Welcome to Workshop 23/07/2016
Workshop On Behalf of Group - I
Topic
Section 3 of Evidence Act
And
different kinds of presumptions
• Section 3 - Defines: some of the important words in the Evidence Act.
“Fact”: Means
1) anything, state of things or relation of things capable of being perceived by senses;
2) Any mental conditions of which any person is conscious
eg. of facts
1. That a man heard or saw something, is a fact.
2. That a man said certain words, is a fact.
“Relevant” - One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.
"Facts in issue" – The expression "facts in issue" means and includes –any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.
"Documents" – "Documents" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.
“Evidence” – “Evidence” means and includes

1. All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry such statements are called oral evidence.
2. All document including electronic records produced for the inspection of the Court, such statements are called documentary evidence.
"Proved" – A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.
"Disproved"— A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.
"Not proved"– A fact is said not to be proved when it is neither proved nor disproved.
"Evidence" – The fundamental rules of evidence are:
1. Evidence must be confined to the matter in issues.
2. Hearsay evidence is not to be admitted.
3. In all cases the best evidence must be given.
Oral Evidence – means statement made by a witness before a court in relation to matter of fact under inquiry.

Oral Evidence is that evidence which the witness has personally seen, heard or felt. Oral evidence must always be direct or positive.
Hearsay Evidence – Means whatever a person declares on information given by some one else. However section 32 of the Evidence Act lays down the rule against hearsay and provides instances when the same is admissible. Section 6 and section 27 of the Act also partially embodies the rule against hearsay.
Documentary Evidence – Section 3 of The Indian Evidence Act says that all those documents which are presented in the court for inspection such documents are called documentary evidences.

The Documentary evidence that would show the actual attitude of the parties and their consciousness regarding the contract is more important than any oral evidence.
Primary Evidence - means the Document itself produced for the inspection of the court.

- Section 62 of The Indian Evidence Act says Primary Evidence is the Top - Most class of evidences.
Secondary Evidence – Section 63 says Secondary Evidence is the inferior evidence. It is evidence that occupies a secondary position.

It is the evidence which is produced in the absence of the primary evidence therefore it is known as secondary evidence.
Circumstantial Evidence or Indirect Evidence. - Relates to a series of other facts than the fact in issue but by experience have been found so associated with the fact in issue in relation of cause and effect that it leads to a satisfactory conclusion.

Circumstantial Evidence attempts to prove the facts in issue by providing other facts and affords an instance as to its existence
In the case of Ashok Kumar v. State of Madhya Pradesh [AIR 1989 SC 1890], the Hon’ble Supreme Court held-
(1) The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established.
(2) Those circumstances should be of a definite tendency unerringly pointing towards the guilt of accused.
(3) The circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.
The Circumstantial Evidence in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.
Appreciation of tape record evidence?
Apex Court in **Coca Cola Company v. William Structure Ltd.** AIR 1968 SC 214 - has held that the tape-recording can be admitted in Civil Cases.
In the case of **R. M. Malkani V. State of Maharashtra (1973) 1 SCC 471** court held that tape recorded conversation is admissible provided, first the conversation is relevant to the matters in issue, secondly, there is identification of the voice and thirdly the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape record.
In the case of Ziyauddin Barhanuddin Bakhre .V. Brijmohan Ramdas Mehra and others (1976) 2 SCC 17 it was held that tape records of speech were documentary as referred in section 3 of the Act, which, stood on no different footing than photographs, and that they were admissible in evidence on satisfying:
a) Voice must be identified by maker.
b) Rule out possibility of tempering.
c) Subject recorded should be shown to be relevant.
Punjab Montogomery Transport Corporation v. Raghuvansy A 1983 Cal 343

