

## **An Analysis on the Probative Value of Evidence: A Review**

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**Abstract:** *The article emphasizes on concepts, definitions and classifications of evidence. It mostly analyzes about evidentiary value of different kinds of evidence and their limitations. What qualities constitute best evidence, and which part of evidence is competent, relevant, material, that has been focused clearly. Additionally, the weight of the hearsay rule and its exceptions has been depicted as well as other evidentiary policies involving confession, different statement, and the concept of legal weight has been discussed.*

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### **I. Introduction**

Practically, all evidentiary knowledge to some extent notional, usually are being planted in the framework of trial and proceedings.<sup>1</sup> Evidence is the matter of testimony manifesting fact on particular precision or circumstances.<sup>2</sup> Without evidence, there is no testimony; without testimony, burdens are not met, and convictions, verdicts, or judgments are impracticality.<sup>3</sup> "Evidence directs the courts, the judges, and legal practitioners advocating its content toward actions to be taken". Data collection, investigation and delivery are rational actions directed toward a precise conclusion, namely, the truth of the matter.<sup>4</sup> "Evidence" "takes several forms, including: testimony of a witness; real, tangible, physical and documentary evidence; chattels; microscopic fibers, biological materials and open forensic matter; character evidence; intellectual copyrights, trademarks and patent: habits and customs; conviction records; public records; recordings, motion pictures, photographs and videotape confessions; personal or professional reputation; mental state or condition; and judicially noticed findings".<sup>5</sup> It ought to never be forgotten that in a resolution of disputes in a court room, as in all other experiences of individuals in our society, the emotions of the persons involved litigants, advocate, witnesses, judges, and jurors—will play a part. In fact the complete justice form, in both the civil and criminal contexts, cannot work or carry on without evidentiary study; it cannot advocate nor take proceedings without parameters and benchmarks; and it cannot issue findings or judgments without dependence upon the evidentiary structure. Police force and law enforcement officers need a basic perceptive of evidence, its value and content, and the set of laws prevailing its acceptability. The duty of police is intricately coupled to evidence scrutiny. Law enforcement agencies collects, conserve, and packages evidence and then amasses and coordinates this evidence for prosecutorial personnel.<sup>6</sup>

Law enforcement conducts field interviews and other analytical inspection and locates and prepares witnesses for inquiring. Proceedings teams are in dreadful want of evidentiary understanding. In civil and criminal cases, evidence scrutiny and trial policy are intimately entangled. If they are doing their jobs, lawyers and legal action specialists will appraise evidence by placing themselves in the shoes of the judges. Hearing officers in the administrative vicinity and other tribunals must be attentive to evidentiary values. Understanding not only the different areas of evidence law, but also its real application, ensures a more skillful justice expert. One who understands evidence will do investigative functions more wisely, correspond with witnesses more efficiently, as well as set up them for inspection and to observe flaws in an opponent's case.<sup>7</sup>

Bangladesh is belongs to common law and the foremost intend of this is to uphold the just and independent administration of justice. But the question is that how the legal jurisprudence does achieves its goal? Definitely through the instrument of administration of justice and the main agent of this are the lawyer and the court. Second question is that how the courts and lawyers prove the existence of rights, liabilities, crime? This is where the significance of the law of evidence lies. The court proves all those by producing, proving, disproving evidences in appropriate form<sup>8</sup>. But difficulties arise when we try to sort out the evidentiary value of

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<sup>1</sup> Overview of Evidence (Jones and Barletta Publishers) LLC <<http://samples.jbpub.com/9780763766610/CH01.pdf>> accessed 20 September 2015

<sup>2</sup> *Ibid*

<sup>3</sup> *Ibid*

<sup>4</sup> *Ibid*

<sup>5</sup> *Ibid*

<sup>6</sup> *Ibid*

<sup>7</sup> *Ibid* at p. 2

<sup>8</sup> Md. Abdul Halim, *The Law of Evidence: Theory and Practice*, 4<sup>th</sup> ed. (2011), CCB Foundation, p. 15

evidence because it comes from variable sources. Such as the statement stated by accused does not bear better evidentiary value as the person who has already committed crime might not that much reliable whom can the court trust. The accused is, however, entitled to rely on the fact that he is of previous good character as making it less likely that he would have committed the offence. If there is any room for doubt, his good character may be thrown in the scales in his favor.

## II. General Conception And Classification Of Evidence

Evidence is something that provides the grounds for belief tending to prove or disprove the existence of any particular fact. Every case needs evidence to prove its facts in issue. The Judge determines the facts in issue of a case by hearing both parties. Parties of case give evidence to prove or disprove or not prove the facts in issue, but they cannot present evidence whatever they want. They have to follow some rules in this regard. These rules are ascertained in the evidence Act. The term "Evidence" means anything by which any alleged matter of fact is proved or disproved. In one sense, evidence means a fact by which another fact proved or disproved.

According to Taylor evidence is something which tends to prove or disprove any fact the truth of which is submitted to judicial investigation.

Sir James Fitz James Stephen has said "the law of Evidence is that part of the law of procedure, which with a view to ascertain individual rights and liabilities in particular cases, decides;

- (a) What facts may and what may not, be proved in such cases;
- (b) What sort of evidence must be given of a fact which may be proved?
- (c) By whom and in what manner the evidence must be produced by which any fact is being proved?

According to Section 3 of the Evidence Act defines evidence as follows: Evidence" means and includes

- a) All statement 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.
- b) All documents produced for the inspection of the court such documents are called documentary evidence.

After discussing the above mentioned following we can conclude that the law of evidence is the set of rules to govern the parties and the court in proving a particular case before the court. Whenever a party asserts any right before the court and wants a decision on it the court must be satisfied with the existence of the right. And the evidence plays its part in satisfying the court about the existence or non-existence of the right. It is the evidence before the court on which the court shall base its decision. So evidence is the mode to prove the existence of right. The term "evidence" in the Act signifies only the instruments by means of which relevant facts are brought before the court, viz., witnesses and documents.

**Classification of Evidence:** Basically the evidence act can be divided into two classes: 1. oral evidence; and 2. documentary evidence. It is evident that evidence act recognizes only oral and documentary evidence but there exists real or material evidence also which is supplied by material objects for the inspection of the court e.g. weapon of offence or stolen property. According to Code of Criminal Procedure 1898,<sup>9</sup> a police officer has to send to the magistrate any weapon or other article when upon investigation evidence is found to be sufficient against the accused<sup>10</sup>. Under<sup>11</sup> the provision of law of evidence the court may require the production of a material thing for its inspection. Under the act such material is not evidence strictly speaking. The definition of evidence must be read together with of prove<sup>12</sup>. The combined result of these two definitions is that evidence as defined by the act is not the only medium of proof and that in addition to it there are a number of other matters which the court has to take consideration when forming its conclusions. Thus the definition of evidence in the act is incomplete and narrow. Hence what is not evidence: (1) a confession or the statement of accused under section 342, Crpc<sup>13</sup>, (2) demeanor of witnesses (section 361, Crpc, 018), R. 12, C.P.C)<sup>14</sup> (3) local investigation or inspection (o. 26, R. 9); (O. 18, R. 18, C.P.C.; section 293, 539-B<sup>15</sup>CrPC)<sup>16</sup> (4) Facts judicially noticeable without proof (section 56, 57 of evidence act, 1872) (5) Material objects (section 60 of evidence act, 1872).

