

# MODE OF TAKING AND RECORDING EVIDENCES IN INDIA

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## ABSTRACT

“This paper contains the procedure followed during the collection of evidence in criminal cases. It talks about mode of taking and recording evidences. Due to technological era, electronic evidences are now admissible in the court of law. The meaning of evidence is defined in the Section 3 Indian Evidence Act. After the acceptance of electronic evidences, amendments have been made in section 65-A and 65-B of the Indian Evidence Act. Evidences are used to arrive at a truth and serve justice to the people. So it is utterly important to look into the evidences and present them before the court in the best manner possible. The procedure for mode of taking and recording evidences is provided in the Sections from 272 to 283 of the Code of Criminal Procedure, 1973. Case laws described below depicts some of the important judgments of the said topic. This paper also includes some important questions of law.

## INTRODUCTION

The duty of a Court is to arrive at the truth and sub serve the ends of justice. For discovery of the truth, Courts require proper relevant facts and record evidence in clear and intelligible manner. So, before understanding the foremost topic it is necessary to understand the actual definition of Evidence. **Section 3 of Indian Evidence Act** defines evidence as follows: -

Evidence means and includes; 1) all statements which the court permits or requires to be made before it by witnesses, in reference 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.<sup>i</sup>

When the accused is brought before the court, the public prosecutor opens the case by describing the charges brought against the accused. He also states by what evidence he proposes to prove the guilt. Evidences should be recorded in clear manner. The presiding officer takes participative role in taking and recording evidences. Section 272 to 283 of Code of Criminal Procedure, 1973 read with rules covered under Chapter XII of General Rules and Circular Order Volume- I throws light on mode of taking and recording evidences in criminal cases.

## BRIEF HISTORY OF ELECTRONIC EVIDENCE

As when the Act came into force, the evidences that were admissible and recorded before the Courts were Oral, Direct, Documentary, Circumstantial, Primary and Secondary Evidences. But as the technology is rapidly changing and the process of exchanging of information has transformed, exchanging of data has transformed, Electronic Evidences shall even be admissible and brought before the Courts. In India, the main tendency in electronics is basically found to be regulated. However, Judges, who are people who got to interpret the law thanks to a legal gap, are divided in their opinions according to their specialty, but the majority opinion favors those that tend to think that current legal situation isn't the perfect one and wishes change

to adapt the laws to technological reality. The definition of 'evidence' has been amended to incorporate electronic records. The definition of 'documentary evidence' has been amended to incorporate all documents, including electronic records produced for inspection by the court. New sections 65-A and 65-B are introduced to the Evidence Act, under the Second Schedule to the IT Act. Section 65-A provides that the contents of electronic records could also be proved in accordance with the provisions of Section 65-B. Section 65-B provides that notwithstanding anything contained within the Evidence Act, any information contained in an electronic, is deemed to be a document and is admissible conspicuous without further proof of the original's production, as long as the conditions set out in Section 65-B are satisfied.

## **MODE OF RECORDING EVIDENCES UNDER INDIAN LAW**

- 1. Section 273** – It mandates to record all the evidences in presence of the accused, when his personal attendance is dispensed with, the same must be recorded in the presence of his pleader.
- 2. Section 274** – Magistrate shall record memorandum of substance of evidence in the language of the court and it must be signed by him.
- 3. Section 275 (1)** – In all warrant cases, the evidence of each witness shall be taken down in writing either by magistrate or by his direction or if he is unable to do so due to physical or other incapacity, under his direction and superintendence, by an officer of the court appointed by him in his behalf. Provided that evidence of witness under this sub- section be recorded by audio-video electronic.
- 4. Section 275 (3)** – Permits the Magistrate to record the evidence in the form of questions and answer.
- 5. Section 276** – Recording of evidence before session court should be in the form of narrative. The presiding officer in his discretion can take down any part of evidence in form of question and answer and it has to be signed by him.

**6. Section 278** – The evidence of a witness when completed should be read over to him in presence of the accused or his pleader. It should not be done at the end of the day after examining all witness. It can be corrected by the accused if needed.

**7. Section 280** – It empowers the Presiding judge or the Magistrate to record the remarks.

**8. Rule 83** – The margin of 1/4th of the deposition sheet should be left blank

**9. Rule 84** – Enables court to record deposition of type writing machine. A certificate must be given by Presiding Judge that evidence is recorded in his dictation and each page has to be attested by him.

**10. Rule 85** – the Presiding Judge shall record in his own handwriting the name of the witness examined and his details.

**11. Rule 87** – Deposition of each witness should be separately paragraphed in consecutive number order.

**12. Rule 88** – The Presiding Judge shall sign the certificate at the bottom of the deposition of each witness and it is explained to the accused and admitted to be correct.<sup>ii</sup>

## **MARKING OF EXHIBITS**

Prosecution shall submit some evidences; these evidences have to be marked with number in the order in which they are admitted. For example: Ext.1, 2, 3 etc. The documents admitted in behalf of defense shall be marked with alphabets in capital letters. For example: Ext. A, B, C etc. If neither party is willing to accept them as evidence, then they shall be marker as: Ext C-I, C-II etc. If number of documents are of same nature, then a small number or small letter be added to distinguish each document of the series. After being proved and admitted as evidence it shall be marker with Roman number. For example: MO-I, MO-II etc. The list of articles shall be prepared by the Bench clerk of the court and shall be signed by the Judge.

