

# LL.B 3 year 3rd semester

## The Law of Evidence

### Unit -1<sup>st</sup>

#### Syllabus

Main features of Indian Evidence Act 1872.

Concept in law of Evidence Act-

Fact, Relevant fact, Fact in issue, Distinction

Evidence- oral and documentary evidence, circumstantial evidence and direct evidence,

Presumption

Proving not proving, Disproving

Witness, Appreciation of evidence.

Doctrine of res gestae,  
Evidence of common intention,

Problem of relevancy of otherwise relevant.

Relevant fact for proof of custom.

Fact concerning body and mental state

## Law of evidence

Law may be broadly categorized under two heads namely:

- (1) Substantive law
- (2) Procedural law

The substantive law defines what facts go to constitute a right or liability.

Example- the Indian Penal Code 1860, the Indian Contract Act 1872 etc.

Procedural law on the other hand is one by which substantive law is applied to particular cases. It is concerned with the enforcement of rights, duties and liabilities determined in accordance with the rules of substantive law.

In India the law relating to the principles of evidence is governed by the Indian Evidence Act 1872, which owes its origin from the English law of evidence. It came into force from 1st September 1872. It extends to the whole of India except the state of Jammu and Kashmir and applies to all judicial proceedings in or before any Court including court martial other than court martial convened under the army act, the Indian Navy Act, the Air Force act but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator.

### Main features of Indian Evidence Act--

- (1) The base of Indian Evidence Act is English common law and changes made to align Indian requirements- Sir James Stephen prepared the bill and was presented in British parliament.
- (2) This is a procedural law which covers who are competent witnesses on what aspects witnesses can speak genuineness of documents, burden of proof etc.
- (3) The act is not exhaustive. This speaks about general provisions and a separate procedure of evidence can be made based on subject matter requirements.
- (4) Discretion of the court- in certain provisions Court has the power to accept or reject the evidence. However the same is limited.

- (5) The act allows both oral and documentary evidence.
- (6) The act gives importance only to direct or circumstantial evidence and there is no place for hearsay evidence.
- (7) The act provides protection and privileges to witnesses including non incrimination of self.
- (8) The very object of Evidence Act is to find out truth.
- (9) Evidence Act is Lex fori.
- (10) The evidence act is applicable to both Civil and criminal cases.

#### Meaning and Definition of Evidence\_\_\_\_\_

Meaning:- The expression evidence is derived from the Latin word 'Evidentia'. evidentia means being clear or plain or apparent clear'. according to phispon , evidence means testimony weather oral documentary or a real, which may be legally received in order to Prove or disprove some fact in dispute.

#### Definition:----

Of evidence may be defined as a system of rules for ascertaining controverted questions of fact in judicial inquiries.

According to Taylor, evidence means and includes all facts Xcept arguments which tend to prove or disprove any matter which is under enquiry in judicial proceedings.

Under section 3 of the Indian Evidence Act evidence is an instrument of proof regarding fact in issue. It means and includes----

- (1) All statement which the court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry,
- (2) All documents including electronics record produced for the inspection of the court.

### Fact(sec.3)

The term fact means 'an existing thing'

According to Section 3 of the act fact means and include:

1- Anything, state of thing or relation of things capable of being perceived by the senses.

Illustrations:-----

2- Any mental condition of which any person is conscious.

Illustrations:-----

### Relevant fact (sec. 3)\_\_\_\_\_

The word relevant has two meaning. In one sense it means connected and in another sense admissible. one fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provision of the evidence act relating to the relevancy of fact( section 5-55) in other words a fact is said to be relevant to another if it is collected there with under the provisions of the evidence act.

A fact is said to be relevant when it is Expressed as relevant under section 5 to 55( relevancy of facts).

According to Section 6 to 55 of the act following are relevant facts:

1- Facts connected with facts in issue all relevant facts.

2- Facts to the issue is admission and confession.

