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# **WITNESSES: ITS ROLE AND EXAMINATION IN CRIMINAL JUSTICE SYSTEM.**

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**Keywords:** witness, relevant facts, testify, evidence, document, examination of witness

## **Abstract**

*In this article we will study an in-depth of witnesses, just as a necessary party is required in a case. witnesses are also an important part of the link of the case. witness is a person who have information about the case and provide evidence on basis of such information to the court or to police for the purpose of resolve that matter and help judge provide justice to the party who actual suffered. There is no particular number of witnesses shall required in any case for the proof of any fact .(Sec 139 BSA,2023) There are certain types of witnesses and examination of witness is asking the question regarding relevant fact in the case and recording the statement of such witnesses as evidence. Firstly they are examined by chief examination then cross examination after that re examination. The re examination shall be directed to the explanation of matters referred in cross examination and if new matter is arise then it will be introduce with the permission of court in re-examination and the adverse party may further cross examination upon that matter. Section 124 to 126 and 137,138,139 of Bharatiya sakshya adhiniyam are dealing with the witnesses. Section 148 to 168 of Bharatiya sakshya adhiniyam are talking about the examination of witnesses. Section 180 of Bharatiya nagarik Suraksha sanhita is examination of witness by police.*

## **I. Introduction**

*Section 124 of BSA, 2023 define the term witness, All persons shall be competent to testify unless the court consider that they are unable to understand the questions put to them or provide rational answers to those questions by the reason of tender age, extreme old age, disease whether of body or mind or any other cause of the same kind. A person of unsoundness of mind can testify if he is capable of understanding a question and giving rational answer despite his un soundness of mind.*

Exceptions to above general rule are:

- **Privileged witness who can't be compelled to testify on certain matters (section 127 to 136) also known as privileged communications. The president and governor during their term in office can't be compelled to testify.**

**Case law: R v Hills (1920)**

A person beliefs in communicating with spirits does not automatically disqualify them from testing. For eg. Donley who thought he spoke with 20000 souls was deemed capable of answering questions despite he is dilusion. The judge observed that if such beliefs were grounds for incompetence figures like Martin Luther King and Socrates would also be considered incompetent. The factor is that whether witness can understand and give answer not their personal beliefs.

## **II. Types of witnesses**

1. **Prosecution witness:** The witness who support the victim case (prosecution case).
2. **Defence witness:** the witness who support the accused case by providing evidence to challenge the prosecutions claim.
3. **Eye witness:** the witness who directly observed the things at the crime scene and provides first hand information(sec 55 BSA i.e oral evidence must be direct)
4. **Hostile witness:** Those who appears unwilling to tell the truth or shows bias. Hostel witness also known as unfavourable witness. Sec 157 BSA.
5. **Child witness:** A child who can understand and answer questions rationally can testify. **Digamber vaishnav v state of Chattisgarh 2019:** child witness evidence must be corroborated due to the potential for torturing or influence. A child witness if found competent to depose a reliable one such evidence could be the basis of conviction.
6. **Dumb witness:** section 125 of BSA deal with the dumb witness. A witness who can't speak may provide evidence through other methods such as by writing or signs and such writing must be written and the sign made in open court and evidence so given shall be deemed to oral evidence.

**Proviso:** the court shall take the assistance of an interpreter or special educator in recording the statement which shall be videographed.

**Case : Queen Empress v Abdullah**

In this case court held that gestures can also be considered as oral evidence.

7. **Accomplice witness:** any person who was connected with the crime in any way like as: abet or instigate the commission of offence, escape to criminals, hide evidences, to threat witnesses etc.

- **Court made accomplice to anyone from such persons under sec 343 of BNSS.**
- **Sec 138 of BSA : an accomplice shall be a competent witness against an accused person and the conviction is not illegal if it proceeds upon the corroborated testimony of an accomplice.**

### **III. Role of witnesses in criminal justice system.**

Witnesses play a critical role in the criminal process by providing relevant information about the case in the court can be oral or written. His statement can have a significant impact on the outcome of case which lead to acquittal or conviction of accused.

