INDIAN EVIDENCE ACT, 1872

(Act No. 1 of 1872)

Introduction

Father of Indian Evidence Act : **James Fitz Stephen**
Assent of Governor General : March 15, 1872
Date of Commencement : September 1, 1872 (Sec. 1)
Total no of parts : 3
Total no. of chapters : 11
Total no. of sections : 167
Last amendment : November 26, 2018
Object (as given in preamble) : to consolidate, define and amend the law of evidence.

Extension (territorial jurisdiction) >> whole of India. (**Section 1**)

Application >> all judicial proceedings in or before a court including court martial

Exception >> Court martial under Army Act, Naval Discipline Act, Indian Navy Act, Airforce Act.

Not applicable to -

- affidavits presented to any court or officer,
- proceedings before an arbitrator.

- Evidence Act applies to judicial proceedings and not applies to proceedings which are not judicial whether civil or criminal.
- **Judicial proceedings** – Any proceeding in the course of which evidence is or may be legally taken **on oath** (S. 2(i)CrPC).
- **Court**- includes all the persons who are legally authorised to take evidence.
- **Difference between judicial and non-judicial proceedings-**

  An enquiry is judicial if the object of it is to determine a jural relation between one person and another. On the other hand an enquiry about matters of fact where there is no discretion to be exercised and no judgment to be formed, but something is to be done in a certain event, as a duty, is not a judicial proceeding but an administrative enquiry.

  Both judicial and *quasi-judicial* functions pre-supposes the existence of a dispute between the parties and this is the feature which distinguishes them

from an administrative function. The distinction between an administrative and judicial or *quasi-judicial* act, therefore, terms upon the question whether the duty of the authority was to act judicially or not.

Affidavits

Affidavit is no evidence under Evidence Act, but it can be so used -

- Under O19 CPC and Ss. 295 & 296 CrPC
- In a case where the deponent is available for cross examination and opportunity is given to the other side to cross examine him, the same can be relied upon.
- O18, Rr4, 5 CPC (after Amendment)
- Where any law specially permits certain matters to be proved by affidavit.

Tribunals – Evidence Act do not apply to proceedings before tribunals.

Lex fori – Law of evidence is lex fori i.e. it applies of the forum where the case is tried.

Complete code – It is a complete code in itself.

Interpretation clause (Section 3)

The general rule of construction is not only to look at the words but to look at the context.

- **Court**- includes
  all judges,
  all magistrates, and
  all persons (except arbitrators) legally authorised to take evidence.
  N.B. A court does not include an arbitrator though he is legally authorised to take evidence.
- **Fact-** means and includes-
  (i) anything capable of being perceived by the senses (physical fact),
  (ii) any mental condition of which is any person is conscious (mental fact).
- **Relevant –** A fact is said to be relevant to another when it is relevant under the provisions of Ss. 6-55 of IEA.
- **Fact in issue –** means and includes - any fact from which
  - the existence, non-existence, nature, or extent of
  - any right, liability or disability
  - asserted or denied
  - in any suit or proceedings.

- Facts in issue are those facts which are alleged by one party and denied by the other party in the pleading in a civil case or alleged by the prosecution and denied by the accused in a criminal case. These are the facts of which existence or non-existence is disputed by the parties.

- In civil cases issues are framed u/O 14 r1 CPC.
- In criminal cases charge is framed in Ss. 228, 240, 246, 251 CrPC.

- **Document-** means any matter **expressed or described** upon **any substance**
  - by means of
  - letter, figures or marks
  - intended to be used or which may be used for the purpose of recording the matter.
    - Document procured by improper or illegal means is no bar to its admissibility if it is relevant and its genuineness is proved.
- **Evidence -** means and includes
  (i) all statements made before the court by witness**(oral evidence)**
  (ii) all documents including electronic records produced for the inspection of the court (**documentary evidence).**

Types of Evidence

1. Oral evidence

A) direct evidence,

B) circumstantial evidence,

C) hearsay evidence

2. Documentary evidence

A) primary evidence (s. 62)

B) secondary evidence (s. 63)

3. Material evidence (real evidence) - such as murder weapon, blood stained clothes.

Fundamental principles of evidence

1. Evidence must be confined to matters in issue only.
2. Hearsay evidence is not admissible.
3. In all cases, the **best evidence** must be given.

