

An Analysis of Evidence: It's Importance and Classification

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Abstract

Evidence is a very important segment of the justice delivery system. It is the evidence where from the outcome of a judgement can be determined. In the Indian legal system, Indian Evidence Act, 1872 passed by the Imperial legislative Council plays a crucial role in the judicial pronouncements procedure. In this research, the researchers have tried to explain in a very simple way the concept of evidence and types of evidence with the help of judicial pronouncements. The expertise and experience of Mr. Prabhat Kumar Srivastava (LL.M. from BHU & Additional District Judge) has been taken by the researchers to explain the concepts in easy language.

Keywords: Evidence, document, record, trial etc.

INTRODUCTION

Whole trial system of any type of cases is mainly based on evidence. Evidence must be produced in order to prove the cases before the court. Thus, one can say that 'evidence' plays a pivotal role in the trial system.

GENERAL OVERVIEW OF THE INDIAN EVIDENCE ACT, 1872

In 1872, the Imperial Legislative Council established the Indian Evidence Act. It was enacted on 15th of March 1872 and commenced on 1st September 1872 [1]. The whole Act consists of 167 Sections divided into 11 Chapters.

In this research, evidence and types of evidence with the help of judicial pronouncements has been discussed. Evidence has been observed as the 'ear' and 'eye' of the Court. The term "evidence" is derived from the Latin word "evident" or "evidere," which meaning "to prove". So, the word evidence itself clarifies the fact that each and every issue before the Court requires to be proved.

The rules of evidence have been incorporated with the intention of assisting the Courts in learning the truth and preventing judges' minds from becoming confused as a result of the excessive acceptance of evidence [2]. By establishing a proper and consistent standard of conduct, the Indian Evidence Act

of 1872's primary goal was to avoid indiscipline in the acceptance of evidence. The lex fori [3], or evidence law, is what regulates the court. To ascertain whether a writer is competent, whether a given fact must be proved in writing or not, and whether a given piece of evidence proves a given fact or not, the law of the nation where the issue arises, where the remedy is sought to be enforced, and where the Court sits to enforce it will be applied [4].

Every time a matter is brought before a judge for his or her determination of the rights and obligations of parties based on facts, specific information

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regarding the facts involved must be provided to him in order for him to have confidence in what the true facts are [5]. The facts must first be established, and only then is the matter appropriate for the application of pertinent laws [6]. It is law of evidence, by which facts are proved and are governed. The law of evidence establishes guidelines by which facts in a case can be supported or refuted in front of a judge or jury. Thus, it may be deduced that the laws and guidelines established by the law of evidence govern all methods that can be employed to establish a fact. It should be recalled that the law of evidence simply establishes rules to make the administration of justice easier, not to impact the parties' actual legal rights [7].

The Indian Evidence Act of 1872's interpretation clause in Section 3 defines the term "evidence" as:

Evidence includes and means:

1. All declarations that witnesses are allowed or required to make in front of the court regarding matters of fact and the investigation; such declarations are called for the evidence,
2. All papers, including electronic data, prepared for the Court's review are referred to as documentary evidence [8].

Thus, from provision contained under Section 3 of the Indian Evidence Act, 1872 it can be said that the definition of evidence is exhaustive in itself, as it prescribes about 'what are the evidence.'

Classification of Evidence

Analysing the different provision contained in the Indian Evidence Act, 1872 the evidence can be classified as follows.

Oral and Documentary Evidence

This classification can be derived from the definition of evidence given in Section 3 and the provision contained under Sections 59 and 60 of the Indian Evidence Act, 1872. As previously discussed, Section 3 of the Act states that oral evidence is any statement a witness makes in front of the court regarding the facts being investigated. So, one can say that oral evidence is a statement, but all types of statements are not oral evidence. Only those statements that the witness is allowed or required to make in front of the court and that relate to the factual issues the court is investigating are considered oral evidence. Written evidence is the evidence contained in the documents in written form. It may be contained in electronic records also.

Only those statements that the witness is allowed or required to make in front of the court and that relate to the factual issues the court is investigating are considered oral evidence [9]. So, from the combined effect of definition of evidence contained under section 3 of the Act as well as provision contained under Section 59 and 60, evidence can be classified into oral and documentary evidence.

Example

- a. If 'A' says from 'B' that he has murdered 'C' and B appears in the Court and deposes this fact in the Court his evidence is oral evidence.
- b. If there is an agreement regarding sale of property in between 'A' and 'B' and the same has been reduced into writing, the document in which the agreement has been reduced into writing is documentary evidence.

