B.A.LL.B. IX SEMESTER
SUBJECT – LAW OF EVIDENCE & LIMITATION ACT
CODE – BL-901
TOPIC - EVIDENCE

Meaning, Nature And Scope of The Law of Evidence

Every case that comes before a court of law has a fact story behind it. Facts out of which cases arise keeps happening in the ordinary course of life. The primary objective of any Judicial System, irrespective of any state is to administer justice and protect the rights of the citizens. For administering justice, every judicial system has to consider the facts of the cases and has to extract the correct facts for complete justice; and there the importance of procedural law comes into existence which laws different rules in checking the value of the facts produced by the law offender and by the victim. The law of evidence act does not affect the substantive rights of parties, but only lays down the law for facilitating the course of justice. The evidence acts laid down the rules of evidence for the purpose of guidance of the courts it is a procedural law which provides, *inter alia*, how a fact to be proved.[1]

It now becomes necessary to explain the meaning of the word "evidence".

Conceptions of Evidence:

The Meaning of the word "Evidence" The word “evidence” has been derived from the Latin word "evidens evidere" which means “to show clearly; to make plain, certain or to prove.” According to Blackstone, “Evidence signifies that which demonstrates, makes clear, or accretions the truth of every fact or point in issue, either on the one side or on the other”. Stephen (1872: 3–4, 6–7) long ago noted that legal usage of the term “evidence” is ambiguous. It sometimes refers to that which is adduced by a party at the trial as a means of establishing factual claims. (“Adducing evidence” is the legal term for presenting or producing evidence in court for the purpose of establishing proof.) This meaning of e1872: 149).[2] The definition drafted by

[1] Avtar Singh, principles of the law of Evidence, central Law publication, edition 2004, p.n-1

[2] Stephen, J., 1872, The Indian Evidence Act, with an Introduction on the Principles of Judicial Evidence, Calcutta: Thacker, Spink & Co

Stephen reads as follows vidence is reflected in the definitional section of the Indian Evidence Act (Stephen

"Evidence" means and includes—(1) all statements which the Court permits or requires to be made before it by witnesses…; such statements are called oral evidence (2) all documents produced for the inspection of the Court; all such documents are called documentary evidence

When lawyers use the term "evidence" in this way, they have in mind what epistemologists would think of as "objects of sensory evidence" (Haack 2004: 48). Evidence, in this sense, is divided conventionally into three main categories.[3] oral evidence (the testimony given in court by witnesses), documentary evidence (documents produced for inspection by the court), and "real evidence"; the first two are self-explanatory and the third captures things other than documents such as a knife allegedly used in committing a crime. The term "evidence" can, secondly, refer to a proposition of fact that is established by evidence in the first sense.[4] This is sometimes called an "evidential fact". That the accused was at or about the scene of the crime at the relevant time is evidence in the second sense of his possible involvement in the crime. But the accused's presence must be proved by producing evidence in the first sense. For instance, the prosecution may call a witness to appear before the court and get him to testify that he saw the accused in the vicinity of the crime at the relevant time. Success in proving the presence of the accused (the evidential fact) will depend on the fact-finder's assessment of the veracity of the witness and the reliability of his testimony. (The fact-finder is the person or body responsible for ascertaining where the truth lies on disputed questions of fact and in whom the power to decide on the verdict vests. The fact-finder is also called "trier of fact" or "judge of fact". Fact-finding is the task of the jury or, for certain types of cases and in countries without a jury system, the judge.) Sometimes the evidential fact is directly accessible to the fact-finder. If the alleged knife used in committing the crime in question (a form of "real evidence") is produced in court, the fact-finder can see for himself the shape of the knife; he does not need to learn of it through the testimony of an intermediary. A third conception of evidence is an elaboration or

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[3] Haack, S., 1993, *Evidence and Inquiry, Towards Reconstruction in Epistemology*, Oxford: Blackwell.

[4] As Schum, 1994: 19, observes, there is a distinction "between evidence and the actual or factual occurrence of the event(s) reported in evidence". This distinction is also drawn by Wigmore (1937: 45, 318–320) and Keynes (1921: 181)

extension of the second. On this conception, evidence is relational. A factual proposition (in Latin, *factum probans*) is evidence in the third sense only if it can serve as a premise for drawing an inference (directly or indirectly) to a matter that is material to the case (*factum probandum*). The fact that the accused's fingerprints were found in a room where something was stolen is evidence in the present sense because one can infer from this that he was in the room, and his presence in the room is evidence of his possible involvement in the theft. On the other hand, the fact that the accused's favourite color is blue would, in the absence of highly unusual circumstances, be rejected as evidence of his guilt: ordinarily, what a person's favourite color happens to be cannot serve as a premise for any reasonable inference towards his commission of a crime and, as such, it is irrelevant. In the third sense of "evidence", which conceives of evidence as a premise for a material inference, "irrelevant evidence" is an oxymoron: it is simply not evidence. Hence, this statement of Bentham (1825: 230)[5]

