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JUDICIAL DISCRETION UPON ADMISSIBILITY OF EVIDENCE: A PERQUISITE OR PREDICAMENT

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I. ABSTRACT

The present manuscript draws a parallel between the perquisites and predicaments of the component of how judicial discretion variedly affects the admissibility of evidence in both the civil as well as criminal cases at the preliminary stage. We have taken into consideration the beauteous idiosyncrasy of the judges formed over years of virtuosity as well as kept the factor of the scope of retaliation by the litigant and its mechanisms upon dissatisfaction in the cases of the jurist's not being by the tenets of the esteemed Act of Evidence Law. The very facet of a form of evidence being in consonance with the statute and it not adhering to or aligning with the particularity of the Act would be paid heed to and various extensions of the same would be discussed. There cannot be a probable conclusion to the said topic, but the importance of a jurist's perspective would be laid down.

II. KEYWORDS

Judicial Training, Knowledgeability, Democratized, Pragmatically, Marshalling, Evidence Admissibility, Judicial Discretion, Indian Evidence Act

III. INTRODUCTION

At the juncture of the legal system of India, large emphasis is put on the judge's viability to either accept or disregard the facet of evidence when deemed admissible which is purely upon the discretion of the learned judge. With due regard to the qualification, respect, wisdom, experience, and judicial training possessed by the learned judges, the cases both civil or criminal in their very respective preliminary stages pose evidence from both sides proclaiming the evidence supporting their vindications.

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In this manuscript, we will be thoroughly discussing the ascendancy as well as the pitfalls of the inclusion of the judges when ascertaining the evidence to be deemed as proof as per the tenets of the Indian Evidence Act, of 1872 which signifies the expertise of the learned judges and can be marked as a notion of respect for the jurists who through thorough judicial training are the key proponents of justice as a remedy. The readers can expect the notable mention of the work done by judges to safeguard the sanctity of the law and abided by the statute while separating the important part from a pool of variable aspects of a case. The judge very well possesses the power to decline to contemplation of particular evidence.

Human beings unconsciously develop a bias from an early age which additionally is affected by the surroundings lives around, our jurists undoubtedly by the very factum of being humans may as well possess certain preconceived notions and it may pose to be a very magnanimous turning point in the case of the decision of the court when analyze a case. The very purpose of the jurists by the tenets of Evidence Law is to marshal the evidence presented to them to separate the wheat from the chaff and to dissipate the aspects important about the case.

The very presence of the fanciable and intellectual legislation, namely, The Evidence Act transcends and broadens the scope of different types of Evidence and precisely answers all key questionable points with regards to the legality and the intervention of Evidence and their admissibility in the Legal juncture. But the fact remains that pragmatically laypersons and for the matter, the parties in a particular case have in conscience and knowledge about the intellect of the learned judges who through numerous years of experience and expertise have garnered the knowledgeability that they possess and for this rationale, The intervention and the scope of retaliation by the parties upon the rejection of evidence as proof at the preliminary stage gets minimized.

The Law also clearly does not provide a means or a resort for the parties to comply in the case they do not agreeably undertake the reasoning by the court in the case of either acceptance or denial of certain evidence. However, The large proposition revolves around the factor of the judges being the prodigies of their respective fields

and being in conformity with the legislation at all times because of the presence of the various instruments of checks and balances being present in the legal system of the country. The fact remains that the learned judges also keep in consideration the factors of clear adjudication and the admissibility part when it relates to or matches the tenets of The Evidence Law.

The very **Section 4 of the IEA**[2] encapsulates and presents the factors of **May presume and Shall presume**. In the **May presume** presumption, The Court will adhere to the provisions and if the other side disproves it may grant permission for the other side to contradict, However the fact remains that the Judiciary's presumption is always backed by a lot of research and then it conclusively reaches to a viewpoint. The May presume factor provides a lot of room for the parties to contradict however the **Shall presume** presumption puts a mandate on the court to not deviate until the contrary is proved and it draws a line for the parties to prove something beyond a reasonable doubt and then the court will admit it.

The case of May presume invites a lot of discretion and advocates for hegemony that can be preached by the learned judges. May presume leaves it upon the judges upon their discretion to make a presumption according to the case &Shall presume mandates and leaves no discretion or option to the judge to make a presumption which significantly also keeps an adherence perspective to the jurists.

In the words of **Justice Krishna Iyer**, the blurred area of the criminal justice system largely rests and hinges on the hunch of the bench which is otherwise called judicial discretion, The very statement entails the reliability of the legal system on the knowledgeability and expertise of the jurists and how when the entire system of the law beseechs interpretation while deciding the credibility or interpreting the factums, The factor of 'Judicial Discretion' is the foremost factor of dependence.[3] Here the importance of judicial discretion and how the jurists act upon the gaps and unnamed lacunas of the criminal system and giving it a spine through their expertise and interpretations by assessing the facts and circumstances of the case which necessarily

[2] Section 4 of the Indian Evidence Act, 1872 (Act No. 1 of 1872)
[3] Gudikanti Narasimhulu And Ors vs Public Prosecutor, High Court Of Andhra AIR 1977 SC 429.

cannot be challenged since it stems from a place of knowledge and grip over the subject matter is discussed.

