'A'- APPRECIATION OF EVIDENCE IN CRIMINAL CASES WITH SPECIAL REFERENCE TO INTERESTED WITNESS, CHILD WITNESS CHANCE WITNESS, HEARSAY WITNESS, HOSTILE WITNESS AND INJURED WITNESS.

The definition of 'evidence', as given in Section 3 of the Indian Evidence Act 1872, covers (a) the evidence of witnesses and (b) documentary evidence. Evidence can be both; oral and documentary. Electronic records can also be produced as evidence. In criminal case, the prosecution has to prove the charge beyond reasonable doubt. The proof does not rest on mere preponderance of probabilities. The prosecution has to discharge the burden to a greater degree in proof beyond reasonable doubt. The presumption is that the accused is innocent till the contrary is clearly established. If there is a reasonable doubt about the guilt of the accused it is safer to acquit the accused. One has to appreciate the available evidence in proper perspective and reach a conclusion one way or the other. It is not a quantity of evidence but the quality that matter.

In criminal trial suspicion, surmises or conjecture cannot take place of legal proof. Therefore, in the matter of appreciation of evidence the facts and circumstances of the particular case are the decisive factors. It is the function of Court to separate grain from the chaff and accept what appears to be true and reject the rest. If a whole body of testimony is to be rejected because the witness evidently speaking an untruth in some aspect, it is clear that administration of criminal justice would come to dead stop. The maxim (falsus in uno falsus in omnibus) has no application in India and witness cannot be branded as a liar.

Based on the nature of evidence, witnesses can be broadly classified as interested, chance, etc. Let us consider them one by one.
INTERESTED WITNESS

It cannot be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated in material particular by independent witness. Relationship is not the factor which affects credibility, the only thing is that evidence of interested witness is to be scrutinized with care and weighed in golden scale before being relied upon. More often than not a relative would not conceal the actual culprit and inculpate an innocent person. Each case must be judged on its own facts.

A close relative who is a natural witness cannot be regarded as an interested witness having a direct interest in having the accused somehow or the other convicted. The relationship or the partisan nature of the evidence only puts the court on its guards to scrutinize the evidence more carefully. Interestedness of the witness has to be considered and not just that he is interested. Over insistence upon outside witnesses who might not have seen anything as compared with natural eye-witnesses may result in criminal injustice. To sum up, interestedness does not require outright rejection of evidence, only necessities the deeper scrutiny.

CHILD WITNESS.

Under section 118 of the Indian Evidence Act, 1872, a child can be competent witness. Provided that such witness is able to understand the question and able to give rational answer thereof. With respect to children, no precise age is fixed by law within which they are absolutely excluded from giving evidence on the presumption that they have not sufficient understanding. The object of putting questions to a child witness is that the time of the Court should not be wasted if it is found, as the result of a preliminary inquiry, that the child is neither intelligent nor can he give evidence which may be acceptable.
The evidence of a child is required to be evaluated carefully because he is an easy prey to tutoring. A conviction can be based on the evidence of a child witness, if the child is found competent to depose and his evidence is found reliable. Thus, Hon’ble Supreme Court in Suresh - Vs. State of U.P. (AIR 1981 S.C. 1122) accepted the evidence of a child of five years who was the sole witness to murder by a domestic servant.

In reference to the testimony of a witness of thirteen years, the Hon’ble Supreme Court observed, "In our country, particularly in rural areas, it is difficult to think of a lad of 13 years as a child. A vast majority of boys round about that age go to fields and do man's work. They are certainly capable of understanding significance of oath and necessity of speaking truth." (Tahal Singh Vs. State of Punjab, AIR 1979 S.C. 1347).

A child is not an incompetent witness and his evidence is not to be discarded per-se. The evidence of a child witness is to be taken with great caution. There should be close scrutiny of the evidence of child witness before the same is accepted by a Court of law. It is sound rule in practice not to act on the uncorroborated evidence of a child whether sworn or unsworn, but this is a rule of prudence and not of law. However, the statements of a child witness which inspire confidence can be relied upon without corroboration.

