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E-BOOK

On

Interrogation
in
Customs

Interrogation in Customs

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Investigation: Issuance of Summons and Recording of Statement

1. Introduction:

1.1 Investigation means search for material and facts in order to find out whether or not an offence has been committed. Establishing an offence depends entirely on effective and meticulous investigation. Customs authorities are empowered to investigate offences under the Customs Act and allied acts and in connection with the investigation, exercise powers conferred under relevant sections of the Customs Act 1962 and such allied Acts. Investigation would generally mean efforts to identify modus operandi, locate the source of the offending goods, the goods themselves, the brain behind the entire smuggling operations, the operators, aiders and abettors, flow of funds and evidence to prove the offence.

1.2 Recording of statements under Customs Act, 1962 is one of the most important aspects of investigation. A successful investigation is substantially dependent on good interrogation and recording of statements to convert the findings into admissible evidence. A timely and proper recording of statement is a pre-requisite to a good Show Cause Notice.

1.3 Provisions exist under the Customs Act, 1962 providing summoning power to the Customs officers. Summons can be used for recording statements of accused as well as witnesses and also for calling persons for producing documents necessary for investigation. Statements recorded under Customs Act, 1962 are valid as evidence in Court of Law and can supplement other documentary and circumstantial evidence.

2. Legal provisions for summoning under Customs Act, 1962:

2.1 Section 108 of the Customs Act, 1962 contains provisions empowering Gazetted Officers of Customs to summon persons to give evidence and produce documents. The section 108 of the Customs Act, 1962 provides as under:-

Power to summon persons to give evidence and produce documents.

(1) Any Gazetted Officer of customs shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act.

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(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(3) All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required:

Provided that the exemption under section 132 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to any requisition for attendance under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).

Salient features of legal provisions regarding summoning a person

2.2. The following points emerge from the above mentioned legal provisions:

- The legal provisions empower all the officers of Customs not below the rank of Superintendent to issue summons in an enquiry.
- The summons to appear in person to give evidence or produce documents can be issued only when there is an inquiry being conducted under the Customs Act and such evidence or documents are relevant to the inquiry.
- The language of the Section categorically expresses that the inquiry under this section shall be deemed to be “judicial proceeding” within the meaning of Section 193 and Section 228 of the Indian Penal Code, 1860. The implication is that any person who gives false evidence under summons shall be liable to punishment under Section 193 of the Indian Penal Code. Further any person who intentionally insults or interrupts the Officer sitting in summon proceedings shall be liable to punishment under Section 228 of the Indian Penal Code.
- All persons summoned are bound to appear before the officers concerned, the only exception being women who do not by tradition appear in public or privileged

persons like Honorable President, Vice President etc. i.e. exceptions as provided in Section 132 and 133 of the Code of Civil Procedure.

Precautions to be taken while summoning a person

2.3 The following precautions should generally be observed when summoning a person:

- A summon should not be issued for appearance where it is not justified. The power to summon can be exercised only when there is an inquiry being undertaken and the attendance of the person is considered necessary.
- Summons should not be issued repeatedly. As far as practicable the statement of the accused or witness should be recorded in minimum number of appearances. Repeated summons often lead to complaints of harassment.
- The time of appearance given in the summons must be respected. No person should be made to wait for long hours before his statement is recorded [*except when it has been decided very consciously as a matter of strategy*].

3. Types of persons tendering Statements:

3.1 The persons tendering statements under section 108 of the Customs Act, 1962 may be divided into three categories:-

- (a) Witnesses
- (b) Accomplice, and
- (c) Accused

3.2 For legal purposes, sometimes, it may be necessary to record the statements of the witnesses. Generally person in possession of documents such as banks, telecom service providers, and other corporate entities having the dealings with the accused persons are summoned to provide documents. These persons may provide documents under cover of their official letters and may not be required to depose in person as deemed fit by the officer concerned. Even if it is required to record the statements of such witnesses, it is very easy as these persons would willingly provide the information.

3.3 On the other hand, it is very difficult to extract information from the accused or the accomplices as they do not provide or divulge the information willingly. The application of proper techniques is necessary to extract information from such persons. The information provided by the accused can be used as a confession or admission to an illegal act. As they are inculpatory in nature, they have to withstand detailed scrutiny by the courts. Many times, retractions are filed against such statements, which need to be defended.

