

**ANNEXURE**

***THE INDIAN EVIDENCE (AMENDMENT) BILL, 2003***

A

Bill further to amend the Indian Evidence Act, 1872

Be it enacted by Parliament in the Fifty-fourth year of the Republic of India as follows:-

**Short title and commencement**

1. (1) This Act may be called as the Indian Evidence (Amendment) Act, 2003.
- (2) It shall come into force on such date as the Central Government may by notification in the Official Gazette appoint.

**Amendment of section 1**

2. In the Indian Evidence Act 1872, hereinafter referred to as the principal Act, in section 1, the words “other than Courts-martial convened under the Army Act (44 & 45 Vict., C. 58), the Naval Discipline Act (29 & 30 Vict., C. 109) or the Indian Navy (Discipline) Act, 1934 or the Air Force Act (7-Geo. 5, C 51)”, shall be omitted.”

**Amendment of section 3**

3. In section 3 of the principal Act,
  - (a) in the definition of the word “Fact”, for the words “Fact means and includes” the words “Fact includes”, shall be substituted.
  - (b) in the definition of the words “Facts in issue”, for the words “facts in issue means and includes” the words “facts in issue means”, shall be substituted;

(c) for the definition of ‘Document’ the following shall be substituted, namely:-

“ ‘Document’ shall include any substance having any matter written, expressed, inscribed, described or otherwise recorded upon it by means of letters, figures or marks or by any other means or by more than one of these means, which are intended to be used, or which may be used, for the purpose of recording that matter.

Explanation:- It is immaterial by what means the letters, figures or marks are formed or decoded or retrieved.”

(d) in the definition of the word “Evidence”, for the words “Evidence means and includes”, the words “Evidence includes”, shall be substituted.

(e) after the definition of “Not proved” and before the definition of “India”, the following definition shall be inserted, namely:-

“admissible” means “admissible in evidence”.

### **Amendment of section 9**

4. In section 9 of the principal Act, for the words “Facts necessary to explain”, the words, “Facts which are necessary to explain”, shall be substituted.

### **Substitution of section 10**

5. For section 10 of the principal Act, the following section shall be substituted, namely:-

#### **Things said or done by conspirator in reference to common design**

“10. Where-

- (a) the existence of a conspiracy to commit an offence or an actionable wrong, or the fact that any person was a party to such a conspiracy, is a fact in issue or a relevant fact; and
- (b) the question is whether two or more persons have entered into such conspiracy,

anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first

entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it”.

### **Amendment of section 11**

6. In section 11 of the principal Act, after clause (2) and before the illustrations, the following Explanation shall be inserted, namely:-

“Explanation : Facts not otherwise relevant but which become relevant under this section need not necessarily be relevant under some other provision of this Act but the degree of their relevancy will depend upon the extent to which, in the opinion of the Court, they probalilise the facts in issue or relevant facts.”

### **Amendment of section 12**

7. In section 12 of the principal Act, for the word “damages “ in both the places where it occurs, the words “compensation or damages”, shall be substituted.

### **Amendment of section 13**

8. In section 13 of the principal Act, after clause (b) and before the Illustration the following Explanations shall be inserted, namely:-

“Explanation I:- A previous legal proceeding, whether it was or was not between the same parties or their privies, may be relevant as a transaction or instance, within the meaning of the section; and when a legal proceeding so becomes relevant under this section, a judgment or order delivered in that proceeding is admissible as evidence of such legal proceeding; findings of fact but not the reasons therefor contained in such a judgment or order are relevant; but nothing in this Explanation shall affect the relevance of a judgment or order under any other section.

Explanation II :- Recitals in documents which are or not between the same parties or their privies, including recitals regarding boundaries of immovable property are relevant in a legal proceeding.”

### **Amendment of section 14**

9. In section 14 of the principal Act in Illustration (h), for the words, “The fact that public notice of the loss of the property had been given in the place where A was,” the following words shall be substituted, namely:-

“The fact that public notice of the loss of the property had been given in the place where A was and in such a manner that A knew or probably might have known of it.”

### **Substitution of section 15**

10. For section 15 of the principal Act, the following section shall be substituted, namely:-

#### **Facts bearing on question whether act was accidental or intentional**

“15. When there is a question whether an act of a person was accidental or intentional, or was done by a person with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the same person doing the act was concerned, is relevant.”

### **Substitution of section 18**

11. For section 18 of the principal Act, the following section, shall be substituted, namely:-

#### **Admission by party to proceeding or his agent or by party interested in subject matter or by person from whom interest is derived**

“ 18. (1) Subject to the provisions of this section, statements made by a party to the proceeding which is against his interest are admissions.

(2) Such statements made by an agent to a party to the proceeding, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

(3) Such statements made by parties to a civil proceeding, where the proceeding is instituted by or against them in their representative character, are not admissions, unless they were made while the party making them held that character.

(4) Such statements made by persons who have a joint proprietary or pecuniary interest in the subject-matter of the proceeding are admissions, provided the following conditions are satisfied:-

- (a) the statements are made by such persons in their character of persons so interested, and during the continuance of the interest of the persons making the statements; and
  - (b) the statements relate to the subject-matter of the proceeding.
- (5) Such statements made by persons from whom the parties to the civil proceeding have derived their interest in the subject-matter of the proceeding are admissions, if they are made during the continuance of the interest of the persons making the statements”

### **Amendment of section 19**

12. In section 19 of the principal Act, for the word “suit” in both the places where it occurs, the words “ civil proceeding “ shall be substituted.

### **Amendment of section 20**

13. In section 20 of the principal Act for the word “suit” the words “civil proceeding” shall be substituted.

### **Substitution of sections 21 and 22**

14. For sections 21 and 22 of the principal Act, the following sections shall be substituted, namely:-

### **Proof of admissions against persons making them, and by or on their behalf**

“21. (1) Admissions are relevant and may be proved against the following persons that is to say,-

- (a) the person who makes them, or his representative in interest;
- (b) in the case of an admission made by an agent where the case falls within sub-section (2) of section 18, the principal of the agent;
- (c) in the case of an admission made by a person having a joint proprietary or pecuniary interest in the subject-matter of the proceeding, where the case falls within sub-section (4) of section 18, any other person having a joint proprietary or pecuniary interest in that subject-matter;
- (d) in the case of an admission made by a person whose position or liability it is necessary to prove as against a party, where the case falls within section 19, that party;

- (e) in the case of an admission made by a person to whom a party has expressly referred for information, where the case falls within section 20, the party who has so expressly referred for information.

(2) Admissions cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:-

- (a) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.
- (b) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.
- (c) An admission may be proved by or on behalf of the person making it, when it is relevant otherwise as an admission.

### **Illustrations**

- (a) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

- (b) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

- (c) A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible, under section 32, clause (2).

(d) A is accused of receiving stolen goods knowing them to be stolen. He offers to prove that he refused to sell them below their value. A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skillful person to examine the coin as he doubted whether it was counterfeit or not, and that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

### **When oral admission as to contents of documents are relevant**

22. Oral admissions as to the contents of a document are not relevant –

- (a) unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained; or
- (b) except where a document is produced and its genuineness is in question.”

### **Substitution of section 23**

15. For section 23 of the principal Act, the following section shall be substituted, namely:-

#### **Admission in civil cases when relevant**

“23 (1) In civil cases, no admission is relevant:

- (a) if it is made either upon an express condition that evidence of it is not to be given; or
- (b) if it is made for the purposes of or in the course of a settlement of compromise of a disputed claim; or
- (c) under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given,

unless the party who made the admission and the party in whose favour the admission is made agree that evidence be given, or evidence as to the admission becomes necessary to ascertain if there was at all a settlement or compromise or to explain any delay where a question of delay is raised;

(2) Such an admission which is not relevant under sub-section (1) may be relevant in so far as it touches upon an issue between the person who made the admission and a third party to the admission.

(3) Nothing in this section shall exempt;

(a) any legal practitioner from giving evidence of any matter of which he may be compelled to give evidence under section 126; or

(b) a person who made a publication, from giving evidence of any matter of which he may be required to give evidence under section 132 A.

Explanation I: 'legal practitioner' as used in this section shall have the meaning assigned to it in Explanation 2 to section 126.

Explanation II: 'publication' as used in this section shall have the meaning assigned to it in para (a) of the Explanation to section 132 A."

#### **Amendment of section 24**

16. In section 24 of the principal Act, for the words, "caused by any inducement, threat or promise", the words "caused by any inducement, promise, threat, coercion, violence or torture", shall be substituted.

#### **Substitution of sections 26 and 27**

17. For sections 26 and 27 of the principal Act, the following sections shall be substituted, namely:-

#### **Confession by accused while in custody of Police not to be proved against him**

"26. No confession made by any person whilst he is in the custody of a police officer, shall be proved as against such person, unless it is recorded by a Magistrate in accordance with Chapter XII of the Code of Criminal Procedure, 1973.



