# CHAPTER III

## SUMMARY OF RECOMMENDATIONS

Section 1

In section 1 of the Act, the following words be deleted:

> "other than Courts-martial convened under the Army Act (44 & 45 Vict., C. 58), the Naval Discipline Act (29 & 30 Vict., C. 109) or the Indian Navy (Discipline) Act, 1934 or the Air Force Act (7-Geo. 5, C 51."

Section 3

Definition of the word "court"

It is not necessary to include all revenue courts within the definition of 'Court' for purposes of the Evidence Act. The question whether the provisions of the Evidence Act apply or not, would depend upon the nature of the tribunal, the nature of inquiry contemplated and other special characteristic of each such 'revenue court'. We are, therefore, not in favour of applying the Evidence Act to all 'revenue courts'.

Definition of Evidence: The words 'means and' be omitted.

Definition of Document: The meaning of the word 'document' is expanded, stating that it shall include any substance having any matter written, expressed, inscribed, described or otherwise recorded upon it by means of letters, figures or marks, or by any other means, or by more than one of these

means, which are intended to be used or which may be used for the purpose of recording that matter. An Explanation is also prepared to say that it is immaterial by what means the letters, figures or marks are formed or decoded or retrieved.

Definition of the word "fact"

The words 'means and' may be deleted in order to avoid confusion.

Definition of 'fact in issue': The words 'and includes' be omitted.

Definition of the word " relevant"
We agree with the 69th Report and do not think that the definition of 'relevance' should be amended by linking it up with 'proof' or rendering other facts probable in as much that concept is already incorporated in the definition proved in sec. 3.

Definition of the words "proved", "disproved" and 'not proved"

We do not think that any amendment be made in respect of the words 'proved', 'disproved' or 'not proved'.

Definition of the word 'India'

No modification is necessary with regard to this definition.

Definition of the words 'Certifying Authority', digital signature', Digital Signature Certified', 'Electronic Form', 'electronic records', 'information', 'secure electronic record', 'secure digital signature', 'subsection'

The words have been recently brought into sec. 3 by the Information Technology Act, 2000 and require no further change.

Other definitions – if to be added?

Judiciary proceeding:

Having said that the definition of 'Court' need not be incorporated and that it is best left to the Court to decide whether a body is a 'Court' or not, we feel that likewise, it will be necessary to leave the meaning of 'Judicial proceeding' to be decided on the basis of the particular provision of the statute.

Admissible

The word 'admissible' be defined as 'admissible in evidence'.

Section 4

Section 4 defines words 'may presume', 'shall presume' and 'conclusive proof'.

We do not also think that any amendment is necessary.

Section 5

The existing provisions of the Explanation in this section cover the different territories in question and hence no amendment of the Explanation is necessary.

Section 6

We agree with the 69th Report that no amendment is necessary in sec. 6.

Section 7

We agree with the 69th Report that no amendment is necessary in section 6.

Section 8

We agree with the 69th Report that no amendment is necessary in sec. 8.

Section 9

The only amendment we suggest in sec. 9 is that in the opening part, after the word "Facts" and before the word "necessary", insert the words "which are".

Section 10

(A) The section is revised in partial modification of the recommendation in the 69th Report, as follows:

Things said or done by conspirator in reference to common design

"**10.** Where-

(a) the existence of a conspiracy to commit an offence or an actionable wrong, or the fact that any person was a party to such a conspiracy, is a fact in issue or a relevant fact; and

(b) the question is whether two or more persons have entered into such conspiracy,

anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it".

(B) The 69th Report recommended that the illustrations as at present with consequential change as may be required.

Instead of making changes in the illustration, we recommend that it may be dropped.

Section 11

We differ from the recommendation made in the 69th Report and we recommend that the following Explanation be inserted after clause (2) and before illustrations in section 11:

> "Explanation : Facts not otherwise relevant but which become relevant under this section need not necessarily be relevant under some other provision of this Act but the degree of their relevancy will depend upon the extent to which, in the opinion of the Court, they probabilise the facts in issue or relevant facts."

Section 12:

We recommend that in the title and body of sec. 12, before the word 'damages', the words 'compensation or' are added before the word 'damages'.

Section 13:

In the 69th Report, the Commission recommended the insertion of an Explanation and Exception below sec. 13 as follows:

"Explanation: A previous legal proceeding, whether it was or it was not between the same parties or their priories, may be relevant as a transaction or instance, within the meaning of this section; and, when a legal proceeding becomes relevant under this section, a judgment delivered in that proceeding is admissible as evidence of such legal proceeding, but not so as to make relevant the findings of facts or the reasons contained in the judgment; but nothing in this Explanation is to affect the relevance of a judgment under any other section.

Exception: Nothing in this section shall render relevant recitals of boundaries in documents which are not between same parties or their priories."

The proposal in the 69th Report for excluding boundary recitals in documents inter-partes, is not accepted. Hence the Exception recommended there should be dropped.

It is recommended that following explanations be added below section 13:

"Explanation I :- A previous legal proceeding, whether it was or was not between the same parties or their privies, may be relevant as a transaction or instance, within the meaning of the section; and when a legal proceeding so becomes relevant under this section, a judgment or order delivered in that proceeding is admissible as evidence of such legal proceeding; findings of fact but not the reasons therefor contained in such a judgment or order are relevant; but nothing in this Explanation shall affect the relevance of a judgment or order under any other section.

Explanation II :- Recitals in documents which are or not between the same parties or their privies, including recitals regarding boundaries of immovable property are relevant in a legal proceeding."

Section 14:

In the 69th Report, the Commission observed (see para 8.154) that sec. 14 does not need any amendment, except in illustration (h) to the extent indicated in para 8.150.

In para 8.150 of the 69th Report, the Commission stated as follows:

> "Illustration (h), where it say that the fact that public notice of the loss of the property had been given in the place where A was, is relevant, assumes that some evidence would be given to show that the notice was within the knowledge of A, the accused. It would, therefore, be desirable to add the words "and in such a manner that A knew or probably might have known of it", after the words "in the place where A was" in illustration (h). We recommend accordingly."

We agree with the said recommendation.

Section 15:

In para 8.176, the 69th Report stated that no change in the law is recommended.

We have recommended, differing from the said recommendation, that section 15 be revised as under:

**Facts bearing on question whether act was accidental or intentional**

**"15.** When there is a question whether an act of a person was accidental or intentional, or was done by a person with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the same person doing the act was concerned, is relevant."

Section 16:

In para 8.1.87, the 69th Report stated that no amendment is necessary and we agree with the view.

Section 17:

This section deals with relevancy of 'admissions'. This was amended by Act 21/2000 by adding the words "or contained in electronic form".

In the 69th Report, it was stated (see para 9.24) that no amendment is necessary in sec. 17. After going through the subsequent case law, we are of the view that there is no good reason to differ from the above view.

Section 18:

In the 69th Report (see para 9.26) it was stated that section 18 requires changes partly (i) in expression (ii) in substance and (iii) in structure and arrangement.

The suggestions with which we fully agree, are mainly to split up para 1 into two parts, one dealing with admissions by parties and another with admissions by agents; to substitute the word civil proceedings for suits. With regard to 'representative character' or 'proprietary or pecuniary interest', words are added that the admissions must have been made during the continuance of the said character or interest. With these changes, it is recommended that the section should read as follows:

**Admission by party to proceeding or his agent or by party interested in subject matter or by person from whom interest is derived**

" **18.** (1) Subject to the provisions of this section, statements made by a party to the proceeding which is against his interest are admissions.

(2) Such statements made by an agent to a party to the proceeding, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.

(3) Such statements made by parties to a civil proceeding, where the proceeding is instituted by or against them in their representative character, are not admissions, unless they were made while the party making them held that character.

(4) Such statements made by persons who have a joint proprietary or pecuniary interest in the subject-matter of the proceeding are admissions, provided the following conditions are satisfied:-

(a) the statements are made by such persons in their character of persons so interested, and during the continuance of the interest of the persons making the statements; and
(b) the statements relate to the subject-matter of the proceeding.

(5) Such statements made by persons from whom the parties to the civil proceeding have derived their interest in the subject-matter of the proceeding are admissions, if they are made during the continuance of the interest of the persons making the statements"

Section 19:

We agree with the 69th Report that no change is necessary in sec. 19 and that the word 'suit' may be substituted by the word 'civil proceeding'.

Section 20:

We have nothing fresh to add and we too recommend that the word 'suit' be substituted by the word 'civil proceeding.

Section 21:

We do not find any significant change in the law concerning sec. 21 after 1977, when the 69th Report was given and hence the recommendations made therein require no change. The revised section 21 will be as follows:-

**Proof of admissions against persons making them, and by or on their behalf**

**"21.** (1) Admissions are relevant and may be proved against the following persons that is to say,-

(a) the person who makes them, or his representative in interest;
(b) in the case of an admission made by an agent where the case falls within sub-section (2) of section 18, the principal of the agent;
(c) in the case of an admission made by a person having a joint proprietary or pecuniary interest in the subject-matter of the proceeding, where the case falls within sub-section (4) of section 18, any other person having a joint proprietary or pecuniary interest in that subject-matter;
(d) in the case of an admission made by a person whose position or liability it is necessary to prove as against a party, where the case falls within section 19, that party;
(e) in the case of an admission made by a person to whom a party has expressly referred for information, where the case falls within section 20, the party who has so expressly referred for information.

(2) Admissions cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:-

(a) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.
(b) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.
(c) An admission may be proved by or on behalf of the person making it, when it is relevant otherwise as an admission.

**Illustrations**

(a) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.

A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and

indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(c)A is accused of a crime committed by him at Calcutta.

He produces a letter written by himself and dated at Lahore on that day and bearing the Lahore post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead, it would be admissible, under section 32, clause (2).

(d) A is accused of receiving stolen goods knowing them to be stolen. He offers to prove that he refused to sell them below their value. A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e)A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skillful person to examine the coin as he doubted whether it was counterfeit or not, and that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration."

Section 22:

We agree with the 69th Report 9para 9.74) that sec. 22 be redrafted as follows:

**When oral admission as to contents of documents are relevant**

"**22.** Oral admissions as to the contents of a document are not relevant –

(a) unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained; or

(b) except where a document is produced and its genuineness is in question."

Section 22A:

This section introduced by Act 21/2000 does not require any further amendments. We recommend accordingly.

Section 23

(I) In the 69th Report, the Commission pointed out that the section protects only admissions in (i) and express agreement prohibiting the giving of evidence, or (ii) circumstances from which such an agreement can be implied. This requirement may not cover 'all statements made for negotiations. It would be fair to provide that statements made with a view to, or in the course of negotiations for a settlement should always fall within the section. It recommended insertion of an Explanation below sec.

"Explanation 2: Where an admission is made for the purpose of or in the course of negotiation of a settlement of compromise of a disputed claim, the parties shall be deemed to have agreed together that evidence of the admission shall not be given".

We agree respectfully that such a provision is necessary but instead of an Explanation, the following words can be added after the words "upon express condition that evidence of it is not to be given"- "or if it is made for the purposes of or in the course of a settlement of compromise of a disputed claim." We may also refer to the observation in the 69th Report that this Explanation does not affect the

operation of Order 23 R 3, Code of Civil Procedure 1908, since the compromise in writing can be proved.

We have recommended insertion of a new section 132A for disclosure of source of information contained in a publication. According to this proposed provision, a person in certain circumstances may be required to disclose source of information contained in a publication. There is a need to exempt provision of section 23, in case a person who made a publication, from giving evidence of any matter of which he may be required to give evidence under proposed section 132A. In this regard, reference may be made to the discussion made under proposed section 132A.

Therefore we recommend that sec. 23 should upon such amendments, read as follows:

**Admission in civil cases when relevant**

**"23** (1) In civil cases, no admission is relevant:

(a) if it is made either upon an express condition that evidence of it is not to be given; or

(b) if it is made for the purposes of or in the course of a settlement of compromise of a disputed claim; or

(c) under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given,

unless the party who made the admission and the party in whose favour the admission is made agree that evidence be given, or evidence as to the admission becomes necessary to ascertain if there was at all a settlement or compromise or to explain any delay where a question of delay is raised;

(2) Such an admission which is not relevant under sub-section (1) may be relevant in so far as it touches upon an issue between the person who made the admission and a third party to the admission.

(3) Nothing in this section shall exempt;

(a) any legal practitioner from giving evidence of any matter of which he may be compelled to give evidence under section 126; or

(b) a person who made a publication, from giving evidence of any matter of which he may be required to give evidence under section 132 A.

Explanation I: 'legal practitioner' as used in this section shall have the meaning assigned to it in Explanation 2 to section 126.

Explanation II: 'publication' as used in this section shall have the meaning assigned to it in para (a) of the Explanation to section 132 A."

Section 24

So far as section 24 is concerned, the 69th Report stated (see para 11.6) that there is no need to amend this section. But, for reasons given in our discussion under sec. 27, we recommend to add some more words, 'coercion, violence or torture' in the body of sec. 24 and in the title.

Section 25: (and proposal for sec. 26A in the 69th Report)

We agree that that sec. 25 need not be amended.

We do not agree that sec. 26A as recommended by the 69th Report permitting confessions recorded by Superintendents of Police, in all cases. Such a provision cannot satisfy Art. 20(3), Art. 21 and the judgments of the Supreme Court. We, therefore, do not accept the recommendation.

Section 26

In the 69th Report, the recommendation was to revise the section as follows (see para 11.15), after omitting the Explanation:

"Section 26: No confession made by any person whilst he is in the custody of a police officer, shall be proved as against such person, unless it is recorded by a Magistrate under section 164 of the Code of Criminal Procedure, 1973".

We recommend that it would be necessary to omit the words "under section 164" and add "in accordance with Chapter XII". With that modification, the section, after omitting the Explanation, will read as follows:

**Confession by accused while in custody of Police not to be proved against him**

"**26**. No confession made by any person whilst he is in the custody of a police officer, shall be proved as against such person, unless it is recorded by a Magistrate in accordance with Chapter XII of the Code of Criminal Procedure, 1973."

Section 27

We agree with the 69th and 152nd Reports that the relevancy of information relating to facts discovered should cover statements to police officers made by those in custody or not. Thus, the word 'or' has to be restored. That would mean that sec. 27 will cover the statement made under sec. 25 to a police officer while the person is not in custody.

We, differ from the proposal in the 69th Report to exclude information relating to discoveries in the case of confessions falling under sec. 24.

In order to avoid the police authorities in using sec. 27 indirectly violating sec. 25 and sec. 26, it will, in our opinion be advisable to confine sec. 27 to the 'facts' discovered as stated in the 152nd Report of the Commission.

