

# COMMITTEE FOR REFORMS IN CRIMINAL LAWS

## FIRST CONSULTATION ON THE LAW OF EVIDENCE

### QUESTIONNAIRE

**[Disclaimer:** The questions provided herein are not reflective of the position of the Committee upon any issue/question of law in any form or manner. The questions have been formulated after research and examination of – judicial precedents; reports of Committees and Commissions; and, other authoritative treatises. While these Consultations seek to solicit your views, opinions, knowledge, experience and recommendations on these issues/questions of law, the Committee is alive to other issues and questions beyond the questionnaire, and the same maybe addressed through the Open Consultations.]

#### Part A

### Relevancy of Facts

**Q.1.** Should s. 10 of the Indian Evidence Act be modified to:

- a) replace the phrase “in reference to” with “in furtherance of” in order to clarify its scope; and/or,
- b) replace the phrase “where there is a reasonable ground to believe” with the phrase “where the question is whether two or more persons have...”?

**Q.2.** Should an explanation be added to s. 11 of the Indian Evidence Act stating that -

- a) facts not otherwise relevant but which become relevant under this section need not necessarily be relevant under some other provision of this Act; and,
- b) the degree of their relevancy will depend upon the extent to which, in the opinion of the Court, they render any fact in issue or relevant fact probable or improbable?

[Illustration - A and B were co-accused in a case of theft. On appeal, A was convicted by the High Court while B was acquitted. For A's conviction, the High Court had relied on the recovery of the stolen article on 03.01.2020 when A was arrested. In A's appeal by Special Leave before the Supreme Court, the Court referred to an application filed by B before a Magistrate on 01.01.2020 stating that A had already been arrested and that he (B) was apprehending arrest. This statement was made at a time when there was no warrant against B. This statement probalized A's arrest before 01.01.2020 and rendered the recovery of the stolen article at A's instance doubtful. This statement is admissible under s. 11(2) even if not admissible under any other provision of the Indian Evidence Act, subject to a determination of the degree of its relevancy.]

**Q.3.** Should s. 12 of the Indian Evidence Act be modified so as to:

- a) apply to compensation in addition to damages; and/or,
- b) apply to criminal proceedings wherein compensation is in issue?

## Part B

### Admissions and Confessions

**Q.1.** Should ss. 24 and 28 of the Indian Evidence Act be modified to expressly include other vitiating circumstances such as 'coercion, violence or torture' within its ambit?

**Q.2. A.** Should the scope of ss. 25 and 26 of the Indian Evidence Act be expanded to include other public servants with the power to arrest and detain in custody; and,

**B.** If yes, should all categories of public servants with the power to arrest and detain in custody (whether acting under the Cr.P.C. or any S.L.L.) be covered under ss. 25 and 26; and,

**C.** If not, please specify which categories of public servants may be so included.

**Q.3.** Should the legal position regarding consideration of confession by one accused as against others being jointly tried for the same offence under s. 30 of the Indian Evidence Act be modified? If yes, how should the same be modified.

**Q.4. A.** Should the application of s. 58 of the Indian Evidence Act be limited only to civil proceedings?

**B.** If yes, should an exception be made for s. 294 of the Cr.P.C? Should there be mandatory admission-denial of documents in every criminal trial?

## Part C

### Exclusionary Rules (Illegally Obtained Evidence, Secret Evidence, etc.)

**Q.1.** In light of the recognition of the right to privacy as a fundamental right under Article 21 of the Constitution of India, should the provisions of Indian Evidence Act be modified to:

- a) define what constitutes 'illegally obtained evidence'; and
- b) expressly stipulate the exclusion of illegally obtained evidence; and/or
- c) provide certain exceptions to such a mandatory exclusion; if yes, please suggest the appropriate exceptions; or
- d) provide discretion to the courts to exclude illegally obtained evidence and/or provide an illustrative list of the circumstances/factors to be taken into consideration while exercising such discretion?

**Q.2.** Should the Indian Evidence Act provide guidelines for the admissibility of 'sealed cover evidence' in judicial proceedings? If yes, please suggest the same.

## Part D

### Statements

**Q.1.** Should s. 32 (1) of the Indian Evidence Act on dying declarations be modified to:

- a) expand the scope of “circumstances of the transaction” to expressly include statements relating to the death of another person, and/or
- b) introduce ‘expectation of death’ as a necessary criterion for relevancy of the statement?

