A Critical Analysis of Precedents on Child Evidence in Child Abuse Cases

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Abstract

The evidence is a tool to determine the innocence and guilt of any accused in a criminal trial. The trials of child sexual abuse cases are always a difficult job to do. Under the relevant law, there is no prohibition as to the competence of a witness except in a few cases, even the evidence of a single witness can prove the case. The law and precedents do not prohibit a child to testify before a court, however, there are some restrictions imposed by the Superior Courts of the country. The basic criterion is that the child should comprehend the questions asked to him and capable to give rational answers. According to precedents the tender age of the child witness is no bar to preclude him to testify. The Superior Court of the country requires that the trial court before recording the evidence of a child must ask some preliminary inquiry/questions to him and satisfy himself as to the competence of a child, this exercise is based on the rule of prudence. According to precedents the evidence of a child witness can be relied upon for passing the conviction, even the solitary statements of the victim child are sufficient but the same must be corroborated through some independent and confidence-inspiring source.

Keywords: Child Sexual Abuse (CSA), Precedents, Witness, Corroboration, Preliminary Inquiry, Examination-in-Chief, Cross-Examination.

Introduction:

The meanings and interpretations of the word 'child abuse' have been elaborated by different laws and scholars. Child abuse is "physical or mental violence, injury, exploitation, neglect or neglect treatment, maltreatment or sexual abuse[1], it is intentional damage to a child's growth due to neglect and sexual abuse of the caretaker, any other person, and the parents[2]. An act or commission of an illegal act that results in physical, mental, sexual, and emotional abuse of the children that most of the time led to the death of the children[3]. The WHO in the year 1999, has clearly outlined the definitions of "child abuse or mistreatment which constitutes all forms of physical and/or disturbing misbehavior, sexual abuse, neglect or negligent ill-treatment or any other kind of exploitation, which may result in real or possible damage to the child's physical condition, endurance, growth or self-respect"[4].

Evidence means; every type of testimonies which a court allows or requires from the parties to the litigation to be adduced through witnesses, in the context of matters of fact under litigation; such testimonies are termed oral evidence, and all documents presented for the examination of the court; such documents are termed as documentary evidence[5]. The purpose of leading evidence in a trial is to enable the court to reach a fair conclusion regarding the facts in

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[1] The Khyber Pakhtunkhwah Child Protection and Welfare Act, 2010, section 2(e)

[2]. David DiLillo, Michelle A. Fortier, Andrea R. Perry child Abuse and Neglect, November 2005, https://www.researchgate.net/publication/228815606.

[3] National Clearinghouse on Child Abuse and Neglect Information. (2006). What Is Child Maltreatment?

[4] Report of the Consultation on Child Abuse Prevention, 29–31 March 1999, WHO, Geneva. Geneva, World Health Organization, 1999 (document WHO/HSC/PVI/99.1).

[5] Qanun-e-Shahadat Order, 1984, section 2(c).

issue and relevant facts[6]. As such, in general, the law does not prohibit any person to testify before a court of law and the same is the case with the testimony of a child witness[7]. The importance of child testimony becomes more valuable in the cases of child abuse because it is the child who is direct and star witness to the occurrence[8]. Between 1988 to 1991 the legal status of 'child witness' under the criminal justice system had been under a profound transformation and the general barriers which earlier had been placed before the testimony of a child witness were removed or relaxed[9]. Although; it is difficult to absorb that an innocent child appears before a court for deposing an extremely unwanted and teased incident happened to him but at the same time the affected child is the best person to depose about the occurrence[10]. The rules regarding the child evidence are clear which requires that a child must give his own account of events rather than a third person to whom a child would have narrated the occurrence and in such case[11]. The Peshawar High Court[12] observed that sentence may be imposed based on the solitary testimony of the child victim with the condition that the said testimony can be relied upon and the same has been supported by medical as well as circumstantial evidence[13] [14]. Generally, in cases of Zina and sodomy, hardly there is any witness other than the victim as it is very rare that the offence would take place in public view because of the others or at a public place, therefore, the sole testimony of the child victim would have great sanctity and would be sufficient to base the conviction of accused if same is confidence-inspiring[15].

