CHAPTER-II

HISTORICAL EVOLUTION OF

THE LAW OF EVIDENCE
After discussing the introductory chapter, it is now proposed to discuss the evolution of the law of evidence in its historical perspective. The historical development of law of evidence has been discussed here under the following heads:

A. Hindu Period

B. Muslim Period

C. British Period

D. Post-independence Period

Now the detailed discussion is submitted as under :-

A. Law of Evidence in Ancient India (Hindu Period)

It is submitted that in ancient India i.e. Hindu Period Sasita was the court which the king presided. It was the highest court in any kingdom in ancient India. It was situated in the royal palace at the capital city. The King (Rajah), the Chief Justice (Pradvivaka) and the Judges (Sabhyas) were the judicial officers of the court. The King was invested with the power of passing final decrees. The Chief Justice had to give his final opinion in the cases, and the duty of the judges was to investigate the merits of each case.
The courts in ancient India were not bound by any technical procedure for doing justice to the aggrieved persons. The basic consideration was upholding dharma. After filing the plaint, the summons were to be issued to the opposite party to answer the charges. There were well set rules relating to admission, denial, confession, avoidance and *res-judicata*.

The trial was conducted by the courts with the help of witnesses and documents adduced in support of the claim. Parties had to themselves produce witnesses. The King should not delay in examining the witnesses. The King should himself examine the witnesses who were present and should consider along with the members of the court the statements made by them. Witnesses should give their deposition inside the hall of justice (*Dharmanikarana*) and not anywhere else. The witnesses should give their evidence in the presence of the plaintiff or the defendant as the case may be and never behind their back. Before giving the evidence, the witness should be administered oath after taking off his shoes and his turban and he should stretch out his right hand and declare the truth, taking in his hand, gold, cow-dung or a few of sacred grass (*kusha*), as the case may be. The highest punishment i.e. capital punishment was given for the offence of giving false
evidence. The judge should question each witness separately. The words of the witnesses when free from faults should be taken down as narrated by them naturally and it should be accepted as useful for deciding the legal proceeding.

The *Smritis* were the *dharmasastras*. Among them, the *Manu Smriti* was written somewhere between 200 BC and 100 AD. It was a landmark in the history of Hindu Law. Next to Manu, *Yajnavalkya, Narada* and *Katyayana* (who compiled his *Smriti* somewhere between fourth or fifth century AD) had dealt with the law of evidence in their Smritis.

According to *Manu*, after the parties have submitted their plaint and answer, evidence has to be presented before the court. Systematising Manu’s rule on the subject, *Yajnavalkya* first mentioned three kinds of proof, namely, documents, witnesses and possessions, and he adds that ordeal is another kind of evidence in the absence of any of these. In the context of the law of debt, Yajnavalkya explains the law relating to documents and witnesses.

*Narada* repeat the three kinds of proof specified by *Yajnavalkya*, namely, documents, witnesses and possession. As regards witnesses, *Narada* amplified and explains the
views of Manu and divided them into eleven classes. Narada classified proof under two broad headings, namely, human and divine, the former comprising documentary and oral evidence, and the latter, ordeal by balance and the rest.

**Katyayana** followed *Brihaspati* and **Narada** explained the formula of the four ‘feet’ (i.e. the stages) of legal proceedings namely *purvapaksha* (plaint), *uttara* (reply), *pratyakalita* (deliberation as to burden of proof), and *kriyapada* (adducing of proof). When both the parties have submitted their evidence, the court was required to deliberate and deliver its judgement.

The law of evidence was well-developed but suffered being a cast- ridden concept. Both **Yajnavalkya** and **Katyayana** prescribed three kinds of evidence, namely documents (*likhita*), witnesses (*sakshi*) and possession (*bhuki*). Other means of proof consisted of reasoning (*yukti*) and ordeals (*divyas*). The main evidence comprised of either documents or oral testimony of witnesses. It was evidence in the form of sakshi which had drawn the attention of ancient law-givers.
(I) **Witnesses** *(Sakshi)*

The following were the main features of witnesses:

1) According to Manu, the trustworthy men, who knew their whole duty and were free from covetousness, were admissible as witnesses irrespective of caste-interested persons, friends, companions, enemies and those convicted of perjury, while persons of several other categories were not admissible as witnesses.

2) Another rule was to the effect that women, twice-born men, Sudras and men of the lower castes should give evidence only on behalf of people of the same class. This was where the caste consciousness creeped in.

