

# Introduction to documents under the Indian Evidence Act, 1872

## The Evidence Act- Introduction

The Law of Evidence in India is comprehensively governed by the Indian Evidence Act, 1872. It deals with different forms of evidence and the process of how they are presented in court. A substantive law defines the rights, liabilities and duties. The procedural laws prescribe the process to be followed in application of the substantive laws. Evidence act is a 'procedural' or 'adjective' law. This implies that it is a tool through which the substantive laws are brought into action. Thus, the Indian Evidence Act provides the legislative framework on the procedures to be followed in producing facts and documents as evidence in a suit or proceeding. Further, on admissibility and proof of evidence as well as examination of witnesses.

## Definition of Evidence under the Indian Evidence Act, 1872

*Section 3 (Interpretation-clause) of the Indian Evidence Act recognizes two types of "evidence"-*

*"(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."*

Section 3 thus clarifies that an evidence may be presented before a court either in the form of statements by witnesses having knowledge of the case or in the form of a document that may prove the facts of the case.

## Primary and Secondary Evidence

In as far as documents are concerned, the Evidence Act identifies Primary Evidence and Secondary Evidence. Section 62 states that when the document itself, in original, is produced for the inspection of the Court, it becomes primary evidence.

Explanation 1 under Section 62 explains that when a document is produced in several parts or counterparts, each of such parts shall also be primary evidence. Explanation 2 provides that where a number of documents are produced, each made

by one uniform process then each one is a "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." For instance, at the time of making of a document is several copies of the same were reproduced through one uniform process, all such copies must be a primary evidence. However, a copy of any of such originals must not be primary evidence.

In **Krishna Sahebrao Patil vs. The State of Maharashtra** 2014 SCC OnLine Bom 299 the court observed that the documents, in that case, which had signatures on them could be brought within the meaning of section 62.

Relying on Explanation (2) and **Prithi Chand vs. State of Himachal Pradesh AIR 1989 SC 702**, the court held that carbon copies could rightly be treated as primary evidence as they were made by one uniform process.

In contrast, secondary evidence, as enshrined under Section 63 means and includes the following-

*"(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."*

The illustrations under section 63 may be of value in understanding as to what would constitute secondary evidence. The 'copies' of the documents may include photographs, photocopies made out of copying machines and copies transcribed from the original, provided it is afterwards compared with the original. However, an oral account or description of a copy compared with the original shall not be regarded as secondary evidence.



**Neha Maniktala**

Associate, MCO Legals  
BBA, LLB,  
Symbiosis Law School, Noida

## Expertise:

Corporate/Commercial Arbitration

✉ [neha.m@mcolegals.co.in](mailto:neha.m@mcolegals.co.in)



**Shivangi Pathak**

Research Partner  
B.A., LLB (Hons),  
Calcutta University

## What are documents?

Section 3 defines “documents” in an elaborative form. It “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.”

The illustrations under such provision provide that a writing, words printed, lithographed or photographed, map or a plan, inscription on a metal or stone, a caricature, are all to be regarded as documents.

In **Kokilambal vs. N. Raman** (2005) 11 SCC 234, the Supreme Court observed that a document as defined under section 3, shall be read as a whole and the court must take into account the substance thereof.

## Public and Private documents

According to section 74 of the Indian Evidence Act, Public documents are documents forming the acts or records of the acts-

- of the sovereign authority,
- of official bodies and tribunals, and
- public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country.

Under sub-section (2), public documents shall also include public records kept in any State of private documents.

In the case of **Anita Malhotra vs. Apparel Export Promotion Council** (2012)1 SCC 520 held that copies of documents filed with the Registrar of Companies shall be a public document within the meaning of section 74(2).

A decree and judgment are also public documents, as held in **Shakuntala Devi Jain vs. Kuntal Kumari**, AIR 1969 SC 575

Section 75 states that all documents other than those mentioned under Section 74 shall be private documents. Private documents are most often in the forms of letters, agreements, e-mails, etc. exchanged intra-parties.

The scope of evidence tampering is far less in case of public documents since it comes from a source of public record or register.

## Third Party Documents

A document that is not exchanged between the parties to litigation but is executed by or in relation to a third party, becomes a third-party document when it is relied on in a dispute by either of the parties to litigation. Invoices issued by a vendor in a dispute between the seller and buyer, correspondences issued by a bank in case of a dispute in relation to bank guarantee, are a few examples of what could constitute third party documents in a dispute.

Such document is referred to in an evidence due to it holding a substantial value in the facts of the case. The process and mode of proving third party documents is similar to the one provided for other documents under Sections 61, 64 and 65 of the Evidence Act.

In **Sakaldeep Rai vs. Sarjug Rai** AIR 1961 Pat 460 the court held that in a case of property dispute, the recitals of boundaries in a document between third parties shall not be admissible as evidence.

In **Smart Steels vs. Raipur**, it was held that the authorship of third-party documents must be verified. This may draw inference from **Mohd. Arif vs. State (NCT of Delhi)**(2011) 13 SCC 621 wherein handwriting on a deposit slip was sought to be proved since the deposit was made by a third party. The court may also require a third party to produce a document when it is necessary for the adjudication of a dispute.

In **Trilok Chand Jain vs. Dagi Ram Pindi Lall**, 1973 SCC OnLine Del 253 the court held that when a third party is required to file documents, a right accrues as regards the third party to resist the production of such document on the ground of privacy and confidentiality. Similarly, the obligation to not disclose the private documents of a third party accrues on the concerned officer or authority.

## CONCLUSION

Documents hold great evidentiary value in determining the truth behind a fact or case. Documents are the first source of proving the dispute for the court to take cognizance and accept the occurrence of such dispute. Keeping in mind, such value that it holds, it is imperative to note the kinds of documents that may be relied on in evidence before a court. The law in relation to documents under the Indian Evidence Act are well established. However, various specific issues, proving of third-party documents, for instance, are based on precedents owing to lack of clarification on such aspects. Yet, the same does not pose serious problems due to the nature of the Indian Evidence Act since procedural laws can be applied through agreements or discretion as well. *Supdt. Of Taxs vs. Onkarmal Nathmal Trust*, (1976) 1 SCC 766 held that a procedural provision may be waived by conduct or agreement.