improvement in our judicial system.

Recommendations

The study suggests the followings recommendations and suggestions based on the proposed research:

- A precise policy and comprehensive law based on legal concepts, Common Law tradition, International Standards, and model best practices may be implemented with relation to the admission of child evidence.
- In accordance with international norms, a comprehensive legal framework and procedural guidelines pertaining to child witnesses and the recording of their testimonies may be given.
- More study may be done to improve the credentials and abilities of intermediaries and support personnel.
- If the court determines through expert judgement that a kid witness experiences greater mental stress and trauma than an adult witness, then the evidence may be favored over the other via one-way closed-circuit television.
- To prevent the trauma and unpleasant experience from being relived in the youngster, as well as the potential for the child to provide inconsistent testimony during the trial's later phases. Without impairing the accused's ability to cross-examine, a pre-recorded statement may be given, particularly in the instance of little children.
- The specifics of extracting the truth from a juvenile witness by various tools, such as the use of contemporary technology and modified courtrooms, are not covered by Pakistani law. This can be accomplished by changing both procedural legislation and the already available evidence.
- The 1984 Qanoon-e-Shahadat Order has to be reviewed and brought closer to the Sunnah and Qur'an's teachings.
- When a kid is a witness, the court must appropriately follow section 118 of the Evidence Act, which means it must use its discretion to determine if the child is competent of recognizing the question posed to him and providing logical responses.
- A quick trial is considered one of the essential rights in the Indian criminal justice system. To guarantee this entitlement, the court need to promptly arrange a trial to reduce the amount of time a minor has to bear the anxiety associated with being involved in the legal process. The right actions should be taken by the court to prevent a minor witness from testifying in court repeatedly.
- Since they are often afraid, children might not be able to testify in a formal courtroom environment. Several investigations and studies have proposed that a child-friendly setting may be established in order to get a child's testimony.
- Children have a limited vocabulary and may have a different understanding of direction, time, place, day, and date than adults, especially if they are young. However, this understanding can be distinguished from lying and may not have a negative impact on the child witness's credibility or the veracity of his statement.

- It is advised that the first-hand statement be accurately recorded by the investigative agency preferably on video to prevent the risk of the kid witness being tutored. It may be possible to employ technological gadgets and interview procedures to help ensure that the testimony is more accurate.
- It is important for prosecutors, police, and judicial officers to have a solid understanding of child psychology and behavior. In order to handle situations in which children are purported victims or witnesses of abuse, they have to obtain appropriate training in this area.
- Interrogation of the witness through an intermediary: The court may appoint an intermediary to help the witness testify in court. The intermediary may clarify questions or responses as much as is required to ensure that the witness or the
- questioner understands them, but they may not alter the core of the evidence.
- For situations involving kid witnesses, a separate tribunal ought to be established in order to facilitate fast trials.

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