Primary and Secondary Evidence

The next division of evidence resulting from the provisions of Sections 61, 62, and 63 of the Indian Evidence Act, 1872 is into primary and secondary evidence. According to Section 61, primary or secondary evidence may be used to prove a document's contents. So, from provision contained under Section 61 of the Act one can say that, 'the contents of the document may be proved only in two ways, either by primary or by secondary evidence.'

Primary Evidence

Section 62, specifies what constitutes primary evidence. Primary evidence is the actual document that was produced for the Court's review [10].

Explanation 1

When a document is performed in multiple sections, each one acts as the document's main piece of evidence. When a document is executed in counterparts, each of which is signed by only one or a small number of the parties, each counterpart serves as primary evidence against those signing it [11].

Explanation 2

If all of the documents were created using the same standard procedure, such as printing, lithography, or photography, then each one serves as the primary proof of the contents of the others. However, when they are all copies of a single original, they do not serve as the main source of information on what was in the original. Illustration It is demonstrated that a person had several placards in their hands that were all printed simultaneously from the same source. Any one of the placards can serve as primary proof of the information on any other one, but none of them can serve as primary proof of the information on the original placard [12].

Secondary Evidence

Secondary evidence is something which is not an original document but which contains an original document's contents [13]. Section 63 of the Indian Evidence Act of 1872 provides guidelines for secondary evidence. Secondary evidence refers to and comprises:

1. Certified copies provided pursuant to the provisions herein;
2. Copies made from the original using mechanical procedures that, by themselves, guarantee the accuracy of the copy, and copies compared to such copies;
3. Reproductions of the original or comparisons to it;
4. Document counterparts as a defence against non-signatory parties;
5. Oral accounts of a document's contents provided by someone who has personally seen it [14].

Illustrations [15]:

- a. Even though the two have not been compared, a photograph of an original constitutes secondary proof of its contents if it can be established that the object was the original.
- b. If it can be proven that the copy made by the copying machine was made from the original, a copy of a letter compared to a copy made by the machine is secondary evidence of the letter's contents.
- c. A copy that has been transcribed from a copy and then compared to the original is secondary evidence; however, a copy that has not been compared to the original but has been transcribed from a copy that has been compared to the original is not secondary evidence of the original.
- d. Secondary evidence of the original is neither an oral account of a copy compared with the original, nor is it an oral account of a photograph or machine-copied original

As a result, it can be deduced that the original documents serve as the main source of evidence, while any other version of the original document's contents serves as secondary proof.

Electronic Evidence

The Information Technology Act of 2000 changed the definition of evidence and introduced the term "electronic records" in response to the significance and influence of the digital world in our day-to-day lives [16]. Data, record or data generated, image or sound stored, received or communicated in an electronic form, or microfilm or computer-made microfiche are all examples of electronic records [17].

Hearsay Evidence and Real Evidence

The next classification of evidence ensuing from provision contained under Section 6 of the Indian Evidence Act, 1872 may be termed as:

Before dealing with these two types of evidence it is important to quote here that, Section 6 of the Indian Evidence Act, 1872 prescribes about the Relevancy of Facts.

Illustration

A is charged with killing B by hitting him. The relevant fact is whatever was said or done by the A, B, or witnesses during the beating, or just before or after it so as to be a part of the transaction [18].

Here in the present illustration the word 'by-standers' denotes the person whose evidence/ statement is given by some other in the Court. Thus, a statement of by-stander produced by the person who heard it, is hearsay evidence. The person producing the statement of by-standers in the Court has not himself seen the actual occurrence, but he has heard from someone who had seen the occurrence.

Hearsay evidence is the evidence of the person who himself has not seen the occurrence but has heard about it from a person who has seen the occurrence. The real evidence is the evidence of the person who himself has seen the occurrence.

The words "hearsay" and "say" are combined to define a testimony that is based on what a witness may have heard from others. Evidence from hearsay is insufficient because:

- i. The person providing the evidence lacks any sense of accountability,
- ii. Repetition can taint the truth, and
- iii. There is enough room to commit fraud while claiming to have heard it from a third party;

Privy Council in the case of *Ghulam Rasul Khan v. Secretary of State for India* [19] in Council has made following observation about the requirement of admissibility of hearsay evidence.