Evidence of a Victim Child in the Cases Involving Child Sexual Abuse:

The cases involving child sexual abuse are often difficult to deal with, on the part of police while investigating, the public prosecutor while scrutinizing the evidence, and also the court while adjudicating, assessing evidence of witnesses including the child witness and finally deciding the case. While discussing and evaluating the issues relating to a child witness, one must seek guidance from different sources and the same may be the laws, existing research, and precedents of Superior Court which have interpreted the nature, importance, scope, evaluation, and admissibility of child evidence. In Ahsan Banghash's case, the Karachi High Court observed that if a child gives a statement that indicates that such witness understands questions and has given answers intelligently and rationally, the same cannot be discarded for the reason of tender age of the witness[16] [17]. In the case of Muhammad Abbas, the Lahore High Court held that under Art. 3 of Qanun-e-Shahadat Order, 1984, testimony of child witness is related to his capacity and competency to understand the questions and then to address them rationally[18]. Ekman says that the competence of a child as a witness can be evaluated by considering adequate intellect, understanding, the capability to observe, remember and correspond to incidents, ability to

[6] Amanda Elizabeth Wade, 1997, *The Child witness and the Criminal Justice Process: A case study in law reform.* http://etheses.whiterose.ac.uk/422/1/uk_bl_ethos_249578.pdf.
[7] Ibid, 1.
[8] Ibid, 8.
[9] Ibid, 8.
[10] Edwards, S. *'Violence against women: feminism and the law*.' In: (3elsthorpe, L. and Morris, A. (eds.) Feminist Perspectives in Criminology, (Open University Press, 1990).
[11] Ibid, 31.
[12] Hazrat Bilal vs. State, 2013 (PCr.LJ) 800, Peshawar High Court.
[13] Ibrahim vs. State, 2013 (YLR) 436, Peshawar High Court.
[14] Yasir and two others vs. State, 2018 (MLD) 1014, Balochistan High Court.
[15] Saleem Khan and others vs. State, 2001 (Pcr. LJ) 503, Federal Shariat Court
[16] Ahsan Banghash alias Junaid vs. State, 2017 (Pcr. LJ), 509, Karachi High Court, Sindh.
[17] Muhammad Yaqub vs. State, 1993 (Pcr. LJ), 1852.
[18] Muhammad Abbas vs. State, 2018 (Pcr. LJ), 537, Lahore High Court, Lahore.

understand the significance of an oath, and an appreciation of the requirement to tell the truth[19]. No particular age has been given by the legislature which determines the question of competency of a witness and the same would depend upon the capacity of the child to understand the questions[20].

From aforementioned precedents and juristic views, it can be said that evidence of a child witness is admissible subject to certain legal and prudential requirements i.e. the child witness is capable to understand the questions and could rationally answer said questions, the rationality of answers is always concerned with the facts and circumstances of every case. Another query which has been solved by the above-mentioned precedents is that the tender age of the child witness is no ground to brush aside his evidence. Although the Superior Courts have a difference of views regarding the admissibility of child evidence but when we minutely observe the precedents it could be found that Courts only require the scrutiny of evidence keeping in mind all available evidence and facts of the case.

Existing legislation on child abuse:

In Pakistan; several laws deal with definitions of different kinds of child abuse, the said laws are promulgated both at Federal and Provincial levels by the concerned governments. Pakistan Penal Code, 1860 (Criminal Law Amendment, 2016), Islamabad Capital Territory Child Protection Act, 2018, The Punjab Destitute and Neglected Children Act, 2004 (Amended in 2017), The Sindh Child Protection Authority, 2011, The Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010, The Khyber Pakhtunkhwa Child Protection and Welfare (Amendment) Act, 2018, The Balochistan Child Protection Act, 2016, The Gilgit Baltistan Child Protection Response Act, 2016, The Children Act, 2015, The Child Rights (Care and Protection) Act, 2016 (Azad Jammu & Kashmir), National Commission on the Rights of Child Act, 2017. (NCRC), The Child Marriages Restraint Act, 1929, Prevention of Electronic Crimes Act, 2016, The Punjab Restriction on Employment of Children Act, 2016, Juvenile Justice System Act, and 2018, The Sindh Children Act, 1955.