***Note:** Exculpatory evidence is evidence favorable to the defendant in a criminal trial that exonerates or tends to exonerate the defendant of guilt. It is the opposite of inculpatory evidence, which tends to prove guilt.]*

4. Interrogating of Accused/Accomplice:

4.1.1. Interrogation is a method to extract information which the respondent is generally reluctant to provide. In case of financial investigation, the interrogation may lead to-

- Confirmation of documentary evidence,
- Providing lead for further evidence, or
- Confirmation of the role of the accused.

4.1.2 As the respondents have their freedom or finances at stake, they generally adopt various techniques to evade/avoid giving /providing information. Some important techniques adopted by the respondents are:

- Keep silence,
- Conceal,
- Distract or delay,
- Pass the buck,
- Provide minimum information,
- Negotiate,
- Feign Amnesia/ Alzheimer,
- Feign sickness.

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4.1.3 Interrogation of the accused/ accomplice is a very tough task and it requires acumen as well as experience. As there is a conflict of interest between the interrogator and the respondent, it is difficult to establish a congenial environment. The strategies adopted by the interrogator and respondent are illustrated in the Table-I given below:-

Table I

INTERROGATOR	ACCUSED/ SUSPECT
Uses various techniques and information in hand to extract the desired information.	Takes care not to say something that might give out the information [to be concealed].
Poses questions to the respondent which are often of leading, loaded and deceptive nature.	Tries to depose with vague, ambiguous, misleading or confusing answers.
Probes critically into prior replies of the accused and try to use them to extract further information.	Tries to be consistent in replies so that they are non-committal and could not be crossed at later stage.
Tries to find inconsistencies in the statements of the accused with information from other sources.	Tries to disprove other sources wrong by adhering to own statement or show ignorance of those facts.
These discussions may move in tortuous cycle and sometimes may result in allegations and counter allegations.	

4.2 Preparation for Interrogation

4.2.1. A meticulous and through preparation is the prerequisite of a successful interrogation. Some suggestions for preparation are:

(A) Preparation of place of interrogation:

- (i) The room where interrogation takes place should have a look of serious business. Recording and photography equipment should be kept handy if it is anticipated to be used.
- (ii) The sitting position should not be very comfortable taking into account the status of the respondent; however, all basic amenities should be there.

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- (iii) Interrogation should be conducted at a segregated place i.e. not more than one person to be interrogated in the same room and the room should not be frequently visited by persons other than the interrogators.
- (iv) Interrogation should always be done by a team consisting of at least two interrogators.
- (v) If possible the co-accused should also be interrogated at the same time by another team of interrogators in an adjacent room.
- (vi) Statements should be recorded during office hours; however, an exception could be made regarding time and place of recording statement having regard to the facts in the case.
- (vii) Care should be taken to record the statement in most transparent way so that there is no accusation of mal-treatment and physical injury.
- (viii) No counsel should be allowed, however, if obligatory, they should be at a hearing distance and should give their views only if permitted by the interrogator.
- (ix) Interrogation room should be equipped with First Aid Kit and necessary arrangements to take the respondent to hospital if the need arises.

(B) Preparation of Questionnaire:

- (i) Gather detailed information about the accused and the concerned companies. Also gather information about all the persons involved in the chain of events relating to the violation under scrutiny.
- (ii) Gather all the relevant documentary evidence relating to the case and study them thoroughly and have a discussion in the team so that the entire team of interrogators is aware of the facts of the case. They should check every factual detail before the interrogation and ensure that all the written statements, exhibits etc. to be confronted are available.
- (iii) The leader of the team must assert absolute authority as regards to all the issues relating to the interrogation. The team must meet before starting interrogation and decide the strategies after scrutinizing the background of the respondent.
- (iv) Basic questions along with relevant documents should be kept ready with proper indexing. A record of other circumstantial evidence needed for confronting the respondent must also be kept ready.
- (v) Some important basic questions are:

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- **Who?:** Complete identification of the person be made including alias, age, education qualification, profession, designation, PAN, Bank A/c, family background etc.
- **What?:** Complete details of the duties of the person in the light of the offence.
- **Where?:** Complete details of the place of incidence, storage facilities, records, associates, company address, residence address etc.
- **When?:** Direct questions can be asked to relate time of the event with other known events.
- **How?:** Complete details about how the event occurred and who were party to it.
- **Why?:** Determine the motive behind.

