CHAPTER-I

INTRODUCTION

Every law which is true is true always and forever, but upon the other hand every law emphatically is an abstraction. And hence all law are true only in abstract. It remains perfectly true, but is inapplicable where the conditions, which it supposes, are absent.

The law is commonly divided into substantive law, which defines rights, duties and liabilities, and adjective law, which define the procedure, pleading and proof by which the substantive law is applied in practice. "Rules regarding judicial evidence may be generally divided into those relating to the *quid probandum* or thing to be proved and those relating to the *modus probandi* or modes of proving.[1]

The word EVIDENCE signifies in its, original sense, the state of being evident ie plain, apparent or notorious. The evidence of a fact is that which tends to prove it. Some thing which could satisfy an enquirer of the fact's existence or non existence. Evidence is the most important part of a trial. It can either convict the accused or set them free. In its broadest sense evidence is defined by Bentham as "any matter of fact, the effect, tendency or design of which is to produce in the mind a persuasion affirmative or disaffirmative of the existence of some other matter of fact.[2]

According to Norton " The law of Evidence is the most important branch of the adjective law. It is to legal practice what logic is to all

[1] Best. Ev. S. III.
[2] Bentham Ev., 17

reasoning without it trials might be indefinitely prolonged to the great detriment of the public and the vexation and expense of suitors.[3]

The process of forming belief in judicial cases is often very difficult and unsatisfactory. The degree of certainty attainable is generally not high. If always falls short of absolute certainty or of high degree of certainty attained by mathematical demonstrations, experiments, comparisons and other scientific process. A judicial enquiry, accordingly is as compared with scientific enquiry, a very rough process. The risk of error is considerable and the degree of certainty is low. At times even highly relevant peice of evidence is excluded on grounds of admissibility. Its here where the rule of prudence come in fore front to bridge the gap.

In order for evidence to be admissible under evidence law, it must be material, competent and relevant. For evidence to be material it must prove a fact that is central to the case. Competent evidence refers to facts that meet established standards of reliability. The most important criteria for evidence, however, is that it is relevant to the case at hand. According to evidence law, any evidence that is presented must be relevant to the case at hand. This means that it must convey facts that directly relates to the circumstances of the case. In general all relevant evidence is allowed to be presented in court and evidence that is not relevant is not permitted to be introduced.

The key to success is the art of distinguishing the relevant from irrelevant, and that is a key that can open any door. [4]

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[3] Norton SG. IEA-1.

[4] Art of Advocacy by M.C. Chagla in Advocacy by R.K. Sonnavala 1960.

As laid down by the Supreme Court in appreciating oral evidence the question in each case is whether the witness is a truthful witness or not and whether there is anything to doubt his veracity. Where the witness is found to be untruthful on material facts there is an end of the matter. Where the witness is found to be partly truthful or to spring from tainted sources, the court may take the precaution of seeking some corroboration adequate and reasonable to meet the demands of the situation.[5]

It can be further said that the heartening development of the present Indian society is that now a days it is very difficult to get a competent "witness" and "relevant evidence". Both the witness and the evidence have become rarest of the rare things in the present society. The obvious reason of this apathetic attitude, to become a witness, on the part of the constituents of Indian society seems to be that to become a witness would mean inviting him and his family-members to numerous and various kinds of physical, social, legal, economical, moral, political, family, religious and other problems. One may get many examples in the newspapers and in their day today life where the witnesses are hurt, killed, kidnapped, abducted, raped, molested, defamed and tortured. Due to these possible problems, a person deters or avoids to become a witness, irrespective of their duty to testify given under various provisions of the Indian Penal Code 1860, Code of Civil Procedure 1908, Code of Criminal Procedure 1973, Indian Evidence Act, 1872.[6]

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[5] Sate of Gujarat Vs Raghunath AIR 1985 SC 1092, 1985 Cr Lj 1357, (1985) 3 SCC 45:
[6] Dr. J.. Malik in Journal of the legal Studies. Vol. XXXVI

But it is the well-established principle of the law of evidence that every fact has to be proved or established by some sort of "evidence" or "testimony" from a "competent witness." But who may become a witness, and how he should testify, this is regulated as per provisions of the Indian Evidence Act, 1872. In this regard, section 118 of the Indian Evidence Act, 1872, is treated as the main pillar and provision for regulating this problem. Section 118 provides that 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.

