

Competency of Witnesses Under Indian Evidence Act, 1872

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Abstract:

A witness is someone who knows the matter. In the rule, a witness is someone who, either knowingly or under obligation, gives oral or written testimony about what he or she knows or appears to know. A witness is a vital part of the legal process. We may argue that witness preform is a religious obligation in civil and criminal cases to deliver justice to the aggrieved party. This is one of the reasons that witnesses are given an oath before deposing a testimony. The witness, therefore, serves a civic function. This paper stresses the competence of witnesses with the aid of the Indian Evidence Act. A witness who serves a fundamental obligation, whether he or she can testify? Or is his evidence relevant to the legal process? An endeavour to take care of the anxieties of these issues in the paper.

Kye Words: Competency, witness, Child, Disease, Judicial Process, Lunatic

1. Introduction:

“Witnesses are eyes and ears of justice.”

- **Jeremy Bentham**

The witness plays a pivotal role in civil and criminal justice around the world. The witness is one of the most significant aspects of the legal procedure. In plain language, the judicial process means "Whole Complicated Phenomenon of the Court of Justice Functioning." According to **Justice Benjamin Cardozo** "Judges do make law; however, the judge legislates only between gaps. He fills the open spaces in the law. How far he may go without travelling beyond the walls of the interstices cannot be staked out for him on a chart. He must learn it for himself as he gains the sense of witness and proportion that comes with years of habitude in the performance of an art".

Likewise, the Hon'ble higher Judiciary of India interpreted the law and provisions regarding witnesses. The legal system has noted the importance of witnesses in the judicial proceedings from time to time. Hon'ble Supreme Court Of India in, *Mahender Chawla & Ors. Vs Union Of India & Ors. Writ Petition (Criminal) No. 156 Of 2016* wherein held "witnesses are important players in the judicial system, who help the judges in arriving at correct factual findings". On the other hand the hon'ble

judiciary also emphasis on the duty of the witnesses. In *State of Gujarat v. Anirudh Singh*, held "It is the salutary duty of every witness who has the knowledge of the commission of the crime, to assist the State in giving evidence."

In this article, with the aid of the Indian Evidence Act (hereinafter referred to as the "Act"), I will try to discuss the provisions and definition of a witness. The Act is based on the Common Law of England. In the British period, the presidential courts adopted the English laws of the Law of Evidence. The rules of the Law of Evidence in the Mofussil Court were not specified except by the Presidency Town. There was a strong need for the codification of the laws of evidence law. The Third Law Commission of 1861 has drawn up a plan for an Evidence Act. The idea finds little support with India. In 1870, the coding work assigned to Sir James Fits Stephen was prepared and enacted. The Evidence Act deals with the subject-matter of the rule of evidence in general. It is not an exhaustive provision of the laws of evidence. The Act is divided and consolidated. The Act is a procedural statute that does not affect substantive rights. It provides all the responses in the form of guidelines on questions such as "What matters witnesses may speak, who can testify, the rights of witnesses, the prosecution of witnesses. The Act is an adjective statute that enforces substantive law.

As noted above, the Act plays an important role in the judicial process. The term judicial proceeding is not defined in the Evidence Act. But the very first section of the Act which says it applies to all judicial proceedings in or before any Court, including court-martial, other than courts-martial convened under the Army Act, Naval Discipline Act, The Indian Navy Act or the Air Force Act.¹ Judicial proceedings include any proceedings in the course of which evidence is or may be legally taken on oath.² A judicial proceeding is any proceeding in the course of which evidence is or may be taken or in which any judgment, sentence or final order is passed or recorded evidence.³

2. Witness Under The Act :

The preamble to the Act offers “*whereas it is expedient to consolidate, define and amend the Law of Evidence.*” In a judicial proceeding, three parts play a vital role i.e. *actor* or plaintiff, *reus* or defendant and *judex* or judicial power. It examines the truth of the facts. In doing so, the role of witness determines who caused the injury or injustice. Section 3 of the Act provides the interpretation clause. The word “witness” is not specified by the Statute. However, the Act provides for the competence of the persons to testify. In basic terms, we may conclude that a witness is a person who provides testimony or evidence to the court or tribunal. As a general rule, each person is qualified to testify. However, Section 118 of the Act provides certain disqualifications of persons who are unable to testify.