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<sup>9</sup>Abbreviated to, CrPC 1898 for the purpose of this paper.

<sup>10</sup>CrPC 1898, Section 170 & 218, see also new criminal procedure code, 1973.

<sup>11</sup>The Evidence Act 1872, Sec.60

<sup>12</sup>Evidence Act, 1872 (Interpretation clause) Section 3; a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

<sup>13</sup>*Bhairon Prasad v. Laxmi Narayan Das*, (1924) N SC 385

<sup>14</sup>*LaxmanJairam v. E*, 38 BLR 1122. *E.v. TutiBabu*, ILR 25 P, 33,(written statement) *Kashmira Singh v. State*, (1952) AIR SC 159

<sup>15</sup>Overview of Evidence, Jones and Barletta Publishers LLC<<http://samples.jbpub.com/9780763766610/CH01.pdf>> accessed 20 September 2015

<sup>16</sup>*Joy Coomar v. BuddhooLal*, 9 c 363 as cited in Law of evidence (short edition), chief justice M. Monir, 6th ed., p 48.

Though these matters are not evidence yet are media of proof and form part of the material on which the decision of the court may be based. Evidence is to be weighted not counted.<sup>17</sup>

However, there is no specific statutory classification of evidence. Classification tends to reflect a textbook writer's individual preferences. The following classifications are adopted below.

1. Direct or indirect which is known as circumstantial evidence;
2. Real or personal; and
3. Original or unoriginal.
4. Oral or documentary evidence; and
5. Primary or Secondary evidence.

**Recommendation with regard to Definition of Evidence:** The Evidence Act does not contain any definition of the term physical evidence. A draft proposal for amendment of the Evidence Act prepared by UNDP includes the following additional definition of evidence. Physical evidence means any material or object-1. That may establish that an offence has been committed or that may establish a link or relation between an offence and its victim or an offence and its offender.

2. That may prove or disprove a fact: such as: blood, semen, hairs, all body materials, organs or part of organs, Deoxyribo Nucleic Acid (DNA), Finger impressions, palm impressions, foot print, latent print, Photograph, traced print, reports originated from all automated identification system, etc.

### **III. Evidentiary Value Of Different Types Of Evidence**

How much credence or value we accord evidence at trial depends on the structure of case or suggestion being advocated. Value is largely a term of art, with courts giving some evidence more respect than others. From one intense, where no value is attached to evidence and the evidence is stricken or excluded from trial, to the other end of the evidentiary spectrum, of judicial notice, weight is basically how much something is worth<sup>18</sup>. One view on the value of evidence would be whether the evidence is direct or circumstantial. For example, is the evidence sufficient in weight for a charge of murder, when the evidence relied upon is strictly circumstantial?<sup>19</sup>As the sole judges of the facts, you must determine which of the witnesses you believe, what portion of their testimony you accept and what value you attach to it.

**Evidentiary Value of Direct Evidence:** One of the main principles of the law of Evidence is that the best evidence must be given in all cases. Direct evidence is the best evidence which is submitted before the court by the person who has seen it and the court mostly relies upon the direct evidence for better disposal of the cases and suits. Direct evidence is evidence that proves a fact or proposition directly rather than by secondary deduction or inference. Examples of direct evidence include eyewitness or testimony, an oral confession of a defendant, or the victim's firsthand account of a criminal assault. Direct evidence is the foundational support for many cases. The eyewitness testimony regarding an accident scene or a victim's testimony regarding her injuries has a primary quality that encompasses direct evidence. As a general rule, the more direct evidence amassed, the better the advocate's case.

**Evidentiary Value of Circumstantial Evidence:** In criminal cases the offence with which the accused is charged may be proved by direct or circumstantial evidence alone or with the help of both. But it is very difficult to obtain direct evidence in majority of the cases. So the prosecution has to rely on circumstantial evidence to prove the case against the accused. Naturally, a question arises, whether it is safe to convict a person against whom there is no direct evidence and the case is based entirely on circumstantial evidence. It is not illegal to convict a person for an offence on the circumstantial evidences. If they are of such nature that they lead to the conclusion that it was the accused who committed the offence and none else.<sup>20</sup>“If two inferences are possible from the circumstantial evidence, one pointing to the guilt of the accused, and the other, also plausible, that the commission of the crime was the act of someone else, and the circumstantial evidence would not warrant the conviction of accused.”<sup>21</sup>

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<sup>17</sup>*State of Orissa v. State of U.P.*, (1988) AIR SC 14

<sup>18</sup>Overview of Evidence (Jones and Barletta Publishers) LLC <<http://samples.jbpub.com/9780763766610/CH01.pdf>> accessed 20 September 2015

<sup>19</sup>West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc. (Latin, Thebody of thecrime.) *Thefoundation or materialsubstance of a crime.*Thephrasecorpusedeficitmight be used to mean thephysicalobjectupon which the crimewas committed, such as a dead body or the charred remains of a house, or it might signify the act itself, that is, the murder or arson. The *corpusedelicti* is also used to describe the evidence that proves that a crime has been committed

<sup>20</sup>*Kamal v. Nandlal*, (1929) A.I.R. Cal 37

<sup>21</sup>*In K.M. Shelka v. State of Maharashtra*, (1953) A.I.R. SC 2474

In cases in which the evidence is purely of a circumstantial nature, two conditions must be satisfied before conviction on such evidence can be sustained,<sup>22</sup> Firstly, the facts and circumstances from which the conclusion of guilt is sought to be drawn must be fully established beyond any reasonable doubt, and Secondly, the established facts and circumstances should not only be consistent with the guilt of the accused, but they should further be of such a conclusive nature as to exclude every hypothesis except that of his guilt. In another case,<sup>23</sup> it has further been established that before convicting an accused for an offence, on circumstantial evidence only, all other possibility except this that the accused committed the crime, must have been ruled out. It has been held in a case,<sup>24</sup> that evidentiary value or weight has to be attached to such statement, must necessarily depend on the facts and circumstances of each particular case. As pointed out by Fazal Ali, J,<sup>25</sup> in most cases it will be difficult to get direct evidence of the agreement, but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.

