Indian Evidence Act, 1872 (Introduction & History)

E-Content

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Module-I - INTRODUCTION

Why to study Evidence Act?

Evidence refers to anything that is necessary to prove a certain fact. Thus, Evidence is a means of proof. Facts have to be proved before the relevant laws and its provisions can be applied. It is evidence that leads to authentication of facts and in the process, helps in rationalizing an opinion of the judicial authorities. Further, the law of evidence helps prevent long drawn inquiries and prevents admission of excess evidence than needed.

What is IEA? How does it function?

To answer this question one need to know how law proceed or propose to decide a case. There two fundamental principles of trial in all the judicial systems, firstly, it must ensure that parties to the case are given full opportunity to prove their case, and secondly every dispute must come to an end. These two rules which are juxtaposed to each other must be balanced and this is done by the blending of procedural law and rules of evidence.

What is Evidence?

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.

In other words, the object of every judicial investigation is the enforcement of a right or liability that depends on certain facts. The law of evidence can be called the system of rules whereby the questions of

fact in a particular case can be ascertained. It is basically a procedural law but it has shades of substantive law. For example, the law of estoppel can defeat a man's right. Law of Evidence is one of the fundamental subjects of law and therefore we must study it in detail and depth. The term 'evidence' owes its origin to the Latin terms 'evident' or 'evidere' that mean 'to show clearly, to discover, to ascertain or 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."

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". **Sec-3 of the Indian Evidence Act, 1872 read**s: 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. 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)

TYPES OF EVIDENCE

1. Direct 2. Circumstantial 3.Hearsay 4. Documentary 5. Oral 6. Scientific 7. Real 8. Digital

Law related to evidence and proof is nothing but rules that must be observed in particular situations before certain forums. If the other party in a legal proceeding admits guilt, all is well. The other party can also deny the allegations in the plaint and the existence of certain facts may be called into question. Then the parties or their witnesses have to give evidence in the court of law so that the court may decide whether the facts exist or not. Interpretation of agreed facts is a rarity and in most cases the existence or non existence of facts as to be shown and therefore, the law of evidence plays a very important role.

Illustration: X has entered into a contract with Y to sell his house for an amount of INR 10,000. In case of a breach of contract by either X or Y, a Court of Law cannot decide the rights and liabilities unless the existence of such a contract is proved.

In Indian Evidence Act, we will study who is a competent witness, on whom does the burden of proof lie and other things.

INTRODUCTION TO IEA

The Indian Evidence Act, 1872 is largely based on the English law of Evidence. The Act does not claim to be exhaustive. Courts may look at the relevant English Common Law for interpretation as long as it is not inconsistent with the Act. The Act consolidates, defines and amends the laws of evidence. It is a special law and hence, will not be affected by any other enactment containing provisions on matter of evidence unless and until it is expressly stated in such enactment or it has been repealed or annulled by another statute. Parties cannot contract to exclude the provisions of the Act. Courts cannot exclude relevant evidence made relevant under the Act. Similarly, evidence excluded by the Act will be inadmissible even if essential to ascertain the truth.

THE LAW OF EVIDENCE IS THE LEX FORI

Law of evidence is part of the law of procedure. That why it is called the lex fori or the law of the court or forum. It means that Indian courts know and apply only the Indian law of evidence. Thus, the competency of a witness, whether a fact is proved or not is determined by the law of the country where the question arose, where the remedy is sought to be enforced and where the court sits to enforce it. For example, if a legal proceeding is going on in Sri Lanka and evidence is taken in India for the said proceeding whether by commission or by assistance of courts in India, the law which will be applied during such recording of evidence will Sri Lankan Law of Evidence.

THE LAW OF EVIDENCE IS THE SAME IN CIVIL AND CRIMINAL PROCEEDINGS

A civil case of will and murder will have the same law of evidence. For example, the date of death has to be clarified or confirmed for the will to come into existence and a murder date has to be set for proceeding further with the criminal investigations too. There are, however, certain sections that apply exclusively to civil matters and others that apply exclusively to criminal cases. In civil cases, mere preponderance of evidence may be enough but in criminal cases the prosecution must prove its case beyond reasonable doubt and leave the other alternatives presented very unlikely and highly suspect.

BASIC PRINCIPLES OF EVIDENCE

The Act deals with Relevancy of Facts, Mode of Proof and Production and Effect of Evidence. The following principles are called the basic principles and the exceptions to the above principles, the exact application has been set out very clearly in the Act:

Evidence must be confined to the matters in issue.