(C) Action in case of non-appearance:

Sometimes it may so happen that an accused does not join investigations even after being repeatedly summoned. In such cases, after giving reasonable opportunity, generally three summons at reasonable intervals, a complaint should be filed with the jurisdictional magistrate alleging that the accused has committed offence under Section 172 of Indian Penal Code (absconding to avoid service of summons or other proceedings) and Section 174 of Indian Penal Code (non-attendance in obedience to an order from public servant). The Courts generally issue necessary directives to the accused to join investigations.

5. Process of Interrogation:

5.1 Interrogation should start with oral discussions on general issues and at first the team should try to establish rapport with the accused. During the initial discussions the team should try to understand the state of the mind of the accused and try to make him comfortable. Since a person being interrogated starts in a defensive frame of mind, the questioning should be done in such a manner that cooperation is developed.

5.2 In most of the interrogations, the accused will show an inclination to confide in a gentle member of the interrogating team. The suspect should be initially allowed to be interrogated by that member so that he could develop cooperation and make disclosures in confidence.

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5.3 Recording of statement should start with the introduction of the accused such as name, address, educational qualification, designation and nature of duty etc. It is desirable to record information like telephone numbers, PAN, Passport Number, bank account details, Aadhar Card Number etc.

5.4 Preferably the statement should be recorded by the accused in his own handwriting and in a language known to him. If the accused is unable to write due to some reason, the statement can be recorded by one of the officers on the request of the accused and this fact should be mentioned in the statement. In the end it must be mentioned that the said statement has been recorded by XYZ person on the request made by the accused and the same has been read out to the accused and as a token of having read and understood the same he has signed on each page of the statement.

5.5 Before starting the actual questionnaire, the accused should be asked to narrate in detail the incidence in his own words. This will indicate the degree to which the accused is ready to cooperate in the investigation and also provide material to cross question him later stage when the accused is confronted with the evidence.

5.6 Thereafter, start the interrogation with easy and simple questions so that the accused can answer them freely. Stay off the main topic till he start responding freely. However, the accused should not be allowed to aimlessly wander and confuse the issue leaving the basic question unanswered. The interrogator should focus on the answer of the accused and supplementary questions, if any, and not on the next pre-determined question.

5.7 While coming to a very specific admission it is desirable to first ask a broad question then a narrower question and finally a very specific question. For example in cases of smuggling or clandestine removal while interrogating a person who maintained private records of clandestine removal the sequence could be general questions regarding clandestine removal in the industry, followed by questions relating to the company he works in and practices adopted by this company. Finally, he could be confronted with the private records written by him.

5.8 The interrogation should be conducted without hiatus and the team members taking turns in such a manner that a constant stream of questions are directed at the accused so that he is forced to think and answer questions without getting enough time to concoct stories.

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5.9 During the course of interrogation, it is desirable to ask a few questions for which the answer is already known to the interrogator. Such question should be intermittently mixed as they are a good indicator as to whether the accused is giving correct answers or not. Once the accused is confronted with his wrong answers, he is likely to give true answers thereafter, as only truth can ensure consistency.

5.10 During interrogation, the interrogator should be in complete grip of the situation and should not reveal his mind so that the accused keep guessing. The interrogators must keep themselves calm and composed even if the accused keeps on giving irrelevant answers. Be patient but persistent and show that you are not going to give up however long it may take.

5.11 The accused should be confronted with documentary evidence and also cross questioning should be resorted to using other respondents' depositions and other documentary and circumstantial evidence.

5.12 The accused should be sympathized and the interrogators inability to help beyond a limit should be expressed in clear terms. The accused should be made to understand that giving correct statement is the best available choice before him in the given circumstances.

5.13 If the accused is not cooperating, the interrogator can blow hot and cold to extract correct statement and be reminded of the consequences **of such non-cooperation**.

5.14 Very often the offenders after having tutored by his counsel are reluctant to answer any question. To achieve their cooperation it is desirable to explain to him the futility of his non-cooperation and advantages of cooperating with the investigation. It should be further explained that investigators would be willing to assist him to the extent possible if he cooperates in the investigation.

5.16 Despite all attempts, if the accused is not cooperative, questions should still be asked on all the aspects of the offence and his 'reply' or even 'no reply' should be recorded as it will demolish his likely future defence on the issues already covered. The non-cooperation of the accused should be clearly brought out on record by asking very simple and innocent questions and recording his 'reply' or 'no reply' to them. This would establish his hostile attitude. Questions should be framed in such a way that 'no reply' to the questions would assist the department in drawing adverse conclusion. Finally, he

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could be asked, “it could be taken from his refusal to answer questions that he has no defence against the allegations which are being put to him”.

