
UNIT 8 BASIC PRINCIPLES OF LAW OF EVIDENCE

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8.1 INTRODUCTION

The entire body of law of the land may be divided into two branches – The substantive law and the adjective law (Procedural law). The substantive law defines the rights, duties and liabilities of persons, where as adjective law defines the procedure, pleadings and proof by which the substantive law is applied in practice. The law of evidence being a procedural law is the basis of administration of justice. This unit explains the basic principles of law of evidence in the context of Indian Evidence Act, 1872 with reference to criminal administration of justice. The writer has taken every care to avoid legal jargons, reproduction of sections and terms purely technical in nature. This will help the reader to understand the general principles of law of evidence.

8.2 OBJECTIVES

After reading this unit, you should be able to:

- introduce the basic principles of law of evidence to the student of criminal administration of justice;
- explain the need to study the principles of law of evidence;
- organise and present the rules of evidence in a systematic manner;

- explain the nexus between the Law of Evidence and Criminal Justice System;
- enable the reader to understand, how the principles of evidence are used as basic tools in administration of justice for fact finding; and
- discuss important principles of law with respect to relevancy, admissibility, examination and proof of facts.

8.3 MEANING AND CLASSIFICATION OF EVIDENCE

The word evidence is derived from the Latin word *evicare* which means to show clearly, to make clearly and to discover clearly. In general parlance evidence means collection of facts produced by the parties either orally or in the written form before the court of law to prove the existence or non-existence of disputed facts. In legal sense evidence means and includes:

- 1) All statements made by the witnesses and permitted by the court as oral evidence, and
- 2) All documents produced by the parties for inspection of the court are known as documentary evidence. The following definitions may be helpful to the reader to understand the classification of evidences under law:

Oral Evidence: Personal acknowledgement of facts by words, verbal statements, visible representation, gestures or signs or any other means which can be communicated to the court.

Documentary Evidence: Any matter expressed or described upon any substance by means of letters, figures or marks for the purpose of recording is called document. Electronic records like floppy, CD, memory stick also come under the definition of document. When a document is called for the inspection of the court it is known as documentary evidence.

Primary Evidence: When the original document is produced before the court of law for its inspection, it is called primary evidence.

Secondary Evidence: If the law permits the parties to produce the copies of the original in place of primary evidence it is known as secondary evidence.

Direct Evidence: When the fact is directly attested by witnesses, things or documents is called as direct evidence.

Circumstantial Evidence: Means information dealing with related surroundings or circumstances. It is an evidence of circumstances or situations leading to the happening of the principal fact.

Hearsay Evidence: Any information received by a person with the help of others and not through his direct senses is called hearsay evidence.

8.4 BASIC LEGAL TERMS

Fact: It means something that has actually happened. Section 3 of Indian Evidence Act defines fact it means and includes: 1) Any thing or state of things

or relation of things, capable of being perceived by the senses; 2) Any mental condition of which any person is conscious.

The above section refers to both physical facts and psychological facts. Physical facts can be perceived by the senses. Ex. Seeing, smelling, hearing, tasting and perceiving. Where as psychological facts show idea, intention, knowledge, ill will, etc.

Fact in issue: Any fact from which either by itself or in connection with the other facts, the existence, non-existence, nature or extent of any right, liability or disability, asserted or denied in any suit or proceedings necessarily follows: Ex.: Facts basically disputed between the parties, facts asserted or denied by the parties which facts deal with rights and liabilities of the parties, points of issues between the parties, matters of investigation, charges framed in the court of law, guilt of the accused, etc.

Relevant: One fact is said to be relevant to another, when one is connected with the other in any of the ways mention in the provisions of the Indian Evidence Act relating to relevancy of facts. Relevancy means relationship between two facts. This relevancy may be logical or legal. The Indian Evidence Act permits all legally relevant facts admissible in the court of law.

Proved: means shown to be true by means of facts. A fact is said to be proved when after considering the matter before it, the court believes that the fact exists. Ex.: A Kills B and pleads insanity as defence. Insanity is proved by producing a certificate from competent medical doctor.