"In such a case as the present, statements in public documents are receivable to prove the facts stated on the general grounds that they were made by the authorised public agents performing the official duty and respecting facts having public interest or required to be recorded for the community benefit [20]. In many cases, in deed, in nearly all cases, after lapse of years it would be impossible to give evidence that the statements, contained in such documents were in fact true, and it is for this reason that such an exception is made to the rule of hearsay evidence."

Therefore, it can be analysed that, real evidence is the evidence of a person who himself has seen or heard the occurrence and hearsay evidence is the evidence of a person who has not seen the occurrence but has heard from someone who has seen or heard the occurrence. It might be considered second-hand information.

Judicial and Non-Judicial Evidence

Judiciary evidence is the information that a court of justice receives to support or refute the facts that were presented to it [21]. Such type of classification of evidence may be traced in the provision contained under Section 165 in the Indian Evidence Act, 1872 which provides the Judge's power to put questions or order production. The judge may examine any witness or party at any time, in any format, regarding any important or irrelevant fact in order to learn about or get adequate proof of that fact. The parties or their representatives are not allowed to object to his request for or order for the creation of any item, nor may they cross-examine any witness over a response to such a request without the Court's permission: As long as the judgement is founded on facts that have been lawfully established and deemed relevant by this Act. However, nothing in this section shall authorise any Judge to compel any witness to answer any question or to produce any document that such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive. The Judge shall not dispense with pleadings and shall not ask any questions that would be improper for anyone else to ask under Sections 148 or 149 [22].

Judicial evidence may also be seen in the form of confession made before the Court or the judicial officer. Non-Judicial Evidence refers to any confession made outside of court by the accused in the presence of anyone or the admission of a party. Non-judicial evidence is that which is presented in a court case or administrative procedure before a magistrate or other officer.

Direct and Indirect Evidence

On the basis of provision contained under Section 60 of the Indian evidence act discussed above this classification of evidence may be made. Section 60 mandates that oral testimony be forthright. Direct evidence is the statement of the person who has seen the occurrence [23]. It can be said as the statement of the person who has personal knowledge about a fact Which is under enquiry before the Court. Indirect evidence may be termed as circumstantial evidence. Evidence from indirect observation of the fact in question is referred to as circumstantial evidence.

Example

1. A provides direct testimony of material facts in a murder when he states that he witnessed a person "x" beating a person "y," who later died.
2. A is put on trial for killing "B". 'C' deposes in the Court that shortly before the murder he saw 'A' and 'B' together on the place from where dead body of 'B' was recovered. This evidence is circumstantial evidence.

It is not safe to rely upon circumstantial evidence without applying any rule of precaution that's why *Hon'ble Apex Court in Sharad Birdhichand Sarda v. State of Maharashtra* [24], has established the following five golden rules for proving a case using circumstantial evidence, known as the panchsheel of the proof [25]:

- a. The conditions from which it is to be inferred guilt should be thoroughly proved. The difference between "may be proven" and "must be or should be proven" is not just linguistic; it also has legal implications. Before a court can convict someone, it is fundamentally important that they be guilty rather than just maybe guilty. Because it separates speculative hypotheses from specific conclusions, the mental distance between "may be" and "must be" is significant.
- b. The facts that have been proved should only be compatible with the accuser's guilt; in other words, they shouldn't be able to be explained by any other possibility but the accuser's guilt.
- c. The situation should have a trend toward being conclusive;
- d. They should rule out any hypotheses other than the one being proven, and
- e. The chain of evidence must be so strong that it excludes all reasonable grounds for the finding that the accused is innocent and must demonstrate that, by all reasonable probabilities, the act was committed by the accused. These are the forms of evidence that must be shown by the parties to support their claims if the Court is to rule on the issues that are before it.

CONCLUSION

Based on above provisions, it can be analysed that, the importance of the evidence in court of law for deciding a case is very important. In both civil and criminal cases, the evidence is crucial because it is necessary for the successful establishment of facts. The evidence has been categorised in various kinds as they are important regarding their relevancy and admissibility. The various types of evidence drawn from the provision contained in the Indian Evidence Act, 1872 are necessary to deal with different types of cases. It is to be noted that, there are no specific provision in which types of evidence can be fitted. To make it easier to study and comprehend the evidence, it has been divided into different classes based on a number of criteria. The Indian Evidence Act, 1872 has expanded its scope to include digital and electronic evidence, which is crucial because today, almost every field is heavily influenced by the cyber world. The ideas discussed above may not be complete but it has been tried to discuss all the facts regarding evidence and types of evidence based on provision contained under Indian Evidence Act as well as in Judicial pronouncements.

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