

## HEARSAY: EXCEPTIONS AND APPLICATIONS IN MODERN TRIALS

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### **Information you have heard but are known to be true**

Although the term "hearsay" may sound technical, it's something we all encounter in our everyday lives—whether it's a rumour, gossip, or something we've "heard on the grapevine." In the context of law, however, hearsay has a very specific meaning: it refers to statements made outside of court, which are presented in court to prove the truth of the matter asserted. While we might casually share or hear such information in daily conversation, the rules of evidence in a courtroom are much stricter. Hearsay evidence is generally excluded from trials because it lacks the reliability and trustworthiness that come from direct testimony and cross-examination. That said, hearsay isn't entirely shut out of the legal process—it's governed by a set of exceptions that allow certain statements to be admitted, depending on their context and the circumstances under which they were

made. Understanding hearsay and its exceptions is crucial for both legal practitioners and anyone who finds themselves involved in a trial, as these rules can significantly impact the outcome of a case.

Some exceptions of heresy rule in India are,

**Dying declarations-** These are statements or gestures made by a person before their death, which a proximate relation to the cause of death. Section 32 of *Bhartiya Sakshya Adhinyam* makes this type of evidence an exception to the hearsay rule. In fact, in cases such as *Kushal Rao v. State of Bombay*, the court emphasized that if these statements are deemed reliable enough, they can be treated as substantive evidence and may, in some instances, serve as the sole basis for a conviction.

**Res Gestae-** These types of statements are explained under Section 4 of the Indian Evidence Act (IEA), which states that they are so closely connected to a transaction that they form part of it and are therefore admissible as evidence. For these statements to be considered genuine there must be no time lag and it has to be said on the spur of the moment. It makes a statement genuine, spontaneous, thus it is unlikely to be influenced by any other factors than the person's thoughts or feelings at that moment. In the case of *GV Rao v State of Andhra Pradesh* the court emphasized on the fact that such statements will not be admissible unless they are made without interval, so stressing more on the condition attached to it, that is timing.

**Confession**– A confession is a statement that examines the accused's involvement of a particular crime and since the examinee is fully aware of his/her actions, then the examinee's offer of a confession can be regarded as truthful. A confession has to be done without pressure, threats or promises being made before an accused person can be allowed. As a result, the circumstances under which it was made receives a lot of attention to ensure that it is not the result of excessive pressure being placed on the accused. However, in court the only confession accepted as evidence is a voluntary one the suspect was free to refuse to make.

**Public document**– According to sec 74 of BSA The hearsay rule does not apply to records that are maintained by a public officer or records which are lawfully admissible. These materials include copy documents, official documents, and government records which are certified true copies.

### **Why is hearsay important?**

Hearsay is important because it preserves the reliability of the evidence that is tendered in court. These principles are quite sound and form the basis of reasons for disallowing hearsay with a view of admitting only reliable statements as evidence. Although at times it tends to give a picture that has some relevance to the case, its primary function is to bar 'junk' inferences, or information, which is considered unreliable or not sufficiently corroborated. The requirement for some kind of credibility assurance before admitting a declarant's statement particularly in situations where the declarant cannot be produced, serves to prevent cases of fraud or misinformation. In the final analysis the hearsay rule is a protection which serves to balance the need for relevant evidence and the need for fairness and reliability in the determination of the truth in Court.

### **The test of Credibility and Relevancy: Challenges to Hearsay in Modern Trials**

The prohibition of hearsay has for many years been one of the principles of evidence law which purports to exclude from the trial any inadmissible evidence. The hearsay rule presents a number of difficulties for courts when applied to more recent cases, including, but not limited to, the use of digital evidence, video and audio recordings and the increased interaction of people from around the world. G-resistant evidence is usually inadmissible in court since this evidence is flawed, but there is something which makes the acceptable use of this evidence more complicated.

This paper focuses on the issues of reliability and authentication of digital evidence.

Social media posts – be it post made on personal accounts or organizational accounts like Facebook or Twitter or even the WhatsApp messages – form a category of hearsay since the content generated online is done away from the court and the main objective is to ensure the trust in the statement is brought forward. Such electronic messages might, however, come under some exceptions particularly where they form part of public or business documents, though, must meet specific conditions of relevance and genuineness. Ensuring that the evidence collected is genuine is a massive challenge. There is a possibility to distort the messages, make up some tales, or add changes to it. The current courts require the correct authentication of digital evidence; this means that there has to be proof that the evidence is genuine, has not been tampered with and reflects the statement or communication in question. For instance, Courts needs to be assured that a text message or a post on Facebook or twitter was authored by the credited sender and has not been doctored.

### **The Changing Nature and Globalization**

This paper finds that courts face a lot of challenges when addressing cross-border

hearsay evidence as communication advances internationally. Issues of authenticity, translation, and admissibility arise when the somebody's remarks made in one nation may end up be used in trial in another nation due to the emergence of social media and other global platforms. Courts must be aware whether the evidence from foreign state is regulated or protected under international law and messages on email or social media in foreign language may be requiring translation before they can be presented in court. The admissibility of hearsay is especially a problem in social media considering that information posted in sites such as Face book or twitter can easily be posted or distorted, hence it becomes difficult to determine their authenticity. For instance, an anonymous tweet may be employed to support a claim but before the court allows them, they have to determine if the hearsay tweet is reliable enough to be admitted.

### Striking a balance

After having presented the hearsay exceptions and the problems met in the modern trials, it is essential to wonder how to bring the two together. In India, functions as the judge who is solely liable for the evaluation of hearsay because the Indian legal system does not contain the jury. When hearsay should be allowed is not clear cut; it depends with the circumstances of the case. The admissibility of the evidence must also address both the reliability of the evidence or the soundness of the reasons given in the evidence for the making of the decision, and relevance of the decision to the case and the soundness of the reasons for the making of the decision. For example, when a hearsay remark is not closely scrutinized the level of reliability of a naturally reliable source may be overstated. On the other hand, some rumour may appear to be vague, but the reality is that they may be discernible to the judge and reveal their defects.

The challenge is trying to prove to the court about the relevance of the hearsay statement

to the case and not that the statement was so and so. However, in India a dying declaration, res gestae or admissions which satisfy the legal requirements may be accepted by the judge under hearsay. To provide justice the judge has to consider the need to admit statements in time as well as the need to admit remarks that cannot be cross examined. Finally, the judge has to some extent pay attention to certain evidence so that justice prevails and no inferior or false information has an undue influence on the overall outcome of a case.

### CONCLUSION

Therefore, it can be suggested that further development of the hearsay exceptions requires the use of a complex approach when searching for the right balance between the modern hearsay exceptions and the challenges that concern ensuring fairness in contemporary trials. In deciding whether or not hearsay can be admitted as evidence, the judge also has a major part to play in a case, specifically in considering the case as a whole, as well as the admissibility of the evidence. The honourable court must be very cautious not to forget that these evidence destroys few tenets of justice like cross examination and the aspect of open trial though there are few exceptions of dying declaration and res gestae which allows certain hearsay utterances. In any way the contemporary forms of evidence make it challenging, the judge helps to preserve the sanctity of trial process and ensure that the truth is properly found by following these directions and adapting to features of the particular case.

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