2.1. Competency to Testify:

Witnesses and documents are the primary sources of evidence. As mentioned above, the legal case is focused on the facts. The capability of the person provided as a witness is assumed, i.e. the absence of a witness based on mental or moral capability is assumed. “All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease whether of body or mind or any other cause of the same kind.

Explanation – A lunatic is not incompetent to testify unless he is prevented by his lunacy from

understanding the questions put to him and giving rational answers to them.”⁴

Having considered the above, it is clear that all persons are competent to give evidence unless, as the Court considers, they are unable to understand the questions, to give rational answers on the grounds of tender years, extreme old age, mental or physical illness or any other such cause. The admissibility of evidence does not depend solely on the competence of the witnesses. A witness may have privilege under Section 118, but his or her evidence may be inadmissible whether he or she lays out his or her views or convictions in place of truth in his or her expertise or offers listening proof. With any presumption explicitly of criminal trials, all witnesses who are capable of knowing the essence of the oath and of providing fair testimony compete of civil courts if the witness is a witness or not. In the other hand, it depends on knowing the questions posed to him as a witness and providing the responses that can be understood.

While recognising the competence of witnesses, it is important to look at the compellability of witnesses. Competent witnesses can be made to testify before the court and be called before the court. In compliance with the rules of the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973, the General Witness will be obliged to testify before the court. There are, however, certain persons who, although competent, cannot be forced to do so. Those people who possess immunity and cannot be required to testify ex. foreign diplomats and sovereigns. This can be referred to as limited compellability or privilege.

2.1.1 Grounds of Incompetency:

A. Child Witness (Tender Years)

As a general rule, child witnesses are not incompetent to provide testimony. However, as mentioned above, if the child is unable to understand the question put before him or to answer the questions, it is incompetent to give testimony. No minimum age has been set to consider the competence of the child witness. A child of three to four years can definitely testify whether he or she can understand the questions and must be in a position to provide reasonable answers to those questions. As per the Oath Act, an oath must not be given to a child

under 12 years of age. The evidence recorded without the oath may not have been invalid. There is no need to prescribe the oath if the witness is a child. The kid can not grasp the moral meaning of the oath. The fact that the child witnesses are very much prone to tutoring requires thorough scrutiny of their evidence with care and caution and corroboration by the natural competent and independent witness of the occurrence is a must.⁵ In the context of the aforementioned analysis, it should be understood that there is no specific rule on the standard of intellect, experience, education or qualification that would make a child a qualified witness. If the child's testimony is likely and real, it cannot be disputed. In **Suresh Vs State of UP AIR 1981, SC 1122** wherein held even a child of 5 years is a competent witness. On the other hand in **State of Bihar Vs Hanuman Koeri (1971) Cr.L.J. 187 (Pat.)** wherein held that child of eight years who does not understand questions or is unable to give rational answers, is not a competent witness.

The child witness easily susceptible to influence by near and dear persons. Evidence of the child witness is not reliable who is under the influence of tutoring and that the child witness should be corroborated although no rule of practice prudence and desirability.⁶ While recording the evidence from a child the court conducts a test which is known as "**voir dire test**". It means the court asked some questions to witness. On the side questions and answers given by the child, the court draws the inference about the competency of the child witness. It is 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 so. 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.⁷

Having discussed the argument above, it shows that the testimony of the child witness must be taken with great care. There must be a summary of the testimony of the child witness. There is no clear and quick guideline as to the age of the child witness. As specified in the Evidence Act, the value of the child witness testimony depends on the child witness's interpretation of the questions and logical

responses to those questions. Every child witness cannot be disqualified for testimony. It depends on the facts and circumstances in each and particular case. It is therefore well settled that the testimony of a child witness should only be accepted after the greatest caution and circumspection.⁸

B. Extreme Old Age:

This is one of the other grounds of incompetence. Section 118 of the Act provides that if a witness is of extreme age and, because of his age, cannot understand the questions put before him or is unable to give rational answers to those questions, the witness is incapable of testifying. The section does not authorise a witness to state because he does not understand the issue and cannot give answers to the questions. Generally, people of severe age also much become susceptible. They've got a really bad memory. Quite sometimes the witness offers meaningless responses to them. In their conversation, they can forget their memory and remembrance. There is no law on the competence of the serious old age witness. As addressed, here again, the obligation of the court to determine the competence of the witness of the severe old age. The court will administer a desperate examination to decide whether or not the witness is qualified to testify?

