

Child Testimony Across Borders: Ensuring Reliability and Admissibility in Line with International Human Rights Standards

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Abstract

Children often face significant challenges when they are involved in a judicial process. Testifying in court can be an upsetting experience for them, especially when they are victims. The question arises whether their testimony requires corroboration or if a conviction can be based solely on their own testimony, and whether they are considered reliable or unreliable witnesses. This study aims to reinforce the admissibility and reliability of children's testimony and to explore their legal capacity as independent witnesses. Through a qualitative analysis of landmark case laws, international human rights frameworks, and relevant statutory provisions, and articles, this paper evaluates how courts should take child testimony considering both domestic legal standards and international human rights scenarios, with an aim to provide guidance for improvement in the treatment of child witnesses. The findings of this study show that though legal system of Pakistan recognizes the children as witnesses, yet there are gaps in the protection and procedural support which are being provided to them. The research concludes through submission of certain recommendations to enhance reliability of child testimony, to formulate multidisciplinary approaches that integrates psychologists and social support, to better protect and elicit truthful testimony from child witnesses.

Keywords: Child Testimony, Children Witness, Law of Evidence, Evidentiary Value, Criminal Justice System

Introduction

The role of legal evidence is central in the pursuit of justice and the protection of rights; it serves as a vital mechanism for the fair resolution of legal disputes. Across legal systems worldwide, evidence and the testimony of witnesses are regarded as significant components in the judicial proceedings. In the legal context, "evidence" covers all lawful methods, apart from arguments, that are used to substantiate or refute facts which are presented before the court for judicial examination (Ranchhoddas & Thakore, 2007, p. 22). The evidence refers

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to any material which is presented during a judicial proceeding with the purpose of proving or disprove an allegation or a claim. Evidence involves everything that is submitted to the court to enable it to determine the issues of fact in a case before it. In legal terms, evidence includes all factual items or statements that are brought before a competent tribunal which are helpful to ascertain the truth of any disputed matter pending before a court. It is essentially the foundation upon which the court constructs its decisions regarding the facts in question (Stephen, 1901, p. 5).

In most cases, apart from the contents of documents, evidence is typically presented by a witness in the form of oral testimony. Under Common Law theories, oral testimony must be 'direct' instead of 'hearsay,'. This means that only firsthand accounts are usually accepted, and hearsay is excluded. Furthermore, for a witness to provide testimony in court, they must be deemed competent. Competency refers to the legal eligibility (Monir, 2010, p. 13 & 406). Furthermore, every witness is accepted as the competent unless the court concludes that they are incapable to comprehend the questions enquired or to provide cogent responses due to issues such as very undeveloped age, old age, bodily or psychological illness, or any alike ailments. According to the basic notion of law of evidence, competency is the default status for all witnesses, exception is that in cases where the court believes that the witness's ability to understand or respond is compromised due to above referred impairments (*Nivrutti Pandurang Kokate v. The State of Maharashtra*, 2008).

Samina (2014) in her work observed that historically, children were regarded primarily as the responsibility of adults; however, in today's context, their status has improved, and it prompt us to reassess their rights and capacities. The children's rights movement of the 1960s marked a turning point in this regard. This shift led courts in the U.S. and Britain to grant children certain legal rights. It includes their independent representation in cases of neglect and abuse. This period marked a transition from taking children in terms of "needs" to recognizing their individual "rights." However, whether their testimony is reliable or not, this still is arguable.

Dr. Kenny pointed out that young children can sometimes be unreliable witnesses. This is because they might mix up dreams with real events. They may also repeat things they have heard. Additionally, children can be easily influenced by rewards, punishments, or the desire for attention. Though these are important considerations, yet each case should be evaluated individually (Kenny, 1915, p. 386). Though researchers stress that a key component of a fair justice system is the protection of children as victims as well as witnesses in criminal cases, however, there are also some issues with their testimonies. Studies by M. Ovens, D. Lambrechts, and J. Prinsloo reveal that though children were infrequently

allowed to testify in Canada, the United States, and the United Kingdom, this was more common in several European countries. They specific research on children's courtroom testimony, ultimately they concluded that younger children, in particular, tend to be suggestible and at risk of making significant errors during their testimony (Ovens et al., 2001).