Hearsay evidence may not be admitted.

The best evidence must be given in all cases.

All facts having rational probative value are admissible in evidence, unless excluded by a positive rule of paramount importance.

Module-II- HISTORY OF THE LAW OF EVIDENCE

Today we have two basic of evidence upon which rules are formulated. One rule is that only the facts bearing importance to the matter being heard should be looked into by the courts and second that all facts that will help the court to reach a decision are admissible unless otherwise excluded like a client confessing to his legal counsel.

Among others from ancient Hindu Period, Vasistha recognised 3 kinds of evidence:

Lekhya (Documentary Evidence)

Sakshi (Witnesses)

Bukhti (Possession)

Divya (Ordeals)

Though the concept of justice in Islam is that it is a divine disposition, the Mohammedan law givers have dealt with evidence in various forms as indicated by the table below:

1. Oral that may be Direct Hearsay

2. Documentary (Less preferred than oral)

Initially at many places and in many beliefs, the parties to litigation would fight each other and it was believed that divine help will come to the rightful party. Trial by battle has been abrogated only in 1817. The trials by ordeal included a person on bed of hot coals or putting ones hand in boiling water. Anyone who suffered injury was held to be impure and guilty. Though it was believed that providence will not let harm come to the innocent, often it was the priests who manipulated the tests so that certain people could go scot-free.

It was believed that if a guilty man touches the corpse it would show a reaction and then the man should be punished. Accordingly refusal to touch a corpse was also admission of guilt by the accused.

The most cruel evidence law existed in Europe with respect to witch hunts and witch craft. The woman suspected of being a witch was tied up and thrown into a pond. If she floated p, she was a witch and was burned alive at stake. If the woman were to sink to the bottom of the pond, she was not a witch. Unfortunately she would be dead by then but nevertheless innocent in the eyes of law.

Confessions due to torture are not unknown today either.

THE MODERN LAW AS IT PREVAILS

The concrete evidence of the ‘law of evidence’ comes from the times of the Britishers. In 1837, an Act was a passed whereby even a convicted person was allowed to give evidence. Subsequently, parties to

litigation could be witnesses for their respective sides. Charles Dickens ridiculed this law and questioned the honesty of such witnesses. After all, who will testify against himself or to his disadvantage? Between 1835 and 1855, there are eleven Acts that touch upon the subject of law of evidence. And these were consolidated.

In 1856, Sir Henry Summer Maine, the then law member of the Governor General's Council was asked to prepare and Indian Evidence Act. His draft was found unsuitable for the Indian conditions. So it fell to Sir James Fitzjames Stephan who became the law member in 1871 to come up with the Indian Evidence Act. His draft bill was approved and came into being as the Indian Evidence Act, 1872 and came into force from 1st September 1872. Before independence, many states had already accepted this law as the law in their respective state. After independence, the Indian evidence Act was held to be the law for all Indian courts.[1]

Module-III- Structure and Objective of 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 to100) 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.

The Objective of the Indian evidence Act 1872 was to consolidate, define and amend the Law of Evidence.

Module-IV- Amendment of the Indian Evidence Act, 1872

A)- Amendment of the Indian Evidence Act, 1872 in 2000

1. In section 3,—
(a)
in the definition of "Evidence", for the words "all documents produced for the inspection of the Court", the words "all documents including electronic records produced for the inspection of the Court" shall be substituted;
(b)
after the definition of "India", the following shall be inserted, namely:— 'the expressions "Certifying Authority", "digital signature", "Digital Signature Certificate", "electronic form", "electronic records", "information", "secure electronic record", "secure digital signature" and "subscriber" shall have the meanings respectively assigned to them in the Information Technology Act, 2000.'.

2. In section 17, for the words "oral or documentary,", the words "oral or documentary or contained in electronic form" shall be substituted.

[1] https://kanwarn.wordpress.com/2008/12/20/introduction-to-indian-evidence-act/

2. After section 22, the following section shall be inserted, namely: —
When oral admission as to contents of electronic records are relevant.
"22A. Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question.".

In section 34, for the words "Entries in the books of account", the words "Entries in the books of account, including those maintained in an electronic form" shall be substituted.

1. In section 35, for the word "record", in both the places where it occurs, the words "record or an electronic record" shall be substituted.

2. For section 39, the following section shall be substituted, namely: —
What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers.