The well-known rule governing circumstantial evidence is that each and every incriminating circumstance must be clearly established by reliable evidence and "the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible."<sup>26</sup> Similarly in the famous case<sup>27</sup> Court held that circumstantial evidence can be a sole basis for conviction provided the conditions as stated below is fully satisfied. Condition is: (a) the circumstances from which guilt is established must be fully proved; (b) That all the facts must be consistent with the hypothesis of the guilt of the accused; (c) That the circumstances must be of a conclusive nature and tendency; (d) That the circumstances should, to a moral certainty actually exclude every hypothesis except the one proposed to be proved.

Admissibility of circumstantial evidence: So far as admissibility is concerned direct and circumstantial both stand on the same footing. Chief Justice Gibson of Pennsylvania observed in a case, "Circumstantial evidence is, in the abstract, nearly, though perhaps not altogether, as strong as positive evidence, in the concrete. It may be infinitely stranger. A fact is positively sworn to by a single eye-witness of blemished character is not as satisfactorily proved as is a fact which in the necessary consequence of a chain of other facts sworn to by many witnesses of undoubted credibility." Circumstantial evidence has got its own advantages. Men may speak lie, circumstances, if reasonably inferred, will not.

**Evidentiary value of Hearsay Evidence:** Attorneys and legal scholars can spend a lifetime analyzing about the Hearsay Rule. Seasoned practitioners know the hearsay rule as an overrated evidentiary restriction. At its heart, hearsay evidence is an out-of-court declaration or statement, with the person who uttered it being called the "Declarant," unavailable to question or examine.<sup>28</sup> Fundamentally, hearsay evidence at common law is generally inadmissible. However, this hearsay rule has now been virtually abolished for civil proceedings by the Civil Evidence Act 1995, and at present, there are many statutory exceptions in criminal cases.<sup>29</sup> There may exist some exceptional circumstances in where no direct evidence is available and the parties or the court, have to depend on indirect or hearsay evidence in deciding the case. And if the hearsay evidence is of such kind, which on the basis of human nature and experience, may throw same light on the fact in issue or any relevant fact, and also on the experience, it may be considered reliable and trustworthy.<sup>30</sup> The grounds for the admissibility of hearsay evidence are necessity. Hearsay evidence is admitted because justice demands it. They are important and necessary in a given case, for the decision of the case. Hearsay evidence made admissible by the Act is not admissible in each and every case. They have been made admissible because of the special circumstances in which they have been made and the circumstances are such that to a greater extent they may be considered

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<sup>22</sup>*Hanumant Govind Naragundkor v. state of Madhya Pradesh*, (1952) A.I.R SC 343)

<sup>23</sup>*Ram Bharosey v. State of Uttar Pradesh*, (1954) AIR. SC 704

<sup>24</sup>*Ramawati Devi vs. State of Bihar*, (1983) AIR SC 164

<sup>25</sup>*V.C. Shukla v. State*, (1980) AIR 962

<sup>26</sup>*Wadhwa, J. in Nalini's case*, 348 U.S. 121, 75 S. Ct. 127, 99 L. Ed. 150 (1954)

<sup>27</sup>*Bodh Raj v. State of Jammu & Kashmir*, (2000) Appeal (crl.) 921

<sup>28</sup>How the Sixth Amendment's confrontation clause entangles itself in hearsay problems is keenly critiqued in Ellen Liang Yee, *Confronting the "Ongoing Emergency": A Pragmatic Approach to Hearsay Evidence in the Context of the Sixth Amendment*, 35 FLA. ST. U. L. REV. 729 (2008)

<sup>29</sup>Criminal Justice Act 1988, S. 23

<sup>30</sup>For example, a person may be wounded in a lonely place, not seen by any person, and the injuries are so serious that the man is at the verge of his death. He is admitted in the hospital. Human experience teaches us that a man nearing death never speaks lie, barring exceptional cases. He gave out the name of assailants and the circumstances in which he was injured. Whether the statement was given to the doctor or the Magistrate is immaterial. Now the man dies after making the statement which, in law, is known as dying declaration. At the trial of the assailants named by the deceased, there is no other evidence than the dying declaration, which is hearsay evidence and is admissible under this section.

reliable and trustworthy; and because no better evidence of the fact, made admissible under the Act, may be available.<sup>31</sup>

**Evidentiary Value of Dying Declaration as an Exception to Hearsay Evidence:** It is settled law that it is not safe to convict an accused person merely on the evidence furnished by a dying declaration,<sup>32</sup> without further corroboration, because such a statement is not made on oath, and is not subject to cross-examination, and because the maker of such a statement might be mentally and physically in a state of confusion and might well be drawing upon his imagination when he was making the declaration. It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction Unless it is corroborated because each case must be determined on its own facts, keeping in view the circumstances in which the dying declaration was made and it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence. A dying declaration stands on the same footing as any other piece of evidence, and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence.

The first information report is a matter of special importance when its maker died shortly after he made it. The FIR is clearly admissible in evidence. This may also be treated as a dying declaration in view of the fact that victim himself dictated the Ejarah at a time when his condition was really critical.<sup>33</sup> When a dying declaration of the victim is stated by the witnesses and the declaration is not taken exactly in the own words of the deceased, but is merely a note of the substance of what had stated, it cannot be safely accepted as a sufficient basis for conviction.<sup>34</sup> A dying declaration enjoins almost a sacrosanct status as a piece of evidence as it comes from the mouth of a person who is about to die and at that stage he is not likely to make a false statement. Court's duty is to scrutinize the statement and to separate grain from the chaff of the said statement.<sup>35</sup> If the dying declaration is acceptable as true conviction can be based upon the dying declaration alone in the absence of corroborative evidence on record.<sup>36</sup> The statement of a person surviving serious injuries is not a dying declaration and therefore not relevant under section 32.<sup>37</sup>

A dying declaration although a piece of substantive evidence has always been viewed with some degree of caution as the matter is not liable to cross-examination. It stands on the same footing as any other piece of evidence and has to be judged in the light of surrounding circumstances and common human experience. When there is a record of such statement of the deceased the court has to satisfy itself, in the first place, as to the genuineness of the same keeping in view all the evidence and circumstances in which the statement of the deceased was said to have been recorded. The alleged dying declaration, the only piece of evidence against the appellant, having not been free from reasonable doubt, the accused is entitled to the benefit of doubt.<sup>38</sup>

