



LAW OF EVIDENCE AND IT'S HISTORICAL DEVELOPMENT

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Abstract:

In society, civil and criminal cases are going on and for controlling them there are several substantive laws but these are not enough because without procedural laws e.g. law of evidence the legal proceeding does not complete. In this scenario number of changes are going with these changes there is a need to make certain amendments under the evidence Act. Several alterations have been made after 1990 because of scientific and modern technology e.g. Information Technology Act, 2000. When we study the historical background of the Indian Evidence Act from the ancient Hindu period to the Modern period, that time we may notice some points like; the evidence means proofs and these were taken during Hindu period to till today and all these references we have got from Ramayana and Mahabharata. One more thing there was no particular evidence law but they were proving the guilty of a person in several ways and modes. As well as *Brihaspati* has mention four stages of proving guilty before the court or king and now the same stages we are applying in the court procedure for carrying the smooth court system e.g. Complaint, Reply, Trial and investigation, and Verdict or Decision. Hence, there is a need to do a deep study of the historical background of certain Acts and to make necessary changes in the concerned Act.

Key Words: Evidence, Historical Background, Hindu, Muslim, British Period.

Introduction:

The Evidence Act was passed by the British parliament in 1872. It contains the set of rules regarding the admissibility of the evidence before the Courts of law. This Act systematically divided into three parts namely- 1) Relevancy of Fact 2) proof 3) Production and effect of evidence. It provides the procedure as to how to establish a claim before the court. The Evidence Act, identified as Act no. 1 of 1872, and it is called The Indian Evidence Act, 1872. It is an applicable whole of India.

To focus on the historical development of the law of evidence in India referred to three different periods namely- 1) Ancient Hindu Period, 2) Ancient Muslim Period, 3) British Period. During Hindu Period for resolving the dispute between the parties, they follow the rules and regulations of the *Dharmashastra*. As well as there was a crucial role of the scholars and *smritikars* to set the rules of evidence. Later *Brihaspati* has stated four stages of the court system. Generally, three kinds of evidence were recognized namely- document, witnesses, and possession and in absence of anyone, they followed the ordeal system.

Under the Muslim period, it is often said that there is no real concept regarding rules of evidence hence they were followed the rules of the Quran. Then, during the British period, the Britishers identified the problem, how to apply the law of evidence uniformly in the Indian Courts. Therefore, they have taken efforts for passing the Indian Evidence Act, 1872.

Meaning and Definitions of Evidence:

The word 'Evidence' is derived from the Latin word 'Evidentia' which means 'the state of being evident' i.e. plain apparent clear'. The Latin expression 'evidens' or 'evidere' means "to show clearly, to make plain, certain or to prove". In *Kalyan Kumar Gogoi vs Ashutosh Agnihotri & Anr*¹, the word 'evidence' is used in common parlance in three different senses: (a) as equivalent to relevant (b) as equivalent to proof and (c) as equivalent to the material, on the basis of which courts come to a conclusion about the existence or non-existence of disputed facts. Though, in the definition of the word "evidence" given in Section 3 of the Evidence Act one finds only oral and documentary evidence, this word is also used in phrases such as: best evidence, circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, etc. The scholars and jurist have given various definitions of the 'Evidence' as follows:

According to Taylor: "Evidence is adduced to prove any fact the truth of which is submitted to judicial investigation".

According to Phison, "Evidence means the testimony, whether oral, documentary, or a real which may be legally received, in order to prove or disprove some fact in Dispute".

According to Dictionary meaning (Oxford Dictionary of Law) of Evidence - that which tends to prove the existence or non-existence of fact. It may consist of "testimony", Documentary Evidence", "real evidence, and when admissible hearsay evidence. According to Advanced Learner Dictionary of Current English: "Evidence means anything that gives reason for believing something that makes clear or prove something."

