Paper Presentation

On the Subject -

TYPES OF WITNESSES UNDER INDIAN EVIDENCE ACT AND EVIDENTIARY VALUE OF THEIR TESTIMONY

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INTRODUCTION

"The witnesses are the eyes and ears of justice"- Jeremy Bentham

The witness is also an important organ of the court and the part and parcel of the court's daily functioning. It is significant in both the civil and criminal proceeding and the indispensable part of a court.

The Hon'ble Supreme Court emphasized the importance of the witness in the criminal trail and proceeding and expressed that 'a criminal case is built on the edifice of evidence, evidence that is admissible in law. For that, witnesses are required whether it is direct evidence or the circumstantial evidence". Furthermore the report of the Justice Malimath Committee of the year 2003 on the Criminal Justice System in India expressed their views that ' a witness by giving evidence relating to the commission of an offence, he performs a sacred duty of assisting the court to discover the truth. It is because of this reason that the witness either takes an oath in the name of God or solemnly affirms to speak the truth, the whole of the truth and nothing but truth. A witness performs an important public duty of assisting the court in deciding on the guilt or otherwise of the accused in the case. He submits himself to cross-examination and cannot refuse to answer questions on the ground that the answer will incriminate him.

WHO IS A WITNESS?

Neither the Indian Evidence Act nor any other substantial and procedural laws have defined the word 'witness'. The word **witness** means and includes various meanings by its nomenclature and may be used for different purposes at a same time. The

Black's Legal dictionary defines the word 'witness' in various senses as- the person who sees a document signed, the person called to court to testify and give evidence. Furthermore the Black's Legal dictionary defines the word 'witness' in 'noun' as in the primary sense of the word, a witness is a person who has knowledge of an event. As the most direct mode of acquiring knowledge of an event is by seeing it, "witness" has acquired the sense of a person who is present at and observes a transaction. A witness is a person whose declaration under oath (or affirmation) is received as evidence for any purpose, whether such declaration be made on oral examination or by deposition or affidavit.

Furthermore the '**Concise Law Dictionary**' defines the word 'witness' as one who gives evidence in a cause; an indifferent person to each party, sworn to speak the truth, the whole truth, and nothing but the truth.

The Black's Law Dictionary edited by Bryan A. Garner defines the term 'witness' as one who sees, knows, or vouches for something, or one who gives testimony, under oath or affirmation in person or by oral or written deposition, or by affidavit. Hence, though there lacks the statutory definition of the term 'witness' but its dictionary definitions and meanings the word 'witness' covers and includes wide sphere in the legal parlance.

WHO CAN BE A WITNESS?

Section 118 of the Evidence Act states the persons who can be a witness. The court identifies all competent individuals who can testify with proper knowledge of the crime. There are restrictions placed in consideration by the court on those who are incompetent in understanding the questions put to them, these include:

- by tender years;
- extreme old age;
- disease, whether of body or mind, or any other cause of the same kind.

The condition of the witness does not bar him from testifying but his incompetency to understand the questions or answer rationally exclude him from being a witness.

WITNESS UNDER INDIAN EVIDENCE ACT, 1872

Chapter IX titled "OF WITNESSES" of the Indian Evidence Act, 1872 consists of seventeen Sections spreading from Sections 118 to 134 deals with

i. Competency;

ii. Compellability;

iii. Privileges; and

iv. Quantity of Witnesses required for judicial decisions

Sections 118 to 121 and Section 133 of this Act provide for competency of witnesses whereas Section 121 (Judges and Magistrates) and Section 132 (Witness not excused from answering on the ground that answer will criminate) refers to the compellability of the witnesses. Privileges of the various witnesses find place in various forms in Section 122 to 131 of this Act. Section 134 of the Indian Evidence Act 1872 envisages that no particular number of witnesses is required for proof of any fact. The last Section 134 of the Chapter IX enshrines the well-recognized magazine that Evidence has to be weighed and not counted.

Distinction between Competency and Compellability

Competency of a witness may be distinguished from his compellability and from privilege. A witness is said to be competent when there is nothing in law to prevent him from being sworn and examined if he wishes to give evidence. Though the

general rule is that a witness who is competent is all compellable, yet there are cases where a witness is competent but not compellable to give evidence as for example sovereigns and ambassadors of foreign states. (Section 125 and 133)

Further a witness though compellable to give evidence may be privileged or protected from answering certain questions .Even if witness be willing to depose about certain things, the court will not allow disclosure in some cases. The Legislature has consciously made a broad distinction between compellability to be sworn or affirmed and compellability, when sworn to answer specific question. Thus a witness though compellable to give evidence may be privileged or protected under Section 122,124,125 and 128 Evidence Act from answering certain question. Similarly even if a witness be willing to depose about certain things, the court will not allow disclosure in some cases keeping in view the provisions of Section 123, 126 and 127 Evidence Act.

KINDS OF WITNESSES :

The witnesses which are generally examined before the Courts in criminal trials and whose testimony has to be appreciated by the Courts are of following categories :

(A) Witnesses under Indian Evidence Act

1. Direct (Ocular) Witness (Section 60 of Indian Evidence Act)
2. Child Witness (Section 118 of Indian Evidence Act)
3. Deaf and Dumb Witness (Section 119 of Indian Evidence Act)
4. Expert Witness (Section 45-51 of Indian Evidence Act)
    (a) Doctor (Medical Expert)
    (b) Hand Writing Expert
    (c) Chemical Examiner

(d) Ballistic Expert

(e) Any Other Expert

5. Approver as Witness (Section 133 of Indian Evidence Act)

6. Hearsay Witness

7. Hostile Witness (Section 154 of Indian Evidence Act)

8. Solitary Witness (Section 134 of Indian Evidence Act)

9. Parties to civil suit and their wives or husband etc. (Section 120 of Indian Evidence Act)

I. DIRECT/ OCULAR WITNESS

A person who, from his eyes, witnesses any act or scene of the crime, is an eye witness to that offence. An eye witness may be any person like a stranger or relative or any other person. From the perspective of evidence, an eye witness is an important evidence in solving a case. It is generally said that anything can betray but not the eyes.