**CHANCE WITNESS**

"If by coincidence or chance a person happens to be at the place of occurrence at the time it is taking place, he is called a chance witness." The expression chance witnesses is borrowed from foreign countries where every man's home is considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is quite unsustainable an expression in our country where people are less
formal and more casual, at any rate in the matter explaining their presence.

If a chance witness happens to be a relative or friend of the victim or inimically disposed towards the accused, then his being a chance witness is viewed with suspicion. The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence. Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded. Conduct of the chance witness, subsequent to the incident may also be taken into consideration particularly as to whether he has informed anyone else in the village about the incident.

HEARSAY WITNESS

Hearsay evidence means statements of a witness of what he says he heard from a third person, being hearsay, is generally excluded. For example if A repeats orally or in writing, a statement alleged to have been made him or to another person about a certain event by B who is not produced before the Court, it is hearsay and inadmissible unless the statement is covered by Sec. 32 of the Indian Evidence Act and B is proved to be dead. It is rejected because A did not personally observe the event and is not qualified to speak to it.

Where the question was whether J was driving the bus at a particular time. No eye-witness was produced. The witnesses were telling the Court what others had told them. Such evidence was not allowed. (Jaddoo Singh Vs. Malti Devi, AIR 1983 Allahabad 87)

Evidence Act section 32 relates to statement by person as to cause of his death. Statement made by deceased before witnesses regarding demand of dowry and cruelty soon before her death. Statements are as to the circumstances of the transactions which resulted in her death said
statements are no doubt hearsay but are admissible U/s 32(1). Though
dying declaration is indirect evidence being the specie of hearsay, yet it is
an exception to the rule against admissibility of hearsay evidence.
Section 6 of Evidence Act, Rule of Res-gestae is an exception to the rule
of evidence that hearsay evidence is not admissible. Statement should be
spontaneous and should form part of the same transaction ruling out any
possibility of concoction.

**HOSTILE WITNESS**

In today's scenario the problem of witnesses turning hostile is quite
evident. Generally a witness is labeled as hostile, when he furnishes a
certain statement on his knowledge about commission of a crime before
the police but refutes it when called as witness before the court during the
trial. The term 'hostile witness' does not find any explicit or implicit
mention in any Indian Laws, be it Indian Evidence Act or the Code of
Criminal Procedure or any other law.

Where a party calling a witness and examining him discovers that
he is either hostile or unwilling to answer questions put to him, it can
obtain permission of the Court. Under Section 154 of the Evidence Act,
there is nothing to declare witness as hostile but it provides that the Court
in its discretion may permit a person who calls a witness to put any
question to him which might be put in cross-examination. This section
allows a party, with the permission of the Court to cross-examine his own
witness in the same way as the adverse party. Such cross-examination
means that he can be asked, firstly, leading questions under section 143;
secondly, questions relating to his previous statement in writing under
section 145 and, thirdly, questions which tend to test his veracity, to
discover who he is and what his position in life is or to shake his credit
under Section 146. A 'hostile witness' is one who from the manner in
which he gives evidence shows that he is not desirous of telling the truth to the Court. A hostile witness is not necessarily a false witness. Merely because one part of the statement of a witness was not favourable to the party calling him, the Court should not readily conclude that he was suppressing the truth or that his testimony was adverse to that party. Hostility of a witness is to be judged from the answers given by him. A witness who is unfavourable is not necessarily hostile. A witness who is gained over by the opposite party is a hostile witness.

In Balu Sonba Shinde Vs. State of Maharashtra (AIR 2002 SC 3137) it was observed 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 which such a reliance is placed shall have to be extremely cautious and circumspect in such acceptance.

In case of State of U.P. Vs. Ramesh Prasad Mishra reported in 1996(10) SCC 360, it is held that it is equally settled law that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted.

