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**UNIT 1.**

## INTRODUCTION-

Indian Evidence Act has been enacted to prevent laxity in the admissibility of evidence, and to introduce a more correct and uniform law of practice than that was previously in vogue. Prior to the passing of the Indian Evidence Act the principles of English law of Evidence were practised in the presidency towns of India and followed by the Courts.The word 'evidence' is derived from the Latin word evidens or evidere,which means 'to prove', 'to discover clearly'. In 1871 Mr.Stephen prepared a new draft which was passed and acknowledged as Act I of 1872.Object of the Evidence Act is to prevent the inaccuracy in the admissibility of evidence so that evidence should be properly established and appreciated. And act provides that evidence must be confined to the matter in issue i.e,relevant to fact and fact in issue. It is to be seen while applying rule sof evidence that hearsay evidence must not be admitted; and best evidence must be given in all cases. The Indian Evidence Act is a procedural law because it is concerned with the mode of proving a particular fact, whether a particular offence has been committed by a particular person or not. The Law of Evidence helps the judges to separate grain from chaff amongst the mass of facts that are brought before them. It helps to draw correct inferences from the circumstances mentioned during the hearing of the case and helps to deliver a judgement. According to Chief Justice Monir,Law of Evidence can be defined, ' as a system of rules for ascertaining controversial questions of fact in judicial enquiries. It bears the same relation to a judicial investigation as logic to reasoning.'' Law of **evidence is** also known as the **rules of evidence**, encompasses the rules and legal principles that govern the proof of facts in a legal proceeding. This subject is that part of procedural law which tells us what evidence is to be admitted and what not and it further guides us to accept that part of evidence which is quality type of evidence so quantity is not the rule in Indian evidence act as falsus in uno falsus in omnibus is not applicable in Indian evidence act. This act guides us about the procedure of appreciation of evidences during trial. Indian evidence act prescribes the procedure for acceptance of documentary evidence which includes electronic devices as well.

The Evidence Act is divided into three parts, eleven chapters and 167 sections.

Part I on Relevancy of Facts contains Chapters I (Ss. 1-4) and II ( Ss. 5-55)
Part II contains contents on Proof Chapters III (Ss. 56-58), IV (Ss. 59-60), V ( Ss. 61-90) and VI (Ss. 91-100)
Part III on Production and Effect of Evidence contains Chapters VII (Ss 101-114), VIII (Ss. 115-117), IX Ss. 118- 134), X (Ss. 135- 166 and XI ( S. 167).

**Section 1:** This Act may be called the Indian Evidence Act 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 courts martial, other than the courts martial convened under the Army Act, the Naval Discipline Act or Indian Navy (Discipline)Act 1934, or the Air Force Act but not to affidavits presented to any court or officer , nor to proceedings before an arbitrator; And it shall come into force on the first day of September 1872.

The term judicial proceedings is not defined by Evidence act but cr.p.c mention it as proceedings in the course of which evidence is or may be legally taken on oath in court which includes court martial(other than the court-martial held under the specified acts)But evidence act is not applicable to affidavits and proceedings before arbitrators.

***Lex Fori***

The Law of Evidence is *lex fori* meaning the law of the place of action. All questions relating to the admission or rejection of evidence shall be determined by the law of the country where the question arises, where the remedy is sought to be enforced and where the court sits to enforce it.

Where evidence is taken in one country in aid of a suit or action in another country, either on ordinary commission or with assistance of local courts, the law applicable to the recording of the evidence would be the law prevailing in the country where the proceeding is going on.

For example, A lends money to B in England. they enter into a contract according to the English law. A brings an action against B in a court in Bangladesh. A tenders evidence to prove his debt which is admissible under the law of England but is inadmissible under the law of Bangladesh. The evidence is admissible so it cannot be adduced.

SECTION 3: INTERPRETATION CLAUSE.

A. Define court?

Court includes all judges and Magistrates and all persons except arbitrators legally authorized to take evidence. In virendar Kumar Satyawadi v/s State of Punjab AIR 1956 SC 153, supreme court quotes, "what distinguishes a court from a quasi judicial tribunal is that it is charged

with a duty to decide dispute in a judicial manner and declare the rights of parties in a definitive judgement. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it.''( commissioner appointed under CPC or CrPC is legally authorised to take evidence ).

B. Define evidence?

Evidence means and includes oral statements or documents which court either permits or admits in relation to the matter of fact under enquiry. All the statements made in court or all the documents submitted in court can not be considered as an evidence till all the conditions laid down in evidence act is not fulfilled. E.g , A witness before court gives oral statement which is not related to fact in issue or is not having any nexus/relevancy with the fact or is privileged communication then court will not permit such statements and cannot be called as evidence. Similarly any document produced before court is not itself an evidence till it furnishes the rules laid down in evidence act then court can admit such documentary evidence. e.g, A witness in a witness box examine a document which is not properly stamped and court cannot admit such document as an evidence. And such documentary evidence is not confined to written document only. It includes any electronic devices like computers ,phones(section 65A B).When court will admit or permit any of the oral statement or document then it can be called as evidence but still we cannot call that as proof. So proof is next step to evidence.

