




**INDIAN EVIDENCE LAW**  
**BY – POONAM P. NATHANI**

# MEANING OF EVIDENCE

- It is anything which is necessary to prove a particular fact
  - It includes oral testimony, Production of documents, instruments or weapons used while committing a crime
  - It is means of proof
  - It is mean to prove existence or nonexistence of disputed facts
  - It is to facilitate the judge to form a rational conclusion
  - It is adjective Law which defines the pleadings and procedures for the applications of Civil and Criminal Law
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- The matters relating to rights and liabilities are to be proved
- To prove one has to offer evidence
- These rules are of high importance because no substantive law can be enforced without the help of the rules of evidence law
- It is the foundation on which whole judicial system is based---- if the foundation is weak the structure is bound to collapse
- It is applicable in all the cases may be Criminal , Civil, Revenue and so on



# OBJECTIVES OF THE LAW OF EVIDENCE

1. *To administer justice in Civil and Criminal disputes*
2. *To provide rules for relevancy and admissibility of the witness----- such as-----*

What matter can be brought before the Court

What witness can speak?

Who is competent witness?

On whom the burden to prove the case lies?

How knowledge of the witness can be placed before the Court?

How his story can be tested?

How genuineness of the documents can be proved?

3. *To prove facts to arrive at the truth*

(best Principles of the Evidence Law)

4. *Certainty in Law --- Uniformity ---- Consolidation*

5. *To prevent laxity in the admissibility of evidence*



# HISTORICAL BACKGROUND

**In order to trace the history of Law of Evidence in India we have to study the three different Periods they are**

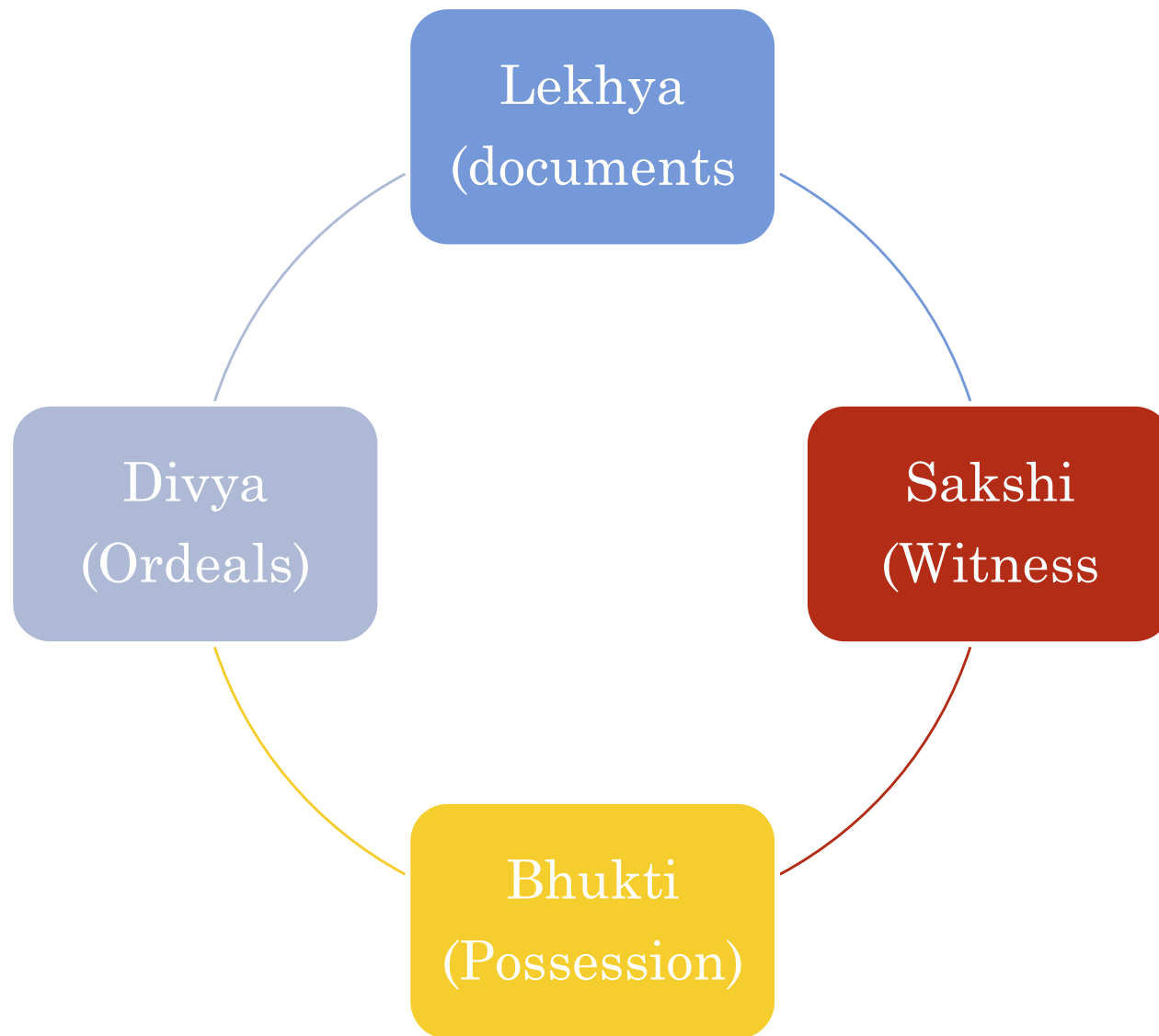
Ancient Hindu Period

Medieval Muslim Period

Modern British Period



# ANCIENT HINDU PERIOD----- BASED ON 'DHARMASHASHTRA'



# ORDEALS GIVEN IN AGNIPURAN ---- IT WERE USED FOR SERIOUS OFFENCES

*Ordeal by fire*

*Ordeal by water*

*Ordeal by  
poison*

*Ordeal of lot  
(image of  
Dharma and  
adharma)*

*Ordeal of  
fountain*

*Ordeal by Kosa*



# MEDIEVAL MUSLIM PERIOD

- Holy Quran lays great emphasis on justice. It holds that whole creation of the world is on the foundation of justice and that one of the excellent attributes of God is that He is Just, therefore the conception of justice in Islam is that the administration of justice is a divine disposition
- *Oral evidence appears to have been preferred to documentary evidence.*
- In regard to oral evidence the Holy Quran enjoins truthfulness. It gives message to observe justice
- This will approach nearer to piety and fear God. God is fully acquainted with what you do
- Under Muslim law documents executed by certain classes of persons were considered as vitiated and inadmissible in evidence.
- Persons like women, children, drunkards, gamblers, criminals were considered as not competent to execute the documents

# MODERN BRITISH PERIOD

Presidency Courts

Mofussil Courts


- Presidency Courts in Bombay, Madras and Calcutta were governed by English rules of Law of Evidence
- There were no definite rules relating to Mofussil Courts outside the Presidency towns
- The Court enjoyed unfettered liberty in the matter of admission of evidence. . The entire administration of justice in the Mofussil Courts in the absence of any definite rules of law of evidence was in total chaos
- There was a dire necessity for the codification of the rules of law the evidence.

