LLB 6TH SEM. 2016 UNIT IV

LAW OF EVIDENCE e- content.

SECTION 115 : Estoppel. —When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it. The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title

Estoppel is based on the principle that it would be most inequitable and unjust that if one person , by a representation made, or by conduct amounting to a representation, had induced another to act as he would not otherwise have done, the person who made the representation should not be allowed to deny or repudiate the effect of his former statement, to the loss and injury of the person who acted on it. The section says words, estoppel is a principle applicable when one person induces another or intentionally causes the other person to believe something to be true and to act upon such belief as to change

his/her position. In such a case, the former shall be estopped from going back on the word given. The principle of estoppel is, however, only applicable in cases where the other party has changed his position relying upon the representation thereby made.

For application the doctrine following conditions have to be satisfied-

1) There must be a representation made by one person to another person.

2) The representation must have been made as to fact and not as to law.

3) The representation must be as to an existing fact.

4) The representation must be intended to cause a belief in another.

5) The person to whom the representation is made must have acted upon that belief and must have altered his position.

In the case of Chowdhury …Appellant Versus Kalpana Mukherjee & Anr. ...Respondents 2014 AIR S.C It needs to be understood, that the rule of estoppel is a doctrine based on fairness. It postulates, the exclusion of, the truth of the matter. All, for the sake of fairness. A perusal of the above provision reveals four salient pre conditions before invoking the rule of estoppel. Firstly, one party should make a factual representation to the other party. Secondly, the other party should accept and rely upon the aforesaid factual representation. Thirdly, having

relied on the aforesaid factual representation, the second party should alter his position. Fourthly, the instant altering of position, should be such, that it would be iniquitous to require him to revert back to the original position. Therefore, the doctrine of estoppel would apply only when, based on a representation by the first party, the second party alters his position, in such manner, that it would be unfair to restore the initial position. In our considered view, none of the ingredients of principle of estoppel contained in Section 115 of the Indian Evidence Act, can be stated to have been satisfied, in the facts and circumstances of this case. Herein, the first party has made no representation. The second party has therefore not accepted any representation made to her. Furthermore, the second party has not acted in any manner, nor has the second party altered its position. Therefore, the question whether the restoration of the original position would be iniquitous or unfair does not arise at all. Even if consideration had passed from Kalpana Mukherjee to Pratima Chowdhury, on the basis of the representation made by Pratima Chowdhury, we could have accepted that Kalpana Mukherjee had altered her position. In the facts as they have been presented by the rival parties, especially in the background of the order passed by the Arbitrator, that no consideration had passed in lieu of the transfer of the flat, and especially in the background of the factual finding recorded by the Co-operative Tribunal and the High Court, that passing of consideration in the present controversy was inconsequential, we have no hesitation whatsoever in concluding, that the principle of estoppel relied

upon by the Co-operative Tribunal and the High Court, could not have been invoked, to the detriment of Pratima Chowdhury, in the facts and circumstances of the present case. Insofar as the instant aspect of the matter is concerned, the legal position declared by this Court fully supports the conclusion drawn by us hereinabove. In this behalf, reference may be made, firstly, to the judgment rendered by this Court in Kasinka Trading vs. Union of India, (1995) 1 SCC 274, wherein this Court noticed as under:- In order to operate as estoppel under the aforesaid **section**, three conditions must be fulfilled : (1) there must be a representation made by the opposite party with a view to cause belief (2), the representation should have been believed under circumstances that its falsity could not be ascertained in spite of due diligence and (3) **action**s arising out of such belief. There can be no estoppel where truth is accessible. Again, there can be no estoppel in the absence of representation or conduct amounting to such. Further, there can be no estoppel where a party is not misled and has not been induced to do something detrimental to his interest owing to the **action** of the other party.

