SARKAR'S LAW OF EVIDENCE

Fifteenth Edition

Reprint 2004

(As Amended by Information Technology Act, 2000 and the Indian Evidence (Amendment) Act, 2002 (4 of 2003))

Volume 2

Sec. 101 To End

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NEW DELHI - 110 019 INDIA
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SARKAR'S

LAW OF EVIDENCE

IN INDIA, PAKISTAN, BANGLADESH, BURMA & CEYLON

As amended by the Information Technology Act, 2000 and the Indian Evidence (Amendment) Act, 2002 (4 of 2003). Containing lucid, comprehensive, accurate and encyclopaedic information on Law of Evidence. This book solves all evidence quesitons quickly and saves valuable hours by enabling you to turn up any question instantly on account of its splendid arrangment.

by

M.C. Sarkar

and

S.C. Sarkar Judge, Calcutta Small Cause Court;
Author of Law of Civil Procedure, Law of Criminal Procedure & c.

and

Prabhas C. Sarkar Advocate, High Court, Calcutta;
Author of Law of Civil Procedure, Law of Criminal Procedure & c.

Fifteenth Edition* (Throughly Revised & Enlarged)

Reprint 2004 (As Amended by Information Technology Act, 2000 and the Indian Evidence (Amendment) Act, 2002 (4 of 2003), dt. 31-12-2002

by

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Volume 2
THE INDIAN EVIDENCE ACT, 1872
Sec. 101 To End

* Fifteenth Edition 1999.

First Edition	1913
By M.C. Sarkar S.C. Sarkar	
Second Edition	1924
By S.C. Sarkar	
Third Edition	1925
By S.C. Sarkar	
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By S.C. Sarkar	
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Twelfth Edition	1971
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Reprint	1977
Thirteenth Edition	1980
By Prabhas Sarkar Sudipto Sarkar	
Reprint	1990
Fourteenth Edition	1993
By Sudipto Sarkar V.R. Manohar	
Reprint	1994
Fifteenth Edition	1999
By Sudipto Sarkar V.R. Manohar	
Revised Reprint	2000
Reprint	2002
Reprint	2003
Reprint	2004

all about the book

Printed Pages
—Volume 1—1670 (approx.)
—Volume 2—1312 (approx.)
Price in India
—Volume 1 Rs. 1195.00
—Volume 2 Rs. 1195.00
Price abroad £ 200 $ 300 (US)
(For the set of 2 Volumes)

Publishers : Wadhwa and Company, Law Publishers, Agra/Nagpur/New Delhi

Paper-Export Stuff

Printed at
WIN Offset Printers
B-193, Okhla Industrial Area, Phase I
New Delhi 110 020

Printed and bound in India.
15141312110987654321

preface
he fifteenth edition

The present edition comes after a gap of nearly five years. Though it is a shorter period as compared to the gap between the earlier editions, this period of five years has been of greater value to the developments in the law of evidence. During this period the subject has grown not only quantity-wise by accumulating a large number of cases and statutory changes, but also quality-wise in the sense that the modern scientific techniques of investigation and the advancement in information technology have brought about sea changes in this field resulting in re-examination and revision of a number of fundamental doctrines. Some of the fundamental doctrines were the best evidence rule; the necessity of direct evidence; prohibition of hearsay personal appearance of witnesses; precedence of documentary evidence; the concept of a document and privileged communications beyond disclosure. These doctrines are no longer fundamental to the subject, but are considered to be only of functional nature. The law of evidence governs the modes and methods for provision of facts and information to enable a judicial conclusion. It is a technique for transmission of information. The subject remained interwoven with information technology. Therefore, it has always remained responsive to the improvements in information technology. The more stupendous such changes, the more rapid the changes in the law of evidence.

As this edition progressed in its search for the recent judicial output on the subject, it was found that electronic and video links have changed the requirement of personal appearance of witnesses, that the traditional concept of a document has been transformed by computer records and tapes which can be retrieved on the screen or paper, that the rigid rule of hearsay has had to make concessions in favour of technological evidence, and that the probative value of the information is a more important consideration than the earlier rigid doctrines. In this search for latest developments for the enrichment of this edition, cases and materials from many other countries and judicial systems have been traced in addition to those of India. Such countries include Australia, New Zealand, Malaysia, Singapore, Hongkong, England, European countries, Canada, Nigeria and South Africa.