The identification of an eyewitness forms the testimony for the evidence in criminal offences. The testimony of eye witness has a long history in the legal arena including the courts' procedures and the investigation of the criminal offences playing a valuable role in acquittals and convictions. For a person to qualify as an eye witness, following five factors which are famously called the Telfair instructions must be satisfied:

1. The quality of an eyewitness in view of the perpetrator of the crime
2. The eyewitness' confidence with respect to the accuracy of the identification
3. The eyewitness' accuracy with respect to the description of the perpetrator
4. The amount of attention the eyewitness paid during the occurrence of the crime
5. The time between the occurrence of crime and the identification procedure

Importance of eyewitness and the relevant provisions in the courts of law

Eyewitnesses are important during the trial procedures and to deliver fair and reasonable justice to the aggrieved party. The role of an eyewitness becomes important in the initial trial stage during which the case has been built concretely at the court.

Section 164 of Criminal Procedure Code, 1973 records all the statements of witnesses given for evidence which shall hold high evidentiary value.

Section 135 of the Indian Evidence Act 1872 states that the order of witness produced and examined with respect to the civil and criminal procedure respectively are to be regulated by the law and practice.

Section 138 of the Indian Evidence Act 1872 states "Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined. The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined to the facts to which the witness testified on his examination –in-Chief".

Direction of re-examination – The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in-re-examination, the adverse party may further cross-examine upon that matter.

Chapter IX (Section 118-134) of the Indian Evidence Act 1872, provides with a detailed explanation of the competency, compellability, privileges and the quantity of the witness as required for judicial decisions.

Eyewitness testimony is of paramount importance under the Indian Legal System. The value of eyewitness testimony is preferred by the court in most of the criminal

cases. Earlier, there were no specific legal provisions under the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973 for the admissibility of science and technology or forensic science reports.

When the drawbacks of eyewitness testimony were studied, and the importance of forensic and medical science was realised, then forensic science was given a better evidentiary value. After the Criminal Procedure Code (Amendment) Act of 2005, two new sections were brought by which the investigating officer is empowered to collect a DNA sample from the accused and the victim with the help and assistance of medical practitioner. But these sections are mainly related to a medical examination in cases of sexual offences.

Even today, forensic or DNA reports are not given much evidentiary value. Most of the times the judges deny its admissibility on the ground such as legal or constitutional prohibitions and the testimonies of witnesses are preferred. But if the forensic reports will be given better evidentiary value along with the eyewitness testimony, then the chances of wrongful convictions will be reduced.

Supreme court's decision on evidentiary value of eyewitness

In the landmark case of Vikas Kumar Roorkewalv State of Uttarakhand&Ors [2011]2 SCC 178, the Supreme Court has held that the eyewitnesses play an integral role in the Criminal Justice System and held the various legislative measures for protecting the witness right contributing to the conduct of a fair trial.

The Supreme Court states that close observation should be made to check:

1. if the eyewitness was under any kind of undue influence while giving the evidence at the trial court,
2. if there was any possibility of threats to the eyewitnesses

3. if there was any non-deferral which would enable subsequent witnesses giving evidence on similar facts which would tailor the testimony to circumvent the defence strategy

4. if there is any possibility of delay in the trial and the non-availability of the witnesses in cases where deferral is allowed.

However, the guidelines set by the Supreme Court shall be mandatorily followed by the trial courts and other High Courts to avoid any kind of disturbances while examining the eyewitnesses. There shall be no kind of denial or dispute while doing it. This should be strictly followed so that eyewitnesses are not unduly harassed or intimidated by the prosecution, while they shall be given full protection from any kind of harassment. It should be seen that the witnesses, being the paramount importance of the court, are not influenced in any manner so that the witnesses can give their evidence without any fear ensuring justice which would ultimately triumph in the end and the real accused are set for the right punishment.

II. CHILD WITNESS

A child even of 6 or 7 years of age may be allowed to testify without any oath, if the Court is satisfied that they have capacity to give rational testimony. A child of tender years is a competent witness when such child is intellectually sufficiently developed to understand what he or she had seen afterwards to inform the Court about it. Before the evidence of a child may be recorded the Court must, by preliminary examination test his capacity to understand and to give rational answers and must form an opinion as to the competency of the witness.

A child witness is competent to testify **u/s 118**, Evidence Act. Tutoring cannot be a ground to reject his evidence. A child of tender age can be allowed to testify if it has

intellectual capacity to understand questions and give rational answers thereto. Trial Judge may resort to any examination of a child witness to test his capacity and intelligence as well as his understanding of the obligation of an oath. If on a careful scrutiny, the testimony of a child witness is found truthful, there can be no obstacle in the way of accepting the same and recording conviction of the accused on the basis of his testimony.

1. Suryanaraya Vs State of Karnataka, AIR 2004 SC 482.

The evidence of a child witness is not required to be rejected per se; but the Court as a rule of prudence considers such evidence with closer scrutiny and only on being convinced about the quality and reliability thereof can record conviction on its basis. The court is required to scrutinise the evidence of a child witness with care and caution. If the witness is shown to have stood the test of cross examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancy in the statement of a child witness cannot be made the basis of discarding such testimony. Discrepancies in that the deposition, if not in material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purpose of holding the accused guilty or not.

2. Panchhi Vs State of U.P., AIR 1998 SC 2726.

Evidence of child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus an easy pray to tutoring.