**Discovery of facts at the instance of the accused**

27. Notwithstanding anything to the contrary contained in sections 24 to 26, when any relevant fact is deposed to as discovered in consequence of information received from a person accused of any offence, whether or not such person is in the custody of a police officer, the fact so discovered may be proved, but not the information, whether it amounts to a confession or not:

Provided that facts so discovered by using any threat, coercion, violence or torture shall not be provable.”

**Amendment of section 28**

18. In section 28 of the principal Act for the words, “caused by any such inducement, threat or promise”, the words “caused by any such inducement, promise, threat, coercion, violence or torture”, shall be substituted.

**Substitution of sections 29 and 30**

19. For sections 29 and 30 of the principal Act, the following sections shall be substituted, namely:-

**Confession otherwise relevant not to become irrelevant because of promise of secrecy etc**

“29. (1) If a confession is otherwise relevant, it does not become irrelevant merely because –

- (a) it was made
  - (i) under a promise of secrecy, or
  - (ii) in consequence of a deception practised on the accused person for the purpose of obtaining it, or
  - (iii) when he was drunk, or
  - (iv) in answer to questions which he need not have answered, whatever may have been the form of those questions.
- (b) the accused person was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

(2) Subject to the provisions of section 463 of the Code of Criminal Procedure, 1973, nothing contained in sub-section (1) shall make a confession relevant which is recorded in contravention of the provisions of sub-section (2) of section 164 of that Code.

**Consideration of proved confession affecting person making it and others jointly under trial for same offence or offences**

**30.** When more persons than one are being tried jointly for the same offence or offences, and a confession made, before the commencement of trial, by one of such persons affecting himself and some other of such persons in respect of same offence or all the offences affecting himself and some other of such persons is proved, the Court may, where there is other relevant evidence against such other person or persons, take into consideration such confession as lending credence against such other person or persons as well as against the person who makes such confession.

Explanation: ‘Offence’ as used in this section, includes the abetment of, or attempt to commit the offence.

**Illustrations**

- (a) A and B are jointly tried for murder of C. It is proved that A said – “B and I murdered C”. The court may consider the effect of this confession as against B.
- (b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said – “A and I murdered C.” This statement may not be taken into consideration by the court against A, as B is not being jointly tried.”

**Amendment of section 32**

**20.** In section 32 of the principal Act ,-

- (a) for the opening portion, the following shall be substituted, namely:-

“Statements, written or verbal, of facts in issue or relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose presence cannot be procured without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable, or who is kept out of the way by the adverse party, are themselves relevant facts in the following cases:”

- (b) for clause (2), the following clauses shall be substituted, namely:-

“(2) **or is made in course of business:** When the statement was made by such a person in the ordinary course of business and, in particular, and without prejudice to the generality of the foregoing provisions of this clause, when it consists of any entry or memorandum made by him in books kept in the ordinary course of business.

(2A) **or is made in discharge of professional duty etc:** When the statement consists of an entry or memorandum made by such person in the discharge of professional duty or of an acknowledgement written or signed by such person in respect of the receipt of money, goods, securities or property of any kind, or of a document used in commerce, written or signed by him or of the date of a letter or other document usually dated, written or signed by him

(c) In clause (3), the following Explanation shall be inserted namely:-

“Explanation: A recital as regards boundaries of immovable property in document containing such statements, as to the nature or ownership or possession of the land of the maker of the statement or of adjoining lands belonging to third persons, which are against the interests of the maker of the statement, are relevant and it is not necessary that the parties to the document must be the same as the parties to the proceedings or their privies.”

(d) for clause (7), the following clause shall be substituted, namely:-

“(7) **or in documents relating to transactions mentioned in section 13, clause (a):**When the statement is contained in any deed, will or other document, being a deed, will or other document which relates to any transaction by which a right or custom was created, claimed, modified, recognized, asserted or denied or which was inconsistent with its existence, as mentioned in clause (a) of section 13.

Explanation I:- Such statement is relevant where the question in the proceeding now before the court is as to the existence of the right or custom or if such statement related to facts collateral to the proceeding and it is not necessary that the parties to the document must be the same as the parties to the proceeding or their privies.

Explanation II:- A recital as regards boundaries of immovable property in a document containing such statement, as to the nature or ownership or possession of the land of the maker of the statement or of adjoining lands belonging to third persons, shall be relevant and it is not necessary that the parties to the document must be the same as the parties to the proceeding or their privies.”

**Substitution of section 33**

21. For section 33 of the principal Act, the following section shall be substituted, namely:-

**Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated**

“33. Evidence given by a witness –

- (a) in a previous judicial proceeding, or
- (b) in an earlier stage of the same judicial proceeding, or
- (c) in any proceeding before any person authorized by law to take evidence,

is relevant in a subsequent judicial proceeding before a court, for the purpose of proving the truth of the facts which it states, when the witness is dead, or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided-

- (i) that the subsequent proceeding before the Court is between the same parties or their representatives in interest;
- (ii) that the adverse party in the first proceeding had the right and opportunity to cross-examine;
- (iii) that the questions in issue are substantially the same in the first as in the subsequent proceeding.

Explanation:- A criminal trial or inquiry shall in cases ,

- (a) where the criminal proceedings are instituted by a private person, be deemed to be a proceeding between that person and the accused within the meaning of this section, if that person is permitted by the Court to conduct the prosecution under section 302 of the Code of Criminal Procedure, 1973; and
- (b) other than those referred to in clause (a), be deemed to be a proceeding between the State and the accused.”

**Amendment of section 34**

22. In section 34 of the principal Act, for the words “such statement” the words “such entries” shall be substituted.

**Substitution of section 35**

23. For section 35 of the principal Act, the following section shall be substituted, namely:-

**Relevancy of entry in public record or in electronic record made in performance of public duty**

“35. An entry in any public or other official book, register, record or electronic record stating a fact in issue or relevant fact, and made by

- (a) a public servant in the discharge of his official duty, or
- (b) any other person in performance of a duty specially enjoined by the law of the country in which such book, register, record or electronic record is kept,

is itself a relevant fact.”

**Substitution of sections 36 and 37**

24. For sections 36 and 37 of the principal Act, the following sections shall be substituted, namely:-

**Relevancy of statements in maps, charts and plans**

“36. Statements of facts in issue or relevant facts -

- (a) made in published maps, charts or plans generally offered for public sale; or
- (b) contained in published maps, charts or plan made under the authority of the Central Government or any State Government,

as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

**Relevancy of statement as to fact of public nature contained in certain Acts or notifications**

37. When the Court has to form an opinion, as to the existence of any fact of a public nature, any statement of it made in a recital contained –

- (a) in any Central Act, Provincial Act, or a State Act, or
- (b) in a Government notification appearing in the Official Gazette, or
- (c) as respects the period before 15<sup>th</sup> day of August, 1947 –
  - (i) in any Act of Parliament of the United Kingdom, or
  - (ii) in a Government notification appearing in any printed paper purporting to be the London Gazette or the Government Gazette of any Dominion, colony or possession of His Majesty, or
  - (iii) in a notification by the Crown Representative appearing in the Official Gazette,

is a relevant fact.”

**Amendment of section 38**

25. In section 38 of the principal Act, for the words, “When the Court has to form an opinion as to a law of any country,” the words “When the Court has to form an opinion as to a law of any country outside India” shall be substituted.

**Substitution of sections 39 and 40**

26. For sections 39 and 40 of the principal Act, the following sections shall be substituted, namely:-

**HOW MUCH OF A STATEMENT IS TO BE PROVED**

**What evidence should be given when statement forms part of a conversation, electronic records, document, book or series of letters or papers**

“39.(1) When any statement of which evidence is given –

- (a) forms part of a longer statement or of a conversation or part of an isolated document or part of an electronic record, or
- (b) is contained in a document which forms part of a book or is contained in part of an electronic record or of a connected series of letters or papers,

then, subject to the provisions of subsection (2), the party giving evidence of the statement shall give in evidence so much, and no more of the statement, conversation, document, electronic record, book or series of letters or papers as is

necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

(2) Where such party has failed to give in evidence any part of the statement, conversation, document, electronic record, book or series of letters or papers which is necessary as aforesaid, the other party may give that part in evidence.

## **JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT**

### **Previous Judgments relevant to bar a second suit or trial**

40. The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or issue or holding a trial or determining a question, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or issue, or to hold such trial or determine such question, as the case may be.”

### **Amendment of section 41**

27. In section 41 of the principal Act, the following Explanation shall be inserted at the end, namely:-

“Explanation: An order refusing to grant probate does not fall within the scope of the section.”

### **Amendment section 45**

28. In section 45 of the principal Act, for the portion beginning with the words “When the court has to form an opinion” and ending with the words “Such persons are called experts” the following shall be substituted, namely:-

“When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to the identity of handwriting, or finger impressions or, footprints or, palm impressions or typewriting or usage of trade or technical terms or identity of persons or animals, the opinions, upon that point, of persons specially skilled in such foreign law, science or art, or as to the identity of handwriting, finger impressions, footprints, palm impressions, typewriting, usage of trade, technical

terms or identity of persons or animals, as the case may be, are relevant facts. Such persons are called ‘experts’.”

