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## Judicial Classification of Witnesses

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*The aggrieved party in both civil and criminal cases, having met with unfortunate accidents and losses are always in a dire search for recovery in a short time as possible, respecting the judiciary's provided duration. The only way to recover or vindicate oneself from such a tempest is by gathering as much evidence as possible. Thus, every second of an incident is microscopically scrutinized starting from the very beginning. Aside from documenting evidence, a witness is the first go-to person to confirm the occurrence of an instance. Though any person can be a witness and testify for the incident that occurred, however, not everyone can be fully honest or even remember the minuscule details that might be crucial for judgments. Thus, the admissibility of a witness also proves to be equally important to verify the accuracy of evidence, a witness provides. Hence, this article has researched the various kinds of witnesses judicially classified under the Indian Evidence Act, 1872. Additionally, an attempt to understand the thorough examinations of a witness also has been made.*

**Keywords:** *witness, evidence, classification, examination, competent, crime.*

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### CLAIMS TRIBUNAL

*"Witnesses are the eyes and ears of justice."*

*- Jeremy Bentham*

If eyes are the windows for our soul, then so is a witness in a legal suit. It is through the perspective of a witness that we are offered with fresh approach than what sometimes can be observed on a documented piece of evidence.

### **WHO IS A WITNESS?**

A witness is a person who has had first-hand experience of a crime or an offense happening in front of them. A witness is a fact-checker in every legal matter, especially in the matters of criminal suits where it provides a strong approach for concluding the case and can give sound judgments. Since witnesses are the conformers of a fact that is presented to the Court, they are extremely crucial to the Case; but are also given the responsibility to be unbiased, authentic, and particular in their testimonies to bring justice to both the accused and the victims. Besides judging based on sound evidence provided, the Court is also thus dependent upon the testimonies of the witness to bring fairness to the judiciary.

### **WHO CAN BE A WITNESS?**

The term 'witness' has not been defined in the Indian Evidence Act 1872, but upon reading further sections, we can infer about the persons who act as a source of evidence before the Court can admit the individual as a witness. The Court, taking into consideration of a witness's confirmation, is one of their building blocks towards providing sound judgments. Thus, the Court requires individuals to be completely present and competent during the time of the testimony. Hence, Section 118<sup>1</sup> of the Indian Evidence Act, 1872, states that<sup>2</sup>:

“All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or 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.”

Hence, an individual to be eligible for being a witness shall:

- Not be of tender age

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<sup>1</sup> Indian Evidence Act, 1872, s 118

<sup>2</sup> Ratanlal & Dhirajlal, *The Law of Evidence* (21<sup>st</sup> edition, LexisNexis 2009) 683

- Not be of extreme old age
- Not contain diseases whether it of body or mind.

Thus as long as the individual can clearly understand the questions asked by the Court and be able to provide rational answers, they are eligible for testifying for the case.

## CLASSIFICATION OF WITNESSES

A witness under the Indian Evidence Act, 1872, falls under one of the following classes<sup>3</sup>:

- **Child Witness:** A child who has an understanding of the questions or has the rational answers to the questions put forward can testify as a witness in Court under Section 118 of the Indian Evidence Act, 1872.
- **Interested witness:** An interested witness means a person who wants to see the accused convicted because of his animus or otherwise. It is due to their interest and responsibility that they have volunteered to bring clarification of a case.
- **Eye Witness:** These are by far the most commonly known witness found testifying in Court. Eyewitnesses are those who from their own eyes have witnessed the occurrence of a crime. These witnesses can be either strangers or relatives to either the victim or the accused.
- **Chance Witness:** Those individuals who are normally not supposed to be usually not supposed to be in that place, but coincidentally were present at the crime site. If such a witness gives testimony in the Court. Then they will be treated as a chance witness.
- **Official Witness:** When a person from the police force gives testimony in the Court of law the term official witness came from the person testifying prosecution.
- **Related Witness:** A related witness is someone having a relationship with the prosecuted or victim party.