"39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or pan of an isolated document, or is contained in a document which forms part of a book, or is contained in part of electronic record or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, electronic record, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.".

7. After section 47, the following section shall be inserted, namely: —
Opinion as to digital signature where relevant.
"47A. When the Court has to form an opinion as to the digital signature of any person, the opinion of the Certifying Authority which has issued the Digital Signature Certificate is a relevant fact.".

1. In section 59, for the words "contents of documents" the words "contents of documents or electronic records" shall be substituted.

2. After section 65, the following sections shall be inserted, namely: —
Special provisions as to evidence relating to electronic record.

'65A. The contents of electronic records may be proved in accordance with the provisions of section 65B.

Admissibility of electronic records.

65B. (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2)
The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: —
(a)
the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;
(b)
during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;
(c)
throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and
(d)
the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.
(3)
Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) ofsub-section (2) was regularly performed by computers, whether—
(a)
by a combination of computers operating over that period; or
(b)
by different computers operating in succession over that period; or
(c)
by different combinations of computers operating in succession over that period; or
(d)
in any other manner involving the successive operation over that period, in

Proof as to digital signature.

"67A. Except in the case of a secure digital signature, if the digital signature of any subscriber is alleged to have been affixed to an electronic record the fact that such digital signature is the digital signature of the subscriber must be proved.".

11. After section 73, the following section shall be inserted, namely: —

Proof as to verification of digital signature.
'73A. In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct—

(a)

that person or the Controller or the Certifying Authority to produce the Digital Signature Certificate;

(b)

any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by that person.

12. Presumption as to Gazettes in electronic forms.

After section 81, the following section shall be inserted, namely: —

"81 A. The Court shall presume the genuineness of every electronic record purporting to be the Official Gazette, or purporting to be electronic record directed by any law to be kept by any person, if such electronic record is kept substantially in the form required by law and is produced from proper custody.".

13. Presumption as to electronic agreements.

After section 85, the following sections shall be inserted, namely: —

"85A. The Court shall presume that every electronic record purporting to be an agreement containing the digital signatures of the parties was so concluded by affixing the digital signature of the parties.

Presumption as to electronic records and digital signatures.

85B. (1) In any proceedings involving a secure electronic record, the Court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time to which the secure status relates.

(2)

In any proceedings, involving secure digital signature, the Court shall presume unless the contrary is proved that—

(a)

the secure digital signature is affixed by subscriber with the intention of signing or approving the electronic record;

(b)

except in the case of a secure electronic record or a secure digital signature, nothing in this section shall create any presumption relating to authenticity and integrity of the electronic record or any digital signature.

Presumption as to Digital Signature Certificates.

85C. The Court shall presume, unless contrary is proved, that the information listed in a Digital Signature Certificate is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscriber.".

14. Presumption as to electronic messages.

After section 88, the following section shall be inserted, namely: — '88A. The Court may presume that an electronic message forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent. Explanation.—For the purposes of this section, the expressions "addressee" and "originator" shall have the same meanings respectively assigned to them in clauses (b) and (za) of sub-section (1) of section 2 of the Information Technology Act, 2000.'.

15. Presumption as to electronic records five years old.

After section 90, the following section shall be inserted, namely: —

"90A. Where any electronic record, purporting or proved to be five years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the digital signature which purports to be the digital signature of any particular person was so affixed by him or any person authorised by him in this behalf.

Explanation.—Electronic records are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable.

This Explanation applies also to section 81A.".

16. For section 131, the following section shall be substituted, namely: —

B)- Amendment of the Indian Evidence Act, 1872 in 2013

After section 53 of the Indian Evidence Act, 1872 (hereafter in this Chapter referred to as the Evidence Act), the following section shall be inserted, namely:—

Evidence of character or previous sexual experience not relevant in certain cases.

“53A. In a prosecution for an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 3768, section 376C, section 376D or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person’s previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.”.

Substitution of new section for section 114A.

For section 114A of the Evidence Act, the following section shall be substituted, namely:-

Presumption as 10 absence of consent in certain prosecution for rape.

‘II4A. In a prosecution for rape under clause (0), clause (b), clause (c), clause (d), clause (e), clause (j), clause (g), clause (h), clause (‘), clause (j), clause (k), clause (f), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court. That she did not consent, the court shall presume that she did not consent.

Explanation.- In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (0) to (d) of section 375 of the Indian Penal Code.’.

Substitution of new section for section 119.