3. A. I. R. (33) 1946 P. C. 3, Rel. on.

AIR 1952 SUPREME COURT 54 "Rameshwar v. State of Rajasthan"

A Judge who recorded the statement of a girl of seven or eight years certified that she did not understand the sanctity of an oath and accordingly he did not administer one to her. He, however, did not certify that the child understood the duty of speaking the truth. The question was whether this omission rendered her evidence inadmissible.

Held,

1. An omission to administer, an oath, even to an adult, goes only to the credibility of the witness and not his competency. The question of competency is dealt with in S. 118, Evidence Act. The Oaths Act does not deal with competency and under S. 13 of that Act omission to take oath does not affect the admissibility of the evidence. It therefore follows that the irregularity in question cannot affect the admissibility of the evidence of the girl: **A. I. R. (33) 1946 P. C. 3,** Rel. on.

2. It is, however, desirable that Judges and Magistrates should always record their opinion that the child understands the duty of speaking the truth and state why they think that, otherwise the credibility of the witness may be seriously affected, so much so, that in some cases it may be necessary to reject the evidence altogether.

3. Whether the Magistrate or judge really was of that opinion can, however, be gathered from the circumstances when there is no formal certificate. One can presume that the Judge had that in mind from the fact that he examined the child after referring to a fact which arises out of the proviso.

Our own Hon'ble HC has held in **Ajay Parganiya v. State of Chhattisgarh**(CRA No 379 of 2008), has relied upon several Judgements of Hon'ble SC and whereby propounded that, "it is well settled that the evidence of a child witness has to be evaluated with great care and caution and greater circumspection 5 Cr.A. No. 379 of 2008 and its credibility has to be examined in light of the facts and circumstances of each case and if it is found credible in all respects it can be relied on for conviction in a criminal case". It is also been observed in para 14 that " A portion of evidence of a witness is not to be read in isolation. The evidence is to be read as a whole. Any casual admission, which later on is cleared by the witness without any question by the Court has not to be given much importance. If the entire evidence of a witness appears to be trustworthy and focus of the evidence is on a particular fact in issue, that has to be looked into by the Court while appreciating the evidence of the witness".

III. DEAF AND DUMB WITNESS (SECTION 119) :

Section 119, Evidence Act provides that a deaf and dumb person is also a competent witness provided he can make his evidence intelligible, by writing or by signs and such evidence can be deemed to be oral evidence under Section 3 of the Evidence Act. When a deaf and dumb person is examined in the court, the court has to exercise due caution and take care to ascertain before he is examined that he possesses the requisite amount of intelligence and that he understands the nature of an oath. On being satisfied on this, the witness may be administered oath by appropriate means and that also be with the assistance of an interpreter. In case the witness is not able to read and write, his statement can be recorded in sign language with the aid of interpreter, if found necessary. In case the interpreter is provided he should be a person of the same surrounding but should not have any interest in the case and he

should be administered oath. However, in case a person can read and write it is most desirable to adopt that method being more satisfactory than any sigh language. The law requires that there must be a record of signs and not the interpretation of signs. See : **State of Rajasthan Vs Darshan Singh alias Darshan Lal, AIR 2012 SC 1973.**

Precautions to be taken by court before examining deaf &dumb witness:

When a deaf and dumb person is examined in court as witness, the court has to exercise due caution and take care to ascertain before he is examined that he possesses the requisite amount of intelligence and that he understands the nature of an oath. On being satisfied on this, the witness may be administered oath by appropriate means and that also with the assistance of an interpreter. There must be a record of signs and not the interpretation of signs. See : **Ram Deo Chamar Vs. State of UP, 2016 (94) ACC 384 (All)(paras 20 & 21)**

IV. EXPERT WITNESSS

Who is an expert?

A person instructed by experience is called 'expert'. Witnesses ordinarily are to testify the facts in their direct knowledge leaving it to the judge to form opinions, inferences or conclusions on the basis of such facts. Witnesses are ordinarily not to say what they thought or believed to be and therefore their opinions are irrelevant in a judicial enquiry, but in certain special matters requiring special skill in the subject concerned, opinions of persons having special study, training or experience are accepted as evidence. Expert evidence in a criminal trial would be just a fraction of the totality of the evidence on the appreciation of which the judge takes decision. The Court takes into account all the other evidence at hand along with the opinion of

the scientific expert, which is just one piece of evidence required to be taken into consideration and appreciated for its evidentiary value. An expert witness is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to form his independent judgment by the application of such criteria to the facts proved by the evidence of the case.

Sec.45 of Indian Evidence Act, 1892, states as – "When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identify of handwriting or finger impressions, the opinions upon that point of persons especially skilled in such foreign law, science or art, or in questions as to identify of handwriting or finger impressions, are relevant facts." Such persons are called experts. The careful reading of the section gives us a vague idea about who is an expert, by the words – the persons especially skilled. There is no clear mention about qualifications, experience or any particular attainment. But especially skilled means there must be something to show that the expert is skilled and has an adequate knowledge of the subject.

Courts should give due regard to the expert opinion u/s 45 of the Evidence Act but not bound by it :

The courts normally would look at expert evidence with a greater sense of acceptability but the courts are not absolutely guided by the report of the experts, especially if such rports are perfunctory and unsustainable. The purpose of an expert opinion is primarily to assist the court in arriving at a final conclusion but such report is not a conclusive one. The court is expectedto analyse the report, read it in conjunction with the other evidence on record and form its final opinion as to

whether such report is worthy of reliance or not. Serious doubts aarise about the cause of death stated in the post- mortem reports in this case. See : **Tomaso Bruno & Another Vs. State of Uttar Pradesh, (2015) 7 SCC 178 (Three-Judge Bench) (para 40).**

(I) DOCTOR AS A WITNESS

As per Sec. 45, Evidence Act a doctor is a medical expert. It is well settled that medical evidence is only an evidence of opinion and it is not conclusive and when oral evidence is found to be inconsistent with medical opinion, the question of relying upon one or the other would depend upon the facts and circumstances of each case.

