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ADMISSIBILITY OF VARIOUS KINDS OF EVIDENCE IN INDIAN COURTS- AN ANALYSIS.

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ABSTRACT

Evidence forms the basis for proving facts in a case. Though it can be said that the evidence producing mode may be broadly classified as Direct Evidence and Indirect Evidence. Further the evidence by document method is classified as Primary evidence and Secondary evidence. The court has recognized the other kinds of evidence such as oral evidence, hearsay evidence etc which I am discussing below in detail. More over in the present scenario there are other forms of evidence like electronic evidence, which has been used in all transactions. The main criteria for accepting an evidence is it must be genuine and satisfy all the norms of a valid evidence. The Golden rules of evidence are of three categories. They are 1. Evidence produced must be confined to the fact in issue. 2. Hearsay evidence to be avoided at the most .3. Best acceptable relevant evidence should be given in all cases. Certain kinds of evidences will be rejected by the court on the ground of public policy. The court shall make presumptions on the basis of the evidence produced. If there is any ambiguity in the words of an evidence , the court may apply its inherent power and interpret to fulfill the objective of the maker. Therefore the different kind of evidence shall be in such a proposition that it should satisfy the court for delivering a justifiable Judgment. I have discussed in this article about the various kind of evidence permissible and admissible by the courts.

KEY WORDS: *Evidence , Direct , Indirect , Kinds , Interpretation ,Admissibility .*

1.INTRODUCTION

In its unique sense, "Evidence" alludes to the condition of being clear , for example plain, self-evident, or notable. Nonetheless, it is utilized to portray something that will in general create proof or evidence. The central truth is the one that should be demonstrated, and the evidentiary reality is the one that will in general lay out it. To put it another way, one might say that, correct evidence goes about as the eyes and ears of the court.

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Sir William Blackstone defined evidence as “that which demonstrates, makes clear or ascertains the truth of the facts or points in issue.” . According to Mr.Faylor evidence is “All means which tend to prove or disprove any matter, fact, the truth of which is submitted to judicial investigation.”

Dr. Johnson’s Dictionary says evidence as “the state of being evident, that is plain apparent or notorious”. Bentham says “evidence” as “any matter of fact, the effect, tendency or design of which is to produce in the mind a persuasion affirmative or disaffirmative, of the existence of some other matter of fact.”

Wigmore defined ‘evidence’ as representing “Any knowable fact or group of facts, not a legal or logical principle, considered with a view to its being offered before a legal Tribunal to produce a persuasion, positive or negative, on the part of the Tribunal, as to the truth of a proposition, not of law, or of logic, on which the determination of the Tribunal is to be asked.”

Mr. James Stephen defines , “It sometimes means words uttered and things exhibited by witnesses before a Court of Justice. At other times, it means the facts proved to exist by those words or things and regarded as grand work of inference as to other facts not so proved. Again, it is sometimes used as meaning to assert that a particular fact is relevant to the matter under inquiry.”

Section 3² says ‘Evidence’ means and includes the following:

“All statements made before the Court by witnesses about matters of fact under investigation, which the Court permits or requires; such statements are referred to as oral evidence”

“All documents (including electronic records) presented for the inspection of the Court; such materials are referred to as documentary evidence”.

Hence, the term "Evidence" is characterized as whatever will in general check or deny the presence or non presence of an expressed fact. The party who guarantees the presence of a reality should demonstrate its presence, while the party who denies it should negate its presence or lay out its non-presence.

² Indian Evidence Act, 1872

2. KINDS OF EVIDENCE

a) **DIRECT EVIDENCE** : Direct Evidence is considered as basic proof for choosing the matter in the issue. It straightforwardly demonstrates or invalidates the reality. In such evidence, a particular reality is laid out straightforwardly without giving motivation to associate with the reality. One scarcely needs to bring up the delineation gave as the evidence of the observer in court is immediate proof rather than a declaration to a reality recommending responsibility. Such evidence is genuine, substantial, or obvious evidence of a reality that requires no reasoning or thought to demonstrate its presence. In any case, depending on the evidence totally with practically no thinking to demonstrate its presence can be considered as a downside too. In *Neeraj Datta Versus State (N.C.T.of Delhi)* Held in a bribery case , “the mere receipt of any property or valuable security would not tantamount to acceptance unless the bribe giver had made an offer demanding favour from the public servant and that fact in issue should be proved by direct evidence”. Therefore , If a person sees anything he has to give evidence . If the person smells a thing , that person has to give evidence . If a person hears anything that person has to give evidence. It is called Direct Evidence. It is valid in the courts.

b) **INDIRECT OR CIRCUMSTANTIAL EVIDENCE**: It is the opposite of direct evidence, in the sense that any third person giving evidence after hearing from the original person. It is not valid. Dissimilar to direct evidence, circumstantial evidence doesn't straightforwardly demonstrate a key reality. Rather, this kind of proof demonstrates another reality and an individual can then make a sensible derivation that a key truth occurred. Dying Declaration is an example. It is valid if it is made by proper recognized procedures. In *Bharad Bhirdi Chand Sarda Versus state of Maharashtra*³ Held "Before accused can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that up on no rational hypothesis other than murder can the facts be accounted for."

c) **PRIMARY EVIDENCE**: If the original document itself produced for the inspection of the court as evidence , then it is called primary evidence. According to Section 62⁴ it is the permissible evidence without objection and explanation. It says “when a document is in various parts, each part of the document forms a part of the primary evidence and if the documents are

³ 17 July 1984.