Disproved: means to prove something to be false. A fact is said to be disproved if after considering the matters before it, the court believes that it does not exist. Ex.: A Kills B and pleads insanity as defence. Insanity is disproved because the certificate produced from a doctor is false.

Not proved: A fact is said to be not proved when it is neither proved nor disproved. A fact is said to be not proved when neither its existence nor non-existence is proved. It indicates a state of mind between the two, proved and disproved. It negatives both proof and disproof. Ex.: A Kills B and pleads insanity as defence. Insanity is neither proved nor disproved because no certificate is produced.

Please answer the following self assessment question:

Self Assessment Question

- 1) a) The Law of Evidence being a procedural law is the basis of
- b) Any matter is expressed or described upon any substance is called

8.5 PRESUMPTIONS

The presumption denotes things taken for granted or an hypothesis drawn on the basis of proper reasoning. Presumption is the result of human experience and reason as applied to the common course of events in ordinary way of life. In fact

presumption has no place in proof of facts in the administration of justice. However, there are certain facts well settled and known to the general public which need no proof. Ex.: A man, who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. Obviously presumptions reduce the burden of the court in investigation, examination and proof of facts. For this reason the Indian Evidence Act permitted three important presumptions namely may presume, shall presume and conclusive proof.

May presume: Whenever it is provided by the Indian Evidence Act the court may presume a fact, as if it is proved unless and until it is disproved. It is a discretionary presumption, rebuttable presumption and presumption of fact, which can be modified, altered or changed. Ex.: Presumption as to abetment of suicide by a married woman. There is presumption against the husband and family members if a married woman commits suicide as a result of abetment by her husband or relatives of her husband within period of 7 years from the date of marriage.

Shall presume: Whenever it is directed by Indian Evidence Act the court shall presume a fact, as if it is proved unless and until it is disproved. This is a presumption of law, mandatory in nature but rebuttable. Ex.: When the question before the court of law is that a person committed dowry death of woman and it is shown that soon before her death such woman had been subjected to cruelty or harassment for dowry, the court shall presume that such person had caused the dowry death. Another example, if a woman is subject to custodial rape the court shall presume that she did not consent to the act.

Conclusive proof: Whenever it is declared by Indian Evidence Act that a particular fact is a conclusive proof, the court shall not allow any evidence to disprove such fact. Ex.: If the question is, A and B are husband and wife and when divorced decree is produced, the court shall conclusively presume that they are no longer husband and wife and no evidence is permitted to disprove it.

8.6 RELEVANCY OF FACTS — AN OVERVIEW

The Indian Evidence Act under Chapter-II has incorporated a number of provisions to govern relevancy of facts in a suit or proceedings. The purpose and object of this chapter is to separate the grain from chaff. This chapter deals with the rules of relevancy and admissibility of evidences in order to save the time of the court. Important relevant facts explained in this chapter are; *res gestae*, cause and effect, motive, preparation, conduct, explanatory facts, introductory facts, things said or done in conspiracy cases, right or custom, state of mind, bodily feelings, admissions, confessions, dying declaration, expert's opinion, character, judgments, etc. Since the module is relating to criminal administration of justice the present unit is confined to rules relating to relevancy, admissibility, examination and proof of facts only in criminal cases. The following two diagrams enables the reader to understand the relevancy of facts under Indian law.

RELEVANCY OF FACTS(SECTIONS 5-55)

Basic Principles of relevancy of facts in criminal justice system :

Doctrine of *res gestae*: It is a Latin Word, which means; “things said and done in the course of a transaction”. In Judicial enquiry it is necessary to consider a number of facts to decide the nature of right or liability. The facts may be extending over a period of time to different places. The collection of these facts, explaining these facts are called *res-gestae*. In other words *res-gestae* means relevancy of facts forming part of same transaction. In any transaction the surrounding facts of the main fact is (fact in issue) usually known as *res gestae*.
Ex.: A is accused of the murder of B by beating. Whatever was said or done by A or B or the by-standers at the time of beating or so shortly before or after the beating forms the part of same transaction, so they are relevant facts.