We propose the following sec. 27 in the place of the existing sec. 27:

**Discovery of facts at the instance of the accused**

**"27.** Notwithstanding anything to the contrary contained in sections 24 to 26, when any relevant fact is deposed to as discovered in consequence of information received from a person accused of any offence, whether or not such person is in the custody of a police officer, the fact so discovered may be proved, but not the information, whether it amounts to a confession or not:

Provided that facts so discovered by using any threat, coercion, violence or torture shall not be provable."

Section 28:

In the 69th report (see para 11.60), no amendment was suggested to sec. 28 but that it should be remembered as sec. 24A as it is a qualification of sec. 24.

That would require deletion of sec. 28. As of now, nobody has any doubt that it qualifies sec. 24. We, therefore, feel that there is no necessity to delete sec. 28 and bring it in as sec. 24A.

We are of the view that in the light of the amendment proposed in sec. 24 in this Report, in sec. 28, for the words "inducement, threat or promise", the following words be substituted in the body of sec. 28 and the title, namely,

"inducement, promise, threat, coercion, violence or torture".

Section 29:

In the 69th Report, it was stated that there were two meanings as what was meant by "otherwise relevant". One view, as in Patna was that it must be a confession other than those referred to in sec. 24 to 28. The other view taken by the Bombay High Court was that it may be one admissible and not excluded by sec. 24 to 28 or by any other provision of law. The latter view was accepted and it was suggested that the words "is otherwise relevant" be replaced by the words "made by an accused person is not irrelevant or incapable of being proved under sec. 24 to 27 or to drop the word 'such' or that the word 'such' may be dropped. In fact, the Report stated that the dropping of the word 'such' is preferable.

The Commission considered sec. 29 in relation to sec. 164 and finally recommended that sec. 29 must be made subject to sec. 164(2) CrPC.

We entirely agree with these two recommendations and that sec. 29 should be redrafted as follows:

**Confession otherwise relevant not to become irrelevant because of promise of secrecy etc**

"**29. (1)** If a confession is otherwise relevant, it does not become irrelevant merely because –

(a) it was made

(i) under a promise of secrecy, or

(ii) in consequence of a deception practised on the accused person for the purpose of obtaining it, or

(iii) when he was drunk, or

(iv) in answer to questions which he need not have answered, whatever may have been the form of those questions.

(b) the accused person was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

(2) Subject to the provisions of section 463 of the Code of Criminal Procedure, 1973, nothing contained in sub-section (1) shall make a confession relevant which is recorded in contravention of the provisions of sub-section (2) of section 164 of that Code."

Section 30:

We do not think sec. 30 should be repealed. We recommend its retention in a modified form as follows:

**Consideration of proved confession affecting person making it and others jointly under trial for same offence or offences**

**"30.** When more persons than one are being tried jointly for the same offence or offences, and a confession made, before the commencement of trial, by one of such persons affecting himself and some other of such persons in respect of same offence or all the offences affecting himself and some other of such persons is proved, the Court may, where there is other relevant evidence against such other person or persons, take into consideration such confession as lending credence against such other person or persons as well as against the person who makes such confession.

Explanation: 'Offence' as used in this section, includes the abetment of, or attempt to commit the offence.

**Illustrations**

(a) A and B are jointly tried for murder of C. It is proved that A said – "B and I murdered C". The court may consider the effect of this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said – "A and I murdered C." This statement may not be taken into consideration by the court against A, as B is not being jointly tried."

Section 31

The 69th Report stated (see para 11.95) that section 31 does not require any amendment.

There are several principles laid down by Courts that an admission must be considered as a whole and may be accepted in part or rejected in part. We do not think that any further additions to sec. 31 are necessary.

We are in entire agreement with the 69th Report that no amendments are necessary for sec. 31.

Section 32

(A) We recommend that the opening part of section 32 will have to be amended as follows:

> **"**Statements, written or verbal, of facts in issue or relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose presence cannot be procured without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable, or who is kept out of the way by the adverse party, are themselves relevant facts in the following cases:"

We are of the view that the first recommendation in the 69th report that the statement as to cause of death of others should be made admissible by adding Explanation 2 is not acceptable to us.

(B) We disagree with the recommendations made in the 69th Report so far as clause (1) of section 32 is concerned and recommend that the said clause be left as it is.

Clause (2) of section 32

The Commission, however, recommended splitting up of clause(2) of sec. 32 in clauses (2) and (2A), the former dealing with the first part of clause (2) of sec. 32 which is general in nature and the latter, dealing with specific particular situations as follows.

We agree that clause (2) of section 32 be amended by splitting it up into clauses (2) and (2A) as follows:

> "(2) **or is made in course of business:** When the statement was made by such a person in the ordinary course of business and, in particular, and without prejudice to the generality of the foregoing provisions of this clause, when it consists of any entry or memorandum made by him in books kept in the ordinary course of business.

> (2A) **or is made in discharge of professional duty etc**: When the statement consists of an entry or memorandum made by such person in the discharge of professional duty or of an acknowledgement written or signed by such person in respect of the receipt of money, goods, securities or property of any kind, or of a document used in commerce, written or signed by him or of the date of a letter or other document usually dated, written or signed by him"

The Commission felt in its 69th report (see para 12.102) that the first interpretation had superior merit in bringing about clarity and avoiding artificiality. Accordingly, it was suggested (see para 12.103) that the first part of clause (2) of sec. 32, as it stands, should be confined to statements made 'in the ordinary course of business' and that a new clause should be introduced, namely, clause (2A) to deal with the enumerator type of statements in the second part of clause (2) of sec. 32, where the statements could be those made in the ordinary course of business or otherwise (as in the case of letter written by a husband to his wife of which Rammurthi vs. Subba Rao AIR 1937 Mad 19 was quoted as an example.

We are in agreement with the recommendation for splitting up clause (2) of sec. 32 into clauses (2) and (2A) for purposes of clarity and for avoiding artificiality. We have already extracted the clauses (2) and (2A) as proposed.

Clause (3) of section 32

In the 69th Report, it was finally recommended that such recitals should not be admissible and that, therefore, an Explanation as stated below is to be added below clause (3) of section 32.

> "Explanation: Recitals of boundaries containing statements as to the nature or ownership of adjoining lands of third persons are not statements against pecuniary or proprietary interest within the meaning of this clause".

We are not in favour of adding the Explanation below sec. 32(3) as suggested above.

We have recommended insertion of an Explanation in sec. 13 as Explanation II so far as boundary recitals are concerned. We recommend a like Explanation be added below clause (3) of section 32 as follows:

> "Explanation: A recital as regards boundaries of immovable property in document containing such statements, as to the nature or ownership or possession of the land of the maker of the statement or of adjoining lands belonging to third persons, which are against the interests of the maker of the statement, are relevant and it is not necessary that the parties to the document must be the same as the parties to the proceedings or their privies."

Clause (4) of Section 32

We have perused the reasons given and we agree with the view that no specific amendment is necessary in clause (4) of sec. 32.

Clauses (5) and (6) of Section 32

We agree that no amendments need be made in clauses (5) and (6) of section 32.

Clause (7) of Section 32

Clause (7) of Sec. 32 should read as follows:

> "(7) **or in documents relating to transactions mentioned in section 13, clause (a)**:When the statement is contained in any deed, will or other document, being a deed, will or other document which relates to any transaction by which a right or custom was created, claimed, modified, recognized, asserted or denied or which was inconsistent with its existence, as mentioned in clause (a) of section 13.

Explanation I:- Such statement is relevant where the question in the proceeding now before the court is as to the existence of the right or custom or if such statement related to facts collateral to the proceeding and it is not necessary that the parties to the document must be the same as the parties to the proceeding or their privies.

Explanation II:- A recital as regards boundaries of immovable property in a document containing such statement, as to the nature or ownership or possession of the land of the maker of the statement or of adjoining lands belonging to third persons, shall be relevant and it is not necessary that the parties to the document must be the same as the parties to the proceeding or their privies."

Clause (8) of Section 32:

In the 69th Report, it was observed that clause (8) of sec. 32 did not require to be amended (see para 12.189). We agree with this recommendation.

Section 33

We accept generally the recommendation in para 12.215 of the 69th Report but we have changed the format of the proposed amendments.

We, therefore, recommend that sec. 33 be revised as follows:

**Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated**

"**33**. Evidence given by a witness –

(a) in a previous judicial proceeding, or

(b) in an earlier stage of the same judicial proceeding, or

(c) in any proceeding before any person authorized by law to take evidence,

is relevant in a subsequent judicial proceeding before a court, for the purpose of proving the truth of the facts which it states, when the witness is dead, or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided-

(i) that the subsequent proceeding before the Court is between the same parties or their representatives in interest;

(ii) that the adverse party in the first proceeding had the right and opportunity to cross-examine;

(iii) that the questions in issue are substantially the same in the first as in the subsequent proceeding.

Explanation:- A criminal trial or inquiry shall in cases ,

(a) where the criminal proceedings are instituted by a private person, be deemed to be a proceeding between that person and the accused within the meaning of this section, if that person is permitted by the Court to conduct the prosecution under section 302 of the Code of Criminal Procedure, 1973; and

(b) other than those referred to in clause (a), be deemed to be a proceeding between the State and the accused."

## Section 34

We do not think any amendment of section 34 is needed. We agree with conclusion in the 69th Report. We however agree (see para 13.27 of 69th Report) that the words "such statements" be substituted by the words "such entries".

Section 35:

We agree with the recommendation in the 69th Report (see para 14.20) that sec. 35 be revised with slight modification as follows:

**Relevancy of entry in public record or in electronic record made in performance of public duty**

"**35.** An entry in any public or other official book, register, record or electronic record stating a fact in issue or relevant fact, and made by

(a) a public servant in the discharge of his official duty, or

(b) any other person in performance of a duty specially enjoined by the law of the country in which such book, register, record or electronic record is kept,

is itself a relevant fact."

Section 36:

In the 69th Report, it was pointed out firstly (see para 14.32) that the words 'maps or plans or charts' must appear in the first and second parts of sec. 36. As at present, in the first part which refers to those offered for public sale, 'plans' are not included while in the second part which refers to those made under the authority of Government, 'charts' are not included.

Secondly, it was stated (see para 14.34) that the opening part of the section which refers to "statements of facts in issue or relevant facts" is governed by the words in the latter part, namely, "as to matters usually represented or stated" and that this idea must be prominently brought out by suitable amendment.

We do not think it necessary to accept the second part of the recommendation of the 69th report. Further, the words "as to matters usually represented or stated" cannot easily be particularized.

We recommend, that the first recommendation be accepted by referring to the words 'maps, charts and plans' at the two places in sec. 36. We recommend the following draft of revised section 36:-

**Relevancy of statements in maps, charts and plans**

"**36**. Statements of facts in issue or relevant facts -

(a) made in published maps, charts or plans generally offered for public sale; or

(b) contained in published maps, charts or plan made under the authority of the Central Government or any State Government,

as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts."

Section 37:

We recommend that section has to be revised as follows:

**Relevancy of statement as to fact of public nature contained in certain Acts or notifications**

**"37.** When the Court has to form an opinion, as to the existence of any fact of a public nature, any statement of it made in a recital contained –

(a) in any Central Act, Provincial Act, or a State Act, or
(b) in a Government notification appearing in the Official Gazette, or
(c) as respects the period before 15th day of August, 1947 –
  (i) in any Act of Parliament of the United Kingdom, or
  (ii) in a Government notification appearing in any printed paper purporting to be the London Gazette or the Government Gazette of any Dominion, colony or possession of His Majesty, or

(iii) in a notification by the Crown Representative appearing in the Official Gazette,

is a relevant fact."

Section 38:

We agree with the recommendation in para 14.59 of the 69th Report but instead of the words 'other than India', the words 'outside India' are appropriate (as in the English Act of 1972) and have to be added after the words 'any country'.

Section 39:

The 69th report recommended that a subsection be added in sec. 39 that where a party has failed to give evidence any part of the statement, conversation etc. which is necessary, the other party may give that part in evidence. The proviso in the existing sec. 39 'as the court considers necessary' is deleted. Discretion of the court is substituted by discretion given to the other party. Sec. 39 is split up into two subsections and a revised sec. 39 is recommended in the 69th Report as follows (the underlined words are new):

"39. (1) When any statement of which evidence is given –

(a) forms part of a longer statement or of a conversation or of an isolated document, or

(b) is contained in a document which forms part of a book or of a connected series of letters or papers,

then, subject to the provisions of subsection (2), the party giving evidence of the statement shall give in evidence so much, and no more, of the statement, conversation,

document, book or series of letters or papers as is necessary in that particular case to the full understanding of the nature and effect of the statement and of the circumstances under which it was made.

(2) Where such party has failed to give in evidence any part of the statement, conversation, document, book or series of letters or papers which is necessary as aforesaid, the other party may give that part in evidence."

We agree with the above recommendation subject to the further amendment consequent to Act 21/2000 by adding the words 'or is contained in part of electronic record' after the word 'book' in proposed clause (b) of subsection (1) and later adding the words 'electronic record' after the word 'document' in the same subsection (1). We also recommend that the words 'electronic record' be added after the word 'document' in proposed subsection (2) also.

The revised section 39 should read as follows:

**HOW MUCH OF A STATEMENT IS TO BE PROVED**

**What evidence should be given when statement forms part of a conversation, electronic records, document, book or series of letters or papers**

"**39.**(1) When any statement of which evidence is given –

(a) forms part of a longer statement or of a conversation or part of an isolated document or part of an electronic record, or

(b) is contained in a document which forms part of a book or is contained in part of an electronic record or of a connected series of letters or papers,

then, subject to the provisions of subsection (2), the party giving evidence of the statement shall give in evidence so much, and no more of the statement, conversation, document, electronic record, book or series of letters or papers as is necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

(2) Where such party has failed to give in evidence any part of the statement, conversation, document, electronic record, book or series of letters or papers which is necessary as aforesaid, the other party may give that part in evidence."

Sections 40

We, agree with the recommendation in para 16.12 of the 69th Report that sec. 40 be revised as follows:

> **JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT**
>
> **Previous Judgments relevant to bar a second suit or trial**
>
> **"40**. The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or issue or holding a trial or determining a question, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or issue, or to hold such trial or determine such question, as the case may be."

Section 41:

The 69th Report, however, discussed issues as to lunacy jurisdiction and recommended (para 16.32) that as does not fall in any one of the four enumerated categories, the order in that behalf under the Indian Lunacy Act is not a judgment in rem though it may be binding between parties and privies. We do not, however, think that this classification is necessary for it is no different from the cases of legitimacy, adoption etc. referred to above.

We recommend that it is sufficient if an Explanation can be inserted below sec. 41 to the following effect:

> "Explanation: An order refusing to grant probate does not fall within the scope of the section."

Section 42:

We are of the view that the 69th Report did well in not proceeding with the proposed sec. 42A to make previous convictions admissible in latter cases. We leave the matter at that.

