

# THE INDIAN EVIDENCE ACT, 1872.

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# PRELUDE

The functions of Court of Justice are two-fold:–

- i) To ascertain the existence or non existence of certain facts, and
- ii) To apply the substantive law to the ascertained facts and to declare the rights and liabilities of the parties.

For this, the court has to collect, peruse, analyse and sift the evidential material brought before it. The means whereby the court informs itself of the existence of these facts is called EVIDENCE.

# JURIST PROPOSITIONS

- ▶ ‘Evidence’ is derived from the Latin term “Evidere” which means – “to show clearly, to make plainly certain, to ascertain, to prove”
- ▶ Taylor says – (functional description of court process)
  - “The word ‘evidence’ includes all legal means, exclusive of mere arguments, which tend to prove or disprove any matter of fact, the truth of which is submitted to judicial investigation.”

# Contd...

Classical exposition of Bentham –

“Any matter of fact, the effect or tendency of which is to produce in the mind a persuasion, affirmative or disaffirmative of the existence of some other matter of fact.”  
(comprehends both physical and psychological facts)

Evidence may bear two meanings or refer to –

- i) **MEANS** – that tend to create a belief in the mind of judge;  
and
- ii) **FINAL BELIEF** – actually created in his mind, known as **PROOF**.

**PROOF IS THE END AND EVIDENCE IS THE MEANS TO PROOF.**

In the Indian Evidence Act, 1872, the word ‘Evidence’ is used in the sense of “Means”.

# Statutory interpretation

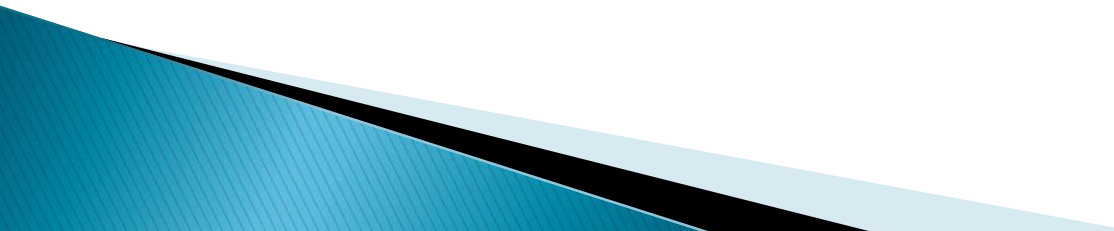
Sec-3 of the Indian Evidence Act, 1872 reads:

EVIDENCE means and includes –

- (1) All statements which the court permits or requires to be made before it by witnesses, in relation to matters of facts under inquiry – such statements are called **ORAL EVIDENCE**.
- (2) All documents produced for the inspection of the court – called **DOCUMENTARY EVIDENCE**.

**This interpretation is not exhaustive.** It did not cover ‘Material Objects’ like, photos, weapon used in murder, bloodstained clothes etc. which are admitted in practice.

# Contd...

- ▶ Court need not concern itself with the method by which such evidence is obtained. (Pushpa Devi M. Jatia vs. M.L.Wadhwan)
  - ▶ Tape recorded conversation is held as documentary evidence. (Rama Reddy vs. V.V.Giri)
  - ▶ Dock tracking evidence is held to be scientific evidence. (Abdul vs. State)
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# OBJECT OF LAW OF EVIDENCE

- ▶ Ascertaining controverted questions of fact in judicial proceedings. Evidence is to a judicial investigation what Logic is to reasoning.
- ▶ To prevent laxity in the admissibility of evidence.

## CARDINAL PRINCIPLES OF LAW OF EVIDENCE:

- Evidence must be confined to the matter in issue.
- Hearsay evidence must not be admitted.
- Best evidence must be given in all cases.
- Facts judicially noticeable need not be proved.(S-56)
- Facts admitted need not be proved. (S-58)

# Classification of Evidence.

Evidence may be divided into –

- ▶ i) Direct Evidence and
  - ▶ li) Circumstantial Evidence.
- 
- ▶ i) Oral Evidence (S–60)
  - ▶ li) Documentary Evidence. (Ss–61 to 65)
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- ▶ i) Primary Evidence (Ss–62/64)
  - ▶ li) Secondary Evidence. (Ss–63/65)



# THE INDIAN EVIDENCE ACT, 1872.

- ▶ The Indian Evidence Act, 1872 is divided into 3 parts, 11 chapters and comprises of 167 sections.
- ▶ Part-I answers the question ‘what facts may or may not be proved?’ (Ch.I & II – Ss-1 to 55)
- ▶ Part-II deals with ‘what sort of evidence is to be given of these facts?’ (Ch.III – VI Ss-56 to 100)
- ▶ Part-III covers ‘by whom and in what manner the facts are to be proved?’ (Ch-VII to XI; Ss-101 to 167)
- ▶ Sec-5 to 55 deal with RELEVANCY and
- ▶ Sec-56 to 167 deal with the ADMISSIBILITY.

