

# ANDHRA LEGAL DECISIONS

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## APPRECIATION OF EVIDENCE – A LECTURE

By

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In both criminal and civil trials as well, appreciation of evidence occupies an important place. It cannot be said that appreciation of evidence will be of lesser importance in case of Labour Courts, Industrial Tribunals, Consumer Fora, Revenue Courts, other Quasi-judicial Tribunals, writ proceedings *etc.*, but however, the mode of proof and appreciation of evidence may be of a different standard, on a different footing. In several such cases, strict rules of evidence as contemplated by Indian Evidence Act as such may not be applicable. I will make an attempt to be brief since the subject is a vast one.

The Code of Civil Procedure and the Code of Criminal Procedure are procedural laws governing the procedure to be followed in civil Courts and criminal Courts. Order X of C.P.C. deals with examination of parties by the Court, Order XI - Discovery and inspection, Order XII - Admission, Order XIII - Production, impounding and return of documents, Order XVI - Summoning and attendance of witnesses, Order XVI-A - Attendance of witnesses confined or detained in civil prisons, Order XVIII - Hearing of the suit and examination of witnesses, Order XXVI - Commissions, Order XLI Rule 27 - Production of additional evidence in appellate Court, Rules 28 and 29 - Mode of taking additional evidence and points to be defined and recorded. Likewise, under Cr.P.C. too, Chapter XXIII deals with evidence in Inquiries and trials, Chapter XXIV - General provisions as to inquiries and trials,

Section 386 - Powers of the appellate Court. Wherever the rules of evidence specified by Indian Evidence Act as such are not applicable, such bodies discharging judicial or quasi-judicial or even administrative functions at certain times, are expected to follow the principles of natural justice. Natural Justice is one of the most essential concepts of the Constitutional Law and is of very ancient origin. This may be understood as Justice that is simple and elementary as distinct from Justice that is complex, sophisticated and technical - *John v. Rees* 1969 (2) All.E.R.274. It is also popularly known as “fair play in action”, “social justice”, “universal justice”, “fundamental justice”, “substantial justice” *etc.* The concept of Natural Justice also differs from country to country and the principles applied are not uniform in nature though the fundamental concept of fair play in action may be the same - *Macleay v. Workers Union* - 1929 (1) Ch.D.602. The principles of Natural Justice are easy to proclaim but their precise extent is far less easy to define - *Abdul v. Sullivan* - 1952(1) All.E.R. 226. In modern times opinions have some times been expressed to the effect that Natural Justice is so vague as to be practically meaningless but these can be regarded as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured and therefore it does not exist - *Ridge v. Baldwin* - 1963(2) All.E.R. 66. It is no doubt well settled that these principles are to be observed by Court, Judicial bodies and Quasi-judicial authorities too — *Kishanchand*

*v. Commissioner of Police* - AIR 1961 S.C. 705.

Proceedings under Companies Act, 1956 are governed by the provisions of the Act and rules and provisions of C.P.C. as well upto a limited extent.

Indian Evidence Act, 1872 simply defines evidence as evidence means and includes

- (1) all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry - 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.

Chapter IV of the Act deals with oral evidence and Chapter V deals with documentary evidence. Documentary evidence may be primary evidence or secondary evidence. Section 62 of the Act deals with primary evidence and Sections 63 to 65 of the Act deal with secondary evidence. Section 1 of the Indian Evidence Act, 1872 specifies that it extends to the whole of India except to the State of Jammu and Kashmir and applies to all Judicial proceedings in or before any Court, Courts martial, other than Courts martial convened under the Army Act, Naval Discipline Act, Indian Navy (Discipline) Act, Air Force Act but not to affidavits presented to any Court or Officer nor to proceedings before an arbitrator. Order XVIII Rule 4 as amended by the C.P.C. (Amendment) Act 2002, Act 22 of 2002 dealing with recording of evidence reads:

*Recording of evidence* :—(1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence.

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

(2) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court shall be taken either by the Court or by the Commissioner appointed by it:

Provided that the Court may, while appointing a Commission under this sub-rule, consider taking into account such relevant factors as it thinks fit.

(3) The Court or the Commissioner, as the case may be, shall record evidence either in writing or mechanically in the presence of the Judge or of the Commissioner, as the case may be, and where such evidence is recorded by the Commissioner he shall return such evidence together with his report in writing signed by him to the Court appointing him and the evidence taken under it shall form part of the record of the suit.

