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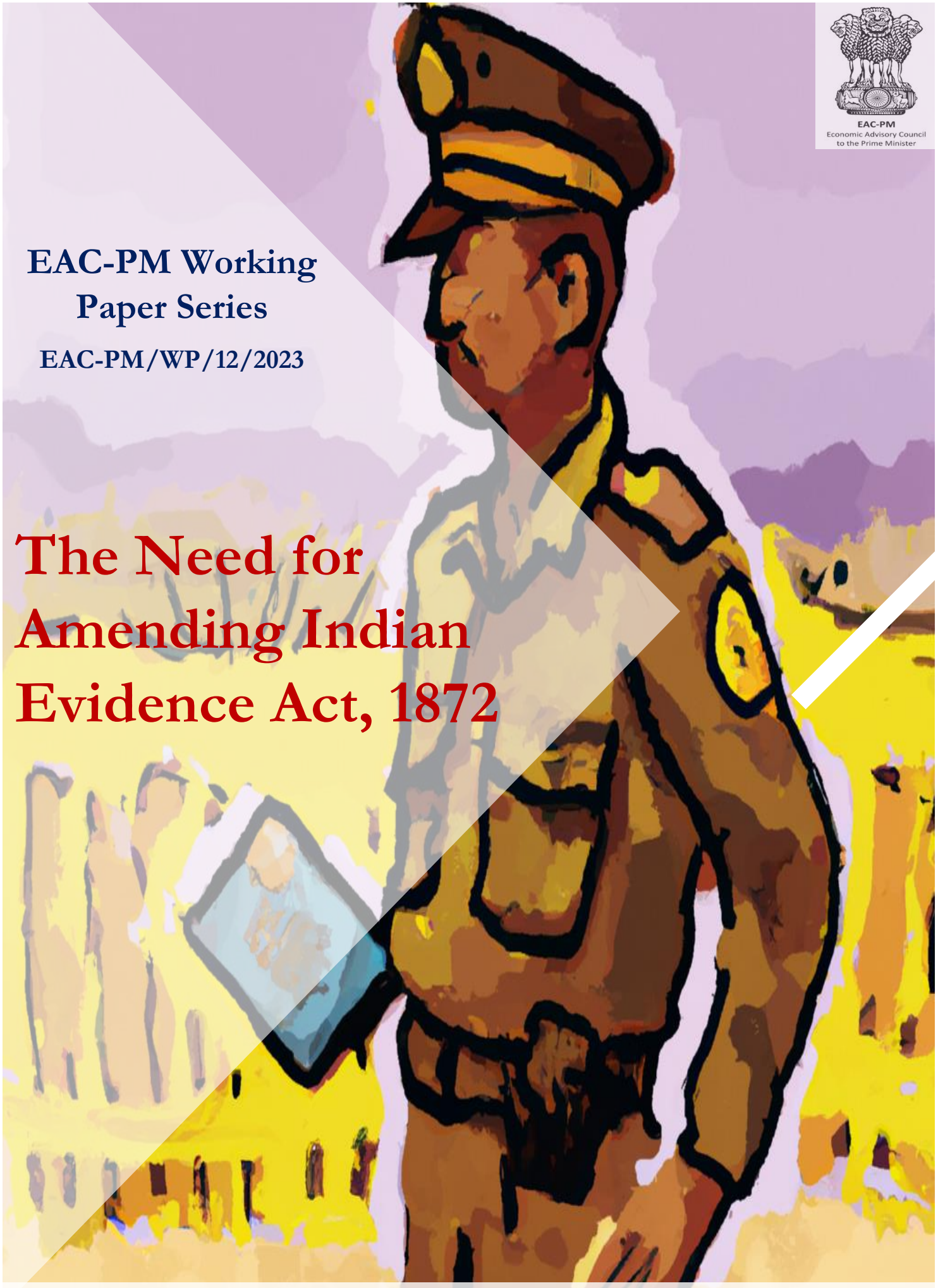
The Need for Amending Indian Evidence Act, 1872



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The Need for Amending Indian Evidence Act, 1872: Navigating the Path to Reform

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1. Introduction

The foundation of the Indian judicial system rests on four key elements: the Indian Constitution, the Civil Procedure Code (CPC), the Criminal Procedure Code (CrPC), and the Indian Evidence Act. While the Constitution guarantees fundamental rights, the CPC outlines the process for resolving civil disputes, and the CrPC governs the resolution of criminal disputes. The Indian Evidence Act of 1872 ('Evidence Act / Act') is the only law that applies to all disputes that require production of any form of evidence (documents, statements of an individual etc.)

Despite being introduced over 150 years ago in 1872, the Act has received only minimal amendments, leaving it woefully outdated and ill-equipped to address the complex issues of modern society.

Although the Indian Evidence Act continues to serve as a stable foundation for resolving disputes and protecting rights, it is also crucial to consider the need for modernization and the evolution of the legal system better to serve the needs of a rapidly changing society.

2. What is evidence?

As defined under the Indian Evidence Act, "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.*

Simply put, evidence is a piece of information submitted before a court or a tribunal to support/prove a crime (e.g., murder) or a civil dispute (e.g., whether a child is the actual inheritor of the properties after the demise of its parents). This information can be a document (death certificate of the parents, will / letter of administration, birth certificate of the child etc.), an individual making the statement that they saw 'x' murder 'y' or an individual 'a' confiding into 'b' that he/she saw 'x' murder 'y'. The Act majorly categorizes evidence into several heads and assigns importance / a form of hierarchy to such categories of evidence.

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3. Why is the act important?

Though the nature of evidence has evolved over the centuries with changes in technology and the dynamics of society, the Act has remained constant without any significant modifications.[2]Clearly, the mode,[3] source,[4] and nature[5] of evidence[6] not only vary case-wise but also help determine the weightage of the evidence, i.e., to what extent it can influence a case / convince the judge.[7] Thus, the outcome of a legal dispute is primarily determined by the quality and nature of evidence presented by the parties involved. It is crucial to ensure that obtaining evidence adheres to fundamental principles of dignity, ethics, legitimacy, and other relevant standards. With advancements in technology and the increasing use of digital evidence, it is imperative that the law is updated to accommodate various forms of evidence and their corresponding standards of proof, witnesses, and exceptions. This paper aims to identify sections of the law that require modification or deletion and provide practical recommendations for amending the law based on proposals from various interested groups.

4. The Evolution of Evidence Act (1872-present)

The Act of 1872 was passed by the British Parliament, which superseded the theories of Dharma Shastras[8] and Muslim Jurisprudence that directly dealt with oral, documentary and hearsay evidence.[9] Before the Act came into place, several other Acts were brought about to introduce reforms into the unstructured standards of evidence that were followed all across India.[10] Apart from the Presidency Courts, it was an amalgamation of Hindu laws, Muslim laws, customary laws and a few stretches of English laws that were applicable to the mofussil regions without being binding as such.[11] Such a situation of non-uniformity not only created chaos in the administration of justice but also prompted confusion in the minds of the puisne judges who had no access to the English Evidence Act but were often confronted with barristers arguing their cases based on the same. Thus, to lay to rest this confusion, Sir James Fitzjames Stephen's work on evidence gave way to the Indian Evidence Act of 1872.

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[2] The two recent but minor modifications were in the year 2002 which prohibited asking of questions related to the general immoral character of a prosecutrix in rape cases and again in 2005 which included one subsection to s. 154 of the Act. The only major modification to the main body of the Act was in 2000 when the manner of admission / furnishing of electronic evidence were included within the Act.

[3] Evidence can be either oral or documentary.

[4] Evidence is mainly categorised as primary or secondary.

[5] Another category of evidence can hearsay evidence, circumstantial evidence and the likes.

[6] For the sake of convenience, evidence and information has been used interchangeably

[7] Sometimes it is not possible to procure fool proof evidence (primary evidence) to support one's claims. That is when one must complement their claims by providing various secondary / additional categories of evidence from which any reasonable person can draw a conclusion as to the truthfulness of the claims.

[8] Patrick Olivelle, in his book 'Dharmasutras, The Law Codes of Apastamba, Gautama, Baudhayana and Vasistha' mentions that one of the earliest Dharma writers, Vasistha mentions the use of written judicial proceedings in his texts. (Ref to Introduction, page no. xxxiii)

[9]Introduction to Indian Evidence Law, 28th August 2017, Available at: https://lawtimesjournal.in/indian-evidence-law/, Last accessed on: 22nd December 2022; See also: Abdur Rahim, Principles of Muhammadan Jurisprudence, pg. 60

[10] Two major Indian Evidence Act that were in force before the current Evidence Act was introduced were the Act XIX of 1853 and II of 1855

[11] George Claus Rankin, 'Background to Indian Law' (1946), pg. 112

5. The Structure of the Indian Evidence Act

The Act consists of 3 parts which are further subdivided into 11 chapters. The Act starts with the usual short title and commencement, followed by the definitions of the most common terms that are frequently used in the course of the completion of the proceedings of the cases. These terms are clubbed under the heading 'interpretation-clause'. Once the common terms like 'Court', 'fact', and 'fact in issue', are covered, the technical terms like' proved', 'disproved', 'may presume', 'shall presume', and 'conclusive proof' are also defined.[12] Of the definitions, the term evidence is also included. These terms are used equally in civil, commercial as well as criminal cases.[13] What is curious is that part one is headed under the term 'Relevancy of Facts' and not just 'on relevancy' as compared to part two, which is 'on proof'. Chapter I of Part 1 contains a list of terms that aid in interpreting evidence and documents in a case. This section is categorized as preliminary. Following this, Chapter II, titled 'of relevancy of facts' aims to clarify through examples the meaning of the term "relevancy of facts," which refers to the transactions, communications, business decisions, or any set of facts that contradict another set of facts and their relevance to a case.[14] Chapter II has another sub-heading, 'admissions.'[15] Under this sub-head, for the first time, a clear distinction is set out in the form of civil and criminal evidence in the form of admission and confession. What is interesting is that the first section reads as 'admissions defined'[16] while the subsequent term confession is not defined. Nor does this term find mention in the interpretation clause. Though not expressly mentioned, a difference in the standard of evidence, burden of proof etc., in a civil case as to that of a criminal case is reflected in the provisions. The subsequent provisions explain the status of those who can make an admission, confessions, and the extent to which a confession needs to be proved. Thereafter, the Act lists those who can give statements but are not qualified as 'witnesses' per se. This segment is under a different sub-head and is replete with several illustrations. This segment also includes references to public documents such as maps, charts, notifications etc. This chapter includes a significant section on "how much of a statement is to be proved." It specifies the relevant parts of a longer document that require proof in a particular case but lacks illustrations to provide further clarity. The last two sections of Chapter I discuss the relevance of judgments in a case and the nature of character proof. Chapter II focuses on "proof" and outlines facts that the judiciary must take notice of, facts that require proof, and those that do not. Chapter IV has only two sections that pertain to "oral evidence" and its proof and nature. Chapter V, "documentary evidence," describes primary and secondary types of documents and explains in detail how to submit electronic and secondary evidence to the court and how to prove them if certain submission requirements are not met. This chapter includes the recent amendment of section 65B. Chapter VI addresses situations where oral evidence