**INJURED WITNESS**

Natural injuries on the person of a witness assures his presence at the spot (Ramesh Bhagwan Manjrekar Vs. State, 1997 Cr.L.J. 796 (Bom.)) The testimony of an injured witness hold more credence. Normally he would not shield the real culprit. However, there is no immutable rule that the evidence of an injured eye-witness should be mechanically accepted. Narayan Ranu Datavale Vs. State, 1997
Cr.L.J. 1788 (Bom.) Presence of injury on the person of a witness does not guarantee his truthfulness. The injuries of a witness may best assure of his presence at the spot but, his truthfulness has to be demonstrated otherwise. He should not have any reason to falsely implicate the accused person. The court is not bound to accept his evidence if it is found to be hopelessly contradictory and utterly unreliable.

In the matter of Abdul Saeed Vs. State of Madhya Pradesh reported in (2010) 10 SCC 259; the Hon'ble Supreme court while dealing with the evidentiary value of the injured witness has held that:

"where witness to occurrence was himself injured in the incident, testimony of such witness is generally considered to be very reliable as he is a witness who comes with a inbuilt guarantee of his presence at the scene of crime and is unlikely to spare his actual assailant in order to falsely implicate someone”.

"The Hon'ble Supreme Court has further held that 'deposition of injured witness should be relied upon unless there are strongly grounds for rejection of his evidence on basis of major contradictions and discrepancies therein.” Thus, the special evidentiary status is accorded to the testimony of injured witness.

VICTIM OF RAPE

It is well settled that in a rape case, no corroboration to the evidence of prosecutrix is required if the evidence of prosecutrix is trustworthy and reliable. Even the medical evidence is not necessary to corroborate the evidence of prosecutrix. The evidence of prosecutrix is similar to evidence of the injured complainant or witness and if found to be reliable, it by itself may be sufficient to convict the culprit. No corroboration of her evidence is necessary. A woman who is victim of sexual assault is not a accomplice to the crime. Her evidence cannot be
tested with suspicion as that of accomplice. It is only by way of abundant caution that Court may look for corroboration so as to satisfy its conscience and rules out any false accusation.

'B'- CONSIDERATION FOR ISSUANCE OF PROCESS AND DISCHARGE.

1. Chapter XV (Sections 200 to 203) of the Code of Criminal Procedure (Cr.P.C.) deals with 'Complaints to Magistrates' while chapter XVI (Section 204 to 210) relates to 'Commencement of Proceedings Before Magistrate'. Section 200 of Cr. P.C. requires a Magistrate taking cognizance of an offence to examine the complainant and his witnesses, if any, on oath. If he is satisfied that there is no need for further inquiry, he may proceed to issue process under section 204 of Cr.P.C. However, section 202 of Cr.P.C. enacts that a Magistrate is not bound to issue process as a matter of course. Before issuing process, the magistrate may either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether there is sufficient ground for proceeding further. The scope of inquiry under section 202 of Cr.P.C. is very limited. It is not an administrative inquiry but a judicial inquiry requiring application of mind. It allows a magistrate to form an opinion whether process should be issued or not.

2. If, upon such inquiry, the magistrate does not find sufficient ground for proceeding, he can dismiss the complaint under section 203 of Cr.P.C. by briefly recording the reasons for doing so. But if he is satisfied that there is sufficient ground to proceed with the complaint, he can issue process by way of summons under section 204 of Cr.P.C. therefore, what is necessary or condition precedent for issuing process under Section 204 is the satisfaction of the magistrate, either by examination of the
complainant or witnesses or by the inquiry contemplated under section 202 of Cr.P.C. that there is **sufficient ground** for proceeding with the complaint.

3. The meaning of the expression 'sufficient ground' used in section 204 of Cr.P.C. is that a prima facie case should be made out against the accused. Issuance of process is nothing but taking cognizance of the offence. It is a matter of judicial determination. An order issuing process under section 204 of Cr.P.C. need not contain detailed reasons. But, such order should reflect that the magistrate has applied his mind to the facts before him.