- In 1835 the first attempt was made to codify the rules of law of evidence by passing the Act of 1835. Between 1835 to 1853 about 11 enactments were passed dealing with the law of evidence. But all these enactments were found inadequate.
- In the year 1868 a commission was setup under the chairmanship of **SIR HANRY MAYNE** . *He submitted the draft but was not suitable to the Indian conditions*
- Later in the year 1870 this task of codification of the rules of law of evidence was entrusted to **‘SIR JAMES STEPHEN’**. *He submitted his draft and it was referred to the Select Committee and also to the High Courts and members of the Bar to elicit the opinion and after gathering the opinion the draft was placed before the legislature and it was enacted.*

# RELEVANCE OF THE LAW OF EVIDENCE

- ***It is relevant in finding the Truthfulness of assertions and ascertainment***-----In the process of delivering Justice, the Courts have not only to go into the facts of the case but also to ascertainment of its truthfulness of the assertions made by the parties. The area and assertions and ascertainment of its truthfulness is governed by the Law of Evidence.
- ***It is guidance for the Court***----- It is procedural side of law which lays down the rules for guidance of the Court upon the questions of reaching to the truth and getting the assertions and facts proved before it.
- ***Resolve the disputed facts*** -----It is relevant in deciding the issues of disputed facts and relevancy of admitted facts, in reaching to a conclusion
- ***It provides that how facts are to be proved.***
- ***It helps in preventing the wastage of Court's valuable time upon irrelevant issues.***

# MAIN FEATURES OF INDIAN EVIDENCE ACT

- *Based on English Common Law*
  - *Indian Evidence is not exhaustive Law*
  - *Consolidated Act*
  - *Procedural Law*
  - *Territorial extension*
  - *Applies to the judicial proceedings*
  - *Discretion of the Court*
  - *Allows both oral and documentary evidence*
  - *No room for hearsay evidence*
  - *Protection and privileges to the witnesses*
  - *Object is to find out the truth*
  - *Lex fori (Law of the Land)*
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# OTHER ACTS DEALING WITH EVIDENCE

The Evidence Act does not contain the whole of the rules of the evidence. The law of Evidence is contained in the Evidence Act and in other Acts and statutes which makes specific provisions on matter of evidence. There are several laws relating to the subject of evidence which supply the omissions in the Evidence Act and supplement its provisions. The following

Acts dealing with the Law of Evidence :

- 1) **The Banker's Books Evidence Act, 1891** (Act No 18 of 1891).  
The object of this Act is to permit entries in banker's books admissible
- 2) **The Commercial Documents Evidence Act, 1939 (Act No XXX of 1939)**. According to this Act, statements of facts in issue or of relevant facts made in any document included in the Schedule as to matters usually stated in such document shall be themselves relevant facts.
- 3) **The Indian Succession Act, 1925**. Section 63 of the Act deals with the execution of unprivileged wills which deals with the signatures of the testator and witnesses.

#### 4) **Code of Civil Procedure, 1908.**

1. Provisions of order L relating to evidence in small causes suits;
2. Order XLI, Rule 23 to 29 deals with additional evidence in appellate court under CPC;
3. Order XVI relating to summoning and attendance of witnesses. Order XVI A relating to attendance of witness is confined or detained in prisons;
4. Order XVIII relating hearing to the suit and examination of witnesses;
5. Order XIII for to production, impounding and return of documents;
6. Order' XXVI deals with commissions to examine witnesses in CPC which are directly related to the laws of evidence.

5) **Code of Criminal Procedure, 1973:** Sections of 195, 200, 231, 242, 244, 272 to 299, 310 of the Code of Criminal Procedure deal with the law of evidence – contempt of lawful authority of public servant – offences against public justice and documents given in evidence - complaint to magistrate – evidence for prosecution – Evidence in Enquiries and trial

- 6) **Indian Penal Code, 1860:** Sections 191 to 229 of Chapter XI of false evidence and offences against public justice deal with the law of evidence.
- 7) **The Negotiable Instruments Act, 1881:** Sections 118 and 137 of Chapter XIII which deals with special rules of evidence is concerned with the law of evidence.
- 8) **Indian Stamps Act, 1899:** Sections 35 to 40 of the Indian Stamps Act are related to the Law of evidence.
- 9) **The Prevention of Corruption Act, 1988:** The presumption where public servant accepts gratification other than legal remuneration under Section 20 of the Prevention of Corruption Act, 1988 is concerned to Law of Evidence.
- 10) **The Powers of Attorney Act, 1882.** The presumption relating to deposit of original instruments creating powers of attorney under Section 4 of the Powers of Attorney Act 1882 is related to the law of evidence.
- 11) **The Oath's Act, 1969:** This Act deals with the law relating to judicial oaths and for certain other purposes.



- 12) **Divorce Act, 1889:** Sections 7, 12 and 14 of Divorce Act, 1889 are related to the Law of evidence.
- 13) **Limitation Act, 1963.** Sections 19 and 20 of the Limitation Act deals with the law of evidence
- 14) **Registration Act, 1908:** Sections 49 and 50 of the Registration Act, 1908 deals with the Law of evidence.
- 15) **Succession Act, 1925:** Section 63 of the Succession Act, 1925 is related to the law of evidence.
- 16) **Transfer of Property Act, 1882:** Sections 59 and 123 of Transfer of Property Act, 1882 are related to the law of evidence
- 17) **The Information Technology Act, 2000:** The second schedule of the Information Technology Act 2000 is related to the amendments to the Indian Evidence Act, 1872. Section 3, (additions of definitions), Section 22A, 47A, 65A, 65B, 67A, 67A, 73A, 81A, 85A, 85B, 85C, 88A, 90A, have been inserted and Sections 34, 35, 39 & 131 have been amended. The third schedule contained the amendments to the Banker's Books Evidence Act, 1891.

# GENERAL PRINCIPLES OF EVIDENCE LAW

- 1. Evidence should be confined to the matter / facts in issue or relevant fact
- 2. Hearsay Evidence should not be admitted (Hearsay evidence is not evidence)
- 3. Best Evidence Rule or Best Evidence must be given in all cases.



# INTERPRETATION CLAUSE

“Fact”.—“Fact” means and includes—

- (1) any thing, state of things, or relation of things, capable of being perceived by the senses;
- (2) any mental condition of which any person is conscious.
  - (a) That there are certain objects arranged in a certain order in a certain place, is a fact.
  - (b) That a man heard or saw something, is a fact.
  - (c) That a man said certain words, is a fact.
  - (d) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.
  - (e) That a man has a certain reputation, is a fact.



- Facts has been described as follows –
- A fact is a truth a reality something that has come to pass
- The event as well as the facts of any kind which have neither occurred in the past nor are occurring at the time when the statement about them is made and are said to be likely to occur in future do not fall within the definition of fact
- Because such facts cannot be perceived by the senses as required by clause 1
- Future events cannot be covered by the expression ‘mental condition’ of which person is conscious within the meaning of second clause



# TYPES OF FACTS

- External and Internal Facts
- Physical and Psychological Facts
- Positive and Affirmative Facts
- Theory, Opinion and Feeling
- Event and State of things