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## Part E

### Expert Opinion and Forensics

**Q.1.** Should s. 45 of the Indian Evidence Act be modified to include any additional categories of experts or to exclude any existing categories? If yes, please suggest the same.

**Q.2.** Should s. 45 of the Indian Evidence Act be modified to specify the contents of the expert's report (field experience; qualification; methodology; scientific acceptability of the methodology used etc.)? If yes, please suggest the contents of such a report.

**Q.3.** Should the expert's report under s. 45 of the Indian Evidence Act be provided to all the parties? If yes, should this obligation be imposed on the court?

**Q.4.** Please suggest measures to enhance the reliability and credibility of experts and/or expert evidence.

**Q.5.** Should the Indian Evidence Act be modified to include a uniform test applicable to admissibility of forensic evidence? If yes, please suggest a suitable test (e.g. the five-pronged test applied by the U.S. Supreme Court in *Daubert v. Merrel Dow Pharmaceuticals, Inc.* [509 U.S. 579 (1993)]; the 'general acceptance' test applied in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923); etc).

**Q.6.** Please suggest the statutory safeguards that can be put in place to protect the privacy of persons whose body samples are taken to conduct forensic analysis.

**Q.7.** Should the relevant provisions of the Indian Evidence Act be modified to specify that continuity of a sample/specimen (from the point of its identification, collection and till examination) must be established before it is relied upon in court? Please suggest the safeguards to maintain the chain of custody of a sample/specimen.

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## Part F

### Character

**Q.1.** In the context of evidence as regards bad character of the accused, should the bar against evidence as regards other pending cases (established by judicial precedent) remain limited to cases where *trial* is pending, or should also bar evidence of cases where *appeals* are pending?

**Q.2.** Should Explanation 2 to s. 54 of the Indian Evidence Act be modified, so as to provide that at the stage of sentencing, evidence on previous convictions shall *only* be admissible where the accused is liable to increased punishment under the I.P.C. or under any other criminal statute?

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## Part G

### Burden of Proof

**Q.1.** Should Chapter VII of the Indian Evidence Act be modified to address the evidentiary challenges in cases involving custodial deaths / grievous injuries? If yes, please suggest appropriate modifications.

**Q.2.** Should s. 114 A of the Indian Evidence Act be modified to expand its scope to s. 377 I.P.C. wherein the offence pertains to acts in the nature of offences mentioned in s. 114 A? If yes, should it also extend to circumstances other than those mentioned therein? Please specify.

**Q.3.** Should the presumption as to absence of consent under s. 114 A of the Indian Evidence Act be extended to include -

- a) S. 376 (1) of the I.P.C.?
- b) S. 377 of the I.P.C. (where the circumstances discussed in the previous question are not covered)?

# Committee for Reforms in Criminal Law

## Second Consultation on the Law of Evidence

### Questionnaire

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### Part A

#### Documentary and Electronic Evidence

**Q.1.** Should a proviso be added to s. 60 of the Indian Evidence Act allowing the opinion of an expert (as well as the grounds for such opinion) to be proved by production of the opinion *in writing* where the Court, having regard to the circumstances of the case and subject to the right of either party to cross-examine, considers it desirable in the interests of justice? If yes, what are the types of experts (e.g., experts employed in state agencies) to whom such a proviso should apply?

**Q.2.** Should s. 65 of the Indian Evidence Act be modified to allow secondary evidence to be given in cases where the original is shown or appears to be in the possession or power of a person not legally bound to produce it (e.g., if the document incriminates him) and, after notice by the Court to produce it, such person fails to do so?

**Q.3.** Should a proviso be added to s. 65B of the Indian Evidence Act expressly giving the Court discretion to allow relaxation of the requirement for a certificate under s. 65B(4)? If yes, in what circumstances should such a relaxation be permissible?

**Q.4.** Should the provisions of the Indian Evidence Act be modified to expressly provide for the definition and admissibility requirements for emerging technologies (e.g., evidence obtained using blockchain technology and/or evidence regarding use of blockchain technology such as cryptocurrency)?

**Q.5.** Should the scope of s. 73 of the Indian Evidence Act be expanded to include evidence other than signature, writing or seal? If yes, what are the other kinds of evidence that can be included?

**Q.6.** To expand the ambit of s. 80 of the Indian Evidence Act to dying declaration, should it be modified to include the statements recorded by a Magistrate under s. 164 of the Cr.P.C.?

