# PAPER PRESENTATION BY G.SRINIVAS, PRINCIPAL DISTRICT JUDGE, ANANTHAPURAMU.

**Topic: DOCUMENTARY EVIDENCE IN CIVIL CASES**:

## Classification of documents

Document Classification or Document Categorization is a process to assign different classes or categories to documents as required, eventually helping with storage, management, and analysis of the documents. It has become an important part of the computer sciences and the daily functioning of many companies today.

## Sale deed: Secs. 54 to 57 of Transfer of Property Act.

A sale deed represents a vital legal document which comes into play when a buyer purchases a property. This document simply implies that the entitlement is transferred from the owner to the one who has paid for it. A sales deed initiates the communication between a property buyer and an interested seller in India. This article is an exclusive source of knowledge regarding key features of sale deeds in India

A sale deed represents a vital legal document which comes into play when a buyer purchases a property. This document simply implies that the entitlement is transferred from the owner to the one who has paid for it. A sale deed initiates the communication between a property buyer and an interested seller in India. This article is an exclusive source of knowledge regarding key features of sale deeds in India.

The sale deed in India shows the property specifications and establishes the rights and legal obligations involving both parties. Judicial stamp paper is not required to draft a sale deed. The Indian Registration Act of 1908 regulates the policies stipulated by a sale deed. The involved individuals are addressed as vendor and vendee respectively.

This legal act indicates a change in previous ownership status. 1988’s Transfer of Property law includes a clause in Section 54 which indicates that

the provisions are applicable only for immovable properties. In the next section, we are about to read the salient clauses present in a sale deed

**Features of  Sale Deed:**

Now we are going to know all the important points that must be a part of any valid sale deed issued in India. These clauses are as follows:

•Identity of individuals participating in the transfer of properties: The document must show the personal details of both parties. These pieces of information sum up the name, residential address, current age, etc. All the details must match the official documents of the persons involved.

•Specifications of the property to be transferred: This field is a must. A detailed description of the concerned property has to be mentioned on the paper. For example, suppose you are selling a 3 BHK apartment, then it is your responsibility to highlight minute details like cumulative plot area, landmark of the flat, ID number, etc.

•Sale agreement: The norms and regulations that are going to control the course of property transfer are set by both parties before drafting the sales deed. In this stage, the seller demands an advance payment from the buyer which he needs to provide to lock the deal.

•Sale negotiation: The consideration clause of the sales deed shows the agreed-upon amount which has to be charged from the buyer before transferring property rights. The amount or price must be expressed both in words as well as figures.

•Mode of payment: This is a crucial factor; legal intervention is not required for this as parties mutually decide in the deed whether they are going to complete the payment process via net banking, cash, demand draft or some other means. The total amount again has to be stated without fail.

•Advance payment: A Property sale has got to generate a token amount which is furnished by the prospective owner in order to close a particular offer. The partial payment ensures a form of reservation by the name of

the interested person who agrees to pay the remaining sum of money later.

•This policy or system is being mandated to imply the clauses of a sale deed to a buyer. The paper work must reciprocate the money which has been already transferred to the bank account of the owner. Also, the seller should issue an invoice supporting the transaction and give it to the buyer. Installment schemes are also accepted while collecting the advance payment on which the seller can charge interest. These policies need to be fixed first in the Sale agreement.

•The clause stating the transfer of title: This section proclaims the identity of the new property owner. The buyer shall enjoy all benefits associated with the property rights once the transaction has been completed following the clauses of the sales agreement.

•Sale Deed's Delivery: The buyer must possess both the sale agreement as well as the sale deed once he attains the projected property' possession. The seller must provide the original documents to the person making the purchase.

•Indemnity clause: This portion explains that the sold property is free from any possible charges such as water bills, electricity invoices, etc. If the buyer discovers that the aforesaid case is not true then he/she has the right to indemnify the seller based on this clause of the sale deed.

•Defaulter's Liability: This clause states that if any one of the individuals commits faulty activities, he/she will be liable to pay compensation to the other party. This must be ensured to maintain the stability of the cell.

•Registration in presence of witnesses: Once the sale deed has been completed, the buyer and seller get hold of two witnesses who approve of providing testimony. This action must take place within 120 days from the issuance of the sales deed. The regulations have been set up by the Registration law (1908).

•Property clause ensuring the right of quiet enjoyment: This clause restricts a third party force or the previous owner from interfering in the life of the buyer once the property rights have been duly shifted.

•Reddendum: The seller adds this clause to mention a few limited rights which he/she will continue to have on their previously owned property.

•Tandem clause: This portion ensures that the buyer will inherit all the associated advancements made in the property as they happen to be a part of the deal closed between both parties.
•Warranty: The most vital portion of the sales deed expresses that the buyer is from now onward the lawful landlord of the property.

•Time is the essence – sales deed clause: This expresses that one party's active contribution within a predetermined time is required. Failing to perform activities abiding by this clause positively ends the commencement of the contract. Document delivery, termination sequence, closing date, etc. are mentioned in this segment. Deadlines direct the course of sales.

•Fundamental Right to nullify a deed: This specifies typical situations that if encountered, either of the parties can discontinue their adherence to the sales agreement. This drastic decision usually comes into play when the seller refrains from handing over the house or at times when the buyer disagrees to pay the agreed-upon amount.

**Miscellaneous Provisions:**

Some additional features are there in the Sale deed in India. These might be the Governmental norms, confidentiality regarding the personal details of the seller, contract breaching conditions, etc.,

Also, this might include legal notice that specifies the channel of communication between the involved parties. Apart from all of these amendment possibilities are also stated to provide flexibility to the sales agreement. All this information must be thoroughly read and legal assistance must be taken before proceeding to buy a property in India.

**Conclusion**

Two parties mutually decide on the terms of a sales agreement whenever property rights are to be shifted from one person to another. The sales deed is then drafted and it comes with multiple clauses. Searchlight

has summed up the key features of sales deeds in this article to guide you in your prospective endeavors.

**Gift deed: Sec.124 to Sec.126 of T.P.Act:**

A Gift Deed is a legal document elucidating the voluntary transfer of the property – movable or immovable – to someone else without any monetary exchange. The property owner can hand it over either to a person or an institution; however, it should be accepted by the donee (recipient) during the lifetime of the donor and should be registered under Section 122 of the Property Transfer Act, 1882 with the sub-registrar as per Section 17 of the Registration Act, 1908. Like a Sales Deed, Gift Deed also comprises the details of the transferor and the recipient.

Having a registered gift deed in place helps avoid any sort of litigation that may arise in future.

To document a gift deed, the donor should be competent. According to the law, a donor should not be a minor. On the contrary, the recipient can be a minor with a natural guardian as a nominee, who shares the onus of managing the property till the donee becomes an adult. Additionally, the beneficiary should be alive; else, the property will become invalid.

Aditya Khadri, a Legal Expert, shares that a gift deed is a legal document that includes details pertinent to the property transfer and is prepared with the help of an attorney. It should contain important details of the transferee. The transfer should be voluntary and should not be a forceful act.

**Acceptance of the deed:**

The acceptance process of the gift transfer is completed only when the donee receives the property while the donor is alive. The acceptance can be validated by taking possession of the property.

**Registration:**

The ownership transfer under a gift deed can only take place for a registered property. A minimum of two witnesses are required to attest to

the deed. Usually, the number of witnesses required varies from state to state.

**Documents required to register a Gift Deed:**

One needs to produce the original gift deed, as well as an ID proof, PAN card, Aadhaar card, the sale deed of the property, as well as other documents pertaining to other agreements.

**Stamp duty on gift deed:**

Registration of a gift deed involves stamp duty and registration fee. The amount of stamp duty varies across different states. Generally, the stamp duty rates for property transferred by gift are the same as the sale of conveyance deed.

**How to cancel a gift deed?**

According to Section 126 of the Transfer of the Property Act, a gift deed can be revoked if it complies with following conditions:

- There is a mutual consensus between the donor and the donee that the deed should be revoked.
- The property transfer event was just based on the will of the transferor and the recipient was unwilling to accept the asset.
- The condition is illicit, repugnant and immoral to the estate created under the Gift.

This means a gift, which is based on fraud, or any illegal grounds can be revoked. However, it is recommended to consult a legal expert to help through the process. Remember, once the gift deed is prepared, revocation is not possible unless a clause of revocation is added to the deed. Therefore, it is imperative to add ‘revocation clause’ to avoid future complications.

## Mortgage deed: Sec.58 to 79 of T.P.Act:

## What is a Mortgage Deed?

Mortgage deeds are legal documents or instruments that pass over a property's legal rights to the loan provider, which they can exercise in case of a loan default. This document gives lenders the property rights to sell the foreclosed property and recoup their defaulted loan amount to protect their interest.

The person who mortgages a property against a loan is termed a mortgagor, whereas the person or party who lends a loan against the property is called a mortgagee. The mortgage deed contains all the loan terms and conditions involved. Registration of the deed is essential to give it legal validity. For registration, both parties must sign the deed, pay stamp duty, and at least two witnesses must attest to it.

### How Does a Mortgage Deed Work?

Mortgage deeds allow lenders to hold a borrower's property as collateral until they repay the borrowed amount in full. The deed states that if the mortgagor fails to repay the loan on time, they have the legal right to claim the property's ownership and sell it to recover their financial losses. When entering a loan transaction, both parties agree upon loan size, repayment tenure, EMIs, and interest rate for total repayment. Parties must file the deed in court at a public registry office. Upon successful repayment, the document files as a "satisfaction of a mortgage", stating that the mortgagee no longer holds interest in the property.

### Importance of a Mortgage Deed

After understanding the mortgage deed meaning, you should know that it is necessary when a property owner loans money from a lending institution and transfers their property's interest to the lender. In other words, when you borrow a loan against your property, the deed secures both parties' interest and rights over the asset. Here are a few reasons why a deed is important:

- First and foremost, it determines the parties involved in a loan deal, including the borrower and lender, known as the mortgagor and mortgagee, respectively.

- The document enforces the lender's rights in court by ensuring that if the borrower defaults on the loan repayment, they can sell the property to get their payment.

- The deed provides a thorough investigation of the property's title and interest, helping determine the property's rightful owners.

**Types of Mortgage Deeds:**

There are several types of mortgage deed options, which parties must sign depending on the mortgage loan type they select. Here are a few:

- **Simple Mortgage Deed**

  The mortgagor pledges an immovable asset to obtain a loan. The mortgagee enjoys the right to sell the property in case of a payment default.

- **Usufructuary Mortgage Deed**

  The lender receives the property’s possession rights. They can earn via profit or rent without any personal liabilities on the borrower.

- **English Mortgage Deed**

  It establishes the borrower’s personal liability and gives the lender the property’s rights if successful payment leads to recovery.

- **Mortgage by Conditional Sale Deed**

  The borrower sells the property, but the sale will turn void if they repay the loan successfully.

- **Mortgage by Title Deed Deposit**

  The borrower submits the property's title deed to the lender to avail of a mortgage loan against it.

- **Anomalous Mortgage Deed**

A mortgage loan that does not come under any of these types of mortgage deed options is an anomalous deed.

- **Commercial Mortgage Deed**

Entrepreneurs often use this deed to buy commercial properties like shops, office spaces, etc.

**Bill of Exchange: Sec.5 of :N.I. Act:**

**What is a bill of exchange?**

A bill of exchange is essentially a formal, written IOU that states when a certain amount of money needs to be paid. Sometimes known as an international bill of exchange, they are similar to a contract, binding one party to an agreed-upon payment amount.

**What are the key features of a bill of exchange?**

A bill of exchange must feature the following

- It must be a written document
- It must name all relevant parties
- It must be addressed from one party to another
- It must bear the signature of the party giving it
- It must outline the time when the money is due
- It must outline the amount of money that must be paid

Another notable feature of a bill of exchange is that it features three parties, which are as follows:

- The drawer: the party who writes the bill and orders the money be paid
- The drawee: the party who is required to pay
- The payee: the party who is due to be paid

That means the drawer who demands the money in the first place is not necessarily the one due to be paid. An international bill of exchange allows one party to demand payment to a third party.

**What's the difference between a cheque and a bill of exchange?**

A bill of exchange is similar to a cheque in the sense that similar details must be included, while both documents function as requests for payment from one party to another. However, a cheque is slightly more straightforward in that it is merely a request from a bank's customer to have the bank pay someone from a specific account. A bill of exchange requests that the recipient makes payment, regardless of where the funds originated.

A cheque clearly states where the money will come from and is far more direct: one person writes the cheque, one person banks it, and the bank fulfills it. In the case of a bill of exchange, the bill writer may have no further involvement in actually paying the amount. However, they should assist the payee where the drawee is late or reluctant, so they retain some accountability.

**Promissory note: Sec.4 of T.P.Act:**

**What is a Promissory Note?**

When the purchaser of the goods or debtor of any business himself writes a note, signs it, and gives it to the seller of the goods, the note signed by the debtor becomes a promissory note. It can also be described as a verbal or written unconditional promise by the debtor to the seller to pay a specific amount of money to or on behalf of a specific person or to the bearer upon demand at a specific future time.

Features of a Promissory Note:

1. A promissory note should be in writing.
2. There must be a promise to pay the amount to the seller by the debtor. It should be clearly stated by the maker of the Promissory Note that he is willing to pay a certain amount on a fixed date.

3. A promissory note should be an unconditional written promise. There should not be any condition attached to it.

4. It is created and signed by either the debtor (maker) or the party to whom credit is extended.

5. It is directed to the creditor or seller or the person who extends credit.

6. The payment is due immediately or at a specific future date.

7. The amount of money to be paid should be clearly mentioned.

8. The name of the payee should be clearly mentioned.

**Parties to a Promissory Note:**

**1. Maker:** The maker is the person who writes a promissory note and duly signs it. Generally, the maker is the debtor of a company or anyone to whom money is lent.

**2. Payee:** Payee is the person for whom the promissory note is written. He is the person who is entitled to get the payment.

**3. Holder:** A holder essentially acts as the custodian of a promissory note. Sometimes a note is endorsed to any other person. The person who has the promissory note at the date of payment is called the Holder. He could be the payee or anybody else.

**Lease: Sec.105 of TP.Act:**

Leasing is an innovative technique of financing industrial equipment. The technique of leasing provides a facility to use or possess the asset without transfer of title. Basically, It is a contract between two parties Lessor and Lessee, where the lessor is the one who purchases the goods or equipment while lessee is an individual who possesses that goods or equipment. That means lessee use that equipment for a specific purpose with some promises. Here, in this contract title doesn't transfer to the lessee, only he is right to take the possession and use the goods. The lessee is expected to pay for upkeep and maintenance charges of the possessed asset.

**Some features of lease are :**

1. A lease is a financial contract.
2. Two parties are - Lessor and Lessee
3. Equipment is purchased by the lessor on the request of the lessee
4. Lessee has the right to possess the equipment.
5. It is for a specific period of time.
6. Lessee have to pay some lease rentals to the lessor.
7. Lessor takes some depreciation and income tax benefits.

**Types of lease are as follows :**

1. Financial Lease,
2. Operating Lease,
3. Sales and Leaseback,
4. sales and aid leasing,
5. Leveraged lease.

- **Financial Lease -**

Financial lease refers to the lease which is for long term duration, it means period takes place the same as the life of an asset. It covers the capital outlay plus required rate of return on funds at the period of lease. Here, lessor intends to cover the cost of capital of the asset and also wants to get some required rate of return. This financial lease cannot be canceled, the lessee has to make a series of payment for the use of an asset.

Lessee possess that asset without having any title. In other words, there is no transfer of title in the financial lease. Rest life of equipment is equal to the scrap value where lessor does a contract to sell his asset to the lessee at scrap value and transfer his title to the lessee.

The Financial lease has taken place where lessee doesn't have enough funds to purchase the equipment. So, he takes the equipment from lessor by paying lease rental payments. In case of housing, loan lessor becomes the bank and lessee is the one who purchases the house by taking a loan from the bank.