A predicament has remained to exist as to whether a court deciding on the fate of an accused should consider the testimony of a friend in crime. The courts have struggled long to settle down on a practical and prudent solution so that the guilty does not go unpunished and the innocent stays unscathed. It is from this prospective that the courts have made an unceaseth attempt through hoard of judicial decisions to come up with a rule of prudence read into the law of evidence to guide the minds whenever an accomplice renders an account of the crime committed. The writing is an attempt to critically analyze the need for receiving accomplice evidence and the approach of caution adopted in such instances. It aims at simplifying the law with regards to accomplices and approaches it from a practical point of view. It makes an effort to endorse the idea that the flexibility engrained should be retained and the law on the

point in India should be modified to suit the need of the hour which is indefinitely the speedy disposal of cases so that justice is rendered for justice delayed is justice denied.

Historical background.

The History of law of evidence in India can be traced back to Vedic Era. Its always been recognised by Dharma Shastras that the purpose of a trial is the desire to as certain the truth. A test of Yagnavalka declares, " discarding what is fraudulent the King should give decision in accordance with the true facts", Manu says, the King presiding over the tribunal shall ascertain the truth and determine the correctness of the allegations, correctness of the testimonies of the witness and so on- Late Mr. B. Guraraja Rao Described" Ancient Hindu law insisted on high moral qualification, in a witness. Person with questionable character were barred as legally incompetent witness.

In later stages where the Land was governed by Muslim rulers . The Islamic jurisprudence prevailed. The rules of evidence in Islamic Era are advanced and modern. Oral evidence appears to have been preferred to documentary. Certain classes of witness were held to be incompetent viz, very close relatives, or a partner in favour of another partner, professional singers, mourners, drunkards etc were regarded as unfit for giving evidence

In criminal cases confession were admissible but there are indications that the confessions of one co-accused was held to be inconclusive against the other co-accused, though it was admissible. Thus

since the ancient times the desire to get the justice prevailed and the rules of Evidence were formulated according to the social obligations and need of time. But since ever the character of witness was one of important principle guiding the admissibility of his evidence. The evidence of friend in crime was always taken with great precaution and needed to be corroborated by other independent evidence though circumstantial.

In Balwank kaur V. Union Territory[7] Supreme Court retracted the history of non acceptance of accomplice evidence without corroboration. In 17th and 18th centuries it was ruled repeatedly by the English courts that an accomplice was a competent witness. His credit of the sufficiency of his evidence as a quantitative conception remained in back ground. Wigmore[8] says on Evidence that it was about the end of 18th century there came into acceptance a general practice to discourage a conviction founded solely upon the testimony of an accomplice uncorroborated.

The aspect to the extent and content of independent corroboration had two line of thought. One that independent evidence tending to verify any part of testimony of accomplice should suffice while the other required that the corroborative evidence should not only show that part of the accomplice testimony is true, but should go further and also implicate the other accused. Second view preferred in *R.V. Baskerville* by court of criminal appeal in England.[9]

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[7] AIR 1988 SC 139 pg. 141-142
[8] 3rd Ed. Vol VII para- 2054
[9] (1916) 2 KB 658.

WHO IS AN ACCOMPLICE?

The Indian Evidence Act, 1872 does not lay down the definition of. An accomplice is a person who has concurred in the commission of an offence[10] and the maxim *"participes criminis*[11] is included in the term. An accomplice is a person who is guilty-associate in crime or who sustains such a relation to the criminal act that he can be jointly indicted with the principal criminal.[12]A witness concerned may not confess to his participation in a crime and may deny his being an accomplice but it is for the courts to decide on a consideration of the entire evidence whether he is an accomplice.[13] The burden of proving that an accomplice is definitely on the party alleging it for the purpose of invoking the rule while the duty to bring the accomplice character of the evidence to the notice of the court rests upon the prosecution and the court needs to believe by a preponderance of probabilities.[14] The essential prerequisite is participation in crime willfully and this can be done in various ways.[15] The term in fullness includes all persons concerned in the commission of the crime, whether they in the strict legal aptness are principals in the first degree[16] or

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[10] R.V. Mullins 3Cox Cr 526 (as per Maule J.)