(4) The Commissioner may record such remarks as it thinks material respecting the demeanour of any witness while under examination:

Provided that any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of arguments.

(5) The report of the Commissioner shall be submitted to the Court appointing the Commission within sixty days from the date of issue of the Commission unless the Court for reasons to be recorded in writing extends the time.

(6) The High Court or the District Judge, as the case may be, shall prepare a panel of Commissioners to record the evidence under this rule.

(7) The Court may by general or special order fix the amount to be paid as remuneration for the services of the Commissioner.

(8) The provisions of rules 16, 16A, 17 and 18 of Order XXVI, in so far as they are applicable, shall apply to the issue, execution and return of such Commissions under this rule.

Sections 18 to 23 of the Evidence Act deal with admissions. Sections 24 to 30 - Confessions, Sections 40 to 44 - Relevancy of Judgments, Sections 45 to 51 - Opinions of experts, Sections 52 to 55 - Relevancy of character.

Sections 56 to 58 of the Act deal with facts which need not be proved. Section 58 specifies that facts admitted need not be proved. Report of Commissioner in civil cases is part of record and should be considered as evidence whether Commissioner was examined or not (AIR 1973 A.P. 168). See AIR 1976 Allahabad 121, AIR 1992 A.P. 300.

In *Harishankar Jain v. Sonia Gandhi* 2001(8) S.C.C. 233 it was held that judicial notice can be taken of the laws in force in India, but foreign law is not covered by Section 57(1) of the Act and hence it must be pleaded like any other fact. Tape records of speeches are documents within the meaning of Section 3 of the Act (AIR 1975 S.C. 1788). Evidence may be direct or circumstantial. For credibility and appreciation of evidence - See 1987(3) Crimes 230, AIR 1974 S.C. 2294, AIR 1980 SC 1160, AIR 1974 SC 1936, 1987 Ker. L.J. 782, I.L.R. (1979) 2 Kar 2154, 1988 Cr.L.J. 1154, 1991 Cr.L.J. 1501, 2002(4) S.C.C. 679, 2002(4) S.C.C. 76. Abscondance

of accused - AIR 1988 S.C. 1883. Degree of proof in a criminal case - AIR 1973 S.C. 460. Standard of proof in criminal trial - AIR 1974 S.C. 985. Benefit of doubt-AIR 1974 S.C. 898, AIR 1974 S.C. 778, 1974 Cr.L.J. 890, AIR 1976 S.C. 2013, AIR 1977 S.C. 673, AIR 1977 SC, 472, AIR 1978 S.C. 1647, AIR 1979 S.C. 1224, AIR 1980 S.C. 1269, AIR 1979 S.C. 387. Suspicion not a substitute to proof- AIR 1984 S.C. 1622. Related witness - AIR 2002 S.C. 1621, 2002(1) S.C.C. 351. Burden of proving exceptions 2002(1) S.C.C. 71. Number of witnesses to be examined, quality and not quantity that matters - 2002(1) S.C.C. 351. Shoot out case - Appreciation of evidence - AIR 2002 S.C. 2461.

In *Krishna Mochi v. State Of Bihar* - 2002(6) S.C.C. 81, the duties and responsibilities of the Courts in appreciating evidence was discussed and it was also held that even solitary witness can form the basis of conviction. In *Srinivasulu v. State of A.P.* 2002(6) S.C.C. 399, non-examination of material witness was discussed. In *Kalpana Mazumdar v. State of Orissa* - 2002(6) S.C.C. 536, brutal murder of a child to appease deities and the sentence had been discussed. Humiliation will not amount to instigation and hence it cannot be said that there is abetment of suicide in such a case -*Nelam v. State of A.P.*, 2002(2) A.L.T. (CrI) 186. Non-conducting of identification parade and effect thereof - *Syed Zameer v. State of A.P.*, 2002 (2) A.L.T. (CrI.) 272.

In *State of Bihar v. Lalu Prasad* - AIR 2002 S.C. 2432 where prosecution witness gave evidence even in chief-examination in favour of defence, public prosecutor had not sought permission to cross-examine him at that stage and permitted cross-examination by defence, subsequent permission sought refused - such refusal need not be inferred with. Interested witness - AIR 2002 S.C. 1212.

Sections 91 to 100 of the Act deal with exclusion of oral by documentary evidence. Chapter VII of the Act deals with burden of proof. Chapter VIII - Estoppel, Chapter IX - Of witnesses, Chapter X-Of the examination of witnesses.