# Extent and Application of the I.E.Act, 1872.

## Sec-1

- ▶ The Indian Evidence Act, 1872 came into force on 1<sup>st</sup>. September, 1872.
- ▶ It applies to the whole of India except J & K.
- ▶ It applies to all **JUDICIAL PROCEEDINGS** in or before a court, including court martials under the Army Act, 1950, The Navy Act, 1957 and the Air Force Act, 1950.

## Not applicable to –

- ▶ i) proceedings under The Army Act, The Naval Discipline Act, 1934 and the Air Force Act passed by the British Parliament.
- ▶ ii) Affidavits
- ▶ lii) Arbitration proceedings.
- ▶ The provisions of this Act are not applicable to Departmental Inquiries / Domestic Inquiries / Commissions of Inquiries / Administrative Tribunals.
- ▶ Refer to Court – Judicial Proceedings – Taking of evidence on oath.

# FACT

Sec-3: Interpretation.

**FACT means and includes** –

- ▶ i) Any thing, state of things or relation of things capable of being perceived by the senses .....  
Called as Physical Facts.
- ▶ ii) Any mental condition of which any person is conscious .....called as Psychological facts.

**Fact may be divided into** –

- i) Fact in issue (FACTUM PROBANDUM) and
- ii) **Relevant Fact** (FACTUM PROBANS)/Evidentiary fact

Facts are the subjects of judicial inquiry and form the fulcrum of adjudication. A fact may be not only the object of perception by any one of the five senses, but also the subject of consciousness.

# STANDARD OF PROOF.

## S-3 – PROVED – DISPROVED – NOT PROVED

▶ **These terms deal with the degree or standard of proof.** What and how much proof is necessary to convince the judge of a fact in issue depends upon many circumstances. These terms assess the degree of certainty to be arrived at before a fact is said to be proved, disproved or not proved.

‘Proved’ refers to a state when the court believes in the existence of a fact absolutely, or considers its existence highly probable that a prudent man would act on the assumption of its existence.

‘Disproved’ indicates that the material is sufficient to establish the non-existence of the fact asserted. Court believes in the non-existence of a fact or its existence highly improbable.

‘Not proved’ implies that the material on record falls short of the requisite proof. A fact is said to be not proved when it is neither proved nor disproved.

▶ **Standard of proof in civil cases – Preponderance of probability.**

▶ **Standard of proof in criminal cases – Proof beyond any shadow of doubt.**

Proof does not mean proof to rigid mathematical demonstrations, but must be such to induce an apprehension in a reasonable man to come to the conclusion.

Suspicion cannot take the place of proof. **“The sea of suspicion has no shore and the court that embarks upon it is without rudder and compass.”** – Justice Caldwell.

# RELEVANT

- ▶ One fact is said to be relevant to another when the one is connected with the other in any of the ways mentioned from S-5 to 55 of Ch.II on relevancy. So only those facts that fall within the sweep of S-6 to 55 will be known as Relevant Facts.
- ▶ S-5 of the *I.E.Act*, 1872 lays down the rule of relevancy. **Evidence may be given in respect of (i) fact in issue and (ii) relevant Fact** falling within the sphere of ch.II and OF NO OTHERS.
- ▶ Thus opinions and individual presumptions cannot form evidence except to the extent permitted by the Indian Evidence Act, 1872.

# ORAL EVIDENCE

S-59 says that all facts – **except the contents of documents** – may be proved by oral evidence.

If a fact is to be proved by oral evidence, **the evidence must be of a person who has directly perceived the facts which he testifies or who has the personal knowledge of the facts** i.e. oral evidence must be ‘direct’. (S-60)

- ▶ S-3 provides that “**all statements which the court permits or requires to be made before it by witnesses in relation to the matters of fact under inquiry**” – called oral evidence.
- ▶ Statements of facts made by the parties to the suit or proceedings, and witnesses constitute oral evidence.
- ▶ **Statements made by gestures may be considered as oral evidence.** Ex. R. vs. Abdullah.

