

Relevancy of Facts (Sec.5 to Sec.55)

SCHEME OF INDIAN EVIDENCE ACT:-

Three broad categories:-

Firstly what to prove (5 to 55)

Secondly, who to prove (S. 100-115)

Lastly how to prove (rest of IEA)

Introduction

The second chapter in the law of evidence, 'relevancy of facts' can be considered as a tool to identify facts, appropriate to the case, from a plethora of them. These are called 'Facts in Issue' and help in steering the case towards a justifiable judgment. Only through evidence can they be proved and evidence has been defined as:

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.

Not everything holds value in the court of law, only certain events, and physical or abstract that is brought to court's notice, though legal means hold relevancy.

Every event is a fact in itself and is made up of a number of facts. The law of evidence was developed to chalk out the rule and principles to prove "facts".

'Fact' means an existing thing or action. The event or fact which is likely to occur in future and which neither occurred in the past nor is occurring at present, do not amount to 'fact' within the meaning of Indian Evidence Act.

As per I.E. Act, the fact is divided into two categories as following:

Fact:

➤ **Physical and psychological facts**

Physical facts are those that can be discovered through the use of a person's senses. For instance, observing the arrangement of certain objects, hearing the distinct sound of a horn, etc. However, the law of evidence is not restricted to physical facts "only".

Beyond, physical facts lie psychological facts which are based on the mental condition of a person. For instance, when a person commits fraud, his intention to deceive the other party is also a fact.

The legal meaning of the fact (S.3, I.E. Act), as under the Indian Evidence Act:

1. Anything, state of things, or relation of things, capable of being perceived by the senses; (Physical facts)

Illustration—

(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.

For.Ex. ---

- a. A, a man, saw something, it is a fact
- b. B, a woman, said some words, it is fact.
- c. C, a man, is riding on a horse, it is a fact.
- d. Some chairs are arranged in a certain order in a certain place, it is a fact.

2. Any mental condition of which any person is conscious. (Psychological fact).

Illustration—

(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.

For.Ex. ---

- a. A has a good reputation in his locality.
- b. A fraudulently sold his car to B.
- c. A has a bad opinion about B.

The feelings, opinions etc. can't be perceived by the sense but can be felt by the mind, so these are psychological facts.

The first clause of the definition of "fact" refers to external facts which are the subject of perception by the five senses,

--and the second clause refers to internal facts, which are the subject of consciousness.

-- Illustrations (a), (b) and (c) are illustrations of the first clause;

---illustrations (d) and (e) of the second.

Facts are, thus, (adopting the classification of Bentham), either physical-e.g., the existence of visible objects, or psychological-e.g., the intention or animus of a particular individual in doing a particular act.

The psychological facts are incapable of direct proof by the testimony of witnesses; their existence can be ascertained only by the confession of the party whose mind is their seat or by presumptive inference from physical facts.

- **Psychological facts**

Bentham gave the following as important examples of psychological facts¹:-

"1. **Sensations**: feelings having their seat in some one or more of the five senses-sight, hearing, smell, taste and touch. Sensations, again, may be sub-divided into those which are pleasurable, those which are painful, and those which, not being attended with any considerable degree of pleasure or pain, may be called indifferent.

2. Recollections: the recollections or remembrances of past sensations.

¹ Bentham (Works), Vol. 6, p. 236

3. Judgments: that sort of psychological fact which, has place when we are said to assent to or dissent from a proposition.

4. Desires: which, when to a certain degree strong; are terms passions.

5. Volitions: or acts of the will etc."

can further be divided into two categories, namely positive facts and negative facts.

- **Positive or affirmative facts:-** these facts are those facts whose existence are positive or affirmative.

For example:

- a. A killed B. there is blood stains on the floor. There is a knife in the hand of A.
- b. Parliament of India is situated at New Delhi.

Negative Facts: - These facts mean non-existence of positive facts.

For example-

- a. A and B are not seen together since last 30 days.
- b. Nothing is heard from B.
- c. No weapon is found in the house of A.
- d. A, the complainant, failed to identify B, the accused, due to lack of light.

