

**CREDIBILITY OF CIRCUMSTANTIAL EVIDENCE**- Harshita Mahajan<sup>1</sup>**ABSTRACT**

“In this paper, the researcher will be examining the credibility of circumstantial evidence by distinguishing it from direct evidence, examining legal provisions in this regard and scrutinizing precedents and the interpretation of the value of such evidence in isolation and in comparison with direct evidence.

The paper is built upon the hypothesis that circumstantial evidence is as valuable as direct evidence, but only entails a longer process to prove a fact. It will critically analyze the existing Indian jurisprudence in India and also draw out a brief comparative analysis with United States of America to discuss the provisions and precedents in another jurisdiction and bring out some meaningful suggestions for the improvement of the current system.”

**Keywords:** Evidence Act, 1872, Circumstantial Evidence, Guidelines, Supreme Court, India, USA

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<sup>1</sup> Student at Symbiosis Law School, Pune

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## INTRODUCTION

*“Men may tell lies but circumstances, do not.”*

Evidence can be broadly classified as direct and circumstantial evidence. Evidence is classified as direct, when it involves the eyewitness detailing of the facts in question. Alternatively, circumstantial evidence is the indication of relevant facts which are often used to deduce the existence of relevant facts which are in question through a process of intuitive reasoning, it does not serve as a direct evidence to prove these facts objectively. It only provides the circumstances which may prove a fact in issue on the basis of the testimony of a witness.

It was stated in *Dalpat Singh v. State*<sup>2</sup> that the difference between direct and circumstantial evidence is limited to the direct establishment of guilt in the former category and the leading up to an appealing inference of guilt of the party, in the latter.

However, circumstantial evidence is often looked at suspiciously because there is always peril that the conjecture built in a mind may replace proof and distort the truth for that case, and thus the Court is more cautious in adopting circumstantial evidence, so as to not build suspicion in place of proof, however, it is not a derogation to say that an evidence is classified as circumstantial<sup>3</sup>.

An example of circumstantial evidence that can be fathomed to illustrate its value is:

R accuses his wife of cheating with X and uses it as ground for divorce. There is no direct evidence to conclude this; however, he finds the clothes of X in the bedroom. The Court after inductive reasoning can conclude that X was present in the bedroom, and with addition of other circumstantial evidence, may be able to determine the guilt of the wife and Z, and admit this as a ground for divorce.

## CIRCUMSTANTIAL EVIDENCE AND PREVAILING JURISPRUDENCE IN INDIA- AN ANALYSIS

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2. 2005 CrLJ 749 (Raj).

3. G. Parshwanath v. State of Karnataka, (2010) 8 SCC 592.

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Circumstantial evidence is not explicitly defined under the Indian Evidence Act, 1872. The Act defines evidence as: “ Evidence means and includes- , (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 produced for the inspection of the Court; such documents are called documentary evidence.”<sup>4</sup> Thus, the definition does not classify evidence as direct and circumstantial in the definition.

The Act does introduce the concepts recognized as circumstantial and direct evidence indirectly, by Sections 6, 7 and 8 which state the relevancy of facts and how a non-direct fact may also be admitted in a Court if it points to or proves a relevant fact or a fact in issue.

However, the Act does refer to direct evidence indirectly, in Section 60 that states Oral evidence must be direct. However, according to the researcher, it provides for the occurrence of circumstantial evidence as well, especially when it states “If it refers to 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” and also where its detailed that “If it refers to an opinion or to which that opinion is held, it must be the evidence of the person ,who holds that opinion on those grounds.” The same has been illustrated and expressed through a document by the Joint Director of Maharashtra Judicial Academy where he gave the following illustration.

Where A is charged with murder of B by stabbing and C, D and E are witnesses:

‘C’ says that he heard ‘B’ cry out that ‘A’ was stabbing him. His evidence is direct, but circumstantial and substantive in respect of relevant fact and not hearsay (Section 6 & 60 second part) even though he actually did not witness the incident of stabbing

‘G’ is a medical officer, who says that the knife found in ‘A’s possession might have caused wounds found on ‘B’. His evidence being opinion is circumstantial, but direct and corroborative (Section 60 fourth part) in respect of relevant fact.<sup>5</sup>

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4. Section 3, Indian Evidence Act, 1872.

5. K.D. Patil, Jt Director, MJA, Thane, EVIDENCE – KINDS OF, [http://mja.gov.in/Site/Upload/GR/EVIDENCE\\_\\_K\\_D\\_PATIL\\_.PDF](http://mja.gov.in/Site/Upload/GR/EVIDENCE__K_D_PATIL_.PDF), (last accessed on February 3, 2020.)

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Further, such circumstantial as well as direct evidence can be further classified as:

Substantial: which proves a fact without corroboration

Corroborative: This corroborates substantial evidence and does not exist as evidence in a Court without such evidence.

The credibility of circumstantial evidence and its admissibility has been developed in Indian Jurisprudence through precedents.

The judgment of *Smt. Ram Rati v. State*<sup>6</sup>, held that where the counsel resort to circumstantial evidence in the absence of direct evidence, all circumstance must be admitted as in aggregate so as to form comprehensible links without any diversion from the conclusion that the accused committed the crime. Similarly, it was also held by the Apex Court that the inference of the accused being guilty can only be made out when all circumstance and facts in issue leave no possibility of the innocence of the accused<sup>7</sup>.

