VOLUME VII ISSUE –I (Jan-March 2021)

IILSQUEST

A Quarterly Journal authored by IILS Students.
Published in the IILS Website

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THE STUDENT JOURNAL (2021)

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INDIAN INSTITUTE OF LEGAL STUDIES

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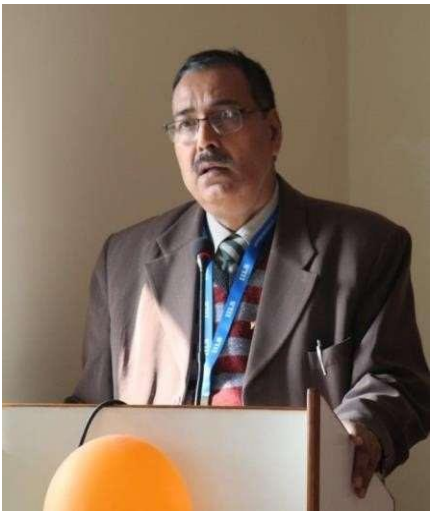
MESSAGE

FROM THE PRINCIPAL'S DESK



It gives me great pleasure to write a few words for our student journal IILS Quest. It is exclusively meant for bringing out the potential of writing as a part of their overall personality development. We are sure the journal will help to acquire knowledge and skills, build character and enhance employability of our young talented students to become globally competent. IILS Quest kindles the imagination of our learners.

I congratulate the students who used various media of expression to present their ideas. As long as our ideas are expressed and thoughts kindled, we can be sure of learning, as everything begins with an idea.

I congratulate all the contributors and the editorial board for bringing out such as outstanding magazine.

I appreciate every student who shared the joy of participation in IILS Quest along with their commitment to curriculum.

Prof. (Dr.) Ganesh Ji Tiwari
Principal,
Indian Institute of Legal Studies

MESSAGE

FROM THE REGISTRAR'S DESK

"Knowledge is power, information is liberating, education is the premise of progress, in every society, in every family"

\- Kofi Annan.

We have a resilient convention to make students knowledgeable in the truest sense, and we are eager to bring out competent students of high caliber so that they can take advantage of the immense opportunities provided by our college. The IILS Quest is a platform for the students to unleash their true potential in the field of law, swaying from serious thinking to practical approach. It not only inculcates moral values but also aids the student to develop versatile personality in this temple of learning.

Empowerment of students in all the field of knowledge is our cherished motto. The IILS Quest has traversed a significant passage of time, and indeed it will move forward in pursuit of knowledge and truth of life

and society.

I congratulate the students, and the editorial team for their hard work and dedication that has resulted in the publication of this issue of the College journal.

Shri Sanjay Bhattacharjee

Registrar, Indian Institute of Legal Studies

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ARTICLES

RASAGULLA VERSUS RASOGOLLA: A BATTLE NOT SO SWEET

Sibu Bhagat
B. A. LL. B Semester IX

ABSTRACT

India, being one of the most ancient harbingers of cultural heritage in the world, has contributed enormously in every possible sphere: it is evident not only in terms of religion, historical architecture, and multi- linguistic legacy, but in regards to scientific innovations, sports, and industrialization as well. The world had never predicted about the significant stroke which India would claim on the G.I TAGS. IPR has contributed a lot in the phase of trade and commerce and has formulated various legislations for its protection; it traverses the world economy as a whole. The significance of IPR is so crucial that it motivates an individual into innovation. Without protection of ideas, business an individual cannot reap the full benefits of their invention and there would be restrictions for him towards further research and inventions.

Historians claim the theory: The world is neither revolutionary nor evolutionary but both the phases are two different sides of the single coin. The world history imprints its mark on human mind as it has witnessed two major world wars: the most destructive period for mankind, but when we talk about the contemporary era the conflict has changed immensely. An individual would never ever have thought that there would be a period where countries would be embroiled in tussles over products and their origin i.e. G.I TAGS. G.I TAGS not only facilitates the product but the country of origin too holds reputation and its attributes. Similar connotation can be traced down between the States of West Bengal and Odisha where the mystifying battle is once again in limelight for the origin claimant of Rasogolla. The bone of contention over its origin ends in a big question mark which leaves an individual's mind stuck. The State of West Bengal asserts that it was an innovation of Lt. Nabin Chandra Das back in 1860's, and the state of Odisha claims it as a part of bhog and holy offering to Lord Jagannath. The present paper aims to analyze the sweet apricot over the origin of Rasogolla which has been a mystery over the years.

Keywords: Global tussle over G.I TAGS. IPR Protection over products, Changes in contemporary era.

INTRODUCTION: HISTORY OF RASOGOLLA

A SWEET JOURNEY IN THE REGION OF BENGAL

"Imagine life without sweets"! Yes, you are correct: it's like a part of our very existence. In India there is a saying: "SUBH KAAM SE PEHELE KUCH MITHA KHANA CHAIYE'' in English this means "Before initiating any auspicious work we must have something sweet". The historical journey of sweets in India can be traced down from mythological roots: -

"The English word "sugar" comes from a Sanskrit word 'sharkara' for refined sugar, while the word "candy" comes from Sanskrit word 'khaanda' for unrefined sugar. Ancient Sanskrit literature from India mentions feasts and offerings of 'mithas' (sweet). Rig-Veda mentions a sweet cake made of Barley called 'apupa', where barley flour was either fried in ghee or boiled in water and then dipped in honey. The origin of sweets in the Indian subcontinent has been traced to at least 500 BC when, records suggest, both raw sugar (gur, vellam, jaggery) and refined sugar (sarkara) were being produced. By 300 BC, kingdom officials in India were acknowledging five kinds of sugar in official documents. In the Gupta dynasty era (300–500 BC), sugar was being made not only from sugar cane, but from other plant sources such as palm.

Sushruta Samhita records about sugar being produced from mahua flowers, barley (yavasa) and honey. Sugar-based foods were also used in temple offerings as 'bhoga' for the deities which, after the prayers, became 'prasada' for devotees, the poor, or visitors to the temple."

Well, we have often heard about this magnificent statement **"Necessity is the mother of all inventions"**, I believe so it was with Nabin Chandra Das. The history of rasogolla holds a very eminent place in the region of Bengal. Bengal is the hub of most 'chhena' [coagulated milk solids] based products which is used to produce different varieties of sweet. Rasogolla plays such a vital role in the life of Bengalis that any occasion without it is incomplete. Nabin Chandra Das who is said to be the innovator of rasogolla wanted to do something out of the beaten track as in the late 1860's chhena was only associated with sandesh which had a sweet caramel and hard texture. Mr. Das, however, wanted to provide something more delicious which his consumers had never expected. He came up with the idea to have a product associated with chhena but which will hold a soft, spongy and succulent outlook, dipped into the sugary syrup which could eliminate both hunger and thirst at the same time. In this process he failed multiple times as because whenever he tried to dip the cottage cheese balls in sugar syrupit disintegrated: after few more attempts, he tried with a different enzyme [soap nut] which played the trick and fulfilled his goal.

Since then, the popularity of rasogulla has accomplished peaks in the city of erstwhile Calcutta (presently Kolkata). This led to the inception of the outlet standing stiff and tall named **K.C DAS,** also considered as **Rossogolla Bhaban in Baghbazaar**. Well, the journey of 'Banglar Rasogolla' holds some fictitious tales too: some culinary historians and sweetmeat trader's associations claim it to be a creation of BRAJA MOITRA two years prior

N.C DAS. In 1906, Panchana Bandopadhyay wrote that Haradhan Moira, a Phulia-based sweet makerinvented the sweet in the 19th century whilst working for the Pal Chowdhurys of Ranaghat. Due to this reason the rasgulla was also known as ‘gopalgolla’, ‘jatingolla’, ‘bhabanigolla’ and ‘rasogolla’ before being known by its most common marketable name today.

THE “PORTUGUESE” INFLUENCE

It is a relatively lesser known fact that the Portuguese invasion in the eastern region of India contributed a lot not only in the area of trading skills but immensely with culinary creations too. The Portuguese regime in the Indian coastal regions covered from Chhattisgarh, Bengal till Bombay. Many food historians acknowledge the fact that the Portuguese were magnanimously fond of cottage cheese and the process of extracting chhena [coagulated milk solids] from milk was an idea of theirs gifted to India. K.C Archarya, an eminent food historian, believes that this introduction lifted a long prevailing taboo i.e. extracting chhena from milk gave a new direction to India’s culinary branches, and gave a new ingredient to the people of Bengal or Bengal confectioners to experiment with.

RASOGOLLA: AS CULTURAL BOND AMONGST THE PEOPLE OF BENGAL

One of the eminent jurists of sociological school Clyde Kluckhohn defined Culture as a way of life. Cultural value orientations represent the basic and core beliefs of a culture; these basic beliefs deal with humans' relationships with one another and with their world. Similar connection can be traced in the people of Bengal. The cultural and the ethical belief they possess towards the approach of life and way of living distinguish them from other remaining communities. Sweet has been an indispensable part of their life; they can have it anytime in their regular routine, irrespective of any occasion. Without Rasogolla their life comes to a stagnant point. The cultural heritage of Bengal is so rich and vibrant that it is one of the most refined and recognized part of India in Global World. Apart from being the land of great writers, scholars, freedom fighters, it is considered to be the land of music ("Rabindra Sangeet") and their gesture to other fellow mates and their culinary skills for famous sweet known as "Banglar Rasogolla".

Rasogolla and Bengalis have the "sweetest bong connection" which the entire world admires and in general half a million Bengali girls have nicknames like Chini Mishti, Mithi, Mithu, etc and all these are Bengali terms meaning Sweets or Sweetness. In fact, Bengalis are supposed to possess round faces, that too because of their association with Rasogolla. When Bengalis want to establish a relationship of trust and intimacy with anybody, food is the ingredient.

And Rasogulla performs the perfect catalyst.

"But now a bitter-war has broken out over the origins of this white dripping-with-sweetness-ball of cottage-cheese. The fight is between Odisha and West Bengal, with each one claiming ownership of rasogolla. Odisha has claimed that Rasogolla originated from the Jagannath Temple in Puri, where it is a part of the religious rituals, and has been a part of the same since the 12th century". [1]

And when your favorite food comes into the limelight of controversy your entire focus tends to shift towards the ongoing issue. But jokes apart- Rasogolla is not only a part of their life but a symbol they possess in the world community.

RASAGULLA VERSUS RASOGOLLA

AN ARENA OF CONTENTATION FOR BOTH THE STATES:

The greatest war is not fought in the war fields but in the mind of fighters and the conflict of Rasogolla originated in the kitchen itself. The world has already witnessed two of the major world wars which left an imprint in the lives of people. But in this contemporary era had we ever thought the war would be regarding G.I TAGS and the origin of specified products? The answer is simply, No! The point which now comes into play is the place where the sweet first originated and what is the historical event associated with it behind the creation of this scrummy stuff.

[1] Priyanka Dutta, 'Roshogolla' The sweetest bong connection; Kolkata 24x7 (Nov.14, 2014, 4:30 PM), https://english.kolkata24x7.com/roshogolla-sweetest-bong- connection-officially-bengalis-plate.html/.

The battle for the rasogolla intensified in 2015 when Odisha's science and technology minister Pradip Kumar Panigrahi said that more than one committee which had been set up to trace the origin of the sweet pointed to "conclusive evidence" that 'rasagola' (which is how the dessert is spelt in the state) existed for about 600 years. Odisha contended that historical research proved that the 'rasagola' originated in Puri. Its first avatar was 'kheer mohana', which later evolved into 'pahala rasagolla'.

In response, the West Bengal government quoted 19-century history to claim the rasogolla was invented by Nabin Chandra Das, a famous sweetmeat maker, in 1868.[2]

The apricot conflict between both the states has gained a lot of limelight within a small span of time, and achieving the G.I TAG has become the upmost tussle between these two neighboring states.

HISTORICAL BACKDROP OF WEST BENGAL'S CLAIM

West Bengal is often referred to as the state which is in a constant frenzy of joyous celebration. Indeed, the statement is true. The people of Bengal enjoy

[2] Sumanta Ray Chaudhuri, Rosogolla originated in West Bengal, rule GI authorities, rejecting Odisha's claim, Hindustan Times, Kolkata (Nov. 14, 2017, 9:27 PM), https://www.hindustantimes.com/india-news/bengal-wins-the-rosogolla-battle-authorities-say-sweet-didn-t-originate-in-odisha/story-kAfHmCXBDG03Iogw9fo53L.html/.

to the fullest, be it the celebration post India's victory in the Cricket World Cup in 1983 and 2011, or cheering for their home team "MOHAN BAGAN" and "EAST BENGAL" in football stadiums; they are always ready for it, filled with triumph and enthusiasm. And after every win, it's time to celebrate and what will be the best way to celebrate it rather than enjoying the sweet, sugary and spongy "Banglar Rasogolla".

The journey of Rasogolla in the region of Bengal starts in the year 1845. Nabin Chandra Das was born into a North Kolkata sugar merchant's family, in the **Kashi Mitra Ghat** area. His father passed away when Nabin was just three months old; his widowed mother was pushed out of the family home with the infant. As he grew older, Nabin realized excelling in academics wasn't his cup of tea, but he did want to be the breadwinner for his mother, so he took up a helper's job at a local sweet shop. The shop was called **Indrer Mishtir Dokaan** (Indra's Sweet Shop) and Nabin proved to have a real aptitude for the confectioner's trade. Within a few months, he had branched out on his own setting up a small makeshift stall right opposite Indra's.

To begin with, Nabin only knew how to make dry sweets, specifically sondesh. His sondesh was quite popular among the locals, and even **Rani Swarnamoyi** was an ardent admirer. It was her wish to eat more of the sondesh that led to the creation of a mildly sweeter form now known as

'**Aabar Khaabo'** (meaning, 'will eat again').[3]

Well, this was the time when the world would witness a new creation in the clan of sweets. The words of **Rani Swarnamoyi** striked Nobin Chandra Das so hard in his head that he started experimenting with the coagulated milk solids chhena which will hold a soft, spongy and succulent outlook, dipped into the sugary syrup which could quench both hunger and thirst at the same time, but in this process he failed numerous times as because whenever he tried to dip the cottage cheese balls in sugar syrup it disintegrated which decimating his idea but after few more attempts he tried with a different enzyme [soap nut] which played the trick and brought his goal to fruition, and in the year 1860 he finally commanded on his product, i.e., "Banglar Rasogulla".