Later it was held detriment is not essential ingredient for law of estoppels and applicability of doctrine of promissory estoppels necessitates striking a balance between individual rights and larger public interest ,like in the case of Motilal Padampat Sugar Mills v. State of U.P. is a trendsetter regarding the application of the doctrine of promissory estoppel against the Government. In this case the Chief Secretary of the Government gave a

categorical assurance that total exemption from sales tax would be given for three years to all new industrial units in order them to establish themselves firmly. Acting on this assurance the appellant sugar mills set up a hydrogenation plant by raising a huge loan. Subsequently, the Government changed its policy and announced that sales tax exemption will be given at varying rates over three years. The appellant contended that they set up the plant and raised huge loans only due to the assurance given by the Government. The Supreme Court held that the Government was bound by its promise and was liable to exempt the appellants from sales tax for a period of three years commencing from the date of production.

PROMISORY ESTOPPEL

The doctrine of promissory estoppel is an equitable doctrine. Like all equitable remedies, it is discretionary, in contrast to the common law absolute right like right to damages for breach of contract. The doctrine has been variously called ‘promissory estoppel’, ‘equitable estoppel’, ‘quasi estoppel’ and ‘new estoppel’. It is a principle evolved by equity to avoid injustice and though commonly named ‘promissory estoppel’, it is neither in the realm of contract nor in the realm of estoppel. The true principle of promissory estoppel is where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the

promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it. It is not necessary, in order to attract the applicability of the doctrine of promissory estoppel that the promisee acting in reliance of the promise, should suffer any detriment. The only thing necessary is that the promisee should have altered his position in reliance of the promise. The ingredients for the application of the doctrine are:

- That there was a representation or promise in regard to something to be done in the future,
- That the representation or promise was intended to affect the legal relationship of the parties and to be acted upon accordingly, and,
- That it is, one on which, the other side has, in fact, acted to its prejudice.

Lord Denning in Central London Properties Ltd. v. High Trees House Ltd., [1947] K.B. 130, who asserted:

"A promise intended to be binding, intended to be acted upon, and in fact acted upon is binding."

Exceptions:

1.The doctrine of promissory estoppels is not available against the legislative functions of state.

2. The doctrine of estoppel does not apply to statutes. In other words, a person who makes a statement as to the existence of the provisions of a statute is not estopped, subsequently, from

contending that the statutory provision is different from what he has previously state.

3. When an officer of the government acts outside the scope of the authority , the plea of promissory estoppels is not available.

Kinds of estoppel:

1. Estoppel by record:

Under this kind of estoppel, a person is not permitted to dispute the facts upon which a judgment against him is based. It is dealt with by (i) Ss. 11 to 14 of the Code of Civil Procedure, and (ii) Ss. 40 to 44 of the Indian Evidence Act.

2. Estoppel by deed:

Under this kind of estoppel, where a party has entered into a solemn engagement by deed as to certain facts, neither he, nor any one claiming through or under him, is permitted to deny such facts.

3. Estoppel by conduct:

Sometimes called estoppel in pais, may arise from agreement, misrepresentation, or negligence. Estoppel in pais is dealt with in Ss. 115 to 117. (Estoppel in pais means "estoppel in the country" or "estoppel before the public.")

If a man, either by words or by conduct, has intimated that he consents to an act which has been done, and that he will not offer any opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others

to do that from which they otherwise might have abstained from doing, he cannot question the legality of the act to the prejudice of those who have so given faith to his words, or to the fair inference to be drawn from his conduct.

4. Equitable Estoppel:

The Evidence Act is not exhaustive of the rules of estoppel. Thus, although S. 116 only deals with the estoppel that arises against a tenant or licensee, a similar estoppel has been held to arise against a mortgagee, an executor, a legatee, a trustee, or an assignee of property, precluding him from denying the title of the mortgagor, the testator, the author of the trust, or the assignor, as the case may be.

5. Estoppel by Negligence:

This type of estoppel enables a party, as against some other party, to claim a right of property which in fact he does not possess. Such estoppel is described as estoppel by negligence or by conduct or representation or by a holding out of ostensible authority.

