

# My life is my message

- Gandhiji was arrested at the Satyagraha Ashram, Sabarmati, Ahmedabad on Friday the 10th March, 1922 for certain articles published in his young India.
- On the 11th noon Gandhiji and Shri Shankarlal Banker, the publisher, were placed before Mr. Brown, Assistant Magistrate, the Court being held in the Divisional Commissioner's Office at Shahibagh
- . complaint for four articles published in Young India, dated the 15th June 1921, entitled "**Disaffection a Virtue**"; dated the 29th September, "**Tampering with Loyalty**"; dated the 15th December, "**The Puzzle and Its Solution**" and dated the 23rd February 1922, "**Shaking the Manes**".
- **The original signed articles and issues of the paper in which these appeared were also produced as evidence.**
- Mr. Gharda, Registrar, Appellate Side, Bombay High Court. Second witness, produced correspondence between Mr. Gandhi as the Editor of Young India and, Mr. Kennedy, District Judge, Ahmedabad. Mr. Chatfield, Magistrate of Ahmedabad was next witness.
- He testified to the security deposited by Mr. Gandhi and the declaration of Mr. S. Banker as printer of Young India. **Two formal police witnesses were then produced.**
- The Accused Mr. Gandhi and Mr. Banker **declined to cross-examine the witnesses** and thereafter made the following statement.

# Great statement in court-by Mahatma Gandhiji

- I wanted to avoid violence. I want to avoid violence. **Non- violence is the first article of my faith. It is also the last article of my creed.** But I had to make my choice. I had either to submit to a system which I considered had done an irreparable harm to my country, or incur the risk of the mad fury of my people bursting forth when they understood the truth from my lips. I know that my people have sometimes gone mad; I am deeply sorry for it.
- **I am, therefore, here to submit not to a light penalty but to the highest penalty.**
- I do not ask for mercy.
- I do not ask for any extenuating act of clemency.
- I am here to invite and cheerfully submit to the highest penalty that can be inflicted upon me for what in law is a deliberate crime and what appears to me to be the highest duty of a citizen.
- The only course open to you, the Judge, is as I am just going to say in my statement, either to resign your post, or inflict on me the severest penalty, if you believe that the system and the law you are assisting to administer are good for the people of this country

# History Will Absolve Me

- “The fact is, when men carry the same ideals in their hearts, nothing can isolate them - neither prison walls nor the sod of cemeteries.

For single memory, a single spirit, a single idea, a single conscience, a single dignity will sustain them all.”

**Fidel Castro.**

- **“I know that imprisonment will be harder for me than it has ever been for anyone, filled with cowardly threats and hideous cruelty.**
- But I do not fear prison, as I do not fear the fury of the miserable tyrant who took the lives of 70 of my comrades.
- **Condemn me. It does not matter. History will absolve me.”**  
**Fidel Castro.**

# Evidence.-- "Evidence" means and includes:

- 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) all documents **including electronic records** produced for the inspection of the Court; such documents are called documentary evidence.
  - TO PROVE
  - TO ASCERTAIN
  - TO MAKE CLEAR

# proof

- "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 disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.
- "Not proved." -- A fact is said not to be proved when it is neither proved nor disproved.

# Evidence - Appreciation of

## ANALYSIS OF EVIDENCE TO ASCERTAIN THE RELIABILITY AND GENUINNESS

- The dictionary meaning of Appreciation is “the act of recognising or understanding that something is valuable, important, or as described”. It can also be defined as **“understanding of the nature or meaning or quality or magnitude of something”**.
- The word „**evidence**“ signifies the state of being evident, i.e. plain, apparent or notorious.
- **Evidence should not be confused with proof because proof is the effect or result of evidence, while evidence is the medium of proof.**
- Section 1 of the **Indian Evidence Act, 1872** (the Act) speaks of applicability of the Act and **excludes specifically its application on affidavits filed in the court or before the officers.**
- Thus, the Act does not apply to affidavits. More so, section 3 which defines evidence, does not include affidavits. (*Ayaubkhan Noorkhan Pathan v. State of Maharashtra*, AIR 2013 SC 58)
- IT IS EVIDENCE WHEN ORDERD BY COURT UNDER O19 RULE 1 AND 2

# Fact.-- "Fact" means and includes-

- **"Fact."**-- "Fact" means and includes–
- (1) anything, state of things, or relation of things, capable of being perceived by the senses;
- (2) any mental condition of which any person is conscious.
- **Illustrations**
- (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"

- "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, 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.

