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## INTRODUCTION

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Indian Evidence Act is the most important pillar amongst all the laws available in India. There are two types of laws one is substantive law and another is procedural law. Substantive laws are those laws which define certain rights and liabilities and adjective laws are those which facilitate the realization of those rights and liabilities. Adjective laws are further divided into procedural laws and the law of Evidence. Law of Evidence has been recognized as a distinct category because it consists of elements of both substantive as well as procedural law.

The law of evidence is based on reasoning and logic. Without a proper piece of evidence to determine the merit of the case in the Court of the Law will cause much delay in trial to ascertain and give justice to the people. Thus, the very idea of the formation of the Indian Evidence Act is to give power to the judiciary and help them to decide the case and give a verdict of conviction and acquittal depending on the facts and evidence brought before it.

## **HISTORICAL BACKGROUND**

Prior to the passing of Evidence act the principles of the English Evidence Act were practice in the presidencies towns and in Indian courts. There was no systematic enactment on this subject. In 1868 Mr. Sir Henry Maine prepared a draft bill on law of evidence but it was not adopted, as it was not suitable for our country. In 1871 Mr. Stephan prepared a new draft which was passed as Act 1 of 1872. Therefore, the Indian Evidence Act, 1872 is a mode or an instrument through which the court upheld its functions by reaching the truth of each case. The Indian Evidence Act, 1872 was passed on 15th March 1872 and enforced on 1st September 1872. The Indian Evidence Act is divided into three main Parts:

### **I. RELEVANCY OF FACTS**

- ❖ (Chapter I containing Section 1-4 deals with 'Preliminary points';
- ❖ Chapter II containing Section 5-55 deals with 'Relevancy of facts').

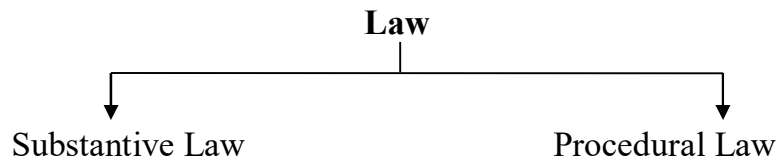
### **II. MODE OF PROOF**

- ❖ (Chapters III containing Section 56-58 deals with 'Facts which need not be proved';
- ❖ Chapter IV containing Section 59-60 deals with 'Oral evidence';
- ❖ Chapter V containing Section 61-90A deals with 'Documentary evidence';
- ❖ Chapter VI containing Section 91-100 deals with 'Exclusion of oral by documentary evidence').

### **III. PRODUCTION AND EFFECT OF EVIDENCE**

- ❖ (Chapters VII containing Section 101-114A deals with 'Burden of proof';
- ❖ Chapter VIII containing Section 115-117 deals with 'Estoppel';

- ❖ Chapter IX containing Section 118-134 deals with ‘Witnesses’;
- ❖ Chapter X containing Section 135-166 deals with ‘Examination of witnesses’;
- ❖ Chapter XI containing Section 167 deals with ‘Improper admission & rejection of evidence’).



Basically evidence Act is procedural law but Doctrine of estoppels is in substantive nature.

## **OBJECTIVES**

1. The objective of the Evidence Act is to prevent laxity and negligence in the admissibility of evidence and to introduce a full-proof and uniform rule of practice than what was previously used. The Indian Evidence Act has no application to enquiries by Tribunals, even though they may be judicial in nature.
2. It sets out rules for oaths and affirmation and provides for the court to control the questioning of witnesses.
3. This act tries to create a balance between substantive laws and procedural laws.
4. It protects the social interest as well as individual interest.
5. The objective of the evidence Act to save public time and to prevent fanciful inferences which may prejudice and mislead the court.

## **EXHAUSTIVE OR NOT**

It is not exhaustive. But if there is express provision in the act, the courts have to follow it and if there is no provision, courts can follow the English law or law of any country. There are other acts which also consists the provisions for evidence such as:-

- Banker's book evidence Act.
- C.P.C O.XXVI.
- C.R.P.C, S. 291 & S.292.
- Registration Act, S.49 & S.
- T.P.A. S. 59 & S.123.
- The Limitation Act, S.19 & S.20.