In short, the law of Evidence covers all the rules of presentation of facts and how to adduce evidence before Court, particularly the rules governing the admissibility of evidence. The Definition of Evidence given under Section 3 of Indian Evidence Act: "Evidence" means and includes

- 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;
- All documents including electronic records produced for the inspection of the Court, such documents are called documentary evidence.

The Law of Evidence is the best tool in the court of law to prove the existence or non-existence of fact.

Historical Development to the Law of Evidence:

India has a good historical background of the judicial system and procedure from the ancient period to till today. We should know the Hindu, Muslim, British period, and after independence what was the status and position of evidence law during these respective periods.

1. Hindu Period:

Hindu period extends before and after the beginning of the Christian era. During that, there was a strongly existed caste system, and caste was the social group consisting solely of persons born in it. The whole society was divided into four main castes namely- *Brahmins*,² *Kshatriya*,³ *Vaisyas*,⁴ and *Sudras*⁵; if there was any dispute among them they were resolve through the caste *panchayat*, in short every caste was its own caste *panchayat*. They have followed rules of *panchayat* about evidence. Suppose, in case of adultery and rape punishment was awarded based on the caste considerations of the offender and the woman. According to *Gautama*, *Yajnavalkya*, and *Manu* if *Kshatriya* or a *Vaisya* abusing or defaming a *Brahmin* woman was to be punished respectively with a fine up to 100 *Panas*⁶ and 150 *Panas*. A *shudra* was punished by corporal punishment.⁷ While a *Brahmin* defaming a *Kshatriya* or *Vaisya* was to be fined 50, 25, and 12 *Panas* respectively. During this period certain court system was not found but the king was the fountain head of the justice, he was empowered to investigate dispute and award the punishment, during trial of dispute the *Brahmin* priest were assisted to king. The king was followed the principles of *Dharmashatra* for resolving such dispute between the parties. The oath system existed but its nature was different; the witness or party should be administered oath after taking off his shoes, turban, and put right hand on the gold, cow-dung, a few of sacred grass, or holy book *Dharmashtra*. *Dharmashtra* laid down that, "The purpose of any trial is the desire to find out the truth." *Yajnavalkya* says, "Discarding what is fraudulent, the king should give decisions in accordance with the true facts." *Manu* says, "The king presiding over the tribunal shall ascertain the truth and determine the correctness of the testimonies of the witnesses, the description, time and place of the transaction or incident giving rise to the case as well as the usage of the country, and pronounce the true judgment."

Rules of Evidence in Ancient Period:

The *smritikars* and scholars have deals rules of the law of evidence during this period these were followed in the investigation of the disputing matters. According to *Manu*, when the parties had submitted their complaint or fact after that they should adduce the evidences before the court. *Yajnavalkya* and *Naradah* mentioned the three kinds of proof, namely- document, witnesses and possessions and he also added ordeal as a kind of evidence in case of absence of any of these three kinds. After that *Brihaspati* had mentioned four stages of a suit or trial namely- i) *Plaint (Poorvapaksha)*, ii) *Reply (Uttar)*, iii) *Trial and investigation of dispute by the court (Kriya)*, and iv) *Verdict or decisions (Nirnaya)*. Same stages followed in the existing judicial system also.

Kinds of Evidence:

Yajnavalkya, *Narada* and *Katyayana* prescribed four kinds of evidences as follows:

Witnesses⁸ (Sakshi):

The Hindu lawgivers have provided the rules of determining the competency of witnesses as follows:

- The highly doubtful character of Persons was held to be incompetent witnesses.
- According to *Manu*, the witness should be trustworthy men.
- Two women witnesses' equivalent to one man.
- The man of the lower castes should give evidence only in favour of the same caste person.
- If any persons belong to inferior caste but he had personal knowledge of murder case, he could be considered as a witness.
- In case of violence, adultery, defamation and assault, the women, infants, pupils, relations, slaves or hired servants as a competency of witness could not be examined too closely.
- The certain directions were giving to the witnesses, to speak the truth either separate penalties for giving false evidence.
- The good character of person usually helpful to considered as witness.
- The eyewitnesses were considered as direct witnesses but in absence of direct evidences then hearsay evidence had admissible.