Section 43:

In para 16.95, 16.97, 16.145 of the 69th report, the Commission had not unfortunately chosen to delete reference to sec. 42A proposed sec. 43A of the 69th Report. This section was proposed in the 69th Report (see paras 16.72 and 16.73) for treating as relevant the summary of pleadings in an earlier judgment.

We are of the view that there is no need to have a separate sec. 43A to make summary of pleadings contained in an earlier judgment relevant. The summary prepared by the court is relevant u/s 35, a part of a public record. In the 69th Report, in paras 16.72 and 16.73, the above change in the case law and the observation of the Privy Council were not noticed. No change is necessary in sec. 43. Nor it is necessary to have sec. 43A as proposed in that Report.

Section 44:

The 69th Report did not suggest any changes in sec. 44 except to add proposed sec. 44A. But as we have omitted the proposal for sec. 43A (and also proposed sec. 42A), there is no need even for a formal amendment of sec. 44.

In the above Report, it was felt that there was some conflict of opinion in the High Courts as to the right of a minor or other person under disability to sue to set aside a judgment on the ground of negligence of the guardian ad liten on the next friend.

We do not think that it is necessary to have a separate provision merely because of the Bombay view in Krishna Das vs. Vilhoba, AIR 1939 Bom 66 and two other Bombay cases, in as much as there are decisions of the Privy Council and Supreme Court to the contrary.

Section 45

In the 69th Report, after an elaborate discussion, the Commission recommended (end of para 17.44) to include 'footprints, palm impressions or typewriting, as the case may be' in sec. 45 and further recommended insertion of sec. 45A in regard to the duty of an expert witness to supply copy of his report to all parties, along with the grounds for opinion.

Sec. 45B was proposed to cover expert opinion on 'foreign law' as in the statutes of 1859, 1861 with two subsections.

We do not think 'foot prints and palm impressions' alone be added in 45. Typewriting, trade, technical terms, inventory of persons or animals must also be added. Section 45 should be amended as follows:

> For the portion beginning with the words "When the court has to form an opinion" and ending with the words "Such persons are called experts" the following shall be substituted, namely:-
>
> > "When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to the identity of handwriting, or finger impressions or, footprints or, palm impressions or typewriting or usage of trade or technical terms or identity of persons or animals, the opinions, upon that point, of persons specially skilled in such foreign law, science or art, or as to the identity of

handwriting, finger impressions, footprints, palm impressions, typewriting, usage of trade, technical terms or identity of persons or animals, as the case may be, are relevant facts. Such persons are called 'experts'."

Sec. 45A is to be inserted in regard to the duty of an expert witness to supply a copy of his report to all parties along with the grounds for opinion. No doubt, this is procedural and could be inserted in the Code of Civil and Criminal Procedure but instead, it could as well form part of the Evidence Act. The Report should be 'verified'. In this connection, we would wish to expand sec. 45 as proposed in the 69th Report further, on the model of the UK 'Practice Directions, Supplementary Civil Practice Rule 35' set out in para 44.24 of Phipson, in the manner stated below. We modify proposed sec. 45A as follows (see Phipson, paras 44.20 and 44.224):

**Supply of copy of Expert`s Report**

"**45A**. (1) Except by leave of the Court, a witness shall not testify as an expert unless a copy of his report has, pursuant to subsections (2) and (3), been given to all the parties.

(2) An expert's report shall be addressed to the Court and not to the party on whose behalf he is examined and he shall owe a duty to help the Court and this duty shall override any obligation to the party on whose behalf he is examined.

(3) An expert's report must -

(a) give details of the expert's qualifications;
(b) give details of any literature or other material which the expert has relied on, in making the report;
(c) state who carried out any test or experiment which the expert has used for the report and whether or not the test or experiment has been carried out under the expert's supervision and the reasons if any, given by the person who conducted the test;
(d) give the qualifications of the person who carried out any such test or experiment;
(e) where there is a range of opinion on the matters dealt with in the report –

(i) summarise the range of opinion, and

(ii) give reasons for his own opinion;

(f) contain a summary of conclusions reached;

(g) contain a statement that the expert understood his duty to the Court and has complied with that duty;

(h) contain a statement setting out the substance of all material instructions (whether written or oral) of the party on whose behalf he is examined.;

(i) be verified by a statement of truth as follows:
"I believe that the facts I have stated in the report are true and that the opinion I have expressed are correct "; and

(j) contain a statement that the expert is conscious that if the report contained any false statement without an honest belief about its truth, proceedings may be brought for prosecution or for contempt of Court, with the permission and under the directions of Court."

Section 45B proposed by the 69th Report

The 69th Report contains a separate chapter (ch. 18) on the question of expert opinion on 'Foreign Law' and referred to the procedure in UK, USA etc. and to Indian law e.g., sec. 26 of the Negotiable Instruments Act, sec. 11 of the Contract Act relating to capacity, the constitutionality of foreign law, and specially to the British statutes applicable to India (sec. 5, Report of the Law Commission of India, page 45, entry 55, and the British States (Application to India) Repeal Act, 1900 (Act 58 of 1960). The 69th Report stated: (see p. 348)

"whether they (British statutes) should be incorporated in the Evidence Act or elsewhere, is a matter of detail, which we leave to the draftsman"

The Recommendation for insertion of sec. 45B in the 69th Report (see p. 348-349) is as follows: (18.33, though para number not given)

"In the light of the above discussion, we recommend

(a) insertion of a provision requiring notice to be given where a party in a civil case desires to raise a question of foreign law;

(b) incorporation of the substance of the British statutes of 1859 and 1861 into our statute law;

(c) insertion of a provision enabling the court to look at the relevant material relating to foreign law, where it considers such a course necessary in the interests of justice."

The Report stated that the second point (b) mentioned above maybe preferably inserted in a separate law. It was suggested that the first and third (i.e. (a) or (c)) could be inserted in the Evidence Act, as sec. 45B, somewhat on the following lines:

"(1) A party to a suit or other civil proceeding who intends to raise an issue concerning the law of a foreign country, shall give notice in his pleadings or other reasonable notice;

(2) the court, in determining a question of foreign law, in any case, may after notifying the parties, consider any relevant material or source, including evidence, whether or not submitted by a party, and the decisions of the court, shall be treated as a decision on a question of law."

<u>Our Recommendation on sec. 45B & British statutes of 1859, 1861</u>:

So far as the above recommendation for insertion of sec. 45B with different subsections, we do not want to repeat the reasons given in the 69th Report but we wholeheartedly support the recommendation.

So far as the recommendation for making a separate Act incorporating the substance of British statutes of 1859 and 1861 are concerned, we are of the view that it is unnecessary.

We recommend that the proposed section 45B should be as follows:

**Procedure to prove foreign law and Court's power**

**"45B.** (1) A party to a suit or other civil proceeding who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice.

(2) The Court, in determining a question of foreign law, in any particular case may, after notifying the parties, consider any relevant material or source, including evidence, whether or not submitted by a party, and the decision of the Court shall be treated as a decision on a question of law".

Section 46:

Sec.46 does not require any change.

Section. 47:

Section 47 is clear enough and has not required any change. We agree with this view.

Sec. 47A.

The section was inserted by Act 21/2000 w.e.f. 17.10.2000 and says 'opinion as to digital signature, when relevant'. No further amendment is necessary.

Section 48: We recommend that sec. 48 be substituted as follows:

**Opinion as to existence of right or custom, when relevant**

"**48.** When the Court has to form an opinion as to the existence of any general or public right or custom or any matter of general or public

interest, the opinions, as to the existence of such right or custom or such matter, of persons who are likely to know of its existence if it existed or of that matter, as the case may be, are relevant.

***Explanation***: The expression 'general or public right or custom or any matter of general or public interest` includes rights or customs or matters common to any considerable class of persons.

**Illustration:-**

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section."

Sec.49:

The section requires no change.

Sec. 50:

We agree with the recommendation in the 69th Report that the proviso in sec. 50 be amended as follows:

"Provided that such opinion shall not be sufficient in any civil or criminal proceedings, where a person has to prove that there was a marriage"

Section 51:

The 69th Report said the section requires no change. We agree. Further, we have already recommended sec. 45A that an expert should submit a copy of his report to the parties and that the report must contain reasons for his opinion.

Section 52

The 69th report states (see ch. 20 p. 555) that no change is necessary in sec. 52. We agree.

Section 53:

In the 69th report, it was stated (p. 357) that sec. 53 does not require any change. We agree.

Section 53A (as proposed)

This section was proposed in the 172nd Report of the Law Commission. The section as proposed referred to the following sections of the IPC, namely, 376, 376A, 376B, 376C, 376D and 376E. But, as of now section 376E has not been brought into the Indian Penal Code. We therefore propose introduction of sec. 53A as follows:

> **Character of victim not relevant in certain cases**
>
> **"53A**.. 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, evidence of the character of the victim or of her previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent."

Section 54:

So far as sec. 54 is concerned, it was stated in the 69th Report (see Page 357) that he substance of the section need not be disturbed but annexure is necessary in respect of some detail because, and that for the

words "unless evidence has been given that he has a good character, in which case it becomes relevant" be substituted by the words:

> "unless evidence has been given that he has good character whether through witnesses for defence or through cross examination of witnesses for the prosecution or in any other manner, in which case it becomes relevant."

**Sec. 55:**

In the 69th Report it was suggested (see p.358) that as to 'Libel action', in a suit for damages for defamation for injury to reputation of a person, evidence of character should relate to that aspect of that person's character to which the libel relates and that this recommendation is in furtherance of the approach of the 69th Report to sec. 12 (see para 8.40 of the Report).

On a consideration of this aspect, we are of the opinion that the above aspect is indeed a matter on facts in each case, and that no special provision need be made in sec. 55 to cover cases of libel.

Section 56:

This section as pointed out in para 21.21 of the 69th report, is introductory in nature and requires no amendment.

Section 57:

(A) The 69th report suggested to add Explanations below clause(1) of sec. 57 on the basis of which, we recommend that the following two explanations be added:-

> **"Explanation I**:-Where, by virtue of this section, the Court is bound to take judicial notice, and the question relates to the existence, extent, commencement of the terms of a statutory instrument, the Court shall, for the purpose of deciding the question, resort for its aid to appropriate books or documents of reference, if such books or documents are readily available, before calling upon the party concerned to produce such books or documents.
>
> **Explanation II:-**'Statutory instrument' means a rule, notification, bye-law, order, scheme, or other instrument made under an enactment';

(B) Clauses (2) to (6) of section 57:

The 69th Report suggested the revision of clauses (2),(4), (5) and (6) of section 57(see para 21.49).

We agree with the 69th Report that clauses (2),(4), (5) and (6) of section 57 be revised as follows:-

> "(2) All public Acts passed by Parliament of the United Kingdom before the fifteenth day of August 1947 and local and personal Acts directed by Parliament of the United Kingdom before that date, to be judicially noticed;"
>
> "(4) The course of proceeding of Parliament of the United Kingdom before the fifteenth day of August 1947, of the Constituent Assembly of India, of Parliament and of legislatures established under any laws for the time being in force in a Province before the said date or in the States;
>
> (5) The accession and sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland in relation to any act done before the fifteenth day of August 1947;
>
> (6) The following seals, that is to say,

(a) All seals of which English Court take judicial notice in relation to any act done before the fifteenth day of August 1947:

(b) The seals of all Courts in India;

(c) Seals of all Courts out of India, established by the authority of the Central Government;

(d) Seals of law Courts established by the authority of the Crown Representative in relation to any act done before the fifteenth day of August 1947.

(e) Seals of Courts of Admiralty and Maritime Jurisdiction and Notaries Public; and

(f) All seals which any person is authorized to use by an Act of Parliament of the United Kingdom in relation to any act done before the fifteenth day of August 1947 or by the Constitution of India or an Act or Regulation having the force of law in India;"

(C) Clause (7) of Section 57 :

As Clause (7) of Section 57 did not refer to offices holding office in India, it was recommended in the 69th Report (para 21.50), that the matter should be added and Clause (7) of Section 57 be revised as follows to which we agree:

(7) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in India or any State, if the fact of their appointment to such office is notified in any Official Gazette;"

(D) Clauses (8) to (13) of section 57:

We agree with the 69th Report that no amendment is called for in these clauses.

(E) Second Para of Section 57:

This para refers to the powers of the court to refer to appropriate literature for reference and does not require any amendment. We agree with para 21.53 of the 69th Report.

(F) Third Para of Section 57:

This para confers a discretion of the court to refuse to take judicial notice in the absence of sufficient material. We agree that this paragraph does not also require any amendment.

Proposed Section 57A:

We agree with the recommendations in para 22.13 of the 69th Report for deleting section 87 A (2) from the Code of Civil Procedure, 1908 and for insertion of section 57A in the Evidence Act, as stated hereinbelow: [this will be sub-section (1)]

In addition, we further recommend that a procedure for a certificate as in section 5 (1) and (2) of the Foreign Jurisdiction Act, 1947 be added as sub-section (2) and (3). The proposed section 57A will read as follows:-

**Court to take judicial notice of certain matters relating to foreign states**

" **57A**. (1) Every Court shall take judicial notice of the fact –

(a) that a State has or has not been recognized by the Central Government;
(b) that a person has or has not been recognized by the Central Government as head of a State.

(2) If, in any Court, questions with reference to sub-section (1) arise, the Secretary to the Government of India in the appropriate department shall, on the application of the Court, forward to the Court, the decision of the Central Government on the question, and that decision shall, for the purpose of the proceeding, be final.

(3) The Court shall forward to the said Secretary, in a document under the seal of the Court and signed by a Judge of the Court, questions framed so as properly to raise the question, and sufficient answers to those questions shall be returned to the Court by that Secretary and those answers shall, on production thereof, be conclusive evidence of the matters therein contained."

Section 58:

We agree with para 23.9 of the 69th Report to add the words "other than in a criminal prosecution", after the words "in any proceeding".

Section 59

In the 69th Report (see Chapter 24) after some discussion, it was pointed out in para 24.94 that the section is not happily worded (as stated by Woodroffe and Amir Ali) in so far as it implies a mandatory rule that the contents of documents can never be proved by oral evidence. In certain circumstances, the contents may be proved by oral evidence, when such evidence of their contents is admissible as secondary evidence (see sec. 63(5). However, it was said that it is like a minor point, not calling for amendment. We, however, think that the matter should be placed beyond controversy and we recommend that section 59 be redrafted as follows:

**Proof of facts by oral evidence**

"**59.** (1) Subject to the provisions of sub-section (2), all facts may be proved by oral evidence.

(2) Save as otherwise expressly provided under this Act, the contents of documents or electronic records shall not be proved by oral evidence."

