

Section – 7- Facts which are the 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.

Principle:-

Section 6 dealt with facts which formed part of the same transaction. Section 7 embraces a larger area and provides for the admission of several classes of facts, which though not possibly forming part of the transaction are yet connected with it in particular modes and are hence relevant, when the transaction itself is under inquiry.

These five modes of connection are:

- i Occasion,
- ii Cause,
- iii Effect,
- iv As giving **opportunity** for its occurrence,
- v Or constituting the **state of things** under which it happened.

These modes of connection are really different aspects of causation and therefore valuable means of discovering the truth.

They are in truth different aspects of causation, and the reason for the admission of facts of this nature is that, if you want to decide whether a thing were facts at hand calculated to produce or afford opportunity for its occurrence or facts which its occurrence was calculated to produce. In order, moreover, properly to appreciate fact it is necessary to know the state of things in which it occurred.

Moreover, this section is based on induction. The relevancy of facts is required to be determined by human experience. What has been the effect of a particular cause and what has been the constant cause of a particular effect in the past will be the same in future.

Every fact is connected with numberless, other facts by ties more or less close. It may often be difficult for Judge to say whether a fact can or cannot be properly said to 'Form part of transaction' within the meaning of Section 6.

Section 7 meets this difficulty by embracing a larger area of facts. Leaving the transaction itself, it provides for the admission of several classes of facts, which though not possibly forming part of the transaction, are yet connected with it in particular modes, and so are relevant when the transaction itself is under enquiry.

For example,

If a living being is cut on the ground necessarily there shall be bleeding and the blood can be found at the place of occurrence. Whenever a large quantity of human blood is found at any place by human experience it can be reasonably inferred that a human being has been injured. Thus, the bleeding is the effect of injury is the cause of bleeding.

Similarly, when a large number of trees are found to have fallen it shows that there must have been a storm. When tanks are filled with full of water and revivers are found to in spate it shows that there must have been a heavy rainfall.

Section 7 based on induction—

“There is a principle implied in the very statement of what induction is; an assumption with regard to the grace of nature and the order of universe, namely, that there are such things in nature as parallel cases that what happened once, will, under a sufficient degree of similarity of circumstances happen again and only not again but as often as the circumstances recur. This, I say, is an assumption, involved in every case of induction and if we consult the actual grace of nature we find that the assumption is warranted. The universe so far known to us is so constituted that whatever is true in any one case is true in all cases of certain description. The only difficulty is to find out the description.”

Under section 7, the relevancy of facts is to be determined by human experience. What has been the effect of a particular cause and what has been a constant cause of a particular effect in the past will be the same in future. The thing will be clear by taking examples. If a living being is cut into pieces on the ground there shall be bleeding and the blood will be found on the place of occurrence. By his induction whenever a man finds human blood in a great quantity on a particular place he may reasonably infer that some living being was cut into pieces or at least severely injured there.

1. Occasion:-

Occasion means the circumstances in which the event has occurred. Evidence can always be given of the set of circumstances which constituted the occasion for the happening of the principal fact.

For example,

1. If you say to friend that tomorrow I will go and withdraw money from bank, the next day you withdraw your money while returning extortion caused you.

Your statement “you said to your friend to that your will go and withdraw money from bank” will be relevant under occasion, you have given occasion to extort.

2. ‘J’ was tried for the murder of K. the dead body of K was found near a bridge in a gunny bag. At the trial the facts proved were:

- i The wife of k deposited all her ornaments with J;
- ii J took all the money that k had for purchasing a truck that he never purchased;
- iii K demanded money from J on the 17th May, 1947. J asked K to come on the 19th May;
- iv K came and stayed with J on the 19th night, of these facts, the facts of J being indebted to K and K’s demand for money are relevant as the *cause of murder* and the fact that K went and stayed there and slept are relevant as the *occasion of murder* and also *opportunity for it*.¹

3. R. vs. Richardson,² the facts of which have been noted before, the fact that the deceased girl was alone in her cottage at the time of the murder is relevant as it constituted the occasion for the murder.