Man's character is often a matter of importance in criminal proceeding - AIR 1954 S.C. 51. Evidence of test identification admissible under Section 9 of the Act - 1974(4) S.C.C. 213. Tape recorded statement admissible in evidence subject to certain conditions -1985 Supp. S.C.C. 611, 1973(1) S.C.C. 471. Plea of alibi to be proved with absolute certainty - 1984(1) S.C.C. 446, 1975(4) S.C.C. 257. Newspaper reports are in the nature of hearsay secondary evidence AIR 1969 S.C. 1201, AIR 1988 S.C. 1274.

In Wellman's Art of Cross-examination, Lord Chief Justice *Cockburn* was quoted as follows:

"I deeply deplore that members of the Bar so frequently unnecessarily put questions affecting the private life of witnesses which are only justifiably when they challenge the credibility of a witness. I have watched closely the administration of justice in France, Germany, Holland, Belgium, Italy and a little in Spain as well in US and Canada and in Ireland and in no places have I seen witnesses so badgered brow-beaten and in every way so brutally maltreated as in England. The way in which we treat our witnesses is a national disgrace and a serious obstacle instead of aiding the ends of justice".

I am of the opinion that these observations are equally applicable to this country too which in fact had adopted the common law jurisprudence only. In *Food Inspector v. James*, 1998 Cr.L.J. 3494 (Kerala), it was held that the evidence of a witness who could not be cross-examined due to his death in the meanwhile is admissible in

evidence though its evidentiary value may depend upon the facts and circumstances of the case. See also *Horil v. Rajab* (AIR 1936 Patna 34). In *Sukvant Singh v. State of Punjab* (1995(2) Crimes 148) it was held that there was no meaning in tendering a witness for cross-examination only since it will amount to giving up the witness by the prosecution since the prosecution had not chosen to examine such witness in-chief. See also 1996 Cr.L.J. 394 (SC) - *Tej Prakash v. State of Haryana*. A Court witness who is called by the Court is liable to be cross-examined by both the parties - *Sadanand v. Empeor* (AIR 1931 Bombay 412), *Peeta v. Emperor* (85 Indian Cases 719). In *Ramchandra Chattejee v. Haneef* (1894) 21 Calcutta 401, the Division Bench observed:

"We think that there may be many cases of failure of justice if a co-accused were not allowed to cross examine the witnesses called by a person whose case was adverse to him, for the effect might be practically that a Court might act upon evidence which was not subject to cross-examination. The Evidence Act gives a right to cross-examine witnesses called by the adverse party".

In *Balaram Prasad v. State of Bihar* (1997 (1) Supreme 35) it was held that oral evidence must be direct (see 1997(2) Supreme 331). Circumstantial evidence (AIR 1963 SC 74, AIR 1983 SC 906, 1998(6) Supreme 161). In *Hari Babu v. Veera Raghavamma* (2000 (1) ALT (CrL) 197) it was held that *bona fide* certificates issued by head of the institution are admissible in evidence. Plan drawn by draughtsman if corroborated by witnesses is admissible (AIR 1956 SC 526 - *Santa Singh v. State of Punjab*). Carbon copy of medical certificate is admissible (AIR 1989 SC 702 -*Prithi Chand v. State of H.P.*). In *Mohmedbhai Rasulbhai Malak v. Amirbhai Rahimbhai Malik* (AIR 2001 Gujarat 37) it was held that a certified copy of Judgment, not bearing



signature of the Judge without date of pronouncement, final portion missing is inadmissible in evidence being incomplete. An accurate tape record of the statement is relevant and admissible (AIR 1968 SC 147 - *Yusufalli Esmail Nagsee v. State of Maharashtra*) Hear say evidence to prove contents of document cannot be admitted (AIR 1964 SC 1625 - *Mohd. Akram Hussain v. State of UP*). The evidence of the witness that he was informed that accused persons would be coming behind the truck in a taxi is not admissible where the informant was not examined (AIR 1983 SC 906 - *Bhagdomal Gangaram v. State of Gujarat*). Court is bound to draw a presumption that certified copy of a document is genuine (AIR 1959 SC 960 = 1960 SCJ 892 - *Bhunka v. Charan Singh*). News item is hear say in nature and Court cannot take judicial notice of it (AIR 1988 SC 1274 - *Laxmi Raj Shetty v. State of Tamilnadu*). Court is bound to accept the certificate of committing Magistrate as correct (AIR 1952 SC 214 - *Bhagwan Singh v. State of Punjab*). There must be an assumption that whatever is published in the Government owned paper correctly represents the actual state of affairs relating to Governmental business, (AIR 1986 SC 2045 - *R.S. Nayak v. A.R. Antulay*). Under Section 88 of the Evidence Act there is a presumption only that the message received by the addressee corresponds with the message delivered for transmission at the office of origin (AIR 1957 SC 857 = 1958 SCJ 111 = *Mobarik Ali Ahmed v. State of Bombay*). Where the object is not to establish the truth of the statement but only to establish the fact that one made the statement, bar of reception of hear say evidence in Section 60 of Evidence Act is not applicable (1986(2) Crimes 581 - *Raja v. State of M.P.*, see 1991 (1) Crimes 691 - *Umakanta Rao v. State of Karnataka* - 1956 M.L.J. 220). In *Lezjor v. Queen* (1952 AC 480) Lord Norman observed that hear say evidence is normally excluded not because it lacks