“That all our knowledge begins with experience, there can be no doubt. For, how is it possible that the faculty of cognition should be awakened into exercise otherwise than by means of objects which affect our senses, and (which partly of themselves produce representations, partly rouse our powers of understanding into activity, to compare, to connect, or to separate these, and so to convert the raw material of our sensuous impressions into a knowledge of objects, which is called experience? In respect of time, therefore, no knowledge of ours is antecedent to experience, but (it) begins with it.”

Meaning of thing.-

"Thing"-an expression used in the definition-is defined in the Oxford English Dictionary as-

"That with which one is concerned (in action, speech or thought); an affair, business, concern, matter, subject.

That which is done or to be done; a doing, act, deed, transaction; an event, occurrence, incident; a fact, circumstance, experience.

That which is said; a saying, utterance, expression, statement; with various connotations e.g. a charge or accusation made against a person, a form of prayer, a story, tale; a part or section of an argument or discourse; a witty saying, a jest.

Formerly used absolue; (without article or qualifying word) also a thing, in indefinite sense- anything, something.

An entity of any kind. That which exists individually (in the most general sense, in fact or in idea); that which is or may be in any way an object of perception, knowledge or thought, a being, an entity. (Including persons, when a personality is not considered." It is not thus confined to static phenomena.

In Webster's Dictionary,

"Thing" is defined to include; assembly, reason a matter of concern, affairs; a particular state of affairs; situation, complication; Deed, act, accomplishment, used commonly as cognate object of do; a product of work or activity ... the end or aim of effort or activity. Whatever exists or is conceived to exist as a separate entity or as a distinct and individual quality, fact or idea; a separate or distinguishable object of thought something that is said, told or thought.

Legal meaning of "thing".-

In legal discussion also, the expression "thing" is used to **refer to events**. The word 'occurrence' has been judicially defined as that which occurs-an event, incident or happening-and as that which occurs especially adversely-an appearance of happening. Incidentally "occurrence", to the lay mind, and more so to the legal mind, has a much broader meaning than the word "accident". "As these words are generally understood, accident means something that happened in a certain way, while an occurrence means something that came about in any way."

It would appear that there are precedents for taking the expression "thing" as covering everything that exists or can exist in reality-physical or psychic, animate or inanimate, static or dynamic. Not only what exists without change, but also what represents a change or an event, is covered. If the body can feel or the mind can conceive of a subject, then it is a "thing". Every matter within the ambit of the physical or the intellectual apparatus of man can, therefore, be regarded as a "thing". It is not confined to what can be seen again and again-a permanent physical object. It covers also events or acts which can be perceived only once-phenomena which have a transient effect on the senses.

"Relation of things" would, in any case, seem to cover acts-see illustrations (b) and (c)-and events also, because an event represents a "relation" in point of time.

It is pertinent to mention that in the law of evidence 'Facts' include-

- i The **factum probandum** (i.e. principal fact to be proved) and
- ii The **factum probans** (i.e. the evidentiary fact from which the principal fact follows immediately or by inference).

What is 'Fact in issue'? (S. 3)

Means and includes—

Any fact from which—

- i By itself or
- ii In connection with other facts

The existence, non-existence, nature or extent of-

- i Any right or
- ii Any liability or
- iii Any disability

Whether asserted or denied in any suit or proceeding, necessarily follows.

Illustration:-

A is accused of the murder of B.

At his trial the following fact may be in issue:-

- a) That A caused B's death;
- b) That A intended to cause B's death;
- c) That A had received grave and sudden provocation from B;
- d) 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.

- Fact in issue means the matters which are in dispute or which form the subject of investigation.
- When a case comes before the court, it is most important that the facts in controversy should first be determined as because the evidence tendered must be relevant and pertinent to the points in issue. Evidence of collateral facts which have no connection with the principal transaction must be excluded.
- **Facts in issue are those facts which are—**
 - i alleged by one party and denied by the other in the pleadings in a civil case or
 - ii Alleged by the prosecution and denied by the accused in a criminal case.
- Facts in issue are those facts out of which some legal right, liability or disability involved in the enquiry, necessarily arises and upon which a decision must be arrived at.
- What facts are facts in issue in a particular case is a question to be determined by the substantive law or by the branch of law of procedure which regulates the law of pleadings, civil or criminal.
- It is the main fact which controls the case and its proof often depends on the relevant facts.
- In civil cases the matters in dispute are sorted out and framed into issues. They become facts in issue in civil suits. So the facts in issue are determined by the process of framing of issues.
- In criminal cases, the ingredients of the offences become the facts in issue as they are alleged by the prosecution and denied by the accused. The charge constitutes and includes facts in issue.

