



## ADMISSIBILITY AND RELEVANCY OF CHILD WITNESS UNDER INDIAN EVIDENCE ACT 1872 – A COMPARATIVE STUDY

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**Best Citation** – SULEKHA WATHARKAR, ADMISSIBILITY AND RELEVANCY OF CHILD WITNESS UNDER INDIAN EVIDENCE ACT 1872 – A COMPARATIVE STUDY, *ILE JOURNAL OF EVIDENCE AND JURISPRUDENCE (ILE JEVJ)*, 1 (1) of 2023, Pg. 19-28, APIS – 3920 – 0049 | ISBN – 978-81-964391-3-2.

### ABSTRACT

*The reliability and credibility of a child witness's testimony are essential in ensuring a fair trial and delivering justice. Child witnesses are more vulnerable and susceptible to being influenced, intimidated, or confused than adult witnesses. Therefore, it is essential to understand the psychological factors that influence a child's ability to remember, communicate, and testify accurately in court.*

*Research has shown that children's memory and communication abilities depend on their age, cognitive development, and emotional state. For instance, younger children may have difficulty recalling events accurately, describing them coherently, or distinguishing reality from fantasy. Moreover, children may be influenced by leading questions, suggestive interviewing techniques, or peer pressure, leading to false memories or inaccurate testimony.*

*Therefore, legal practitioners must be aware of these factors and take appropriate measures to ensure that the child witness's testimony is reliable and credible. This may include conducting a pre-trial interview to assess the child's cognitive and emotional abilities, using non-leading questions, avoiding suggestive language, and allowing the child to testify in a comfortable and supportive environment.*

*Moreover, judges and juries must be trained to evaluate a child's testimony critically, taking into account the child's age, maturity, and cognitive abilities. This includes assessing the child's demeanour, consistency, coherence, and corroborating evidence. Judges may also allow expert testimony from child psychologists or forensic interviewers to assist in evaluating the child's testimony.*

*Legal practitioners must be aware of the psychological factors that influence a child's testimony and take appropriate measures to ensure its reliability and credibility..This paper aims to analyze the validity and admissibility of child testimony in India and also makes comparisons with other countries.*

**Key words:** Evidence, admissibility, relevancy, witness, Voir dire, Corroboration

### CHAPTER – I

#### 1. INTRODUCTION

It is true that children's memories can be influenced by tutors or other adults around them. Children have a natural tendency to trust and believe what adults say, which can

sometimes lead to them repeating false information. However, it is important to note that not all statements made by child witnesses are a result of imagination or influence. Children's memories can be very strong and accurate, especially when they are recalling events that were emotionally significant to them. It is the



responsibility of the court to carefully evaluate the testimony of child witnesses, taking into account factors such as their age, maturity, and the circumstances of the alleged incident. In India, as per the Indian Evidence Act, children have the right to testify in court, but the court must determine their competence to testify on a case-by-case basis.

### 1.1 CHILD WITNESS IN INDIA

These provisions in the Indian Evidence Act (IEA) ensure that everyone, regardless of age or any physical or mental disability, has the right to testify in court. The court may determine whether a witness is competent to testify, including those who are young, old, sick, or have other similar conditions. However, a lunatic who is unable to understand the questions asked and provide rational answers may be considered incompetent to testify.

The IEA also recognizes the rights of "silly witnesses" who are unable to speak and provides that they may testify in writing or in any other way that they can understand, such as signing. The evidence provided by such witnesses is considered as oral evidence.<sup>1</sup>

These provisions ensure that all individuals are given an equal opportunity to testify and have their voices heard in court, regardless of any physical or mental limitations they may have.

### 1.2 MEANING

Credibility refers to a witness's believability and trustworthiness. The court may assess a witness's credibility based on factors such as their demeanour, consistency of their testimony, and any potential biases or motivations they may have. The credibility of a witness can also be challenged through cross-examination or the presentation of contradictory evidence.

### 1.3 BACKGROUND OF THE STUDY

In India, child witnesses are accepted in the legal system, and the age of the witness is not considered as a disqualifying factor. However, the testimony of a child witness must be

examined by the court on a case-by-case basis to determine its relevance and reliability. The court must also ensure that the testimony has not been influenced or tampered with in any way. Additionally, the child's level of understanding of the questions and ability to provide rational answers must also be evaluated. The Supreme Court of India has emphasized that the evidence of a child witness must be subjected to a close scrutiny and carefully evaluated to arrive at a decision in the case.