it is held that Tape record of speeches of document which stands on different footing then photographs, the party produces such evidence must prove by competent witnesses the **time, place** and **accuracy** of such tape recordings
Appreciation of evidence in civil and criminal proceedings
Civil cases are decided on the basis of preponderance of probabilities while in a criminal proceeding the entire burden is on the prosecution and proof beyond reasonable doubt has to be given – *Iqbal Singh .V. Meenakshi (2005) 4 SCC 370*. 
Appreciation of evidence:
General principle
In our criminal law jurisprudence which is based on the adversarial model, an **accused is presumed to be innocent** unless such a presumption is rebutted by the prosecution by establishing guilt of the **accused beyond reasonable doubt** by producing the evidence to show him to be guilty of the offence with which he is charged – *Chikkarangaiah v. State (2009) 17 SCC 497.*
1. In criminal jurisprudence evidence has to be evaluated on the touchstone of consistency.
2. Consistency is the keyword for upholding the conviction of an accused.
3. Evidence of the eyewitness requires a careful assessment and must be evaluated for its credibility.
4. Since the fundamental aspect of criminal jurisprudence rests upon the stated principle that “no man is guilty until proven so”, hence utmost caution is required to be exercised in dealing with situations where there are multiple testimonies and equally large number of witnesses testifying before the court.
5. There must be a string that should join the evidence of all the witnesses and there by satisfying the test of consistency in evidence amongst all the witnesses and this is held in– **G. Mangesh v. State (2010) 5 SCC 645.**
Different types of Witnesses
Interested Witnesses
Hostile Witnesses
Child Witnesses
Tutored witnesses
Injured witnesses
Rustic witnesses
Expert Witness
Panch witness
Chance witness
Stock witness
**Interested witness:** One who is interested in securing conviction of a person. Relationship does not affect credibility of witness.
In the case of *Sonelal v. State of M.P. AIR 2009 SC 760* alleged incident took place in the dwelling house. It was held that in such cases it is unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen.
Hostile Witness
Hostile Witness: The evidence of Hostile witness is not necessarily to be rejected entirely.

The evidence depends upon the veracity and reliability of evidence of the witnesses already examined.

The evidence is not to be counted but has to be tested and weighted.
It is the quality which is material and if the evidence of the witnesses is examined by prosecution is reliable then it is not tenable ground that the prosecution should have examined some more witnesses, encumbering the records with oral evidence and this is held in *Phani Bhushan Gupta V. State, AIR 1968 Tripura 57.*
It is elementary that evidence of an infirm witness does not become reliable merely because it has been collaborated by a number of witnesses of the same brand, for evidence is to be **weighed** not **counted** this is held in *Muluwa V. State of Madhya Pradesh*, AIR 1976 SC, 989.
In Balu Sonba Shinde v. State of Maharashtra reported in A.I.R. 2002 SC 3137, it is held that, while it is true declaration of a witness to be hostile does not ipso facto amount to rejection of his evidence, and it is now well settled that the portion of evidence being advantageous to the parties may be taken advantage of, but the court before whom such a reliance is placed, shall have to be extremely cautious and circumspect in such reliance.
The Court should exercise its discretion very judiciously because the witness wants to conceal the truth or has been won over by the adverse party.

Therefore it is necessary that if witness did not disclose the fact, even though he knows the fact, the court should declare the witness hostile and permit cross examination to the party who has called such witness to adduce evidence.
A witness is considered to be hostile witness when in the opinion of the Court the witness is **deposing against the party who has called him to depose** on his behalf and the witness adopts an adverse attitude to the said party.

The hostility of the witness and his adverse attitude can only be inferred from his statement and his conduct.
When a person debars from his earlier statement, he becomes an hostile witness.

In criminal cases when the witness debars from his earlier statement, the prosecution seeks permission from the court to allow the prosecution to cross examine the witness.
The court on perusing the statement or panchanama have to see if the witness is resilling from his earlier statement and if yes the prosecution has to be permitted to put leading questions to the witnesses.
**Child witness :-** When the witness is the child witness (minor) to whom **oath** cannot be administered, the court is required to assess the general competence of the witness to testify.

A child witness or a minor can be heavily influenced and that is why court should conduct **competency test**.
The court has to put preliminary questions to come to the conclusion that the court is satisfied that the witness is capable of distinguishing between the truth and untruth and is also capable of understanding sanctity of the proceedings and to reproduce correctly before the court as to precisely what has happened and this is held in State of Karnataka .V. Ningappa Bhimappa uppar, 2000(1) Kaut L. J. 42.
By putting question to the child witness on the basis of the answers given by the child witness, the court has to satisfy himself that the child witness possessed of sufficient understanding. However, failure to hold a preliminary examination of child witness does not introduce a fatal infirmity in the evidence and this is held in *Jibhan Vishnu Wagh V. State of Maharashtra* 1996 Cr. L. J. 803.
Courts should accept the evidence of child witness after the same has been subject to caution and scrutiny. There is no rule of law which requires that the testimony of child witness cannot be relied upon unless it is corroborated on material particulars by some other witnesses.
Apex court has observed that oath is to be administered to child witness after recording observation that the witness understood, **The implication of the questions and his duty of speaking the truth.**
Care and Caution to be Taken: While assessing the statement of the child witness recorded in the court, care and caution have to be exercised by the courts because such witness is apt to give statement as tutored by others.