Dying declaration-Statement of a person about the cause of his death of circumstances leading to his death is substantive evidence under section 32(1) of the Evidence Act-If found to be reliable, then it may by itself be basis of conviction even without corroboration. Statement failing under section 32(1) of the Evidence Act is called a "dying declaration" in ordinary parlance-A dying declaration may be recorded by any person who is available and it may be written or it may be verbal or it may be indicated by signs and gestures in answer to questions even-There is no requirement of law that a dying declaration should be recorded by a Magistrate as in the case of the confessional statement of an accused under section 164(3) CrPC.<sup>39</sup>

**Probative Value of Relevancy of Certain Evidence for Proving, in Subsequent Preceding the Truth of Facts therein stated as an Exception to Hearsay Evidence:** The general rule is that all depositions must be given on oath and the witness must be brought before the court to test him by the weapon of the cross-examination. But once these two have been satisfied in case of a witness, the statement of that witness may be carried to another proceeding or in the same proceeding at a later stage, if necessity in a given case demands so. section 33 of evidence act 1872, provides the conditions under which a deposition may be relevant and admissible in another proceeding or at a later stage of the same proceeding if in the subsequent proceeding parties are the same, issues are the same and the parties had a right and opportunity to cross-examine the

<sup>31</sup>NitishBiswas, *Esey Understanding Evidence Act, 1872*, 1<sup>st</sup>edn, hira Publications, p 120-121

<sup>32</sup>Evidence Act 1872,S. 32; when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question is called dying declaration

<sup>33</sup>*State V. Rashid Ahmed &others*(2002) 54 DLR, HCD 333.

<sup>34</sup>*State V. KabelMollah&ors*(2003)55 DLR, HCD, 108

<sup>35</sup>*Babul Sikder&ors. Vs. State represented by the DC*(2004), 56 DLR, HCD 174

<sup>36</sup>*State Vs. Abdul Hatem* (2004) 56 DLR, AD 431

<sup>37</sup>*Subban Khan Vs. The State* (1960) PLD, Lah. 1

<sup>38</sup>*ShamsurRahman V. The State*(1990)42 DLR (AD) 200

<sup>39</sup>*Nurjahan Begum V. The State*(1989) 42 DLR (AD) 130

witness in the previous suit. The provision of this section should be applied in rare and extreme cases and with great caution. The previous statement of a witness is admissible under this section when the witness is dead, or when the witness cannot be found, or when the witness is incapable of giving evidence, or when the witness is kept out of the way by the adverse party, or when the witness's presence cannot be obtained without an amount of delay or expense, under the circumstances of the case, the court considers unreasonable.<sup>40</sup> As the investigating officer was examined-in-chief and he died but the defense got an opportunity to cross-examine him but they took adjournment for which the evidence given by him can be accepted under section 33 of the Evidence Act and non-examination of the Investigation Officer will not vitiate the trial.<sup>41</sup> Previous deposition of a witness can be tendered in evidence in a subsequent proceeding between the same parties when the other party had an opportunity of cross-examining him when such witness could not be produced in circumstances stated in section 33.<sup>42</sup>

**Admission against Interest:** Another example expressly exempted from the exclusionary aspects of the hearsay rule is an admission by a party opponent. The definition of an admission is: The statement is offered against a party and is the party's own statement, in either an individual or representative capacity or a statement of which the party has manifested an adoption or believe in its truth, or a statement by a person authorized by the party to make a statement concerning the subject, or a statement by the party's agent....<sup>43</sup> The general principle behind the admission exception is that making statements against one's own interest, something that casts the declarant in a negative light, does not occur naturally or with contrivance. If a person says "I am responsible for what happened," the adverse comment is likely not a fabrication. It would be rare for parties to impute culpability by such statements unless true.

**Excited Utterances:** When individuals witness startling events, catastrophes, and circumstances rife with tension and emotion, the declarations are deemed trustworthy. The spontaneity and unpredictability of the Event gives rise to honest reactions rather than deceit. In spontaneous circumstances, people rarely utter untrue statements because the mind lacks the time and space to invent or create the falsehood.<sup>44</sup> An excited utterance is admissible if the following elements exist: A startling occurrence sufficient to produce stress or excitement in persons of ordinary sensibilities. The declarant was present at the Occurrence, and the utterance came very soon thereafter. The startling occurrence is the subject of the remark. The declarant need not be available to testify.<sup>45</sup> In a prosecution for sexual assault arising out of the defendant's assault on a four-year-old boy, the court properly allowed the child's mother, physician, and the responding police officer to testify as to statements made to each by the child, pursuant to the excited utterance exception to the hearsay rule. These statements were allowed even though they were made on the morning after the alleged assault occurred due to the severity of the trauma.<sup>46</sup> While contemporaneous reaction is the general rule, events and conditions can be assessed for a longer term depending upon the severity and seriousness of the circumstances.

**Evidentiary Value of Confessional Statement:** A confession is received in evidence on the presumption that no person will voluntarily make a statement which is against his or her interest, unless it be true.<sup>47</sup> Therefore, when prosecution demands conviction of an accused primarily on the basis of his or her confession, the court must apply two tests: (a) whether the confession is perfectly voluntary, and (b) if so, whether it is true and trustworthy. Satisfaction of the first test is *sine qua non* for its admissibility in evidence and if the circumstances of the case throw any doubt on its voluntary nature the confession must always be rejected.<sup>48</sup> A voluntary confession means a confession not caused by inducement, threat or promise and does not mean a confession. If the confession is shown to be made in consequence of inducement, threat or promise, it is inadmissible in evidence.<sup>49</sup> As to the second test, for determining whether the confession is true the court must

<sup>40</sup>Supra Note 23, pp. 139-140

<sup>41</sup>AbdurRahmanV. The State, 1 BLC 215

<sup>42</sup>Salauddin V. The State (1980) 32 DLR 227

<sup>43</sup>Federal Rules of Evidence, Section 801(d) (2) as cited in Overview of Evidence, Jones and Barletta Publishers LLC<<http://samples.jbpub.com/9780763766610/CH01.pdf>> accessed 20 September 2015

<sup>44</sup>A 1992 U.S. Supreme Court decision reaffirmed the traditional rationale for this hearsay exception. We note first that the evidentiary rationale for permitting hearsay testimony regarding spontaneous declarations and statements made in the course of receiving medical care is that such out-of-court declarations are made in contexts that provide substantial guarantees of their trustworthiness. But those same factors that contribute to the statements' reliability cannot be recaptured even by later in-court testimony. A statement that has been offered in a moment of excitement without the opportunity to reflect on the consequences of one's exclamation—may justifiably carry more weight with a trier of fact than a similar statement offered in the relative calm of the courtroom. *White v. Illinois*, 502 U.S. 346, 355–56 (1992) (footnote omitted). *People v. Ortega*, 672 P.2d 215 (Colo. App. 1983).

<sup>45</sup>Kenneth s. Broun, mccormick on evidence§ 272, at 260–61 (6th ed. 2006).