# CARDINAL PRINCIPLES OF LAW OF EVIDENCE:

- CARDINAL PRINCIPLES OF LAW OF EVIDENCE:
- i) Evidence must be confined to the matter in issue.
- li) Hearsay evidence must not be admitted.
- lii) Best evidence must be given in all cases.

# RELEVANCY AND ADMISSIBILITY.

- Evidence is 'relevant' when it has applicability to the issues presented in the case.
- Relevancy is that quality in evidence that makes it properly applicable to the truth or falsity of matters at issue between the parties.
- A fact is relevant when it helps to prove an issue.
- **Relevancy** means what facts may be proved before a court.
- The **admissibility** is the means and the methods of proving the relevant facts.
- such other facts are hereinafter **declared to be relevant and of no other (Section 6 to 55).**

# The probative value of evidence

- The probative value of evidence refers to its **usefulness or relevance in proving or disproving a fact in a legal context.**
- It's essentially the ability of evidence to contribute to the establishment or undermining of a claim, argument, or issue in a case.
- Several factors determine the probative value of evidence:
- Courts assess the probative value of evidence to determine its admissibility and significance in reaching a verdict.
- While some evidence might have probative value individually, its weight and significance can change when viewed in conjunction with other pieces of evidence in the case.
- Ultimately, the evaluation of evidence and its probative value is crucial in determining the outcome of legal proceedings

# Factors affecting probative value

- 1. Relevance:** Evidence must be directly related to the facts in dispute. If it doesn't pertain to the issue at hand, it lacks probative value.
- 2. Reliability:** The reliability or trustworthiness of evidence affects its probative value. For instance, eyewitness testimony might have probative value, but its reliability can be influenced by various factors such as memory, perception, and bias.
- 3. Materiality:** Evidence must be material, meaning it's significant or important in proving or disproving a fact. Material evidence directly impacts the outcome of the case.
- 4. Credibility:** The credibility of witnesses or sources providing evidence influences its probative value. Credible witnesses or reliable sources enhance the value of evidence.
- 5. Corroboration:** Evidence supported by other evidence or multiple sources often carries more probative value. Corroborated evidence tends to be stronger in establishing a fact.
- 6. Weight:** The strength or weight of evidence also determines its probative value. Strong, conclusive evidence holds more weight in proving a point compared to weaker, circumstantial evidence.

# why presumptions are important

- 1. Evidentiary Convenience:** Presumptions simplify legal proceedings by providing a starting point for proving certain facts. They save time and resources by allowing the court to start from a standard assumption unless proven otherwise.
- 2. Filling Evidential Gaps:** In situations where direct evidence might be unavailable, difficult to obtain, or inconclusive, presumptions help in filling these gaps by allowing the court to infer certain facts.
- 3. Maintaining Fairness:** Presumptions help maintain fairness by creating a balance between the burden of proof and the availability of evidence. They prevent one party from unfairly escaping liability or responsibility by shifting the burden to prove certain facts.
- 4. Reflecting Social Realities:** Many presumptions in the Evidence Act are based on societal norms and common experiences. They reflect how things generally occur in society and aid in drawing logical conclusions.
- 5. Legal Certainty:** Presumptions provide a level of legal certainty. They establish standard assumptions that can guide judgments when direct evidence is lacking or inconclusive, contributing to predictability within the legal system.
- 6. Protecting Vulnerable Parties:** Some presumptions are designed to protect vulnerable parties in legal matters, ensuring fairness in situations where they might be at a disadvantage in presenting evidence.

# Section 114 of Indian evidence act

- Section 114:- This is a section of crucial importance to the Courts. The Court may presume the existence of
- any fact which it thinks likely to have happened, having regard to-
  - a) Common Course of natural events,
  - b) Human conduct, and
  - c) Public and private business, ...
- In their relation to the facts of the particular case.
- The illustrations attached to the section are not intended to lay down rules of law which are exhaustive of the presumptions that may be made under the provisions of the section itself.
- They are merely examples of circumstances in which certain presumptions may be made.
- The law of evidence only lays down the law for facilitating the course of justice.
- The presumptions under the Evidence Act are only the inferences which a logical and reasonable mind normally draws.
- Presumptions arising out of Section 114 of the Evidence Act are not presumptions of law but of fact. As they are always rebuttable, it is always open to a party to dispel the presumption.