Some sections presuppose the existence of the importance of the jurist for instance, **Section 56 – Facts judicially noticeable need not be proved**[4] warrant the importance of the ascertainment by the court and how if court takes judicial notice of a particular fact, it need not be proved. The cases about this section are the evidence that are established that the evidence of their existence is unnecessary. Here judicially noticeable facts would be so apparent on the face of it that it does not require further ponderment and hence are not needed to be proved further. There is a certain notion of judicial competency which would be directly harmed if a fact is judicially noticeable & proven is questioned since it would directly attack the virtuosity and intelligence of the jurists.

The Evidence Act through various sections puts forth the importance and the viability of the facet of judicial discretion discreetly. The basic essence shall be the component of certitude that shall prevail by the people upon the jury and the very premise of the legality of the country can be propagated by the advent of faith and trust upon the judges. However, It cannot be an ignored fact that pragmatically keeping in consideration the number of cases pending and the difference in the types of judges, The legal system instills certain lacunas, For instance, for the fast dispensing of justice, It very well happens that a certain grey area is cast upon by the jurists during the admissibility of evidence. There is an utmost need for the courts to accord judgment and be true to the procedure involved but practically it may as well not lead to the contentment of the people and that is where a methodology to keep a check and balance upon the discourse illustrated as judicial discretion shall be present.

Where the statute casts lacuna is where the scope of discretionary powers by the jurists arises and by the very facet of the jurists being humans, there can be a scope of dissatisfaction by the parties and because the judges cannot upon their whims and caprices act arbitrarily, there must be a hierarchical power present which adjudicates

[4] Section 56 of the Indian Evidence Act, 1872 (Act No. 1 of 1872)

and presents itself as a determining point. Evidence is a very necessitated commodity essential to the parties as their own and shall be thoroughly inspected and decided upon their value addition to the particular case in the trial stage itself because the law explicitly bars the addition of evidence at a later stage.

Sections **58, 135, 136, 148, and 154** of the **Indian Evidence Act** further encapsulate and highlight the importance of the factor of discretion of the judges with regard to the Evidence Act. Section 58 says that No fact needs to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing or which by any rule of pleading in force at the time they are deemed to have admitted by their pleading. This section mandates the accountability by the parties and that the statement by the parties in themselves are admission and there arises, no factor of questionability upon it being proved, This eases the work of the jurists.

Section 135 mandates the discretion of the court in case of the absence of an order being present of the witnesses being produced and examined regulated by the law and practice in case of civil & criminal procedures, signifying the integrity of judicial discretion in terms of hierarchy and procedural aspects as well.

Section 136 further gives the power to the judge to decide the admissibility of evidence upon the judge admitting the evidence if he thinks that the facts if proved, would be relevant, and not otherwise. Section 148 gives the decisive power to the court to decide whether the witness is compelled to answer if a question affects the credit of the witness by injuring his character, giving the judge the power to decide an integral facet of the proceeding. Section 154 talks to us about Question by a party to his witness which is a discretionary power of the court signifying the importance of Judicial Discretion.

It is a normative practice of the legal system to rely on the interpretation by the courts, However, the hard and fast rule to resolve the ambiguity provided by leaving the room of contemplation in the presupposition of the factor of **May presume** in the Indian Evidence Act can be resolved by providing boundaries and limitation, also an extent to which the judiciary might as well accrue the power to admit the evidence and shall explicitly provide reasoning as to why a certain evidence was not admitted

as proof, The very democratized setup of the nation transcends and propagate the importance of people in the country and there shall be no lacuna/extent left to the dissatisfaction of the key tenet of the country i.e. its people. This way, the judiciary would strive and postulate for a transparent and acceptable answer to the parties.

For instance, A student has all rights reserved to know about the deficiencies in her answer because it may as well be possible that the lacunas posed by the teacher are accurate in their stance which was otherwise in the mind of the student to be of the wrong proposition, This way both the parties are strived to on a one-on-one platform allowed to exchange their advances.

Similarly, The litigant so having her evidence deemed inadmissible shall possess a conclusive reasoning for the same done to them to pose a factor of questionability upon the jurists as well as the answerability upon them. Jurists by the very nature of work expected from them have an inherent superiority that they possess in their respective minds however this very factor shall not be a hindrance to the litigant who through faith in the legality of the country wants to garner justice or settlement. There are legal procedures present that casts upon the judges a notion of checks and balances but there is a dire need to put forth the same in practicality.

IV. CONCLUSION

A conclusive viewpoint transcends and propagates that, with due respect to the respectable judiciary and the utmost sincerity of the judiciary, There shall be a practical method of the analysis of the working of the judiciary when deciding upon adjudicatory matters when they align with the tenets of Evidence Law. Conclusively, It is a consecration for us to be blessed by a powerful and eminent judiciary and it bounds us to respect the premise and the efficacy of it however, there shall be no vacillation concerning questioning the learned judges for their stance of not admitting particular evidence however there persists a dire need for us to substantiate our claim in form of evidence in its truest essence.