Illustration (a) is also on the same point. If a man claims that he was robbed of money on the occasion of a certain fair, he should be able to show that he had money with him, for otherwise there would be no occasion to rob him. The fact that on the way he told one of his friends that he was going to the fair with money would be relevant as this shows that he did have money with him.

2. Cause:-

Evidence can be given of the set of circumstances which constitute the cause for the happening of the principal fact.

“Cause” often explains why a particular act was done. It helps the court to connect a person with the act. The act in question must have been done by the person who had the cause for it.

¹ Jai Nand R. vs. Rex, AIR 1949 All. 291.

²Wills, p. 225.Stephen’s Introduction to the Law of Evidence p. 93.

If for example, a person is running short of money that may cause him to take a loan. And, if he denies the fact of the loan, evidence can be given of the circumstances which became the cause of the loan. In this respects the work “cause” more or less means the same thing as does the word “motive” in section 8. For the things that cause an act to become necessary also supply the motive for it. The word “cause” is however, broader than the word “motive”.

Where **for example**, soon after an election the winning candidate is murdered, the election and somebody’s defeat at it is the cause of the murder and beyond that cause there may be no motive in it. It has been held by the Calcutta High Court in **Indian Airlines vs. MadhuriChowdhury**³

For example: accused was in love with deceased’s wife.

3. Effects:

Every act leaves behind certain effects which not only record the happening of the act, but also throw light upon the nature of the act.

For example, whether the death of a particular person was caused by suicide or by murder is often determined by looking at the effects of the incident, for suicide and murder have different effects.

Section 7, therefore, provides that the facts which are the effects, immediate or otherwise, of a fact in issue or of a relevant fact, shall be relevant.

One of the important facts which connect a person with the act in question is the footprints on the scene of the crime and the finger impressions upon the objects that he might have touched.

For example,

In R. vs. Richardson,⁴

Where a young girl was killed in her cottage, “the prints of the footsteps showed that they were those of a person who must have worn shoes, the soles of which had been newly mended and which had iron knobs or nails in them.” This is one of the effects of the facts in issue.

³AIR.1965 Cal. 252.

⁴Wills on Circumstantial Evidence p. 225.

The fact that the accused Richardson's shoes corresponded exactly with this impression in dimensions, shape of the foot, form of the sole, and the number and position of the nails, was relevant as it so surely established Richardson's presence at the lace of the crime.

Similarly, where a person is poisoned, the symptoms produced by the poison are relevant, being the effects of the facts in issue.

Illustration (b) speaks of marks of struggle at or near the place where a murder has been committed. Unexplained scratches on the face or the person of the accused are also the effects of the facts in issue and, therefore, relevant as such.

4. Opportunity:-

The circumstances which provide an opportunity for the happening of a fact in issue are relevant.

Often a person has to carve out for himself an opportunity to do the act in question. This may involve a break from the normal routine of his life.

Evidence of opportunity thus becomes important as it shows that the act must have been done by the person who had the opportunity to do it.

In Spencer Cowper's Trial,⁵

Cowper, a young and promising lawyer of 30 years of age, knew Sarah Stout, a young and wealthy spinster, who belonged to the religious denomination of Quakers.

Sarah fell in love with Cowper but for her to marry outside her faith would have led to her being expelled from the community of Quakers.

Moreover, Cowper was already married.

On 13th March 1699, Sarah's body was found floating on the river Priory and Spencer Cowper, along with three other, was tried for the murder of Sarah who was allegedly killed by Cowper and his accomplices by strangling her with a rope. The dead body was allegedly thrown in the river to conceal the murder.

⁵ See T.B. Hovel. A complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors, Folio Edn, Vol. III, (London: 1816), p. 403 ff; The Cowper Trial created a sensation at that time and the story was telecast in "On Trial" Series programme in the year 1960 in England.

The question before the Court was whether she committed suicide by jumping into the river because she was said to be “melancholy” or whether she was murdered as alleged by the prosecution.

An examination of her body revealed that there was no water in her lungs or stomach.

While the defense argued that Sarah Stout committed suicide and that in the case of suicide water might not be found in lungs and stomach, the prosecution contended that no water was found in the lungs etc as she was murdered by strangulation and her dead body was thrown in the river.