3- Statements under special. circumstances( section 34 - 38).

4- Judgement( section 40 and 41).

5- Opinion of third. persons( section 45 - 51).

6- character of parties( section 52- 55).

Fact in issue( section 3):-----

The expression fact 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 new 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.

Illustrations:-----

A is accused of the murder of B.

at his trial the following facts may be in issue.

That a caused B death that A intended to cause B's death.

That A had received Grave and sudden provocation from B that A at the time of doing the act which caused B's death by reason of unsoundness of mind in capable of knowing its nature.

Fact in issue in the plain senses means fact which are in issue and form the subject matter of the court decision. The questions relating to a fact enabling the court to give decision are facts in issue.

Facts in issue are those facts which are alleged by one party and denied by the other in the pleading in a civil case or alleged by the prosecution and denied by the accused in a criminal case.

Sec.3 of Evidence Act-defines Facts in issue- as follows\_

Facts in issue means and includes any fact from which either by itself or in connection with other facts give rise to the existence non existence, nature or extent of any right, liability asserted or denied in any suit or proceeding.

Distinction between facts in issue and relevant fact:-----

1-

Facts in issue-

It is a necessary ingredient of a right or liability.

Relevant facts-

It is not a necessary ingredient of a right or liability.

2-

Facts in issue-

It is called the principal fact or factum probandum.

Relevant facts-

It is called evidentiary fact or factum probandi.

3-

Facts in issue-

Fact in issue are affirmed by one party and denied by the other party.

Relevant facts-

Relevant facts are the foundation of inference regarding them.

Evidence( sec.3)

Evidence means and includes--

1---- All statement which the court permits are requires to be made before it by witnesses, in relation to matters of fact under enquiry such statements are called oral evidence

2----- All documents (including electronic records) produced for the inspection of the court such documents are called documentary evidence.

Oral evidence-----

It is a fact brought to the knowledge of the court by the verbal statement of witness qualified to speak on the point. All facts except the contents of documents may be proved by oral evidence(sec.59).

### Documentary evidence-----

The term document under section 3 of the evidence act means any matter express or described upon any substance by means of letters, figures or marks or by more than one of these means intended to be used for the purpose of recording the matter.

The expression documentary evidence as it is defined in section 3, it means- all document produced for the inspection of the Court such documents are called documentary evidence.

### Circumstantial evidence-----

In cases where direct evidence is not available then circumstantial evidence can be resorted to . Circumstantial evidence is it testimony by witnesses as to the circumstances from which an inference is it to be drawn as to the fact in issue.

### Relevant case law-----

A.C. Lagu v/s. state of Bombay AIR i r 1960 SC\_\_\_\_\_

Kalua v/s state of Uttar Pradesh AIR 1958 SC\_\_\_\_\_

Hardayal versus state of Uttar Pradesh AIR 1976 SC\_\_\_\_\_

### Direct evidence-----

It is also known as positive evidence'. Evidence given by direct witness/eyewitness is called direct evidence. direct evidence is the testimony of a witness to the existence of or non-existence of a fact or fact in issue.

### Presumption (sec.4)\_\_\_\_\_

In the absence of absolute certainty we resort to presumptions. The word presume means supposed to be. The presumption means an inference from known facts.

Section 4 of the Indian Evidence Act 1872 provide for three types of presumptions namely, may presume shall presume and conclusive proof.

May presume-----

Whether it is provided by this ACT that's the court may presume a fact it may either regard such fact as proved unless and until it is disproved may call for proof of it.

Shall presume-----

Whenever it is directed by this act that the court shall presume a fact it shall regard such fact as proved unless and until it is disproved.

Conclusive proof-----

when one fact is declared by this act to be the conclusion proof of another the court shall on proof of the one fact regard the other as proved and shall not allow evidence to be given for the purpose of disproving it.