For section 119 of the Evidence Act, the following section shall be substituted, namely:-

Witness unable 1.0 communicate verbally.

“119. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence:

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be video graphed.”.

Amendment of section 146.

In section 146 of the Evidence Act, for the proviso, the following proviso shall be substituted, namely:-

Provided that in a prosecution for an offence under section 376, section 376A, section 3768, section 376C, section 3760 or section 376E of the Indian Penal Code or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.”
Chapter V

Substitution of new sections for section 42.

For section 42 of the Protection of Children from Sexual Offences Act, 2012, the following sections shall be substituted, namely:-

Alternate punishment.

“42. Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 3540, 370, 370A, 375, 376, 376A, 376C, 3760, 376E or section 509 of the Indian Penal Code, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.

ACI not in derogation of any other law.

42A. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency.”

Module- V- The Relevancy of facts (Section 5 to 55)

Whole IEA can be divided into three broad categories, firstly what to prove (5 to 55), Secondly, Who to prove (100-115), and lastly how to prove (rest of IEA). What to Prove? Section 5 of IEA, provides that evidence may be given on fact in issue or on relevant facts but no other facts. It means, during trial parties are allowed to prove fact in issue, relevant facts but they are not allowed to prove anything which is neither.

Facts: means anything or state of things or relations of thing which can be perceived by senses (see, touch, taste, hear, and smell). Particular ‘state of mind’ is also a fact. Examples of facts:

1. Knife which is used for murder is a fact (things)

2. The blood of the victim on the sport or over the knife is facts (relation with the things i.e. knife)

3. Presence of victim and accused at the sport immediately before occurrence is also fact (state of things)

4. In case of murder through poisoning, pre-poisoning state condition of body and after poisoning condition of body of the victim is fact (State of things & relation of things) etc.

Facts in issue is defined under section 3 of IEA, which simply means those facts which can established right, duty, liabilities or obligations.

The expression “facts in issue” means and includes—any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue, is a fact in issue.

Thus, in a dispute relating to possession of house, ownership would be fact in issue, since once the ownership is decided, who should have possession can easily be decided just by application of law. In criminal law, ingredients of an offence are 'facts in issue'. Say example, in case of murder, whether death is caused or not, whether death was caused with same intention as required by section 300 IPC or not? Whether accused is entitled for any right of private defense or not? These are 'facts in issue'. Example given in the IEA is:

Illustrations

A is accused of the murder of B. At his trial the following facts may be in issue:—

That A caused B's death; (will fix the liability as required by section 300 IPC)

That A intended to cause B's death; (will fix the liability as required by section 300 IPC)

That A had received grave and sudden provocation from B; (will reduce the liability as provided in section 300 IPC)

That A at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature. (will absolve from any liability since it general exception to any offence and a very good defense)

Relevant facts: relevant facts are those facts which are so connected with the 'fact in issue' that it can explain, assert or deny existence of 'facts in issue'. However, it is to be noted here that every facts connected with 'facts in issue' is not relevant, unless the said fact is connected with 'facts in issue' in the same way as described in section 6-55 of IEA. Categories of relevant facts are:

1. Facts forming part of same transactions

2. Certain Statements like admission, confession or dying declarations

3. Earlier judgment pertaining to the said cause of action

4. Opinion of expert of facts disputed

5. Character of parties

Principle of Res gestae— in English law all facts which are connected through 'part of the same transaction' they are called as evidence of 'res gestae', however in India such facts are codified from section 6 to section 11. Res Gestae in IEA are:

1. Facts forming part of same transaction (section 6)

2. Facts which are occasion, cause or effect of facts in issue (Section 7)

3. Facts suggesting Motive, preparation and previous or subsequent conduct (Section 8)

4. Facts necessary to explain or introduce relevant facts (section 9)

5. Things said or done by conspirator in reference to common design (Section 10)

6. When Facts not otherwise relevant become relevant because these facts make other facts in issue or any relevant fact either highly probable or highly improbable (section 11)

Facts forming part of same transactions (Section 6):

All facts which are connected with the 'facts in issue' due to:

1. Proximity of time

2. Proximity of place

3. Continuity of action

4. Community of purposes, whether happen at same time and place or different time and different place. Then, they are said be 'part of the same transactions'. For example

Facts which are occasion, cause or effect of facts in issue (Section 7):

These facts are those which provide either occasion or cause or create effect over 'facts in issue'. For example in murder case, 'presence' of accused and victim at the place of occurrence at same time or accused 'having gun', at given time, or 'altercation between' accused and victim are the facts proving occasion, and thus they are relevant in this section. 'Firing' of bullet is cause of death, so 'firing' as such is a relevant fact; 'firing of bullet' may have effect of causing death or serious injuries, here injuries or death is effect of 'firing of bullet', so such injuries are relevant facts.