### 1.4 RESEARCH METHODOLOGY

This study makes use of Qualitative data comprising of the opinions of academia in light of the subject and the judgements concerning the relevant legislations, guidelines and delivered judgements. This paper attempts to use commentaries, books, landmark judgments, and parallel sources to understand the subject's scope.

### 1.5 RESEARCH QUESTIONS

1. Is the position of child witnesses Valid in the Indian legal system?
2. How has the landmark decision contributed to the development of acceptance of child testimony?
3. What is the significance of the child witnesses in the Suryanarayana v. Karnataka case?
4. What actions can be taken to ensure holistic development to include relevant child testimony in the future?

## CHAPTER II

### LITERATURE REVIEW

Based on the information provided, it seems that the academic research on the topic of child witnesses in the Indian legal system is limited. However, it is still possible to gather insights and perspectives from secondary literature such as journals, articles, research papers, and other web-based sources. It is important to critically evaluate the sources

used to ensure that they are reliable and credible.

**2.1** A comparative study conducted by "Charanjit Singh (2019)" "Eliciting Best Evidence from a Child Witness" depicts that:

In India, India's Supreme Court's notorious rulings involving identifying the best evidence or 'best achievable evidence' from child witnesses are often linked to the experiences of victims of crimes. This perhaps gives a glimpse of why much of the good progress in this regard has been to allow this group of witnesses the best possible evidence.

It leaves room for the alleged extension of these provisions, developed as discussed above, to all child witnesses, whether or not. In India, criminal justice officers who have little experience or training in dealing with vulnerable witnesses may repeatedly interrogate witnesses as this can affect their memory. Moreover, the defendant's attorney's ability to question witnesses for extended periods of time represents an anomaly deserving further investigation, despite the fact that rule changes limiting that ability are being discussed. Child Witnesses would undoubtedly benefit from a program that familiarizes them with the Witness Courts and Procedures and the benefits that technology brings Common Scheme Witness Equivalents.<sup>3</sup>

**2.2** Dr. Shalini Saxena (2017) "Child Witnesses: Protection, Competency and Credibility Issues in Indian Criminal Justice System"

Dr. Saxena discusses the issues surrounding child witnesses in the Indian criminal justice system, including their protection, competency, and credibility. The author explains that child witnesses are often vulnerable to intimidation and harassment, and thus need special protection during the investigation and trial process. The article further explores the issue of competency, which refers to a child's ability to understand and respond to questions in court.<sup>4</sup>

**2.3** Indumathi,(2019), "A study on admissibility of child witness in view of Indian administration of justice system."

The competency of children as witnesses in court is no longer determined solely by their age but by their degree of understanding. The adoption of this more reasonable rule allows a child to be considered a competent witness if they demonstrate an ability to understand the questions asked and provide rational answers.

There is no specific age mentioned in the law that automatically excludes children from giving evidence based on the assumption that they lack sufficient understanding. Instead, the decision regarding a child's competence as a witness depends on the judgment of the judge, who must consider factors such as the child's intelligence, knowledge, and overall comprehension.

When determining whether a child should be sworn in as a witness, the judge's primary concern is whether the child grasps the solemnity of taking an oath and the increased responsibility it entails to tell the truth. This responsibility goes beyond the ordinary duty of truthfulness in everyday social interactions.<sup>5</sup>

**2.4.** Praful Sharma,(2022) Testimony of a child witness – admissibility and relevance,

Child witness testimony in cases of sexual molestation or abuse is a complex issue that requires careful consideration. In India, the Protection of Children from Sexual Offences (POCSO) Act, which came into effect in 2012, provides legal provisions to protect child victims and witnesses.

Under the POCSO Act, special procedures have been established to facilitate the testimony of child witnesses. The Act recognizes that children may face difficulties in understanding and articulating their experiences, and therefore, it allows for a child to testify in a child-friendly manner. This includes the provision of a conducive environment, presence of a support person, video recording of the child's statement,



and the use of intermediaries or child-friendly methods of communication.

The Act also allows for the admission of certain types of evidence, such as medical reports and statements made by the child to persons in whom they have confided, to support the child's testimony. This is done to reduce the burden on the child and to consider corroborative evidence that can help establish the credibility of the child's statement.