[11] In two cases where the person is not participes criminis is also considered as an accomplice, namely a) receivers of stolen property b) where a person has been charged with a particular offence and evidence of other similar offences by him has been admitted as proving system and intent and negating accident persons who had been accomplices in the pregious offences. (R.K. Dalmia v. Delhi Administration AIR 1962 SC 1821)

[12] Ramaswami V. R. 14 MLJ 226 (as per Subramania J.), State v. Murli AIR 1957 All 53. (This definition has been based on the US definition of accomplice U.S. v. Neverson 14 Century Dig Col 1279)

[13] Hussain Umar v. Dilip Singhji AIR 1970 SC10

[14] Jagannath v. Emperor AIR 1942 Oudh 221

[15] Ibid.

[16] A principal of the first degree is one who actually commits the crime whilst a principal of the second degree is one who assists and prepares in the commission of the crime. *Ismail Hasan Ali v. Emperor* AIR 1947. Lah. 220

second degree [17]merely are accessories before[18] or after[19] the commission.[20] In India two categories of offenders are recognized- persons who are principals and abettors or instigators and the term accomplice includes both of them i.e. the principal and the privy.[21]

WHEN IS AN ACCOMPLICE COMPETENT WITNESS?

Section 118 of the Indian Evidence Act speaks about competency of witness. Competency is a condition precedent for examining a person as witness and the sole test of competency laid down is that the witness should not be prevented from understanding the questions posed to him or from giving rational answers expected out of him by his age, his mental and physical state of disease.[22] At the same time Section 133 speaks about competency of accomplices. Further more in case of accomplice witnesses, he should not be a co-accused under trial in the same case and may be examined on oath.[23]

Let us consider the following propositions suggested by courts. First, courts have opined that such competency, which has been conferred on him by a process of law, does not divest him of the character of an accused and he remains a *participes criminis*[24] and this remains the genesis of the major problem surrounding the credibility of such evidence.

[17] Ibid.

[18] Narain V.R. 63 CLJ 191.

[19] Every person is an accessory to the fact that having knowledge of the fact committed by another person receives, relieves, relieves comforts or assists him in order to enable him to escape from punishment. All accessories after the fact do not have the same parameters of criminality and much depends upon the factual matrix at hand, Mahadeo v. The King AI/R 1936 PC 242.

[20] Fost Cr Cas 341: 1 Russ Cr 21, 4 Bla Com 331, 1 Phil Ev 28 c.f. Sudipto Sarkar, V.R. Manohar, "Sarkar Law of Evidence", Vol 2, Wadhwa Nagpur Publications (16th ed, 2007) at page 2248.

[21] Ibid Sarkar on Evidence.

[22] L. Choraria v. State of Maharashtra AIR 1968 SC 938.

[23] Joseph v R 86 IC 236

[24] Kunddan v. R AIR 1931 Lah 353:131 IC 625

Secondly, an accomplice by accepting a pardon under Section 306 CrPC becomes a competent witness and may as any other witness be examined on oath, the prosecution must be withdrawn and the accused formally discharged under Section 321 of the Criminal Code before he would be a competent witness[25] but even if there is omission to record discharge, an accused is vested with competency as soon as the prosecution is withdrawn.[26] Thirdly, Article 20(3) of the Indian Constitution says that no accused shall be compelled to be a witness against himself. But as a co-accused accepts a pardon of his free will on condition of a true disclosure, in his own interest, and is not compelled to give self-incriminating evidence, the law in Section 306 and 308 of CrPC is not affected and a pardoned accused is bound to make a full disclosure and on his failure to do so he may be tried of the offence originally charged and his statement may be used against him under Section 308.[27] This suggests that a *participes criminis* continues to be the same and if so then despite the fact that his involvement has been pardoned by a judicial act can be used for self-incrimination and to expect a "true and full disclosure" is unreal.