Motive: Motive means a psychological fact that moves a person to do an act in a particular way. In criminal law *mens rea* (intention) is an important fact to establish the guilt of an accused person. On the other hand there is always a question as to why an offence is committed by the accused?. What are the motivating factors leading to commission of such offence. This is very important if the case is going to be decided purely on the basis of circumstantial evidence and granting sentence or imposing fine.

Preparation: There are four stages of crime namely intention, preparation, attempt and commission of an act. Preparation is the stage to design the plan and execute it. Evidence which shows that the accused made preparation to commit a crime is relevant and admissible.

Conduct : Conduct means what a person thinks of himself and behaves. Conduct is an external behaviour of a person. There is nexus between the conduct of the accused and the crime committed. Conduct like avoiding arrest, resistance to arrest, escape from the custody, running away from the scene of offence, etc. amounts to the conduct of the accused and is quite relevant in criminal proceedings.

Identification parade: The evidence of Identification parade proceedings conducted for the purpose of establishing the identify of accused is relevant evidence at the time of trial of the accused person. The object of conducting Identification Parade is to test the truthfulness of the witnesses and his capability to identify an unknown person whom he has seen only once. When the accused person is arrested on the basis of physical features given by the eyewitness, police arrange the test identification parade. Test Identification parade is conducted in presence of Judicial Magistrate and the police have to leave the scene to ensure the free and fair conduct of identification parade. Arrested person will be placed between the other persons who have same physical characters of accused as far as possible. Then the Magistrate calls the eyewitness to identify the accused person, whom he had seen while committing the crime. If the eyewitness identifies the accused, he picks up the person whom he had seen, while committing the crime, the Magistrate records to that effect and he completes the proceedings. The eyewitness who has identified the accused will be produced in court at the time of trial to identify the accused person again.

Conspiracy : When two persons agree to do an illegal act or an act which is not illegal but by illegal means, such agreement is called a criminal conspiracy. The general principle is that no person can be made liable for the acts of other. But in a criminal conspiracy persons who take part in conspiracy are deemed to be mutual agents for the purpose of commission of an offence. Here anything said, done or written by one partner shall be binding on all other partners as an important evidence in the court of law.

Alibi: Alibi means “elsewhere”. It is the defence of the accused person that he was elsewhere at the time of commission of offence and therefore his physical presence at the place of offence is highly impossible. Ex. *A* is charged with murder of *B* which took place at Hyderabad but the fact is *A* was in Delhi on the same day. *A* can take the plea of alibi i.e. he was elsewhere at the time of commission of crime. But the burden of proof lies on *A* to produce evidence in this regard to establish his innocence.

8.7 CONFESSIONS

The word confession is a biblical term which denotes accepting one’s own sins to the heavenly father. In criminal justice system confession means to admit a fault or crime. This is acknowledgement of one’s own guilt. In fact it is self harming statement in criminal cases. Ex.: *A* is charged with murder of *B*. Here *A* makes a statement that he committed the murder. This admission of crime amounts to confession. The statement of confession may be recorded by any person except the police. When confession is made to Magistrate, it is called formal statement of confession having a good evidentiary value. The reason is that under Section 164 CrPC the Magistrate shall take every care and caution while recording the confession statement. The evidentiary value of confession statement depends upon its veracity. The legal aspects of confession can be explained as follows:

- No person accused of an offence shall be compelled to give a witness against himself. Otherwise it amounts to testimonial compulsion.
- Confession should be made voluntarily. If it is made by inducement, threat or promise it is not relevant.
- Confession made to the police officer shall not be proved against the accused person.
- Confession made under the custody of police shall not be established against the accused.
- Confession made by one accused person is also relevant against the co-accused provided the confession should make both the parties liable.

Exceptions

- If any inducement, threat or promise is made to record the confession, by a person other than police, in such case in the opinion of court, if such inducement, threat or promise has been fully removed then it is relevant.
- When a confession is made under the promise of secrecy is relevant.
- When confession is made under deception or under the state of drunk is relevant.