Sec. 60:

We recommend addition of a second proviso as follows in section 60:

"Provided further that the opinion of the expert expressed in writing, and the grounds on which such opinion is held, may be proved without calling the expert as a witness, unless the Court otherwise directs, having regard to the circumstances of the case, where the expert –

(i) is an employee of the Central or State Government or of a local authority or of a University or other institution engaged in research and has been consulted by the Court on application of a party or on its own motion; or

(ii) recorded the opinion in the course of his employment,

subject however to the right of either party to summon the expert for the purpose of cross-examination."

Section 60A: proposed in the 69th Report in regard to "evidence of age" proposed given up as the Commission felt that the provision will be abused. We respectfully agree.

Section 61:

So far as section 61 is concerned, the 69th Report stated (see para 27.11) that it does not require any arrangement. We respectfully agree.

Section 62:

The 69th Report stated that section 62 does not require any amendment. We agree.

Section 63:

We are of the view that clauses (b) and (g) of section 65 cannot be included in the definition of 'secondary evidence' by adding them to section 63 because they do not bring in the whole document. But, as clauses (b) and (g) of section 65 make evidence admissible, otherwise then of the original document, such evidence must be 'secondary evidence', if it is not 'primary evidence' because we do not have a third category. Thus section 63 cannot ignore the concepts behind clauses (b) and (g) of section 65. The only way this can be achieved, and further scope for scientific developments can also be given, is to drop the word "means and" from the opening portion of the section 63.

In the 69th Report, three clauses were separately considered (see paras 29.23 to 29.28) and it was stated that no amendment was called for except in clauses (3) and (5) of section 63. In clause (3) of section 63, for the words 'made from or compared', the words 'made from and compared' will have to be substituted. Similarly in clause (5), for the words 'given by some person who has himself seen it', the words 'given by some person who has himself read it', shall be substituted.

Section 64:

In the 69th Report, it was observed that no amendment of section 64 is necessary. We respectfully agree.

Clause (a) of Section 65:

(A)We are of the view that the two paras in clause (a) of sec. 65 be numbered as sub clauses (i) and (ii) and clause (aa) be added, as follows:

> "(a) when the original is shown or appears to be in the possession or power –
>
> > (i) of the person against whom the document is sought to be proved; or of any person out of reach of, or not subject to, the process of the Court and such person does not produce the original; or
> >
> > (ii) of any person legally bound to produce it, and such person, after receiving the notice mentioned in section 66, does not produce it; or
>
> (aa) when the original is shown or appears to be in the possession or power of any person not legally bound to produce it, and such person, after receiving notice from the Court at the instance of any party to produce the original, does not produce it."

(B) In our view, no clarification is necessary so far as clause (a) to (d), (g) are concerned but it is necessary in the last part of the penultimate para of the section, where negative words are used, to substitute the following words:

> "In case (e) or (f), unless some other clause of this section applies, certified copy of the document, but no other kind of secondary evidence, is admissible", shall be substituted for the words,
>
> "In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible."

The 69th Report suggested that in the above clause, the words "unless some other clause of this section applies" be added, as stated above.

Clause (b) of Section 65: In the 69th Report, it was stated (see para 30.15) that no changes are required in clause (b) of sec. 65. (see also below clauses (d) to (g) of sec. 65).

Clause (c) of Section 65: This clause need not be amended.

Clauses (d) to (g) of Section 65:

These clauses require no change.

Sections 65A & 65B: These sections were introduced by Act 21/2000.
We do not think that any amendment is necessary in this section.

Section 66:
In the 69th Report (see para 30.29), it was stated in para 30.29 that no amendment is necessary in this section. We, however, recommend that in view of our proposals for amendment of sec. 65(1)(a) by inserting in sub clause (iii), a consequential amendment in section 66 by using the words "sub clause (i) and (ii) of clause (a)" for the words "clause (a)".

Section 67:

After some discussion of sec. 67 (including case of registered documents), the 69th Report stated (see para 31.15) that no amendment is necessary except to add the following Explanation:

> "Explanation:- In this section and in sections 68 to 73, the expressions 'execution' or 'signature' in relation to wills shall have the same meaning assigned to them under section 63 of the Indian Succession Act, 1925 and the expression 'attestation' shall mean signing or putting a mark by the attestor."

Section 67A:

This section was inserted by Act 21/2000 and deals with 'proof of digital signature'. It states that 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 signature is the digital signature of the subscriber must be proved. No amendment is necessary here.

Section 68:

We recommend that sec. 68 be redrafted as follows:

> **Proof of execution of will required by law to be attested**
>
> "**68.** (1) If a will is required by law to be attested, it shall not be used as evidence of any testamentary disposition until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive and subject to the process of the Court and capable of giving evidence.
>
> (2) Notwithstanding anything contained in sub-section (1), an attestor need not be called as a witness to prove the execution of a will if,-

(a) the attesting witness is incapable of giving evidence; or is kept out of the way by the opposite party or by another person in collusion with that party or is one whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable; or
(b) the will is in the possession of the opposite party; or
(c) a party wants to refer to any collateral fact contained in the will; or
(d) the provisions of section 89 or section 90 apply."

Section 69:

The 69th Report recommended (para 32.37 & 32.30) for replacing the word by the word 'will' and for omitting the words "or if the document purports to have been executed in the United Kingdom". We agree but propose a slight change.

The revised section, as recommended, should be as follows:

**Proof where no attesting witness is found**

**"69**. If no such attesting witness can be found as specified under sub-section (1) of section 68, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the will is in the handwriting of the executant of the will."

Section 70:

We recommend sec. 70 to be revised as follows:

**Admission of execution by party to attested will**

**"70.** The admission by the executant of an attested will of its execution shall, if such admission is made during his lifetime in a pleading or otherwise in the course of a suit or proceeding, be sufficient proof of its execution as against those who dispute the execution, though the will is one required by law to be attested."

Section 71:

The 69th Report recommended that sec. 71 should be revised as follows:

> "71. If the attesting witness called for the purpose of proving execution denies or does not recollect the execution of the will, its execution may be proved by other evidence and it shall not be necessary to call any other witness."

Instead, we recommend sec. 71 be revised as follows:

**Proof when attesting witness denies the execution**

**"71.** If the attesting witness called for the purpose of proving execution of a will denies or does not recollect the execution of the will, its execution shall, subject to the provisions of section 68, be proved, by calling other attesting witnesses, before other evidence is adduced."

Section 72:

We propose sec. 72 be revised as follows:

**Proof of wills or other document not required by law to be attested**

**"72.** An attested will or other document not required by law to be attested may be proved as if it was unattested."

Section 73:

We recommend that the section 73 be redrafted as follows:

**Comparison of signature, writing or seal with others admitted or proved**

**"73.** (1) In order to ascertain whether a signature, writing or seal is that of the person by whom it is alleged to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared by the Court or under its orders with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

(2) The Court may direct any person present in Court to write any words or figures for the purpose of comparison of the words or figures so written with any words or figures alleged to have been written by such person.

(3) This section applies also, with any necessary modifications, to finger impressions, palm impressions, footprints and type-writing.

(4) Without prejudice to the provisions of any other law for the time being in force, nothing in this section shall apply to a criminal Court before it has taken cognizance of an offence."

Section 73A:

We do not think that any change is necessary in this section.

Section 74:

We agree with the 69th Report but propose a modified Explanation to be added in clause (1) of sec. 74, using the word 'deemed'. It will read as follows:

"Explanation:- Records forming part of a case leading to a judgment of a Court or an order of a public officer, if the order is pronounced judicially, shall be deemed to be public documents."

Section 75:

In the 69th Report, it was stated in para 34.20 that it needs no change. We agree.

Section 76:

After referring to the provision of various Indian statutes and some English statutes, the 69th Report observed in paras 35.14 to 35.17 that it is necessary to clarify that:

> "whenever copies are required to be given to a person under a statutory provision, or non-statutory-rule or order made by the government, even if it be non-statutory, the document should be regarded as on which that person has a 'right to inspect'."

. We agree with this recommendation in para 35.17 and this aspect is brought out in Explanation II, referred to hereinafter.

The 69th Report then refers to 'confidential documents' and (after referring to the conflicting Bombay, Calcutta and Allahabad decisions) observed that to deny copy of a document for inspection on the ground of confidential nature of the document, is not correct. In para 35.22 it was rightly pointed out that keeping a document confidential from others is different from keeping it confidential from the persons whom it concerns or affects. The Commission, in para 32.25 also referred to documents relating to affairs of the State which, in any event, the Court can peruse.

The 69th Report then recommended, in para 35.30 that the Explanation now contained in sec. 76 be numbered as Explanation 1 and that new Explanations 2 and 3 be added as follows:

> "Explanation 2: For the purposes of this section, it is not necessary that the public should have a right to inspect the document and it is sufficient if the person demanding a copy has a right to inspect the document of which the copy is demanded.

> Explanation 3: When a person has by a law a right to inspect a document or to a copy thereof, or where a rule or order made by the Government allows a copy to be given, this section applies, notwithstanding any provision of law requiring that the document should be treated as confidential in regard to other persons."

Explanation 3 purports to the clarification referred to above that a person who has a right to a copy has a right to inspect but the idea is not clearly brought out. The common law rule is also to be reflected.

We agree that Explanation 2 be inserted as above but, Explanation 3 be modified as stated below.

> "Explanation 3- If a person has a right to obtain a copy of a document, he shall be deemed to have a right to inspect; and where a person has been conferred by any law , a right to inspect or a right to obtain a copy thereof or where a rule or order made by the Government allows a copy to be given, this section applies notwithstanding any provision of law requiring that the document shall be treated as confidential as regards other persons."

Section 77:

We recommend addition of the following Explanation in sec. 77:

> " Explanation:- If a certified copy is in fact issued, the same shall be admissible irrespective of whether it has been issued pursuant to a right to inspect or a right to obtain a certified copy."

Section 78:

In the 69th Report, changes were recommended in clauses (1), (2), (3) and (6). No changes were considered necessary in clauses (4) and (5).

The above proposals are formal and we think it is sufficient to refer to them.

78(1): The reference to the Crown representative is to be confined to the period before 15th August, 1947.

(2) The word 'legislatures' is to be substituted by the word 'Parliament or of the Legislature of any State'.

(3) Insert clause (2A) after clause (2) and above clause (3) in section 78, as follows:

> "(2A) the unpublished and private proceedings of a legislature or its Committees,
>
> by a certified extract of the proceedings issued under the signature and seal of the presiding officer of the legislature concerned or of the Chairman or head of the Committee of the legislature concerned."

(4) Add the words 'as respects the period before the 15 day of August, 1947', before the words 'proclamations, orders or regulations issued by Her Majesty's Government'.

(3) Split up clause (6) as under:

> "(6). Public document of any other class in a foreign country,
>
> (a) by the original, or
> (b) by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of an Indian Consul or diplomatic officer, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country."

Section 79:

In the 69th Report, after an elaborate discussion, it was recommended (see para 37.27) that the following words in sec. 79 be omitted.

> "or by any officer in the State of Jammu and Kashmir, who is duly authorized thereto by the Central Government."

We agree with the recommendation

Yet another recommendation (see para 37.9) refers to Parliamentary proceedings. A Committee on Privileges of Lok Sabha (Report F No. 3(1)/55.L.C. Part I, S.No.5) (vide Notes of Ministry of Home Affairs F.No. 22/4/58-Judl) (Ministry of Law, U.O.No.20(1)58-Leg.II, dated 21.7.59) recommended that normally, when documents connected with Parliament are to be produced in a court of law, certified copies should be considered sufficient evidence of such documents, and that, if necessary, the Evidence Act may be amended to that extent.

Under sec. 78(2) of the Evidence Act, the proceedings of the legislatures can be proved by journals of the legislatures or published Acts or abstracts, or by copies purporting 'to be printed by the order of the Government concerned'. This is so far proceedings of legislatures which are published. Question remains regarding proceedings of legislatures which are not published. They may (according to para 37.8 of the 69th Report) be classified as follows:

(a) documents which form 'the acts and records of acts' of Parliament, and

(b) documents which do not form the acts or records of acts of Parliament.

(a) The Law Commission in the 69th Report pointed out (para 37-8) that category (a) would fall under 'public document' referred to in sec. 74(1)(iii), so that certified copies can be given under sec. 76 and such certified copies can, under sec. 77, be accepted in evidence without production of the original under sec. 77.

(b) In regard to the (b) category, the Law Commission said (see para 37.9) that the only question to be considered was the extension of the beneficial provisions of section 79 (presumption as to the genuineness of certified copies), to certified copies of such documents. The Commission recommended accordingly.

We agree.

Therefore section 79 should be amended as follows:-

> For the words "duly certified by any officer of the Central Government or of a State Government or by any officer in the State of Jammu and Kashmir, who is duly authorized thereto by the Central Government," the following shall be substituted, namely:-
>
> "duly certified by any officer of the Central Government or of a State Government or by the presiding officer of the legislature concerned or of the Chairman or head of the Committee of the legislature concerned."

Section 80:

In sec. 80, after the words 'taken in accordance with law,', the following words be added:

> "or to be a statement recorded by a Magistrate under section 164 of the Code of Criminal Procedure, 1973."

Section 81:

We agree with the 69th Report (see para 37.3) that the presumption in respect of (1) London Gazette, (2) the Government Gazette of any colony, dependency or possession of the British Crown and a private Act of the UK Parliament printed by the Queen's Printer must be confined to the period before 15.8.1947. (see the recommendation in sec. 37 of the Act also).

We agree with the 69th Report, that sec. 81 should be amended as follows:-

For the words, ""The Court shall presume the genuineness of every document purporting to be the London Gazette," the words "The Court shall presume the genuineness of every document dated or issued before the fifteenth day of August 1947,purporting to be the London Gazette," shall be substituted.

Section 81A as proposed in the 69th Report.

The 69th Report recommended sec. 81A in relation to Registration of Births.

We, therefore, feel that sec. 81A as proposed does not fit into the scheme of the Act between sec. 81 and 82.

The next is whether there is indeed a need to have a provision elsewhere in the Act making such entries admissible as recommended in the 5th Report and the 69th Report. We find that no special provision is necessary to make

entries in Birth registers necessary in as much as such entries are admissible under sec. 35 of the Act and that sec. has been applied by Courts to such registers.

Suffice it to say that if the entries are admissible under sec. 35, it is not necessary to have another sec. 81A specifically concerning such registers.

Having regard to the fact that the 69th Report has not suggested that initially the Court 'shall' draw a presumption of genuineness of entries from such Birth Registers and having regard to the case law, we do not think it is necessary to have a provision like sec. 81A. We do not, therefore, accept the recommendation.

Section 81A as incorporated by Act 21/2000.

This section is newly introduced in the year 2000 and does not require any modification.

Section 82:

We recommend that section 82 should be deleted.

