

## A CRITICAL STUDY ON ADMISSIBILITY OF EVIDENCE

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### ABSTRACT

The law in most of the democratic countries is based on the principle, “Innocent until proven guilty”. It is the duty of the prosecution to prove beyond any reasonable doubt that the accused has committed the offence. Circumstantial evidence, even though it is allowed in certain cases, it is not enough to prove a case beyond any reasonable doubt. The prosecution has to rely on the material evidence to get a conviction. The material evidence must also be a one which is legally obtained to be considered as an admissible evidence. Section 101 to 166 of the Indian Evidence Act,1872 explains about the production of evidence and the burden of proof. It applies to material Documentary and evidence and also witnesses. There are some evidences which are inadmissible such as the hearsay evidence except in few circumstances. It is the duty of both the parties to provide the best evidence possible to win the case. Evidences obtained through improper means are inadmissible and has hindered many criminal investigations throughout the years. Thus, it is important to know the Collection and producing of evidence to utilize it to the utmost effect.

### Keywords:

Murder, Evidence, Forensic, Admission, Witness.

## A CRITICAL STUDY ON ADMISSIBILITY OF EVIDENCE

### INTRODUCTION

Admissibility means that only the facts which are relevant are admissible in the court of Law. Section 136 of the Indian Evidence Act, 1872 explains which all evidence are admissible.

“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.”

The above section states that it is the discretion of the Judge to decide whether an evidence is admissible or not. The presiding officer may ask the party to clarify how the particular fact or evidence is relevant under the provisions Section 6 to 55 of the Indian Evidence Act, 1872. If he is not convinced of its relevance. So, technically the question of relevance comes first and then the question of admissibility.

The presiding officer has the full power in deciding whether an evidence is admissible or not in a particular case. So, with this power comes ultimate responsibility to the Judge to make sure that every relevant evidence which is obtained legally is made admissible, so that the parties can obtain justice without undue advantages to one side. The main aim of the study is to analyse whether the Law of Evidence is suitable for the present age.

#### **Objectives:**

- To explain the effect of evidence in trials
- To analyse whether Law relating to admissibility of evidence is suitable for present age.
- To differentiate between relevancy and admissibility of evidence.

**Research Question:**

Whether the law relating to admissibility of evidence is perfect for the present age?

**Hypothesis:**

The Law relating to admissibility of evidence is perfect for the present age and no amendments are required.

**Review of Literature:**

1. Rekha Prasad, in “ Importance of Oral and Documentary Evidence” explains about the part played by the oral and documentary evidence in trials.
2. David Hume, in” 21<sup>st</sup> century challenges in evidence law”explains the challenges faced by the evidence law throughout the ages and its evolution
3. Lee Loring, in “ Facts, evidence and Legal proof” explains about the importance of relevant facts and its admissibility.
4. Elisabeth McDonald, “In principles of Evidence in Criminal Cases” talks about the principles of evidence and its importance in criminal cases.

**Methodology:**

Narrative and Descriptive methodologies are used by the researcher for the study.

**Sources of Study:**

Only Secondary sources are referred for this research paper.

Secondary sources are in the form of Books and Articles.

**RELEVANCY AND ADMISSIBILITY OF FACT**

The legal concept of Evidence is neither static nor universal The past methods followed like the trial of ordeal would be alien to the present methods followed today<sup>1</sup>. Nothing which is not relevant may be adduced as evidence as per the law Evidence helps in establishing guilt or innocence of a person(Ho). The evidence law has evolved recently and even scientific evidences are being made admissible in courts The challenges faced by evidence law are timeless.. No matter what the evidence is , the common method of discovering the truth plays an important role in modernisation of evidence<sup>2</sup>(Goodison). The Indian Evidence Act is

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<sup>1</sup> "The Legal Concept of Evidence (Stanford ...." Accessed May 31, 2018.  
<https://plato.stanford.edu/entries/evidence-legal/>.

<sup>2</sup> (n.d.). Digital Evidence and the US Criminal Justice System - NCJRS. Retrieved May 31, 2018, from <https://www.ncjrs.gov/pdffiles1/nij/grants/248770.pdf>

unique., It has not been amended for a long time. India follows the Due Process Model, which is contrary to the crime control model where the police and other authorities play an active role in solving the crimes(Retreat 2014)<sup>3</sup>. In the Due Process, the burden of proof lies on the parties to prove their case.. Thus, having a guideline for admissibility of evidence is important.. The Act not only lays down procedure for admissibility of evidence but also explains which evidence is relevant and which is not. The discretion of the Judge is very high in the due process model. Some set of guidelines for relevancy and admissibility are put in place to make sure that the Judge does not use his power arbitrarily since corruption has taken a new shape all over the world. The two important terms in the Indian Evidence Act are admissibility and relevancy. The word admissibility is not defined but relevancy is defined in the Act. relevancy is based on the section 5 and section 7 of the Indian Evidence Act.No matter what the evidence system is, the common method of discovering the truth plays an important role in modernisation of evidence(Zhang).<sup>4</sup>