Apart from the new additions, the existing text has been subjected to a thorough reading and revision. A lot more headings and sub-headings have been added with a view to help the readers to locate the topic of their need more conveniently and quickly.

The contribution of the Indian judiciary in this field has been collected from all sources comprising All India Reporter and also Regional Journals. An exhaustive view of each and every worthwhile case has been presented.

(Contd.)

preface
to the fifteenth edition (contd.)

Materials have also been taken from leading articles on the subject appearing in the standard legal journals. Topics like circumstantial evidence, value of dying declaration and expert opinion, standards of proof, estopped competence of witnesses and protection of witnesses from aggressive cross-examination particularly when the victim of rape is being cross-examined, have attracted a good number of decisions creating some new trends.

We are thankful to the publishers for the excellent production and maintenance of laudable marketing record which enables us to present revised editions at shorter intervals. In addition to this, the research and development division of the publishers was instrumental in conducting the praiseworthy search for cases for which we remain immensely grateful.

22nd November, 1998

Sudipto Sarkar
V.R. Manohar

preface to the thirteenth edition

Since the last edition nothing has happened in this country with regard to the amendment of Indian Evidence Act, 1872 apart from the introduction of a bill, the Indian Evidence Amendment Bill, 1979 which is not yet of statutory force. The bill proposes certain amendments to Chapter II of the Act.

A statutory amendment has taken place in England by the Civil Evidence Act, 1972 relating to the admissibility of expert and opinion evidence.

Some major changes have been made in England by case-law and some changes have also taken place here.

Perhaps the decision with the most far reaching effect here is the one delivered by the Supreme Court in *Dastane v. Dastane*, AIR 1975 SC 1534 which appears to decide that standard or proof in matrimonial matters is the preponderence of probability as in civil cases. The scope of the decision is far from clear in view of various other judgments to the contrary including some earlier Supreme Court judgments.

As in the earlier editions many English decisions have been incorporated wherever thought applicable and useful.

We are very happy to say that the 12th edition, the first since the death of the author was so well received that it became out of print within a short time and we had to bring out a reprint edition in the year 1977 which also became out of print in 1978. We hope that readers and users of the book would continue to maintain their confidence in the book as they have done in the past.

Addenda 1 and 2 contain cases that came out while the book was passing through the press. Decisions up to July, 1981 have been incorporated in this edition.

We shall be grateful if readers coming across any error or omission bring it to our notice.

Calcutta
15th Sept. 1981

PRABHAS C. SARKAR
SUDIPTO SARKAR

preface
to the eleventh edition

In the present edition the book has been very carefully revised throughout and some of the principal topics have been more fully treated. Not only have case-laws been brought down to date of publication but the statements of law under each section have been scrutinised with care with a view to ensure accuracy. Necessary suggestions have been made on obscure points or points not covered by precedents and comments have been offered on a few unsatisfactory decisions of the higher courts.

In the preface to the eighth edition of the work published in January, 1949, I pleaded strongly for a thorough reform and rethinking on the law of Evidence and the appointment of a Law Commission for the purpose. The latter has since been established but no revision of the Indian Evidence Act has been undertaken by that body and that Act has practically remained unamended since it was passed 93 years ago.

Upon reading my preface to the 8th edition, Mr. P.V. Rajamannar, the then Chief Justice of the Madras High Court, wrote me in the course of a letter dated the 25th April, 1949 :

> "The preface to the present edition (8th) contains a plea for the reform of law of Evidence which is thought provoking and deserves attention. I entirely agree with the learned author that there is much scope for legal reform, particularly, in the law of Evidence and I had occasion to emphasise the need for setting up an independent expert body to study and ascertain the modifications which are necessary having regard to the altered conditions of life at the present time. As the learned author says 'laws cannot remain in a static condition if it is to keep pace with the march of society and the progress of knowledge and civilization'. Mr. Sarkar has indicated some instances in which the law of Evidence needs reconsideration and reform, the most important of which is the recognition of the competence of an accused to testify on his own behalf."