Child Witness: Memory, Accuracy, and Retrieval:

Research indicates that human memory comprises multiple factor-like interacting systems with the addition of encoding, storing, and recalling information which depends upon the age and maturity of a child[21]. Another concept is procedural memory which is based on knowledge of action, habits, and physical skills of a child, giving evidence[22]. Generally, it is required by the courts that a child witness must remember and identify the time and place of the incident or wherefrom he/child witness got the knowledge of certain facts relating to the issue in hand[23]. The next query is the accuracy of memory of a child and it often depends upon the age of the witness and for accuracy, the qualitative and quantitative nature of accuracy is also worth important[24]. When young children, elder children, and adults are compared, it has been found that adults have more clear and pinpointed memory collection based on more accurate

[19] Ekman P. *Lying, leakage, and clues to deceit*, (New York, NY: WW Norton, 1985), 25–42
[20] Mst. Imam Sain vs. State, YLR, 17, Lahore High Court, Lahore.
[21] Cordon, I. M., Pipe, M.-E., Sayfan, L., Melinder, A., & Goodman, G. S. *Memory for traumatic experiences in early childhood. Developmental Review*, (2004). 24, 101–132.
[22] Ibid.
[23] Nadel, L. *Multiple memory systems: What and why, an update*. Cambridge, (MA: The MIT Press, 1994).
[24] Baker-Ward, L., Ornstein, P. A., Gordon, B. N., Follmer, A., & Clubb, P. *How shall a thing be coded? Implications of the use of alternative procedures for scoring children's verbal reports* (1995).

knowledge, perception, and understanding[25]. Research divulges that children of 3 to 4 years old are more liable witnesses[26]. The last query under this discussion is the retrieval of memory by the witness, especially a child witness. Experts say and research indicates that young children face more difficulties as compare to elder children to retrieve the memory, on command[27]. Besides this research, the experts are of the view that this issue still needs more research and accuracy for some better and concrete views[28].

Admissibility of Child Evidence with Reference to Qanun-e-Shahdat Order, 1984:

In Pakistan; the Qanun-e-Shahadat Order, 1984[29] is the relevant law that governs the competence of a witness including the child witness. Admissibility of evidence of child has been elaborated and a principle has been laid down by Lahore High Court in Muhammad Boota's case held that the testimony of a victim/child witness is acceptable in evidence with the condition that the court believes the said witness is prohibited from apprehending the question or from giving rational answers[30]. Principles concerning the admissibility of evidence of a child have been enunciated by Lahore High Court in Ghulam Farid's case and held that a child of tender age, because of his/her youth, does not disqualify him as a witness[31]. No general rule of universal application can be laid down that in no case evidence of child witness is believed[32]. UNICEF in collaboration with UNODC has mentioned some important factors regarding the child's evidence and its admissibility[33]. There are two main questions of the acceptability of testimony of a child; the first question is admissibility and the second is reliability[34]. The question of admissibility is related to whether the child witness is competent to testify for the conclusion of a case and the factor of reliability is related to legal importance that must be given to the evidence of a child[35]. In this context the court must determine as to admissibility and reliability of child evidence; considering the facts of every case and in this regard, the age of the child must not be a hurdle to make his/her evidence admissible and reliable[36]. Bottoms and Goodman had mentioned that a person/judge or any other one who has his own children may analyze the trustworthiness of a child and he can evaluate the capability more efficiently than the one who has no children and this formula can be applied to defence, social worker, etc[37].