[12] The idea of may presume and shall presume indicates the finality in the nature of presumptions which the courts are allowed to make due to the obvious / non-obvious nature of the facts or evidence.
[13] The degree of proof varies from criminal to civil cases.
[14] A series of facts frame up a particular dispute / crime. Therefore, only those facts which are relevant to the 'issue' are required to be ascertained to complement the speedy resolution of the case.
[15] A sort of conclusion to a fact or a statement with the help of an oral or written statement by an individual who is aware of the same.
[16] All the definitions are included in the interpretation clause. Admission is the first such term which finds mention in the later section. Interestingly, it is also an interpretation term but is excluded from the interpretation clause.

is replaced by documentary evidence and identifies documents that do not require oral evidence supplementation. Part III of the Act deals with the production and effect of the evidence and covers Chapters VII to XI. Chapter VII deals with the 'burden of proof'.[17] Chapter VIII is dedicated to 'estoppel', which in other words, means to stop. It specifically deals with those aspects when someone is stopped from giving a certain form of evidence and the extent to which they are allowed to deny a specific set of facts. Chapter IX which is titled 'of witnesses', is intrinsically linked with the penultimate chapter X that deals with the examination of witnesses. Chapter IX elaborates on who can testify in a court and the nature of the testament of a witness who is unable to communicate verbally. The order of examination and the nature of questions that can be put (both in examination-in-chief as well as cross-examination) are laid down in the next chapter. A crucial aspect of the relationship between husband and wife, and their being a witness against one another, is also discussed in this chapter. It also includes the provision where a party can ask a question to its own witness, corroboration, the power of the judges to require the production of certain documents, ask specific questions etc. The last and final chapter, i.e., XI, expressly states that evidence which was improperly admitted or rejected should not bring about a new trial or result in a case decision being reversed. It is a form of protection since the evidence is an intermediate stage of a case, and therefore, a technical fault of sorts should not hamper the entire case.

6. Reforms to the Indian Evidence Act

Touted to be the most comprehensive of legislations, approximately eight reports have been tabled majorly with the intent to make amendments to the Evidence Act. Some secondary reports associated with criminal justice reforms have also impressed upon the need to modify the Act. The 74th Law Commission Report gave its opinion on the proposal to modify section 33 of the Indian Evidence Act to make admissible the witness given by a person before a commission of inquiry or other statutory bodies. Thereafter, the sole focus of the 88th Law Commission Report was on government privilege, i.e., the right of the government to withhold certain documents from being produced as evidence. The 91st Law Commission Report suggested the modifications that are required to be introduced into the Evidence Act to facilitate the presumption of evidence regarding dowry death. Thereafter the 113th Law Commission Report suggested amends to be introduced into the Evidence Act so that injury to an individual while in police custody also draws liability and the requirement of proof. All these amendments were proposed till the late 90s. Subsequently, in the 2000s, three more reports were tabled, one of which was a review of the Evidence Act in the year 2003. It was tabled soon after the last amendment to the Indian Evidence Act. The two other reports introduced in 2001 and 2017 are part of miscellaneous amendments proposed to both civil and criminal provisions in the Evidence Act. Of all the above, two law commission reports, i.e., the 69th and the 185th Law Commission Reports, exclusively dealt with amendments/modifications that can make the Indian Evidence Act better suited to modern India and provided a review of the Act in force.

[17] Burden of proof means the liability to prove a particular fact or statement. Depending on the nature of the case, a party has to prove a particular fact. If X claims that he withdrew a certain sum of money from his account, it will be his responsibility to give proof of the same. So, it can be concluded that the burden of proof to show that X withdrew money lay on 'X'.

The 69th Law Commission Report was submitted in the year 1977. Thereafter, as mentioned, a few more reports were also submitted. Notably, one of the major modifications/amendments were carried out in the year 2002.[18] It was stated that the 69th Law Commission Report ("Report") was no longer an adequate report considering the major changes in technology as well as the format of legal practice that has taken place. Thus, there was a requirement to prepare another report that would take into consideration the current scenario and, therefore, be able to suggest succinct changes. The 185th Law Commission Report ("report /Committee Report") was then submitted in the year 2003. However, no subsequent amendments have been brought about in the Evidence Act. An amendment bill was introduced in the Lok Sabha in the year 2017 with a minor modification.[19]However, the same was not passed. This paper attempts to discuss those provisions which require modifications under the current Act, the proposals that were put forth in the Law Commission Reports but are yet to be implemented and whether there is a need to overhaul the Act in its entirety besides discussing a few prominent aspects highlighted in other Committee Reports as well.

7. From the 69th to 185th Law Commission Report

Though the few amendments to the Indian Evidence Act is a testament to the utility and comprehensiveness of the Act, there have been two major attempts to both modernize as well as Indianize the Act. The 69th Law Commission Report, published in the year 1977, spreads over a formidable eight hundred-plus pages and deals with each aspect of the Act. Published in three parts that are further divided into 100 chapters, it is a comprehensive report aimed to usher in a mammoth change to the extant Act. Thereafter, building up on the previous report, the 185th report was published in 2003. This report was published in 3 parts: 3 chapters and one Annexure (The Indian Evidence Amendment Bill, 2003). Apart from the introductory chapter, the second chapter reviewed the provisions of the erstwhile Act, and the third chapter was a summary of all the recommendations. Since the recommendations are endorsed by both the reports are discussed in greater detail in the subsequent chapter, the departures, differences a few alterations (non-exhaustive)[20] between the two reports[21] are highlighted hereunder:[22]

[18] Notified in the Gazette of India by Act no. 4 of 2003

[19] Bill no. LXVII of 2016. Proposed introduction of section 114B; Presumption in prosecution of custodian death or injury.

[20] The 69th report has minutely assessed each and every section of the Indian Evidence Act. Every technical as well as typographical issue has been flagged in that report. The 185th report has built upon it and has taken up each aspect dealt with in the 69th Report. As much as it has retained the changes proposed in the report, the 185th Report has also introduced new proposals, made structural modifications to the proposed amendments of the 69th Report. The aforementioned table is merely an attempt to introduce a few of the changes so that an idea can be derived as to the comprehensiveness of the two reports. This table does not include the entirety of changes or proposals that were mentioned in the two reports.

[21] The text of the report refers to clauses. The same has been referred in this paper as sub-sections.

[22] A few technical modifications such as the name of an amended Act etc. has not been included under this table.

Section No.	The 69th Law Commission Report	The 185th Law Commission Report
3 (Court)	The Law Commission made a brief note of the various tribunals, commissions, administrative courts, the position in England and the US and opined that the definition of Court should be restrictive, incorporated the term 'revenue court' after civil and criminal and proposed to leave certain avenues for the state and the centre to declare some specific bodies as Courts for the purposes of the Evidence Act. This Report specifically excluded the arbitrators from the scope of a Court.	This Law Commission stated that the proposition in the 69th report to leave open avenues for inclusion of bodies as Courts in future is an obvious position and therefore does not require an express mention. Also, the report suggested that the inclusion of all revenue courts would bind these bodies to follow the strict rigours of evidence which can hamper the process of delivering justice. The final suggestion by this Commission was that no apparent changes were required in the definition of 'court'.
3 (Document)	The Report drew inference of the 60th Law Commission report which suggested change to the definition of the term document. This Report did not further go into any elaboration but suggested that the same definition be included. The only change was to expand the scope of the term document by changing the arrangement from 'document means…' to 'document includes.'	The 185th report has retained the definition proposed by the previous Law Commission. The explanation that was proposed in the previous report has been slightly expanded to include two terms 'decoded and retrieved'. The explanation to the definition previously stated that the means by which such documents are formed is immaterial. Given the fact that these two reports came after a span of 26 years, it is indicative that the law commission has taken into consideration the electronic form of documents as well as technical / scientific documents so as to include the aforementioned terms.
3 (Facts)	The Law Commission Report suggested that the beginning of the definition as fact means is sufficient in itself and should not require the term 'and includes'.[23] These two words, as stated in the report are confusing and inaccurate.	The 185th report also suggested same changes to the definition.
3 (Facts in issue)	Proposed that the term 'and includes' be dropped.	This report retained the proposition of the 69th report.
Other definitions	The Law Commission Report initially proposed a definition of the term Judicial proceedings. However, since the report suggested an alteration to	The 185th report does not include any definition of the term judicial proceeding. It suggests that the term

[23] In general parlance, the term and includes would limit the scope of what can be included in a fact. And includes is an indicator of the exhaustive nature of facts. This is in direct contravention with the beginning where it is clearly stated that fact means [and includes] anything. The term anything conflicts with the connotation 'and includes'.