If the opinion given by one Doctor is bereft of logic or objectivity or is not consistent with probability, the court has no liability to go by that opinion merely because it is said by a doctor. The opinion given by a medical witness need not be the last word on the subject and such an opinion shall be tested by the Court.

Conflict between ocular and medical evidence—How to reconcile? :

If the direct testimony of eye witnesses is reliable, the same cannot be rejected on hypothetical medical evidence and the ocular evidence, if reliable, should be preferred over medical evidence. Opinion given by a medical witness (doctor) need not be the last word on the subject. It is of only advisory character. Such an opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. If one doctor forms one opinion and another doctor forms a different opinion on the same fact, it is open to the Judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with the probability, the court has no liability to go by the opinion

merely because it is said by the doctor. Of course, due weight must be given to the opinions given by persons who are experts in the particular subject. See : **Sadhu Saran Singh Vs. State of UP, (2016) 4 SCC 357**

When medical opinion suggesting alternative possibilities than ocular testimony--How to reconcile? :

The ocular evidence being cogent, credible and trustworthy, minor variance, if any, with the medical evidence are not of any consequence. It would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eye-witnesses' account which had to be tested independently and not treated as the 'variable' keeping the medical evidence as the 'constant'. It is trite that where the eye witnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Eye- witnesses account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy: consistency with the undisputed facts the 'credit' of the witnesses: their performance in the witness-box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation. See : **Krishnan Vs. State, AIR 2003 SC 2978**

(II) HANDWRITING EXPERT :

A handwriting expert is a competent witness whose opinion evidence is recognized as relevant under the provisions of Sec. 45 & 73 of the Evidence Act and has not been equated to the class of evidence of an accomplice. It would, therefore, not be fair to approach the opinion evidence with

suspicion but the correct approach would be to weigh the reasons on which it is based. The quality of his opinion would depend on the soundness of the reasons on which it is founded. But the court cannot afford to overlook the fact that the science of identification of handwriting is an imperfect and frail one as compared to the science of identification of finger-prints; courts have, therefore, been wary in placing implicit reliance on such opinion evidence and have looked for corroboration but that is not to say that it is a rule of prudence of general application regardless of the circumstances of the case and the quality of expert evidence. No hard and fast rule can be laid down in this behalf but the court has to decide in each case on its own merits what weight it should attach to the opinion of the expert. See : **State of Maharashtra vs. Sukhdev Singh @ Sukha, AIR 1992 SC 2100**

(III) CHEMICAL EXAMINER

Chemical experts provide testimony concerning alcohol, arsenic, benzene, cocaine, creosote, diesel fumes, formaldehyde, hexavalent chromium, welding fumes, methadone, marijuana, oil spills, PCBs, dioxins, perchloroethylene, ozone, trichloroethylene, pesticides, tobacco smoke, sulfur dioxide, freon, chlorine, ammonia, bleach, catalysts, chemical spills, chemical vapor deposition, cleaning products, chemical compounds, deformulation, heterogeneous catalysis, homogeneous catalysis, household chemicals, hydrocarbons, industrial chemicals, inhalant abuse, inorganic chemicals, organic chemicals, personal care products, pool chemicals, silicate materials, solvents, synthetic chemicals, and hazardous chemicals. They may provide reports on chemical processing, chemical recovery, and chemical risk assessments.

(IV) ACCOUNTING AND SECURITIES EXPERT WITNESSES-:

These expert witnesses provide expert opinion on more complex matters dealing on white collar crime and fraud. Aside crimes, they also advise courts on when a

particular company falls short of their duties and obligations to their customers. They also come in when banks engage in crimes, frauds and misappropriation and mismanagement of customers' money and when they fail in their banker/customer relationships.

(V) <u>FORENSIC EXPERT WITNESS</u>:-

Forensic science is the application of science to criminal and civil laws, especially on criminal aspects during investigations as governed by legal standards of admissible evidence and criminal procedure. In as much as there seems to be an overlap in the functions of medical and forensic experts, forensic experts range from biologists, chemists, psychologists etc. Forensic experts are usually employed by most law enforcement agencies to provide expert opinions and also testify in court when the need arises.

(VI) <u>VOCATIONAL EXPERT WITNESS</u>:-

These experts are called by the social security administration when someone petition a denial of social security disability benefits. On normal circumstance, the social securities administration always deny benefits to the disabled individuals on the ground that they cannot work. If the disabled individual then petitions that he can work despite his or her disability, the vocational experts are invited to give an expert opinion as to whether such a disabled individual can work. It should be noted that unlike other experts that need to have special knowledge and training, vocational expert witnesses do not need to have any special qualification or training to hold the job. This always makes lawyers to treat them with suspicion.

(VII) <u>Mental Health Expert Witness</u>:-

These are very similar to medical experts. However mental health experts are invited to give an expert opinion as to the mental fitness or otherwise of a suspect in a trial.

(VIII) EXPERT ON FOREIGN LAW:

The opinion of an expert in foreign is defined in section 38 read with 45 of the act. It states that the law contained in a book of specific country is relevant. For this, an expert needs to be well versed with the law books of a particular country in order to provide his opinion in foreign law.

(IX) BALLISTIC EXPERT:

A forensic ballistics expert matches bullets, fragments, and other evidence with the weapons of alleged suspects or others involved in a case. Experts may be asked to explain their findings to a jury during criminal or civil trials.A firearms expert can give opinion in the case where a gun is involved as a murder weapon.