6. Estoppel on benami transactions:

If the owner of property clothes a third person with the apparent ownership and a right of disposition thereof, not merely by transferring it to him, but also by acknowledging that the transferee has paid him the consideration for it, he is estopped from asserting his title as against a person to whom such third party has disposed of the property and who has taken it in good faith and for value. (Li Tse Shi v Pong Tse Ching, (A.I.R. 1935 P.C. 208)

SECTION 116: Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

Section 116 provides for estoppels of a tenant as against his landlord and of a licensee as against his licensor. The section provides that a person who comes into an immovable property taking possession from a person whom he accepts as to the landlord , is not permitted to say as against his landlord that he had no title to the property at the commencement of the tenancy. So long the relation of landlord and tenant stands and by which the tenant remains in possession of tenancy the principle of estoppel is applicable against the tenant. The rule applies "during the continuance of the tenancy." After the expiry of the period of tenancy or the tenancy is surrendered by the tenant there is no application of estoppel. But the tenancy is obtained by fraud etc. the tenant cannot be estopped. The estoppel of the tenant is natural consequence, on proof of relationship of landlord and tenant remains bound by it irrespective of any change in the line of succession in the landlord's family. Defendant categorically admitted in written statement that his father was a tenant of the plaintiff-society. After death of father

the defendant became tenant. Tenant once having admitted tenancy is estopped from challenging title of landlord. Once the defendant tenant had acknowledged the title of the plaintiff landlord, the case may not strictly fall under section 116, but the general principle of estoppel would apply. A tenant due to ignorance of law paid rent to a third person will not stand as estoppel against tenant from denying derivative title of third party and from retendering rent to real landlord.

In **Kuldeep Singh vs Shrimati Balwant Kaur ,AIR 1991 P & H. 291,** when the tenant become wealthy of the property portion of which was let out to him, under the sale deed registered prior to one registered in favour of other, denied by him of relationship of tenant and landlord between him and subsequent vendor. It was held that tenancy right is not extinguished.

SECTION 117: Estoppel of acceptor of bill of exchange, bailee or licensee.—No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorese it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or licence commenced, authority to make such bailment or grant such licence.

Explanation 1.—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn. Explanation 2.—If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

Section 117 deals with estoppel in respect of movable property. An estoppel under this section is based on agreement. The section is supplemented by Sections 41 and 42 of the N.I. Act. It is applicable to:

(i) Against the acceptor of a bill of exchange.

(ii) Against the bailee, and

(iii) Against a licensee.

Acceptor of a bill of exchange:

An acceptor of a bill of exchange is not permitted to deny that the drawer had authority to draw or to endorse it. But there is an exception laid down in Explanation-I which provides that the acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Bailee:

A bailee of goods cannot be permitted to say that at the time of commencement of the bailment, the bailor has no authority to bail or to take them back. Under the Explanation-II, if a bailee delivers the goods bailed to a person other than the bailer, he may prove that such person had a right to them as against the bailor. A garage owner receiving a car for repairs is estopped from challenging the title of the person from when the car was received.

License:

Same rule is applicable here as applied in bailment.

SECTION 118 : Who may testify. —All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.— A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

This section discuses about the competence of all witness provided there statement is permitted as per evidence act.(already discussed in previous semester llb 5th_ section 3).

SECTION 119 :Dumb witnesses.—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

The dumb witness is one who is unable to speak due to physical deformity. Section 119 applies only to those cases when the witness is deaf and mute or a person who has taken a religious van of silence. In case of such witness the evidence may be taken by means of written questions-answers techniques or by recording signs. The evidence given shall be deemed to be oral evidence. “The reception of the evidence of such person rests on the ground of expediency.”

The court while recording the evidence of dumb witness, must record both signs as well as the interpretations of the interpreter and then only it becomes admissible under the Indian Evidence Act.

Section 120 and s. 122 read together.

SECTION 120 : Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal trial.—In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

SECTION 122: "No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication unless the person who made it or his representative-in-interest, consents, except in suits between married persons, or proceedings in which on married person is prosecuted for any crime committed against the other."