5.17 The person being interrogated should be administered information and warning related to self-incrimination as per Section 164 of Cr.P.C i.e. he has been explained the meaning of Section 108 of the Customs Act, 1962, or Section 14 of the Central Excise Act, 1944, and he understands that his statement may be used as an evidence against him or against any other person in court of law. He should also be told about the legal consequences of giving false information by showing him the relevant provisions of Customs Act (Section 108(3)) and IPC (Section 193).

5.18 In the end a summary in the form of review questions can be place to summarize the main issues of the interrogation. Also the agreement of the accused in his earlier statement, if any, should be recorded.

5.19 The statement should generally conclude very clearly stating that the statement running in so many pages has been recorded in the hand writing of the accused (or the writer and read out to him) and the same is voluntarily recorded without any threat, pressure, coercion or inducement.

5.20 The statement should be signed by the accused on each page along with his name and the person recording the statement should also sign on each page of the statement along with his name and designation. At the end of the statement the officer recording the statement must sign after recording the declaration “Recorded before me”. The statement should also contain the place, date and time of recording.

6. *Dealing with retracted Statements:*

A retracted statement should be corroborated in material particulars and attempt should be made to sustain the general trend of confession. It has been made clear in many judicial pronouncements that Retraction has no effect on the admissibility of the Statement unless the retraction is done within a reasonable time. However, on receipt of a retraction, the same should be expeditiously examined and a reply to the retraction should be sent very clearly bringing out that the retraction is an afterthought, if the enquiry has found so. Considering that retraction has become a tool increasingly being used by the accused persons to thwart investigations, it is advisable to corroborate a confessional statement by recording a second statement after a few days of the first statement confirming the confessions made.

7. Importance of Documentary and Circumstantial Evidence:

A statement without the backing documentary or circumstantial evidence has little value. The value of a statement increases many fold if disclosures made in the statement are corroborated by other material evidence. Conversely, a good incriminating statement can be obtained by confronting the accused/ witness with documentary evidence or statements of other persons. Therefore a good investigation will bring sufficient material evidence on record and will not overtly depend on statements.

8. Pattern for Recording Statement

8.1 As a direct result of interrogation, statements have to be recorded. It is significant to note that the Customs Act, 1962 does not prescribe any procedure for recording of statements. The absence of the same has resulted in wide variance and disparity in the form and manner in which statements are being obtained. This has also resulted in officers having to face accusations of malpractice, unjustifiable exercise of power, irregularities, illegalities, etc. Hence, it is necessary that all officers follow a uniform manner and format for recording of statements. A systematic and detailed pattern of questioning and recording of statement as given below becomes necessary:

8.1.1. The following clauses/points should be incorporated/mentioned in a statement:

- (i) *“I am in receipt of your summon no.dated..... issued byI have been explained the provisions of Section 108 of the Customs Act, 1962 and have been explained that giving false evidence in the enquiry proceedings is an offence punishable under Section 193 of the Indian Penal Code. Further, I have also been explained that my statement can be used against me or against any other person, in this enquiry proceedings or in any other proceedings as an evidence.”*
- (ii) The relevant Act and section should be boldly indicated.
- (iii) Full name, age and address of the person giving the statement.
- (iv) Full name and designation of the officer recording the statement.
- (v) The reference number and date of issue of summons.
- (vi) Date and time of appearance of the person summoned for giving the statement.
- (vii) Statement should carry following information about the person.
 1. Full Name and aliases, if any.
 2. Address : (I) Business
(II) Residential

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3. Age:- Date of Birth
4. Occupation
5. Names and addresses of partners, if any
6. Annual income
7. Marital status
8. No. of Children
9. Languages known – read/write/speak
10. Any known medical complaints
11. PAN number, passport number, UID, etc.

The more background details that can be elicited, the better.

- (vii) Reason why the person is giving the statement.
- (viii) Factual details of the case as known to the person.
- (ix) How the above facts are known to the person:
 - (1) Personal knowledge
 - (2) Hearsay
 - (3) Documentary evidence
 - (4) Material evidence
- (x) If the evidence is hearsay, explanation of the person as to why it is reliable.
- (xi) If other people are sought to be implicated, get:
 - (1) Full identification
 - (2) Address
 - (3) Age
 - (4) Precise role played
- (xii) The nature of the violation committed.
- (xiii) Affirmation that all details have been truthfully disclosed and voluntarily given without any fear, favour or coercion.
- (xiv) Full signature and name to be obtained at the end of each page of the statement. Check genuineness of the signature.
- (xv) Date and time of conclusion of the statement.
- (xvi) Full name, signature and designation of the officer recording the statement.

