



A study Expioring the concept of Primary and Secondary Evidence in india

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ABSTRACT

This Research work is intended to explore the concept of primary and secondary evidence. As governance, commerce, and industry move into the 21st century and onto the advanced age, it is basic for the law to keep pace with its subject, and advance compatibles. Whether something is a primary or secondary source often depends upon the topic and its use. There exist a few new difficulties under the steady gaze of the courts while tending to evidences. The legal system heavily relies on evidence to establish facts, substantiate claims and ensure fair and just outcomes in court proceedings. In this context, the concepts of primary and secondary evidence hold significant importance.

INTRODUCTON

Law may be broadly categorized into (i) Substantive law (ii) Procedural law. The substantive law defines what facts go to constitute a rights or liability. Adjective law is one by which substantive law is applied to particular case, also known as Law of procedure.

In India the law relating to the principles of evidence is governed by the Indian Evidence Act 1872. It comprises of 167 Sections divided into 11 chapters under 3 parts. Indian Evidence Act has great importance, seems it enables the court to decide the existence or non - existence of facts.

The word Evidence indicates 3 rules:-

- Evidence must be bound to the matter in issue
- Hearsay evidence is not to be admitted
- In all cases best evidence must be given.

CONCEPT OF PRIMARY & SECONDARY EVIDENCE

Document:- Document is enshrined in Indian Evidence Act 1872 as per Section 3, Document means any matter expressed or described upon any substance by any means of letter, marks and figure or by more than one or those means intended to be used for the purpose of recording that matter. All material substances on which the thoughts are represented by writing or any other species of conventional mark or symbol can generally be categorized as a document. An evidentiary document can be almost anything consisting written communication and is not restricted to paper writing surfaces.

How documents can be proved in court:-

Documentary evidence can be either circumstantial or direct in nature. Section 61 of Indian Evidence Act deals with Proof of contents of documents. The contents of documents may be proved either by:-

- Primary evidence
- Secondary evidence

Primary evidences are more reliable and best evidence consider by the court of law. In absence of primary evidence, secondary evidence is that which the witness produces as copies made by original by mechanical process.

LITERATURE REVIEW

1. The law of evidence by Ratanlal & Dhirajlal 27th Ed 2019 Lexis Nexis Publications

This book deals with a critical commentary covering emerging issue as well as legislative developments.



2. **The Law of Evidence by Batuk Lal 22nd Ed 2018 Central Law Publications**

This book deals with Documentary evidence and proofs of content – Primary and Secondary Evidence.

STATEMENT OF RESEARCH PROBLEM

There is great talk and discussions about primary & secondary evidence and lots of confusion about their admissibility. In this research the researcher attempts to answer certain issues regarding primary and secondary evidence. The specific aim of the Research is to embody one of the underlying principles of the Law of Evidence that the best evidence must be given in all cases. Document must be proved by Primary Evidence except in the cases where in the absence of Primary Evidence, Secondary Evidence should be taken into consideration.

OBJECTIVES

The purpose of this study is to appraise about “the Primary & Secondary Evidence” aimed at and to prove the fact during the proceeding. In the absence of the primary evidence the condition may so require that the secondary evidence is to be taken into account for adjudication of the matter. The study will primarily focus on the basic knowledge of Primary & Secondary evidence and proceeds with the admissibility of the evidence.

HYPOTHESIS/ RESEARCH QUESTION

Hypothesis:-

The content of a document should have been admitted and not its truth or correctness is to be ascertained from the evidence. A party admitting document has right to explain that though the document contains such a statement, it is not correct.

Primary evidence is that which the law requires to be given first and is more reliable and best evidence should be considered. Secondary evidence should be considered in when primary evidence is absent; they have less evidential value and are generally not easily admissible.

Research Questions:-

1. How do you prove documents in a Court?
2. If document is executed in several parts, each part is primary evidence of the document or not?
3. Secondary evidence is having less evidential value, is it justified ? and generally is it admissible in a court ?