#### **Relevancy of Fact:**

Fact has been explained in section 3 of the Indian Evidence Act. fact means a thing that exists. In the Evidence Act, it is not restricted to the tangible nature, even the feelings, state of mind and personal preferences come under the broad term fact. Section 5 to 55 deal with the relevancy of fact. The main question arises as to which fact is legally relevant and also logical in nature. A logically relevant fact may not necessarily be legally relevant in court. All facts that are to be produced in court must be logically relevant as well as legally admissible. In State of UP v. Raj Narain("AIR 1975 SC 865")<sup>5</sup> where it was shown that not all relevant facts are admissible. .In Ram Bihari Yadav v. State of Bihar("Ram Bihari Yadav v. State of Bihar")<sup>6</sup>, the difference between relevancy and admissibility is explained. Section 6 of the India. Evidence Act is very important as it explains about the facts that form a part of the same transaction. The facts which are directly connected to the issue such as motive, cause, effect are most relevant this is contained in sections 6 to section 16 of the Indian

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<sup>3</sup> "Why is Evidence So Important? • Smilodon's Retreat - Skeptic Ink." Accessed May 31, 2018. <https://www.skepticink.com/smilodonsretreat/2014/06/19/why-is-evidence-so-important/>.

<sup>4</sup> (n.d.). Recent trends in evidence law in China and the new evidence .... Retrieved May 31, 2018, from <https://ieeexplore.ieee.org/document/8158126/>

<sup>5</sup> AIR 1975 SC 865

<sup>6</sup> AIR 1998 SC 1850

Evidence Act. The relevancy regarding Confessions and precedents is also explained in the Indian Evidence Act, 1872. Character of a person may also be a relevant fact in some cases.(Character evidence and the role it pl...)<sup>7</sup>

#### **Admissibility of Fact:**

The admissibility of facts helps in deciding whether a particular piece of evidence will help in concluding a case. The admissibility of evidence is a question of Law and it is decided by the Judge as per section 136 of the evidence act. Admissibility is based on Law and not Logic. Facts which may have no logical relevance may sometimes be admissible in courts. After an evidence has been declared logically relevant and legally admissible, how it was obtained becomes irrelevant. In situations where it is practically impossible to differentiate between an admissible evidence and non admissible one, If the admissible and non admissible evidence are given together to the point they cannot be segregated, then the whole evidence becomes inadmissible.. The rules for admissibility of evidence is same for both Civil and Criminal trials(Loevinger)<sup>8</sup>.

#### **Relevancy and Admissibility:**

It is very important to differentiate between relevancy and admissibility. Admissibility of evidence is strictly based on law whereas relevancy is based on logic and probability. The next fundamental difference basic feature of the two. Admissibility declares whether an evidence is admissible or not whereas relevancy declares whether the given facts are relevant to the facts in question(Croxford).

Importance of electronic evidence:

Expanding dependence on electronic methods for correspondences, web based business and capacity of data in digital shape has unquestionably made a need change the law identifying with data innovation and tenets of suitability of electronic evidence both in common and criminal issues in India. This expanded utilization of innovation, be that as it may, postures challenges pleasing and mirroring the new age advancements in laws crosswise over purviews, which thus has given the much expected impulse to the development and energy

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<sup>7</sup> (n.d.). Character evidence and the role it plays in court - LawTeacher. Retrieved May 31, 2018, from <https://www.lawteacher.net/free-law-essays/judicial-law/character-evidence-and-the-role-it-plays-in-court-law-essay.php>

<sup>8</sup> (n.d.). Facts, Evidence and Legal Proof - Scholarly Commons - Case .... Retrieved May 31, 2018, from <http://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=3731&context=caselrev>