5. Following are some of the important considerations for issuance of process.

i) The allegations made in the complaint or the statement of witnesses must disclose essential ingredients of the offence which is alleged against the accused.

ii) The complaint must not suffer from fundamental legal defects such as want of sanction, where necessary or absence of complaint by legally competent authority and the like;

iii) Process should not be issued when allegations made in the complaint are patently absurd and inherently improbable so that no person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

iv) No process should be issued where allegations made in the complaint or the statements of the witnesses, if taken at face value, do not make out any case against the accused.

v) In issuing process, magistrate should exercise his discretion judiciously and not arbitrarily or capriciously.

vi) The material which is wholly inadmissible or irrelevant should be
excluded from consideration.

The accused has no right of hearing at the stage of issuance of process and the magistrate has no authority to recall or review the process once issued. Some times the complaints impleading the Managing Director or Directors of a company or the Chairman of the institution comes before the magistrate. While issuing process against them, the magistrate has to see whether there is a reasonable nexus between the act or decision of such juristic person and the harm alleged to be caused.

**DISCHARGE**

This stage comes before framing of charge against an accused. Sections 227, 239, 245, 249 and 258 of Cr.P.C. deal with discharge of accused from the offence. The code contemplates discharge of the accused by the court of sessions under section 227 in a case triable by it. Warrant cases instituted upon a police report are covered by section 239 while those instituted otherwise than on police report are dealt with in section 245 and 249. Under section 227 of Cr.P.C., the trial court is required to discharge the accused if it considers that there is no sufficient ground for proceeding against the accused. Discharge under Section 239 of Cr.P.C. can be ordered when Magistrate considers the charge against the accused to be groundless. The power to discharge under Section 245(1) of Cr.P.C. is exercisable when Magistrate considers, for reason to be recorded, that no case against the accused has been made out which, if not repudiated, would warrant his conviction. When the proceeding have been instituted upon complaint, and on any day fixed for hearing of the case, the complainant is absent, and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may in his discretion, discharge the accused under section 249 of Cr.P.C.

Sections 227 and 239 provide for discharge before recording of
evidence. However, the stage of discharge under section 245 is reached only after the evidence as referred in section 244 has been taken. There is no specific provision to discharge the accused in summons cases instituted otherwise than upon complaint, but the court may stop the proceedings at any stage and release the accused under section 258 of Cr.P.C., which has the effect of discharge.

**IMPLIED DISCHARGE**

There can be implied discharge -

(i) Where a person is accused of more than one offence and a charge is not framed in respect of any of them, the trial terminates so far as that offence is concerned. Though no express order of discharge is passed for that offence, non framing of a charge for that offence amounts to an implied order of discharge of the accused, in respect of that offence.

(ii) Where a Magistrate consciously frames a charge on a minor section instead of on the major section on which the case starts, his action is equivalent to a discharge with regard to the major offence.

Some of the illustrative grounds of discharge, as led down by Hon'ble Supreme Court and the High Courts in catena of judgments regarding 'discharge' of an accused, are -

i) Absence of a prima facie case;

ii) Civil nature of dispute;

iii) Insufficiency of evidence;

iv) Groundless complaint;

v) No previous sanction, if mandatory, to take cognizance of offence.

In conclusion we can say that at the time of issuance of process and framing of charge, the court has to see whether there is sufficient ground for proceeding against the accused.
C'- SCOPE AND AMBIT OF "DOMESTIC RELATIONSHIP" & "DOMESTIC VIOLENCE" UNDER DOMESTIC VIOLENCE ACT:-

1) In India woman is equated with all form of Goddess. Therefore, she has very significant place in our society. But in reality one gets wonder struck when a woman is seem to have been abused in different forms. Domestic Violence is, sadly, reality in Indian society. Prior to decades in the Indian patriarchal set up, it became an acceptable practice to abuse woman. There may be many reason for occurrence of domestic violence.