- They provide evidence about what they saw, heard or know related to the alleged crime. Oral evidence must be direct.
- Witnesses may corroborate the testimonies on the account of other individuals involved in the case and challenge or contradict testimony provided by others.
- In some cases court has to form an opinion of experts who have specialized knowledge in the field of foreign law, science or as to identify handwriting or finger impressions.
- The credibility of witness examined by chief examination, cross examination and re-examination.
- A witness shall not be excused from answering any question as to any matter relevant in issue in any suit or criminal proceeding upon the ground that the answer to such a question will criminate or may tend directly or indirectly to criminate such witness or that it will expose such witness to a penalty or forfeiture of any kind.

### **IV. Provisions relating to examination of witnesses in BNSS:**

#### **Section 180: Examination of witnesses by police**

- An Investigation officer making an investigation or any police officer not below such rank as the state government may by general or special order prescribe in notice acting on requisition of such officer may examine orally ( as well as in writing) any person who acquainted with facts and circumstances of the case.

- *He shall be bound to answer truly all such questions relating to case except questions the answers to which would have a tendency to expose him a criminal charge or to penalty.*
- *The police officer may reduce into writing any statement made to him in course of examination and if he do so he shall make a separate statement of each such person. That statement can also be recorded by audio video electronic means.*
- *Statement of woman against whom an offence under section 64 to 71, 74 to 79, 124 of BNS, 2023 is alleged to have been committed shall be recorded by a woman police officer.*
- ***Section 216: procedure for witnesses in case of threatening etc.*** *whoever threatens another with any injury to his person reputation, property or to the person or reputation any person in whom that person is interested with intent to cause that person to give false evidence then witness or any other person may file a complaint under section 232 of BNS, 2023 and the person who give threatens to another etc. shall be punished with imprisonment for a term of 7 years+ fine or with both.*
- *If innocent person is convicted and sentenced with death or imprisonment for more than 7 years in consequence of false evidence, then the person who threatens shall be punished with same punishment and sentence in same manner and to same extent such innocent person is punished and sentenced.*

## **V. Examination of witnesses in BSA: Chapter 10 of BSA deal with the Examination of witnesses.**

### ***Section 140: order of production and examination of witnesses:***

*The order in which witnesses are produced and examined is governed by civil and criminal procedure laws. In Civil proceedings follow the CPC 1908 and In criminal proceedings follow the BNSS, 2023. In absence of such laws then court can use his discretion.*

*Examination on commission: in both Civil and criminal cases witnesses may be examined on commission rules from CPC (order XXVI) and BNSS sec (319-323) apply and evidence taken on commission is later added to the case record.*

### ***Section 141: judge to decide as to admissibility of evidence:***

*To determine the admissibility of evidence based on its relevance to the issues in the case:*

- *When a party proposes to introduce evidence the judge must ask how the proposed fact, if proven would be relevant. He can disallow if he finds that evidence would not be relevant to avoid wasting court time.*
- *If the evidence of one fact is admissible only if another fact is proven first, the later fact must be established before the former can be admitted.*
- *As an exception to above rule, if the relevancy of fact depends on proving second fact, the judge may at his discretion allow the first to be proved even if the second fact has not yet been established.*
- **Section 142: examination of witnesses:**

*This section defines the types of examination of witnesses:*

1. *The Examination of witness by the party who calls him called as **Examination -in - chief.***
2. *The examination of a witness by the adverse party called as **cross Examination.***
3. *The examination of witness, thereafter to the cross examination, by the party who called him, shall be called as **re-examination.***

#### **Section 143: order of examinations:**

***Witnesses must be first examined-in-chief, then cross- examined, then re- examined.***

*Examination-in-chief and cross 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.*

*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 on that matter.*

***\*Prof wigmore said that, cross examination is regarded as the greatest legal engine ever intended for the discovery of truth.***

- **Section : 144: cross examination of person called to produce a document:**

*If summon is sent to a person to produce a document he does not become a witness and cannot be cross examined until and unless he called as witness.*

#### **Section 145: witnesses to character:**

*Witnesses to character may be cross examined and re examined for shaking his credibility.*