Facts suggesting Motive, preparation and previous or subsequent conduct (Section 8):

Facts suggesting motive (say example previous fighting, property dispute, love affair, family dispute, business rivalry etc.) or preparation (say example just before the murder accused purchased a gun or bullets, or took training for shooting, or in case of forgery, he purchase few stamp papers to forged a sale deed etc) or conduct, whether previous or subsequent of the parties are also relevant (examples of previous conducts like, previous attempts, any fights; example of subsequent conduct such as being missing from house after committing murder, suspicious act of hiding himself or certain goods used for the offence etc.)

It is important to note that conducts of parties as well as their agents both are relevant in any suit or proceeding.

Facts necessary to explain or introduce relevant facts (section 9):

When certain fact can explain any fact in issue or any relevant fact, and by such explanation the parties can support or rebut any inference drawn from such facts, then these types facts are called as explanatory facts, and they are thus relevant. Explanatory facts are those facts which can explain a fact which is already taken and inference are drawn from such facts

Things said or done by conspirator in reference to common design (Section 10):

This is most often used section in cases related to conspiracy. It provides that during existence of a conspiracy, what ever were said or done by the conspirators in furtherance of conspiracy is relevant against all conspirators. Essentials of this section are:

Proof of an existed conspiracy (reason to believe) between all people whose statement or conduct is proposed to be proved

Statement or conduct of conspirator must be limited to the one which was in furtherance (direct relationship) with the said conspiracy.

When Facts not otherwise relevant become relevant because these facts make other facts in issue or any relevant fact either highly probable or highly improbable (section 11):

Facts which are not otherwise relevant will become relevant: if they are inconsistent with any fact in issue or relevant fact;

Other relevant facts (Section 12-16):

Facts tending to enable Court to determine amount of damages or compensation are relevant under **section 12** of IEA. For example, at given time, income of victim's family, number of family members, medical expenditure after accident etc.

Facts necessary to establish a right or custom in question are relevant in **section 13** of IEA. For example, the 'transaction' by which the right or custom in question was created, claimed modified, recognized, asserted or denied, or which was inconsistent with its existence of such right or custom are relevant if the said right or custom itself is disputed.

Facts showing existence of state of mind or of body or bodily feeling are always relevant **under section 14** of IEA. A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally but in reference to the particular matter in question.

Statements: Admission, Confessions & Dying Declaration (Section 17-32)

Admission: According to section 31 of IEA, Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained. Admissions are those statements of made by the parties which are against their own interest. Why these statements are relevant is easy to appreciate. If some one is making statement against his own interest, then either he is insane or he is speaking truth, and if he is speaking truth, law must recognise that statement.

Since, admissions are made by parties against their own interest, during suit or proceeding, they are often proved by opposite party, except in following cases:

1. An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead it would be relevant as between third person under section 32 i.e. dying declaration.

3. An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

4. An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

Who can make Admissions? (Section 18, 19 & 20 IEA)

Admissions can be made by:

1. a. Parties to the case

2. b. Authorised agents of parties, whether expressly authorised or authorized impliedly

d. Persons having any proprietary or pecuniary interest in the subject-matter of the proceeding

1. e. Persons from whom the parties to the suit have derived their interest in the subject-matter of the suit, and where statement was made during the continuance of such interest of the persons making the statements

Confession— (Section 24-30)

Confession is that type of admission in criminal matter where accused admits guilt in its absolute terms, leaving prosecution to prove nothings. In other words, confession of guilt in its entirety may be termed as confession.

Rule regarding Admissibility of Confession—

According to section 24 of IEA, No confession given by an accused person would be relevant if it given in a criminal proceeding, and it was given under any inducement, threat or promise, with reference to the charge against the him, and such inducement, threat or promise was given by a person in authority in relation to that case and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him.

Exception to Rules of Confession—

The first exception to rule of confession is provided in section 27 of IEA. It provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

The condition necessary to bring the section 27 into operation is that the discovery of a fact in a consequence of information received from a person accused of any offence in the custody of a police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved;

Section 29 provides that Confession otherwise relevant not to become irrelevant because of promise of secretary etc.