Apart from numerous mentions of rasgolla in history and literature, there is a book by Haripada Bhowmik on how it was invented by Das**. Haripada Bhowmick says;** "I began by researching the origins of chhena or cottage cheese. I found important references on curdled milk in Chaitanya Charitamrita, one of the primary biographies of Chaitanya **Mahaprabhu**. Chhena the thickened form of milk, was **never considered to be offered to the deity**. Sri Chaitanya popularized chhena in Bengal, but in the rest of the country it remained unknown," said Bhowmick. According to reports, noted food historian KT Acharya also pointed out the fact that making chhena form milk was a

[3] Amita Ghose, The rosogolla's bittersweet beginning: How a Kolkata confectioner created the dessert, First post (Nov. 20, 2017, 12:01 PM), https://www.firstpost.com/living/the-rosogollas-bittersweet-beginning-how-a-kolkata-confectioner-created-the-dessert-4217227.html/.

taboo in India. Bengal learnt it first from the Portuguese and it gave a new ingredient to the people of Bengal and Bengal confectioners to experiment with and from there the journey of Rasogolla began.

HISTORICAL BACKDROP OF ODISHA'S CLAIM

The claim made by the state of Odisha over the origin of Rasagolla sounds to be more fictitious rather than a historical one. The Odisha government claims that the famous 'Chhena Poda' holds its imprint back in 12th century. The Odisha government said rasagulla originated in Puri some 600 years ago in form of kheer mohana, the name referring to the milk-white color of the delicacy.

According to mythology, the deity synonymous with Puri's famous Jagannath temple, (from which the English word "**juggernaut**" originates) - Lord Jagannath - had offered kheer mohana to an angry Goddess Lakshmi in order to appease her so that she lets him enter his home after the nine-day rath yatra.[4] Goddess Lakshmi gets very upset as Lord Jagannath leaves the house without her consent and she locks one of the doors to the temple called the 'Vijay Dwar'. Upon the Lord's arrival, he tries to appease her by offering her rasgullas. This ritual which is known as 'Bachanika' is a part of the **"Niladri Bije"** or "Arrival of God" observance which marks the return of the deities

[4] Daily Bite, How Bengal won the prestige issue of rasgulla from Odisha, Daily O Open to opinion, (Nov. 14, 2017, 8:43 PM), https://www.dailyo.in/lifestyle/rosogolla-west-bengal-odisha-mamata-banerjee-naveenpattanaik/story/1/20576.html

to the temple. According to research scholars, the "Niladri Bije" tradition finds mention in ancient scriptures such as the '**Niladri Mahodaya'**, which dates back to the 18th century by **Sarat Chandra Mahapatra.**[5] This kheer mohana later became Pahala rasgulla, named after the village Pahala, which, according to the government, became the rasgulla village of Odisha, owing to the abundant production of milk. To contest the claims of the West Bengal government, the Odisha government set up a number of research committees. A 150-page report by Jagannath cult researcher Asit Mohanty said that Dandi Ramayanhas the first documented presence of rasgulla in Odisha history. Dandi Ramayan, an Odia adaptation of the Valmiki Ramayan, was written in the 15th century.

G.I TAG: IDENTIFICATION IN INTERNATIONAL REGIME

TUSSLE AND TREMENDOUS WIN:

Once a great philosopher said: Identification identifies who you are. Without it there is no existence of ours. Same goes with regards to products; it helps us in recognition and its country of origin. The G.I TAG represents a mark of pride, honor, emotion and global

[5] Youth Forum, Face-Off: The Rasgulla Battle between West Bengal and Odisha, Youth Forum, (Aug. 27, 2016, 8:51 PM), https://youthforum.co/face-off-the-rasgulla-battle-between-west-bengal-and-odisha/.

recognition; for both the states it has rather been a matter of prestige than tussle.

The ongoing dispute between both the neighboring states has led to various controversies across the Nation and worldwide regarding its history of origin. The ‘Geographical Indication' Tag refers to a sign which is used on products possessing some qualities, characteristics, reputation attributable to the geographical origin. There needs to be a clear link between the product and the place of production. The Act providing protection to Geographical Indications (GI) in India is The Geographical Indications of Goods (Registration and Protection) Act, 1999.

On the basis of the nature, the products obtaining a GI tag can be divided into 4 categories:

Agricultural: E.g. Darjeeling Tea from West Bengal; Handicraft:

E.g. Chanderi Sarees from Madhya Pradesh; Manufactured: E.g.

Mysore Sandal Soap from Karnataka; and Food Stuff: E.g.

Bikaneri Bhujia from Rajasthan.

The recent tiff between the States of Odisha and West Bengal over the origin of the ever popular sweet dish 'Rasogolla' has been the centre of attraction. In the year 2017, the GI registry of Chennai gave West Bengal the GI status to **'Banglar Rasogolla** in furtherance of an application filed on the behalf of the West Bengal State Food Processing and Horticulture Development Corporation Limited (WSFPHDCL) for obtaining such status. [6]

The status was accredited to West Bengal on the basis of differentiation of the sweet. The Banglar Rasogolla was an innovation of Nabin Chandra Das in the late 1860's which holds a spongy texture and is white in color and delivers a sweet taste to its consumers, on the other hand the claim of Odisha Government was rejected by the registrar of TAGS as the Odisha Rasagulla is way too distinctive than the Banglar Rasogolla. The Odisha Government claims it to be their creation in 12th century which was used as an offering to Lord Jagannath which holds a soft texture and is light brown in color and delivers a mild sweet taste.

The Registrar of the Chennai GI office gave the GI tag to the Banglar Rasogolla of West Bengal. The judgment was delivered in this manner mainly due to the reason that the registrar was satisfied about the registrability of the product possessing uniqueness and created keeping the old age traditions of the state in mind. This was objected by the State of Odisha on the basis that the dish had originated in the State of Odisha. But the same was not accepted by the registrar and objections were not raised by the state in accordance to the terms of the act, making the application not maintainable in nature.

[6] Ram Sharma, Geographical Indication In Context Of The Rasgulla Controvers, Mondaq, (Jan. 3,2020, 11:25 PM) https://www.mondaq.com/india/trademark/879718/geographical-indication-in-context-of-the-rasgulla-controversy

On the other hand, the Odisha Government has filed an application with regards to G.I tags for their own innovation known as "**Odisha's Rasagulla**" which has been recognized by the Registrar of G.I TAGS and accredited for the same after 2 years of Bengal's recognition. The prestigious battle between both the states led to bitter sweet tussle but the historical evidence extended its support towards the Bengal's side as there is no proper documentation produced by the Odisha government for its claim. The International Regime believes Rasogolla as a part of Bengal rather than Odisha. Although the Odisha government has been awarded with the G.I TAG but the tremendous superiority lies with the state of West Bengal.

RASOGOLLA: AN ECONOMIC OUTCOME

The G.I TAGS not only imprints as a mark of pride but immunes the state's economy as a whole. Each and every product holds some socio- economic output for their state of origin and for Bengal Rasogolla does that work. Rasogolla sales in West Bengal have shot up by around 25 per cent after the state secured a Geographical Indication (GI) tag for "Banglar Rasogolla", a body of sweetmeats makers stated after its accreditation.

"The GI tag recognized the industry's efforts and customers' passion for the sweet. The development has caused euphoria among sweets-lovers and the industry as a whole has been witnessing a 20-25 per cent rise in rasogolla sales, "**Paschimbangla Mistanna Byabasayee Samity's"**

General Secretary R K Paul told IANS.

According to Paul, the sweet's manufacturing in Bengal was estimated to be worth about Rs 20,000 crore annually though this figure was computed about 15 years back. "Now, the industry size would be well above Rs 20,000 crore and rasogolla, as a core item, contributes a substantial amount to our sales. The GI tag for Banglar Rasogolla will help the industry to develop further," Paul said.

He said two lakh manufacturers, employing 7.5 lakh workers, were involved in the sweetmeats industry in the state. According to industry estimates, rasogolla contributes about 20 per cent of daily sales at sweetmeats shop but it varies across locations and depends on the number of items on offer.[7]

CONCLUSION AND SUGGESTIONS

Isaac Newton: For every action, there is an equal and opposite reaction; well, this law perfectly fits for both the neighboring states, the tussle between these two discovered evident historical indebtedness behind the innovation of the worldwide delicacy i.e. "Rasogolla". The apricot struggle of both the states was mystifying and their claim over the origin of "rasogolla" owes appreciation. Each of these states is rich in their cultural heritage; one has the "CITY OF JOY" whiles the other has "THE TEMPLE CITY OF INDIA".

[7] IANS, Sweet returns: Rasogolla sales in West Bengal surge 25% after GI tag, Business Standard, (Nov. 16, 2017, 7:25 PM), https://www.business-standard.com/article/current-affairs/sweet-returns-rasogolla-sales-in-west-bengal-surge-25-after-gi-tag-117111601127_1.html

This might be the best possible probability for both the states to enter into a bitter- sweet battle **where it's a war of documents rather armories**.

The product has not only gained its love and affection in the domestic domicile but in the International Regime too. The wide recognition of the product has gained it magnate in the sphere of tourism and its impact can be seen through the demand of exports and revenue earned by the G.I Tag holding State, i.e. West Bengal.

The recognition of G.I. TAG was now not just a matter of achievement but a prestigious issue for the twin States. The IPR has gained so much importance in today's world; where everyone is aware of the fact of safeguarding their creations; the G.I TAG holds such a significant attribute towards the economic implications in their respective state and the sentimental attachments of the people which they possess over the particular product. Consumers are the prime dialect in order to flourish a product in the life of people and to make it globally recognized by consumer to consumer [c2c] approach and reviews. The G.I TAG helps the consumers to distinguish the actual product which has achieved the tag and makes them conscious and aware of the fraudulent sets which are sold in the name of originals. "Rasogolla" is not just a sweet but an identification for Bengalis in the International Regime. And when your right comes into controversy the entire focus tends to shift towards its judgment. However, the certification can only be granted to one of the competitors for a specified product and in this tussle,

it was granted to West Bengal for its "Banglar Rasogolla". The dispute does not settle over here. The Odisha government after having a cantaloupe smash by the West Bengal filed an application to G.I Registrar for its own set of creation in culinary outlet and i.e. "Odisha Rasogulla".

Based upon the above analytical research, the Researcher constructs the following suggestions mentioned below:

- There should be proper implementation of awareness program by each of the states so that the people of the regime get well acquainted with IPR laws for the protection of their products.
- To encourage the neighboring states to be more associated with research and innovation, which will lead to economic development of the Nation at large and will set an impact in international society.
- To set a benchmark for all the states to have a G.I TAGS of their states as a mark of pride, just like the state of West Bengal.
- A proper committee set up by the government of India in each state for encouraging its citizens in comparative research and innovation in all feasible spheres.
- To broaden the sects of tourism in the Indian food sphere and help and guide the tourist's to get acquainted with the original G.I sets of products through different mechanisms.

THE MALIMATH COMMITTEE REPORT AND THE LAW OF EVIDENCE

Rishav Das
B. A. LL. B Semester IX

HISTORICAL BACKGROUND OF LAW OF EVIDENCE

The Law of Evidence did not emerge as we see it in the present recorded format but it has developed and evolved through time. Evidence was known to be taken by every King in different time periods and that evidence was based upon the functionality and rationality of the belief which existed among the people at that time. Different time periods brought something or the other in the administration of evidence during that period and based upon popular belief. The Evidence or Law of Evidence in India has subsequently developed as we see it today primarily through three stages of history viz.,

1. The Hindu Period;
2. The Muslim Period and

3. The Modern Period i.e. The Onset of the British Rule in India.

THE HINDU PERIOD:

There is ample material on the law of evidence in Hindu Dharmashastras. The object of the Trial was to find out the truth from the falisity in the same way as segregating a nodule of stone from the grains of rice using very high precision and precaution. Dharmashastras recognized four types of evidence- (1) Lekhya, i.e. document; (2) Sakshi i.e., oral evidence; (3) Bhukti or Bhog i.e. use in other words possession and (4) Divya i.e. Divine test or Ordeals.

1. **Lekhya (Document):** Lekhya was of three types-
   - **(a)** Rajya Sakshayak- It was a document written in the Court by the clerk of the King. It was like a registered document.
   - **(b)** Sakshayak- It was a document written by a private person and attested by a witness.
   - **(c)** Asakshayak- It was a document written by the parties themselves by their own hand.

Lekhya Sakshya was preferred to Sakshi i.e. oral evidence. Later on Dharmashastris keeping in view the defects of Lekhya Sakshya made provisions for the removal of such defects. For Example, it was provided that a document written by a rogue or its attestation by a wicked person would vitiate it. According to Vardachariyar, there is description of

notorial system also in Dharmashastras. There is a detailed classification of document in public and private, ancient and modern India and direction for comparative appreciation of legal documents and the method to prove them.

The original document was of great weightage. According to Narada, Vishnu Dharmashastras and Katyayan, that Lekhya Pramaan (documentary evidence) is treated as proved which is written confirming with the rules, beyond doubt and meaningful.

2. **Sakshi (Oral Evidence):** The rules of Sakshi or oral evidence were quite different in the civil and criminal matters. The capacity of witnesses was regulated by the rules made like other ancient laws. The strict rules of capacity of witnesses were relaxed in penal matters probably due to reason that the crimes could be committed in forest or lonely places where only the person present could see the incident whatever their eligibilities. Judges put questions to the witnesses and while answering the questions put by them watched their demeanour and took the decisions on their credibility.
3. **Bhukti or Bhog (Use):** The main economy in ancient India was agriculture. The disputes relating to Bhukti i.e., the possession of the land were in plenty. The law relating to

possession was well settled. There were two kinds of Bhukti- (1) Bhukti Sagma (with right) and (2) Anagama Agam means Udgam (Origin) the root of the ownership or the basis of the right, example, whether the property was purchased or obtained in gift or inherited. The Agam and prescription i.e. the use of the property give weight to each other.