- **Operating Lease-**

Operating lease is somehow the same as financial lease. Operating lease for short term duration and power of lessor to control on the asset is more than lessee. When the lessor is a manufacturer, who wants to boost up his sales in short term, so he allows customers to possess the asset for a short

period of time. In some cases, lessor takes the title of goods and leases his assets to the lessee for a specific time duration. So, it is the responsibility of the lessee to take care of the possessed goods. If any misuse of an asset has been taken place by the lessee then, penalty and press charges are charged to him by the lessor.

In an operating lease, the contract can be canceled before the expiry of duration. The payment of lease payments doesn't mean that lessor wants to recover the cost of an asset. As it can be multiple leases, so lessor can recover his cost and earn his commission from the different lessee. This is a popular lease in many countries because people used to lease their equipment to find out the exact profit from their asset.

**This lease is preferred in the following conditions-**

1. When the life of an asset is uncertain.
2. In case of rapid obsolescence of good.
3. When we have to use the asset to recover its temporary problem.

- **Sales and Leaseback -**

In this lease, the first lessee purchases the equipment on his own and then he sells it to the lessor or to its firm. This operation can be used when the user of equipment holds his asset for a longer period of time and makes his lump sum cash and then makes some alternative use of it.

The main advantage of this type of lessee satisfy himself for the quality of the asset and after his possession, he can convert it into the sale. In this lease, lessor also can also claim tax for depreciation expenditure. This lease is popular because when the lessee facing any liquidity problems from an asset. Then, he can sell his equipment to the lessor and get it back from them. This will help lessee in sort out the liquidity issue without parting with it.

- **Leveraged Lease**

In this form of contract, lessor takes only finance part of the money which is required to purchase the asset. There are generally three parties who get involved in this contract, the lessor, the lessee, and the financer.

This type of lease agreement will help the lessor to expand his business with limited capital and keep it balanced.

- **Sales Aid Leasing -**

In this leasing agreement, parties who involves are usually the manufacturer of the good where they get commission upon their sales and adding it to their profits.

**Adoption deeds**

Childhood is the most cherished stage of our lives. So when certain kids who are unfortunate to savour the true essence of childhood can be taken up by the family who could bring in lots of joy in their life, then why drift back?

So that's where the term `**adoption**` comes into play. Now before talking about the topic and its legal proceedings, there are two major questions that strike everyone's mind:

1.Who is adopting?

2.Who is the one being adopted?

Now there are various laws enacted in India regarding the term 'adoption' and three of them being;

•Hindu Adoption and Maintenance Act, 1956

•Guardianship and Ward's Act 1890

•Juvenile Justice (Care and Protection) Act 2000

All these acts throw light on the nature and significance of adoption and the various provisions for it alongside the eligibility of the individuals for carrying out the adoption of a child. Now what is worth defining is the term 'child'. Though we all use the word child casually, there is a crystal-clear definition put forward by the judicial system in the context of 'adoption'. In the eyes of the Law; a 'child' is an individual who has not attained puberty or is below the maturity age.

**Who is allowed to adopt?**

All three laws enacted state that any Indian, Non-Indian, or a foreigner can adopt a child. The minimum age of the adopter should be 21 years with

an age difference of 16 years between the ‘adopter’ and ‘adoptee’. However, if the age of ‘adopter’ is more than 55 years old then such adoptions are not encouraged by the law.

**Who is to be adopted?**

As mentioned earlier, the encouraged age difference between the adopter and adoptee is 16 years, but under certain circumstances, the requirement for the age difference can be relaxed where adoption is carried forward with the prevailing customs or practices in certain communities. Though there isn’t any specified age for the child being adopted; in general, the upper age limit of the adoptive child is considered as 12 years.

Procedure for registration of the adoption deed

1.Drafting of the Adoption deed by a legal expert or advocate in the specified format on stamp papers (available at Notaries)

2.Requesting an appointment date with ‘Sub Registrar’ to carry out the registration process in the Registrar’s Office.

3.Payment of Government registration fees.

4.Registering the Adoption deed in Sub Registrar Office along with two witnesses on the appointment date.

5.Registered Adoption deed available within a week or so after registration in Registrar’s office.

Key Points to look during the adoption of a child

•Only Hindus, Sikhs, Jains, and Buddhists are capable of adoption under the ‘Hindu Adoption and Maintenance Act 1956‘. Whereas Muslims, Christians, Parsis, and Jews can undertake the adoption process under the ‘Guardian and Wards Act 1890‘ after prior permission from the court.

It’s necessary for the parents who’re thinking of adopting a child are to produce certain original documents along with two self-attested copies to undergo the legal adoption process.

Documents to be furnished with the adoption deed format are listed below

- Any of the following documents for identity proof- Passport/ Driving License/ Voter ID / Pan Card
- Address proof- Aadhaar Card/ Ration Card/ Electricity bill
- Marriage Certificate
- The Prospective Adoptive Parents are requested to submit a recent Health certificate stating and proving that the individuals don't suffer from any contagious disease or mental or physical agony and are fit and competent to take care of the adopted child.
- A family photograph
- Three recently clicked photographs of the adoptive family (postcard size).
- The self-employed prospective adoptive parents are asked to furnish an IT statement of the preceding three years. If they are employed in any organization then they are asked to submit an income certificate from the organization.
- Two letters of recommendation are to be submitted by the Prospective Adoptive Parents (PAP). One of them is the letter by a close acquaintance and the other one from a far relative of the Prospective Adoptive Parents.
- In case of any previous adoption, the PAP are requested to submit the Adoption Decree.
- In case if the PAP already has a biological or adopted child aged more than 7 years, written consent from that child is necessary to proceed further with the adoption process.
- Single Prospective parent needs to furnish a letter from any of their close relative stating their approval to take care of the child due to any unforeseen circumstances.

In conclusion, Child Adoption would not take more than 2 weeks, if the required documents are available and a draft adoption deed is prepared in advance. We have shared a draft adoption deed in this article as a reference

that can be used to create a legally vetted 'Deed' for submission to Registrar's office.

## Agreement: (Indian Contract Act)

**Definition**: In legal parlance, the word 'agreement' is used to mean a promise/commitment or a series of reciprocal promises which constitutes consideration for the parties to contract.

In an agreement, one person offers or proposes something to another person, who in turn accepts the same. In other words, offer plus acceptance amounts to the agreement, or we can say that an accepted proposal is an agreement.

### What is a Promise?

The party to the agreement, to whom the offer is given or proposal is made, gives his/her assent in this regard for mutual consideration, the offer is considered as accepted, which results in a promise.

### What are Reciprocal Promises?

In the Contract Act, the word 'reciprocal' refers to 'mutual or give-and-take'. Hence, 'reciprocal promise' is the promise which results in consideration or part thereof, for the parties to the agreement.

### Characteristics of Agreement

The main characteristics of the agreement are discussed below:

1.**Plurality of Persons**: To constitute an agreement, at least two persons should be there, as one person cannot make an agreement with himself/herself.

2.**Consensus ad idem**: It is a Latin term, which implies "Concurrence of Minds", i.e. when in an agreement there is a common understanding between the parties with respect to the terms and conditions of the agreement.

This means that the parties to the agreement must agree upon the same thing in the same sense, as it was intended, with respect to their corresponding rights and duties, concerning the performance of promises in the past or future.

**Elements of Agreement :** Basically there are two key elements of the agreement, which are discussed as under:

•**Offer/Proposal**: A person makes an offer, when he/she expresses to another person his/her willingness to undertake an obligation, in exchange for a promise, act or abstinence. The person who expresses his/her willingness or the one who makes the offer is known as offeror or proposer, whereas the person to whom the offer is made, is regarded as the offeree.

Offer made by the offeror must be clear, i.e. the terms concerning the offer must be certain. In addition to this, the offer should be communicated to the offeree, which is considered as complete when the offeree comes to know about it.

•**Acceptance**: As the name signifies, when the offeree gives his/her assent to the offeror, either expressly or impliedly to receive or undertake something which is proposed to him/her, it is considered as acceptance. It is required to be communicated to the person who makes the offer, in the prescribed mode, within a reasonable time. It must be unqualified and absolute.

Further, when the offer is made to a particular person, it is required to be accepted by that specific person only. However, in case of a general offer, it is open to all and anyone can accept it.

**PRINCIPAL DISTRICT JUDGE,**
**ANANTHAPURAMU**

**WORKSHOP - I**

**Session-2**

# PAPER PRESENTATION ON THE TOPIC RELEVANCY AND ADMISSIBILITY OF DOCUMENTS IN EVIDENCE

**BY**

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**RELEVANCY AND ADMISSIBILITY OF DOCUMENTS IN EVIDENCE:**

• We all know that, besides oral evidence, documentary evidence plays a crucial role in the legal system and is widely used in courts to prove facts and establish truth. The Indian Evidence Act, 1872, contains provisions related to the relevancy, admissibility and proof of documentary evidence.

• Before dealing with the relevancy and admissibility of documents and objections on the admissibility of documents, it is pertinent to Know the terms relevancy, admissibility, document and Evidence.

• **What is Relevancy?** Is it defined under Indian Evidence Act,1872.

• Relevancy is not defined under Evidence Act,1872. As per the Black's law Dictionary, relevance means logically connected and tending to prove or disprove a matter in issue; having appreciable probative value, that is rationally tending to persuade people of the probability or possibility of some alleged fact.

• But the Word relevant, is defined in the interpretation clause in Sec.3 of Evidence Act,1872.

• **Relevant".**-- One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

• Relevancy of facts is contained in chapter 2 (sec.'s 5 -55 of Evidence Act,1872). So, it is obvious that, evidence may be given of relevant facts.

Then, a doubt arises, what is evidence. Is it defined in the Evidence Act,1872. Yes, the term Evidence is defined in the Evidence Act,1872.

• **"Evidence."**-- "Evidence" means and includes--
(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;
(2) all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence.
**Thus, it is vivid that, Evidence includes oral, documentary and electronic Evidence.**

• **What is Document?**
Document is defined under **Sec.3 of Indian Evidence Act,1872**

• Document". —"Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

**Illustrations** :

A writing is a document;
Words printed, lithographed or photographed are documents;
A map or plan is a document;
An inscription on a metal plate or stone is a document;
A caricature is a document.

• **What is admissibility?**

The Black's law Dictionary, defined 'admissibility' as the quality or state of being allowed to be entered into evidence in a hearing, trial, or other official proceeding. Therefore, to be admissible means capable of being legally admitted; allowable; permissible as evidence or worthy of gaining entry or being admitted.

• **Is there any difference between admissibility and Relevancy?**

• **ADMISSIBILITY AND RELEVANCY.**

• As a general rule, it is only facts which are relevant to the facts- in- issue that can serve as the foundation for the admissibility of a piece of evidence. In other words, evidence will be admitted only if it is relevant to the facts -in- issue. Relevance is judged by the provisions of the Evidence Act,1872 (Sec.'s 5 to 55). All evidence that is admissible is relevant, but all facts which is relevant is not necessarily admissible. Relevancy is the Genus of which admissibility is the species.

- In **Ram Bihari Yadav vs State Of Bihar & Ors - AIR 1998 SC 1859**, It is observed by the Hon'ble Supreme Court that, More often the expressions 'relevancy and admissibility' are used as synonyms but their legal implications are distinct and different for more often than not facts which are relevant are not admissible; so also facts which are admissible may not be relevant, **for example,** questions permitted to be put in cross-examination to test the veracity or impeach the credit of witnesses, though not relevant are admissible. The probative value of the evidence is the weight to be given to it which has to be judged having regard to the facts and circumstances of each case.In cases in which cause of his death comes in question, is relevant under Section 32 of the Evidence Act and is also admissible in evidence. Though dying declaration is indirect evidence being a specie of hearsay, yet it is an exception to the rule against admissibility of hearsay evidence.

**Relevancy of Documents with Reference to the provisions of Indian Evidence Act,1872**

• According to Section 3 of the Indian Evidence, 1872 documentary evidence means and includes all documents produced before the Court for its inspection.

Documents are divided into two categories, Public documents and Private Documents ( Sec. 74 and 75).

• Provisions as to Documentary evidence is contained in Chapter 5 from Sections 61- 90A of Indian Evidence Act,1872. It is divided into three categories -

1. General rules concerning proving documentary evidence in various cases are dealt with under sections 61 to 73 A.
2. Second is the public documents which are dealt with under sections 74 to 78 and
3. Finally, presumptions as to the documents are contained in Sec.'s 79 to 90 A which deals with.

• Documents which are produced to prove the relevant facts under sec.5 to 55 of Indian Evidence Act,1872 are relevant documents.

• **Sec. 32 of Indian Evidence Act,1872** states that, Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. — Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:

1) When it relates to cause of death; 2) Made in course of business; 3) Against interest of maker; 4) Gives opinion as to public right or custom; 5) Matters of general interest; 6) Relates to existence of relationship; 7) Made in will or deed relating to family affairs; 8) Document relating to transaction mentioned in section 13,(a) and 9) Made by several persons, and expresses feelings relevant to matter in question.

**Illustrations**:

• The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.

• The question is, whether, and when, A and B were married. An entry in a memorandum book by C, the deceased father of B, of his daughter’s marriage with A on a given date, is a relevant fact.

• The question is, what was the date of the birth of A. A letter from A’s deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

• The question is, whether rent was paid to A for certain land. A letter from A’s deceased agent to A, saying that he had received the rent on A’s account and held it at A’s orders is a relevant fact.

• The question is, whether A was in Calcutta on a given day. A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

• The question is as to the date of A's birth. An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that, on a given day he attended A's mother and delivered her of a son, is a relevant fact.

**Sec.33.** Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

• The evidence contemplated by this section is evidence given by a witness in an earlier judicial proceeding or before any person authorized by law to take evidence. The section states that such evidence is relevant in a subsequent proceeding for the purpose of proving the truth of the facts which it states when (a) the witness is dead, or (b) the witness cannot be found, or (c) the witness is incapable of giving evidence, or (d) witness is kept out of the way by adverse party, or (e) witness's presence cannot be obtained without any amount of delay or expense which, under the circumstance of the case, the Court considers unreasonable.

This is subject to three conditions:

(1) that the proceeding (i.e. earlier proceeding) was between the same parties or their representatives in interest;

(2) that the adverse party in the first proceeding had the right and opportunity to cross examine;

(3) that the questions in issue were substantially the same in the first as in the second proceeding.

**Sec.'s. 34 to 38 of Indian Evidence Act,1872 deals with relevancy of** entries and statements in books of account, public records, maps, charts and plans, certain Acts or notifications, law contained in law-books.

• **In State Bank of India v. Ramayanapu Krishna Rao: (AIR 1995 SC 244)**, the Supreme Court observed that the certified copy of ledger accounts maintained in the regular course of business is admissible under section 34 and can be used as a piece of evidence corroborating any substantive evidence on record indicating liability if any.

• First information taken under section 154 Code of Criminal Procedure, 1973 amounts to an entry by a public servant in the discharge of his official duty and falls within section 35 but it is not substantive evidence and is not evidence of facts it mentions. It can be used merely by way of previous statement for

corroboration (section 157 of Evidence Act) or contradiction (Section 145 of Evidence Act).

• As per Sec.'s 40 to 43 of Indian Evidence Act,1872, Previous judgments, decrees and orders are relevant. **Sec.40 deals with** Previous judgments relevant to bar a second suit or trial; **Sec.41 deals with** Relevancy of certain judgments in probate, etc., jurisdiction; **Sec.42 deals with** Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41 and **Sec.43**. Judgments, etc., other than those mentioned in sections 40, 41 and 42, when relevant. Therefore, any such previous judgments, order and decrees produced by the parties are relevant.

**Illustration:**

- A has obtained a decree for the possession of land against B, C, B's son, murders A in consequence. The existence of the judgment is relevant, as showing motive for a crime.

• Opinion of experts, Examiner of Electronic Evidence and Handwriting and digital signature, are relevant under Sec.'s 45,45A, 47 and 47A of Evidence Act,1872.

**Illustrations:**

• The question is, whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died are relevant.

