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Supremacy of Law of Evidence over Procedural Laws

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***Abstract*- "Extraordinary claims require extraordinary evidence."--Carl Sagan. Before developing a model or a theory, it is important to understand the requirements of the domain in which the model or the theory is going to be used. Even before the birth of humankind, when the whole world was still and silent the only thing which existed is the "Law". The law of nature and dependency. And it is a well know established fact that where there is an existence there is evidence. Therefore everything begins with nothing and when that nothing set in to motion it gives birth to the existence and the existence of a thing is then said to be evident. Thus one can find the roots of the law of evidence since from the origin of the universe and of the mankind itself.**

Keywords- Law of Evidence

I. INTRODUCTION

When man begins to develop he formulated the Social contract theory which begins the era of manmade laws, their formulation, interpretation and execution. Various theories have been propounded thereafter, such as the Natural law, society, customs, command, pain and pleasure, sovereignty, rights and duties. The object behind all these theories was to provide an adequate justice delivery system for the society in current and prospectively and to attain the dreamed concept of welfare state. In modern times when the world gets divided into different territorial boundaries and the concept of state and sovereignty emerged, the governmental functions have multiplied by leaps and bounds which results in the era of "codification". Then there came a view that "one should be considered in the light of other" the reasons which brought this thought are many. The philosophy as to the role and function of the state has undergone radical changes and comparative study of legal systems all in different ways contributed a lot for this. Many jurists have made attempts to define it, but none has completely demarcated. In 1748 Montesquieu formulated the doctrine of separation of powers, systematically, scientifically and clearly. This had tremendous impact on the development of laws, function of government and administration of Justice. As a result of separation of powers the so called police state exercising only the sovereign functions was now converted in a progressive democratic state which seeks to ensure social security and welfare for the common man and takes all the steps which the social justice demands, through the process of legislation, execution, interpretation and constitution of courts. In awake, a number of civil and criminal Acts and codes have been enacted since then. Though they were significant but not fully satisfactory because most of them were unable to define their own constitution for example many attempts have been made to define "crime" under criminal law but the makers fails to identify and define that what kind of act or omission amounts to a crime. And what is justice? It's nowhere defined even till today. The procedural laws only provided a machinery for the prevention of crime, apprehension of suspected criminals, detection of crime, collection of evidence, determination of guilt or innocence of the suspected person and imposition of suitable punishment on the guilty person. But in ultimate analysis and review it seems that all these enactment and procedure are of no use as they too require evidence. It is so because the collection of evidence itself requires some of sort of evidence to proceed for investigation.

II. LAW OF EVIDENCE

The nations all over the world had enacted their law of evidence, framing and defining rules and a set category of things to be consider as and in evidence in court . But none have spoken about or critically examine the role played by it in entire legal system. It is always considered as a part of procedure laws and not as their power source and only taken into consideration firstly during the framing of charges upon police report or when the magistrate take cognizance of complaint made under section 190 or 200 of the code of criminal procedure and then after framing of charges to proceed with trial before the pronouncement of final order, judgment or decree. But the truth is that – all the laws enacted by the legislature are silent in nature upon almost everything and are mere few words written upon the papers representing the will of sovereign, they are not having any sanction and relief behind them, and they came in to action only upon some act of motion of their cognizance. Their entire existence is governed by the law of evidence itself. Therefore the importance of evidence is though considered at the same time its "role" in legal system is neglected by the legislature, researchers and jurists. The law of evidence is nowhere considered as the "constitution" of procedural laws. It is only considered as an adjective law which is accessory to substantive law, by the legislatures and interpreters. In general and then in law a thing or a fact which exists is said to be the evident of the thing so exists and in the language of legislation "evidence" before the amendment of 2000, means and includes:

(1) All statements which the Court permits or requires to be made before it by witness, in relation to matters of fact under inquiry.

(2) All documents produce for the inspection of court;

Such documents are called documentary evidence.

III. PROCEDURAL LAWS

With the advent of the science and technology and its development during 18th, 19th and 20th century; things become digital today. The whole world is wired, living in

a state of electronic connectivity whether they be cameras, print and electronic media, or computers and mobile devices. Thus, we and our societies got super - connected at the same time it also give birth to the modern era of crimes via digital mode such as computers, networks, mobile phones and other electronic mediums, as either tools or targets which are known as cybercrimes. Due to which it become necessary for the legislature to amend each and every statute dealing with prevention, detection and determination of crime and to formulate new laws to deal with crimes committed through electronic means. Moreover the method of accepting evidence recorded or collected through electronic means has also been amended.

IV. CONCLUSION

In a step apart from formulation of information technology Act, 2000 the legislature has taken a major step of reviewing the Indian Evidence Act, 1872 and to amend and define the term "evidence" once again in year 2000; which includes and treated "electronic records" produced for the inspection of the Court under the category of documentary evidence. Thus the information relating to any crime, which are either stored or transmitted in digital form are called electronic evidence. Evidence in electronic form serves the same aims with traditional evidence, but they bring along some concerns and treats, especially in the course of their collection, such as potential privacy violations. Because the procedures relating to the collection of electronic evidence, especially the electronic search and seizure and the interception of communication, pose threat against individuals' privacy. The problem does not arise only due to the nature of the electronic evidence, but it grows in relation to the way that the procedures are regulated and the electronic or digital evidence is handled

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