As to the competency of an accused to testify for the defence, it was at long last recognised by the legislature by a slovenly addition of section 342A to the Criminal Procedure Code, 1898 (by Act 26 of 1955) which leaves unsolved many important problems like the answering of any criminating question by the accused in his cross-examination, or any question tending to show that the accused has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is a bad character &c. &c. These and many other questions would naturally crop up when an accused comes to offer himself as a witness for the defence. These and other intricate questions have been dealt with in the English Criminal Evidence Act, 1898 (61 & 62 Vic. c. 36) section 1(e), (f), (g) &c. of that Act. Section 342 of the Burma Criminal Procedure Code as amended by Burma Act, 13 of 1945, which proceeds on the lines of the English Criminal Evidence Act, 1898, is a better piece of legislation.

There has been no worthwhile amendments to the Indian Evidence Act since 1872, while during this long interval legislation introducing reforms in the law of Evidence has gone far ahead on many occasions in England and several instances may be cited. The presumption relating to ancient documents has been reduced to 20 years by s. 4

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of the Documentary Evidence Act, 1938 (1 & 2 Geo. 6. c. 28). This Act has effected many reforms by modifying the common law and is applicable to civil proceedings. It has modified the rule excluding hearsay in documents. In *Bhogilal v. State*, A 1959 SC 356 the Supreme Court had occasion to notice one of its provisions. It was observed by that court that a change was, however, introduced in the English law by the Evidence Act, 1938, which provides than in any civil proceeding where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact, shall on production of the original document, be admissible as evidence of that fact, if the maker of the statement has personal knowledge of the matter dealt with by the statement and if he is called as a witness in the proceedings. Provided that the last condition may be dispensed with if the person cannot for any reason be called as a witness. In cases of undue delay or expense, the court has been further empowered to admit such a statement in evidence notwithstanding that the maker is available as a witness and that the original is not produced, if there is produced a certified copy of the original if prescribed conditions are satisfied [s. 1(2)(*b*) of the Act]. The conditions as to the death of the person or the statement being against the interest of the maker or made in the course of business (as in s. 32 of the Evidence Act) has also been dispensed with.

The overstrict law as to the proof of an attested document in s. 68 of the Evidence Act has been considerably altered in England by the Evidence Act, 1938 (1 & 2 Geo. 6. c 28). Under s. 3 proviso of this Act except wills and other testamentary documents, instruments which are required by law to be attested, instead, of being proved by an attesting witness, may be proved as if no attesting witness were alive; that is by proof of an attestor's handwriting. The introduction of such law in India is long overdue and the continuation of the former English law promotes needless perjury in many cases which is avoidable.

The object of the English Act, 1938, is to lighten the burden of proof in various cases and to save time and expense by dispensing with the formality of strict compliance with the rules regarding the proof of certain documents.

In a despatch by Reuter dated the 24th September, 1964, the following news was announced (as reported in the Statesman of 25/26 September) :

> "England's Law of Evidence covered by Acts of Parliament which mostly dates back to the 19th century is to be reviewed.
>
> The Law of Evidence regulates such matters as what is admissible for the purpose of establishing facts in legal proceedings; the manner in which the facts may be proved; and the weight to be attached to particular kinds of Evidence.
>
> It is one of the complex branches of the English Law.
>
> In deciding on the review, Britain's Home Secretary, Mr. Henry Brooke and the Lord High Chancellor, Dilhorne believe special scrutiny is needed on the rules restricting the admission of hearsay evidence; on the need for proof in criminal

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proceedings of facts admitted by the defence; on rules governing the admissibility in criminal proceedings of questions tending to show that the accused has committed other offences or is of bad character; and on the extent to which documentary evidence may be admitted.

The review will be conducted by the Law Reforms Committee and the Criminal Law Revision Committee."

The above extract shows how deeply concerned the Government of Britain is to review and effect reform in the law of Evidence periodically and systematically. But conditions in this country are otherwise and legislative wheels move here at a painfully slow pace.