It can thus be seen that the newspapers & the cases decided by the Supreme Court of India and High Courts, reported in All India Reporter, Criminal Law Journal, The Crimes & other similar law magazines, reveal a fact that in every criminal case we need some sort of evidence and witnesses to prove the crime against the accused person because it is the well established principle of criminal jurisprudence that everyone should

[25] Babu Singh v. R 10 CWN 962.
[26] Sheropati v. R 18 CWN 1213.
[27] Supra Note 14 (Sarkar on Evidence).

be presumed to be innocent until he is proved to be guilty. The plea of innocence of accused which is considered as foundation stone of criminal jurisprudence cannot be applied even in favour of the accused without some sort of supporting or favourable evidence for accused person. This further gives birth to a problem that whether an accused or co-accused can become a competent witness in favour of himself? The Code of Criminal Procedure, 1973 under Section 315 treats even the accused person as a competent witness. The next question that arises is that when no evidence is available against the accused person then under such circumstances whether he should be exonerated from his criminal liability on the basis of non-availability of witness against him. To cover up this problem under criminal jurisprudence, the concept of "accomplice" was developed by the judges and jurists. "Accomplice" is a person who is a guilty associate in crime and according to Section 30 of the Indian Evidence Act, when two or more persons are tried jointly for the same offence and the confession made by one of them is proved at the trial, the court may take into consideration that confession against the other accused as well as the accused confessing the guilt. If no evidence is available against a co-accused person than to obtain the evidence one of the co-accused is offered or tendered pardon according to the provisions of Sec. 306, 307, 308 of Criminal Procedure Code, 1973. Regarding the provisions of such a witness, under Indian Evidence Act, two Sections namely 114(b) and 133 have been enacted but both seems to be against each other. At the outset, it has been proposed that incorporation of Section 133 when read in the light of Section 118 speaking about the competency of witness does not justify the inclusion of the former in the Act. Further Section 134 which deals

with the number of witnesses in a case negates the second part of Section 133 which narrates that the uncorroborated testimony of an accomplice is not illegal. But the inclusion of the section attains a highly elevated status, for without inclusion of this specific section, there existed a dominant chance of the law being misunderstood or misapplied. Section 114, illustration (b) creates a cloud of doubt as to the competency of the accomplice witness and it seems significant when seen from this perspective that inclusion of Section 133 was required to settle a sound basis and caution that merely because the testimony of the accomplice is uncorroborated does not make it illegal. The difficulty in understanding the combined effect of the two sections proceeds largely on the account that their positioned under different Chapters in the Act. It clearly emerges that both-rule laid down in illustration (b) to Section 114 which deals with presumptions of various kinds and the caution laid down in Section 133 are part of the same rule and neither can be ignored in the exercise of judicial discretion, except in cases of a very exceptional nature. The application of the rules together emerges as a rule of practice that has assumed the force of rule of law[28] that evidence of the accomplice would be accepted with corroboration.[29] *Why this "practical rule" emerged?* This is an outcome of experience that an accomplice is unworthy of credit[30] for the following:

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[28] K. Hasan v. State of Tamil Nadu AIR 2004 SCW 6372.

[29] Sant Lal v. State of Uttar Pradesh 2006 Cri LJ 690 All. S.C. Bahri v. State of Bihar AIR 1994 SC 2420.

[30] R v. Sadhu Mandal 21 WR Cr. 69; R v. Boyes 9 Cox CC 32. Courts have been critical about the character of an accomplice. The principal reasons of holding the testimony of an accomplice witness unworthy are 1) because the accomplice witness is likely to falsely swear in order to shift the guilt from himself, 2) because an accomplice is a particip criminis and it is strongly presumed that he has a low morality and it is likely that he may disregard the sanction of oath, 3) because an accomplice gives his evidence under the promise of pardon, or in the exception of an implied pardon (R v. Maganlal ILR 14 Bom 115).