A comprehensive study of children's legal issues must consider the international human rights (IHR) scenario. After World War I, the League of Nations was the first body who adopted the 1924 Geneva Declaration which is considered as the first human rights instrument with a focus on children. The 1948 Universal Declaration of Human Rights (UDHR) also recognized their need for special care, followed by the 1959 Declaration on the Rights of the Child, which emphasized special safeguards and protections. The 1989 United Nations Convention on the Rights of the Child (CRC) established children as independent rights-holders. It grants them very essential civil, political, social, economic, and cultural rights. This also includes fair trial rights (Parkes, 2013; Van Bueren, 2021).

Furthermore, young children have a unique knack for being in unexpected places at surprising times. They often find themselves in advantageous situations, witnessing people, objects, and events that may go unnoticed by adults. Their curiosity and tendency to explore things can sometimes lead them into dangerous situations where they may become crime victims or witnesses. In such cases, the child might be the only witness available for the prosecution. This presents a challenging situation for prosecutors to prove the child's capability as a witness, then their credibility and reliability (Stafford, 1962).

Research Problem

Children involved in judicial proceedings face challenges when testifying in court. Despite their recognition as witnesses, under the legal system of Pakistan, there are gaps that persist about reliability and admissibility of their testimony. This raises concerns about their treatment as independent witnesses and the alignment of domestic practices with international human rights standards.

Key Questions

- i. What are the domestic legal standards regarding the admissibility and reliability of child testimony?
- ii. How does Pakistan treat child witnesses when compared to IHR standards?
- iii. How can multidisciplinary approaches be adopted to improve the reliability and admissibility of child testimony?

Objectives

- i. To analyze the legal framework about child testimony in Pakistan.
- ii. To evaluate the reliability and admissibility of child testimony in light of IHR standards and landmark case laws.
- iii. To propose recommendations for enhancement of reliability of child witnesses.

Scheme of the Paper

This research paper contextualized both domestic legal standards and IHR frameworks on the subject. It begins with a detailed overview of evidentiary laws, particularly in India and Pakistan. Thereafter, this paper explores the unique challenges which child witnesses face. This study identifies how courts assess the capability of child witnesses through an analysis of landmark Pakistani cases. The paper also contrasts approach of Pakistani and Indian courts with practices in other common law jurisdictions, including England, the United States, and Canada. Additionally, this research also draws upon international conventions, such as the CRC, to propose reforms that would align Pakistan's legal framework with current global standards on the subject. The findings of this study culminate into recommendations for procedural amendments, including initiation of enhanced trainings for legal practitioners, judges, prosecutors, investigation agencies and the introduction of child-friendly courtroom procedures in the pursuit of justice.

Research Methodology

This research is primarily descriptive and qualitative, and this work mainly relies on extensive library and digital resources. Research materials were gathered from the libraries at Punjab University, the Lahore High Court, and various online libraries. Initially, classical law texts which is relevant to child testimony were reviewed, along with some juristic opinions which are sourced from academic articles. Then the study also examines child testimony within the framework of IHR law, with a particular focus on the CRC. Moreover, Pakistani and Indian case laws provided significant insights in this study because they shared Common Law heritage about evidence law. Comparative analysis was also conducted with case laws from other Common Law jurisdictions. Based on these findings, in the end, this study offers recommendations which are aimed to support legal practitioners and courts to effectively facilitate child testimony and obtain admissible reliable evidence.

Legal Framework on Child Testimony in Pakistan

The legal framework most of laws in Pakistan come from two main sources: English law and Islamic law. Islamic law is more important for personal

and criminal matters, while English law is more important for business matters. However, the base of criminal law is still the common law (Peters, 1994). From 1977 to 1988, it was shown that government at that time tried to make its laws more Islamic. Many people in Pakistan want Islamic laws. The 1973 Constitution includes the Objective Resolution, which states that Islam is the state religion (Rizvi, 2022). During this time, many Islamic laws were introduced, including the controversial hudūd laws. However, some people criticized these changes. The Evidence Act of 1872 was replaced by the Qanoon-e-Shahadat in 1984, (QSO) which kept many parts of the old law that were not against Islamic principles (Siddique & Aslam, 2020).

