

ORAL EVIDENCE

(SEC 54 TO 55)



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ORAL EVIDENCE: (SEC 54 & 55)

Evidence may be divided as oral & documentary. Among them, documentary evidence is the best & oral evidence comes next.

Sec 2 of Bharatiya Sakshya Adhinyam defines oral evidence as –

Evidence means & includes- “all statements including statements given electronically which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry and such statements are called oral evidence”

Oral evidence means all statements made before the court by witnesses.

Sec 54: Proof of facts by oral evidence:

All facts, except the contents of documents or electronic records, may be proved by oral evidence.

Oral evidence is confined to words spoken by mouth. Oral evidence, if worthy of credit, is sufficient to prove a fact or title (without documentary evidence)

ORAL EVIDENCE: (SEC 54 & 55)

Where a fact may be proved by oral evidence, it is not necessary that the statement should be verbal/spoken. Any method of communicating thought (which the circumstances of the case or condition of witness demand) may, in the discretion of the court be employed. Thus, a deaf may testify by signs or writing or gestures.

The section lays down that where written documents exist, they shall be produced as being the best evidence of their own contents & no oral evidence can be adduced. e.g. X & Y enters into a contract which was reduced into writing. If controversy arises between them about the terms of contract, it can be proved only by the document. Oral evidence will not be allowed. The document (original or copy) must be produced before the court.

Tape recorded evidence is admissible when court is satisfied that there is no tampering, dubbing & imperfect recording. It is important in case of blackmail, bribery threatening etc.

The test for accepting or rejecting oral evidence is- **1.** how consistent the story is with itself. **2.** how it stands the test of cross examination. **3.** how far it fits in with the rest of the evidence & circumstances of the case.

ORAL & DOCUMENTARY EVIDENCE:

Sec 55: Oral evidence to be direct:

Oral evidence shall, in all cases whatever, be direct; If it refers to

- a fact which could be seen, it must be the evidence of a witness who says he saw it;
- a fact which could be heard, it must be the evidence of a witness who says he heard it;
- a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;
- an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds.



ORAL & DOCUMENTARY EVIDENCE:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided further that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.



ORAL & DOCUMENTARY EVIDENCE:

To be technical, it may be said that hearsay evidence is not admissible.

The term “hearsay” in its legal sense denotes- that kind of evidence which does not derive its value solely from the credit to be given to the witness himself, but rests also in part on the competency of some other person.

Hearsay evidence is that evidence which comes indirectly i.e. to say which comes not from the knowledge of the person who deposes it but through some other person.

Hearsay evidence is that evidence which the witness has not learnt through his own bodily senses, but learnt through the medium of others. e.g. **A** stabbed **B** with his knife. **C** was present there & saw the incidence. **C** told this to **D**, who was present there at the time of murder. The deposition of **D** is called as hearsay evidence.

Value of hearsay evidence-

1. Hearsay evidence is no evidence because oral evidence in all cases must be direct

ORAL & DOCUMENTARY EVIDENCE:

2. Due to the repetition of the statements from one person to another, there is every likelihood of depreciation of truth OR original fact is added several concocted & silly things. Thus, the original fact disappears & false comes to appearance.

3. There is no responsibility on hearsay witness. Even if he tells the same on oath, it does not stand its veracity.

4. The adverse party has no chance to cross examine the original witness

5. If hearsay witness is admitted, much scope would be given to fraud & injustice.

6. Also, the number of witnesses will be increased & the precious time of the court will be spoiled.

7. When best evidence rule requires all oral evidence to be direct, any admission of hearsay evidence encourages for the substitution of weaker in the place of stronger proof.

Thus, oral evidence in all cases must be direct & hearsay evidence is no evidence.

ORAL & DOCUMENTARY EVIDENCE:

Exceptions to the rule of hearsay evidence:

The rule is that- oral evidence in all cases shall be direct. Hearsay evidence is no evidence. But, in cases of necessity or expediency, hearsay evidence may be admissible. e.g. statement by a person who is dead or not found etc.

No doubt, documentary evidence is the best evidence. But, it is not possible to get the documentary evidence in all cases & in all circumstances.

Especially in crimes, offenders do the offence secretly. Hence, oral evidence is required to prove the guiltiness of criminal.

The correct rule is- to judge the oral evidence with reference to the conduct of parties & presumptions & probabilities legitimately arising in the case.

Another rule is- to see whether the evidence is consistent with the common experience of mankind with the usual course of nature & human conduct.

Another rule is that- the court must test the reliability of witnesses. In determining admissibility, production of best evidence should be exacted.

ORAL & DOCUMENTARY EVIDENCE:

Distinction between Direct & hearsay evidence:

Direct Evidence

This is the evidence which is given on the basis of own perception

It is best oral evidence of the fact

Liability of its veracity is on the person giving evidence

Witness is available for cross examination

Source of this evidence is the person present in the court & giving evidence

Hearsay Evidence

This has been derived by other person

It is secondary & accepted exceptionally

Person giving it does not take responsibility of its veracity

Such witness is not author of original evidence

In this, person giving evidence is not original source of evidence given by him