A privileged communication is a private statement that must be kept in confidence by the recipient for the benefit of the communicator. Even if it is relevant to a case, a privileged communication cannot be used as evidence in court barring certain exceptions. A prohibition against the disclosure of any communication between spouses made during the subsistence of marriage unless the person who made it or his

representative-in-interest consents to the same. The bar is not only against a spouse being compelled to disclose the same but also extends to cases where the spouse may be inclined or willing to disclose the same. In the latter case, the disclosure can be permitted if the other spouse, who made the same, agrees to the disclosure. In M.C. Verghese Vs. T.J. Poonan and Anr. Rathi, daughter of M. C. Verghese, was married to T. J. Poonan. Poonan wrote from Bombay, letters to Rathi who was then residing with her parents at Trivandrum, which as it was claimed contained defamatory imputations concerning Verghese. Verghese then filed a complaint in the Court of the District Magistrate, Trivandrum, against Poonan charging him with offence of defamation. Poonan submitted an application raising two preliminary contentions –
(1) that the letters which formed the sole basis of the complaint were inadmissible in evidence as they were barred by law or expressly prohibited by law from disclosure; and
(2) that uttering of a libel by husband to his wife was not "publication" under the law of India and hence cannot support a charge for defamation, and prayed for an order of discharge, and applied that he may be discharged.In this case hence, Poonan's contention that the letters addressed by him to his wife are not except with his consent-admissible in evidence by virtue of Section 122 of the Indian Evidence Act, and since the only publication pleaded is publication to his wife, and she is

prohibited by law from disclosing those letters, no offence of defamation could be made out were accepted.,hence, Poonan's contention that the letters addressed by him to his wife are not except with his consent-admissible in evidence by virtue of Section 122 of the Indian Evidence Act, and since the only publication pleaded is publication to his wife, and she is prohibited by law from disclosing those letters, no offence of defamation could be made out were accepted.

SECTION 121: Judges and Magistrates.—No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any question as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.
Illustrations

(a) A, on his trial before the Court of Sessions, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.

(b) A is accused before the Court of Sessions of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

(c) A is accused before the Court of Sessions of attempting to murder a police officer whilst on his trial before B, a Sessions Judge. B may be examined as to what occurred.

Under this section a judge or a magistrate is a competent witness. A judge or a magistrate cannot be compelled to answer questions except: (i) upon the special order of the court to which he is subordinate or (ii) as to his conduct in court as such judge or magistrate in relation to a case tried by him.This section makes it clear that privilege granted to the judge or magistrate cannot be extended to the other kinds of witnesses. So long he or she is acting or has acted as a judge or a magistrate no question is permitted to be asked as to his or her conduct or judicial function. But the superior court by virtue of the section has right to question as to his or her conduct. The Supreme Court has extended the privilege to arbitrators also. According to the Supreme Court in no case an arbitrator can be summoned to explain how he came at his award.The privilege given by this section is the privilege of the witness, i.e., the judge or magistrate of whom the question is asked. If he waives such privilege or does not object to answer the question, it does not lie in the mouth of any other person to assert the privilege. A session judge while trying a case cannot compel a committing magistrate, except under the special orders of the court to which he is subordinate.

SECTION 123:. Evidence as to affairs of State.—No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the

permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

This section is based on the principle that disclosure of any unpublished document would not be in the public interest. Basically this section is founded on the maxim salus populi est suprema lex, which means that regard for public welfare is the highest law. This section lays down that no person shall be permitted to give any evidence derived from unpublished public records relating to affairs of state. Such an unpublished record can be had of from the official head of the department concerned, who may also withhold the permission in case of necessity. The section also prohibits the disclosure of any evidence derived from unpublished official records.

Under the section unpublished official records of the state are protected from being disclosed. Only exception laid down is that such unpublished document may be disclosed with express permission of the head of the department. "The court is also bound to accept without question the decision of the public officer." In order to claim immunity from disclosure thereof the document must be unpublished state documents and must relate to affairs of the state and the disclosure thereof must be against interest of the state or public interest. An objection against the disclosure of a public document was raised on the ground that it would be against the interest of the state or public service and it is such class of documents which being public interest ought not to be disclosed. In S.P. Gupta v President of India, overruling its

earlier decision the Supreme Court Observed that the injury to public interest which is likely to result from their disclosure would be far less than the injury which would arise from suppression of such information

SECTION 124: Official communications.—No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

