

Imperial Legislative Council



*Indian Evidence
Act 1872*

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CHAPTER I - Preliminary

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1. Short Title, Extent, Commencement

This Act may be called the Indian Evidence Act, 1872.

It extends to the whole of India [except the State of Jammu and Kashmir] and applies to all judicial proceedings in or before any Court, including Courts-martial, [other than Courts-martial convened under the Army Act] (44 & 45 Vict., c. 58) [the Naval Discipline Act (29 & 30 Vict., c. 109) or [***] the Indian Navy (Discipline) Act, 1934 (34 of 1934)[or the Air Force Act] (7 Geo. 5, c. 51) but not to affidavits presented to any Court or Officer, nor to proceedings before an arbitrator; and it shall come into force on the first day of September, 1872.

2. [Repeal of enactment.] Rep. By the Repealing Act,1938 (1 of 1938), S.2 and Sch..

[Repeal of enactment.] Rep. By the Repealing Act,1938 (1 of 1938), S.2 and Sch..

3. Interpretation clause

In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

“Court”.—“Court” includes all Judges¹ and Magistrates,² and all persons, except arbitrators, legally authorized to take evidence.

“Fact”.—“Fact” means and includes—

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

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

(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.

“Relevant”.—One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

“Facts in issue”.—The expression “facts in issue” means and includes—any fact 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 in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure,³ any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue, is a fact in issue.

Illustrations

A is accused of the murder of B.

At his trial the following facts may be in issue:—

That A caused B's death;

That A intended to cause B's death;

That A had received grave and sudden provocation from B;

That A at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

“Document”.—“Document” means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations

A writing is a document;

Words printed, lithographed or photographed are documents;

A map or plan is a document;

An inscription on a metal plate or stone is a document;

A caricature is a document.

“Evidence”.—“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) **1**[all documents including electronic records produced for the inspection of the Court], such documents are called documentary evidence.

“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 the particular case, to act upon the supposition that it exists.

“Disproved”.—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 the particular case, to act upon the supposition that it exists.

“Not proved”.—A fact is said not to be proved when it is neither proved nor disproved.

[“India”.—“India” means the territory of India excluding the State of Jammu and Kashmir.]

2[the expressions “Certifying Authority”,**3**[electronic signature], “digital signature”, “Digital Signature Certificate”, “electronic form”, “electronic records”, “information”, “secure electronic record”, “secure digital signature” and “subscriber” shall have the meanings respectively assigned to them in the Information Technology Act, 2000.]

1. Subs. by Act 21 of 2000, sec. 92 and Sch. II, for certain words “all documents produced for the inspection of the Court” (w.e.f. 17-10-2000).

2. Ins. by Act 21 of 2000, sec. 92 and Sch. II (w.e.f. 17-10-2000).

3. Subs by Act 10 of 2009, Sec 52(a), for digital signature” and “Digital Signature Certificate” respectively (w.e.f. 27-10-2009)

4. "May presume"

Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

"Shall presume" - Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

"Conclusive proof" - Where one fact is declared by this Act 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.

CHAPTER II - Of the relevancy of facts

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5. Evidence may be given of facts in issue and relevant facts

Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation - This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue -

A's beating B with the club;
A's causing B's death by such beating;
A's intention to cause B's death.

(b) A suitor does not bring with him and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

6. Relevancy of facts forming part of same transaction

Facts which, though not in issue are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after as to form part of the transaction, is a relevant fact.

(b) A is accused of waging war against the Government of India by taking part in an armed insurrection in which property is destroyed, troops are attacked and goals are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of

the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d) The question is whether certain goods ordered from B were delivered to A. the goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

7. Facts which are occasion, cause or effect of facts in issue

Facts Which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations

(a) The question is, whether A robbed B.

The facts that, shortly before the robbery B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons, are relevant.

(b) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

8. Motive preparation and previous or subsequent conduct

Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1. - The word "conduct" in this section does not include statements unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2. - When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations

(a) A is tried for the murder of B.

The facts that, A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b) A sues B upon a bond for payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, it relevant.

(c) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d) The question is, whether a certain document is the will of A.

The facts that not long before the date of the alleged will A made inquiry into matters to which the provisions of the alleged will relate that he consulted vakils in reference to making the will, and that he caused drafts or other wills to be prepared of which he did not approve, are relevant.

(e) A is accused of a crime.

The facts, either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favorable to himself, on that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence - "the police are coming to look for the man who robbed B" and that immediately afterwards A ran away, are relevant.

(g) The question is, whether A owes B rupees 10,000.

The fact that, A asked C to lend him money, and that D said to C in A's presence and hearing "Advice you The Orient Tavern to trust A, for he owes B 10,000 rupees" and that A went away without making any answer, are relevant facts.

(h) The question is, whether A committed a crime.

The facts that, A absconded after receiving a letter warning him that inquiry was being made for the criminal,