- When any fact is discovered in consequence of information received from the accused person while he is in the custody of police, so much of such information whether it amounts to confession or not as relates distantly to the facts thereby discovered, may be proved.

Magistrate's duty in recording confession

- He shall explain that accused person need not make or be bound by his confession.
- He shall not record the statement unless he satisfies that the statement seems to be voluntarily.
- If a person is not willing to make the confession the Magistrate is not supposed to handover the person to the police custody.
- The Magistrate shall write a foot note that the statement of confession is recorded and read in the presence of the accused person.
- If the Magistrate has no power to take up that case, the recorded confession shall be forwarded to the concerned judge for inquiry and trial.

Please answer the following Self Assessment Question.

Self Assessment Question

2) What is meant by Confession ?

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8.8 DYING DECLARATION

A dying declaration is called *leterm mortem* which means the words said before death. Statement of a dead person before his death explaining the cause of death or any circumstances leading to cause of his death is a dying declaration. In a number of homicide or suicide cases dying declaration is of vital evidence. Some times it is *prima facie* evidence and some times it is corroborative evidence. The reason for admissibility of dying declaration is on the presumption that no person shall lie on his death bed. In English law dying declaration is admissible only in criminal cases, where as in India it is admissible in both civil and criminal cases, provided the death comes into question. Before taking the dying declaration as an admissible evidence the following conditions to be satisfied.

- 1) The declarant must have died.
- 2) The cause of his death must be in question.
- 3) The declarant must explain the cause of his death or circumstances which resulted in his death.
- 4) The declaration must be a complete statement.
- 5) The person making the statement must be in sound mind.

The courts in India evolved certain principles and made some propositions for effective use of dying declarations as evidences. Some of the propositions read as under:

- Dying declaration may be the sole basis of conviction depending upon the circumstances it is recorded.
- Dying declaration may be made to any person like Magistrate, police, doctor or relatives of injured person. But if it is recorded by Magistrate, it will have a greater evidentiary value.
- The Dying declaration must be recorded in the exact words used by the declarant to avoid possibility of several interpretations.
- If the dying declaration is recorded immediately after the occurrence of an incident i.e causing of injuries, it can avoid the influence of the other members of the family in making of the statement.
- The declarant must have an opportunity to identify the accused person by giving particulars like name, address, physical features, relationship, etc.
- When there are several dying declarations made to different persons, they must be identical and similar in respect of substantive part of the declaration.
- Incomplete dying declarations are not allowed as evidences.
- If it is proved that a portion of dying declaration is false evidence and the other part of dying declaration has no meaning in admission.
- Dying declaration should be made in a fit state of mind. There is no prescribed form for making a dying declaration. Therefore, it may be oral or in written form.

The above guidelines make the criminal justice system more effective and efficient in recording and admitting dying declarations as substantive evidences for the purpose of investigation. It can be said that judicial precedents cannot be applied in all situations because every case and circumstance in each case varies.

8.9 EXPERT'S OPINION

The general principle of law of evidence is that every witness is witness of fact but not witness of an opinion. Presumptions, opinions or hypothesis have no place in the administration of justice unless the law is specific. Another principle is that the opinion of witness should be excluded. Witness is allowed to speak about the happening of an incident but not his opinion about the incident. After taking the evidence from both the parties it is the court which has to form an opinion about the existence and non-existence of facts to decide a case.

However, to a judge it is very difficult to form an opinion on every matter since he has certain human limitations. He cannot understand certain matters which are highly technical in nature and where the special means of knowledge is required. Under these circumstances the Indian Evidence Act allows the judges to take an opinion of experts to assist the court in functioning of justice delivery system.

An expert is a person who is specially skilled in a particular art or trade or business or profession. According to law an expert is a person specially skilled in foreign law, science or art, identity of handwriting and identity of finger impressions. The word science represents a systematic study of knowledge of any discipline in the universe which includes biological science, physical science, social science, behavioural science, medical science, forensic science, DNA finger printing, study relating to fire arms, etc.

