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Witnesses.

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Q1. What do you understand by expression Competent Witness?

The test of competancy of witnesses is laid down in S 118 of Indian evidence Act, 1872.

According to S 118, Everybody person is a competent witness provided :-

① He understands the question put before him.
② He is able to give a rational answer to such a question

A person could be prevented from fulfilling the above points because of certain reasons :-

① Tender years
② Extreme Old age
③ Disease of mind or body
④ Any other cause of same kind. (Ejusdem Generis).

However, reliability of a witness is different from his competency to give evidence. Competancy is the realm of law and reliability is the realm of appreciation of evidence by the judge.

Types of witnesses and their competency :-

① Child Witness. :- Child witnesses are competent witnesses provided they fulfil the requirements of S 118 and are not prevented by their tender years from understanding

V Sec. 134 No particular number of witnesses are required to prove a fact

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*Panchi vs. State of UP 1948 / Child witness

use and answering the question put before them. However, court has to be very careful while recording the testimony of child witnesses because children have a very fertile imagination and they can easily cook a story. Also, because of their tender years they are prone to force and fraud by others.

S118 does not prescribe any age of competency. So the court has to be cautious while gauging the understanding of the child. (Voir Dire Test).

*Ram Bilas Singh vs. State of Bihar:

Yhewar Ram v. State of Rajasthan (2001 Raj HC)
A child does not know the meaning & significance of an oath so non-administration of an oath to a child witness will not render his evidence inadmissible.

Hence, if the child has sufficient understanding and his testimony is corroborated then his evidence can be relied upon.

② Interested Witness / Relatives :-

Interested witnesses are those witnesses which are interested in the outcome of the case. They can also be relatives of the parties. The presumption that interested witnesses will lie is a very weak presumption and can be easily rebutted if

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the witness withstands the scrutiny of cross-examination.
Sometimes, interested witnesses are the natural witnesses. If a murder is committed in the middle of the night then the inmates of house (blood relatives) will be the witness. We do not expect outsiders to be present there to give evidence.

Harbans Kaur v. State of Haryana (2005 SC)
There is no proposition in law that relatives will always tell lies.

③ Chance Witnesses :-
Chance witnesses are those witnesses whose presence is generally not expected at the spot but they happen to be on the spot on the day of commission of offence or a wrong.
Eg - Pizza delivery boy, man coming unusually late from his office.
Their testimony could be relied upon if they are able to explain their presence on the spot.

④ Dumb Witnesses -
Dumb Witnesses are competent witnesses and that is dealt with in S 119 of Indian Evidence Act, 1872. Court has to preferably record their evidence in written format or audio-visual form.

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To conclude, S118 does not prescribe any restrictions in terms of age, societal status, reputation for a person to be a competent witness. A drug addict, a prostitute, a lunatic in his lucid intervals even an accused (under Section 315 CrPC) can be a competent witness if they understand the question and can give a rational answer.

Q2 What do you understand by Priviledged communication?

Ans. Certain communications are protected by law and privilege is given to a witness not to divulge any information in evidence to the extent provided by law under S121 to S129 of Indian Evidence Act.

There can be two types of priviledged communications :-

① Where a person cannot be compelled to give evidence.
Here the bar is on the court to not compel a witness. If a witness so wishes he can give evidence.

② Where a person is cannot be permitted to give evidence.
Here, the evidence is totally prohibited by law.

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Following communications are priviledged :-

① Marital communication :-
It is the duty of the court to save marriage. If the court compels a spouse to reveal the marital communication then it will lead to friction in marriage. Hence, to save the institution of marriage S122 was crafted.
S120 provides that husband or wife can be competent witness.
S122 provides that no person can be compelled or permitted to disclose any communication made during marriage unless —
① with the consent of other spouse or his representative in interest.
② Suit between spouses or with respect to crime committed against the other spouse.

② Client - Attorney Priviledge -
It is dealt under S126 to S129 of Indian Evidence Act. No attorney, advocate, legal advisor or their juniors or clerks should be permitted to disclose any communication made by the client in such capacity.
However, any communication made in :-
① furtherance of illegal purpose
② with respect to crime or fraud committed

See. 123 / evidence as to affairs of State

official Communications / 124

125 / Info. as to Commission of offences

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127 → 126 apply to interpreters also.

after the commencement of such employment can be disclosed by such attorney, advocate or vakil.