1. A bare and segregated perusal of Section 133 may instigate the young magistrates and judges at the lower courts to base their convictions on the uncorroborated testimony of accomplice witness on the presumption that the legislature intended to encourage such convictions and such testimonies.
2. This rule emerged in order to ration the threats that flow from necessity for administration of justice for an accomplice witnesses are a practical mandate as matter of necessity nevertheless they are infamous and the most dangerous forms of witnesses to base a conviction.
3. An accomplice is a 'partner in guilt' and is definitely an infamous witness and inevitably distrust flows into what he testifies calling for fullest corroboration in material particulars for a conviction. He may without this burden simply testify to save himself by procuring conviction for others.[31]

Section 133 is the absolute rule of law as regards to the evidence of accomplices but this essentially has to be read with the rule of prudence laid down in illustration (b) of Section 114. Section 114 enacts a rule of presumption but this is not a hard and fast presumption that cannot be rebutted, a presumption *puris et de jure* and the right to raise this presumption as to an accomplice witness is sanctioned by the Act, and

[31] "Lord Abinger, CB in R v. Farler 8C & P 106 observes- "The danger is that when a man is fixewd, and knows that his own guilt is detected, he purchases immunity by falsely accusing other," Similarly Sir John Beaumont in Bhuboni v. R AIR 1949 PC 257 says – "The real danger is that he is telling a story which in its general outline is true, and it is easy for him to work into the story matter which is untrue. He may implicate ten people in an offence, and the story may be true in all its details as to eight of them, but untrue as to the other two, whose names have been introduced because they are enemies of the approver."

it would be an error of law to disregarded it, what effect is to be given to it must be determined by the circumstances of each case.[32] It is thus well settled that except in circumstances entailing an exceptional nature, it is the duty of the court to raise the presumption in section 114 illustration (b), and the legislature requires that the court should make the natural presumption in that section.[33]

The result of the combined reading that is to be done to both the sections may be stated as follows:

(1) the uncorroborated evidence of an accomplice is admissible. There can be a conviction upon the uncorroborated testimony of the accomplice if believed to be true and this is so especially where there is in question the evidence of a person who is not so much an accomplice as a victim.[34],

(2) Although it is so, experience teaches that an accomplice being an infamous person, it is extremely unsafe to rely upon its testimony unless and until materially corroborated.

(3) It is the duty of the judge to be warned that it is dangerous to convict on the uncorroborated testimony of an accomplice and an omission to warn with prudence would be misdirection.

(4) And if a departure is made form thus virtual rule of law, then it has to be showed that the circumstances justify the exceptional treatment

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[32] R v. Srinivas 7 Bom LR 969

[33] Muthukumareswamy v. R ILR 35 Mad. 397. (as per Abdul Rahim J)

[34] R.V. Ridge 192317 Cr. App-R 113. Food Inspector V.G. Satyanarayana (2003) 3 Crimes 153 (SC) AIR 2004 SC 1236.

for the presumption of unworthiness is raised and corroboration is demanded for administration of justice. However, on a perusal of various judicial decisions it seems that the word of caution under Section 114, illustration (b) has a super imposing sweep over the clear wordings of Section 133.

What is corroboration?

Corroboration means independent testimony. Lord Abinger said- "In my opinion that corroboration ought to consist in some circumstance that affect the identity of the party accused. A man who has been guilty of a crime himself will always be able to relate the facts of the case, and if the confirmation be only truth of that history, without identifying the persons, that is really no corroboration at all. If a man were to break upon a house and put a knife to your throat, and steal your property, it would be no corroboration that he had stated the facts correctly, that he had described how the person did put the knife to the throat and steal the property. It would not at all tend to show that the party accused participated in it……The danger is that when a man is fixed, and know that his guilt is detected, he will purchase immunity by falsely accusing others."[35] Independent corroboration does not mean that every detail must be corroborated by independent witnesses and all that is required is that there must be some additional evidence rendering it probable that the story of the accomplice is true.[36] That is to suggest that supposed in a case of conspiracy, if there is corroboration with regards to the general facts of the existence of a conspiracy and also of participation in it of any particular

[35] Lord Abinger in R v Farler cited in Ambika v. R AIR 1981 Cal 697.
[36] Tribhuvan v. S AIR 1973 SC 450, Ramanlal v. S AIR 1960 SC 96

accused, corroboration of the specific acts is unnecessary unless the evidence of the accused is intrinsically subject to suspicion.[37] Amount of corroboration cannot be laid down in specific as it depends upon the circumstances; particularly on the crime charged and the degree of the accomplice's complicity.[38]

The evidentiary value of the statements of a witness depends upon the nature of statements, substance of the testimony and appreciation of the testimony by the court. Even a single statement may be treated as sufficient evidence, while a long narration by the witness, may not even be treated as a fact. This, however, depends upon the value of statements of a witness, which has thus emerged after cross-examination and corroboration.