An expert opinion definitely assists the administration of justice specially in homicide cases, suicide cases, rape cases, maternity, paternity and virginity disputes, forged documents and other vital medical issues. When there is a conflict between opinion given by two experts, it will be referred to third opinion. Experts opinion is always a corroborative evidence and rarely a substantive evidence.

8.10 RELEVANCY OF CHARACTER

Character is a combination of certain qualities of a person such as nature, temperament, behavior, honesty, goodwill, reputation, etc. Generally this is a public opinion about a person. In civil cases character of the parties to the case has no importance, but in criminal cases the character of the accused person is essential in order to assess the gravity of situation and grant sentence to the accused. For example, *A* files suit against *B* for recovery of loan from *B* on the basis of the promissory note. Here the character of *B* is irrelevant. Suppose *X* filed a petition against her husband *Z* for dissolution of marriage on the grounds that *Z* is living in adultery. In such case the character of the husband has to be proved to grant divorce.

In criminal proceedings the accused person's previous good character is always relevant but not his bad character. However the accused person claims that he has good character then the defence counsel may show evidences of bad character of the accused person. The court of law in criminal administration of justice takes bad character in certain specified offences like habitual offenders in gang decoities, offences relating to counterfeit of coins and Govt. stamps, offence relating to property, etc.

Please answer the following Self Assessment Question.

Self Assessment Question

3) True or False

- a) Dying declaration need not be a complete statement. ()
- b) A judge takes expert's opinion because he cannot understand certain important aspects of technical in nature. ()
- c) Previous good character is relevant in criminal cases. ()

8.11 BURDEN OF PROOF

All the relevant facts admitted by the court must be proved by evidence, i.e. either by statement of witnesses or admissions or confessions of the parties or by production of the documents. The important question is on whom a burden lies to produce evidence and prove the relevant facts? Generally burden of proof

lies on the person who approaches the court to give judgment in his favour. The expression burden of proof has two different things. It means 1) The party is required to prove an allegation before judgement is given in his favour. 2) It also means that in a contested case one of the two contesting parties has to introduce evidence.

In criminal cases the burden of proof always lies on the prosecution. It is the duty of the prosecutor to establish the guilt of the accused person beyond all reasonable doubts. There are five basic principles of criminal law in respect of burden of proof. They are as under:

- Accused person should be presumed to be innocent until his guilt is proved beyond all reasonable doubts.
- Charge against the accused should be proved beyond all reasonable doubts.
- Benefit of doubt should always be given to the accused.
- If two views on one fact are possible the court must accept the view which is favourable to the accused.
- *corps delecti* (Commission of the offence) should be established.

Burden of proof and the Indian Evidence Act: The Act evolved certain principles in respect of burden of proof and burden to produce evidence in a case or proceedings. They are summarized as under:

- He who asks the court to deliver a judgment in his favour must prove the case.
- Burden of proof lies on that person who would fail if no evidence is given in both the sides.
- Burden of proof as to a particular fact lies on that person who wishes the court to believe in the existence of that fact.
- Burden of proof lies on the accused person, if he claims general exceptions under Indian Penal Code.
- Burden of proof lies on a person if he has special means of knowledge about a particular fact.
- Burden of proof as to relationship in case of landlord and tenants lies on that person who says such relationship does not exist.
- Burden of proof as to ownership of the property lies on that person who says that the other person is not the owner.
- Burden of proof in respect of a transaction in good faith lies on a person who is in the status of active confidence on the other person.
- If a child born during marriage or within 280 days after dissolution of marriage, it shall be presumed that the child is legitimate of that marriage unless non-access is proved.
- If a married woman dies by committing suicide within 7 years of marriage because of alleged cruelty of the husband or relatives of the husband, the court may presume that the suicide is by abetment of those relatives.

- If a married woman dies within 7 years of the marriage, in connection with the demand of dowry, the court shall presume that the death was caused by her husband or his relatives. Therefore, the burden of proof lies on those relatives to prove that it was not a dowry death.
- In custodial rape cases the court shall presume that there is no consent to the sexual intercourse from the victim.(woman)

Please answer the following Self Assessment Question.

