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Eliciting Best Evidence from a Child Witness: A Comparative Study of the United Kingdom and India.

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Abstract

The successful prosecution of any criminal offence relies on evidence that proves its commission. Although the admissibility of evidence is key at first instance, the weight attached to a piece of evidence i.e. how 'reliable' or 'persuasive' it is will tilt the scale of justice in one or another direction. The problems with various forms of evidence i.e. that elicited from an eye or ear-witness has been thoroughly explored by academics and lawyers alike. Those same problems are potentially exacerbated where the witness is a child who has not only witnessed a gruesome crime but is required to give evidence in a forum (court) that is accompanied by intimidating surroundings. Whilst witness evidence, regardless of whether it is given by an adult or child, is a factual part of criminal justice, it is salient to note that the entire process has been made more witness-friendly in some commonwealth jurisdictions. This article explores the differences in the rules designed on eliciting best evidence from a child witness in the United Kingdom and India. In so doing, the case law from each jurisdiction is contrasted. There are two aims of the article, the first is to facilitate a conversation where one criminal justice system may learn from another's experience. The second, a result of the first, is to make suggestions on improving the experience of a child witness in the Indian Criminal Justice Process.

Keywords: child-witness, weight and reliability, witness testimony, exclusion of evidence.

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1. Introduction

The successful prosecution of criminality relies on relevant and admissible evidence that meets the requisite standard of proof. In the United Kingdom and India, two common law jurisdictions with a close colonial past², the prosecution must prove its case beyond a reasonable doubt, see: *Woolmington v DPP* and *Kali Ram v State of Himachal Pradesh*³. Therefore, criminal culpability, or liability is dependent upon the evidence being adduced before the court. It is not unusual, as in other jurisdictions that adopt the adversarial model, that evidence will include the oral testimony of witnesses, police interviews and reports, documentary and expert evidence etcetera. In the United Kingdom the court has the right to receive relevant and admissible evidence, it retains the right to exclude the same for instance for unfairness under s.78 the Police and Criminal Evidence Act 1984 but does not have the right to admit irrelevant evidence. In *R v Doherty* the Northern Irish court reiterated that 'courts should continue to remain open and receptive to new forms of evidence being adduced even where the risk associated with that [might be] grave'⁴. This includes oral testimony given by witnesses in court.

In India, s.3(1) of the Indian Evidence Act 1872 (IEA) defines witness testimony or oral evidence as: 'all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence'⁵.

A witness can be defined as someone who gives percipient evidence i.e. something that they have themselves heard, seen, smelt or touched. A hearsay witness or one that does not give percipient evidence is one who gives evidence of what someone

² It should be noted that one of the reasons these two jurisdictions were selected was because of their historical colonial relationship and their common law nature.

³ [1935] UKHL 1 and (1973) 2 SCC 808 as per the Right Honourable Justice H. R. Khanna at p.1060, para 25. The latter is available at: <https://www.sci.gov.in/jonew/judis/6454.pdf> see para. 1 at page 2 of 15. [Date accessed: 02/12/2018].

⁴ See *R v O'Doherty (Anthony)* [2002] N.I. 263.

⁵ Section 3 of The Indian Evidence Act, 1872, defines "Evidence" as follows: "Evidence" means and includes: (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence; (2) all documents produced for the inspection of the Court; such documents are called documentary evidence.

else perceived for example something that they said (i.e. dying declaration) or wrote⁶.

Witnesses who come up to proof can prove invaluable in helping a judge(s) or jury⁷ to conclude whether or not an accused is guilty.

This article seeks to contrast how *best evidence* is elicited from a child or vulnerable witness in the United Kingdom and India. The aim is to facilitate a conversation to share best practice so as to improve the experience of child witnesses in the Criminal Justice Process.

2. Child Witnesses – *The United Kingdom*

There are quite well known and complex rules on competence and compellability in the United Kingdom. All persons are deemed to be competent namely capable of lawfully being called to give evidence with two exceptions. All competent witness may be compelled to give evidence with the exception that relates to the defendant, his or her spouse or civil partner – the latter can only be compelled to give evidence against their partner in a limited set of prescribed circumstances (the discussion of these is beyond the scope of this paper)⁸.

Section 53(1) of the Youth Justice and Criminal Evidence Act 1999 (YJCEA) states: 'At every stage in criminal proceedings all persons are (whatever their age) competent to give evidence.'