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<sup>3</sup> 'Witnesses and Types of Witness under Indian Evidence Act' (*Writing Law*)

<<https://www.writinglaw.com/witness-and-types-of-witness/#:~:text=As%20per%20section%20118%20of,person%20can%20be%20a%20witness>> accessed 21 May 2022

## MINORS AS A WITNESS

Individuals who are below 18 years of age are known as minors. Among one of the exceptions in Section 118 of the Indian Evidence Act, 1872, the age of a minor is taken into question for qualifying as a competent witness. Thus, if under this Section, all persons are allowed as a witness, then how old a minor should actually be to be considered an eligible witness? The Indian criminal jurisdiction for acknowledging the credibility of a child witness has not set a precise age where a child might be considered incompetent as a witness. The intellectual capacity of a child to understand questions and to give rational answers is the sole answer for the test for testimonial competency of a child.

However, before taking into account such a witness, the Court usually tests the witness in question to determine the intellectual capacity and the propensity to provide rational answers concerning the case. This test is known as the *voir dire test*<sup>4</sup>. Under this test, the Court puts certain preliminary questions before the child which has no relation to the case. This is adopted so, as to confirm the competency of a minor as an eligible witness. In a landmark case of *Suresh v State of U.P*<sup>5</sup>, the Supreme Court held that the testimony of a 5-year-old is admissible as the girl could comprehend and understand the nature of the question put forward to her<sup>6</sup>. The Court also said that as long as the child can comprehend and understand the question, their testimony shall be applicable. Thus the “tender” age for a child under the competency for witness does not matter much as long as the child in question is able to understand and provide rational statements in their testimonies.

## DEAF AND DUMB AS A WITNESS

Section 119<sup>7</sup> of the Indian Evidence Act, 1872, states that:<sup>8</sup>

*“A witness who is unable to speak may give his evidence in any manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in Open*

<sup>4</sup> Divi Jain, ‘Child Witness’ (*Legal Service India*) <<https://www.legalserviceindia.com/article/129-child-witness.html>> accessed 22 May 2022

<sup>5</sup> Brinda Nagaraj, ‘Child Witness under the Indian Evidence Act, 1872’ (*Law Circa*, 2 February 2021) <<https://lawcirca.com/child-witness-testimony-under-the-indian-evidence-act-1872/>> accessed 22 May 2022

<sup>6</sup> *Ibid*

<sup>7</sup> Indian Evidence Act, 1872, s 119

<sup>8</sup> Ratanlal & Dhirajlal (n 2) 686

*Court. Evidence so given shall be deemed to be oral evidence.”* Before such person should be allowed to provide their testimony in open Court, the Court themselves will examine the witness in question to check whether they possess the requisite amount of intelligence required and understands the nature of the Oath. This Section also includes deaf-mute individuals who have voluntarily taken a religious vow of silence.

In *Lakhan Singh v King-Emperor*<sup>9</sup>; the convicted, Lakhan Singh after assaulting his master Medni Prasad had run away due to the fear of getting caught by the villagers. The witness, in this case, was a Sadhu who was the one who eventually caught the convict. He had taken a vow of silence due to his religious beliefs and thus provided his testimony through written statements. It was held that the witness shall be deemed unable to speak within the meaning provided under Section 119 of the Indian Evidence Act. Thus, if a deaf-mute or a dumb person is perfectly capable of expressing themselves through any mode of non-verbal communication *viz.*, signs, symbols, and written expressions that can rationally be understood and decoded, are competent as a witness and hence should not be exempted during prosecution.