External  
facts

Internal facts

Physical  
facts

Psychological  
facts

Positive facts

negative  
facts

Theory,  
opinion and  
feeling

Event and  
state of thing



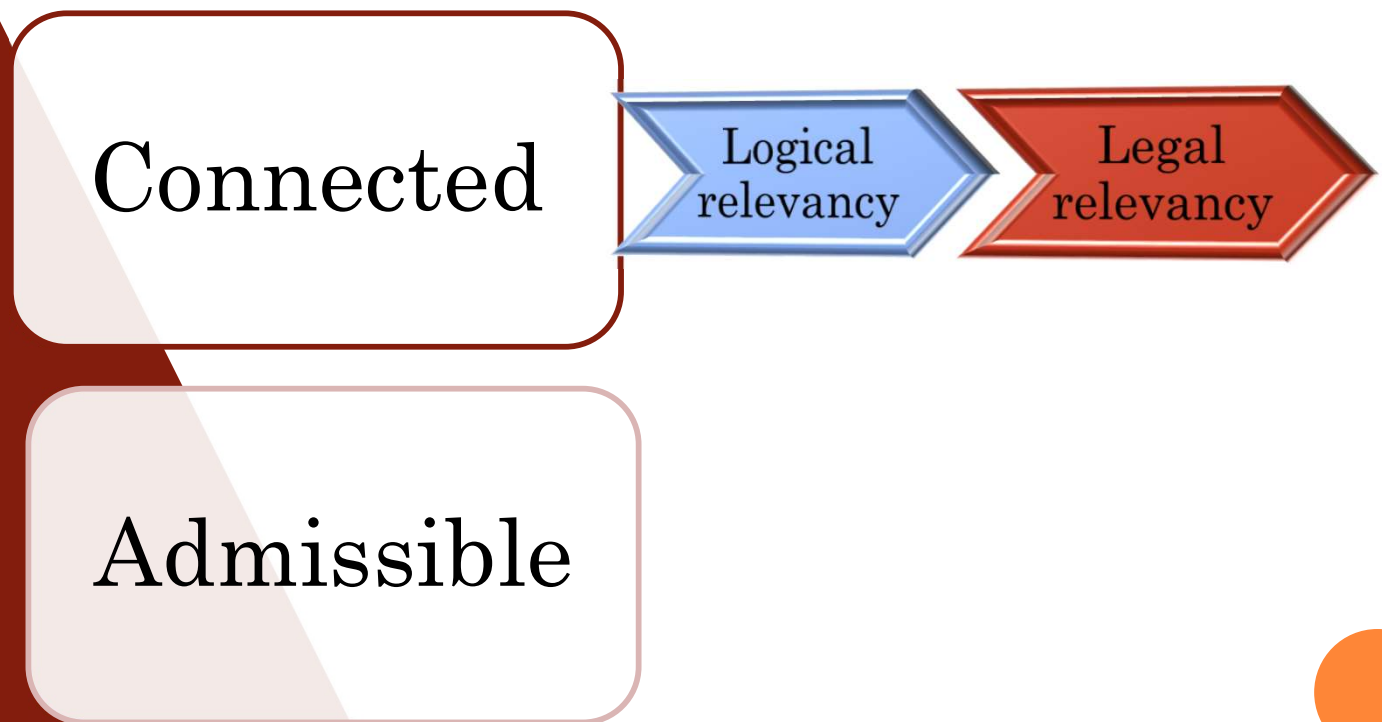
## SOME OTHER TYPES

- Affirmative facts
- Antecedent facts
- Circumstantial facts
- Constituent facts
- Contemporaneous facts
- Direct facts
- Disputed facts
- Essential facts
- Exculpatory facts
- Facts in issues
- Relevant facts
- Similar facts
- Negative facts
- Collateral facts
- Main facts
- Notorious facts
- Uncontroverted facts
- Subsidiary facts
- Undisputed facts
- Unessential facts
- Inculpatory facts
- Facts relevant to the issue
- Irrelevant facts
- Subsequent facts



# RELEVANT

- “Relevant”.—One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.



- “Facts in issue”.—The expression “facts in issue” means and includes—
  - any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure,<sup>3</sup> any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue, is a fact in issue.

### Illustrations

A is accused of the murder of B.

At his trial the following facts may be in issue:—

That A caused B’s death;

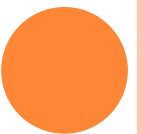
That A intended to cause B’s death;

That A had received grave and sudden provocation from B;

That A at the time of doing the act which caused B’s death, was, by reason of unsoundness of mind, incapable of knowing its nature.



- The expression “facts in issue” means and includes—
  - any fact from which, the existence, non-existence, nature, or extent of any right, liability, or disability, necessarily follows



# DOCUMENT

- “Document”.—“Document” means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.
- Illustrations
- A writing is a document;
- Words printed, lithographed or photographed are documents;
- A map or plan is a document;
- An inscription on a metal plate or stone is a document;
- A caricature is a document.






# EVIDENCE

- “Evidence”.—“Evidence” means and includes—
- (1) all statements 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;
- (2) all documents including electronic records produced for the inspection of the Court, such documents are called documentary evidence.



# DEFINITIONS BY DIFFERENT AUTHORS

- Best- he defines as any matter of fact, the effect, tendency, or design of which is to produce in the mind a persuasion, affirmative or dis affirmative, of the evidence of some other matter of fact
  - Stephen – it signifies only the instruments by means of which relevant facts are brought before the court (witnesses and documents) and by means of which the court is convinced of the facts
  - Phipson – it means the testimony whether oral, documentary or real where may be legally received in order to prove or disprove some facts in dispute
  - Taylor – all the legal means exclusive of mere arguments which tend to prove or disprove any fact the truth of which is submitted to judicial in investigation
  - Wigmore – evidence as representing any fact or group of facts, considered with a view to its being offered before a legal tribunal for the purpose of producing a persuasion, positive or negative, or the fact of the tribunal as to the truth of a proposition on which the determination of the tribunal is to be asked.
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# ANSWER WHETHER IT IS EVIDENCE

- An affidavit
- Statements of Accused and parties such as Admission, confession, statement of an accused in a trial, demeanor of any witness under examination
- Results of local investigation or local inspection
- Material objects other than documents such as weapons, tools stolen properties
- Statement under section 154 of CrPC – information for cognizable offence
- Statement under section 164 of CrPC – confessional statement
- Personal knowledge of judges
- Observations of judges
- The speeches by the ministers and members of the Assembly
- Newspaper items
- Pleadings
- Evidence collected by the police during investigation
- Letter addressed to the Court
- Statement of witness in FIR



# TYPES OF EVIDENCE

Oral and Documentary Evidence

Direct and Circumstantial

Real and Personal Evidence

Substantive and Non-Substantive Evidence

Primary and Secondary Evidence

Public document and private document

Positive and Negative Evidence

Prosecution evidence and Defence Evidence

Judicial non-Judicial Evidence

Corroborative and Contradictory Evidence

# CIRCUMSTANTIAL EVIDENCE

- Circumstantial evidence is that which relates to a series of other facts than fact in issue. But by experience have been found so associated with the fact in issue in relation of cause and effect that it leads to a satisfactory conclusion.
- E.g footprints on sand are found
- Sodomy with murder of a boy nine years old
- It is not to be confused with hearsay or secondary evidence. It is always direct and primary
- i.e the facts from which the existence of the fact in issue to be inferred must be proved by direct evidence



# DIRECT EVIDENCE

- 60. Oral evidence must be direct –
- Oral evidence must, in all cases, whatever, be direct; that is to say;
- If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;
- If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;
- If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner.

- If it refers to an opinions or to the grounds in which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds –
- Provided that the opinion of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise if the author is dead or cannot be found or has become incapable of giving evidence or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable.
- Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.



# FIVE GOLDEN PRINCIPLES OF CIRCUMSTANTIAL EVIDENCE

- Sir Alfred Wills in his book on “Circumstantial Evidence” described the following rules to be observed –
- 1. the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the facts
- 2. the burden of proof is always on the party who asserts the existence of any fact which infers legal accountability
- 3. in all cases the best evidence must be adduced
- 4. in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt
- 5. if there be any reasonable doubt of guilt of the accused he is entitled of the right to be acquitted

# PRINCIPLES

- The circumstances from which the conclusion of guilt is to be drawn should be fully established
- The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty
- The circumstances should be of a conclusive nature and tendency
- They should exclude every possible hypothesis except the one to be proved and
- There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability that act must have been done by the accused

# HEARSAY EVIDENCE

## **Need of acceptance**

1. a necessity of the evidence
2. a circumstantial guarantee of trustworthiness

## **Exceptions to hearsay**

- Section 17 to 39
- 1. Admissions (section 17-22)
- 2. Confessions (section 23- 28)
- 3. Statements by the person who cannot be called as witness (section 32)
- 4. Previous deposition of a witness who is dead or cannot be called as witness (section 33)
- Entries in book of account (section 34)
- Entries in public register (section 35)
- Maps and chart



- “Proved”.—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.
- “Disproved”.—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.
- “Not proved”.—A fact is said not to be proved when it is neither proved nor disproved.