This late 17th century case reveals the rather elementary state of forensic medicine at that time and much discussion has been made on issues like whether water will be found in lungs only in the case of homicidal drowning and not in the case of suicide and whether body floats only in the case of homicide and not in the case of suicide etc.

The jury finally found Cowper and other accused not guilty as the jury believed that Sarah committed suicide because of frustrated love.

Illustration (c) speaks of a death caused by poisoning. The fact that the accused know the habits of the deceased which facilitated the poisoning is relevant.

The illustration is close to the facts of **R. vs. Donellan**,⁶

The deceased suffered from a trifling ailment, for which he occasionally took a laxative draught. The draught was usually served by his mother. The accused knew all this and also the time at which it was usually served. He accordingly replaced the bottle with a bottle containing the poison. The mother accordingly innocently administered poison to her son of which he died. The fact of the accused’s knowledge of the deceased’s habit was held to be relevant as it afforded an opportunity to the accused.

5. State of things:-

The facts which constitute the state of things under which or in the background of which the principal facts happened are relevant. This category of facts, as enumerated in Section 7, would allow evidence of the state of relations

⁶Stephen’s Introduction to the Law of Evidence pp. 192-6.

between the parties, and, in the case of murder, the state of the health of the deceased and his habits, etc.

In Ratten vs. Reginam,⁷ for example,

Where the accused was prosecuted for shooting down his wife and he took the defence of accident, the fact that the accused was unhappy with his wife and was carrying an affair with another woman was held to be relevant as it constituted the state of things in which the principal fact, namely, the shooting down, happened.

In murder trial evidence was led to the effect that when it became cloudy and stormy, when the electricity failed and when it became very dark the murder was committed. Here, the fact of murder is principal fact and the other facts show the state of things under which the principal fact happened.

Motive, Preparation and Conduct

Section –8:- Motive, preparation and previous or subsequent conduct----

⁷(1971) 3 All E. R. 801.Consideed in connection with res gesate,

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,

-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. (Motive).

b) A sues B upon a bond for the 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, is relevant. (Motive).

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. (Preparation).

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

The fact 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 of other wills to be prepared of which he did not approve, are relevant. (Preparation).

e) A is accused of a crime.

The facts that, 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 favourable to himself, or 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. (Conduct)

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. (Statement affecting conduct)

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

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing—"I advise you not to trust A, for he owes B 10,000 Rupees", and that A went away without making any answer, are relevant.

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

The fact 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. (Conduct)

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. (Complaint)

The fact 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. (Complaint)

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.

Principle:-

Section 7 lays down that facts which are the occasion, cause or effect of relevant facts, or which constitute the state of things under which they happened, or which afford an opportunity for their occurrence are relevant.

Section 8 is wider than section 7 in its application. Under this section motive, preparation and conduct are declared to be relevant facts.

There is hardly any action without a motive and it is said that an action without a motive would be an effect without a cause.

Often it is important to find out whether the accused had any interest or motive in committing the offence. Hence, motive is relevant.

So preparation is also relevant. Premeditated action must necessarily be preceded not only by impelling motives but also by appropriate preparation.

Preparation is an instance of previous conduct of the party which influences the facts in issue or relevant facts.

Evidence of motive or preparation assumes significance when a case depends upon circumstantial evidence only.

Conduct previous or subsequent of either of the party or his agent is also relevant, under this section.

In other words Section 8 deals with the **relevancy of motive, preparation and conduct.**

It lays down that-

1. A fact which shows or constitutes a motive for any fact in issue or relevant fact is relevant;
2. A fact which constitutes or shows preparation for any fact in issue or relevant fact, is relevant;
3. Previous or subsequent 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 or relevant fact, are relevant provided such conduct influences or is influenced by any fact in issue or relevant fact;
4. Previous or subsequent conduct of any person an offence against whom is the subject of any proceeding or suit is relevant provided such conduct influences or is influenced by any fact in issue or relevant fact;
5. Statements accompanying and explaining acts (Explanation 1);
6. Statements made in the presence and hearing of a person whose conduct is relevant provided the statement affects such conduct.