Section No.	The 69th Law Commission Report	The 185th Law Commission Report
	the definition of Court, which according to the report was 'court proper', there would be no requirement of further defining the term judicial proceedings. This Report further suggested a small inclusion, the definition of the term admissible as 'admissible in evidence'	is better defined based on the particular provision of the statue. The same definition of the term admissible has been suggested in this report as well.
5 (Evidence of relevant facts and facts in issue)	An amendment to section 5 was recommended, especially in the explanation part where civil code is mentioned. The recommended explanation was to cover those areas where CPC was not in force.	This report observes that the existing provision of explanation covers all territories and therefore, no amendment was suggested.
10 (Things said or done by conspirator in reference to common design)	The Report emphasised that two major conditions are required to be included in this section. Since this section deals with anything that is said or done in reference to a common design, it is essential to set out that the existence of a conspiracy and involvement of two or more persons are facts in issue or relevant to the case in question.[24]	The 185th Law Commission Report has also retained this proposal with a further suggestion that the illustration which is included after this section be dropped. N.B.: The previous Report had suggested that the illustration is to remain as it is with consequential changes that maybe necessary.
11 (to the relevancy of facts)	One of the main aspects that the Commission was concerned about in this section is that it has been rendered considerable elasticity in interpretation.[25] Hearsay evidence, its admittance and the dangers associated with such evidence were also discussed under this head. A conflict situation that could arise in relation to section 32 was also mentioned.[26] Based on such observations, the Commission suggested an exception which made section 11 partially dependent on another section.	This Commission differed considerably on this aspect. According to the report, the view proposed would be entirely contradictory to the idea, which stated that sections 11 and 32 are entirely separate sections and have been endorsed in a few judgements as well. The Commission also took note of the fact that a contrary view has been adopted by a few judges as well. Based on such observations, the Commission proposed that those facts which will be relevant under

[24] These two were set out as subsections in the proposed amendment to section 10.
[25] The words highly probable or improbable resulted in varied inferences in different cases. Thus, chances of drawing inference from evidence were also seen in some cases.
[26] It was suggested that those evidence which could not be admitted under section 32 would be possible to be admitted under section 11. So, different views arose that section 11 must be read in light of other provisions while another view was opposed to it. Another view was that while section 11 dealt with facts, section 32 deals with statements. So, there is no scope of conflict.

Section No.	The 69th Law Commission Report	The 185th Law Commission Report
		this section but cannot be made relevant under any other section would then be left to the discretion of the Court for admittance under section 11.
12 (relevancy of determination of amount)	The Commission had proposed that the word damages used in this section should be replaced by compensation. The Commission studied in detail the etymological differences between the two. The major indicator was that in criminal cases, the tendency is to use the word compensation, while civil cases mostly refer to the term damages.	This report agreed that the two terms are used in different scenarios. This report also pointed out the cases which are quasi-civil in nature and stated that the term used in those is 'compensation'. Thereafter, the Commission Report suggested that rather than replacing the term damages with compensation, it is better that both terms are retained in the wording of the section.[27]
13 (question of custom and right)	The Commission, while dealing with the aspect of customs, considered that it is essential to clarify the concept of transactions. It proposed to include an explanation where a transaction would be illustrated, and what parts of the transactions would be relevant was also highlighted. [28]	The 185th report dealt in detail with the explanation provided in the 69th Report. Analyzing a few case laws, the report concluded that the relevancy of certain parts of the transaction was a default. Therefore, a minor modification was suggested in the same. [29] The second proposal related to recitals was dropped by this Commission, and a modified explanation was suggested.
15 (act: accidental or intentional)	The Commission suggested that no modification to this section is necessary.	This report differed in their opinion. The section deals with a series of similar occurrences. The intent is to establish a linkage with a similar occurrence to the same individual. However, the report opined that the 'same individual' who is being talked about is not clear and suggested that

[27] What this Law Commission report does not include is that in case the word compensation is to be included, it must be set out in detail that the term is used to refer to either criminal or quasi-criminal matters and not civil. Though, the report did not set out the draft, it should have been included that the terms criminal and quasi-criminal be included within the body of the section as well. In this section, a discussion to broaden the scope from mere suits for damages to claims of compensation would have been welcome.

[28] A legal proceeding was considered a transaction. While the judgement was deemed relevant, the set of facts was not.

[29] The Report suggested that the set of facts should not be set aside. The report gave examples of two different natures of property and the corresponding conclusions that can be drawn from them. Thus, the fact 'nature of the property' becomes important. Based on the same, the report concluded that the facts will be relevant but not the reasoning contained in the judgement.

Section No.	The 69th Law Commission Report	The 185th Law Commission Report
		the term 'the person doing the act…' be replaced with the 'same person…'
18 (admission)	The section, in consideration of the Commission, required changes in structure, expression, substance and arrangement. A draft was also suggested to that extent.[30]	The 185th report built on this draft and suggested a few minor structural amendments.
21 (proof of admissions against a person)	The Commission concluded that this section should deal with the negative as well as positive aspects of admission, i.e., admissions that can be proved and those that cannot be proved. Proceeding on this concept, the opening of the section was termed to be ambiguous, and the section was proposed to be split into two with detailed information on those admissions which can be proved and those which cannot be proved.	The 185th report seconded this proposal.
22 (oral admission as to the content of the document)	This Report proposed to rectify a perceptive error. It suggested that the last phrase of the section which stresses states that the latter part of this section cryptically worded and suggests a structural change.[31]	The Commission Report agreed with the recommendation put forth in the 69th report.
23 (admission in civil cases)	The Commission proposed that this section lacks the inclusion of a proposal of a settlement which should be included within its scope. It was suggested that a settlement and its nature is also not to be used against the individual in the case be included in the form of an explanation.	This report considered several other aspects which needed to be considered. Therefore, rather than including an explanation, the report proposed a redraft of the section and also suggested a reference to the proposed section 132A, which should be read along with this section.[32]
Proposed 26A	The Report drew the inference from the position in UK and US and suggested that there should be a provision for admittance of any form of confession made before police officers. The Report further suggested the forms of precautions that are to be	This report assessed several cases post-1977. It also mentioned the particulars to be followed by such police officers in the D K Basu case. The report finally concluded that the situations are not ideal for implementing such a section and

[30] The Commission had reported that the same language was not used in the paragraphs. Suits and proceedings were used in the paragraphs which was objected to by the Commission. It was further suggested that the aspect of admission by parties and agents be dealt in two different paragraphs rather than being dealt under one head.
[31] The last part suggests that only if the genuineness of a document that has been produced is in question, the oral evidence of the same is allowed.
[32] This proposed section is in relation to disclosure of source of the publication by a journalist.

Section No.	The 69th Law Commission Report	The 185th Law Commission Report
	adhered to in case such forms of confessions are to be admitted.	therefore suggested that such a proposal should be dropped.
26 (Confession by accused while in the custody of Police)	In the explanation part of the section, the Committee suggested that the section should be modified to include the term 'unless it is recorded by a Magistrate under section 164 of the Code of Criminal Procedure'.[33]	This Committee suggested that in light of the latest report to amend the Code of Criminal Procedure, which suggested the addition of section 164A, it is ideal to just include 'recorded by a Magistrate in accordance with Chapter XII of the Code of Criminal Procedure, 1973.'
27 (to prove: information received from accused)	This section was deemed to be a proviso since the section begins as 'provided that….'. However, confusion persisted as it was unclear as to which sections were covered under the scope of the proviso. After much deliberation, it was recommended that this section be re-introduced as a proviso to sections 25 to 26.	The 185th Committee Report differed slightly in opinion and, after assessing several cases, concluded that this section is an exception to section 24 as well.
29 (Confession otherwise relevant not to become irrelevant)	The 69th Commission Report suggested that section 29 be made subject to section 164(2) so that those confessions become inadmissible in which the procedure has been violated by a magistrate.	In the 185th report, however, it was suggested that it is essential to add a new subsection be added since the exception set out in the 69th report does not fall in line with the Kehar Singh case. Therefore, it was suggested that as much as a confession under 164(2) would be inadmissible, the same would be without prejudice to section 463 of CrPC.
30 (Proved confession in joint trial)	The Report suggested that this section should be repealed.	This report suggested a minor modification to the section as opposed to the previous suggestion of repealing the section.[34]
32 (statement of relevant fact by a person who is dead or cannot be found)	The Report suggested that the opening of the section should be amended to the tune of section 33. The reason for the same was that the current structure of the section resulted in the exclusion of certain classes of persons. Also, a few terms were suggested to be modified in tune with section 33.	This Committee Report agreed with the suggestions put forth. The report also found a few suggestions regarding the clauses running contrary to the Supreme Court decisions and therefore dropped them. A subsequent proposal of splitting up clause 2 of this section was

[33] This suggestion was in light of the procedure where the power to record confession is given to only judicial magistrate and the metropolitan magistrate.

[34] The confession of one person in a joint trial, as per this amended proposal, should be taken into consideration by the court as 'lending credence' as against the other.

Section No.	The 69th Law Commission Report	The 185th Law Commission Report
		agreed upon by this Committee. The Committee took note of the detailed discussion in the 69th Report regarding boundary recitals. Having contradicted the opinion held by the previous Committee, a modification was also suggested to clause 7.
33 (Relevancy of certain evidence for proving, in a subsequent proceeding, the truth of facts therein)	The Report highlighted an inversion which the Privy council had interpreted as a departure from English laws.[35]	The previous Report did not delve much into the observation by the Privy Council. This Commission analyzed the cases of Hindu Law, which, according to the Privy council, was the reason for such an inversion and suggested that no such scenarios could be made out, as suggested by the Privy Council. Thus, the Report agreed with the modifications suggested by the 69th Law Commission.
38 (Relevancy of statements as to any law contained in law books)	The Report pointed out the inconsistency with regard to Indian laws since the section is very broad in nature. Therefore, it was suggested that this section be narrowed down so as to exclude the Indian Laws from its scope.[36]	The 185th Law Commission Report considered it a relevant inclusion and suggested that the proposal in the 69th Report be implemented.
41 (Relevancy of certain judgments in probate, etc., jurisdiction)	The Report dealt in great detail with various aspects of this section. One particular aspect which this Report considered essential to be mentioned specifically was with respect to lunacy jurisdiction. It also pointed out the scope of negative orders and opined that an order refusing probate would not fall under this classification.	The 185th Committee disagreed with the requirement of a special mention of lunacy jurisdiction. However, this Committee agreed with the explanation as to negative order. Therefore, the refusal to grant probate being outside the scope of this section was recommended as an explanation for this section.
Proposed 44A	A proposal was put forth by the Committee for setting aside those judgements against a minor which might be the result of gross negligence of a guardian or next friend of a minor.	The 185th Committee disagreed with the inclusion of such a provision since it did not think that it was necessary to include a separate provision dealing with this topic.

[35] The proviso u/s 33 apparently gave the impression that in the two proceedings that are being talked about, the parties need not be same. The Privy Council considered it as a deliberate departure which the 69th Committee suggested, be rectified.

[36] This section lays down that when the relevancy of any law is to be considered, any books, prints, ruling of courts are relevant in that matter. However, this is contrary to the principle 'the Judge knows the law' (mainly referring to the law of the land). Therefore, it was suggested that Indian Laws be excluded from the scope of this section.