## **LEX FORI OR LEX LOCI**

The term Lex Fori means the law of the court and the term Lex Loci means the law of the land. The House of Lords observed that Law of evidence is Lex fori which govern the courts. All the questions related to evidence should be determined by the law of the country where

Our address - HO: SCO-209,1st & 2nd floor, Sector-36/D, Chandigarh

Phone: 0172-4024244, 7087878746

Website: [www.thedivinegroup.in](http://www.thedivinegroup.in), [www.divineinstitute.co](http://www.divineinstitute.co)

the question arises, where the remedy is sought to be enforced and where the court sits to enforce it.

## **PREAMBLE:**

Where as it is expedient to consolidate define and amend the Law of evidence as follows:-

## **SECTION 1- SHORT TITLE, EXTENT AND COMMENCEMENT:-**

The Act extends to the whole of India including the State of Jammu and Kashmir (after the amendment of the Jammu and Kashmir Reorganisation Act, 2019) and applies to all judicial proceedings in or before any Court, including Court-martial (other than the Court-martial convened under the Army Act, the Naval Discipline Act or the Indian Navy Discipline Act, 1934 or the Air Force Act) but not to affidavits presented to any Court or officer, or to proceedings before an arbitrator.

The Indian Evidence Act applies to all Judicial proceedings in or before any court including courts martial but it does not apply to:-

### **1. Court martial convened under**

- Army Act
- The Naval Discipline Act.
- The Indian Navy
- Air force Act

### **2. Affidavits**

An affidavit is a declaration sworn or affirmed before a person competent to administer an oath. Thus, an affidavit per se does not become evidence in the suits but it can become evidence only by consent of the party or if specifically authorised by any provision of the law. They can be used as evidence only under Order XIX of the Civil Procedure Code.

***“Shamsunder v. Bharat Oil Mills AIR 1964 Bom 38”***, it had been held that affidavits can be used as evidence if, for sufficient reasons, the Court passes an order under Order 19, rule 1,2 of the Code Of Civil Procedure 1908. It, therefore, stated that an affidavit cannot be treated as evidence unless an order has been passed under Order 19 of the Code of Civil Procedure.

### **3. Proceedings before any arbitrator.**

According to S.2, Sub- clause (i) Cr.P.C.1973, a judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath.

The Act in clear terms doesn't have any significant bearing to the arbitral method. As a result of which arbitrator is not limited by the specialized standards of evidence except, if the fundamental principles of fairness and well- established principles of evidence are not disregarded.

### **SECTION 3 INTERPRETATION CLAUSE:-**

The term evidence is defined under Section 3 of the Evidence Act as follows:

#### **EVIDENCE:**

Evidence means and includes:

1. All statements which the court permits or requires to be made before it by witness in relation to a matter of fact under inquiry such statements are called oral evidence.
2. All documents produced for the inspection of the court.

Evidence may be oral or documentary. The word evidence in the Act signifies only the instruments by means of which relevant facts are brought before the Court, viz., witnesses and documents, and by means of which the court is convinced of these facts.

Evidence under Section 3 of the Indian Evidence Act, 1872 may be either oral or personal (i.e. all statements which the Court permits or requires to be made before it by witnesses, and documentary (documents produced for the inspection of the court), which may be adduced in order to prove a certain fact (principal fact) which is in issue. There must be an open and visible connection between the principal fact and the evidentially facts. Facts are which form part of the same transaction, though not in issue, place or at different times and places.

In general the rules of evidence are same in civil and criminal proceedings but there is a strong difference as to the effect of evidence in civil and criminal proceedings. In the former a mere preponderance of probability due regard being had to the burden of proof, is sufficient basis of a decision, but in the latter, a much higher degree of assurance is required. The persuasion of guilt must amount to a moral certainty such as to be beyond all reasonable doubt.

Three major principles of evidence are

- i) it must be confined to facts in issue and relevant facts
- ii) Hearsay evidence is not admissible
- iii) Best evidence must be produced before the court.

***Rakesh v State of Haryana AIR 2001 S.C 2521*** where in it is held as under.

“That the term evidence used in section 319(1) does not mean ‘evidence’ tested by cross-examination. The statement of prosecution witnesses recorded by the Court can be Prima Facie material to enable the Court to decide whether the person not arraigned before it is involved in the crime or not. Section 319 does not contemplate cross-examination of the said witness prior to his addition of new accused wherein”