③ Official communication :-
Public officers cannot be compelled to give disclose communication made in official capacity. (Sec. 124).
Similarly, S125 provides that Magistrates, police officers or revenue officer cannot be compelled to disclose where they got information about commission of any offence.

It is the duty of the court to protect certain relationships and communications made there under and this duty is reflected in public policy and in provisions discussed hereinbefore.

Q3. Who is an accomplice? What is the nature, scope and value of his evidence in a criminal trial?

Accomplice is a person who participates in the commission of offence. S113 provides that an accomplice is a competent witness and conviction can be based upon the uncorroborated evidence of an accomplice. However, its understand

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the veracity, scope and value of the evidence of an accomplice or a co-accused following provisions and pronouncements have to be considered -

Theory of double test

Section 30 provides that when more than one person are being tried jointly and for the same offence, and a confession is made by one person, then it could be used against the other person.

Section 133 and 114(b) of IEA) explain and relate both

"May" used in S30 gives discretion to the court to use it against the co-accused or not. This indicates that the evidentiary value is only corroborative and this is not a substantive piece of evidence. This is also confirmed by State of NCT of Delhi v. Navjot Sandhu (2005 SC). This appears to be directly in conflict with S133 which clearly states that uncorroborated testimony of an accomplice can form the basis of conviction.

This position is clarified by illustration (b) of S114. S133 comes into picture only if the accused has been absolutely trustworthy and proves to be reliable.

1. Kashmira Singh v. State of MP (1952 SC).
In order to take the testimony of co-accus

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Sarwan Singh v(1 Stat of Punjab 195

duto consideration following conditions must be fulfilled :—

① Joint trial
② Same offence.
③ Confession must affect confessioner & others.

We conclude S30 is based on principle of necessity and also upholds natural justice. S133 provides that an accomplice is a competent witness however, we cannot ignore the fact that he cannot be relied easily but if reliability is established then this evidence could be taken even without corroboration (illustration (b) of S114). These above provisions also forms the basis of law of approver given under S306 of CrPC.

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Relevancy of facts

Q. What do you understand by dying declaration? What is its evidentiary value? If a person making dying declaration happens to live, can the dying declaration be admitted in evidence? If so, what will be the value of such statement in law?

Generally, Hearsay evidence is not admissible but Dying declaration is one of the exceptions to the rule of hearsay.

The term 'Dying declaration' is not used in Indian Evidence Act, 1872 but S32(1) provides that Dying declaration is a statement to :-

1. Cause of death.
2. Circumstances of transaction which resulted in his death.

Unlike English law, in Indian law, even if there is no expectation of death it is still relevant as dying declaration. [Pakala Narayan Swamy v. Emperor (1939 PC)].

Probative Value :-

On one hand dying declaration is hearsay evidence and on the other hand it is a substantive piece of Evidence. This combination is very rare. And this is because of the basic presumption of human conduct that a man will not meet his maker with lie on his lips. This presumption elevates dying declaration to the level of substantive evidence. [Lilka Ram v. State of Rajasthan (2001 SC)].

* Nemo moriturus praesumitur mentire.

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* whatever may be the nature of the proceedings in which the cause of that person's death comes into question

If the declarant survives :-
It was clarified by the SC ~~that if~~ the in Ranjit Singh v. State of MP (2011 SC) that if the declarant survives after giving Dying declaration then the statement can be used for corroborative purposes. It no longer remains a Dying Declaration and is no longer a substantive evidence.
However it cannot be treated as S161 CrPC statement because S161 statement can be used only for contradiction but this statement can be also used for corroboration under section 157 Indian Evidence Act.

→ In the light of above pronouncements & provisions, Dying declaration is a substantive evidence and is based on the principle of necessity as the person cannot be himself present in court to give his evidence. But the court has to always be on its guard to and separate the chaff from grain.

Q2. What is the relevancy of opinion of third persons?