Section No.	The 69th Law Commission Report	The 185th Law Commission Report
Proposed 45B	This Report took note of instances when a foreign law is invoked by a party. To be able to refer to such foreign laws, there is a requirement to redraw certain arrangements with India. Since some similar statutes relating to British India were not repealed, those statutes were expressly mentioned in the amendment.	The 185th Committee agreed, in essence, to the arguments posed in the 69th Report. However, the wording of this proposed section was amended, and they did not include a reference to the two statutes mentioned in the previous report.
48 (Opinion as to the existence of right or custom, when relevant)	This Report took note of the various provisions which made reference to the general rights and customs. Thus, it concluded that the nature of the wordings used in section 32(4) is the widest, and the same should be incorporated in this section.	The 185th report suggested that the proposal of the 69th Report should be incorporated accordingly.
50 (Opinion on relationship, when relevant)	This Report suggested the addition of a clause that would refer to other laws which regulate the punishment of bigamy, dissolution etc.	This report merely suggested that there could be other situations apart from dissolution and bigamy. It also suggested the construction of a general clause which would cover both dissolution and bigamy. At the same time, the proviso to section 50 was proposed to be substituted.
Proposed 53A	This is a wider scope of the proviso added under section 146 (3), which restricted the questioning of the character of the prosecutrix in a variety of sections, as included under 376-376E.	The 185th Law Commission agreed that this section should be introduced into the Evidence Act.
55 (Character as affecting damages)	The 69th Report suggested that libel action in defamation cases should be made relevant under this section.	The report departed from the opinion of the 69th Law Commission and suggested that no amendments were necessary to this section since the aspect discussed in the 69th Report is case-specific and special provisions with regard to such cases are not necessary.
Proposed 57A	This Report suggested that the power of the court to take judicial notice of matters related to foreign states should be covered under this section. It further proposed that a similar provision under CPC should be deleted, and this section should cover both civil and criminal aspects of matters related to foreign states.	The 185th report further expanded the scope of this section to include the procedure for the grant of a certificate as contained in section 6(1) and (2) of the Foreign Jurisdiction Act, 1947.

Section No.	The 69th Law Commission Report	The 185th Law Commission Report
59 (Proof of facts by oral evidence)	The Report observed that the section was worded in such a manner that a negative connotation is affixed to it. It indicates a mandate a document's content can never be proved via oral evidence. However, the report suggested no amendments to that effect.	The Commission opposed the lenient view adopted in the 69th report and proposed that the section be modified to put an end to all forms of controversies.
60 (Oral evidence must be direct)	The Report suggested that a proviso be included in this section wherein the right to examine experts is left to the discretion of the courts.	The Commission opined that the previous report, though discussed in detail the aspect of discretion of the court, the draft proposed was unable to enumerate the same. Therefore, a modified version of the section was presented in this Report.
63 (Secondary evidence)	The Committee deliberated extensively on this section since this it lays down the scope of secondary evidence. It was considered to be exhaustive due to the inclusion of the term 'means and includes'. Therefore, it was proposed that the word means be dropped from the body of the section. A few more modifications were also included to further modify the scope of this section.	The 185th Committee agreed to the proposals so made.
65 (a) [Cases in which secondary evidence relating to documents may be given]	With regards to the production of documents by a person, the Commission opined that the section should also include, within its ambit, those persons who are in possession of a document and are not bound to produce it but also refuses court orders to produce it.	The 185th report took note of the recommendation and split up the clause into further sub-parts, and incorporated the changes.
68 (Proof of execution of document required by law to be attested)	The Report suggested the practice of calling at least one witness to prove the veracity of such a document. The Report highlighted the practical disadvantages, the concept of registration, a document having exceeded a certain time as qualifiers which can do away with such a stringent requirement.	The 185th report suggested that this section be restricted to only the case of wills and no other form of documents.
69 (Proof where no attesting witness found)	This Report, in line with the recommendation made in section 68, suggested that the term 'document' be replaced with 'will.'	The 185th report agreed with the suggestion.

Section No.	The 69th Law Commission Report	The 185th Law Commission Report
70 (Admission of execution by party to attested document)	The Report suggested that this section also, rather than using the broad head of the document, restrict itself to the admission of execution of a will. It further modified that such an admission during a pleading/proceeding would be a sufficient admission of proof.	This Committee further explored the case laws post the submission of the 69th Report and highlighted an observation of a Kerala High Court judgement which remarked that generally will related matters come to court post the death of the executor. Therefore, the suggested amendment was modified to include '….. if such admission is made during his lifetime in a pleading or otherwise in the course of a suit or proceeding,…' as sufficient proof of admission at a later stage.
71 (Proof when attesting witness denies the execution)	With regards to this section, the Report suggested that the term 'document' be replaced with a will. Also, as its stand on the calling of witnesses, it opined that the procedure of calling witnesses should be done away with. Accordingly, an amendment was suggested.	This Law Commission Report did not agree with the proposal of doing away with the calling of a witness. Therefore, a modified draft was proposed where another form of evidence was allowed to be admitted when the witness refused/was unable to recollect the execution of the will.
73 (Comparison of signature, writing or seal with others admitted or proved)	The Report suggested that the term 'purported', as found in the body of the text, has been subjected to varying forms of interpretation by several courts. Therefore, it was suggested that the term 'purported' be replaced with 'alleged'. It also suggested that it be clarified that comparison of such signatures etc., be not restricted to the court and be left open to experts. An exception was also included in that the provisions of this section will not be applicable to criminal cases where courts are yet to take cognizance of the same.	The 185th report expressed its consonance with the provisions so suggested. However, a modified form of the draft was suggested in this section.
76 (Certified copies of public documents)	A few explanations were added to this section so that the right of the person to seek inspection of a document is clarified, irrespective of whether the person has the right to inspect the document or not.	The Committee agreed with the explanations. However, it was of the opinion that one of the explanations was not clearly formulated and therefore presented a modified version of the same.
80 (Presumption as to evidence)	The Report suggested that this section be expanded to include those statements that are recorded by a Magistrate under section 164 of the	The 185th Commission agreed to the proposal.

Section No.	The 69th Law Commission Report	The 185th Law Commission Report
	Criminal Procedure Code. This would also cover the dying declarations, which are currently not covered by section 80.	
81 (Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents)	This Report suggested that the presumption of the genuineness of a document (a gazette from that of the British Crown or territory) by the Indian Courts should be restricted to those till August 1947.	The 185th report concurred with this suggestion.
82 (Presumption as to document admissible in England without proof of seal or signature)	Since this specific section was dedicated solely to the documents of England and its nature of admissibility, it was considered no longer necessary to be retained.	The Commission agreed to the proposal of deletion of this section.
81A As proposed in the 69th Report	This Commission proposed that a section be introduced on the aspect of admissibility of documents relating to registration of birth. In the absence of any such provision in the Central Acts, it was proposed that such a provision be included under the Evidence Act.	The Committee opined that this proposal does not fit in between sections 81 and 82. Further, in light of the amendment of section 81A, it was no longer necessary to discuss the amendment proposed in section 81A (as per the 69th Law Commission Report).
83 (Presumption as to maps or plans made by authority of Government)	A technical amendment was suggested to clarify the stand that any map curated for a 'particular' cause must be proved. The previous wording, 'any cause….', was considered rather vague and broad.	This Commission agreed with the suggestion and also proposed the inclusion of a 'Chart' in this section.
87 (Presumption as to books, maps and charts)	As previously proposed, this Report again stressed the inclusion of the term 'plans' in this section. Also, the part which deals with the statement of facts, in the opinion of the Commission, needs elaboration.	The Commission agreed with the proposal and provided a draft of the amendment.
90 & 90A (Presumption as to documents and	This Report took into consideration the State amendment made with respect to this section. The Report proposed that UP has made ideal modifications and suggested that the	The 185th Commission also agreed accordingly.

Section No.	The 69th Law Commission Report	The 185th Law Commission Report
electronic records)	same be incorporated into the main section as well in the form of sub-section 90(1).[37] An insertion was suggested in section 90(2). Section 90A was construed to be slightly narrower. It intended to cover certified copies of original documents which were registered, and the execution of the original was on a date less than 20 years from the date of production of the certified copies in the Court.	
92 (Exclusion of evidence of oral agreement)	The Report stressed on the fact that a modification to be made to the existing section by splitting the section into two sub-sections. It is essential to be clarified that this section is not applicable to unilateral documents, which legally require to be reduced to writing and also the position that this section is, in essence, a corollary to section 91.	The report agreed to the discussion and suggested accordingly to introduce the changes.
99 (Who may give evidence of agreement varying terms of the document)	The Report suggested that this section be appropriately worded so as to clarify that this section applies to both strangers and strangers-party to an agreement/document. This Report further clarified that extrinsic evidence be allowed under this section to be clarified via modification of the text.	This Law Commission agreed with the suggestions put forth.
101 (Burden of Proof)	No amendment was suggested to this section. However, a broad set of principles which are usually followed in civil and criminal cases were laid down in detail. The main body of the text was not altered.	This Commission made an observation that the principles being basic and well-known, would not require further deliberation.
107 (Burden of proof: death of a person)	The Commission considered the proposal of the High Court of Mysore which suggested that the provision should be deleted. However, the commission did not agree with the same. It did further add a proviso wherein a discretion was given to the courts to not apply the provision of this section when it is evident that the person	The 185th report agrees in tandem with the proviso.

[37] The reduction of the time period of a document from 30 to 20 years was recommended.