For example:-

A, a cashier in a factory. It is his duty to bring money from the bank and distribute it among the labourers. One day A has brought Rs.2 lakhs from the bank and

misappropriated Rs. 1 lakh out of the money. He is prosecuted u/s. 409 of IPC., for committing criminal breach of trust.

A pleaded in his defence that he brought the cash from the bank, but on that particular day he was to go on leave and as such he asked the Manager of the Company for handing over the cash to some other staff. Finally, as per the direction of the Manager of the company he handed over the same to B, the Asst. Cashier.

Now the question is whether A is liable for criminal breach of trust. According to the definition of criminal breach of trust u/s. 405 of IPC., the following ingredients may be found before a person is held guilty—

- a) That he has been entrusted with some property.
- b) That he has dishonestly misappropriated that property.

Now, in the instant case, it may be found that the court holds A liable for criminal breach of trust, it has to decide—

- i. Whether A handed over Rs. 2 Lakhs to B.
- ii. Whether A worked on the day in office.
- iii. Whether B worked on the day and distributed the money to the labourers.

What is 'Relevant Fact'?

The word "relevant" has two meanings. In one sense it means 'connected' and in another 'admissible'.

According to Stephen,

'Relevancy' means connection of events as cause and effect.

What is really meant by 'relevant fact' is a fact that has a certain degree of probative force.

The connection may be traced either from cause to effect or from effect to cause. All facts are relevant which exist in relation to cause or effect to the fact alleged to exist.

Relevant under the Act:-

This Act does not give any definition of the word 'relevant'. It only lays down that a fact becomes relevant only when it is connected with other facts in any of the ways referred to, in this Act relating to the relevancy of facts.

Under Chapter II, Sections 5 to 55, deal with the relevancy of facts.

A fact in order to be relevant fact must be connected with the facts in issue or with any other relevant fact in any of the ways referred to in Sections 6 to 16, 27 to 30, 32 to 38 and 40 to 55.

A fact not so connected is not a relevant fact. The scheme of the Act seems to be to make all relevant facts admissible.

As per S.3 of Indian Evidence Act, one fact is said to be relevant to another when one is connected with the other in any of the ways referred to in the provisions of I.E. Act relating to relevancy of facts.

I.E. Act does not give any specific definition of 'relevancy' or 'relevant fact'. It simply describes when one fact becomes relevant to another fact.

Sec. 5 to Sec. 55 of Indian Evidence Act provides several ways in which one fact may be connected with the other fact and therefrom the concept of relevant fact can be meted out.

One fact is relevant to another fact if they are connected with each other in any of the ways as described in S.5 to S. 55. If a fact is not so connected, it is not a relevant fact.

All facts are relevant which are capable of affording any reasonable presumption as to fact in issue or the principal matter in dispute.

- Sir Stephen opines that the 'relevancy' means connection of events as cause and effect.
- Generally the facts relevant to an issue are those facts which are necessary for proof or disproof of a fact in issue. Such facts may be given in evidence directly or inferentially.
- What is really meant by 'relevant fact' is a fact that has a certain degree of probative force. They themselves are not facts in issue but may affect the probability of fact in issue.

- Relevant facts are subsidiary or collateral in nature, but pertinent or probable in giving rise to an inference of right or liability by a process of reasoning.
- A fact may be relevant as it has connection with the fact in issue, but still it may not be admissible.

For example,

Communication made by spouses during marriage or professional communication, communication made in official capacity relating to affairs of state etc. are not admissible though they may be relevant.

On the basis of logic and not of law it can be ascertained whether a particular fact is reasonably connected with the main issue or not. So, logical relevancy signifies reasonable connection between facts. But logical relevancy is not the sole test of admitting such fact on the record of a court. Admissibility is founded on law not on logic. 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.

The relevancy of facts in a case of circumstantial evidence can be explained by the illustration of –

R. v/s Richardson.²

In this case, a young woman of weak intellect was alone in the cottage when her parents had gone to harvest field. On their return, a little after mid-day, they found her murdered with throat cut. The circumstances excluded the possibility of suicide.

