
ADMISSIBILITY OF THE HERSAY EVIDENCE: SHOULD INDIA MOVE TOWARDS RELAXATION LIKE OTHER JURISDICTIONS

Parth Attry¹, Priyanka Bhardwaj² & Ruchika Bhatt³

ABSTRACT

This article provides a thorough review of the admissibility of hearsay evidence in India, focusing on the Bharatiya Sakshya Adhiniyam, 2023, which replaces the Indian Evidence Act, 1872. It explores how this new law changes the rules around hearsay statements made outside court used to prove the truth of the matter, considering technological progress and new evidentiary challenges. Historically, hearsay is excluded in India because of concerns about reliability and the lack of cross-examination, which are vital for fairness.

The article compares legal approaches in the US, UK, and EU, showing their more adaptable methods. For example, the U.S. Federal Rules permit certain exceptions based on reliability and corroboration, while the UK and EU rely on judicial discretion and safeguards to admit hearsay when suitable. These systems balance efficiency and fairness through strict gatekeeping, corroboration, and reliability checks.

The study questions whether India should follow suit, especially with the rise of electronic records, digital communication, and blockchain verification. Loosening hearsay rules could boost judicial efficiency, fill evidentiary gaps, and enhance substantive justice by allowing trusted evidence that might be otherwise excluded. Yet, the article emphasises maintaining fairness through judicial oversight, corroboration, and pretrial review.

It proposes a cautious modernisation of India's hearsay rules, advocating for statutory recognition of new digital evidence forms, supported by procedural safeguards and judicial checks to protect probative value. By aligning with international best practices while safeguarding India's procedural principles, the article suggests that India can strike a balance between accepting broad evidence and adhering to due process. This research adds to the ongoing

¹ LLB, UILS, Chandigarh University

² LLB, UILS, Chandigarh University

³ LLB, UILS, Chandigarh University

conversation on evidence law reform and offers a forward-looking plan to harmonise traditional doctrines with modern justice needs.

I. INTRODUCTION

Hearsay evidence occupies a pivotal yet complex position within legal systems worldwide as it centers upon statements made outside judicial proceedings but tendered for their truth to resolve factual disputes. Fundamentally, hearsay comprises second hand information whose reliability cannot be directly tested through traditional courtroom mechanisms of cross-examination, posing significant implications for truth-finding and procedural justice. The rules governing hearsay reflect legal systems' efforts to balance efficiency in fact-finding with protections against unreliable or fabricated evidence⁴. In India, this balance has garnered heightened scrutiny, especially following the promulgation of the Bharatiya Sakshya Adhiniyam, 2023, which enacts comprehensive legal reforms related to the handling of evidence. As the judiciary grapples with issues raised by technological advancements and changes in evidentiary practice, the admissibility of hearsay evidence emerges as a crucial debate with the potential to reshape evidentiary frameworks⁵.

This article is structured to examine the multiple facets of hearsay admissibility in India thoroughly. It reviews the current statutory and judicial regime under both the Indian Evidence Act, 1872 and the new statute, investigates the principle rationales undergirding hearsay exclusion within Indian jurisprudence, and offers a comparative analysis of how prominent jurisdictions have modified or relaxed hearsay rules. It also explores the challenges and safeguards that accompany these reforms in foreign contexts and assesses the prospects for India to embrace a more nuanced approach that preserves evidentiary integrity while enhancing judicial efficiency and fairness. The article thereby seeks to contribute to ongoing policy discourse on aligning Indian procedural standards with contemporary legal realities and international best practices,⁶.