C. Disease Body or Mind:

Section 118 of the Evidence Act specifies that those people who have a disease of their body or mind are unable to testify. The conditions or grounds of the incompetence of the witnesses referred to above shall extend here. It means that if a witness is incompetent nor understands the questions and responses to them, he is unable to testify. If a person is mentally insane, summoned as a witness, it is for the court to determine the competence of that witness. A witness may be incompetent because he or she is prevented by mental illness, drunkenness and the like, from understanding the nature of the oath or from understanding the question asked and giving answers which can be understood.⁹ It is not proper not to produce a testing witness who is to prove the contents of the document on the ground that he is a leper, and he could be examined on commission.¹⁰

D. Other Kind of Disease:

The witness could, at some other time, be found unfit to appear before the court. There may be situations in which a person may not be in a position to give rational answers. 118 of the act states that there is practically no excuse not to be allowed to testify because they can understand the questions posed. For example, people may assist with domestic issues or social problems or are emotionally upset.

E. Lunatic:

Section 118 of the Act Evidence Act also applies to the insane person. The segment is not bad, but the lunatic testifies. Lunacy is the flaw of mine between the boundaries of absolute idiocy. It's a person who has empathy, but that's why he's lost the use of his reason. The section also required the lunatic to testify. Around the same time, however, the law specifies that, under such conditions, the lunatic is unfit to testify. If that guy is unable to understand the questions and provide the answers to those questions because of his being unable to testify to you. It could be possible for a lunatic to have lucid intervals, which time may not be natural for his faculties to work properly to understand the questions posed to him and to provide logical answers. The explanation set out in section 118 refers to the case of a monomaniac or an individual with partial insanity. Such a person shall be an admissible witness if the court decides that he or she is a witness.

Various old authorities have been brought forward to show that a person non-compass mentis (lunatic) is not a competent witness. But the question is in what sense expression non-compass mentis is used. If by that is meant one who does not understand the function of an oath, of course, he ought not to be admitted as an eyewitness. But he may be non-compass mentis in another sense. He understands the function of an oath and is capable of giving material testimony. He has a clear apprehension of the application of oath, and what is capable of giving a trustworthy account of any transaction which took place before his eyes, and he was perfectly rational upon all subjects except with respect to that particular delusion.¹¹

3. Conclusion:

It is also concluded that the witness plays a crucial role in the criminal and civil judicial system. As long as the subject of this paper is concerned, we may assume that the Act requires everyone to appear before the court. There are, of course, some exceptions which prohibit people from testifying before the court. Such exceptions shall, however, extend to people who are tender years of age, serious old age or have a mental or physical disorder or some other kind of disorder. However, because of age and illness, the person is unable to testify or understand the questions or responses to those questions only those persons are incompetent to testify. Moreover, the testimony of a witness based on the information provided by another person is admissible if they inform and is also examined in the case. Even where the informant turns hostile, the information is admissible as showing the contact of a witness who approached a police station and lodged a report based on that information. Therefore, hearsay evidence is admissible if it explains the contact of a witness.

Reference

1. ¹ Section 1 Indian Evidence Act, 1872.
2. ² Section 2 (1) of Code of Criminal Procedure, 1973
3. ³ Queen Vs. Golam Ismail (All.1 FB P.13)
4. ⁴ Section 118 of Indian Evidence Act, 1872.
5. ⁵ Daman Bedia Vs State , 2003 (2) JCR 734 : 2004 Cr. LJ (NOC) 3 (Jhar).
6. ⁶ Chagan Dame Vs State of Gujrat 1994 Cr. LJ 566 (SC)
7. ⁷ Rameshwar Vs State AIR 1952 SC 54
8. ⁸ Narayan Kanu Datavale vs State of Maharashtra , 1997 Cr. LJ 1788 (Bom)
9. ⁹ R vs Lee 1988 Crim. LR 525 CA
10. ¹⁰ Ramkrishna panda Vs Arjun Padhano AIR 1963 Ori. 29
11. ¹¹ R vs Hill 1851 (20) LJMC 222
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