This section is designed to prevent the knowledge of official papers beyond the circle which would obtain knowledge of them in confidence whether the confidence was express or implied.In the case of K.M. Sugatha Prasad And Ors. vs State Of Kerala And Ors. on 24 May, 1963 wherin the petitioner in O. P. No. no of 1962 in particular has filed an application C. M. P. No. 1366 of 1963 for directing the State Government and the other respondents to disclose the machinery used for the purpose of verification and the report obtained by verification relating to his char**acter** and antecedents. That application has been opposed by the State Government. In particular, the Home Secretary to the State Government has filed a counter-affidavit in the same application claiming privilege under Sections 123 and 124 of the Indian Evidence Act. No such application has been filed in O. P. Nos. 497 and 532 of 1962. As a similar application has been filed in O. P. No. 309 of 1962 also,

I will advert to this petition a little later. . Here again, the petitioner has filed C. M. P. No. 1399 of 1963 for directing the respondents to disclose the machinery used for verifying the char**acter** and antecedents of the petitioner and the material or report of such verification. This application is opposed on behalf of the respondents and here again the Home Secretary to the Stare Government has filed a counter affidavit claiming privilege under Sections 123 and 124 of the Indian **Evidence Act**. A supplementary affidavit has been filed by the State Government in this writ petition in C. M. P. No. 1399 of 1963 on 19th March 1963. In particular, the said affidavit deals with the scope of the Memorandum No. 8419/D1/62/ Home dated 15-3-1962 which has been relied upon by this petitioner as well as the petitioner in O. P. No. 119 of 1962 as imposing a permanent ban against their aspiring for Government Service. As mentioned earlier, on behalf of the State the Home Secretary has filed counter-affidavits claiming privilege under Sections 123 and 124 of the **Indian Evidence Act**. The Home Secretary has stated that the Government's conclusion in regard to the char**acter** and antecedents was based on the report of the Dy. Inspector General of Police, C.I.D. and Railways, Trivandrum. It is also mentioned in the affidavit by the Home Secretary that no irrelevant or extraneous considerations have weighed with the Government in coming to the conclusion regarding the char**acter** and antecedents of the petitioners. It is also stated

that the petitioners cannot compel the Government to disclose the reasons in the report on the strength of which Government came to the conclusion regarding, the petitioners' char**acter** and antecedents. The Home Secretary further states that he has carefully examined the report and other relevant documents relating to the verification of the char**acter** and antecedents of the petitioners and according to him, those documents and reports form unpublished public records relating to the affairs of the State and he is entitled to claim privilege against their production under Section 123 of the Evidence Act. The Home Secretary also states that the report of the Deputy Inspector General of Policy on the strength of which Government have come to the conclusion, is a report made in official confidence and he considers that it would pot be in public interest to disclose the contents of the report and he is of the view that public interest would suffer by such disclosure. But it is also stated by the Home Secretary, that without prejudice to the claim or privilege under **Sections 123** and **124** of the **Evidence Act** Government is prepared to make available to this Court, the file relating to the report of the Deputy Inspector General of Police, on the basis of which the Government's conclusions regarding char**acter** and antecedents of the petitioners were arrived at. . The learned Advocate General has quite naturally relied upon the decision of the Supreme Court reported in State of Punjab v. S. S. Singh, AIR

1961 SC 493 wherein their Lordships have, if I may say so with respect, very elaborately considered and laid down the various principles which have to be borne in mind in dealing with a claim for privilege under Sections 123 and 124 of the **Indian Evidence Act**.

SECTION 125. Information as to commission of offences.—No Magistrate or Police officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue

Explanation.—"Revenue officer" in this section means an officer employed in or about the business of any branch of the public revenue.

Section 125 on the basis of public policy protects the information given to magistrates or to police officers about the commission of offences. In M/S M.D. Overseas Ltd. vs Director General Of Income-Tax ... on 4 February, 2011 it was held that the information in possession of the dit(i)-kanpur is within the ambit of section 125 of the **Evidence Act**. The Department can neither be compelled to say from where the information was received, nor can it be divulged. Section 125 of the **Evidence Act** would bar the disclosure of source of information but this

does not bar the content or nature of the information or the reasons to believe for authorising the search. In State Of Himachal Pradesh vs Chandan Lal on 14 December, 1954The learned Sessions Judge has commented on the f**act** that the information was conveyed to the S. H. O. at 6 A. M. He has also pointed out that the name of the informer has not been disclosed because Section 125, Evidence Act, gives such protection which lays that no Magistrate or police officer shall be compelled to disclose the name of an informer.