4. **Divya (Divine Ordeals):** Where the evidence given by a man lead to a decision, Divya i.e., divine tests help to reach the decision. Such tests were prevalent in ancient India where the appeal was to super natural power to prove guilt or innocence. If a man entered the burning fire or into deep water and came out without any harm, he was innocent in the eye of law or his case stood proved. Gradually Divya was limited to extra-ordinary cases only where the common type of evidence was not available.[1]

Hindu system of evidence had advanced much in course of time and the modern concepts of evidence were incorporated in them.

MUSLIM PERIOD:

In the Muslim Period, the rules of evidence were well developed. The evidence was of two types- Oral and Documentary. The oral evidence was further divisible

[1] . P. V. Kane, 'Divya'; Dharmashastra Ka Itihas; Chapter 14; (4 Ed.); (Uttar PradeshHindi Sansthan).

into direct and hearsay evidence. It was so in the history that in this period, the oral evidence was preferred to documentary evidence, and such support for oral evidence can be found in the Quran as well-

> "O You who believes stand out firmly for Justice, as a witness to Allah, even against yourselves, or your parents or your kin, and whether it be against rich or poor: Allah protects you both better. So, follow not the desires of your hearts, because you may swerve and if you distort justice, or decline to do justice. Surely, Allah is well acquainted with all that you do." (Sura 4-135)

In the Muslim period, the demeanour of witnesses and parties were also taken into account. This was something which was not present previously in the Hindu period and was brought about by the Muslim rulers.

The witnesses were examined and cross-examined separately and far from the other witnesses so that the latter could not hear the former. These days this system has been adopted by the Courts. There were also classifications made regarding which classes of people were allowed to be witnesses and which classes were not allowed.[2]

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[2]. Rama Jois, Seeds of Modern Public Law in Ancient Indian Jurisprudence 1–2

Circumstantial evidence developed largely during the Muslim period and was accepted without any hitch. For example, if a man comes out of a house with a blood stained dagger in his hand and blood stains all over his clothes and a dead man with dagger wounds is found inside the house, the inference can be drawn from the circumstantial facts that the man is the killer. The circumstantial evidence was taken on an oath.[3]

Therefore, the Law of evidence in India during the Muslim Period evolved a lot based upon various factors and many other new methods such as demeanour of witnesses were incorporated while delivering Justice. A method like circumstantial evidence on oath was hugely taken into consideration and was considered as an ultimate proof available which was not used previously in an extensive manner.

MODERN PERIOD: ONSET OF ENGLISH LAW:

The present enactment governing admissibility of evidences in the court of law is a result of British period. Before this time, the rules of evidence were based upon the local and traditional legal systems of different social groups residing in India. These rules were different for almost every social group, caste, community etc which created chaos in the prevalent legal system of

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(Lucknow: Eastern Book Company, 1990) (India)

[3] M.B. Ahmed, Administration of Justice in Medieval India (Retrieved: Batuklal,The Law of Evidence; 22nd Edition; Central Law Agency, 2018) (India)

that time. After the advent of British East India Company in the dominion of India, it was granted royal charter by King George I in 1726 to establish Mayor's courts in Bombay, Madras and Calcutta. These courts followed the English rules of evidence. On the other hand, outside these towns in Mofussil courts, there was no definite law relating to evidence. Hence, Mofussil courts were having unfettered power in relation to rules of evidence. This difference in laws resulted in chaos in the Mofussil courts. **CJ Peacock** observed in the case of **R v. Khairulla**[4] that, "*English Law of Evidence was not the law of the Mofussil courts and it was further held that Hindu and Muslim laws were also not applicable to those courts. There being no fixed and definite rules of evidence, the administration of the law of evidence was far from being satisfactory".*

ENACTMENT OF INDIAN EVIDENCE ACT, 1872:

The first Act relating to the Evidence was of 1835 enacted by the Governor-General. A series of Acts were passed between the period of 1835 to 1855 to incorporate the reforms as suggested by Bentham but considering the Indian scenario which was far from similar to that of England, none of the reforms in its full vigor worked for India. Between 1855 and 1869, there were also several reformed Acts passed but the Courts in India while administering

[4] 6 WR Cr 21(India)

Justice followed the English law of Evidence as it was more accustomed to the Judges at that time although only a part of English law was applicable in Mofussil area and Presidency Towns both. With the problem not ending soon even after several reforms, the British Crown decided to set up two important commissions to understand the scenario of India:

- **Maine Commission:** There was a need to codify the Law of Evidence. A Commission under the Chairmanship of Sir Henry Maine the then law member was constituted in 1868 for drafting the new Law of Evidence. The Bill was presented by Sir Maine but was rejected because it was not suitable under the conditions of that time and focused more on the English law more than the Indian scenario.

- **Stephen Commission:** In 1871, the Stephen Commission was constituted for drafting the Law of Evidence. Stephen presented the draft of the Bill to the Council on 31st March, 1871 which was sent to the local Governments, High Court and Advocates for their consideration. After receiving their views, the Bill was referred to the Select Committee which made the appropriate amendments and presented to the Council which enacted it as the Indian Evidence

Act, 1872. Since its enactment, the Act has undergone several amendments.

The Indian Evidence Act, 1872 is based on the English law of evidence but there are some provisions, in the act according to the situations and need in India. Though some defects have been pointed out from time to time and several recommendations have also been made to rectify the defects but the Indian Evidence Act, 1872 remains the Act with least amendments till the present time.

THE MALIMATH COMMITTEE REPORT AND REFORMS IN LAW OF EVIDENCE

Criminal Justice System in India has existed since time immemorial and has been modified according to the need of the situations. All the laws such as Penal Provisions, the Criminal Procedure and the Laws of Evidence has all evolved from various time periods into what it is found in the present. As discussed in the previous Chapters, the Law of Evidence was one of the major requirements while dealing with any types of criminal offenses both in the past as well as in the present. Considering the Past time periods such as the Hindu Period as well as the Muslim period and the British period, the Evidence laws has been changed as well as modified to suit the needs. After the formulation of the Indian Evidence Act, 1872, it remains the least amended Act for 140 years.

After various landmark judgments and onset of the technological advancements and the world starting to become digitalized, a new Act was enacted by the name The Information and Technology Act, 2000 and this resulted in the formation of two most important commissions in the legal system viz., Justice Malimath Committee and the 185th Law Commission in the year 2002 and 2003 respectively. This chapter shall focus on the recommendations of both the Committees and what are the amendments that have been actually done in the Evidence Act, 1872.

The recommendations are as follows: [5]

1. **Inquisitorial system[6]:** The Committee has given its anxious consideration to the question as to whether this system is satisfactory or whether we should consider recommending any other system. The Committee examined in particular the Inquisitorial System followed in France, Germany and other Continental countries. The Inquisitorial System is certainly efficient in the sense that the investigation is supervised by the Judicial Magistrate which results in a high rate of conviction. The Committee on balance felt that, a fair trial and in particular,

[5]. The Justice Malimath Committee Report was made for the entire Criminal Justice System including the Indian Penal Code, 1860; The Code of Criminal Procedure, 1973 and the Evidence Act, 1872. This Chapter shall deal with only the recommendations made to the Evidence Act, 1872.

[6]. Report on the Criminal Justice System; Justice Malimath Committee; (Retrieved: April 15th 2020; Siliguri) (India)

fairness to the accused, are better protected in the adversarial system. However, the Committee felt that some of the good features of the Inquisitorial system can be adopted to strengthen the Adversarial System and to make it more effective. This includes the duty of the Court to search for truth, to assign a pro-active role to the Judges, to give directions to the investigating officers and prosecution agencies in the matter of investigation and leading evidence with the object of seeking the truth and focusing on justice to victims. On this thought recommendations were made to the CrPC, 1973 as well as Evidence Act, 1972. The recommendation to the Evidence Act as follows:

- Section 54 of the Evidence Act be substituted by a provision on the following lines: "In criminal proceeding the fact that the accused has a bad character is relevant".

  Explanation: A previous conviction is relevant as evidence of bad character.

2. **Incorporation of the Information Technology Act, 2000[7]:**

With the onset of the technological advancement, a dire need to incorporate the admission by electronic means as evidence was

[7]. Report on the Criminal Justice System; Justice Malimath Committee; (Retrieved:April 15th 2020; Siliguri) (India)

felt and therefore, amendments were recommended by the Committee under the following Sections or parts of Sections as:

- In section 3,-

(a) in the definition of "Evidence', for the words "all document produced for the inspection of the Court", the words "all documents including electronic records produced for the inspection of the Court" shall be substituted;

(b) after the definition of "India, the following shall be inserted, namely: -

The expressions "Certifying Authority", digital signature", "Digital Signature Certificate", "electronic form", "electronic records", "information", "secure electronic record", "secure digital signature" and "subscriber' shall have the meanings respectively assigned to them in the Information Technology Act, 2000.

- In Section 17, for the words "oral or documentary," words "oral or documentary or contained in electronic form' shall be substituted.
- After section 22, the following section shall be inserted, namely: -

"22A". When oral admission as to contents of electronic records are relevant.- Oral admissions as to contents

electronic records are not relevant, unless the genuineness of the electronic record produced is in question.

- In Section 34, for the words “Entries in the books of account”, the words “Entries in the books of account, including those maintained in an electronic form” shall be substituted.
- In Section 35, for the word “record”, in both the places where it occurs, the words “record or an electronic record” shall be substituted.
- For Section 39, the following section shall be substituted, namely: - “39. What evidence to be given when statement forms part of a conversation, documents, electronic record, book or series of letters or papers. -

When any statement of which evidence is given forms part of longer statement, or of a conversation or part of an isolated documents, or is contained in a document which forms part of a book, or is contained in part of electronic record or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, electronic record, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effects of the statement, and of the circumstances under which it

was made."

- After Section 47, the following section shall be inserted, namely:- "47A. Opinion as to digital signature when relevant.- When the court has to form an opinion as to the digital signature of any person, the opinion of the Certifying Authority which has issued the digital signature Certificate is a relevant fact"
- In Section 59, for the words "contents of documents" the words "contents of documents or electronic records" shall be substituted.
- After Section 65, the following shall be inserted, namely:- "65A. Special provisions as to evidence relating to electronic record.-the contents of electronic records may be proved in accordance with the provisions of Section 65B."
- Section 65B shall be entered as "Admissibility of electronic records" which deals with the admission of the records which are relevant as evidence in a particular suit and in accordance to the relevant fact in issue in electronic form in a computer or computer output shall be made admissible subject to the conditions below:

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not; then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents;

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

- After Section 67, the following section shall be inserted, namely:- “67. Proof as to digital signature. - Except in the case of a secure digital signature, if the digital signature of any subscriber is alleged to have been affixed to an electronic record the fact that such digital signature is the digital signature of the subscriber must be proved.”
- After section 73, the following section shall be inserted, namely: - “73A. Proof as to verification of digital signature- In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct-
  (a) that person or the Controller or the Certifying Authority to produce the Digital Signature Certificate;
  (b) any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by that person.”

- After Section 81, the following section shall be inserted, namely:- “81A. Presumption as to Gazettes in electronic forms.-The Court shall presume the genuineness of every electronic record purporting to be the Official Gazette, or purporting to be electronic record directed by

any law to be kept by person, if such electronic record is kept substantially in the form required by law and is produced from proper custody."

- After Section 85, the following Sections shall be inserted, namely: - "85A. Presumption as to electronic agreements. - The court shall presume that every electronic record purporting to be an agreement containing the digital signatures of the parties was so concluded by affixing the digital signature of the parties."
- Section 85B. Presumption as to electronic records and digital signatures- In any proceedings involving a secure digital signature, the Court shall presume unless the contrary is proved that-

(a) the secure digital signature is affixed by subscriber with the intention of signing or approving the electronic record;

(b) except in the case of a secure electronic record or a secure digital signature, nothing in this section shall create any presumption relating to authenticity and integrity of the electronic record or any digital signature.

- Section 85C. Presumption as to Digital Signature Certificates- The Court shall presume, unless contrary is

proved, that the information listed in a Digital Signature Certificate is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscriber.

- After Section 88, the following Section shall be inserted, namely:- “88A. Presumption as to electronic messages.- The Court may presume that be electronic message forwarded by the originator through an electronic mail server to the addresses to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.”
- After Section 90, the following section shall be inserted, namely:- “90A. . Presumption as to electronic records five years old-where any electronic record, purporting or proved to be five years old, is produced from any custody which the court in the particular case considers proper, the Court may presume that the digital signature which purports to be the digital signature of any particular person was so affixed by him or any person authorized by him this behalf.”
- For Section 131 the following section shall be substituted, namely:- 131. Production of documents or

electronic records which another person, having possession, could refuse to produce.- No one shall be compelled to produce documents in his possession or electronic records under his control, which any other person would be entitled to refuse to produce if they were in his possessions or control, unless such last-mentioned person consents to their production."

After the coming of the Information Technology Act, 2000 and the master stroke recommendation by the Malimath Committee, the above mentioned Sections were either incorporated or amended or substituted according to the needs to make the electronic medium available in the Evidence Act, 1872

3. **Right to Silence[8]:** The Right to silence is a fundamental right guaranteed to the citizen under Article 20(3) of the Constitution which says that no person accused of any offence shall be compelled to be a witness against himself. As the accused is in most cases the best source of information, the Committee felt that while respecting the right of the accused a way must be found to tap this critical source of information. The Committee feels that without subjecting the accused to any duress, the court should have the freedom to question the accused to elicit the

[8]. Report on the Criminal Justice System; Justice Malimath Committee; (Retrieved:April 15th 2020; Siliguri) (India)

relevant information and if he refuses to answer, to draw adverse inference against the accused. At present the participation of the accused in the trial is minimal. He is not even required to disclose his stand and the benefit of special exception to any which he claims. This results in great prejudice to the prosecution and impedes the search for truth. The Committee has therefore felt that the accused should be required to file a statement to the prosecution disclosing his stand. For achieving this, the following recommendations are made:

- Section 313 of the Code may be substituted by Section 313-A, 313-B and 313-C on the following lines: -

  In every trial, the Court shall, immediately after the witnesses for the prosecution have been examined, question the accused generally, to explain personally any circumstances appearing in the evidence against him.