Proved (sec. 3)-----

A fact is said to be proved when after considering the matter before it the court either believes it to exist or consider its existence so probable that a prudent man ought under the circumstances of the particular case to act upon the supposition that it exist.

The word proof means anything which serves the purpose of convincing either immediately mediately the mind as to the truth or falsehood of a fact or profession. The expression proof under section 3 of the evidence act means such evidence as would induce a reasonable man to come to a conclusion.

Disproved( section 3)\_\_\_\_\_

A fact said to be disproved when after considering the matters before it the court either believes that it does not exist or consider its non existence so probable that a prudent man ought under the circumstances of the particular case to act upon the



supposition it does not exist.

Not proved( section 3)

a fact is said to be not proved when it is neither proved Nor disproved.

A fact is said to be not proved when neither its existence nor its non existence is proved. It also indicates a state of mind in between the two that is one cannot say whether fact is proved or disproved. It negative both proof and this disproof.

witness:-----

An individual who being present personally sees or perceives a thing a beholder spectator, or eyewitness. So we can say a person who give testimony is in a court of law.

Appreciation of evidence\_\_\_\_\_

Appreciation of evidence involves weighing the credibility and reliability of the evidence presented in the case. According to Bentham evidence is any matter of facts the effect tendency or design of which is to produce in the mind a persuasion affirmative or disaffirmative of the existence of some other matter of fact.

In the case of state of Gujarat v/s. Bharwad Jakshibhai and others 1990 CrLJ 2531.

for appreciating the evidence of the injured witness the code should be bear in mind that.....

.....

Evidence may be given of fact in issue and relevant fact (Section 5)\_\_\_\_\_

Section 5 of the Indian Evidence Act is a foundation of the law of evidence. As per this section only evidence of fact in issue and of relevant fact may be given. The main purpose of this section is to limit the scope of evidence.

Doctrine of res gestae\_\_\_\_\_

section 6 of the Indian Evidence Act 1872 Lays down the provisions relating to the doctrine of res gestae or relevancy of facts forming part of the same transaction.

Facts which though not in issue are so connected with the 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.

The doctrine of res gestae is borrowed from English law and incorporated in section 6 of the Indian Evidence Act 1872. The term res is a Latin word which means thing and the expression res gestae literally means thing done is subject matter a transaction or essential circumstances surrounding the subject.

In law of evidence it means things done including words spoken forming part of the action.

In simple words relevancy of facts which form part of the same transaction the denotes res gestae.

relevant case law-----

Ratan v/s Queen\_\_\_\_\_

R v/s.Wedding field\_\_\_\_\_

R V/S. Foster\_\_\_\_\_

State of Andhra Pradesh v/s. P. Satyanarayan\_\_\_\_\_

Res Gestae and hearsay  
evidence....

one of the fundamental principle of the law of evidence is hearsay evidence must not be admitted. It is said that hearsay evidence is no evidence. However it can be permitted in evidence, provided it forms part of the same transaction. In other words the doctrine of res gestae is an exception to the rule that hearsay evidence is no evidence.

(Sec. 7)- Facts which are the occasion cause or effect of facts in issue:

This section declare the following facts to be relevant---

- (1)- Facts of cause or causation
- (2)- Facts of effect
- (3)- Facts of affording occasion or opportunity
- (4)- Facts constituting the state of things

R.M. Malkani v/s state of Maharashtra Supreme Court held that Tape recorded conversation is relevant under section 6, 7 and 8.

Motive preparation and previous or subsequent conduct (Section 8)\_\_\_\_\_

Section 8 of the Indian Evidence Act 1872 Lays down the provisions relating to the relevancy of three principal fact which are very important in connection with every kind of civil or criminal cases.

they are:

- 1- Motive
- 2- Preparation and
- 3- Conduct

Any fact it is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party or of any agent to any party, to any suit or proceeding in reference to such suit or proceeding or in reference to any fact in issue therein or relevant thereto and the conduct of any person an offence against whom is the subject of any proceeding is relievant if such conduct influencers or influenced by any fact in issue or relevant fact and whether it was previous or subsequent thereto.