It is more than high time that a thorough review of the Indian law of Evidence were taken up as speedily as possible. This task should be undertaken not by the Law Commission alone, but also by an independent body of experts, who have made a special study of this branch of law, should be co-opted and associated with it. These experts and the Law Commission should deliberate what changes and modifications are needed in the law of Evidence at the present time. There is abundant scope for reviewing and reshaping the law of Evidence in the light of enlightened legislation elsewhere and particularly in the Britain as the Indian Evidence Act is entirely based on the English law of Evidence which was in vogue in the seventies.

It is unquestionably the duty of the Indian Legislature to take up the work of an extensive reform and reconsideration of the law of Evidence, but it is apprehended that it will again be a lone voice in the wilderness as has happened during the past sixteen years.

Addenda 1 and 2 contain cases that came out while the book was passing through the press. Case-laws have been brought down to January, 1965.

Mr. P.C. Sarkar, Advocate, High Court, has rendered valuable assistance in the reading of proofs and has also helped me in numerous other ways.

I shall be grateful if any reader coming across any typographical or other error or omission in the book, brings it to my notice (care of the Publishers).

S.C. SARKAR

March, 1965,
Calcutta

foreword

To the Second Edition, by Mr. Justice C. WALSH, M.A., K.C., High Court, Allahabad, Author of "The Advocate", "Revision & Extraordinary Jurisdiction", &c.

It is not easy to say anything which is either new or valuable about the Indian Evidence Act. Nor to a lawyer, whose experience has been gained chiefly in the English courts, it is easy to work by a Code of the Law of Evidence. The English practitioner who has read "Taylor on Evidence" from cover to cover, or who has attempted anything like complete study of the rules of Evidence, must be scarce. Once he has mastered the fundamental truths that the English law requires the best evidence, and does not permit hearsay, the problems which present themselves for solution in the course of daily practice require little more than the application of logic and common sense.

The thoroughness with which cases in England are prepared before they come into court, and the preliminary skirmishes which take place in Chambers over interlocutory applications in most cases of any importance, result in the settlement of many of those subsidiary points which arise in the majority of cases, before the trial begins. It has been truly said that cases are often won or lost in Chambers. The machinery of "Discovery," if rightly understood and utilised, extracts from either side all the material documents in its possession, and with the aid of inspection and the supply of copies, enables both sides to go to trial fully equipped with all the relevant documents relied upon by either party. Nearly all questions relating to the relevance of the documents have already been determined in Chambers before the trial begins. Facts within the knowledge of one party, but unknown to the other have been disclosed, and elucidated, by admissions and interrogatories. Thus nearly all the cards are on the table, and the risk of "surprise" is reduced to a minimum. To pursue the analogy of the card-table, most suits are fought out, as it were, in a game of "double-dummy". Each party is fully aware of the strong features and the weak spots in both its own and its opponent's armoury respectively, and it rarely happens that any question as to the admissibility of a document, or the relevance of a fact, is still outstanding when the hearing begins. Counsel on either side, responsible for the preparation, and also, when no leader is employed, for the conduct of the case in court, have advised on evidence, and have mapped out for the guidance of the solicitor, who is putting the final touches to the preparation of the case, a ground plan of what is required to establish the issues essential to success.

The value of perfecting your tackle in this way before the real struggle begins cannot be over-estimated. Not only is each side fully armed at all points which foresight, judgment and experience can suggest, but the hearing is concentrated on the main issue, or pivot of the dispute, and is confined within limits which eventuate in a saving to the parties of time and money — the one essential in all litigation if the administration of the law is to merit and maintain the confidence of the commercial public. Moreover, the exhausting and embarrassing struggles over side-issues and technical objections are almost wholly eliminated. It is recognised by every practitioner as a matter of first importance that a defeat at the trial upon a subsidiary point is injurious to the chance of success upon the main issue. To tender evidence which is ultimately rejected, and to struggle successfully for its admission, necessarily create in the mind of the tribunal an impression of distrust as to the merits of the residue of your case.

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If your other evidence is adequate, it is superfluous to offer supplementary proofs which are open to serious objection. Again, to object unsuccessfully to evidence tendered by the other side is liable to produce a similar impression. You seem to be anxious to exclude something which you have reason to fear. The consequence is that the best practitioners avoid raising objections unless they are confident of success, and do not risk a decision against them excluding evidence which is not essential. It may therefore be said that the combined effect of the mutual tact and reasonableness of the opposing forces is, in almost all cases which are skilfully conducted, to eliminate subordinate controversies upon points of evidence. It becomes in effect a question of practice and procedure rather than one of substantive law.