#### **Section 146: Leading questions**

- *Those questions that suggesting the answer which the person putting it wishes or expects to receive called as leading question. These questions may be asked in cross examination.*

*Leading questions are framed to hint at or directly suggest the answer the examiner desires from the witness.*

- *Leading questions must not be asked if objected by the adverse party in an examination in chief, in re examination except with the permission of the court.*
- *The court shall permit leading questions as to matters which are introductory or undisputed or which have in its opinion been already sufficiently proved.*
- ***Section 147: evidence as to matters in writing:***

*During examination any witness may be question about whether contract, grant or other disposition of property concerning which they are providing evidence was documented .It the witness,*

*Confirms that the matter was documented and to describe the contents of document*  
*The adverse party may object to the presentation of this evidence unless*

*The document itself is produced, the party presenting the witness is entitled to provide secondary evidence of document.*

***Section 148: This section deal with the contradiction.*** *A witness may be cross examined about his previous written statement relevant to such case without showing or proving the document initially. If the intention is to contradict him by the writing his attention must first be drawn to the parts of the statement being used for contradiction before the writing can be proved.*

***Section 149: questions lawful in cross examination:*** *when a witness is cross examined he may in addition to the questions herein before referred to be asked any questions which tend, to test his veracity, to discover who he is and what his position in life, to shake his credit by injuring his character although the answer to such questions might tend directly or indirectly to expose him to a penalty or forfeiture.*

***Provided that in a prosecution for an offences under sec 64-71 of BNS or for attempt where the question of consent is an issue it shall not be permissible to adduce evidence or to put questions in cross examination of the victim to general immoral character or his previous sexual experience with any person for proving such consent.***

***Section 150: when witness to be compared to answer:***

*If any question relates to a matter relevant to the suit or proceeding then section 137*

*shall apply. If the question is relevant and impacts the witness credibility then sections 137, 151 152 and 153 guide whether the witness must answer.*

***Section 151: court to decide when question shall be asked and when witness compelled to answer:***

*If a question asked to witness in a cross examination pertains to matters not relevant except impact the credibility of witness by questioning his character then court decide whether the witness must answer and may caution the witness that he is not obliged to respond.*

*In exercising his discretion the court shall regard following considerations.*

- *If questions could significantly affect the court opinion on the witness credibility regarding the testimony then court considered such questions to be proper.*
- *Such questions are deemed improper if the imputation is about matter to remote in time or of such a nature that it has minimal effect on the witness credibility.*
- *Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness character and the importance of his evidence.*
- *The court may infer that witness refusal to answer indicates that the response would be unfavorable if given.*
- ***Section 152: Question not to be asked without reasonable ground:***
- *If any question referred in section 151 are to be asked only when there are reasonable grounds to ask such questions that might injure the witness character or expose him.*
- ***Section 153: procedure of court in case of question being asked without reasonable ground:*** *If the court finds that the question was asked without reasonable ground by the advocate then court may report to the high court or relevant authority.*
- ***Section 154: Indecent and scandalous questions:***
- *The court may prohibit questions or inquiries that are deemed Indecent or scandalous even if they have some relevance unless they pertains directly to the facts in issue or are essential for determining those facts.*
- ***Section 155: Questions intended to insult or annoy:*** *The court shall forbid any question which appears to it to be intended to insult or annoy or which though proper in itself appears to the court needlessly offensive in form.*
- ***Section 156: exclusion of evidence to contradict answers to questions testing veracity:***

- *When a witness gives testimony in respect of fact which are relevant, evidence may be given in contradiction of what he has stated. But when his testimony to affect only his credit no evidence to contradict him can be led for the sole purpose of shaking his credit by injuring his character.*

***Exceptions: if any question is asked from the witness about his previously conviction, if he denies it evidence may be given of his previous conviction.***

***If witness is asked any question tending to impeach his impartiality and answers it by the denying the facts suggested he may be contradicted.***

### ***Section 158: impeaching credit of witness***

*This section defines the methods for impeaching the credibility of a witness. It can be done either by the adverse party or with the consent of court by the party who called the witness if the witness turns hostile.*