Definition of a child in Pakistan

In Pakistan, the definition of a child is influenced by various legal frameworks, including the CRC, which defines a child as “every human being below the age of 18 years, unless the law applicable to the child sets a different age of majority.” Generally, a child is recognized as the one who reaches adulthood at 18 years of age. The term "child" is also commonly referenced in numerous national laws. It includes legislation related to child rights, criminal justice, and child welfare. Other terms are "minor," "youth," or "adolescent" which lack universal definitions, and their meanings can differ based on context or specific legal provisions. In Pakistan, various federal and provincial laws also offer protections for children, although the Constitution does not explicitly define the term "child." However, it includes important provisions regarding their rights; for example, Article 113 prohibits child labour for individuals under 14 years, while Article 25-A guarantees free and compulsory education for children up to the age of 16. The Pakistan Penal Code of 1860 further delineates the age of criminal responsibility, it provides in Section 82 that no act is considered an offense if committed by a child under 10 years of age, and Section 83 provides immunity for acts committed by children aged between 10 and 14. Additionally, the Majority Act of 1875 stipulates that a person domiciled in Pakistan will reach the age of majority at 18 years (Akhtar, 2022).

Competency and admissibility of Child Witnesses under Pakistani Law

The QSO is a new law of evidence. It is divided into three main parts: 1) Relevancy of Facts: This part has six chapters; 2) Proof: This part has two chapters; 3) Production and Effect of Evidence: This part has five chapters. In the first part, Chapter 2, Article 3, there is a rule about who can testify as a witness. This rule is similar to Section 118 of the old, present Indian, Evidence Act. This law says that everyone can be a witness, unless the court thinks they cannot

understand the questions or give sensible answers to them. This could be because they are too young, too old, sick, or have some other reason (Monir, 2010, p. 452).

Competency, admissibility, and relevancy are distinct concepts, and they must be treated differently. A witness must be competent to testify, meaning thereby that there are certain qualifications. And the determination of evidence admissibility is a legal issue, and this is for the judge to decide. It is also essential that the testimony must be relevant to the case at hand. According to Stephen's views, two facts are relevant if they are connected in such a way that one fact can prove or make probable the other (Keane & McKeown, 2012, p. 20, 21). Therefore, for a child's testimony to be accepted by the court, it must pass three tests: competency, relevancy, and admissibility.

When it comes to children, the courts have clarified that their testimony must demonstrate a certain level of understanding. It cannot be accepted blindly. They must be able to distinguish between right and wrong. This can be evaluated during cross-examination. The court can also evaluate his competency by directly questioning them. Even if specific questions about their understanding are not asked, yet their responses can reveal their comprehension of the situation and their ability to handle questions (*State of M.P. v. Ramesh 2011*).

Examination of Key Pakistani Case Laws on Child Testimony

Courts in Pakistan have consistently ruled that the testimony of a child witness can be accepted and relied upon for securing a conviction (*M. Ismail v. The State 1995*). In a specific case which involved an 11-year-old witness named Hina Jehangir, there were questions about whether she was a good enough witness to testify. The trial court did not write down those questions. The court observed that there is no law that said the judge had to write down the questions and it is now accepted that if a judge thinks a child witness is intelligent and understands the questions, then he is a good witness (*M. Qadeer v. The State 2007*). In the Ameer Umar case, the Court settled down that the law of evidence does not specify a particular set of questions to determine a child's competence as a witness. Instead, the court must ensure that the child witness is capable to provide rational responses to the questions (*Ameer Umar v. The State 1976*).

It remains an area of research to determine the appropriate level of prudence or care that is required in such cases. In the Ulfat Hussain case, the court observed that though convictions can rely on the testimony, yet courts are cautious and careful regardless of the child's level of intelligence (*Ulfat Hussain v. The State 2010*). Furthermore, in the case of Amjad Javed, the court ruled that the consistent, credible, and straightforward statements of a child witness—characterized by a ring of truth and innocence—could serve as a reliable basis for

conviction subject to corroboration by additional evidence (*Amjad Javed v. The State* 2002). Likewise, in the Muhammad Jamal case, the court upheld the conviction which was based on the child witness's trustworthy testimony supported by medical evidence and last-seen evidence (*M. Jamal v. State* 1997). The courts are of the view that it would be most unsafe to establish the case for the conviction upon the sole testimony of a young child (*Sultan and another v. State* 1965). In a case where the trial court recorded a child's statement without measuring his level of intelligence, maturity, and understanding, the superior court found the testimony to be highly questionable and declared that it was lacking credibility (*Umer Zaman v. The State* 2013).