It is, therefore, to points of practice rather than to principles underlying the Law of Evidence that I can most usefully address myself. The student of law will find in the pages of this exhaustive work all that he needs to know. The practitioner should know the Evidence Act by heart, so that he is never at a loss, when called upon in court, to give chapter and verse for what he is doing. He should take the actual sections as his sole guide, and leave case-law as far as possible, alone. The conduct of the trial is the translation into action of his client's paper-case, and he should use the Evidence Act as the translator uses his dictionary. Like the careful mariner, he should lay out his course and clearest passage which he can see to lead him to his goal; and he should steer his way along this course, checking his progress and verifying his results as he moves from stage to stage of his journey, until he reaches the accomplishment of his task, without deviating from his plan, jettisoning his cargo.

For this purpose, he must realize from the first, and never forget it that it is the documentary evidence which constitutes the strength of most cases. He must start by asking himself what documents are necessary to establish his client's case; where they are ; how they are to be obtained; and what is the mode of proof required by law to establish each one of them. Next, he must ascertain, by the valuable machinery, provided in the Civil Procedure Code, known as "Discovery", whether any other documents exist in the possession of his opponent, of which he has no knowledge, and which may assist, or injure his client's case. I have always said that any practitioner who went into Court without having first raked his opponent fore-and-aft to ascertain what relevant documents were in his possession, ran a grave risk, and if misfortune resulted in consequence of the omission, was guilty of a high degree of negligence. No practitioner knows how far his client may have forgotten, or deliberately ignored, the existence of some embarrassing document with which the other party is armed and which may at some later stage be sprung upon him by surprise, and the knowledge of which in the early stages of preparation would have enabled him to frame his case on the right lines. The obligation laid upon each party by the Civil Procedure Code to file in Court all documents on which he relies is not, in itself, a sufficient guarantee against the possibility of a miscarriage. On the other hand, it is not always necessary to disclose to your opponent, before the day for filing arrives the existence of material documents adverse to his case. And it is often undesirable to do so unless he, in his turn, presses for an affidavit of documents. Even if he does so, there is no obligation upon a party to file or disclose documents which are in the sole possession of a mere witness, who is to be called to produce them, and it would be quixotic to do so if a material advantage were to be gained by keeping them secret.

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The next important step is to decide what witnesses are necessary to prove, support, or elucidate the documents which are essential to success. For this purpose, it is well to submit all such necessary witnesses to a preliminary examination, so as to refresh their memories, or to test their evidence in the presence of the document itself, or a copy thereof. A witness called in relation to a document should never be exposed to the risk of "surprise". This process may be called "dove-tailing" the oral evidence into the documentary. As often as not, it turns out to be superfluous. But this is no excuse for omitting the step. One never knows. There may be some peculiarity about the document itself, or about its execution, which cursory examination of it has not discovered, or which only the renewal of his acquaintance with it by witness may disclose. The discovery may occur from some chance remark. It may necessitate the summoning of some additional witness by way of corroboration, or the preparation, by way of anticipating the attack which is certain to come, of a true but involved explanation. Such preparation should precede the trial. It may afterwards be unavailable, or unconvincing when hastily attempted in the surprise and confusion of a first discovery made in the course of the trial. For the same reason, it is essential when examining a witness in relation to a document to which he was a party, or which he is called to support or explain, to put it into his hand, and to take him through it while he is in the box, so that he is able to give clear and intelligible answers. No witness should ever be asked a question relating to a document which is in court, without having it in his hand, to refer to. I have seen cases last, or seriously hampered in the Appellate Court, by the neglect of this obvious precaution. When the trial judge comes to write his judgment, or the Appellate Court comes to review the whole evidence, a serious *lacuna* is discovered which there is nothing to fill.