  (1): Without previously warning the accused, the Court may at any stage of trial and shall, after the examination under Section 313-A and before he is called on his defence put such questions to him as the court considers necessary with the object of discovering the truth in the case.

  (1): No oath shall be administered when the accused is examined under Section 313-A or Section 313-B and the

accused shall not be liable to punishment for refusing to answer any question or by giving false answer to them. The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, or any other offence which such answers may tend to show he has committed.

4. **Presumption of Innocence and Burden of Proof[9]:** There is no provision in the Indian Evidence Act prescribing a particular or a different standard of proof for criminal cases. However, the standard of proof laid down by our courts following the English precedents is proof beyond reasonable doubt in criminal cases. In several countries in the world including the countries following the inquisitorial system, the standard is proof on 'preponderance of probabilities. There is a third standard of proof which is higher than 'proof on preponderance of probabilities' and lower than 'proof beyond reasonable doubt' described in different ways, one of them being 'clear and convincing' standard. The Committee after careful assessment of the standards of proof came to the conclusion that the standard of proof beyond reasonable doubt presently followed in criminal cases should be done away with and recommended

[9]. Report on the Criminal Justice System; Justice Malimath Committee; (Retrieved:April 15th 2020; Siliguri) (India)

in its place a standard of proof lower than that of 'proof beyond reasonable doubt' and higher than the standard of 'proof on preponderance of probabilities'. The Committee therefore favours a mid level standard of proof of "courts conviction that it is true". Accordingly, the Committee has made the following recommendations:

- The Committee recommends that the standard of 'proof beyond reasonable doubt' presently followed in criminal cases shall be done away with.
- The Committee recommends that the standard of proof in criminal cases should be higher than the one prescribed in Section 3 of the Evidence Act and lower than 'proof beyond reasonable doubt'.
- The Committee recommends that the standard of proof in criminal cases should be higher than the one prescribed in Section 3 of the Evidence Act and lower than 'proof beyond reasonable doubt'.

(The clause may be worded in any other way to incorporate the concept in Para 2 above)

- The amendments shall have effect notwithstanding anything contained to the contrary in any judgment order or decision of any court.

5. **Investigation[10]:** The machinery of Criminal Justice System is put into gear when an offence is registered and then investigated. A prompt and quality investigation is therefore the foundation of the effective Criminal Justice System. Police are employed to perform multifarious duties and quite often the important work of expeditious investigation gets relegated in priority. A separate wing of investigation with clear mandate that it is accountable only to Rule of Law is the need of the day. Criminality has undergone a tremendous change qualitatively as well as quantitatively. Therefore, the apparatus designed for investigation has to be equipped with laws and procedures to make it functional in the present context. If the existing challenges of crime are to be met effectively, not only the mindset of investigators needs a change but they have to be trained in advanced technology, knowledge of changing economy, new dynamics of social engineering, efficacy and use of modern forensics etc. Investigation Agency is understaffed, ill equipped and therefore the gross inadequacies in basic facilities and infrastructure also need attention on priority. Accordingly, to administer proper taking of Evidence, the following recommendations were made:

[10]. Report on the Criminal Justice System; Justice Malimath Committee; (Retrieved:April 15th 2020; Siliguri) (India)

- Law should be amended to the effect that the literate witness signs the statement and illiterate one puts his thumb impression thereon. A copy of the statement should mandatorily be given to the witness.
- Audio/video recording of statements of witnesses, dying declarations and confessions should be authorized bylaw.
- Forensic Science and modern technology must be used in investigations right from the commencement of investigations. A cadre of Scene of Crime Officers should be created for preservation of scene of crime and collection of physical evidence there-from.
- Section 25 of the Evidence Act may be suitably amended on the lines of Section 32 of POTA 2002 that a confession recorded by the Superintendent of Police or Officer above him and simultaneously audio / video recorded is admissible in evidence subject to the condition the accused was informed of his right to consult a lawyer.
- Identification of Prisoners Act 1920 be suitably amended to empower the Magistrate to authorize taking from the accused finger prints, foot prints, photographs, blood sample for DNA, finger printing, hair, saliva or semen etc., on the lines of Section 27 of POTA 2002.

- The Committee recommended for the review and re-enactment of the IPC, CrPC and Evidence Act may take a holistic view in respect to punishment, arrestability and bailability.

6. **Witnesses and Perjury[11]:** The prosecutions mainly rely on the oral evidence of the witnesses for proving the case against the accused. Unfortunately, there is no dearth of witnesses who come to the courts and give false evidence with impunity. This is a major cause of the failure of the system. The procedure prescribed for taking action against perjury is as cumbersome and as it is unsatisfactory. Many witnesses give false evidence either because of inducement or because of the threats to him or his family members. There is no law to give protection to the witnesses subject to such threats, similar to witness protection laws available in other countries.

    - As the oath or affirmation administration to the witnesses has become an empty formality and does not act as a deterrent against making false statements by the witnesses, it is recommended that a provision should be incorporated requiring the Judge administering the oath

11. Report on the Criminal Justice System; Justice Malimath Committee; (Retrieved: April15th 2020; Siliguri) (India)

or to affirmation to caution the witness that he is duty bound under section-8 of the Oaths Act to speak the truth and that if he makes a false statement in violation of the oath or affirmation that has been administered to him, the court has the power to punish him for the offence of perjury and also to inform him of the punishment prescribed for the said offence.

7. **Organised Crime and Terrorism[12]:** Organised Crime and Terrorism have been growing globally and India has not escaped their pernicious effect. The nexus between organised crime and terrorism has also been a cause of serious concern to the Country. The Committee has given deep consideration to inter-twined and inter-dependent professional crimes in Indian as well as international background. The task of dealing with the organised crime and the terrorism becomes more complicated as structured group in organised crime is enmeshed with its counter-part (of structured group) in terrorism. The former is actuated by financial/commercial propositions whereas the latter is prompted by a wide range of motives and depending on the point in time and the prevailing political ideology.

    - Suitable amendments to provisions of the Code of

12. Report on the Criminal Justice System; Justice Malimath Committee; (Retrieved: April 15th 2020; Siliguri) (India)

Criminal Procedure, the Indian Penal Code, the Indian Evidence Act and such other relevant laws as required may be made to deal with the dangerous nexus between politicians, bureaucrats and criminals.

- The administration of Evidence shall be made wider in accordance with the POTA, 2002 and TADA, 1987.

The above mentioned points were the recommendations made by the Justice Malimath Committee with regards to the Evidence Act, 1872 and also the administration of evidence and witnesses under various circumstances. The above recommendations by the Justice Malimath Committee were later reviewed by the Law Commission of India in the 185th Law Commission Report and suggested various changes in the Evidence Act, 1872. Complying with the recommendations of the Justice Malimath Committee Report and the subsequent 185th Law Commission Report, the Evidence Act was amended and modified in the following grounds:

1. The changes recommended by the Justice Malimath Committee Report in the Evidence Act, 1872 and incorporation of Information Technologies Act, 2000 while making admission of various modes of evidence in electronic modes.
2. The acceptance of the Inquisitorial system along with the Adversarial system of administrating Justice in special situations where the Judges power of inquiry has been given a priority at par with the other investigating agencies to curb out biasness and partial investigation.

3. Incorporation of Forensics and DNA tracing along with incorporation of other Modern Medical Technologies which can suffice as evidence.

The above mentioned points have been accepted by the Judicial System with regards to the admission of Evidence in various circumstances and as per requirements. The 185th Law Commission made the following recommendation subsequently with regards to Section 146 and 155 respectively. As only Section 146 and 155 has been amended till date in the Evidence Act, 1872, therefore, only those Sections are discussed as given below:

The 185th Law Commission after the Malimath Committee Report suggested the following changes to be made:[13]

☐ 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

[13] Report on Reforms of The Indian Evidence Act, 1872; 185th Law Commission of India (Retrieved: May 19th 2020; Siliguri) (India)

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’.”

☐ In Section 155 of the Principal Act,

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 Section 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;

(4) be omitted from the principal Act.

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.

Nevertheless, only the following amendments have been made to the Evidence Act, 1872 till date:

- **Amendment of Section 146:**[14] Section 146 of the Evidence Act, 1872 prior to the amendment read as follows:

Questions lawful in cross-examination—When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

(1) to test his veracity,

[14.] The Evidence (Amendment) Act, 2003 (Retrieved: May 20th 2020; SIliguri)

(2) to discover who he is and what is his position in life, or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

After the Amendment of 2003, after clause (3), the following proviso has been 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".

- **Amendment of Section 155:**[15] Section 155 prior to the amendment read as follows:

Impeaching credit of witness- The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the Court, by the party who calls him:-

1) By the evidence of persons who testify that they, from their knowledge of the witness believe him to be unworthy of credit;

[15]. The Evidence (Amendment) Act, 2003 (Retrieved: May 20th 2020; SIliguri)

(1) By proof that the witness has been bribed, or has1[accepted]the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(2) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

(3) When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

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.

After the Amendment of 2003, the clause (4) from Section 155 has been omitted after consultation with the Law Commission of India and National Commission for Women.

RECOMMENDATIONS OF THE COMMITTEE: ITS IMPLEMENTATION

The Researcher has done Empirical study by Observation and Sample

Collection which includes the facts from the Certified Copy of the Judgments of those cases regarding the practical implementations of the accepted recommendations of the Justice Malimath Committee Report in the Courts while dealing with various cases.

LIMITATION: The Limitation faced by the Researcher was that limited field study was only possible by the Researcher as the Nationwide Lockdown was established due to Pandemic situation which left the researcher with only limited resources.

- **IMPLEMENTATION IN THE CASES:**

1. **Case No. 608/18; Dated: 30th November, 2018**

[Under Sections. 354(c), 506, 384, 376 and 323 IPC]

Facts: One Bikash Chettri of Eastern Bypass made a video of one Mrs. Pratiksha Rai Gurung w/o Mr. Shree Gurung while she was bathing and later asked for Rs. 10,000/- per month as blackmailing failing to which the accused would have released the video. On 1st October, 2018, the accused called the Victim to one Ashirbaad Lodge stating that he will delete the video in front of her in the Lodge, the accused raped the Victim woman and also asked her to keep sexual relation with him failing to which he shall release both the videos.

The Bhakti Nagar Police arrested the accused based on the FIR by the victim's mother. The Police raided the said Lodge and collected the check-in register and also confiscated the mobile phone of the accused as evidence.

The Court during the course of the proceeding took the video recordings, text messages and call records as admissible as Evidence and no oral evidence was further taken regarding the recordings present but the check-in register of the Lodge was made admissible as evidence after corroboration with the footage from the CCTV camera of the Lodge.

The accused was held guilty under the above mentioned Sections of IPC by the Court primarily based on the electronic evidence produced before it.

2. Case No. 637/18; Dated: 30th May 2018

[Under Sections. 4 and 12 of POCSO Act, 2012]

Facts: The Complaint was filed by the Victim's father Shri. Dhanya Barman. The complainant's daughter i.e. the victim named Sonali Barman aged 16 years was a student of Ramkrishna Saradamoni School.

One Partha Barman for nearly 1 year stalked the girl and often restrained her while going to the school and coming back and also used cuss words along with words to indicate

sexual abuse. On 25th August 2018, while the victim minor girl was returning from school with her uncle, the accused with two of his friends named Sachin Gupta and Bittu Mandi restricted them. While the two co-accused restrained the victim's uncle, the main accused took the victim minor girl to a secluded place near Eastern Bypass and sexually assaulted her.

On receiving the complaint, the police arrested the accused and informed the families of the accused.

During the ongoing proceeding of the case, the Court felt that the case concerned the mental wellbeing of the victim minor girl and therefore, instructed for a video admission of the victim's statement. Also, the confession of the main accused was taken via video calling as there was large public gathering outside the Court and it was felt that the accused can get heavily injured by the angered public gathering.

The co-accused along with the main accused was held guilty under the above mentioned Section of POCSO Act, 2012.

3. **Case No. 560/18; Dated: 06th January, 2018**
   [Under Section. 498(A) of IPC]

Facts: The complaint was filed by one Sri. Ratan Pramanik. The claim of the complainant was that his sister named Rakhi Pramanik who was married to Sri. Subhojit Kar for almost 2 years, resident of Lower Bhanu Nagar, Siliguri was subjected to repeated mental and physical cruelty by the in- laws. The Husband, Sri. Subhojit Kar previously filed a complaint against his wife for adultery. The husband claimed that his wife was having an affair with a man named Karan Roy who was their neighbour for nearly a year and had physical relation with the man and that he had witnesses and also several other proofs.

During the ongoing proceeding, the Court decided to hear both the matters together, as the husband claimed that he hit his wife out of anger after coming to know about the affair of his wife. The Court did not allow the witness of the in-laws in matter related to the wife's having affair stating that they are interested parties and can give false witness against the woman. The Court also did not allow any cross-examination of the woman related to her previous sexual encounters stating that to be against the morality of the woman.

In the hearing of the matter related to the Cruelty by the in-laws, the Court held that the bodily marks on the woman and the report by the Doctor who the woman went for treatment previously after corroborating with other

witnesses were made admissible. The Husband and the in-laws were found guilty.

4. Case No. 583/19; Dated: 03th November 2019

[Under Section 307 and 328 of IPC]

Facts: The Complaint was filed by one Parul Saha, a resident of Hyder Para, Siliguri.

One Sri. Rakesh Jha was a tenant in the house of the complainant and worked in a call centre in Matigara. The complainant had stated that a lady named Smt. Sonam Prasad who identifies as one of the colleagues of Sri. Rakesh Jha used to frequently visit him in the complainant's house and stayed back often.