2) The protection of Women from Domestic Violence Act is laudable piece of legislation that was enacted in 2005 to tackle the problem of domestic violence. Before enactment of this Act, there was no civil law addressing the domestic violence. Admittedly, women could earlier approach the courts under the Indian Penal Code in cases of Domestic Violence. However, this provision was not expensive in scope. The Indian Penal Code never use the term "The Domestic Violence" to refer to the objectionable practice. This pose a problem specially where the victims were children or women who were dependent on the assailant. In fact, even where the victim was the wife of assailant and could approach the court under section 498-A of the I.P.C. She would presumably have to move out of her matrimonial home to ensure her safety or face further violence retaliation. There was no major in place to allow her to continue staying in matrimonial home and yet raised her voice against the violence perpetrated against her. This, together with many other problems faced by women in the household, prompted this enactment. A good thing about the Act is the fact that it deals with domestic violence regardless of the religion of the parties. It is the secular
in outlook in protecting women's right.

**Scope and ambit of 'Domestic relationships'**

3) The definition of "domestic relationship" is given u/s 2(f) of the Protection of Women from Domestic Violence Act, 2005. (hereinafter called as DV Act for brevity). It means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

4) In the 21st century where relationship between the man and woman developed not only through marriage, but also in the nature of marriage. The Hon'ble Supreme Court and High Court discussed the concept of "Relationship in the nature of marriage". The Hon'ble Supreme Court in **D. Velusamy -V/s- D.Patchaiammal AIR 2010 S.C. 479** dealt with the question that whether woman is entitled for maintenance if she is having live in relationship with man. In Para No.33 to 35 the Hon'ble Supreme Court observed that 'In our opinion a relationship in the nature of marriage' is akin to a common law marriage. Common law marriages require that although not being formally married :

a) The couple must hold themselves to society as being akin to spouses
b) They must be of legal age to marry.
c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.
d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

5) In addition to the above, parties must have lived together in a shared household as defined in Sec.2(s) of the Act. Merely spending weekend together or a one night stand would not make it a 'domestic
relationship'. In our opinion not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be the relationship in the nature of marriage.

6) In another case law **Indra Kumar Sharma V/s V.K.V.Sharma (Criminal Appeal No.2009 of 2013)** the Hon'ble Supreme Court again laid down some more guiding principles to identify relationship in the nature of marriage;

   i) The length of the relationship between two person of opposite sex.
   ii) Whether two persons have resided together,
   iii) The name and extent of common residence,
   iv) Whether there is, or has been, a sexual relationships between them.
   v) The degree of financial dependence or interdependence and any arrangements for financial support between them.
   vi) The ownership, use and acquisition of their property.
   vii) The degree of mutual commitment by them to a shared life.
   viii) Whether they care for and support children.
   ix) The reputation and public aspect of the relationship between them.

   These guidelines, of course are not exclusive but will definitely get some insight to such relationship.

**Scope and ambit of term 'Domestic violence'**

7) Section 2(g) read with Section 3 of the Act defines term 'domestic violence' as any act of physical, mental or sexual violence actually perpetrated or an attempt of such violence as well as the forcible restriction of individual freedom and of privacy, carried out against individuals who have or have had family or kinship ties or cohabit or dwell in the same home.

8) Thus this section provides protection against any act/
conduct/ omission/ commission that harms or injures or has the potential to harm or injure, and it will be considered as 'domestic violence'. Under this, the law considers physical, sexual, emotional, verbal, psychological, and economic abuse or threats of the same. Now, women do not have to suffer a prolonged period of abuse before taking recourse to the law. Even a single act of commission or omission may constitute domestic violence. This legislation has widened the scope of domestic violence and now it can be broadly related to human rights. In addition to this, the interpretation of the fact that whether the act would come under the ambit of domestic violence or not is not left solely on the discretion of the judges.