According to the surgeon who examined the wound, the throat was cut by a sharp edged weapon by the left hand. On opening the body, the deceased was found to be pregnant for some months. On the ground, there were marks of foot-steps of a person who might have run hastily through indirect way and in confusion and slipped into a quagmire or bog which had stepping stones and he must have been wet till his middle of leg.

The impression of footsteps were taken and measured. It appeared that the impression of the foot steps were of the person who must have worn shoes and were newly mended. The shoes appeared to be with iron knobs or nails. Along the tracks of the footsteps with a certain interval drops of blood were found.

At this stage, there was neither any suspicion on any person murdering the woman nor there was any suspicion on the man by whom she was impregnated. At the funeral, a number of persons assembled and the steward thought it a fit occasion to detect the criminal as he might not be absent to avoid any kind of suspicion.

There were about sixty men at that time and after interment, the steward called one by one and asked them to take off their shoes, measured and found one of them pretty of same impression as measured nearby the cottage the person who wore the shoes was a school-master and it was suspected that he might have been father of the child and would have murdered the woman to save his character.

On a closer examination, the shoes corresponded with the impressions found on the ground near the cottage. On the closer examination, the shoes were found to be pointed at the toe but the impression of the shoes at the place of incident were

² Wills pp. 224-229; Stephen, 'Introduction to the Evidence Act' (1902) p. 93, Woodruff and Amir Ali, 'Law of Evidence', 14th Ed., pp. 64 to 68.

round in shape. Rest of the shoes corresponded exactly with the impression in dimension, shape, sole and the position of nails.

On being questioned as to where he was on the day of the murder, he without any embarrassment replied that he was employed whole day in his master's work. His statement was confirmed by his master and fellow servants present there. A few days thereafter, he was apprehended. On the examination, he acknowledged to be left-handed man.

On being asked regarding some scratches on his cheek, he told that he got scratches while pulling the nuts in the wood. He adhered to his previous statement of being employed that day in his master's work. In course of inquiry, it appeared that on the day of murder he had been absent from the work about half an hour in the forenoon; he called at smith's shop in the way of the cottage of deceased.

A young girl about hundred yards away from the cottage saw a man exactly with the dress and appearance of Richardson running hastily towards the cottage at about the same time when the deceased was murdered but she did not see his return as he might have gone by a small eminence to avoid being viewed by her. It was the very track where foot-prints were found.

The fellow servants of Richardson recollected that on that day they and Richardson were driving the master's cart. While passing a wood, Richardson left the cart saying that he must run to the smith shop and told fellow servants that he would come back in half an hour but he took longer time. On being asked by a fellow servant, he told that he had stopped in the wood to gather some nuts. One of his stockings were wet and soiled. He told that he had stepped into a marsh which he named also. His fellow servants remarked that he must have been either mad or drunk as there was a foot path by the side of the marsh. The time of absence from the cart and the distance of the cottage from there appeared that he might have gone there, committed the crime and returned.

On the search, his stockings were found concealed in the thatch of his apartment. The stockings were much soiled and some blood-stains were also found on them. He first told that he had bleeding in the nose a few days back and then he said that he had assisted a horse in bleeding but it was proved that he had not assisted. The soil on examination was found to correspond with that of more the puddle adjoining the cottage and was of a particular kind found in the neighborhood.

The shoe-maker, who had mended his shoes a short while ago, was discovered. On the shoes being exhibited to the shoe-maker, he told that he had mended the shoe which was of prisoner. It came out that he was acquainted with deceased and was on one occasion seen with her in such situation as to give rise to suspicion that he had criminal intercourse with her.

On being taunted with such connection with one in her situation, he shoes were measured; he appeared to be a good deal agitated. Between that time and his apprehension he was advised to fly but he answered, "Where can I fly to?" the prisoner was convicted, confessed and hanged.

According to Woodruff and Amir Ali, this is a case of illustration of method of agreement as described by Mill excluding the supposition of chance.