Section 83:

The revised sec. 83, as proposed would read as follows:

**Presumption as to maps, charts or plans made by authority of government**.

"**83.** The Court shall presume that maps or plans or charts purporting to be made by the authorities of the Central Government or any State Government were so made and are accurate; but maps or plans or charts made for the purpose of any particular cause must be proved to be accurate."

Section 84:

In the 69th Report it was stated in para 39.18 that the words 'any country' in sec. 84 includes India also. It was also stated that the section does not require any amendment. We agree.

Section 85:

We are in agreement with the 69th Report (see para 40.8) that no amendment of sec. 85 is necessary.

Sections 85A to 85C refer to presumptions of electronic records and digital signatures and were introduced in the year 2000. Sections 85A, 85B, 85C use the words 'shall presume'. This requires no amendment.

Section 86:

We agree with the 69th Report (see para 40.10) that no amendment is necessary in sec. 86.

Section 87:

In the 69th Report, it was suggested (see para 40.17) that two changes are necessary – (1) add plans, (as in sec. 36); (2) that portion relating to 'statement of facts' must be expressed more clearly. Draft was not given.

The proposed section 87 would therefore be redrafted as follows:

**Presumption as to books, maps, plans and charts**

"**87.** The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or plan or chart, the statements regarding which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written and published."

Section 88:

We agree with 69th Report (see para 40.22) that no amendment is necessary in sec. 88.

Section 88A:

This section refers to the presumption as to electronic messages. This was introduced by Act 21/2000. It does not require any amendment.

Section 89:

In the 69th Report, it was stated that the section does not require any amendment. We agree.

Section 90:

We propose renumbering section 90 as section 90(1) and insert subsection (2) as done under the UP Act, 1954. We add a separate section 90A as under the UP Act of 1954. Section 90 applies to documents which are 20 years old or more. Section 90A applies to certain documents less than 20 year's old.

We recommend the following revised sec. 90 and 90A.

**Presumption as to certain documents 20 years old**

**"90**(1) Where any document, purporting or proved to be twenty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the person by whom it purports to be executed or attested.

(2) Where any such document as is referred to in subsection (1) was registered in accordance with the law relating to registration of documents and a duly certified copy thereof is produced, the Court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person, is in that person's handwriting and in the case of a document executed or attested, that it was duly executed and attested by the person by whom it purports to have been executed or attested.

Explanation: Documents referred to in sub-section (1) are said to be in proper custody if they are in the place in which, and under the care of the person with whom they would naturally be, but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81 and clause (a) of section 90A.

**Illustrations**

(a) A, has been in possession of landed property for a long time. He produced from his custody deeds relating to the land, showing him titles to it. The custody is proper.

(b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.

(c) A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody is proper.

**Presumption as to certain documents less than 20 years old**

**90A** Where –

(a) any document registered in accordance with the law relating to registration of documents is produced from any custody which the Court in the particular case considers proper, and which registered document is less than twenty years old; or

(b) a duly certified copy of a document registered in accordance with the law relating to registration of documents, the original of which is less than twenty years old, is produced; or

(c) a duly certified copy of a document which is part of the record of a Court of justice, the original of which has been proved to be genuine in the earlier case and the original of which is less than twenty years old, is produced,

the registered document mentioned in clause (a) or the originals of the documents referred to in clauses (b) or (c) may be presumed by the Court to have been executed by the person by whom it purports to have been executed:

Provided that no such presumption shall be made under this section, in respect of any document which is the basis of a suit or of a defence or is relied upon in the plaint or written statement."

Section 90A:

This section was introduced by Act 21/2000. It shall be renumbered as section 90B.

Section 91:

We agree with the 69th Report that no changes are required in sec. 91.

Section 92:

(A) In paras 43.18 and para 43.20 of the 69th Report, it was recommended that sec. 92 requires (a) some redrafting so far as bilateral transactions are concerned and (b) a provision to prohibit oral evidence to vary unilateral transactions are concerned, must be inserted.

In the main part of sec. 92, it was recommended, that it be split up as follows into sec. 92(1)(a) and (b) in regard to documents 'between parties', clause (a) referring to contract, grant or other disposition of property and clause (b) referring to documents in which the matter required by law to be reduced to the form of a document is recorded. Sec. 92(2) is to be added to cover matters required to be reduced to the form of a document and not constituting a transaction between two or more parties'.

We recommend the format proposed in para 43.18 of the 69th Report regarding the amendment in the opening paragraph of section 92. We further recommend that for exclusion of oral evidence in the case of certain unilateral documents, besides the format of provision given in para 43.20 of the 69th report, the following words should be added "such as confessions of the accused, statements of witnesses, court proceedings other than judgments, decrees or orders, resolution of a company required to be in writing". But instead of bringing it in subsection (2) of section 92 as proposed in the 69th report (para 43.20), we recommend that this should be brought out in a new section 92A.

We recommend the following draft of amendment in the opening paragraph of section 92 and insertion of a new section 92A :-

> "**92** When the terms of any such contract, grant or other disposition of property as is referred to in section 91 or any matter required by law to be reduced to the form of a document and constituting a transaction between two or more parties, have been proved according to section 91, no evidence of any oral agreement or statement shall be admitted-
>
> (a) as between the parties to any such contract, grant or other disposition of property or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, the terms of the document, or

(b) as between the parties to such transaction, or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from the terms of the document in which the matter required by law to be reduced to the form of a document is recorded, as the case may be.

**Exclusion of oral evidence in the case of certain unilateral documents**

**92A.** When any matter required by law to be reduced to the form of a document, and not constituting a transaction between parties, such as a confession of an accused, the statement of a witness, a court proceeding (other than judgments, decree or order), a resolution of a company required to be in writing, has been so reduced to writing and proved according to section 91, no evidence of any oral statement shall be admitted for the purpose of contradicting, varying, adding to, or subtracting from the contents of the document."

(B) We shall next deal with the six provisos to sec. 92. The 69th Report divides the discussion here into (a) the first five provisos and (b) the sixth proviso.

(a) the first five provisos to sec. 92

We do not suggest any amendment in proviso (1).

Proviso (2):

We do not propose any amendment to proviso (2).

Proviso (3):

We do not propose any amendment to proviso (3).

Proviso (4):

We do not propose any amendment to this proviso.

Proviso (5):

We do not propose any amendment to proviso (5).

Proviso (6):

After considering all aspects relating to proviso (6), we are also of the view that the proviso be left as it is.

Section 93:

In the 69th Report, it was stated (see para 44.21) that sec. 93 does not require any change. We agree.

Section 94:

We agree with para 44.3 of the 69th Report that sec. 94 does not require any change.

Section 95:

In para 44.4 of the 69th Report, it was stated that this section does not require any amendment. We agree.

Section 96:

We agree with the 69th Report, para 44.6 that the section does not require any amendment.

Section 97:

We agree with para 44.10 of the 69th Report that sec. 97 does not require any amendment.

Section 98:

We agree with para 44.14 of the 69th Report that sec. 98 does not require any change.

Section 99:

We agree with the proposals in the 69th Report (para 44.27) but recommend the following revised draft :-

**Who may give evidence of agreement varying the terms of a document**

"**99.** Evidence of any fact tending to show a contemporaneous agreement contradicting, varying, adding to, or subtracting from the terms of a document may be given –

(a) as between persons who are not parties to the document or their representatives in interest; or
(b) as between a person who is a party to the document or his representative in interest and a person who is not such party or representative in interest:

Provided that no such evidence shall be given where the matter is required by law to be reduced to writing.

**Illustration**

A and B make a contract in writing that B shall sell certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests."

Section 100:

In the 69th Report pointed that the words "Indian Succession Act, 1865 (10 of 1865)" be substituted by the words "Indian Succession Act, 1923 (39 of 1925)." We agree.

Section 101

In the 69th Report, in Chapter 45, the Commission considered section 101 and came to the conclusion that no amendments are called for so far as sec. 101 is concerned (see para 45.18).

But, the Commission referred to the broad principle in civil cases relating to the burden of 'establishing a case' or the 'legal burden (or persuasive burden', which never shifts and the 'evidentiary burden' which shifts during the trial from one side to the other. In a criminal case, the burden is always on the prosecution to from that the accused is guilty, though there may be special statutes requiring the accused to prove certain facts whenever the prosecution has proved certain facts.

These principles being well known and basic, the Commission does not suggest any amendment.

Section 102:

The section again lays down an elementary proposition and we agree with 69th Report (see para 45.19) that sec. 101 does not require any amendment.

Section 103:

The section does not require any amendment. But in the illustration, the brackets and letter "(a)", can be dropped.

Section 104:

In the 69th Report, in para 45.22, it was recommended that no change is necessary in sec. 104 and we agree with that recommendation.

Section 105:

Having examined the matter in depth, we agree that it is not desirable to make any relaxation so far as the defence of insanity is concerned and we agree with the 69th Report that no amendment is called for.

Section 106:

We further agree with para 47.28 of the 69th Report that sec. 106 does not require any amendment.

Section 107:

The 69th Report also pointed out in para 48.6 and 48.7 that there is no need to reduce the period. The longer the period, the lesser the strength of the presumption.

But in para 48.10, the Commission recommended addition of a proviso giving a discretion to the Court where it appeared to the Court likely that the person concerned was involved in an accident or calamity. The proviso below sec. 107 as recommended in para 48.11 of the 69th Report reads as follows:

> "Provided that where it appears to the Court from the evidence that the person concerned had been involved in an accident or calamity in circumstance which render it highly

probable that the accident or calamity caused his death, the Court may, for reasons to be recorded, direct that the provisions of this section shall not apply."

We agree that a proviso in the manner referred to in para 48.11 of the 69th Report as extracted above can be added below sec. 107 as it now stands.

Section 108:

Section 108 states that if a man is not heard of for seven years, the burden of proving that he is alive is shifted to the person who affirms it. Two questions arise, one is as to the position at the end of the period of seven years and the other is about the burden of proof within the period of seven years. Having regard to the case law in England and in India and problems regarding succession and re-marriage, in regard to both these situations it is recommended to modify section 108 to say, so far as the first situation is concerned that at the end of seven years, a presumption arises that the person is not alive and the burden shifts then to the party who claims he is alive after expiry of seven years to prove it failing which, it will be presumed that the person died at the expiry of seven years. The proposed Explanation covers the second situation and says that, within the period of seven years, there is no presumption of death and it will be for the person who says that a person died on a particular day within the seven years to prove that fact.

The format of section 108 proposed in the 69th report is being modified in the draft recommended below. The proposed sec. 108, in our view should read as follows:

**Burden of proving that a person is alive who has not been heard of for seven years**

"**108.** Notwithstanding anything contained in section 107, where the question is whether a man is alive or dead, or was alive or dead at a particular time, and it is proved that he has not been heard of for seven years or more by those who would naturally have heard of him if he had been alive, the burden of proving that he was alive during any period after the expiry of seven years shall be upon the person who affirms it and if the said burden is not discharged, the Court shall, as respects such period starting from the expiry of seven years, presume that the person was dead.

Explanation:- If any question is raised that the man died on any particular date during the period of seven years aforesaid, the burden of proving that he died on such date during that period, shall be on the person who so affirms, and the presumption referred to in this section has no application."

Section 108A: (as proposed in the 69th Report). This concerns presumption as to simultaneous deaths.

The 69th Report proposed repeal of sec. 21 of the Hindu Succession Act, 1956 and insertion of sec. 108A (see para 50.26) as follows:

"108A. Presumption in case of simultaneous deaths: Where two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths shall, for all purposes, be presumed to have occurred in order of seniority, of age and accordingly the younger shall be deemed to have survived the older.

Provided that where the question arises in respect of title on intestacy or testamentary rendering it uncertain which of them survived the other, and the husband or wife is, by virtue of this section, deemed to have survived the intestate.
or the testator, then the law of succession shall, nevertheless, have effect as respects the intestate or the testator, as if the husband or wife had not survived the intestate or the testator".

We agree with this recommendation with modifications and recommend insertion of new section 108A as follows:-

**Presumption in case of simultaneous deaths**

**108A**. (1) Subject to the provisions of sub-section (2), where two or more persons have died in circumstances rendering in uncertain which of them survived the other or others, such deaths shall, for all purposes, be presumed to have occurred in the order of seniority of age and until the contrary is proved, the younger shall be presumed to have survived the elder.

(2) In the case of husband and wife dying in circumstances rendering it uncertain which of them survived the other and

(a)where the question arises in respect of title on intestacy or testamentary succession to the property of a deceased spouse; and

(b)the husband or the wife is, by virtue of sub-section (1) presumed to have survived intestate or the testator, being the younger of the two,

then succession, whether intestate or under the testament shall, nevertheless have effect as respects the intestate or testator, as if the younger spouse has predeceased the intestate or the testator:

Provided that where the younger spouse, who is so deemed to have predeceased the intestate or the testator is, according to law, the sole heir or heir along with others, to the estate of the intestate or the testator, then the younger spouse shall not to be so deemed to have predeceased the intestate or the intestate under this sub-section and the property of the intestate or testator shall devolve according to law on the younger spouse and the heirs of the said spouse may claim the estate of the said spouse.

Illustrations

(a) Two brothers A and B die simultaneously in an accident and in that event, B, the younger brother, shall be deemed to have survived A.

(b) The husband A and his wife B die simultaneously in an accident. The husband A has agricultural land and the wife has house property. In respect of succession to the estate of A, the husband, by the husband's heirs, it shall be presumed that B the wife died earlier and B's heirs' shall not therefore be entitled to claim the husband's estate. In respect of succession to the estate of B, the wife, by the wife's heirs, it shall be presumed that A, the husband died earlier and A's heirs shall not be entitled to claim the wife's estate.

(c) In the first part of Illustration (b), if the wife B is younger to the husband A, but is to be deemed to have predeceased her husband, because of sub-section (2), she will not be so deemed where, if she had survived the husband A, she would have been the sole heir or have to a share along with others to her husband's estate, whether by virtue of intestacy or testamentary succession and in that event, once

such property of A, the husband devolves on the wife B, her heirs would be entitled to claim the same.

(d) In the second part of Illustration (b), if the husband A is younger to the wife B, but is to be deemed to have predeceased his wife, because of sub-section (2), he will not be so deemed where, if he had survived the wife B, he would have been the sole heir or heir to a share along with others to his wife's estate, whether by virtue of intestacy or testamentary succession and in that event, once such property of B, the wife devolves on the husband B, his heirs would be entitled to claim the same."

Section 109:

In the 69th Report, in para 51.6, it was stated that this section does not call for any changes. We agree.

Section 110:

In the 69th Report, there is some discussion of the related aspects and it has been finally stated in para 52.1 that this section does not require any change. We agree.

Section 111

The 69th Report stated in para 53.5 that sec. 111 does not call for any amendment. We agree.

Section 111A:

We do not find that the presumption in sec. 111A need any amendment.