<sup>46</sup>*People v. Ortega*, 672 p.2d 215 (colo.App. 1983). See also 2am. Jur. Trials53(supp. 1993)

<sup>47</sup>*Moslemuddin v. state*, (1996) 48 DLR 588

<sup>48</sup>Dr. Sarkar Ali Akkas, *Law of criminal procedure*, 2<sup>nd</sup> revised end, AnkurPrakashani, P 86

<sup>49</sup>Evidence Act 1872, Section 24

carefully examine its contents and must than compare them with the other evidence and apply to them the test of probability. If the court finds that the material statement in the confession is inconsistent with the evidence of eye witness, it must be held that the prosecution has failed to prove that the confession is true and it must be put aside<sup>50</sup>Conviction of an accused solely based on confession is valid if true and voluntary, conviction of an accused solely based on the confession of his co-accused not valid.<sup>51</sup>Confession must admit in terms of the offence or substantially all facts constituting the offence, Exculpatory statement is nor confession.<sup>52</sup>The confessional statement even if found to have been true and voluntary it could not have treated to be a basis of conviction of co accused being lacking of corroboration of the said in any manner<sup>53</sup>

Confession can form the sole basis of conviction against its maker on the conditions that it is true and voluntary; it fits in the circumstances of the particular case which may at least create an impression that it is true and it either admit in terms of the offence or at any rate substantially all the facts which constitute the offence. There is no compulsion that a true and voluntary confession needs to be materially corroborated for using it against its maker.<sup>54</sup> However when the confession found to be voluntary and also corroborated by other evidence, the accused cannot be acquitted.<sup>55</sup> If a confession inculpatory in nature, true and voluntary, it can be sole basis for conviction of the maker of the confession, no matter whether it is retracted or not.<sup>56</sup> In a case<sup>57</sup> the appellate division of the Supreme Court held that a confessional statement even if it is partly true or partly false or in other words does not disclose the true picture, can be used against the maker and there is no legal bar in upholding the conviction on the basis of confession. Similarly in another case<sup>58</sup> it was held by the high court division that part of the confessional statement found true may be accepted by the court to convict the accused rejecting the other part which is not true. There is no merit in the contention that when one part of the confessional statement is rejected, the other, even if true, cannot be accepted. Although the weight of the confessions made by the accused may be regarded as great against the parties making them, they must be accepted with great caution against the co accused whom they implicate unless there is corroboration from an independent source would make it safe to act upon the confession. The confession of one co accused cannot be said to be corroborated by the confessions of another co accused.<sup>59</sup>It is general principle that a confession should be accepted or rejected as a whole but in certain facts and circumstances, the inculpatory part may be accepted if the exculpatory part found to be false or basically improvable regards being had to reason and humane conduct.<sup>60</sup> In another case the accused admitted in his statement that he was in charge of the Godown but denied that the contraband was discovered from it and contended that it was found from outside the Godown. The court accepted the former part of his statement, but rejected the latter part in its view of the fact the prosecution had proved beyond reasonable doubt.<sup>61</sup>When a statement is partly exculpatory and partly inculpatory, the court will usually accept inculpatory part and reject exculpatory part and exculpatory statement denying the guilt are not confessions.

**Evidentiary Value of Statement:** A statement made under law<sup>62</sup> is admissible and may be used to corroborate or contradict a statement made in the court in the manner provided by ss 145<sup>63</sup> and 157<sup>64</sup> of the evidence act 1872. A Statement of a witness obtained under s 164 of CrPC. always raises suspicion that it has not been voluntarily made. Such statement can be used against its maker if it is found to be true, voluntary and inculpatory in nature, but it cannot be used any other co accused without any corroborative evidence and circumstances.<sup>65</sup> A statement made by a mere witness and not by an accused by way of confession under s 164 CrPC can never be used as a substantive piece of evidence to substantiate the prosecution case as to the

<sup>50</sup>*Sarwansingh v. State of Punjab*(1957) SCJ 699, See also M Monir, Principles and digest of the law of evidence (H S Ursekar edited, the university book agency, allahabad, 2<sup>nd</sup>edn, 1984), p 24

<sup>51</sup>*Abdur Rashid v. The State* (1983) BLD 20

<sup>52</sup>*Abdul Jalil v. The State* (1985) BLD 137

<sup>53</sup>*NurulIslam v. state*, (2008) 28 BLD 114,120

<sup>54</sup>*State v. Shafique* (1991) 43 DLR(AD) 203

<sup>55</sup>*State of Gujrat v. Sabaniya dos Mohammad*, (1980) 21 CLR 587

<sup>56</sup>*Goaur Chandra pal v. State*, (2007) 59 DLR, HD 17, 23

<sup>57</sup>*Hazrat Ali v. state*, (1991) 11 BLD (AD) 270

<sup>58</sup>*State v. AfazudinSikder*, (1998) 50 DLR 212

<sup>59</sup>*Ranakariappa v. Emperor*, (1929) AIR (Bom) 327; *State v. Tajulislam*, (1996) 48 DLR 305, 323

<sup>60</sup>*State v. LaluMiah* (1997) 39 DLR (AD) 117

<sup>61</sup>*Vijendrajit v. State of Bombay*, (1953)SCJ 330

<sup>62</sup> Code of Criminal Procedure 1898, Section 164

<sup>63</sup> A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him

<sup>64</sup> In order to corroborate the testimony of a witness, any former statement made by such witness relating the same fact or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

<sup>65</sup>*ZakirHossain v. State*, (2003), 55 DLR 137, 145

complicity of accused in the alleged offence.<sup>66</sup> In a case it held<sup>67</sup> that trial court convicted the accused on the basis of statement of witnesses. The High Court Division held that the trial court misdirected itself when it had convicted appellant on the basis of statement of witnesses made under s 164 CrPC by treating them as confessional statement. Similarly, in another case<sup>68</sup> it was found that the trial court convicted the accused only on the basis of statement made under s 164 of CrPC by the victim. The High Court Division held that the Judge committed error of law in distinguishing the statement of witness recorded under s 164 and confessional statement of an accused recorded under s 164. Another case<sup>69</sup> the High Court Division observed that the trial court on repeated occasions used the expression *shikarokti* (confession) of a statement of a witness under s 164 CrPC and was totally confused with the expression confession and statement used in s 164. The court held that a statement which is not a confession cannot be used as a confession and such a statement can never be used to support or challenge the evidence given in court by the witness who made the statement.