The two exceptions to this rule are as follows:

⁶ See: Black, H. C. *Blacks Law Dictionary*. West Publishing Company: USA at p.1230. See: *State v Desforges*, 17 South 811 in *Re Lossee's Will* 18 Misc Rep 298, 34 N.Y. Supp. 1120. See also: *Bliss v Shuman* 47 Me. 248.

⁷ Trial by jury was contained in the Code of Criminal Procedure 1861. It was abolished following the high profile case of *Commander K. M. Nanavati vs. State of Maharashtra* AIR 1962 SC605 – this was the last jury trial in India. The jury acquitted the accused of murdering his wife's lover; the Bombay High Court dismissed the verdict and the case retried under Bench Trial. The Code of Criminal Procedure was subsequently amended in 1973.

⁸ For a discussion of the rules in the United Kingdom see: Singh, C. (2014). *Beginning Evidence*. Routledge: London. See chapter 3 at page. 42.

- s.53(3) of the YJCEA 1999 states that in criminal proceedings, a person is not competent to give evidence if it appears to the court that he or she is unable to understand the questions being put to them as a witness and to give answers to those questions that can be understood⁹;
- s.53(4) of the YJCEA 1999 states that a person who is charged in criminal proceedings is not competent to give evidence in those proceedings for the prosecution (whether he is the only person, or is one of two or more persons, charged in the proceedings).

It should be noted that a co-accused can only give evidence for the prosecution if he or she ceases to be a co-accused i.e. following a plea of guilty.

Often, competence¹⁰ is confused with credibility or reliability. Determining competence is not an assessment of whether the witness is giving, will give truthful or even accurate evidence. Credibility and reliability are questions that affect the weight ascribed to the evidence by the trier of fact (judge or jury depending upon where the case is being heard).

In *R v B* [2010] EWCA Crim 4 the court stated that: ‘... the purpose of the trial process is to identify ... evidence which is reliable and that which is not ... [regardless of] whether it comes from an adult or a child. If competent ... as defined by the statutory criteria, in the context of credibility in the forensic process, the child witness starts off on the basis of equality with every other witness.’

The Crown Prosecution Service (CPS) the service charged with the prosecution of criminal offences in the UK has a series of additional guidelines on how to deal with

⁹ Section 29 of the YJCEA 1999 allows for the appointment of a Registered Intermediary i.e. an interpreter, that may assist a witness to give evidence where required. Thus, any competency assessment must take into account techniques or measures that may be used to assist a witness. IN *R v B* [2010] EWCA Crim 4 the Court of Appeal stated that: ‘the competency test is not failed because ... the processes of the court ... have to be adapted to enable [a] witness to give the best evidence ... he or she is capable of giving.’ See also: *F* [2013] 1 WLR 2143 and *R v Watts* [2010] EWCA Crim 1824 and *R v Sed* [2004] 1 WLR 3218 – the latter relates to the holistic performance of the witness, there is no requirement the witness understand all questions put to him or her and for all of his or her answers to be understood so long as there was a common comprehensible thread to the responses tendered.

¹⁰ Note that there is extensive guidance on witnesses that have mental health issues or learning disabilities.

competence and compellability when prosecuting criminality. Questions relating to the competence of witnesses may affect how realistic the prospect of obtaining a conviction is for the service. *The Code for Crown Prosecutors*¹¹ ('The Code') specifically instructs prosecutors to consider whether evidence can be used and whether it is reliable (see paragraph 4.6 of the Code). Whether a witness is compellable and if he or she will give evidence voluntarily will affect the decision to prosecute – given the financial budgetary constraints imposed upon this public service. A prosecutor could validly conclude that a witness is not competent to give evidence by virtue of s.53(3) of the YJCEA 1999 – there are ramifications for both the current and future proceedings in that the competency of the witness will be challenged but this time supported by the decision of 'no competency' made earlier by the service¹².

The competency of a child witness depends upon their 'understanding' and not their age. As noted earlier, the same competency test is applied to both adult and child witnesses (see *Powell* [2006] 1 Cr App R 468 and *R v B* [2010] EWCA Crim 4)¹³. Sections 55 and 56 of the YJCEA 1999 cover whether the competency of the child witness to give sworn or unsworn evidence.

Section 55 states that a witness may only be sworn to give evidence on oath if they have attained the age of fourteen (14) (s.2(a)) and 'has a sufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth which is involved in taking an oath' (s.2(b)). Subsection 3 states that: 'The witness shall, if he is able to give intelligible testimony, be presumed to have a sufficient appreciation of those matters if no evidence tending to show the contrary is adduced (by any party).'