**•Relevancy of Public documents:-**

• Sec. 74. Public documents.—The following documents are public documents :—

(1) Documents forming the acts, or records of the acts—

(i) of the sovereign authority, (ii) of official bodies and tribunals, and (iii) of public officers, legislative, judicial and executive, [of any part of India or of the Commonwealth], or of a foreign country; (of any part of India or of the Commonwealth], or of a foreign country;"

(2) Public records kept [in any State] of private documents.

• **Certified copies of Public documents under sec.76 are relevant and admissible.** It reads that,

**Sec. 76. Certified copies of public documents**.—Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be

sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

" Explanation.—Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

**There are number of examples relating to public documents. I am mentioning some examples.**

• Entry in Hindu marriage register; Birth and death register maintained by Municipality; Judgments of Court; Report of advocate commissioner in judicial proceedings ; revenue records; FIR.

**• Is charge sheet and documents appended to charge sheet are public documents?**

- In **Saurav Das v. Union of India, 2023 SCC OnLine SC 58,** decided on 20.01.2023, the Hon'ble Supreme Court held that, documents mentioned in Section 74 of the Evidence Act only can be said to be public documents, the certified copies of which are to be given by the concerned police officer having the custody of such a public document. Copy of the charge sheet along with the necessary documents cannot be said to be public documents within the definition of Public Documents as per Section 74 of the Evidence Act. As per Section 75 of the Evidence Act, all other documents other than the documents mentioned in Section 74 of the Evidence Act are all private documents. **Therefore, the charge sheet/documents along with the charge sheet cannot be said to be public documents under Section 74 of the Evidence Act,** and copies of the charge sheet and the relevant documents along with the charge-sheet do not fall within Section 4(1)(b) of the RTI Act and reliance placed on all the provisions and the ruling in Youth Bar Association of India, is absolutely misconceived and misplaced, the Court held that the petitioner was not entitled to the relief as prayed in the present petition namely directing all the States to put on their websites the copies of all the chargesheets/challans filed under Section 173 of the Cr.P.C. It is further held that, as per Section 173 Cr.P.C. and Section 207 Cr.P.C., the Investigating Agency is required to furnish the copies of the report along with the relevant documents to be relied upon by the prosecution to the accused and to none others. Therefore, if the relief as prayed in the present petition is allowed and all the chargesheets and relevant documents produced along with the chargesheets are put on the public domain or on the websites of the State Governments, it will be contrary to the Scheme of the Criminal Procedure Code and it may as such violate the rights of the accused as well as

the victim and/or even the investigating agency.

• In **Youth Bar Association of India v. Union of India, (2016) 9 SCC 473**, the Hon'ble Supreme Court had directed copies of FIRs to be published within 24 hours of their registration on the police websites or on the websites of the State Governments, looking to the interest of the accused, so that the innocent accused are not harassed, and they are able to get the relief from the competent court and they are not taken by surprise.

**• Recitals in Third party documents:**

• Recitals in a document of 3rd parties are not facts as mentioned in sec.11, unless the existence of those recitals is itself a matter in issue, then the document is relevant.

• Recitals in a 3rd party documents as to fact- in-issue are relevant.

**-** In **Sadhurajan Vs. Sriramulu Naidu and others - AIR 1999 Madras 377** at page 382 where in at paragraph 28, it is held as follows:

**" 28.** In the decision reported in Amiappa Nainar V. Annamalai Chettiar, 1972 (1) MLJ 317: (AIR 1972 Mad 154) it was laid down as follows:-

"Recitals as to boundaries in documents not inter parties are inadmissible in evidence Under Sections, 11,13(a), 32(3) and 32(7) of the Act. The only method by which recitals in a document not inter parties could be admitted in evidence is by examination of the executant of the document in which such recitals as to boundaries are found."

- **M.Vedamanickam Nadar V. M.Sudalaikannu Thevar dt.29-03-2007** wherein it is held that, recitals of boundaries in documents between third parties are not admissible under Sec.11 or 13 of the Indian Evidence Act, 1872 but they could be admitted under Sec.32 when conditions laid down under Sec.32 are satisfied. Recitals in documents not inter-parties are ordinarily irrelevant unless they can be brought within condition under Sec.32 of Indian Evidence Act.

- **Kalappa Shiddappa Uppar And Ors. vs Bhima Govind Uppar And Ors.-AIR 1961 Kant 160,**

The general rule is that ordinarily the recitals contained in such documents are not admissible to prove possession or title as against a person who is not a party to the document still the said rule is subject to exceptions which will again be classed under Four heads, viz. if those documents come within the relevancy and admissibility contemplated under (a) Sec. 157, 155 of the Evidence Act; (b) sec. 32(3) of the Evidence Act; (c) under sec. 13 of the Evidence Act; and (d) under sec.11 of the Evidence Act.

- **Radhakrishna v. Sarbeswar, AIR 1925 Cal 684** question arose as to whether the recitals as regards boundaries in documents between strangers are

admissible in evidence. Their Lordships held that Se. 11 has no application to such recitals on the ground that Sec. 11 "deals with relevant facts".

In **Brojo Mohan v. Gaya Prasad, AIR 1926 Cal 948** their Lordships also dealt with the question as to whether or not such statements appearing in a document between; third parties are admissible against parties to the suit and held that they were not admissible amongst others under Sec.11 of the Evidence Act.

In **Madanlal Vs. Durgadutt AIR 1958 Raj 206**, while dealing with the question as to whether recitals of boundaries in documents not inter parties were admissible under Section 13, it was held that such recitals were not admissible.

**Admissibility of Documents with reference to Stamp Act, Registration Act and other relevant laws**

• Sec.2 (14) of Stamp Act, defines Instrument,

• **Sec.2 (14) "Instrument"** includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or record;

• The sections which are material in Stamp Act,1899 and Registration Act,1908 for the purpose of this paper presentation, are, Sec.35, 36 of Stamp Act,1899 and Sec.17 (1) and Section 49 of the Registration Act,1908. They are reproduced as below.

• **Sec.35**. **Instruments not duly stamped inadmissible in evidence, etc**.—No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped: Provided that—

(a) any such instrument shall, be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

xxxx xxxxx xxxxxx xxx"

• **Section 36. Admission of instrument where not to be questioned.**—Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not duly stamped.

• **Sec.17**. Documents of which registration is compulsory.—(l) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act

No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

**a)** instruments of gift of immovable property;

**b)** other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

**c)** non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

**d)** leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

**e)** non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:] Provided that the [State Government] may, by order published in the [Official Gazette], exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.]

• **Sec.49** - Effect of non-registration of documents required to be registered.—No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall—

| |
|---|
| a) affect any immovable property comprised therein, or |
| b) confer any power to adopt, or |
| c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered |
| Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument. |

**• Criteria Governing admissibility of a document:**

The criteria which govern the admissibility of a document in evidence are, whether, a) the document is pleaded. b) Is it relevant to the case c) Is it admissible in law and d) Is proper foundation is laid for admissibility of the document.

• We all know that, any document filed by either party passes through three stages before it is held proved or disproved. These are:

**First stage**: when the documents are filed by either party in the Court; these documents though on file, do not become part of the judicial record;

**Second stage:** when the documents are tendered or produced in evidence by a party and the court admits the documents in evidence. A document admitted in evidence becomes a part of the judicial record of the case and constitutes evidence;

**Third stage:** the documents which are held “proved, not proved or disproved” when the court is called upon to apply its judicial mind. Usually, this stage arrives at the final hearing of the suit or proceeding.

**• Mere Marking of Document - Dispense with proof?**

Admission of a document in evidence is not to be confused with proof of a document. Mere marking of the document as an exhibit does not dispense with its proof.

**-** In **Sait Tarajee Khimchand And Ors. vs Yelamarti Satyam Alias Satteyya** -**AIR 1971 SC 1865,** the Hon'ble apex Court held that, documents do not prove themselves. The contents of the document have to be proved. Mere marking of a document as an exhibit does not dispense with its formal proof.

**• Objections as to documents:**

At the stage of evidence when documents are tendered in evidence, the opposite party has the right to object to the document being admitted in evidence and marked as an exhibit. Objections are basically of **three types**:

**(a)** Objection to the document purely on ground of absence/insufficiency of stamp duty.
**(b)** Objection as to the mode of proof.
**(c)** Objection that the document inadmissible in evidence, under the provisions of the Registration Act, 1908 and the Transfer of Property Act, 1882, i.e, abinitio (or inherently) 'inadmissible'

**I) Objection as to stamp duty- When to be raised**

• The objection should be taken when the document is tendered and before it is admitted in evidence and exhibited. Then , it is the duty of the Court before which the objection is raised questioning admissibility of the document on the ground that it is not duly stamped, to judicially determine the issue.

**• Whether the Court can post phone to determine the said objection ?**

- Where a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped, it has to be decided then and there when the document is tendered in evidence.

• But, in **Bipin Shantilal Panchal v. State of Gujarat**, AIR 2001 SC 1158, held that, Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment."

•The Full Bench in **Hemendra Rasiklal Ghia - 2008 SCC online Bom 1017** has inter alia held that the correct procedure for raising objections and marking of documents in evidence is immediately when such objection is raised without postponing the decision thereon till the stage of final judgment.

• By way of exception, the objection relating to the admissibility of the document requiring resolution of complex issues, having effect of arresting progress of the matter, or if the admissibility of the evidence is dependent on receipt of further evidence, then, in such cases the trial court can, in the interest of justice, defer the issue of deciding admissibility of the document. In Ram Rattan v. Bajrang Lal-(1978) 3 SCC 236 the Hon'ble Supreme Court has also observed that in a given circumstance a document can be exhibited with the endorsement made by the learned trial Judge "objected, allowed subject to objection", clearly indicating that the objection has not been judicially determined and the document was tentatively marked.

• But the principle laid down in P.C. Purushothama Reddiar v. S. Perumal (1972)1 SCC 9, R.V.E. Venkatachala Gounder(2003)8 SCC 752 and Dayamathi Bai v. K.M. Shaffi-

(2004) 7 SCC 107 has been consistently followed in our country in civil matters, as observed in Mishri Lal v. Dhirendra Nath-(1999) 4 SCC 11.

• The procedure stated in Bipin Shantilal case is to be followed only in exceptional circumstances, in a case which requires resolution of complex issues which may arrest the progress of the matter or if the admissibility of such evidence is itself dependent on receipt of further evidence, only then, the decision on admissibility can be deferred to a later stage, and not as a rule.

• Ordinarily, the objection to the admissibility of the document should be decided as and when raised without reserving the question as to admissibility of the document until final judgment in the case.

• **Failure to raise Objection by the opposite party:-**

• If the party fails to raise the objection relating to insufficiency of stamp duty and the document is admitted in evidence, such admission of document cannot be called in question at any stage of the suit or proceedings on the ground that the instrument has not been duly stamped. It is not open either to the Trial Court itself or to a Court of Appeal or revision to go behind that order and the document cannot be demarked. I intend to mention the following decisions on the aspect ,

- **Javer Chand v. Pukhraj Surana - AIR 1961 SC 1655** held that, Once a document has been marked as an exhibit and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, Sec. 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence, it is not open either to the Trial Court itself or to a Court of Appeal or revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction.

-**Jatti Veera Venkata Satyam vs Bosukonda Chinnadevi - 2023 (3) ALT 345 (AP),** The Hon'ble lordship held that, in view of the express prohibition made under Sec.36 of the Stamp Act, no such objection can be raised on the ground of insufficiency of stamp duty. As such, the document, which is already marked as exhibit A1, cannot be demarked.

- **Sirikonda Madhava Rao Vs. N.Hemalatha and others - 2022 Live Law (SC) 970,** The Hon'ble lordships by referring the judgments of Javer Chand and Ors. Vs. Pukhraj Surana, (1962) 2 SCR 333 and Shyamal Kumar Roy Vs. Sushil Kumar Agarwal, (2006) 11 SCC 331, held that, once a document has been admitted in evidence, such admission cannot be called in question at any stage of the suit or proceedings on the ground that the instrument has not been duly stamped. Objection as to admissibility of a document on the ground of sufficiency of stamp, has to raised when the document is

tendered in evidence. Thereafter, it is not open to the parties, or even the court to reexamine the order or issue.

• **Duty of Court When unstamped document is produced:**

• The Court should not depend on objections of the other Counsel before considering whether the document is admissible in evidence or not.

• **Section 33 of the Stamp Act,1899** casts a duty on the Court to examine the document to find out whether it is duly stamped or not, irrespective of the fact whether an objection to its marking is raised or not.

**Section 33 of the Indian Stamp Act,1899 provides as under**:

**Sec. 33**. —(1)Every person having by law or consent of parties, authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2)For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in [India] when such instrument was executed or first executed: Provided that—

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (5 of 1898);

(b)in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3)For the purposes of this section, in cases of doubt,—

(a) the State Government may determine what offices shall be deemed to be public offices; and

(b) the State Government may determine who shall be deemed to be persons in charge of public offices.

**Avinash Kumar Chauhan v. Vijay Kumar Mishra - AIR 2009 SC 1489 at para 17 and 18 observed that,**

**"** 17.section 33 of the stamp Act casts a statutory obligation on all the authorities to impound a document. The court being an authority to receive a document in evidence is bound to give effect thereto.

18. The unregistered deed of sale was an instrument which required payment of the stamp duty applicable to a deed of conveyance. Adequate stamp duty admittedly was not paid. The court, therefore, was empowered to pass an order in terms of section 35 of the Act."

**• Ascertaining the nature of the document**

• In order to ascertain as to whether a document is chargeable with stamp duty or not, the recitals of the document are to be looked into and one cannot go by the nomenclature of the document.

• In **Kothuri Venkata Subba Rao Vs. District Registrar of Assurances,1985 (3) APLJ 50**, it was observed by the Hon'ble High Court that "in order to determine the nature of an instrument, neither the nomenclature nor the language which the parties may choose to employ in framing the document is decisive. What is decisive is the actual nature and the character of the transaction intended by the executant". What was really sought to be conveyed through the deeds are to be looked into and no fishing exploration is to be made as to what other articles/items were sought to be conveyed without there being any specific mentioning of the same in the documents.

In **Omprakash v. Laxminarayana and others- (2014) 1SCC 618** wherein, on a specific question, whether admissibility of a document produced by the party would depend upon the recitals in the document or the plea of the adversary in the suit, it was categorically held that the recitals in the document alone should be looked into and therefore, they are the decisive of admissibility.

**• Whether the question of admissibility of a document can be considered at the stage of inquiry in an interlocutory application ?**

In **Burra Anitha Vs. E. Mallavva, 2010 (6) ALT 128**, the Hon'ble lordship held that, an objection as to the admissibility of a document, at the stage of enquiry into an interlocutory application filed under Order 39 Rules 1 and 2 C.P.C., was raised, on the ground that it was improperly stamped and not registered. The trial Court took the view that the question as to admissibility of such document can be considered at the stage of hearing of the suit and it cannot be received in evidence, at the interlocutory stage. In the Revision,the Hon'ble High Court took the view that even at the interlocutory stage, an unstamped or improperly stamped document cannot be received in evidence.

**II) Objection as to Mode of proof or Manner of proof - When to be raised**

• In this case also, the objection should be taken when the document is tendered and before it is admitted in evidence and exhibited. Failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of the

document, which is sought to be produced, the document by itself being otherwise admissible in evidence. Once the document is admitted in evidence and is used in cross-examination, the document gets proved and can be read in evidence. The decisions Which I intend to mention on this aspect is,

- **Lachhmi Narain Singh (D) Through LRs & Ors.Versus Sarjug Singh (Dead) Through LRs. & Ors - Live Law 2021 SC 388** The Hon'ble Supreme Court by referring decisions of R.V.E Venkatachala Gounder v. Arulmigu Viswesaraswami& V.P Temple -(2003) 8 SCC 752 at para 20 and Dayamathi Bai v. KM Shaffi - (2004) 7 SCC 107, has held at para 24 that, it is clear that plea regarding mode of proof cannot be permitted to be taken at the appellate stage for the first time, if not raised before the trial Court at the appropriate stage. This is to avoid prejudice to the party who produced the certified copy of an original document without protest by the other side. If such objection was raised before trial court,then the concerned party could have cured the mode of proof by summoning the original copy of document. But such opportunity may not be available or possible at a later stage. Therefore, allowing such objection to be raised during the appellate stage would put the party (who placed certified copy on record instead of original copy) in a jeopardy & would seriously prejudice interests of that of party. It will also be inconsistent with the rule of fair play as propounded by Justice Ashok Bhan in the case of R.V.E.Venkatachala (Supra).