C. Define Proof ?

Proof is something (oral evidence or documentary evidence) on the basis of which court can decide and their remains no doubt about the fact in issue which was supposed to be sorted. Evidence and proof is often used as synonyms but actually it is not synonyms infact proof is accurate and evidence may or may not be correct.

D. Define Fact?

Fact means any state of thing perceived by any of senses.

As illustration clarifies the fact as :

A is accused of the murder of murder B.

At his trial the following facts may be in issue:-

That A caused B's death.

That A intended to cause B's death.

That A, at the the of doing the act which caused B's death, was, by reason of unsoundness of mind incapable of knowing its nature.

Fact can be physical and psychological facts. Physical facts can be proved by direct evidence and psychological facts can be proved by indirect evidence.

E. Define fact in issue?

Fact in issue means disputed question on which parties are at variance. These are the facts that a plaintiff will base his claim on or which the defendant denies the claim. And it should touch right or liability of either party. Illustration reads as:

A is accused of the murder of B.

At his trial the following facts may be in issue:-

That A caused 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 ,was ,by reason of unsoundness of mind incapable of knowing its nature.

Sir James Fitzjames Stephen ,who framed the Act defines fact in issue :-

"They may by themselves ,or in connection with other facts, constitute such a state of things that the existence of the disputed right or liability would be a legal inference from them.''

All the ingredients of the offence ,which is charged against the accused are fact in issue in a criminal trial. So when fact in issue is to be framed then rule of of the substantive law which is applicable to the case is to be checked and sorted.e.g case is of murder then ingrendients of section 302 (I.P.C)will be fact in issue.

F. Define Direct evidence ?

Direct evidence means original evidence. *Evidence* in *the form* of *testimony from* a *witness who actually saw, heard,* or *touched the subject* of *questioning. Evidence that,* if *believed, proves existence* of *the fact* in *issue*

*without inference* or *presumption. That means* of *proof which tends* to *show the existence* of a *fact* in *question, without the intervention* of *the proof* of *any other fact.e.g, Witness A was present at the place of occurance where B was murdered and witness can identify the accused and weapon used in the commission of crime properly. Witness A is called as direct witness.*

G. Define Circumstantial evidence?

Circumstantial evidence is also called as indirect evidence. It consists of evidence of circumstances which ultimately gives an inference that such fact does exist. In circumstantial evidence witness is not actually present at the place of occurance but witness to any of the circumstance.

Circumstantial evidence is evidence of relevant facts from which inference is drawn .When all the circumstances so collected fulfills the principles of circumstantial evidence the court will admit and decide on the basis of circumstantial evidence.

Essential ingredients of circumstantial evidence are:-

1.Circumstances from which conclusion is drawn should be fully established.

2.The circumstances should be conclusive in nature.

3. All the facts so established should be consistent only with hypothesis of guilt and inconsistent with innocence.

4. The circumstances should to a moral certainity exclude the possibility of guilt of any person other than the accused.

5.There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

What court has to consider is the total cumulative effect of all proved facts and each one of which re-enforces the guilt of accused.

These 5 golden principles constitute the panch sheel was held in Prakash v/s State of Rajasthan 2013 A.I.R S.C. and appeal filed by the accused was dismissed and order of conviction upheld on the basis of circumstantial evidence.

In Santosh Kumar v/s State through CBI A.I.R 2010 SC, conviction was made on the basis of circumstantial evidence.

H. What is appreciation of evidence ?

Appreciation of evidence means sorting of evidence/separating grain from chaff. In a criminal case appreciation of evidence is one of the first and foremost tests to consider the credibility and reliability of the prosecution version both oral and documentary. The finding of the facts, the question of law and the conclusion of the Judges of the Court culminating into the judgments in a criminal case mainly based on the appreciation of evidence.

Right from setting the law in motion in a criminal case by preferring FIR and after completion of investigation filing the final report ultimately resulting in producing and adducing the evidence before the Court consist varied kinds of evidence both oral and documentary and the admissibility and reliability of such evidence should be considered by the Court on the basis ofthe facts and law for arriving at the just decision of the case. Therefore appreciation of evidence is the heart and soul of the dispensation of justice delivery system in criminal law. Criminal cases involves life and death problem of a citizen and the destiny of the citizen is to be decided by carefully analyzing and scrutinizing the evidence adduced by the prosecution. In Takdir Samsuddin Sheikh v/s State of Gujrat A.I.R 2012 SC 39.'' It is settled legal proposition that while appreciating the evidence, court has to take into consideration whether the contradictions/omissions/improvements/embellishments etc. had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, omissions or improvements on trival matters without affecting the case of prosecution should not be made the court to reject the evidence in entirety.''

