# Role of Legal Education in Indain History

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**Abstract:**
*Today we have two basics of evidence upon which rules are formulated. One rule is that only the facts bearing importance to the matter being heard should be looked into by the courts and second that all facts that will help the court to reach a decision are admissible unless otherwise excluded like a client confessing to his legal counsel.*

*Among others from ancient Hindu Period, Vasistha recognised 3 kinds of evidence:*
1. *Lekhya (Documentary Evidence)*
2. *Sakshi (Witnesses)*
3. *Bukhti (Possession)*
4. *Divya (Ordeals)*

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## 1. Introduction

Though the concept of justice in Islam is that it is a divine disposition, the Mohammedan law givers have dealt with evidence in various forms as indicated by the table below:

1. Oral that may be Direct Hearsay
2. Documentary (Less preferred than oral)

Initially at many places and in many beliefs, the parties to litigation would fight each other and it was believed that divine help will come to the rightful party. Trial by battle has been abrogated only in 1817. The trials by ordeal included a person on bed of hot coals or putting one's hand n boiling water. Anyone who suffered injury was held to be impure and guilty. Though it was believed that providence will not let harm come to the innocent, often it was the priests who manipulated the tests so that certain people could go scot-free.

It was believed that if a guilty man touches the corpse, it would show a reaction and then the man should be punished. Accordingly, refusal to touch a corpse was also admission of guilt by the accused. The cruellest evidence law existed in Europe with respect to witch hunts and witch craft. The woman suspected of being a witch was tied up and thrown into a pond. If she floated p, she was a witch and was burned alive at stake. If the woman were to sink to the bottom of the pond, she was not a witch. Unfortunately, she would be dead by then but nevertheless innocent in the eyes of law. Confessions due to torture are not unknown today either.

## 2. The Modern Law as it Prevails

The concrete evidence of the 'law of evidence' comes from the times of the Britishers. In 1837, an Act was a passed whereby even a convicted person was allowed to give evidence. Subsequently, parties to litigation could be witnesses for their respective sides. Charles Dickens ridiculed this law and questioned the honesty of such witnesses. After all, who will testify against himself or to his

disadvantage? Between 1835 and 1855, there are eleven Acts that touch upon the subject of law of evidence. And these were consolidated.

In 1856, Sir Henry Summer Maine, the then law member of the Governor General's Council was asked to prepare and Indian Evidence Act. His draft was found unsuitable for the Indian conditions. So, it fell to Sir James Fitzjames Stephan who became the law member in 1871 to come up with the Indian Evidence Act. His draft bill was approved and came into being as the Indian Evidence Act, 1872 and came into force from 1st September 1872. Before independence, many states had already accepted this law as the law in their respective state. After independence, the Indian evidence Act was held to be the law for all Indian courts.

The doctrine that all facts in issue and relevant to the Issue, and no others, may be proved, is the unexpressed principle which forms the center of and gives unity to all these express negative rules. These rules always appeared to form a hopeless mass of confusion, which might be remembered by a great effort, but could not be understood as a whole, or reduced to system, until it occurred to ask the question, what is this evidence which you tell me hearsay is not? The expression "hearsay is not evidence" seemed to assume that I knew by the light of nature what evidence was, but I perceived at last that that was just what I did not know. I found that I was in the position of a person who, having never seen a cat, is Instructed about them in this fashion: "Lions are not cats in our sense of the word, nor are tigers nor leopards, though you might be in clined to think they were." Show me a cat to begin with, and at once understand both what is meant by saying that a lion is not a cat, and why it Is possible to call him one.[1]

The law has been worked out by degrees by many generations of judges who perceived more or less distinctly the principle on which it ought to be founded. The rules established by them no doubt treat as relevant some facts which cannot perhaps be said to be so. More frequently they treat as irrelevant facts which are really relevant, but exceptions excepted, all their rules are reducible to the principle that facts in issue or relevant to the issue, and no others, may be proved.

The question "What is evidence?" gradually disclosed the ambiguity of the word. To describe a matter of fact as "evi dence" in the sense of testimony is obviously nonsense. No one wants to be told that hearsay, whatever else it is, Is not testimony. What then does the word mean? The only possible answer Is: It means that the one fact either is or else is not considered by the person using the expression to furnish a premise or part of a premise from which the existence of the other Is a necessary or probable inference; in other words, that the one fact is or is not relevant to the other. When the inquiry is pushed further, and the nature of relevancy has to be considered in itself, and apart from legal rules about it, we are led to Inductive logic, which shows that judicial evidence is only one case of the general problem of science, —namely, inferring the unknown from the known.