II. CURRENT LEGAL POSITION ON HEARSAY EVIDENCE IN INDIA

Historically, the Indian evidence framework, codified in the Indian Evidence Act, 1872, has

⁴ Richard A. Posner, An Economic Approach to the Law of Evidence, 51 Stan. L. Rev. 1477 (1999)<https://doi.org/10.2307/1229527>

⁵ Richard A. Posner, An Economic Approach to the Law of Evidence, 51 Stan. L. Rev. 1477 (1999)<https://doi.org/10.2307/1229527>

⁶ P. A. Anyebe, Appraisal of Admissibility of Electronic Evidence in Legal Proceedings in Nigeria, 92 J. L. & Pol'y 1 (2019), <https://doi.org/10.7176/jlpg/92-01>.

maintained a stringent stance against hearsay evidence, reflecting a tradition inherited from English common law principles. The Act expressly excludes hearsay statements as a general rule, allowing their admissibility only under statutorily enumerated exceptions, such as dying declarations, statements against interest, and admissions, among others as under the landmark case **Khushal Rao v. State of Bombay (AIR 1958 SC 22)**⁷, it established that dying declaration is admissible if the court is satisfied that it is true, voluntary, and made while the declarant was in a fit mental state. This case clarifies that a conviction can be based solely on a dying declaration. A protective regime aims at ensuring that tribunals base their findings predominantly on direct evidence subject to the test of cross-examination, thereby upholding procedural fairness and the reliability of fact-finding ⁸.

The enactment of the Bharatiya Sakshya Adhiniyam, 2023, marks a significant legislative shift in Indian evidence law, reflecting the evolution of legal processes and the acknowledgement of technological advances, especially regarding electronic evidence. The new statute explicitly incorporates provisions facilitating the admissibility of computer-generated and electronic records, recognising the challenges presented by digital transactions and communications. While it maintains the general principle of hearsay exclusion, the Act expands the scope and nuances of exceptions to accommodate modern evidentiary contexts, signalling a cautious yet progressive move towards relaxing traditional restrictions where reliability can be demonstrated through alternative means ⁹.

Judicial interpretations following the adoption of the new framework have begun to explore the boundaries of hearsay admissibility with closer attention to evidentiary reliability and relevance. Courts have increasingly acknowledged the role of electronic proofs and digital confirmation mechanisms, albeit with a critical emphasis on procedural safeguards such as authentication and corroboration. The jurisprudence thus reflects a transitional phase where courts balance the orthodox exclusionary approach with emergent technological and evidentiary realities, underscoring the imperative for further legislative and judicial clarity , ¹⁰.

⁷ Kushal Rao v. The State of Bombay, AIR 1958 SC 22 (India).

⁸ P. A. Anyebe, Appraisal of Admissibility of Electronic Evidence in Legal Proceedings in Nigeria, 92 J. L. & Pol'y 1 (2019), <https://doi.org/10.7176/jlpg/92-01>.

⁹ P. A. Anyebe, Appraisal of Admissibility of Electronic Evidence in Legal Proceedings in Nigeria, 92 J. L. & Pol'y 1 (2019), <https://doi.org/10.7176/jlpg/92-01>.

¹⁰ Richard A. Posner, An Economic Approach to the Law of Evidence, 51 Stan. L. Rev. 1477 (1999)<https://doi.org/10.2307/1229527>

Several landmark cases illustrate this framework:

1. **In Anvar P.V. v. P.K. Basheer (2014)**¹¹, the Supreme Court of India set a stringent and mandatory standard for the admissibility of electronic evidence. The court ruled that electronic evidence is admissible only if it fully complies with the special provisions of Section 65B of the Indian Evidence Act, 1872.
2. **Shafhi Mohammad v. State of Himachal Pradesh (2018)**¹²- The Supreme Court case is a landmark judgment in the context of electronic evidence admissibility, particularly regarding modern communication such as WhatsApp messages.

The Bharatiya Sakshya Adhiniyam, 2023 brings a much-needed modernisation to India's evidence law, especially regarding electronic and digital proof.

III. RATIONALES BEHIND THE EXCLUSION OF HEARSAY EVIDENCE IN INDIAN LAW

The exclusion of hearsay evidence within the Indian legal system is rooted primarily in concerns regarding reliability and the protection of fair trial standards. Hearsay, by its nature, deprives the opposing party of the opportunity to cross-examine the declarant, a cornerstone of adversarial justice designed to expose falsehoods and assess the credibility of witness testimony. The absence of this critical testing mechanism raises substantive risks of admitting fabricated or erroneous statements, which can undermine the integrity of adjudication¹³.