Section No.	The 69th Law Commission Report	The 185th Law Commission Report
	concerned might have been involved in an accident.	
108 (Burden of proof: person alive; not heard of in 7 years)	This provision was amended to propose that the burden of proof with respect to a person being alive after an expiry of period of 7 years, in case those who should naturally hear from him hasn't, is upon the person who claims him to be alive. Further, the court was empowered to presume such a person as dead 'as respects any such period'.	This report has restructured the provision as proposed. In this report, it has been clearly stated that the court shall presume the person to be dead after the expiry of the seven-year time period. Also, a proviso is added wherein if someone claims the particular date of the death of the concerned individual, this section would no longer be applicable and the burden of proof to establish the death would then shift unto the person so claiming.
Proposed 108A	Considering the absence of any provision in the Indian statues with regards to that of commorientes, this section was proposed to be introduced.[38]	This report also agreed to the proposal put forth in 69th Law Commission Report.
115 (Estoppel)	While discussing the provision of estoppel, the report recommended that this section should be extended to apply on minors as well. The proposed suggestion clarified the situation when this section is applicable to a minor and when it is not.	The report generally agreed with the proposal but had reservations on the manner it was structed. The first part of the proposed amendment which read "*This section applies to a minor or other person under disability*" was considered unnecessary and negative in intent.
117 (Estoppel: bill of exchange, licensee, bailee)	Since this section deals with bill of exchange, bailee and licensee, a recommendation was made that this part be incorporated in the Negotiable Instruments Act and deleted from the erstwhile Act.	No suggestions proposed since the recommendation in the 69th report, as according to this Law Commission was not a positive recommendation for the transfer.
132A (Privilege of disclosure)	The report, under this section discussed the necessity of extending the privilege of some sort of protection to the private counsellors who might be appointed by parties to resolve family disputes.	This report suggested that the proposal given in 69th report is not necessary to be brought into force. The report further dwelled upon the aspect of disclosure of information of a journalist's resource under this section.
Proposed 132B	Chapter 72 of the report made a reference that a separate provision	This report suggested that the format of UK Act of 1988 be adopted and

[38] This section mainly deals with the scenario when two or more persons die simultaneously in a same event and there is no possible way to determine who died first. This has multiple effects on several facts and case laws. Therefore, the nature of presumption, based on age, sex etc. was proposed.

Section No.	The 69th Law Commission Report	The 185th Law Commission Report
	should be included under the head of privilege of patent agent. It made reference to Civil Evidence Act of 1968.	provided a draft of the section to be included under 132B.
133 (Accomplice)	A disharmony between 133 and the illustration of 114 (b) was pointed out in this report. The Commission proposed that section 133 be deleted since it is not understood as to why this section was introduced in the first place.[39]	The 185th report departed considerably from this proposal and suggested that illustration 114(b) be deleted from the Act and suggested amendment to section 133.
137 (Examination-in-chief)	The 69th Law Commission Report suggested no amendments to this section.	A minor restructuring was proposed in this section with regards to re-examination.
138 (Order of examination)	This report dealt in great detail regarding the scope and manner of examination-in-chief and cross examination. However, no substantial modifications were suggested in the text of the Act. One minor alteration was regarding the plural form of the words witnesses that was used in one of the paragraphs.	The report expressed its confusion regarding the recommendation that was suggested in the 69th report besides suggesting a few amends of their own. The majority of these amends were structural changes, addition of sub-sections before the paragraphs and the likes.
144 (Evidence as to written documents)	The report objected to the manner of drafting of this section wherein it expressed concern that the first part of the section refers to evidence and statement and in the later half summarizes everything under the expression 'such evidence'. This, the report expressed concern, might give rise to discrepancy and therefore proposed re-drafting of the same.	This report expressed its agreement with the 69th Law Commission Report.
145 (Cross-examination regarding previous written statements)	This report highlighted the issue that this section lays down the procedure of contradicting the statements of a witness. However, the section is so designed that it emphasises on the written statement and makes no mention of oral statements. The report further highlighted the difference of opinion by several High Courts as to whether this section would apply to oral statements or not as well. Thereafter, it was proposed	The 185th report retained this proposal in toto.

[39] The report suggested that it is a bare legal provision and does not enumerate the caution that is to be retained while applying this section which proceeds on uncorroborated testimony of an accused.

Section No.	The 69th Law Commission Report	The 185th Law Commission Report
	that provisions be included so that this section covers oral evidence as well.	
146 (Lawful questions in cross-examination)	This report observed that the word veracity which was used in the provision was not adequate since the same involved moral intonations.[40] The report expressed its concern in matters where no moral aspersions are involved. However, no recommendations were suggested.	The report observed the remarks made in the 69th Law Commission Report and included the terms "accuracy and credibility". Further, a proviso was suggested to be included after sub-section 3.
Proposed 148A	This was recommended in the form of sub-section 148(2). Proposed as a rough draft, this addition attempted to solidify the position of the accused during questioning as a witness. It laid down the safeguards and the restrictions that are to be adhered to while questioning an accused who has agreed to be a witness.	The report chose to retain the proposed suggestion as it is with the addition of the principle that was laid down in a UK case, DPP v P.[41] The report further proposed that this should be inserted as a new section under 148A.
154 (Questions by party to its own witness)	The Commission observed that this section was a broad one. The Commission further reported that this section comes into play when a witness is declared to be hostile.[42] However, the same finds no mention in the section. Considering the status in both England and India, as well as reviewing several cases, the Commission chose to retain the section as it along with an inclusion of a sub-section which would prohibit the narrow interpretation of this provision, as adopted in England, from becoming a precedent in India.[43]	In light of a Supreme Court decision, the Commission recommended that the existing section should be retained under sub-section 1 of 154 and proposed adding another sub-section which is the same as 69th Law Commission Report. However, the report does not elaborate on the Supreme Court decision that was referred to, whether it was the same as the one cited by the 69th Law Commission Report.
155 (Impeaching credit of witness)	The report observed that cross-examination is not the only way of ascertaining the credit of the witness despite the fact that there were no	This report chose to retain most of the suggestion with some minor

[40] Under this section, a witness can be asked questions that can test his veracity.

[41] [1991] 3 All ER 337. The case stated that the essential feature of the admitted evidence must be such that "*its probative force is sufficiently great to make it just to admit the evidence, notwithstanding that it is prejudicial to the accused intending to show that he was guilty of another crime.*"

[42] A term which signifies that the witness has considerably differed from the position that he was to maintain before the Court (at least in accordance with the knowledge of the party who called the individual as a witness).

[43] The report cited one judgement where it was observed that the situation where a witness becomes hostile cannot be catalogued. Therefore, there is no mention of any such term. Further the report assessed a few cases of England where the position was that when a witness is declared hostile, his entire testimony is discarded which is quite different from that followed in India. The Indian Courts have adopted the position that there is no general bar in retaining the favourable part of the testimony of a hostile witness.

Section No.	The 69th Law Commission Report	The 185th Law Commission Report
	specific provisions supporting the same.[44] Thus, a few recommendations were made to this section where the term 'unworthy of credit' in subsection (1) was replaced with "impeach his credibility, accuracy or veracity", sub-section (3) was narrowed down, and another sub-section was added.	modifications, wherein they further clarified sub-section (3).[45]
157 (Former statements to corroborate later testimony)	The report observed that there should be suitable arrangement to include in testimony, the statements made during an identification parade before a magistrate. However, no express recommendation or amendment was suggested to this effect.	This report introduced the inclusion of test parade and the statements made therein as testimony as an explanation in furtherance to section 157.
Proposed 157A (Credit of Witness by independent evidence)	Drawing inference from the provision of arriving at the credibility of the declarant who is now dead, the 69th Commission proposed that a provision should be introduced that can ascertain the credibility of a witness. It was suggested that the same be done by virtue of an independent witness and not by corroborative evidence.[46]	The 185th Law Commission was not in favour of sub-section (2) of section 157A. This provision permits the vouching for good moral character of the prosecutrix. The Law Commission opined that such an opportunity might empower the opposite party to attempt to introduce evidence or indicate that the prosecutrix had a bad moral character, which this Commission has previously opposed.
161 (Writing used to refresh memory)	A minor modification suggested in this section was that the term 'writing' considerably limits the scope.[47]Therefore, instead of using the term writing, it was suggested to be replaced with documents. This would bring into harmony the interpretations of section 160 and 159 which are also related provisions.	This Law Commission Report also retained the suggestion. [48]

[44] The commission report solidified this position by referring to section 5 which states that evidence may always be given regarding the existence and non-existence of fact. So, whenever a witness asserts a fact, there is scope to contradict the same.

[45] The Law Commission roped in section 153 and 154 so that the premise of this attempt to impeach a witness be clarified. Since section 153 and 154 clarifies the nature of impact that false evidence will have on the credibility of a witness and the nature of questions that a party may put to its own witness respectively.

[46] Such an introduction may lay to rest the precarious situation when a witness turns hostile.

[47] This is in reference to an individual referring to any writing made by him which may be used to recollect a certain fact, transaction etc.

[48] The main reason this provision was proposed to be amended during 1977 was to include printed matters into the scope of writing. However, because of elaboration of the definition of the term document, it would now cover the state-of-the-art sources of information which an individual might have referred to.

8. Section-wise Discussion of the Indian Evidence Act, 1872

The Indian Evidence Act has 167 sections in total. Since it is not necessary to explore every section in detail, this paper is restricted to exploring only those sections which are either not in conformity with today's laws, require minor modifications, need elaboration etc. This part deals with two important committee reports- the Malimath Committee Report and the N R Madhava Menon Committee Report. Though these two reports were not dedicated solely to the Indian Evidence Act, they have suggested a few major improvements which can be incorporated into the Evidence Act. This part also investigates the latest Law Commission Report, i.e., the 185th Law Commission Report, which drew inspiration from the 69th Law Commission Report and not only suggested new changes to the previous report but also proposed a few novel ideas. However, since the report is from the year 2003, a major change has evolved in the judicial setup. Thus, it is essential to revaluate all the reports and form a state-of-the-art Act which can be suited to all spheres. To comply with the standards, a few other proposals have also been included under this heading.

8.1 Interpretation-clause

Primarily there is a requirement to include the definition of the term confession under the Indian Evidence Act. A lack of the definition of the term has led the courts to develop jurisprudence through case laws which elaborate on what a confession is. An expression that was first explained in the Privy Council has been adopted by the Indian Courts as well. Furthermore, confession has been categorized into judicial, extrajudicial, retracted, voluntary and non-voluntary etc. There is a plethora of jurisprudence available in India which explains the types of confessions. However, it is essential to determine what transactions of communication form a part of confession and how the same is different from admissions. So, it is suggested that a provision be included which would clearly define confession along with illustrations which can be derived from the various case laws that are already existing.[49]

The interpretations of various terms such as may presume shall presume, proved and disproved would be better explained if they are further elaborated with the help of illustrations.

