

## Oral Evidence: Relevancy, Recording & Proof of Evidence

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**Abstract:** Indian Evidence is called as one of the bests in the world. Under the Indian Evidence Act, the statement may be made by any method by which the witness is capable of making it. But the question that which evidence is the best evidence is one that has occurred and reoccurred as a focus of debate. The Courts have to separate the grain from the chaff and have to accept what it finds true and reject the rest. It has to be based on sound principles of law of evidence relating to relevancy and recording of evidence. In all civilized system of jurisprudence there is a presumption against perjury. The correct rule is to judge the oral evidence with the reference to the conduct of the parties, and the presumptions and the probabilities legitimately arising in the case.

**Key Words:** evidence, oral evidence, relevancy, recording of evidence, proof, Indian Evidence Act.

### 1. INTRODUCTION:

*“The weight and value of oral evidence depends on its credibility as found by the court in each case. The court must give reasons for its findings on credibility.*

*-Balasingham v. Public Prosecutor<sup>1</sup>*

Indian Evidence is called as one of the bests in the world. One key reason for the same is the provisions relating to relevancy, recording and proof of oral evidence provided under the Act. Generally spoken, oral evidence means evidence given by a witness in court, usually on oath. Under the Indian Evidence Act, all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry are called oral evidence<sup>2</sup> The statement may be made by any method by which the witness is capable of making it. A witness who cannot speak may communicate the facts to the court by signs or by writing and in either case, his evidence will be called as oral evidence. Thus, where a woman was unable to speak, as his throat was cut, but she suggested the name of offender by signs of her hand, was considered as oral statement relevant as dying declaration.<sup>3</sup>

The Indian Evidence Act further reads that all facts, except the contents of documents or electronic records, may be proved by oral evidence.<sup>4</sup> It is cardinal principle that where documentary evidence is available it shall be produced as being it is the best evidence. But in criminal cases, the fact happen suddenly and hence, oral evidence always prevail. The question that which evidence is the best evidence is one that has occurred and reoccurred as a focus of debate. To illustrate, Evidentiary value of an eye witness cannot be deluted by reason of non-production of any document in support of any claim contrary to the oral testimony.<sup>5</sup> Even only when, medical evidence is totally contrary to oral evidence, adverse inference can be drawn.<sup>6</sup> Hence, it can be seen that oral evidence must be approached with great caution. The Courts have to separate the grain from the chaff and have to accept what it finds true and reject the rest. But this is certainly not a plain simple task. It has to be based on sound principles of law of evidence relating to relevancy and recording of evidence.

### 2. LITERATURE REVIEW:

Selected literature has been referred to have a deep idea about the work that has been done by learned researchers, academicians, authors and subject experts.

Eilis S. Magner (1995), The Best Evidence has highlighted that the 'Best Evidence Rule' is more than two hundred years old and it has been shaped from time to time by the greatest authors like Gilbert(1754), Sir WD Evans (1806), J.Bentham (1838) and many more.

Ratanlal & Dhirajlal (2015), Evidence Law is of particular view that 'Falus in Uno, Falus Omnibus' Maxim which means false in one particular, false in all is a dangerous maxim and there is always a frindge of embroidery to a story, however true in the main.

<sup>1</sup> (1959) MLC 193 (HC).

<sup>2</sup> Section 3 of the Indian Evidence Act, 1872.

<sup>3</sup> Queen-Empress v. Abdullah (1885) 7 all 385 (F.B.).

<sup>4</sup> Section 59 of the Indian Evidence Act, 1872.

<sup>5</sup> Anil Sharma v. State of Jharkhand, AIR 2004 SC 2294.

<sup>6</sup> Anil Kumar v. State of U.P., AIR 2004 SC 4662.

Avtar Singh (2011), The Law of Evidence has focused on the aspect that the Law of evidence is based on human experience and that's why it is essentially Lex Fori i.e. the law of the country in which the action is brought.

Though, these materials are informative and descriptive but these do not focus specifically on relevancy and recording of oral evidence from analytical view. There is a need of systematic study of legislative provisions and judicial trend. So in this study, the researcher has analyzed the legislative provisions and recent judicial trend and overall developments relating to the subject.

### 3. MATERIALS AND METHODS:

Methodology of present research has covered the aspect of relevancy of oral evidence on the one hand and its proper recording on the other. Thus, the present research subject has covered the persons, society and the law and it has an interdisciplinary approach to be studied. The Researcher has carried out this research work by adopting inductive and deductive methods to analyze legislative provisions and socio-legal study of important cases dealt by the Supreme Court and various high court of India. While doing that consideration has been taken of genesis of principles of Law of Evidence and the way its genesis has casted constant shadow over criminal justice system. The methodology adopted for the present research work is based on doctrinaire as well as empirical analysis.