3½

As a general rule the oral testimony of the witness is restricted to fact as seen or heard or perceived by the witness through his senses. It is not the job of the witness to give his evidence. Only a judge can give his ~~evidence~~ opinion which is based on appreciation of evidence in the form

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of judgment. Accepting opinion of witnesses would amount to delegation of judicial function as pointed out by the SC in Mubarak Ali Ahmad v. State of Bombay (1958 SC)

Section 45 - 51 of Indian Evidence Act is an exception to the general rule. Opinion of third person can be relevant under following provisions:-

* Sec 46 | Facts bearing upon opinion of experts

(1) S45 - Opinions of Experts :-
Experts are specially skilled (and not specially "educated") people. Courts are not supposed to be masters of all science and arts and thus by application of principle of necessity the opinions of experts are allowed. S45 limits the scope of "expert" to the fields of :-
① foreign law
② science
③ art
④ handwriting
⑤ finger impressions.

(2) Opinion of Examiner of Electronic Evidence S45A :-
Opinion about information transmitted or stored in any computer resource or any other electronic form is relevant.

(3) S47 : Opinion as to handwriting of person other than a handwriting expert.
Opinion of a person acquainted with the handwriting of the person is relevant.
Also, in case of electronic signature, the opinion of certifying authority which issued is relevant under S47A.

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Sec. 47A → Opinion as to electronic signature when relevant

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④ Person having special knowledge or likely to know (S48, 49).

S48 provides that opinion of people who are likely to know about the existence of a general custom or right are relevant. Similarly S49 makes relevant the opinion of people who have special knowledge about any usage, letter observed by a family or group or words used in particular sense in particular area etc.

Mentioning all relevant provisions in brief

⑤ Opinion on Relationship (S50):-

Opinion on relationship of person having special means of knowledge by virtue of being in the family or otherwise is relevant.

→ An opinion evidence is not a gospel truth and cannot be taken as conclusive or substantive evidence. Afterall, it is an opinion and not a fact. An opinion can never be universal and if it is universal it graduates to the level of fact. However, it is an opinion of a specially skilled person or a person having special knowledge. Court or the opposite party can raise question about the grounds of such an opinion under S51 of Indian Evidence Act and for this purpose he can be corroborated and contradicted under Section 46 of the Act. Thus, Indian Evidence Act, 1872 very successfully lays down the safeguards for using such evidence.

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Q3. How far is "character" relevant and admissible in evidence in civil suits and criminal proceedings?

Character is sum total of all the qualities of a person. A man's character is what he is in fact and is and not what other people think he is (reputation).

Indian Evidence Act, 1872 talks about both, character:
① Character of witnesses (S155)
② character of parties (S52-55).

① If it is proved that a witness is of bad character, then his evidence becomes unreliable. S155 talks about impeaching the credibility of witnesses.

② Character of Parties when Relevant (S52-55).

Relevancy of character

In civil cases

S52 - Character cannot prove conduct imputed.

S55 - Character affects the amount of damages a person ought to receive

In criminal cases.

S53 - In criminal cases, previous good character is relevant.

S54 - Previous bad character is irrelevant except
① in case of previous conviction. (Explanation 2 of S54)
② in reply of evidence given to show good character.

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- **Sexual Offences** – In case of sexual offences previous character or sexual experience of victim is not relevant in order to determine the question of consent (Section 53A).

To conclude, character is a weak evidence and as a general rule it is not admitted except provided above because the business of the court is to try the case and not the man.

general reputation and general disposition. evidence may be given.

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N Nishtha Singh

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Garvit Dave

★★★★★ 25/08/2021

Dear ma'am Greetings of the day! On a personal note, Edzorb law helped me a lot, rather it helped me immensely in my preparation. As we all know that standard books for the preparation are very bulky & language is also hard but the way Edzorb team has put effort to explain the concept through pictorial example which are related to our day to day life, thus making it very simple and easy to understand various provision. With regards to notes, I would contend that they are very simplified and provide in depth knowledge of every subject, one can never feel tired while studying. The best thing is the highlighted portion of it. To summarise The course, is very helpful for quick revision. Thank you EDZORB for your extreme efforts. With best regards Garvit dave



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