3) Any person who had personal knowledge of a murder case or acts done in the interior of a house or in a forest, could be called as a witness.

4) Lastly, on failure of regular witnesses, anyone could be summoned to bear evidence -- women, infants, pupils, relations, slaves or hired servants for example. Particularly in cases of violence, adultery, defamation and assault, the competence of a witness should not be examined too closely.
5) The direction given to the witnesses was to the effect that they must speak the truth and severe penalties were prescribed for giving false evidence.

6) There is yet another aspect of the legal position of witnesses i.e. character. Manu states: “On conflict of the witnesses the king shall accept the (evidence of) majority, if (the conflicting parties are) equal in number, (that of) those distinguished by good qualities; on a difference between (equally) distinguished (witnesses, that of) the best among the twice born”.

7) The role of the oath came in when there were no witnesses. The judge could ascertain the truth by means of the oath or an ordeal. A religious sanctity was attached to oath, for he who swears on an oath falsely is lost this (world) and after death.

8) Penalties were prescribed for witnesses who did not speak the truth and they were mostly in terms of imposition of suitable fines, while one who, having sworn to give evidence, conceals it under influence of passion is to pay an eight-fold fine.

9) Persons whose character was highly dubious were considered as tainted witnesses and were held to be not competent to give evidence. Yajnavalkya says, “He
who shifts from place to place, licks his lips, whose forehead perspires, whose countenance charges colour, who with dry tongue and stumbling speech talk much and incoherently and who does not heed the speech or sight of another, who bites his lips, who by mental vocal and bodily acts falls into a sickly state, is considered a tainted person”.

Gautama stated the law regarding witnesses as follows:

1) “It is only specially qualified persons who may be presumed to speak the truth, who are competent witnesses.

2) The witnesses should be trustworthy persons who know the facts.

3) The witnesses should be examined by the king or the judge and they must answer questions only when asked.

4) The practice of naming witnesses by a party in his pleading was in vogue.

5) No question of qualification of witnesses can be raised in case of hurt.
6) Swearing of witnesses was prescribed by some authorities.

The well-known rule of sound evidence, namely, that eyewitnesses were to be preferred to informers was well-established from vedic times. It was in the absence of eyewitnesses that by necessity some weight had to be given to hearsay evidence.

(II) **Documentary Evidence** *(Lekhya)*

As early as *Vasistha*, documentary evidence had come into vogue, though apparently it was considered of less importance than the testimony of witnesses. But in all later smritis documents had acquired great importance.

*Vishnu* speaks of three kinds of documents, namely, *Rajasaksika, Sasaksika* and *Asaksika*. *Rajasaksika* was a document executed in the king’s court by the king’s clerk (*Kayastha*) and attested by the hand of the presiding officer. *Sasaksika* was purely private being scribed by anyone, but attested in their own hands by witnesses. *Asaksika* is a document which was admissible being written entirely in the hands of the party himself. Unless a document came under any one of these three categories, it was not admissible.
Brihaspati speaks of various kinds of documents which were classified into three distinct classes: i) Rajalekhya; ii) Svayamkrita; and iii) Svahastalikhita.

The ancient law givers were aware of the weakness of the documentary evidence as against possible forgery. They have evolved elaborate rules to ensure the genuineness of the documents. A document was considered as vitiated if it was written by children, dependents, lunatics, women or persons under fear. There were also rules for testing the genuineness of a document by comparison of handwriting in question, particularly in case where the executant is dead.

Yajnavalkya illustrated elaborate requirements of written documents in his description of the contents of a written contract between the debtor and the creditor. He says that such a contract, if written by another hand, must state the names of the parties (along with their caste and gotra - names and the names of their fathers), and it must also mention, the witnesses as well as details about the year, the month, the day, etc. Afterwards, it had to be signed successively by the debtor, the witnesses, and the writer in a specified form. A writing in one’s own hand, though unattested by witnesses, is still valid, except when it was caused by force or fraud. The forgery documents led to the necessity of proof of documents by oral testimony or divya.
(III) **Possession** *(Bhukti)*

In the disputes of the landed property, possession as evidence, apparently of right and title was mentioned by **Vasistha** along with documents and witnesses. However, **Gautama** does not refer to possession as evidence. He recognized the title by prescription.