Such statement can only be relied upon provided the same is corroborated by the other evidence on material particulars and this is held in AIR 1952 SC 54.
In *Rameshwar v. State of Rajasthan, AIR 1952 SC 54* the victim was examine as PW3. The victim at the time of his examination was aged 9 to 10 years and was a child witness before his examination.

The Addl. Sessions Judge has given a certificate after recording some answers to the questions put to the victim.
The certificate was that the witness was able to understand the implication of the questions and has given rational answers, after recording such observations, oath was allowed to be administered to the witness PW3 without recording further observation that the witness was able to understand the **duty of speaking the truth**
It was held **RAMESHWER SUPRA**, that when no such certificate has been given by the learned Additional Sessions Judge, the statement of PW3 recorded in court cannot be treated as statement on Oath.

•
Evidence of tutored child witness cannot be relied. The court has to carefully consider whether the child was under the influence of any tutoring.
From the answers to the questions in the cross examination of the child witness it clearly indicate that the child was tutored and the child was made to give evidence in accordance with the earlier statement recorded under section 162 of Cr. P.C. than it is highly unsafe to place reliance on the evidence of such child witness and this is held in Chhagan Daman .V. State of Gujarat 1994 Cr.L.J. 56.
Tutored witness - is a witness who is under the influence of any tutoring.
Injured Witness
The testimony of the injured witnesses corroborated by the medical evidence, forms sufficient and a sound basis, in fact that is best basis, for convicting accused persons because, injuries guarantee the presence of such witnesses on the place of the incident.
It was held in the case of *Suresh Sitaram Surve  .V . State of Maharashtra AIR 2003 S.C.344* that the evidence of any injured eye witness cannot be discarded in toto on the ground of inimical disposition towards the accused particularly where his evidence, when tested in the light of broad probabilities, it can be concluded that he was a natural eyewitness, and had no reasons to concoct a case against the accused.

•
Rustic witness
Rustic witness – The testimony of an ignorant and rustic woman hailing from country side cannot be judged by the same standard of exactitude and consistency as that of an urban sophisticated witness. Evidence of a rustic witness who is not educated must be appreciated as a whole *State of U.P. v. V. Krishna* Master AIR 2010 SC 3071.
EXPERT WITNESS

An expert witness is one who has acquired special knowledge, skill or experience in any science, art, trade or profession.

Such knowledge may have been acquired by practice, observation or careful studies.
• In xec ayub v. State, AIR 1966 Goa 17, it is held that Expert witness evidence can never be conclusive because after all it is an opinion evidence
video conferencing
Examination of witness by video conferencing: In the case of State of Maharashtra v. Dr. Praful B. Desai reported in A.I.R. 2003 SC 2053, Supreme Court observed that

1. video conferencing is an advancement of science and technology which permits seeing, hearing and talking with someone who is not physically present with the same facility and ease as if they were physically present.
The legal requirement for the presence of the witness does not mean actual physical presence.
END OF SECTION 3 OF EVIDENCE ACT
Different kinds of Presumptions
A presumption means a rule of law by which the court and Judges shall draw a particular inference from particular facts or from particular evidence unless and until the truth of that inference is disproved.
A presumption is a legal or factual assumption drawn from the existence of certain facts.
Presumptions are of three types.
1. Permissive presumptions or presumptions of fact,
2. Compelling presumptions or presumptions of law (rebuttable)
3. Irrebuttable presumption or law or conclusive proof.
“Presumption of facts” are inferences of certain fact patterns drawn from the experience and observation of the common course of nature, the constitution of the human mind, the springs of human action, the usages and habits of society and ordinary course of human affairs.
It is not obligatory for the court to draw a presumption of fact.
In case of presumption of law, *no discretion* has been left to the court and it is bound to presume the fact as proved until evidence is given by the party interested to rebut or disprove it.
Presumption of law can be further subdivided into two parts:
1. conclusive.
2. rebuttable.
Conclusive presumption: Conclusive presumptions are those where the inference drawn cannot be proved to be false.
Rebuttable Presumptions

Rebuttable presumptions are inference, drawn from facts where the inference is not sufficiently proved. These presumptions can be shown to be false by leading contrary evidence.
Presumptions of law are found in Section 79, 80, 81, 83, 85, 89 and 105 of Evidence Act.
Section 79 :- Presumption as to genuineness of certified copies, certificate or other document.
Section 80 :- Presumption as to documents produced as record of evidence.
Section 81 :- Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.