**3. Law of Evidence is Mere Procedural Law?**

All law may be divided into Substantive Law, by which rights, duties, and liabilities are defined, and the Law of Procedure by which the Substantive Law is applied to particular cases. The Law of Evidence is that part of the Law of Procedure which, with a view to ascertain individual rights and liabilities In particular cases, decides:

I. What facts may, and what may not be proved in such cases:
II. What sort of evidence must be given of a fact which may be proved;
III. By whom and in what manner the evidence must be produced by which any fact is to be proved.

[1]A Digest of the Law of Stephen, Sir J.F.J. Stephen, 1918, p.xxiv, The W. H. Courtright Publishing Company, accessed online-http://books.google.com

The facts which may be proved are facts in issue, or facts relevant to the issue. Facts in Issue are those facts upon the existence of which the right or liability to be ascertained in the proceeding depends. Facts relevant to the issue are facts from the existence of which Inferences as to the existence of the facts in issue may be drawn.

A fact is relevant to another fact when the existence of the one can be shown to be the cause or one of the causes, or the effect or one of the effects, of the existence of the other, or when the existence of the one, either alone or together with other facts, renders the existence of the other highly probable, or improbable, according to the common course of events.

Four classes of facts, which in common life would usually be regarded as falling within this definition of relevancy, are excluded from it by the Law of Evidence except in certain cases: —

1. Facts similar to. but not specifically connected with, each other. (Res inter alios actoe.)
2. The fact that a person not called as a witness has as serted the existence of any fact. (Hearsay.)
3. The fact that any person la of opinion that a fact exists. (Opinion.)
4. The fact that a person's character is such as to render conduct imputed to him probable or improbable. (Character.)

To each of those four exclusive rules there are, however, important exceptions, which are defined by the Law of Evidence.

As to the manner in which a fact in issue or relevant fact must be proved. Some facts need not be proved at all, because the Court will take judicial notice of them, if they are relevant to the Issue.

Every fact which requires proof must be proved either by oral or by documentary evidence. Every fact, except (speaking generally) the contents of a document, must be proved by oral evidence. Oral evidence must in every case be direct; that is to say, it must consist of an assertion by the person who gives it that he directly perceived the fact to the existence of which he testifies.

Documentary evidence is either primary or secondary. Primary evidence is the document itself produced in court for inspection.

Secondary evidence varies according to the nature of the document. In the case of private documents, a copy of the document, or an oral account of its contents is secondary evidence. In the case of some public documents, examined or certified copies, or exemplifications, must or may be produced in the absence of the documents themselves.

Whenever any public or private transaction has been reduced to a documentary form, the document in which it is recorded becomes exclusive evidence of that transaction, and its contents cannot, except in certain cases expressly defined, be varied by oral evidence, though secondary evidence may be given of the contents of the document.

As to the person by whom, and the manner in ivhich the proof of a particular fact must be made. When a fact is to be proved, evidence must be given of it by the person upon whom the burden of proving it is im posed, either by the nature of the issue or by any legal presumption, unless the fact is one which the party Is estopped from proving by his own representations, or by his conduct, or by his relation to the opposite party.

The witnesses by whom a fact is to be proved must be competent. With very few exceptions, every one is now a competent witness in all cases. Competent witnesses, however, are not in all cases compelled or even permitted to testify.

The evidence must be given upon oath, or in certain ex cepted cases without oath. The witnesses must be first examined in chief, then cross-examined, and then re-examined. Their credit may be tested in certain ways, and the answers which they give to questions affecting their credit may be contradicted in certain cases and not in others.

**References**

1. Abraham, Arvind Kurian (16 May 2019). "Delegated Legislation: The Blindspot of the Parliament". The Wire. Retrieved 2 March2021.
2. Alexander, C.H. (July 1952). "International Law in India". The International and Comparative Law Quarterly. **1** (3): 289–300. ISSN 0020-5893.
3. Kalra, Kush (2013). Be Your Own Layer - Book for Layman. Vij Books India Pvt Ltd. ISBN 978-93-82652-07-6.