

## CONTEMPORARY ISSUES IN EVIDENCE JURISPRUDENCE

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### ABSTRACT

*The Indian Evidence Act 1872 contains a number of provisions governing examinations, relevancy, admissibility and evidence of facts, relevant investigations, witness, confessions, character relevance, the burden of proof in criminal trials, expert opinions and various levels in the witness examination, dying declaration, information indicating or adjudicating the values of any facts, proving facts and profits to achieve speedy and fair justice.*

**KEYWORDS:** Evidence, proof, legal proceedings, judgement, facts, circumstances, statements, Special Courts.

### I. INTRODUCTION:

During the Hindu judicial dispute resolution systems and Muslim kings' emperors reign were intact in the rural areas. The reason for the intact was that due to rigid caste system and village level self-reliant Gram Panchayats and Gram Sabhas. The beginning of Islamic Law in India in twelfth century, the muslim kings began to invade India. The last Muslim Emperor was Bahadur Shah. The muslim kings and emperors established the judicial dispute resolution systems (civil and criminal). According to the Islamic Law, which is purely based upon the Holy Quran. The judges were appointed by the king Generally quajis were preferred to decide the disputes. During the trial all the substantive laws and procedural laws were interpreted according to the tenets of Quran. The rules of evidence were followed according to the Holy Quran. The judges used to interpret the substantive laws according to the Holy Quran.

The policy of preserving personal laws of the Hindus and Muslims in family matters was reiterated by Cornwallis as it was specifically declared in the Preamble to Regulation II of 1793 that he aim of the Government was to preserve to the Indians the law of the Shastras and the Quran in the matters to which they have been in

variably applied. The Indian Evidence Act 1872 was enacted during the Third law Commission period.

Before passing the 1872 Act, the rules of evidence were not clear. Different courts in different Provinces were following different rules of evidence. Before the Indian Evidence Act was passed in 1872, there were three important sets of rules of evidence in India. They are Evidence enacted by different Legislatures, The evidence settled by the judicial decisions, The sets of rules of evidence basing upon the personal laws, customary laws of evidence, customs and utility etc.

The Indian Evidence Act, 1872 is basically founded on the English Laws of Evidence. However, certain importance changes were taken cautiously by Stephen to suit the native circumstances. His efforts in preparing the draft were a good deal. He discarded the English phraseology and try to soften it. He described the 1872 Act as follows. "The Indian Evidence Act 1872 compresses into a very short compass the whole of the English and Indian Law of Evidence". The Act has been in force from the last one hundred and thirty years. However, not many amendments have been introduced in it. This itself shows the drafmanship and skillness

of Sir James Fitzjames Stephen who could be called founding father of comprehensive piece of legislation.

The Indian Evidence Act 1872 has 11 chapter and 167 sections and it came into force 1st September 1872. At that time India was a part of British Empire. It was not changed or amended considerably for a lengthy period i.e. for 130 years. However, after 1990s several tremendous and dramatic changes have occurred throughout the world due to the invention and development of the information technology and computers.

## II. EVIDENCE:

Lord Brougham explains “Lex Fori”. The law of evidence is the lex fori which governs the court constitutes the basis of the law of evidence. The evidence being a procedure has to be governed by the law of the country where the proceedings are taken place. Hence Section 1 of the Indian evidence Act 1872 explains that “it extends to the whole of India except the State of Jammu and Kashmir”. According to the section 1 and the definition given for “Court” under section 3 of the Indian Evidence Act 1872, this Act applies to the judicial proceedings in or before any Court. The evidence is court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry such as statements. All documents including electronic records produced for the inspection of the court which are documentary evidence.

The Court records a fact in issue and allows evidence to show the relevancy of that fact, it is “admissibility of evidence”. All admissible evidence are relevant, however, all relevant evidences are not admissible. An evidence may be relevant to a particular case, if such evidence cannot be permitted by the rules of evidence, the court is empowered to reject it. ‘relevant facts are explained in the Act from Sections 5 to 55. One fact is said to be relevant to another as the one is connected with the other in many of the ways referred to in the provisions of the Indian Evidence Act 1872

relating to the relevancy of facts. It based on logical probative. Relevancy declares certain facts relevant.