The earlier decision taken by the CPS on the incompetency of a witness can hold weight as evidence to the contrary. It will then be up to the party tendering that

¹¹ The Crown Prosecution Service. 2019. *The Code for Crown Prosecutors | The Crown Prosecution Service*. [ONLINE] The code is available to download here: <https://www.cps.gov.uk/publication/code-crown-prosecutors>. [Date Accessed: 01/12/2018].

¹² Such decisions, which are made at the file review stage that is the point at which the CPS is deciding whether there is enough evidence and public interest to prosecute the crime, are rare given that outlined above but where they are made need to be authorised by a District Crown Prosecutor.

¹³ See *ibid* p.3.

witness to prove, on the balance of probabilities, that the child witness has ‘a sufficient appreciation of the matters mentioned in subsection (2)(b)’. It should be noted that the reference to ‘intelligible testimony’ is (a) the ability to understand questions put to the witness and (b) give answers to those questions that can be understood. This is probably one of the toughest tasks for an advocate where a child witness of tender years is concerned. An example of the challenges faced in the form of questioning used to elicit evidence from a child, aged three (3), who had suffered sexual abuse in R v B: ‘It was not in dispute that the child's account described an incident of anal penetration, sufficient to found the allegation against the appellant. The relevant passages from the video recording include:

‘Q...what did you tell the doctor about your bottom, can you remember?

A. S got hurt me.

Q. S hurt your bottom and how did he hurt your bottom?

A. Cos he gave me his willy.

Q. Say that again.

A. He gave me his willy.

Q. He gave you his willy and what did he do with his willy?

A. He got hurt me.

Q. How did he do it. Show me?

A. Well he put it in me.

Q. He put it in you, whereabouts?

A. There.

Q. There, at the front, (X nods) ok, and what did he do with his hands when he put his willy there?

A. He didn't ...he didn't put his hand in there.

Q. What did he put there?

A. He just put his willy in there.’¹⁴

¹⁴ See *ibid* p.3.

Therefore, it is important that the questioning skills of the advocate must match the communication needs of the child witness. There has never been a rule in the English common law of evidence for evidence to be corroborated or for a jury (or trier of fact) to be warned of the dangers inherent in acting upon evidence that is uncorroborated. The general rule in criminal cases, and civil albeit that is not a matter for this article, is that currently a judgment or conviction can be based on upon uncorroborated evidence whether given by a single witness or of another kind¹⁵.

A witness who is a child under the age of fourteen (14) should give unsworn evidence in court (s.56 of the YJCEA 1999).

In 1991, the UK government signed up to the United Nations Convention on the Rights of the Child (1989)¹⁶. The Indian government became a signatory to the Convention in 1992. Article 1 of the UN Convention defines a child as: ‘... every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.’

Article 3.1 states that: ‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration’.

Therefore, both the UK and Indian governments have an obligation under International Law to safeguard the rights of the child when involved in court proceedings and for the purposes of this article; proceedings in criminal courts. The question is to what extent they achieve this.

The CPS guide ‘*Safeguarding Children: Guidance on Children as Victims and Witnesses*’¹⁷ sets out to safeguard children in the course of criminal proceedings in terms of expedition, sensitivity and fairness.

¹⁵ Note: English law has seen an advent in ‘discretionary care warnings’ for instance in relation to co-defendants operating cutthroat defences. In short, care warnings were given by judges asking the jury/trier of fact to ‘take care’ when assessing particular evidence. The care warning in relation to the uncorroborated evidence of a child was abolished by s34(2) of the Criminal Justice Act 1988.

¹⁶ *Convention on the Rights of the Child* (CRC) 1989, (Resolution 44/25), Opened for signature 20th November 1989, entered into force 2nd September 1990. The Convention text can be accessed here: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> [Date Accessed: 12/02/2019].

¹⁷ *Safeguarding Children: Guidance on Children as Victims and Witnesses*. The text can be accessed here: <https://www.cps.gov.uk/legal-guidance/safeguarding-children-victims-and-witnesses> [Date

In 2008 the HMCPSI report '*A second Review of the Role and Contribution of the Crown of the Crown Prosecution Service to the Safeguarding of Children*' states that the CPS role in safeguarding children includes the '...consideration of the use of children as witnesses, witness care and of special measures to enable them to give evidence in the best way possible in terms of quality of their evidence and reducing trauma to them.'¹⁸ The means by which this has been pursued is set out in s.16 of the YJCEA 1999 and the automatic eligibility of a regime of 'Special Measures' available to help children under the age of eighteen (18) give best evidence.

