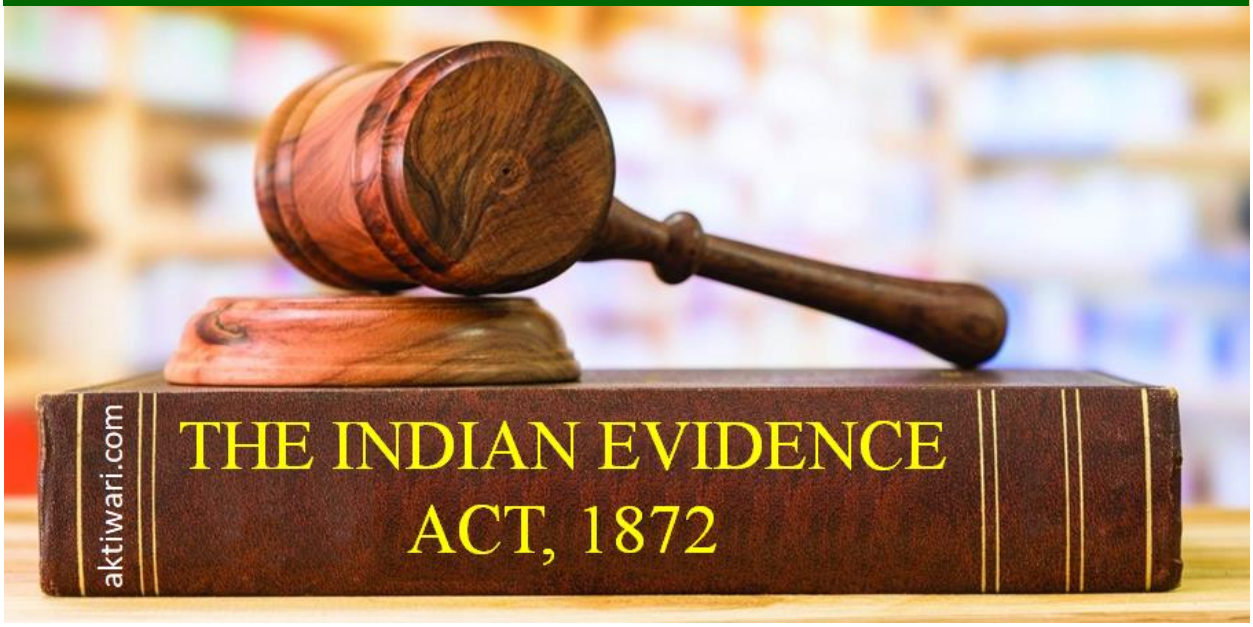
THE INDIAN EVIDENCE ACT, 1872



The Indian Evidence Act, 1872 ("**Evidence Act**") consolidates, defines, and amends the laws relating to evidence in India which helps courts to ascertain the truth. This law deals with set of principles which tend to prove or disapprove any matter of fact before the judicial authority. The present FAQ covers few important concepts provided in the Evidence Act.

1. **What does evidence mean and include?**

   Under the Evidence Act, evidence is defined as all such statements or documents which the court permits or requires to be disclosed in relation to the facts under inquiry. Such evidence can be either oral or documentary evidence. It is on the basis of such evidence that the courts determine the facts under inquiry in a case.

2. **Does the Evidence Act apply to arbitral proceedings?**

   No. Evidence Act does not apply to arbitral proceedings. The Act applies exclusively to the proceedings before courts in India. Further, the Evidence Act is applicable to proceedings related to court-martial.

3. **What is oral evidence?**

   Oral evidence consists of an oral testimony provided by a witness before the court. The contents of such oral evidence must be related to what the witness saw, heard, perceived by any sense or by making of an opinion with relation to the fact under inquiry.

4. **What is documentary evidence?**

   Evidence in the form of documents including electronic records which relate to the facts under inquiry and produced for inspection of the court is called documentary evidence.

5. How can the contents of documents be proved?

The contents of a documentary evidence may be proved either by primary evidence or secondary evidence.

6. What is primary evidence?

When the original document itself is produced for the inspection of the court, it is called primary evidence. It is preferable that wherever possible, the original document should be produced before the court as the evidentiary value of such document is relatively higher than secondary evidence.

7. What is secondary evidence?

Secondary evidence can be produced in absence of primary evidence. It includes certified copies made from original or a typed copy of the original. Since the duplication of a document is susceptible to errors or distortion, primary evidence is more valuable than secondary evidence.

8. When can secondary evidence relating to the documents be given?

Secondary evidence may be given in the following cases: —

a) when the original is shown or appears to be in the possession or control of the person against whom the document is sought to be proved, or any person out of reach of the party or the court;

b) when the existence, condition or contents of the original have been admitted in writing by the person against whom it is to be proved;

c) when the original has been destroyed or lost,

d) when the original is of such a nature that it cannot be easily produced before court;

e) when the original is a public document;

f) when the original document is of such a nature that the Evidence Act permits production of certified copy of such document;

g) when the originals consist of numerous documents which will make it inconvenient for the court to examine the same.

9. What is expert evidence?

In certain cases, there are issues related to foreign law or science or art, or as to identity of handwriting or finger impressions and the court may have to form an opinion on such point. In such circumstances, an expert may be called upon to provide an opinion on such issue. The opinion given by such skilled/experienced person is called as expert evidence.

An expert must be a skilled person who has special knowledge of the subject over which he provides an opinion.

10. Whether court is bound by the evidence given by experts?

The Supreme Court in *Malay Kumar Ganguly v. Dr. Sukumar Mukherjee (2010)* has held that a court is not bound by the evidence of the experts, and it is largely advisory in nature.

11. What is electronic evidence?

Any information contained in an electronic record (such as an email), which has been printed on a paper, stored, recorded or copied as a computer output will be considered to be a document which is admissible without any further proof or production of originals.

12. Whether certificate for admissibility of electronic records is mandatory?

Section 65-B of the Evidence Act lays down the requirement of a certificate to prove electronic records. A three judge bench of the Supreme Court of India ("**Supreme Court**") recently in *Arjun Panditrao Khotkar v. Kailash Gorantyal (2020)* has held that certificate under section 65-B of the Evidence Act is required as a condition precedent for the admissibility of evidence by way of electronic record, unless the original document itself is produced.

13. Are documents executed using digital signature accepted as evidence?

Yes, documents executed using digital signature are acceptable as evidence. It is presumed that a document executed using digital signature has been affixed by its subscriber, unless proven otherwise.

14. What is "examination in chief" and "cross examination" under the Act?

Examination or putting questions to a witness by the party who calls the witness is called "examination in chief". The purpose of "examination in chief" is to lay out the testimony of the witness before the court and counter-party.

Thereafter, a witness is cross-examined by a counter-party. During cross-examination, the counter-party attempts to discredit the witness by bringing out inconsistencies or deficiencies in the testimony of the witness.

15. What is the meaning of estoppel?

The Evidence Act provides that in certain circumstances, a party is disabled from claiming that a certain statement is untrue. Such a disability is known as “estoppel”.

The purpose of estoppel is to ensure that a party does not change its stance with relation to a statement that it has already represented as being true and which has caused the counter-party to act in a certain manner.

16. Can lawyers be compelled to provide testimony against their clients?

No, lawyers cannot be compelled to disclose confidential communications between the lawyer and his / her client. Further, a lawyer is not permitted to disclose any communication of his / her client, or any advice given or the contents of any document which he / she became aware of during his / her engagement as a lawyer without the client’s express consent.