Thus ----

1. "The murderer had a votive—Richardson had a motive.
2. The murderer had an opportunity on that hour of that day at that place.
3. The murderer was left-handed-Richardson was left-handed.
4. The murderer wore shoes which made certain marks-Richardson wore shoes which made exactly similar marks.
5. If Richardson was the murderer and wore stockings, they must have been soiled with a peculiar kind of sand-he did wear stockings which were soiled with that kind of sand.
6. If Richardson was the murderer, he would naturally conceal his stockings-he did conceal his stockings.
7. The murderer would probably get blood on his clothes-Richardson got blood on his clothes.
8. If Richardson was the murderer, he would probably tell lies about the blood-he did tell lies about the blood.
9. If Richardson was the murderer, he must have been at the place at the time in question-a man very like him was seen running towards the place at the time.
10. If Richardson was the murderer, he would probably tell lies about his proceedings during the time when the murder was committed—he told such lies.

Here are ten separate marks, five of which must have been found in the murderer, one of which must have been found on the murderer if he wore stockings, whilst others probably would be found in him.

All ten were found in Richardson. Four of them were so distinctive that they could hardly have met in more than one man. It is hardly imaginable that two left-handed men, wearing precisely similar shoes and closely resembling each other, should have put the same leg into the same hole of the same marsh at the same time, that one of them should have committed a murder, and that the other should have causelessly hidden the stocking which had got soiled in the marsh. Yet this would be the only possible supposition consistent with Richardson's innocence".

Difference between relevancy and admissibility:-

Relevancy		Admissibility	
1	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.	1	When facts have been declared to be legally relevant under I.E. Act, they become admissible.
2	It is founded on logic and human experience.	2	It is founded on law not logic.
3	The question regarding relevancy has been enunciated in S. 5 to S. 55 of I.E. Act.	3	The question of admissibility is provided in s. 56 and the following sections.
4	It signifies as to what facts are necessary to prove or disprove a fact in issue.	4	It is a decisive factor between relevancy and proof.
5	It merely implies the relevant facts.	5	It implies what facts are admissible and what are not admissible.
6	It is the cause.	6	It is the effect.
7	The court may apply its discretion.	7	There is no scope for the court to apply discretion.

8	All admissible facts are relevant.	8	All relevant facts are not admissible. Only legally relevant facts are admissible.
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Thus it is found that all legally relevant facts are admissible, but all logically relevant facts are not admissible. What is legally receivable is admissible, whether it is logically probative or not.

For practical purpose, relevant fact means what is legally admissible in evidence. Only the evidence which is legally admissible should be received by the court.

Facts	
Fact in issue	Relevant facts
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. No list is given in Evidence Act of the facts in issue. The Court has to frame in every case.	<i>One fact is said to be relevant to another when one is connected with the other in any of the following ways.</i>
	1. Facts forming part of the same transaction (s. 6)
	2. Facts which are occasion, cause or effect of the facts in issue (s.7).
	3. Motive, preparation, conduct of a party (s.8).
	4. Facts, necessary to explain the facts in issue (s. 9)
	5. Things, said or done by conspirators (s. 10).
	6. Facts inconsistent with facts in issue (s. 11).
	7. Facts helping in the estimate of damages (s. 12.)
	8. Transaction creating right, etc. (s. 13).
9. Facts stating of mind or body (s. 14).	

	10.	Facts showing whether act is intentional or accidental (s. 15).
	11.	Existence of course of business (s. 16).
	12.	Admission (s. 17 to 23 & 31).
	13.	Confession (s. 24 to 30).
	14.	Statements of persons who are dead or cannot be found (s. 32 to 33).
	15.	Statements made under special circumstances (s. 34 to 39).
	16.	Judgments (s. 40 to 44).
	17.	Opinions of experts and others (s. 45 to 47).
	18.	Opinions as to existence of custom and usages (s. 48, 49).
	19.	Opinion on relationship (s. 50).
	20.	Character (s. 52 to 55).

Section 5:-

Evidence may be given in any suit or proceedings 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.

Illustrations

(a) A is tried for the murder of B by beating him with a club(stick) 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.

S.5 is the cornerstone of the chapter –II dealing with relevancy of facts. According to this section, the fact in issue can be proved by either the evidence of fact in issue itself or relevant facts (dealt by S. 6 to 55).

For example- where it is alleged that B was murdered by A and an eyewitness 'C' appearing before the court clearly says that he saw A causing the death of B with an intention of causing death. Here, the 'C's oral testimony is an evidence of fact in issue (in this case, fact in issue is: whether A murdered 'B'?). But where there is no evidence of fact in issue, the fact in issue can be proved by producing before the court evidences of relevant fact.