### **Insertion of new sections 45A and 45B**

29. After section 45 of the principal Act, the following sections shall be inserted, namely:-

#### **Supply of copy of Expert’s Report**

“45A. (1) Except by leave of the Court, a witness shall not testify as an expert unless a copy of his report has, pursuant to subsections (2) and (3), been given to all the parties.

(2) An expert’s report shall be addressed to the Court and not to the party on whose behalf he is examined and he shall owe a duty to help the Court and this duty shall override any obligation to the party on whose behalf he is examined.

(3) An expert’s report must -

- (a) give details of the expert’s qualifications;
- (b) give details of any literature or other material which the expert has relied on, in making the report;
- (c) state who carried out any test or experiment which the expert has used for the report and whether or not the test or experiment has been carried out under the expert’s supervision and the reasons if any, given by the person who conducted the test;
- (d) give the qualifications of the person who carried out any such test or experiment;
- (e) where there is a range of opinion on the matters dealt with in the report –
  - (i) summarise the range of opinion, and
  - (ii) give reasons for his own opinion;
- (f) contain a summary of conclusions reached;
- (g) contain a statement that the expert understood his duty to the Court and has complied with that duty;
- (h) contain a statement setting out the substance of all material instructions (whether written or oral) of the party on whose behalf he is examined.;
- (i) be verified by a statement of truth as follows:



“I believe that the facts I have stated in the report are true and that the opinion I have expressed are correct”; and

- (j) contain a statement that the expert is conscious that if the report contained any false statement without an honest belief about its truth, proceedings may be brought for prosecution or for contempt of Court, with the permission and under the directions of Court.

### **Procedure to prove foreign law and Court’s power**

- 45B.** (1) A party to a suit or other civil proceeding who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice.
- (2) The Court, in determining a question of foreign law, in any particular case may, after notifying the parties, consider any relevant material or source, including evidence, whether or not submitted by a party, and the decision of the Court shall be treated as a decision on a question of law”.

### **Substitution of section 48**

- 30.** For section 48 of the principal Act, the following section shall be substituted, namely:-

#### **Opinion as to existence of right or custom, when relevant**

“**48.** When the Court has to form an opinion as to the existence of any general or public right or custom or any matter of general or public interest, the opinions, as to the existence of such right or custom or such matter, of persons who are likely to know of its existence if it existed or of that matter, as the case may be, are relevant.

***Explanation:*** The expression ‘general or public right or custom or any matter of general or public interest’ includes rights or customs or matters common to any considerable class of persons.

#### **Illustration:-**

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.”

**Amendment of section 50**

31. In section 50 of the principal Act, for the proviso, the following proviso shall be substituted, namely:-

“Provided that such opinion shall not be sufficient in any civil or criminal proceedings, where a person has to prove that there was a marriage”

**Insertion of new section 53A**

32. After section 53 of the principal Act, the following section shall be inserted, namely:-

**Character of victim not relevant in certain cases**

“53A.. In a prosecution for an offence under section 376, 376A, 376B, 376C or 376D or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of her previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.”

**Amendment of section 54**

33. In section 54 of the principal Act, for the words, “unless evidence has been given that he has a good character, in which case it becomes relevant”, the following shall be substituted, namely:-

“unless evidence has been given that he has good character whether through witnesses for defence or through cross examination of witnesses for the prosecution or in any other manner, in which case it becomes relevant”.

**Amendment of section 57**

34. In section 57 of the principal Act,

(a) in clause (1), the following Explanations shall be inserted at the end, namely:-

**“Explanation I:-**Where, by virtue of this section, the Court is bound to take judicial notice, and the question relates to the existence, extent, commencement of the terms of a statutory instrument, the Court shall, for the purpose of deciding the question, resort for its aid to appropriate books or documents of reference, if such books or documents are readily available, before calling upon the party concerned to produce such books or documents.

**Explanation II:-**‘Statutory instrument’ means a rule, notification, bye-law, order, scheme, or other instrument made under an enactment’;

(b) for clause (2), the following clause shall be substituted, namely :-

‘(2) All public Acts passed by Parliament of the United Kingdom before the fifteenth day of August 1947 and local and personal Acts directed by Parliament of the United Kingdom before that date, to be judicially noticed’;

(c) for clauses (4) to (7), the following clauses shall be substituted, namely:-

“ (4) The course of proceeding of Parliament of the United Kingdom before the fifteenth day of August 1947, of the Constituent Assembly of India, of Parliament and of legislatures established under any laws for the time being in force in a Province before the said date or in the States;

(5) The accession and sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland in relation to any act done before the fifteenth day of August 1947;

(6) The following seals, that is to say,

(a) All seals of which English Court take judicial notice in relation to any act done before the fifteenth day of August 1947:

(b) The seals of all Courts in India;

(c) Seals of all Courts out of India, established by the authority of the Central Government;

- (d) Seals of law Courts established by the authority of the Crown Representative in relation to any act done before the fifteenth day of August 1947.
- (e) Seals of Courts of Admiralty and Maritime Jurisdiction and Notaries Public;and
- (f) All seals which any person is authorized to use by an Act of Parliament of the United Kingdom in relation to any act done before the fifteenth day of August 1947 or by the Constitution of India or an Act or Regulation having the force of law in India;

(7) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in India or any State, if the fact of their appointment to such office is notified in any Official Gazette;”

**Insertion of new section 57A**

35. After section 57 of the principal Act, the following section shall be inserted, namely:-

**Court to take judicial notice of certain matters relating to foreign states**

“ 57A. (1) Every Court shall take judicial notice of the fact –

- (a) that a State has or has not been recognized by the Central Government;
- (b) that a person has or has not been recognized by the Central Government as head of a State.

(2) If, in any Court, questions with reference to sub-section (1) arise, the Secretary to the Government of India in the appropriate department shall, on the application of the Court, forward to the Court, the decision of the Central Government on the question, and that decision shall, for the purpose of the proceeding, be final.

(3) The Court shall forward to the said Secretary, in a document under the seal of the Court and signed by a Judge of the Court, questions framed so as properly to raise the question, and sufficient answers to those questions shall be returned to the Court by that Secretary and those answers shall, on production thereof, be conclusive evidence of the matters therein contained.”

**Amendment of section 58**

36. In section 58 of the principal Act, for the words “ No fact need to be proved in any proceeding,” the words “No fact need to be proved in any proceeding, other than in a criminal prosecution”, shall be substituted.

**Substitution of section 59**

37. For section 59 of the principal Act, the following section shall be substituted, namely:-

**Proof of facts by oral evidence**

“59. (1) Subject to the provisions of sub-section (2), all facts may be proved by oral evidence.

(2) Save as otherwise expressly provided under this Act, the contents of documents or electronic records shall not be proved by oral evidence.”

**Amendment of section 60**

38. In section 60 of the principal Act, after the first proviso, the following proviso shall be inserted, namely:-

“Provided further that the opinion of the expert expressed in writing, and the grounds on which such opinion is held, may be proved without calling the expert as a witness, unless the Court otherwise directs, having regard to the circumstances of the case, where the expert –

- (i) is an employee of the Central or State Government or of a local authority or of a University or other institution engaged in research and has been consulted by the Court on application of a party or on its own motion; or
- (ii) recorded the opinion in the course of his employment,

subject however to the right of either party to summon the expert for the purpose of cross-examination.”

**Amendment of section 63**

39. In section 63 of the principal Act-

- (a) in the opening portion, for the words “Secondary evidence means and includes” the words “Secondary evidence includes” shall be substituted;
- (b) in clause (3) for the words “made from or compared” the words “made from and compared” shall be substituted;
- (c) in clause (5) for the words “given by some person who has himself seen it” the words “given by some person who has himself read it” shall be substituted.

### **Amendment of section 65**

40. In section 65 of the principal Act,

- (1) for clause (a), the following clauses shall be substituted, namely:-

“(a) when the original is shown or appears to be in the possession or power –

(i) of the person against whom the document is sought to be proved; or of any person out of reach of, or not subject to, the process of the Court and such person does not produce the original; or

(ii) of any person legally bound to produce it, and such person, after receiving the notice mentioned in section 66, does not produce it; or

(aa) when the original is shown or appears to be in the possession or power of any person not legally bound to produce it, and such person, after receiving notice from the Court at the instance of any party to produce the original, does not produce it.”

- (2) for the words “In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible ” the words “In case (e) or (f), unless some other clause of this section applies, certified copy of the document, but no other kind of secondary evidence, is admissible”, shall be substituted.

### **Amendment of section 67**

41. In section 67 of the principal Act, the following Explanation shall be inserted at the end, namely:-

“Explanation:- In this section and in sections 68 to 73, the expressions ‘execution’ or ‘signature’ in relation to wills shall have the same meaning assigned to them under section 63 of the Indian Succession Act, 1925 and the expression ‘attestation’ shall mean signing or putting a mark by the attesor.”