*Ways of impeaching credibility:*

1. *By the evidence of the persons who testify that they from their knowledge of the witness believe him to be unworthy of credit.*
2. *By proof that the witness has been bribed or has accepted the offer of bribe or received any other corrupt inducement to give his evidence.*
3. *By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.*

### ***Section 159: questions tending to corroborate evidence of relevant fact admissible:***

*It allows questions that tend to corroborate the evidence of a relevant fact.*

***Section 160: former statements of witness may be proved to corroborate later testimony as to same fact:*** *It permits proof of former statements to corroborate later testimony on the same fact.*

***Section 161: what matters may be proved in connection with proved statement relevant under section 26 or 27:***

*Whenever any statement relevant under section 26, 27 is proved all matters may be proved either in order to contradict or corroborate or in order to impeach or confirm the credit of the person by whom it was made which might have been proved if that person had been called as a witness and had denied upon cross examination the truth of matter suggested.*

### ***Section 162: Refreshing memory***

*A witness may refresh his memory by referring to any writing he made at the time of transaction*

*in question or shortly thereafter as long as the court deems the transaction to have been fresh his memory.*

***Proviso: witness may also refer to any such writing made by any other person and read by witness within the time aforesaid if when he read it he knew it to be correct.***

***Whenever a witness may refresh his memory by reference to any document he may with the permission of the court refer to copy of such document.***

***Provided that the court be satisfied that there is sufficient reason for the non production of original.***

***Further an expert may refresh his memory by reference to professional treatises.***

***Section 163: witness may also testify to facts mentioned in any such document as is mentioned in section 162 although he has no specific recollection of the facts themselves if he is sure that the facts were correctly recorded in the document.***

***Section 164: Right of adverse party as to writing used to refresh memory:***

*If a witness use the document to refresh his memory as under section 162 and 163 the adverse party has right to inspect the document used by the witness and right to cross examine the concerning contents of the documents such that must be produced in court and made available for inspection.*

***Section 165: production of documents***

*If summon is sent to witness for production of document in court which are in his possession or under control, if any objection to its production or admissibility. So validity of any such objection shall be decided by court.*

*The court may inspect the document if it is necessary unless it concerns the matters of state.*

*If the document produced are in a language other than official language of court, the court may order it's translation. The translator may be instructed to keep the contents confidential.*

*If the translator disobeys Direction he shall be punishable under sec 198 of BNS.*

*No court shall require any communication between the ministers and the President of India to be produced before it.*

***Section 166: giving as evidence of document called for and produced on notice:***

*When a party requests a document from another party by giving notice to produce it, and the document is produced and inspected by the requesting party, the requesting party is obligated to submit the document as evidence if the party producing it requires.*

***Section 167: using as a evidence of document production of which was refused on notice:***

*When a party refuses to produce document which he had notice to produce hereinafter he cannot use the document as evidence without the consent of other party or order of court.*

***Section 168: judges power to put questions or order production.***

*The judge has the authority to ask any question in any form at any time to any witness or party involved in the case .This power is exercised to discover or obtain proof of relevant facts and establish facts pertinent to case. The judge may also order for the production of any document or thing, parties and their representatives cannot object on judges question or order not without the permission of court are entitled to cross examination any witness upon any answer given in reply to such question.*

*Proviso: The judgment must be based on facts declared by this Adhiniyam to be relevant and duly proved.*

*Judge cannot compel to witness to answer any question or to produce any document which such witness would be entitled to refuse answer or produce document under sec 127-236.*

*He cannot ask question that would be improper for any person to ask under sec 151, 152 of this Adhiniyam.*

*Nor he shall be dispense with primary evidence of any document except in the cases hereinbefore excepted.*

**Conclusion:**

*According to above arguments, witnesses are also important part of civil, criminal proceedings because they play a significant role to resolve the matter by relevant information given to judge and clear doubts. They speak freely without the fear of prosecution and this law provide punishment to that person who threatens to any person for giving false evidence. witnesses must be examined by three ways . The purpose of examination is to discover the truth*

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