Section 30 of IEA provides that when a confession is given by one accused, and the same was proved, it can be used against the co-accused if he is tried together in the same case during the joint trial. However,

Dying Declaration—

Generally, no statement given by any person can be used as evidence, until he comes to the court and testified on oath as to veracity of his statement. The reason behind this rule is that court cannot rely on a statement which is just a hearsay or rumor. What someone said, who know better than the person who made that statement, and until he comes to court, his statement should not be considered.

Evidence given by a witness in a judicial proceeding is relevant for the purpose of proving a particular fact in later stage of the same judicial proceeding, when the witness cannot be found or is dead

Public Entries, documents & Judgment of the Court:

Section 35 provides that entry in public record or an electronic record made in performance of official duty is relevant

Section 36 provides that statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of the Central Government

or any State Government, as to matters usually represented or stated in such maps, charts, or plans are themselves facts.

According to Section 37, When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

Section 40 provides that the existence of any judgment etc which by law prevents any court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is, whether such Court ought to take cognizance of such suit or to hold such trail. A final judgment or order or decree of a Competent Court, in exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or to take away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing not as against any specified person but absolutely, is relevant when the existence of any legal character, or the title of any such person to any such thing, is relevant.

Judgments, orders or decrees other than those mentioned in Section 41, are relevant if they relate to matters of a public nature relevant to the inquiry; nut such judgments, orders or decrees are not conclusive proof of that which they state.

judgments, orders or decrees other then those mentioned in Sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant, under some other provision of this Act.

Expert Opinion and its Relevancy— Section 45-50

For declaring someone expert no particular certificate of degree is required unless the same is recognised by law.

Any one having special knowledge may be declared expert. When there is a conflict of opinion between the experts, then the Court is competent to form its own opinion with regard to signatures on a document. The evidence of a doctor conducting post mortem without producing any authority in support of his opinion is insufficient to grant conviction to an accused.

Section 46 "Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinion of experts when such opinions are relevant."

Section 47, when the Court has to form an opinion as to the person by whom document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation – A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received document purporting to be written by that person in answer to documents written by himself to under his authority and addressed to that person, or when in the ordinary course of business document purporting to be written by that person have been habitually submitted to him.

According to section 47A, when the Court has to form an opinion as to the digital signature of any person, the opinion of the Certifying Authority which has issued the Digital Signature Certificate is a relevant fact.

Under section 48 & 49, opinion may taken to decide questions relating to right or custom or usages etc.

Section 50 says that when the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860).

Relevancy of Character—

As per provisions the evidence law, in criminal matter, character of the accused is not relevant. however, if party want to suggest evidence of good-character to take some relief, then prosecution may adduce evidence of bad-character as well.

Module VI- Facts which need not be Proved

Generally, if a fact is alleged by any party to a suit or criminal case, that party has to provide proof of the truthfulness of that fact to the court. However, Indian Evidence Act allows the court to accept certain kinds of facts without any necessity to be proven by any party. These kinds of facts are specified in Section 56, 57, 58, and 114. The provisions in these sections are as follows -

Section 56 - Facts judicially noticeable need not be proved - No fact of which the Court will take judicial notice need be proved. This means that if the court is bound to take notice of a particular fact, the parties do not have the burden of proving that fact. It is part of the judicial function to know that fact. For example, the court is bound to know the various laws and customs of the country. A party does not need to provide any proof when stating any law. Facts for which a court will take judicial notice are specified in **Section 57**. These include Laws in force in India, Public Acts of Parliament, Local, and person acts declared by it to be judicially noticed, Articles of War for Indian armed forces, the rule of the road, land, or sea, that vehicles in India must keep to the left of a road etc, the territories under the dominion of Govt. of India. In all these case, the court may resort appropriate books or documents of reference for its aid. Also, the matters enumerated in this section are not exhaustive. The section merely provides that the court must take judicial notices of the facts enumerated in this section. It does not prohibit the court from takings judicial notice of any other facts. To understand this point, we need to look at the meaning of judicial notice -

Meaning of "Taking Judicial Notice" - It means recognition of something as existing or as being true without having any proof. Judicial notice is based upon reasons of convenience and expediency. Certain things are so commonly known that any ordinary person is aware of it and it is a waste of time to seek any proof for such things.