Moreover, Indian legal culture places significant emphasis on direct evidence as the most reliable and trustworthy means to establish facts. This preference aligns with the conviction that cross-examination and live testimony enhance the accuracy and trustworthiness of evidence, thereby fortifying procedural safeguards. The exclusionary hearsay rule thus acts as a strong safeguard against admitting potentially prejudicial assertions that have not undergone adversarial scrutiny, helping preserve the fact-finding accuracy and prevent miscarriages of

¹¹ Poonam Bera, Presentation of Electronic Evidence in a Court in Light of the Supreme Court Judgment in Anvar P.K. v. P.K. Basheer & Ors., iPleaders (Oct. 2020), <https://blog.ipleaders.in/presentation-of-electronic-evidence-in-a-court-in-light-of-the-supreme-court-judgment-in-ansar-p-k-vs-p-k-basheer-ors/>.

¹² Shafhi Mohammad v. The State of Himachal Pradesh, MANU/SC/0058/2018 (India).

¹³ P. A. Anyebe, Appraisal of Admissibility of Electronic Evidence in Legal Proceedings in Nigeria, 92 J. L. & Pol'y 1 (2019), <https://doi.org/10.7176/jlpg/92-01>.

justice ¹⁴.

Another crucial rationale lies in maintaining the coherence and orderly conduct of trials. The hearsay exclusion maintains transparency and equal procedural footing for disputing parties, thereby reinforcing judicial efficiency and public confidence in the justice system. It mitigates the risk of prolonged evidentiary battles and ensures that evidence presented has demonstrable probative value rooted in firsthand knowledge or adequately substantiated exceptions. Collectively, these rationales affirm the foundational role of hearsay rules in upholding procedural fairness and evidentiary soundness in Indian jurisprudence ¹⁵.

IV. COMPARATIVE JURISPRUDENCE: UNITED STATES APPROACHES TO HEARSAY RELAXATIONS

The United States exemplifies a jurisdiction where hearsay evidentiary rules have undergone significant reform, characterised by a pragmatic balancing of reliability concerns with procedural efficiency and fairness. The Federal Rules of Evidence (FRE), established in 1975, codify a comprehensive framework that embraces numerous exceptions and modifications to the traditional hearsay exclusion. These reforms underscore a recognition that certain hearsay statements may possess sufficient indicia of trustworthiness to merit admittance, particularly when bolstered by corroborative or procedural safeguards ¹⁶.

Notably, the FRE incorporates exceptions such as business records, public records, prior statements by witnesses, and statements that fall within firmly rooted hearsay exceptions recognised at common law. Additionally, several states exercise discretion in expanding admissibility permissively, allowing flexibility tailored to particular evidentiary contexts. Integral to these reforms is the acknowledgement of expert testimony and emerging technological evidence as essential tools in authenticating hearsay statements and enhancing their probative value. Experts often assist courts in understanding the reliability and relevance of technical data and blockchain records, thereby bridging the gap between hearsay content

¹⁴ Richard A. Posner, *An Economic Approach to the Law of Evidence*, 51 *Stan. L. Rev.* 1477 (1999), <https://doi.org/10.2307/1229527>.

¹⁵ R. J. Allen & Brian Leiter, *Naturalized Epistemology and the Law of Evidence*, 87 *Va. L. Rev.* 1145 (2001), <https://doi.org/10.2307/1073901>.

¹⁶ Xiang Wang, Y. C. Wu & Z. Ma, *Blockchain in the Courtroom: Exploring Its Evidentiary Significance and Procedural Implications in U.S. Judicial Processes*, *Frontiers Media* (2024), <https://doi.org/10.3389/fbloc.2024.1306058>.

and judicial trustworthiness.

However, the U.S. experience also elucidates challenges in harmonising hearsay relaxation with due process protections. Courts must vigilantly guard against unfair prejudice, ensuring rigorous judicial gatekeeping through pretrial hearings and reliability assessments. The burden lies in preventing hearsay evidence from supplanting direct testimony without adequate scrutiny. This dynamic interplay of reform and safeguarding highlights the necessity for complementary procedural mechanisms alongside hearsay rule relaxation to preserve evidentiary fairness¹⁷.