<p>Self Assessment Question</p> <p>4) On whom the burden of proof lies in criminal cases?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

8.12 COMPETENCY OF WITNESSES

A very important question is who is the competent witness to be testified. According to the law of evidence every person is a competent witness unless he is disqualified by the judge on certain reasons. A Judge may disqualify a person as a witness on the ground of his extreme old age or tender age or decease to the mind or body etc. A child, lunatic, blind persons, deaf and dumb person are also considered as competent witnesses. In civil and criminal proceedings wife and husband are competent witnesses against other. However there are certain persons who shall not be compelled to give witness before the court of law. They are as under:

- No Judge or Magistrate shall be compelled to answer questions as to his own conduct or anything which came to his knowledge in court except under the special orders of superior courts.
- No person who is or has been married shall be compelled nor permitted to disclose any communication made to him during marriage by the person to whom he is or has been married. This privilege is intended to ensure matrimonial harmony which is available even after dissolution of marriage. However, when there is a dispute between wife and husband this privilege may not be available.
- No witness shall be permitted to give evidence from the unpublished records relating to the affairs of the state without the consent of the head of the department.
- No Magistrate or police officer can be compelled to say as to where and how he got information in relation to the commission of offence.
- No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interest would suffer by its disclosure.

- No barrister, attorney, pleader, *vakil*, his clerks or servants and interpreters even after the employment has ceased shall be permitted to disclose any communication made to him by the client. In the same manner the advice given by him to his client is also protected.
- No person taking legal advice shall be compelled to disclose to the court any confidential communication between him and his legal professional advisor.
- No witness, who is not a party to the suit, shall be compelled to produce his title deeds to any property.
- No one shall be compelled to produce any document which is in his possession. But if he consents to the production of document it can be produced by him.
- Witness will not be excused, from answering the questions on the ground the answers will incriminate him.

ACCOMPLICE : An accomplice is one of the guilty associates or partners in the commission of the crime or who in some way or other is connected with the commission of crime or who admits that he has a conscious hand in the commission of a crime. Ex.: An abettor, a person who assists in the concealment of the crime, a bribe giver, an approver and a receiver of stolen property.

Categories of Accomplices : An accomplice is a person who participated in the same offence. The participation may be done in various stages, they are as follows:

- 1) Principle of the first and second degree.
 - 2) Accessories before the fact.
 - 3) Accessories after the fact.
- 1) **Principle of the first Degree:** A principle of the first degree is one who actually commits the crime.
Principle of the Second Degree: A principle of the second degree is a person who is present and assists in the preparation of the crime.
 - 2) **Accessories before the facts:** Persons who abet, instigate or counsel for the commission of crime are known as accessories before the facts. A person who is not present at scene of offence but who helps someone in doing it. Accessories before the crime means one who instigates the commission of crime. Here he remains absent while the crime is being committed.
 - 3) **Accessories after the fact :** Means one who aids a criminal after the commission of crime. It means a person who harbours the criminal, who shields, who protects or who assists the criminal from escaping the law.

Accomplice evidence is admitted in view of necessity. Now it is a well settled law that the courts should not convict a person on the basis of accomplice unless it is supported by other corroborative evidence. The justified reasons may be that accomplice is likely to speak falsehood in order to shift his guilty to others or with a hope of getting excuse in his favour from the prosecution.

8.13 EXAMINATION OF WITNESSES

In a suit of proceedings the court issues the summons to the witnesses for appearance before it. The trial commences when the parties are present with their advocates and witnesses. The court orders for commencement of the trial and proceedings. When a person comes as a witness his name, age, address, occupation and other relevant personal information will be recorded on oath in the witness box. The answers given by the witnesses are recorded by the court. In civil cases there are two parties known as plaintiff and defendant. In criminal cases they are called as complainant / prosecution and accused / defence.

In civil cases the advocate for the plaintiff explains the fact and introduces evidences in support of his claim. In criminal cases prosecution explains the charges against the accused persons and introduces the evidences to prove the charges. In criminal cases the accused person is presumed to be innocent therefore the burden of proof lies on the prosecution. There are three stages of examination of witnesses under the law of evidence. They are examination-in-chief, cross examination and re-examination.

