
Unreliability of Hearsay Evidence in Trial Proceedings

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ABSTRACT

In the Article, I would dive deeper into the question that what can be the possible reasons that render Hearsay unreliable. The article would also briefly focus on the impact of hearsay evidence in trial proceedings and how it proves to be unreliable. The objective of this article is to analyse what are the possible factors and reasons why hearsay is inadmissible and less reliable in trial proceedings. It aims to study what are the various hazards of using hearsay as evidence in courts and how it proves to be non-reliable in various cases or instances across the globe. Further, to elaborate on how hearsay proves to be non-reliable in court, I would also discuss how the rights of an accused may get affected due to inaccurate and less reliable hearsay evidence presented in courts and the court proceedings in general. To prepare the article, I would refer to various secondary sources. I would refer to journal articles/review papers, news articles, blogs, etc. to gather a comprehensive understanding of the topic on hearsay. The selected articles, blogs, etc. are written by different authors which provide relevant insights which would help in answering the concerned question. Further, I would also use some case laws, which would support my views/points in the research paper. The reasoning or the ratio used in the case laws would be used to note the role of Judges while deciding cases wherein Hearsay evidence has been put forth.

I. INTRODUCTION

Hearsay is one of the important and oldest concepts in Evidence law. Hearsay evidence is a widely recognized concept, however, it is still not completely admissible in Courts. The Court does not recognize hearsay as a reliable and trustworthy form of evidence. The concept of hearsay emerged in India through the Indian Evidence Act. The Act does not define 'Hearsay'

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anywhere. However, there have been multiple views on Hearsay and different judges interpret the concept differently. As per the general view, a Hearsay can be defined as any statement which is made out of court and which is used to prove the truth of the concerned subject matter. An important case law which broadly discusses hearsay is *Kalyan Kumar Gogoi vs Ashutosh Agnihotri & Anr.*² The Court in the said case states that hearsay includes whatever a person is heard to say or whatever a person declares on the receipt of the information provided by someone else. The sayings or the action of someone else other than the parties in dispute, if produced as evidence, is termed as 'irrelevant'. As per the case, anything which is heard and seen directly by a person's own eyes and ears is said to be relevant and is admissible. Hearsay Evidence is generally excluded and is not admissible due to various reasons, the same has been discussed in the subsequent part of the paper.

The history of hearsay evidence dates back to the 1400s. The concept of hearsay was gradually acknowledged in the 1500s when people were produced before Courts and the court recognized the fact that statements made upon oath were reliable. It was a gradually accepted concept. Later the concept of hearsay was accepted as corroborative evidence in Court but not as sole and single-handed evidence. Further, various exclusions to hearsay were recognized and it was concluded that hearsay is not admissible evidence in courts barring some exceptions. In India, the law of evidence traces back its root to the Vedic period. It was recognized by Dharma Shastra, to help in ascertaining the truth. It was also a significant part of the Muslim rule of law and played an important role in reaching decisions and conclusions in judicial proceedings.

II. ADMISSIBILITY OF HEARSAY EVIDENCE

The decision as to whether or not hearsay evidence may be admitted as evidence is subject to the discretion of the presiding officer and this discretion is exercised, keeping in mind the few exceptions, as specified in Section 3 (1) of the Law of Evidence Amendment Act. According to the Section, hearsay evidence can only be admitted into evidence if- a) the opposite party consents to the admission thereof, b) the original source testifies at such proceedings, c) the court, considering the following factors such as the nature of the proceedings, nature of evidence, the purpose for which evidence is tendered, the probative value of the evidence, the reason why the evidence is not given by the person upon whose credibility the probative value of such evidence depends, any prejudice to the party which the admission of such evidence

² [2007 (4) GLT 374]

might entail and any other factor which, in the opinion of the court, should be taken into account or should be admitted in the interest of justice.

III. UNRELIABILITY OF HEARSAY EVIDENCE

Hearsay evidence is generally not admissible in Courts barring a few exceptions under which such evidence is admissible. In this paper, our focus would be mainly on the unreliability of Hearsay Evidence.

1. Hearsay Evidence cannot be Corroborated by Oaths and Cross-Examination

As per an article³ by Edmund Morgan, a general idea with respect to hearsay gradually emerged was that the attestation of the witness must be to enquire about what the witness knows about the concerned issue or subject matter and not merely know what he has heard. The court must be directed further by the witness' own knowledge rather than some other person's knowledge who has not been a witness in court. The said article also emphasizes the importance of oath and states that the witnesses should necessarily take oath before the commencement of proceedings by the Jurors. The statements made out of court are not heard on oath and thus lack credibility and are less reliable. Since hearsay is a statement which is presumably made out of court, it is less reliable. This is because the trier cannot conduct cross-examination contemptuously upon the hearsay statement which is made beyond the boundaries of the court. Due to the lack of proper procedure for taking the oath, the evidence cannot be considered reliable. It is emphasized that oath and cross-examination are crucial and to a great extent, prevent the trier from getting misled into mistaking and considering false as true. The hearsay evidence cannot be based on oaths nor can be cross-examined.