(X) OPINION AS TO USAGES AND TENETS:

According to section 49 of the act when the court needs to form any opinion on:

a. The tenets of any group of men or a family

b. The wages of any group of men or a family,

c. The constitution and government of any religious or charitable foundation,

d. The meaning of words used in particular districts or any particular class of people,

e. The opinions of person having special knowledge are relevant.

(XI) OPINION ON RELATIONSHIP:

Section 50 of the act states that when the court needs to form any opinion on any of the relationship from one person to other the opinion which is expressed by the

conduct as to the existence of relationship by any of the family member, or any of the person who has special means of knowledge on the subject is relevant.

Admissibility of expert opinion:-

Expert opinion becomes admissible only when the expert is examined as a witness in the court. The report of an expert is not admissible unless the expert gives reasons for forming the opinion and his evidence is tested by cross-examination by the adverse party. But in order to curtail the delay and expenses involved in securing assistance of experts, the law has dispensed with examination of some scientific experts.

For example, **Sec.293 Cr.P.C.** provides a list of some Govt. Scientific Experts as following:-

a) Any Chemical Examiner / Asstt. Chemical examiner to the Govt.

b) The Chief Controller of explosives

c) The Director of Fingerprint Bureau

d) The Director of Haffkein Institute, Bombay

e) The Director, Dy. Director or Asstt. Director of Central and State Forensic Science Laboratory.

f) The Serologist to the Govt.

g) Any other Govt. Scientific Experts specified by notification of the Central Govt.

The report of any of the above Govt. Scientific Experts is admissible in evidence in any inquiry, trial or other proceeding and the court may, if it thinks fit, summon and examine any of these experts. But his personal appearance in the court for examination as witnesses may be exempted unless the court expressly directs him to appear personally. He may depute any responsible officer to attend the court who is

working with him and conversant with the facts of the case and can depose in the court satisfactorily on his behalf.

(V) ACCOMPLICE

Section 133 of the Evidence Act reads :"An accomplice shall be a competent witness against an accused person and conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice."

Section 133 of the Evidence Act, makes an accomplice a competent witness against the accused person and declares that a conviction shall not be illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Even so, the established rule of practice evolved on the basis of human experience since times immemorial, is that it is unsafe to record a conviction on the testimony of an approver unless the same is corroborated in material particulars by some untainted and credible evidence. So consistent has been the commitment of the courts to that rule of practice, that the same is now treated as a rule of law. Courts, therefore, not only approach the evidence of an approver with caution, but insist on corroboration of his version before resting a verdict of guilt against the accused, on the basis of such a deposition. The juristic basis for that requirement is the fact that the approves by his own admission a criminal, which by itself make him unworthy of an implicit reliance by the Court, unless it is satisfied about the truthfulness of his story by evidence that is independent and supportive of the version given by him. That the approver's testimony needs corroboration cannot, therefore, be doubted as a proposition of law. The question is whether any such corroboration is forthcoming from the evidence adduced by the prosecution in the present case. See : **Venkatesha Vs State of Karnataka, AIR 2013 SC 3634 (para 15)**

Who is an Approver?

As per **Section 306 CrPC**, when an accomplice turns as a witness on accepting the pardon granted by the court under Section 306 CrPC to speak to the facts relating to the offence, he is called an approver.

An accomplice is different from a co-accused: The statement of a co- accused may be admissible in certain circumstances, though not examined, but not that of an accomplice who is available to be examined. Accomplice on being pardoned u/s 306 CrPC ceases to be an accused and becomes PW : Once an accused is granted pardon u/s 306 CrPC, he ceases to be an accused and becomes a witness for prosecution. See: State (Delhi Administration) Vs. Jagjit Singh, AIR 1989 SC 989

Corroboration of testimony of accomplice is necessary (Sec. 133 r/w Sec. 114(b), Evidence Act) : The testimony of an approver may be accepted in evidence for recording conviction of an accused person provided it receives corroboration from direct or circumstantial evidence in material particulars.

VI. HEARSAY WITNESS

As per **Sec. 60, Evidence Act**, hearsay deposition of a witness is not admissible and cannot be read as evidence. Failure to examine a witness who could be called and examined is fatal to the case of prosecution. See : **Kalyan Kumar Gogoi Vs. Ashutosh Agnihotri, AIR 2011 SC 760.**

Newspaper reports would be regarded as hearsay evidence and cannot be relied upon. See : **Joseph M. Puthussery Vs. T.S. John, AIR 2011 SC 906.**

Exceptions for Hearsay Evidence

Res Gestae

The Evidence Act, under S. 6 defines res gestae as "facts which form part of the same transaction" irrespective of its occurrence.

In this scenario, when a statement is made in court, it may be further proved during the legal proceedings by another person appearing as a witness provided the aforesaid statement is a part of the same transaction.

Sukhar v. State of Uttar Pradesh– In this case, the witness arrived at the scene of the crime on hearing firing and saw the injured who conveyed the identity of the murder was admissible under S. 6 since it was a part of the same transaction which was the act of shooting.

Admission and Confession

Admissions and Confessions are provided under S. 17 – 23 and S. 24 – 30 respectively. Admissions are statements that provide inference to any fact in an issue. Confession isn't defined under the IEA but the different provisions regarding confessions are stated like cases where they are irrelevant eg.

- caused by inducement, threat, or promise;
- a police officer;
- confessions in police custody and others.

Courts at times allow admissions and confession to be evidence even if hearsay as the fact that the witness would say something that is against his or her own interest gives validity to the otherwise hearsay statement.

Dying Declaration

Section 32 of the Indian Evidence Act talks about the statement of a person who cannot be called as a witness in court. Although it's a law that a dying declaration is

to be recorded by the magistrate but this may not be possible in all cases. Hence the court allows the testimony of the police, doctor and any other person present with the deceased before he/she took its last breath. However, it has to be supported by the corroboration of facts.