9) This wide definition of domestic violence- physical, mental, economical and sexual, thus brings under its purview the invisible violence suffered by a large section of women and entitles them to claim protection from the courts. A woman of any age, she may be a girl child, and unmarried, married or elderly women including a widow or such women with whom men have marriage like relationship. Violence can be both physical and psychological. It indicates threats or aggressive behavior towards her not only to her physical being, but towards her self-respect and self-confidence. Domestic Violence against women may be psychological, physical or sexual. Psychological violence is carried out with psychological weapons like insults, humiliating treatment, denial of human existence rather than physical attack. Physical violence includes all types aggressive physical behavior towards the women's body. Sexual violence could include both passive and active violence. It will also include cases of perversity. Perpetrators of domestic violence may be husband or his family members. Domestic violence could occasionally be seen in other relations also like by parents, brothers or others in parent
family.

10) Domestic violence and abuse can happen to anyone, regardless of size, gender, or strength and yet the problem is often overlooked, excused, or denied. This is especially true when the abuse is psychological, rather than physical. Emotional abuse is often minimized, yet it can leave deep and lasting scars. Violence generally means physical abuse but it does not include only this. The scope is wider than we think.

In short, we can describe as following:

**Physical abuse** :- Physical abuse is abuse involving contact intended to cause feelings of intimidation, pain, injury, or other physical suffering or bodily harm. Physical abuse includes hitting, slapping, punching, choking, pushing, burning and other types of contact that result in physical injury to the victim. Physical abuse can also include behaviors such as denying the victim of medical care when needed, depriving the victim of sleep or other functions necessary to live, or forcing the victim to engage in drug/alcohol use against his/her will. If a person is suffering from any physical harm then they are experiencing physical abuse. This pain can be experienced at any level. It can also include inflicting physical injury on to other targets, such as children or pets, in order to cause psychological harm to the victim.

**Sexual abuse** :- Sexual abuse is any situation in which force or threat is used to obtain participation in unwanted sexual activity. Coercing a person to engage in sex, against his/her will, even if that person is a spouse or intimate partner with whom consensual sex has occurred, is an act of aggression and violence.

**Emotional abuse** :- (also called psychological abuse or mental abuse) can include humiliating the victim privately or publicly, controlling what the victim can and cannot do, withholding information from the victim,
deliberately doing something to make the victim feel diminished or embarrassed, isolating the victim from friends and family, implicitly blackmailing the victim by harming others when the victim expresses independence. Emotional abuse can include verbal abuse and is defined as any behavior that threatens, intimidates, undermines the victim's self-worth or self-esteem, or controls the victim's freedom. This can include threatening the victim with injury or harm, telling the victim that they will be killed if they ever leave the relationship, and public humiliation. Constant criticism, name-calling, and making statements that damage the victim's self-esteem are also common verbal forms of emotional abuse. Women undergoing emotional abuse often suffer from depression which puts them at increased risk for suicide, eating disorders, and drug and alcohol abuse.

**Verbal abuse**: It is a form of emotionally abusive behavior involving the use of language. Verbal abuse can also be referred to as the act of threatening. Through threatening a person can blatantly say he will harm you in any way and will also be considered as abuse. Verbal abuse may include aggressive actions such as name-calling, blaming, ridicule, disrespect, and criticism, but there are also less obviously aggressive forms of verbal abuse. Statements that may seem benign on the surface can be thinly veiled attempts to humiliate, falsely accuse; or manipulate others to submit to undesirable behavior, make others feel unwanted and unloved, threaten others economically, or isolate victims from support systems.

**Economic abuse**: It is a form of abuse when one intimate partner has control over the other partner's access to economic resources. Economic abuse may involve preventing a spouse from resource acquisition, limiting the amount of resources to use by the victim, or by exploiting economic
resources of the victim. The motive behind preventing a spouse from acquiring resources is to diminish victim's capacity to support him/herself, thus forcing him/her to depend on the perpetrator financially, which includes preventing the victim from obtaining education, finding employment, maintaining or advancing their careers, and acquiring assets. In addition, the abuser may also put the victim on an allowance, closely monitor how the victim spends money, spend victim's money without his/her consent and creating debt, or completely spend victim's savings to limit available resources.

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