Section 112: This section refers to birth during marriage and proof of legitimacy. One of the important issues is whether, apart from non-access, other exceptions based on blood/DNA tests be permitted or proof a sterility or impotency of the husband should be permitted. We have recommended

two more exceptions but there is more stringent proof 'conclusive proof' will be the standard. We have also dealt with cases of avoidance of marriage and nullify apart from dissolution of marriage.

We recommend that sec. 112 should be revised as follows:

**Birth during marriage conclusive proof of legitimacy except in certain cases**

**"112** The fact that any child was born during the continuance of a valid marriage between its mother and any man, or within two hundred and eighty days,

(i) after the marriage was declared nullity, the mother remaining unmarried, or
(ii) after the marriage was avoided by dissolution, the mother remaining unmarried,

shall be conclusive proof that such person is the legitimate child of that man, unless

(a) it can be shown that the parties to the marriage had no access to each other at any time when the child could have been begotten; or
(b) it is conclusively established, by tests conducted at the expense of that man, namely,

(i) medical tests, that, at the relevant time, that man was impotent or sterile, and is not the father of the child; or
(ii) blood tests conducted with the consent of that man and his wife and in the case of the child, by permission of the Court, that that man is not the father of the child; or
(iii) DNA genetic printing tests conducted with the consent of that man and in the case of the child, by permission of the Court, that that man is not the father of the child; and

Provided that the Court is satisfied that the test under sub-clause (i) or sub-clause (ii) or sub-clause (iii) has been conducted in a scientific manner according to accepted procedures, and in the case of each of these sub-clauses (i) or (ii) or (iii) of clause (b), at least two tests have been conducted, and they resulted in an identical verdict that that man is not the father of the child.

Provided further that where that man refuses to undergo the tests under sub clauses (i) or (ii) or (iii), he shall, without prejudice to the provisions of clause (a), be deemed to have waived his defence to any claim of paternity made against him.

Explanation I: For the purpose of sub clause (iii) of clause (b), the words 'DNA genetic printing tests' shall mean the tests conducted by way of samples relatable to the husband and child and the words "DNA" mean 'Deoxyribo-Nucleic Acid'.

Explanation II: For the purposes of this section, the words 'valid marriage' shall mean a void marriage till it is declared nullity or a voidable marriage till it is avoided by dissolution, where, by any enactment for the time being in force, it is provided that the children of such marriages which are declared nullity or avoided by dissolution, shall nevertheless be legitimate."

Section 113:

We agree with para 55.3 of the 69th Report that this section 113 be deleted.

Section 113A:

Sec. 113-A does not require any amendment.

Section 113-B:

We do not suggest any amendment to sec. 113-B.

Section 114:

The presumption as to state of things in future is provided in sec. 114 illustration but the presumption backwards, as recognized by Courts, is sought to be introduced by our recommendation. Certain other minor changes are made.

As to accomplice, we shift the substance of illustration (b) to sec. 133 and drop illustration (b) from section 114.

We recommend the following changes in the illustrations in sec. 114.

(i) illustrations (b) and (c) be omitted.

(ii) after illustration (d), the following illustration be added namely,

> "(da) that a thing or state of things which has been shown to be in existence at a point of time, was in existence earlier within a period shorter than within which such things or state of things usually cease to exist";

(iii) after the paragraph "But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:" the following amendments shall be made, namely:-

(A) both the paragraphs starting with the words "As to Illustration (b) " shall be omitted;

(B) the paragraph starting with the words "As to Illustration (c) " shall be omitted;

(C) after the paragraph starting with the words "As to Illustration (d)" the following shall be inserted, namely:-

> "As to Illustration (da) : It is proved that a river is running in a certain course this year, but it is known that there have been floods for several years earlier, which might have changed its course." ;

(D) in the paragraph starting with the words," As to Illustration (e)", for the words " A judicial act, the regularity of which is in question ",the words ," A judicial or official act, the regularity of which is in question" shall be substituted."

Section 114A:

In 172nd Report of the Law Commission, there was an amendment proposed in sec. 376 of the Indian Penal Code defining 'sexual assault'. Consequent changes were proposed to be made in sec. 114A, in the 172nd Report. But, as the said Report is not yet implemented, we leave sec. 114A as it is now.

Section 114B:

The text of sec. 114B as recommended in the 113th Report was as follows:

> "114-B. (1) In a presumption of a police officer for an offence constituted by an act alleged to have caused bodily injury to a person, if there is evidence that the injury was caused during a period when that person was in the custody of the police, the Court may presume that the injury was caused by the police officer having custody of that person during that period.
>
> (2) The Court, in deciding whether or not it should draw a presumption under sub-section (1), shall have regard to all the relevant circumstances including, in particular, (a) the period of custody, (b) any statement made by the victim as to how the injuries were received, being a statement admissible in evidence, (c) the evidence of any medial practitioner who might have examined the victim, and (9) evidence of any magistrate who might have recorded the victim's statement or attempted to record it."

We reiterate this recommendation with modification. In the light of D.K. Basu , we are of the view that a subsection (3) be added below the proposed sec. 114B that 'police officer' in this section means, officers belonging to police, the para military forces and the officers of Revenue Department such

as those of the Customs, Excuse officers and the officers under Revenue intelligence.

We recommend that a new section 114B be inserted as follows:-

**Presumption as to bodily injury while in police custody**

**"114 B**. (1) In a prosecution of a police officer for an offence committed by an act alleged to have caused bodily injury to a person, if there is evidence that the injury was caused during a period when that person was in the custody of the police, the Court may presume that the injury was caused by the police officer having custody of that person during that period.

(2) The Court, in deciding whether or not it should draw a presumption under sub-section (1), shall have regard to all the relevant circumstances including, in particular,

(a) the period of custody;

(b) any statement made by the victim as to how the injuries were received, being a statement admissible in evidence;

(c) the evidence of any medical practitioner who might have examined the victim; and

(d) evidence of any magistrate who might have recorded or attempted to record the victim's statement ."

(3) For the purpose of this section, the expression 'police officer' includes officers of the para-military forces and other officers of the revenue, who conduct investigation in connection with economic offences."

Section 115:

In the 69th Report, after considerable discussion of the principle of estoppel and promissory estoppel, it was recommended in para 57.24 of the 69th report that an Explanation be added dealing with the position of 'minors'.

The proposal in para 57.24 for adding an Explanation is made applicable to "minor or other persons under disability". But, in para 57.15, while it was accepted that in matters not relating to contracts or transfers of property (i.e. where sec. 11 of Contract Act did not apply), the principle of estoppel must apply. Sub para (c) in para 57.18 says:

> "(a) But this does not mean that a minor can never be estopped – Under section 116, for example, i.e. between a landlord and tenant, a minor can be estopped. This is because sec. 11 of the Contact Act does not come in the way, where the original tenancy was not extended in to by a minor, who has now succeeded to the property."

It was to cover such cases also that in para 57.24, a recommendation was made to add the following Explanation:

> "Explanation: This section applies to a minor or other person under disability; but nothing in this section shall affect any provision of law whereby the minor or other person under disability becomes incompetent to incur a particular liability."

So far as sub para (o) of para 57.18 is concerned, we do not really see why it is necessary to make a further qualification.

We think that the first part of the Explanation "This section applies to a minor or other person under disability" is not necessary. In fact, it gives a wrong notion of the proposed Explanation.

Even the second part requires some re-drafting. We, therefore, recommend a proviso as follows:

> "Provided that nothing contained in this section shall apply to minors or other persons under disability for the purpose of enforcing any liability arising out of a representation made by such persons, where a contract entered into by such persons incurring a like liability would have been null and void."

Section 116:

We broadly accept the recommendation in para 58.31B by the 69th Report. Now section 116 as recommended in the 69th Report requires that the existing provisions of sec. 116 should be redesignated as subsection (1) with the addition of the words "or at any time thereafter if the tenant continues in possession after termination of the tenancy".

We agree with above recommendation with slight modification that the words "or the person claiming through such tenant" should also be added after the proposed words "if the tenant".

We recommend that section 116 should be substituted as follows:-

> Estoppel of tenant and of licensee of person in possession
>
> "116 (1). No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy or any time thereafter, if the tenant or the person claiming through such tenant, continuous in possession after termination of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such property; and no person who came upon any immoveable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

(2) Where a tenant in possession of immoveable property is attorned to another, the tenant or any person claiming through him shall not, during the continuance of the tenancy, or at any time thereafter if the tenant or the person claiming through him continues in possession after termination of the tenancy, be permitted to deny that the person to whom the tenant was attorned had, on the date of the attornment, title to such immoveable property; but nothing in this sub-section shall preclude the tenant or the person claiming through him from producing evidence to the effect that the attornment was made under mistake or was procured by fraud."

Section 117:

In the 69th Report, it was pointed out (see para 59.5) that in the 11th Report of the Commission (at ;p. 66, para 164) it was recommended that the portion of section 117 which relates to the acceptor of a bill of exchange, be transferred to the Negotiable Instruments Act as sec. 104. (See also page 113, draft of sec. 104 and p 151 of Appendix III of the 11th Report). But, in the 69th Report there is no positive recommendation for such transfer. No doubt in para 59.7, the 69th Report states that no amendment is required in the remaining part of the section.

We do not think that it is necessary to shift the first part of sec. 117 to the Negotiable Instruments Act. For that matter, there are presumptions relating to landlord and tenant and other relationships of bailees, etc. contained in the Evidence Act and if there is not need to transfer them to the Transfer of Property Act or the Contract Act, there is equally no need to transfer the first part of sec. 117 to the Negotiable Instrument Act.

We, therefore, do not recommend any amendment to sec. 117.

Section 118:

In as much as the principles pertaining to sec. 118 have all crystallized and in para 60.12 of the 69th Report, it was recommended that there is no need to amend sec. 118, and we agree with it.

Section 119:

We recommend insertion of an Explanation below sec. 119.

> "Explanation: The interpretation of the signs of a person unable to speak, by an expert, shall be treated as oral evidence of the person who made the signs."

**Section 120**

We agree that, as recommended in para 61.17, the following proviso be added below sec. 120:

> "Provided that the spouse of the accused in a criminal prosecution shall not be compelled to give evidence in such prosecution except to prove the fact of marriage unless –
>
> (a) such spouse and the accused shall both consent, or
>
> (b) such spouse is the complainant or is the person at whose instance the first information of the offence was recorded, or
>
> (c) the accused is charged with an offence against such spouse or a child of the accused or a child of the spouse, or a child to whom the accused or such spouse stands in the position of a parent."

Section 121:

We leave section 121 as it is.

Section 122:

We, therefore, recommend with slight modification of the recommendation in the 69th Report (para 64.47) that section 122 should be substituted as follows:

**Communication during marriage**

"**122** (1). No person who is or has been married, shall be compelled to disclose any communication made during marriage, between that person and any person to whom that person is or has been married; nor shall that person be permitted to disclose any such communication, unless the person to whom that person is or has been married or that person`s representative in interest, consents, or unless the proceedings are of the nature specified in sub section (3).

(2) Any person other than the person referred to in sub-section (1) who has overheard or has acquired possession of or has intercepted, in accordance with law, any communication as is referred to in subsection (1), may be permitted to disclose any such communication without the consent of the spouses or their representatives in interest.

(3) The proceedings referred to in sub section (1) are-

(a) proceedings between married persons;

(b) proceedings in which one married person is prosecuted for any offence committed against the other;

(c) proceedings in which one married person is the complainant or is the person at whose instance the first information of the offence was recorded, and the other married person is the accused;

(d) proceedings in which one married person is prosecuted for an offence committed against a child of the other person or a child of the first mentioned person or a child to whom either of them stands in the position of a parent."

Section 123:

After considering the recommendations in the 69th and the 88th reports and development of case law, we recommend that section 123 should be substituted as follows:

**Evidence as to Affairs of State**

**"123** (1) Save as otherwise provided in this section, ,-

(a) no person shall give evidence derived from unpublished official records relating to any affairs of State; or
(b) no public officer shall be compelled to disclose any oral, written or electronic communication relating to any affairs of the State made to him in official confidence,

unless the officer at the head of the department concerned, has given permission for giving such evidence.

Explanation:- For the purposes of clause (a), the expression 'evidence derived from unpublished official records' includes the oral evidence derived from such records and the record itself.

(2) The officer at the head of the department concerned referred to in sub-section (1), shall not withhold such permission, unless he is satisfied that the giving of such evidence would be injurious to the public interest; and where he withholds such permission, he shall file an affidavit in the Court, raising an objection and such objection shall contain a statement to that effect and his reasons therefor.

(3) Where the objection referred to in sub-section (2) is raised in a Court subordinate to the High Court, whether in a civil or criminal proceeding, the said Court, notwithstanding anything in any other law for the time being in force, shall have power and shall refer the question as to the validity of such objection to the High Court for its decision.

(4) The High Court, on a reference under sub-section (3), shall decide upon the validity of the said objection, in accordance with the provisions of sub sections (5) to (7) and transmit a copy of the judgment to the Court which made the reference to enable the said Court to proceed further in accordance with the Judgment.

(5) Where the High Court, on a reference under sub-section (3) is of the opinion that the affidavit filed under sub section (2) does not state the facts or the reasons fully, the High Court may require such officers or, in appropriate cases, the Minister concerned with the subject, to file a further affidavit on the subject.

(6) The High Court, after considering the affidavit or further affidavit as the case may be, and if it thinks fit, after examining such officer or, in appropriate cases, the Minister, orally, shall

(a) issue summons for the production of the unpublished records in chambers; and

(b) inspect the records in chambers, and
(c) determine the question whether the giving of such evidence would or would not be injurious to the public interest, recording its reasons therefor.

(7) Where the High Court determines under clause (c) of subsection (6) that the giving of such evidence would not be injurious to the public interest and rejects the objection raised under sub-section (2), the provisions of sub section (1) shall not apply to such evidence and such evidence shall be received.

(8) Where the objection referred to in sub section (2) is raised in the High Court or in the Supreme Court, whether in a civil or criminal proceeding, the said Court shall decide the validity of such objection in accordance with the procedure in sub sections (5) to (7), as if the validity of the said objection had been referred to it."

Section 162

In paras 65.85 and 65.92 and para 93.109 of the 69th Report and in the 88th Report, it was recommended that the words "matters of State" in the second para of section 162 be deleted.

Following the same, we recommend that in the second para of sec.162, the words, 'unless it refers to matter of State' be deleted.

Section 124:

We recommend that sec.124 be revised as follows:

**Official Communications**

> **"124.** (1) Subject to the provisions of section 123, no public officer shall be compelled to disclose any oral, written or electronic communication made to him in official confidence, when the Court considers that public interest would suffer by such disclosure.
>
> (2) Where a public officer who is a witness is asked a question which might require the disclosure of any such communication, and he objects to answering the question on the ground that public interest would suffer by its disclosure, the Court shall, before rejecting his objection, ascertain from him, in chambers, the nature of his objection and reasons therefor."