(IV) **Ordeals** *(Divya)*

The trial was conducted by the ancient courts with the help of witnesses and documents adduced in support of claim. When the parties to a litigation were unable to provide their case by means of oral or documentary evidence, the courts could allow the parties concerned to prove their case through divine tests or ordeals. It was the belief in ancient times that truth could be found out by applying **Divya** or divine tests. The ordeals method emanated from the superstitious belief of the people in ancient times about the consequences of person undergoing an ordeal would meet with in accordance with the truth or falsehood of his case. A detailed account of ordeals, as they existed in ancient India, is given in *Agni Purana*. It points out that only in cases of high treason of very serious offences, trial by ordeal was used. In other petty matters, it was sufficient to prove the truth by taking oath.
Yajnavalkya mentioned five kinds of ordeals in place of the three referred to by Manu. These include; i) ordeals by balance, ii) by fire; iii) by water; iv) by poison; and v) by sacred libation. Narada increased Yajnavalkya’s five classes of ordeals to seven by adding the rice ordeal and the ordeal of a hot piece of gold.

Some important types of ordeal are:

1) **Ordeal by Balance**

A wooden balance had to be prepared out of the wood of a sacred tree (such as khadira, oudumbara). Chanting the vedic mantras, a large balance was set up on which the accused (sodhya) was weighed against weights placed in the other pan. Then the sodhya was to get down from the pan. After the prescribed general procedure was followed such as telling by the judge about the consequences of telling truth and tieing the written subject matter on forehead, he had be placed once again in the vacant pan. He was required to sit there in for five palas or vinadis. If, on this occasion, the pan went up beyond the original marks, he was found innocent, if it went below the mark, he was guilty.

2) **Ordeal of Fire**

In the process of fire in ordeal, a piece of flat ground had to be treated with cow dung. Keeping fire centre, nine
circles each of 16 *angulas* (inches) diameter and situated 16 *angulas* apart had to be drawn on the ground. A person to be tested (*sodhya*) had seven *asvatha* leaves placed on his hands with some rice and curd put thereon. Following the general rules, and after the *sodhya* had invoked the fire God, a red-hot iron ball weighing about 20 *palas* (equal to 66 *tolas*) had to be placed in his palms. With the hot ball in hand, the accused had to walk seven steps across the circles placed round the fire and then throw it out. If his hands were not burnt or badly seared, he was found innocent. In other alternative test, the accused was required to pick with his hand a coin out of a pot of boiling liquid or to lick with his tongue a red hot plough-share. If it did not burn he was deemed innocent. Similarly, an accused was required to walk through or stand in fire for some specific time. If it was accomplished without any harm to the accused, he was held innocent.

3) **Ordeal by Water**

The ordeal of water had to be performed after observing all the general formalities including invoking the deities. In this process the *sodhya* was to dive under water taking hold of the knees of a person standing in the water besides him while another man shot three arrows at a target of a hundred and fifty cubits away. A man who stood near
the target was required to pick up the arrows one after the other. If the *sodhya* could keep himself completely inversed under water during all this time he was innocent. If they found him floating, he was declared guilty.

Another method required the accused person to drink the water used in bathing the idol. He was considered innocent if within the next fourteen days he had no harmful effects.

4) Ordeal by poison

In the process of ordeal by poison, the *sodhya* was administered for a specified number of days, some kind of poison, in small quantities, extracted from specified plants and mixed with ghee after some rituals. If the poison has any adverse effect on the body of *sodhya*, he was declared guilty, if not, he was declared not guilty.

5) Ordeal of Lot

In the ordeal of lot, a white image of *Dharma* and a black image of *Adharma* were prepared. They were placed on a piece of cloth of plantain leaf over a lump of cow-dung and the whole thing was put in an earthen pot. After observing the general formalities and worshipping the images, the *sodhya* was asked to put his hand in the pot
and pick up one of the images without looking at them. If he got the white image of \textit{Dharma}, he was to be declared innocent. If he got the black image of \textit{Adharma} he was declared guilty.

6) \textbf{Ordeal of Fountain - Cheese}

\textit{Ktesias} states that there was a fountain from which water coagulates like cheese and if this water is mixed with ordinary water and given to the accused person to drink, he becomes delirious and confesses his misdeeds.

7) \textbf{Ordeal by Kosa}

The \textit{sodhya} had to worship deities such as \textit{Rudra} and \textit{Aditya} and then these images were to be immersed in water. He had to perform all other general formalities. Thereafter, there was a period of waiting of two weeks. If during that period no calamity befell on the \textit{sodhya} or any of his close relatives, he was to be declared not guilty.