**Evidentiary Value of Examination of the Accused under Section 342:** According to law<sup>70</sup> the court to examine the accused after the evidence for prosecution has been taken. The object of examination of the accused under s 342 of CrPC is to give the accused an opportunity of explaining any circumstances which may lead to incriminate him or her and thus to enable the court, in cases where the accused is undefended, to examine the witnesses in his or her interest.<sup>71</sup> In a case<sup>72</sup> The High Court Division held that the examination of the accused person under section 342 of CrPC is not a mere formality and it is fundamental principle of law that the attention of the accused person must be drawn to the evidence on record in a precise manner. In another case<sup>73</sup> THE High Court Division held that the accused appellant were not given any chance to explain any circumstances against them. The court observed that it is an established principle of law that an examination of an accused under s 342 is not an idle formality and for that reason, it has to be carried out carefully in the interest of justice and fair play to the accused. In a case<sup>74</sup> S 342 is mainly give benefit to the accused as well as benefit to the court in reaching final decision and the provision engrafted in this section is intended to comply with the most salutary principles of natural justice enshrined in the maxim *audi altarem partem*.<sup>75</sup>

**Evidentiary Value of the Deposition of Medical Witness:** The deposition of civil surgeon or other medical witnesses, taken and attested by a Magistrate in the presence of the accused, or taken on commission, may be given in any inquiry, trial or other proceeding, although deponent is not called as witness.<sup>76</sup> When the civil surgeon or any other medical officer is summoned as a witness he or she must be examined as other witness.<sup>77</sup>

**Evidentiary Value of the Report of Post Mortem Examination:** The evidence of the civil surgeon or other medical officer who prepared post mortem report is material; justice requires that he or she should be examined at the trial in the presence of the accused. However, S 509A CrPC provides an exception to this requirement of law. Under this section, where in any inquiry, trial or other proceeding before a court the report of a post mortem examination is required to be used as evidence, such report may be used as such without examining the civil surgeon or other medical officer if the following requirements are fulfilled: The civil surgeon or other medical officer who made the report is dead, incapable of giving evidence or he or she is beyond the limits of Bangladesh and his or her attendance cannot be without an amount of delay, expense or in convinces which, under the circumstance of the case, without would unreasonable.<sup>78</sup>

**Evidentiary Value of First Information Report:** First Information Report is not in the nature of a formal charge. It is an important public document and may be put in evidence to support or contradict the evidence of the person who gave the information, but it cannot be used as substantive evidence. The investigation under this Chapter proceeds on the first information.<sup>79</sup>

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<sup>66</sup>*Toyezuddin Pramanik v. State*, (1981) 1 BLD 433

<sup>67</sup>*Muslim v. State*, (1995) 47 DLR 185

<sup>68</sup>*Hobi Sheikh v. State*, (2004) 56 DLR 383, 387.

<sup>69</sup>*State v. Nazrul Islam*, (2005) 57 DLR 289, 297

<sup>70</sup>Code of Criminal Procedure 1898, Section 342

<sup>71</sup>Select committee's report on the bill of the Criminal Procedure Code 1882 (act x of 1882)

<sup>72</sup>*State v. Kabel Molla*, (2003) 55 DLR 108

<sup>73</sup>*Shahid Mia v. State*, (2008) 28 BLD (HCD) 236, 243

<sup>74</sup>*Mahbubuddin Ahmed v. State*, (2005) 57 DLR 513

<sup>75</sup>*Ibid*, P544

<sup>76</sup>Code of Criminal Procedure 1898, Section 509A

<sup>77</sup>*Fazar v. Crown*, (1952) 4 DLR 99

<sup>78</sup>Code of Criminal Procedure, Section 509A

<sup>79</sup>*Belayet Hossain, The Code of Criminal Procedure*, 1898; 1<sup>st</sup>edn, Hira Publication, p 178

**Probative Value of Reports of Chemical Examiner, Serologist, etc.:** Any document purporting to be a report under the hand of any chemical examiner or assistant chemical examiner to Government or any serologist, handwriting expert, finger print expert or fire arm expert appointed by the government, upon any matter or thing duly submitted to him or her for examination or analysis and report in the course of any proceeding before a criminal court, may, without calling him or her as a witness, be used as evidence in any inquiry, trial or other proceeding.<sup>80</sup>

**Value of Evidence of Formal Character on Affidavit:** The evidence of any person whose evidence is of a formal character may be given by affidavit, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceeding before a court. The court may in its discretion summon and examine such person, but it will do so if either prosecution or the accused desires it by an application.<sup>81</sup>

**Evidentiary Value of Record of Evidence when Offender Unknown:** Record of Evidence when offender unknown. If it appears that an offence punishable with death or transportation has been committed by some person or persons unknown, the High Court Division may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence. Any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of Bangladesh.<sup>82</sup>

**Evidentiary Value of Examination of Witness by Police Officer:** when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall on the request of the accused, refer to such writing and direct that the accused be furnished with a copy thereof, in order that any part of such statement. If duly proved, may be used to contradict such witness in the manner provided by section 145 of the Evidence Act, 1872 (I of 1872). When any part of such statement is so used, any part thereof may also be used in the re-examination such witness.<sup>83</sup>

**Evidentiary Value Diary of Proceedings in Investigation:** Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police-officer who made them, to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of the Evidence Act, 1872, section 161 or section 145, as the case may be, shall apply.<sup>84</sup>

**The Value of Expert Evidence:** In every case the court will decide about the competency of the expert witness. It is not necessary that if evidence of an expert has been accepted in one case, it should be accepted in other cases also. How much reliance should be placed on the expert evidence, the court will decide from the facts and circumstance of the particular case. The expert evidence should be taken very cautiously.

Testimony of expert is usually considered to be of slight value, since they may be, though perhaps unwittingly, biased in favor of the side which calls them. It is indeed unsafe to base a conviction on the uncorroborated opinion of any expert.<sup>85</sup>

The evidence of an expert cannot alone be treated and used to form basis to find an accused guilty and to form basis of his conviction independent of the substantive evidence of the PWs in the case.<sup>86</sup> Where the direct evidence is not supported by expert evidence, and evidence is wanting in the most material part of prosecution cast it would be difficult to convict the accused on the basis of such evidence.<sup>87</sup> Post Mortem Report is document which by itself is not substantive evidence. A Doctor's statement in Court has the credibility of a substantive evidence and not report. In a similar vein Inquest Report, also, cannot be termed to be basic or substantive evidence being prepared by police personnel, a non-medical man, at the earliest stage of the proceeding. Medical evidence of Doctor, the PW 5 supported by trustworthy evidence of the PWs 1, 2 and 3 is sufficient proof that head injury was the cause of death of the wife of the condemned prisoner.<sup>88</sup> Court will certainly consider the expert's opinion but it is the court which alone will come to its own conclusion regarding

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<sup>80</sup>Code of Criminal Procedure 1898, Section 510

<sup>81</sup>*Ibid*, Section 510a

<sup>82</sup>*Ibid*, Section 512(2)