But when we do not have the evidence of fact in issue or the evidence of fact in issue is or the evidence of fact in issue is not sufficient, evidence may be given of facts which are declared relevant on the basis of the rules contained in S. 6-55.

Section 165, which confers on the judge enormous power to elicit the truth by putting any question, relevant or irrelevant, at any time, of any witness, in any form, or order production of nay document etc.,³ still mandates that "the judgment must be based upon facts declared by this Act to be relevant, and duly proved."

Section 3 does not really define what is relevant but only says that facts declared to be relevant under Sections 6 to 55 are relevant.

³ S. 311 of Cr.PC. Also confers similar power on the Court if the witness' "evidence appears to be essential for the just decision of the case".

Section 5, which like a way-mark or sign-post directs 'go this way', provides that evidence may be given of "every fact in issue and of such other facts as are hereinafter declared to be relevant" i.e., by Section 6 to 55.

For good measure, the section gives a parting warning to say "and of no others" and these four words are a very eloquent testimony to the legislative intent that the questions of relevancy are to be determined by reference only to the provisions of Chapter II and no extraneous considerations of "logical" relevancy or of "probative value" can be brought into play by the Court.

Logical Relevancy, Legal Relevancy, Admissibility and Reliability: -

Logical Relevancy:-

The dictionary meaning of the term "relevancy" is given as "the relation of something to the matter at hand", "pertinence", "connection", "materiality" etc.

If one fact is connected to the other logically, it is called logical relevancy and it may be based on the following factors, among others:⁴

- a) Cause and effect;
- b) Occurrence at the same time (unity of time);
- c) Occurrence at the same place (unity of place);⁵
- d) Common purpose and design; etc.⁶

For instance,

If a severed dead body is found on a railway track, it can be inferred that the death occurred because of the train running over the person. On closer observation, if it is found that there is no hemorrhage near the body, the first inference may be replaced by another inference that the person was killed elsewhere and the dead body was thrown on the railway track to create the misleading impression that he was run over by the train. Here the inferences are drawn on the basis of logic based on cause and effect. If two or more persons have committed an offence together at the same time and place, it can be inferred that they were acting with common intention.

⁴Hadu vs. State, AIR.1951 Ori. 53.

⁵ However, S. 6 of the Evidence Act states that facts may be relevant as forming part of the same transaction "whether they occurred at the same time and place or at different times and places"

⁶Section 10 of the Act deals with the relevancy of common intention.

Legal Relevancy:-

While logical relevancy is certainly a very important factor in determining the probative value of facts, it so happens that the facts may be connected to each other by varying degrees of logical proximity. Thus, for instance, there can be direct, proximate and immediate causes and effects, and remote, indirect and even conjectural causes and effects. Hence, the Courts should let in only those facts which have a high degree of probative value that would help the Courts to decide one way or the other with relatively greater certainty. Then, the vexed question that arises is: how far is too far and how close is close enough?

Consequently, the Evidence Act adopted the device of declaring as relevant in Sections 6 to 55 only those logically connected facts which are considered to have a high probative value.

Thus, facts which may be connected to each other so remotely that they cannot be considered to have high probative value are kept outside the purview of the provisions of Sections 6 to 55.

Facts legally relevant under the Evidence Act means, simply, facts declared to be relevant under Sections 6 to 55 and this is a part of the legislative and not judicial determination.

Hence, all logically relevant facts are not legally relevant and all legally relevant facts may not be logically relevant.

For instance, the Evidence Act permits impeaching the credit of a witness by injuring his character, even though his character is not logically relevant to the fact in issue.

Admissibility:

Admissibility means that the facts which are relevant are eligible for consideration by the Court. Generally, while the rules relating to relevancy lay down what is included, rules relating to admissibility lay down what is included, rules relating to admissibility lay down what is excluded.

Ho Hock Lai points out that the rules of exclusion are of two types:

1. Exclusion from deliberation by Court and

2. Exclusion from proof.

As applied to Indian situation, it would mean, for instance, that the Court has to decide whether a piece of evidence is admissible or not. The Court will look into the evidence then decide upon admissibility.