logical probative value but because in a system of trial by jury it is difficult to assess the weight which can properly be given to statements which cannot be tested by the demeanour or cross-examination of the persons who made them- - see *R.V. Blastand Law Reports of Commonwealth* (Cr) 234. Photographic print can be proved on production of negative only (1977 Maha.J. 68, 1991 Cr.L.J. 978, AIR 1977 Gauhati 31). Photostat copy and secondary evidence (1986) 1 DMC 185, (1985) 2 DMC 136, AIR 1976 Orissa 236). Court can direct accused to give specimen, writing AIR 1979 SC14 = 1979 Cr.L.J. 17 - *State v. Paliram*). In *Krishnaiah v. T.T.D.* (1995 (2) ALT 122) it was held that photo copy of title deed of 1889 in favour of T.T.D. was held to be permissible. Income-tax returns are public documents (AIR 1958 AP 200). Adangal is a public document (1971 (1) APLJ 13). In *Venka Subba Rao v. Venkata Venugopala Jagannadha Rao* (1995 (2) ALT 651) it was held that Xerox copies of documents are not admissible in evidence. Admissibility of photo copies - understanding to file originals at proper time (AIR 2000 Rajasthan 415 - *Prem Kumari v. Sushil Kumari*).

Secondary evidence (2000(1) CCC 190, 2000(1) CCC 188, AIR 2000 SC 1759, 1954 (2) MLJ (Andhra) 75, AIR 2000 SC 2629). Sections 65-A and 65-B of the Indian Evidence Act dealing with special provisions as to evidence relating to electronic record and admissibility of electronic records had been introduced by Information Technology Act, Act 21 of 2000. Likewise, Section 67-A - proof as to digital signature had been introduced by Act 21 of 2000. Section 73-A dealing with proof as to verification of digital signatures also had been introduced by Act 21 of 2000. Remand reports and public documents (1973 M.L.J. (CrL) 25). Injury report (1990 Cr.L.J. 1848). Statement under Section 161 Cr.P.C. (1987 Cr.L.J. 570 - See also 1955 Cr.L.J. 441, AIR 1984 Gujarat 69, AIR 1963 Calcutta 431). Sections

85-A, 85-B, 85-C, 88-A also had been introduced in Indian Evidence Act by Act 21 of 2000.

Burden of proof of a will is on the propounder (2000(2) CCC 371). Burden of proof lies on the party seeking to establish the execution of a document or the handwriting or signature thereon (2001(1) CCC 36). In *Neela Singh v. Mahagopal Singh* (2000(3) ALT 289), the proof validity of Holograph Will was explained. Scribe as attesting witness (AIR 1956 AP 195). Attesting witness (1970(2) An.W.R. 88, AIR 1971 AP 319). In *Laxminarayana v. Venkata Subba Rao* (2000(6) ALT 295) the proof of execution of gift was dealt with and where donor admits execution, it is sufficient proof. Comparison of signature - Section 73 of Evidence Act (2000(1) ALT (CrI) 13 (NRC), 2001 (3) ALT 22, AIR 1999 Gauhati 101, 2000 (1) ALT (CrI) 84, 1998(2) ALT (CrI) 357). Recitals in a document relating to consideration are *prima-facie* proof if execution is proved (AIR 1962 AP 29). Presumption as to documents thirty years old (1971 (1) APLJ 61, 2000(1) An.W.R. 327, AIR 1956 SC 305, AIR 1948 Madras 388, AIR 1964 Patna 187, AIR 1954 SC 606).

