

RESOLVING THE CONUNDRUM OF INTERESTED & RELATED WITNESSES UNDER INDIAN EVIDENCE ACT

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ABSTRACT

The Indian Evidence Act has been passed during the colonial era by the Imperial Legislative Council which governs the rules of admissibility of evidences and procedure for recording evidences in a trial. The Hon'ble Supreme Court through catena of judgements held that fair trial of any accused is of paramount importance and that cannot be in any circumstances is done away. The concept of related and interested witness is inextricably linked with the right of fair trial of any person. The evidences adduced by such witness require high scrutiny and then it can be relied by the courts while pronouncing the judgement. With the help of this work and effort has been put to portray as to how the evidences advanced by such witnesses are recorded and what tests and caution have adopted by the courts while recording the evidences. In this piece of work the philosophy underlying these laws are explained and main legal provisions are explored, and an attempt has been made to future directions that could move the ethic forward. This work increases our understanding of Interested and Related witnesses and other corresponding analysis of this theory in the light of relevant case laws; this work will contribute to future research on similar topics also.

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INTRODUCTION:

The scheme of Indian Evidence Act is designed in such a manner that it aims to strike the balance between the evidence adduced by the Prosecution in a trial and introduction of check and balances system i.e., to prove its credibility the cross examination is allowed to be done by the defence counsel so that the real purpose of inquisitorial trial can be served. There are various types of witnesses which are put forward by any party during a trial and such category is the category of interested witness.

Any witness which has any sort of direct or indirect relation or interest in the matter at hand can be termed as related witness.¹ Through the journey of various case laws it has been proved by the court that the testimony of any interested witness can never be rejected on the sole ground that the witness is related to the victim in the matter.² Notwithstanding the fact that their testimony cannot be disregarded, the Hon'ble Apex Court held in many cases that the testimony of such witness will be keenly observed and will come under the purview of "close scrutiny."³ The position of law is very clear i.e., the testimony of any interested witness cannot be regarded as a weightless testimony⁴ rather the law is that it should be relied upon with great caution and care.⁵ The Courts through the medium of modern jurisprudence has made a sub category under Interested witness i.e., those witnesses who have feeling of enmity or ill will with the accused persons.⁶

The article below is an attempt to revisit the existing laws related to the topic have a fair and an in depth analysis of this topic.

¹ Bryen A. Gornor, Black's Law Dictionary 1741 (14th Ed., 2013).

² Section 122 of the Indian Evidence Act states: "No person who is or has been married, shall be competent to disclose any communication made to him 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 representative-in-interest consents, except in suit" between married person is prosecuted for any crime committed against the other."

³ Meharaj Singh (L/Nk) v. State of U.P, (1994) 5 SCC 188.

⁴ Ramaphula Reddy and others v. State of Andhra Pradesh, (1970) 3 SCC 474.

⁵ Madhu @ Madhuranatha v. State of Karnataka, 2014 (2) Kant LJ 158.

⁶ Jodhan v. State of M.P., (2015) 11 SCC 52.

ANALYSIS OF RELEVANT PROVISIONS:

One of the most significant authorities which can be looked upon while discussing on this topic is *State of A.P. v. S. Rayappa*⁷ wherein while adjudicating an appeal from the Hon'ble Delhi High Court it was held unequivocally that the term "interested" in interested person clearly indicates the fact that the concerned person have any sort of interest which is apparent to be served if the accused is convicted because of the reasons like hostility or other reasons.⁸

NARROW TEST GIVEN BY THE HON'BLE SUPREME COURT:

A small test was given by the Judges in that matter wherein they said that in a criminal matter the witnesses whom the prosecution can rely to present their case are the natural relatives of the victim and they would advance their evidence in such a manner which will in anyway implicate the accused so that he or she will be convicted in that case. The only demarcation which according to the learned judges is operative is that these witnesses should be examined by incorporating highly cautious measures.⁹

CREDIBILITY OF RELATED WITNESS (TESTIMONY INSPIRING CONFIDENCE):

The credibility of any witness in any trial is of paramount importance. The courts have always adopted an attitude where the credibility of any related witness cannot be disregarded outrightly instead a proper evaluation of each and every bit of his/her statement is done before coming to conclusion.¹⁰ In the landmark case of *Khurshid Ahmed v. State of Jammu and Kashmir*¹¹ the Hon'ble Court set down a rule of "Confidence" and held that even if the eye witness is a person who is closely connected to the victim and if his/her testimony inspires confidence and it can be corroborated through various other evidences then the courts can heavily rely upon it and certainly courts should be very vigilant while evaluating such testimonies.

⁷ *State of A.P. v. S. Rayappa*, (2006) 4 SCC 512.

⁸ *The Continuing Evolution of Investor-State Arbitration as a Dynamic and Resilient form of Dispute Settlement*, Carolyn B. Lamm and Karthik Nagarajan, 5 IJAL (2017) 93.

⁹ *Deepu v. State*, 2017 SCC OnLine Del 12402.

¹⁰ *Matrimonial Communications: Wedded to the Irrational*, Tanmay Amar, 17 Stud Adv (2005) 59.

¹¹ *Khurshid Ahmed v. State of Jammu and Kashmir*, 2018 SCC OnLine SC 529.