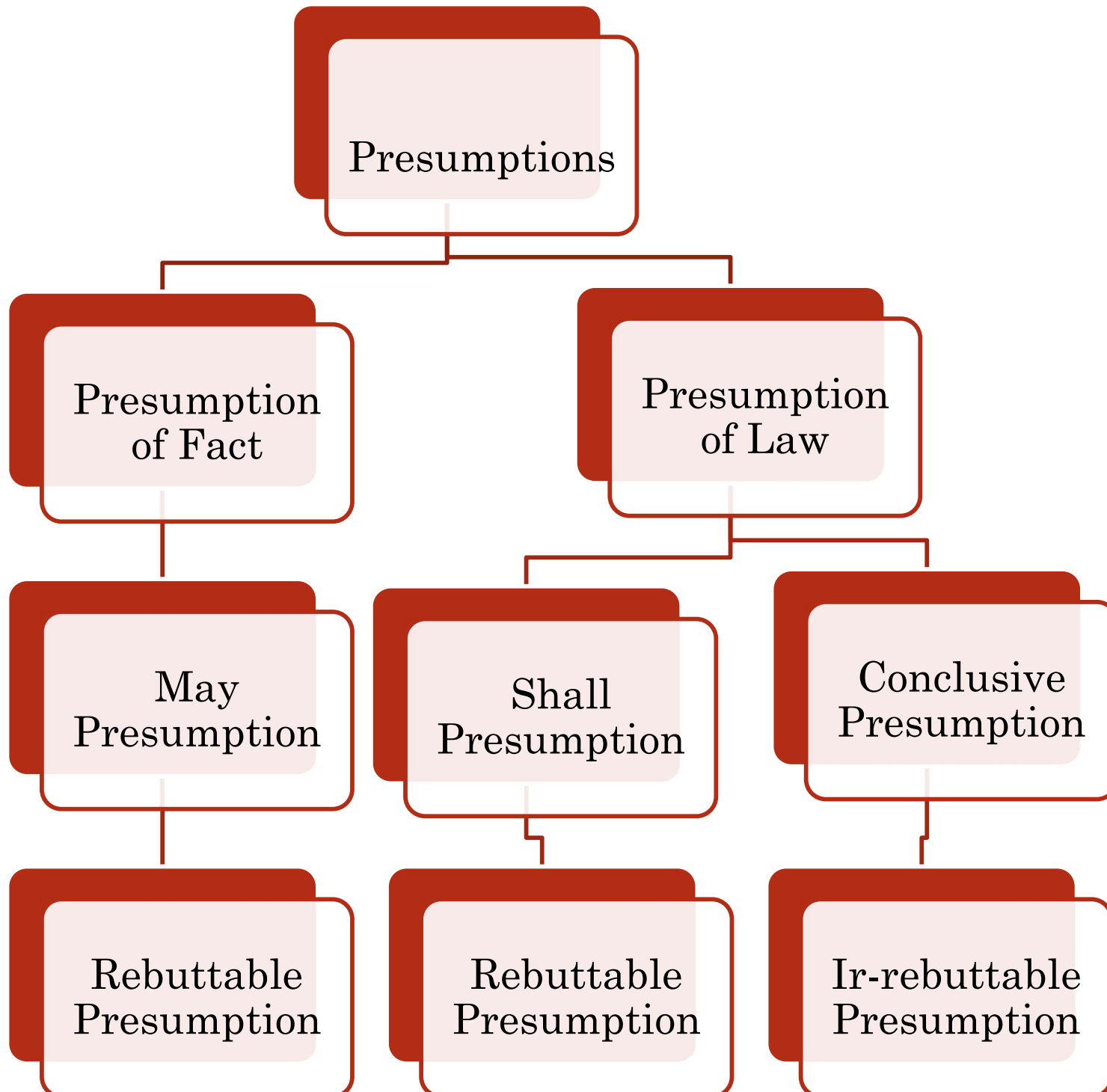


# PROVED

- Distinction between Proof and Evidence
- Proof how effected
- Prima facie case
- Matter before it
- Local Investigation
- Statement of Accused (Section 313 CrPC)
- Evidence Illegally Procured- Admissible
- Personal Knowledge of Judge
- Proof in Civil and Criminal Cases
- Legal Proof and Moral conviction
- Test – Beyond Reasonable Doubt
- Burden on accused
- Presumption of Innocence



# PRESUMPTIONS - SECTION 4



- “May presume” – Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.
- “Shall presume” – Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.
- “Conclusive proof” – Where one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.



# **MAY PRESUME**

## **SECTIONS 86,87,88,90,113A, 114**

**86. Presumption as to certified copies of foreign judicial records** –The Court may presume that any document purporting to be a certified copy of any judicial record of any country is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of Central Government in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

**87. Presumption as to Books, Maps and Charts** – The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

88. **Presumption as to Telegraphic Messages** – The Court may presume that a message, forwarded from a telegraph office to the person corresponds with a message delivered for transmission at the office; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

90. **Presumption as to documents thirty years old** – Where any document, purporting or proved to be thirty years old, is produced from any **custody** which the Court in the particular case considers proper, **the Court may presume that the signature** and every other part of such document, which purports to be in the **handwriting** of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was **duly executed and attested** by the persons by whom it purports to be executed and attested.



114. Court may presume existence of certain facts –The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

### Illustration

The Court may presume –

- (a) That a man who is in possession of stolen goods after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;
- (b) That an accomplice is unworthy of credit, unless he is corroborated in material particular;
- (c) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;
- (d) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence;

- (e) That judicial and official acts have been regularly performed;
- (f) That the common course of business had been followed in particular cases;
- (g) That evidence which could be and is not produced would, if produced be unfavorable to the person who withholds it;
- (h) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavorable to him;
- (i) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.



But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it –

As to illustration (a)—A shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;

As to illustration (b)—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself;

As to illustration (b)—A crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;

As to illustration (c)—A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was young and ignorant person, completely under A's influence;

As to illustration (d)—It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course;

As to illustration (e)—A judicial act, the regularity of which is in question, was performed under exceptional circumstances;

As to illustration (f)—The question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;

As to illustration (g)—A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family;

As to illustration (h)—A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;



# SHALL PRESUME- SECTIONS 79-85,89,105, 111A, 113B AND 114A

79. Presumption as to genuineness of certified copies –
80. **Presumption as to documents produced as records of evidence** – Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be statement or confession by any prisoner or accused person taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume – that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.
81. **Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents** – The Court shall presume the genuineness of every document purporting to be the London Gazette, 1or any official Gazette or the Government Gazette of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of private Act of Parliament 2of the United Kingdom printed by the Queen’s Printer and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.
82. **Presumption as to document admissible in England without proof of seal or signature** – When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine and that the person signing it held at the time when he signed it, the judicial or official character which he claims; and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.
83. **Presumption as to Maps or Plans made by authority of Government** – The Court shall presume that maps or plans purporting to be made by the authority of 1the Central Government or any State Government were so made, and are accurate, but maps or plans made for the purposes of any cause must be proved to be accurate.

- 84. Presumption as to collections of laws and reports of decisions –**  
The Court shall presume the genuineness of every book purporting to be printed and published under the authority of the Government of any country, and to contain any of the laws of that country; and of every book purporting to contain reports of decisions of the Courts of such country.
- 85. Presumption as to powers of attorney –** The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government, was so executed and authenticated.
- 89. Presumption as to due execution etc., of documents not produced –**  
The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.
- 105. Burden of proving that case of accused comes within exceptions –** When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

### Illustrations

(a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act.

The burden of proof is on A.

**111A. Presumption as to certain offences.-** (1) Where a person is accused of having committed any offence specified in sub-section (2), in-

- (a) any area declared to be disturbed area under any enactment, for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order; or
- (b) any area in which there has been, over a period of more than one month, extensive disturbance of the public peace, and it is shown that such person had been at a place in such area at a time when firearms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their duties, it shall be presumed, unless the contrary is shown, that such person had committed such offence.

(2) The offences referred to in sub-section (1) are the following, namely –

- (a) an offence under section 121, section 121-A, section 122 or Section 123 of the Indian Penal Code (45 of 1860);
- (b) criminal conspiracy or attempt to commit, or abatement of, an offence under section 122 or section 123 of the Indian Penal Code (45 of 1860).

shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

**113B. Presumption as to dowry death.**- When the question is whether a person has committed the dowry death of a women and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry; the court shall presume that such person had caused the dowry death.

**304B. Dowry death.**—(1) Where the death of a woman is caused by any burn or bodily injury or occurs otherwise than normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called “dowry death”.