**Substitution of new sections for sections 68 to 73**

42. For sections 68 to 73 of the principal Act, the following sections shall be substituted, namely:-

**Proof of execution of will required by law to be attested**

“68. (1) If a will is required by law to be attested, it shall not be used as evidence of any testamentary disposition until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of the Court and capable of giving evidence.

(2) Notwithstanding anything contained in sub-section (1), an attesor need not be called as a witness to prove the execution of a will if,-

- (a) the attesting witness is incapable of giving evidence; or is kept out of the way by the opposite party or by another person in collusion with that party or is one whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or
- (b) the will is in the possession of the opposite party; or
- (c) a party wants to refer to any collateral fact contained in the will; or
- (d) the provisions of section 89 or section 90 apply.

**Proof where no attesting witness is found**

69. If no such attesting witness can be found as specified under sub-section (1) of section 68, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the will is in the handwriting of the executant of the will.

**Admission of execution by party to attested will**

70. The admission by the executant of an attested will of its execution shall, if such admission is made during his lifetime in a pleading or otherwise in the course of a suit or proceeding, be sufficient proof of its execution as against those who dispute the execution, though the will is one required by law to be attested.

**Proof when attesting witness denies the execution**

71. If the attesting witness called for the purpose of proving execution of a will denies or does not recollect the execution of the will, its execution shall, subject to the provisions of section 68, be proved, by calling other attesting witnesses, before other evidence is adduced.

**Proof of wills or other document not required by law to be attested**

72. An attested will or other document not required by law to be attested may be proved as if it was unattested.

**Comparison of signature, writing or seal with others admitted or proved**

73. (1) In order to ascertain whether a signature, writing or seal is that of the person by whom it is alleged to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared by the Court or under its orders with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

(2) The Court may direct any person present in Court to write any words or figures for the purpose of comparison of the words or figures so written with any words or figures alleged to have been written by such person.

(3) This section applies also, with any necessary modifications, to finger impressions, palm impressions, footprints and type-writing.

(4) Without prejudice to the provisions of any other law for the time being in force, nothing in this section shall apply to a criminal Court before it has taken cognizance of an offence.”



**Amendment of section 74**

43. In section 74 of the principal Act, in clause (1), the following Explanation shall be inserted at the end, namely:-

“Explanation:- Records forming part of a case leading to a judgment of a Court or an order of a public officer, if the order is pronounced judicially, shall be deemed to be public documents.”

**Amendment of section 76**

44. In section 76 of the principal Act, the Explanation shall be renumbered as Explanation 1 thereof and after the Explanation as so renumbered, the following Explanations shall be inserted, namely:-

“Explanation 2- For the purposes of this section, it is not necessary that the public should have a right to inspect the document and it is sufficient if the person demanding a copy has a right to inspect the document of which the copy is demanded.

Explanation 3- If a person has a right to obtain a copy of a document, he shall be deemed to have a right to inspect; and where a person has been conferred by any law, a right to inspect or a right to obtain a copy thereof or where a rule or order made by the Government allows a copy to be given, this section applies notwithstanding any provision of law requiring that the document shall be treated as confidential as regards other persons.”

**Amendment of section 77**

45. In section 77 of the principal Act, the following Explanation shall be inserted at the end, namely:-

“ Explanation:- If a certified copy is in fact issued, the same shall be admissible irrespective of whether it has been issued pursuant to a right to inspect or a right to obtain a certified copy.”

**Amendment of section 78**

46. In section 78 of the principal Act, -

(a) in clause (1), in the opening part, for the words “ Crown Representative or” the words “Crown Representative, where such Acts ,Orders or Notifications were issue before the fifteenth day of August 1947 or’, shall be substituted.

(b) in clause (2) for the words “The proceedings of the Legislatures”, the words “The proceedings of Parliament or of the Legislature of any State’, shall be substituted;

(c) after clause (2) the following clause shall be inserted, namely:-

“(2A) the unpublished and private proceedings of a legislature or its Committees,

by a certified extract of the proceedings issued under the signature and seal of the presiding officer of the legislature concerned or of the Chairman or head of the Committee of the legislature concerned.”

(d) in clause (3), for the words ‘Proclamations, orders or regulations issued by Her Majesty’s Government’, the words and figures ‘Proclamations, orders or regulations issued by Her Majesty’s Government before the fifteenth day of August 1947’, shall be substituted.

(e) for clause (6) the following clause shall be substituted, namely:-

“(6). Public document of any other class in a foreign country,

(a) by the original, or

(b) by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of an Indian Consul or diplomatic officer, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.”

### **Amendment of section 79**

47. In section 79 of the principal Act, for the words “duly certified by any officer of the Central Government or of a State Government or by any officer in the State of Jammu and Kashmir, who is duly authorized thereto by the Central Government,” the following shall be substituted, namely:-

“duly certified by any officer of the Central Government or of a State Government or by the presiding officer of the legislature concerned or of the Chairman or head of the Committee of the legislature concerned.”

### **Amendment of section 80**

48. In section 80 of the principal Act, for the words ‘taken in accordance with law, and purporting to be signed by any Judge,’ the following shall be substituted, namely:-

“‘taken in accordance with law, or to be a statement recorded by a Magistrate under section 164 of the Code of Criminal Procedure, 1973 and purporting to be signed by any Judge’”.

### **Amendment of section 81**

49. In section 81 of the principal Act, for the words, “‘The Court shall presume the genuineness of every document purporting to be the London Gazette,’” the words “‘The Court shall presume the genuineness of every document dated or issued before the fifteenth day of August 1947, purporting to be the London Gazette,’” shall be substituted.

### **Omission of section 82**

50. Section 82 of the principal Act shall be omitted.

### **Substitution of section 83**

51. For section 83 of the principal Act, the following section shall be substituted, namely:-

#### **Presumption as to maps, charts or plans made by authority of government.**

“83. The Court shall presume that maps or plans or charts purporting to be made by the authorities of the Central Government or any State Government were so made and are accurate; but maps or plans or charts made for the purpose of any particular cause must be proved to be accurate.”

### **Substitution of section 87**

52. For section 87 of the principal Act, the following section shall be substituted, namely:-

**Presumption as to books, maps, plans and charts**

“87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or plan or chart, the statements regarding which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written and published.”

**Substitution of section 90**

53. For section 90 of the principal Act, the following section shall be substituted, namely:-

**Presumption as to certain documents 20 years old**

“90(1) Where any document, purporting or proved to be twenty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person’s handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the person by whom it purports to be executed or attested.

(2) Where any such document as is referred to in subsection (1) was registered in accordance with the law relating to registration of documents and a duly certified copy thereof is produced, the Court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person, is in that person’s handwriting and in the case of a document executed or attested, that it was duly executed and attested by the person by whom it purports to have been executed or attested.

Explanation: Documents referred to in sub-section (1) are said to be in proper custody if they are in the place in which, and under the care of the person with whom they would naturally be, but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81 and clause (a) of section 90A.

**Illustrations**

- (a) A, has been in possession of landed property for a long time. He produced from his custody deeds relating to the land, showing him titles to it. The custody is proper.

- (b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.
- (c) A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody is proper.”

**Insertion of new section 90A**

54. Section 90A of the principal Act, shall be re-numbered as section 90B thereof and before section 90B as so re-numbered, the following section shall be inserted, namely :-

**Presumption as to certain documents less than 20 years old**

“90A Where –

- (a) any document registered in accordance with the law relating to registration of documents is produced from any custody which the Court in the particular case considers proper, and which registered document is less than twenty years old; or
- (b) a duly certified copy of a document registered in accordance with the law relating to registration of documents, the original of which is less than twenty years old, is produced; or
- (c) a duly certified copy of a document which is part of the record of a Court of justice, the original of which has been proved to be genuine in the earlier case and the original of which is less than twenty years old, is produced,

the registered document mentioned in clause (a) or the originals of the documents referred to in clauses (b) or (c) may be presumed by the Court to have been executed by the person by whom it purports to have been executed:

Provided that no such presumption shall be made under this section, in respect of any document which is the basis of a suit or of a defence or is relied upon in the plaint or written statement.”

**Amendment of section 92**

55. In section 92 of the principal Act, for the opening paragraph the following shall be substituted, namely:-

“92 When the terms of any such contract, grant or other disposition of property as is referred to in section 91 or any matter required by law to be reduced to the form of a document and constituting a transaction between two or more parties, have been proved according to section 91, no evidence of any oral agreement or statement shall be admitted-

- (a) as between the parties to any such contract, grant or other disposition of property or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, the terms of the document, or
- (b) as between the parties to such transaction, or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from the terms of the document in which the matter required by law to be reduced to the form of a document is recorded, as the case may be.”