It's important to note that the accuracy of a child's statement can be a subject of debate, as children may be vulnerable to suggestion, manipulation, or misunderstanding. Therefore, it becomes crucial to corroborate the child's testimony with other evidence and ensure that the child's statement is handled with extreme caution and care.<sup>6</sup>

**2.5** Interviewing of children often incorporates techniques to establish rapport and create a comfortable environment for the child. Building rapport is crucial because it helps to establish trust between the child and the interviewer, encourages the child to feel more at ease, and can facilitate better communication throughout the interview process.

When children feel comfortable and supported, they are more likely to perform well during the interview. They may be more open to sharing information and providing accurate details about their experiences. In fact, research suggests that young children may be less susceptible to suggestive questioning when the interviewer is friendly, supportive, and professional.

Creating a warm and supportive environment during the interview also helps children resist misleading suggestions. When children feel safe and supported, they are more likely to stick to their own memories and experiences rather than being influenced by external factors. Contrary to concerns raised by some critics, studies have shown that socio-emotionally supportive interviewing techniques do not increase suggestibility.

It's important to note that while interviewers strive for objectivity and neutrality regarding the veracity of allegations, they can still demonstrate kindness and understanding towards the child. Being kind and empathetic does not compromise the interviewer's ability to conduct an effective and thorough interview. In fact, it can enhance the child's willingness to participate and provide accurate information.<sup>7</sup>

### CHAPTER III

## CHILD WITNESSES AND ITS POSITION IN THE INDIAN LEGAL SYSTEM

Section 118 of the Indian Evidence Act, 1872 deals with the competency of a witness to testify in court. This means that any person, including a child, can be a witness in court as long as they are able to understand the questions and provide rational answers. The court has the discretion to determine whether a witness is competent or not based on their ability to understand the questions and provide rational answers.

### 3.1 COMPETENCY OF WITNESSES

In the Indian legal system, a witness is considered competent if there is no legal provision that prevents them from giving testimony. Competent witnesses are also generally required to give testimony, but there are exceptions, such as for foreign rulers and ambassadors. In certain cases, witnesses may be competent but not required to give testimony, such as in divorce and other marriage procedures.

However, competency must be distinguished from privilege. A witness is compelled to give testimony when they are sworn in and asked a specific question, but there are certain privileges that may prevent them from giving certain types of evidence. For example, hearsay or confession in front of a police officer may not be admissible as evidence even if the witness is competent to give testimony. The rules regarding privileges are outlined in Sections 121-132 of the Indian Evidence Act.<sup>9</sup>



### 3.2 CHILD WITNESSES COMEPENCY

In India, there is no specific age limit for children to testify as witnesses, but they must be competent to understand the questions put to them and give rational answers. The court is responsible for determining whether a child is competent to testify and can use various methods to assess their competence, such as asking the child questions, observing their behaviour and responses, and considering their age and level of maturity. The child's intelligence and knowledge level are not the only factors considered in determining their competence as a witness. It is up to the court's discretion to decide if a child is a credible and competent witness based on their individual circumstances.<sup>10</sup>

In *Nivrutti Pandurang Kokate v. State of Maharashtra*, the competence of a child witness is determined by the court based on their understanding of the questions posed to them and their ability to provide reasonable answers. There are no specific rules related to the intelligence or knowledge level of a child witness, and it is left to the discretion of the judge to assess their competence. However, it is important to take precautions when dealing with child witnesses, as they may be susceptible to coaching or living in a world of pretend. Despite this, if the court determines that there is an impression of truth in the child's evidence, there is nothing that prevents it from being accepted.<sup>11</sup>

In *Himmat Sukhadeo Wahurwagh v. State of Maharashtra*, the Supreme Court must ensure that the child witness is able to distinguish between right and wrong, and that they understand the questions put to them. The court may cross-examine the witness to determine their competence and credibility, and even if no such questions are asked, the court may gather evidence to assess the witness's understanding of the proceedings. The court must also ensure that the child witness is not discredited before rigorous cross-

examination, and that their evidence is evaluated on its merits.<sup>12</sup>

In *Ratansinh Dalsukhbhai Nayak v State of Gujarat* the Supreme Court held that the decision on the competency of a child witness primarily rests with the judge, who should observe the child's demeanour, manners, and apparent possession or lack of intelligence to assess their ability to understand and answer questions. The higher court may disturb the decision of the trial court if it is clear that their conclusion was erroneous.<sup>13</sup>

The court must take into consideration the danger of child witnesses being easily influenced and the need to carefully examine their evidence. However, in some cases, the testimony of child witnesses can be given considerable weight and their relative perceptions and understandings may be considered equal to that of an adult witness.