PRIMARY EVIDENCE

Section 61 of the Indian Evidence Act enlists two means of proving content of a document in court of law, primary and secondary evidence. There is no other method of proving the content of documents. An authentic document or an evidence that is offered as proof in a law suit as contrasted with a copy of or substitute for the original. Primary evidence is considered to be the best form of evidence as per the scheme of Act because it is the actual evidence. It has been defined in Section 62 also it differs from the secondary evidence which is a copy or substitute for the original. According to Section 62 of Indian Evidence Act, Primary Evidence means the document itself produced for the inspection of the court. Primary evidence is that which the law requires to be given first and the secondary evidence is that can be given in the absence of the primary evidence.

Proof of Documents by Primary Evidence:- Proof of document by primary evidence is given under Section 64 of the Indian Evidence Act 1872. The rule therefore is that the document must be proved by primary evidence except in the cases mentioned in Section 65. The rule is based on the fundamental principle of evidence. Wherever the original document exist and is available it must be produced



because it is the best evidence. The rule applies only to proof of content of documents and not to cases involving their existence or identity.

SECONDARY EVIDENCE

Secondary Evidence is that which has been reproduced from an original document or substituted for original evidence. It indicates the existence of more original sources of information. Secondary evidence is to be given in the absence of better / primary evidence.

According to Indian Evidence Act 1872 copies made and compared with the original or Photostat copies may be treated as secondary evidence. Secondary evidence is also known as inferior or substituted evidence.

As per Section 63 of Indian Evidence Act 1872, Secondary Evidence means and includes:-

1. Certified copies given under the provision hereinafter contained.
2. Copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies.
3. Copies made from or compared with the original.
4. Counterparts of documents as against the parties who did not execute them.
5. Oral accounts of the content of a document given by some person who has himself

seen it Section not exhaustive:-

Section 63 is not exhaustive of all the categories of secondary evidence. In the case of Smt. Lachcho v. Dwari Mal, Allahabad High court held that the scope of Section 63 is not restricted to its five clauses but leaves enough scope for cases which do not strictly fall within any of those enumerated. The court must however be satisfied that the document sort to be introduced as secondary evidence is a faithful draft of the final document whose copy it purports to be.

Secondary evidence of a document which is lost is difficult to trace can be adduced in two ways:-

- (i) By oral evidence of persons who were present when the document was executed.
- (ii) By a certified copies of the original documents.

When Secondary evidence relating to documents may be given:-

In Indian Evidence act 1872 Section 65 provides for the seven cases in which secondary evidence relating to documents may be given. Secondary evidence may be given of the condition, existence or contents of a document in the following cases-

- When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of or not subject to the process of the court, or of any person legally bound to produce it and when after the notice mentioned in Section 66 such person does not produce it.
- When the original has been destroyed or lost or when the party offering evidence of its contents cannot for any other reason not arising from his own default or neglect produce it in reasonable time.
- When the existence condition or content of the actual have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest.
- When the actual is of such a nature as not to be easily movable.
- When under the meaning of Section 74 the original is a public document.
- When the original is a document of which a certified copy is permitted by this act or by any other law enforce in India to be given in evidence.
- When the original consist of numerous accounts or other documents which can not conveniently be examined in court and the fact to be proved is the general result of whole collection



DISCUSSION

By examining the objective and Hypothesis, In Indian Evidence Act 1872, primary evidence considered to be the superior or leading evidence yet secondary evidence plays a very important role in the court of law as there are various circumstances and situation occur in which primary evidence cannot be produced and therefore at that time secondary evidence assists the court in securing justice.

CONCLUSION

At last by a concluding point that as it was rightly said by Mahatma Gandhi – Truth never damages a cause that is just. The proof of genuineness of the content of a document are to be proved either by adducing by primary evidence and in the absence by secondary evidence.

Therefore this study gives to understand that Primary evidence is the foremost evidence admissible in the court and circumscribed wherein other forms of documentary evidence is allowed in the form of secondary evidence which may be given in its absence.

The Indian Judiciary also plays a very important role regarding primary and secondary evidence. In the case of Ashok Dulichand v. Madahavlal Dube & others 1975 (4) SCC 664 –Admission of secondary evidence under Section 65 is given. Also in the case of Kamla Rajamanikham v. Sushila Takur Das AIR 1983 All 90 –where a number of documents are all made by one uniform process, each is the Primary evidence.