Sections 101 to 111 of the Indian Evidence Act deal with Burden of proof. Silence of accused is not a substitute to proof of prosecution (AIR 1954 SC 15, AIR 1975 SC 573). Burden of proof is on prosecution (AIR 1972 SC 716, AIR 1968 SC 1393, AIR 1966 SC 1762, AIR 1957 SC 366, AIR 1964 SC 1563, AIR 1974 SC 155). Evidence on both sides must be weighed (AIR 1975 SC 667). Plea of alibi to be established by accused (AIR 1978 SC 191). Where custom is pleaded by plaintiff, it is for him to prove the same (AIR 1973 SC 814). Burden of proving exception is on accused (AIR 1966 SC 1). See AIR 1974 SC 1570, AIR 1974 SC 216, AIR 1975 SC 2161, AIR 1980 SC 660, AIR 1979 SC

1179. Plea of benami and onus of proof (AIR 1971 AP 179, AIR 1965 SC 1364). Non-production of account books by a person having possession will go against him (AIR 1953 SC 225). In *Dwaraka Prasad Stapaty v. Budyut Prava Dixit* (AIR 1999 SC 3348) it was held that in a maintenance matter under Section 125 Cr.P.C., proof of marriage not as strict as required in a case of bigamy. *Mala fides* to be proved by a person alleging the same (AIR 1974 SC 38). When entire evidence is before the Court, question of burden of proof is merely academic (AIR 1963 SC 1150). In Railway claim burden is on railway to prove that they have not been negligent (AIR 1969 AP 386). Where a fact is especially within the knowledge of any person, burden is upon him to prove it (1994(2) ALT (CrI) 482, AIR 1957 AP 926). Presumption of continuance of life under Section 107 of Evidence Act ceases at the expiration of seven years from the period when he was last heard of (1994(3) CCC 117). Time of death requires proof, not a presumption (AIR 1957 AP 380).

Sections 111-A to 114-A of the Indian Evidence Act deal with presumptions. Child born during lawful wedlock is presumed to be legitimate unless it is rebutted (1993(2) ALT (CrI) 356). This presumption can be displaced by a strong preponderance of evidence and not balance of probabilities (AIR 1993 SC 2295). Child born within the period of gestation from the date of divorces - Burden is on the father to prove illegitimacy (1995(1) ALT (CrI) 160). In *State of Tamilnadu v. Suresh* (1997(10) Supreme, 426) it was held that it is open to the Court to presume that the uncorroborated testimony of an accomplice is unworthy of credit. In *Smt.Kanti Devi v. Moshi Ram* (AIR 2001 SC 2226) it was held that relating to paternity of child born during subsistence of valid marriage the standard of proof of non-access by way of rebuttal should be atleast be of a degree between the proof beyond reasonable doubt and test of

preponderance of probability. In *State of West Bengal v. Orilal Jaiswal* (AIR 1994 SC 1418) it was held that the requirement of proof beyond reasonable doubt is not altered by introduction of Section 498-A IPC and Section 113-A of Indian Evidence Act. Section 113-A of Evidence Act was introduced by Criminal Law (Second Amendment) Act, Act 46 of 1983 and Section 113-B of Evidence Act was introduced by Dowry Prohibition (Amendment) Act, Act 43 of 1986. Incident after 21 days of marriage (1999(2) Crimes 372). Vague allegations of cruelty (1990(1) Crimes 429). Suicide within two years of marriage in matrimonial home (2000(2) Crimes 397). Allegations of taunting against in-laws (2000(2) Crimes 213). Section 113-A and Section 107 I.P.C. (2000 (1) Crimes 508). Presumption of dowry death (1998(1) Crimes 213, 2000 (2) ALT (CrI.) 50, AIR 1997 SC 1830). Section 113-A of the Evidence Act is procedural (AIR 1990 SC 209 - *Gurbachan Singh v. Satpal Singh*). For scope and ambit of Sections 113-A and 113-B of Evidence Act (1997 CrI.L.J. 1727, 1998 CrI.L.J. 4253, 1991(3) Crimes 210, 1998 CrI.L.J. 2179, 1993 CrI.L.J. 2636, 1992 CrI.L.J. 309, 1993 CrI.L.J. 3723, 1995 CrI.L.J. 989).