Fourthly, the conditions for something to be received (or, in technical term "admitted") as evidence at the trial are sometimes included in the legal concept of evidence. On this conception, legal evidence is that which counts as evidence in law. Something may ordinarily be treated as evidence and yet be rejected by the court. Hearsay is often cited as an example. It is pointed out that reliance on hearsay is a commonplace in ordinary life. We frequently rely on hearsay in forming our factual beliefs. In contrast, "hearsay is not evidence" in legal proceedings (Stephen 1872: 4–5). As a general rule, the court will not rely on hearsay as a premise for an inference towards the truth of what is asserted. It will not allow a witness to testify in court that another person X (who is not brought before the court) said that p on a certain occasion (an out-of-court statement) for the purpose of proving that.

Legal Significance of Relevance

The concept of relevance plays a pivotal role in legal fact-finding. Thayer (1898: 266, 530) articulates its significance in terms of two foundational principles of the law of evidence: first, without exception, nothing which is not relevant may be received as evidence by the court and secondly, subject to many exceptions and qualifications, whatever is relevant is receivable as evidence by the court. Thayer's view has been influential and finds expression in sources of

[5] Bentham, J., 1825, *A Treatise on Judicial Evidence*, M. Dumont (ed.), London: Paget

law.[6] .The first and most essential step towards a right adjudication is, therefore, to ascertain the facts correctly. The value of rules, which guide and assist in the performance of this duty must necessarily be very great and thus we see the importance of the study of the law of Evidence.

Role of Evidence

The object of rules of evidence is to help the Courts ascertain the truth and to avoid the confusion in the minds of judges, which may result from the admission of evidence in excess.[7] Thus, the Indian Evidence Act, 1872 was passed with the main object of preventing indiscipline in the admission of evidence by enacting a correct and uniform rule of practice. The law of evidence is the Lex fori which govern the Courts; whether a writer is competent or not; whether a certain fact requires to be proved by writing or not; whether a certain evidence proves a fact or not; that is to 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.[8]

The Indian Evidence act, 1872 came into force from 1st September 1872 applies to all over India except the state of Jammu and Kashmir. The limitation of this act does not end here, as it is not applicable to army & naval law, disciplinary acts and all the affidavits.[9] It is well known that the Law of evidence is Procedural Law and it only applies to court proceedings, but it also has a feature in its some part which makes it as a Substantial Law like the Doctrine of Estoppe. The term evidence means anything by which any alleged matter of fact is either established or disproved. Anything that makes the thing in question evident to the court is evidence. Evidence can be defined as any material which tends to persuade the court of the truth or probability of some fact asserted before it.[10]

Section 3 "Evidence".—"Evidence" means and includes-

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[6] Thayer, J., 1898, *A Preliminary Treatise on Evidence at the Common Law*, Boston: Little, Brown & Co

[7] Hales v. Kerr, (1908) 2 KB 601; Butterley Co. v. New Hucknall Colliery Co., (1909) 1 Ch 37.

[8] Brain v. White Raven and Furnem Junction Ry., (1850) 3 HLC 1 (19).

[9] Section 1Indian Evidence Act, 1872

[10] Peter Murphy, A Practical Approach To Evidence 1 (4th Edn., 1992)

(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. Documentary Evidence is evidence of the fact brought to the knowledge of the court by inspection of the document produce before the court.

The definition of word "evidence" is explanatory and not precise. It consist oral evidence and documentary evidence. Oral evidence is evidence of the fact brought to the knowledge of the court by the verbal statement of witness, quality to speak on the point he testifies. It includes all statements, which the court permits or requires to be made before it by witness with regard to matters of fact under inquiry.[11]

"Fact".-"Fact" means and includes-

(1) Anything, the state of things, or relation of things, capable of being perceived by the senses;

(2) Any mental condition of which any person is conscious.

Illustrations

(a) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b) That a man heard or saw something is a fact.

(c) That a man said certain words is a fact.

(d) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.

(e) That a man has a certain reputation is a fact.[12] **Fact in issue-** the expression facts in issue means and includes- any facts from which either by itself or in connection with other facts, the existence, non- existence, nature or extent of any right, liability,or disability, asserted or denied

[11] Section 3 of the Indian Evidence Act, 1872.