Also, the factor of the judge's stance to give the reasoning for their judgment persists. Since judgment poses to be the operative part or finality of the court's decision, there

should be no stones unturned to provide a meaningful solution. Also, in the cases of the judges portraying a bias since the very inception, the people involved in the case by the very facet of prudency shall find solutions or report the issue with the concerned authorities, This may as well pose to cleanse the plinth of notorious aspect of the legal system/judiciary. It is a basic tenet of humanity to have bias and it may as well affect objectives & reliability, However, it is a quintessential facet as a counsel to amalgamate all the prospects of the case and has an expanded vision and awakening concerning the factors essential for the support of a certain evidence.

The very essence of the Evidence Law is an indicative law with ethical considerations. In the cases of direct evidence, there is no scope for the presence of an alternate side mostly, For instance, if the judge administers the video of a murder taking place, there is no room for further examination or to determine the accuracy, Here the proposition of the judge is of foremost importance and cannot be questioned and if the other party questions the viability of the admission of the particular evidence, they must have substantial grounds to resort to the means. Certain evidences on the very face of it are inadmissible and thereby deemed inadmissible evidence, for instance, Hearsay, prejudicially/improperly obtained, or irrelevant items, Such refusal by the court cannot practically be questioned.

The court is also well acquainted with judging the body language, stature, and other aspects of the people approaching the court with evidence that they have garnered over through thorough hard work and experience which in its very premise becomes a matter of utter respect. Another technicality revolves around the admissibility of electronic evidence, With the advent of Artificial Intelligence judges have reached a point of difficulty ascertaining the credibility of a particular evidence which also leaves a lot of scope for discussion and interpretation and the same credibility and proficiency of the judges cannot be questioned.

However, the very important aspect of corroboration deems it tough to negate the contention put forward by the jurists who present a need for the supplementation of the evidence presented by the factor of corroboration and not to be taken in isolation. The thorough scrutiny of the evidence also strengthens the factor of judicial

intervention in the Evidence. Admissions are catered to the tenets of Evidence Law and it is upon the discretion of the courts to consider it or not. The journey from evidence to proof requires thorough scrutiny and is not hurried upon, The evidence is an essential medium of proof, These factors vitiate the claim that the judiciary leaves any lacuna in the propagation of justice and applying the applicability of Evidence Law into practicality. Conclusively, The factor of marshaling of the evidence is a great asset. Since there is no probable extent to garner the statistics on this topic, We have left it to the scope of interpretation.

Other countries state judicial discretion to be a philosophical dispute, As per **Aristotle** there cannot be individualization of justice and the facet of whether the jurists preach the discretion is also put to contention. He expects judicial discretion to be minimal and that judges should be bound by pre-existing laws signifying the importance of precedents and pre-existing legality and the impact of jurists' knowledgeability. The maximization of the ability of the jurists to preach discretion is particularly upon the jurists themselves which can be transcended in this manuscript.[5] In the USA, The governing agency for the Federal court is the Federal rules of evidence and a set of immense powers is provided to the jurists to exercise judicial discretion only if the legislature allows for it.

Upon lack of rigidity, there is a choice provided to the jurists to choose the type of punishment to be given which somewhat is very flexible when compared to the Indian juncture where there is a set of regulations and laws at all times to be abided by and the extent of judicial discretion being preached is not so flexible however in the USA, excess of powers leading to abuse can be complained of.[6]

In the case of **Re: Chief Judicial Magistrate, Trivandrum**, It was held that there is no question of exercising any judicial discretion to decide anything else by assessing the evidence of witnesses. [7] This very case bars the questionability and puts a certain extent limits the intricacies of The Evidence Law and its applicability. When we

[5] Barry Hoffmaster, *Understanding Judicial Discretion,* Vol. 1 JSTOR 21 21 1982.
[6] Cornell Law School LII https://rb.gy/zq35vu (02 April, 2024)
[7] Re : Chief Judicial Magistrate, Trivandrum IJR 1987 HC 169

foresee a global perspective, In the case of **Attorney General vs Gray**, It was stated that the exercise of the court's discretion would depend upon the assessment of where the balance of justice lies, Here personally, The query accrues as to what is the determining point of the 'Balance of Justice' and it is a normative factor and may vary upon case-to-case basis so how would the applicability of judicial discretion be discussed.[8] From analyzing the variable law points on the pretext of the Evidence Law of various countries it can be concluded that there is a certain limitation provided to the applicability of Judicial Discretion in different countries.

In conclusively, The manuscript addresses the concrete institution of Evidence Law and the role it plays. As advocates of law and constitution we will always adhere to and respect the framework laid by the jurists and respect their work however, for the betterment we may too, always give recommendations and facets for the betterment of the practicality of the working of Evidence Law. Through this manuscript, We can indispensably cater to resorts for the better implication of Evidence Law while respecting the credibility of the jurists. However, the manuscript encompasses the variable shades of the judge's approach towards the appreciation of the evidence and the manuscript can be posed to be the testament to the same with significant recourses for the betterment.

[8] Attorney General vs Gray EWHC 2024 WLUK 439