On 15th August, 2019, the lady came again and there was a huge quarrel in the tenant's room and the lady left shouting. On 30th September 2019, around afternoon, the lady came again and warned the tenant in his room that she will not spare him and left angrily and in a hurry. The complainant when later went to the tenant's room, found him lying unconscious with blood in his mouth. The complainant called ambulance and informed the local Police Station. The accused was arrested by police and her statement was recorded. During the Proceeding, the Court allowed the cross-examination of

The accused was arrested by police and her statement was recorded. During the Proceeding, the Court allowed the cross-examination of the accused which raised questions about the immoral character of the woman with previous history of having relations with other men. During the proceeding, the Court with other circumstantial evidence found that the victim was administered poison. But there was no empty file or any finger print of the accused.

Based on the circumstantial evidence, the medical report of presence of poison in the victim's stomach and the fact that the woman left angrily and in a hurry on the date of the occurrence of the event, the Court held the accused guilty under the above section of IPC.

CONCLUSION AND SUGGESTION

Therefore, from the above made discussion in the project it can be concluded that that the concept of Evidence in India is not new or has not suddenly emerged with the modernization of the World, but has existed in the roots of India from a very ancient time period. The roots of Evidence and various ways of administering evidence can be seen vividly in the Hindu Time Period where evidence was divided into four categories which had different requirements and intensity of their own and was considered accordingly based on the situation.

Divya or Divine Ordeal was the final and ultimate way of considering evidence of a crime. Later, with the advent of the Muslim rule, the mode of administering evidence was strictly according to the Quran and depended on the situations and many new factors were also taken into account such as preference of oral evidence over documentary evidence and also the demeanour of parties and witnesses were also considered in this period. In the Modern Period, with the onset of the British rule, the mode of administering evidence in Britain was also made applicable in India, but it was soon felt that the situation in India is far different from that of Britain and therefore, the first committee was set up i.e. the Maine Committee was set up but the draft was rejected. Finally, the draft by Stephen Committee was accepted in 1872 and the Indian Evidence Act, 1872 was enacted.

With the onset of modern technologies, medical facilities and changing situations, in 2002, Justice Malimath Committee was set up to review the Criminal Justice System which included Evidence Act, 1872 as well and several recommendations were suggested in the Report by the Committee such as incorporation of admission of Electronic Evidence and Documents, Inquisitorial System along with the age old Adversarial System and others. Following the Justice Malimath Committee Report, the subsequent 185th Law Commission Report suggested amendments to almost all the Sections of the Evidence Act, 1872 but only two sections viz Sec.146 and 155 were amended.

During the survey, the Researcher observed that although some of the accepted Recommendations are followed most of the times, in some cases, the recommendations are neglected and not straight way followed. Also, not all the recommendations of the Justice Malimath Committee are accepted or even taken into consideration.

Based on the above study, the following points can be suggested:

i. The incorporation of the suggestion of the Justice Malimath Committee related to the relevancy of the witnesses' immoral character is considered while dealing with the truthfulness of the witness.
ii. The suggestion of treating the witnesses with humanity and with due respect be strictly incorporated in the Evidence Act, 1872 with strict effect.
iii. The use of modern medical technologies and other modern technologies is given importance more than aged old investigating techniques.

Henceforth, although few of the recommendations have been accepted by the Courts while dealing with cases, most of the recommendations remain un-noticed. Therefore, the Hypothesis proves to be true.

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SECTION 32 OF INDIAN EVIDENCE ACT: RATIONALE AND SCOPE

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B. A. LL B Semester IX

INTRODUCTION

The fundamental duty of the court is to find out the truth in respect of a particular case. Finding truth of a case plays an important role in the disposition process which is the part of justice delivery mechanisms. In order to find out the truth, the facts have to be scrutinized, analyzed and evidence has to be adduced in order to substantiate the narrated story.

The ultimate end of law is to ensure justice. Truth being the backbone of the justice constitutes its strong pillar. Evidence is the career of truth and proof is the eye to which truth can be perceived.

Every legal system in the world has its own justice delivery process to which

evidence seems to be paramount. No legal systems reasonably allow either parties or the judge to struggle in order to establish each and every ensuing fact of a particular enquiry. If there is no restriction on the parties to give the evidence, the parties may indefinitely go in bringing the facts in the support and besides wasting of time, task of the court may be difficult to reach a conclusion. Thus, there are barriers imposed by law on the limit and scope of facts which are to be accepted before a court as evidence in order to make one's claim or right so that the court can proceed accordingly. Had, that not been the barriers or rules of evidence, there would have been much uncertainty, loss of time and energy of the court.

The basic rules around which the entire evidentiary process rotate are as follows:[1]

(1) Evidence may be given in a suit or proceeding only of the relevant facts and of no others.
(2) Best evidence in all cases should be given.
(3) Hearsay evidence should be excluded.

The rule of evidence not only put the restrictions on the parties to the case in giving the evidence but they are also guiding facts for the courts in taking evidence. The rules of evidence restrict the investigation made by the court within the limits of general convenience.[2]

[1] Dr. O.N. Tiwari, *Cogency of Dying Declaration: An Analysis*, ILI LAW REVIEW,87(2018).
[2] Batuk Lal, The Law of Evidence (Allahabad Central Law Agency, 22nd Ed.2018),p, 4-5.

Thus, the Indian Evidence Act envisages events, statements, entries, judgments of courts, expert opinion and the character of the parties to the suit or proceeding as relevant for which evidence is admissible before a court of law. Although as has been convinced by the scholars of the subject that whatever has been declared legally relevant are logically relevant and the facts declared relevant are the result of extreme foresight and innovation[3].

Under the scheme of the Act, statements either oral or documented have declared to be relevant under various sections in different manner. The statement to which the present project is concerned has been declared relevant under Section 32 of the Indian Evidence Act, 1872. Section 32 of the Indian Evidence Act, 1872 has been considered as an exception to the general rule excluding hearsay evidence. The present project seeks to study the rational and scope of the particular section and its logical interpretation by the Indian courts in order to ascertain the guilt of the offender.

HEARSAY PRINCIPLES: AN OVERVIEW

The law of evidence elaborates on the relevance and admissibility of evidence before the courts. One of the cardinal principles of law of evidence suggests that facts must be proved by direct evidence beyond any reasonable doubts. In other words, a fact to be proved by evidence, it must be stated before the court by the

[3] TIWARI, *supra* note 1

person who has got the first knowledge of the facts to be proved. Therefore, only direct evidences are admissible in the court of law. It is important to note that no matter how cogent a particular evidence may be unless it comes within class admissibility it is excluded.[4]

As a general rule, hearsay evidence is not admissible. One of the principles of evidence is the outright rejection of any evidence which is based on the hearsay propositions. A second hand or derivative evidence is termed as hearsay evidence. The term hearsay refers to an out of court statement made by someone other than the witness reporting it. For example, while testifying in A's murder trial, B states that A's best friend told him that A had killed the victim. The statement made by B is hearsay. In other words, where a representation of any fact is made other than a person but depends for its accuracy on the information supplied by a person, it is hearsay. Therefore, the non-admissibility of the hearsay evidence in the court of law because it is not a direct evidence and the information or the fact in hearsay has a tendency to be exaggerated is known as the hearsay rule or the hearsay principle.

The rule against the admission of hearsay evidence is fundamental. The principle which governs the law is that evidence which cannot be tested is not admissible in the court of law. Hearsay evidence is not considered to be the best evidence and also is not delivered on oath. Moreover, the person putting the fact before the court is immune from all sorts of penalties of falsehood. The truthfulness and the accuracy of the person whose words are spoken by another person cannot be tested by cross

[4] Myers v. DDP (1965) AC 1001, (1964) 2 All ER 881 (India)

examination and the light which his demeanor would throw on his testimony would be lost.[5]

The purpose and the reason of hearsay rule are based on two considerations: (1) a necessity for the evidence, and (2) a circumstantial guarantee of trustworthiness. Therefore, as said above hearsay evidence is excluded because it is considered not sufficient trustworthy. It is rejected because it lacks the sanction of test applied to admissible evidence, namely the cross examination and oath.

EXCEPTION TO THE HEARSAY RULE:

In law of evidence, there are special circumstances which give a guarantee of trustworthiness to the testimony even though it comes from a second-hand source. The idea of necessity for the evidence and circumstantial probability of trustworthiness with conjoined value has been responsible for exceptions to the hearsay rule.

There are many exceptions to the rule against hearsay evidence such as **(1)** Res Gestae under Section-6 of the Act; **(2)** Statement relevant under Section -32; **(3)** Expert's opinion under Section- 45 to Section -51; **(4)** Evidence given in former proceedings under Section -33 ;**(5)** Admission and Confession under Section -17to 30. [6]

Although there are many exceptions of the hearsay rule under the Indian Evidence

[5]TIWARI, *supra* note 1

[6]SRD LAW NOTES, hearsay evidence is no evidence (May, 08, 2020), http://www.srdlawnotes.com/2016/12/hearsay-evidence-is-no-evidence.html?m=1

Act, 1872, the researcher has confined its project only with the exception mentioned under Section -32 of the Indian Evidence Act, 1872

There are cases where it may be impossible, or it may cause unreasonable expense or delay to procure the attendance of a witness who, if present before the court, could give direct evidence on the matters in question; and it may also be that this witness has made a statement either written or oral with reference to such matter under such circumstances that the truth of this statement may reasonably presumed. In such a case the law was enacted by Section 32 dispense with direct oral evidence of the fact and with the safeguard for truth provided by cross examinations, and the sanction of an oath, the probability of the statement being true depending upon other safeguards which are mentioned in the section.[7]

Section 32 of the Evidence Act deals with the cases in which the statement by a person who is dead or cannot be found is relevant. It states that where the statement whether written or verbal made by a person who cannot be called as witness either because he is dead, cannot be found, has become incapable of giving evidences, or his attendance cannot be procured without unreasonable delay, then the statements given by such person are relevant in the court of law. Therefore, all the clauses of section 32 are based upon the principle that the statements are of such nature or were made under such circumstances as to guarantee their being true.

[7] LAL, *supra* note 2

SECTION 32 OF INDIAN EVIDENCE ACT : RATIONALE AND SCOPE

Under Section 32 of Indian Evidence Act, 1872, statements written or verbal, of relevant facts made by a person (a) who is dead, or (b) who cannot be found, or (c) who has become incapable of giving evidence, or (d) whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the court unreasonable themselves are relevant facts, if (1) it relates to the cause of his death , or to any of the circumstances of the transaction which resulted in his death, or (2)it is made in course of business, or (3) it is made against the interest of the maker, or (4) it gives its opinion as to public right or custom or matters of general interest, or (5) it relates to existence of relationship, or (6) it is made in will or deed relating to family affairs, or (7) it is made in document relating to transaction mentioned in Section 13, or (8) is made by several person expresses feelings in relation to matter in question.[8]

It must be borne in mind that in order to make a statement admissible under Section 32, Evidence Act, one of the conditions mentioned in the group (a) to (d) and one of the conditioned mentioned under the heading 1 to 8 must be fulfilled.

Clause (1) : Dying Declaration

- **Scope of dying declaration**

The provision under section 32(1) relates to the statement made by a person before

[8]Members of criminal core group*, summary on workshop of dying declaration* ,3(Title No. 194)

his death. When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question, and such statements are admissible. Such statements are known as dying declaration.

Dying declaration is a statement written or oral of a person who is dead, with respect to the cause of his death or the circumstances resulting in his death. The statement is relevant in any judicial proceedings where the cause of death of that person is in issue. Dying declaration under Indian law is admissible in both civil and criminal proceedings. The only material point is that the cause of death (whose statement is sought to be proved) must come into question irrespective of the nature of the proceedings in which it comes into question.[9]

The second part of the section 32(1) makes it clear that it is not necessary that the person making the statement should be apprehending death at the time of making statement. Therefore, restriction of the expectation of death has not been recognized in the Indian law. Though the expectation of the death does not affect the relevancy of the dying declaration but it will certainly affect the weight attached to the declaration. If the person making the declaration is conscious that he is dying soon the possibility to speak the truth is very great.[10]

It may be important to note that the dying declaration is not limited to the cases of homicide alone but also includes suicide. Hence, all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case

[9]Parmanand v Emperor, AIR1940 Nag. 340 (India).

[10] State v. Kanchan, AIR 1954 All 153(India).

of suicide.[11]

Dying Declaration is admissible not only in relation to the cause of death of the person making the statement as to the circumstances of the transaction which resulted in his death, if the circumstances of the said transaction relates to the death of another person, the statement cannot be held to be inadmissible when circumstances of "his" death are integrally connected to the circumstances of death of such person.[12]

A Dying Declaration made before a Judicial Magistrate has higher evidentiary value as he is presumed to know how to record a dying declaration and he is neutral person.[13]

A Dying Declaration written by a doctor is reliable. Where the dying declarations was recorded by the doctor in question and answer form in the presence of other witnesses and it was corroborated with the testimony of other eye witnesses, it was held to be sufficient to convict the accused.[14]However a dying declaration is inadmissible as evidence if it is incomplete.

The statement of deceased as to cause of his death does amount to dying declaration.

A clear and corroborated dying declaration cannot be rejected just only because it was recorded by a police officer.[15]

A FIR made by the deceased relating as to the cause of his death or as to any

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[11]LAL , *supra* note 2

[12]Tejram Patil v State of Maharashtra,2015 Cri LJ 1829 (SC) (India).

[13] Samadhan Dhudaka v State of Maharashtra, AIR 2009 SC 1059 (India).

[14] Munna Raja v State of M.P., AIR 1976 SC 2199 (India).

[15]Ram Singh v State, (Delhi ADMN.) 1995 Cr Lj 3838(India).

circumstances of the transaction which resulted in his death shall be relevant as dying declaration under section 32(1).

The court is under an obligation to closely scrutinize all pros and cons of the circumstances while valuating a dying declaration since it is not a statement made an oath and is not tested on the touch stone of cross examination.

In **Ram Nath V State of Madhya Pradesh**[16], the Hon'ble Supreme Court held that it is settled law that it is not safe to convict an accused person merely on the evidence of dying declaration without further corroboration. But later in **Kushal Rao V State of Bombay**[17], Hon'ble apex court held this observation to be in the nature of obiter dicta and observed that, "It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of the conviction unless it is corroborated".