Admissibility and Corroboration in the Case of Child Testimony:

Corroboration is criminal cases is one of the imperative factors and especially, concerning a child witness, corroboration ought to be independent evidence or material which

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[25] Bukatko, D., & Daehler, M. W. *Child development: A thematic approach* (3rd ed.), (Boston: Houghton Mifflin Company, 1998).

[26] Goodman, G. S., & Melinder, A. *Child witness research and forensic interviews of young children: A review. Legal and Criminological Psychology*, (2007). 12, 1 –19.

[27] The Cognitive Interview Fisher and Geiselman (1992) It highlights the need to help the interviewee take control in the interview situation (Geiselman & Fisher, 1997).

[28] Kuehnle, K. *Child sexual abuse evaluations: The scientist-practitioner model. Behavioral Sciences and the Law*, (1999). 16, 5–20.

[29] Article 3 of Qanun-e-Shahadat Order, 1984.

[30] State vs. Muhammad Boota, 2014 YLR, 306, Lahore High Court, Lahore.

[31] Ghulam Farid vs. State, 2014 (Pcr. LJ), 1803, Lahore High Court, Lahore.

[32] Ibid.

[33] UNICEF, UNODC, *Justice in Matters involving Child Victims and Witnesses of Crime, Model Law and Related Commentary*, (New York: 2009). 49.

[34] Ibid, Part-C, During the trial phase, 49.

[35] Ibid.

[36] Ibid.

[37] Bette L. Bottoms & Gail S. Goodman, "*Perceptions of Children's Credibility in Sexual Assault Cases"* (1994) 24 Journal of Applied Social Psychology 702.

should establish two things i.e. offence had been committed with the victim and committed by the accused person[38]. The Supreme Court of Pakistan held that consistent credible, confidence-inspiring, straightforward, and innocent statements of a child witness could safely become the basis of conviction provided the same had been corroborated by other evidence i.e. circumstantial, medical, recovery and reports of serologist, etc[39]. In another case the Court ruled that the victim was medically examined by Medical Officer[40], the forensic report is also a strong corroboration[41]. The conviction upon an accused can be based on the evidence of a child witness, but the said evidence must be consistent, confidence-inspiring, credible, straightforward, and must be corroborated by connected circumstantial and medical evidence[42]. The honorable Supreme Court[43] remarked that though in principle, a sentence may be based upon the evidence of an intelligent child witness but Courts had preferably elected to follow the well-settled standard of prudence and rule of care attached to solitary evidence of child witness despite the child's intelligent deposition[44] [45]. From the above discussion precedents, it can be maintained that corroboration is a piece of evidence which supports the main evidence, independent and proceed from some autonomous source. The courts generally, for corroboration, consider the independent evidence, the medical evidence i.e. evidence of a doctor, forensic report, and report of DNA as a corroborative piece of evidence. Another aspect concerning the corroboration is the standard of corroboration and courts held that the only requirement is an independent source of said evidence that meets the general standard of common prudence.

The Satisfaction of the Court as to the Competency of a Child Witness:

In a leading judgment on child witness, the age limit for child witness, requirements of corroboration, and satisfaction of the court, the Lahore High Court held that the testimony of a child is acceptable in evidence with the condition that the court considers that the child witness is prohibited from apprehending the asked questions and to reply rational answers[46]. The trial court is to ascertain whether or not a child witness is prevented from an understanding question because of his tender age[47]. Ther is no legal restriction is in existence to ensure the intellectuality of a child witness to be in written form, there is only one requirement which is the satisfaction of the court[48]. In Abdul Haq's case, the Peshawar High Court[49] remarked that writing questions and answers to check the intelligence of a child witness is not required under the law, the court is competent to pass its observation as to the intellect of the child witness, meaning thereby that the only requirement is the satisfaction of the court (Court observed it as a test)[50] by asking a few simple and ordinary questions before recoding examination[51].