about digital evidence. Staying aware of the circumstances, essential changes were likewise made to Indian laws in the year 2000 with presentation of the Information Technology Act, 2000 ('IT Act'), which acquired comparing alterations to existing Indian statutes to make digital evidence acceptable. The IT Act, which depends on the UNCITRAL Model Law on Electronic Commerce, prompted changes in the Indian Evidence Act, 1872 ('Evidence Act'), the Indian Penal Code, 1860 ('IPC') and the Banker's Book Evidence Act, 1891. With the adjustment in law, Indian courts have created case law in regards to dependence on electronic evidence. Judges have likewise shown perceptiveness towards the inborn 'electronic' nature of evidence, which incorporates knowledge with respect to the suitability of such evidence, and the translation of the law in connection to the way in which electronic evidence can be brought and recorded under the watchful eye of the court. While the acceptability of electronic evidence in legitimate procedures isn't new in India, with the progression of time, the protections utilized for empowering the generation of records have changed generously, particularly since the capacity and utilization of electronic data has expanded and turned out to be more mind boggling. As of late, the Supreme Court of India in the event of *Anvar P. K. versus P.K Basheer & Ors.*,<sup>1</sup> overruled the before choice the instance of the State (NCT of Delhi) v *Navjot Sandhu*,<sup>2</sup> likewise prevalently known as the 'Parliament Assaults' case. The Supreme Court re-imagined the evidentiary acceptability of electronic records to accurately mirror the arrangements of the Evidence Act by reinterpreting the utilization of segments 63, 65 and 65B. A short foundation of the Evidence Act and the fundamental standards of evidence will assist the peruser with understanding and welcome the genuine imply and ramifications of the choice of Supreme Court in its actual soul and the way in which digital records can be shown as evidence in Indian courts.

Traditionally, the basic decide of evidence is that immediate oral evidence might be showed to demonstrate all actualities, with the exception of reports. The prattle decide recommends that any oral evidence that isn't immediate can't be depended upon except if it is spared by one of the special cases as illustrated in areas 59 and 60 of the Evidence Act managing the gossip run the show. Be that as it may, the gossip lead isn't as prohibitive or as direct on account of archives as it is on account of oral evidence. This is on account of it is settled law that oral evidence can't demonstrate the substance of a report, and the archive represents itself with no issue. In this manner, where an archive is missing, oral evidence can't be

offered with regards to the exactness of the record, and it can't be contrasted and the substance of the report. While essential evidence of the report is simply the archive, it was understood that there would be circumstances in which essential evidence may not be accessible. Along these lines optional evidence as certified duplicates of the report, duplicates made by mechanical procedures and oral records of somebody who has seen the archive, was allowed under area 63 of the Evidence Act for the reasons for demonstrating the substance of a report. Along these lines, the arrangement for permitting optional evidence in a way weakens the standards of the gossip govern and is an endeavor to accommodate the troubles of anchoring the generation of narrative essential evidence where the first isn't accessible. Area 65 of the Evidence Act sets out the circumstances in which essential evidence of the report require not be delivered, and auxiliary evidence – as recorded in segment 63 of the Evidence Act – can be advertised. This incorporates circumstances when the first record (i) is in threatening ownership; (ii) or hosts been demonstrated by the partial gathering itself or any of its agents; (iii) is lost or demolished; (iv) can't be effectively moved, i.e. physically conveyed to the court; (v) is an open archive of the state; (vi) can be demonstrated by certified duplicates when the law barely allows; and (vii) is an accumulation of a few reports. With the coming of the digitisation of records reports, the prattle lead confronted additionally difficulties and weakening. With expanded digitization of records, evidence was presently for the most part electronically put away which implied more noteworthy inclination for citing auxiliary evidence if there should be an occurrence of digital evidence. The Evidence Act has been corrected now and again, particularly to accommodate the tolerability of electronic records alongside paper based reports as evidence in the Indian courts. A portion of the critical alterations incorporate giving electronic records the status of reports to adduce evidence.<sup>5</sup> The meaning of 'admission'<sup>6</sup> was changed to incorporate an announcement, oral or narrative, or contained in electronic shape, which recommends any derivation as to any reality in issue or significant actuality, while segment 22A was embedded to accommodate the importance of oral evidence with regards to the substance of electronic records. It gives that oral admissions with regards to the substance of electronic records are not significant, except if the validity of the electronic records that are delivered is being referred to.

### ADMISSIBILITY OF EVIDENCE

Admissibility means that only the facts which are relevant are admissible in the court of Law. Section 136 of the Indian Evidence Act, 1872 explains which all evidence are admissible (McDonald)<sup>9</sup>.

“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, which is proposed to be proved is among one of which evidence is admissible only upon further 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. When the relevancy of an alleged fact entirely depends upon another alleged fact being proved first, 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.

The above section states that it is the discretion of the Judge to decide whether an evidence is admissible or not. The presiding officer may ask the party to clarify how the particular fact or evidence is relevant under the provisions Section 6 to 55 of the Indian Evidence Act, 1872. If he is not convinced of its relevance (Kaye)<sup>10</sup>. So, technically the question of relevance comes first and then the question of admissibility. The discretion that is given to the judge can be misused and it is important that certain guidelines are made to stop the arbitrary use of power by the judge. Only relevant evidence is admissible in a court of law but not all relevant evidence is (Hamer). In *Ram Bihari Yadav v. State of Bihar*, the Supreme Court observed that. The probative value of the evidence is the weight to be given to it which has to be judged having regards to the fact and circumstances of each case.”