Documentary Evidences (Lekhya):

The documentary evidence has been divided into three categories, namely: a) *Rajasaksika*; b) *Sasaksika*, and c) *Asaksika*.

- **Rajasaksika:** It was the public document and it was executed before the King's Court by the King's Clerk and it should be attested by the presiding officer of the court with affixing seal. In short it was the executed document registered by the appropriate authority which was appointed by the king.
- **Sasaksika:** It is purely private document which was written by own or any person but it should be attested by the witnesses.
- **Asaksika:** It is a document which is admissible being written entirely by the party himself. During Hindu Period documentary evidences had greater evidentiary values than the oral evidences like that in present day. Because in documentary evidences there may be possibility of forgery and fraud.
- **Possession (Bhukhti):** In the dispute of the landed property, possession as evidence, apparently of right and title was mentioned by Vasistha along with documents and witnesses. However, Gautama does not refer to possession as evidence. He recognised the title of the property is the best evidence in case of land property.
- **Ordeal⁹ System:** It was the method to determine the guilty of a person. The ancient Hindu society was dominated by the religion and faith in God, hence these people were considered ordeal system was valid method of proof. There are some important types of ordeals mentioned by Yajnavalkya, Manu, and Narada which were commonly adopted. Some of the ordeals are as follows:
 - **Ordeal of Balance:** In ordeal of balance the accused was made to sit in a balance and weighted. He was then made to pray to God. If his part of balance was lowered after prayer he was deemed guilty.
 - **Ordeal of Fire:** There is a reference to this ordeal in the Ramayana where Sita had to prove her chastity of her captivity (imprisonment) by Ravana by walking through fire. Accused was made to walk through fire. If he suffered no harm, he was held innocent.
 - **Ordeal by water:** Here the accused was made to drink water used in bathing the idol. If within the next 14 days he had no harmful effect he was considered innocent.
 - **Ordeal of Poison:** In ordeal of poison the accused was to drink poison. If no harm came to him, he was held innocent.
 - **Ordeal of Lot:** In ordeal of lot he was to draw from two lots. If he drew the lot of Dharma, he was held innocent.
 - **Ordeal of Rice-Grains:** In ordeal of Rice-Grains if the accused chewed unhusked rice and if no blood appeared in his mouth he was held innocent.
 - **Ordeal of Fountain-cheese:** In ordeal of Fountain-Cheese, the accused was to drink some special type of water. If he becomes delirious and confesses his misdeeds, he was held guilty.

2. Muslim Period:

Since the beginning of the 12th century, the Muslim kings began to invade in India. The Muslim Kings and emperors in medieval India established the judicial dispute resolution system according to the Islamic Law, which is purely based upon the Holy Quran. The conception of 'Justice' in Islam is that the administration of justice is a divine disposition. The judges were appointed by the ruler. Generally, *Quasis* were preferred to decide the disputes. The Muslim King Sultan has established civil administrative unit and it was divided into Province (*Subahs*), Districts (*Sarkars*), Praganahs, and Villages; after that he was established Court system at each administrative unit.

Substantive and Procedural Law:

During the trial all the substantive and procedural laws were interpreted according to the tenets of *Quran*, *Sunna*, *Ijmaa* and *Quiyas*. It states; "O True Believers: Observe Justice, where you appear as witnesses before God and let not hatred towards any inducement to you to do wrong, but act justly. This will approach nearer to piety. And fear god for God is fully acquainted with what you do."¹⁰

Institution of Lawyers:

Litigants were represented before the court by professional legal experts. They were popularly known as *Vakils*. Thus the legal profession flourished during the Mediaeval Muslim Period.

Though there was no institution of lawyers like the Bar Association as it exists today, still the lawyers played a prominent role in the administration of justice. There was two Muslim Indian Codes it clearly deals the duties of the *Vakils*.