In this connection there is one slovenly practice of which I have known some Subordinate Judges of my Province to be guilty, and which seems to me of sufficient importance to deserve a word or two of comment. I do not suggest that it is general throughout India, but it does happen, and it is valuable as an illustration of how *not* to do it. The filing of the documents, and the arguments relating to their admission of relevance, sometimes take place on what is called the first day of hearing, when the issues are settled. It takes place as an independent ceremony detached from the remainder of the hearing. Sometimes elaborate arguments are allowed. This is wrong. The process should be speedy and superficial. Any difficult question of admissibility should be dealt with by allowing the document to be filed *de bene esse*, subject to any formal objection at the trial, when after argument the judge should give his final ruling, and state his reasons for admission or rejection in his judgment. Some sort of desultory weeding takes place, but it is not followed upon by a ruling at the trial. The resulting balance is treated as the documentary evidence in the case, and dates are fixed for the summoning of witnesses. When these gentlemen arrive, they proceed to transact their business—one might almost say, to perform their drill—without reference to the documents which have now been put temporarily on the shelf. One might just as well send infantry into battle without artillery. It is as though a General commenced operations without a preliminary bombardment a week before the battle, and then packing away his guns proceeded to employ his infantry at his leisure, after a decent interval for reflection. What is the result? Documents are not tendered in evidence. They are "on the record". The practice of "putting them in," of discussing them, and of trying to understanding them in the presence of the witnesses who can explain

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them and of dove-tailing them into the story is neglected. They make their re-appearance in a kind of "salvo," or valedictory bombardment, during the final arguments which precede the judgment.

At this later stage, the judge wakes up to the fact that the law requires him to endorse on each document the decision at which he has arrived upon its admissibility. He hastily runs through the task, endorsing as a rule merely the name of the party—plaintiff or defendant—who produced it, and a date. I frequently found the date to be the same date as the judgment, and the same date for all documents. Whatever may be the right way of dealing with documents at the trial it is certainly not this. In the few original trials which I have heard in India, my practice has always been to insist upon the officer of the court keeping two files; one "omnibus" file, for all documents filed by the parties in compliance with the Civil Procedure Code before the hearing, and the other to which each document is transferred *seriatim* as it is put in during the evidence. On each of these I endorse an exhibit number, with the name of the witness in the course of whose evidence it was "put in," or proved; any admission by the opposite party, or ruling by myself as to its admissibility; and the date. This plan, to say the least of it, affords the Appellate Court a clear "bird's-eye-view" of how the documentary evidence was dealt with at the trial. People too often forget that the object of litigation is to elucidate and not to obscure.

For one who has rarely in the course of his professional career consulted any authority upon a question of evidence, and, content with the provisions of the Act, has never been driven to do so in the course of his judicial experience in India. I marvel at the wealth of reported cases which have grown up round this Act. Several pages of this work are devoted to the simple proposition that an Act must be "construed strictly". I do not know even what this means. Everything ought to be done strictly, particularly in the law. The judicial task is complete when the Judge, or Bench, has applied to the language of a section, the natural meaning of the words. It is astonishing that it should be thought necessary to deliver a thoughtful judgment, and even to cite authorities, explaining that section means what it says. It is more surprising that any one should think it worthwhile to report the case. I fear the responsibility rests rather with the reports and with editors of reports, particularly unofficial reports. I have been amused at times to renew acquaintance with my own platitudes, solemnly recorded with all the majesty and importance of "an authority," after I supposed that I had said farewell to them for ever in the necessary but obvious reasons for a decision.

The text-writer has no option but to produce and arrange his wealth of learning, and the student will benefit by a perusal of the vast range of subjects covered by the author of this work. A book so well known as to have reached a second edition requires little more to recommend it. I only hope that its many readers will, bestow upon its study one tithe of the industry and zeal which has been lavished upon its compilation.