1. Motive:-

A fact showing or constituting motive is relevant. Motive is that which moves or induces a person to act in a certain way.⁸

According to Woodruff- it is the emotion supposed to have led to the act. There can be no action without a motive, which must exist for every voluntary act. Generally speaking the voluntary acts of the same persons have an impelling emotion or inducting cause, i.e., motives.

⁸Gangaram vs. Emp., 22 CrLJ 529.

It is difficult to prove motive by direct evidence and hence it is sought to be established by circumstantial evidence, viz., conduct of person.

Motive is a fact which is only within the knowledge of a person doing the act, and which no human being but the party himself can divine.⁹

It is the emotion which implies man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes.

It is that which is in the mind of a man and which moves him to act. “The common inducement to acts, are the desires of revenging some real or fancied wrong; of getting rid of rival, or an *abnoxious* connection, or of escaping from the pressure of pecuniary or other obligation or burden; of obtaining plunder or other coveted object; of reserving reputation or of gratifying some other selfish or malignant passion.”

Motive is excite, to emotion, the outward facts, which may be the stimulus and the cause of the emotion.

Motive, in the correct sense is the emotion supposed to have led to the act. It is generally proved by two sorts of circumstantial evidence, namely –

1. Conduct of the person, and
2. by events about that person which could excite that emotion.

An emotion, a State of mind, but it is often confused with events tending to

Conduct is effect and expression of that inward emotion.

Motive, conduct and statements:

There is hardly any act without a motive. Motive is the moving power which impels one to do an act. It is the inducement for doing the act.

The absence or presence of a motive and evidence of preparation, previous attempt, previous or subsequent conduct of the parties are relevant as they help in proving or disproving a fact in controversy. It may sometimes be

⁹HazratGul Khan vs. E., 29 Cr. LJ 546.

important to know whether a man charged with an offence, has any interest or motive to commit it.

It determining the fact whether a man charged with an offence, committed it or not, it is important to know whether previous to the act he made certain preparations to do the act.

Again, the conduct, antecedent or subsequent, of a person committing an offence or of a person against whom an offence has been committed, may be helpful in deciding as to whether a man has committed an offence.

In Lakshmi vs. State¹⁰

The accused was addicted to smoking *ganja* and taking wine. He used to make demands for money from deceased **ChhoteLal** who was opposed to this habit of life of the appellant and would not accede to his request to advance him money to enable him to indulge in these vices. A few days before the accused had also beaten his mother and wife. At that the deceased had intervened and prevented him from doing so. On the appellant's refusal to obey him, the deceased had chained him. The accused had run away after breaking the chains. The accused stopped speaking to ChhoteLal. On the evening of 6th October, 1954, ChhoteLal was sitting at his door on a *Chabutra*. The appellant took a *pharsa* and proceeded towards ChhoteLal. He began to assault ChhoteLal with the *pharsa*.

The accused tried to win over the witness of fact. In jail he gave a correct description of his address. At the trial at every stage, his statement was such as according to his conception was best calculated to subserve his purpose and to advance his own interest.

At the trial the accused took the plea that he was of unsound mind at the time of the incident. All the facts given above were held to be admissible. The facts given in the first para were admitted as motive of the murder, the contents of second para were allowed as the conduct of the accused, before the incident, at the time of the incident and after the incident. The facts given in third para were admissible as conduct of the accused during the trial in reference to the proceedings.

¹⁰1959 ALJ 287.

In State of M.P. vs. Dhirendra Kumar,¹¹

Munnibai was killed. Respondent Dhirendra Kumar had an evil eye on her. Respondent was tenant in the house of father-in-law of deceased. She reported the matter to her mother-in-law who in turn told her husband who asked respondent to vacate the house. Held, it could be taken as motive of murder.

Motive is relevant because the ordinary feelings, passions and propensities under which parties act, are facts known by observation an experience; and they are so uniform in their operation that a conclusion may be safely drawn that, if a party acts in a particular manner, he does so under the influence of a particular motive.¹²

The presence of motive is relevant under S. 8 of the Evidence Act as it goes to show the *mensrea* of crime. Motive, preparation and opportunity, are mental acts covered by this section. ¹³

Existence of a motive for committing a crime is not an absolute requirement of law but it is always a relevant factor, which will be taken into consideration by courts as it will render assistance to the Courts while analyzing the prosecution evidence and determining the guilt of the accused.¹⁴

There is no relevance of motive when the prosecution case is fully established by reliable ocular evidence coupled with medical evidence.