9. Statement by Authorised Agent:

In the context of person being summoned, the term “*authorised agent*” has not been defined, but Section 146 A of the Customs Act, 1962 defines an “authorised representative’ as hereunder:

- (a) relative or regular employee; or
- (b) a Custom House Agent licensed under Sec. 146; or
- (c) any legal practitioner who is entitled to practice in any civil court in India;

Or

- (d) any person who has acquired such qualifications as the Central Government may specify by rules made in this behalf.

9.2 It is clear from sub-sec. (3) of Sec. 108 that appearance through authorized agent is not at the discretion of the person summoned. The discretion lies with the summoning officer, who may direct the person summoned either to attend in person or by an authorized agent. Thus, it makes it imperative for the person to appear personally and not by an authorized representative when he has been directed to do so.

10. Judicial pronouncements on Power to Summon and admissibility of Statements:

Over the years the power to summon and admissibility of statements recorded as evidence has been examined by various courts of law. Some of the important pronouncements in this regard are as follows:-

- (i) A person called for interrogations has no right to have his lawyer present during questioning by the officers as such person cannot be equated with an accused. {*Poolpandi V. Superintendent Central Excise, 1992 (60) ELT 24 (SC)*}
- (ii) Voluntary statements recorded under Section 14 are admissible as evidence in departmental proceeding and also in a court of law. {*K. I. Povunny v. ACCE 1997 (90) ELT 241,255 (SC)*}
- (iii) Service of summon is not a condition precedent to recording of statement. There is no rule prescribing procedure for issuing any summon nor is there

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any form prescribed, therefore service of summon is not a condition precedent to recording of statement. (*Laxman Padma Bhagat v. State of Maharashtra, AIR 1965 Bom 195, 210*)

[Note: To understand implication of the above said judgement, complete judgements may be referred to.]

11. Text of Relevant Sections of Indian Penal Code/Code of Civil Procedure

11.1 Text of Section 172 of the Indian Penal Code, 1860

172. Absconding to avoid service of summons or other proceeding

Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the summons or notice or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

11.2 Text of Section 174 of the Indian Penal Code, 1860

Non-attendance in obedience to an order from Public Servant

Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, Intentionally omits to attend at that place of time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the summons, notice, order of proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustrations

(a) A, being legally bound to appear before the *[High Court] at Calcutta, in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(b) A, being legally bound to appear before a **[District Judge], as a witness, in obedience to a summons issued by that 2[District Judge] intentionally omits to appear. A has committed the offence defined in this section.

**Subs. by the A.O.1950, for "Supreme Court".*

***Subs. by the A.O.1950, for "Zila Judge".*

11.3 Text of Section 193 in the Indian Penal Code

193. Punishment for false evidence.—

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court-martial; 1[***] is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice. Illustration A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice. Illustration A, in any enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding. A has given false evidence.

11.4 Text of Section 228 of the Indian Penal Code

228. Intentional insult or interruption to public servant sitting in judicial proceeding

Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

11.5 Text of Section 132 of the Code of Civil Procedure

132. Exemption of certain women from personal appearance.

(1) Women who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in Court.

(2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code.

11.6 Text of Section 133 of the Code of Civil Procedure

133. Exemption of other persons.

The following persons shall be entitled to exemption from personal appearance in Court, namely-

- (i) the President of India;
- (ii) the Vice-President of India;
- (iii) the Speaker of the House of the People;
- (iv) the Ministers of the Union;
- (v) the Judges of the Supreme Court;
- (vi) the Governors of States and the administrators of Union Territories;
- (vii) the Speakers of the State Legislative Assemblies/
- (viii) the Chairman of the State Legislative Councils;
- (ix) the Ministers of States;
- (x) the Judges of the High Courts; and
- (xi) the persons to whom section 87B applies.

[Note: *Subs. by Act No. 66 of 1956, sec. 12, for sub-section (1) (w.e.f. 1-1-1957)]

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(2) [Omitted] by Act No. 66 of 1956, Sec. 12 (w.e.f. 1-1-1957)

(3) Where any person*^{***} claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs

*The words "**so exempted**" omitted by Act 66 of 1956, sec. 12 (w.e.f. 1-1-1957)

**