☐ **Rationale for admitting dying declaration as evidence.**

While it has been recognized that dying declaration cannot be tested on cross examination and in many cases, they are contradictory, they have been admitted as an exception to the hearsay rule because of a historical belief in their reliability, and because of its necessity.

Dying declaration is based on the principle "nemo moriturus praesumitur mentire" it means a man will not meet his maker with a lie in his mouth.

The philosophy of law, which signifies the importance of dying declaration, is based on the maxim "nemo moriturus praesumitur mentire" which means no one at the

[16] AIR 1953 SC 420
[17] 1958 SCR 552

time of death is presumed to lie and he will not meet his maker with a lie in the mouth.[18]

In **Uka Ram v State of Rajasthan**,[19] it was held by Supreme Court that the admissibility of dying declaration rests upon the principle that a sense of impending death produces in man's mind the same feeling as that of conscientious and virtuous man under oath. Dying declaration is admitted upon consideration that the declaration is made in extremity; when the maker of declaration is at the point of death and when every hope of this world is gone; when every motive of falsehood is silenced and mind induced by the most powerful consideration to speak the truth. The principle on which the dying declaration is admitted is based upon the maxim Nemo morituras Praesumitur Mentire which means "the man will not meet his maker with a lie in his mouth". It has always to be kept in mind that though dying declaration is entitled to a great weight yet it is worthwhile to note that as the maker of the statement is not subject to cross examination, it is essential for the court to insist that dying declaration should be of such nature as to inspire full confidence of the court in its correctness. The court is obliged to rule out the possibility of statement being either the result of tutoring, prompting or conducive or product of imagination.[20]

Indian law recognizes the fact that "a dying man seldom lies" or "truth sits upon the tips of a dying man"

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[18]LAL , *supra* note 2

[19]AIR 2001 SC 1814.

[20]LAL, *supra* note 2

It is important to note that dying declarations are also admitted because they are necessary. The necessity principle has been given two interpretations. The first interpretation argues that since the declarant is unavailable the court will be deprived of his evidence unless it is allowed to use his extra judicial statements.[21] The narrower and more widely accepted view is that dying declaration are necessary in order to bring the murderers to justice. It is believed that since homicide is often a secret crime the dying declaring is often the only witness and the guilty person may escape the punishment if the declaration is not admitted in evidence.[22] It is also worthy to note that escaping the punishment by the guilty person is against the principle of the legal system. In the case of **P.V. Radhakrishna v. State of Karnataka**[23], it was held that the victim is exclusive eye witness and hence such evidences should not be excluded.

Clause (2) : Statement made in the course of business

- **Scope of Clause (2)**

Sub clause (2) of section 32 talks about the relevancy of statements made in the course of business by a person who is dead or who cannot be found or has become incapable of giving evidence or whose attendance cannot be procured without an amount of delay or expense which is unreasonable.

The expression "in the course of business" means in the way that business (which may be purely private and even trivial nature) is conducted. It has no connection with a course of business which suggests a series of acts of business. Therefore, the

[21]Fordham Law Review, *Admissibility Of Dying Declaration* ,513 (1970)
[22]*Id.*
[23]CRIMINAL APEEAL NO. 1018/2002 (India)

section would apply to an act or acts of simple or private nature.[24]

The expression "statement made in the ordinary course of business" means a statement made during the course not of any particular transaction of exceptional kind but of business or professional employment in which the deceased was politically or ordinarily engaged.[25] The post mortem report of a civil surgeon, who unfortunately died before his examination in the court, has been admissible under section 32, sub clause (2) as it is a statement made by a dead person in the ordinary course of business and in discharge off his professional duty. [26]

It is also important to note that according to English Law, the entry should have been made at or near the time of transaction recorded. But the provision of the Indian Evidence Act contains no such restriction. According to this clause, an entry made even after the occurrence of the fact about which it relates is admissible if it is made in course of business or in a book of account.[27]

Moreover, the entries made in the books of account admissible under Section 32, sub clause (2) need no corroboration with reference to the facts mentioned therein. They are in law sufficient evidence in themselves.

- **Rationale for admitting the statement as evidence.**

The probable rationale of admitting the statement made in the course of business as evidence is because of its importance in the civil disputes, particularly business disputes. It is believed that without the business record exception, many business

[24]LAL, *supra* note 2.
[25]*Id.*
[26]Makkhan Singh v Emperor, AIR 1925 All. 430
[27]LAL, *supra* note 2.

records that are needed to prove a claim or defense may be excluded under the hearsay rule.

Therefore, with the business record exception, these important records are admissible as long as they are recorded in a proper and appropriate manner as mentioned under the section.

Clause (3) : Statement against the interests.

- **Scope of the statement as an evidence**

Sub clause (3) lays down that when a person is dead, or cannot be found, or has become incapable of giving evidence or the attendance cannot be procured without undue amount of expense or delay which the court consider unreasonable, makes a statement which is against the pecuniary and proprietary interest of the person making it, or when if true, it would expose him to a criminal prosecution or to a suit for damages, such statement is admissible under the court of law.

By declaration against proprietary interest is meant a statement made by a person while in possession of an estate asserting a more limited interest in the land or an inferior interest and denying some higher title which he would have been thought to possess had he not made the statement.[28]

The statement of a person that he is separated from a joint family, of which he was a coparcener and that he has no further interest in the family would be a statement against his interest under section 32 (3).[29]

Under this clause, the third case in which declarations against interest are admissible

[28] *Id*.p.16

[29] Bhagwati Prasad v. Dubari Rameshwari, AIR 1952 SC 72.

are such as to subject the declarant to prosecution or civil action. However, this clause cannot be applied to a statement made by a deceased person after proceedings have been instituted against him. The moment a criminal proceeding has been instituted against the person making the statement, the words of sub clause (3) cease to apply.[30]

Recitals of boundaries in documents not *inter partes* were admitted under this clause in several cases. Therefore, the mortgage deeds and sale deeds have been held to be statement against the pecuniary or propriety interests. Such documents are evidence not only of the precise facts against the interests but of all the collateral facts mentioned therein.[31]

□ Rationale for admitting the statement as evidence.

Ordinarily a person is not expected to make a statement to his detriment unless it is true. The principle upon which the hearsay evidence is admitted under clause (3) is that "a man is not likely to make a statement against his own interest unless it is true" therefore, it is on this principle that a statement coming under clause (3) has been made admissible in evidence.[32]

Further, under this clause, if the entry of a person is such that if true, he would have been criminally liable for that or he would be liable to pay damages in civil suit, the statement will be admissible. The idea behind this principle is that when a person makes statement rendering him liable to criminal prosecution, the statement is likely to be true statement as no one wants to put themselves behind the bars.

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[30]LAL, *supra* note 1

[31]Ram Nadan v Tilak Dhari, AIR 1933 Pat. 636

[32] LAL, *supra* note 1

Clause (4) : Statement as to public and general rights

- **Scope of the statement as evidence**

Clause (4) of the section talks about the statement about opinion as to public right or custom. It says that where a person was likely to be aware of the existence of any public right or custom or matter to any public or general interest, and being so aware makes a statement giving his opinion about the existence of such public right, etc, before any controversy as to such right arose and dies after making such statement or opinion be found or has become incapable of giving evidences or whose attendance cannot be procured without undue amount or expense or delay which the court considers unreasonable, it shall be admissible under section 32 clause (4).[33] The statement declared under clause (4) are known as a declaration as to public right and general right. This clause applies in case of any public right or custom.[34]
The opinion under the said clause must be of competent persons. The opinion to be admissible under this clause must have been formed among a class of persons who were in a position to have a perfect sense of information.

- **Rationale behind admitting the statement as evidence**

The declaration made under clause (4) would be admissible even if they are more than the evidence of reputation or hearsay.[35] The rationale for this rule is that the origin of the rights claimed is usually so ancient and the rights themselves are

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[33]*Id*., p. 18
[34]Mati Lal v Baldeo Das, AIR 1952 V.P. 36.
[35]Monir. M.,*Textbook On The Law Of Evidence* . (New Delhi,Universal Law Publishing. 2012 ,8th Edition)

of such undefined and general character that direct proof of their existence and nature can seldom be obtained.

The reason for this exception favoring the hearsay evidence is partly due to the necessity as without such evidence ancient rights could rarely be established and partly due to the fact that public nature of the rights minimizes the risk of mis-statement.[36]

Clause (5) and Clause (6) : Declaration as to pedigree

□ Scope of the statements as evidence

These two clauses reproduce with some modifications of the English law on the subject.

Clause (5) talks about the statement as to the existence of relationship. Under this clause, the statement of a dead person, or a person who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without undue amount of expense or delay which the court considers unreasonable relating to the existence of relationship between persons are relevant if the person making the statement has some special knowledge about the relationship and the statement was made before the question of dispute was raised.

It should be borne in mind that to have a special means of knowledge the declarant should be related to the family by blood or marriage. In India for the purpose of proving relationship, statements of deceased relatives, servants and dependents of the family are admissible and, in every instance, it must be a question of fact as to

[36]Busold v Newaz Ahmad Khan, 1929 Cal 533.

whether the person who made the statement had the special means of knowledge.[37] Moreover, the statement must be made before the dispute arose.

Clause (6) is regarding the evidence of pedigree under which a statement in a will or deed relating to family affairs is relevant. Such statement must relate to the existence of any relationship by blood, marriage or adoption.

It is important to note that statements under clause (6) are admissible only when they are between two deceased persons and is made in any will or other deeds which relates to the affairs of the family. However, it is not necessary that that the statements in wills, documents, portrait etc should have been made by a person having special knowledge about the relationship.

In India, the declarations of the deceased declarant have been admitted on question of age, birth, death, marriage etc.[38] A horoscope is admissible under this clause. [39] Entry of age of person in the school register is a relevant piece of evidence but slight evidence to the contrary may displace it.[40]

□ Rationale for admitting the statements as evidence

The rationale behind admitting such statement as evidence is that these declarations are made *ante litem mortem* (when there was no existing dispute or controversy regarding the matter). As a result of which these declarations are considered as disinterested and dispassionate and are made without any intention to serve a particular cause or mislead the posterity.

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[37]LAL, *supra* note 2.

[38]Naima Khatun v Basant, 1934 All 405 FB

[39] Chuah Hooi v Khaw Sim Bee, 1915 PC 45

[40] Bgahwan Das Single v Harchand Singh, AIR 1971 Punj. 65

Moreover, declarations made after the controversy has arisen are to be regarded as lacking the guarantee of truthfulness. [41] Therefore, statement of nature being *ante litem mortem* they must not be only made before the controversy but they should be made even before as the commencement of legal proceedings.[42]

Clause (7) and Clause (8)

Scope of the Clause (7) and Clause (8)

Clause (7) talks about the statement made in a document relating to transaction. Under this clause, only such statement is relevant which is contained in any deed or will or other documents relating to any transaction by which any right or custom was created, claimed, modified, recognized asserted or denied or which was inconsistent with its existence.

A deed of mortgage containing an assertion of title as owner by the mortgagor is relevant as evidence of title. A statement of boundaries in document of title is legal evidence in suit between third parties if the person who made the statements are dead.[43]

Clause (8) talks about the statements made by a number of persons expressing feelings relating to matter in question are admissible as evidence under the court of law.

[41]LAL, *supra* note 2
[42]State of Bihar v Radha Krishna Singh, AIR 1983 SC 684
[43]LAL, *supra* note 2

☐ **Rationale behind admitting the statement as evidence.**

The probable rational behind admitting these statements as evidence is that as these statements are made *ante litem mortem*, so there is no question of misleading the proceeding. Such statements by the person are considered as disinterested and dispassionate.

Therefore, the statement under these clauses has been considered as truthful and necessary evidence to punish the guilty person.

SECTION-32 OF THE INDIAN EVIDENCE ACT, 1872: JUDICIAL RESPONSE

The judiciary was called time and again to interpret Section 32 of the Indian Evidence Act, 1872 in order to ascertain the guilt of the offenders.

The following cases ascertain the judicial response regarding section 32 of the Act, which is an exception to the general rule excluding hearsay evidence.

☐ **Vijay Pal v. State (Government of NCT), Delhi** [44]

Fact: The deceased's daughter about 10 years of age came running to her mother's paternal house situated at a distance of about half a kilometer and told the father of the deceased and the deceased brother, that her father was threatening to burn her mother. The deceased brother reached the place earlier than his father at the house of his sister and found the deceased was burning. The deceased told him that the accused, her husband, had put her ablaze by pouring kerosene. The brother poured

[44] AIR 2015 SC 1495

water on the deceased to extinguish fire. The brother and father with two other people took her to Deen Dayal Upadhyay hospital but due to lack of facility, they took her to different hospital. Despite being admitted there and available treatment, she died.

The trial court convicted the accused for an offence under Section 302 of IPC and sentenced him to suffer rigorous imprisonment. It was one of the grounds urged by the amicus curiae before the Supreme Court in appeal that the High Court had flawed by placing reliance on oral dying declaration to her brother when she had suffered serious burn injuries and in such a situation, it could not have been possible to tell anything to her brother.

Held: The Supreme Court dismissed the appeal and held that the law is quite clear that if the dying declaration is absolutely credible and nothing is brought on record that the deceased was in such a condition that he or she could not make a dying declaration to a witness, there is no justification to discard the same.

☐ **Harbansh Lal v. State of Haryana**[45]

Fact: Two dying declarations were presented. One dying declaration was recorded by the doctor to whom the deceased was brought for treatment and other dying declaration was that upon which there was thumb impression of deceased. The second dying declaration was written by a person and attested by Sarpanch. In the statement made to doctor, the deceased had given full description of accused

[45] AIR 1993 SC 819

and that was not with any inherent fault. The statement was duly recorded by the doctor and attested by two other doctors who were looking after the deceased. It was certified that deceased was in fit state of mind while making dying declaration and that she remained in that state still the dying declaration was recorded. As far as the second dying declaration was concerned, it was not mentioned in FIR and it was not exactly known when it came into existence.