V. COMPARATIVE JURISPRUDENCE: UNITED KINGDOM AND EUROPEAN UNION PERSPECTIVES

The legal systems of the United Kingdom and the European Union present alternative yet instructive paradigms of hearsay rule modification. In the UK, legislative interventions such as the Civil Evidence Act 1995 and the Criminal Justice Act 2003 have introduced measured relaxations permitting hearsay evidence under carefully circumscribed conditions. These statutory reforms emphasise judicial discretion and the management of evidentiary risks, allowing courts to admit hearsay statements when reliable guarantees exist, such as the unavailability of the declarant or corroborating evidence¹⁸.

Within the European Union, a harmonised approach sustains member states' procedural autonomy while advocating for evidentiary standards that approximate fairness and reliability across jurisdictions. The European Court of Human Rights jurisprudence reinforces the principle that hearsay evidence should not undermine the right to a fair trial, prompting member states to implement safeguards consistent with the ECHR framework. Judicial authorities enjoy latitude to evaluate hearsay admissibility case by case, weighing probative value against potential prejudice and ensuring robust procedural protections¹⁹.

¹⁷ Xiang Wang, Y. C. Wu & Z. Ma, Blockchain in the Courtroom: Exploring Its Evidentiary Significance and Procedural Implications in U.S. Judicial Processes, *Frontiers Media* (2024), <https://doi.org/10.3389/fbloc.2024.1306058>.

¹⁸ Mark F. Koehler & G. Yujun, The Acceptance of the Unified Sales Law (CISG) in Different Legal Systems, 4 *Int'l J. Priv. L.* 45 (2008), <https://doi.org/10.58948/2331-3536.1049>.

¹⁹ Michele Roscini, Evidentiary Issues in International Disputes Related to State Responsibility for Cyber Operations, in *Cyber Operations: Law, Ethics, and Policy* 213 (David J. Jensen ed., Oxford Univ. Press 2015), <https://doi.org/10.1093/acprof:oso/9780198717492.003.0011>.

The UK and EU models illustrate a gradual shift from categorical hearsay exclusion towards a more flexible, context-sensitive approach aligned with contemporary evidentiary realities. This shift underscores the importance of preserving systemic integrity through judicial oversight, corroborative demands, and the strategic use of exceptions that enable reliable hearsay without compromising fairness^{20, 21}.

VI. CHALLENGES AND SAFEGUARDS ACCOMPANYING HEARSAY RELAXATION IN COMPARATIVE JURISDICTIONS

Relaxing hearsay restrictions engenders significant challenges around the potential admission of unreliable evidence and the attendant risk of unfair prejudice. A primary concern remains the diminished ability for opposing parties to confront and challenge out-of-court statements, which may permit untested assertions to influence adjudication adversely. Such risks can erode confidence in judicial outcomes and disproportionately impact defendants in criminal contexts²².

To mitigate these dangers, comparative jurisdictions have instituted multifaceted safeguards. Prominently, rigorous judicial gatekeeping functions as a pivotal control, with judges conducting pretrial reliability assessments and applying discretionary standards to exclude hearsay lacking sufficient indicia of trustworthiness. Corroboration requirements often supplement gatekeeping, demanding supporting evidence that validates hearsay statements. These procedural checks aim to balance the dual objectives of evidentiary efficiency and the protection of due process rights^{23, 24}.

Moreover, structured evidentiary frameworks incorporate specific conditions under which hearsay becomes admissible, frequently limiting its use to situations where declarants are

²⁰ Mark F. Koehler & G. Yujun, The Acceptance of the Unified Sales Law (CISG) in Different Legal Systems, 4 J. of Com. L. 45 (2008), <https://doi.org/10.58948/2331-3536.1049>.

