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# **A DETAILED EVALUATION ON THE IMPORTANCE OF PRIMARY EVIDENCE**

Authored By: Krithika Jamkhandi

## **Introduction**

The means by which one satisfies the burden of proof is through evidence. The key question that must be answered in order to establish and prove the defence or mitigation or to disprove a prima-facie case or presumption in a civil, criminal, or administrative case is whether the evidence that has been presented to you meets the criteria or is sufficient to provide such evidence.

It is a known truth that the decision will be made in the person's favour if the weight of the evidence tips that way. Such proof will be sufficient and legally sufficient for the judicial action that the parties have requested or prayed for.

The word "evidence" comes from the Latin word "evidre," which means to show clearly or to determine.

## **Significance Of Evidentiary Elements**

Bits of evidence are presented by both parties in order to prove a case in a court of law, and certain systematised rules are necessary to ensure that the evidence is presented within the parameters advised by law. The Indian Evidence Act, 1872 is the law that governs the presentation of evidence in judicial proceedings, whether they be civil, criminal, or of another type, with the exception of situations where it is currently prohibited by the law.

Documentary Evidence, as defined in Section 3 of the Indian Evidence Act of 1872, is defined as "All Documents Produced for the Inspection of the Court." All documents delivered with the Court's approval and under its watchful eye are implied by and included in documentary evidence.

It is held in Lucas v. Williams, 1892 Q.B., in legal terms, primary evidence is that which must be shown first while secondary evidence is that which may be presented in the absence of superior evidence. once a suitable explanation for it has been provided.

## **Oral Evidence:**

It refers refers to all statements that witnesses are allowed or required to make in front of the court regarding the facts being investigated. Additionally, oral evidence is only comprised of uttered words or hand gestures. When a fact can be established through oral testimony, an oral statement from the witness is not always required. A dumb individual can so testify through writing or with signals. Oral testimony can also be used to support the facts.

Oral evidence encompasses both the evidence presented by a party through the examination of witnesses and the evidence presented by the other side during the witness' cross-examination.

## **Two Different Classes Are Isolated For Documents:**

The provisions relating to evidence given in any civil or criminal proceeding in any court are outlined in the Indian Evidence Act, 1872. Evidence can serve as proof that demonstrates the truth or validity of a belief or a statement. It should be noted that in any lawsuit or procedure, evidence must be presented before the court only to establish the existence or absence of a fact in contention or any other fact pertinent to the lawsuit or proceeding.

Both the Criminal Procedure Code and the Civil Procedure Code govern the production of court documents. The production of a document known as Primary Evidence or Secondary Evidence should be used to demonstrate the content of documents.

As a result, the documentary evidence is divided into three categories according to the Indian Evidence Act:

Sections 61 to 73 A cover general guidelines for demonstrating documentary evidence in various situations.

The second category is public documents, which are covered by sections 74 to 78, and the last category is presumptions as to documents, which is covered by sections 79 to 90 A.

There are two ways to prove the contents of a certain document in a court of law, according to Section 61, which deals with proof about the contents of documents.

Both primary evidences discussed in sections 62 and 63 and secondary evidence are types of evidence.

There are only two ways to prove the document's content, according to basic norms.

## **Section 62 – Meaning & Significance**

Documentary evidence is preferred to oral pieces of evidence, especially in the area of reliability, according to any document submitted for the judge's consideration. This idea is derived from the philosophy known as **Vox Audita Perit, Littera Scripta Manet**, which states that only written words survive after being uttered. This means that when there are two types of evidence presented to the court one is oral evidence, and the other is documentary evidence the documentary evidence will always take precedence.

The document that was prepared for the Court's review is referred to as the primary evidence. In general, primary evidence is the strongest type of testimony allowed in court, and secondary evidence which may be presented in the absence of main evidence, which the law mandates must be presented first is only permitted under very specific conditions and requires a legal justification.

Explanation 1: When a document is executed in multiple parts, each part serves as primary evidence of the document. When a document is executed in counterparts, each of which is signed by just one or a small number of the parties, each counterpart serves as primary evidence against those parties.