# DOCUMENTARY EVIDENCE

## S-3: DOCUMENT –

- ▶ “Any matter expressed or described upon any substance by means of letters, figures or which may be used, for the purpose of recording that matter.”
- ▶ Ex. A writing is a document.
  - Words printed, lithographed or photographed are documents.
  - A map or plan is a documents;
  - An inscription on a metal plate or stone is a document.
  - A caricature is a document.

Thus the term includes all material substances on which the thoughts of men are represented by writing or any other species of conventional work or symbol.

VOX AUDIT PETIT – LITERA SCRIPTA MANET – The law of evidence recognizes the superior credibility of the documentary evidence as against oral evidence.

# Proof of contents of Documents.

- ▶ S-61 says that the contents of a document may be proved either by primary or by secondary evidence.
- ▶ S-62: **PRIMARY EVIDENCE** means 'the document itself produced for the inspection of the court'.
- ▶ Explanation-1.
- ▶ Where a document is in several parts, each part is primary evidence. If executed in counterparts, each counterpart is primary evidence.
- ▶ Explanation-2:
- ▶ Where documents are made one uniform process, i.e. printing, lithograph or photography, each is primary evidence of the contents of the documents.



# Secondary Evidence.

- ▶ S-63 - Secondary Evidence means and includes -
- ▶ i) Certified copies of the original documents.
- ▶ li) copies made from the original by mechanical process which assure the accuracy of the copy,
- ▶ lii) copies made from or compared with the original,
- ▶ Iv) Counterpart of a document against the party who did not sign it,
- ▶ V) Oral account of the contents of a document given by a person who has himself seen the document.

This section is not exhaustive of all kinds of secondary evidence.

# When Secondary Evidence is admissible.

S-65 provides that Secondary Evidence may be given in the following cases: –

- ▶ i) When a document is in possession of –
  - (a) the person against whom it is to be proved
  - (b) any person out of reach or not subject to the process of the court
  - (c) person legal bound to produce does not produce even after notice.
- ▶ li) when the contents of the original are admitted in writing by the party against whom to be proved,
- ▶ lii) when the original is lost or destroyed not out of one's own negligence,
- ▶ Iv) when the original is not easily movable,
- ▶ V) when the original is a public document,
- ▶ Vi) when the certified copy of the original is permitted by the Act,
- ▶ Vii) when the original consists of numerous accounts and unwieldy for perusal, a summary result of such documents.

# Continued

Ss-45 to 51 dealing with 'Expert Evidence' constitute exception to the rule of relevancy of S-5 of I.E.Act, 1872.

- ▶ S-45 provides that when the court has to take opinion upon a point
  - ▶ i) of foreign law
  - ▶ ii) of science or art
  - ▶ iii) identity of hand writing
  - ▶ iv) finger impressions
- ▶ the opinions of 'persons specially skilled' on that point will be considered as relevant.

Such persons are called Experts.

- ▶ Ex: whether the death of a person is caused by poison? The opinion of an expert doctor as to the symptom produced by the poison may be considered as relevant.
- ▶ Opinion of a professional goldsmith as to the purity of gold may be relevant as expert evidence. (Abdul Rahaman vs. State of Mysore– (1972)
- ▶ Muslim law is not a foreign law in India.
- ▶ **S-46 says that facts bearing upon opinion of experts are relevant.**
- ▶ Ex. The question whether A was poisoned by certain poison. The fact that persons who were poisoned by the same poison had exhibited the same symptoms is relevant.

# Continued

- ▶ S-47 says when the opinion as to handwriting would be relevant. – Opinion of any person acquainted with the handwriting of the person supposed to have written or signed, is relevant.
- ▶ may be proved –
  - ▶ i) By the evidence of the writer himself
  - ▶ li) by the opinion of an expert
  - ▶ lii) by the evidence of a person who is acquainted with the handwriting of the person in question, and
  - ▶ Iv) by the court under Sec-73 itself comparing the handwriting in question with the proven handwriting.
- ▶ In case of digital signature, by the opinion of the Certifying Authority.
- ▶ S-48 makes relevant the opinions of persons who know the existence of a general right or custom.
- ▶ S-49 refers to opinions as to usages, tenets etc – opinions of persons having special means of knowledge thereon are relevant.
- ▶ S-50 says when the court has to form an opinion as to the relationship one person with another, opinion expressed by conduct as to such relationship by any family member or person having special means of knowledge on that subject is relevant.
- ▶ Ex. Whether A was the legitimate child of B.
  - Whether A and B were married.
- ▶ S-51 says that whenever the opinion of a person is relevant, the grounds on which such opinion is based are also relevant.