Where a person was brought from police custody with injuries, Court can presume torture (2000(1) ALT (CrI) 199). Section 114-A of the Evidence Act was introduced by Act 43 of 1983. Section 114 of the Evidence Act deals with presumption relating to existence of certain facts - Illustrations have been given under this provision. Where presumption of unnatural death was un rebutted, conviction is sustainable (AIR 1997 SC 1830, 1997(1) Crimes 11). Where a lady was living with deceased as husband and wife for a long time, presumption of valid marriage can be drawn (1994(2) ALT 445). Where a party has receipts for payments made it can be presumed that such party made payments (2000(6) SCC

566). Long period of cohabitation and presumption of marriage (2000(2) SCC 431). Presumption and burden of proof explained (2000(8) SCC 382 = 2000 SCC (CrI) 1516). Presumption that official acts are performed (2000(10) SCC 420, 2000(9) SCC 549). Adverse inference for withholding evidence (1999(1) SCC 377). Purpose of legal presumption is only with a view to cast burden of proof (2000(1) SCC 1). In *Vidyadhar v. Manik Rao* (AIR 1999 S.C. 1441 = (1999(3) SCC 573) it was held that where a party to a suit does not appear in the witness box, a presumption would arise that the case set up by him is not correct. Defendant not presenting himself for cross examination - Adverse inference has to be drawn (AIR 1999 SC 1341 = 1999(3) SCC 457).

There are certain presumptions like Section 118 of N.I. Act, Section 139 of N.I. Act and similar provisions in different enactments. These are all presumptions specified by the statutes.

While appreciating evidence of a witness, the chief-examination, cross-examination and re-examination also may have to be considered. The subordinate Courts being predominantly fact finding Courts, should be careful and cautious while appreciating the evidence of witnesses. A witness may not speak whole truth and equally he may not speak total falsehood. While recording the evidence of a witness, the Court is expected to observe demeanour of the witness. Court may put relevant questions. Court may disallow irrelevant questions. At certain times, Court may call upon a particular witness as a Court witness. Whenever admissibility of a document is raised as an objection, it is better to decide the question than to postpone it to be decided at the time of final disposal. We cannot visualise all the problems which may come up before the Courts in relation to evidence and hence it is possible to lay down all the

principles or all the guidelines. Approach of Courts while appreciating evidence must be in the standard of an ordinary prudent man, should be more based on equity though law cannot be totally ignored since law must bend before justice at times and should be based on common sense too and justice should not be defeated on trivial legal technicalities unless they touch the very root of the matter by virtue of which the hands of Court are tied thus preventing the Court to take any other possible view in a given situation.

Appreciation of evidence in civil cases may stand on a different footing from criminal cases. Likewise, appreciation of evidence *vis-a-vis* observance of principles of natural Justice or affording reasonable opportunity also will be on a different footing. Evidence broadly may be:

*oral or documentary*  
*direct or circumstantial*  
*primary or secondary*  
*expert evidence*  
*report of Commissioner*  
*inspection by Court*

*all other modes permissible by law.*

Examination of witnesses, chief-examination, cross-examination, re-examination, marking of documents are certain other important facets. Court putting questions too is another important aspect. Witnesses can be parties to the litigation, the power of attorney agents, independent witnesses, interested witnesses, child witnesses, dumb, duff, disabled witnesses, partisan witnesses, solitary witness, hostile witnesses, police witnesses, expert evidence like medical evidence, ballistic expert, finger prints, forensic experts and all other persons who can be brought under the expression "expert". Apart from Section 45 of Indian Evidence Act, Sections 291 to 294 of Cr.P.C. also deal with expert evidence in specified instances.

Competency and credibility of witnesses - See 2002 (3) Indian Civil Cases 65. If plaintiff wants to give evidence, she should give evidence at the first instance - 2002 (3) Indian Civil Cases 79.

I do confess that I touched only certain aspects of the topic.

#### OFFENCE OF BIGAMY – LEGISLATIVE LACUNA

*By*

—CH. V.R.R. VARA PRASAD, B.Com., L.L.M.,  
 II Addl. Junior Civil Judge, Gurazala,  
 Guntur District, A.P.

An important question of law is being confronted by the Magistrates in the State of A.P. as to whether the Court can take cognizance of the offence under Section 494 of Indian Penal Code (for brevity 'IPC') basing on the police report filed by a police officer under Section 173 (2) of the Code of Criminal Procedure (for brevity 'Cr.PC') after completion of investigation.

2. Section 494 IPC falls under Chapter XX of IPC which deals with offences relating to marriage. Initially Section 494 IPC was non-cognizable and bailable offence. It was deemed to be cognizable when it was associated with offence under Section 498-A IPC by virtue of Section 155(4) of Cr.PC. However, by amendment (A.P. Act No.3 of 1992) brought