Besides the above ordeals there were other types of ‘ordeals like the ordeal of \textit{Tandula} (rice grains), ordeal of \textit{Taptaniasha} (heated piece of gold), ordeal of \textit{Phala} (Ploughshare) and so on.
B. Law of Evidence in Medieval India (Muslim Period)

Since the beginning of the twelfth century, the Muslim Kings began to invade India. The Muslim Kings and emperors in medieval India established the judicial dispute resolution system according to the Islamic Law, which is purely based upon the **Holy Quran**. The conception of ‘justice’ in Islam is that the administration of justice is a divine disposition. The judges were appointed by the ruler. Generally **Quajis** were preferred to decide the disputes.

During the trial all the substantive and procedural laws were interpreted according to the tenets of Quran, Sunna, Ijmaa and Qiyas. Holy Quran enjoins truthfulness. It states; “O True Believers: Observe Justice, where you appear as witnesses before God and let not hatred towards any inducement to you to do wrong, but act justly. This will approach nearer to piety. And fear God for God is fully acquainted with what you do” (Quran 5:8) “O! You who believe, be maintainers of justice when you bear witness for God’s sake, although it be against yourselves or your parents: or your near relations, whether the party be rich or poor, for God is most competent to deal with them both. Therefore do not follow your low desire in bearing testimony so that you may swerve from justice and if you swerve or
turn aside then surely God is aware of what you do.” (Quran 4: 135).

The plaintiff was required to go to the Quazi to get relief for the wrong done. At the hearing of the plaint, the presence of both the parties was essential. A Quazi could not pass an *ex parte* decree. Justice was almost free. The procedure was followed in the form of questions and answers put by the Quazi to the parties and to the witnesses produced in the court. More credit was given to eye witness than to that of hearsay evidence. The general rule was that evidence of at least two men or one man and two women was required for proof.

The evidence of non-believer (Hindu) was not admissible against the Muslims. When the persons stood in relation to each other, they were considered as incompetent witnesses. For example, son in favour of father, gamblers, drunkards, habitual liars, idiots, professional singers, public mourners, criminals etc. were considered incompetent witnesses. A person who was blind, insane or dumb was considered as incompetent to give evidence. Slaves were also considered incompetent witnesses. While examining the witnesses, the courts, were to pay great attention to the demeanor of the parties and witnesses, in order to ensure their credibility.
The evidence might be oral or documentary. Oral evidence was further sub-classified into direct and hearsay evidence. Oral evidence used to be preferred to documentary evidence. Documents properly executed and books in the course of business were accepted as evidence. Documents executed by certain persons like women, children, drunkards, gamblers, criminals etc. were considered as vitiated and inadmissible in evidence.

During the Muslim King’s and emperor’s reign, the Hindu judicial dispute resolution systems were intact in the rural area. During the trial, all the substantive laws and procedural laws were interpreted according to the tenets of Quran. The rules of evidence were followed according to the Holy Quran by Quazis.

C. Law of Evidence in British India (Historical Background of the Indian Evidence Act, 1872)

In the beginning of the seventeenth century, the British came to India. They occupied one after one kingdom. Along with their administrative procedures, they had also established the legal system, court system in India. During the British rule, the first step was taken in 1726 to introduce the rules contained in the common and statute law which prevailed in England, into India through the
Charter of 1726. In the Preamble to Regulation 11 of 1793, they declared the aim of the Government was to preserve to the Indians the law of the *Shastras* and the *Quran* in the matters to which they have been invariably applied. While resolving the disputes pertaining to the personal laws, they followed the rules of evidence as laid down in *Shastras* and the *Holy Quran*. In other matters such as civil and criminal disputes, the English Common Law was followed. As part of the legal procedure, the rules of evidence as were prevalent in England were imported from English Common Law. Gradually the Principle of Justice, equity and good conscience were given priority in the proceedings and recording of the evidence.