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[38] Harding, R., *Foreword in Sexual Assault Law Reform in the 1980's: To Where From Now*? Proceedings of the Institute of Criminology, University of Sydney, March, (1987).
[39] Amjad Javed vs. State, 2002 SCMR, 1247, Supreme Court of Pakistan.
[40] Abdul Haq vs. State, 2018 (Pcr. LJ), 12, Peshawar High Court. (facts of the case)
[41] Muhammad Irfan vs. State, 2018 (Pcr. LJ), 1319, Lahore High Court, Lahore.
[42] Muhammad Raheem vs. State, 2010 YLR, 2400, Peshawar High Court.
[43] Ulfat Hussain vs. State, 2010 SCMR, 247, Supreme Court of Pakistan.
[44] Ibid, Court rulings.
[45] Jamil Ahmad vs. State, 2003 MLD, 1420, Lahore High Court, Lahore.
[46] Ahsan Banghash Case, 2017.
[47] Ibid, 15.
[48] Ibid, 15.
[49] Abdul Haq vs. State, 2018 (Pcr. LJ), 12, Peshawar High Court.
[50] Abdul Majeed vs. State, 2002 (Pcr. LJ), 41, Lahore High Court Lahore.
[51] State vs. Abdul Rahim, 1984 (Pcr. LJ), 41, Karachi High Court, Sindh.

Preparation 0f Child Witness for Evidence in the Court:

It is a legal question whether a child witness is required to be prepared for deposing his/her testimony in the court or not, who will prepare the child witness, to what extent a child witness is to be prepared, whether such preparation amounts to tutoring or not. To conduct examination and cross-examination in the court is the most important stage for recording evidence of any witness, particularly, a child witness. Precedents of Superior Courts and jurists' views are that the conducting examination of witness and cross-examination in the court is a skill coupled with prevalent laws. As per jurists, there are more or less five important stages i.e. homework, understanding, a free description account of the occurrence, questions, and ending[52]. The preparation consists of two parts; first is relating to facts of the case and the second is the environment of the court[53]. If a child wishes to accompany some friend or relative with him he may be allowed to make him more comfortable[54]. While asking questions; the concerned person/prosecutor must not ask leading, defamatory, scandalous, compound questions, and inconsistent questions[55]. The objective of this preparation is to enable a child witness for proper and result oriented testimony[56].

Cross-Examination on Child Witness:

The admissibility, credibility, and reliability are always dependent upon the outcome of every piece of evidence after the process of cross-examination. That the accused has a right to a fair trial in every judicial system. In Pakistan, Article 10-A of the constitution of the Islamic Republic of Pakistan, 1973 ensures and guarantees the right of a fair trial to every person. The right of a fair trial also includes the right of cross-examination or to confront the person who alleges some allegation against the person under trial[57]. Under article 134[58] the right of cross-examination has been protected by the Pakistani legislature. Cross-examination is a blend of words and deeds which the adverse party uses for thrashing out the truth from the testimony of the witness produced by the other party and creates doubts in the evidence of the other party[59]. It is very unfortunate that in the underdeveloped countries the legal system is not that strong which could fulfill the requisite needs and the same is the case with cross-examination in a criminal case, specifically child abuse cases, where many of the times the witness has to face pure technical and legal questions due to which some unwarranted answers may occur and in aforesaid countries, the legal disputes are termed as 'battle' and proceedings are termed as

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[52] Bentovim, A. and Tranter, M. 1988. *The sexual abuse of children and the courts in The child witness: Do the courts abuse children*? Edited by Davies, G. and Drinkwater, J. British Psychological Society: Leicester. 55. (*The Child Witness, A Training Manual by UNICEF*, 2016-2017, Rachel Odede, UNICEF Representative).

[53] Boggs, S.R. and Eyberg, S. *Interview techniques and establishing rapport in Through the eyes of the child* edited by La Greca, A.J. Allyn and Bacon: 85. (The Child Witness, A Training Manual by UNICEF, 2016-2017, Rachel Odede, UNICEF Representative).