## CASE LAWS

### **1: Banchhanidhi Singh v. State of Orissa**

It was reported in 1990 Criminal Law Journal 397, where the accused was facing trial for the offence under section 379 of Indian Penal Code. The personal attendance of the accused was dispensed with and the lawyer representing the accused was also not present during the examination. The High Court held that the examination was made in gross violation of the mandatory provisions of Section 273 of Cr.P.C and the entire trial was held to be vitiated.

### **2: Javer Chand and Others v. Pukhraj Surana.**

Whenever an objection is raised, the court does not proceed further without passing order on such objection. If there is an objection regarding the stamp duty of a document, then the objection is decided then and there before continuing with the proceeding further.

### **3: State of Madhya Pradesh v. Budhram**

The accused was convicted of the offence under Section 302 of IPC and death sentence was imposed on him. It was set aside because the evidence was recorded in his absence and the case was remanded back for trial.

### **4: State of Maharashtra v. Dr. Prafull B. Desai and Another**

The important question that aroused in this case was whether the evidence of a prosecution witness can be recorded on video conferencing and whether it is permissible in law in a criminal trial in the face of Section 273 of the Code of Criminal Procedure. It is well settled in the case that the mandatory provision should be strictly construed and therefore, it would not be feasible or proper to bring within the fold of Section 273 the recording of deposition through a medium of video conferencing by any liberal interpretation of the said provision

## QUESTION OF LAW

### **1. If objection is raised during examination of prosecution witness regarding proof of document, how does the court deal with the situation?**

Whenever an objection is raised, the court does not proceed further without passing order on such objection. The court makes a note of such objection and mark the document tentatively as an exhibit in case. It is decided at the last stage of the final judgment.

### **2. Is recording of evidence by video conferencing permissible?**

It is permissible, a proviso was inserted to sub section (1) to section 275 of the Code Of Criminal Procedure, 1973 by Act 5 of 2009. Its states that: "Provided that evidence may be recorded by audio-visual means in the presence of the advocate of the accused of the offence."<sup>iii</sup>

### **3. Whether defense can be allowed to recall a prosecution witness for re-examination?**

Section 137 and 138 of Evidence Act leads to the conclusion that only prosecution has right to recall witness for re-examination. Newly appointed advocate cannot recall for re- examination on the ground that earlier advocate had failed to ask certain questions and even if the case has been settled amicably

### **4. How does a magistrate of First Class examine the witnesses in absence of accused?**

If the accused of an offence punishable with death or imprisonment of life absconds, the High Court directs the Magistrate of First Class to hold an enquiry and examine the witness. The evidence of such witnesses can be used against the accused on his arrest.

## ADMISSIBILITY OF INTERVIEWS AS EVIDENCE

In Jagit Singh vs State of Haryana (2006 11 SCC 1 ), The Hon'ble Apex Court considered the digital evidence in the form of interview transcripts from the Zee News channel , the Aaj Tak channel and therefore the Haryana News of Punjab Today channel and determined that the

Electronic Evidence placed on record was admissible and upheld the reliance placed by the speaker on the recorded interview when reaching the Conclusion that the voices recorded on the CD were those of the persons taking action.

## **ADMISSIBILITY OF E-MAIL AS EVIDENCE**

In Abdul Rahaman Kunji Vs. The State of West Bengal, The Hon'ble High Court of Calcutta while deciding the admissibility of e-mail held that an email downloaded and printed from the email account of the person are often proved by virtue of Section 65B r/w Section 88A of Evidence Act. The testimony of the Witness to hold out such procedure to download and print an equivalent is sufficient to prove the transmission.

## **CONCLUSION**

The force of judgment is brought out by the recording of evidences. The mode of recording and taking evidences is uncountable and integral feature of criminal trial. The court looks at the evidences and decide upon the cases through the eyes of trial judges. The presiding judge may scrutinize evidence led by both the sides. A judge should be well equipped with legal knowledge and also well trained in recording evidence and protection of innocent. The initial recording of crime scene is the back bone for investigation. There are many sources of evidence which include anything from observation of witnesses to the examination and analysis of physical object in the crime scene. It may even include relationships between people, places and objects within the timeline of events in the crime. From the various forms of evidences, court can draw inferences and reach conclusion to prove the charge beyond a reasonable doubt.”

## BIBLIOGRAPHY

- Code of Criminal Procedure, 1973
- Indian Evidence Act
- <http://lawtimesjournal.in/mode-of-taking-and-recording-evidences/>
- <https://legalsarcasm.com/legal-national/mode-of-taking-and-recording-evidence/>

## ENDNOTES

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<sup>i</sup> Indian Evidence Act

<sup>ii</sup> Code of Criminal Procedure, 1973

<sup>iii</sup> Code of Criminal Procedure, 1973