VII. HOSTILE WITNESS

A hostile witness is described as one who is not desirous of telling the truth at the instance of the party calling him and a unfavourable witness is one called by a party to prove a particular fact in issue or relevant opposite test. In India the right to cross-examine the witnesses by the party calling him is governed by the provisions of the Evidence Act, 1872. S. 142 requires that leading questions cannot be put to the witness in examination in chief or in re-examination except with the permission of the Court. The Court, can however, permit leading question as to the matters which are introductory or undisputed or which have in its opinion, already been sufficiently proved. S. 154 authorises the Court in its discretion to permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. The courts are, therefore, under a legal obligation to exercise the discretion vesting in them in a judicious manner by proper application of mind and keeping in view the attending circumstances.

Informant/complainant when turning hostile :

Once registration of the FIR is proved by the police and the same is accepted on record by the Court and the prosecution establishes its case beyond reasonable doubt by other admissible, cogent and relevant evidence, it will be impermissible for the Court to ignore the evidentiary value of the FIR. It is settled law that FIR is not

substantive piece of evidence. But certainly it is a relevant circumstance of the evidence produced by the investigating agency. Merely because the informant turns hostile it cannot be said that the FIR would lose all of its relevancy and cannot be looked into for any purpose. See : **Bable Vs. State of Chhattisgarh, AIR 2012 SC 2621**

Reliance upon Hostile witness :

If the prosecution witness has turned hostile, the court may rely upon so much of his testimony which supports the case of the prosecution & is corroborated by other evidence.

A Division Bench judgment of Hon'ble Allahabad High Court delivered in Cr. Misc. Petition No. 5695/2006, **Karan Singh VS. State of U.P.**, decided on 12.4.2007 and circulated amongst the judicial officers of the State of U.P., vide C.L. No. 6561/2007 Dated: April 21, 2007 directs the judicial officers to initiate process for cancellation of bail of such accused who threaten the PWs to turn hostile. The directions issued by the Hon'ble Court reads as under :

"We now direct the District Judges and the DGP to ensure expeditious conclusion of trials and investigations, and directions for re-investigations where erroneous final reports appear to have been submitted, or where extraneous pressures have been exercised for saving politically influential accused. In some cases non-bailable warrants have been issued but no further steps taken for initiating proceedings u/s 82 and 83 CrPC where the accused public representatives are absconding or are not cooperating with the trials. Necessary orders may be issued in this regard by the court concerned. A number of cases are held up in different courts by means of criminal revisions or other proceedings or on the basis of orders passed by the High Court. We direct that the District Judges, the Registry and the Government

Advocates to prepare lists of such cases separately and take steps for expeditious disposal and vacation of stays where proceedings or investigations have been stayed. In some cases, the information is extremely inadequate, for example, in the case of Brij Bhushan Sharan Singh. The relevant column only mentions that in as many as three cases u/s 302 IPC, the cases have been decided or disposed of but it appears that the District Judge concerned has not clarified as to whether the cases have ended in acquittals or in convictions or under what circumstances the said cases were disposed of. We require the District Judges concerned to furnish better details where inadequate information has been furnished or where no information has been furnished, and to continue to submit periodical reports as directed by this Court. A perusal of the chart

shows that a large number of cases have ended in acquittals, principally on the basis that the witnesses are not coming forward to support the prosecution version and are turning hostile. If there are any reasons to suspect that the witnesses have been won over, as we have already directed in an earlier order that the Court concerned should take steps for ensuring that the witnesses are not under any pressure including by initiating proceedings for cancellation of bails, if necessary. This may be done as already emphasized in our order dated 31.8.2006 by taking of steps for cancellation of bails of accused persons, where it is apparent that witnesses are turning hostile due to political or other extraneous pressures, as has been recommended by the Apex Court in **Gurucharan VS. State, AIR 1978 SC 179, Mahboob Dawood Shaikh VS. State of Maharashtra: AIR 2004 SC 2890 and Panchanan Mishra Vs. Digambar Mishra: AIR 2005 SC 1299**. It has become necessary to re- emphasize this direction because in may case we find that the trial courts are recording acquittals on the ground that the witnesses have turned hostile without taking any

step to prevent the witnesses from turning hostile owing to extraneous reasons. The possibilities of witnesses turning hostile are much greater in cases where the accused public representative is wanted in several grave cases including those under sections 302 IPC. We must again re- emphasize as directed earlier, that the DGP should ensure that the investigating officers are directed to ensure that the witnesses turn up on the dates fixed for giving their evidences before the courts concerned."

1. Khujji Vs State of M.P. (AIR 1991 SC 1853)

The evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.

2. Gurpreet Singh Vs State of Haryana, AIR 2002 SC 32 17.

By giving permission to cross examine, nothing adverse to the credit of the witness is decided and the witness does not become unreliable only by his declaration as hostile. Merely on this ground his whole testimony can not be excluded from consideration. It is for the court of fact to consider in each case whether as a result of contradictions the witness stands discredited or can still be believed in this regard to any part of his testimony. In appropriate cases the court can rely upon that part of testimony of such witness which is found to be creditworthy.

3. Karuppanna Thevar Vs State of Tamil Nadu, AIR 1976 SC 980.

Though testimony of a hostile witness may not be rejected outright but the court has at least to be aware that prima facie, a witness who makes different statements at different times has no regard for truth. The court should therefore be slow to act on

the testimony of such a witness and normally it should look for corroboration of such evidence.