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<sup>9</sup> (2012, December 1). Principles of Evidence in Criminal Cases – Thomson Reuters New .... Retrieved May 31, 2018, from <https://www.thomsonreuters.co.nz/landingpages/pdfs/Chapter-Extracts-Reviews/Extract-Principles-Criminal-Evidence.pdf>

<sup>10</sup> (n.d.). "Digging into the Foundations of Evidence Law" by David H. Kaye. Retrieved May 31, 2018, from <http://repository.law.umich.edu/mlr/vol115/iss6/8/>

Section 9 of the Evidence Act, 1872, lays down some facts which can be treated as relevant. In the case of *Lakshman Das Chagan lal Bhatia v. State* (“AIR 1968 Bom 400, (1967) 69 BOMLR 808, 1968 CriLJ 1584”)<sup>11</sup>, the court laid down the following to be “relevant facts:

Facts, which are necessary to explain or introduce a fact, which is in issue or relevant, Facts which support or rebut an inference suggested by a fact in issue or a relevant fact, Facts which establish the identity of anything or person whose identity is relevant, Facts which fix the time and place at which any fact in issue or relevant fact happened, Facts which show the relation of parties by whom any fact in issue or relevant fact was transacted (Thomson).

Section 11 also deals with admissibility.

In *Bibi Khaver v. Bibi Rukha* (Gurnani)<sup>12</sup> the court held that “in order that a collateral fact can be admitted as relevant under this section, the prerequisites of the law are that The collateral fact must itself be established by conclusive evidence; and It must, when established, afford a reasonable presumption or inference as to the matter in dispute (*National Conference On Evidence Law: Contemporary Development*)<sup>13</sup>.

All facts that are considered to be evidence may not be evidence in the eyes of law. The burden of proof is on the opposition to disprove the evidence provided by the other party as inadmissible. However, the burden of proof may be reversed for some reasons (Kaplow)<sup>14</sup>. The discretion is solely in the hands of the judge to decide whether a evidence is admissible or not. Improper admission of evidence is not a ground for retrial and also a decision cannot merely be reversed on the grounds of improper evidence. The power vested on a judge by section 136 is vast and It must be handled properly. Thus, it is important that certain guidelines are given for a presiding officer to decide whether an evidence is admissible or not (Swift). Increasing the discretion of the trial judge to accept or throw evidence may result

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<sup>11</sup> AIR 1968 Bom 400, (1967) 69 BOMLR 808, 1968 CriLJ 1584

<sup>12</sup> [1904] 6 AIR 983 (BLR)

<sup>13</sup> (2016, April 23). Evidence Law: Contemporary Development - Galgotias University. Retrieved May 31, 2018, from <http://law.galgotiasuniversity.edu.in/pdf/hyperlink.pdf>

<sup>14</sup> (2011, November 4). Burden of Proof by Louis Kaplow :: SSRN. Retrieved May 31, 2018, from <https://www.yalelawjournal.org/article/burden-of-proof>

in harm.<sup>15</sup> The Judges, like all other Human beings are fallible and discretionary powers should not be given to them to decide whether an evidence is admissible or not. Ted Bundy, one of the most notorious killers of our time managed to do more crimes and evaded the eyes of law as he was let out on inadmissible evidence(Rule). The Law or the Judge, both should not be given the power to decide whether an evidence is admissible or inadmissible. Every piece of Evidence which concerns the case must be mad admissible whether it is found through illegal search or any other means. There are many people among us who evade the eyes of Law forever because of inadmissible evidences. Thus, a new mechanism must be developed to admit or not admit a particular evidence.

## CONCLUSION

The Law relating to evidence has evolved over the years as one of the most important in deciding cases. The power vested on the presiding officer in deciding whether an evidence is admissible or not is huge and must be restricted through guidelines. The law relating to evidence is not suitable for the present age and it must be amended for the better functioning of the legal system. A clear line must be drawn between the power of the judge and the power of the judge as such a huge power vested on a human being would only result in corruption of power. The law is supreme and no man should be given the discretionary power to bend it to his wish. Thus, a clear distinction must be drawn between the law and discretionary power of the judge. Thus, the law is in dire need of an amendment. The Judges, like all other Human beings are fallible and discretionary powers should not be given to them to decide whether an evidence is admissible or not. Ted Bundy, one of the most notorious killers of our time managed to do more crimes and evaded the eyes of law as he was let out on inadmissible evidence. The Law or the Judge, both should not be given the power to decide whether an evidence is admissible or inadmissible. Every piece of Evidence which concerns the case must be mad admissible whether it is found through illegal search or any other means. There are many people among us who evade the eyes of Law forever because of inadmissible evidences. Thus, a new mechanism must be developed to admit or not admit a particular evidence.

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<sup>15</sup> (n.d.). "One Hundred Years of Evidence Law Reform: Thayer's Triumph" by .... Retrieved May 31, 2018, from <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1481&context=californialawreview/>

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