- Figh-e-FirozShahi
- Fatwa-e-Alamgiri

Trial by Ordeal:

In this period Non-Muslims were continued the ordeal system but Muslims neither followed ordeal system as well as they nor interfered in the non-Muslims state to stop it.

3. British Period:

The English Law was originally existed in India from the presidency town, i.e. Bombay, Madras, and Calcutta (BMC), in 1726 the Presidency Courts were followed it. It was based on common law of England. Because there were no specific laws pertaining to the law of evidence in the outside courts of the presidency towns. Hence, the courts have enjoyed full autonomy in the matter of accepting evidences.

In 1835, the British Govt. has taken efforts to consolidate all the laws of evidence and after that they had codified in the Act of 1935 which were uniformly and equally applied to all the courts in British India. During 1835 to 1853 the total eleven enactments were passed but all these enactments of rule of evidence were found to be unsuitable and incompetent.

After that, the Evidence Act of 1855, it was established certain evidentiary laws to be uniformly followed in India, but it could not be completed. Hence, they could not restrict other laws to apply in the Indian courts. Hence, additions were made in 1859, 1861, and 1869.

In 1968, a commission was established under the chairmanship of Sir Henry Mayne. He had submitted the draft based on the recommendations of the third Indian Law commission, but in 1861 it was found to be inadequate and unsuitable for the Indian conditions.

Later in 1870, Sir James Fitzjames Stephen was given a charge to draft a complete law of evidence for Indian court system. He was presented draft before the Legislative Council in 1871. Finally that bill was approved by the Legislative Council and received the assent of the Governor General in India on the 15th March 1872 and it came into force on 1st September, 1872.

4. After Independence:

After independence the substantive and procedural laws had been uniformly applied in India. The Indian Evidence Act, 1872 has been in force in India but could not make more amendment upto 1990. In 1977, the law commission of India, in its 69th Report has expressed: *"In dealing with the problem of making recommendations in the relevant provisions of the Act, the commission was fully conscious about that Act because the Act has usually refer the teachers of law, jurists and judges"*. Hence, the commission has recommended several amendments due to political, social, economic, legal, scientific and technical changes. After 1990 remarkable amendments have been made in the Act due to the scientific and technological changes as well as computerization. Generally, It is related to e-commerce, e-banking, e-contract, e-marriages, tele-business, online transaction, etc. crimes increased day by day in the society hence the appropriate government has enacted the Information Technology Act, 2000 to regulate the computer and internet related crimes. Under Evidence Act several provisions have been inserted regarding to the electronic or digital issues, some provisions are as follows: Sections. 22-A, 47-A, 65-A & B, 67-A, 73-A, 81-A, 85-A, B, C, 88-A, and 90-A.

5. Conclusion:

Indian Evidence Act 1872 has introduced a set of rules to be applicable throughout India. It is used by courts in both civil as well as criminal proceedings and maintains uniformity of the application of the Act. The preamble is the most pivotal part of any Act as it defines the objects of passing such law. Preamble Indian Evidence Act 1872 provides that it seeks to consolidate, define and amend the law of evidence. After enactment of this Act, no other law of evidence is applicable in India. It has consolidated all laws related to evidence. Hence respective Act is adequately suitable to the Indian conditions in all the angles.

6. References:

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4. Adv. P.R. Chande, "Indian Evidence Act", (Re. 2012), Mukund Prakashan, Thane.
5. Batuk Lal, "The Law of Evidence", (19th ed. 2011), Central Law Agency, Allahabad.

End Notes:

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1. (2011) 2 SCC 532.
 2. It was considered most superior and scholar caste. They were exercising the role of priests.
 3. It known as nobles and warriors caste and usually it belongs to various states or kingdoms.
 4. They were the merchants and traders.
 5. Were the workers and ranked lowest.
 6. Means Copper coin
 7. Torture or cutting organs of the human being.
 8. Refers to the 'Pure Awareness'
 9. To determine guilt or innocence by submitting the accused to dangerous or painful tests believed to be under supernatural control
 10. Quran 5:8