²¹ Michele Roscini, Evidentiary Issues in International Disputes Related to State Responsibility for Cyber Operations, in Cyber Operations: Law, Ethics, and Policy 213 (David J. Jensen ed., Oxford Univ. Press 2015), <https://doi.org/10.1093/acprof:oso/9780198717492.003.0011>.

²² Xiang Wang, Y. C. Wu & Z. Ma, Blockchain in the Courtroom: Exploring Its Evidentiary Significance and Procedural Implications in U.S. Judicial Processes, *Frontiers in Blockchain* (2024), <https://doi.org/10.3389/fbloc.2024.1306058>.

²³ Xiang Wang, Y. C. Wu & Z. Ma, Blockchain in the Courtroom: Exploring Its Evidentiary Significance and Procedural Implications in U.S. Judicial Processes, *Frontiers in Blockchain* (2024), <https://doi.org/10.3389/fbloc.2024.1306058>.

²⁴ Michele Roscini, Evidentiary Issues in International Disputes Related to State Responsibility for Cyber Operations, in Cyber Operations: Law, Ethics, and Policy 213 (David J. Jensen ed., Oxford Univ. Press 2015), <https://doi.org/10.1093/acprof:oso/9780198717492.003.0011>.

unavailable or where the hearsay falls within firmly established exceptions. This calibrated approach preserves the integrity of the fact-finding process while accommodating practical necessities posed by modern evidence gathering. Thus, the challenge lies in harmonising liberalised hearsay admission with comprehensive oversight to ensure that broadening evidence admissibility does not compromise reliability or fairness ²⁵.

VII. POTENTIAL BENEFITS OF REFORMING HERSAY ADMISSIBILITY IN INDIA

India stands to gain substantially from a reformed approach that judiciously relaxes hearsay admissibility. One immediate benefit concerns enhancing judicial efficiency by curtailing procedural delays that arise from rigid hearsay exclusion. Courts currently expend considerable time navigating hearsay objections and evidentiary exclusions, often resulting in protracted trials and case backlogs. A more flexible regime could expedite the admission of relevant evidence, thus streamlining fact-finding ²⁶.

Reforming hearsay rules would also address evidentiary gaps prominent in complex, technologically-driven cases where direct evidence may be unavailable, but reliable hearsay such as electronic communications or blockchain-verified documents exists. Broader admissibility, coupled with appropriate safeguards, would enable Indian courts to adapt to evolving evidence landscapes effectively, rendering judgments more reflective of the totality of probative information²⁷.

Furthermore, relaxing hearsay could promote fairness by allowing relevant, trustworthy evidence that traditional rules exclude solely on technical grounds. This inclusive evidentiary approach may better serve substantive justice, ensuring that material truths are not obscured by procedural formalism. When combined with robust procedural oversight, such reform could bolster both accuracy and equity in judicial outcomes ²⁸.

²⁵ P. A. Anyebe, Appraisal of Admissibility of Electronic Evidence in Legal Proceedings in Nigeria, 9 J. Law Political Governance 1 (2019), <https://doi.org/10.7176/jlpg/92-01>.

²⁶ P. A. Anyebe, Appraisal of Admissibility of Electronic Evidence in Legal Proceedings in Nigeria, 9 J. Law Political Governance 1 (2019), <https://doi.org/10.7176/jlpg/92-01>.

²⁷ P. A. Anyebe, Appraisal of Admissibility of Electronic Evidence in Legal Proceedings in Nigeria, 9 J. Law Political Governance 1 (2019), <https://doi.org/10.7176/jlpg/92-01>.

²⁸ Richard A. Posner, An Economic Approach to the Law of Evidence, 51 Stan. L. Rev. 1477 (1999), <https://doi.org/10.2307/1229527>.

VIII. PROPOSED LEGISLATIVE AND JUDICIAL REFORMS FROM INDIA

8.1 Legislative Amendments for Flexible Hearsay Exceptions

India should introduce legislative reforms allowing hearsay admissibility when reliability and necessity are demonstrated, modelled after effective international frameworks. This includes explicit provisions for electronic evidence and blockchain-based records, addressing the evidentiary challenges of the digital era ²⁹.