# CONCLUSIVE PROOF SECTIONS 41,112,113

## **41. Relevancy of certain judgments in probate etc., jurisdiction –**

A final judgment, order or decree of a Competent Court, in exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or to take away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing not as against any specified person but absolutely, is relevant when the existence of any legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof –

## **112. Birth during marriage, conclusive proof of legitimacy –**

The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

## **113. Proof of cession of territory –**

A notification in the Official Gazette that any portion of British territory has before the commencement of Part III of the Government of India Act, 1935, (26 Geo. 5 Ch. 2) been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

## Presumption of Fact

- Basis** ○ POF is based on Logic, human experience and Law of nature, business, human nature, Practices, tradition
- Nature** ○ It is always rebuttable and goes away when explained or rebutted by establishment of positive proof
- Position** ○ The position of POF is uncertain and transitory
- Pressure on court** ○ The Court can ignore Presumption of fact however strong it is
- The court can exercise its discretion while drawing presumption of fact

## Presumption of Law

- POL is based on Provisions of Law established by judicial norms and have become part of legal rules
- POL is conclusive unless rebutted as provided under rule giving rise to presumption
- The position of POF is certain and uniform
- The Court cannot ignore Presumption of law
- The court is bound to draw presumption of law – no discretion while drawing

- **Chapter II – Of the relevancy of facts**



## 5. EVIDENCE MAY BE GIVEN OF FACTS IN ISSUE AND RELEVANT FACTS –

Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation – This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.<sup>1</sup>

### Illustrations

- (a) A is tried for the murder of B by beating him with a club with the intention of causing his death.
- At A's trial the following facts are in issue –
- A's beating B with the club;
- A's causing B's death by such beating;
- A's intention to cause B's death.
- (b) A suitor does not bring with him and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

Many facts which are relied as probable and relevant, are rejected by law as irrelevant on the ground of public policy, precedent, remote relation or slight probative value. For examples,

- a) Communication made between advocate and client under certain circumstances
- b) Communication made by one spouse legally wedded to another
- c) Confession made to a police officer
- d) Insufficiently stamped document

The above facts are not legally relevant though they are reasonably connected with or logically relevant to the main issue.

On the other hand, there are certain facts which are logically irrelevant, but are admissible in record by the court under I.E.Act. For example,

- a) The facts or questions permitted to be asked in cross examination to test the veracity or impeach the credit of a witness,
- b) The facts which corroborate the evidence of a witness.

The above facts may not be relevant but admissible.



## Relevancy

- (i) When facts are so related as to render the existence or non-existence of other facts probable according to common course of events or human conduct, they are called relevant.
- (ii) It is founded on logic and human experience.
- (iii) The question regarding relevancy has been enunciated in Sec.5 to Sec.55
- (iv) It signifies as to what facts are necessary to prove or disprove a fact in issue.
- (v) It merely implies the relevant facts.
- (vi) It is the cause.
- (vii) The court may apply its discretion.
- (viii) All admissible facts are necessarily relevant.


## Admissibility

- (i) When facts have been declared to be legally relevant under I.E.Act, they become admissible.
- (ii) It is founded on law not on logic.
- (iii) The question of admissibility are provided in Sec.56 and the following sections.
- (iv) It is a decisive factor between relevancy and proof.
- (v) It implies what facts are admissible and what are not admissible.
- (vi) It is the effect.
- (vii) There is no scope for the court to apply discretion.
- (viii) All relevant facts are not admissible. Only legally relevant facts are admissible.


## 6. RELEVANCY OF FACTS FORMING PART OF SAME TRANSACTION –

**Facts which, though not in issue are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.**

### Illustrations

- (a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after is as to form part of the transaction, is a relevant fact.
  - (b) A is accused of waging war against the Government of India by taking part in an armed insurrection in which property is destroyed, troops are attacked and goals are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.
  - (c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.
  - (d) The question is whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.
- 

# RES GESTAE

- It is derived from Latin for "things done," it means all circumstances surrounding and connected with a happening.
  - Thus, the res gestae of a crime includes the immediate area and all occurrences and statements immediately after the crime.
  - Statements made within the res gestae of a crime or accident may be admitted in court even though they are "hearsay" on the basis that spontaneous statements in those circumstances are reliable.
  - It may be broadly defined as matter incidental to the main fact and explanatory of it including acts and words which are so closely connected therewith as to constitute a part of the transaction and without a knowledge of which the main fact might not be properly understood. They are the events themselves speaking through the instinctive words and acts of the participants, the circumstances, facts and declarations which grow out of the main fact, are contemporaneous with it and serve to illustrate its character.
- 

## 7. FACTS WHICH ARE OCCASION, CAUSE OR EFFECT OF FACTS IN ISSUE –

**Facts Which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.**

Illustrations

(a) The question is, whether A robbed B.

The facts that, shortly before the robbery B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons, are relevant.

(b) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.



## 8. MOTIVE PREPARATION AND PREVIOUS OR SUBSEQUENT CONDUCT –

Any fact is relevant which shows or constitutes a **motive** or **preparation** for any fact in issue or relevant fact.

The **conduct** of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1. – The word “conduct” in this section does not include statements unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2. – When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.



## ○ Illustrations

(a) A is tried for the murder of B. The facts that, A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b) A sues B upon a bond for payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, it relevant.

(c) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d) The question is, whether a certain document is the will of A.

The facts that not long before the date of the alleged will A made inquiry into matters to which the provisions of the alleged will relate that he consulted vakils in reference to making the will, and that he caused drafts or other wills to be prepared of which he did not approve, are relevant.



(e) A is accused of a crime.

The facts, either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favorable to himself, on that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence – “the police are coming to look for the man who robbed B” and that immediately afterwards A ran away, are relevant.

(g) The question is, whether A owes B rupees 10,000.

The fact that, A asked C to lend him money, and that D said to C in A's presence and hearing “Advice you The Orient Tavern to trust A, for he owes B 10,000 rupees” and that A went away without making any answer, are relevant facts.

(h) The question is, whether A committed a crime.

The facts that, A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.



(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j) The question is whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which the complaint was made, are relevant.

The facts that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant as a dying declaration under section 32, clause 1, or as corroborative evidence under section 157.

(k) The question is whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint, relating to the offence, the circumstances under which, and the terms in which the complaint was made, are relevant.

The fact that he said he had been robbed without making any complaint, is not relevant, as conduct under this section, though it may be relevant as a dying declaration under section 32, clause 1, or as corroborative evidence under section 157.

- Motive
- Preparation
- Conduct- Previous and subsequent
  - - conduct of a Party
  - - the conduct of any person against whom crime has been committed
  - - the conduct in reference to the fact in issue or relevant fact
  - - conduct in reference to Proceeding
  - - against whom conduct is admissible
  - - conduct of the accused
  - Previous and subsequent conduct

Explanation 1 – statement of the party accompanying and explaining acts

Explanation 2 – statement of another affecting conduct of a party

## **9. FACTS NECESSARY TO EXPLAIN OR INTRODUCE RELEVANT FACTS –**

Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.



- Facts which are necessary to **explain** a fact in issue or relevant fact
- Facts which are necessary to **introduce** a fact in issue or relevant fact
- Facts which **support an inference** suggested by a fact in issue or relevant fact
- Fact which **rebut an inference** suggested by a fact in issue or relevant fact
- Facts which **establish the identity of anything or person** whose identity is relevant
- Facts which **fix the time or place** at which the facts in issue or relevant fact happened
- Facts which show **the relation of parties** by whom any such fact was transacted



## Illustrations

- (a) The question is, whether a given document is the will of A  
The state of A's property and of his family at the date of the alleged will may be relevant facts.
- (b) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libelous is true. The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.



## 10. THINGS SAID OR DONE BY CONSPIRATOR IN REFERENCE TO COMMON DESIGN –

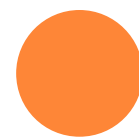
- Where there is reasonable ground to believe that two or more persons have conspired together
- to commit an offence or an actionable wrong,
- anything said, done or written by any one of such persons in reference to their common intention,
- after the time when such intention was first entertained by any one of them
- is a relevant fact as **against each of the persons** believed to be so conspiring, as well as for the purpose of **proving the existence of the conspiracy** as for the purpose showing that any such persons was a party to it.




## ○ Illustration

Reasonable grounds exist for believing that A has joined in a conspiracy to wage war against the Government of India.

- The facts that, B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D Persuaded persons to join the conspiracy in Bombay. E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Kabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.



# REQUIRED CONDITIONS

- Prima facie evidence affording a reasonable ground for a court to believe that two or more persons are members of a **conspiracy**
  - anything said, done or written by any one of such persons **in reference to their common intention** will be evidence against the other
  - anything said, done or written by him should have said, done or written by him after the time when **such intention was first entertained** by any one of them
  - is a relevant fact as **against each of the persons**, whether it was said, done or written before he entered the conspiracy or after he left
  - It can be used against him and not in his favour
- 

# 11. WHEN FACTS NOT OTHERWISE RELEVANT BECOME RELEVANT –

Facts not otherwise relevant, are relevant.