#### Discussion on Legislative Aspect

- Evidence-**

The word Evidence' has been derived from the Latin word 'evidere' which implies to show distinctly, to make clear, to view or sight, to discover clearly, to make plainly certain, to certain, to ascertain, to prove. The Indian Evidence Act, 1872<sup>7</sup> defines evidence in the following words-

“Evidence means and includes-

(1) All the statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry; such statements are called Oral evidence;	(2) All the documents including electronic records produced for the inspection of the court; such documents are called documentary evidence.”
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- Relevancy and Admissibility**

The expressions 'relevancy' and 'admissibility' are often taken to be synonymous. But they are not the same. Their legal implications are different. All admissible evidence is relevant but all relevant evidence is not admissible. Relevancy is the genus of which admissibility is the species. The golden rule of admissibility is that all evidence which is relevant is admissible and that which is irrelevant is inadmissible.

S. N.	Relevancy	Admissibility
1.	When facts are so related as to render the existence or non-existence of other facts probable according to common course of events or human conduct, they are called relevant.	When facts have been declared to be legally relevant under Indian Evidence Act, they become admissible.
2.	It is founded on logic and human experience.	It is founded on law not on logic.
3.	The question regarding relevancy has been enunciated in Sec.5 to Sec.55 of I.E.Act.	The question of admissibility are provided in Sec.56 and the following sections.
4.	It signifies as to what facts are necessary to prove or disprove a fact in issue.	It is a decisive factor between relevancy and proof.
5.	It merely implies the relevant facts.	It implies what facts are admissible and what are not admissible.
6.	It is the cause.	It is the effect.
7.	The court may apply its discretion.	There is no scope for the court to apply discretion.
8.	All admissible facts are relevant.	All relevant facts are not admissible. Only legally relevant facts are admissible.

Stephen quite explicitly and deliberately incorporated that under Evidence Act, under certain circumstances, though the evidence is irrelevant, it can be made admissible (Section 165) and relevant evidence also can be made inadmissible.

Thus it can be seen that all legally relevant facts are admissible, but all logically relevant facts are not admissible. What is legally receivable is admissible, whether it is logically probative or not. For practical purpose, relevant fact means what is legally admissible in evidence. Only the evidence which is legally admissible should be received by the court.

<sup>7</sup> Section 3 of the Indian Evidence Act, 1872.

- **Falsus in Uno, Falsus in Omnibus**

In ordinary terms one would not be inclined to take other statements of such as being above-board. On this count, under common law a doctrine prevails, known as *Falsus in Uno, Falsus in Omnibus* where under if a portion of the statement given by witness is found to be false, the entire statement of witness is rejected. However the law of evidence does not follow this doctrine and instead requires the judge to ascertain the portion of the evidence which is correct and based thereon decide the matter.

In matter of *Balaka Singh v. State of Punjab*<sup>8</sup>, the Supreme Court observed that “the Court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up, then the principle will not apply” In all civilized system of jurisprudence there is a presumption against perjury. The correct rule is to judge the oral evidence with the reference to the conduct of the parties, and the presumptions and the probabilities legitimately arising in the case.

Thus, The credibility of the witness should be decided on the following important points:

- a. Whether the witness have the means of gaining correct information,
- b. Whether they have any interest in concealing the truth,
- c. Whether they agree in their testimony.

- **Best Evidence Rule and Hearsay Evidence**

The Indian Evidence Act, 1872 also prescribes the provision of recording oral evidence. Oral evidence must in all cases whatever be direct.<sup>9</sup> Evidence is direct when it goes straight to establish the main fact in issue.<sup>10</sup>

Hearsay Evidence is that evidence which the witness has neither personally seen or heard, nor has he perceived through his senses and has come to know about it through some third person. There is no bar to receive hearsay evidence provided it has reasonable nexus and credibility.<sup>11</sup> When a piece of evidence is such that there is no prima facie assurance of its credibility, it would be most dangerous to act upon it. Hearsay evidence being evidence of that type has therefore, to be excluded whether or not the case in which its use comes in for question is governed by the Evidence Act.

- **Hostile Evidence-**

The witness who makes statements adverse to the party calling and examining him and who may with the permission of the court, be cross examined by that party. Now it is true that in *Coles v. Coles*, and it may be in other cases, a hostile witness has been described as a witness who from the manner in which he gives his evidence shows that he is not desirous of telling the truth to the Court. This is not a very good -definition of a hostile witness and the Indian Evidence Act is most careful in Section 154 not to restrict the right of ‘\_cross-examination’ even by committing itself to the word ‘\_hostile’.