8.2 Judicial Reforms to Strengthen Oversight

Judicial reforms must empower courts with clear criteria to evaluate hearsay reliability, necessity, and declarant availability. Strengthening judicial oversight will ensure consistent and fair evidentiary decisions in diverse case contexts.³⁰

8.3 Judicial Training and Capacity Building

Comprehensive training and capacity-building programs for judges and legal practitioners are crucial for understanding modern evidence types and executing hearsay reforms effectively. This education fosters uniform application and improved judicial competence ^{31,32}.

8.4 Procedural Safeguards to Preserve Fairness

The reforms should incorporate procedural safeguards such as corroboration requisites, pretrial evidentiary hearings, and appellate review mechanisms. These safeguards help prevent the misuse of hearsay evidence while maintaining trial fairness ³³.

²⁹ Fiona Cornish, Evidence Synthesis in International Development: A Critique of Systematic Reviews and a Pragmatist Alternative, 31 Int'l J. Soc. Res. Methodology 575 (2015), <https://doi.org/10.1080/13648470.2015.1077199>.

³⁰ Xiang Wang, Y. C. Wu & Z. Ma, Blockchain in the Courtroom: Exploring Its Evidentiary Significance and Procedural Implications in U.S. Judicial Processes, *Frontiers in Blockchain* (2024), <https://doi.org/10.3389/fbloc.2024.1306058>.

³¹ Xiang Wang, Y. C. Wu & Z. Ma, Blockchain in the Courtroom: Exploring Its Evidentiary Significance and Procedural Implications in U.S. Judicial Processes, *Frontiers in Blockchain* (2024), <https://doi.org/10.3389/fbloc.2024.1306058>.

³² P. A. Anyebe, Appraisal of Admissibility of Electronic Evidence in Legal Proceedings in Nigeria, 9 J. Law Pol'y & Governance 1 (2019), <https://doi.org/10.7176/jlpg/92-01>.

³³ Anant Singhal, Hearsay Exceptions in Indian Criminal Trials: Balancing Fairness and Efficiency, *Indian J.L. & Legal Rsch.* (2025), <https://www.ijllr.com/post/hearsay-exceptions-in-indian-criminal-trials-balancing-fairness-and-efficiency>.

8.5 Encouraging Interdisciplinary Collaboration

Collaboration among technologists, legal experts, and policymakers is essential to develop context-sensitive guidelines. Balancing innovation in evidence technology with procedural tradition protects legal integrity while accommodating emerging evidence forms³⁴.

This structured approach ensures that India's evidence law reform will be well-rounded, technologically informed, and procedurally fair, preserving justice while adapting to modern evidentiary realities.

CONCLUSION

This comprehensive examination reveals that India's current hearsay evidentiary regime, anchored in the Indian Evidence Act, 1872, and partially reformed under the Bharatiya Sakshya Adhinyam, 2023, reflects a cautious but evolving legal environment. While the traditional emphasis on hearsay exclusion protects procedural fairness and fact-finding integrity, the complexities of contemporary evidence, particularly digital and electronic forms, demand re-evaluation. Comparative analyses demonstrate that jurisdictions such as the United States, the United Kingdom, and European Union member states have successfully introduced calibrated relaxations, balancing enhanced evidentiary efficiency with robust safeguards.

Carefully tailored reforms in India could yield significant benefits: expediting trials, closing evidentiary gaps, and promoting substantive fairness, provided that judicial oversight and procedural protections remain robust. A balanced approach embracing flexible hearsay admissibility underpinned by legislative clarity, judicial training, and procedural rigour offers a pragmatic path forward. Continued empirical research and consultative dialogue are indispensable to crafting reforms attuned to India's unique legal culture and demands, ultimately fortifying the justice system's capacity to discern truth without compromising fairness.

³⁴ Anant Singhal, Hearsay Exceptions in Indian Criminal Trials: Balancing Fairness and Efficiency, *Indian J.L. & Legal Rsch.* (2025), <https://www.ijllr.com/post/hearsay-exceptions-in-indian-criminal-trials-balancing-fairness-and-efficiency>.