Circumstantial Evidence and Motive:-

In Sheo Shankar Singh vs. State of Jharkhand,¹⁵

The Court held that where prosecution relies circumstantial evidence on the one hand and those where it relies upon the testimony of eye-witnesses on the other in the former category of cases proof of motive is given the importance it deserves, for, proof of a motive itself constitutes a link in the chain of circumstances upon which the prosecution may rely.

¹¹AIR 1997 SC 318.

¹² Com. Vs. Webster, 5 Cuch 295 (316).

¹³VinayakDattaDurbhatkar vs. State, AIR 1970 Goa 96 (101): 1970 Cr.LJ. 1081.

¹⁴Aagupandi vs. State of Tamil Nadu, AIR 2012 sc 2405.

¹⁵AIR 2011 SC 1403.

Proof of motive recedes into the background in cases where the prosecution relies upon an eye-witnesses account of the occurrence. That is because if the court upon a proper appraisal of the deposition of the eye-witnesses comes to the conclusion that the version given by them is credible, absence of evidence to prove the motive is rendered inconsequential. Conversely even if prosecution succeeds in establishing a strong motive for the commission of the offence, but the evidence of the eye-witnesses is found unreliable or unworthy of credit, existence of a motive does not by itself provide a safe basis for convicting the accused. That does not mean that proof of motive even in a case which rests on eye-witnesses is found unreliable or unworthy of credit, existence, of a motive does not by itself provide a safe basis for convicting the accused. That does not mean that proof of motive even in a case which rests on an eye-witnesses account does not lend strength to the prosecution case or fortify the court in its ultimate conclusion. Proof of motive in such a situation certainly helps the prosecution and supports the eye-witnesses.

Where the case based on circumstantial evidence, motive for committing the crime assumes **great importance**. In such circumstances, absence of motive would put the court on its guard to scrutinize the evidence very closely to ensure that suspicion, emotion or conjecture does not take the place of proof.¹⁶

The absence of motive in a case depending entirely on circumstantial evidence is a factor that weighs in favour of the accused as it “often forms the fulcrum of the prosecution story.”¹⁷

Intention and Motive:-

Motive should not be confused with intention. Intention is an act of the will directing an act or a deliberate omission. It shows the nature of the act which the man believes he is doing.

If a man fires at a tiger, but the aim is missed and a man is killed, he intends to kill the tiger. His intention is not to kill the man. The motive to kill the tiger might have been to get rid of the danger from it to men or to get its hide.

A owes Rs. 1,000 to B. B puts pressure upon A for his money. A decides to kill B with a motive to get rid of the pressure of demand. He invites B to his house

¹⁶MunishMubar vs. State of Haryana, 2013 SC 651 (para 19).

¹⁷ R. Shaji vs. State of Kerala, AIR 2013 SC 651 (para 19).

and strikes him with a sword and kills him. His act was prompted with the said motive and at the actual moment, the assault was with the intention to kill.

Motive is reason which prompts the intention. It is the reason which induces him to do the act which he intends to do and does.

Importance of motive:--

Motive is relevant and may be proved in a case as it is of great importance to see whether there was motive for committing such and such crime or whether there was none.

It is always a right argument by the counsel of the accused that there is no apparent motive for the committal of the crime for his client.

Existence of motive not an absolute requirement:-

Existence of a motive for committing a crime is not an absolute requirement of law but it is always a relevant factor.¹⁸

Absence of motive is a factor that weighs in favour of the accused as it often forms the fulcrum of the prosecution story.¹⁹

In case of direct evidence, motive for crime is meaningless.²⁰ It is in case of circumstantial evidence that motive assumes importance.²¹

When there is positive, clear, cogent and reliable ocular testimony, motive in criminal cases is not at all relevant. The mere fact of a strong motive to commit the crime cannot be of any assistance to the accused. The motive behind a crime and absence of motive both are relevant for assessing evidence.²²

Motive loses all significance where prosecution case is fully established by reliable ocular evidence.²³

¹⁸Algupandi vs. State of Tamil Nadu, AIR 2012 SC 2405.