SECTION 126 :Professional communications.—No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment: Provided that nothing in this section shall protect from disclosure—

(1) Any such communication made in furtherance of any 1[illegal] purpose(2) Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment. It is immaterial whether the attention of such barrister, 2[pleader], attorney or

vakil was or was not directed to such fact by or on behalf of his client. Explanation.—The obligation stated in this section continues after the employment has ceased. Illustrations

(a) A, a client, says to B, an attorney—"I have committed forgery, and I wish you to defend me". As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, an attorney—"I wish to obtain possession of property by the use of a forged deed on which I request you to sue". This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment. This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

SECTION 127 :The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys, and vakils.

SECTION 128.: If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and if any party to a suit or proceeding calls any such barrister, [pleader], attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.—If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and if any party to a suit or proceeding calls any such barrister, 1[pleader], attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

SECTION 129.: No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers

himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

Sections 126 to 129 of the Act deal with privileged communication that is attached to professional communication between a legal adviser and the client. Section 126 of the Act provides the scope of privilege attached to professional communications in an attorney-client setting. It restricts attorneys from disclosing any communications exchanged with the client and stating the contents or conditions of documents in possession of the legal advisor in course of and for the latter's employment with the client. It consisted of:

(1) Any communication made to him by his client or any advice given by his client or on behalf of his client or any advice given by him to his client;

(2) The contents and conditions of any document with which he is accounted.

But the section has no application:

(1) To any communication made in furtherance of any illegal purpose, and

(2) To any fact observed by a legal practioner in course of his employment showing that any fraud or crime has been committed since the commencement of the employment. [Illustration (b)]

The section also provides certain exceptional grounds on which such privilege shall stand denied, being in furtherance of any illegal purpose or facts coming to the awareness of the attorney showing that either crime or fraud has been committed since the commencement of the attorney's employment on the concerned matter. It is immaterial whether the attention of such

barrister, [pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client. Under Section 129 of the Evidence Act, that in order to claim privilege under Sections 126 and 129 of the Evidence Act, it is incumbent upon the person claiming the privilege to show that the privilege is claimed in respect of a professional communication., it is necessary for the applicant to plead and establish before the court what is relationship between the applicant and its internal legal advisers i.e have professional qualification to give legal advice. A "privileged professional communication" is a protection awarded to a communication between the legal adviser and the client. Professional communications and confidential communications with the legal advisors have been accorded protection under The Indian Evidence Act, 1872 (**"the Act"**). If the privilege did not exist at all, everyone would be thrown upon his own legal resources. Deprived of all professional assistance, a man would not venture to consult any skilled person, or would only dare to tell his counsel half his case. We will discuss this topic from the perspective of India and few other countries in the world. In this article we will discuss the Indian law the way it perceives attorney-client privilege. To claim privilege under section 126 of the Act, a communication by a party to his pleader must be of a confidential nature. (**Memon Hajee Haroon Mohomed v. Abdul Karim [1878] 3 Bom. 91**). Also, there is no privilege to communications made before the creation of a relationship of a pleader and client. (**Kalikumar Pal v. RajkumarPal 1931 (58) Cal 1379.** In **Municipal Corporation of Greater Bombay v. Vijay Metal Works (AIR 1982 Bom 6)** the court held that "a salaried employee who advises his employer on all legal questions and also other legal matters would get the same

protection as others, viz., barrister, attorney, pleader or vakil, under Ss.126 and 129, and, therefore, any communication made in confidence to him by his employer seeking his legal advice or by him to his employer giving legal advice should get the protections of Ss.126 and 129."

All communications between lawyer and his clients are privileged communications protected under section 126 of the Evidence Act, Section 126 does not stand obliterated on the enforcement of the Right to Information Act.