In *State of U.P. v, Ramesh Prasad Misra*, the Supreme Court held that the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or accused, but it can be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defense may be accepted.

In *Balu Sonba Shinde v. State of Maharashtra*<sup>12</sup> the Supreme Court held that the declaration of a witness to be hostile does not ipso facto reject the evidence. The portion of evidence being advantageous to the parties may be taken advantage of, but the Court should be extremely cautious and circumspect in such acceptance. The testimony of hostile witness has to be tested, weighed and considered in the same manner in which the evidence of any other witness in the case.

- **Recording of Oral Evidence**

The mode of recording oral evidence in criminal cases has been prescribed under the code of Criminal Procedure. These can be summarised as under-

**Section 273** mandates to record all the evidence in presence of the accused. If personal attendance of the accused is dispensed with, the same must be recorded in presence of his pleader.

**Section 274** lays down that the Magistrate shall record the memorandum of substance of evidence of a witness in open Court and such memorandum must be signed by him and shall form part of the record so far as summons case is concerned. In a warrant case, the Magistrate shall record the evidence of a witness by taking down by himself or cause it to be taken down in the narrating form.

**Section 275(3)** permits the Magistrate to record the evidence in the form of question and answer. In view of the proviso to section 275(1), the evidence of a witness may be recorded by audio video electronic means

<sup>8</sup> 1975 (4) SCC 511.

<sup>9</sup> Section 60 of the Indian Evidence Act, 1872.

<sup>10</sup> Dr. J.J. Irani @ Jamshed J. Irani ... vs State Of Jharkhand And Anr, 2006 (4) JCR 117 Jhr.

<sup>11</sup> Hasmukhlal V. Shah vs Bank Of India And Ors, (1997) 3 GLR 1891).

<sup>12</sup> 2003 SCC (CrL.) 112.

in presence of the advocate of the accused.

**Section 276** says that recording of evidence before Sessions Court should be in the form of narrative. The Presiding Judge may, in his discretion, take down or cause to be taken down, any part of such evidence in the form of question and answer and the evidence so taken down shall be signed by the Presiding Judge.

**Section 278** stipulates that evidence of a witness when completed should be read over to him in presence of the accused or his pleader. It should not be done so at the end of the day after all witnesses have been examined. When the evidence is read over to the witness or to his pleader, if necessary, it can be corrected. If the witness denies the correctness of any part of the evidence, the Presiding Judge may instead of correcting the evidence, make the memorandum of the objection raised by the witness and shall add such remarks as he deems fit. If the evidence is recorded in the language not understood by the accused or his pleader, it shall be contemplated in open Court in the language understood to them.

**Section 280** empowers the Presiding Judge or the Magistrate to record the remarks, if any, if he thinks material in respect of the demeanour of any witness and he should avoid formulating any opinion on the credibility of the witness until the whole evidence has been taken.

**Sec 284 to 289** deal with examination of witnesses on commissions.

#### 4. FINDINGS AND ANALYSIS:

The Supreme Court of India in **Sivrajbhan v. Harchandgir**<sup>13</sup> held that the word evidence in connection with Law, all valid meanings, includes all except agreement which prove disprove any fact or matter whose truthfulness is presented for Judicial Investigation.

In **Director of Public Prosecutions vs Kilbourne**<sup>14</sup>, Lord Simon of Glaisdale has said, "Evidence is relevant if it is logically probative or disprobative of some matter which requires proof. A relevant evidence is evidence that makes the matter which requires proof more or less probable."

#### 5. CONCLUSION AND SUGGESTIONS:

Thus, it can be seen that oral evidence is much less satisfactory medium of proof than documentary evidence. But justice can never be administered in most important cases without resorting to it.<sup>15</sup> Therefore, oral evidence is to be judged with reference to the conduct of the parties and the probabilities and the presumptions that reasonably arise in the case.<sup>16</sup>

Remember-

*"The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sun beam in the whole volume of human nature, by the hand of divinity itself; and can never be erased or obscured by mortal power."*<sup>17</sup>

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<sup>13</sup> AIR 1954 SC 564

<sup>14</sup> [1973] AC 729, [1973].

<sup>15</sup> *Bunwaree Lal v. Hetnarayan Singh*, 7 MIA 148 (167).

<sup>16</sup> *Mathura Pandye v. Ram Ruchya Tiwaree*, 11 WR 482.

<sup>17</sup> Alexander Hamilton in Preface of his book on Human Rights, 1<sup>st</sup> Edition 1775.