4. State of Rajasthan v. Bhawani, AIR 2003 SC 4230

The Court should be slow to act on the testimony of such a witness and, normally, it should look for corroboration to his evidence. The High Court has accepted the testimony of the hostile witnesses as gospel truth for throwing overboard the prosecution case which had been fully established by the testimony of several eye-witnesses, which was of unimpeachable character. The approach of the High Court in dealing with the case, to say the least, is wholly fallacious. (Para 9)

5. Ramesh v. State of M.P., 2009 (2) JLJ 374

The Supreme Court has propounded two principles. One is that when prosecution witness gives two kinds of statements; one is in favour of the prosecution and another in defence, then looking to the facts and circumstances of the case, normally statement given in favour of the accused has to be relied upon and second is that when prosecution witness has not been declared hostile, then the prosecution is bound by his statement and the same cannot be ignored, if it is in favour of the accused.

VIII. SOLITARY WITNESS

Whether conviction can be based on the evidence of a sole witness? It has been held by the Supreme Court in a series of cases that in a criminal trial quality of evidence and not the quantity matters. As per **Sec. 134 of the Evidence Act**, no particular number of witnesses is required to prove any fact. Plurality of witnesses in a criminal trial is not the legislative intent. If the testimony of a sole witness is found reliable on

the touchstone of credibility, accused can be convicted on the basis of such sole testimony :

Generally speaking, the testimony of a solitary witness may be classified into following three categories, namely:

(1) wholly reliable,

(2) wholly unreliable and

(3) neither wholly reliable nor wholly unreliable.

In respect of the **first category**, the court should have no difficulty in coming to conclusion either way - it may convict or may acquit on the testimony of a single witness, if it is found to be about reproach or suspicion of interestedness, incompetence or subordination. In the **second category**, the Court, equally has no difficulty in coming to conclusion. It is the **third category** of cases that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. Cautioning against insistence on plurality of witnesses for establishing a fact the apex court observed in the aforesaid case that, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situation may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act such testimony.

On a consideration of the relevant authorities and the provisions of the Evidence Act, the following propositions may be safely sated as firmly established:

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.**(Lallu Majhi Vs State of Jharkhand, (2003) 2 SCC 401.)**

IX. PARTIES TO CIVIL SUIT AND THEIR WIVES OR HUSBAND ETC.

According to Section 120 of Indian Evidence Act, in a civil proceeding, the parties to the suit are competent witnesses. It follows that the plaintiff and defendant can give evidence against each other; Onkar Chand v. Jagatamba Devi. Even, in the civil proceeding, the husband or wife of any party to the suit is a competent witness. Similarly, in a criminal proceeding against any person, the husband or wife of such person shall be a competent witness.

(B) OTHER WITNESSES

(1) Independent Witness

(2) Interested Witness :

(a) Family Member as Witness

(b) Relatives as Witness

(c) Friendly Witness

(3) Inimical Witness

(4) Injured Witnes

(5) Chance Witness

(6) Tutored Witness

(7) Police Personnel as Witness

(a) Investigating Officer

(b) Chick FIR Registering Constable

(c) Witness to Arrest & Recovery etc.

(d) Official Witness.

(8) Accused as Witness

(C) KINDS OF WITNESSES (CREDIBILITY WISE) :

As regards the reliability of witnesses, they can be categorized as under :

1. Wholly Reliable
2. Wholly Unreliable
3. Partly Reliable & Partly Unreliable. (See : Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537)

I. INDEPENDENT WITNESS

In **Dalip Singh and others vs. The State of Punjab** (AIR 1953 SC 364) it has been laid down as under :-

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

Section 100(4), CrPC has postulated that "Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do."

Thus, it is clear that Section 100(4), CrPC has mandated that seizure must be witnessed by at least 2 (two) independent witnesses. However, it has been a matter of common experience that the local populace is not interested to be made witnesses in criminal cases when they have no concern or interest in the outcome of the case. In the current days of deteriorating law and order situation, strict compliance of the

rules regulating search and seizure demands a rational approach. Very few local witnesses have the courage to depose against their powerful neighbours or habitual miscreants obviously for fear of life and honour. In almost all cases local or public witnesses come to the court to say that they signed blank papers on the asking of the law enforcing agency and they did not see the recovery of incriminating articles. As such, a rigid view on the rules of search and seizure should not be blown too far, else we may stray into wilderness.

II. INTERESTED WITNESS OR RELATED WITNESS

A witness is called interested only when he or she derives some benefit from the result of the litigation; in the decree of a civil case or seeing an accused person punished in a criminal case. A witness who is a natural one and is the only possible eye witness in the circumstances of the case can not be said to be interested.

It is now well settled that evidence of the witness can not be discarded on the ground that he is **related witness or sole witness, or both,** if otherwise the same has been found to be credible. The witness could be a relative but that does not mean to reject his statement in totality. In such a case it is paramount duty of the Court to be more careful in the matter of scrutiny of evidence of interested witness and if on such scrutiny it is found that the evidence on record of such sole interested is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness.

1. Dalip Singh v. The State of Punjab (AIR 1953 SC 364)

A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely

implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

2. **Swaran Singh Vs State of Punjab, AIR 1976 SC 2304.**

It is not the law that evidence of **interested witness** should be equated with that of tainted evidence or that of an approver so as to require corroboration as a matter of necessity. The evidence of an interested witness does not suffer from any infirmity as such, but the Courts require as a rule of prudence, not as rule of law, that the evidence of such witnesses should be scrutinized with a little care. Once that approach is made and the Court is satisfied that the evidence of interested witnesses has a ring of truth, such evidence could be relied upon even without corroboration.

3. Hari Obula Reddy Vs State of A.P., AIR 1981 SC 82.

Although in the matter of appreciation of evidence no hard and fast rule can be laid down, yet in most cases, in evaluating the evidence of an interested or even a partisan witness,

(1) it is useful as a first step to focus attention on the question, whether the presence of the witness at the scene of the crime at the material time was probable?