In *Baby Kandayanathil v. State of Kerala*<sup>14</sup> in this case, the court also noted that child witnesses should be allowed to testify without fear or intimidation, and that their evidence should be carefully evaluated based on its credibility and consistency.<sup>14</sup>

In the case of *Suryanarayana v. State of Karnataka*, the Supreme Court gave considerable weight to the testimony of a four-year-old witness named Bhavya, and held that minor discrepancies in her testimony cannot be used as a basis for discrediting her testimony entirely. The Court also observed that it is not necessary for a child witness to fully understand the implications of an oath, as long as they understand the difference between truth and falsehood. This ruling marked a significant development in the probative value of child witness testimony in Indian courts<sup>15</sup>.

In *Suresh v. State of Uttar Pradesh*, the Supreme Court observed that a child's testimony should not be disregarded simply because of their age. The court emphasized that the relative perceptions and understandings of a 13-year-old witness should be considered equal to that



of an adult witness. The court also held that a child's testimony should be evaluated on the basis of its inherent qualities and the circumstances under which it was made, rather than on the basis of any preconceived notions or stereotypes about child witnesses.<sup>16</sup>

#### CHAPTER IV

##### CREDIBILITY AND ADMISSIBILITY OF CHILD WITNESS

Dr. Henry Gross's views on the nature of evidence presented by children were published in his book "Criminal Investigation" (1934 Edition). He described children between the ages of seven to ten as some of the best witnesses, as they are not yet influenced by adult considerations such as love, hate, ambition, and religious rank. However, he also highlighted the significant disadvantage of children's unreliability as they may speak from their imagination rather than from actual knowledge, leading to disbelief in their testimony.<sup>17</sup>

The case of "Panchhi v. State of U.P" is an important judgment on the issue of child witnesses. The Supreme Court, in this case, held that the evidence of a child witness needs to be evaluated more carefully than that of an adult witness because a child can be easily influenced and tutored by others. The court emphasized the need to ensure that the child witness is not under any pressure or fear and that the testimony given by the child is not a result of any external influence. The court also stressed the importance of cross-examination to test the veracity and reliability of the child witness's evidence. Overall, the court acknowledged that while the testimony of a child witness can be valuable, it needs to be evaluated with caution and care.<sup>18</sup>

In the case "State of Assam v. Mafzuddin Ahmed, this case deals with the admissibility of an accused's statement to a police officer as evidence in a criminal trial. The Supreme Court held that such a statement made to a police officer, who was not authorized to record

statements under the relevant provisions of the law, could not be relied upon as evidence.<sup>19</sup>

#### 4.1 EVOLUTION AND ACCEPTANCE OF CHILD WITNESS TESTIMONY

That's correct. The judicial history of India has seen several landmark decisions that have contributed to the development and adoption of child testimony in the country. These decisions were made at different times, based on different issues and crimes, but they all recognized the unique challenges and considerations involved in evaluating the testimony of child witnesses. These decisions have helped to establish guidelines and principles for assessing the credibility and reliability of child testimony, and have paved the way for a more nuanced and informed approach to the use of such testimony in the Indian legal system.

In *Suryanarayana v. State of Karnataka*, the Supreme Court laid down three primary categories for the acceptance of child witness testimonies:

- i) Age,
- ii) Tutoring, and
- ii) Competency.

The Court emphasized the importance of examining these factors while evaluating the reliability of a child's testimony.<sup>21</sup>

In *State of Uttar Pradesh v. Krishna Master & Ors*, the court observed that the assessment and the child's competency, as well as any potential influence or coaching that may have

It is important to note that while a child may be deemed eligible to be a witness, their testimony should not be automatically accepted as evidence without careful consideration of its reliability. Children can be vulnerable to coaching, persuasion, and threats, and their testimony should be evaluated for its trustworthiness. It is generally unsafe to rely solely on a child's eyewitness testimony without corroboration or additional evidence. Therefore,



a child's statement as a witness must be examined carefully to confirm that it is their own and not influenced by external factors.<sup>22</sup>