Section 81A :- Presumption as to Gazettes in electronic forms.
Section 83 :- Presumption as to maps or plans made by authority of Government.

Section 85 :- Presumption as to powers of attorney.
Section 89 :- Presumption as to due execution etc. of document not produced

Section 105 :- Burden of proving that case of accused comes within exception.
Presumption As To Electronic Agreements (Section 85A)
Presumption As To Electronic Records And Digital Signatures - Section 85B
"May presume" - Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

It gives the court a discretionary power to presume the existence of a fact. Which means that the court may regard the fact as proved unless and until it is disproved.
All the presumptions given in **Section 114** are of this kind, which says that the court **may presume** the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.
For example, the court may presume that a man who is in possession of stolen goods soon after theft, is either the thief of has received the goods knowing them to be stolen, unless he can account for his possession.
"Shall presume" - Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

It basically forces the court to presume a fact that is specified by the law unless and until it is disproved.

The court cannot ask for any evidence to prove the existence of that fact but it may allow evidence to disprove it.
Section 90 lays down that when a document, purporting or proved to be thirty years old, is produced from a custody which the Court considers to be proper, the Court may presume that the signature and every other part of such document is of that very person whose signature or writing it purports to be
Presumption to Certified Copies of Foreign Judicial Records (Section 86)
Presumption As To Books, Maps And Charts (Section 87)
Presumption as to Telegraphic Messages (Section 88)
Presumption as to Electronic Messages (Section 88A)

Presumption As To Electronic Records Five Years Old (Section 90A)
Presumptions under section 70, 80, 81, 81A, 82, 83, 84, 85 and 89 are mandatory provisions and the court shall presume
Discretionary presumption relating to documents are envisaged in Section 86, 88, 88A, 90 and 90A.
Presumption of the innocence:
The ‘presumption of innocence’ is simply another way by stating the rule that the prosecution has the burden of proving the guilt of the accused beyond a reasonable doubt.
But when the prosecution discharges its initial burden and the accused adopts affirmative defence to a crime, the accused may have both the burden of producing evidence and the burden of persuasion with regard to his affirmative defence.
The burden of proof that the case of the accused comes within the exceptions is on the accused but this burden gets discharged by proving preponderance of probabilities in his favour or raising reasonable doubt about the prosecution case.
Presumption – Suicide
Presumption about abetment of suicide of a married woman (**S.113A**).
When women commit suicide within 7 years of her marriage and a question arises is to whether suicide was abetted by her husband and or relative, the court shall presume that the said husband or the relative has abetted the suicide if she was subjected to cruelty by them. **Hans Raj . V . State of Haryana dt. 26.2.2004 (SC) , Sanju @ Sanjay Singh Sengar . V . State of M.P. (2002)5 SCC 371 and State of West Bengal . V . Orilal Jaiswal & Ors. (1994)1 SCC 73.**
In Chhagan Singh v. State of Madhya Pradesh, 1998 Cri L J 2179-Husband beat the wife in the house of third person and the wife suicides after 3-4 days. The marriage is more than 7 years.