**Insertion of new section 92A**

56. After section 92 of the principal Act, the following section shall be inserted, namely:-

**Exclusion of oral evidence in the case of certain unilateral documents**

“92A. When any matter required by law to be reduced to the form of a document, and not constituting a transaction between parties, such as a confession of an accused, the statement of a witness, a court proceeding (other than judgments, decree or order), a resolution of a company required to be in writing, has been so reduced to writing and proved according to section 91, no evidence of any oral statement shall be admitted for the purpose of contradicting, varying, adding to, or subtracting from the contents of the document.”

**Substitution of section 99**

57. For section 99 of the principal Act the following section shall be substituted, namely:-

**Who may give evidence of agreement varying the terms of a document**

“99. Evidence of any fact tending to show a contemporaneous agreement contradicting, varying, adding to, or subtracting from the terms of a document may be given –

- (a) as between persons who are not parties to the document or their representatives in interest; or
- (b) as between a person who is a party to the document or his representative in interest and a person who is not such party or representative in interest:

Provided that no such evidence shall be given where the matter is required by law to be reduced to writing.

**Illustration**

A and B make a contract in writing that B shall sell certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months’ credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.”

**Amendment of section 100**

58. In section 100 of the principal Act, for the words and figures “Indian Succession Act, 1865” the words and figures “Indian Succession Act, 1925” shall be substituted.

**Amendment of section 103**

59. In section 103 of the principal Act, in Illustration (a), the brackets and letter “(a)” shall be omitted.

**Amendment of section 107**

60. In section 107 of the principal Act, the following proviso shall be inserted at the end, namely:-

“Provided that where it appears to the Court from the evidence that the person concerned had been involved in an accident or calamity in circumstances which render it highly probable that the accident or calamity caused his death, the Court may, for reasons to be recorded, direct that the provisions of this section shall not apply.”

### **Substitution of section 108**

61. For section 108 of the principal Act, the following sections shall be substituted, namely:-

#### **Burden of proving that a person is alive who has not been heard of for seven years**

“108. Notwithstanding anything contained in section 107, where the question is whether a man is alive or dead, or was alive or dead at a particular time, and it is proved that he has not been heard of for seven years or more by those who would naturally have heard of him if he had been alive, the burden of proving that he was alive during any period after the expiry of seven years shall be upon the person who affirms it and if the said burden is not discharged, the Court shall, as respects such period starting from the expiry of seven years, presume that the person was dead.

Explanation:- If any question is raised that the man died on any particular date during the period of seven years aforesaid, the burden of proving that he died on such date during that period, shall be on the person who so affirms, and the presumption referred to in this section has no application.

#### **Presumption in case of simultaneous deaths**

108A. (1) Subject to the provisions of sub-section (2), where two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths shall, for all purposes, be presumed to have occurred in the order of seniority of age and until the contrary is proved, the younger shall be presumed to have survived the elder.

(2) In the case of husband and wife dying in circumstances rendering it uncertain which of them survived the other and

(a) where the question arises in respect of title on intestacy or testamentary succession to the property of a deceased spouse; and

(b) the husband or the wife is, by virtue of sub-section (1) presumed to have survived intestate or the testator, being the younger of the two,



then succession, whether intestate or under the testament shall, nevertheless have effect as respects the intestate or testator, as if the younger spouse has predeceased the intestate or the testator:

Provided that where the younger spouse, who is so deemed to have predeceased the intestate or the testator is, according to law, the sole heir or heir along with others, to the estate of the intestate or the testator, then the younger spouse shall not to be so deemed to have predeceased the intestate or the intestate under this sub-section and the property of the intestate or testator shall devolve according to law on the younger spouse and the heirs of the said spouse may claim the estate of the said spouse.

### Illustrations

- (a) Two brothers A and B die simultaneously in an accident and in that event, B, the younger brother, shall be deemed to have survived A.
- (b) The husband A and his wife B die simultaneously in an accident. The husband A has agricultural land and the wife has house property. In respect of succession to the estate of A, the husband, by the husband's heirs, it shall be presumed that B the wife died earlier and B's heirs' shall not therefore be entitled to claim the husband's estate. In respect of succession to the estate of B, the wife, by the wife's heirs, it shall be presumed that A, the husband died earlier and A's heirs shall not be entitled to claim the wife's estate.
- (c) In the first part of Illustration (b), if the wife B is younger to the husband A, but is to be deemed to have predeceased her husband, because of sub-section (2), she will not be so deemed where, if she had survived the husband A, she would have been the sole heir or have to a share along with others to her husband's estate, whether by virtue of intestacy or testamentary succession and in that event, once such property of A, the husband devolves on the wife B, her heirs would be entitled to claim the same.
- (d) In the second part of Illustration (b), if the husband A is younger to the wife B, but is to be deemed to have predeceased his wife, because of sub-section (2), he will not be so deemed where, if he had survived the wife B, he would have been the sole heir or heir to a share along with others to his wife's estate, whether by virtue of intestacy or testamentary succession and in that event, once such property of B, the wife devolves on the husband B, his heirs would be entitled to claim the same."

**Substitution of section 112**

62. For section 112 of the principal Act, the following section shall be substituted, namely:-

**Birth during marriage conclusive proof of legitimacy except in certain cases**

“112 The fact that any child was born during the continuance of a valid marriage between its mother and any man, or within two hundred and eighty days,

- (i) after the marriage was declared nullity, the mother remaining unmarried, or
- (ii) after the marriage was avoided by dissolution, the mother remaining unmarried,

shall be conclusive proof that such person is the legitimate child of that man, unless

- (a) it can be shown that the parties to the marriage had no access to each other at any time when the child could have been begotten; or
- (b) it is conclusively established, by tests conducted at the expense of that man, namely,
  - (i) medical tests, that, at the relevant time, that man was impotent or sterile, and is not the father of the child; or
  - (ii) blood tests conducted with the consent of that man and his wife and in the case of the child, by permission of the Court, that that man is not the father of the child; or
  - (iii) DNA genetic printing tests conducted with the consent of that man and in the case of the child, by permission of the Court, that that man is not the father of the child; and

Provided that the Court is satisfied that the test under sub-clause (i) or sub-clause (ii) or sub-clause (iii) has been conducted in a scientific manner according to accepted procedures, and in the case of each of these sub-clauses (i) or (ii) or (iii) of clause (b), at least two tests have been conducted, and they resulted in an identical verdict that that man is not the father of the child.

Provided further that where that man refuses to undergo the tests under sub clauses (i) or (ii) or (iii), he shall, without prejudice to the provisions of clause (a), be deemed to have waived his defence to any claim of paternity made against him.

Explanation I: For the purpose of sub clause (iii) of clause (b), the words ‘DNA genetic printing tests’ shall mean the tests conducted by way of samples

relatable to the husband and child and the words “DNA” mean ‘Deoxyribo-Nucleic Acid’.

Explanation II: For the purposes of this section, the words ‘valid marriage’ shall mean a void marriage till it is declared nullity or a voidable marriage till it is avoided by dissolution, where, by any enactment for the time being in force, it is provided that the children of such marriages which are declared nullity or avoided by dissolution, shall nevertheless be legitimate.”

### **Omission of section 113**

**63.** Section 113 of the principal Act shall be omitted.

### **Amendment of section 114**

**64.** In section 114 of the principal Act,

- (i) Illustrations (b) and (c) shall be omitted;
- (ii) after Illustration (d), the following Illustration shall be inserted, namely:-

“(da) that a thing or state of things which has been shown to be in existence at a point of time, was in existence earlier within a period shorter than within which such things or state of things usually cease to exist”;

- (iii) after the paragraph “But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:” the following amendments shall be made, namely:-

(A) both the paragraphs starting with the words “As to Illustration (b)” shall be omitted;

(B) the paragraph starting with the words “As to Illustration (c)” shall be omitted;

(C) after the paragraph starting with the words “As to Illustration (d)” the following shall be inserted, namely:-

“As to Illustration (da) : It is proved that a river is running in a certain course this year, but it is known that there have been floods for several years earlier, which might have changed its course.” ;

(D) in the paragraph starting with the words,” As to Illustration (e)”, for the words “ A judicial act, the regularity of which is in question ”,the words ,” A judicial or official act, the regularity of which is in question” shall be substituted.

**Insertion of new section 114B**

65. After section 114A of the principal Act, the following section shall be inserted namely:-

**Presumption as to bodily injury while in police custody**

“114 B. (1) In a prosecution of a police officer for an offence committed by an act alleged to have caused bodily injury to a person, if there is evidence that the injury was caused during a period when that person was in the custody of the police, the Court may presume that the injury was caused by the police officer having custody of that person during that period.

(2) The Court, in deciding whether or not it should draw a presumption under sub-section (1), shall have regard to all the relevant circumstances including, in particular,

- (a) the period of custody;
- (b) any statement made by the victim as to how the injuries were received, being a statement admissible in evidence;
- (c) the evidence of any medical practitioner who might have examined the victim; and
- (d) evidence of any magistrate who might have recorded or attempted to record the victim’s statement .”