# Presumption- The Evidence Act, 1872

- The Evidence Act, 1872 provides for presumption in certain circumstances when the truth or fact remains unknown.
- **Presumption is an inference of fact drawn from other known or proved facts**
- . Rule of presumption is a rule that courts may or shall draw a particular inference from a particular fact or evidence, unless and until, if so permitted the truth of such inference is rebutted.
- "Presumption" is an inference, affirmative or negative, of the truth or falsehood of a doubtful fact, drawn by a process of probable reasoning from something proved or taken for granted. (Kumar Exports v. Sharma Carpets, AIR 2009 SC 1518)
- There are two classes of presumptions, presumptions of fact or natural presumptions and presumptions of law or artificial presumptions. There is a third classification arising out of presumption, i.e., irrebuttable presumptions of law or conclusive presumption. (Syad Akbar v. State of Karnataka, AIR 1979 SC 1848; and P.R. Metrani v. Commissioner of Income Tax, Bangalore, AIR 2007 SC 386)

# Burden of Proof

**Burden of proof means - a duty; a responsibility and in context of the subject, it means person is bound to prove the existence of a fact/charge; an obligation to prove a fact.**

Proof Means:

In Shankar Prasad v. State of A.P., (2004) 3 SCC 753, the Court held that the proof of the fact depends upon the degree of probability of its having existed.

The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him.

As observed in Hawkins v. Powells Tillery Steam Coal Co. Ltd. [(1911) 1 KB 988]

**"Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion."**

In reaching the conclusion the Court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law.

(M. Narsinga Rao v. State of A.P., (2001) 1 SCC 691

## *Madan Mohan Singh v. Rajnikanth*, AIR 2010 SC 2933

- *Madan Mohan Singh v. Rajnikanth*, AIR 2010 SC 2933, the children of a Zamindar from two wives were fighting for succession.
- The school certificates and other documentary evidence had been filed to prove that the second marriage of the Zamindar was prior to the commencement of the Hindu Marriage Act, 1955.
- **None of the parties had ever alleged that the same had been forged documents**

# Thirty-year-old document

## Electronic record

- Section 90:- Where a **thirty-year-old document** is produced from proper custody, court may presume that the signature and every other part of the document, which purports to be in the handwriting of any particular person, is in that person's handwriting. Documents thirty-year-old, produced from proper custody, and otherwise free from suspicion, prove themselves and no evidence of the handwriting, signature, sealing or delivery need be insisted upon. This rule of convenience is based on the difficulty in producing relevant oral evidence after a long lapse of time.. (Surendra Krishna Roy v. Mirza Mahammad., AIR 1936 PC 15; and Sital Das v. Sant Ram, AIR 1954 SC 606)
- **Section 90A.**-Where any electronic record, purporting or **proved to be five years old**, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the digital signature which purports to be the digital signature of any particular person was so affixed by him or any person authorised by him in this behalf. This Section has an explanation similar to the explanation to section 90

# Presumption regarding electronic message

- **Section 88A**-The court may presume that an electronic message, forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; **but the court shall not make any presumption as to the person by whom such message was sent.**
- Explanation. For the purpose of this section, the expressions "addressee" and "originator" shall have the same meanings respectively assigned to them in clauses (b) and (za) of sub-section (1) of section 2 of the Information Technology Act, 2000.
- This section was inserted by Act, 21 of 2000.

# Section 101 : Onus and burden of Proof

- Section 101 : Onus and burden of Proof
- The burden of proof always lies upon the party who makes certain allegations and seeks relief on it. The Court has to address itself whether the party, which has made the allegations, has discharged the burden of proving the allegations. More so, the party must succeed on the strength of its own case rather than on the weakness of the case of the other side. Such party is under a legal obligation to prove its case irrespective of the fact whether the opposite party has proved its case or not.
- The burden of proof includes the burden of persuasion and the burden of production i.e. evidentiary burden;
- There is an essential distinction between the burden of proof and onus to prove; burden of proof lies upon the person who has to prove a fact and it never shifts... Such considerations, having regard to the circumstances of a particular case, may shift the onus of proof. Such a shifting of onus is a continuous process in the evaluation of evidence.....