### **ARE THE ACCUSED A COMPETENT WITNESS?**

All individuals are competent as a witness as long as they are not prevented by the court itself, are of tender age, have extreme old age, and does not have diseases both in mind and body. Since all individuals can be a witness, does the law allows an accused to be his own witness? Yes, it does. Individuals who have been accused of an offense, whether wrongfully or not, and want to provide evidence from their side to plea for their innocence can do so under Section 118 of the Indian Evidence Act. Hence, an accused too can represent himself as a witness in his own case by entering into the witness box and providing testimony in his favor. Notably, a co-accused, who is deemed as an “accomplice” to legal parlance is competent to be a witness. As stated under Section 133<sup>10</sup> of the Indian Evidence Act, 1872<sup>11</sup>:

*“An accomplice shall be a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.”* Thus if an

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<sup>9</sup> *Lakhan Singh v King-Emperor* (1941) 20 Pat 898

<sup>10</sup> Indian Evidence Act, 1872, s 133

<sup>11</sup> *Ratanlal & Dhirajlal* (n 2) 719

accomplice is not under trial for the same case, he qualifies for being an eligible witness. However, it has to be noted, that an accused or a co-accused can be a witness if they wish to be. No accused wants to load more burden on himself than he already has. In due circumstances, if it is seen that providing testimony in their favor will be a critical route and may weaken their stance, then an accused or the co-accused can invoke the right of self-incrimination<sup>12</sup>; a provision under Article 20<sup>13</sup> of the Indian Constitution which gives the convicted legal protection to speak at his own will, considering that such individuals are not under any compulsion to do so.

### MARITAL PARTNERS AS A WITNESS

Under Section 120<sup>14</sup> of the Indian Evidence Act<sup>15</sup>:

*“In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings, against any person, the husband or wife of such person, respectively, shall be a competent witness.”*

Whereas, in Section 122 of the Indian Evidence Act, it is stated as:<sup>16</sup>

*“No person who is or has been married shall be compelled any communication made during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication unless the person who made it, or his representatives in interest, consents in suits between person, or proceedings in which one married person is prosecuted for any crime committed against the other.”*

Thus, in the light of marital relations and evidence, the Indian Evidence Act recognizes two types of spousal privilege<sup>17</sup>:

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<sup>12</sup> Dr. Ashok Dhamija, ‘Can a co-accused be a witness of another accused?’ (*Tilak Marg*, 18 October 2014) <<https://tilakmarg.com/answers/can-a-co-accused-be-a-witness-of-another-accused/>> accessed 20 May 2020

<sup>13</sup> Constitution of India, 1950, art.20

<sup>14</sup> Indian Evidence Act, 1872, s 120

<sup>15</sup> Ratanlal & Dhirajlal (n 8)

<sup>16</sup> Ratanlal & Dhirajlal (n 2) 689

<sup>17</sup> Deborah C. England, ‘Can Spouses be Forced to Testify Against One Another?’ (*Criminal Defense Lawyer*) <<https://www.criminaldefenselawyer.com/resources/criminal-defense/felony-offense/can-spouses-be-forced-testify-against-one-another>> accessed 20 May 2022

a. *Spousal testimonial privilege i.e., providing testimony for or against a spousal under criminal trial*<sup>18</sup>

Under this type of spousal privilege, the spouse is eligible to testify for or against their counterparts. Therefore, their testimony also must be scrutinized and treated no differently than other testimonies.

b. *Marital communication privilege i.e., barring testimony about confidential communication between spouses.*

Under this section a married person shall not be:

- 1) Compelled to disclose any communication made to him during marriage by any person to whom he is married; and
- 2) Permitted to disclose any such communication, except:
  - a) When the person who made it or his representative in interest consents or,
  - b) In suits between marriage
  - c) In proceedings in which one married person is prosecuted for any crime committed against the other

Thus, a marital partner cannot be compelled to testify for or against their other half. It has to be done at their discretion. However, private communications made during the marriage are considered sensitive and are directed to a spouse's emotional viewpoint which also should be taken into account while treating the information as one of the evidence.