Section 136 of the Act lays down the basic guiding principle in this regard and provides:

S. 136: Judge to decide as to admissibility of evidence—

When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.

The essential ingredients of the above section are:

1. It is the judge who decides the questions of relevancy and admissibility.
2. When a party proposes to adduce evidence of any fact, the judge may ask the party to clarify “*in what manner*” the fact would be relevant.
3. The judge would “admit” the particular adduced fact only if he is satisfied with the answer of the party that it is, indeed, relevant under one or the other provisions of S. 6 to 55.

Thus the consideration of relevancy comes first and of admissibility comes later and the judge will “admit” the fact only if it is “relevant”.⁷

Sarkar aptly observes:

“Relevancy (determined by the rules in the Act) is the test of admissibility...Admissibility is founded on law and not on logic. Admissibility presuppose relevancy.”⁸

The important point to be noted here is that the phrase “in what manner” in S. 136 means under what section of the chapter on relevancy the fact is said to be relevant.

⁷ In **Smit vs. The Queen, 2001 HCA 50**, the High Court of Australia observed: “...although questions of relevance may raise nice questions of judgment; no discretion falls to be exercised. Evidence is relevant or it is not. If the evidence is not relevant, no further question arises about its admissibility. Irrelevant evidence may not be received.” (emphasis in the original).

⁸Sarkar’s Law of Evidence, eds. M.C. Sarkar et al., Vol. 2 (New Delhi, 2003), pp 73-74.

Thus, the responsibility is placed on the judge to ensure that the provisions of the Act regarding relevancy are fully complied with but the burden is placed on the party seeking to adduce evidence to convince the judge that the fact is relevant under any of the S. 6 to 55.

It is enough if a fact is shown to be relevant under one of the sections on relevancy in the Evidence Act and the same fact may or may not be relevant under the other sections.

As a rule, all legally relevant facts are legally admissible unless they are barred by one or the other section of the Evidence Act.

Exclusionary provisions:-

That there are certain exclusionary rules in the Evidence Act which bar the admission of facts on policy grounds etc. like official secrets and communication between advocate and client.

It should be noted that while rules regarding relevancy are all contained in Chapter II of Part I of the Evidence Act, the exclusionary rules are found in the same Chapter as well as in other chapters of the Act.

Thus, **S. 24, 25 and 26 which are placed in the Chapter II “On Relevancy”** in fact provide for “irrelevancy” and bar the admission of certain confessions made under inducement, threat or promise, or made to police officers or made in police custody.

S. 122 to 131 which occur in Chapter IX “On Witnesses” also bar admission of facts which are covered by those sections like communications between husband and wife, between advocate and client, official secrets etc.

There are some exclusionary provisions in **Cr.P.C. like S. 162** which bar statements made to the police during investigation from being used in any trial.

All these barring provisions affect the admissibility of the facts covered by them.

Those facts may be otherwise relevant under S. 6 to 55 of the Evidence Act but they are rendered inadmissible by the barring provisions that may be found within the Chapter on Relevancy (S. 24, 25 and 26) or other provisions of the

Evidence Act (S. 121 to 126), or even the provisions of other statutes like S. 162 of CrPC.

In other words, the facts may be relevant but inadmissible.

Thus, all relevant facts are not necessarily admissible. However, almost all the barring provisions have their own exceptions and if a fact comes under the exception the bar will be lifted and the fact will be admitted.

Reliability:-

Just because certain facts are found to be relevant and admissible, it does not necessarily mean that the Court is going to rely on them.

Reliability depends on the Court's own assessment and evaluation of the entire evidence adduced by both the parties to a suit or proceeding, and the Evidence Act leaves this mental process of evaluation of witnesses and evidence entirely to the judicial expertise and wisdom.⁹

The Evidence Act does not lay down any guidelines in this regard except for a rare reminder like the one in **S. 114**, illustration (b) that

“an accomplice is unworthy of credit unless he is corroborated in material particulars” and

Section **34** where it is stated that entries in the books of account-

“shall not alone be sufficient evidence to charge any person with liability” and this is further clarified by stating in the illustration “without other evidence.”

The following conclusions may be drawn from the above discussion:

1. Under English law, all logically relevant facts are admissible unless they are barred by any legal provisions.
2. Under the evidence Act, no logically relevant facts are admissible unless they are legally relevant.