**III) Objection as to Registration**

• In this case also objection is to be taken when the document is tendered in to evidence.

**• Unregistered Documents – Effect of Marking Without Objection** :

• Merely because a document has been marked as “an exhibit”, an objection to its admissibility on the ground of registration, is not excluded. It is available to be raised even at later stage of the suit or even in appeal or revision. There is no question of inadmissible documents being read into evidence merely on account of such document being given an exhibit number without any objection being raised by the opposite party or due to lack of judicial appreciation by the Court.

• Example, in case of unregistered sale deed or gift deed or lease deed requiring registration, the document itself is inadmissible and no evidence of the terms thereof can be given.

• At this point, I deem it necessary to refer to Order 13 Rule 3 of CPC.

**- Order 13 Rules 3 of the Code of Civil Procedure, 1908 provide rules for admission or rejection of documents.**

• **Order 13 Rule 3. Rejection of irrelevant or inadmissible documents**. — The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

**To summarise, objections as to admissibility of documents**

**(a)** Admission of a document in evidence and giving it an exhibit number is a formal act, which does not dispense with proof of the document.

**(b)** As a general rule, objections as to deficiency or defect of stamp duty and mode of proof are to be raised and decided at the time when the document is tendered and can neither be raised nor entertained after the document is already admitted in evidence and exhibited.

**(c)** As regards a document which is ab initio inadmissible in evidence, notwithstanding that such document is admitted in evidence,given an “exhibit” number and cross-examination is conducted thereon, the same would not render it a part of admissible evidence or preclude an objection thereafter. It is the duty of the Court to exclude all inadmissible evidence, even if no objection is taken to its admissibility by the parties and such evidence is liable to be rejected under Order 13, Code of Civil Procedure, 1908, at any stage.

**Unregistered documents- Admissibility for collateral Purpose**

• It is well settled law that, any document which has the effect of creating and taking away the rights in respect of an immovable property must be registered under Sec.17(1) of the Registration Act,1908. If it not be registered as per Sec.17 of the Registration Act,1908, Sec.49 of the Registration Act will prevent its being admitted in evidence. **Can such unregistered documents can be looked in to for collateral purpose.** At this juncture, I intend to mention the decision in,

- **Korukonda Chalapathi rao and others v. Korukonda Annapurna Sampath Kumar - 2021 SCC onlineSC847** at para No.30 has referred to the view expressed by the division Bench of Madras High Court in K. Panchapagesa Ayyar v. K. Kalyanasundaram Ayyar, AIR 1957 Madras 472 at para 25. “To sum up it is well settled in a long series of decisions which have since received statutory recognition by the Amending Act of 1929 (vide the concluding words of the new proviso to Section 49 of the Registration Act) that a compulsorily registrable but an unregistered document is admissible in evidence for a collateral purpose that is to say, for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property”.

•Thus, it is well settled in a long series of decisions that, a compulsorily registerable document though unregistered is admissible in evidence for a collateral purpose that is to say, for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property.

**• What is Collateral Purpose?**

•Collateral purpose is a purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property.

• Section 49 of the Registration Act expressly states admissibility of unregistered documents in evidence for collateral purposes. The word 'collateral' signifies something beyond or parallel. According to Law Lexicon it means "that which is by the side, and not the direct line; that which is additional to or beyond a thing"

• The Hon'ble Supreme Court has observed in Sri **Venkoba Rao Pawar v. Sri S. Chandrashekar, AIR 2008 SCW 4829,** that the collateral purpose/transaction must be independent of, or divisible from the transaction which requires registration. **In Yellapu Uma Maheswari v. Buddha Jagadheeswararao, (2015) 16 SCC 787,** the Apex Court held that in the suit for declaration of title, an unregistered document can be relied upon for collateral purposes i.e. to prove his possession, payment of sale consideration and nature of possession; but not for primary purpose i.e. sale between the plaintiff and defendant or its terms.

**Thus,**

• **Unregistered Sale deed -** can be looked in to for collateral purposes to prove his possession, payment of sale consideration and nature of possession, if sufficiently stamped.

• **unregistered partition deed:** can be looked in to if there was a disruption (division/severance) in status, but not for proving terms of the partition or as the source of title, if it is sufficiently stamped.

• **unregistered lease deed, unregistered gift deed and unregistered Mortgage deed** can be looked in to, to prove the nature and character of possession of the occupant, if they are sufficiently stamped.

• In **K.B. Saha and Sons Private Limited, 2008 AIR SCW 4829**, The Hon'ble Supreme Court has laid the following principles,

1. A document required to be registered is not admissible into evidence under Sec.49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immoveable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.

**• Electronic Evidence- Admissibility**

• After the amendment in 2000, two new sections were inserted in the Evidence Act, one was section 65 A, and the other was section 65 B.

• Section 65 A states that any evidence which is given in the electronic form shall be proved or will be considered admissible in the court under section 65 B. Section 65B of Indian Evidence Act,1872 governs the admissibility of electronic evidence.

• There have been multiple litigations over the scope and ambit of Section 65B, with divergent views taken by the Hon'ble Apex Court.

• In a decision delivered on July 14, 2020, the Hon'ble Supreme Court (three judge bench), in ***Arjun Panditrao Khotkar v. Kailash Kishanrao Goratyal*** **('*Arjun v. Kailash*')(2020) SCC OnLine SC 571**, has clarified the interpretation of Section 65B.

• **Whether a certificate under Section 65B(4) must be produced even when an original record of the electronic evidence is available, or does it have to be given only when a secondary record of the electronic evidence is produced?** It was held that a certificate under Section 65B(4) shall have to be obtained only when the secondary copies of the electronic record are produced before the Court. Production of a certificate shall not be necessary when the original electronic record is produced.

• **Whether compliance with Section 65B(4) is mandatory even in a situation when it is not possible to obtain the certificate from the competent entity?** If the competent person/entity refuses to grant the certificate, the party who wishes to rely on the electronic record can apply to the Court for an order to produce the requisite certificates. Based on this premise, the Court concluded that the obligation placed by Section 65B(4) was mandatory, and not voluntary, and is a condition precedent before secondary copies of an electronic record can be admitted.

**•DOCUMENTS RECEIVED UNDER THE RTI ACT**

**• In Datti Kameswari v. Singam Rao Sarath Chandra- 2015 SCC ONLINE HYD 389,** The Hon'ble lordship has held that,

(i) Production and marking of a certified copy as secondary evidence of a public document under section 65(e) need not be preceded by laying of any foundation for acceptance of secondary evidence. This is the position even in regard to certified

copies of entries in Book I under registration act relation to a private document copied therein.

(ii) Production and marking of a certified copy as secondary evidence of a private document (either a registered document like a sale deed or any unregistered document) is permissible only after laying the foundation for acceptance of secondary evidence under Clause (a), (b) or (c) of Section 65.

(iii) Production and marking of an original or certified copy of a document does not dispense with the need for proof of execution of the document. Execution has to be proved in a manner known to law (Section 67 and 68 and ensuing sections in chapter V of Evidence Act)

and further held that, the xerox copy certified by the designated Public Information Officer under Right to Information Act of the private documents are not certified copies within the meaning of the provisions of sec.65 of the Evidence Act. They are merely true copies of the private documents available in the records of the particular Department. The production and marking of such copies is permissible only after laying a foundation for acceptance of secondary evidence under clauses (a) (b) or (c) of Section 65 of the Act. The condition prescribed under the above cases (a), (b) or (c) of section 65 of the Act have to be fulfilled before marking the true copies obtained under the Right to Information Act. However, the true copies of public documents certified by the designated Information Officer can be taken as certified copies of the public documents.

• At this juncture, I deem it relevant to refer to Sec.'s 65 (a),(b) and (c) of Indian Evidence Act,1872.

**65. Cases in which secondary evidence relating to documents may be given.—** Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:— (a) 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; (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest; (c) 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;

**• Power of the Judge in relevancy and admissibility of documents**

**Section 136 of the Indian Evidence Act, 1872 empowers the judge to decide as to admissibility of evidence**. It reads that,

• When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved,

would be relevant, and not otherwise. If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking. If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

**Illustration:**

• It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32. The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.

• It is proposed to prove, by a copy, the contents of a document said to be lost. The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

• **U/sec. 165 of Indian Evidence Act,1872** the Judge may ask any question at any time about any fact relevant or irrelevant, which is meant to discover or to obtain proper proof of relevant facts.

• The Judge may, in order to discover or to obtain proper proof of relevant facts,ask any question he pleases, in any form at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, cross-examine any witness upon any answer given in reply to any such question;

**Provided** that the judgment must be based upon facts declared by this Act to be relevant, and duly proved;

**Provided also** that this Section shall not authorise an Judge to compel any witness to answer any question or produce any document which such witness would be entitled to refuse to answer or produce under Sec.'s 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases herein before excepted.

• In **Meera Devi &Others V Jitender &Others - (2012) 5 SCC 777** ,it was held that the highest ideal of the court must be nothing but the quest of truth. It is stated that Section 165 of the Indian Evidence Act provide the judge the power to put any question to the witness or the party to the case irrespective of form and relevancy of facts, if the judge decides for finding out the truth.

With this, I conclude this paper, by emphasizing the duty of the judges to do substantial justice to the parties, who approaches the Temple of Justice.

**“Satyameva Jayate” ("Truth alone Triumphs”)**

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# PRIMARY EVIDENCE AND SECONDARY EVIDENCE,

# MODE OF PROOF OF DOCUMENTS,

# AND

# COMPETENCY OF WITNESS TO PROVE DOCUMENTS.

A paper prepared and presented by:

**BANDE SUBHAN,**

***Junior Civil Judge,***

***Kalyanadurg.***

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# PRIMARY EVIDENCE AND SECONDARY EVIDENCE, MODE OF PROOF OF DOCUMENTS, AND COMPETENCY OF WITNESS TO PROVE DOCUMENTS.

A paper prepared and presented by:

**BANDE SUBHAN,**
***Junior Civil Judge,***
***Kalyanadurg.***

## 1 ABSTRACT

*Evidence plays a crucial role in justice delivery system. Each case that comes before the court of law has to be supported by evidence, as it helps the court establish the genuineness of the arguments made by the parties. From the stage of admission of a case in court until the pronouncement of judgement, evidence plays a vital role. Evidence has been dealt with in detail in the Indian Evidence Act, 1872. A document to be used in court has to pass through three steps viz., i) production of documents in court; ii) admittance and exhibition, and iii) proof (formal proof and truth of contents). In this paper, the author made an attempt to explore these key concepts of evidence under the following heads viz., 1) Primary Evidence and Secondary Evidence, 2) Mode of Proof of Documents, and 3) Competency of a Witness to Prove Documents, in the light of the legal provisions contemplated in Indian Evidence Act and the settled authorities of the Hon`ble Supreme Court and various High Courts.*

## 2 INTRODUCTION

### 2.1 EVIDENCE

The term ‘Evidence’ has been derived from the Latin word ‘evidere’, which means to show clearly or to make certain, plain, ascertain or prove. In layman’s terms, the word ‘evidence’ can be defined as a set of facts or information substantiating the argument or proposition put forth by the parties. Recently, in ***Rajesh Yadav vs. State of U.P.[1],*** the Hon`ble Supreme Court held that ‘evidence’ means Factor or material, lending a degree of probability through a logical inference to the existence of a fact. (Para 12)

Section 3 of the Indian Evidence Act,1872 defines the word ‘evidence’ as follows:

> *‘Evidence’ means and includes:*
>
> *(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;*
>
> *(2) all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence.*

From the above definition, evidence can be broadly classified evidence into two categories, namely 1) Oral Evidence and 2) Documentary Evidence.

[1] 2022 LiveLaw (SC) 137 = 2022 (3) SCALE 135.

## 2.2 ORAL EVIDENCE

Oral evidence, as its name suggests, may be referred to as the words of a person who is credible enough to give statements in a court of law, and his statements are not required to be corroborated with documentary evidence.

## 2.3 DOCUMENTARY EVIDENCE

It includes all kinds of documents which are produced before the court to prove certain facts of the matter and are physical or tangible in nature. Documentary evidence is further divided into two categories, namely, 1) primary evidence and 2) secondary evidence.

# 3 PRIMARY EVIDENCE AND SECONDARY EVIDENCE

## 3.1 PRIMARY EVIDENCE

Primary evidence is considered the best quality of evidence and is referred to as the documents produced before the court of law for inspection. It is the evidence which the law requires to be given first. Section 62 of the Indian Evidence Act, 1872, explains primary evidence as follows:

> *"**62. Primary evidence.** — Primary evidence means the document itself produced for the inspection of the Court.*
>
> *Explanation 1. —Where a document is executed in several parts, each part is primary evidence of the document.*
>
> *Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.*
>
> *Explanation 2. — Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original."*

From the plain reading of the above legal provision, it is very clear that when a document itself produced for the inspection of the Court, then it will be treated as primary evidence.

**When a document is executed in several parts, each part is the Primary Evidence of the document.**

For example, Partnership Deed, Partition Deed etc.

**When a document is executed in counter parts, each counter will be Primary Evidence against the parties executing it.**

For example, Mr.A & Mr.B entered into a contract. Mr.A signs one copy, Mr.B signs another copy and subsequently, they exchange the documents with each other. In this case, against Mr.A, the document signed by him is the Primary Evidence & against Mr.B, the signed by him is the Primary Evidence.

**Where a number of documents are all made by one uniform process.**

For example, prints, photographs with negative, lithographs, play cards etc. made at one time by one uniform process are the Primary Evidence.
A tape record is primary and direct evidence of the matter recorded[2].

## 3.2 SECONDARY EVIDENCE

Secondary evidence, as the name suggests, is the evidence that is used in the absence of any primary evidence and is defined under Section 63 of the Indian Evidence Act, 1872 as follows:

> ***"63. Secondary evidence. —*** *Secondary evidence means and includes —*
>
> *(1) certified copies given under the provisions hereinafter contained;*
>
> *(2) copies made from the original by mechanical processes which in themselves insure 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 contents of a document given by some person who has himself seen it."*

From the bare reading of the legal provision, Secondary Evidence means and includes...

**1. Certified copies of Public Documents.**

For example, certified copies of Sale Deed, Gift Deed, Lease Deed etc. issued by Sub-Registrar.

**2. Copies made from the original by mechanical process.**

For example, Xerox copies of the original document.

**3. Copies made from (& after comparison with) the original document.**

For example, Hand written copies made from original after due comparison.

**4. Counterparts of the documents.**

For example, duplicate subscription receipt, duplicate challan, copy of School Transfer Certificate retained by a school etc.

**5. Oral account of the contents of a document given by a person who has seen such document.**

Over the years, various judicial pronouncements have provided clarity on the significance of primary evidence and the admissibility of secondary evidence in its absence. The settled law as to secondary evidence is compiled hereunder.

In ***Jayarama vs. Ramanatha***[3], the Hon`ble Madras High Court defined the word 'copy' as a document which is an accurate and full representation of the original.

---

[2]Rama Reddy vs. VV Giri, AIR 1971 SC 1162.

[3] AIR 1976 Mad 147.

In a case decided in between ***J.Yashoda vs. Smt. K.Shobha Rani***[4], the Hon`ble Supreme Court held that secondary evidence can only be admitted when primary evidence is unavailable.

The Hon`ble Apex Court laid down in ***H. Siddiqui (dead) by LRs vs. A. Ramalingam***[5] that if the party fails to establish the validity of the original document, they cannot introduce secondary evidence regarding its contents. Similarly, the Apex Court reiterated that without providing a rational reason and factual foundation for the non-production of the originals, the court cannot allow the introduction of secondary evidence.