8.2 Evidence of facts in issue and relevant facts

It is proposed that Section 5 of the Evidence Act be modified to include a petition along with the term suit or proceeding. This would bring into scope the commercial courts, arbitral tribunals, consumer forums and their proceedings.[50]

8.3 Acts of the conspirator in reference to common design

The Report suggested that Section 10 of the Act should further be modified to shorten its scope to any acts which are committed after there has been a consensus / a meeting of minds. This modification was brought into effect so

[49] Ref. to cases like: Pyare Lal v. State of Rajasthan, Pancho v. State of Haryana, Sahadevan v. State of Tamil Nadu, Balwinder Singh v. State, State of Punjab v. Bhagwan Singh among others

[50] Although arbitration is outside the scope of the Evidence Act, the recent trend wherein evidence has assumed vitality in such proceedings, this inclusion has been proposed.

that any acts carried out prior to that of the common conspiracy by an individual are not unfairly used against the other individual who had not yet joined the conspiracy / had a similar meeting of minds to carry out the act in question.

8.4 Relevant admissions in civil cases

Further, it was suggested in the Report that Section 23 of the Act is limiting in the sense that the said section only lays down two circumstances wherein the relevancy of admission is not considered relevant. Therefore, an addition to the same was suggested wherein prior agreement with the parties to not give evidence to an extent, situation of a compromise settlement was also covered. At the same time, the Report has further proposed situations where the aforementioned form of evidence is to be allowed to be furnished or not, along with an explanation of the terms such as legal practitioner and publication.

8.5 Status of confessions caused by threat, inducement, or promise

Under Section 24, it has been proposed in the 185th Report that the terms coercion, violence, and torture also be included within the section beside the instances of inducement, threat or promise by which a confession is prised.

8.6 Confession to a police officer

Keeping in mind the Malimath Committee Report and its conclusion regarding the right of refusal of the accused to answer questions put to them, it is proposed that a proviso be introduced in section 25 of the Indian Evidence Act, which states that the confession made before a police officer is not a compulsory procedure that is to be completed before the case can move to further stages.[51] This is necessary considering the several incidents of torture and other manoeuvres resorted to by the police to obtain a confession from the victim.[52]

8.7 The requirement to prove- information received from accused

The Report further suggested that the current Section 27 of the Act requires a minor modification since the same in its current form renders the previous sections, i.e., 24 to 26, which prevents forceful confession, irrelevant. Section 27 allows a certain part of the information received from those who are in custody under the 'can be proved' category. Such a provision leaves open the scope of torture, threat and other adverse modes of obtaining information which is laid down as restricted under sections 24 to 26. Therefore, the words 'notwithstanding anything to the contrary contained in section 24 to 26…' was proposed to be added at the beginning of the current section.

[51] At the same time, due consideration is to be given to the proposal of 48th Law Commission Report which states that the confession before a Superintendent of Police or a high rank officer shall be admissible as evidence. However, it is necessary that such an admission be made in presence of a law officer / magistrate. This should be followed by a proviso that the conclusion of a case or conviction shall not be based solely on confession.

[52] The Act makes provisions for making the same irrelevant in criminal proceedings, however an attempt at forced confession are often alleged to have been resorted to.

8.8 Expert opinion

Section 45 of the Act has also been proposed to make a modification in which an acknowledgement of the emergence of experts in the newer fields of technology such as identification of handwriting, fingerprint impression, typewriting, usage of trade and the like have been mentioned. This is a novel attempt to provide sanctity to the statements of such experts so that they can help determine the outcome of a case securely. This will also put the evidentiary standards of India at par with other countries which heavily rely on such evidence.

8.9 Evidence related to the character in criminal and sexual harassment cases

Considering the various forms of crime that have now emerged, the inclusion of Sections 54 and 53 is no longer the necessary value that could be attached to it when the Act first came into force. Because the Act prohibits questions to the prosecutrix with regards to immoral character in cases of rape, the inclusion of the two sections creates skewered standards within the Evidence Act itself. Taking into consideration cases where the Act is criminal in nature but is perpetrated through electronic media, the character of the individual would have no relevance, be it good or bad.[53] Furthermore, a decent number of self-defence cases also may become difficult to establish in case the character is provided with the same standard of relevancy.[54]

8.10 Secondary evidence related to documents

Also, the Report suggested dropping the term 'means' from section 63 of the Indian Evidence Act so that 'part evidence' as mentioned in section 65(b) and (g), can be included. The only term inclusive besides omitting the term 'means' would help delimit the scope of Section 63.

8.11 Electronic records and their admissibility

In section 65B (4), stress has been laid on the fact that the certificate be signed by a 'person occupying a responsible official position in relation to the operation of the device….' only. However, it is probably essential that it be clarified before the court by furnishing the timeline and details of those persons in charge of the system whose electronic data, its input/output, and transmission are being dealt with. That is to say that the mere official position of an individual shall not suffice unless a nexus / a nature of accountability can be established between the signatory.[55] In case the certificate cannot be only signed by the individual in charge of the system, the said certificate can be further endorsed by an official rather than the same being directly signed by an official. This section, as per cyber

[53] In maximum cases where fraud is perpetrated through e-medium, the same would require an individual to be of above average intelligence to commit the same. Such individuals would generally have a good social standing by virtue of their charisma, eloquence, probably a good academic record etc. Current Indian standards of assessing a character is premised on all such factors. Therefore, such ascertainment not only create a case-to-case bias but also prejudice a certain section of offenders.

[54] This is in reference to attacks on delinquents, gang fights within them etc.

[55] Copy pasting of files may potentially change the metadata. The person who is just an official and not in charge of the system may not be aware of such details. In cases where metadata is crucial, such evidence will bear no value.

expert Pavan Duggal, was amended, keeping in mind only the scope of computers.[56] With the advent of technology, the use of the mobile phone has become more prevalent.[57] Therefore, it is essential that the scope of this section be expanded to include information/documents from mobiles as well.[58]

8.12 Certificate to be provided in case of electronic record

In reference to Section 65 B, the Supreme Court, in one of its recent decisions, stated that there is no requirement for a certificate in case the electronic record is an original one and not a secondary copy.[59] Given the increase in electronic fraud, this judgement has the potential to set out a negative precedent. Also, this judgement is in direct conflict with the recent observation of the Court wherein it commented that WhatsApp chats have no evidentiary value. It is irrefutable that such chats are also e-record, the stress being on the source of origin of such an e-record. In light of such conflicted standards, it is again essential that a set of guidelines is issued in the Evidence Act or as an annexure which can help resolve this conundrum.

8.13 Birth during marriage-conclusive proof of legitimacy

As has been provided under section 112 of the Indian Evidence Act, the inclusion of the term 'conclusive' stands to be excessive under the current scenario.[60] Owing to the changes in society as well as the availability of technology, it is possible to ascertain, through various modes, the paternal lineage of the child. The 185th Law Commission Report has also laid down an elaborate set of standards that is to be followed in order to label the proof as conclusive. So, it is essential to either include the criteria as laid down by the Report or to remove the term conclusive. However, the inclusion of the term at the expense of the man' within the report while undertaking the tests etc., may be omitted.[61]

8.14 Cession of territory

It has been proposed in the 185th Law Commission Report that Section 113, which deals with the cession of territories during the British-Indian era, be deleted. That proposal is yet to be given effect. Furthermore, due to ongoing

[56] Excerpt taken from an article published in The Hindu, "Evidence Act likely to be amended" Vajita Singh, Published on September 19, 2015

[57] The Supreme Court, in the matter A2Z Infraservices Ltd. Versus Quippo Infrastructure Ltd. (Now Known As Viom Infra Ventures Ltd.) SLP(C) No. 8636/2021 had remarked that whatsapp chats have no evidentiary value. Though this forms a part of electronic record, it is necessary that avenue be now developed so that this platform which has become a major mode of exchange of information, carrying out of business etc, can be utilised to furnish evidence.

[58] In this aspect, the certificate would not be sufficient since phones are more of a personal commodity. Therefore, declaration on oath before a competent authority (e.g., Magistrate) would become essential.

[59] Anvar P.V. vs. P.K. Basheer (2014) 10 SCC 473

[60] This section lays down what situations can be considered as conclusive proof of a child's biological father in situations of divorce.

[61] This suggestion is proposed in light of the situation that the father may not be alive at the time of the dispute (sperm bank, blood bank, other male individuals may help in the tests in absence of the father), in some cases the mother might approach only to determine the lineage of the child, also situation of insolvency of the father cannot be ruled out. Therefore, the payment for such tests should be left to the discretion of the court.

border disputes between several states, it is beneficial if a similar provision for internal border territories is chalked out.

8.15 Abatement to the suicide of a married woman

Section 113A of the Indian Evidence Act requires either a proviso or an explanation which elaborates on the aspect of 'having regard to all the other circumstances of the case.'[62] Situations also arise where relatives living in different cities but visiting for a few days or parents who are well above the age of 80 are incriminated. Therefore, such circumstances require elaboration within section 113A.

8.16 Presumption as to the absence of consent

Section 114A of the Indian Evidence Act establishes that a woman's statement regarding her consent is the prevailing standard of proof. However, given the evolving nature of crimes against individuals, it is imperative to replace the term "woman" with the more inclusive "individual" in this section. Additionally, courts must now take into consideration various factors, including the circumstances surrounding the alleged offense, the relationship between the individuals involved, and any relevant prior history, rather than solely relying on the individual's statement.[63]

By broadening the scope of Section 114A to include all individuals, regardless of their gender, the Indian legal system can better serve the needs of all citizens and promote greater equality under the law. The inclusion of additional factors for the court's consideration also ensures a more nuanced and thorough evaluation of evidence in cases involving consent. This, in turn, can lead to more just outcomes for all parties involved.

Moreover, such a revision to the Evidence Act would demonstrate India's commitment to promoting gender equality and upholding the rights of all its citizens. By recognizing the complex nature of crimes involving consent, India can continue to advance towards a more just and equitable society.