Section 58 - Facts admitted need not be proved - No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings. Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

Section 114 - Court may presume existence of certain facts - The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

For example, a person may be presumed to be dead if his whereabouts are not known for seven years. Such facts need not be proven.

Module – VII- Conclusion

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.

In other words, the object of every judicial investigation is the enforcement of a right or liability that depends on certain facts. The law of evidence can be called the system of rules whereby the questions of fact in a particular case can be ascertained. It is basically a procedural law but it has shades of substantive law. For example, the law of estoppel can defeat a man's right. Law of Evidence is one of the fundamental subjects of law and therefore we must study it in detail and depth. The term 'evidence' owes its origin to the Latin terms 'evident' or 'evidere' that mean 'to show clearly, to discover, to ascertain or to prove.'

The Indian Evidence Act, 1872 is largely based on the English law of Evidence. The Act does not claim to be exhaustive. Courts may look at the relevant English Common Law for interpretation as long as it is not inconsistent with the Act. The Act consolidates, defines and amends the laws of evidence. It is a special law and hence, will not be affected by any other enactment containing provisions on matter of evidence unless and until it is expressly stated in such enactment or it has been repealed or annulled by another statute. Parties cannot contract to exclude the provisions of the Act. Courts cannot exclude relevant evidence made relevant under the Act. Similarly, evidence excluded by the Act will be inadmissible even if essential to ascertain the truth.

Law of evidence is part of the law of procedure. That why it is called the lex fori or the law of the court or forum. It means that Indian courts know and apply only the Indian law of evidence. Thus, the competency of a witness, whether a fact is proved or not is determined by the law of the country where the question arose, where the remedy is sought to be enforced and where the court sits to enforce it. For example, if a legal proceeding is going on in Sri Lanka and evidence is taken in India for the said proceeding whether by commission or by assistance of courts in India, the law which will be applied during such recording of evidence will Sri Lankan Law of Evidence.

A civil case of will and murder will have the same law of evidence. For example, the date of death has to be clarified or confirmed for the will to come into existence and a murder date has to be set for proceeding further with the criminal investigations too. There are, however, certain sections that apply exclusively to civil matters and others that apply exclusively to criminal cases. In civil cases, mere preponderance of evidence may be enough but in criminal cases the prosecution must prove its case beyond reasonable doubt and leave the other alternatives presented very unlikely and highly suspect.

FAQ’s

Q. Why to study Evidence Act?

Evidence refers to anything that is necessary to prove a certain fact. Thus, Evidence is a means of proof. Facts have to be proved before the relevant laws and its provisions can be applied. It is evidence that leads to authentication of facts and in the process, helps in rationalizing an opinion of the judicial authorities. Further, the law of evidence helps prevent long drawn inquiries and prevents admission of excess evidence than needed.

Q. What is IEA? How does it function?

To answer this question one need to know how law proceed or propose to decide a case. There two fundamental principles of trial in all the judicial systems, firstly, it must ensure that parties to the case are given full opportunity to prove their case, and secondly every dispute must come to an end. These two rules which are juxtaposed to each other must be balanced and this is done by the blending of procedural law and rules of evidence.

Q. What is Evidence?

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.

Q. "Evidence may be given of facts in issue and relevant facts." Explain.

To ensure that a judicial process does not linger on for too long, courts cannot waste their time on things that are not important for the case. While there can be many things for which evidence can be given but evidence that does not bear on the case at hand, has no use for the court. This is the concept behind Section 5 of Indian Evidence Act, 1872, which says that in any suit or proceeding, evidence may be given of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others. A person is not allowed to bring forward any evidence to prove or disprove a fact that is neither a fact in issue or a fact that is relevant to the facts in issue. This statement refers to two kinds of facts - facts in issue and relevant facts. Let us see what they both mean -

Facts in Issue

Section 3 defines facts in issue. According to this section, a fact in issue is a fact that directly or indirectly in connection with other facts, determines the existence, non-existence, nature, or extent of any right or liability that is asserted or denied in any suit or proceeding. In other words, facts in contention in a case are facts in issue. For example, A is accused of murder or B. In this case, the following are facts in issue -

A caused B's death.
A had intention to kill B.
A was insane.
A received grave and sudden provocation from B.

All the above are facts in issue because they are in contention and they determine the liability of A. Their truth increases or decreases the probability that A murdered B. Prosecution will have to establish the facts that prove that A murdered B before A can be convicted. At the same time, the prosecution also has to disprove that any of the exceptions do not apply to A. A fact in issue is also known by its latin term - factum probandum, which means fact to be proved.