Further, in ***Rakesh Mohindra vs. Anita Beri and others***[6], the Apex Court held that before presenting secondary evidence, it is necessary to establish the plausible reason for the non-production of primary evidence. Secondary evidence can only be accepted if it is proven that the original documents are lost, destroyed or deliberately withheld by the opposing party.

The Hon`ble Supreme Court stated in ***Chandra vs. M.Thangamuthu***[7] that the secondary evidence must be authenticated by foundational evidence, proving that the alleged copy is a true replica of the original. Exceptions to the rule requiring primary evidence are intended to provide relief when a party genuinely cannot produce the original document due to circumstances beyond their control.

### 3.2.1 Counter-Part

Counter-part means duplicate of original. So, far as evidentiary value attached to such document is to the effect that parties are bound by the contents of counter-part signed by both the parties. For example Lease Deed, one retained by the landlord and one given to the tenant.

### 3.2.2 Objection to Secondary Evidence & Stage of objection

In ***R.V.E.Venkatachala Gounder vs. Arulmigu Viswesaraswami and another***[8], the Hon`ble Supreme Court well discussed objection to secondary evidence and stage of objection as follows:

> *"Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the*

[4] 2007 (5) SCC 730.
[5] 2011 (4) SCC 240.
[6] 2016 (16) SCC 483.
[7] 2010 (9) SCC 712.
[8] AIR 2003 SC 4548.

*document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court."*

### 3.2.3 Admissibility of carbon copy of documents

Since the carbon copy was made by one uniform process the same was primary evidence within the meaning of Explanation 2 to Section 62 of the Evidence Act. Therefore, the medical certificate was clearly admissible in evidence. That apart, there is strong, reliable and dependable evidence of the prosecution witness which clearly proves that the prosecutrix was raped by the appellant. ***Prithi Chand vs. State of Himachal Pradesh***.[9]

A post-mortem report is to be prepared in triplicate by pen-carbon and in the instant case also, the post-mortem report was prepared by pen-carbon in one uniform process and as such, in view of the provisions of Section 62 of the Evidence Act, such carbon copy is primary evidence. ***Md. Yakub Ali vs. State of Tripura***.[10]

### 3.2.4 Admissibility of counterpart originals

Section 62 of Evidence Act deals with Primary evidence. Explanation 2 says that where a number of documents are made by one uniform process, each is primary evidence of the contents of the rest. Under Explanation 2, all the documents must be taken at a time under one uniform process in which case, each of such documents is a primary evidence of the contents of the rest. Printing, cyclostyle, lithography are some mechanisms which are recognized under law through which documents can be obtained under a uniform process. Thus, documents prepared under the uniform process of either printing or cyclostyle or

[9] 1989 (1) SCC 432 = 1989 Cri. LJ 841 (SC).
[10] 2004 Cri. LJ 3315 (Guj).

lithography cannot be mere copies in strict legal sense of the term, in fact, they are all counterpart originals and each of such documents is a primary evidence of its contents under Sections 45 and 47 of the Evidence Act. ***Surinder Dogra vs. State***.[11]

### 3.2.5 Admissibility of certified copies obtained under RTI Act.

The documents obtained under RTI Act can be admitted as secondary evidence, as they are obtained under a particular enactment, which fall within ambit of by *"any other law in force in India".*

### 3.2.6 Certified copies of the document can be received on record.

Xerox copy of the certified copy of a document cannot be marked as it does not come within the purview of Sec.63 of Evidence Act., as held in ***H.Siddiqui vs. A.Ramalingam***[12], wherein, at para 12, as follows:

> *"In our humble opinion, the Trial Court could not proceed in such an unwarranted manner for the reason that the respondent had merely admitted his signature on the photocopy of the power of attorney and did not admit the contents thereof. More so, the court should have borne in mind that admissibility of a document or contents thereof may not necessary lead to drawing any inference unless the contents thereof have some probative value."*

### 3.2.7 Photocopies of documents

The photocopies which are exhibited were not public documents. Therefore Section 65 (e) does not apply. Though the seal and signature of the manager on those photocopies mention it as *'certified copy'*, in fact it does not fall within the meaning of certified copy as referred under Section 65(e) or 65(f), nor such certificate found on the exhibits satisfies the mandate of Section 4 of Banker's Book Evidence Act. ***G. Subbaraman vs. State.***[13]

# 4 MODE OF PROOF OF DOCUMENTS

Modes of proof of documents as to, both, *'formal proof'* and *'truth of the contents'*, include the following:

- **i.** Admission of the person who wrote or signed the document (Sec. 17, 21, 58, 67, 70).
- **ii.** Evidence of a person in whose presence the document was signed or written – ocular evidence (Sec. 59).
- **iii.** An attesting witness (Sec. 59).
- **iv.** Opinion of a person who is acquainted with the writing of the person who signed or wrote (Sec. 47).
- **v.** Admission made by the person who signed or wrote the document made in judicial proceedings (Sec. 32, 33).
- **vi.** Evidence of a handwriting expert-opinion evidence/scientific evidence (Sec.45).
- **vii.** Evidence of a person who in routine has been receiving the document; or a document signed by such a person in the ordinary course of his business or official

[11] 2019 Cri. LJ 3580 (J&K).
[12] Ibid.
[13] 2018 Cri. LJ 2377 (Mad).

duty, though he may have never seen the author signing the document (Sec. 32, 34, 35 or 114).

**viii.** Invoking (specific) presumptions under Sec. 79 to 90A.

**ix.** Presumptions (general) under Sec. 114.

**x.** Circumstantial evidence: on probability or inferences (Sec. 114).

**xi.** Court-comparison (Sec. 73).

**xii.** Facts judicially noticeable (Sec. 56 and 57).

**xiii.** A fact of common-knowledge. (It does not require proof. See: ***Union Of India vs. Virendra Bharti***[14]).

**xiv.** Internal evidence afforded by the contents of the document; a link in a chain of correspondence; recipient of the document. (***Mobarik Ali Ahmed Vs. State of Bombay***[15].

According to section 61 of Indian Evidence Act, 1872, contents of the document can be proved either by primary evidence or by secondary evidence. Section 64 of the Act speaks that proof of a document shall be by primary evidence, i.e., a document is to be proved by producing the original. Section 65 is an exception to section 64. Simply, in the following instances, secondary evidence may be given to prove the contents of a document as per section 65 of Indian Evidence Act.

1) When the original is in the possession of the adverse party.
2) When the original is in the possession of a person who is out of reach of the Court and not subject to the process of the Court.
3) When the original is in the possession of a person who is legally bound to produce, but does not produce even after notice.
4) When the original is destroyed or not found.
5) When the original is not easily movable to be brought to the Court.
6) When the original is a public document.
7) When the certified copy of the original is allowed by law.
8) When the contents of original have been admitted in writing by the other party.
9) When the original is an onerous document containing numerous accounts and other documents.

Section 66 states that the party, who proposes to produce secondary evidence before the Court, shall first give notice to the other party in whose possession original document (primary evidence) is, asking him to produce the same before the Court.

If other party fails to produce the same before the Court, then the party who proposes to produce secondary evidence will be allowed to do so. Proviso to section 66 prescribes certain exceptions to give notice.

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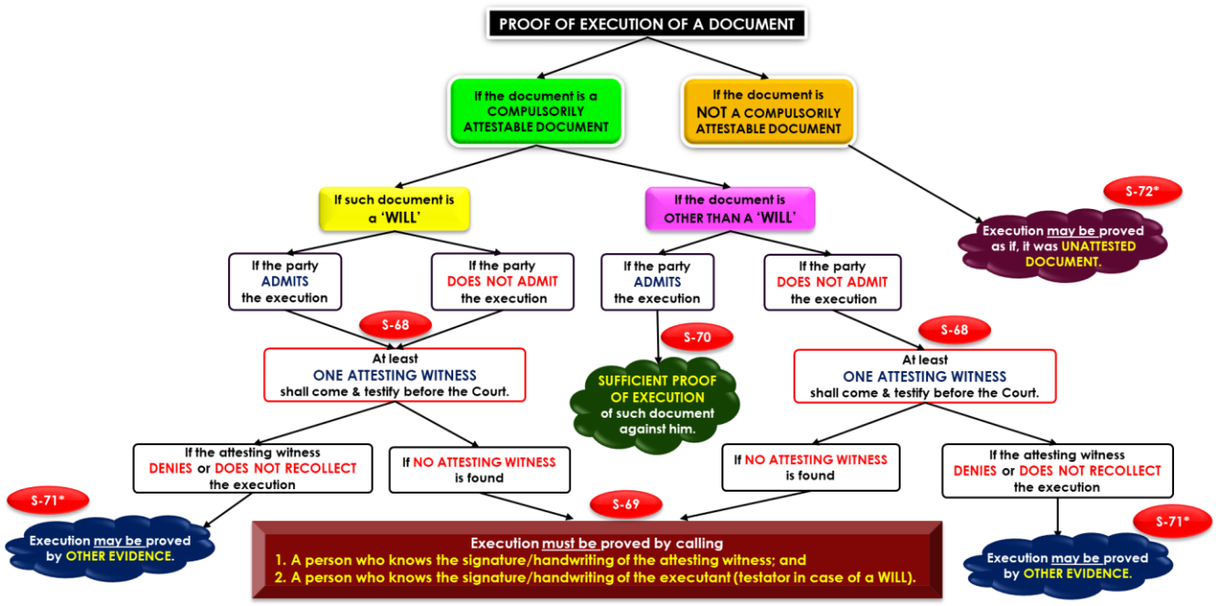
[14] 2011-2 ACC 886 = 2010 ACJ 2353.
[15] AIR 1957 SC 857.

The author made an attempt to simplify the relevant provisions of law under Evidence Act to understand the concept of mode of proof of documents as follows:




## 4.1 PROOF OF CONTENTS OF DOCUMENT

Mere marking of a document cannot be said to be the proof of said document. The document has to be proved in accordance with law and the same has to be appreciated in order to ascertain the genuineness of the document with other materials available on record. In that context, both the parties would get ample opportunity to counter those documents as well to submit their arguments with reference to the evidence already recorded by the court. ***S. Ravichandra vs. M/s. Elements Development Consultants, Bengaluru***.[16]

Normally, any party who wants to prove the content of the document is required to lead evidence by production of the original document before the court through its author. Under Section 61, the original document can be presented before the Court through the author, who created the document and it can be proved. ***G. Subbaraman vs. State***[17].

The legal position is not in dispute that mere production and making of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the evidence of those persons who can vouchsafe for the truth of the facts in issue. ***Narbada Devi Gupta vs. Birendra Kumar Jaiswal***[18]; see also, ***Alamelu vs. State represented by Inspector of Police***[19].

[16] 2018 Cri. LJ 4314 (Kar).
[17] 2018 Cri. LJ 2377 (Mad).
[18] 2003 (8) SCC 745 = AIR 2004 SC 175.
[19] 2011 (2) SCC 385: AIR 2011 SC 715.

### 4.1.1 Proof of documents

A document is required to be produced and proved according to law to be called evidence. Whether such evidence is relevant, irrelevant, admissible or inadmissible, is a matter of trial. ***Hardeep Singh vs. State of Punjab***.[20]

### 4.1.2 Recitals in documents

The recitals in the document do not become a part of the evidence. They are assertions by a person who is alive and who might have been brought before the Court if either of the parties to the suit had so desired. This distinction is frequently overlooked and when a document has been admitted in evidence as evidence of a transaction the parties are often apt to refer to the recitals therein as relevant evidence. ***Nihar Bera vs. Kadar Bux Mohammed.***[21]

### 4.1.3 Proof of Execution of a Certified Copy of document of 30 years

Mere production of a certified copy of a document more than 30 years old, is not sufficient to raise a presumption under Sec. 90 of Evidence Act, regarding the genuineness or execution, although, the certified copy may be used to prove the contents of the document. Mere production of a certified copy of the registered document would not amount to proving the original deed by way of secondary evidence. See – ***Basant Singh vs. Brij Raj Saran***[22]; ***Harihar Prasad vs. Deo Narain***[23]; ***Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale***[24]; and also ***Cement Corporation of India Ltd. vs. Pury***[25].

### 4.1.4 Proof of lost or destroyed documents

Secondary evidence can be accepted by the Court for the existence, condition or contents of a document if the original has been lost or destroyed. In this regard, the decision in ***Aher Rama Gova vs. State of Gujarat***[26] may be relied upon. The loss of original must be proved. In this regard, the decision in ***State of Bihar vs. Karam Chand Thapar***[27] may be relied upon.

Secondary evidence can be accepted by the Court for the existence, condition or contents of a document; 1) when the original appears to be possession or power of the person against whom the document is to be in the possession or power of the person against whom the document is sought to be proved, or of a person not subject to the power of the Court or of any person legally bound to produce it, who has not it despite being given the required statutory notice, 2) when the party offering such evidence cannot, though no default or neglect of his own, produce the original in reasonable time. (relevant decision – ***Ashok Dulichand vs. Madhavlal Dube***[28], 3) when the original document is not easily movable, 4)when the original document comprises numerous accounts or other documents which

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[20] 2014 (3) SCC 92 =AIR 2014 SC 1400 = 2014 (2) ALD (Cri) 152 (SC).
[21] AIR 1923 Cal 290.
[22] AIR 1935 PC 132.
[23] AIR 1956 SC 305.
[24] AIR 2007 SC 2577.
[25] AIR 2004 SC 4830.
[26] AIR 1979 SC 1567.
[27] (1962) 1 SCR 827.
[28] AIR 1975 SC 1748.

cannot be conveniently examined in Court and the fact to be proved is the general result of the whole collection.

If a document is written by hand by the executant himself and produced before the Court, such document is called as 'Holograph/Autograph'. If it is written by a scribe and relied upon, such document is called 'Onmatic' document. There exists another type of document called as 'Symbolic' document.

### 4.1.5 Thumb Impression

Document executed by illiterate person. Such person who has put the thumb impression need not say that it is his thumb impression. Suffice to say that this is the document on which he put thumb impression. Marking of thumb impression as exhibit is wrong. ***Bheek Chand vs. Parbhuji.***[29]

### 4.1.6 Execution of a document by Pardhanashin woman

Pardanashin lady has to admit the contents of the document. In India pardahnashin ladies have been given a special protection in view of the social conditions of the times; they are presumed to have an imperfect knowledge of the world, as a result by the pardah system they are practically excluded from social intercourse and communion with the outside world. ***Kharbuja Kuer vs. Jangbahadur Rai***.[30]

### 4.1.7 Proof of Photographs

By producing both photographs and their negatives. By examining the photographer, a person who has developed the photographs. If other side admits the contents of the photographs, then negatives need not be produced. In case of digital photographs, production of photos and CD is necessary.

If the photograph confronted is admitted, then it can be said that photograph has been proved. There may be possibility of tricking the photograph. To avoid the tricking Court has to be more cautious. ***Laxmipat Choraria and others vs. State of Maharashtra***.[31]

### 4.1.8 Xerox Copies

Unless the original is perused, a Xerox copy with signature cannot be marked. ***Government of Andhra Pradesh vs. Karri Chinna Venkata Reddy and others***.[32]

In the decision decided in between ***K. Neelamma vs. B. Suryanarayana***[33], it is held that whenever Xerox copy is produced, the duty of the Court is to be much more cautious than when a copy is produced under other mechanical process.

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[29] AIR 1963 Raj 84.
[30] AIR 1963 SC 1203.
[31] AIR 1968 SC 938.
[32] AIR 1994 SC 591.
[33] 1990 (2) ALT 171.