8.17 Injury to an individual during police custody

In line with the recommendations made in the 113th Law Commission Report[64], the 2017 report titled Implementation of 'United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment' through Legislation emphasized the need for a new provision to be added to the Indian Evidence Act, known as Section 114B. This provision would hold the police responsible for proving their innocence in cases where an individual has suffered injuries during police custody. While this is undoubtedly a crucial step towards safeguarding the rights of individuals, it is equally important to expand

[62] This section deals with the presumption as to abatement of suicide of a married woman.
[63] There are several recent case decisions pronounced by the High Courts which follow this practice. However, the subordinate courts majorly follow the laws which remain archaic and biased.
[64] This report in particular has been pending since the year 1985 despite the fact that it is a major reform which requires immediate inclusion into the Evidence Act.

the scope of this provision to include cases of custodial deaths, injuries, and deaths that occur during judicial custody. [65]

By enacting such measures, India can demonstrate its commitment to upholding international human rights standards and preventing the abuse of power by law enforcement agencies. Moreover, by holding the police accountable for any harm inflicted upon individuals while in custody, the legal system can help to restore trust and confidence in the criminal justice system, particularly among vulnerable communities who are disproportionately affected by police brutality. Ultimately, the inclusion of Section 114B in the Indian Evidence Act can serve as a significant step towards promoting justice, fairness, and accountability in the country's legal system.

An attempt was made to include this provision in the amendment bill that was introduced in the Lok Sabha in 2017.[66] In the said section, the scope was expanded to include cases of injury as well as death, but it didn't fructify. Also, avenues must be discussed in order to ascertain how the scope of this section can be expanded.

8.18 Prohibition on denial of something

Section 115 of the Evidence Act lays down the conditions during which an individual is estopped from denying the 'truth of the thing'. The 185th Law Commission Report proposed to introduce a proviso to the aforementioned section in which the section would not be applicable to the cases of minors and people falling under various heads of disability for the purpose of enforcing any liability….. The term disability has been accorded a broad spectrum. Therefore, it is essential to reproduce the part as 'people considered as disabled within the purview of law for the purpose of enforcing liability… so that this provision may not be taken advantage of.[67]

8.19 The capacity of an individual to testify

Section 118 of the Act outlines the criteria for individuals who can testify in a particular case. However, it is crucial to note that the inclusion of any such person on the witness list should be preceded by a thorough evaluation report from a qualified doctor, psychologist, or psychiatrist. This exercise is especially important in criminal proceedings to ensure that adequate support is available to the witness before and after their examination.

Given the high prevalence of psychological disorders in the general population, such a requirement could serve as a much-needed relief for individuals who are hesitant to engage with the legal system due to the perceived stress and anxiety of cross-examination. By prioritizing the well-being of potential witnesses, the

[65] It may be effective to include provisions which lays down the necessity of conducting the post-mortem in case of custodial death (judicial or police) in presence of a Magistrate or a law officer within 4-8 hours of the death along with the compulsion to inform the recent family of the victim of such an incident.
[66] Indian Evidence Amendment Bill 2016
[67] It is essential to include such changes since these provisions are applicable to all cases which are registered even at the primary courts. Chances remain that such incomplete definitions maybe taken advantage of at such grassroot level where judges are mostly bound by the words of the act. Many such cases do not reach the upper echelons to be accorded the elaboration that is required.

legal system can foster a more supportive and empathetic environment, ultimately increasing trust and confidence in the process.

8.20 Scope of protection to judges and magistrates

Section 121 may be expanded to include arbitrators as well.[68] This can put a stop to the practice of issuing notices to arbitrators by the executing courts.[69] Though it is not suitable to include the term arbitrator explicitly, however, the words 'those who are considered equivalent / accorded similar status to that of a judge in out-of-court proceedings or in tribunals' would suffice.

8.21 The extent of disclosure of information by a married individual

Section 122 requires modification to the extent that issues of national interest and security also be included as a ground based on which a married individual can be compelled to give evidence against the spouse.

8.22 Unpublished records and their disclosure

Section 123 bars an individual from giving evidence in relation to matters arising out of unpublished records of the state without the express permission of the head of the department so concerned. In this case, absolute discretion has been bestowed upon the head of the department. Therefore, to bring about accountability, it is essential that the department head produces before the Court an affidavit containing appropriate reasons as to why an objection has been raised. A similar provision with an elaborate set of conditions/guidelines has been laid out in the 185th Law Commission Report.[70] At the same time, in case of approval is granted, the concerned department should also maintain a record of the details of the nature of the document and the kind of evidence furnished.

8.23 The privilege accorded to public officials while disclosing documents

In light of the Puttaswamy judgement on privacy, it is essential that the recommendation provided in the Report under section 124 be adopted into the Evidence Act.[71] However, the manner of ascertaining the nature of objections as laid down in the proposal needs to be amended. The consultation of the same in chambers might not be the best mode to be implemented. In several cases, there is the provision of submitting in a sealed cover, confidential document etc. In this situation, also, a written objection of the official may be submitted before the court in sealed covers.

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[68] As previously discussed since this act is not per se applicable to arbitration, this provision is necessary so as to facilitate situations wherein High Courts or the Supreme Court can summon an arbitrator to depose before it.
[69] This section accords protection to judges and magistrates from being compelled to answer regarding his conduct etc. without the special instruction of a court to which the concerned judge or magistrate is subordinate to.
[70] Besides that, the 88th Law Commission Report also suggested the modifications necessary to this section.
[71] Section 124 of the Act accords privilege to public officials wherein they cannot be compelled to disclose the official communications that are made to him.

8.24 Date and time of receipt of the information

An essential amendment suggested by the 69th Law Commission Report pertains to section 125 (under exceptions). It proposes to eliminate the obligation to maintain confidentiality regarding the timing of the receipt of information concerning the commission of an offence if such timing is crucial in determining the liability of the parties. However, this proposed exception is narrow in scope and should be broadened to encompass instances where the disclosure of such information could indicate a lackadaisical attitude on the part of the concerned officer, as it remains ambiguous whether the liability of the party covers this aspect.

8.25 Disclosure of privileged information

Section 126 allows a legal practitioner to reveal privileged communication only with the explicit consent of the client. However, there may be circumstances where the client may not fully comprehend the significance of certain communications that the legal practitioner, due to their area of expertise, may recognize. Thus, instead of restricting the privilege of disclosing a communication solely to the client's explicit consent, it is essential to incorporate scenarios where another legal practitioner of comparable standing would also refrain from disclosing such information based on customary practice and legal knowledge. Moreover, it is necessary to consider that a significant portion of clients may belong to indigenous, uneducated, or socially unaware backgrounds, making it challenging to assess explicit consent.

8.26 Refusal to produce documents by a person who possesses certain documents

The structuring of section 131 is cumbrous and effectively does very little to add to the Evidence Act. A glimpse of the 69th Law Commission Report shows that the original intent of including such a section was to ensure that any document/information which is temporarily in possession of an individual is given the same amount of importance as had the document been in permanent possession / with the author of the said information. The omission of the word temporary or permanent, as suggested by the Law Commission Report, renders this provision to be merely repetitive.

8.27 Disclosure of source in cases of publication

A recommendation that features in both the 69th Law Commission Report, as well as the 185th Report, is the introduction of section 132A in the Evidence Act.[72] Though comprehensive to an extent (in the 185th Report), it is essential that the requirement of disclosure not be restricted to situations of interests of the State. Keeping in mind the Puttaswamy judgement on privacy, arrangements may be made to introduce evidence in sealed covers etc. Also, extending the requirement of the disclosure can benefit cases of civil defamation, which, as a form of litigation/relief, is otherwise unpopular in India. Since this provision was proposed to be introduced keeping in mind' journalist resources', the changing

[72] In this section, the report suggested that there should be provision of disclosure of source of information contained in a publication.

phase of media and the flurry of defamation cases also can be helped by the introduction of such methods.

8.28 Process of examination

Section 138 of the Evidence Act lays down, in detail, the provision of examination-in-chief. However, considering the introduction of the process of filing an affidavit in order to do away with the process of examination-in-chief, the same must find mentioned under the Evidence Act. Also, some tribunals often resort to the practice of asking to submit the 'cross' in papers as well (without resorting to in-person cross).[73]This form of practice must be strictly prohibited under the Evidence Act.

8.29 Inappropriate questions asked by legal counsel

With respect to the provision laid out under Section 150 of the Evidence Act, a suggestion was put forth in the 185th Law Commission Report that in case of a legal practitioner asks questions to any witnesses without any reasonable grounds, such misconduct be reported to the appropriate Bar Council to which the concerned legal practitioner is subject to. However, due to both logistical as well as practical hindrances, it is beneficial to have some form of system in place so that if such misdemeanour occurs in the civil courts, they are also equipped to deal with such situations instead of referring such matters directly to the State Bar Council. (Apart from suspension, there are no other known forms of reprimands in place for such incidents). Referring such matters also become ineffective in case such lacunae occur on the part of a senior counsel or any influential member of the Bar.

8.30 The jury system and evidence

A suggestion was made in the 185th Law Commission Report that Section 166 of the Evidence Act be deleted, considering that the jury system has since been abolished in India. It is, therefore, necessary that the section be deleted from the statute owing to its redundancy.

8.31 Status of evidence when a written statement has not been filed

As per the procedure of CPC, if a party refuses to file the Written Statement, the party is also barred from producing witnesses. Therefore, the reliance of the party is restricted only to documentary evidence. It is essential that the Evidence Act lay down a standard of evaluation in such cases where one party is evidently disadvantaged.

8.32 Collection of evidence through remote means

Considering the changed circumstances, the advent of COVID, promotion of e-arbitration, it is essential that a proper set of guidelines be chalked out as to how evidence is to be taken or cross-examination be carried out of those witnesses who are appearing virtually. Though the Supreme Court has set out guidelines, it

[73] This is a practice common in consumer forums. Though the Evidence Act is not applicable strictly to such forums, but to eschew the standard of practice should not be permitted.

is essential to validate the same through either inclusion/reference of the same in the main text. It is important to reiterate that the Evidence Act is not applicable to arbitration. However, since the practice of furnishing evidence and cross-examination is carried out on a regular basis, it is essential to lay down some structure for arbitration as well so that the courts / Tribunals have the avenue to fall back onto the law of the land in case of difficulties.[74]

8.33 Evidence of experts

Also, in cases of expert witnesses, provision should be made for their appearance through videoconferencing.[75] In such situations, the best experts in the field can be requested to appear. Also, the burden on the state exchequer to compensate such witnesses would be reasonably reduced. This would provide relief to those witnesses as well who are financially constrained and are not provided with any such reimbursement.[76]

8.34 Preservation of evidence

Given the fact that the legal system of India is already overburdened, there are numerous instances where the cases take decades to be concluded. While cases continue for such long stretches of time, it is not unheard of where evidence has been lost, or the person in charge of preserving the evidence has no proper training / intentionally flouts the norms[77] set out for such preservation.[78] Therefore, it is essential that either a repository be formed to preserve evidence, especially material evidence which is of acute importance in criminal and quasi-criminal cases.[79] Alternatively, it is possible to include a schedule detailing the measures that are required to preserve such evidence on a long-term basis.[80] Also, penal provisions should be introduced to accrue responsibility upon those concerned in cases where data has been lost.