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## Part B

### Witnesses

**Q.1.** Notwithstanding s. 122 of the Indian Evidence Act, should an express proviso be added to s. 120 stating that the spouse of the accused in a criminal proceeding shall not be compelled to testify against the accused? Please specify the exceptions to this, if any.

**Q.2.** Should s. 122 of the Indian Evidence Act be modified to expressly allow for information received by third parties in relation to spouse-to-spouse communication to be admissible, notwithstanding the consent of either spouse?

**Q.3.** Should s. 122 of the Indian Evidence Act be modified to:

- a) remove the bar against the voluntary testimony of the accused's spouse; and/or,
- b) extend the privilege provided under the section to relationships in the nature of marriage; and/or,
- c) end the spousal privilege after the termination of the marriage?

**Q.4.** Should s. 123 of the Indian Evidence Act be modified to provide for reference to the High Court by subordinate courts as soon as objections to admissibility of unpublished official records are raised, to avoid indirect public disclosure of contents of such records by reasoned orders of the subordinate court?

**Q.5.** Should an exception be added in s. 125 of the Indian Evidence Act to direct the disclosure of information if it relates to a fact in issue on which the liability of a person depends or is otherwise a material fact? If yes,

- a) Should the exception be extended to information received by all the three categories of persons in the section?

b) What should be the safeguards to protect the informants if such disclosure is allowed?

**Q.6.** Should an exception be added in s. 126 of the Indian Evidence Act to include a criminal proceeding between the client and the legal practitioner? If yes, should the inclusion of such proceedings be permitted in all circumstances?

**Q.7.** Should sources of the information contained in a publication be considered 'privileged communication' under the Indian Evidence Act? Please specify exceptions allowing for the disclosure of such sources, if any.

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## Part C

### Examination of Witnesses

**Q.1.** A. Should the order on admissibility of any evidence be passed as and when the objection is raised, or be dealt with at the stage of final arguments?

B. Should such an order on admissibility, if passed at the interim stage, be a revisable order?

**Q.2.** Should co-accused be permitted to cross-examine each other's' defence witnesses? Please suggest the factors which may govern such cross-examination.

**Q.3.** Should the Indian Evidence Act be modified to provide for deposition of witnesses through video conferencing? If yes, please suggest the criteria for (and necessary safeguards in relation to) allowing witnesses to depose through video conferencing?

**Q.4.** A. Should there be a statutory obligation on the Court to record the objections raised and the decision on such objections to cross-examination questions?

B. Should such an obligation be limited to particular circumstances? If yes, please specify such circumstances.

**Q.5.** Should s. 154 of the Indian Evidence Act be modified to:

a) Guide judicial discretion as regards identifying "hostile/unfavourable" witnesses? Please specify the scope of such guidelines; and,

b) Provide for the consequences of declaring a witness as "hostile/unfavourable"? Please specify such consequences.

**Q.6.** Should s. 165 of the Indian Evidence Act be modified to provide for safeguards other than those already provided for within the provision (e.g., limiting the same only to admissible questions, whether relevant or irrelevant; recording/transcription of all questions put to the witness or parties, etc.)? If yes, please specify such safeguards.

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## Part D

### Miscellaneous

**Q.1.** Should time-frames be prescribed for:

- a) Depositing of forensic evidence in the forensic science laboratory by the investigating agency?
- b) Submission of forensic and medico-legal reports to the court after receipt of such reports by the investigating agency?

If yes, please specify such time-frames.

**Q.2.** Should bodies/panels of “coroners” be constituted at central/state/district levels for the conduct of inquests? If yes, please suggest:

- a) the mode of their appointment and desirable qualifications; and,
- b) the scope of their powers and functions.

**Q.3.** Should the Indian Evidence Act expressly provide that the following orders shall be revisable:

- a) Order closing the right to bring forth any particular witness(es);
- b) Order closing the right to cross-examine any particular witness(es);
- c) Order refusing video conferencing deposition for any particular witness(es)?

Please suggest if there are any other orders which should expressly be defined as revisable.

**Q.4.** If Exception 2 to s. 375 I.P.C. is repealed, should there be any special procedures or standards of evidence in relation to marital/spousal rape which deviate from general procedures / evidentiary standards? Please specify the special procedures/standards of evidence, if any.

**Q.5.** Should express provisions be incorporated in the law to codify procedures governing Test Identification Parades (TIPs)? If yes, please specify the required procedures and safeguards.