These case laws indicate that such testimony is a sensitive issue. It is essential to ensure that his evidence is not influenced by any form of coaching (*A.G. Sindh Karachi v. Farman Hussain and others* 1995).

Comparative Legal Analysis on Child Testimony in Common Law Jurisdiction

Both India and Pakistan inherited their legal systems from British colonial rule. Both countries have similar basic principles regarding child testimony. International best practices and legal principles recognize that other factors are important and not age.

England

This can be gauged from the English case laws. For instance, as early as 1778, England recognized that children could serve as competent witnesses in criminal trials. In a case, *Rex v. Brasier*, the court stated that a child, even if under the age of seven, could be sworn in in a criminal prosecution. There is no specific age limit for exclusion of children from providing evidence; rather, their admissibility is based on their comprehension of the risks and moral implications of lying. This can be measured through their responses to questions. However, if a child is deemed incompetent to take an oath, their testimony will not be accepted (Schetky, 2014).

America

Moreover, in American jurisdiction, the same principle is being followed (Robinson, 2015). In the Wheeler's case, the court decided that a 5.5-year-old child could be a witness in a murder trial. The court said that being young does not automatically mean a child cannot be a witness. Though very young children might not be able to be witnesses but there is no specific age limit. It depends on the understanding of truth and their ability to tell the truth (JGA, 1953). In this regard, in a report presented by Dr. Grzegorz Skrobotowicz it was noted that there

are no statistics available to depict exactly how many court cases in the U.S. involve children as witnesses (not victims) of violence. But in 2022, about one-fourth of American children saw some kind of violence, and 9.8% saw domestic violence. He also said that when a child testifies in court, their evidence should be treated as reliable. A child can only testify if they: 1) are smart enough to understand and remember things; 2) understand the importance of telling the truth; 3) know what it means to swear to tell the truth. Dr. Skrobotowicz said that to know if a child can be a good witness, there is always a need to take their age under consideration, what happened to them, and what is going on in their life. As children grow, they get better at remembering things and understanding the difference between what is real and what is not. They also learn about what is right and wrong (Skrobotowicz, 2023).

Canada

Scholars have examined how Canadian law has changed in order to better protect child witnesses. Historically, they were not considered reliable witnesses; however, recent changes in the law have made significant improvements in their system on the subject. The law now recognizes the capabilities of child witnesses (Bala et al., 2010). Nicholas notes these changes in Canadian law. He observed that until the late 1980s, children were often not considered reliable witnesses. However, a new law in 1988 allowed them to appear for the purpose of evidence without taking an oath if they could communicate and have the ability to tell the truth (Bala, 1999). This shows that the Canadian legal system is making efforts to well accommodate child witnesses and to recognize their importance in legal proceedings (Gilbert, 2016).

In the Marquard case, the Canadian Supreme Court clearly defined the capability of a child witness by drawing specific criteria. These criteria include: (1) the capacity to observe and construe events; (2) the ability to recollect those events; and (3) the ability to transfer what they remember. The judge must confirm that the witness has these capabilities. Generally, the best way to evaluate a witness's ability is through evaluation of their performance during the trial. The test highlights the essential skills that are needed to testify. Once these abilities are confirmed, then any shortcomings in perception or memory can be considered at the time when weighing the evidence (*R. v. Marquard 1993*).

India

Child abuse in India was increasing. Previously, the government's primary focus was on health, education, and welfare, and the child abuse issues were receiving limited attentions. Children in India lacked a strong legal voice due to

cultural norms (Segal, 1996). However, the situation is now evolving. Indian law also considers children as capable, reliable and admissible witnesses. Their courts have reached on a conclusion that though a child's testimony is valuable evidence, yet it must be evaluated carefully (Chandran, 2022). Therefore, it is important to have additional evidence with an aim to support their testimony before relying on it solely. This is not a strict legal rule but rather it is a practical approach to ensure to reach on the accuracy of their statements (*Digamber Vaishnav v. The State of Chhattisgarh* 2019).