A fact will be considered as fact in issue only if the fact is such that by itself or in connection to other facts it is crucial to the question of a right or liability. To be a fact in issue, a fact must satisfy two requirements - the fact must be in dispute between the parties and the fact must touch the question of right or liability. The extent of rights and liabilities of parties depend on the

ingredients of an offence. In criminal matters, the allegations in the charge sheet constitute the facts in issue, while in a civil case, it depends on the provisions of the substantive law.

Relevant Facts

Q. What do you understand by relevancy of facts?
The word relevancy as such is not defined in Indian Evidence Act, 1872, however, the meaning of the word is quite clear. The word "relevancy" means the property of a thing that makes it connected to the matter at hand. A thing is relevant to other when it has a relation to the other thing that tells something appropriate about the other thing. Relevancy of a Fact means that the fact has a significant relation to another fact that is under consideration. When two facts have a direct relation, they are relevant to each other. For relevancy it is necessary that if we take one fact, the other will be relevant only if there is a certain type of relation between them, which is pertinent in the given circumstances.

A relevant fact is also known by its latin term - factum probans, which means a fact that proves. Thus, if facts-in-issue are the facts to be proved or disproved in a trial, relevant facts are the facts that help prove or disprove facts-in-issue. A fact is relevant if belief in that fact helps the conclusion of the existence or non-existence of another.

Section 3 specifies that a Relevant fact is a fact is relevant to another when it is connected to the other in any of the ways referred to in the provisions contained in the act. Sections 6 to 55 contains provisions that define the relationships that make a fact legally relevant or not relevant to another. The relationship makes one fact more probable or improbable because of the other. For example, Fact A is that a person was given certain medication and he died. Fact B is that the person was suffering from TB. Here, fact B is relevant to fact A because it throws light on the possible causes of his death. Fact B makes is probable that he might have died because of TB instead of the given medication.

In DPP vs Kilbourne, 1973, Lord Simon of Glaisdale has said, "Evidence is relevant if it is logically probative or disprobative of some matter which requires proof. A relevant evidence is evidence that makes the matter which requires proof more or less probable."

As is evident from Section 5 stated above, only those facts that are related to the facts in issue through relationships defined in Section 6 to 55 are legally relevant and evidence can be given only for those facts in a trial. It must be noted, however, that a relevant fact may not necessarily be admissible.

Section 11 would be important to mention here. As per Section 11, in certain situations facts not otherwise relevant become relevant. This happens if they are inconsistent with any fact in issue or relevant fact or if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable. For example, (a) The question is whether A committed a crime at Calcutta on a certain day - The fact that, on that day, A was at Lahore is relevant. (b) The question is, whether A committed a crime. The circumstances are such that the crime must have been committed either by A, B, C or D. Every

fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C or D is relevant. As is shown by these illustrations, an alibi is a very common example of an irrelevant fact becoming relevant.

Q. Explain the doctrine of Res Gestae. Do you agree with the view that this doctrine is not only useless but is also harmful? / When does relevancy of facts form part of the same transaction?

Doctrine of Res Gestae
In a nutshell, Res Gestae means facts forming part of a transaction. This includes things done and things said in the course of a transaction. Acts and declarations accompanying a transaction are treated as Res Gestae and are admissible in evidence. As discussed above, a Court is interested only in such evidence that is bearing on a fact in issue or a relevant fact. This is important in limiting the scope of the trial to facts that are indeed important for the case so that justice can be done swiftly.

However, in narrowing the scope of things that can be brought before the court, injustice should not be done. The things that are reasonably connected to the facts in issue are usually very important for a case and such facts must be allowed to be brought before the court whether they fall into any of the sections that categorize the facts as relevant or not. This concept is espoused by Section 6. It says:

Section 6. Relevancy of facts forming part of same transaction - Facts which, though not in issue are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

What it means is that a fact in issue does not happen in isolation. It always has a factual story behind it. A fact in issue lies in a pool of other facts that gives birth to it. This section makes all such facts relevant. The important thing to understand here is the meaning of the term "transaction". To be eligible under this section the fact must have occurred in the same transaction in which the fact in issue occurred. "Occurring in the same transaction" is a wide term that includes several kinds of things such as things that happened at the vicinity of the facts in issue, things that were done by the accused right after or before the facts in issue, things that lead to facts in issue, and so on.

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