Judgements of Courts based on the following two Latin maxims:

**Nemo Debet Bis Vexan Pro Una Et Eadem Causa:** States that no one can be punished twice for the same offense.

**Interest Republicae Sit Finis Litium** says that it is in the best interests of the state to put an end to litigation. It is based on public policy and ensures that lawsuits do not go on for too long.

**Admissibility** means acceptance. It explained in a the Act Sections 56 to 167. The rules of admissibility lay down as to whether a certain form of evidence about relevant fact may be allowed or excluded. The admissibility is the means and the method of proving relevant facts. Three of the most recent amendments to the statute were the information Technology Act 2000, The Criminal Law (Amendment) Act of 2013, and The Indian Penal Code (Amendment) Act of 2021

Information Technology Act 2000 (Act No.21 of 2000) was enacted by the Indian Parliament which brought several amendments to the existing sections and also inserted certain new definitions and sections in the Indian Evidence Act 1872.

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. In section 3 of interpretation clause.

The Criminal Law (Amendment) Act of 2013 an Indian legislation passed by the Lok Sabha on 19<sup>th</sup> March 2013, and by the Rajya Sabha on 21<sup>st</sup> March 2013, provides for amendment of Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973 on always related to sexual offences.

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The Incident of Nirbhaya's case generated international coverage and condemned by the United Nations Entity for Gender Equality and the Empowerment of Women who called up the Government of India and Delhi "to do everything in their power to take up radical reforms and the like to make women's lives safer and secure".

The Indian penal Code (amendment) 2021: Another Amendment has been proposed in the Rajya Sabha this year. Following the deadly second wave of the Covid-19 pandemic, a lot of children lost their parents to the virus and were orphaned at a very young age. This amendment seeks to protect such orphaned children from the vicious prying eyes of child traffickers in the country and also established more stringent laws against child trafficking. The will also incorporates a proposed provision for mandatory reporting and punishment for those who fail or neglect to report a case of trafficking when it takes place before them. This proposal is similar to a provision that has been made under the protection of children against Sexual offences Act (also known as the POCSO Act).

Confession, Stephen in his Digest on the law of Evidence defines "A confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime. "

Webster explains "Character is a combination of the peculiar qualities impressed by nature or by habit of the person, which distinguish him from others". The explanation to section 55 of the Indian Evidence Act 1872 explains "Character" in Section 52, 53, 54 and 55 includes both reputation and disposition, but except as

provided in Section 54, evidence may be given only of general reputation and general disposition and not of particular acts by which reputation or disposition were shown.

Burden of proof: Dunkley J observed, "The phrase burden of proof' is used in two distinct meanings in the Indian Evidence Act viz., the burden of establishing a case and the burden of introducing evidence in a criminal trial the burden of proving everything essential to the establishment of the charge against the accused lies upon the prosecution and that burden never changes".

Ordinarily the burden of proof lies on the person who has contended a fact or has tried to establish a case. The term "**onus Probandi**" (burden of proof) means that if a fact has to be proved, the person whose interest to prove it, should adduce some evidence.

### III. Dying declaration:

The statement by a person who is conscious and known that death is imminent concerning what he or she believes to be the cause or circumstances of death that can be introduced into evidence during a trial in certain causes. Section 32(1) in Indian Evidence Act 1872.

A dying declaration is considered credible and trustworthy evidence based upon the general belief that most people who know that they are about to die not lie. As a result, it is an exception to the hearsay rule, which prohibits the use of a statement made by someone other than the person who makes a dying declaration must, however be competent at the time he or she makes a statement otherwise it is inadmissible. A dying declaration is usually introduced by the prosecution, but can be used on behalf of the accused.

The word "dying Declaration" means a statement written or verbal of relevant facts made by a person who is dead. It is the statement of a person who had died explaining the circumstances of his death. This is based on the '**nemo mariturus presumuntur mentri**',

i.e. a man will not meet his maker with a lie on his mouth. Our Indian law recognizes this fact that a dying man seldom lies or truth sits upon the lips of a dying man. It is an exception to the principle of excluding hearsay evidence rule. Here the person (victim) is the only eye witness to the crime. And exclusion of his statement would lead to defeat the end of justice. Section 32 of Indian Evidence Act deals with the cases related to that person who is dead or cannot be found.