⁹**Sir Stephen observed:** “The rules of evidence may provide tests, the value of which has been proved by long experience, by which judges may be satisfied that the quality of the materials upon which their judgments are to proceed is not open to certain obvious objections; but they do not profess to enable the judges to know whether or not a particular witness tells the truth or what inference is to be drawn from a particular fact. The correctness with which this is done must depend upon the natural sagacity, the logical power, and the practical experience of the judge, not upon his acquaintance with the law of evidence.” Sir James Fitzjames Stephen, *The Indian Evidence Act: With an Introduction of the Principles of Judicial Evidence* (London, 1872), Macmillan Co., p. 42.

3. Under the evidence Act, for legal relevancy the only test is whether the facts are declared to be relevant under nay of the S. 6 to 55.
4. Hence, all logically relevant facts are not legally relevant.
5. All legally relevant facts also admissible unless they are barred by any of the exclusionary provisions contained in (a) Chapter on relevancy, or (b) other provisions of Evidence Act or (c) of CrPC or other statues.
6. In short,
 - a. No logically relevant facts are legally relevant unless they are declared to be relevant under S. 6-55 of the Evidence Act.
 - b. Conversely, all legally relevant facts are legally admissible unless they are barred by one or the other sections of the Evidence Act or some other law like CrPC.¹⁰
7. Hence, under the Evidence Act, questions of relevancy and admissibility are to be answered by reference to law only.

Section 5 of the Evidence Act deals with the right to produce evidence, in any suit or proceedings, relating to the existence or non-existence of every fact in issue, and also to prove such other facts which may be declared relevant to the fact in issue, by virtue of the provisions contained in Sections 6 to 55. This section restricts the investigation made by Courts within the bounds prescribed by general convenience.

Facts in issue:-

The evidence is given to settle the matter in controversy and for the purpose of establishing the existence of a fact 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.

¹⁰ The position is same in USA also. The United States Federal Rules of Evidence provide in Rule 402: “General Admissibility of Relevant Evidence.—Relevant evidence is admissible unless any of the following provides otherwise:

- The United States Constitution;
- A federal statute;
- These rules; or
- Other rules prescribed by the Supreme Court.

Irrelevant evidence is not admissible.”

In civil cases the facts in issue arise out of the pleadings by the parties, by assertion of the facts by one party and controverted by the other party. Such disputed facts would be drawn up by the Court under the Civil Procedure Code from the issues framed for determination in the suit. In criminal cases, the Court draws the facts given out by the prosecution, which constitute an offence against the accused person. Only such of those facts relevant to the offence would form a charge against the accused. While framing the charges concerning the offences alleged, the Court briefly points out the facts which constitute the particular offence.

Relevant facts:

According to S. 3 of the Evidence Act, 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. Relevancy relates to all facts in issue and of no other. The term **‘relevant’ is synonym of the term ‘the facts that may be proved’**.

‘And of no others’:

The words ‘and of no others’ in Section 5 of the Act clearly point out that the party to the proceeding is prohibited from proving any fact which is not in issue or not declared relevant by any of the provisions of the Act. Anyone who wants to give evidence of a particular fact must show that it is admissible under someone or other of the following sections.

The word ‘and of no others’ impliedly impose a duty on the Court to exclude the evidence of irrelevant facts, irrespective of objections by the parties.

The Court must therefore ignore any other consideration and confine itself strictly to the provisions of the Act and come to a conclusion as to the relevancy of a fact on the interpretation of the relevant provisions of the Act regardless of the fact whether the conclusion ultimately arrived at is in accordance with commonsense view of things or not. Conversely, a Court cannot, on the ground of public policy, exclude evidence relevant under the Indian Evidence Act, 1872.

Admissibility of evidence:

Generally, all facts are admissible, subject to two conditions, viz.

1. The best evidence connecting the fact in issue is admissible.

2. No hearsay evidence is inadmissible.

Under the Evidence Act, only facts directly connected with the fact in issue and such other facts which are declared relevant can be pleaded by the party.

It is always proper for the Court to determine the questions as to admissibility of evidence as and when objection arise. It is advisable to give at least brief reasons either for admissibility or inadmissibility of the evidence tendered, though detailed reasoning may be given in the judgment, so that the appellate Court can appreciate the question of admissibility.