Section 125.

In paras 67.17 to 67.21 in the 69th Report, the Commission considered the need for change and dealt with cases of malicious prosecution. It was felt that it would be difficult for the plaintiff to produce evidence unless he knew the name of the informant on whose information another person made a false complaint to the police or a criminal proceeding was started in a Court.

The Commission then referred to three alternative proposals (see para 67.21) and finally came to the conclusion that the third one which gave discretion to the Court was the best. It said that the section requires some relaxation.

Section 125 of the Act is too stringent and is not on par with today's concepts in England, Canada and other countries.

We agree that the third alternative stated in para 67.21 of the 69th Report and the recommendation for insertion of an 'Exception' as stated in para 67.22 below sec. 125. We agree with the said recommendation.

Thus, below sec. 125, we recommend the following Exception to be added:

> "Exception: Nothing in this section shall apply where it appears to the Court that the giving of the information is a fact in issue on which the liability of a party depends or is otherwise a material fact, and the Court, for reasons to be recorded and in the interests of justice, directs the disclosure of such information by the Magistrate, Police officer or Revenue officer".

Section 126, 127, 128, 129 together

There will be no difficulty if the words barrister, pleader, attorney and vakil in sec. 126, 127, 128 are substituted by the word 'legal practitioner', as suggested in Ch. 68 of the 69th Report. Explanation 2 has been proposed; defining 'legal practitioner'. Section 129 used the word 'legal professional adviser' and it is left as it is in the 69th Report. It can be left as it is.

The word 'employed' used in sec. 126, in the main section and in the proviso and in illustration (c) can be replaced as stated in 69th Report. The 69th Report suggested a new exception to be incorporated in the proviso to sec. 126 to say that the privilege will not apply in an action between the client and the legal practitioner, be it a civil or criminal action. There can be no objection to this recommendation also.

Therefore, the provision of sec. 126 need not be modified so as to include a provison like the one we recommended in sec. 123 enabling the court to have the final sec. on the question of injury to public interest.

We agree with the limited changes suggested in para 68.37 of the 69th Report. The section will be revised as follows:

**Professional communications**

"**126**. No legal practitioner shall, at any time, be permitted, except with his client's express consent, to disclose any communication made to him in the course of and for the purpose of his professional engagement, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course of and for the purpose of such engagement, or to disclose any advice given by him to his client in the course of and for the purpose of such engagement:

Provided that nothing in this section shall protect from disclosure –

(a) any such communication made in furtherance of any illegal purpose;

(b) any fact observed by any legal practitioner in the course of his engagement as such, showing that any crime or fraud has been committed since the commencement of his engagement.

(c) any such communication when required to be disclosed in a suit between the legal practitioner and the client arising out of the professional engagement or in any proceeding in which the client is prosecuted for an offence against the legal practitioner or the legal practitioner is prosecuted for an offence against the client, arising out of the professional engagement.

Explanation 1:– The obligation stated in the section continues after the engagement has ceased.

Explanation 2:- In this section and in sections 127 to 129, the expression 'legal practitioner' or 'legal professional adviser' includes any person who, by law, is empowered to appear on behalf of any other person before any judicial or administrative authority; and the expression 'client' shall be construed accordingly.

Explanation 3:- For the purpose of clause (b) of the proviso to this section, it is immaterial whether the attention of such legal practitioner was or was not directed to such fact by or on behalf of his client.

**Illustrations**.

(a) A, a client, says to B, a legal practitioner – "I have committed forgery, and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, a legal practitioner – "I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

This communication being made in furtherance of a criminal purpose, is not protected from disclosure.

(c) A, being charged with embezzlement, retains B, a legal practitioner to defend him. In the course of proceedings, B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his professional engagement.

This being a fact observed by B in the course of his engagement, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure."

<u>Sections 127 and 128:</u>

So far as sections 127 and 128 are concerned, we recommend that for the words, "barristers, pleaders attorneys and vakils" in these respective sections, the words "legal practitioners" should be substituted.

Section 129:

There is no change suggested in sec. 129.

Sec. 130:

We recommend only a limited change as follows:

For the words, "unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims" the following shall be substituted, namely:-

> "unless such witness has agreed in writing with the party so requiring him or with a person claiming through such party."

Sec. 131:

But sec. 131 as proposed in para 69.12 of the 69th Report reads as follows:

> "131. No one shall be permitted to produce documents in his temporary possession which any other person would be entitled to refuse to produce if they were in his possession, unless such last mentioned person consents to their production."

But, in our view, the words 'any person' does not convey the real principle behind the section. We are of the view that the following format will be better:

> **Production of documents or electronic records which another person, having possession could refuse to produce**

"**131.** No person who is in possession or control of documents or electronic records belonging to another, shall be compelled to produce the said documents or electronic records, if the person to whom they belonged, would have been entitled to refuse to produce them if they were in the possession or control of that person:

Provided that the person in possession or control of such documents or electronic records belonging to another, may be compelled to produce them, if the person to whom they belong, consents to their production.

Sec. 132:

We are of the view that sec 132 be revised as follows:

**Witness or accused not excused from answering on ground that answer will criminate**

**"132**(1) A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness or the spouse of the witness or that it will expose, or tend directly or indirectly to expose, such witness or spouse to a penalty or forfeiture of any kind.

(2) An accused person who offers himself as a witness under section 315 of the Code of Criminal Procedure, 1973, shall not be excused from answering any question as to any matter relevant to the matter in issue in the prosecution, on the ground that the answer to such question will criminate or may tend directly or indirectly to criminate the accused or the spouse of the accused; or that it will expose, or tend directly or indirectly to expose, the accused or the spouse to a penalty or forfeiture of any kind.

(3) Where any witness or accused is bound or feels bound to answer a question, under the provisions of this section whether he has objected to it or not, no such answer which-

(a) the witness gives to that question shall subject the witness or the spouse of the witness, as the case may be, to arrest or prosecution or be proved against them
(b) the accused gives to that question shall, save as otherwise provided in sub-section (2), subject the accused or the spouse of the accused , as the case may be, to arrest or prosecution or be proved against them in any criminal proceeding,

> Provided that nothing contained in this sub-section shall apply to any answer which may amount to giving of false evidence."

Sec. 132A(as proposed in the 69th report):

The 69th Report recommended the insertion of sec. 132A dealing with privilege of family counsellors. It was stated that the privilege belongs to the family counsellor and this privilege has to be created in the interest of society, so that the family counsellor can function effectively. In para 71.10, it was proposed that the privilege should apply to counsellors appointed by the court and not to those counsellors who are appointed by parties.

We think that the recommendations in para 71.12 need not be given effect to.

Sec. 132A(as proposed in this report):

In the place of sec. 132A (privilege of family counsellors), we are of the view that it is necessary to make a specific provision in relation to journalists' resources.

We recommend the insertion of sec. 132A as follows:

> **Disclosure of source of information contained in publication**
>
> **"132A**. (1) No Court shall require a person to disclose the source of information contained in a publication for which he is responsible, unless it is established to the satisfaction of the Court that such disclosure is necessary in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to Contempt of Court or incitement to any offence.
>
> Explanation.- For the purposes of this sub-section,

(a) 'publication' means any speech, writing, symbols or other representation disseminated through any medium of communication including through electronic media in whatever form, which is addressed to the public at large or to any section of the public.

(b) "source" means the person from whom, or the means through which, the information was obtained.

(2) The Court while requiring any person to disclose the source of information under subsection (1), shall assess the necessity for such disclosure of the source as against the right of the journalist not to disclose the source."

Sec. 132B: in the 69th Report, in Chapter 72, it was recommended that there should be a separate provision dealing with the privilege of 'patent agents' governed by the provisions of secs. 126, 127 of the Patents Act, 1970. By virtue of these provisions, a patent agent can practice not only in the High Court but also before the Controller-General of Patents, Designs and Trade Marks referred to in sec. 73 of the Patents Act. A patent agent can prepare all documents, transact all business and discharge other functions prescribed in connection with proceedings before the Controller.

We propose to adopt the format in the UK Act of 1988. The provision regarding privilege of 'patent agents' should be as follows:

**Communication with patent agents:**

**"132B** (1) Any communication as to any matter relating to the protection of any patent or as to any matter involving passing off.–

(a) between a party and his patent agent, or

(b) for the purpose of obtaining, or in response to a request for information which a party is seeking for the purpose of instructing his patent agent,

is privileged from disclosure in legal proceedings in the same way as a communication between a client and his legal practitioner or, as the case

may be, a communication for the purpose of obtaining, or in response to a request for, information which a client seeks for the purpose of instructing his legal practitioner.

(2) For the purposes of subsection (1) –

(a) 'patent agent' means

(i) a patent agent registered as a patent agent in the register of patent agents maintained pursuant to the provisions of the Patent Act, 1970, or

(ii) a partnership entitled to describe itself as a firm of patent agent;or

(iii) a body corporate entitled to describe itself as a patent agent.

(b) 'party' in relation to any contemplated proceedings, means a prospective party thereto.

(c) 'legal practitioner' means a person as defined in Explanation 2 of section 126.

:

**Communication with Trademark Agent**

**132C.** (1) Any communication, as to any matter relating to the protection of any trademark or as to any matter involving passing off.–

(a) between a party and his trademark agent; or

(b) for the purpose of obtaining, or in response to a request for information which a party is seeking for the purpose of instructing his trademark agent,

is privileged from disclosure in legal proceedings in the same way as a communication between a client and his legal practitioner or, as the case may be, a communication for the purpose of obtaining, or in response to a request for, information which a client seeks for the purpose of instructing his legal practitioner.

(2) For the purposes of subsection (1)-

(a) 'trademark agent' means

(i) a trademark agent as defined under section 145 of the Trade Marks Act, 1999**;**

(ii) a partnership entitled to describe itself as a firm of registered trademark agents, or

(iii) a body corporate entitled to describe itself as a registered trademark agent.

(b) 'party' in relation to any contemplated proceedings means a prospective party thereto.

(c)'legal practitioner' shall have the same meaning assigned to it in Explanation 2 of section 126."

Sec. 133:

We have said in our discussion under sec. 114 illustration (b) that instead of deleting sec. 133 and amending the illustration (b) as recommended in the 69th Report, it is better if sec. 133 is amended and ill. (b) be deleted from section 114 and this aspect of illustration (b) should be referred in this section. We had also suggested deletion in the later part of sec. 114, the two paragraphs starting with the words "As to illustration (b)".We recommended redrafting sec. 133 as follows and also add some illustrations below sec. 133:

**Accomplice**

**"133.** An accomplice shall be a competent witness against an accused person but his evidence is unworthy of credit unless he is corroborated in material particulars:

Provided that where the accomplice is a person whose evidence, in the opinion of the Court, is highly creditworthy as not to require corroboration, a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

**Illustrations**

(a) A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally of good character, who also took part in the arrangement, describes precisely what was done, and admits and

explains the common carelessness of A and himself. The evidence of B shall have to be considered by the Court, while deciding on the negligence of A.

(b) A crime is committed by several persons. A, B and C, three of the criminals are captured on the spot and kept apart from each other – each gives an account of the crime implicating D, and the accounts corroborate each in such a manner as to render the previous concert highly improbable. The variance in the different accounts of facts given by A, B, C as to the part of D shall be taken into account by the Court while deciding if D was an accomplice."

Sec. 134:

The 69th Report stated (see para 74.29) that sec. 134 does not call for any modification.

Sec. 135:

We agree with para 75.12 of the 69th Report that no amendments are necessary in sec. 135.

Sec. 136:

We agree with recommendations in para 76.10 of the 69th report that sec. 136 does not require any amendment.

Sec. 137

In para 77.23, after considerable discussion of these steps in a trial, the 69th Report stated that sec. 137 does not require any amendment.

We agree but we feel that the third paragraph of this section can be restructured as follows:

> "**Re-examination**.- The further examination of a witness by the party who called him, subsequent to the cross-examination, shall be called re-examination."

Sec. 138: There is considerable discussion in the 69th Report in sec. 138 but only a minor amendment was suggested in para 77.23 that in the last paragraph as follows:

> "The last paragraph should use the singular 'witness' in view of the singular 'him' which occurs in the section. We recommend that sec. 138 should be so amended."

We are not clear what the Commission meant by this recommendation. We find that para three has not used the word 'witness'. Probably the reference is to the first para which uses the word 'witnesses'.

We recommend the use of "A witness" in the place of "witnesses" in para one.

We also recommend that the three paras be numbered (1), (2), (3) and that a fourth para be added as done in Sri Lanka.

We recommend that section 138 should be substituted as follows:-

> **Order of examinations**
>
> **"138.**(1) A witness shall be first examined-in-chief, then (if the adverse party so desires) cross examined, then (if the party so desires) re-examined.
>
> (2) The examination and cross examination must relate to relevant facts but the cross examination need not be confined to the facts to which the witness testified on his examination in chief.
>
> (3) **Direction of re-examination :** The re-examination shall be directed to the explanation of matters referred to in cross examination; and if new matter is, by

permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

(4) **Further examination-in-chief:** The Court may in all cases permit a witness to be recalled either for further examination-in-chief or for further cross-examination, and if the court does so, the parties have the right of further cross-examination and re-examination or re-examination, as the case may be."

Sec. 139:

We agree with para 78.3 of the 69th Report that no amendment is necessary in sec. 139.

Sec. 140:

We agree with para 78.4 of the 69th Report that no amendments are necessary to sec. 140.

Secs. 141, 142 & 143:

We do not propose any amendments to secs. 141, 142 and 143 and leave them as they are.

Sec. 144:

We agree with para 80.7 of the 69th Report that section 144 should be redrafted as follows:

"(1) Any witness may be asked, while under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who has called the said witness, to give

secondary evidence of it; and if, in the opinion of the Court, the document ought to be produced, the objection shall be upheld.

(2) If a witness, while under examination, is about to make any statement as to the contents of any document, the adverse party may object to such statement being made until such document is produced, or until facts have been proved which entitle the party who has called the said witness to give secondary evidence of it; and, if in the opinion of the Court, the document ought to be produced, the objection shall be upheld."

(The Explanation and illustration as at present remain.)

Sec. 145:

We agree with the recommendation in para 81.27 of the 69th report that the following subsections (2) and (3) be added after numbering the existing provisions of sec. 145 as subsection (1):

"(2) Where a witness is sought to be contradicted by his previous statement in writing by a party entitled to produce secondary evidence of the writing in the circumstances of the case, his attention must, before such secondary evidence can be given for the purpose of contradicting him, be called to so much of it as is to be used for the purpose of contradicting him.