[54] Saywitz, K., Nathanson, R. *Credibility of child witness: the role of communicative competence in American Prosecutors Research Institute* (ed.) Savannah, USA. (The Child Witness, A Training Manual by UNICEF, 2016-2017, Rachel Odede, UNICEF Representative).

[55] Walsh, B. 1998. *Interviewing v interrogation in American Prosecutors Research Institute* (ed.) Finding Words. Conference Proceedings. Savannah, USA.

[56] Murray, K. *Preparing Child Witnesses for Court: A Review of Literature and Research*. (1997). Central Research Unit: Scottish Home Office.

[57] Keenan, E.O. *Making it last: Repetition in children's discourse* in Ervin-Tripp, S. and Mitchell-Kerman, C. (eds). Child Discourse. (New York: Academic press, 1977), 125-138.

[58] Qanun-e-Shahadat Order, 1984, article 134.

[59] Perry, N.W. and Wrightsman, L.S. *The Child Witness: Legal Issues and Dilemmas*, (USA: California, Sage Publications, 1991).

combating aggression[60]. The Pakistani law[61] says that evidence of a witness should be recorded in the attendance of the culprit and he has a right of cross-examination under the law[62] [63].

The Factors that why Evidence of the Child is not Admissible:

The court while taking the testimony of a child has to ascertain that the victim/child has the capacity (1) to recall, register, and describe the events reliably; (2) to differentiate the truth from falsehood; and (3) his/her duty to narrate/testify the truth before the court[64] [65]. Research shows that child's testimony may be affected due to experiencing sexual abuse which may lead to emotional, feeling of shame, and motivational factors, children often conceal sensitive details in their deposition[66]. The Pakistani Superior Courts have also discussed the important facts regarding the testimony of child witness and remarked that evidence of a child witness is not reliable due to certain reasons and the Courts observed that great care is to be taken that in the evidence of child the element of the coaching is not involved[67].

The Court also observed that children are not a trustworthy segment of witnesses due to the reasons; tender age, because common experience teaches that children often mistake dreams for reality, repeat glibly as of their knowledge what they have heard from others, and are persuaded by fear of punishment, for the hope of reward and the wish of notoriety[68]. In Farhan Hussain's case the Supreme Court observed that testimony of a child witness is a fragile matter and generally it is not safe to rely upon it unless as a rule of prudence, it is corroborated, great care to be taken that element of the coaching is not involved in the evidence[69]. The Court observed that "we feel it would be most unsafe to base the conviction upon the sole testimony of the young child.

Absence of Child/Victim Evidence in a Child Abuse Case:

The child/victim can depose the best evidence of the occurrence, if he/she is adjudicated by the court to be a competent witness and the court while discussing the absence of evidence of child/victim evidence in a case of child sexual abuse, held that prosecution did not produce victim child aged 5 years to substantiate the allegation of sodomy against accused[70]. It is further observed that no evidence was available to the effect that the victim child was not of sound mind, Trial Court did not even think fit to summon the child as a court witness, despite he was a direct affectee of the gruesome crime and was essential and a natural witness.[71]. Statement of the child could have clinched the whole issue, the Court also observed that Article 3[72] of Qanun-e-Shahadat Order, 1984 did not at all contemplate age limit for a person to be a