Held: The court held that in absence of any proof, the second dying declaration was not reliable. But the dying declaration recorded by the doctor fulfils all the essential conditions of dying declaration and it was more reliable. The court further held that in case of multiple dying declaration, each dying declaration will have to be considered independently on its own merits as to its evidentiary value and one cannot be rejected because of the content of other.

☐ **Tejram Patil v. State of Maharashtra**[46]

Fact: The deceased, Savita, was subjected to cruelty. The prosecution case was that on the fateful day, the appellant (her husband) returned home in a drunken state and started to abuse her and her mother, Prabha bai, who had come on a visit to her daughter's house and they picked up quarrel. The appellant poured kerosene on his wife and set her on fire. Her mother tried to extinguish the fire and she also sustained burn injuries. They were taken to the hospital. The dying declaration of the deceased and her mother was recorded. The deceased died. Three days, thereafter her mother

[46]2015 Cri Lj 1829 (SC) (India)

also died.

The accused's version that the cause of death was suicide was found to be false. The question involved was the admissibility of the statement of her mother relating to cause of death of her daughter.

Held: The court held that the dying declaration is admissible not only in relation to the cause of death of the person making the statement and as to the circumstances of the transaction which resulted in his death, but also if the circumstances of the said transaction relate to the death of another person, the statement cannot be held to be inadmissible when circumstances of "his" death are integrally connected to the circumstances of death of such person.

Therefore, the statement of pouring of kerosene on Savita, intervention of Prabhabai in process and her receiving injuries resulting in her death are integral part of the same transaction. Thus, the statement which relates to circumstances of the transaction resulting in her death being admissible can be relied upon to show as to how the death of Savita took place.

- **Queen –Empress v. Abdullah** [47]

Fact: The accused had cut the throat of the deceased girl and because of that she was unable to speak so. As a result of which, she indicated the name of the accused by the signs of her hand. Several questions were asked to her which she answered with negative sign and affirmative sign by waving her hands. She was questioned

[47] ILR 7 All 385 (India)

whether the accused had wounded her, she made an affirmative by moving her hand up and down.

Held: The full bench of Allahabad high court that if the injured person is unable to speak, he can make dying declaration by signs and gestures in response to the question. The court further observed that the questions and signs taken together might perfectly be regarded as "verbal statement" made by a person as to cause of the death within the meaning of section -32 of the Evidence Act, and therefore admissible in evidence as dying declaration.

- **Ram Balak Singh v. State [48]**

Fact: Dr. Bhola Mahto, had performed the autopsy over the dead body of Kedar at 2 P.M on 10th November, 1959. During the trial of the case, he was abroad and his post mortem report was proved by Dr. E.N. Pathak by proving the handwriting and signature of Dr. Bhola Mahto on the post mortem report.

Held: the court held that since Dr. Bhola Mahto was not easily available, the post mortem report prepared by him would be admissible as evidence under clause (2) of Section 32 of the Act.

- **Twarku v. Surti[49]**

Fact: The entry in family register was maintained under rules. The name of the first

[48]AIR 1964 Pat 62, 1964 Cri LJ 214

[49]AIR 1997 HP 76

wife therein was deleted on the basis of divorce deed and the name of the wife subsequently married was found mentioned.

Held: The court held that the representation made by the husband and recorded as entry in register was very much relevant under Section 32 (5) to prove that that the person mentioned in entry had married the second wife. The court further held that to have a special means of knowledge regarding the existence of any relationship under clause 5 of section 32, the declarant should be related to the family by blood or marriage.

CONCLUSION

There are certain classes of people who cannot be called as a witness but their statements when recorded under certain circumstances, it is considered as relevant. Such as the statement made by a person who is dead or a person who cannot be found or the attendance of whom requires unreasonable delay or expenses then the statement made by them regarding death, or ordinary course of business and certain other conditions as mentioned under Section 32 of the evidence Act are considered relevant. Section 32 of the evidence Act has been considered as an exception to the rule against hearsay evidence. Therefore, the hypothesis of the project has been proved of the evidence Act.

The statement under Section 32 of the evidence Act is no doubt an important piece of evidence under Indian law to guide the courts in the task of finding the truth. Section 32 of the evidence Act makes a departure from the general and established principles of evidence as such statements cannot be cross examined. The rationale

behind the whole process of admitting such statement is to punish the guilty people and such evidence has been considered as an important piece of evidence and must carry sufficient preponderant weight as to the truthfulness of the contents therein. Such statements have got statutory permission but the court have cautioned before endorsing such permissions. The real danger which tempted the court to make rigid parameters for admitting such statements is the misuse of such statements by either party to the proceedings.

It is obvious that the prosecution will try to find strength in the statements in order to punish the offenders and the defense in shattering the prosecution story by weakening the statements to establish doubts for escaping the criminal liability. So, in this case it becomes necessary to have proper evidence.

In due course of time, the Indian courts have evolved the principle of caution. If the statement is clear, unambiguous, pointed and match or support the prosecution story beyond any reasonable doubts, the court will be in favor of admitting the statement as evidence. However, if the statement is not clear or is incomplete, the court cannot take the statements as evidence.

Thus, the court suggested for due caution and if the statement stands to meet the parameters, there is enough scope to rely upon it. Evidence of a fact is to be adduced and the balance of its admissibility has to be accepted by the presiding adjudicator.[50] Section 32 of the Act intelligently designed in such a manner as o cover any eventuality in respect of a statement which happens to the last words of person who perceived the offender. It is wider than English proposition and stands on a different

[50]TIWARI, *supra* note 1

plank. Indian courts have unhesitatingly accepted the veracity of such statement to prove the fact impugned in any case where the death and involvement of the suspected offender is questioned.

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BLOGS

DRUG ADDICTION

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"It was a slow process. You gotta remember I hadn't recorded a song sober in seven years. So, it took me a while to even feel like I could record a song sober"

Addictions started out like magical pets from the pocket tightly knitted to money. They show oneself extra ordinary tricks, which no one has witnessed yet and turn out to be some dire alchemy to make the decision for you. Eventually, they make the most crucial life decisions. The very basic or next-door type of addiction is drug addiction. These drugs once consumed create an urge in the person to consume it repeatedly.

The initial journey towards sobriety is a delicate balance between insight into one's desire for escape and abstinence from one's addiction. The problem of drug addiction poses as a great danger for

both the consumer and his or her family. Mentioning the fact, the urge if not satisfied makes the person lose self-control and leads to damaging lives. The person if tries to satisfy his urge might end up getting addicted to it.

A drug addict is a person whose very existence or survival is due to drugs. The acceptance of a person responding to life due to drugs is nothing but a mere act of slowly digging his own grave. They do not know how harmful this addiction can be for them as well as their families. Drugs are mostly dealt within parties where youngsters are instigated to try them out just for fun. Pubs and other places like this have various people such as drug dealers, drug peddlers who trade drugs for money. The youngsters contact the dealers on a regular basis and start the trade of destroying their lives.

Bollywood movies and web series such as **Sanju, Udta Punjab, 13 Reasons Why, Fashion, Shaitan, Dev D, Go Goa Gone, Hare Rama Hare Krishna, High** etc., clearly give a message to the world at large on how dangerous drug addiction can be and how it destroys lives. I'm pretty sure everyone must have watched the biopic of the famous actor, Sanjay Dutt. In this movie, it is the life of the celebrated actor destroyed due to drug addiction. The addiction level became so intense that overcoming it was a task of great difficulty. It was a lesson to all youngsters of the country on, no matter what pain or sorrow they have in their lives, addiction is maintained by pleasure, but the intensity of this pleasure gradually diminishes and the addiction is then maintained

by the avoidance of pain. Similar is the showcase in Hollywood movies. Movies such as **Trainspotting, Requiem for a Dream, Traffic, Everything Must Go, Less Than Zero**, etc., are the movies based on the drug cult.

Apart from the Bollywood-Hollywood movies and web-series, **the recent sensational and mysterious suicide or murder case of the popular young actor, Sushant Singh Rajput** depicts the ultimate consequence of the consumption of such substances. What once added to his happiness, slowly and gradually rang the knell of his impending death like the termite on the wall. His journey shows that a drug addict not only has the ultimate natural death but the improper functioning of mind may also lead to such asphyxia death. The entire nation especially the youth, who are going to be the pillars of the nation tomorrow, protested for his receiving of justice and simultaneously lamented over his wrong choice – consumption of drugs.

Rightly said by *Brittany Bungunder, "Recovery is hard. Regret is harder"*. Recovering from drug addiction is not at all an easy process. The road to sobriety is not linear. There are setbacks, but it is important not to be discouraged. A number of rehabilitation centers have been opened up to stop people from the consumption of drugs. They provide with several exercises and yogas to help people get over such addictions. Even they do not guarantee the addicts but try level best to cure them. To add on it, familial love, care and support act as a homeopathic remedy for the drug addict's treatment.

Also considering the monetary aspect of drugs, they are expensive which poses up as another big problem. This hampers not only the victim but also the family and the nation at large. Hence, it is a humble request to all the readers that consumption of drugs is harmful for every individual and one should completely avoid this.

CORPORATE ESPIONAGE: A THREAT TO THE CORPORATE WORLD

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Corporate espionage is not what most people picture it like a spy of big screen or spying on a foreign country. The concept is very different from what is shown in the virtual screen on the contrary it is an unethical theft of trade secrets by a competitor which they use it for their own advantage. From the British stealing tea from the Chinese during the 1800s to the French stealing tech from the British during the 1700s, corporate espionage became a common practice. Commercial enterprises have a number of methods and techniques to access trade secrets both legally and illegally but when this becomes a covert practice it becomes a threat to the world.

Corporate espionage is generally associated with technology-heavy industries particularly the computer, biotechnology and a significant amount of money is spent on research and development. It takes a lot of time and effort for a company to build its idea and introduce it into the market like Amazon,

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Apple, Tesla etc. The main factor which gives rise to corporate espionage is employee mobility and shifting allegiance.

Information is commonly stolen by individuals posting as workers or repairmen who gain access to unattended computers and copy information from them. Due to the rise of internet connectivity and of computer network which have opened avenues of corporate espionage that were previously inaccessible. It is mainly focused on the people who obtain information by manipulating people; such people are called social engineers. With this technique a social engineer is able to convince a person in a targeting company to lower his/her and divulge information that should not be released; generally, it is a precursor to criminal activity.

Even the giant companies are victims of espionage and Tesla is one such company. In November 2018, Tesla filed a lawsuit against Martin Tripp, who stole confidential photographs and videos of Tesla's manufacturing systems. He spied on his employees and used the data to harm the company. That's why in order to protect the trade secrets and to control the unfair practice of corporate espionage the US Government passed the Economic Espionage Act of 1996 which made stealing of commercial secrets a federal crime. In India, trade secrets are protected through contract law or through the equitable doctrine of breach of confidentiality.

Corporate espionage is a real problem that affects all types of organisations whether big or small. The threat could be reduced if the employees are

educated about the techniques used by hackers and social engineers. Employees should lock their workstations when they are not in use and the company should consider a clean desk policy which will help them to secure their data.

INDEPENDENCE OF INDEPENDENT DIRECTORSIN CORPORATE BOARDS: A MYTH

Girish Agarwal

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'Independent directors' as the name signifies are those directors in a company who are unconventional of their views and are those non- executive directors who have no pecuniary relationship with the company or its promoter groups or directors. They are ineligible individuals to provide or receive any services from the company. With pursuant to Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 every listed company and every public company with paid up share capital of rupees 10 crore or more; or public companies having turnover of rupees 100 crore or more; or public company having aggregate outstanding loans, debentures and deposits exceeding 50 crores are required to keep a part of their board as independent.

So, why an independent director is appointed in a company?

Firstly, so that the shareholders get a transparency in the conducts of that company.

Secondly, so that the investors are assured on the accountability of the company

And thirdly, the stakeholders are assured that some independent person is having a control over the company to avoid any apprehension of misfeasance taking place in the company.

Thus, the decisions should be independent of those who have controlling stake in the company and in overall interest of the company and its stakeholders.

Undoubtedly, an independent director is appointed by the shareholders in the general meeting by simple majority, but if the actual process of selection is verified it is the existing directors who nominate the independent directors that too with consultation of promoters which is then approved by the shareholders in the general meeting. The problem arises here when in most of the Indian companies the majority shareholding is taken over by the board, in such case it is an easy access to obtain a simple majority voting in the general meeting. Also referring to section 16 of General Clauses Act, 1897 which says that the power to appoint includes power to suspend or dismiss, in such a case where the majority power is held by the board, an independent director can anytime be suppressed or dominated by the board in a fear that he will be anytime dismissed from the board. For instance, in one of our renowned company Reliance Industries Limited approximately 49 percent of voting power is held by the promoter's group, it becomes very easy to either appoint or dismiss any independent director. As the law makers here had the

intention to have an unconditional working of independent directors, such intention is defeated at the very beginning during their appointment.

The working of independent directors is affected on the following grounds:

Lack of incentives- These directors are not fully dedicated to maximize shareholder's wealth. In spite of having a clear intention to increase shareholder's wealth as they don't have any equity holding in the company, they aren't fully motivated to increase shareholder's wealth. Moreover, these directors being part time directors of the company even if they initiate necessary steps that would increase the earning per share, such decisions are never considered as a primary decision by the board of directors.

Lack of expertise- These directors might not be fully informed about the operations of the company as compared to executive directors. They clearly don't make the best of their efforts as well to become informed but in some cases, they simply don't have as much expertise as executives which would make it difficult to convey as much information as executive directors.

In more than 80% of the companies in India we have a shareholder in the form of majority shareholder, which means a single person with their persons acting in concert are holding approximately 50% of the voting power of the company. In such a case even if we consider that the company is required to keep one-third of the board as independent, the voice of independent directors will not be considered substantive enough to do justice for the

concern of multiple shareholders. It will be useless to have an independent director in such a company.