Explanation 1\_\_\_\_\_

Explanation 2\_\_\_\_\_

Illustrations: (a to k)\_\_\_\_\_

Motive\_\_\_\_

the word motive means the reason behind the act or conduct or an act to be achieved in doing an act. A motive is that which moves a man to do a particular act. It is an emotion or state of mind which lead a man to do an act.

Motive differ from intention intention refers to immediate consequences whereas motive refers to ultimate purpose with which an act is done.

Importance of evidence of motive:.

Motive is a relevant factor in all criminal cases whether based on the testimony of eye witnesses or circumstantial evidence. Motive alone is not sufficient evidence to established that the crime in question has been committed by a particular person. Where a crime is to be proved beyond reasonable doubt it is not necessary to consider the evidence of motive.

Sukh Ram v/s. state Of MP air 1992\_\_\_\_\_

Supreme Court was laid down in this case that absence of motive may not be relevant where there is overwhelming evidence against the accused but it is A plus point where evidence against him is only circumstantial. It is therefore not proper to consider the evidence of motive before examining the evidence as to Commission of the the crime.

Preparation\_\_\_\_\_ Section 8

para 1 of the Indian Evidence Act 1872 says any fact is relevant which shows or constitutes a motive or preparation of any fact in issue or relevant fact.

Conduct\_\_\_\_\_

The second paragraph of Section 8 deals with the relevancy of conduct. it

says-

the conduct of any party or of any agent of any party to any suit or proceeding In reference to such suit or proceeding or in reference to any fact in issue their in or relevant there to and the conduct of any person in offence against whom is the subject of any proceeding is relevant if such conduct influences or is influenced by any fact in issue or relevant fact and whether it was previous or subsequent thereto.

Statement accompanying or explaining conduct-----

Evidence can be given of a statement which either accompanies some conduct or explains act other than statements.

Relevant case law\_\_\_\_\_

Queen Empress v/s Abdullah  
1885.

Identification parade----- (section 9).

Facts necessary to explain are introduced relevant fact .....  
section 9 provides for the identification parade of persons. The purpose of identification test is to test the memory and veracity of a witness who claims to identify an accused person who is said to have participated in a crime. Section 7 and 8 of the evidence act deal with the fact which have some casual relation with the facts in issue are relevant facts. Whereas Section 9 of the act deals with the fact which are not so connected but are necessary to introduce or explain the facts in issue or relevant facts.

Conspiracy (section 10)\_\_\_

Things said or by conspirator in reference to common design-----

Conditions for application of section 10\_\_\_\_\_ section 10 of the evidence act the following conditions are to be satisfied--

1. Reasonable Grounds to believe the existence of conspiracy
2. Act or statement of the conspirator
3. Common intention and
4. The act or statement must be in reference to common intention

However the expression in reference to their common intention used in section 10 of the evidence act is very comprehensive.

Relevant case law\_\_\_\_\_

1. A v/s. Black 1844. Q&B
2. Mirza Akbar v/s. Emperor 1940. P.C.
3. Badri Prasad v/s. state of Bihar 1968 S.C.
4. Bhagwan Swaroop v/s state of Maharashtra AIR 1965 SC.

In this case the supreme court pointed out that the expression in reference to common intention has a wider scope than the expression in furtherance of common intention used under English law.

Plea of alibi\_\_\_\_\_

Facts not otherwise relevant becomes relevant (section 11):

Section 11 of the Indian Evidence Act says that when facts not otherwise relevant become relevant. It reads as follows:

facts not otherwise relevant are relevant---

1. If they are inconsistent with any fact in issue or relevant fact'
2. 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.

Illustrations\_\_\_\_\_(a&b)

Section 11 is very exhaustive. It has two parts according to part 1 fact inconsistent with a

fact in issue or relevant facts also are relevant.