There are considerations for witnesses whose age is uncertain, there is a presumption that they are under the age of eighteen (18) where they are the complainants of relevant offences i.e. sexual offence, or an offence under s.4 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004, under s.1 of the Children Act 1978 or s.160 of the Criminal Justice Act 1998. Thus, they too are eligible for special measures under s.16 of the YJCEA 1999.

The relevant special measures will be clearly explained to the child witness and his or her parents or person in locus parentis, often a carer, so that they are able to express an informed view in relation to them before an application for the special measures themselves is made to the court.

In the English courts there exists the presumption that a child's evidence-in-chief will be given via a recorded interview and any further evidence facilitated by live link unless the court is satisfied that this procedure would not serve to improve the quality

Accessed: 12/02/2019]. See also the National Investigative Interviewing Strategic Steering Group. (n.d.). *ACPO Position Statement: Interviewing Child Witnesses in Major Crime Investigations: Interviewing Child Witnesses in Major Crime Investigations* and Ministry of Justice. (2011). *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Using Special Measures*. London: HMSO. The report can be accessed here: https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/best_evidence_in_criminal_proceedings.pdf [Date Accessed: 12/02/2019].

¹⁸Assuring Justice HM Chief Inspector of the Crown Prosecution Service Annual Report 2008-2009. The report can be accessed here: https://www.justiceinspectorates.gov.uk/crown-prosecution-service/wp-content/uploads/sites/3/2014/04/HMCPSI_CIAR_2008-09.pdf [Date Accessed: 12/02/2019].

of the child witness's evidence¹⁹. Furthermore, where the court agrees, a child witness may opt-out of giving their evidence by recorded interview and/or live link. In this instance, there is a presumption that the child witness will give his or her evidence in court but from behind a screen. Once again, if the court agrees, the child witness may opt-out of using a screen in court.

It is preferable that an application for special measures is made after the child witness has had the opportunity to visit a court and to see the measures in practice. However, given the finite nature of time often it is not possible to facilitate a visit before an application has to be made and thus, any measures granted may need to be subsequently varied.

A range of research by the National Society for the Prevention of Cruelty to Children (NSPCC) has shown that often a child witness is afraid of being seen by an alleged defendant over the live link. Therefore, during the introduction to the process of using a live link it is important that the witness is informed so that he or she understands that the defendant will be able to see him or her on a monitor in the courtroom. The importance here is placed on the witness being able to make an informed choice on how they are to give evidence²⁰.

Thus, the range of actions being put in place should, at least in theory, facilitate a child witness being able to give better evidence because of improvements or management of the fear and stress levels witnesses often experience coupled with informed choice-making, trained criminal justice agents etcetera, leading to a better overall experience.

3. Child Witnesses – *India*

¹⁹ If a video interview is recorded before a child witness's 18th birthday then they are eligible for relevant recorded evidence-in-chief and live link special measures directions after his or her 18th birthday too.

²⁰ The NSPCC and Bar Council of England and Wales have produced videos for lawyers to demonstrate how special measures can be used to aid better witness evidence.

Under Indian law *all persons are competent to give evidence*. Section 118 of the Indian Evidence Act 1872 (IEA), Chapter IX, states: 'All persons shall be competent to testify unless the Court considers that they are prevented from understanding the question put to them, or from giving rational answer to those questions, by tender years, extreme old age, disease, whether of body and mind, or any other cause of the same kind.'²¹

The following explanation is also given: 'A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the question put to him and giving rational answers to him.'

Section 11 relates to 'dumb witnesses' namely those harbouring under a disability where they are unable to speak, the provision states: 'A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence'.

A presumption of immaturity persists in relation to the child witness; immaturity in understanding. Indian criminal courts must evaluate the intellectual ability of the child witness. In *Panchhi and Others, National Commission for Women v State of Uttar Pradesh and Others* 1998 CriLJ 3305²² - a case concerning the murder of an entire family, the only witness was a child, the son of one of the victims. The Supreme Court of India (SCI) stated that: '...It is not the law that if a witness is a child his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others [told] them and thus a child witness is an easy prey to tutoring. Courts have laid down that evidence of a child witness must find adequate corroboration before it is relied on. It is more a rule

²¹ In India, you note a number of sub-category of witness types including those that are hostile and those that have an interest in the proceedings. The purpose of these sub-categories is to aid the assessment of the evidence in terms of credibility so that an appropriate weight can be attributed to it.