# PUBLIC AND PRIVATE DOCUMENTS

S-74 says that the following documents are public documents: –

- ▶ 1) Documents forming the acts or records of the acts –
  - ▶ i) of sovereign authority,
  - ▶ ii) official bodies and tribunals, and
  - ▶ iii) of public officers, legislative, judicial and executive of India or of the Commonwealth or of a foreign country.
- ▶ 2) Public records kept in any state of private documents.
- ▶ Ex. Memorandum of Articles of a Company registered with the Registrar of companies.
- ▶ A private Wakf deed recorded in the office of the sub-registrar is a public document.
- ▶ Entries made by a police officer in the site inspection map and site memo held to be public documents.
- ▶ Bankers' books of nationalised banks are public documents.
- ▶ But an application for a licence filed in Govt. is not a public document.
- ▶ Similarly a post-mortem report is not a public document as a proof of identity of the dead without producing the doctor in evidence.
- ▶ SEC-75 SAYS THAT ALL OTHER DOCUMENTS ARE PRIVATE DOCUMENTS.

# PROOF OF DOCUMENTS

- ▶ Proof of Public Documents by secondary evidence/certified copies.
- ▶ S-76 says that every public officer having the custody of a public document, shall give on demand a copy of it on payment of legal fee to every person who has a right to inspect such document.
- ▶ Endorsement at the foot of such copy that it is a true copy of such document, and shall be signed, dated and affixed with official title and sealed.
- ▶ S-77 provides that such certified copies may be produced in proof of the contents of the public documents, or part thereof.
- ▶ Cultivation registers, registers of paddy producers prepared by village assistants provable by secondary evidence.

# CONTD...

- ▶ S-78 deals with the proof of other official documents –
- ▶ Central Acts, orders or notifications – certified by the Heads of the departments concerned.
- ▶ Proceedings of the Legislatures – Journals of those bodies or copies printed by the Govt.
- ▶ Proclamations, orders or regulations issued by Her Majesty or Privy Council – by copies of extracts of London Gazette.
- ▶ Foreign legislative Acts – journals published by foreign authority, copy certified under the seal of the sovereign of such foreign country.
- ▶ Municipal Proceedings – publications of such body certified by their legal keeper
- ▶ Public documents of any other class in a foreign country may be proved by the original or certified copy issued by the legal keeper of the document with a certificate and seal of notary public, or Indian counsel or diplomatic agent.



# PRESUMPTIONS AS TO DOCUMENTS

- ▶ Sec-79 to 90 DEAL WITH THE PRESUMPTIONS AS TO DOCUMENTS.
- ▶ S-79 – Presumption as to genuineness of certified copies – Courts shall presume.
- ▶ S-80 – The Court shall presume genuineness of documents produced as records of evidence – Deposition of witness, confessional statement of accused before Judge or Magistrate
- ▶ S-81 – The court shall presume as to the genuineness of the gazettes, newspapers, private acts of parliament and other documents etc.
- ▶ S-81 – A presumption as to Gazettes in electronic forms.

# CONTD....

- ▶ S-82 – The court shall presume the genuineness of documents admissible in England without proof of seal or signature.
- ▶ S-83 – Presumption as to maps and plans issued under the authority of Government – The courts shall presume their genuineness.
- ▶ S-84 – The courts shall presume the genuineness of collections of laws and reports of decisions of a foreign country.
- ▶ S-85 – Presumption as to power attorney, electronic agreements and digital signatures. – shall presume.
- ▶ S-86 – Presumption as to certified copies of foreign judicial records – courts shall presume.
- ▶ S-87 – Presumption as to books, maps and charts – May presume.
- ▶ S-88 – Presumption as to telegraphic messages – May presume.
- ▶ S-89 – The court shall presume due execution of documents not produced even after due notice.
- ▶ S-90 – Presumption as to documents of 30 years old – MAY PRESUME.