According to part 2 facts by themselves or in connection with other factors make the existence or non existence of any fact in issue highly probable or improbable are also relevant.

Alibi is a Latin term which means elsewhere. Accused very often takes the plea that he was not present at the place where the offence was committed.

Clause 1 of section 11 contains five common instances of inconsistent facts as stated below:

1. Alibi
2. Absence or non access of husband
3. Survival of the alleged deceased
4. Commission of an offence by a third person
4. Self infliction of harm alleged

Right or Custom\_\_\_\_\_

Facts relievant when right or custom is in question( sec. 13):

Section 13 of the Indian Evidence Act 1872 speak about facts relevant when right or custom is in question. It runs as follows:

Where the question is as to the existence of any right or custom the following facts are relevant---

(1)-Any transaction by which the right or custom in question was created claimed modified recognised asserted or denied or which was inconsistent with its existence'.

(2)- Particular instances in which the right or custom was claimed recognised or exercised or in which its exercise was disputed asserted or departed from.

Illustrations\_\_\_\_\_

Right-:

The word right literally means an interest recognised and protected. If it is protected by the administration of Justice. It is called legal right. Section 13 is concerned with legal rights only.

The word right as used under section 13 of the evidence act means only public and in- corporeal rights such as right to fairies right to Road right to fisheries etc. The right of private ownership of a house or chattle is not covered by section 13. However the high court of Bombay Madras and Allahabad took a different view in this point.

Custom-:

The term Custom means usage or traditionally followed long practice by the members of society. Manu recognise custom to be transcendent law. Custom is a good source to interpret law in the administration of Justice.

A custom is a particular rule which has existed from time immemorial and has obtained the force of law in a particular locality. A Custom is nothing but a long standing usage.

Proof of custom-:

Section 13 makes the instances and transactions relevant to prove or disprove a custom, it has nothing to do with the mode of proof.

A custom is a mixed question of law and fact. First certain facts are to be proved and from those facts an inference of the existence of a valid custom is drawn. Where a custom is pleaded by one party and denied by the other the onus is on the party pleading is to show its existence.

Judgements orders or decrees are relevant to prove a custom but they are not conclusive proof thereof. But when a custom has been repeatedly brought to the



notice of the court and judicially recognised it becomes a part of the law of the locality where it prevail and it is not necessary to prove its attributes in each individual case.

State of mind or body or bodily feeling\_\_\_\_\_

Facts showing existence of state of mind or of body or bodily feeling (section 14)---

Section 14 of the Indian Evidence Act 1872 deals with the proof of facts showing the existence of any state of mind or of body or bodily feeling. It runs as follows:

Facts showing the existence of any state of mind such as intention knowledge good faith negligence rashness ill will or goodwill towards any particular person or showing the existence of any state of body feeling are relevant, when the existence of any such state of mind or body or bodily feeling are relevant when the existence of any such state of Mind or body or bodily feeling is in issue or relevant.

Explanation :1-

Explanation :2-

Illustrations : (a to f) -

In simple words the following facts are made relevant under section 14 of the evidence act namely :

- (1)- State of mind, and
- (2)- State of body or bodily feeling.

(1)\_

Facts showing the state of mind constitute intention knowledge good faith negligence rashness ill will or goodwill. For the purpose of showing the existence of state of mind, it is not possible to provide direct evidence.

(2)-

The condition of one's body or his bodily feelings may help a lot in finding the truth. Thus where it is alleged that a was murdered by ministering poison to him his statements regarding his condition and bodily feelings may help in finding whether poison was given to him and which type of poison was administered.

Facts bearing on question whether act was accidental or intentional (sec.15):

Section 14 and 15 of the evidence act are overlapping. Section 15 is an application of the general rule laid down in section 14.

Section 15 of the evidence act deals with facts bearing on question whether Act was accidental or incidental.

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