Referring Xerox copies without comparing original is not proper. In ***Himatsingka Seide Ltd., Bangalore vs. Shambappa Basappa***[34], it is held that:

> *"In case of xerox or photo copy, Section 63 of the Evidence Act requires that, the said copy must itself ensure that it is accurate copy, such as competent authority certifying the copy as accurate copy of the original. Hence, the photo copy by itself may not be admissible, but if it is proved that it is made from the original, it is admissible."*

In a decision reported in between ***H.Siddiqui vs. A. Ramalingam***[35], the Hon`ble Supreme Court held that:

> *"In a case where original documents are not produced at any time, nor, any factual foundation has been led for giving secondary evidence, it is not permissible for the Court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non-production of the original is accounted for, so as to bring it within one or other of the cases provided for in S. 65. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law. The Court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon. Where the respondent had merely admitted his signature on the photocopy of the power of attorney and did not admit the contents thereof and the trial Court without examining whether contents thereof had probative value decreed the suit for specific performance, the approach of trial Court was held to be improper."*

### 4.1.9 Proof of Newspaper Items

So, far as the newspaper items are concerned, it is neither primary nor secondary evidence but it is second hand secondary evidence. Therefore, the newspaper items cannot be admitted in evidence unless the original manuscript is produced. ***Quamarul Islam vs. S. K. Kanta***[36], wherein at head note it is held that:

> *"Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Evidence Act. Where the speech alleged to be delivered by the returned candidate during election campaign was published in a newspaper but neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor and Publisher by itself cannot amount to the contents of the newspaper reports. Though the advertisement or message published in a newspaper contained in appeal on ground of religion, when the original manuscript of the advertisements or the messages was not produced at the trial and no witness came forward to prove the receipt of the manuscript of any of the advertisements or the*

[34] 2010 KCCR (2) 816.
[35] AIR 2011 SC 1492.
[36] AIR 1994 SC 1733.

*messages or the publication of the same in accordance with the manuscript, and there was no satisfactory and reliable evidence on the record to even establish that the same were actually issued by or at the instance of the returned candidate, the evidence of the election petitioner himself or of the Editor and Publisher of the Newspaper to prove the contents of the messages and advertisements in the newspaper could not be admitted and relied upon as evidence of the contents of the statement contained therein and could not be used against the returned candidate".*

The Court cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A Report in a news paper is only hearsay evidence. A newspapers not one of the documents referred to in Section 78(2) of Evidence Act. ***Laxmi Raj Shetty vs. State of T.N.***[37]

### 4.1.10 Whether registration of a document dispenses the proof?

The answer would be 'no'. In ***Bhagat Ram vs. Suresh***[38]**,** the Hon`ble Court held as follows:

*"Registration of a document does not dispense with the need of proving the execution and attestation of a document which is required by law to be proved in the manner as provided in Section 68 of the Evidence Act. Under Section 58 of the registration Act the Registrar shall endorse the following particulars on every document admitted to registration :*

*(1) the date, hour and place of presentation of the document for registration;*

*(2) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;*

*(3) the signature and addition of every person examined in reference to such document under any or the provisions of this Act, and*

*(4) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution."*

### 4.1.11 Proof of 'Will'

The Supreme Court, in ***V.Kalyanaswamy (D) by LRs. vs. L.Bakthavatsalam (D) by LRs***[39], it is held that, in a situation where both the attesting witnesses to a will are dead, it is sufficient to prove that the attestation of at least one attesting witness is in his handwriting. The Hon`ble Apex Court further held as follows:

*"In the case of a Will, which is required to be executed in the mode provided in Section 63 of the Indian Succession Act, when there is an attesting witness available, the Will is to be proved by examining him. He must not only prove that the attestation was done by him but he must also prove the attestation by the other attesting witness. This is, no doubt, subject to the situation which is contemplated in Section 71 of the Evidence Act which allows other evidence to be adduced in proof of*

[37] (1988) 3 SCC 319.
[38] AIR 2004 SC 436.
[39] 2020 SCC OnLine SC 584.

*the Will among other documents where the attesting witness denies or does not recollect the execution of the Will or the other document. In other words, the fate of the transferee or a legatee under a document, which is required by law to be attested, is not placed at the mercy of the attesting witness and the law enables proof to be effected of the document despite denial of the execution of the document by the attesting witness." (Para 70)*

*"Reverting back to Section 69 of the Evidence Act, we are of the view that the requirement therein would be if the signature of the person executing the document is proved to be in his handwriting, then attestation of one attesting witness is to be proved to be in his handwriting. In other words, in a case covered under Section 69 of the Evidence Act, the requirement pertinent to Section 68 of the Evidence Act that the attestation by both the witnesses is to be proved by examining at least one attesting witness, is dispensed with. It may be that the proof given by the attesting witness, within the meaning of Section 69 of the Evidence Act, may contain evidence relating to the attestation by the other attesting witness but that is not the same thing as stating it to be the legal requirement under the Section to be that attestation by both the witnesses is to be proved in a case covered by Section 69 of the Evidence Act. In short, in a case covered under Section 69 of the Evidence Act, what is to be proved as far as the attesting witness is concerned, is, that the attestation of one of the attesting witness is in his handwriting. The language of the Section is clear and unambiguous. Section 68 of the Evidence Act, as interpreted by this Court, contemplates attestation of both attesting witnesses to be proved. But that is not the requirement in Section 69 of the Evidence Act." (Para 71)*

### 4.1.12 Depositions in Earlier Proceedings

In ***Biswanath Prasad vs. Dwarka Prasad***[40]**,** the Hon`ble Supreme Court held that to prove the statement of a witness in earlier proceedings with regard the admission, true copy cannot be confronted. Certified copy of the deposition can be confronted, if such deposition is admitted it has evidentiary value. In this case, the Hon`ble Supreme Court further considered the distinction between substantive evidence and the prior statement of a witness used for the purpose of contradiction and explained the legal position thus:

*"There is a cardinal distinction between a party who is the author of a prior statement and a witness who is examined and is sought to be discredited by use of his prior statement. In the former case an admission by a party is substantive evidence if it fulfills the requirements of Section 21 of the Evidence Act: in the latter case a prior statement is used to discredit the credibility of the witness and does not become substantive evidence. In the former there is no necessary requirement of the statement containing the admission having to be put to the party because it is evidence proprio vigore: in the latter case the Court cannot be invited to disbelieve a witness on the strength of a prior contradictory statement unless it has been put to him, as required by Section 145 of the Evidence Act."*

[40] AIR 1974 SC 117.

In ***Telanakula Kasi Viswanadham vs. Pokuri Maruthi Prasad***[41], the Hon`ble High Court of Andhra Pradesh placed reliance on ***Biswanath Prasad's case***[42], and held in para 9 of its judgment as follows:

> *"9. In view of the above precedential guidance, it is clear that as it is the case of the revision petitioner/respondent in the instant OP that the witness (PW.1) made a statement in his present deposition contrary to certain admissions, which he made in the deposition given by him in the former judicial proceeding, the contrary statements in his said previous deposition can be confronted to him in his cross-examination; and, on such confrontation, if he admits the confronted portions or statements in his previous deposition, such admissions can be recorded by the Trial Court in his present deposition; however, if, on such confrontation, he denies the previous statements in his previous/former deposition, which are contrary to his statements in his present deposition, then the confronted portions only of the previous deposition given in former judicial proceeding can be permitted to be marked, but, the entire deposition cannot be permitted to be marked in the instant case, in view of the facts and the legal position obtaining."*

### 4.1.13 Proof of Hiba

In case of gifts by Mohammedan acceptance by donee is must.[43] As per the principles laid down in ***Hafeeza Bibi and others vs. Shaikh Farid***[44], in the Mohammedan Law, for the purpose of proving whether a gift was Hiba, three essential ingredients must be proved. These are (i) declaration of gift by the donor, (ii) acceptance of the gift by the donee and (iii) delivery of possession.

### 4.1.14 Whether information relating to how a judge has come to conclusion in a particular case can be sought under Right to Information Act?

No. Refer the decision reported in ***Khanapuram Gandaiah vs. Administrative Officer***[45], wherein, it is held that:

> *"Definition of 'information' u/S. 2 (f) shows that an applicant under Section 6 of the RTI Act can get any information which is already in existence and accessible to the public authority under law. Of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices circulars, orders, etc. have been passed, especially in matters pertaining to judicial decisions. A judge speaks through his judgments or orders passed by him. If any party feels aggrieved by the order/judgment passed by a judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek information as to why and for what reasons the judge had come to a particular decision or conclusion. A judge is not bound to explain later on for what reasons he had come to such a conclusion. Moreover, in*

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[41] AIR 2019 AP 79.
[42] Ibid.
[43] AIR 1981 Kerala 176.
[44] AIR 2011 SC 1695
[45] AIR 2010 SC 615.

*the instant case, the petitioner submitted his application under Section 6 of the RTI Act before the Administrative Officer-cum-Assistant State Public Information Officer seeking information in respect of the questions raised in his application. However, the Public Information Officer is not supposed to have any material which is not before him; or any information he could have obtained under law. Under section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the "Public authority" under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have had access to this information. A judge cannot be expected to give reasons other than those that have been enumerated in the judgment or order. Application before public authority seeking such information is therefore per se illegal, unwarranted. (Paras 6, 7)*

*A judicial officer is entitled to get protection and the object of the same is not to protect malicious or corrupt judges, but to protect the public from the dangers to which the administration of justice would be exposed if the concerned judicial officers were subject to inquiry as to malice, or to litigation with those whom their decisions might offend. If anything is done contrary to this, it would certainly affect the independence of the judiciary. A judge should be free to make independent decisions"*

### 4.1.15 Proof where no attesting witness found

The words 'can be found' in the Section are not very appropriate and must be interpreted to include not only cases where the witness cannot be produced because he cannot be traced but also cases where the witness for reasons of physical or mental disability, or for other reasons, when the Court considers sufficient, is no longer a competent witness for the purpose, as is provided in Sec. 68 of the Act.

If no attesting witness is available, it must be proved that attestation of one attesting witness is in his own handwriting and that the signature of the executants is in his handwriting.

### 4.1.16 Signature includes mark.

When both the attesting witnesses were no more a line, Section 68 Indian Evidence Act cannot apply. So by applying Section 69, it has to be proved by other evidence as mentioned in Section 69. The word not found occurring in Section 69 of the Act should receive a wider purposive interpretation.

### 4.1.17 Bonds:

Although, for the purpose of the Stamp Act, it may be necessary for a bond to be attested, it is not a document required by law to be attested within the meaning of Sec. 68.

If document is not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act unless its execution by the person by whom it purports to have been executed is specifically denied. In ***Rosammal Issetheenammal Fernandez (dead) by LRs vs. Joosa Mariyan Fernandez***[46], it is held that:

*"Under the proviso to Section 68 the obligation to produce at least one attesting witness stands withdrawn if the execution of any such document, not being a will which is registered, is not specifically denied. Therefore, everything hinges on the recording of this*

[46] (2000) 7 SCC 189.

*fact of such denial. If there is no specific denial, the proviso comes into play but if there is denial, the proviso will not apply. In the present case as we have held, there is clear denial of the execution of such document by the plaintiff, hence the High Court fell into error in applying the said proviso which on the facts of this case would not apply. In view of this the very execution of the gift deed, Exhibit B-1 is not proved. Admittedly in this case none of the two attesting witnesses has been produced. Once the gift deed cannot be tendered in evidence in view of the non- compliance of Section 68 of the Indian Evidence Act, we uphold that the plaintiff has successfully challenged its execution. The gift deed accordingly fails and the findings of the High Court contrary are set aside. In view of this no rights under this document accrue to the respondent concerned over Schedule A property which is covered by this gift deed."*

### 4.1.18 Exceptions to strict proof of execution and attestation

When a document is called for and not produced after notice to produce the document is given, the Court will presume that it was attested. Stamped and executed in the manner required by law.

The contents of documents can be proved by oral evidence. However, the contents must be proved by admissible evidence. If the truth of the facts stated in the documents itself is in issue, then, proof of execution of the document should not be equated with the proof of facts stated in the document. In this regard, the decision of the Apex Court reported in ***Hawaldar Singh vs. State of U.P.***[47] may be relied upon.

In a case decided in between ***M.Chandra vs. M. Thangamuthu***[48], it is held that:

*"It is true that a party who wishes to rely upon the contents of a document must adduce primary evidence of the contents, and only in the exceptional cases will secondary evidence be admissible. However, if secondary evidence is admissible, it may be adduced in any form in which lit may be available, whether by production of a copy, duplicate copy of a copy, by oral evidence of the contents or in another form. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. It should be emphasized that the exceptions to the rule requiring primary evidence are designed to provide relief in a case where party is genuinely unable to produce the original through no fault of that party".*

### 4.1.19 Whether Court can compare the signature and form an opinion itself as to identity of handwriting and signature?

No. It is not proper on the part of the Court to compare the signature under Sec. 73 of Evidence Act. The Judge should not take the risk of comparing the disputed writing with the admitted writing without the aid of evidence of any expert. Though Sec. 73 of the evidence Act states that the Court is the expert of experts, prudence demands that such disputed signature/handwriting is referred to an expert and his opinion and evidence is considered. -

[47] AIR 1985 SC 955.
[48] 2010 AIR SCW 6362.

***Thiruvengada Pillai vs. Navaneethammal***[49]. Also see: 2009 (5) Supreme 674 in the case of ***G. Someshwar Rao vs. Samineni Nageshwar Rao***[50].

### 4.1.20 Proof of Call Records

The information contain in the call records is stored in huge servers which cannot be easily moved and produced in the Court. Hence, printout taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. Irrespective of the compliance with the requirements of Section 65-B, which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, Sections 63 and 65. It may be that the certificate containing the details in sub-section (4) of Section 65-B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely, Sections 63 and 65 of the Act. ***State (NCT of Delhi) vs. Navjot Sandhu @ Afsan Guru***[51]. Overruled in ***Anvar P.V. vs. P.K. Basheer***.[52]

### 4.1.21 Video-Conferencing

Video-conferencing is a latest technological invention. It enables the Court to record the evidence without bringing the accused to Court. Evidence recorded through video conferencing is admissible in evidence. ***State of Maharashtra vs. Praful B. Desai.***[53]

### 4.1.22 Proof of Call records of mobile phone

In ***State (N.C.T. of Delhi) vs. Navjot Sandhu***[54], it is held at para nos. 15,18,19 that:

> *"The call records relating to cellular phones are admissible and reliable and rightly made use of by the prosecution. In the instant case the computer, at the first instance, instead of recording the IMEI number of the mobile instrument, had recorded the IMEI and cell ID (location) of the person calling/called by the subscriber. The computer rectified this obvious error immediately and modified the record to show the correct details viz., the IMEI and the cell ID of the subscriber only. The document is self-explanatory of the error. A perusal of both the call records with reference to the call at 11:19:14 hours exchanged between 9811489429 (Shaukat's) and 9811573506 (Afzal's) shows that the said call was recorded twice in the call records. The fact that the same call has been recorded twice in the call records of the calling and called party simultaneously demonstrates beyond doubt that the correctness or genuineness of the call is beyond doubt. Further, on a comparative perusal of the two call records, the details of Cell I.D. and IMEI of the two numbers are also recorded. Thus, same call has been recorded two times, first with the cell ID and IMEI number of the calling number (9811489429). The same explanation holds good for the call at 11:32:40 hours. Far from supporting the contention of the defence, the above facts,*

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[49] AIR 2008 S C 1541.
[50] 2010- KCCR-1-683.
[51] (2005) 11 SCC 600 = AIR 2005 SC 3820.
[52] (2014) 10 SCC 473 = AIR 2015 SC 180.
[53] AIR 2003 SC 2053.
[54] AIR 2005 SC 3820.

*evident from the perusal of the call records, would clearly show that the system was working satisfactorily and it promptly checked and rectified the mistake that occurred. It was not suggested nor could it be suggested that there was any manipulation or material deficiency in the computer on account of these two errors. Above all, the printouts pertaining to the call details exhibited by the prosecution are of such regularity and continuity that it would be legitimate to draw a presumption that the system was functional and the output was produced by the computer in regular use, whether this fact was specifically deposed to by the witness or not."*

## 4.2 SECTION 65-B: ADMISSIBILITY OF ELECTRONIC EVIDENCE

The applicability of procedural requirement under Section 65-B(4) of the Evidence Act of furnishing certificate is to be applied only when such electronic evidence is produced by a person who is in a position to produce such certificate being in control of the said device and not of the opposite party. In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such document is kept out of consideration by the court in absence of certificate under Section 65-B(4) of the Evidence act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65-B(4) is not always mandatory. Accordingly, the legal position was clarified on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65-B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by the Court wherever interest of justice so justifies. ***Shafhi Mohammad vs. State of Himachal Pradesh***[55]; see also, ***Sonu*** @ ***Amar vs. State of Haryana***[56]; and ***Kishin T. Punjabi vs. Suresh Kothari***[57].