[12] ibid

in any suit or proceeding necessarily follows. The Indian Evidence **Act, section 3** defines facts and fact in issue in such a way that facts mean the **'happening or existence of anything'** these are particularly knowledge or any information related to anything. Whereas, facts in issue are those facts which are in question or those facts which need to be proved for the purpose of ascertaining some information and making inferences out of relevant information in the case in obtaining justice. **Illustration-** A is the owner of a shop- it is a fact. A is accused of robbery- now whether A committed robbery or not is a fact in issue.

We have just considered the first condition of receivability, namely, relevance. That fact *A* is relevant to fact *B* is not sufficient to make evidence of fact *A* receivable in court. In addition, *B* must be a "material" fact. The materiality of facts in a particular case is determined by the law applicable to that case. In a criminal prosecution, it depends on the law which defines the offence with which the accused is charged and at a civil trial, the law which sets out the elements of the legal claim that is being brought against the defendant.[13]

Imagine that the accused is prosecuted for the crime of rape and the alleged victim's behaviour (fact *A*) increases the probability that she had consented to have sexual intercourse with the accused (fact *B*). On the probabilistic theory of relevance that we have considered, *A* is relevant to *B.* Now suppose that the alleged victim is a minor. Under criminal law, it does not matter whether she had consented to the sexual intercourse. If *B* is of no legal consequence, the court will not allow evidence of *A* to be adduced for the purpose of proving *B*: the most obvious reason is that it is a waste of time to receive the evidence. Not all material facts are necessarily in dispute. Suppose the plaintiff sues the defendant for breach of contract. Under the law of contract, to succeed in this action, the plaintiff must prove the following three elements: that there was a contract between the parties, that the defendant was in breach of the contract, and that the plaintiff had suffered loss as a result of that breach. The defendant may concede that there was a contract and that he was in breach of it but deny that the plaintiff had suffered any loss as a result of that breach. In such a situation, only the last of the material facts is disputed.

[13] Wigmore, J., 1913"Review of *A Treatise on Facts, or the Weight and Value of Evidence* by Charles C. Moore", *Illinois Law Review*, 3: 477–478. (Wigmore 1983a, 15–19; Montrose 1954: 536–537).

Following Stephen's terminology, a disputed material fact is called a "fact in issue" (Stephen 1872: 28).

The law does not allow evidence to be adduced to prove facts that are immaterial or that are not in issue. "Relevance" is often used in the broader sense that encompasses the concepts under discussion. Evidence is sometimes described as "irrelevant" not for the reason that no logical inference can be drawn to the proposition that is sought to be proved (in our example, *A* is strictly speaking relevant to *B*) but because that proposition is not material or not disputed (in our example, *B* is not material). This broader usage of the term "relevance", though otherwise quite harmless, does not promote conceptual clarity because it runs together different concepts.[14]

According to Stephen[15] "relevant" means that any two facts to which it is applied are so related to each other that according to the common course of events one either taken by itself or in connection with other facts proves or renders *probable* the past, present, or future existence or non-existence of the other.

Relevant Fact- The actual meaning of relevant is 'connected', so those facts which give any inferences or support or influence to any other facts then these facts are known as relevant facts Illustration- A is accused of Murder of B in Agra (Fact). A was in Canada for his business meetings at the time of the murder (Relevant fact).

When is a fact said to be proved. Section 3 says A fact is considered to be **proved** when, the court after considering all the evidence after the trials and proceeding either believes the happening of the case in such a manner as it is expressed or if the court makes a probable inference beyond reasonable doubt and believes that the existence of the case in such manner as it was explained. The degree of certainty which must be arrived at before a fact is said to be proved is that described in this section.[16]

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[14] . James, G., 1941, "Relevancy, Probability and the Law", *California Law Review,* 690–691; Trautman 1952: 386; Montrose 1954: 537

[15] (1886: 2, emphasis added)

[16] Abdul karim v. the crown , (1879) PRNo. 32 of 1878 (Cr.)

A fact is considered to be **disproved** when the court after considering all the evidence after the trials and proceeding either believes that it does not exist as explained, or if the court makes a probable inference beyond reasonable doubt and does not believes the existence of case in such a manner as it was explained.

A fact is called **not proved** when the facts are in a circumstantial condition that they are neither proved nor disproved.