The **Code of Cornwallis** (1786 to 1793) allowed women, irrespective of the religion, to give evidence. The Islamic rule of evidence, two women equal to one man was discarded by the Cornwallis Code. The Act X of 1835 for the first time made an attempt to codify the rules of evidence. In 1837, Act XIX abrogated the rule that a person once convicted could not give evidence. In 1852 an Act XV was passed by which parties to a civil litigation could be witnesses on their respective sides. In fact, between 1835 and 1855 there were eleven enactments touching the law of evidence and by Act 11 of 1855 all the enactments were consolidated. The
Evidence Act 11 of 1855 prescribed some rules of evidence to be followed in India, but Section 58 stated that ‘Nothing contained in this Act shall be so construed as to render inadmissible in any court which, but for the passing of this Act, would have been admissible in such court. So the Act 11 of 1855 did not prohibit the adoption of other laws such as rules of English system or the rules of Mohammaden Law in Indian Courts.

Before the passing of the Indian Evidence Act (1 of 1872) this country did not possess any uniform law on the subject of evidence. In the Presidency towns, the rules of the English law of evidence were followed, subject to such modifications as certain Acts of the Indian Legislature had introduced. Of these enactments, Act 11 of 1855 may be said to be the most important, but that Act, even taken with the others, was far too inadequate to supply a substantial code of the rules of evidence. In the Mufassil, where the English law did not prevail, there were scattered rules of evidence based upon the practice of the courts, which had never assumed any definite or systematic form. The practice had grown probably on the basis of the Mohammedan law, which continued to govern the administration of justice for many years, even after the advent of the British rule in India. That law was therefore more or less followed, especially in
criminal cases, till express enactments prohibited its operation. Act 11 of 1855, whilst laying down certain isolated rules of evidence, did not prohibit the adoption either of the English law or of the rules of Mohammedan law which, by custom or practice, had been followed by the courts. Indeed, Sec. 58 of the Act expressly laid down that “nothing in this Act contained shall be so construed as to render inadmissible in any Court any evidence which, but for the passing of this Act, would have been admissible in such Court”. The Act, therefore, did not operate to repeal the rules of evidence which existed before, and, although it did not require the courts to follow the English law or any other particular system of evidence, it did not at the same time preclude them from adopting the English rules of evidence where they appeared to be the most equitable. There is no hesitation in saying that, in the vast majority of cases, where difficulties as to the admissibility of evidence arose, the Mufassil Courts, guided as they were by Judges of the English race, usually and naturally adopted the English rules of evidence as their guide.

In British India, before the enactment of Evidence Act, there were three important sets of rules of evidence, namely, i) the sets of rules of evidence enacted by different legislatures; ii) the sets of rules of evidence settled by the
judicial decisions and; iii) the sets of rules of evidence based upon the personal laws, customary law of evidence, customs and usages etc. As a result, the procedural laws were followed in different courts in different ways. The law became uncertain. These difficulties were reported to the Privy Council.

In 1868, Sir Henry Sumner Maine, the law-member of the Governor-General’s Council, was asked to prepare a draft of Indian Evidence Act, basing on the recommendations of the third Indian Law Commission, 1861 but his draft which contained only 39 clauses was found not suitable to Indian conditions.

The Draft was referred to the Select Committee by the Legislative Council. There was a contradiction between Mr. Whitely Stokes and Professor Alan Gledwill as to the content of the draft code. Later, Sir James Fitzjames Stephen who succeeded Mr. Maine as Law member in Legislative Council brought about a brilliant compromise of the two separate reports submitted by the Select Committee and prepared a Draft Bill and presented before the Legislative Council in 1871. This bill was approved by the Legislative Council and received the assent of the Governor General in India on the 15th of March 1872 and became ‘Indian Evidence Act, 1872 (Act 1st of 1872), which came
into force on 1st September, 1872. The Indian Evidence Act, 1872 has codified the rules of English Law of Evidence with such modifications as are rendered necessary by the peculiar circumstances of this country. According to Rankin, “The Act is very clear, comprehensive and gives distinct knowledge of the subject, without necessary labour”. Before India attained Independence, the various princely States had adopted this Act as the law in their respective States besides the British Provinces.