Rule of best evidence

Generally refers -
primary evidence as against secondary in case of documentary evidence, and original evidence as against hearsay in case of oral evidence

Reasons of exclusion of hearsay evidence

(i) the original maker of the statement not made it on oath,
(ii) the statement is not before the world but made in alone,
(iii) the court had no opportunity to see the demeanour of the maker,
(iv) the opponent had no opportunity to cross-examine the maker.

Exception to hearsay evidence

i. res gestae
ii. admission
iii. confession
iv. dying declaration
v. confidential evidence
vi. statements given in other judicial proceedings
vii. proviso to Sec. 60 – opinion of author when relevant.

Reason behind these exceptions

(i) necessity, because person not available

(ii) relevancy

Direct evidence- means

(i) as opposed to hearsay evidence it is the evidence of a fact actually perceived by a witness with his on senses or an opinion held by him;
(ii) as opposed to circumstantial evidence it is the evidence which goes expressly to the very point in question and proves it .

Principles regarding circumstantial evidence - *Govinda Reddy vs. St. of Mysore, AIR 1960 SC 29*

(i) the circumstances relied upon in support of the conviction must be fully established,
(ii) these circumstances considered in their totality must be consistent with the guilt of the accused,
(iii) the circumstances must be incompatible with the hypothesis of the innocence of the accused.

- The maxim – ***falsus in uno falsus in imnibus*** is not applicable in India.
- ***Corpus delicto***- conviction for an offence does not depend upon the corpus delicto being found.

- **Proved –**

a fact is said to be proved when,

after considering the matters before it, the court

- either believes it to exist, or

- considers its existence so probable that a prudent man ought (under the circumstances of a particular case) to act upon the supposition that it exists.

- **Disproved –**

a fact is said to be disproved when,

after considering the matters before it, the court

- either believes it does not exist, or

- considers its non-existence so probable that a prudent man ought (under the circumstances of a particular case) to act upon the supposition that it does not exists.

- **Not proved –**

which is neither proved nor disproved.

- It indicates a state of mind in between the two i.e. when one cannot say whether a fact is proved or disproved. It negatives both proof, and disproof.

Section 4.

May presume- (factual or discretionary presumption)

court may

either presume a fact, as proved unless it is disproved, or

may call for proof of it.

Shall presume- (legal or compulsory presumption)

court shall

presume a fact as proved unless it is disproved.

Conclusive proof-

when one fact is declared to be conclusive proof of another

the court shall

on proof of the one fact,

regard the other as proved, and

shall not allow evidence to be given for the purpose of disproving it.

Meaning of Presumption

'To assume any fact to be true without any inquiry or proof'. It is a fiction which is done in the absence of adverse evidence.

Legal presumption is as *terrarium* i.e. in form of a command.

Kinds of presumption

1. Presumption of law
   (a) Irrebuttable (conclusive proof)
   (b) Rebuttable (shall presume)
2. Presumption of fact (may presume)

Irrebuttable presumption of law

- These are such presumptions against which any evidence cannot be given.
- These are called conclusive proof under section 4.
- These are also called *prisimptio juris et de jure* in Latin.

Rebuttable presumption of law

- These are such rules of law applied by courts in absence of adverse evidence.
- These are similar to 'shall presume' under section 4.
- These are called *prisimptio juris.*

Presumption of fact

- These are similar to '**may presume**' under section 4.
- These are called *prisimptio hominis.*
- These are always rebuttable.

Difference between factual presumption (presumption of fact) and legal presumption (presumption of law)

Presumption of fact	Presumption of law
1. It is based on logic, human experience and law of nature.	1. It is based on provisions of law.
2. It is always rebuttable and goes away when explained or rebutted by establishment of positive proof.	2. It is conclusive unless rebutted as provided under rule giving rise to presumption.

3. The position of presumption of fact is uncertain and transitory.	3. The position of presumption of law is certain and uniform.
4. Court can ignore presumption of fact however strong it is.	4. Court cannot ignore presumption of law.
5. The presumption of fact are derived on the basis of law of nature, prevalent customs and human experience.	5. Presumption of law are derived on established judicial norms and they become part of legal rules.
6. The court can exercise its discretion while drawing presumption of fact i.e. presumption of facts is discretionary presumption.	6. Presumption of law is mandatory i.e. court is bound to draw presumption of law.