(3) For the purpose of this section, the expression ‘police officer’ includes officers of the para-military forces and other officers of the revenue, who conduct investigation in connection with economic offences.”

**Amendment of section 115**

66. In section 115 of the principal Act, the following proviso shall be inserted at the end, namely:-

“Provided that nothing contained in this section shall apply to minors or other persons under disability for the purpose of enforcing any liability arising out of a

representation made by such persons, where a contract entered into by such persons incurring a like liability would have been null and void.”

### **Substitution of section 116**

67. For section 116 of the principal Act, the following section shall be substituted, namely:

#### **Estoppel of tenant and of licensee of person in possession**

“116 (1). No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy or any time thereafter, if the tenant or the person claiming through such tenant, continuous in possession after termination of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

(2) Where a tenant in possession of immovable property is attorned to another, the tenant or any person claiming through him shall not, during the continuance of the tenancy, or at any time thereafter if the tenant or the person claiming through him continues in possession after termination of the tenancy, be permitted to deny that the person to whom the tenant was attorned had, on the date of the attornment, title to such immovable property; but nothing in this subsection shall preclude the tenant or the person claiming through him from producing evidence to the effect that the attornment was made under mistake or was procured by fraud.”

### **Amendment of section 119**

68. In section 119 of the principal Act, the following Explanation shall be inserted at the end, namely:-

“Explanation: The interpretation of the signs of a person unable to speak, by an expert, shall be treated as oral evidence of the person who made the signs.”

**Amendment of section 120**

69. In section 120 of the principal Act , the following proviso shall be inserted at the end, namely:-

“Provided that the spouse of the accused in a criminal prosecution shall not be compelled to give evidence in such prosecution except to prove the fact of marriage unless –

- (a) such spouse and the accused shall both consent, or
- (b) such spouse is the complainant or is the person at whose instance the first information of the offence was recorded, or
- (c) the accused is charged with an offence against such spouse or a child of the accused or a child of the spouse, or a child to whom the accused or such spouse stands in the position of a parent.”

**Substitution of section 122 to 124**

70. For sections 122 to 124 of the principal Act, the following sections shall be substituted, namely:-

**Communication during marriage**

“122 (1). No person who is or has been married, shall be compelled to disclose any communication made during marriage, between that person and any person to whom that person is or has been married; nor shall that person be permitted to disclose any such communication, unless the person to whom that person is or has been married or that person`s representative in interest, consents, or unless the proceedings are of the nature specified in sub section (3).

(2) Any person other than the person referred to in sub-section (1) who has overheard or has acquired possession of or has intercepted, in accordance with law, any communication as is referred to in subsection (1), may be permitted to disclose any such communication without the consent of the spouses or their representatives in interest.

(3) The proceedings referred to in sub section (1) are-

- (a) proceedings between married persons;
- (b) proceedings in which one married person is prosecuted for any offence committed against the other;

- (c) proceedings in which one married person is the complainant or is the person at whose instance the first information of the offence was recorded, and the other married person is the accused;
- (d) proceedings in which one married person is prosecuted for an offence committed against a child of the other person or a child of the first mentioned person or a child to whom either of them stands in the position of a parent.

### **Evidence as to Affairs of State**

**123 (1)** Save as otherwise provided in this section, -

- (a) no person shall give evidence derived from unpublished official records relating to any affairs of State; or
- (b) no public officer shall be compelled to disclose any oral, written or electronic communication relating to any affairs of the State made to him in official confidence,

unless the officer at the head of the department concerned, has given permission for giving such evidence.

Explanation:- For the purposes of clause (a), the expression ‘evidence derived from unpublished official records’ includes the oral evidence derived from such records and the record itself.

(2) The officer at the head of the department concerned referred to in sub-section (1), shall not withhold such permission, unless he is satisfied that the giving of such evidence would be injurious to the public interest; and where he withholds such permission, he shall file an affidavit in the Court, raising an objection and such objection shall contain a statement to that effect and his reasons therefor.

(3) Where the objection referred to in sub-section (2) is raised in a Court subordinate to the High Court, whether in a civil or criminal proceeding, the said Court, notwithstanding anything in any other law for the time being in force, shall have power and shall refer the question as to the validity of such objection to the High Court for its decision.

(4) The High Court, on a reference under sub-section (3), shall decide upon the validity of the said objection, in accordance with the provisions of sub sections (5) to (7) and transmit a copy of the judgment to the Court which made the reference to enable the said Court to proceed further in accordance with the Judgment.

(5) Where the High Court, on a reference under sub-section (3) is of the opinion that the affidavit filed under sub section (2) does not state the facts or the reasons fully, the High Court may require such officers or, in appropriate cases, the Minister concerned with the subject, to file a further affidavit on the subject.

(6) The High Court, after considering the affidavit or further affidavit as the case may be, and if it thinks fit, after examining such officer or, in appropriate cases, the Minister, orally, shall

- (a) issue summons for the production of the unpublished records in chambers; and
- (b) inspect the records in chambers, and
- (c) determine the question whether the giving of such evidence would or would not be injurious to the public interest, recording its reasons therefor.

(7) Where the High Court determines under clause (c) of subsection (6) that the giving of such evidence would not be injurious to the public interest and rejects the objection raised under sub-section (2), the provisions of sub section (1) shall not apply to such evidence and such evidence shall be received.

(8) Where the objection referred to in sub section (2) is raised in the High Court or in the Supreme Court, whether in a civil or criminal proceeding, the said Court shall decide the validity of such objection in accordance with the procedure in sub sections (5) to (7), as if the validity of the said objection had been referred to it.

### **Official Communications**

**124.** (1) Subject to the provisions of section 123, no public officer shall be compelled to disclose any oral, written or electronic communication made to him in official confidence, when the Court considers that public interest would suffer by such disclosure.

(2) Where a public officer who is a witness is asked a question which might require the disclosure of any such communication, and he objects to answering the question on the ground that public interest would suffer by its disclosure, the Court shall, before rejecting his objection, ascertain from him, in chambers, the nature of his objection and reasons therefor.”



**Amendment of section 125**

71. In section 125 of the principal Act, the following Exception shall be inserted at the end, namely:-

“Exception: Nothing in this section shall apply where it appears to the Court that the giving of the information is a fact in issue on which the liability of a party depends or is otherwise a material fact, and the Court, for reasons to be recorded and in the interests of justice, directs the disclosure of such information by the Magistrate, Police officer or Revenue officer”.

**Substitution of section 126**

72 For section 126 of the principal Act, the following section shall be substituted, namely:-

**Professional communications**

“126. No legal practitioner shall, at any time, be permitted, except with his client’s express consent, to disclose any communication made to him in the course of and for the purpose of his professional engagement, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course of and for the purpose of such engagement, or to disclose any advice given by him to his client in the course of and for the purpose of such engagement:

Provided that nothing in this section shall protect from disclosure –

- (a) any such communication made in furtherance of any illegal purpose;
- (b) any fact observed by any legal practitioner in the course of his engagement as such, showing that any crime or fraud has been committed since the commencement of his engagement.
- (c) any such communication when required to be disclosed in a suit between the legal practitioner and the client arising out of the professional engagement or in any proceeding in which the client is prosecuted for an offence against the legal practitioner or the legal practitioner is prosecuted for an offence against the client, arising out of the professional engagement.

Explanation 1:- The obligation stated in the section continues after the engagement has ceased.

Explanation 2:- In this section and in sections 127 to 129, the expression ‘legal practitioner’ or ‘legal professional adviser’ includes any person who, by law, is empowered to appear on behalf of any other person before any judicial or administrative authority; and the expression ‘client’ shall be construed accordingly.

Explanation 3:- For the purpose of clause (b) of the proviso to this section, it is immaterial whether the attention of such legal practitioner was or was not directed to such fact by or on behalf of his client.

### **Illustrations.**

(a) A, a client, says to B, a legal practitioner – “I have committed forgery, and I wish you to defend me.”

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, a legal practitioner – “I wish to obtain possession of property by the use of a forged deed on which I request you to sue.”

This communication being made in furtherance of a criminal purpose, is not protected from disclosure.

(c) A, being charged with embezzlement, retains B, a legal practitioner to defend him. In the course of proceedings, B observes that an entry has been made in A’s account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his professional engagement.

This being a fact observed by B in the course of his engagement, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.”

**Amendment of section 127**

73. In section 127 of the principal Act, for the words, “barristers, pleaders attorneys and vakils” the words “legal practitioners” shall be substituted.

**Amendment of section 128**

74. In section 128 of the principal Act ,for the words “barrister, pleader attorney or vakil” in both the places where they occur, the words “legal practitioner” shall be substituted.

**Amendment of section 130**

75. In section 130 of the principal Act, for the words, “unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims” the following shall be substituted, namely:-

“unless such witness has agreed in writing with the party so requiring him or with a person claiming through such party.”