These provisions of the act deal with the degree or standard of proof. These are the only provisions that deal with the matter. What and how much proof is necessary to convince the judge of the existence of a fact in issue? the answer depends upon many circumstances as different standards of proof are demanded in civil and criminal cases, for example, a matter is taken to be proved when the balance of probability suggests it, but in criminal cases the court requires a proof beyond reasonable doubts.[17] Proof does not mean proof to rigid mathematical demonstration, because that is impossible, it must mean such evidence as would induce a reasonable man to come to the conclusion.[18]

Presumption when the court presumes the existence of a fact is known as a presumption. Presumptions are either of law or fact. Presumption of law are arbitrary consequences expressly annexed by law to particular facts and may be either conclusive as that a child under a certain age is incapable of committing any crime or rebuttable as that a person, not heard of for seven years is dead, or that a bill of exchange has been given for value. Presumptions of facts are inferences which the mind naturally and logically drew from given facts irrespective of their legal effect. Not only are the always rebuttable, but either the Trier of facts may be refuse to make usual or natural inference notwithstanding that there is no rebutting evidence.[19]

. A presumption is not in itself evidence but only makes a prima facie case for party in whose favour it exists. it indicates the person on whom the burden of proof lies. When presumption is conclusive, it obviates the production of any other evidence. but when it is rebuttable it only

[17] Denning, L.J.,in Hornal v. NeuburgerProduct Lt.,(1956) 3 W.L.R. 1034 : (1957)
[18] Hawkins v. powells Tillery Stream Coal Co. Ltd., (1911) 1 K.B.988,
[19] Avtarsing v. State of Punjab, AIR 2002 S.C. 3343

points out the facts presumed, and when the party has produced evidence fairly and reasonable tending to show that the real fact is not as presumed the purpose of presumption is over. [20]

section 114 of Indian Evidence Act specifically deals with the concept 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 (a) natural events, (b) human conduct, and (c) public and private business, in their relation to the facts of the particular case'. Presumption generally means a process of ascertaining few facts on the basis of possibility or it is the consequence of some acts in general which strengthen the possibility and when such possibility has great substantiate value then generally facts can be ascertained. A presumption in law means inferences which are concluded by the court with respect to the existence of certain facts. The inferences can either be affirmative or negative drawn from circumstance by using a process of best probable reasoning of such circumstances. The basic rule of presumption is when one fact of the case or circumstances are considered as primary facts and if they are proving the other facts related to it, then the facts can be presumed as if they are proved until disproved

The Indian Evidence Act provides that a fact or a group of facts may be regarded as proved, until and unless they are disapproved. The concept is defined under Section 4 of this Act that **'May Presume'**[21] deals with rebuttable presumption and is not a branch of jurisprudence. It is a condition when the court enjoys its discretion power to presume any/ certain/ few facts and recognize it either proved or may ask for corroborative evidence to confirm or reconfirm the presumption set by the court in its discretion.

Section 4 of Indian evidence Act explains the principle of '**Shall Presume'**[22] that the court does not have any discretionary power in the course of presumption of 'Shall Presume', rather the court has presumed facts or groups of facts and regard them as if they are proved until they are disproved by the other party. Section 4 of the Indian Evidence Act explains that the concept of 'Shall Presume' may also be called 'Presumption of Law' or 'Artificial Presumption' or 'Obligatory Presumption' or 'Rebuttable Presumption of Law' and says that it is a branch of jurisprudence. It denotes a strong assertion or intention to determine any fact.

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[20] Sodhi Transport Co. v. State of UP., (1986) S.C. 1099
[21] Section 4 of The Indian Evidence Act,1872.
[22] Ibid.,

With regards to **Conclusive proofs**, the law has absolute power and shall not allow any proofs contrary to the presumption which means if the facts presumed under conclusive proofs cannot be challenged even if the presumption is challenged on the basis of probative evidence. It can be considered as one of the strongest presumptions a court may assume, but at the same time the presumptions are not completely based on logic rather court believes that such presumptions are for the welfare or upbringing of the society.

This is the strongest kind of all the existing presumptions whereas Section 41, 112 and 113 of the Evidence Act and S. 82 of the Indian Penal Code is one of the most important provisions related to the irrebuttable form of **presumptions or Conclusive Presumption.** The general definition of Conclusive Proof is a condition when one fact is established, then the other facts or conditions become conclusive proof of another as declared by this Act. The Court in its consideration shall regard all other facts to be proved, only if one fact of the case is proves without any reasonable doubt. And if the other facts are prove on the basis of proving of one fact that the court shall not allow any evidence contrary to other facts which are presumed as conclusive proofs.

Illustration- A and B married on June 1 and the husband left home for his work for 6 months later he discovered that her wife is pregnant, he divorced the wife and challenges that he is not liable for paying damages either to his wife or to his illegitimate son. And also explains that he never consumed his marriage as just after one day of marriage he left his home for his work. But in this case, the court will conclusively presume that the son born out of his wife is legitimate because he was with his wife for at least 1 day and shall not allow any proof contrary to the conclusive proof even if he provides probative evidence.