# Difference between burden of proof and onus of proof

- In the Indian Evidence Act, Sections 101 to 104 deal with the concepts of burden of proof and onus of proof:
- **Section 101 - Burden of Proof:** This section states that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts that they assert must prove that those facts exist. In simpler terms, the burden of proof lies on the party who asserts the affirmative of the issue.
- **Section 102 - Onus of Proof:** This section specifies that the burden of proof in a case lies on the person who would fail if no evidence at all were given on either side. The onus of proof remains on the person who would lose if no evidence were produced by either party.
- **Section 103 - Burden of Proof as to Particular Fact:** According to this section, the burden of proof regarding any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by law that the proof of that fact shall lie on any particular person.
- **Section 104 - When the Burden of Proof Shifts:** Section 104 specifies situations where the burden of proof shifts from one party to another as a result of evidence or due to the existence of a particular relationship between parties. For instance, it states that when a person is shown to be in possession of stolen goods, the burden of proving that they came by such goods legitimately shifts to that person.
- These sections of the Indian Evidence Act outline the fundamental principles regarding burden of proof and onus of proof, delineating the obligations of parties in presenting evidence to support their assertions and the consequences of failing to discharge these burdens in legal proceedings.
-

# Burden of Proof and Pardanashin Lady

- Burden of Proof and Pardanashin Lady: It is because of the social conditions, illiteracy and customs prevalent in a society that the women in the family are not aware of the worldly affairs and particularly transactions. Thus, they are protected by the law because their disabilities make them dependent or subject them to influence of others. In reality, there maybe no deception or coercion or fraud or undue influence. Thus, the Court presumes that as regards to documents from Pardanashin women, the party executing them had duly informed the lady of the entire transaction and the burden of proof in such a case is not with those who attack, but with those who found upon the deed and the proof must go so far as to show affirmatively and conclusively that the deed was not only executed by, but was explained to, and was really understood by the grantor.
- In Keshav v. Gian Chand, 2022 SCC OnLine SC 81, the Supreme Court observed that when a person obtains any benefit from another, the court would call upon the person who wishes to maintain the right to gift to discharge the burden of proving that he exerted no influence for the purpose of obtaining the document. Corollary to this principle finds recognition in sub-section (3) to Section 16 of the Contract Act, 1872 which relates to pardanashin ladies.
- **The courts can apply this principle to old, illiterate, ailing or infirm persons who may be unable to comprehend the nature of document or contents thereof.**
- Equally, one who bargains in the matter of advantage with a person who places confidence in him is bound to show that a proper and reasonable use has been made of that confidence. The burden of establishing perfect fairness, adequacy and equity is cast upon the person in whom the confidence has been reposed.

## kinds of witnesses in legal proceedings

1. **Eyewitnesses:** Those who directly witnessed an event or incident being discussed in the case.
2. **Expert Witnesses:** Professionals or individuals with specialized knowledge in a particular field relevant to the case, providing their expert opinion.
3. **Character Witnesses:** Individuals who testify about the character of a person involved in the case, speaking to their reputation for honesty, integrity, etc.
4. **Material Witnesses:** Those who have information or evidence directly related to the case and may have crucial information to offer.
5. **Hostile Witnesses:** Individuals called to testify who are expected to be adverse or uncooperative towards the party calling them.
6. **Lay Witnesses:** People who are not experts but who testify about what they saw, heard, or experienced related to the case.

# The presumption of legitimacy of a child

- **Section 112 in The Indian Evidence Act, 1872**
- 112. Birth during marriage, conclusive proof of legitimacy.—The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

# Appreciation of evidence though no application of mind

- Non- application of mind by the Court and as a result accepting the inadmissible evidence or rejecting the admissible evidence tantamount to non-appreciation of evidence. [***State of UP v. Ram Sevak***, 2003 SCC (Cri) 459]
- In ***Madan Mohan Singh v. Rajnikanth***, AIR 2010 SC 2933, the children of a Zamindar from two wives were fighting for succession. The school certificates and other documentary evidence had been filed to prove that the second marriage of the Zamindar was prior to the commencement of the Hindu Marriage Act, 1955. The Courts below decided the case relying upon those documents without examining their genuineness as none of the parties had ever alleged that the same had been forged documents.
- **The Supreme Court after appreciating the same material came to the conclusion that the second wife gave birth to one daughter at the age of twelve, to another daughter at the age of six and to the son (respondent) even prior to her own birth.**