It can further be said that mere becoming witness is not sufficient; the witness must be of credible and reliable characteristics and qualities. It has been rightly said by Robert Browning:

"Oh the little more, and how much it is!

And the little less, and what worlds away."

"Credibility" and *"reliability"* are two best qualities of the personality of a person which provides him or her high quality of reputation, regard, respect, honour and the likes in the society and provides a passport to go anywhere, anytime in the family, society state and even in the world. An attempt has been made in this chapter to discuss the credibility and reliability of an accomplice. It can rightly be said that in considering the weight and value of the testimony of any witness, the

[37] Satyanarayan v. R AIR 1924 PC 67.
[38] Barkati v. R AIR 1927 Lah 581.

appearance, attitude, and behavior of the witnesses, the interest of the witness in the outcome of the suit, the relation of the witness to the parties, the inclination of the witness to speak truthfully or not, the probability or improbability of the witness's statements, and all other facts and circumstances in evidence may be taken into consideration. Thus, the testimony of any witness may be given such weight and value, as the testimony of such witness is entitled to receive.

The established principle of Criminal Jurisprudence is that the responsibility or exemption from criminal liability to a person should always be made in accordance with the procedure established in criminal law for the time being in force. Thus, though an accomplice has become entitled for exemption from criminal liability, yet, the pardon to him should be made according to the provisions of Constitution (Art. 72 and Art. 161) and Code of Criminal Procedure 1973 (Sec. 432 to 435), in this regard. Whether inspite of committing the crime heinous or simple, pardoning him would give a bad or good message in the society and after-effects of doing so, is a matter of deep study and analysis which the researcher has undertaken in her project of research.

In this thesis, an effort has been made to deal and discuss the procedure for pardon and prosecution of an accomplice when he has violated the terms and conditions of granting him pardon under Sections 306 to 308 and 432 to 435 (A) of the Code of Criminal Procedure 1973. The provisions under Section 337 of the Code of Criminal Procedure 1898,

have also been discussed as many cases were decided under these sections before the enforcement of the new Code of Criminal Procedure, 1973.

Occasionally when grave offences are committed the law finds it necessary to enlist the assistance of some of the offenders in order that the rest may be brought to justice. This happens when one of several persons who have committed a crime makes a confession, which is believed to be true and which it is considered would help to secure a conviction of the rest. So, all persons who are suspected to be involved in the commission of an offence have to be booked and made to stand their trial. And as the evidence of accomplices is necessary in certain cases and as an accomplice is as competent witness, the law provides for the procedure that is to be adopted for obtaining the evidence of an accomplice in a criminal court. The provisions are contained in Sections 306 and 308 of the Criminal Procedure Code. These sections provide the terms and the machinery by which pardon can be granted by a magistrate or a judge to an accomplice for the purpose of obtaining his evidence in a criminal trial. These sections deal with granting of pardon in some serious offences specified in Section 306 Cr.P.C.[39]

A pardon is said by Lord Coke to be a work of mercy whereby the king "either before attainder, sentence or conviction or after, forgiveth any crime, offence, punishment" and the King's Coronation oath is "that he will cause justice to be executed in mercy.[40]

[39] 40 CWN 876 FB.
[40] 33 CWN 468 : AIR 1929 Cal 310, G.V. Raman v. Emperor 3 Inst. 233.