Child Testimony in International Human Rights Law

The CRC includes various important provisions regarding the subject, all are aimed to safeguard their rights and to prioritize their best interests. Article 40 is the basic one which outlines protections for children who are accused of crimes, including the right not to confess guilt. Article 37 is also important one which emphasizes on the treatment of children with respect and dignity (Assembly, 1989). Additionally, the CRC's general principles—such as prioritizing the best interests of the child and the right of the child to be heard, under article 12—apply to cases wherein child testimony is involved also helps in shaping the implementation of other relevant provisions (McGoldrick, 1991). Overall, the CRC promotes for treatment of children with care and respect in legal processes, to ensure that their testimony is handled in ways that reduce trauma and enhance accuracy.

The Lubanga Dyilo is considered as a landmark case at the International Criminal Court (ICC). He was a Congolese warlord, and he was convicted of war crimes for conscripting and enlisting child soldiers under the age of 15 and using them in hostilities. This case involved child witnesses, whose testimonies were regarded as crucial in this case. The ICC in this case implemented special measures to protect these children, including anonymity, child-friendly courtrooms, and support personnel; it also adapted its procedures to accommodate them, such as flexible scheduling and sensitive questioning (*Prosecutor v. Thomas Lubanga Dyilo* 2012). However, in this case, experts observed that this judgment reflects a paternalistic approach by ICC judges, likely due to the belief that children may not be able to provide a clear and truthful account. Furthermore, though there are challenges in child victims' cases to testify against their abusers, however, there is a need for a comprehensive approach to consider their physical, psychological, and social well-being. International scenario acknowledges their right to participate in the trial process if they choose to do so (Swanson et al., 2014).

Scholars argue that conflicts have always led to human sorrow, but modern conflicts are deliberate, systematic attacks on civilians, and it includes children. Since children may be the only or best witnesses to certain crimes, they are likely to be called to testify before the ICC. As the most vulnerable witnesses, the Rome Statute includes specific provisions to protect them. However, there is still a need to strengthen the role of child testimony in international human rights laws (Beresford, 2005).

Higher courts in Pakistan have made several rulings related to the CRC. The courts in this country have recognized that a convention becomes legally binding for a country when that country ratifies it. In the case of *Shahbaz Ahmed* (2021), Justice Tariq Saleem Sheikh stated that Pakistan has ratified key IHR treaties covering the rights of children. The court further stated that treaty provisions do not automatically become part of national law; instead, the country's legislature must pass laws to implement them. Pakistani courts are required to interpret laws in line with international norms and the comity of nations whenever possible. As a party to the CRC this country has made commitment to follow its provisions through enactment of laws like the Zainab Alert, Recovery and Response Act, 2020 (*Shahid Imran v. The State, etc.* 2023).

Findings and Discussion

Today, children face many legal challenges. They need special protection. They are more exposed to the world, including the internet, than ever before. This makes them more vulnerable to harm. More and more, children are becoming involved in legal processes (Williams, 2024). Many countries are allowing children to be represented in court. International laws, like the CRC, say that children should be able to express their views and be heard in legal matters that affect them. Therefore, to ensure justice, it is time that we listen to children. Children may be involved in legal cases as victims, witnesses, or even sometimes as suspects. It is important to consider their statements carefully (Bashir, 2014).

In Pakistan, the courts have touched the reliability of child testimony by noting that Article 3 of the QSO does not set an age limit for witnesses. They are of the view that such testimony is admissible unless the court, who is conducting trial, believes the child is unable to understand the questions. If a child can comprehend the questions and respond sensibly, then they are considered competent to testify (*The state v. M. Boota* 2014). The same view was upheld in *Imam Sain* (2015), *Ahsan Bangash alias Junaid* (2017), and the *Aamir Hussain Shah* case (2019).

In *Atif Shahzad* case (2020) where a child under 12 gave testimony without taking an oath, the court accepted the testimony. The court clarified for

conceptual clarity that "competency" and "credibility" of a witness are distinct notions. Competency is a legal issue, and it is governed by the QSO, while credibility is a matter of fact, and it is for the court to assess. The QSO states that anyone can testify except they are incapable of comprehending questions or give cogent answers due to young age, bodily, or mental incapacity.