²² The case report is available to download at: <https://indiankanoon.org/doc/1471173/> [Date Accessed: 20/02/2019].

of practical wisdom than of law'²³. Such need for corroboration has been abolished in England and Wales for decades²⁴.

In recent years the SCI in 2017²⁵ has adopted 'Guidelines for recording of evidence of vulnerable witnesses in criminal matters' in the case *The State Of Maharashtra v Bandu @ Daulat* (24 October, 2017) SLP (CRL.) No. 2172 of 2014²⁶. The case concerned the evidence of a fourteen-year-old (14) 'deaf, dumb and mentally retarded' child witness, the victim of a rape. The Delhi High Court had drawn up extensive guidelines²⁷ in *Virender v The State of NCT of Delhi* (18 September 2009) CrI.A.No. 121/2008 – a case involving the rape of a minor aged eight (8).

Notably in the judgement the court stated that 'a case involving a child victim or child witness should be prioritised and appropriate action taken to ensure a speedy trial to minimise the length of the time for which the child must endure the stress of involvement in a court proceeding'²⁸.

In *The State v Rahul* (15 April 2013) CRL.L.P. 250/2012²⁹. The Delhi High Court had specifically referenced The Economic and Social Council of the United Nations Guidelines on *Justice Matters involving Child Victims and Witnesses of Crime*³⁰ vis-à-vis the Constitutional Court of South Africa's judgment in *Director of Public Prosecutions, Transwal v Minister of Justice and Constitutional Development* (2009) 4 SA 222 (CC)³¹ – a case concerning the rape of an eleven-year-old (11) and thirteen-year-old girl. The prosecutor questioned the child along these lines:

²³ See also: *Prakash and another v State of Madhya Pradesh* [1992] (4) SCC 225; *Baby Kandayanathi v State of Bihar* [1996] AIR SC 1613 and *Dattu Ramrao Sakhare and others v State of Maharashtra* [1997] (5) SCC 341.

²⁴ See *ibid* p.7.

²⁵ Adopted on the 24th of October 2017 by order C.A. No.1820 of 2017.

²⁶ The case report is available to download at: <https://indiankanoon.org/doc/96251512/> [Date Accessed: 20/02/2019].

²⁷ The Delhi High Court had taken account of the *UN Model Law on Justice in Matters involving Child Victims and Witnesses of Crime as published by the UN Office on Drugs and Crime, Vienna, UN, New York 2009*. These are available to download at: https://www.unodc.org/documents/justice-and-prison-reform/Justice_in_matters...pdf. [Date Accessed: 20/02/2019].

²⁸ At para. 22(xxix). [Emphasis added].

²⁹ The case report is available to download at: <https://indiankanoon.org/doc/32457334/> [Date Accessed: 20/02/2019].

³⁰ See also *ibid* p.7.

³¹ Also: (2009) 2 SARC 130 (CC).

‘Q: What did you mean when you said that he had slept with you?’

A: He had raped me.

Q: What do you mean with rape, we must know what you understand under rape?

A: Yes, I personally do not know what rape is, I heard from people who say that there is a thing called rape.

Q: Okay but we need to know what happened, you were tripped and then you fell on the ground and he took out a condom. We must know why do you say you have been raped, what did he do to you?

A: Rape is sexual intercourse.

Q: What is sexual intercourse?

A: Sexual intercourse is when one person has sex with another person.

Q: But we do not know what that means, we need to know what you think what happened, not what you think. You must tell us; why do you say that you have been raped and why did you say that the accused had sexual intercourse with you. What did he do, did he take his finger and scratch you on your ear or what did he do, why do you say it is sexual intercourse?

A: ...’

Highlighting the urgent need for training the Justices of the Supreme Court of India found this type of questioning inappropriate and stated that ‘Questioning a child in court is no exception: it requires a skill. Regrettably, not all of our prosecutors are adequately trained in this area, although quite a few have developed the necessary understanding and skill to question children in the court room environment.’³²

The SCI had itself issued direction for vulnerable witnesses, the case concerned rape, in *Sakshi v Union of India and Ors* (2004) 5 SCC 518³³ as follows: ‘(1) The provisions of sub-section (2) of Section 327 Cr.PC shall, in addition to the offences

³² See *ibid* p.11.