(3) If a witness, upon cross-examination as to a previous oral statement (including a statement recorded by mechanical process or through electronic means) made by him relevant to matters in question in the suit or proceeding in which he is cross-examined and where such a statement is inconsistent with his present evidence, denies that he made the statement or does not distinctly admit that he made such statement, proof may be given that he did in fact make it, but before such proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he made such statement."

Sec. 146:

We recommend that

(a) in clause (1) of sec. 146, after the word 'veracity', the words 'accuracy and credibility' be inserted;

(b) the proviso after clause (3) shall be deleted;

(c) after clause (3), 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 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'."

Sec. 147:

We, therefore, recommend that in sec. 147, after the words "relevant to", the words "the matter in issue in" should be added.

78. **Amendment of Section 148**

(1) In section 148 of the Principal Act, in the main part,

> For the words "If any such question relates to a matter not relevant to the suit or proceeding except", the words "If any such question is not material to the issues in the suit or proceeding but is admissible" shall be substituted.

(2) for clause (4), the following clauses and the Explanation shall be substituted, namely:-

"(4) The court shall have regard as to whether such evidence has or will have sufficient probative value to outweigh its prejudicial effect, in the circumstances of the case.

(5) The court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

Explanation:- Where, in a suit for damages for defamation for injury to the reputation of a person, an aspect of the character of that person, other than that to which the matter alleged to be defamatory relates, is likely to be injured by a question under this section, the court shall have particular regard to the question whether, having regard to the considerations mentioned in this section, such question is proper".

Section 148A:

Insertion of new section 148A: Accused person not to be asked certain questions. This was recommended as sec. 148(2) in the 69th Report. Sec. 148A (in the place of sec. 148(2)) as recommended (para 83.24) in the 69th Report will read as follows - (1) after adding the principle in DPP vs. P at the end and (2) after deleting the clause in the draft proposals regarding cross examination of complaint-prosecutrix by the accused:-

**Accused person not to be asked certain questions**

**"148A**. An accused person who offers himself as a witness in pursuance of section 315 of the Code of Criminal Procedure, 1973, shall not be asked and if asked, shall not be compelled to answer, any question tending to show that he has committed or has been convicted of or been charged with any offence other than that with which he is then charged, or that he is of bad character unless –

(i) the proof that he has committed or been convicted of such other offence is relevant to a matter in issue; or
(ii) he has personally or by his advocate asked questions of the witness for the prosecution with a view to establishing his own good character, or has given evidence of his good character, or
(iii) the nature or conduct of the defence is such as to involve imputations on the character of the witnesses for the prosecution,(other than the character of the prosecutrix) without obtaining the leave of the Court for asking the particular question; or
(iv) he has given evidence against any other person charged with the same offence;

and unless the court is satisfied that such evidence of which the witness is compelled as aforesaid, has or would have sufficient probative value which outweighs the prejudice that may be caused."

Sec. 149: Question not to be asked without reasonable grounds.

We recommend revising the four illustrations as follows:

(a) A legal practitioner is instructed by another legal practitioner that an important witness is a thief. This is a reasonable ground for the first legal practitioner for asking the witness whether he is a thief.

(b) A legal practitioner is informed by a person in Court that an important witness is a thief. The informant, on being questioned by the legal practitioner, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a thief.

(c) A witness, of whom nothing whatever is known, is asked by a legal practitioner at random whether he is a thief. There are here no reasonable grounds for the question.

(d) A witness, of whom nothing whatever is known, being questioned by a Legal practitioner as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a thief."

Sec. 150: Procedure of Court in case of question being asked without reasonable cause.

We recommend section 150 be revised as follows:

**Procedure of Court in case of question being asked without reasonable grounds**

"**150.** If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any legal practitioner, report the circumstances of the case to the appropriate Bar Council established under the Advocates Act, 1961 to which such legal practitioner is subject in the exercise of his profession."

Sec. 151: Indecent and scandalous questions.

In the 69th Report (see para 84.38), after some discussion, no amendment was recommended for sec. 151. We agree.

Sec. 152: Questions intended to insult or annoy.

In the 69th Report, in para 84.40, it was suggested that sec. 151 does not require any amendment. We agree.

Sec. 153: Exclusion of evidence to contradict answers to questions testing veracity.

We are of the view that sec. 153 need not be amended.

Sec. 154: Questions by party to his own witness.

This section deals with 'hostile witnesses'. The law as decided by the Supreme Court is proposed to be incorporated under a separate subsection.

We recommend that sec. 154 as it now stands should be re-designated as subsection (1) of that section and subsection (2) be added as follows:

> "(2) Nothing in this section shall disentitle the party so permitted, to rely on any part of the evidence of such witness."

Sec. 155: Impeaching credit of witness.

Clause (1) of Sec. 155: In the 69th Report, it was suggested (see paras 87.11 and 87.24) that clause (1) of sec. 155 should be amended, as a matter of clarification, by using the words, "impeach his credibility, accuracy or veracity" instead of "believe him to be unworthy of credit".

We agree with this recommendation.

Clause (2) of Sec. 155: In para 87.12 of the 69th Report, it was stated that no amendment is necessary in regard to this subsection. We agree.

Clause (3) of Sec. 155:

It is necessary to clarify clause (3) of sec. 155 by further adding, after the words 'liable to contradiction' the following words:

> "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 sec. 153."

Further, we recommend the addition of the following words in the beginning of clause (3) :-

"subject to the provisions of sec. 145"

We recommend accordingly.

Clause (4) of Sec. 155: We reiterate the recommendation in the 172nd Report for deletion of this clause. But now the said recommendation has been carried out by Indian Evidence (Amendment) Act, 2002 (Act 4 of 2003).

We recommend section 155 should be revised as follows:

**Impeaching the credit of witness**

"**155.** 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 sec. 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;

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.

**Illustrations:**

(a) A sues B for the price of goods sold and delivered to B. C says that he delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered goods to B.

The evidence is admissible.

(b) A is indicted for the murder of B.

C says that B, when dying, declared that A had given B the would of which he died.

Evidence is offered to show that, on a previous occasion, C said that the would was not given by A or in his presence.

The evidence is admissible."

The other provision, instead of sec. 155(2) as recommended, will be sec. 155A. (We change the word 'he' in the 69th Report as 'accused'. We omit the case of questioning the prosecutrix as done under sec. 155(4)).

**Impeaching the credit of the accused while examining him as a witness**

**"155A**. When an accused person offers himself as a witness in pursuance of section 315 of the Code of Criminal Procedure, 1973, it shall not be permissible to put questions to another witness and such witness, if asked, shall not be compelled to answer, questions which tend to show that the accused has committed or has been convicted or been charged with any offence other than that in which the accused is charged or that the accused is of bad character, unless –

(i) the proof that the accused has committed or has been convicted of such other offence is relevant to a matter in issue; or

(ii) the accused has personally or by his legal practitioner asked questions of the witness for the prosecution with a view to establishing his own good character, or has given evidence of his good character; or

(iii) the nature of the conduct of the defence is such as to involve imputations on the character of the witness for the prosecution (other than the character of the prosecutrix) without obtaining the leave of the Court for asking the particular question; or

(iv) the accused has given evidence against any other person charged with the same offence,

and the Court is satisfied that the probative value of the answer to the question has or would outweigh the prejudice that may be caused."

Section 156: Questions tending to corroborate evidence of relevant facts, admissible.

Section 156, it was stated in para 88.89 of the 69th Report, does not require any serious change except to add the words "fact in issue or" before the words 'relevant facts' in sec. 156.

Section 157: Former statement of witness may be proved to corroborate later testimony as to same fact.

We suggest adding an Explanation as follows:

> "Explanation: The statements made before any authority, legally competent to investigate the fact include statements made before a Judicial Magistrate in an identification parade and also statements made before such a Magistrate under section 164 of the Code of Criminal Procedure, 1973."

Section 157A: (recommended in para 88.38 of the 69th report)

The following provision is recommended in para 88.38 of the 69th Report and we agree that such a provision on the lines of sec. 146 be inserted:

**Establishing credit of witness by independent evidence**

"**157A**. Where the credit of a witness has been impeached by any party , the adverse party may, notwithstanding anything contained in section 153, in order to re-establish his credit, introduce independent evidence concerning his accuracy, credibility or veracity or to show who he is and his position in life."

So far as sub section (2) of the above new sec. 157A it was to the effect that "when a man is prosecuted for rape or an attempt to commit rape, it may be shown that the prosecutrix was of generally good character." We are of the view that such a provision may enable the accused to produce contrary evidence of her bad character. As we have reiterated in the 172nd Report that sec. 155(4) be deleted, we are not in favour of sub section (2) of sec. 157A as proposed.

Section 158: What matters may be proved in connection with proved statement relevant under section 32, or 33.

Sarkar says (15th ed. 1999 p. 2291), the object of this section is to expose statement by such persons to every possible means of contradiction or corroboration in the same manner as that of a witness before Court under cross-examination. No sanctity attaches to the statement of a person because he is dead or is not available. No amendment is proposed.

Section 159: Refreshing memory.

We agree (see para 90.15 of 69th Report) that sec. 159 be revised as follows:

**Refreshing memory**

"**159.** (1) A witness may, while under examination, refresh his memory by referring –

(a) to any document made by the witness himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory;

(b) to any such document made by any other person, and read or seen by the witness within the time aforesaid, if, when he read or saw it, he knew it to be correct;

(c) to a copy of such document, with the permission of the Court, provided the Court is satisfied that there is sufficient reason for the non-production of the original.

(2) An expert may refresh his memory by reference to professional treatises or articles published in professional journals."

Sec. 160: Testimony as to fact stated in document mentioned in section 159.
In para 91.6 of the 69th Report, it was observed that sec. 160 does not require any change. We agree.

Sec. 161: Right of adverse party as to writing used to refresh memory.
In para 92.3 of the 69th report the only amendment suggested was to substitute the word 'document' for 'writing' in conformity with section 159, as proposed to be amended, as also in conformity with present section 160. We recommend accordingly.

Sec. 162: Production of documents.
This section has been examined while dealing with sec. 123 and we have proposed amendment to sec. 162. The recommendations made in our discussion under sec. 123 may be looked into. We have recommended deletion of the words 'unless it refers to matter of State' from sec. 162. The entire procedure for record or communication relating to affairs of State will now come under sect. 123.

Sec. 163: This section bears the heading 'Giving, as evidence, of document called for and produced on notice'
We agree that no amendment is necessary in sec. 163.

Sec. 164: Using, as evidence, of document called for an produced on notice. In Sham Das v. R: 36 CWW 1127, a doubt was raised as to whether sec. 164 was applicable to criminal proceedings. It was suggested to the Commission which prepared the 69th Report that the section be amended to confine it to civil proceedings. The Commission declined to do. We are also of the same view.

Sec. 165: Judge's power to put questions or order production.

In the 69th Report, only certain structural changes were suggested in sec. 165. We accept the same, subject to making it clear that the power of the Court to put questions under sec. 165 cannot be used to put questions which are prohibited by the Evidence Act or any other statute.

We recommend that the restructured section 165 should read as follows:

**Judge`s power to put question or order production**

"**165** (1) Subject to the provisions of sub-sections (2), the Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing:

Provided that the parties or their agents shall not be entitled –

(a) to make any objection to any such question or order, or,

(b) without the leave of the court, to cross-examine any witness upon any answers given in reply to any such question.

(2) Nothing in sub-section (1) shall authorize a Judge to-

(a) ask or compel a witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce, under the provisions of this Act or under any other law for the time being in force, if the questions were asked or the documents were called for by the adverse party; or

(b) dispense with primary evidence of any document, except in the cases hereinbefore excepted.

(3) Notwithstanding anything contained in this section, the judgment of the Court must be based upon facts declared relevant under this Act and duly proved."

Section 166:

This section refers to 'Power of Jury or assessors to put questions.

In the 69th Report, see Ch. 97, it was suggested (para 97.2) that the system of trial by jury has since been abolished in India. So far as assessors are concerned, special laws which deal with the role of assessor make adequate provision. Hence sec. 166 be deleted. We agree.

Section 167:

The 69th Report stated that it was not recommending any amendment to sec. 167 and we agree.

**Transitory provision:**

We propose that the amendments recommended in this report, so far as those applicable to evidence in pending civil proceedings, should apply only if the evidence of witnesses (including that of the party witnesses) has not commenced by the date of commencement of the Indian Evidence (Amendment) Act, 2003, Bill in respect of which is annexed with this report.

We may also state that because documents have to be marked under Order 13 of the Code of Civil Procedure, 1908 during the evidence of a witness, the amendment so far as admitting documents also, will be applicable only where the evidence of witnesses (including that of party witnesses) has not commenced by the date of commencement of the said Amending Act.

We further state that in respect of amending provisions in the proposed Amendment Act wherein only Explanation clause is recommended for insertion in the respective provision and there is no other change proposed in that existing substantive provision, then the said amended provision shall be applicable to all suits or civil proceedings pending at the commencement of the proposed Amendment Act, irrespective of whether the examination of witnesses including parties, has commenced or not.

So far as the proposed amendments which apply to criminal proceedings are concerned, those will not apply to offences committed before the commencement of the Amending Act and pending in the court. They will apply only in regard to criminal proceedings relating to offences committed after the commencement of the Amending Act.

The Transitory Provisions read as follows:

**Transitory provisions**

**“** (1) All suits or civil proceedings pending at the commencement of this Act, in which the examination of witnesses including parties, has commenced before the date of commencement of this Act, shall, save as otherwise provided in sub-section (2), be disposed of in accordance with the provisions of the principal Act as it stood immediately before the commencement of this Act, as if this Act had not come into force.

(2) Following provisions of the principal Act as amended by this Act, shall apply in so far as they relate to the procedure in a suit or civil proceeding pending in a Court at the commencement of this Act,, namely :-

(a) the provisions of section 11 of the principal Act as amended by section 6 of this Act;
(b) the provisions of section 13 of the principal Act as amended by section 8 of this Act;
(c) the provisions of sub-section (1) of section 57 of the principal Act as amended by section 34 of this Act;
(d) the provisions of section 67 of the principal Act as amended by section 41 of this Act;
(e) the provisions of section 74 of the principal Act as amended by section 43 of this Act;
(f) the provisions of section 76 of the principal Act as amended by section 44 of this Act;
(g) the provisions of section 77 of the principal Act as amended by section 45 of this Act;
(h) the provisions of section 119 of the principal Act as amended by section 68 of this Act.

(3) All criminal proceedings relating to offences committed before the commencement of this Act and pending at the commencement of this Act, shall be disposed of in accordance with the provisions of the principal Act, as it stood immediately before the commencement of this Act, as if this Act had not come into force.”

We recommend accordingly.

(Justice M. Jagannadha Rao)

Chairman

(Dr. N.M. Ghatate)

Member

(T.K. Viswanathan)

Member-Secretary

Dated: 11.3.2003