<sup>83</sup>*Ibid*, Section 162

<sup>84</sup>*Ibid*, Section 172

<sup>85</sup>*Emperor v. RamraoMangesh*, (1932) 34 BOMLR 598

<sup>86</sup>*Kalu Sheikh alias Kalam Sheikh and others v. State* (2002) 54 DLR 502

<sup>87</sup>*NepoleonKhondker alias Lepu and another v. State*, (2002) 54 DLR 386

<sup>88</sup>*The State Vs. AinulHaque*, 9 BLC 529

the matter on which the expert gives opinion- That is why such expert's opinion is always received with great caution. Handwriting expert's opinion must be considered along with other evidence-where independent witness could have attested the execution, the bringing of only the plaintiff's relations raised reasonable doubt not only about the execution and passing of consideration but also about the contract as a whole.<sup>89</sup>

**Documentary Evidence:** Whenever something is contained in a document, it can be proved only either by the primary or where allowed, by the secondary evidence. Documentary evidence means all documents produced for the inspection of court.<sup>90</sup> Any form of writing or recording is a document, and regardless of whether it's public or private, it may be admitted into evidence if it meets the same standards as oral testimony (relevancy, competency, and materiality), but in addition, a foundation must be laid for the introduction of documentary evidence. Meeting the requirements for authentication and the best evidence rule are two tests that relate primarily to documentary evidence. The authentication requirement is usually met by providing preliminary proof of genuineness, authenticity, or identity.

The best evidence rule is to produce the original and secondary evidence is not admissible unless is proved to be lost, etc, as required under act.<sup>91</sup> Marshall Huts in his book the Rule of Evidence states that in majority of the states in the united states of America the rule is that if the best evidence is not obtainable, the next best evidence, viz, a copy and then in its absence oral evidence may be given in that order. In India if there is no other method allowed by law for proving the content of a document except by the primary or the secondary evidence.<sup>92</sup>

Lord Esher observed<sup>93</sup> says that Primary evidence is evidence which the law requires to be given first; secondary evidence is evidence which may be given in the absence of that better evidence. Section 61 like section 59 of evidence act 1872, must be read subject to sections 64 and 65 of evidence act. The result is that the content of a document must be proved by primary evidence unless secondary evidence becomes admissible for any of the reasons mentioned in section 65 of the same act in which case such contents may be proved by secondary evidence. The principle behind the admissibility of the secondary evidence is explained by Jessel, M.R.,<sup>94</sup> that the whole theory of secondary evidence depends upon this, that the primary evidence is lost and that it is against justice that the accident of the loss should deprive a man of the rights to which he would otherwise be entitled.

#### IV. Limitation Of Evidence

**Relevant and Material yet Inadmissible Evidence:** Relevant and material evidence may never see the inside of a courtroom<sup>95</sup> If the evidence is relevant to a particular fact but is highly prejudicial and inflammatory, its admission will be denied. Federal Rule of Evidence 403 sets out the standard dilemma: Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.<sup>96</sup> There is no shortage of examples that typify the prejudicial potency of evidence: gruesome photographs, biased witnesses, compensated expert witnesses and witnesses granted total immunity, to name a few. As for confusion, various forms of novel, scientific evidence can often confuse the court and jury more than aid in its deliberation. If a scientific discipline has scant academic support or is too advent grade, admission is unlikely despite its inherent relevance.<sup>97</sup>

**Limitations on Legal Relevancy and Admissibility:** Legal relevancy and admissibility do not mean same thing. They are not synonymous terms. Admissibility means receivability in evidence. All legally relevant facts are not admissible in evidence, e.g., communication during marriage which under section 122, evidence act 1872<sup>98</sup> or between a client and his legal adviser which under section 129 of evidence act 1872<sup>99</sup> may be facts in issue or relevant facts but they are inadmissible on grounds of public policy. Similarly all admissible facts are

<sup>89</sup>*Eklas Khan and others v. Poresh Chandra Das and others*, 6 BSCD 185

<sup>90</sup> Evidence Act 1872, Section 3

<sup>91</sup> Evidence Act 1872, Section 65

<sup>92</sup>*Ramprasad v. Raghunandad Prasad* (1885) 7 All 138, 143

<sup>93</sup>*Lucas v. Williams*, 1892(2) QB116

<sup>94</sup>*Sugdenv. Leonards* (1876) PD 154.

<sup>95</sup>Paul Rothstein, *Teaching Evidence*, 50 ST. LOUIS L.J. 999 (2006).

<sup>96</sup>Federal Rules of Evidence, Section 403

<sup>97</sup>Indeed, the polygraph continues to befuddle its proponents as it is locked out of courtrooms. The decision to ban polygraph results is based on continuing disagreement about the accuracy of the polygraph technique. *United States v. Scheffer*, 896 F.2d 842 (4th Cir. 1990).

<sup>98</sup>No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

<sup>99</sup>No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal profession adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no other.

not relevant, e.g., previous statements which are proved under section 157<sup>100</sup> of evidence act 1872 or 155<sup>101</sup> of evidence act 1872, to corroborate or contradict a witness are admissible but are not declared to be relevant as per the evidence act 1872. public policy, consideration of fairness, the particular necessity for reaching speedy decisions-these and similar reasons cause constantly the necessary rejection of much evidence entirely relevant.<sup>102</sup>

**Limitation on Confession:** A confession is a kind of admission, it is as such relevant, but under certain circumstances is declared to be irrelevant, as under section 24 of Evidence Act 1872, when it is caused by inducement, threat or promise.<sup>103</sup>

**Limitation on Hearsay Rule:** In other words, hearsay is evidence of a statement that was made other than by a witness while testifying at the hearing in question and that is offered to prove the truth of the matter stated.<sup>104</sup> According to the principle of law of evidence that statement must not be taken as admissible.

**Limitation on an Admission:** According to the provision of evidence act<sup>105</sup>, in civil cases when a party to the suit has written or admitted any liability with a view to compromise or to end the litigation, such admissions are not relevant and cannot be proved against the maker of the admission.<sup>106</sup>

**Limitation on the Character Evidence:** In civil cases character of a party to a suit is irrelevant and inadmissible.<sup>107</sup> The reason is that court has to try the case on the basis of its own facts for the purpose of determining whether the defendant should be liable or not. If evidence of character is relevant, then it will not only prolong the proceeding but will also unnecessary prejudice the mind of the judge one way or other.<sup>108</sup> Character evidence is excluded generally on the grounds of public policy and fairness, since its admission would surprise and prejudice the parties by taking up the whole of their careers as they would not possible come into court prepared to defend. The general character is not in issue. The business of the court is to try the case and not the man. A very bad man may have a very righteous cause.<sup>109</sup> In criminal proceedings the fact that the accused person has a bad character is irrelevant<sup>110</sup> Evidence of bad character of accused persons is not admissible in evidence in view of the provisions of section 54 of the Evidence Act.