"A pardon is as an act of grace, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. It is in substance and effect, a contract between the State on the one hand and the person to whom it is granted on the other. As the greater includes the lesser, a general power to grant pardon carries with it the right to impose conditions limiting the operation of such pardon".[41]

As has been observed by the Supreme Court in *K.M. Nanavati v. State of Bombay.*[42] "pardon is one of many prerogatives which have been recognized since time immemorial as being vested in the sovereign, wherever the sovereignty might be. The sovereign power to grant a pardon has been recognized in the Constitution of India in Arts 72 and 161 and also in Secs. 432 and 433, Criminal Procedure Code, 1973. These provisions relate to the grant of a pardon after sentence has been removed and the tender of pardon to an accomplice under certain conditions as contemplated by Secs. 306 and 307, Criminal Procedure Code, 1973. There is no doubt that the grant of pardon, whether it is under Art. 161 or Art 72 of the Constitution or under Secs. 337, 338, 401 and 402 old Criminal Procedure Code, is the exercise of the sovereign power.[43] In *United States v. George Wilson,*[44] Marshall, C.J. observed: "A pardon is private, though official act of the executive Magistrate, delivered to the individual for whose benefit it is intended and not communicated officially to the Court."

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[41] A.L. Mehra v. State AIR 1958 Punj 72.
[42] AIR 1961SC 112.
[43] M.M. Kochar v. State 1969 Cr. LJ 45.
[44] (1883) 30-33 USSCR 149;8 Law Ed 64: 7 Page 150.

Crimes are sometimes so secretly committed by an organized body of criminals that it becomes impossible to connect the crime with any of them except by getting information from some of their own members. In such a case, one of the accomplices is offered a conditional pardon on the term of his giving evidence against other criminals. This accomplice is called an approver and his evidence is called State evidence. When a criminal is admitted to bear testimony against his accomplice he is then said to turn "State evidence". Apart from the information, which is obtained through this course in certain types of crime, the only direct evidence that can be offered under the circumstances is that of an accomplice. Therefore the reason for granting a pardon is to obtain the evidence of a person supposed to be involved in an offence, in the trial of another person involved in the same offence, in the trial of another person involved in the same offence. As held by the Punjab and Haryana High Court in *Sarbijit Singh v. State of Punjab,*[45] the object of pardon is that the fear of, prosecution is removed. A person to whom parden is granted though privy to the offence may feel free to give true evidence and make a full disclosure of the event about the crime. The tender of pardon is in other words, quid pro quo. The very object of the provisions contained in Sec. 337 (1) of the old Cr. P.C. is to allow pardon to be tendered in cases where a grave offence is alleged to have been committed by several persons so that, with the aid of the evidence of the person pardoned, the offence can be brought home to the rest.[46] So the subsequent stopping of

[45] 1970 Cr. LJ 944 (Punj).
[46] Hasmukhlal Nvakilna v. Bhairav Nath Singh, ITO, 1972 Guj LR 881.

the trial for some reason will not affect the pardon already granted. In *re Dagdoo Bapu,*[47] an accomplice was given a conditional pardon under Section 337, old Cr. P.C. The principal offender, having absconded, the trial could not go on. The trying Magistrate referred the case to the High Court to have the order of pardon cancelled on the ground that it was invalid, as it was not tendered for the purpose of an inquiry, but for the purpose of securing evidence under Section 512, old Cr. P.C. Held, that there was no ground for revision of the Magistrate's order under Section 337, old Cr. P.C., inasmuch as the principal offence was under inquiry and in order to secure the approver's evidence as to the offence, a pardon was tendered and the proceeding under Section 512 was only ancillary to that inquiry.

The frame work of this research work will be to study the judicial pronouncements of the Supreme Court of India, various High Courts, Priory Council and judgement of House of lords of England as well as survey of affected persons/accused in various cities in Uttar Pradesh. Simultaneously libraries of Agra College Agra, Aligarh Muslim University's and Bar Council of Supreme Court and Allahabad High Court have been visited and various judicial teat books have been consulted. The scheme of research has been divided in following chapters.

- Accomplice-Concept of the Term
- Cases and Stages in Which Concept is Applicable

[47] 46 Bom 120

- Law in Contemporary World
- Competence and Privileges
- Value of Role and Statements
- Role of Credibility and Presumption
- Pardon and Prosecution
- Judicial Trends
- Conclusion and Suggestion

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