³³ The case report is available to download at: <https://indiankanoon.org/doc/1086919/> [Date Accessed: 20/02/2019].

mentioned in the sub-section, also apply in inquiry or trial of offences under Sections 354 and 377 IPC. (2) In holding trial of child sex abuse or rape:

- (i) a screen or some such arrangements may be made where the **victim or witnesses (who may be equally vulnerable like the victim)**³⁴ do not see the body or face of the accused;
- (ii) the questions put in cross-examination on behalf of the accused, insofar as they relate directly to the incident, should be given in writing to the presiding officer of the court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;
- (iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.'

These were in addition to those issued in *State of Punjab v Gurmit Singh* (1996) 2 SCC³⁵ a case involving the rape of a sixteen-year-old (16), the guidance in this case related primarily to 'stigma' and conducting particular proceedings in-camera with restrictions on reporting etc.

The Law Commission of India has made very little progress in recommending change in improving the way in which child witnesses are handled given the judgements of the Indian Supreme Court. Section 273 of the Indian Code of Criminal Procedure 1973 in relation to taking evidence in the presence of the accused states: '*...except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused...*'³⁶. Therefore, whilst active steps have been taken by the SCI there are many available initiatives that could be pursued.

Conclusion

³⁴ Emphasis added.

³⁵ The case report is available to download at: <https://indiankanoon.org/doc/1046545/> [Date Accessed: 20/02/2019].

³⁶ Anon. *Indian Code of Criminal Procedure*. Available to download at: [Indiacode.nic.in](https://indiacode.nic.in/). (2019). [online] <https://indiacode.nic.in/acts/11.%20Code%20of%20Criminal%20Procedure,%201973.pdf> [Date Accessed 21 Feb. 2019].

UK law in relation to the standing of the evidence of a child witness is fairly well established, as are those special measures provisions that protect and aid them to give best evidence possible. For instance, corroboration of the evidence of a child witness has been abolished for many years. Special measures, whilst not perfect, are extensive and generally meet the needs of the child witness. The law is relatively clear on taking witness statements, and the status of a statement as evidence-in-chief. Additionally, training is provided to advocates on how to elicit best evidence from a child witness as well as clear rules on cross-examination. Programmes in relation to helping the witness make informed choices in relation to how they choose to give evidence, familiarisation of the witness with the court venue etcetera are all valuable initiatives that help the witness give best evidence. Technology, for instance live-link, has provided an innovative way to put a witness at ease so as to remove fear and stress from the process thereby excluding actual physical confrontation.

In India, the more notorious decisions of the Indian Supreme Court that comment on eliciting best evidence or 'achievable best evidence' from child witnesses has often related to the experiences of the victims of crime³⁷. This perhaps lends some insight into why much of the good progress in this regard has been to facilitate achievable best evidence of this group of witnesses. Although, the judgements provide room for ostensible extension of those provisions that have been developed, as discussed above, to all child witnesses whether or not they are the victims of criminality. In India, *criminal justice agents* with little experience or training on dealing with vulnerable witnesses can repeatedly subject him or her to questioning given this can affect the witness's recollection of the incident - this would benefit from relevant programmes of training such as that provided to their equivalents working with criminal justice system in the United Kingdom by the NSPCC. Furthermore, the ability of an accused's lawyer to question the witness at length, although the rule changes in restricting this has already been discussed, stands as an anomaly that may benefit from further review. There is no doubt that child witnesses would benefit from witness court and process familiarisation programmes and the advantages that technology

³⁷ Note the following comment from Advocate Rakesh Shukla. In Shukla, A. (2019). *Vulnerable Witnesses And Criminal Justice System: Role Of Intermediaries*. [Online] Livelaw.in. Available at: <https://www.livelaw.in/vulnerable-witnesses-and-criminal-justice-system-role-of-intermediaries/>. Describing, in relation to the provision of intermediaries as the 'lacuna in sensitivity' that exists within the Indian Criminal Justice System towards the child or vulnerable witness.

brings i.e. recorded statements used as evidence-in-chief, intermediaries, giving evidence by live-link etc. Finally, there is no reason why the anomaly that are rules on corroboration of the evidence of a child witness should continue where witnesses, in the general scheme, are treatment as being of equal importance.

Bio notes

Charanjit Singh is a widely published barrister, academic and a certified civil and commercial mediator. He has built up extensive expertise in criminal evidence and his current research focuses on biometric and forensic evidence, terrorism and serious and organised criminality, and employment law. Direct contact can be made on: Doctor.CSingh@gmail.com.