**Limitation Based on Medicine:** Some physicians view EBM (evidence-based medicine) measures as a form of “cookbook medicine” that discounts and interferes with individual physicians’ medical judgment.<sup>111</sup> Physician resistance also stems from the concern that some EBM measures rely on inadequate and occasionally contradictory information.<sup>112</sup> The practical limitations of EBM (evidence-based medicine) include “obstacles to the development, dissemination, and incorporation of medical evidence”.<sup>113</sup>

## V. Recommendations

Since function of the law of evidence is to convince the court as to the existence of that state of facts which according to the provisions of substantive law would establish the existence of the right or liability alleged by the parties of litigation. For fair and impartial disposal of ligation and to evaluate the evidence appropriately the following recommendations are made: Advocate must consider the order of proof, not only in the light of the laws and legal principles but also according to the standard or quantum of proof required in a particular case,

<sup>100</sup>In order to corroborate the testimony of a witness, any former statement made by such witness relating the same fact or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

<sup>101</sup>The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:  
(1) By the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit.

(2) By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence.

(3) by proof of former statement inconsistent with any part of his evidence which is liable to be contradicted;

(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally

<sup>102</sup> Justice M. Monir, *Law of evidence (short edition)*, 6<sup>th</sup> edn, p 252

<sup>103</sup> *Ibid*, P 156

<sup>104</sup> FindLaw, “Hearsay” Evidence, <<http://criminal.findlaw.com/criminal-procedure/hearsay-evidence.html>> accessed 20 September 2015

<sup>105</sup> Evidence Act 1872, Section 23

<sup>106</sup> *Supra* Note 30, P 93

<sup>107</sup> *Ibid*, section 52

<sup>108</sup> *Attorney general v. bowman* (1791), 2 Bos.&p 532

<sup>109</sup> *Queen v. Rowton*, (1865) 34 LJ (MC) 57

<sup>110</sup> Evidence Act 1872, Section 54

<sup>111</sup> HasnainWynia R. Is evidence-based medicine patient-centered and is patient-centered care evidence based, *Health Servs.* 2006;41(1):1-8

<sup>112</sup> *Ibid*

<sup>113</sup> *Ibid*

and the rules determining which party has the affirmative of the issues, and that will assist to sort out the actual values of evidence.

1. Legal scholars and practitioners in determining the measurability of beyond a reasonable doubt and preponderance of probabilities, of a criminal or a civil case are best left to discretionary principles rather than rigid fixations. This will pave the way to evaluate the evidence appropriately.
2. Although it is settled principle that once the presumption has been factually and legally established, its existence is assured unless the opposing party attacks and rebuts its integrity, but it will be prudent course to the legal practitioners and judges to be prepared with evidence rather than to rely on a presumption, except where proved impossible to attain, and that will support them accomplish something the evidentiary value of evidence.
3. At the core of evidentiary scrutiny, courts and legal practitioners should evaluate the quality of evidence positively or negatively, accepting or rejecting it either totally or partially, and assessing its overall relevance. To prove this point, they must examine the influence of testimonial evidence.
4. In determining weight of evidence judges should rely upon the competent evidence<sup>114</sup> and only competent evidence is worthy of their evaluation.
5. The recommendation of law commission for changing in burden of proof in cases of torture on persons in police custody, which give power the court to draw a presumption (may presumption) where bodily injuries are caused to a person while in police custody should be implemented immediately, as it give a hand the court to draw reasonable conclusion of the cases.
6. The concept of Physical Evidence should be implemented immediately for fair and impartial disposal of cases.
7. To ensure the ends of justice the best evidence<sup>115</sup> must be given.
8. Limitations imposed as the law of evidence is not applicable in International Crime Tribunal to conclude the trial procedure of war criminals. If we can free the limitation the case may be proved without any shadow of doubt.
9. If court finds out that the witness is a false one. Court can ensure a provision and the false witness may be punished by the competent court to ensure the flexibility of Evidence.
10. The electronic records<sup>116</sup> should be included in definition of evidence that will become helpful to facilitate electronic communication by means of reliable electronic device.

## **VI. Conclusion**

Logical set of laws of evidence are indispensable to meet the fair and impartial administration of justice because the evidence plays its part in satisfying the court about the existence or non-existence of the right. It is the evidence before the court on which the court shall stand its verdict. So evidence is the mode to prove the existence of right. Evidence is crucial in judicial, quasi-judicial and administrative purpose. It helps to reach in a fair and rational decision in certain point of dispute, and a decision without any evidence or with improper evidence means arbitrariness and miscarriage of justice. Generally Evidence plays its active role in the trial stage. When the witnesses come before the court, and they will give direct evidence by way of examination in chief and their credibility or veracity will be tested by way of cross-examination. So excellent knowledge of the law of evidence is as vital to a successful lawyer as the knowledge of structural engineering is to the architect or the science of navigation is to the captain of a ship. It is a common experience in a court of law that a good case has failed because of a lack of adequate and necessary knowledge of evidence on the part of lawyer entrusted with the conduct of the case. How much value should be imposed upon evidence depends on the type of case or nature of the case or suit, Proposition being advocated. An evidentiary value of evidence is an affair of courts, giving some evidence more emphasis than others. From one extreme, where no value is attached to evidence, and the evidence is stricken or excluded from trial, to the other end of the evidentiary spectrum, it is basically how much something is worth. In the general scheme of things, only best evidence is entitled to more value than others. Another view on the value of evidence would be whether the evidence is direct or circumstantial. However, Evidence is the only way to determine a case finally and also determine whether the case is true or not. Evidence should be checked carefully since evidence can bring the verdict whether a certain thing is true or not.

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<sup>114</sup> The term 'competent evidence' is used to refer evidence that is relevant, and of such nature that it can be received by a court of law. It refers to evidence that is appropriate and needed to prove the issue of fact that the parties have made. Competent evidence may also serve as a link to the subject matter that is to be proved. Competent evidence is also known as proper evidence, admissible evidence, relevant evidence, or legal evidence.

<sup>115</sup> Best evidence consists of statements made by a witness (testimonial evidence) or contained in documents (documentary evidence).

<sup>116</sup> Information recorded in a manner that requires a computer or other electronic device to display, interpret, and process it. This includes documents (whether text, graphics, or spreadsheets) generated by a software and stored on magnetic media (disks) or optical media (CDs, DVDs), as well as electronic mail and documents transmitted in electronic data interchange (EDI). In contrast to a paper (hard copy) document, an electronic document can contain non-sequential (non-linear) information as hypertext.