

PRINCIPLES AND DIGEST
OF THE
LAW OF EVIDENCE

*Being a Commentary
on the
Indian Evidence Act (I of 1872)*

*with
Digest of New Case Law*

Volume 1

By
CHIEF JUSTICE
M. MONIR

*Revised
By
Justice Deoki Nandan*

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PREFACE

The Indian Evidence Act, 1872, bears the imprint of a master draftsman, *Sir James Fitzjames Stephen*, the distinguished jurist and legislator, and has the architectural symmetry of a well-designed piece of art.

The golden jubilee year edition of *Chief Justice M. Monir's Principles and Digest of the Law of Evidence*, was revised by *Justice Deoki Nandan*, retired judge of the Allahabad High Court in 1986. The revised and updated edition was a complete success. This edition has run through a print, after print which is a time tested tribute to a legal classic.

The tenth edition, while retaining the original arrangement and pattern of the book updates the law as pronounced by the Supreme Court of India and High Courts. The new sections have been incorporated at appropriate places, thus presenting a complete book, which stands for its clarity and conciseness.

Publisher

TO
MEMBERS OF
THE NOBLE PROFESSION
OF LAW

PREFACE

The Indian Evidence Act is a unique piece of legislation, the like of which is not to be found anywhere in the world. In the symmetry of its structure, in the clearness and fullness of its outline, in the terseness of its expressions and the compactness of its subject-matter, the work stands out unrivalled and unparalleled. An idea of the conciseness and comprehensiveness of the work may be formed by the fact that in the 167, mostly single-sentenced sections of the Act, no important amendment of principle or detail has been deemed necessary, and hardly a question of evidence has even arisen for which a solution in these sections has not been found, though the Act has been in force for more than a hundred and twenty five years.

The plan of the Act is perfectly simple. The Act is divided into three main parts : (I) Relevancy of Facts, (II) Proof and (III) Production and Effect of Evidence.

The Indian Evidence Act, 1872, has now been amended by the **Information Technology Act, 2000**. Certain sections of the Evidence Act have been substituted and certain new sections have been inserted *i.e.* Sections 3, 17, 22-A, 34, 35, 39, 47-A, 59, 65-A, 65-B, 67-A, 73-A, 81-A, 85-A, 85-B, 85-C, 88-A, 90-A and 131. The **Banker's Book Evidence Act, 1891**, has also been amended and all changes have been incorporated at appropriate places.

I have not disturbed the original work and arrangement of the book as this work is referred to where the law is in English world over. But I have added the latest Cases Law particularly the recent pronouncements of the Supreme Court and the High Courts.

Justice DEOKI NANDAN AGARWALA

THE INDIAN EVIDENCE (AMENDMENT) ACT, 2002

(4 of 2003)

[31st December, 2002]

An Act further to amend the Indian Evidence Act, 1872.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

1. Short title.—This Act may be called the Indian Evidence (Amendment) Act, 2002.

2. Amendment of section 146.—In section 146 of the Indian Evidence Act, 1872 (1 of 1872) (hereinafter referred to as the principal Act), after clause (3), the following proviso shall be inserted, namely:—

“Provided that in a prosecution for rape or attempt to commit rape, it shall not be permissible to put questions in the cross-examination of the prosecutrix as to her general immoral character.”

3. Amendment of section 155.—In section 155 of the principal Act, clause (4) shall be omitted.

PREFACE TO THE FOURTH EDITION

The last edition of this book was published in 1948 at Allahabad. And, though in the meantime the book has run through a reprint, the need for a revised edition has been felt for several years. In the present edition all legislative changes down to date have been incorporated and all important decisions added to the text which as far as possible has been preserved in its original form.

Due to my public preoccupations I have not been able to revise the proofs. My thanks are due to Mr. H.L. Sarin, Advocate of the Supreme Court of India, who had assisted me in the preparation of the last edition and on whom has fallen the main task of completing the manuscript and revising the final proofs for the present edition.

M. MONIR

39, Gulbarg V
Lahore

PREFACE TO THE SECOND EDITION

The first edition of this book was published in January, 1936, and the whole stock was exhausted by June, 1936. The book has thus been out of print for over two years. In July, 1937, the publishers had informed me that a reprint or a second edition of the book would soon be needed; but in view of the adaptation of the Act by the Government of India (Adaptation of Indian Laws) Order, 1937, and some important pronouncements by the Privy Council a reprint would have been out of date, and my increasing professional and official engagements left me little time to bring out a second edition. For these reasons this edition has been somewhat delayed, but the intervening time has been utilized in thoroughly revising the work and bringing it up to date.

All cases have been cited in this edition by name; and though the interests of space demanded abolition of the system of comparative references, its popularity has been the sole reason for its retention. Owing to its bulk the book has ceased to be of much use for elementary reading and therefore the Introduction which was primarily meant for the use of students has been considerably cut down.

Some of the cases of 1940, reported so far, have been incorporated in the commentary, while others have been collected in the Addenda. Two F.B. decisions of the current year, namely, **Hakam v. Crown**, I.L.R. 1940 L. 242 and **Baldeo v. Emperor**, 40 A.L.J. 241, require special notice. The Lahore High Court in the former and the Allahabad High Court in the latter has held that Section 162 of the Code of Criminal Procedure **pro tanto** repeals Section 27 of the Evidence Act. So far as the Punjab is concerned, a Bill has been introduced in the Legislative Assembly to amend Section 162 of the Code of Criminal Procedure to counteract the effect of the Lahore F.B. decision.

Among other American books consulted for this edition are Corpus Juris and the Blue Book of Evidence by Jones. The Commercial Documents Evidence Act, Act XXV of 1939, appears as Appendix D.

I have been assisted in the preparation of this edition by M.A. Malak, Esq., Barrister-at-Law, S.K. Ahmad, Esq., Barrister-at-Law and Mr. H.L. Sarin, B.A., LL.B., Advocate of the Lahore High Court. No pains have been spared to avoid inaccuracies, but, notwithstanding this, if any errors are found in this book it is because they are in the work of this character unavoidable. The responsibility for such errors and any of its shortcomings is entirely mine.

M. MONIR

2, Begum Road
Lahore
August 31, 1940.

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DEDICATED TO
Shri Shiv Das Khanna
[1901-1983]

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