

Bill No. LXVII of 2016

THE INDIAN EVIDENCE (AMENDMENT) BILL, 2016

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BILL

Further to amend the Indian Evidence Act, 1872.

Be it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Indian Evidence (Amendment) Act, 2016.

Short title,
extent and
commencement.

(2) It shall extend to the whole of India except the State of Jammu and Kashmir.

5 (3) It shall come into effect with immediate effect.

2. In the Indian Evidence Act, 1872 after section 114A, the following shall be inserted, namely:

Insertion of new
section 114B in
Act 1 of 1872
Presumption in
prosecution of
custodian death
or injury.

10 "114B. (1) In a prosecution of a police officer for an offence constituted by an act alleged to have caused death or bodily injury to a person, if there is evidence that the death or injury was caused during a period when that person was in the custody of the Police, the court may presume that the death or 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,—

(i) The period of custody,

(ii) any statement made by the victim as to how the injuries were received, being a statement admissible in evidence, 5

(iii) the evidence of any medical practitioner who might have examined the victims, and

(iv) evidence of any magistrate who might have recorded the victims statement or attempted to record it." 10

STATEMENT OF OBJECTS AND REASONS

As per data collected by the National Crime Record Bureau in the year 2013, 115 custodial deaths were reported across the country, followed by 93 in 2014 and 97 in 2015. It is astonishing to note that out of the 97 deaths in 2015, only 9, that is less than 10% were natural deaths and the maximum were reported as suicides. It is alarming that most of these deaths occur in police custody when such people have not been remanded by courts. People die in police custody before they can even be presented in a court of law.

Our criminal justice system is particularly slow to act in such cases. Out of the 93 recorded deaths in 2014, only 28 cases were registered in which 26 policemen were chargesheeted. In 2015, as against 97 recorded deaths, 35 cases were registered and 28 policemen were chargesheeted. However, both in 2014 and 2015, no policeman was convicted for such offences.

In its 152nd report on Custodial Crimes in 1994, the Law Commission of India pointed out that one of the reasons for low convictions in cases of custodial crimes is because they are very difficult to prove as it happens only in the presence of an accused policeman. If the victim has died, it becomes even more difficult to prove the crime. Therefore, the Commission recommended that in such cases where there is evidence to show that death or injury occurred while in custody, it be presumed that death or injury was caused by the police officer having custody. This places the burden of proving innocence on the police officer accused. While other recommendations of the Report, most notably, the rights of the arrestee have been incorporated in the Code, this crucial provision has been left out. I, therefore, intend to bring up an amendment to the Indian Evidence Act, 1872 by inserting a new section, 114(B).

Hence this Bill.

HUSAIN DALWAI

ANNEXURE

EXTRACTS FROM THE INDIAN EVIDENCE ACT, 1872

(1 OF 1872)

114. Court may presume existence of certain facts.—The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural event, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The court may presume—

(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) that an accomplice is unworthy or credit, unless he is corroborated in material particulars;

(c) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(d) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;

(e) that judicial and official acts have been regularly performed;

(f) that the common course of business has been followed in particular cases;

(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(h) that if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given would be unfavorable to him;

(i) that when a document creating an "obligation is in the hands of the obligor, the obligation has been discharged;

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:—

as to *illustrations (a)*—a shop-keeper has in his bill a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;

as to *illustration (b)*—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 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;

as to *illustration (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 give an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;

as to *illustration (c)*—A, the drawer of a bill of exchange, was a man of business, B, the acceptor, was young and ignorant person, completely under A's influence;

as to *illustration (d)*—it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course;

as to *illustration (e)*—a judicial act, the regularity of which is in question, was performed under exceptional circumstances;

as to *illustration (f)*—the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;

as to *illustration (g)*—a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family;

as to *illustration (h)*—a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;

as to *illustration (i)*—a bond is possession of the obligor, but the circumstances of the cases are such that he may have stolen it.

'114A. In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m), clause (n), of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

Presumption as to absence of consent in certain prosecution for rape.

Explanation.—In this section "sexual intercourse" shall mean any of the acts mentioned in clause (a) to (d) of section 375 of the Indian Penal Code.'

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BILL

Further to amend the Indian Evidence Act, 1872.

(Shri Husain Dalwai, M.P.)