Furthermore, in some prone industries (like software, biotech, IT industries and many more) where the promoters or other executive directors can easily conceal or manipulate the investors by providing fraudulent data, the independent directors are the one who plays a vital role in managing the company concerning minority shareholders. If such shareholders come-to-terms with promoters or other executive directors this will lead to an injustice with the other minority stakeholders. Therefore, how can it be taken for granted that an individual appointed as an independent director would act in favor of shareholder. He would rather shake hands with promoters to increase his net profits and would agree or disagree to take such decisions (whether ethical or not) which would increase his profits. Therefore, it can be inferred that even if one or two actual independent directors are independent of their judgment and takes a prudent view, then also at the end of the day the decision of majority prevails, this dilutes the effectiveness of the actual independent directors.

'Just as SEBI is regarded as a watchdog for securities market, the independent directors are regarded as a watchdog for board of directors. How can we expect a pet lamb to work as a watchdog? So, what is required to be done is the reformation of corporate governance by which the majority shareholders shall not be asserting themselves over the transparency and accountability of the control of the company.

Independent directors play a more important and useful role in the functioning of the board if they ensure the proper protection of minority shareholders. As Indian companies started recognizing the importance of independent directors in this century it is probably too early to expect them to really play role the role they are expected to play. As the independence can be implemented in many more ways as specified in law the recommendation would be that a separate body needs to be constituted under the Ministry of Corporate Affairs to oversee the functioning of independent directors.

SHORT STORY

THE OLD TRAIN HEIST

Dipanjan Nandi Chowdhury
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It was my summer break in college, and I decided it would be fun to spend that vacation with my uncle, Private Investigator Mr. Shankar Chowdhury. I had asked for his permission some time before to join him during my vacation and he happily agreed. So, there I was boarding a train along with him. Our destination was Benaras. Accompanying us was my cousin Apu.

The train left our station and it was almost an hour into the journey when Apu asked inquisitively "Uncle Shankar, don't you have any case stories regarding travel?" With a light smirk on his face and adjusting his thick square framed glasses, the detective addressed Apu in a baritone: "Not exactly, but I have one related to this genre. Would you like to know about it?" Apu with excitement affirmed "Yes! Of course! Please tell us."

Then Uncle Shankar turned towards me and said "Bhaipo, would you like to hear about it?" I nodded my head saying yes.

So, Uncle Shankar began "the roots of this case sprouted when I was still a policeman so I won't disclose the location of the incident, all I'll let you know is that it was somewhere in Bihar." He continued, "it was around the early 80's; I was still relatively new in my profession, and I was posted somewhere in West Bengal. A friend of mine Satish, along with his family, was travelling to a certain place in Bihar on a train; accompanying him were his wife and his 3year old daughter. The train at midnight had stopped at a place which was a relatively small station, and from that station a group of burglars boarded the train. The burglars looted the train: they snatched and seized all valuables that the passengers carried, but my friend lost something much more valuable than anyone else: his 3year old daughter was taken away by the burglars. He registered a police complaint at the local station and also informed me. Being posted in West Bengal at that time I could not help him with his case. Local police could not nab the burglars back then and as a result my friend never found his daughter." He stopped to clean his glasses. Apu, being restless and a little disappointed, asked "So, that's it? That's the whole story?"

"Not quite" replied the detective.

He continued "You remember I had told you about the Gupta's drug case last Puja? That was my third case. A few days after closing that case my friend Satish visited me at my office. Since the abduction of his daughter he had

been through a lot. His wife had suffered a nervous breakdown and eventually she died within a year following that. He himself became very restless and frustrated; he quit his job and was not financially stable anymore since that incident 17 years ago. He visited me to have a chat and reminisce of the old days, when all used to be well. Seeing his condition, I felt bad for him, and decided that even though it had been almost 18 years, I still had to take up the case in order to find out what really happened to his daughter.

“I started my investigation by salvaging whatever I could on the case from the police reports and old news reports. What I found out was that at the station, when the burglary took place, was infamous for such incidents. So, it was clear that there was a gang operating in there who were conducting these burglaries but for the last 12 years there had been no report of such incidents. This could also be related to the development of that station into town." Uncle Shankar paused to purchase some tea and snacks from a vendor on the train. Then he continued, "I decided in order to investigate this case I would have to go to the scene of the crime that was the station. So, I took off and reached the destination. The small station had developed now into a thriving town. I had contacted the senior officer in that town before I boarded my train so he was there at the station. I discussed the details of the case with him and its situation, and asked him if he could get me the file of that case's preliminary investigation. Being the S.P. of the region he agreed to get me that file by next morning. However, he also informed me that a few burglars had been

caught during their last heist 12 years ago, and were serving their sentence in jail at present.

“He also said “In order to dig up case which was almost 18 years old you would require some resources, and in this town, there is only one man Mr. Gajanand Shukla who can provide you with all the help and the information you need to crack this case. Mr. Gajanand is a respected man in this town and being an old resident of the place can get you acquainted with the history of the town.”

“The SP fixed the meeting with Mr. Shukla for the next afternoon at his government allotted quarter. Over the course of the next few days, I learnt a lot about the town during that time period from Mr. Shukla. Mr.Gajanand Shukla was an old man in his early 60's with fading vision and almost a hunch back frame supported by his cane that he held in hishand.”

Uncle Shankar stopped to take a sip of his tea. Apu enquired "Was the old man of any help? Did he help you to find the girl?”

Uncle Shankar chuckled and replied “We are quite not there yet. Hold on, let me continue. So, as I was telling I got to learn a lot about that town from Mr. Shukla. He also told me of the burglars’ gang that operated in the town during the early eighties to the late nineties. He told me “As much as I know from the rumours, the burglars mainly consisted of men from underprivileged and poverty-stricken households. During their last heist when a few of their people were apprehended by the police they disappeared from the town. As far as

your friend's daughter is concerned I have never heard of such an abduction by the burglars. They were petty thieves who looted the trains for valuables that the passengers carried. But never did they resort to kidnapping as far is known to me". Saying this, the old man invited me to his home for dinner: "We can discuss this further over dinner at my place today." I agreed to it reluctantly. But if I hadn't visited him that night this case could never be solved."

"So, you solved the case?" Apu asked.

"Yes, I did and also at the same time, I did not. Let me explain: that night when I visited Mr. Shukla's residence for dinner, he gave me a tour of his property. Sitting solitary on a vast piece of land was his mansion, and it's screamed of aristocracy. It was as if generations of his family had been rich and influential people, which I found a bit odd as I had heard from him that his father was a farmer with very little income. However, ignoring the wealth he had accumulated, I continued with him taking his house tour when we entered his living room. There framed over the fireplace mantle was the picture of a little girl, roughly 3 or 4 years old, who had a little scar under her left eye and had a very warm and innocent smile. I couldn't help but ask Mr. Shukla who the little girl in that picture was. Mr. Shukla replied it was his daughter who was 20 years old and was studying abroad. Since that conversation, my brain was stuck on that picture of the girl with the scar under her left eye. It seemed as if I had seen a picture of her somewhere. I kept on thinking where I had seen the picture until it struck me that girl

looked very similar to the picture that my friend Satish had provided of his daughter. I had a hunch but I had to be sure so I requested the S.P. to run a background check on Mr. Shukla. After a lot of digging and cross checking the S.P. informed me that Mr. Shukla wasn't as decent as he claimed to be.

“The SP also informed me that Mr. Shukla had a few criminal records to his name in a neighbouring town from a long time ago. This information along with the picture of the abducted girl on his fireplace mantle helped me theorize that Mr. Shukla was a member of the now- defunct burglary gang that looted the train 17 years ago, and kidnapped the daughter of my friend Satish. It was also evident that his massive wealth could be directly sourced to the burglary gang that he was a part of during the early 80's." Uncle Shankar stopped to buy some snacks from a vendor as we reached a station. We were merely a station away from our destination. Apu filled with intrigue asked Uncle Shankar to narrate rest of the story. Uncle Shankar lighting a cigarette while standing by the door continued: “I started finding connection of Mr. Shukla to all the burglaries that had taken place during that period. What I could figure out was that Mr. Shukla, although a part of most of the burglaries, did not take part in all the heists. This is most probably why he was not apprehended by the police when 12 years ago the burglary did not go as planned, as by that time he was long retired from looting trains. Regardless, all that was left for me was to crack the case by directly confronting Mr. Shukla. So, with the picture of his daughter given to me by Satish, I went to

confront Mr. Shukla. To my surprise he did not resist any of the accusations, rather he accepted them instantly. Mr. Shukla told me “I have been living with this guilt for a long time. The truth be told I have many a times thought of telling my daughter the truth but I could never do it as I feared that she would despise me and that I cannot accept. Mr. Chowdhury, I accept all your accusations, and I confess to you that I used to be a burglar. I took part in all the heists up until the point I found my daughter. Yes, I had abducted her from her family but I love her like my own. I gave up my criminal ways since I had her. Today she is an adult and acknowledges me as her real father, and I admit I am greedy to have her all to myself which is why I never could disclose the truth to her. As my penance I have tried to give her the best possible life that I could afford for her, hoping that I could get rid of my guilt, but that wasn't the case. Every day the burden of my guilt increases and I don't know how I am to get rid of it. All I know is that from all the wealth I have collected from my days as a burglar she is my most valued possession. If you want you can get me arrested, I won't resist.” Uncle Shankar said “I could have him arrested; I should have had him arrested but I did not. As before being a detective, I am a human being, and I could see that that man, although he had kidnapped a child at the tender age of 3, truly cared for her and honestly had given her a better life than Satish probably ever could. I gave Satish the details of the situation, and he was glad that at least his daughter has had a good and prosperous upbringing. Today it's been a year

since the incident. Satish has made peace with his daughter's situation."

By this time the train reached Benaras, and we got off with our baggage; waiting for us at the station was Uncle Shankar's friend Satish who had been living there for roughly a year. Both of them caught up with one another over the course of out stay and we had a wonderful and memorable experience.

POEMS

I WONDER THE REASON WHY?

Rosy Sharon Bagh
B.A. LL. B (H) Semester I

The world is in a hay way

Can anyone say why?

Is it the disturbance

To the Mother Earth

We cause the reason?

Or the living beings we have slaughtered

The crime of treason!!

Life has all of a sudden come to a standstill

But for the animals it's like they are on a drill!

Natural resources are on waste

As man still remains to a self made cage

Some make haste but omit the beauty around

Time to prepare our soul

And wrap it in all purity

Like everything comes in a pack of good and bad

We are locked away from

The entire world, but close to the character of our internal world.

Yes our dear ones, for whom we have

No time to spare

No pause to watch or glare

We have learnt to appreciate

The beauty of the creator

We learned to value relationships

And in casualness never to let them slip

Oh! Yes the world is in hay way

AND NOW I KNOW THE REASON WHY!

LIFE

Simran Chettri
B.B.A. LL. B (H) Semester III

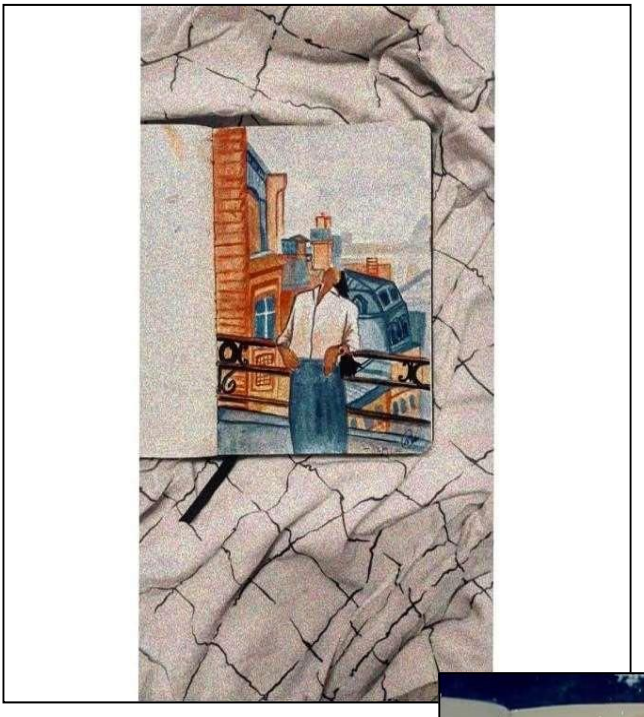
Life is full of dissonance and confusions,
It's difficult to take decisions.
Our conscience is at the root of it;
Whether to choose the right or wrong path takes us to the end of our wit.
In this world people have many faces,
So we should be careful about our innocuous assumptions.
If we assess only external appearances,
Then it will sooner or later shatter our inbred myths.

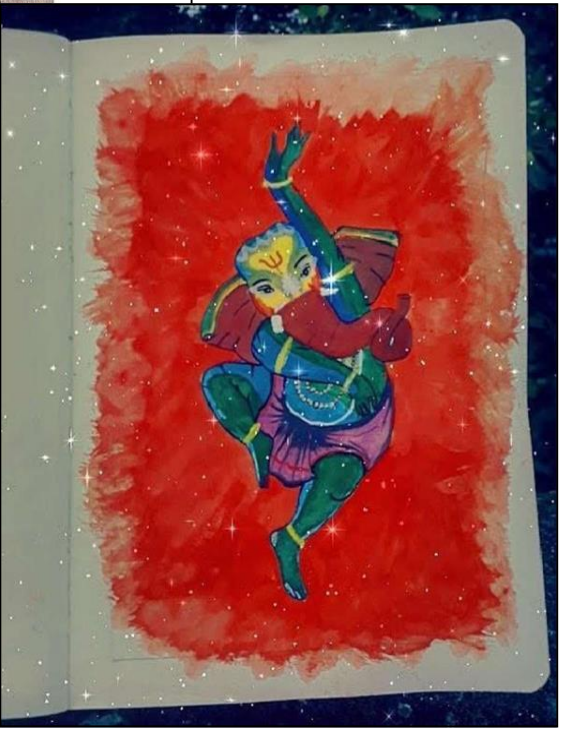
God is there always within our heart,

Who helps us to choose a righteous path of life.

And makes us succeed, helps us heal our hurt,
In this battlefield of our life.

PAINTING





MUSKAAN AGARWAL

LLB SEMESTER I

PHOTOGRAPHY

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BA LL. B (H) SEMESTER III

TIYASHA SAHA
BBA LL.B SEMESTER VII

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