The interpretation of above referred Article 3 suggests that while recording such a testimony, the court should assess the ability of witness to comprehend questions and respond logically. A distinction must be made between a child witness and a child victim. If a child has witnessed a crime against someone else, their ability to observe and report the incident should be carefully evaluated, as they may be influenced to give a false account. In such cases, these testimonies require strict examination. However, if the child is a direct victim, especially of crimes like sexual assault, and he or she can clearly describe their experience at the time of answering cross-examination questions rationally, then their testimony is generally accepted (*Iftikhar Ali v. The State* 2022). Under such circumstances, the courts should adopt progressive interpretation and not static one.

On the point of reliability of such testimonies, in the Tayyaba Bibi case (2020), during cross-examination, the child Tayyaba contradicted many important parts of the prosecution's claims. Her father also took stance not to pursue the case against the accused, though the court did not accept this compromise. It was argued that the appellate court should have given the couple the benefit of the doubt instead of sentences. The case involved child cruelty. The Supreme Court noted that regarding our subject matter, that for any person—including a child—to testify, they must have the competence and intellect to understand and reply sensibly to queries. This standard, known as the "rationality test," is classically applied by the court before recording such testimony. The court further observed that, in Pakistan, courts have generally been cautious about trusting on child testimony as solid evidence.

Conclusion

This research paper has explored the critical issues which are surrounding child testimony within the legal framework of Pakistan through analysis comparative key instruments and case laws. Firstly, it was observed that though there are provisions in the QSO 1984 which concern the competency of child witnesses, the application of these provisions often lacks consistency in practice during the trial proceedings. Secondly, the first court's hesitance, which is trial court, to fully accept child testimony as reliable evidence also raises concerns

about the potential for justice to be undermined in cases which are involving children.

Recommendations

To improve the legal framework and practices related to child testimony in Pakistan, this research recommends the following basic policy changes:

- 1. Development of Comprehensive Guidelines for Child Witnesses:** We need to formulate detailed protocols and comprehensive guidelines to handle with care and caution the child testimony in court. These guidelines should focus on competency assessments, age-appropriate questioning techniques, and ensuring that children are understanding the significance of their statements before courts.
- 2. Training Programs for Legal Professionals:** There is also a requirement to institute specialized training for judges, prosecutors, lawyers, and law enforcement agencies together on the psychological and developmental aspects of child witnesses, during investigations and during trial proceedings. This training may cover techniques to build a safe, non-intimidating, environment in which children can accurately and easily provide testimony.
- 3. Child-Friendly Courtrooms and Support Systems:** Though our country has passed necessary legislations on the juvenile, however, there is no legislation or guidelines for the courtrooms to create child-sensitive settings in it, such as screens, separate entrances, and options for remote testimony, use of online facilities, etc., to protect children from confrontational atmospheres. Therefore, we need to introduce independent support services like court-appointed specialist advocates, psychologists, or social workers to assist child witnesses before and during proceedings.
- 4. Legislative Amendments for Consistent Application of Child Testimony Standards:** to remove inconsistent approaches of trial courts in appreciation of child evidence, it is high time to consider special amendments in the QSO to include unambiguous criteria for evaluation of child competency and reliability. These legislative updates should also focus on the implementation of best practices from other jurisdictions which have successful child witness programs.
- 5. Enhanced Support for Post-Testimony Welfare:**
We have no policy for provision of post-testimony support systems. The administration is required to provide resources and referrals for post-testimony counseling and mental health support with an aim to address the potential trauma which is experienced by child witnesses during criminal

case proceedings. We need to establish follow-up mechanisms to ensure that children who testify in court do receive long-term emotional and psychological care.

Future Research Directions

This study has its limitations. The future research, which this study suggests, should focus on examination of the psychological and social impacts of courtroom experiences on child witnesses. It may also cover the effectiveness of post-testimony support mechanisms. Furthermore, comparative analyses of child testimony protocols across different jurisdictions with established child-sensitive courtroom practices also required to be explored to suggest court-room procedural reforms in Pakistan. This work will ultimately enhance the reliability and protection of child testimony within Pakistan's judicial system.

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