Modes of Proof

There are various ways and methods in which evidence can be grouped together to classify as modes of evidence. A fact may be proved by oral evidence of the fact or by documentary evidence. This means that there are two methods of proving a fact. One is by producing witness of fact, which is called oral evidence, and the other, by producing a document which records the fact in question and this is called documentary evidence. Even though the meaning of evidence as per the Act only includes two modes of evidence, oral and documentary, the Act provides for certain other modes/kinds of evidence as well which are discussed as follows:

Oral Evidence- oral evidence must be direct. This means that a witness cal tell the court of only a fact of which he has the first hand person knowledge in the sense that he is perceived the fact by any of the five senses.[23]section 60 deals with the oral evidence, where oral evidence is that evidence which the witness has either personally seen or heard any such facts or information which has the capability of proving or establishing the facts in issues. The only condition with these types of evidence is that they must be direct or positive for establishing the fact in issues.

Documentary Evidence-[24] Section 3 define the documentary evidence, means all document produced for the inspection of the court, such documents are called documentary evidence. where those facts or information in the form of the document can be witnessed directly by the court of law for establishing the facts in issues.

Primary Evidence-[25] Section 62 deals with primary evidence, these are those facts or information which by any means has a great capability of proving or disproving any fact in issues, then such information is considered as primary evidence like a paper document of any vehicle is primary evidence to prove the ownership of the vehicles.

Secondary Evidence-[26] Section 63 deals with secondary evidence, these are those evidence which are given in the absence of primary evidence like when there is no primary evidence then secondary evidence can be used to prove a fact in issue. If the original paper document is lost, then its photocopies can be used as secondary evidence to prove the ownership.

How the fact in issue will be proved? In two ways. Either by the direct evidence of them, or by the evidence of facts relevant to them, which very roughly means the evidence of surrounding circumstances. Such evidence is also known as circumstances evidence. Thus a fact in issue can be proved either by the direct evidence of it or by its circumstances evidence which can be of relevant facts.

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[23] Garcin v. Amerindo investment Advisors, (1991) 1 W.L.R. 1140
[24] Section 3 of the Indian Evidence Act, 1872.
[25] See section 62 of The Indian Evidence Act, 1872.
[26] See section 63

Direct Evidence- It is one of the most powerful types of evidence as the court need not make any inference because these evidences shows the direct impact and has great value to establish or prove any fact in issues. **Indirect/ Circumstantial Evidence-** When there is no sufficient direct evidence to prove any fact in issue, then the court can make an assumption on the availability of existing evidence and construct a link between the existing evidence and the inference. And if the constructive link is completely beyond any reasonable doubt then the court can establish any fact.[27]

Evidence- Hearsay evidence is very weak evidence or no evidence as to the witness, himself is not the actual witness of the fact in issues because whatever he is not reporting is what he saw or heard rather the reporting facts are the facts which are narrated by another person. Hence the court believes that the narrated facts by the third person have not much credibility in establishing any facts.

Judicial Evidence- Statements of witnesses, documentary evidence, facts established during the examination of a witness in the court, self-incrimination is some kind of evidence which the court receives itself and such evidence are known as judicial evidence.

Non- Judicial Evidences- Confession made by the witness or accused or victim outside the court are considered as non- judicial evidence.

The law of evidence deals with modes of leading evidence as well as regulating that evidence of which fact can be given in court. The main object of the law of evidence is to assist the court in judging what facts are relevant to ascertain the truth and to avoid the confusion and how such relevant facts will be proved in court by lawfully leading the evidence. Law of evidence is law of procedure, i.e., adjective law. The evidence does not define rights or liabilities under the law, but only prescribe the mode by which rights or liabilities of the parties are as curtained. Therefore, it is adjective law and help in implementing the substantive law. It regulates what type

[27] See section 3

of information can be received by a court in order to assist the decision maker (judge or juror) to decide a matter in it is concerned with distinguishing admissible from inadmissible information issue in a case. The law of evidence is not just a fundamental principle governing the process of proof, rather it also has a multidimensional purpose of governing the rules relating to the process of proof in court proceedings. While it's moral dimension is a special asset in criminal trials as it endeavour's in protecting the innocent and highlighting the guilty person to administer complete and fair justice. On the other hand, the evidence rules also have the capability to hide and prevent the truth to be disclosed in the public domain to protect the mass public interest.

Compiled by

Dr Kusumavati
Assistant Professor of Law
ILS, CCSU campus, Meerut

For further queries you may reach us via..
E-mail - kumkumsingh012@gmail.com
Mob - 9410617968