### **STOCK WITNESSES NOT A CREDIBLE EVIDENCE?**

Among the various types of witnesses discussed, a stock witness is considered the black sheep of the family. To simply put, a stock witness is a person who is at the back and calls the police. Owing to the name of being saved for the last, these persons usually oblige the police with tailored testimonies. Such a witness is used by the police in raid cases. Since these persons add

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<sup>18</sup> Ratanlal & Dhirajlal (n 2) 689

uncertainty to what the actual evidence is actually trying to portray, such witnesses are highly disfavored in the eyes of a Judge.<sup>19</sup> Once it is proved that a certain witness examined by the prosecution is a stock witness of the police, the court would be justified in discarding his testimony. However, the larger responsibility lies for the Court itself to brush aside these witnesses, to not meddle or dishevel actual evidence.

### **CAN JUDGES OR MAGISTRATES THEMSELVES BE A WITNESS?**

Section 121<sup>20</sup> of the Indian Evidence Act, 1872 provides that a judge or magistrate is not bound to answer questions regarding his conduct, or anything that came to his knowledge in the Court- except when asked via special order by a Superior Court. However, he might be subjected to under examination regarding matters that occurred in his presence while he was acting as a Judge or Magistrate. But where a Judge is the sole judge of law and fact, he cannot give evidence before himself or import matters into his judgment not stated on oath before the Court in the presence of the accused. The accused is entitled to have nothing stated against him against the judgment which was not stated on oath in his presence, and which he had no opportunity of testing by cross-examination and rebutting. If the Judge knew any facts concerning the case, he is bound to state to the accused, so far as he could, what were the judgments that he observed and to which he himself can bear the testimony.<sup>21</sup>

### **EXAMINATION OF THE WITNESS: AN OVERVIEW**

A witness before testimony is subjected to examination, which is procured by the jurisdiction of the land. Maybe it is civil or criminal suits, the order in which witnesses are produced and examined is regulated by the law. For example, in the case of a civil proceeding, the examination of the witness must strictly adhere to the rules of the Civil Procedure Code. On the other hand, witnesses in a criminal suit are examined under the provisions regulated in the Criminal Procedure Code. The witness's testimony is preserved in the form of responses to questions put to him. Thus, witnesses are required to only limit themselves to the questions

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<sup>19</sup> 'Basic Concept of Stock Witness' (*Law Web*, 1 June 2019) <<https://www.lawweb.in/2019/06/basic-concept-of-stock-witness.html>> accessed 21 May 2022

<sup>20</sup> Indian Evidence Act, 1872, s 121

<sup>21</sup> Ratanlal & Dhirajlal (n 2) 689



regarding the relevancy of the Case presented before them, instead of orating speeches in Court.<sup>22</sup>

The proceedings usually go through a three-stage witness examination process:<sup>23</sup>

*Firstly;* when a witness appears in a Court, he is administered an oath or affirmation. His name and address are recorded. His testimony is first examined in chief and then cross-examined by the opposite party if required. Thus, the first stage of the witness examination is initiated by the party that has itself called the witness to provide evidence.

*Secondly;* the cross-examination of a witness is done by the adverse party. The object of the cross-examination is to verify whether the statements declared by the witness are true or not.

The last examination of a witness is the re-examination of testimony when he has been cross-examined by the defendant who called him. However, during re-examination, the questions asked to a witness must be restricted to the objections faced during cross-examination. A witness's and their testimony is constantly scrutinized under thorough examination and must be done so to maintain the accuracy, authenticity, and fairness for the smooth running of judicial judgments.

## CONCLUSION

A witness is the backbone of every legal matter. They are the junction of a crossroad that constructs the road further. The Indian Evidence Act of 1872 recognizes the need for authentic, accurate, and precise information from a witness and thus finds the qualitative nature of witnesses more crucial than quantitative.

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<sup>22</sup> Ratanlal & Dhirajlal (n 2) 739

<sup>23</sup> Adv. Pooja Gupta, 'Examination of Witness as per Indian Evidence Act, 1872' (*Law Study*, 20 May 2022)

<<https://lawstudy.in/examination-of-witness-as-per-the-indian-evidence-act1872/>> accessed 21 May 2022