- (1) if they are inconsistent with any fact in issue or relevant fact;
- (2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.



## ILLUSTRATIONS

(a) The question is, whether A committed a crime at Calcutta on a certain day.

The fact that, on that day, A was at Lahore, is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C or D is relevant.



**FACTS NOT OTHERWISE RELEVANT, ARE RELEVANT.  
(1) IF THEY ARE INCONSISTENT WITH ANY FACT IN ISSUE  
OR RELEVANT FACT;**

- Plea of Alibi
- Non- access of husband to show illegitimacy of issue
- Survival – of the alleged deceased
- Commission – of an offence by a third person
- Self infliction – of harm



## SECTION 12

12. In suits for damages, facts tending to enable Court to determine amount are relevant –

- In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded, is relevant.



## 13. FACTS RELEVANT WHEN RIGHT OR CUSTOM IS IN QUESTION

Where the question is as to existence of any right or custom, the following facts are relevant:

- (a) any transaction by which the right or custom in question was created, claimed modified, recognized, asserted or denied, or which was inconsistent with its existence;
- (b) Particular instances in which the right or custom was claimed, recognized, or exercised, or in which its exercise was disputed, asserted, or departed from.

The question is whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father irreconcilable with the mortgage particular instances in which A's father exercised the right or in which the exercise of the right was stopped by A's neighbors, are relevant facts.



## 14. FACTS SHOWING EXISTENCE OF STATE OF MIND OR OF BODY OR BODILY FEELING –

Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

- Explanation 1 – A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally but in reference to the particular matter in question.
- Explanation 2. – But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this Section, the previous conviction of such person shall also be a relevant fact.

## Illustration

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(b) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew each and all of the articles of which he was in possession to be stolen.

The fact that, at the time of delivery A was possessed of a number of other pieces of counterfeit coin, is relevant.

The fact that, A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.



- (c) A sues B for damage done by a dog of B's which B knew to be ferocious. The facts that, the dog had previously bitten X, Y and Z and that they had made complaints to B are relevant.
- (d) The question is, whether A, the acceptor of a bill of exchange, knew that the name of payee was fictitious.

The fact that, A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person.

- (e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that, there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.



## 15. FACTS BEARING ON QUESTION WHETHER ACT WAS ACCIDENTAL OR INTENTIONAL –

When there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrence, in each of which the person doing the act was concerned, is relevant.

### Illustrations

(a) A is accused of burning down his house in order to obtain money for which it is insured.

The fact that, A lived in several houses successively each of which he insured, in each of which he insured, in each of which a fire occurred, and after each of which fires A received, payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(c) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B was not accidental.

## 16. EXISTENCE OF COURSE OF BUSINESS WHEN RELEVANT –

When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

### Illustrations

(a) The question is, whether a particular letter was dispatched.

The facts that, it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that particular letter was put in that place, are relevant.

(b) The question is, whether a particular letter reached A. The fact that, it was posted in due course, and was not returned through the Dead Letter Office, are relevant.


# ADMISSIONS

## 17. Admission defined –

An admission is a statement, oral or documentary which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned.



# DEFINITIONS

- Black's Law Dictionary defines Admission as a voluntary acknowledgement made by a party of the existence of certain facts which are inconsistent with his claim in an action
  - According to Stephen "An Admission is a statement, oral or written, suggesting an inference as to any such fact, made by or on behalf of any party to any proceeding"
  - An Admission is a statement of fact which waives or dispenses with the production of evidence by conceding that the fact asserted by the opponent is true
  - Admissions are admitted because the conduct of a party to a proceeding, in respect to the matter in dispute, whether by acts, speech or writing, which is clearly inconsistent with the truth of his contention, is a fact relevant to the issue
- 

# PROVISIONS OR INGREDIENTS OR NATURE OF ADMISSIONS:

- Admissions are statements which suggest any inference as to any fact in issue or relevant fact.
- They must be made by any of the persons prescribed by the Act.
- They must also be made under the circumstances prescribed by the Act.
- They may be in oral or documentary or electronic form and the documents may be letters, depositions, affidavits, complaints, written statements, deeds, receipts, horoscopes.
- Admissions should be clear cut and accurate, specific statement of that very person in his own words.
- Admissions of fact only bind persons making them.
- Admission must be taken as a whole.
- Admission must be conscious and deliberate act and not something which was not intended.



- Admissions are the admitting of anything as true.
- Admission is only a piece of evidence and can be explained. An admission may be relevant if not explained away.
- Admission should not be made on a quest of law
- Admissions must be made on the basis of personal knowledge the facts stated.
- It is immaterial to whom the admission made. An admission made to a stranger is relevant.
- What a person is over-heard saying to himself would even be evidence
- Admission is a voluntary acknowledgement made by a party.
- Admissions are not vague statements but they should be ex facie unequivocal and categorical



# CIRCUMSTANCES OR CONDITIONS FOR THE ADMISSIBILITY OF ADMISSION:

The following are the conditions for the admissibility of admission:

- An admission should be a statement against interest by a party.
- Admission may be oral or in writing or contained in electronic form or by conduct.
- Admission of which evidence is sought to be given must relate to the subject matter in issue.
- Admission must be in the nature of self harming form, that is, it must go against the interest of the maker.
- Admission must be made by persons and in the circumstances mentioned in the Evidence Act [Sections 18-20].
- The party against whom an admission is tendered is retitled to have so much of the whole of the statement contained in admission as relates to the question in dispute put in evidence even if some parts may be favourable to himself.
- The admission should be in clear, certain, definite terms and not ambiguous, vague or confused terms.

# PARTIES TO THE ADMISSION

- A party to the Proceeding
- An agent to the parties to the proceedings
- parties to suits suing or sued in a representative character
- *party interested in subject matter*
- *by person from whom interest derived*
- *Admissions by persons whose position must be proved as against party to suit*
- Admission by persons expressly referred to by party to suit



## PARTIES TO THE ADMISSION

- **18. Admission by party to proceeding or his agent**

Statements made by a *party* to the proceeding, or by an *agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them*, are admissions.

- ***By suitor in representative character*** – Statements made by parties to suits suing or sued in a representative character, are not admissions, ***unless they were made while the party making them held that character.***

- Statements made by –

(1) ***by party interested in subject matter***; persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding and ***who make the statement in their character of persons so interested***; or



(2) ***by person from whom interest derived***; persons from whom the parties to the suit have derived their interest in the subject-matter of the suit, are admissions, ***if they are made during the continuance of the interest of the persons making the statements.***

***19. Admissions by persons whose position must be proved as against party to suit-***

Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against the made if they are made whilst the person making them occupies such position or is subject of such liability.

Illustration

A undertakes to collect rent for B.

B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B.

A statement by C that he owned B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.



20. Admission by persons expressly referred to by party to suit –

Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration

The question is, whether a horse sold by A to B is sound A says to B “Go and ask C C knows all about it” C’s statement is an admission.



## 22. WHEN ORAL ADMISSION AS TO CONTENTS OF DOCUMENTS ARE RELEVANT —

- Oral admissions as to the contents of a document are not relevant unless and until the party proposing them shows that
- -----he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or
- -----unless the genuineness of a document produced is in question.



## 65. WHEN SECONDARY EVIDENCE IS PERMITTED

Secondary evidence may be given of the existence, condition, or contents of a document in the following cases :-

- *When the original is shown or appears to be* in the possession or power of the person against whom the document is sought to be proved, or  
-----of any person out of reach of, or  
----- not subject to, the process of the Court, or  
----- of any person legally bound to produce it, and when, after the notice such person does not produce it;
- *When the existence, condition or contents of the original have been proved to be admitted, in writing by the person against whom it is proved or by his representative in interest;*
- *When the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time ;*

- *When the original is of such a nature as not to be easily moveable;*
- *When the original is a public document within the meaning of section 74*
- *When the' original is a document of which a certified copy is permitted by this Act, or by any other law in force in British India, to be given in evidence;*
- *(g.) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection*



## 23. ADMISSION IN CIVIL CASES, WHEN RELEVANT –

- In civil cases no admission is relevant,
- -----if it is made either upon an **express condition** that evidence of it is not to be given, or
- -----under circumstances from which **the court can infer that the parties agreed** together that evidence of it should not be given
- Explanation – Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under **Section 126**.