Such was the state of things found by the Legislature when the Indian Evidence Act was undertaken as a legislative measure having for its object the consolidation of the rules of evidence and repeal of all others that had prevailed before. This appears from the express words of Sec. 2 of the Act; and the saving clause contained in the last paragraph of that section may be taken in fact, to have an extremely limited operation. The Act became law on the 15th March, 1872, at a time when the Legislature had also in hand an equally important measure connected with the consolidation of the rules of Criminal Procedure.20

20 Queen-Empress v. Babu Lal, 6 All. 509 : (1889) 4 A.W.N. 229.
 Courts established by Royal Charter

Within the Presidency towns, in the courts established by Royal Charter the English rules of evidence have always been followed. Such of these rules as were contained in the Common and Statute Law which prevailed in England before 1726 were introduced by the Charter of that year.\textsuperscript{21} Some others were rules to be found in subsequent statutes expressly extended to India; while others, again, had no greater authority than that of use and custom “cursus curiae est lax curiae”. Many of these rules consisted of those restrictions on the admissibility of evidence which Mr. Bentham attacked with such force at the commencement of the present century, and which have since been swept away under the enlightened auspices of Lord Denman, Lord Brougham, and others. India was not behind hand in the introduction of the reforms thus carried out in England. Act XIX of 1837 abolished incompetency by reason of a conviction for a criminal offence, and Sec. 1 of Act IX of 1840 extended to Her Majesty’s Courts of Justice in India the provisions of the 3rd and 4th Will. IV, cap. 92, as to interested witnesses. In 1843 Lord Denman’s Act (6 and 7 Vict. cap. 85) was passed, which enacted that no person offered as a witness should be excluded, by reason of

\textsuperscript{21} See ante, pp. 2, 3 and 4.
incapacity from crime or interest, from giving evidence either in person or by deposition, and in the following year Act VII of 1844 introduced similar provisions applicable to Her Majesty’s Courts in the Presidency towns. In 1846 the Statute 9 and 10 Vict., cap. 95, first declared parties to the proceeding, their wives and all other persons competent as witnesses in the Country Courts and in 1851 Lord Brougham’s Act (14 and 15 Vict, cap. 99) was passed, which declared the parties and the persons in whose behalf any suit, action, or proceeding might be brought or defended, competent and compellable to give evidence in any Court of Justice or before any person having by law or by consent of parties authority to hear, receive and examine evidence. Similar provisions were enacted for her Majesty’s Courts in India by : Act XV of 1852. The Evidence Amendment Act of 1853 (16 and 17 Vict., cap. 83, introduced by Lord Brougham) made the husbands and wives of parties to the record competent and compellable as witnesses; and the same reform was introduced into India by Act 11 of 1855.

**Courts not established by Royal Charter**

For the courts outside the Presidency towns and not established by Royal Charter, no complete rules of evidence were ever laid down or introduced by authority. There were, indeed, a few occasional directions, partly as to procedure,
partly as to evidence, to be met with in the old Regulations; and some few rules embodying the most striking reforms, then recently introduced in England, were inserted in Act XIX of 1853, the operation of which was, however, restricted to the Bengal Presidency. Two years afterwards, Act 11 of 1855 was passed. This Act reproduced with some additions all the reforms advocated by Mr. Bentham, and carried out in England by Lords Denman and Brougham; but nearly all its provisions presupposed the existence of that body of law upon which these reforms and were amendments engrafted; and yet it was authoritatively laid down that the English Law of Evidence was not the law in the Mufassil. It was

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22 By a Full Bench of the Calcutta High Court, in the case of Queen v. Khairull, 6 W.R. Cr. 21 B.L.R. Sup. Vol. App. II in which Peacock, C.J., said: “It is clear that the English Criminal Law was not the Criminal Law of the Mufassil, and that the English Law of Evidence was never extended by any Regulation of Government to criminal trials there. The Mohammedan Criminal Law, including the Mohammedan Law of Evidence, is no longer the law of the country. A Code of Evidence has not yet been passed, and we have no express rule laid down by the Legislature in any existing laws upon the subject now under consideration. By the abolition of the Mohammedan law, the hire of England was not established in its place. In the case of European British subjects, who are governed by the law of England, we must administer that law. But in the Mufassil, where the law of England is not the law of the country, etc.”