Examination-in-chief : Examination of party or parties or witness by their own advocate is called examination-in-chief. The object of this examination is to give the party a chance to place the facts before the court and explain all facts which needs proof. There are three rules regarding the examination-in-chief. They are: a) the question in examination in chief must be related to facts-in-issue or relevant fact b) no leading question can be asked c) the witness can give evidence only relating to facts but not of law.

Cross examination : After completion of examination-in-chief the witness will be cross examined by the advocate of the opposite party. This stage is known as cross examination. The cross examination an opportunity is available to the opposite party to elicit or extract the truth from the witnesses. It is a very important stage and process to test the correctness of the witness. Naturally, there are four objectives to be fulfilled by cross examination. They are: a) to extract the truth b) to destroy the witness of the opposite party c) to weaken opposite party's witness d) to establish that his witness is correct.

Re-examination: After the witness is cross examined by the opposite party, the party who calls him may examine him again. This is known as re-examination. As a matter of right re-examination cannot be done, it can be done only with the permission of the court. The very purpose of re-examination is to remove any doubt which arose in cross examination and enable the witness to clarify any contradiction.

General rules of examination of witnesses:

- Witness shall not be compelled to give witness against himself.
- Unreasonable questions cannot be asked.
- Whether the question is proper or improper shall be decided by the court.
- Questions intending to corroborate the facts may be asked.
- Indecent and scandalous questions may not be asked unless it is an issue.
- Questions intended to insult or annoy shall not be asked.

- Questions contradicting the witness or test his veracity may be asked.
- Leading questions (suggested answer in the question) should not be asked in examination-in-chief, if it is objected by other side.
- The witness may be cross examined as to his previous written statement.
- Witness may be allowed to refresh his memory with the help of any document.
- In cross examination the credit of the accused may be impeached by putting question to prove that his unworthy or bribed witness and he is inconsistent in his statements.

Self Assessment Question

5) Who is a competent witness to be testified?

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8.14 SUMMARY

- The above discussion reveals that evidence is an important means to prove the existence or non-existence of any disputed fact in the court of law. To meet this process the Indian Evidence Act provides a number of provisions with regard to relevancy, admissibility, examination and proof of facts. The basic principles of law of evidence pertinent to criminal administration of justice have been fully discussed in this unit. The importance of confessions, dying declarations, expert's opinion, relevancy of character, burden of proof in criminal cases, various stages of examination of witnesses have been discussed with appropriate examples. The whole exercise in this unit is to make the student to study the important principles of law of evidence and application of the text to the context. At the end self assessment questions, key and hints are also provided to enable the reader to study the material in a systematic way. I hope this will be beneficial to the diploma holder as a source of basic information and inspiration.

8.15 TERMINAL QUESTIONS

- 1) What is the meaning of Evidence ?
- 2) Define 'May Presume' with illustration.
- 3) What are the legal propositions to the accept Dying Declaration?
- 4) Explain the stages of examination of witnesses.

8.16 ANSWERS AND HINTS

Self Assessment Questions

- 1) a) Administration of Justice b) Document

- 2) In criminal justice system confession means to admit a fault or crime. This is an acknowledgement of one's own guilt. In fact it is self harming statement in criminal cases
- 3) a) False b) True c) True
- 4) In criminal cases the burden of proof always lies on the prosecution. It is the duty of the prosecutor to establish the guilt of the accused person beyond all reasonable doubts.
- 5) Every person is a competent witness unless he is disqualified by the judge on certain reasons. Judge may disqualify a person as a witness on the ground of his extreme old age or tender age or decease of mind or body etc. A child, lunatic, blind persons, dumb person, deaf and dumb person are also considered as competent witnesses.

Terminal Questions

- 1) Refer to Section 8.3
- 2) Refer to Section 8.5
- 3) Refer to Section 8.7
- 4) Refer to Section 8.13

8.17 REFERENCES AND SUGGESTED READINGS

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