⁴ Indian Evidence Act , 1872

merely copies of a common original work, then they cannot be considered as primary evidence of the original work ” . The Supreme Court in *J.Yasoda Versus Shobana Rani*⁵ Held that “it is a general rule that the Secondary evidence can be admitted only in the absence of primary evidence and in a situation where the original is found to be inadmissible as the party who files it to prove its validity has failed to do so, then the said party cannot be allowed to introduce any secondary evidence of its contents”

d) SECONDARY EVIDENCE: It is used in the absence of primary evidence and is considered inferior to primary evidence. Section 63 deals about it. Section 65 prescribes the situation where the secondary evidence is admissible. Permission to be obtained from the court to file secondary evidence on the specified grounds under section 65 including reasons like unavailability or lost of original documents.

The fundamental essential for driving secondary evidence is that the party depending upon the first archives couldn't deliver them regardless of their earnest attempts, because of reasons outside of its reach. Besides, to deliver secondary evidence under the steady gaze of the official courtroom, the party should lay out the conceivable justification behind the non-creation of primary evidence. secondary evidence can't be acknowledged until it is laid out that the said unique reports are lost or are/have been annihilated or have been intentionally kept by the party against whom the said records were looked to be utilized.

The Supreme Court in *Chandra Versdus Thangamuthu*⁶ Held that “the secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original and that should be emphasized that the exceptions to the rule requiring primary evidence are designed to provide relief in a case where a party is genuinely unable to produce the original through no fault of that party.”

e) EXPERT EVIDENCE : The opinion of experts in any particular field is dealt under Section 45 to 51 of the Indian Evidence Act. It is defined As “When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant

⁵ J. Yashoda v. Smt. K. Shobha Rani, 2007(2) R.C.R.(Civil) 840

⁶ (2010)9 SCC 712

facts”.

An 'Expert' witness is one who has committed time and study to a unique part of learning and in this way is extraordinarily gifted on those focuses on which he is approached to express his viewpoint. For the court to reach a satisfactory conclusion, his evidence on these points is admissible. Even for determining a scientific dispute, an expert having scientific mode of knowledge can be brought as an expert. In *Bal Krishna Das Agrawal v. Radha Devi and others*⁷ held that Expert is a person who by his training and experience has acquired the ability to express an opinion.

The opinion of an expert cannot be used to interpret a provision of Law. In *Forest Range Officer v. P. Mohammed Ali*⁸ held that expert opinion is only 'opinion evidence'. Therefore it does not make the court in interpretation of the law. Section 73 in case of disputed signatures, gives power to Judge for comparing and coming to a conclusion. Any person who is present in court may be asked to write down any words or figures so that the Court can compare them to any words or figures that are alleged to have been written by that person. This part applies likewise, with any essential alterations, to finger-impressions.

In the case of **Lalit Popli v. Canara Bank and Ors. (2003)**, the Honourable Supreme Court Held that as per Section 73, the Court can compare and act as an expert.

f) CHARACTER EVIDENCE: Section 55 of the Indian Evidence Act deals with Character Evidence. It says that the term “conduct includes both reputation and disposition”. “It is normally established that reputation is the general opinion about an individual in the eyes of the others whereas disposition is how that person is in real and what are his inherent qualities”. Section 55 gives that in civil cases, evidence of the good or bad character of the individual person is relevant in suits for determining compensation. Similarly the good character of an accused is also relevant in a criminal case except in situation if the accused tells lie. In *Habeeb Mohammad vs The State Of Hyderabad*⁹ Held by the Supreme Court that The accuser's character can play a role in determining whether they are innocent or guilty during criminal proceedings. It can help in either making him dubious or liberated from every one of the doubts. Accused will be allowed to prove general good character to determine the quantum of punishment.

⁷ (1989), SC.

⁸ (1994), SC.

⁹ 1954 AIR 51

h) ELECTRONIC EVIDENCE: Section 65B of the Indian Evidence Act of 1872 specifies a distinct framework for electronic evidence admissibility. The Apex Court has taken opposing positions in a number of litigations concerning Section 65B's scope and application. In *Arjun Panditrao Khotkar v. Kailash Kishanrao Goratyal*¹⁰ Judgment delivered by three-judge bench of the Supreme Court, clarifies the interpretation of Section 65B. On the off chance that the competent authority won't give the certificate, the party who wishes to depend on the electronic record can apply to the Court for a request to create the essential testaments. In light of this reason, the Court presumed that the commitment put by Section 65B(4) was compulsory, and not deliberate, and is a condition point of reference before optional duplicates of an electronic record can be conceded. It was held that the electronic proof ought to be introduced before the preliminary starts, and at any stage preceding the culmination of the preliminary, the Court can coordinate the creation of the authentication under Section 65B(4). More over in *Union of India & Others Versus Ravindra V. Desai*¹¹, Held If the certificate is not produced as per section 65(B), it can be curable later.

3. CONCLUSION:

Thus an analysis of the various kinds of evidence shows that the final decision lies with the Judge to decide its admissibility based on its corroboration with other evidences. Everything that is used to acknowledge or explain the truth of a submission is considered evidence, and each type is considered extremely important in determining a case's outcome. Whether it is a common or a crook case, proof assumes a huge part as the confirmation of realities won't be compelling without having any proof. In addition, the various types of evidentiary proof are eminent concerning their importance and suitability principles.

¹⁰ July 14, 2020

¹¹ 2018(4) TMI 1939.