(2) If so, whether the substratum of the story narrated by the witness, being consistent with – (a) other evidence on the record, (b) the natural course of human

event, (c) the surrounding circumstances and (d) inherent probabilities of the case, is such which will carry conviction with a prudent person.

If the answer to these questions be in affirmative, and the evidence of the witness appears to the Court to be almost flawless and free from suspicion, it may accept it, without seeking corroboration from any other source.

III. INIMICAL WITNESSES :

Enmity of the witnesses with the accused is not a ground to reject their testimony and if on proper scrutiny, the testimony of such witnesses is found reliable, the accused can be convicted. However, the possibility of falsely involving some persons in the crime or exaggerating the role of some of the accused by such witnesses should be kept in mind and ascertained on the facts of each case. See : Dilawar Singh Vs. State of Haryana, (2015) 1 SCC 737

IV. INJURED WITNESS:

Deposition of an injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies for the reason that his presence on the scene stands established in the case and it is proved that he suffered the injuries during the said incident. See : Bhagirath Vs. State of MP, AIR 2019 SC 264.

Non-examination of injured witness when not fatal ? :

Where the injudered witness could not be examined by the prosecution despite efforts as he was kidnapped and threatened by the accused persons, it has been held by the Hon'ble Supreme Court that non examination of the injured witness under the above circumstances was not fatal to the case of prosecution and conviction of the

accused persons on the testimony of eye witnesses was proper. See : **Sadhu Saran Singh Vs. State of UP, (2016) 4 SCC 357.**

Non-examination of injured witness held fatal :

Where an injured witness had not been examined by the prosecution despite the fact that he attended the trial court regularly, the Supreme Court held that his non-examination was fatal to the prosecution since his presence at the place of occurrence was beyond doubt. See: **State of UP Vs Wasif Haider and others, (2019) 2 SCC 303**

V. CHANCE WITNESS

It is not the rule of law that chance witness cannot be believed. The reason for a chance witness being present on the spot and his testimony requires close scrutiny and if the same is otherwise found reliable, his testimony cannot be discarded merely on the ground of his being a chance witness. Evidence of chance witness requires very cautious and close scrutiny.

A person who happens to be at the place of occurrence at the time of incident by sheer coincidence is known as the chance witness.**(Bahal Singh Vs State of Haryana, AIR 1976 SC 2032.)**

1. Gulichand Vs State of Rajasthan, AIR 1974 SC276.

The testimony of a chance witness, although not necessarily false, is proverbially unsafe.

2. Thangaiya Vs State of Tamilnadu, (2005) 9 SCC 650.

Expression chance witness is borrowed from countries where every man's home is considered to be his castle and everyone must have an explanation for his presence

elsewhere or in another man's castle it is a most unsuitable expression in a country whose people are less formal and more casual. To discard the evidence of street hawkers and street vendor's on the ground that they are chance witnesses, even where murder is committed in the street is to abandon good sense and take too shallow a view of the evidence. Murders are not committed with previous notice to the witnesses soliciting their presence. If murder is committed in the dwelling house, the inmates of the house a natural witnesses. If Murder is committed in a brothel, prostitutes and their paramours are natural witnesses. If Murder is committed in street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are merely chance witnesses. **Ranapratap Vs State of Haryana, 1983 SC 680.**

VI. TUTORED WITNESS :

If there are minor inconsistencies in the statements of witnesses and FIR in regard to number of blows inflicted and failure to state who injured whom, would by itself not make the testimony of the witnesses unreliable. This, on the contrary, shows that the witnesses were not tutored and they gave no parrot like stereotyped evidence.

See : Maqsoodan Vs. State of U.P., (1983) 1 SCC 218 (Three Judge Bench)

VII. POLICE WITNESS

The testimony of police personnel should be treated in the same manner as testimony of any other witness. There is no principle of law that without corroboration by independent witnesses, the testimony of police personnel cannot be relied on. The presumption that a person acts honestly applies as much in favour of a police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good reasons. As a rule it cannot be stated that Police Officer

can or cannot be sole eye witness in criminal case. Statement of Police Officer can be relied upon and even form basis of conviction when it is reliable, trustworthy and preferably corroborated by other evidence on record.

1. Nathu Singh Vs State of Madhya Pradesh, AIR 1973 SC 2783.

Case related to seizure of 59 live cartridges - accused convicted under section 25 (1) of the Arms Act - the defence challenged the evidence of two police officers because the Panch witnesses had turned hostile - plea repealed - the mere fact that these two witnesses are police officers was not enough to discard their evidence.

2. **Karamjit Singh Vs Delhi Administration, (2003) 5 SCC 291 and Babulal Vs State of MP, 2004 (2) JLJ 425.**

The testimony of police personnel should be treated in the same manner as any other witness and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies as much in favour of a police personnel as any other persons and it is not proper judicial approach to disperse and suspect them without good grounds. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down.

VIII. ACCUSED AS WITNESS & DEFENCE WITNESSES :

An accused can examine himself u/s 315 CrPC as a defence witness. Equal treatment should be given to the evidence of PWs and the DWs. Standard and parameter for evaluation of evidence is the same whether it is a PW or DW. See : Anil Sharma Vs. State of Jharkhand, (2004) 5 SCC 679

CONCLUSION

Thus it can be concluded that in order to provide justice or to give relief to the deprived/suppressed the witnesses are indispensible and they hold a very important place in the law and the justice delivery system. The witness is the integral part/organ of law court and with the help of witness the judge reaches to the conclusive prove of a fact or to the verdict. The evidence heard by the court through witness is the most important factor in determining whether the judgment will be in favour of the prosecution side or the defense side in the criminal case and whether in the plaintiff's side or in the defendant's side in the civil suit.