The state of the case was thus summarised by the Commissioners, appointed to prepare a body of substantive law for India, in their Report presented to Her Majesty: “India does not at present possess an uniform law upon this subject. within Presidency towns the English Law of Evidence is in force modified by certain Acts of the Indian Legislature, of which Act II of 1855 is the most important. This Act contains many valuable provisions. It extends the range of judicial notice, and facilitates the proof of documents, of foreign systems of law, and of matters of public history. It removes incompetency to testify by reason of interest or relationship; renders parties to suits liable to be called as witnesses, and makes husband and wife . . . competent witnesses for or against each other in civil proceedings; renders dying declaration admissible, though the declarant may have entertained hopes of recovery; provides that witnesses may be cross-examined by the party who called them and that they shall not be excused from answering questions because they may thereby criminate themselves. Declarations which were against the pecuniary interest of the persons who made them, and entries according to the usual course of business, both of which kinds of evidence the English law admits only in case of death, are under this Act
also further decided that the rules of evidence to be found in Hindu and Mohammedan law were not binding on Mufassil Courts.23

Before giving Independence to India, the Indian Evidence Act, 1872 had been amended only eleven times, namely by Act 18 of 1872; Act 3 of 1887; Act 3 of 1891; Act 5 of 1899; Act 10 of 1914; Act 39 of 1925; Act 31 of 1926; Act 10 of 1927; Govt. of India Act, 1935; A.O. 1937; and Act 1 of 1938.

D. Law of Evidence in Independent India (Post-independence Period)

After independence, there was merger of princely States into the Indian Union. Both the substantive law and the procedural laws had been uniformly applied in all the

admissible, if the person who made declaration or the entry has become incapable of giving evidence or if his testimony cannot be procured. The Act also gives to books regularly kept and to certain commercial documents the character of corroborative though not of independent evidence and makes entries in such books independent evidence of certain formal matters; it extends to the class of persons whose declarations are admissible in cases of pedigree, and provides in effect that, mistakes committed in the rejection or reception of evidence shall not lead to a new trial or to the reversal of a decision unless a substantial failure of justice has been caused thereby. The Act however, bears reference in many places to the existing law, and it appears to have been designed, not as a complete body of rules, but as supplementing to and corrective of the English law, and also of the customary law of evidence prevailing in those parts of British India, where the English law is not administered. The customary law has not assumed any definite form; the Mohammedan law, since the enactment of the new Code of Criminal Procedure, has ceased to have any validity in the Country Courts, even in criminal matters; and those courts have, in fact, no fixed rules of evidence except those contained in Act II of 1855. They are not required to follow the English law as such although they are not debarred from following it where they regard it as the most equitable”.

23 See extract from the Full Bench decision in the last Note; and Arbuthonots’ Select Reports (Madras), Preface, p. 27.
States whether British provinces or the native States. Later, the people of India gave themselves the Constitution of India and the Indian Evidence Act, 1872 is the law relating to evidence in all the courts in India.

The Indian Evidence Act, 1872 has been in force from the last one hundred and forty two years. However not many amendments have been introduced in it upto 1990. After independence, the Law Commission of India, in its 69th Report in 1977 expressed: “In dealing with the problem of making recommendations in the relevant provisions of the Act, the Commission has been fully conscious that the Act is a very commendable piece of legislation. The Act has always been regarded by teachers of law, jurists and judges as a model piece of legislation. The scheme of the Act and the meticulous and comprehensive manner in which its provisions deal with all relevant topics justly entitled it to a place of pride in the Statute — book of India”. However, it has suggested and recommended several amendments due to political, social, economic, legal and technical changes.

Immediately after attaining independence, the Government of India amended the Indian Evidence Act, 1872 by A.O. 1948; Act 40 of 1949; A.O. 1950 and Act 3 of 1951. After receiving the 69th Report of the Law Commission of India, the Indian Evidence Act 1872 has been amended

After 1990 several tremendous changes have taken place due to scientific inventions and revolution in information technology and the computers. The traditional contracts and relations among parties due to e-commerce, internet, computerized banking, credit cards, debit cards, telebusiness etc. have been increased. Similarly cyber crimes have also been increased.

Several amendments have been made to the Criminal Procedure Code, 1973 and the Civil Procedure Code, 1908. The Amendment Acts of 1999 and 2002 overhauled the Civil Procedure Code. The Information Technology Act, 2000 was also enacted. This Act 21 of 2000 and Act 4 of 2003 brought major amendments to the Indian Evidence Act, 1872.

**The Information Technology Act, 2000:**

The Second Schedule of the Information Technology Act, 2000 is related with the amendments to the Indian Evidence Act, 1872. Section 3, (additions of definitions), Section 22A, 47A, 65A, 65B, 67A, 67B, 73A, 81A, 85A, 85B, 85C, 88A, 90A, have been inserted and the Sections 34, 35, 39 & 131 have been amended. The third schedule contained the amendments to the Banker's Books Evidence Act, 1891.