I. What is standarad of proof in civil and criminal cases?
This describes the amount of evidence necessary to prove an assertion or claim in a trial. Standarad or degree of proof in civil and criminal cases

vary. In civil cases preponderance of evidence/balance of probability is demanded and in criminal cases court demands beyond reasonable doubt.In criminal cases entire burden is on prosecution to prove beyond reasonable doubt .In civil cases all that is necessary to insist upon is that the proof adduced in support of a fact is such ,that should make a prudent man to act upon the supposition that it exists.

J.Holroyd quotes, ”It is better that ten guilty men should escape than that one innocent man should suffer.’’ So court always demands much higher degree of proof in criminal cases than in civil cases. And in civil cases it cannot be said that benefit of reasonable doubt must necessarily go to the defendant. So the probative effect s of evidence in civil and criminal cases are not always the same and it has been laid down that a fact may be regarded as proved for purposes of a civil suit, though the evidence may not be considered sufficient for conviction in a criminal case.

J. Define relevancy and admissibility?

Relavancy or relevant means when one fact is connected to other in any of the ways referred to in evidence act .But fact which are relevant may not be admissible e.g communication made during marriage (section 122) though relevant but not admissible.

K . “Proved” .—A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

“Disproved”. — A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

“ Not proved”. — A fact is said not to be proved when it is neither proved nor disproved.

L. Who is a child witness?

Child witness is a witness who is a child. But one who is capable of giving rational answers is a competent witness and testimony of child witness is to be

scrutinized properly . In a landmark case, ***Suresh v. the State of U.P*** 1981 A.I.R S.C ,established that a testimony from a 5-year-old child shall also be admissible, so long as the child is able to comprehend and understand the question of the given issue. Hence, it declared that there is no minimum required age for a person to legally testify in the court of law.

M. Who is a approver witness?

Approver is witness who is pardoned by state. Approver is also called as accomplice. His statement is having evidentiary value. Section 133 deals with such evidence which is to be read along with section 114(b).

N. Who is an interested witness?

In State of Rajasthan vs. Smt. Kalki and others. 15 April, 1981 SCC In this case, the widow of the deceased victim was the sole eye witness to the occurrence which took place in her house while her mother- in -law, who had been at some distance from the house, came running to the scene and saw the accused leaving the place. The conviction entered by the trial court was set aside by the High Court. The Supreme Court, in an appeal by the State, confirmed the conviction, setting aside the High Court order. The acquittal by the High Court was on two grounds, namely, that PW1 was a "highly interested witness" and there were serious discrepancies in her evidence: The Supreme Court held that both the grounds were invalid. Dealing with PW1, the three judge Bench held:- "In the circumstances of the case, she (PW1) was the only and most natural witness; she was the only person present in the hut with deceased at the time of the occurrence. True it is she is the wife of the deceased. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from a litigation, in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested". In the present case PW1 had no interest in protecting the real culprit and falsely implicating the respondents".

O. Who is a Trap witness?

A trap witness is not an approver, but he is certainly an interested witness, in the sense that he is interested to see that the trap laid by him succeeds. He can at least be equated with a partisan witness, and it is not safe to rely upon his evidence without corroboration. It is also equally clear that his evidence is not tainted, but it would only make a difference in the degree of corroboration required rather than the necessity for it. Trap witness is used mostly in bribery cases.

Section 4:- Presumptions are inferences which are drawn by the court with respect to the existence of certain facts. When certain facts are presumed to be in existence the party in whose favor they are presumed to exist need not discharge the burden of proof with respect to it. This is an exception to the general rule that the party which alleges the existence of certain facts has the initial burden of proof but presumptions do away with this requirement.

Define May presume:- It may either regard such fact as proved, unless and until it is disproved; or It may call for proof of it. The expression may presume gives a wide discretion to the Court,—

(i) To presume a fact as proved; or

(ii) To call for proof of it.

Sections 86 to 90-A, 113-A, 114 and 114-A of the Evidence Act provide the necessary presumptions for "may presume". presumptions under the first clause of Sec. 4 (May Presume) may also be called as "Presumptions of Fact"; "Natural Presumptions". "Permissive Presumptions"; "Rebuttable Presumptions"Dr T T Thomas vs Elisa AIR 1987, where a doctor failed to perform an emergency operation due to lack of consent, the court presumed that the consent was there since the patient was brought to the hospital. It was up to the doctor to prove that the consent was not there. The court may also ask for further proof before making the presumption.
All the presumptions given in **Section 114** are of this kind, which says that 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, the court may presume that a man who is in

possession of stolen goods soon after theft, is either the thief of has received the goods knowing them to be stolen, unless he can account for his possession.

Define 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: The expression shall presume gives no discretion to the Court, but to accept a fact as proved, unless and until it is disproved. Sections 79 to 85-C, 89 and 105,111-A, 113-B of the Evidence Act provide necessary presumptions for "shall presume".

The presumptions under the Second Clause of Sec. 4 (Shall Presume) may also be called as "Presumptions of Law"; "Artificial Presumptions"; "Obligatory Presumptions"; "Rebuttable Presumptions of Law".

**Define Conclusive proof:-** When one fact is declared by this Act to be conclusive 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. For example, birth during marriage (**S. 112**) is a conclusive proof of legitimacy.