## 31. ADMISSIONS NOT CONCLUSIVE PROOF BUT MAY BE ESTOPPED –

- Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.



## 21. PROOF OF ADMISSION AGAINST PERSONS MAKING THEM, AND BY OR ON THEIR BEHALF –

Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they can not be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases.

- (1) An admission may be proved by or on behalf of the person making it, **when it is of such a nature that, if the person making it were dead it would be relevant as between third person under section 32.**
  - (2) An admission may be proved by or on behalf of the person making it, **when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.**
  - (3) An admission may be proved by or on behalf of the person making it, if it is relevant **otherwise than as an admission.**
- 


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(1) An admission may be proved by or on behalf of the person making it, **when it is of such a nature that, if the person making it were dead** it would be relevant as between third person under **section 32**.

(b) A the captain of a ship, is tried for casting her away  
Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statement, because they would be admissible between third parties, if he were dead under Section 32, Clause (2).



- (2) An admission may be proved by or on behalf of the person making it, **when it consists of a statement of the existence of any state of mind or body, relevant or in issue**, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

example---- gift deed was executed by A in favour of B

After one year A files a suit against B for cancellation of the deed stating that at the time of execution he was seriously ill so much so that he could not understand the contents of the gift deed

- (3) An admission may be proved by or on behalf of the person making it, if it is relevant **otherwise than as an admission.**

A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements though they are admissions, because they are explanatory of conduct influenced by facts in issue.

# CONFESSION

- The expression 'Confession' means "a statement made by an accused admitting his guilt. It is an admission or acknowledgment as to commission of an offence.
- According to **James Stephen** ---- A Confession is an admission made at any time by a person charged with the crime **stating or suggesting** an inference that he committed
  - 1. if he states that he committed the crime he is charged with
  - 2. if he makes a statement by which he does not clearly admit the guilt, yet from the statement some inference can be drawn that he might have committed the crime
- In **Pakala Narayan Swami v Emperor** Lord Atkin observed " A confession must either admit in terms the offence or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating f

# ESSENTIALS OF CONFESSIONS

- Confessions must be voluntary. It must be the outcome of his own freewill
- Confessions are the declarations against the interest of the person making them, they are probably true
- Confession must be clear, definite and unequivocal, whether it is a judicial or extra-judicial confession
- Confession must either admit in terms of the offence or at any rate substantially all the acts which constitute the offence
- The reason for confession and the thing which motivated the accused to accept the guilt
- Confession may be oral or written
- It must not be irrelevant



# STATEMENTS WHICH DO NOT COME UNDER CONFESSION

- Exculpatory statement – these are the statements which exclude the person from the commission of crime
- Guilty conduct – guilty conduct such as a person running from the scene of murder soon after the murder cannot amount to confession
- Acknowledgment of subordinate facts – e.g the Acknowledgment that he was present at the scene of the crime cannot be treated as confession as to the guilt



## Confession

## Admission

1. Confession is a statement made by an accused person which is sought to be proved against him in criminal proceeding to establish the commission of an offence by him.

1. Admission usually relates to civil transaction and comprises all statements amounting to admission defined under section 17 and made by person mentioned under section 18, 19 and 20.

2. Confession if deliberately and voluntarily made may be accepted as conclusive of the matters confessed.

2. Admissions are not conclusive as to the matters admitted it may operate as an estoppel.

3. Confessions always go against the person making it

3. Admissions may be used on behalf of the person making it under the exception of section 21 of evidence act.

4. Confessions made by one or two or more accused jointly tried for the same offence can be taken into consideration against the co-accused (section 30)

4. Admission by one of the several defendants in suit is no evidence against other defendants

5. Confession is statement written or oral which is direct admission of suit.

5. admission is statement oral or written which gives inference about the liability of person making admission.  
act is not in itself a confession”.

6. Confession cannot be made by or on behalf of another person

6. Admission can be made by or on behalf of another person Section 18-20


# TYPES OF CONFESSION



# EVIDENTIARY VALUE OF CONFESSION

- Value of judicial confession-
- The confession of an accused person is substantive evidence and a conviction can be based solely on a confession. If it is found that the confession was made and was **free, voluntary and genuine** there would remain nothing to be done by the prosecution to secure conviction. No question of corroboration arises in this case.
- It would be extremely unsafe to do so when the confession is open to a good deal of criticism and has been taken in the jail without adequate reason and when the story of murder as given in the confession is somewhat hard to believe.
- Now the settled law is that a conviction can be based on confession only if it is proved to be voluntary and true. If corroboration is needed it is enough that the general trend of the confession is substantiated by some evidence which would tally with the contents of the confession. General corroboration is enough.
- Proof of judicial confession- Under section 80 of Evidence Act a confession recorded by the magistrate according to law shall be presumed to be genuine. It is enough if the recorded judicial confession is filed before the court. It is not necessary to examine the magistrate who recorded it to prove the confession. But the identity of the accused has to be proved.

## ○ Value of extra-judicial confession-

- extra-judicial confessions are not usually considered with favour but that does not mean that such a confession coming from a person who has no reason to state falsely and to whom it is made in the circumstances which support his statement should not be believed.
  - The evidence of extra-judicial confession is a weak piece of evidence.
  - The extra-judicial confession must be received with great care and caution.
  - It can be relied upon only when it is clear, consistent and convincing.
  - The court has to decide whether the person before whom the admission is said to have been made are trustworthy witnesses.
  - The extra-judicial confession is open to the danger of mistake due to the misapprehension of the witness before whom the confession was made to the misuse of the words and the failure of the party to express his own meaning.
  - There being no record and there being no sanction behind it is very easy for the prosecution to catch hold of any witness who may come and depose that the accused admitted his guilt in his presence on some particular time.
  - Due to those reasons it is very dangerous for the courts to base conviction on the sole basis of extra-judicial confession.
  - Usually and as a matter of caution courts require some material corroboration to an extra-judicial confession statement corroboration which connects the accused person with the crime in question.
- 

- In **State of Karnataka v. A.B.Nag Raj** there was allegation that the deceased girl was killed by her father and step-mother in the National park. The alleged extra-judicial confession was made by accused during detention in forest office. No mention of said confession in report given to police nor any witness present there mentioning about the same confession. This extra-judicial confession cannot be relied on. Before relying on extra-judicial confession, it must be considered whether the confession was really made. It should also be considered as to why the accused reposed confidence in the witnesses stating about the confession.



## VALUE OF RETRACTED CONFESSION

- A retracted confession is a statement made by an accused person before the trial begins by which he admits to have committed the offence but which he repudiates at the trial.
- After the commission of a serious offence some police officer makes investigation, examines witnesses and the accused. If in his opinion the accused is proved to have committed the offence, he submits a report to a magistrate having jurisdiction in the matter.
- The accused on being examined by the police officer is willing to admit the guilt the police officer sends the accused to some magistrate for recording his statement. The magistrate after being satisfied that the accused admits to have committed the offence this recorded statement by the magistrate may be proved at the trial.
- When the trial begins the accused on being asked as to whether he committed the crime he may say that he did not commit the crime. He may deny to have made the statement at all or he may say that he made that statement due to undue influence of the police. Here the confession made by the accused to the magistrate before the trial begins is called retracted
- It is unsafe to base the conviction on a retracted confession **unless it is corroborated by trustworthy evidence**. There is no definite law that a retracted confession cannot be the basis of the conviction but as a rule of practice and prudence not to rely on retracted confession unless corroborated.

## SECTION 24 OF INDIAN EVIDENCE ACT - CONFESSION CAUSED BY INDUCEMENT, THREAT OR PROMISE, WHEN IRRELEVANT IN CRIMINAL PROCEEDING-

- A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any **inducement, threat or promise** having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused person grounds, which would appear to him reasonable, for supporting that by making it he would gain any advantage or avoid any evil of temporal nature in reference to the proceeding against him.