Section 118 of the Indian Evidence Act deals with the competency of a witness to testify. However, even if a witness is competent, his evidence may not be admissible if it falls under certain exceptions like hearsay evidence or opinion evidence. Hearsay evidence is a statement made by a person other than the witness, which is offered in evidence to prove the truth of the matter stated in it. Similarly, opinion evidence is evidence that states a witness's opinion, belief, or judgment, as opposed to the facts he personally observed.<sup>23</sup>

In *State of Uttar Pradesh v. Krishna Master & Ors* the court observed that the assessment and the child's competency, as well as any potential influence or coaching that may have occurred. Ultimately, the credibility and reliability of the child witness's testimony should be evaluated on a case-by-case basis.<sup>24</sup>

"*State of Bihar v. Basawan Singh*" the rulings in these cases show that the competence of the child witness is a crucial factor in determining the admissibility and reliability of their testimony. While age is one factor to consider, it is not the sole determining factor. The court must also consider other factors such as the child's ability to comprehend and remember events, their susceptibility to influence or coaching, and the overall credibility of their testimony.<sup>25</sup>

#### 4.2 COMPETENCY

It is important to note that in India, the law recognizes that a child witness may not fully understand the consequences of giving false testimony under oath. The courts have therefore allowed for a more lenient standard of corroboration in cases involving child witnesses, as they may not be able to provide the same level of detail and consistency as an adult witness. Ultimately, each case is evaluated on its own merits, with the court taking into

account the age, maturity, and credibility of the child witness.

The judgment in *Jarina Khatun v. State of Assam* emphasizes the importance of a case-by-case analysis of a child's competency to testify, rather than a blanket application of age or other factors. The trial court is in the best position to assess a child's capacity to understand and answer questions, and should take into account factors such as the child's maturity, intelligence, and ability to observe and recall events.

This approach recognizes the unique circumstances of each case and the individual abilities of the child witness, rather than relying on generalizations or assumptions.

### CHAPTER IV

#### MEASURES FOR THE HOLISTIC DEVELOPMENT OF CHILDWITNESSES

There is still room for improvement in the inclusion of child witnesses in legal proceedings. One way to address this is to provide training for legal professionals, including judges, prosecutors, and defense attorneys, on the proper treatment of child witnesses. This training can cover issues such as the proper questioning techniques for children, the need for support and protection during testimony, and the importance of considering a child's age, maturity, and individual circumstances when evaluating their testimony.

Another way to improve the inclusion of child witnesses is to provide them with support and protection throughout the legal process. This can include providing them with a safe and child-friendly environment to testify in, as well as access to counselling and other support services to help them cope with the stress and trauma of testifying.

Finally, there is a need for more research on child testimony and the best practices for including child witnesses in legal proceedings. This research can help inform policy and practice in this area, and ensure that the rights



and needs of child witnesses are properly addressed in the legal system.<sup>26</sup>

### 5.1 THE VOIR TEST

The Voire Dire Test is indeed a useful tool for assessing the competence of child witnesses in court. The test is conducted in order to ensure that the child fully understands the nature of the proceedings and the consequences of their testimony. It involves a preliminary examination in which the child is asked a series of questions about their personal background, living conditions, and other relevant factors. Based on the child's responses, the court can determine whether the child is capable of giving reliable testimony and whether they understand the importance of telling the truth.

It is worth noting that the use of the Voire Dire Test is not without controversy, as some critics argue that it places undue pressure on child witnesses and may cause them to feel intimidated or overwhelmed. However, when used properly and in conjunction with other measures to protect the interests of child witnesses, such as the presence of a support person or the use of closed-circuit television, the test can be a valuable tool for ensuring that the voices of children are heard and taken seriously in the justice system.

In the case of *Virender v. The State of NCT of Delhi*, the Supreme Court laid down specific guidelines for the examination of child witnesses, including the following:

- i) Child-friendly environment: The court should ensure that the child witness feels comfortable and is not intimidated during the examination.
- ii) Use of simple language: The court should use simple and understandable language while questioning the child witness.
- iii) Avoid leading questions: The court should avoid asking leading questions that suggest the answer to the child witness.
- iv) Breaks during the examination: The court should allow the child witness to take breaks during the examination if they feel tired or overwhelmed.

v) Video recording: The court may consider video recording the examination of the child witness to ensure accuracy and prevent any manipulation or tampering of evidence.