2. High Probability of Fabrication and Making Faulty Statements

As per the said article, another important reason why hearsay evidence is considered unreliable is that statements made out of court can be fabricated or incorrect or faulty in nature. This is because there are no legal sanctions for making false statements. With a lack of sanctions and penal consequences, a person could make faulty statements which can lead to inaccurate adjudication and may sometimes lead to the conviction of innocent people on the basis of such

³ [Edmund M. Morgan], [Hearsay Dangers and the Application of the Hearsay Concept], [Vol. 62] [JSTOR] [178], [178,179] [(1948)], [https://www.jstor.org/stable/pdf/1336433.pdf?refreqid=excelsior%3A29442f4d51f2937014b65a37a3f26ef1&ab_segments=&origin=&initiator=&acceptTC=1]

false evidence. An Indian author, Vepa P. Sarathi, in his commentary,⁴ in support of the above-mentioned point states that hearsay evidence is often not considered relevant evidence because the person making hearsay statements may play fraud, in case there is enough time to make and spread false statements, to ensure deviation from the actual truth. As per the commentary, such a person can make statements like “someone told me that...” and spread false rumours. Such a statement if served as evidence, could be highly unreliable as it would mislead Courts. Further, when hearsay statements are made, there may also be a situation where the original source of such information may be absent and thus such information is not authorized and confirmed by the concerned party involved. For instance, if A tells B that C was in the museum the previous day when the incident took place. C might not be present at the time when the conversation took place between A and B and thus, whatever information is passed by A to B might be false or lack credibility as C has himself not stated the same information.

3. Lack of Responsibility and Repetition

As per the commentary by Vepa P. Sarathi, the hearsay evidence becomes irrelevant and less reliable because the person who makes an out-of-court statement does not consider himself responsible and he could easily escape by stating “I don’t know, so and so told me”. Hence, the statement would lack probative value. Further, as per the commentary it is also stated that with subsequent repetition of a particular information, the truth of that information is diluted or diminished. Thus, the information in the form of hearsay becomes less credible and reliable as the repetition fades away the truth of the information. If such information is produced as evidence in courts, it would mislead the case proceedings completely.

4. Risks of Faulty Perception, Faulty Memory, Ambiguity and Insincerity

Risk of faulty perception- There may be the risk of false or inaccurate perception as the declarant of hearsay may have a misperception in his/her mind regarding the concerned event or series of events in regard to which the hearsay statement has been made. This misperception could create misunderstandings and could mislead the court proceedings, in case such faulty perception is produced before the Court in the form of Hearsay evidence.

Faulty Memory- A person’s memory is short and he may easily forget events of the past. Due to partial loss of memory with the passage of time, the declarant may get confused with the

⁴ [Vepa P. Sarathi], [Law of Evidence] [16] [(Eastern Book Company 1989)]

facts of the event which has occurred in past and this may lead to distortion of facts. This could lead to receiving of faulty information. In case of evidence which is admissible in courts (say, direct evidence), such risk of faulty memory is reduced or can be eliminated to a great extent with the help of cross-examination. However, hearsay evidence has such short-coming and hence it cannot be relied upon.

Ambiguity- As per an article by Paul Bergman⁵, the ambiguity may occur with regard to communication and language. There may be a situation where the declarant perceives something and his use of words or language conveys a different meaning. Further, a particular piece of information may be interpreted differently by different people. Thus, there can be ambiguity and thus such hearsay could prove to be unreliable.

Insincerity- the declarant may intentionally make a false statement with a mala fide intention. For instance, the hearsay declarant can make a false statement to defame a particular person and cause a loss of reputation.

Such risks mainly arise due to the fact that such statements cannot be cross-examined as they are made out of court.

IV. IMPACT OF HEARSAY EVIDENCE ON TRIAL PROCEEDINGS

The hearsay evidence is generally not admissible in courts however there are certain exceptions under which the Court accepts such evidence. In common practice, statements which are used to prove the truth of whatever is asserted, are said to be hearsay. Such statements are not admissible except few exceptions. However, something which proves that a statement was made, is admissible in Court. For instance, when B made a statement that tries to prove that B heard A saying that X killed Y.

Further, during the court proceedings, the evidence made in Court can be easily corroborated and cross-examinations and oaths ensure the credibility of the received information. However, hearsay evidence cannot be corroborated by oaths and cross-examination as the statements are made out of Court. Hearsay evidence has several risks and is ambiguous. Hearsay evidence can highly mislead the trial proceedings and could give an unfair advantage to the accused if

⁵ [Paul Bergman], [Ambiguity: The Hidden Hearsay Danger Almost Nobody Talks About], [75] [Kentucky Law Journal] [841], [845,846] [(1987)],
[<https://uknowledge.uky.edu/cgi/viewcontent.cgi?article=1986&context=klj>]

hearsay evidence is used through the play of fraud and ambiguity. This is because it could be interpreted in numerous ways and could be used by the declarant to gain an unfair advantage and preclude himself from getting punished. This could also lead to wrongful convictions.

V. CONCLUSION

To conclude, there are several reasons why hearsay evidence is not reliable and hence not admissible in Courts. To ensure proper court proceedings and trials without any violation of the interests of the concerned parties, it is necessary to apply the concept of hearsay wisely. This would ensure that appropriate justice is delivered to the parties.

