



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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LAW OF EVIDENCE IN INDIA: THAT DECIDES WHAT A COURT IS ALLOWED TO BELIEVE

~ Deepika Tayal

ABSTRACT

Most people assume that a trial is a search for the truth: feed in the facts, apply the law, and get justice. What they do not realise is that, before any of that happens, an entire body of law has already determined which facts the court is even permitted to consider. That body of law is the Law of Evidence, and it is more fascinating, more counterintuitive, and more consequential than most people outside the legal profession ever get to know.

INTRODUCTION: A 150-YEAR-OLD FRAMEWORK, FRESHLY RENAMED

“The law of evidence is designed to ensure a fair trial, which is a component of Article 21 of the Constitution. Admissibility of evidence must be filtered through the lens of constitutional guarantees to protect the innocent and punish the guilty.”

This was said in the landmark case of *Maneka Gandhi v. Union of India*,¹ where the right to a fair trial was discussed, and the role of Evidence Law becomes relevant here. Until recently, the Indian Evidence Act, 1872, the statute drafted by Sir James Fitzjames Stephen during British colonial rule, was largely left untouched for over a century². On 1 July 2024, it was replaced by the Bharatiya Sakshya Adhiniyam, 2023 (herein referred to as “BSA”). The new law, i.e., BSA, retains most of the original framework of the Indian Evidence Act, 1872, but modernizes provisions around electronic records and digital evidence, a long-overdue

¹ *Maneka Gandhi v. Union of India*, 25 January, 1978, 1978 SCC (1) 248, <https://indiankanoon.org/doc/1766147/> (accessed 19 July 2026).

² S.1 of Indian Evidence Act, 1872 (corresponding to Preamble of Bharatiya Sakshya Adhiniyam, 2023).

recognition. What is remarkable about the Indian Evidence Act, 1872, is not that it lasted for about 150 years, but rather that it is the law designed for the colonial courts, applying the western rationalist model of truth-finding, and it became the backbone of a democratic republic's justice system. We will discuss below the multitude nature of this law by shedding some light upon its different aspects, which balance the interest between the society and the accused:

1. RELEVANT IS NOT THE SAME AS ADMISSIBLE:

The first thing the law of evidence does is 'sort'. Not everything that happened is relevant to what a court must decide, and not everything relevant is legally admissible.³ This distinction between relevancy and admissibility is one that the law takes very seriously. A fact is relevant if it logically bears on the matter that is in dispute. It is admissible only if the law permits it to be received in evidence.

A confession obtained through torture may be entirely relevant to determining guilt, yet it is inadmissible because the law has decided that the manner in which it is obtained matters as much as its content. Similarly, evidence of a person's past bad character may be relevant, even compelling, but it is generally excluded because the law is wary of courts convicting individuals for who they are rather than what they have done. Every exclusionary rule in the law of evidence reflects a conscious policy choice about the kind of justice system we seek to uphold.

2. WHO HAS TO PROVE IT AND HOW MUCH?:

In criminal proceedings, the prosecution must prove the accused's guilt beyond a reasonable doubt. The accused is under no obligation to prove anything. This is not merely a procedural convenience but it is a fundamental commitment that the state, with all its resources, must bear the full weight of establishing guilt before it can take away a person's liberty.⁴

What is less often discussed is how quietly the burden can shift. The Bharatiya Sakshya Adhiniyam, 2023 ("BSA") provides that when a fact is especially within the knowledge of one particular party, that party bears the burden of proving it.⁵ This provision has the potential to erode the presumption of innocence by compelling the accused to explain themselves before

³ S.5 to 55 of Indian Evidence Act, 1872(corresponding to S. 1-55 Bharatiya Sakshya Adhiniyam, 2023).

⁴ S. 101 of Indian Evidence Act, 1872(corresponding to S. 95 of Bharatiya Sakshya Adhiniyam, 2023).

⁵ S. 106 of Indian Evidence Act, 1872 (corresponding to S. 107 Bharatiya Sakshya Adhiniyam, 2023 (*Shambhu Nath Mehra v State of Ajmer AIR 1956 SC 404*)).

the prosecution has even fully established its case. The line between legitimate burden-shifting and a quiet and subtle reversal of the presumption of innocence is far thinner than most textbooks admit or can acknowledge.

3. THE WITNESS WHO CANNOT HELP REMEMBERING IT WRONG:

The law requires that oral evidence be direct; a witness may testify only to what they personally perceived.⁶ Courts often then treat inconsistencies between a witness statement to the police and their testimony at trial as indications of fabrication. What this ignores is fifty years of cognitive science showing that memory is not a recording, it is a reconstruction, rebuilt each time you recall it, shaped by time, suggestion, stress, and post-event information⁷. A witness who changes a detail is not necessarily lying. Yet Indian courts have no formal framework for making this distinction. The consequences fall most heavily on vulnerable witnesses, particularly those from rural backgrounds and survivors of trauma, who are often least able to provide the neat, linear, and internally consistent account that the law implicitly expects.

4. THE CONFESSION THE LAW DOES NOT TRUST:

Here is something the law of evidence reveals about the state's relationship with its own police: a confession made to a police officer or while in police custody is inadmissible as evidence of guilt.⁸ It is not merely viewed with suspicion; it is legally inadmissible. The legislature was not making a theoretical point. It was acknowledging a documented reality that the custodial confessions are coerced often enough that the law cannot afford to treat them as reliable.

This is a remarkable admission for a legal system to admit itself. The rule does not say/imply that the police are always dishonest. Rather, it says and recognizes that the conditions of police custody are structurally unreliable and inherently susceptible to coercion, and Justice, in return, requires a rule capable of withstanding the worst-case scenario, rather than one that functions only under ordinary circumstances.

CONCLUSION: A LAW STILL FINDING ITS FOOTING

⁶ S. 56 of Bharatiya Sakshya Adhiniyam, 2023 (corresponding to S.60 of Indian Evidence Act, 1872).

⁷ Elizabeth F Loftus and John C Palmer, 'Reconstruction of Automobile Destruction: An Example of the Interaction Between Language and Memory' (1974) 13(5) Journal of Verbal Learning and Verbal Behaviour 585; *Rammi v State of Madhya Pradesh* (1999) 8 SCC 649.

⁸ S. 25 of Indian Evidence Act, 1872 (corresponding to S. 23 Bharatiya Sakshya Adhiniyam, 2023).

The BSA is a step forward, particularly in its treatment of 'electronic evidence'. Yet the architecture of the law, its assumptions about memory, its silence on cognitive science, and its unexamined colonial inheritances remain largely intact. The law of evidence determines what a court is allowed/ permitted to believe. In a country where the distance between a witness stand and the verdict can determine whether the individual goes home or is sent to prison, it is worth understanding not just what the law says, but also where it falls short.