### 4.2.1 Necessity of certificate under Section 65B

An electronic record is not admissible unless it is accompanied by a certificate as contemplated under section 65-B(4) of the Indian Evidence Act. ***Sonu*** @ ***Amar vs. State of Haryana***[58].

For the purposes of taking cognizance, the Magistrate can look into in electronic evidence which is not accompanied by a certificate. ***B.S. Yediyurappa vs. State of Karnataka***[59].

### 4.2.2 Need for production of certificate

The High Court erred in coming to the conclusion that the failure to produce a certificate under Section 65-B(4) of the Evidence Act at the stage when the charge-sheet was filed was

[55] (2018) 2 SCC 807 = AIR 2018 SC 714.
[56] (2017) 3 SCC (Cri) 663 = (2017) 8 SCC 570.
[57] 2020 (5) KCCR SN 53.
[58] Ibid.
[59] 2020 (4) KCCR 2649.

fatal to the prosecution. The need for production of such a certificate would arise when the electronic record is sought to be produced in evidence at the trial. It is at that stage that the necessity of the production of the certificate would arise. ***State by Karnataka Lokayukta Police Station, Bengaluru vs. M.R. Hiremath***.[60]

### 4.2.3 Non-production of certificate & consequences

The Court emphasised that non-production of a certificate under Section 65B on an earlier occasion is a curable defect. **Union of India vs. Ravindra V. Desai**.[61]

The crucial test is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. ***Sonu @ Amar vs. State of Haryana***[62].

# 5 COMPETENCY OF WITNESS TO PROVE DOCUMENTS

Under the Indian Evidence Law, every person is competent to testify as a witness as long as he understands the questions put by the court and gives rational answers thereof. Religion caste, sex, age play no role at all in deciding the competency of a witness. Once a court is satisfied that the person has the mental capability to answer the questions rationally, he is allowed to give his testimony and help in completing the story involved in the case. Section 118, Indian Evidence Act, 1872 states the qualification of the persons who can testify. The section is reiterated as below:

> ***S.118 Who may testify:*** *All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind or any other cause of the same kind.*

Therefore, the disqualifications as provided in the act are:

- Tender age
- Extreme old age
- Disease of mind or body which renders the person incompetent to understand the questions and answer rationally.
- Any other cause for instance unconsciousness, drunkenness, extreme bodily pain etc.

In so far as competency to prove a document is concerned we need to understand the following rulings.

### 5.1.1 Competency of Witness & Proof of execution of documents

#### *5.1.1.1 Proof of handwriting*

Except when judicial notice is taken of official signatures, the handwriting or signature of unattested documents must be proved. If a document is alleged to be signed or to have been

[60] (2019) 7 SCC 515: AIR 2019 SC 2377.
[61] (2018) 16 SCC 272: AIR 2018 SC 2754.
[62] Ibid.

written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting. This can be done in the following ways:

i. By calling the writer;
ii. By an expert;
iii. By a witness who is familiar with the handwriting of the writer; (***State of Bihar vs. Radha Krishna Singh***[63]);
iv. By comparison of the disputed writing, signature or seal with some other admitted or proven writing, signature or seal of the person; or
v. By admission of the party against whom the document is tendered.

#### 5.1.1.2 Proof of sealing

The sealing of a document can be the subject of judicial notice, proof or presumption. When the seal of a foreign notary is put on a document, a presumption regarding the genuineness of the seal of the notary can be raised.

#### 5.1.1.3 Proof of attestation

If a document is required to be attested by law, it must not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if such a witness is alive and subject to the process of the Court and capable of giving evidence. ***H. Venkatachala Iyengar vs. B.N. Thimmajamma.***[64]

So, far as gift deeds are concerned attestation is necessary and it is to be proved in accordance with law. To prove the same examination of at least one attesting witness is necessary.[65]

If there is no denial of execution of document, then it is not necessary to call a witness for the purpose of proving the same.

For the purpose of valid attestation of a Will under Sec. 63, it is absolutely necessary that the attesting should either sign or affix thumb impression or mark himself, as the Section does not permit an attesting witness to delegate that function to another.

In the decision reported in ***S.R.Srinivasa & others vs. S. Padmavathamma***[66], it is held that mere signature of scribe cannot be taken as proof of attestation without evidence regarding other witnesses to Will.

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[63] AIR 1983 SC 684.
[64] AIR 1959 SC 443.
[65] AIR 1975 Patna 140.
[66] 2010 AIR SCW 3935.

#### 5.1.1.4 Scribe

The party who sees the Will executed, is in fact a witness to it; if he subscribes as a witness, he is then an attesting witness. The scribe or writer of a document may perform a dual role; he may be an attesting witness as well as the writer.

#### 5.1.1.5 Sub-Registrar and Identifying Witnesses

A Will is not required by law to be registered Sec. 63 of Indian Succession Act, merely requires that the Will should be attested by two or more witnesses,. Each of whom, has either seen the testator sign, or affix his mark to the Will, or has received a personal acknowledgment of his signature from the testator, and each of the witnesses should sign the Will in the presence of the testator- no matter when, but before the Will had come into operation; where before it was presented for registration, it bore the signature of only one attesting witness, the signature of sub-registrar and of another person who are proved to have signed the Will in the presence of the testator, though as registering authority or an identifying witness, after its execution had been admitted before them by the testator must be regarded as sufficient compliance with Sec. 63 Succession Act. Reference may be made to the decision reported in ***Pentakota Satyanarayana vs. Pentakota Seetharatnam***.[67]

**Summary:**

Subject to the proviso, the rules regarding may be thus summarized:

- **i.** An attested document not required by law to be attested may be proved as if it was unattested.
- **ii.** The Court shall presume that every document called for and not produced after notice to produce, was attested in the manner prescribed by law.
- **iii.** There is a presumption of due attestation in the case of document thirty years old. The Court may in such cases dispense with proof of attestation.
- **iv.** Where a document is required by law to be attested, and there is an attesting witness available, then, subject to the proviso, at least one attesting witness must be called.
- **v.** If there be no attesting witness available, or if the document purports to have been executed in a foreign country, it must be proved by other evidence that the attestation of one attesting witness at least in his handwriting, and that the signature of the person executing the document is in his handwriting of that person.
- **vi.** The admission of a party to an attested document of its execution will, so far as such party is concerned, supersede the necessity of either calling the attesting witnesses or of giving any other evidence.
- **vii.** If the attesting witness available denies or does not recollect the execution of the document, its execution may be proved by other evidence. But where he fails to prove the execution of the document, the document is not legally proved.

When attesting witness need not be called:

- **i.** When the document is a registered one and its execution is not specifically denied.

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[67] AIR 2005 SC 4362.

ii. Even though the execution of a Will is admitted, attesting witness has to be examined.
iii. When there is no attesting witness available.
iv. When a party to the document against whom, it is sought to be used, admits its execution.
v. When the document is not required by law to be attested.
vi. When the document is thirty years old and there is a presumption of due attestation.
vii. When document is called for and not produced.
viii. When the document is a Will admitted to probate in India, in which case it may by the probate.

### 5.1.2 Burdon to repel suspicious circumstances regarding execution of Will

When there are suspicious circumstances regarding the execution of will, the onus is also on the propounder to explain them to the satisfaction of the Court and only when such responsibility is discharged, the Court would accept the Will as genuine. ***Shashi Kumar Banerjee vs. Chandraraja Kadamba***[68], also see: ***K.Lakshmanan vs. Thekkayil Padmini***[69], ***Mahesh Kumar vs. Vinod Kumar***[70].

#### *5.1.2.1 Effect of Registration of Will*

Registration of Will is a piece of evidence confirming its genuineness and can confirm it a higher degree of sanctity. However, the proof is as stated above. ***S.R. Sreenivasa vs. S. Padmavathamma***[71].

Guidelines as to genuineness of Will and testator's mind. ***Navneeth Lal @ Rangi vs. Gokul***.[72]

i. In construing a document whether in English or in vernacular the fundamental rule is to ascertain the intention from the words used; the surrounding circumstances being considered to find out the intended meaning of such words employed therein.
ii. In construing the language of the Will the court is entitled to put itself into the testator's armchair and is bound to bear in mind also other matters than merely the words used like the surrounding circumstances, the position of the testator, his family relationship, the probability that he would use words in a particular sense-all as an aid to arriving at a right construction of the Will, and to ascertain the meaning of its language when used by that particular testator in that document.
iii. The true intention of the testator has to be gathered not by attaching importance to isolated expressions but by reading the Will as a whole with all its provisions and ignoring none of them as redundant or contradictory.
iv. The court must accept, if possible, such construction as would give to every expression some effect rather than that which would render any of 925 the expression inoperative. The court will look at the circumstances under which the

[68] (1973) 3 SCC 291 = AIR 1972 SC 2492.
[69] (2009) 1 SCC 354 = AIR 2009 SC 951.
[70] (2012) 4 SCC 387.
[71] (2010) 5 SCC 274.
[72] AIR 1976 SC 794.

testator makes his Will, such as the state of his property, of his family and the like. Where apparently conflicting dispositions can be reconciled by giving full effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting down the clear meaning of the words used by the testator. Further, where one of the two reasonable constructions would lead to intestacy that should be discarded in favour of a construction which does not create and such hiatus.

**v.** It is one of the cardinal principles of construction of Wills that to the extent that it is legally possible effect should be given to every disposition contained in the Will unless the law prevents effect being given to it. Of course, if there are two repugnant provisions conferring successive interests, if the first interest created is valid the subsequent interest cannot take effect but a court of construction will proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible to every testamentary intention contained in the Will.

### 5.1.3 Power of Attorney

As far as Section 85 is concerned, summary of position as to who should give evidence in regard to power of attorney is very well stated in the case of ***Mrs. Saradamani Kandappan vs. Mrs. S. Rajalakshmi***.[73] The following observations are made, they are:

**i.** An attorney-holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

**ii.** If the attorney-holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney-holder shall be examined, if those acts and transactions have to be proved.

**iii.** The attorney-holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

**iv.** Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney-holder, necessarily the attorney-holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney-holders or persons residing abroad managing their affairs through their attorney-holders.

**v.** Where the entire transaction has been conducted through a particular attorney-holder, the principal has to examine that attorney-holder to prove the transaction, and not a different or subsequent attorney holder.

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[73] (2011) 12 SCC 18 = AIR 2011 SC 3234.

**vi.** Where different attorney-holder had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney-holders will have to be examined.

**vii.** Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his “state of mind” or “conduct”, normally the person concerned alone has to give evidence and not an attorney-holder. A landlord who seeks eviction of his tenant, on the ground of his “bona fide” need and a purchaser seeking specific performance who has to show his “readiness and willingness” fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or “readiness and willingness”. Examples of such attorney-holder are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.

Section 85 of the Indian Evidence Act provides that there could shall presume that every document purporting to be a power of attorney, and to have been executed before, and authenticated by, a Notary Public or any Court, Judge, Magistrate, Indian Consul or Vice Consul or the representative of the Central Government was so executed and authenticated. Section 85 cannot be read in isolation to the specific provision as contained under Section 14 of the Notaries Act.

# 6 CONCLUSION

Primary and secondary evidence play crucial roles in the legal system when establishing facts and proving claims. Primary evidence considered the highest quality of evidence, consists of original documents or works that are presented directly to the court for inspection. It holds significant evidentiary value as the main source of evidence. On the other hand, secondary evidence serves as a substitute for primary evidence when it is unavailable. Although of lower quality, secondary evidence can be admitted if the party provides a valid justification for the non-production of primary evidence. However, the court requires a rational reason and factual foundation for the introduction of secondary evidence. Proof of documents, in most cases, will be proof of truth of its’ contents’. Proof must be by persons who can vouchsafe for the truth. Where inherently-inadmissible document is marked, objections thereto can be raised ‘at a later stage’; but, Mode of Proof (including proof as to truth of its contents) falls within the realm of procedural law. The objection can be waived. Therefore, objection thereto has to be taken at the ‘earliest opportunity’. But, in cases where ‘truth’ is in issue, or in dispute, marking without objection by itself does not absolve the duty to prove the truth as to the contents of the documents. Mere marking of exhibit on a document does not dispense with its proof. Probative value of a document ‘marked without objection’ is low or nil, for want of proper proof. Presumption can be invoked in proper cases in place of positive proof and truth of its contents. Official record is taken as correct for there is presumption that the entries thereof

are made only after satisfying its truth. Under the Indian Evidence Law, every person is competent to testify as a witness as long as he understands the questions put by the court and gives rational answers thereof. Religion caste, sex, age play no role at all in deciding the competency of a witness.

# EXCLUSION OF ORAL EVIDENCE BY DOCUMENTS

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**Introduction:-**

The term evidence has come from the Latin word "evident" which means "to show clearly" or to prove. Evidence contains everything that is used to reveal the truth or facts. In law the person on whom the burden of proof lies has to produce the evidence before the court of law.

**Types of evidence are as follows:**

- **Direct evidence-** It refers to the evidence directly about the real point in the issue. It is the declaration of the observer as to key certainty to be demonstrated. Example- The proof of an individual who says that he saw the commission of the demonstration that comprises of affirmed wrongdoing. The original document is also included in the indirect evidence. Direct evidence is generally clear and convincing. It is simply the hypothetical verification when the truth of the matter is demonstrated by direct declaration or facts. Direct evidence also means that the person has heard, seen, perceived, form opinion and after that revealed the facts.
- **Circumstantial evidence-** "*Proof does not mean hard mathematical formula since it is impossible*". It was told by **Justice Fletcher Moulton** in regard to circumstantial event. He also said that these proofs are strong but sometimes it leaves a gap through which the accused escapes.
- **Real evidence-** Real evidence means any tangible object which is presented before the court as proof. It means the evidence of any class or object which can be treated as proof, persons are also included in this. Real evidence may be a weapon found at a place where crime is committed or any dispute arising in a contract. Any object, person or material that is used at the time of proceeding in a court to make other parties feel guilty or to make him liable is real evidence.

- **Expert evidence-** The law of evidence is drafted to make sure that, the court only considers the proof that allows them to reach a valid conclusion. When an issue arises such as a medical issue, then the court needs expert advice to settle it. The logical inquiries included are assumed not to be within the knowledge of the court. The cases in which scientists and specialists are involved, there the role of experts cannot be argued.

- **Hearsay evidence-** This evidence is also called as indirect, derivative or second- hand evidence. In this type of evidence, the witness tells the court about what he had heard from somebody but has not seen anything. Thus it can be said that the witness does not tell about the circumstances with his knowledge but with the knowledge of other person and what the other person told him. The court does not take such type of proof seriously.

- **Primary oral evidence-** Oral evidence means that any announcement which is made by an observer in the court, who has personally seen the act, heard it and was present there. This evidence is also called direct evidence contrary to hearsay. These types of evidences are taken seriously by the court.

- **Secondary evidence-** The evidence which is given in the absence of primary proof is called secondary evidence. Secondary evidence is the evidence which is extracted from the original ones such as a photocopy of an original document. At the point when the first archive has been crushed or lost, and when the party has made a persistent scan for it and depleted all sources and means accessible for its generation then the optional proof is allowable.

- **Oral evidence-** When the proof is restricted to spoken words or by gestures or motion then it is termed as oral evidence. Oral evidence, when reliable, is adequate without narration or written proof to demonstrate a reality or fact. Where a reality can be demonstrated by oral proof, it isn't essential that the announcement of the observer ought to be oral. Accordingly, a speechless individual may give evidence by signs or by composing. The reality can likewise be demonstrated or shown by oral proof.