It was held that no presumption under s.113A is available. There was no any act of cruelty. Abetment by husband cannot be inferred.
In *State of Himachal Pradesh v. Nikku AIR 1996 SC 67*. The Hon’ble Supreme Court held that this Section shows that if the woman has been subjected to cruelty as defined in Section 498-A, IPC, the court may presume, having regard to all circumstances of the case that suicide had been abetted by her husband or any of his relation.
In the case of **Ved prakash v State of Madhya Pradesh, 1995 Cri L J 893** In this case the Hon'ble High Court held that the accused person intimidated the deceased to repay the loan amount advanced to him or else he will have to face dire consequences. The accused thereafter committed suicide. The High Court held that it did not amount to abetment to commit suicide.
In K. Prema S. Rao v. Yadla Shri Niwasa Rao, State of Andhra Pradesh v. Yadla Ramga Rao and others, AIR 2003 SC 11-The court held that the cruel treatment by the husband to the wife made the wife to commit suicide and that sec 306 was applicable against the accused and presumption under section 113-A can be raised against him.
The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband or any relative of her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband or any relative of her husband.
2. The court is required to look into all the other circumstances of the case. One of the circumstances which has to be considered by the court is whether the alleged cruelty was of such a nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman.
In the case of *Kailash v. State of M.P. AIR 2007 SC 107* it has been held that the words soon before shall be determined depending upon facts and circumstances of each case.
In the case of **Surinder Singh .v. State of Punjab 1999 (1) Crimes 4296** it has been held that if the husband is the direct beneficiary it can be inferred that he caused life of his wife so miserable that she was compared to commit suicide.
Presumptions – Legitimacy - child
Sec. 112. Presumption of birth during marriage and conclusive proof of legitimacy: When a person is born during the continuance of valid marriage between his mother and any man, or within 280 days after its dissolution, the mother remaining unmarried it shall be presume that he is legitimate son of that man unless it is shown that the parties to the marriage had no access to each other at any time when he could have been begotten.
In the case of Banarasi Das .V. Teeku (2005) 4 SCC 449 it has been held that under sec.112 there is no revertible presumption of law that a child during lawful wedlock is legitimate and that access occurred between them. A presumption can only be displaced by a strong preponderance of evidence and not by mere balance of probabilities. It was further held that DNA test is not to be directed as a matter of courts but in deserving cases.
In Raghunath Parmeshwar Pandit Rao Mali v. Eknath Gajanan Kulkarni, AIR 2009 SC 3115 - The Supreme Court held that where there was evidence on record to prove staying together as husband and wife for continuous and long period, there is presumption of valid marriage.
In S. Ajaramma Bibi alias S. Hajaram Bibi and other v. S. Khursheed Begum and others, AIR 1996 SC 1663 – The Supreme Court held that continuous cohabitation of woman with a man gives rise to presumption of legitimacy of children born during period of continuous cohabitation and held that the Appellants are legitimate son.
In *Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik* 2014(2) SCC 216 – 1. The section 112 of the Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of the Legislature.
2. The result of DNA test is said to be scientifically accurate. Interest of justice is best served by ascertaining the truth and the Court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue.
Supreme court in *Nandlal supra* held that: when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former.
In the case of **Gautam Kundu Vs. State of West Bengal [AIR 1993 SC 2395]** the Apex Court has held that “the party disputing paternity to prove non access in order to dispel the presumption.”
It is rebuttable presumption of law under section 112 that a child born during the lawful wedlock is legitimate and the access occurred between the parents.

This presumption can only be displaced by strong preponderance of evidence and not by mere balance of probabilities.
Presumption – Dowry Death
Sec. 113B. Presumption as to dowry death: When the question is whether a person has committed the dowry death of a women and it is shown that soon before her death such women has been subjected by such persons to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such persons has caused the dowry death.
In the case of **G.V. Siddha Ramesh .v. State of Karnataka (2010) 3 SCC 152** it has been held that there must be material to show that *soon before the death of women*, such women was subjected to cruelty or harassment for or in connection with demand of dowry, then only a presumption can be drawn that the person has committed the dowry death of the woman. And same proposition has been held *in Ramaiah .v. State of Karnataka AIR 2014 SC 3388.*
There must be a **nexus** between the demand or dowry, cruelty or harassment based upon such demand and date of death. The test of proximity will have to be applied. It is not a rigid test and depends on facts and circumstances of each case and calls for a pragmatic and sensitive approach of the court within the confines of law.
Sec. 113B and Article 14, 20 and 21 of constitution
In the case of *Krishanlal v. Union of India 1994 Cr. L. J 3472 (P & H) (F.B.)* it has been held that it is *not ultra virus* of the constitution because the accused can lead some other evidence rather than stepping himself into the witness box to dislodge such presumptions.
Presumptions - Rape Case
114A. Presumption as to absence of consent in certain prosecutions for rape — In a prosecution for rape under clause (a) (b) (c) (d) (e) or (g) of sub-section (2) of section 376 of the IPC, where sexual intercourse by the accused, is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the **Court shall presume** that she did not consent.
In the case of **State of Maharashtra v. Chandra prakash Kewal chand Jain** [(1990) 1 SCC 550], the Supreme Court held that 1. The standard of proof to be expected by the court in such cases must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix is available.
2. Courts must also realize that ordinarily a woman, more so a young girl, will not stake her reputation by leveling a false charge concerning her chastity.”
In **Ranjit V. Sate (1998)8 SCC 635** supreme court has stated that while evaluating evidence, courts must be alive to the fact that in a case of rape no self respecting woman would come forward in a court just to make a humiliating statement against her honor such as is involved in the commission of rape on her.
2. This observation is applicable with greater force when the accused comes within any category of section 376(2) clause a, b, c, d, e and g.

The broad principle is that in such case there cannot be consent and as such the evidence of victim girl should stand in par with the evidence of an injured witness. underlying section 114A is extremely restricted in its applicability.
Thank You

Prepared by
Ms. Shabnam Shaikh
Secretary

DLSA North- Goa