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[74] Therefore, it is not necessary to include the term arbitration in the plain text and reference to e-examination in suits would also suffice.

[75] This proposal was also suggested by Prof. N R Madhava Menon in his Committee Report.

[76] Some States / Courts do not provide reimbursement to their witnesses (despite existing facilities) thus, creating financial hardship on them.

[77] Refer to: "Shocking: Cops openly flout forensic norms, delay of over 10 days in sending samples to labs" https://www.indiatoday.in/mail-today/story/cops-flout-forensic-norms-samples-labs-police-station-delhi-state-legal-services-authority-349226-2016-10-29, Last accessed: 26.12.2022

[78] With the advent of technology, it has become commonplace for parties to file e-evidence as well (contained in CDs, pen drives etc.). This is majorly used in arbitration practice. Therefore, laws should be formulated to bestow liability upon the arbitral institutions as well as arbitrators that such form of evidence are also preserved. Adverse provisions should follow to deter any unethical practices. It is necessary to include such facets since Arbitration also follows a major chunk of the Indian Evidence Act despite clear instructions that this act is not applicable to arbitrations per se.

[79] The N R Madhava Menon Committee also suggested that Crime Scene Technicians (CST) accompany police investigating a crime scene. In such a scenario, the report of the CST would also have evidentiary value. A requisite provision to that extent has been proposed in the 185th Law Commission Report as section 45B.

[80] It may include formulation of a primary report, the mode of preservation that has been adopted. In case the evidence is a perishable one, it is essential that a final report of the assessment of the evidence be kept as a part of record of the proceedings so that the same may be used in near future. With the introduction of e-technology into the judiciary, e-storage of such details can be helpful.

8.35 Expansion of the concept of an adversarial system

As noted in the Malimath Committee report, several jurisdictions around the world have amalgamated several concepts of the inquisitorial and adversarial systems to introduce more effective reforms. One crucial aspect highlighted in the report concerns the role of the "judge of instructions" in the inquisitorial system, who holds a higher position than the Public Prosecutor in the hierarchy and assists in the collection of evidence. A similar system should be implemented in our judicial system, albeit with a minor modification. Therefore, it is recommended that a law officer be appointed to assist the police in determining the nature of evidence and other necessary aids required to adequately collect evidence and frame charges in the primary stage.[81] If a law officer is appointed in such places, the sanctity of our system as adversarial is also maintained, and the position of the judge is also not tainted.[82] Yet justice can be delivered.[83]

8.36 The technical shortcoming in the evidence

The Malimath Committee report further suggested that many cases tend to fall through due to technical fallacies leading to several acquittals. This report further suggested against the adoption of shortcuts by the courts to directly acquit the accused in such cases. To give effect to this proposal, it is necessary to introduce a provision wherein responsibility shall be conferred unto the courts to attempt to remove the defects to the best of their capabilities. In case such defects cannot be cured, the court should apply the principles of fairness, equity and justice to ensure whether the lingering defect is grave enough to deprive the accused of their basic rights or not and then render a decision.

8.37 Victim participation in the investigation

The Malimath Committee further stressed the necessity to include the victims in an active capacity during an investigation. Criminal cases, in India, are generally the responsibility of the state. The cases are registered by arraying the State as a party against the accused. Naturally, this indicates that the role of the victim is reduced to a bare minimum while the public prosecutor handles the entirety of the case. Our judiciary is also afflicted by such amicus of the Court who are largely absent or incompetent, thus jeopardizing the fate of the criminal case. So, it is necessary that the Indian Evidence Act enlarges the scope of victim participation. On several occasions, not only is the victim advantageously placed to provide

[81] In the current set-up, the primary level of investigation as well as framing of charges etc are carried out solely by the police. The lack of adequate training imparted to such officers is a major drawback which vitiates the scope of justice in several genuine cases too.

[82] Though section 482 of the CrPC bestows upon the Courts an inherent power which is indicative that the adversarial nature of our legal system does not limit the judges from asking questions or requiring production of additional evidence, the usual practice has been the opposite. Also, the section restricts the power to the High Courts only and thus depriving the sessions court of such power which plays a major role in the built of the case.

[83] The Malimath Committee Report also takes note of section 165 of Evidence Act along with section 311 of the Criminal Procedure Code that allows any Court to obtain or discover proper proof of relevant facts and summon or re-examine a person in case the same is essential to the decision making of the case respectively. The Committee further notes as to how these two provisions are limiting since the Evidence Act allows for the summon only for production of a document or evidence while the code focuses on the decision making of the case without giving any consideration to ascertaining of truth or establishment of facts etc. At the same time, the report goes on to elaborate how several other accompanying sections render these provisions almost nugatory.

proper evidence, but they are also better equipped to put forth such questions to the accused, which, in the general transaction, neither the court nor the public prosecutor can think of.

8.38 Refusal to answer queries

The Malimath Committee Report discusses the inclusion of the right for courts to presume adverse consequences in cases where the accused refuses to answer questions, which was supported by the majority of courts surveyed. This could potentially reduce instances of custodial torture, death, and fake encounters, as the police would not resort to adverse means to obtain a confession. However, the N R Madhava Menon Report opposed this idea, as it conflicted with the principle of 'innocent until proven guilty' and recommended a positive obligation on the accused to answer questions. However, given the current practice of accused persons refusing to answer, a mere positive obligation without any associated sanctions may not be effective in changing the pre-trial setup. A middle ground could be to introduce the scope of adverse presumption, which would only be invoked when the primary or secondary evidence is established beyond a reasonable doubt.

8.39 Standard of proof and nature of cases

The Malimath Committee Report further opined that the standard of proof which has been labelled as 'beyond reasonable doubt', is harsh given the current nature of crimes. It is, therefore, essential to explore other areas so that the standard of proof can be toned down or some suitable illustrations to the term 'beyond reasonable doubt' can be proposed to water down the higher pedestal against which evidence is currently tested.[84]

8.40 Definition of document

There has been a proposal in the 185th Law Commission Report suggesting a change to the definition of the term 'document'. However, it is necessary to add a proviso to the same that any such material which falls into the category of 'document' shall have no bearing on the nature of proof to make the same admissible or on the weightage assigned to the same, i.e., to say no matter the nature of the document, if it is secondary, the same shall remain so.

8.41 Timeline for completion of evidence

It is further proposed that a set timeline be framed for the completion of evidence.[85] At the maximum, this timeline can be stretched to 90 days.

8.42 Foreign evidence collection and distribution

Considering the boom that globalization has brought about, it is essential that provisions be made for obtaining as well as providing foreign evidence be included in the Indian evidence act. India, in 2007, became a party to The Hague

[84] The N R Madhava Menon Committee report also highlighted the need to draft in clear and precise terms the nature of standard of proof that is essential to be established in criminal cases.
[85] Countries like China make it compulsory for evidence to be completed within a set timeline.

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965 ["Service Convention"] along with a few reservations which cover the mode of obtaining/providing civil and commercial evidence.[86] However, due to India following dualism, it is essential to make a domestic law to give effect to the ratification. In the absence of any laws, the operative portion of the CPC aids in such situations. It is recommended that a provision which states that India being a party to the service convention, will follow the provisions set out therein in collecting/disbursing the evidence can provide uniformity and awareness of the modality that is available.

Similarly, the Evidence Act should also refer to the Mutual Legal Assistance Treaties that are currently in force to utilize the facilities provided therein to obtain any form of criminal evidence.[87]

8.43 Status of scientific evidence

A major issue with regard to medical evidence, which forms a considerable chunk of scientific evidence, is that they are considered either a form of an opinion or only corroborative evidence.[88] This shortcoming was even pointed out by the N R Madhava Menon committee reports. It is generally the presumption that sections 3 and 45 of the Indian Evidence Act set out a hierarchy based on which the nature and the weightage accorded to each piece of evidence are determined. Set out in the early 1800s, the concept of scientific evidence was not so established, which is why scientific evidence does not find mention in such a hierarchy. As a result of which, the same has attained tertiary value, which immediately needs rectification.[89]

9. Conclusion

While many reports have alluded to the need for amending the Indian Evidence Act, implementing the much-needed reforms for the Evidence Act has been elusive. Nevertheless, there is a wealth of exceptional jurisprudence available to assist in reform efforts, which could be a ground-breaking development, potentially alleviating the distressed state of India's legal system.

By establishing predetermined standards of proof in criminal disputes, enabling the electronic examination of witnesses, facilitating victim participation in criminal cases, revising outdated practices such as providing acquittals for technical faults, and addressing other shortcomings, the Evidence Act, which largely mirrors English Law, can be imbued with its own distinct character. Furthermore, by introducing provisions

[86] See also: https://www.hg.org/legal-articles/letters-of-request-service-and-taking-of-evidence-abroad-in-commercial-matters-indian-perspective-27971, last accessed 27.12.2022

[87] As on the date of this draft, India has 14 such treaties in force. A perusal of the same shows that these treaties mainly focus on the aspect of documentary evidence and not many references are made to witnesses.

[88] Refer to the cases of Babulal, S/o Bhagwat Vs State of Chhattisgarh (Chhattisgarh High Court), Solanki Chimanbhai Ukabhai vs State of Gujarat on 22 February 1983 among others

[89] However, if we are to adduce gravity to the strata of scientific evidence, it is essential that we overhaul the entire procedure of post-mortem, collection of evidence from a crime scene, allocate a few more reliable centres for testing and reporting of such scientific evidence, the practice of declaring the death of an individual and more allied issues.

related to the collection and distribution of foreign evidence, India can become an attractive destination for foreign-seated arbitrations, a prize currently sought by all Asian countries. Revising the Evidence Act can also restore the trust of investors and foreign market players who typically avoid India due to complex and inadequate legal regulations. It is crucial that such changes are introduced to avoid potential conflicts with the recently modified and updated laws, such as the Information Technology Act and the Data Privacy Bill. Overall, comprehensive reform can transform the Indian legal market and offer a significant boost to young legal practitioners, who are relying on litigation opportunities.