



FACULTY OF JURIDICAL SCIENCES

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Lecture-1



Introduction

The Law of Evidence is a significant part of any branch of the judicial system irrespective of any nation, which means the role of evidence is very important statute in every country. But talking specifically about India the enactment of Indian Evidence Act has changed our judicial system completely as there were no codified laws relating to evidence which enriched our judicial system by providing rules and regulations for ascertaining the shreds of evidence. Although the India Evidence Act is based on English law still it is not fully comprehensive and also it is a '**Lex Fori**' law which means law of the land where court proceedings are taken. The term 'evidence' is derived from Latin word i.e., '**Evident**' or '**Evidere**' which means 'to show clearly, or to discover, or to ascertain or to prove.'

The Evidence act 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. 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 Substantial Law like Doctrine of Estoppel.

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 complete '*corpus juris*' i.e., a body of laws, is divided into two categories:

- Substantive laws- Which mean a set of rules and regulations that govern the society.
- Adjective laws- These are the set of rules and regulations which deals with the law governing procedural aspects such as evidencing, pleading etc.

But the law of evidence neither comes under substantive law nor under procedural law, rather it is a subject matter of 'adjective law', which defines the pleading, evidencing and procedure

with respect to substantive laws. The general meaning of 'Evidence' is *'a body of facts and information indicating or adjudicating the values of any facts or evidence'*.

The Need for Evidence Law

Evidence is the only possible way by which the court can make inferences to render a decision. The definition of evidence explains that evidence is the proof of any fact in issues so without evidence there will be no possibilities to prove any fact in issues or even to establish any facts in the cases. It is very obvious that it is not much difficult task to obtain trust through violating the basic structure of law but in the course of protecting those rights Evidence, Law comes into the picture. Evidence Law tells the basic principles and rules regarding collection. So the process of evidencing any facts or proof should be governed by a well-established law in order to achieve speedy and fair justice.

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 endeavours 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.

. Meaning of Judicial Proceeding -

Section 2 (i) of the Criminal Proceeding Code, 1973 defines Judicial Proceeding.

According to Section 2(i) "Judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath. Judicial Proceedings Includes Trial and Inquiry but not Investigation

Affidavit:

An affidavit is a self made willing declaration in writing, signed by the deponent (person who makes the affidavit) and accompanied by an oath. "Affidavit" has originated from a Latin word which means to "pledge ones faith." It is to be signed and witnessed by a notary authority. It is to be signed without any cross-examination by the affiant.

Another way of thinking of an affidavit is as a kind of written court testimony. In the court of law, you are asked to take an oath on a Holy Book and swear that you're telling the truth, likewise on an affidavit, you do this same thing in writing. You're under oath, but your testimony is on paper. They are necessary in a way that the oral submission/testimony/evidence is only admissible before a judge but an affidavit can also be used as an alternative to this.

Misleading information in an affidavit can result to criminal penalties against the affiant, but if the affiant fails to recall something or misses something then he cannot be charged for such omission. If the affiant includes something in the affidavit which is not a fully established fact or is not backed up by any evidence, then he will have to state that it is his 'opinion'.

The law on affidavits in India is usually governed by Section 139, Order XIX of the Code of Civil Procedure and Order XI of the Supreme Court Rules also. Judiciary at several instances have upheld the importance of the authenticity of an affidavit by the means of the above mentioned rules and sections.

An affidavit contains following contents:

- An affidavit containing the statement of facts shall be divided into paragraphs and each of the paragraphs need to be numbered. It will be more suitable and appropriate if each paragraph shall be limited to a well defined portion of the subject.
- Every person, except a plaintiff or defendant in a case in which the application is made, making any affidavit, must be described in such a manner as will benefit to identify him clearly, by his full name, father's name, his profession, and place of his residence.
- When the affiant in an affidavit mentions to any facts within his own knowledge, he shall do so positively and directly, by using the words 'I affirm'.
- When any fact is not under the declarant's own knowledge, but is extracted from the information procured from others, the affiant shall use the words 'I am informed',— and, in such cases, should mention 'and verily believe it to be true' – or he may state the source from which he extracted such information. When the statement laid on facts revealed in documents, or copies of documents extracted from any Court of Justice or from any other source, the affiant must mention the source from which they were extracted, and mention his information or his belief as to the truth of the facts revealed in such documents.