CECIL WALSH

ALLAHABAD,
January, 1924

preliminary note to the second edition

Though a new edition, this is in some respects a new book. The first edition was published in 1913 and the reception accorded to it far exceeded the author's highest anticipations, with the result that an edition of several thousands was exhausted within the space of two years. Numerous were the enquiries received in the interim from far and near, regarding the publication of the new edition. The present edition, and in fact several editions, should have been published long long ago and I owe an explanation for my inability to take up the work earlier. Many things stood in the way, but I would give two principal reasons. A judicial officer holding my office has a very hard lot to bear. The manifold duties of a judge absorb most of my time and even encroach upon my leisure hours at home. Secondly, I was not prepared to send out the book by merely adding new cases. That would have been a comparatively easy affair. I wanted to revise and arrange the whole book and re-write portions of it, which meant considerable time. This has now been done. The amount of labour involved will appear from the fact that I had to work incessantly for more than two years.

The commentary portion has been throughout re-written. As was observed in the preface to the first edition, the Indian Evidence Act contains certain abstract rules taken mostly from the English Law arranged in the form of express propositions. The meaning of the rules, their object, the reasons on which they are founded, their gradual development and their proper application cannot be fully comprehended without a previous acquaintance with the law from which they are chiefly drawn. I have therefore referred copiously to English and foreign cases in order to explain the meaning and scope of the sections.

The bulk of the book has been increased by almost double the number of pages in the first edition.

* * * * *

The utility of the book has been considerably enhanced by the pages containing a discourse on the practical application of the rules of evidence, contributed by the Hon'ble Mr. Justice C. Walsh, M.A., K.C., of the Allahabad High Court. His "FOREWORD" contains hints on points of practice and procedure picked from his long experience at the Bar and Bench, which judges and practitioners will find of inestimable value. His racy style makes his writing pleasant reading and is peculiarly well suited to bring home the lessons he wants to impress. I take this opportunity of giving public expression to my deep debt of gratitude for the interest he has taken in the book by kindly making time to write the pages in the midst of various preoccupations and for other acts of kindness.

* * * * *

Calcutta,
January, 1924

S.C. SARKAR

preface to the first edition

The Indian Evidence Act is unquestionably the most important enactment of all the codified laws of the land. The one thing on which the decision of every case, civil or criminal, depends, is evidence and a thorough understanding of the principles of the law of Evidence, is an accomplishment that every lawyer or judge must possess. It has to be applied in almost every matter that comes before the judge, and its usefulness in civil and criminal cases is the same. A mastery, therefore, of the principles and rules of the law of Evidence, is indispensable to all grades of judges, magistrates, counsel, etc. Even police and other ministerial officers are required to make themselves acquainted with some of its rules.

The codified law of Evidence in British India contains certain abstract rules arranged in the form of express propositions mostly taken from the English law of Evidence. But as all that is contained in the voluminous text-books on English law has been squeezed into the four corners of the Act comprising 167 sections only, it is no wonder that the sections have become extremely condensed and abstruse. A knowledge of the principles and reasons on which they are founded, is therefore essential, before one can expect to understand them fully. As the Act is drawn chiefly from the English law a previous acquaintance with that law affords much help in grasping the abstract rules of the Evidence Act; in fact, a reference to that law is essential for a thorough comprehension of the origin, the history the gradual development, and the reasons of those rules which form the basis, of the law of Evidence and which, as Lord Erskine said are founded "in the charities of religion, in the philosophy of human nature, in the truths of history, and in the experiences of common life".

I have therefore striven to explain the sections as clearly as possibly by numerous apt and long abstracts from many standard works

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Now a word as to the genesis of the work. It need hardly be said that I have not the remotest intention to place it in competition with the well-known existing editions. While I was a judge, it was represented to me by the lawyers of many places that the want of a moderate-sized book on Evidence dealing exhaustively with the subject and affording practical help to the understanding and application of this difficult branch of legal study, at a cheap cost, was keenly felt. I took up the idea, but found no possible means of taking up the work in hand, as the enormous duties of a judicial officer took up the whole of my time. At the same time, I began to make the necessary studies and to collect materials, in the hope that it might be possible to produce the work at some future period. After I retired from the service, my son Subodh Chandra Sarkar, B.L., persuaded me to take up the work, promising his help and co-operation. I received assistance from him in all stages of the work, and had it not been for his labours it would have been scarcely possible for me to accomplish the task at this period of my life.

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M.C. SARKAR

Calcutta,
August, 1912

SARKAR'S

LAW OF EVIDENCE

FIFTEENTH EDITION (REVISED REPRINT 2000)

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