**Substitution of section 131 to 133**

76. For sections 131 to 133 of the principal Act, the following sections shall be substituted, namely:-

**Production of documents or electronic records which another person, having possession could refuse to produce**

“131. No person who is in possession or control of documents or electronic records belonging to another, shall be compelled to produce the said documents or electronic records, if the person to whom they belonged, would have been entitled to refuse to produce them if they were in the possession or control of that person:

Provided that the person in possession or control of such documents or electronic records belonging to another, may be compelled to produce them, if the person to whom they belong, consents to their production.

**Witness or accused not excused from answering on ground that answer will criminate**

132(1) A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness or the spouse of the witness or that it will expose, or tend directly or indirectly to expose, such witness or spouse to a penalty or forfeiture of any kind.

(2) An accused person who offers himself as a witness under section 315 of the Code of Criminal Procedure, 1973, shall not be excused from answering any question as to any matter relevant to the matter in issue in the prosecution, on the ground that the answer to such question will criminate or may tend directly or indirectly to criminate the accused or the spouse of the accused; or that it will expose, or tend directly or indirectly to expose, the accused or the spouse to a penalty or forfeiture of any kind.

(3) Where any witness or accused is bound or feels bound to answer a question, under the provisions of this section whether he has objected to it or not, no such answer which-

- (a) the witness gives to that question shall subject the witness or the spouse of the witness, as the case may be, to arrest or prosecution or be proved against them
- (b) the accused gives to that question shall, save as otherwise provided in sub-section (2), subject the accused or the spouse of the accused, as the case may be, to arrest or prosecution or be proved against them in any criminal proceeding,

Provided that nothing contained in this sub-section shall apply to any answer which may amount to giving of false evidence.

**Disclosure of source of information contained in publication**

132A. (1) No Court shall require a person to disclose the source of information contained in a publication for which he is responsible, unless it is established to the satisfaction of the Court that such disclosure is necessary in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to Contempt of Court or incitement to any offence.

Explanation.- For the purposes of this sub-section,

- (a) 'publication' means any speech, writing, symbols or other representation disseminated through any medium of communication including through

electronic media in whatever form, which is addressed to the public at large or to any section of the public.

- (b) “source” means the person from whom, or the means through which, the information was obtained.

(2) The Court while requiring any person to disclose the source of information under subsection (1), shall assess the necessity for such disclosure of the source as against the right of the journalist not to disclose the source.”

### **Communication with patent agents:**

**132B** (1) Any communication as to any matter relating to the protection of any patent or as to any matter involving passing off.–

- (a) between a party and his patent agent, or  
 (b) for the purpose of obtaining, or in response to a request for information which a party is seeking for the purpose of instructing his patent agent,

is privileged from disclosure in legal proceedings in the same way as a communication between a client and his legal practitioner or, as the case may be, a communication for the purpose of obtaining, or in response to a request for, information which a client seeks for the purpose of instructing his legal practitioner.

(2) For the purposes of subsection (1) –

- (a) ‘patent agent’ means  
 (i) a patent agent registered as a patent agent in the register of patent agents maintained pursuant to the provisions of the Patent Act, 1970, or  
 (ii) a partnership entitled to describe itself as a firm of patent agent; or  
 (iii) a body corporate entitled to describe itself as a patent agent.

(b) ‘party’ in relation to any contemplated proceedings, means a prospective party thereto.

(c) ‘legal practitioner’ means a person as defined in Explanation 2 of section 126.

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### **Communication with Trademark Agent**

**132C.** (1) Any communication, as to any matter relating to the protection of any trademark or as to any matter involving passing off.–

(a) between a party and his trademark agent; or

(b) for the purpose of obtaining, or in response to a request for information which a party is seeking for the purpose of instructing his trademark agent,

is privileged from disclosure in legal proceedings in the same way as a communication between a client and his legal practitioner or, as the case may be, a communication for the purpose of obtaining, or in response to a request for, information which a client seeks for the purpose of instructing his legal practitioner.

(2) For the purposes of subsection (1)-

(a) 'trademark agent' means

(i) a trademark agent as defined under section 145 of the Trade Marks Act, 1999;

(ii) a partnership entitled to describe itself as a firm of registered trademark agents, or

(iii) a body corporate entitled to describe itself as a registered trademark agent.

(b) 'party' in relation to any contemplated proceedings means a prospective party thereto.

(c) 'legal practitioner' shall have the same meaning assigned to it in Explanation 2 of section 126.

### **Accomplice**

**133.** An accomplice shall be a competent witness against an accused person but his evidence is unworthy of credit unless he is corroborated in material particulars:

Provided that where the accomplice is a person whose evidence, in the opinion of the Court, is highly creditworthy as not to require corroboration, a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

### **Illustrations**

(a) A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally of good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself. The evidence of B shall have to be considered by the Court, while deciding on the negligence of A.

(b) A crime is committed by several persons. A, B and C, three of the criminals are captured on the spot and kept apart from each other – each gives an account of the crime implicating D, and the accounts corroborate each in such a manner as to render the previous concert highly improbable. The variance in the different accounts of facts given by A, B, C as to the part of D shall be taken into account by the Court while deciding if D was an accomplice.”

### **Amendment of section 137**

77. In section 137 of the principal Act, for the words “**Re-examination.**- The examination of a witness, subsequent to the cross examination by the party who called him ,shall be called his re-examination” the following shall be substituted, namely:-

“**Re-examination.**- The further examination of a witness by the party who called him, subsequent to the cross-examination, shall be called re-examination.”

### **Substitution of section 138**

78. For section 138 of the principal Act, the following section shall be substituted, namely:-

#### **Order of examinations**

“**138.**(1) A witness shall be first examined-in-chief, then (if the adverse party so desires) cross examined, then (if the party so desires) re-examined.

(2) The examination and cross examination must relate to relevant facts but the cross examination need not be confined to the facts to which the witness testified on his examination in chief.

(3) **Direction of re-examination :** The re-examination shall be directed to the explanation of matters referred to in cross examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

(4) **Further examination-in-chief:** The Court may in all cases permit a witness to be recalled either for further examination-in-chief or for further cross-examination, and if the court does so, the parties have the right of further cross-examination and re-examination or re-examination, as the case may be.”

#### **Amendment of section 144**

79. In section 144 of the principal Act, for the portion beginning with the words “Any witness may be asked, whilst under examination” and ending with the words “the party who called the witness to give secondary evidence of it”, the following shall be substituted, namely:-

“(1) Any witness may be asked, while under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who has called the said witness, to give secondary evidence of it; and if, in the opinion of the Court, the document ought to be produced, the objection shall be upheld.

(2) If a witness, while under examination, is about to make any statement as to the contents of any document, the adverse party may object to such statement being made until such document is produced, or until facts have been proved which entitle the party who has called the said witness to give secondary evidence of it; and, if in the opinion of the Court, the document ought to be produced, the objection shall be upheld.”

#### **Amendment of section 145**

80. Section 145 shall be renumbered as subsection (1) thereof and after subsection as so renumbered, the following subsections shall be inserted, namely:-

“(2) Where a witness is sought to be contradicted by his previous statement in writing by a party entitled to produce secondary evidence of the writing in the circumstances of the case, his attention must, before such secondary evidence can be given for the purpose of contradicting him, be called to so much of it as is to be used for the purpose of contradicting him.

(3) If a witness, upon cross-examination as to a previous oral statement (including a statement recorded by mechanical process or through electronic means) made by him relevant to matters in question in the suit or proceeding in which he is cross-examined and where such a statement is inconsistent with his present evidence, denies that he made the statement or does not distinctly admit



that he made such statement, proof may be given that he did in fact make it, but before such proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he made such statement.”

### **Amendment of section 146**

**81.** In section 146 of the principal Act,

(a) in clause (1) after the word, “veracity”, the words “accuracy and credibility” shall be inserted;

(b) after clause (3) the proviso shall be omitted and the following clause and Explanation shall be inserted, namely:-

“(4) In a prosecution for an offence under section 376, 376A, 376B, 376C or 376D or for attempt to commit any such offence, where the question of consent is in issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to her general immoral character, or as to her previous sexual experience with any person for proving such consent or the quality of consent.

Explanation: ‘character’ includes ‘reputation and disposition’.”

### **Amendment of section 147**

**82.** In section 147 of the principal Act, for the words “relevant to the suit or proceeding”, the words “relevant to the matter in issue in the suit or proceeding” shall be substituted.

### **Amendment of section 148.**

**83.** In section 148 of the principal Act,-

(a) for the words “If any such question relates to a matter not relevant to the suit or proceeding except”, the words “If any such question is not material to the issues in the suit or proceeding but is admissible” shall be substituted.

(b) for clause (4), the following clauses and the Explanation shall be substituted, namely:-

“(4) The court shall have regard as to whether such evidence has or will have sufficient probative value to outweigh its prejudicial effect, in the circumstances of the case.

(5) The court may, if it sees fit, draw, from the witness’s refusal to answer, the inference that the answer if given would be unfavourable.