These guidelines aim to create a safe and supportive environment for child witnesses to give their testimony without fear or pressure, and to ensure that the testimony is reliable and accurate.

### 5.2 THE INTERNATIONAL GUIDELINES

The UN Guidelines on Judicial Matters Concerning Child Victims and Witnesses to Crime provide important principles and best practices for the protection of child witnesses. In addition to the two rights you mentioned, the Guidelines also emphasize the following rights for child witnesses:<sup>27</sup>

1. Participation - Children have the right to participate in legal proceedings in a manner that respects their dignity and promotes their well-being.
2. Special protection - Children require special protection measures during legal proceedings to ensure their safety, privacy, and comfort, including the use of support persons and specialized facilities.
3. Assistance and support - Children have the right to receive appropriate assistance and support services, including legal assistance, counselling, and medical care.

The Indian judiciary has indeed incorporated many of these principles in their approach to child witnesses, recognizing the unique vulnerabilities and needs of children in legal proceedings.

### 5.3 CHILD WITNESS IN THE U.S. AND U.K.

The two rules you mentioned - Rule 601 and Rule 603 - both relate to the eligibility of a witness to testify in court and the requirement for a witness to testify truthfully.

Rule 601 of the Federal Rules of Evidence in the United States that "every person is competent to be a witness unless these rules provide





otherwise." This means that any person, including a child, is eligible to testify as a witness in court unless there is a specific legal provision that disqualifies them from doing so.

Rule 603 of the Federal Rules of Evidence requires a witness to declare that they will testify truthfully before they give testimony in court. This is typically done through an oath or affirmation, and failure to comply with this requirement can result in perjury charges.

In India, the competency of a child witness is determined through a process called the "voire dire" test, which involves asking the child simple, open-ended questions to assess their ability to understand and communicate effectively. The test does not specifically address the child's ability to remember and repeat what happened, but rather focuses on their overall competency as a witness.<sup>31</sup>

In the UK, the Youth Justice and Criminal Evidence Act 1999 provides for "special measures" to be taken to help child witnesses give their best testimony in court. These measures include the use of screens or video links to shield the witness from the accused, the use of an intermediary to help the child communicate effectively, and the ability to give evidence through a pre-recorded video. The judge must ensure that the child witness is competent to give evidence and understands the importance of telling the truth. The judge may also allow a support person, such as a parent or social worker, to be present during the child's testimony to provide emotional support.<sup>28</sup>

## CHAPTER V

### 6.1 CONCLUSION AND RECOMMENDATIONS

Child witnesses have been an important part of court proceedings for a long time. As society has evolved, so has the understanding of how to handle child witnesses in a way that is respectful of their rights and needs. The case of *Suryanarayana v Karnataka* is an example of the importance of child witnesses in criminal cases. In that case, the testimony of a child

witness was crucial in securing a conviction against the accused. The court recognized the importance of the child's testimony and took steps to ensure that the child was comfortable and able to testify to the best of their ability.

Indian courts have adopted a case-by-case approach to evaluating the testimony of child witnesses. They do not rely on fixed standards but rather assess the credibility, reliability, and reasonableness of the child's evidence on a case-by-case basis. This allows the courts to take into account the unique circumstances of each case and ensure that child witnesses are not unfairly excluded from providing evidence due to rigid standards.

The health of the child is paramount. Here are some specific recommendations for memorizing them:

1. Provide a safe and comfortable environment for the child to testify, free from intimidation or fear.
2. Use age-appropriate language and avoid leading questions that may influence the child's testimony.
3. Consider using special measures to assist the child, such as allowing them to testify behind a screen or via video link.
4. Allow the child to have a support person with them during the court proceedings, such as a parent, guardian, or counsellor.
5. Ensure that the child's privacy is protected throughout the court process, including their identity and personal information.
6. Provide resources and support for the child to help them cope with the emotional impact of testifying, such as counselling services or referrals to appropriate organizations.
7. Take into account the child's developmental stage and level of understanding when assessing their competence to testify.
8. Ensure that the child's testimony is evaluated based on its credibility, reliability, and



reasonableness, and not on the basis of stereotypes or prejudices about child witnesses.

9. Uphold the child's rights to protection, harmonious development, and an adequate standard of living, as outlined in international guidelines and domestic laws.

10. Treat the child with dignity, respect, and compassion throughout the court process, and prioritize their well-being and best interests above all else.

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