KINDS OF EVIDENCE

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KINDS OF EVIDENCE:

As per definition u/s 2 of Bharatiya Sakshya Adhiniyam, the evidence is divided in two clauses- Oral & Documentary evidence.

Oral evidence means, statements made by a witness before a court in relation to matter of fact under inquiry. It also includes statements given electronically which the court permits or requires to be made before it by witnesses

When a document is produced in a case in support of the case, the document becomes the documentary evidence in the case. It includes electronic or digital records also.

In this way, the definition includes only oral & documentary evidence. Thus, the definition is defective or incomplete AS there are so many things which are good evidences & excluded from the definition. The definition does not cover-

- Character demeanour or conduct of the parties & witnesses
- Question & answer between Magistrate/Judge & accused
- Local inspection reports
- Discretion of the jury
- Statements & admissions of the parties
- Judge’s personal knowledge & observation

KINDS OF EVIDENCE:

Following are the kinds of evidence-

Direct Evidence- It is the testimony of a witness as to the existence or non existence of a fact in issue. e.g. An eye witness.

It is the evidence about the real point in controversy.

Circumstantial Evidence- It is that which relates to a series of other facts than the fact in issue; but by experience have been found so associated with the fact in issue in relation of cause & effect that it leads to a satisfactory conclusion.

It is the testimony of a witness as to other relevant facts, from which the facts in issue may be inferred.

The circumstances should be such as to exclude every hypothesis but the one proposed to be proved. There must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of accused & it must be such as to show that the act must have been done by the accused.

Circumstantial evidence is not to be confused with hearsay or secondary evidence. The circumstantial evidence is always direct & primary.

KINDS OF EVIDENCE:

Difference between Direct & Circumstantial Evidence-

Direct Evidence	Circumstantial Evidence
It is the testimony of the witnesses as to the principal fact to be proved	It is the testimony of a witness to other relevant facts from which the fact in issue may be inferred
It directly establishes the commission of the offence	It does so by placing circumstances which lead to irresistible inference of guilt
It is known as positive evidence	It is known as presumptive evidence
It is superior than circumstantial evidence	It is inferior than direct evidence
It is that what the witness saw the incidence with their own eyes, or heard with their own ears, & perceived with their own senses	It is included under expression ‘relevant facts’ & it is provided that all the relevant facts required to be proved by some evidence i. e. by direct evidence
It is safer than circumstantial evidence	It is a substitute, where the direct evidence is not available
By the direct evidence, the courts easily & safely come to a conclusion	Circumstantial evidence to be relied upon, must not only point to the inference to be drawn by the court, but it must be of such a nature that it can possibly lead to no other inference

KINDS OF EVIDENCE:

Real Evidence- Real evidence is that which is addressed to the sense of the court and the object is also presented for the inspection of it.

A court may inspect the location of offence to properly valuate/appreciate the evidence. e. g. Blood stained knife used as a weapon in offence, cloths of parties etc.

Personal Evidence- Personal evidence is that which reaches the court through human agency. It is afforded by human being by oral testimony. e. g. Statement by a witness before court.

Original Evidence- Original evidence is that which a witness reports himself to have seen or heard through the medium of his own senses. e. g. Plaintiff bases his claim on a sale deed. The sale deed is the original evidence.

Unoriginal Evidence- Unoriginal evidence is that which derives its force from other. It is also known as second hand evidence. e.g. attested copy of a document taken from a competent authority.

Substantive Evidence- Substantive evidence is that on which reliance can be placed for the decision of a case. The substantive evidence pertains about rights & duties & is reliable for the decision of a case.

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Non-Substantive Evidence- Non-substantive evidence is that which either corroborates the substantive evidence to increase its credibility or which contradicts a substantive evidence to discredit it.

Positive Evidence- Positive evidence tends to prove the existence of a fact.

Negative Evidence- Negative evidence is adduced to prove the non existence of a fact or by a negative evidence, non-existence of a fact is proved.

Primary Evidence- Primary evidence means the document itself produced for the inspection of the court. It is the best evidence.

Secondary Evidence- Secondary evidence means & includes-

-certified copies of a document

-copies made from the original by mechanical process (xerox copy, positive photograph)

-copies made from original or compared with original (true copy)

-counter part of the document

-oral account of the contents of documents given by a person who has himself seen it

Secondary evidence is inferior or substitute evidence.

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Judicial Evidence- Judicial evidence is the evidence received by courts of justice in proof or disproof of facts, the existence of which comes in question before them.

Non Judicial Evidence- Evidence given in the proceedings before Magistrate or officer not in a judicial capacity but in an administrative one, is a non-judicial evidence. e.g. evidence u/s 164 of Cr P C.

Hearsay Evidence- Hearsay evidence is that evidence which the witness has not learnt through his own bodily senses, but learnt through the medium of others.

It is also known as derivative evidence.

FACTS - PROVED, DISPROVED NOT PROVED:

A fact is said to be **proved** when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon such supposition that it exists.

A fact is said to be **disproved** when, after considering the matters before it, the court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exists.

A fact is said **not** to be **proved** when, it is neither proved nor disproved.

The term proved is positive. The term disproved is negative & the term not proved is in between the state of proved & disproved.

FACTS - PROVED, DISPROVED NOT PROVED:

When fact is proved, the court gives the judgement in favour of the person who proves it. AND when a fact is disproved or rejected no further question arises about its further proof. AND not proved implies further evidence either to prove a thing or a fact or to disprove the same. **For example-**

A is an accused of murder. A proved that he was 200 km away at the time of offence. He showed Alibi that he took medical treatment in a hospital. There were documentary & other circumstantial evidence. The court believed his evidences & acquitted him. Here, the **fact of Alibi is proved.**

A is an accused of murder. He took the plea of Alibi that he was 200 km away at the time of occurrence of murder. He produced certain evidences. Court did not believe the evidence and convicted him. Here, the **fact of Alibi is disproved.**

A is an accused of murder. He took the plea of Alibi but does not give any evidence to prove it. Then, in this case, as there is no material before the court, the **Alibi is said to be not proved.**

FACTS - PROVED, DISPROVED NOT PROVED:

Proof does not mean proof to rigid mathematical demonstration, because that is impossible. It means such evidence as would induce a reasonable man to come to a conclusion.

The word proof means- anything which serves either immediately or mediately to convince the mind, of the truth or falsehood of a fact or proposition.

Probative force- The extent to which a particular evidence aids in proving the fact in controversy is called as probative force. This probative force must be sufficient.

Standard of proof- On the question of standard of proof, there is but one rule of evidence which applies to civil & criminal trials.

The test in each case is – would a prudent man, after considering the matters before him deem the fact in issue proved or disproved? The court can never be bound by any rule but that which comes from itself dictates a conscientious, and prudent exercise of its judgement.