Explanation:- Where, in a suit for damages for defamation for injury to the reputation of a person, an aspect of the character of that person, other than that to which the matter alleged to be defamatory relates, is likely to be injured by a question under this section, the court shall have particular regard to the question whether, having regard to the considerations mentioned in this section, such question is proper”.

#### **Insertion of new section 148A**

84. After section 148 of the principal Act, the following section shall be inserted, namely:-

#### **Accused person not to be asked certain questions**

“148A. An accused person who offers himself as a witness in pursuance of section 315 of the Code of Criminal Procedure, 1973, shall not be asked and if asked, shall not be compelled to answer, any question tending to show that he has committed or has been convicted of or been charged with any offence other than that with which he is then charged, or that he is of bad character unless –

- (i) the proof that he has committed or been convicted of such other offence is relevant to a matter in issue; or
- (ii) he has personally or by his advocate asked questions of the witness for the prosecution with a view to establishing his own good character, or has given evidence of his good character, or
- (iii) the nature or conduct of the defence is such as to involve imputations on the character of the witnesses for the prosecution, (other than the character of the prosecutrix) without obtaining the leave of the Court for asking the particular question; or
- (iv) he has given evidence against any other person charged with the same offence;

and unless the court is satisfied that such evidence of which the witness is compelled as aforesaid, has or would have sufficient probative value which outweighs the prejudice that may be caused.”

### **Amendment of section 149**

85. In section 149 of the principal Act, for the Illustrations (a) to (d), the following Illustrations shall be substituted, namely:-

- (a) A legal practitioner is instructed by another legal practitioner that an important witness is a thief. This is a reasonable ground for the first legal practitioner for asking the witness whether he is a thief.
- (b) A legal practitioner is informed by a person in Court that an important witness is a thief. The informant, on being questioned by the legal practitioner, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a thief.
- (c) A witness, of whom nothing whatever is known, is asked by a legal practitioner at random whether he is a thief. There are here no reasonable grounds for the question.
- (d) A witness, of whom nothing whatever is known, being questioned by a Legal practitioner as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a thief.”

### **Substitution of section 150**

86. For section 150 of the principal Act, the following section shall be substituted, namely:-

#### **Procedure of Court in case of question being asked without reasonable grounds**

“150. If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any legal practitioner, report the circumstances of the case to the appropriate Bar Council established under the Advocates Act, 1961 to which such legal practitioner is subject in the exercise of his profession.”

### **Amendment of section 154**

87. Section 154 of the principal Act shall be renumbered as subsection (1) thereof and after subsection (1) as so renumbered, the following subsection shall be inserted namely:-

“(2) Nothing in this section shall disentitle the party so permitted, to rely on any part of the evidence of such witness.”

### **Substitution of section 155**

**88.** For section 155 of the principal Act, the following sections shall be substituted, namely-

#### **Impeaching the credit of witness**

“**155.** The credit of a witness may be impeached in the following ways by the adverse party, or with the permission of the Court, by the party who calls him-

- (1) by the evidence of persons who, from their knowledge of the witness, could impeach his credibility, accuracy or veracity;
- (2) by proof that the witness has been bribed or has accepted the offer of a bribe, or has received any other corrupt inducement, to give his evidence;
- (3) subject to the provisions of sec. 145, by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted, that is to say, evidence on a fact in issue or a relevant fact or evidence relating to any matter referred to in the First or Second Exception to section 153;

and provided that the Court is satisfied that the probative value of the answer to the question has or would override the prejudicial effect thereof.

Explanation. A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

#### **Illustrations:**

- (a) A sues B for the price of goods sold and delivered to B. C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered goods to B.

The evidence is admissible.

- (b) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.

The evidence is admissible.

### **Impeaching the credit of the accused while examining him as a witness**

**155A.** When an accused person offers himself as a witness in pursuance of section 315 of the Code of Criminal Procedure, 1973, it shall not be permissible to put questions to another witness and such witness, if asked, shall not be compelled to answer, questions which tend to show that the accused has committed or has been convicted or been charged with any offence other than that in which the accused is charged or that the accused is of bad character, unless –

- (i) the proof that the accused has committed or has been convicted of such other offence is relevant to a matter in issue; or
- (ii) the accused has personally or by his legal practitioner asked questions of the witness for the prosecution with a view to establishing his own good character, or has given evidence of his good character; or
- (iii) the nature of the conduct of the defence is such as to involve imputations on the character of the witness for the prosecution (other than the character of the prosecutrix) without obtaining the leave of the Court for asking the particular question; or
- (iv) the accused has given evidence against any other person charged with the same offence,

and the Court is satisfied that the probative value of the answer to the question has or would outweigh the prejudice that may be caused.”

### **Amendment of section 156**

**89.** In section 156 of the principal Act, for the words “relevant fact” in both the places where they occur, the words “fact in issue or relevant fact” shall be substituted.

**Amendment of section 157**

90. In section 157 of the principal Act, the following Explanation shall be inserted at the end, namely:-

“Explanation: The statements made before any authority, legally competent to investigate the fact include statements made before a Judicial Magistrate in an identification parade and also statements made before such a Magistrate under section 164 of the Code of Criminal Procedure, 1973.”

**Insertion of new section 157A**

91. After section 157 of the principal Act, the following section shall be inserted, namely:-

**Establishing credit of witness by independent evidence**

“157A. Where the credit of a witness has been impeached by any party, the adverse party may, notwithstanding anything contained in section 153, in order to re-establish his credit, introduce independent evidence concerning his accuracy, credibility or veracity or to show who he is and his position in life.”

**Substitution of section 159**

92. For section 159 of the principal Act, the following section shall be substituted, namely:-

**Refreshing memory**

“159. (1) A witness may, while under examination, refresh his memory by referring –

- (a) to any document made by the witness himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory;
- (b) to any such document made by any other person, and read or seen by the witness within the time aforesaid, if, when he read or saw it, he knew it to be correct;

- (c) to a copy of such document, with the permission of the Court, provided the Court is satisfied that there is sufficient reason for the non-production of the original.
- (2) An expert may refresh his memory by reference to professional treatises or articles published in professional journals.”

### **Amendment of section 161**

93. In section 161 of the principal Act, for the words “Any writing”, the words “Any document” shall be substituted.

### **Amendment of section 162**

94. In section 162 of the principal Act, for the words ,“The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.”, the words “The Court, if it sees fit, may inspect the document or take other evidence to enable it to determine on its admissibility.”, shall be substituted.

### **Substitution of section 165**

95. For section 165 of the principal Act the following section shall be substituted, namely:-

#### **Judge`s power to put question or order production**

“165 (1) Subject to the provisions of sub-sections (2), the Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing:

Provided that the parties or their agents shall not be entitled –

- (a) to make any objection to any such question or order, or,
- (b) without the leave of the court, to cross-examine any witness upon any answers given in reply to any such question.

(2) Nothing in sub-section (1) shall authorize a Judge to-

- (a) ask or compel a witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce, under the provisions of this Act or under any other law for the time being in force, if the questions were asked or the documents were called for by the adverse party; or
- (b) dispense with primary evidence of any document, except in the cases hereinbefore excepted.

(3) Notwithstanding anything contained in this section, the judgment of the Court must be based upon facts declared relevant under this Act and duly proved.”

### **Omission of section 166**

96.. Section 166 of the principal Act shall be omitted.

### **Omission of section 21 of Act 30 of 1956**

97. In the Hindu Succession Act, 1956, section 21 shall be omitted.

### **Amendment of Act 1 of 1908**

98. In the Code of Civil Procedure 1908, in section 87A, sub-section (2A) shall be omitted.

### **Transitory provisions**

99. “(1) All suits or civil proceedings pending at the commencement of this Act, in which the examination of witnesses including parties, has commenced before the date of commencement of this Act, shall, save as otherwise provided in sub-section (2), be disposed of in accordance with the provisions of the principal Act as it stood immediately before the commencement of this Act, as if this Act had not come into force.

(2) Following provisions of the principal Act as amended by this Act, shall apply in so far as they relate to the procedure in a suit or civil proceeding pending in a Court at the commencement of this Act,, namely :-

- (a) the provisions of section 11 of the principal Act as amended by section 6 of this Act;
- (b) the provisions of section 13 of the principal Act as amended by section 8 of this Act;
- (c) the provisions of sub-section (1) of section 57 of the principal Act as amended by section 34 of this Act;



- (d) the provisions of section 67 of the principal Act as amended by section 41 of this Act;
- (e) the provisions of section 74 of the principal Act as amended by section 43 of this Act;
- (f) the provisions of section 76 of the principal Act as amended by section 44 of this Act;
- (g) the provisions of section 77 of the principal Act as amended by section 45 of this Act;
- (h) the provisions of section 119 of the principal Act as amended by section 68 of this Act.

(3) All criminal proceedings relating to offences committed before the commencement of this Act and pending at the commencement of this Act, shall be disposed of in accordance with the provisions of the principal Act, as it stood immediately before the commencement of this Act, as if this Act had not come into force.”