The Former Chief Justice of India, Justice P. Sathasivam in the case of *Prakash v. State of Rajasthan*<sup>8</sup> laid down 5 rules now considered as the golden standards of proof required to prove a case on the foundation of circumstantial evidence:

- Firstly, the circumstances presented should conclusively determine guilt and should not terms like “may be proved” and must use terms like “must or should” instead. The importance of these distinctions are not just grammatical but legal as well, and have also been discussed in the Interpretation Clause of the Act.
- Secondly, the facts established should establish only the hypothesis of guilt of the accused and not any other premise.
- Thirdly, the circumstances presented should be of a conclusive nature and predisposition.
- They should exclude all other hypothesis.

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6. 2005 (2) Crimes 221 (All).

7. *State of Himachal Pradesh v. Raj Kumar*, AIR 2018 SC 329.

8. AIR 2013 SC 1474.

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- The chain of circumstantial evidence must be so comprehensive so as to eliminate any reasonable ground with any inference which can be drawn for the innocence of the accused and prove that the offence has been committed by the accused only.

Further, various cases have also upheld that the circumstantial evidence can be held credible and can be relied upon for the conviction of the accused, in the absence of direct evidence. In Mohd. Usman Mohd Islam Shaikh v. State of Maharashtra<sup>9</sup>, the facts were such that the husband, mother and sister were convicted for causing death of wife by burning her. Witness testified that he heard quarrels all afternoon on the day of the death as the husband wanted the wife to leave. The wife allegedly consented to second marriage of the husband provided she could also stay on but this was not acceptable to the husband who in turn beat her and injured her head. The prosecution contended that after this the wife was killed after stifling her cries with a handkerchief, strangling her and then setting her on fire. Other witnesses also stated that the accused and the wife had strained relations due to her not being able to bear a child. Consequently, due to lack of direct evidence from both parties, the conviction based on circumstantial evidence was maintained<sup>10</sup>.

Thus, it is not that circumstantial evidence is lesser important or carries less weight however, it is just partially true because of a longer process to establish guilt. However, it has advantages as well, which include- Firstly, the difficulty in suppressing or fabricating such evidence and secondly, the factor that human agency can be faulty due to memory or expression, but a circumstance cannot miss the mark and thus, this brings us back to the quote in the beginning<sup>11</sup>.

## COMPARATIVE ANALYSIS WITH USA

The USA has a very compact set of Evidence Rules and does not have many definitions like the Act, 1872. However, as is evident from the jurisprudence, such as the landmark case of Holland

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9. AIR 2011 SC 277.

10. Anant Chintaman Lagu v. State of Bombay, AIR 1960 SC 500; Ashok Kumar & Others v. State Of U.P., CRIMINAL APPEAL No. 2156 of 2011.

11. Circumstantial evidence, [http://www.nja.nic.in/Concluded\\_Programes\\_2015-16/SE-8\\_PPTs/2.Circumstantial%20Evidence.pptx](http://www.nja.nic.in/Concluded_Programes_2015-16/SE-8_PPTs/2.Circumstantial%20Evidence.pptx), (last accessed on February 3, 2020.)

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v. United States<sup>12</sup> it was held by the US Supreme Court that “circumstantial evidence is intrinsically no different from testimonial [direct] evidence” and thus, it is held as credible as direct evidence. This is of consequence because USA commonly also has the misconception that circumstantial evidence is less important than direct evidence.

Further, it has also been recognized that scientific evidence is also circumstantial because it necessitates the jury to connect the circumstance contended and the fact in issue. This means that even fingerprint evidence is circumstantial because the jury must connect the object and the commission of the crime.<sup>13</sup>

Thus, the American Jurisprudence regarding credibility of circumstantial evidence is quite similar to Indian Jurisprudence.

## CONCLUSION AND SUGGESTIONS

Thus, according to the researcher it is well established after thoroughly reading the Indian jurisprudence on the matter of circumstantial evidence, that:

Firstly, the conception that circumstantial evidence is not as important as direct evidence is false, and proves the researcher’s hypothesis that it is just as important and only entails a longer procedure for proving a premise because of its nature. Judgments and convictions can be based on circumstantial evidence provided it is proven in a continuous and comprehensive link and leaves no room for doubt on the guilt of the accused.

Secondly, the Evidence Act is insufficient to define and apply provisions and has left lot of scope for judicial determination over the years. As discussed before, the provisions of the Act do not define circumstantial or direct evidence and the provisions that refer to these concepts also do not satisfactorily deal with them, as is seen especially in the case of Section 60, which can be a grey area because it includes principles of circumstantial evidence under the heading of Oral evidence must only be Direct.

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12 348 U.S. 121, 75 S. Ct. 127, 99 L. Ed. 150 [1954].

13. Circumstantial Evidence, <https://law.jrank.org/pages/5218/Circumstantial-Evidence.html>.

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It is satisfactorily established that circumstantial evidence is considered credible, not just in the Indian jurisprudence but also American jurisprudence and thus, In the light of this, the researcher would like to suggest that, as the Act is now antiquated and various precedents have interpreted it further, especially in the light of credibility of circumstantial evidence, the Legislature must at least define such evidence and incorporate the guidelines laid down by the Apex Court so as to:

- i) Expedite the legal process by nullifying the grey areas
- ii) Making the interpretation and acceptance of circumstantial evidence more objective and less arbitrary.
- iii) Clarifying the intention of the Legislature.

Though USA also has not included these provisions in their Federal Rules of Evidence, 2000, it is less problematic there due to their federalist nature and the ability of State to rule upon the same, more objective acceptance of precedents and no conflicting provisions in the Rules in this regard because, it doesn't mention any type of evidence and hence, it is more necessary for India to clarify its Act.

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