It can easily be understood as a matter of fact that the settled law at this point mandates that court while recording the evidences of such witnesses should not adopt very technical presumptions and approach and try to focus on having the broader outlook of the case which can within encompass such circumstances as has been adduced by the evidence of such witnesses.¹² Overall, the courts have to adopt the pragmatic approach by considering the fact that a considerable amount of time passes once the matter come for trial from the date of occurrence of the incident. Thus, unless any material discrepancy appears from the testimony of the interested witness that cannot be disregarded and it can be relied upon by the courts to do the substantial justice.¹³

CAN A CONVICTION BE BASED ON THE TRUTHFUL TESTIMONIES OF RELATED WITNESSES? :

The Hon'ble Supreme Court while adjudicating a criminal appeal in the case of Kamta Yadav v. State of Bihar¹⁴ where five appellants were convicted under Section 302 r/w 149 IPC approached the court with a prayer of setting aside their conviction, the Court in an unambiguous manner held that this entire appeal lacks merit and said that even if the conviction is based on the fact that the eye witnesses are related witness and they have narrated the entire incident in the truthful manner which can be easily attributed with other substantial evidences then these depositions will be considered as credible witness and insignificant irregularities in their testimonies can be overlooked.

CREDIBILITY OF INTERESTED WITNESS:

The Hon'ble Apex Court in the case of Takdir Samsuddin Sheikh v. State of Gujrat¹⁵ clearly held that the meaning of interested witness clearly indicates that that witness have any direct interest towards convicting the person for some reasons. Various decisions of the Apex Court states that the evidence by these witnesses are not reliable and that can only be relied when it is strongly corroborated with other evidences.¹⁶

¹² Challenges in Combating Trafficking in Human Beings in South Asia: Need For A Right-Based Approach, Shiffat Sharmin and Abu Mohammad Atiqur Rahman, 59 JILI (2017) 265.

¹³ Of Judicial Vicissitudes and Self-contradiction, Sunil gupta, (1982) 3 SCC J – 13.

¹⁴ Kamta Yadav & Ors vs State Of Bihar, CRIMINAL APPEAL NO. 1266 OF 2009..

¹⁵ Takdir Samsuddin Sheikh v. State of Gujrat, 2011 (4) RCR (Criminal) 840 (SC).

¹⁶ Promoting Change in the Legal System in India, Zaffiqur Abdullah, 24 JILI (1982) 362..

The point of law at this juncture as held by the Hon'ble Apex Court as to the fact i.e., whether close relative would be considered as Interested Witness was settled in *Rakesh V. State of M.P*¹⁷ wherein it was laid down that the close relative will be considered as a natural witness. The Hon'ble Court clearly said that he cannot be considered as an interested witness because such witness can achieve no material gain in becoming an interested witness.

DUTY OF COURT:

In one of the most significant cases, the Hon'ble Supreme Court has laid down the duty of the court and held explicitly the paramount and most essential duty of the court is to critically evaluate the evidence presented by such witnesses in a trial and after such careful scrutiny if the court is of the opinion that the evidence which is advanced by such interested witness have some credibility, the same cannot be overlooked and sufficient heed must be paid to that evidence and the court must consider that while pronouncing its judgement.¹⁸

Another important facet of the duty casted on the Courts is related to mechanical rejection of the testimony of the interested witness. In *Raju alias Balachandran v. State of Tamil Nadu*, the Hon'ble Apex Court came down strictly on trial courts and held that the practice adopted by the Trial courts where they mechanically reject the testimonies of the interested witness does not reflect the ideal principles of rule of law and they should refrain themselves from passing such orders or judgements. Moreover, the Court held that a reason decision corroborated with sufficient grounds is must while disregarding the testimony of any witness. The practice of mechanically passing such orders has been seriously condemned by the Courts.¹⁹ In addition to this, it has also been held in various cases that the courts cannot disregard the testimony of any witness only on the ground of speculation of that the witness shares a feeling of enmity against the accused.²⁰

¹⁷ *Rakesh V. State of M.P* (SC) 2011(4) RCR (Cri) 355.

¹⁸ *Alamgir v. State (NCT) Delhi*, AIR 2003 SC 282.

¹⁹ *Varun Kumar v. State of Bihar*, Criminal Miscellaneous No.9249 of 2018.

²⁰ *Munigadappa Meenaiah v. State of Andhra Pradesh*, 2008 Cri .L.J 3903.

CONCLUSION & SUGGESTION:

The entire analysis makes it very clear that the standards which are adopted by the Courts are very high i.e., the testimony of any interested witness has always been seen with doubt and before relying and acting upon it the Courts have to critically analyse it and then pass the appropriate orders. The Judiciary has through plethora of cases upheld the act that even if the testimony of single eye witness which can come under the category of interested witness inspires confidence in the court and can be corroborated with evidences can be relied upon and justice can be done by relying on such testimony.

The entire scheme of Indian Evidence Act revolves around the fact that the veracity of the evidences can be identified at all cost. Moreover, the provisions of the code and its interpretation have been flexible enough to incorporate the recent changes to do the substantial justice. The fact that in a criminal trial the evidences are recorded after a considerable time has been passed from the date of the occurrence of the incident and thus insignificant irregularities can be overlooked is a very beneficial interpretation of the Act which seriously helps the court to dispense the justice to the public at large.

The interpretation afforded to Section 122 of the Indian Evidence Act²¹ in the old cases clearly reflects the position that the related is not equal to the interested. Thus, inevitably it is also true that fact that there exists a relationship between the witness and the person adducing evidence is no ground to reject it. Any person who is the close relative can always be considered as a natural witness and his testimony will be regarded by the Courts as a true testimony while pronouncing judgement in a trial.

²¹ **Section 122 of the Indian Evidence Act:-** Communications during marriage.—No person who is or has been married, shall be compelled to disclose any communication made to him 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 representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

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