SECTION 130. Production of title-deeds of witness not a party.—No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

Section 130 protects the witness who is not a party to a suit or proceeding. The section provides that a witness who is not a party to a suit cannot be compelled to produce:

(i) His title deed of any property,

(ii) Any deed or document by virtue of which he is pledgee or mortgagee of any property, and

(iii) Any document, the production of which might tend to criminate him.

In the case of Imrit Chamar vs Sridhar Panday And Ors. on 29 August, 1911 it was held that it is not disputed that the plaintiff had caused summonses to be served upon the witness who had custody of the original and was called upon to produce it. The witness, however, did not comply with the order of the Court. The plaintiff subsequently applied for the issue of a warrant against the witness but no process-fee was paid for service of the writ. This does not, amount to default on the part of the plaintiff. As was pointed out by this Court in the case of Bhagabat Prasad Singh v. King Emperor 14 C.L.J. 120 : 11 Ind. Cas. 794 under Section 130 of the Indian **Evidence Act**, no witness who is not a party to a suit can be compelled to produce his title-deed to any property, or any document in virtue of which he holds any property as pledgee or mortgagee or any document the production of which might tend to incriminate him, unless he has agreed in writing to produce them with the person seeking the production of such deed or some person through whom he claims. It cannot be disputed that the lessee under the perpetual lease of the 21st December 1874 was entitled to urge that the document was his title-deed, and that he was not bound to produce the original except in the event contemplated by Section 130 of the Indian **Evidence Act**. It is not alleged that the lessee had agreed with the plaintiff in writing to produce the original in Court. Consequently, if, after service of summons upon him, he did not produce the original, the plaintiff became entitled to use the certified copy as secondary **evidence**. The first reason assigned by the Subordinate Judge in support of his order of rejection of the document cannot, therefore be supported.

SECTION 131. Production of documents or electronic records which another person, having possession, could refuse to produce.—No one shall be compelled to produce documents in his possession or electronic records under his control, which any other person would be entitled to refuse to produce if they were in his possession, or control, unless such last-mentioned person consents to their production.

section 131 says that if anyone is entitled to refuse the production of a document, the previlege or protection of a document should not suffer simply because it is in the possession of another. Thus any such person who is in possession is not compellable to produce it. Word compellable in the section indicates that the person in possession will be allowed to produce the document which other would be entitled to refuse. In State vs . Devender Singh on 15 May, 2012. It is a well settled law that it the quality and not the quantity which weighs upon the consideration of the court. The Indian Evidence Act, Section 131 provides that no particular number of witnesses are required for proving any f**act**. Thus, this court finds that the testimony of PW3 is totally reliable and is sufficient to base the conviction of the accused.

SECTION 132: Witness not excused from answering on ground that answer will criminate.—A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such

witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

(Proviso) —Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

where a witness is questioned relevant to the matter in issue in any civil suit or criminal proceeding he can be compelled to answer all questions and cannot be excused from answering any question on the ground that the answer might expose him to civil or criminal proceeding or may tend to his prejudice.

The proviso, on the other hand, protects witness that if a witness is compelled to give answer, he shall not be liable for arrest or prosecution nor the answer can be proved against him in any criminal proceeding. However if the answer is false, the witness may be prosecuted for giving false evidence. The protection of the proviso to Section 132 can be applied to a private witness who has been compelled to answer any question during the investigation. A witness is absolutely protected from criminal prosecution on the basis of the evidence as an approver. But, in order to compel the witness to answer such question it is necessary that the question should be relevant to the matter in issue in the civil suit or in any civil or criminal proceeding, as the case may be. If the question is not relevant to the matter in issue, the court shall not compel the witness to answer such question. Without any such question being asked, if the witness,

on his own, deposes to any f**act**, which is not relevant to the matter in issue, as provided in Section 5 of the **Evidence Act**, the court shall not admit the said answer in **evidence**. Thus, it is crystal clear that if the question is relevant to the matter in issue, the court has no option but to compel the witness to answer though the answer to such question will or may tend directly or indirectly to incriminate him. This compulsion is by the statute itself.