In *Ulka Ram Vs. State of Rajasthan*, Apex Court held that, "when a statement is made by a person as to cause of his death or as to any circumstances of transaction which resulted into his death, in case in which cause of his death comes in question is admissible in evidence, such statement in law are compendiously called dying declaration".

A dying declaration is admitted in evidence because it is presumed that no person who is immediately going into the presence of his Maker, will do so with a lie on his lips. But the person making the declaration must entertain settled hopeless expectation of immediate death. If he thinks he will die tomorrow it will not do".

#### IV. EXAMINATION OF WITNESS:

The examination of witness constitutes an important aspect of the law of evidence. Section 135 narrates the provisions about the "Order of Production and Examination of Witnesses". The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively and in the absence of any such law, by the discretion of the court. Section 135 prescribes two conditions for its applicability.

Firstly, the regulation of evidence must be in accordance with the law and practice which is in force.

Secondly, this provision will apply only in the absence of any law to the contrary.

The general practice in the criminal courts is that evidence is taken in the order in which it is produced by the prosecutor and seldom the court interferes with this order.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination in-in-chief.

Section 139 to 166 explain about the procedure to be followed in the examination of witnesses. Each of these Sections contains rules of procedure for recording the evidence. Each section is important for the Bar and Bench. By the examination of the witness and parties only the truth comes out and the Court can take an appropriate decision. Out of this procedure, cross-examination is most useful and powerful weapon in the hands of the advocate. Cross-examination is the crucial stage in the proceeding if the advocate conducts cross-examination perfectly chances to win the case increase if he conducts imperfectly chances to lose the case increase.

**Oral evidence:** A witness may give oral evidence of statements of other persons about the contents of documents. The condition precedent to such evidence is that such statements must be relevant facts.

**Recording Evidence:** Recording statement of a child is also one of the significant evidence. The statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as practicable by a woman police officer not below the rank of sub-inspector and shall be in uniform, and child cannot come in the contract in any way with the accused. No child shall be detained in the police station in the night for any reason. The police officer shall ensure that the identity of the child is protected from the public media unless otherwise directed by the Special Court in the interest of the child.

Special Courts also cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

Fast track Courts is supposed to have all the witnesses in a case examined in a single trial. That is not case with a normal court. The jurisdiction of Fast Track Courts is restricted.

The evidence of the child shall be recorded within a period of thirty days of the 'Special Court' taking cognizance of the offence and reasons for delay, if any shall be recorded by the Special Court. The special court shall complete the trial as far as possible within a period of one year from the date of taking cognizance of the offence. The special Court may record the statement of a child through video conferencing or by utilizing single visibility mirrors or curtains or any other device.

If a court of session is notified as a children's court under the Commissions for the Protection of Child Rights Act 2005 or a Special Court designated for similar purposes under any other law for the time being in force, then such court shall be deemed to be a 'Special Court' under this section

The Special Courts may record the statement of a child through video conferencing or by utilizing single visibility mirrors or curtains or any other device.

The special Courts also shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence.

If a child has a mental or physical disability, the Special Court may take the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed to record the evidence of the child.

**Inapplicability:** This Indian Evidence Act does not apply to arbitration tribunal, administrative tribunal, industrial tribunal etc. This act also does not apply to affidavits administered before any court or an officer. The principle of hearsay evidence is strictly prohibited by the Indian Evidence Act. Hearsay evidence being evidence having no prima facie assurance of its credibility has to be excluded by the industrial Tribunal, whether or not the case is governed by the 1872 Act.

#### V.CONCLUSION:

The Law of Evidence is rules of evidence, encompasses the rules and legal tenets that governs the proof of facts in the form of oral, written, dying declaration, recording evidence in a legal proceeding. According to the evidences and proof, the final decision made by the Judge or jury.

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