

AN INTRODUCTION TO THE LAW OF EVIDENCE (2008). BY Dr. A.H. Mondal. R. Cambray & Co. Private Ltd., Kolkata-700 013. Pp. xxxviii + 398. Price Rs. 350/-

LAW IS commonly divided into substantive law, which defines rights, duties and liabilities, and adjective law, which defines the procedure, pleading and proof by which the substantive law is applied in practice. The law of evidence occupies a unique position in the field of procedural laws. The existence of substantive rights can only be established by relevant and admissible evidence.

The province of the law of evidence is to lay down rules as to what matter is relevant or admissible for the purpose of establishing facts in dispute and as to the manner in which such matter may be placed before the court. The law of evidence plays a pivotal role in the effective functioning of the judicial system. The Indian Evidence Act, 1872 is one of the finest instances of legislative craftsmanship. It bears the imprint of a master craftsmanship of Sir James Fitzjames Stephen, a distinguished jurist and legislator and has the architectural symmetry of a well designed piece of art.

The book under review¹ authored by A.H. Mondal, a former Professor of Law in the University of Burdwan is in its first edition. The author claims² that the book is written to cater the needs of the law students and the new entrants to the legal profession. At the very outset, it requires mention that the author has succeeded in his endeavour.

The “Introduction” gives a lucid idea on the basics of the law of evidence and it is followed by a “Preamble” which deals with the principles governing the interpretation of the preamble of a statute. The author, thereafter, deals with the enactment part-wise, chapter-wise and section-wise. After extracting each section, he elucidates the same. The comments under each section are supported by indigenous and foreign judicial pronouncements and national and international authorities supplemented by the views of the author.

While dealing with part I under the heading “Relevancy of Facts”, the author gives a vivid description on the different kinds of evidence and on the concepts “proved”, “disproved” and “not proved”, “shall presume” and “conclusive proof” have not been properly elucidated. The discussion under the caption “presumptions” should have been made after quoting the

1. Dr. A.H. Mondal, An Introduction to the Law of Evidence (2008).



definitions of “may presume”, “shall presume” and “conclusive proof”. Moreover, the author has not succeeded in bringing out properly the differences between these three concepts. The differences could have been brought out by discussing in detail with reference to the different sections of the Indian Evidence Act which deal with these three concepts. The discussion on “conclusive proof” is quite insufficient to explain that concept. The examples³ given therein as “birth during marriage, a final judgment of the court or a degree conferred by the university” do not help in explaining the term conclusive proof especially because there is no proper discussion with reference to these examples.

The next topic captioned “Of the Relevancy of Facts” consists of fifty one sections starting from section 5 and ending with section 55. They lay down what facts may be proved before a court. Section 5 makes it clear that no evidence can be given of a fact which is neither fact in issue nor is relevant under any of sections 6 to 55. The book under review contains a vivid elucidation of the principles in section 5. However, it appears that a discussion⁴ on the maxim “*falsus in uno falsus omnibus*” is out of context in that place. The author has successfully explained the principle of *res gestae* enunciated in section 6. Section 7 which embraces large area than section 6 has been properly discussed with the aid of examples and judicial pronouncements.

Relevancy of motive, preparation and conduct is the subject matter of section 8. A serious approach is made while dealing with this section. To explain this provision of law, the author has placed reliance upon a number of decisions of the apex court. Section 9 of the Indian Evidence Act makes relevant, among other things, the facts which establish the identity of a thing or person whose identity is relevant. The author has dealt with this aspect of section 9 highlighting the important principles regarding the conduct of identification parades.

In an accusation of criminal conspiracy, for the purpose of proving the existence of conspiracy and for the purpose of showing that a person was a party to the conspiracy, any thing said, done or written by one of the conspirators is relevant against each of the persons believed to be conspiring. This is the principle contained in section 10 of the Indian Evidence Act and the author explains this principle with the aid of Indian and foreign decisions.

One of the pleas commonly raised by a person facing criminal trial is *alibi* and it is made relevant under section 11, which is often said as the

2. *Ibid*, Preface.

3. *Id.* at 27.

4. *Id.* at 30.

5. *Id.* at 59.



residuary section dealing with relevancy of facts as it attempts to state in popular language the general theory of relevancy. It requires mention that though the commentary⁵ under section 11 explains briefly the principles contained in the said section, one expects more serious and detailed discussion on the various facets of the defence of *alibi* with the help of the important decisions on this aspect.