- **Documentary evidence-** Any evidence which is present as a document before the court in order to demonstrate or show a reality. **The content of documentary evidence can be separated into three sections:**

1. How the subject matter of document can be demonstrated?
2. How the record is to be proved to be authentic? and
3. How far and in what instance oral evidence is excluded by documentary evidence?

- **Positive and negative evidence-** By positive evidence the existence of reality can be proved and by negative evidence non-existence of reality can be proved. The people and the court should keep in mind that negative evidence does not act as a good evidence.
- **Substantive and Non-substantive evidence-** Substantive evidence are those evidences on which the court is dependent for the decision of a case. The non-substantive proof is which either strengthens or validates the substantive proof to increase its worthiness of belief or which disproves substantive evidence in order to impair the credibility of a person.
- **Prima facie and conclusive evidence-** Prima facie evidence is accepted valid at a first instance and demonstrates a fact in the absence of contradictory evidence. Conclusive evidence is that evidence which is not opposed by any other evidence. It is very strong that it can bear any other evidence. It is of such a nature that it compels the person who finds the fact to come to a certain conclusion.
- **Pre-appointed and casual evidence-** The law prescribes this type of evidence in advance which is necessary for the demonstration of certain facts or for the formation of certain instruments. The evidence which isn't pre-appointed is called casual evidence. The casual evidence grows naturally with the surrounding situations.
- **Scientific evidence-** Scientific proof is proof which serves to either support or counters a logical hypothesis or speculation. Such proof is required to be exact proof and translation as per logical strategy.
- **Digital evidence-** Digital evidence was recognized in *Commissioner of Customs, New Delhi v. M/s. C-Net Communication India Pvt. Ltd., AIR 2007 SC (Supp) 957.* In this case, the Supreme Court held that "digital electronic" would mean that decoder is multiple outputs, input and logical circuits that changes coded input into a coded output. It was additionally held that a decoder is a gadget which does the opposite of an encoder, fixing the encoding so that the first data can be recovered.
- **Electronic evidence-** This proof can likewise be as electronic record delivered in court. The proof, even in criminal issues, can likewise be,

by method for electronic records. This would incorporate or comprise of video conferencing.

- **Tape record evidence-** The tape itself acts as direct evidence, what the person has said can be recorded and can be presented before the court. Any previous statement made by a person can be tape-recorded and if in the end, the person changes his statement before the court then the tape-recorded statement can be presented before the court in order to test the veracity of the witness. Tape recorded evidence is more authentic than documentary evidence.

Difference between Oral and Documentary Evidence

| **Oral evidence** | **Documentary evidence** |
|---|---|
| Oral evidence means and includes all statements which are made by a witness in the court. | Documentary evidence means producing a document before the court of law and inspection is done by the court in order to know the facts. |
| It is a statement by a witness. | It is a statement of documents. |
| In oral evidence, the witness tells about the facts by speaking or with gestures. | In documentary evidence, the facts are told and it is recorded in writing. |
| Oral evidence is provided under Section 59 and 60 of Indian Evidence Act, 1872. | Documentary evidence is provided under Section 61 to 66 of the Indian Evidence Act. |
| Section 59 of the evidence says that it considers all facts as oral evidence except electronic evidence and documentary evidence. Section 60 says that oral evidence must be direct. | Primary evidence is considered as the evidence which is given in several parts like duplicate copies or as counterpart like those which is signed by the parties or photocopy of the document whereas, Secondary evidence contains certified copies, that have been made by the same mechanical process and also contain counterparts of the document against the parties. |
| For example- any crime has been committed by a Ram and there is a person available at the movement | For example- a photocopy of a document or photograph. |

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|---|---|
| then whatever he heard, sees, perceive, or forms an opinion all this is considered as oral evidence. | |

**Exclusion of Oral and Documentary Evidence**

One of the essential standards of the law of proof is that in all cases the best proof ought to be given. Where the demonstration is exemplified in a record, the record is the best proof of the reality. The maxim of law is "*whatever is recorded as a hard copy must be demonstrated in the form of hard copy only*".

**Section 91 of the Evidence Act- Evidence in the form of contracts, grants and other dispositions of property should be in the form of a document.** This Section applies similarly to cases in which the agreement, stipends or disposition of property alluded are contained in one document or has one record, and cases in which they are contained in a greater number of reports that one.

If there are more than one original documents, then only one original needs to be proved. The statement in any document of whatever facts are mentioned under this Section, shall not prevent the admission of oral evidence as to the same fact mentioned.

**Exceptions**

There are two exceptions mentioned under this rule:

- The general guidelines are that when some content of a document is to be proved in writing, the writing itself must be produced before the court and if it is not produced then secondary evidence should be given. Exception- when any public officer is appointed for writing and it is seen that a particular person has acted like such an officer then in such situations, the writing by which he has been appointed need not be proved. Example- Suresh appears as a witness before the court, to prove that he is a civil surgeon there is no need to show the appointment order. The surgeon only needs to show that he is working as a civil surgeon.
- To the general guidelines of content of writing there is one more exception mentioned under this- At the point when a probate (the copy of will which is required to be certified by the court) has got based on a will and subsequently question emerges about the presence of that

will, the mere presence of the probate will demonstrate the presence of the will and the original will require not to be produced.

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**<u>Section 92-</u> Exclusion of evidence of an oral agreement.**

If any contract, grants or disposition of property which is required by law to be in writing in form of document and if it has been proved according to Section 91, then for the purpose of varying it, contradicting it or subtracting it parties or their representative is not required to give oral evidence and it is not admissible. Two points are proved from this Section:

1-If any third party gives then it is admissible.

2-If any oral evidence is given which do not contradict the contract then it is admissible.

Exceptions

- **Validity of document**

If any contract or grant is made between the parties and fraud is done by other party or there is a mistake of fact, or mistake of law, or the party is not competent to contract then in such circumstances oral evidence can be given and it is admissible.

- **Matters on which document is silent**

Oral evidence can be given when the documents are silent but subject to these two conditions are there:

1- The oral evidence should not contradict the document. **Illustration** – A sells his horse to B and told about the price but the soundness of horse is not told but oral evidence can be given that horse is of sound mind because the document is silent here.

2- In allowing the proof of oral understanding the court is to have respect the level of the custom of the record. On the off chance that the report is formal, proof of oral understanding will not be permitted even on issues on which the record is silent.

- **Separate oral agreement as condition precedent**

In this situation, it is provided that if there is any condition precedent is constituted to the existing separate oral agreement to attaching of any obligations under a document , then it needs to be proved.

- **Recession or modification**

This provision permits the proof of oral agreement by which the document was either revoked or altered. When documents are executed then parties orally agree to treat it as canceled or alter some of its terms, such oral agreement is admissible.

- **Usages or customs**

If there is the existence of any particular usage or customs by which incidents are attached to a contract then it can be proved.

- **Relation of language to facts**

If any document is written then oral evidence can be given of such a document that what is mentioned in and in what circumstances it was mentioned and how to interpret it but it should not exclusively contradict the document.

**Section 93- Exclusion of evidence to explain or amend an ambiguous document.** If the language used in the document is defective or ambiguous, evidence cannot be given of facts which would show it's meaning. Illustration- A agrees to sell his cow to B in writing for Rs. 1500 or Rs. 2000. Evidence cannot be given to show which price wast to be given.

**Section 94- Exclusion of evidence against the application of document to existing facts.** When the language used in the document is correct and when it applies correctly to the facts mentioned, evidence cannot be given that it is to be proved that it was not meant to apply on such facts.

**Section 95- Evidence as to the document unmeaning in reference to existing facts.** When language used in a document is plain in itself, however, is unmeaning in reference to existing facts, reality or situations, proof might be given to demonstrate that it was used in an unusual or different way.

**Section 96- Evidence as to the application of the language which can apply to one of several persons.** At the point when the facts are with the end goal that the language utilized may have been intended to apply to anyone, and couldn't have been intended to apply to multiple, of a few people or things,

proof might be given of certainties which shows the people or things, it was planned to apply to.

**<u>Section 97-</u> Evidence as to the application of language to one of two sets of facts, to neither of which the whole correctly applies.** When the language used is applied partially to other existing facts and partially to other existing facts but the whole does not apply to either of the facts mentioned. Evidence can be given to show that which of the two it was meant to apply.

**<u>Section 98-</u> Evidence as to the meaning of illegible characters, etc.** Proof might be given to demonstrate the significance of obscured or not ordinarily clear characters, of remote, out of date, specialized, and provincial expressions, of abbreviations and of words utilized in an exceptional sense.

*In Canadian-General Electric W. v. Fatda Radio Ltd, the Hon'ble Apex court* held that for the explanation of artistic words and symbols used in the record oral evidence is admissible and can be used for that purpose.

**<u>Section 99-</u> Who may give evidence of an agreement varying term of the document?** The person who is not a party to a contract or their representative may give evidence of any fact which do not contradict with the documents.

**Conclusion**

The value of documentary evidence is more than oral evidence. The court mainly accepts documentary evidence but takes oral evidence into consideration. Briefly, we can say that there are two types of documents- oral and documentary evidence. In court, documentary evidence has more value. Court wants best evidence and documentary evidence is the best evidence and it consists of two parts primary evidence and secondary evidence. Primary evidence is the best evidence recognized by the court. In the absence of primary evidence, secondary evidence is given to the Court. On the other hand, oral evidence is evidence given by words and gestures and are not permanent it can be changed. Hence Section 91 and 92 exclude oral evidence by documentary evidence. Proof in the form of a document can be submitted instead of giving orally.

# PRESUMPTIONS RELATING TO DOCUMENTS

Section 79 to Section 90 of the Indian Evidence Act provides various presumptions as to the documents. There are certain presumptions regarding the documentary evidence in this act. According to the Indian Evidence Act, the presumption is of two types. There are certain cases in which the Court "shall presume" and in certain cases, it "may presume". The terms are defined in Section 4 of the IEA. According to this Section,

- "May presume" means whenever it is mentioned by this Act that the Court may presume a fact, it may either consider such fact as proved, unless and until it is disproved or may call for proof of it.
- "Shall presume" means whenever it is mentioned in this Act that the Court shall presume a fact, it shall consider such fact as proved, unless and until it is disproved.

## Presumption as to the Genuineness of Certified Copies

The certified copies are the copies of public documents that are provided by the authorized officer when it is necessary for inspection. Section 79 of the Indian Evidence Act provides the presumption as to the genuineness of these certified copies. According to this Section, the court presumes the certified copy to be genuine when it comes with a valid certificate. The court also presumes that the officer who has signed the documents holds the official character of the designation mentioned in the certificate. The certified copy of the public document must contain a certificate which is provided by the authorized officer that has to mention that it is the true copy of the document and the officer has to sign the certificate with their name and they also have to mention the date and designation. The certificate should also be sealed whenever it is necessary by the authorized officer.

## Presumption as to Documents produced as Records of Evidence

Section 80 of the Indian Evidence Act provides the various presumptions regarding the documents which are provided as evidence. The Court presumes that the documents which are produced for inspection are genuine. The court also presumes that any statements as to the circumstances under which it was taken, considered to be made by the person signing it, are true and that such evidence, statement or confession was duly taken by following all the procedures. The documents provided for inspection can be a record or memorandum of the evidence that is provided by a witness during the judicial proceeding be-

fore the officer authorized by law to take evidence or it can be a statement or confession that is provided by any prisoner or person who is accused, which taken in accordance with the law and the confession must be signed by the magistrate or any other officer authorized by law.

**Presumption as to Gazettes, Newspapers, Private Acts of the Parliament and other Documents**

Section 81 of the Indian Evidence Act deals with the presumption regarding Gazettes, newspapers, private Acts of the Parliament. The court presumes the following documents to be genuine, according to this Section:

- The document professed to be the London Gazette, or any Official Gazette, or the Government Gazette of any colony;
- The documents which are a dependency of possession of the British Crown;
- Newspaper or journal;
- Copy of a private Act of Parliament of the United Kingdom which is printed by the Queen's Printer.

The documents must be kept in the substantial form mentioned in the law and also it must be produced from proper custody. The Court also presumes the Official gazettes kept in the electronic form is genuine if it is kept in the substantial form mentioned in the law.

**Presumption as to Maps and Plans made by Government authorities**

The maps and plans are also a recognized type of documentary evidence. Section 83 of the Indian Evidence Act provides the various presumptions regarding maps and plans made by the authorities of the government. According to this Section, the maps and plans are presumed to be genuine and accurate if it is made by the authority of the Central or State government.

**Presumption as to a Collection of Laws and Reports**

Section 84 of the Indian Evidence Act provides various presumptions regarding the laws and reports. According to this Section, the court presumes every book which contains laws and reports of the decisions of the Courts of the country to be genuine if the book is printed or published by the authority of the government.

**Presumption as to the Power-of-Attorney**

Section 85 of the Evidence Act provides various presumptions regarding the power of attorney. According to this Section, the court shall presume that every document that is considered to be the power of attorney, and that is executed before the authorized officer or Notary Public or any court or before any Magistrate is executed and authenticated.

**Presumption as to Books, Maps and Charts**

Section 87 of the Indian Evidence Act provides various presumptions regarding the books, maps and charts. The Court presumes that any book which contains any information which contains matters of public or general interest, or any published chart that are in relation with the case or any statements that contain relevant facts which are produced for inspection is written and published by the person mentioned in the book. The court also presumes that the time and place of publication which is mentioned in the book or chart to be true.

**Presumption as to Telegraphic Messages**

Section 88 provides various presumptions regarding the telegraphic messages. According to the Section, the court presumes "that telegraphic messages to be that a message, which is forwarded from a telegraph office to the person to whom such message which claims to be addressed, is in relation with a message that is delivered for transmission at the office from which the message purports to be sent". The Section also mentions that the Court does not make any presumption regarding the person by whom such a message was delivered for transmission. The Section is not of any use now as the telegraph services have been stopped by the Indian Government

**Presumption as to Electronic Messages**

This is a very important Section as a lot of information are transferred in the electronic form in the modern days. Section 88A of the Indian Evidence Act provides various presumptions regarding electronic messages. According to this Section, the Court presumes that an electronic message, which is forwarded by the originator by means of an electronic mail server to the addressee to whom the message claims to be addressed corresponds with the message as fed into his computer for transmission. According to the Section, the terms "addressee" and "originator" has the same meaning as mentioned in the clauses (b) and (za) of sub-section (1) of Section 2 Information Technology Act,2000".

**Presumption as to due Execution of Documents not Produced**

Section 89 of the Indian Evidence Act provides various presumptions regarding the due execution of documents not produced. The Court presumes that every document that is called for inspection and the documents are not produced even after the notice period, it is presumed that the documents are attested, stamped and executed in the manner which is prescribed by law.

**Presumption as to Documents Thirty years old**

Section 90 of the Indian Evidence Act deals with the presumption as to documents that are thirty years old. The Court presumes that any document which is produced for investigation is from proper custody and the signature corresponds to the signature of the person whose custody the document was in. The Court also presumes that any handwriting in the document is the handwriting of the person who has the custody of the document. It is also presumed by the Court that in case if the document attested or executed, that it was duly executed and attested by the persons by whom it professes to be executed and attested. The term proper custody means that the document is with the care of the person and in a place where it would naturally be. For example, 'A' has been in possession of a certain property for a long time. He produces from his custody deeds the various documents relating to the land showing his titles to it and the custody is held to be proper.

**Presumption as to the Electronic Record of Five years old**

Section 90A of the Indian Evidence Act provides the various presumptions regarding electronic records of five years old. According to this Section, the Court presumes that when any electronic record that is above five years old and it is procured from the proper custody for investigation. It is presumed that the digital signature corresponds to the particular person whose custody the record is or the signature belongs to the person who has authorized it. The term proper custody means that the electronic record is with the care of the person and in a place where it would naturally be. It is also mentioned in the Section that no custody is improper if it is proved that the custody is of legitimate origin in the particular case to render such origin possible.