Any document requiring proof must be provided in its best possible shape. The Indian Evidence Act, 1872, Section 64, allows for the proof of documents using primary evidence. It states that any document produced in a legal action or proceeding must be supported by direct proof.

Explanation 2: When several documents are produced using a single, consistent process, such as printing, lithography, or photography, each one serves as primary proof of the information contained in the others. However, if the documents are all copies of a single original, they do not serve as primary proof of the information contained in the original. Illustration A person is seen in possession of several placards that were all printed simultaneously from the same original. All of the placards serve as primary evidence for the information on the others, but none of them serve as primary evidence for the information on the original placard.

Furthermore, it is only possible to submit secondary evidence in the absence of main evidence by citing the cause of its absence. The greatest available proof of an object's existence is provided by primary evidence, also referred to as best evidence because it is the real object itself. It varies from secondary evidence, which is an exact replica of the original or a stand-in for it. A side must present primary evidence as proof if it is available to them. However, if its non-availability has been sufficiently proved, the party may provide a credible substitute for it if the original evidence is inaccessible due to loss or destruction, for example, without their fault.

## **Scope And Limitation**

No notice is necessary before to presenting a primary piece of evidence. A notice must be issued before the secondary evidence is submitted, although this restriction is only a matter of good judgement. The best evidence is primary evidence, which should always be presented. Only when Section 65's rules apply to the case is secondary evidence admissible in court. In a nutshell, secondary evidence is of lower evidentiary value because it is a replacement for primary evidence.

The primary evidence described in section 64 of the Indian Evidence Act must generally be presented, although there are several exceptions that are covered in section 65 of the Indian Evidence Act. In Section 65, it is discussed that secondary evidence may be used to support a claim in certain limited circumstances. Therefore, if a given instance is not covered by section 65, it can only be shown via primary evidence.

The High Court of Madras (Madurai Bench) has made the observation that basic electronic record evidence under Section 62 of the Indian Evidence Act, 1872 would be admitted in evidence without meeting the requirements of Section 65(b) of the Act.

In the case of Prithi Chand v. State of Himachal Pradesh, it was decided that carbon copies are primary evidence of one another because they came from the same source and went through the same procedure. But such carbon copies cannot be considered as the primary evidence against the original document.

In the case of Sheo Nath Prasad vs. Sarjoo Nonia and Others, it was established that if a plaintiff alleges a loan and submits a document that he claims to be a promissory note with his complaint and it is discovered to be unstamped or insufficiently stamped, there can be no proof of the contents of the document, including whether it is signed by anyone or not, if so, who the person signing it is, or of the terms of According to Section 64 of the Indian Evidence Act, the document is not admissible in such a situation as primary evidence.

In the case of Kripa Shankar v. Gurudas AIR 1995 SC 2152 (Supreme Court of India case), in this case the appeal to the Apex court was dismissed with no cost stating that an ex-parte affidavit cannot be documentary evidence of any form without affording an opportunity to another party to test the accuracy of its contents by cross examination.

## Conclusion

This leads us to the conclusion that a document is the greatest type of evidence to prove a fact because it is trustworthy and less likely to be falsified because it is in a tangible, written form. Documentary evidence is the best type of evidence that the court will accept. Whatever the type of evidence, whether it be documentary, visual, or testimonial, each piece of evidence is crucial to making an accurate judgement of the case. Evidence is crucial in both civil and criminal cases because it is necessary for successful factual proof. Without it, a case cannot be won. Additionally, the sorts of evidence matter in terms of their admissibility and relevancy requirements. Additionally, there aren't any watertight chambers that can fit pieces of evidence. To make it easier to analyse and comprehend the data, it has been divided into several classes based on a number of criteria. There are several fundamental concepts of evidence that are relevant and generally applicable.

Documentary evidence presented as primary evidence is regarded as the best type of evidence, and secondary evidence is only taken into consideration in exceptional cases where the primary evidence is unavailable. Despite this, secondary evidence is crucial in assisting courts in rendering a decision and paving the way for justice.

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