Proof of existence of a right or custom as contained in section 13 and relevancy of the facts showing the existence of any state of mind or any state of body or bodily feeling as dealt with in section 14 have been discussed with due seriousness. Sections 17 to 31 come under the caption “Admissions”. While commenting⁶ on the definition contained in section 17, the author has succeeded in explaining succinctly the concept of admissions. The views expressed therein are supported by judicial decisions and are supportive to the comments to the remaining sections under the caption “Admissions”.

Confession which is one species of admission, though has not been defined legislatively has been defined by jurists and judges. An admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime is said to be a confession. It is true that the author has explained properly sections 24 to 30 which deal with confessions. But, it requires mention that the author has not fully succeeded in bringing out the real import of section 27 of the Evidence Act which is one of the most important provisions in the realm of appreciation of evidence. The underlying principle in this section which is a *proviso* to the previous sections dealing with confessions and which is an exception to the general rule that a statement made before police is not admissible in evidence could have been highlighted properly with the help of concrete examples from decided cases. It appears that the author has omitted to deal with *Kottayya v. Emperor*⁷ which is one of the leading decisions on the subject.

Sections 32 to 39 deal with the statement by persons who cannot be called as witnesses and the statements made under special circumstances. The principles contained in these sections have been discussed properly. The relevancy of previous judgments dealt with in sections 40 to 44 of the Act has been explained in a succinct manner. While dealing with the relevancy of opinion of third persons as contained in sections 45 to 51, the learned author has dwelt at length on the scope and ambit of expert evidence.

6. *Id.* at 77-82.

7. AIR 1947 PC 67.



One of the important topics in the law of evidence is contained in chapter 5 entitled “Of Documentary Evidence”. Section 61 of the Act provides that the contents of documents may be proved either by primary evidence or by secondary evidence. Primary evidence and secondary evidence are defined in the two succeeding sections. The discussions contained in this chapter are sufficient to bring out the concepts of primary evidence and secondary evidence. Section 68 deals with proof of documents which are required by law to be attested has been properly elucidated with due seriousness. The important principles governing the comparison of signature, writing or seal have been discussed lucidly while dealing with section 73 of the Act.

Chapter 6 entitled “Of the Exclusion of Oral by Documentary Evidence” contains a detailed discussion on sections 91 and 92 followed by a brief discussion on the other related sections. Section 91 enunciates the best evidence rule. In fact, section 91 and section 92 supplement each other. It is to be remembered that though section 91 and section 92 differ in some material particulars, section 91 would be frustrated without the aid of section 92 and section 92 would be inoperative without the aid of section 91. The author has succeeded in explaining the nuances in sections 91 and 92.

Chapter 7 dealing with “Burden of Proof” has been presented properly. Each section is followed by a brief discussion to explain the same. It is worth mentioning that the concept of conclusive proof contained in section 112 and the presumptions permitted under section 114 have been explained with due importance. The doctrine of estoppel and related principles contained in sections 115 to 117 are discussed in chapter 8. The chapter contains a vivid and useful discussion on the different aspects of estoppel which is a rule of evidence.

Competency of witnesses, privileged communications, accomplice evidence, examination of witnesses, judge’s power to put questions and to order production of documents, etc. are the important topics discussed in chapter 9 and 10. Though the comments under section 118 contain a brief discussion on the competency of witnesses and the evidence of a child witness, one expects more detailed discussion on the examination of a child witness. It does not appear that the author has dealt with the concept of *voir dire* examination to test the competency of a witness. Some more elaborate discussion is necessary, with the help of decided cases, to bring out the various facts of the evidence of a child witness. The procedural aspects to be borne in mind while recording the evidence of a child should have been discussed in this context. A discussion with reference to the provisions of the Oaths Act relating to a child witness also is missing in this chapter.



Before concluding, it may be pointed out that irrespective of the drawbacks pointed out earlier, this is a dependable text book for the law students and others. The cover is attractive and the printing is good. However, it requires mention that a little more care in proof reading could have helped in avoiding mis-spelt words. A methodically prepared subject index at the end of the book enhances the quality of the book and it facilitates easy reference. The lengthy table of cases at the beginning is useful to the readers. However, if the bare Act had been provided at the end of the book as an appendix, it could have enhanced the utility of the book. In short, Dr. A.H. Mondal has brought out a good work on the law of evidence through R. Cambay and Company Private Ltd., Kolkata.

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