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[60] Walker, A.G. *Handbook on questioning children: A linguistic perspective*, (Washington, DC: American Bar Association Center on Children and the Law, 1994).
[61] Section 353 of Code of Criminal Procedure, 1898.
[62] Article 133 of Qanun-e-Shahadat Order, 1984.
[63] Hidayat Ullah and another versus the state, Yearly Law Reports, (2000), 2330.
[64] MELTON, G. B. "*Children's competency to testify. Law Hum. Behavior"*, (1981), 573-85.
[65] BROWN, A. L. *The development of memory: knowing, knowing about knowing, and knowing how to know*. Adv. Child De- uelpm. Behav. (1975), 10103-152.
[66] Leander, L., Granhag, P., & Christianson, S. A. C*hildren exposed to obscene phone calls: What they remember and tell. Child Abuse & Neglect,* 29, 871–888. https://doi.org/10.1016/ j.chiabu.2004.12.012.
[67] PLD 1995 SC 1
[68] Amir Khan and others vs. State, PLD 1985 Lahore 18.
[69] State through A. G Sindh vs. Farhan Hussain, 1995 PLD, 1, Supreme Court of Pakistan.
[70] Kazim Hussain alias Qazi vs. State, 2008 (Pcr. LJ), 971, Federal Shariat Court.
[71] Ibid.
[72] Qanun-e-Shahadat Order, 1984, article 3.

legally competent witness[73]. Trial Court, in circumstances, should have examined the victim because the Trial Court during the trial process, was the best judge to watch the demeanor and conduct of various categories of the witnesses[74].

Duties of Court While Recording Evidence of A Child Witness:

It is the trial court who has to record the evidence of a child and in this context, some important duties are placed upon the trial court to observe and execute while recording the testimony of a victim/child witness. While discussing the minor/victim's testimony the Court observed that in any case, the rule of prudence necessitates that the evidence of child witness must not be relied upon unless it is corroborated"[75], and then close and careful scrutiny required for relying upon the evidence of child witness by the Trial Court [76]. That while examining a child, as witnesses, the questions and answers put to him/minor are to be recorded and if not recorded, that is illegality on the part of the court recording evidence[77] [78]. Supreme Court in 1996 has laid down important principles for recording, admitting, and relying upon the evidence of a child witness, Court held that "to know whether or not the minor apprehends the nature of an oath, the judge can ask him the questions like; what becomes of a liar, or is it a good or bad thing to tell lies[79]? The court must subject a child witness to a preliminary examination before his evidence is received[80]. Two important questions are to be kept in mind while examining a child as a witness; first, questions must be asked in a very proper, polite, and light manner so that the child witness may answer, and second, is that the child witness must be given sufficient time to think and give an answer[81].

Conclusion:

The evidence is a pivotal tool to determine, adjudicate, and conclude the criminal trial, the witnesses always play a vital role in the said determination. In the criminal administration of justice, it is said that trials involving child abuse, more particularly child sexual abuse, are the most difficult trials because of the evidence of a child victim. To deal with a child testimony is a delicate matter because of certain important reasons i.e. the children do not understand the importance of an oath, maybe under the trauma of the incident, tutored by the others, they often mistake dreams for reality, repeat glibly as of their wisdom what they heard from others and are persuaded by fear of punishment, by the hope of incentive and the wish of notoriety. The Superior Courts of the country have directed the trial courts to minutely examine the evidence of the child before it is admitted and relied upon for conviction. The trial courts are required to hold preliminary inquiry or examination of the child witness in a very polite and reasonable manner. The evidence of the child witness can be relied upon if it would have been corroborated through other cogent evidence i.e. medical report, forensic report, opinion of the doctor, and other relevant evidence and the evidence of the child witness cannot be thrown away due to tender age of the child witness. The absence of child evidence is always fatal for the case of the prosecution because in child abuse cases the victim child is always a star witness of the occurrence.

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[73] Ibid.
[74] Ibid.
[75] Sultan and others vs. State, 1965 PLD, (West Pakistan) 615, Karachi High Court.
[76] Shahzad Masih vs. State, 2016 YLR, 1922, Karachi High Court.
[77] Sabz Ali Khan vs. State, 2015 (Pcr. LJ) Notes, 369, Peshawar High Court.
[78] State versus Sabz Ali Khan, FIR No. 22/2012 under section 302. 34 of PPC at police station Chingali, District Buner.
[79] 1996 Supreme Court Monthly Review, 338.
[80] Ibid.
[81] Arbour, L. Assault and Sexual Offences, The Reform of the Criminal Law Conference, (London: July, 1987).