## INGREDIENTS OF SECTION 24

- To attract the prohibition enacted in Section 24 the following facts must be established:
  - That the statement in question is a **confession**,
  - That such confession has been **made by the accused**,
  - That it has been made to a **person in authority**,
  - That the confession has been obtained by reason of any **inducement, threat or promise**, proceeding from a person in authority,
  - Such inducement, threat or promise must have **reference to the charge against the accused**, and
  - The inducement, threat or promise must in the opinion of the court be **sufficient** to give the accused ground, which would appear to him reasonable, for supporting that by making it he would **gain any advantage** or **avoid any evil of a temporal nature** in reference to the proceedings against him.

## 25. CONFESSION TO POLICE OFFICER NOT TO BE PROVED –

- No confession made to police officer<sup>1</sup> shall be proved as against a person accused of any offence.
- Confession made before or after the investigation
- A person accused of any offence
- Confession only excluded
- Made to police officer



## 26. CONFESSION BY ACCUSED WHILE IN CUSTODY OF POLICE NOT TO BE PROVED AGAINST HIM

- No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate<sup>1</sup>, shall be proved as against such person.
- [Explanation.—In this section “Magistrate” does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George ,<sup>3</sup>[\*\*\*] or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (10 of 1882),<sup>4</sup>].



## 27. HOW MUCH OF INFORMATION RECEIVED FROM ACCUSED MAY BE PROVED

- Provided that, when any fact is discovered to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.
- 1. the facts must have been discovered in the consequence of the information received from the accused of an offence
- 2. The person must be accused of an offence
- 3. He must be in the custody of police officer
- 4. The portion only of the information which relates distinctly to the fact discovered can be proved . The rest is inadmissible
- 5. Before the statement is proved somebody must have depose that some articles were discovered
- 6. The facts discovered must be relevant



## 28. CONFESSION MADE AFTER REMOVAL OF IMPRESSION CAUSED BY INDUCEMENT, THREAT OR PROMISE, RELEVAN

If such a confession as is referred to in Section 24 is made after the impression caused by any inducement, threat or promise has, in the opinion of the Court been fully **removed** it is relevant.

- 29. Confession otherwise relevant not to become irrelevant because of promise of secrecy etc. –
- If such a confession is otherwise relevant, it does not become it was made under a promise of secrecy. or in consequence of a deception practiced on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to question which he need not have answered, whatever may have been the form of those question, or because he was not warned that he was bound to make such confession, and that the evidence of it might be given against him.

- 30. Consideration of proved confession affecting person making it and others jointly under trial for same offence –
- When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.
- 1Explanation – “Offence” as used in this Section, includes the abetment, or attempt to commit, the offence.
  
- Illustrations
- (a) A and B are jointly tried for the murder of C. It is proved that A said – “B and I murdered C”. the court may consider the effect of this confession as against B.
- 
- (b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said, “A and I murdered C”. The statement may not be taken into consideration by the Court against A as B is not being jointly tried.



## 32. CASE IN WHICH STATEMENT BY PERSON WHO IS DEAD OR CANNOT BE FOUND, ETC. IS RELEVANT –

Statements, written or verbal, of relevant facts made by a person

-----who is dead, or

-----who cannot be found, or

----- who has become incapable of giving evidence, or

-----whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable,

are themselves relevant facts in the following cases –



- (1) When it relates to cause of death
- (2) Or is made in course of business
- (3) Or against interest of maker
- (4) Or gives opinion as to public right or custom, or matters of general interest
- (5) Or relates to existence of relationship
- (6) Or is made in will or deed relating to family affairs
- (7) Or in document relating to transaction mentioned in section 13, Clause (a).
- (8) Or is made by several persons and express feelings relevant to matter in question



## (1) WHEN IT RELATES TO CAUSE OF DEATH

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.



## (2) OR IS MADE IN COURSE OF BUSINESS

- – When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods securities or property of any kind; or of a document used in commerce written or signed by him or of the date of a letter or other document usually dated, written or signed by him.



- (3) Or against interest of maker – When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true it would expose him or would have exposed him to criminal prosecution or to a suit for damages.
- (4) Or gives opinion as to public right or custom, or matters of general interest – When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest of the existence of which if it existed, he would have been likely to be **aware**, and when such statement was **made before any controversy** as to such right, custom or matter had arisen.




- (5) Or relates to existence of relationship – When the statement relates to the existence of any relationship 1by blood, marriage or adoption between persons as to whose relationship 1by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.
- (6) Or is made in will or deed relating to family affairs – When the statement relates to the existence of any relationship 1by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

- (7) Or in document relating to transaction mentioned in section 13, Clause (a). – When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in Section 13, Clause (a).
- 
- (8) Or is made by several persons and express feelings relevant to matter in question – When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.



### 33. RELEVANCY OF CERTAIN EVIDENCE FOR PROVING, IN SUBSEQUENT PROCEEDING, THE TRUTH OF FACTS THEREIN STATED –

- Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceedings, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party or if his presence cannot be obtained without, an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable;
  - Provided –
  - That the proceeding was between the **same parties** or their representatives in interest;
  - That the adverse party in the first proceeding had the right and **opportunity to cross examine**;
  - That the **questions in issue were substantially the same** in the first as in the second proceeding.
  -
- 


# STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES

- 34. **Entries in books of account** including those maintained in an electronic form when relevant-

Entries in books of accounts including those maintained in an electronic form], regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

- 35. Relevancy of **entry in public record** or an electronic record made in performance of duty –
- An entry in any public or other official book, register or 1[record or an electronic record], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record or an electronic record is kept, is itself a relevant fact.



- 36. Relevancy of statements in maps, charts and plans –
  - 
  - Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of the Central Government or any State Government, as to matters usually represented or stated in such maps, charts, or plans are themselves facts.
  - 38. Relevancy of statements as to any law contained in law books –
  - 
  - When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.
- 

# RELEVANCY OF JUDGMENTS

- 40. Previous judgments relevant to bar a second suit or trail –
- The existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is, whether such Court ought to take cognizance of such suit or to hold such trail.



- 41. Relevancy of certain judgments in probate etc., jurisdiction –
- A final judgment, order or decree of a Competent Court, in exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or to take away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing not as against any specified person but absolutely, is relevant when the existence of any legal character, or the title of any such person to any such thing, is relevant.
- 
- Such judgment, order or decree is conclusive proof –
- That any legal character which it confer accrued at the time when such judgment, order or decree come into operation;
- That any legal character to which it declares and such person to be entitled, accrued to that person at the time when such judgment, 1order or decree declares it to have accrued to that person;
- That any legal character to which it takes away from any such person ceased at the time from which such judgment, 1order or decree declared that it had cased or should cease.
- And that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, 1order or decree declares that it had been or should be his property.

- 42. Relevancy and effect of judgment, order or decrees, other than those mentioned in Section 41. –
- 
- Judgments, orders or decrees other than those mentioned in Section 41, are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.
- 
- Illustrations
- 
- A sues B for trespass on his land, B alleges the existence of a public right of way over the land, which A denies.
- 
- The existence of a decree in favour of the defendant, in a suit by A against C or a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of ways exists.



## 43. JUDGMENT ETC., OTHER THAN THOSE MENTIONED IN SECTION 40 TO 42 WHEN RELEVANT –

- Judgments, orders or decrees other than those mentioned in Sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a **fact in issue, or is relevant, under some other provision** of this Act.
- Illustrations
- (a) A and B separately sue C for a libel which reflects upon each of them C in each case says that the matter alleged to libelous is true and the circumstances are such that it is probable true in each case, or in neither.
- (d) A has obtained a decree for the possession of land against A,C,B's son murders A in consequence.
- The existence of the judgment is relevant, as showing motive for a crime.
- (e) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

- 44. Fraud or collusion in obtaining judgment, or incompetence of Court may be proved –
- 
- Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under Section 40,41 or 42 and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.



# RELEVANCY OF JUDGMENTS

- 40. Previous judgments relevant to bar a second suit or trail –
- 41. Relevancy of certain judgments in probate etc., jurisdiction –
- 42. Relevancy and effect of judgment, order or decrees, other than those mentioned in Section 41. –
- 43. Judgment etc., other than those mentioned in Section 40 to 42 when relevant –
- 44. Fraud or collusion in obtaining judgment, or incompetence of Court may be proved –