¹⁹ R. Shaji vs. State of Kerala, AIR 2013 SC 651.

²⁰Habib vs. State of Uttar Pradesh, AIR 2013 SC 1764.

²¹SubodhNath vs. State of Tripura, AIR 2013 SC 3726 at p. 3731.

²²Darbara Singh vs. State of Punjab, AIR 2013 SC 840 at p. 844.

²³LokeshShivakumar vs. State of Karnataka, AIR 2012 SC 956.

In the absence of an eye-witness or no scientific evidence to connect the accused with murder, the motive to commit murder has to be established.²⁴

Dowry death:-Motive---

Motive is inherent in dowry death. It plays a vital role in determining the guilt when only circumstantial evidence is available.²⁵

In Sarojini vs State of M.P.²⁶

It was held that pre-marital demand of dowry and its non-compliance are relevant facts to establish motive. In a bride burning case, the parents of the deceased did not agree to transfer and register the land in the name of their son-in-law. They wanted to register the same in their daughter's name instead.

It was held that there was a strong motive for the accused-husband and the mother-in-law to commit the crime.²⁷

Cases on Motive---

The accused dreamt of inheriting his unmarried uncle's (father's brother) property. But the uncle got married and brought forth a child. This frustrated the accused. When his uncle died of murder he was seen struggling to get the uncle's property mutated in his name. The Supreme Court held that this fact showed that the accused had the motive of removing his uncle from the scene. This was relevant fact.

Preparation---

Evidence tending to show that the accused made preparation to commit a crime, is always admissible.

Preparation means the means and measures necessary for commission of any offence.

Premeditated crime must necessarily be preceded by appropriate preparation.

²⁴Varun Chaudhary vs. State of Rajasthan, AIR 2011 SC 72.

²⁵Rajammal vs. State of T.N., 1993 Cr.LJ 3029 (Mad).

²⁶1993 AIR SCW 817.

²⁷Kundula Bala Subrahmaniyam vs. State of A.P., 1993 AIR SCW 1321.

Preparation only evidences a design or plan to do a certain thing as planned. It is not always carried out but it is more or less likely to be carried out.

The existence of the plan is always used in daily life as the basis of inferences to the act planned.

The common instances are of possession of poison or lethal weapons, etc., without reasonable excuse.

Preparation on the part of the accused is to accomplish the crime or to prevent its discovery or to aid his escape or to avert suspicion are relevant on the question of his guilt.

Intention, preparation and attempt to do an offence are the three stages preceding the commission of a crime. Mere preparation is not punishable under IPC except under certain special circumstances as for example the preparation to commit dacoity (S.399), preparing to wage war against the Government of India(122).

In a case of burglary the four accused held a meeting to arrange for the crime; a bar of iron and pair of pincers were alone necessary; and these the accused brought; these facts were admitted to show preparation.

The probative force, both of preparation and the previous attempts manifestly rests on the presumption that an intention to commit the offence was framed in the mind of accused which persisted until the power and opportunity were found to carry it into execution.²⁸

The preparation on part of the accused may be, to accomplish the crime, to prevent discovery of crime or it may be to aid the escape of the criminal and avert suspicion.

For example-

The sharing of a knife before an affray in which the knife was used is relevant as an act of preparation. For the same reason, it is relevant to show that the accused hired a revolver a few days before the murder.

²⁸State of Punjab vs. Bittu, AIR 2016 SC 146 p. 150.

Illustration (c) refers to an act of preparation. Where death is caused by poisoning, the fact that shortly before the accused procured poison similar to that which was administered is relevant.

Illustration (d) refers to the acts of preparation that go before the making of a will. In reference to wills the question usually arises whether the will is genuine or forged. The illustration says that not long before the date of the will, the testator made inquiries into the matter to which the provisions of the will relate, that he consulted vakil in reference to making the will and that he caused drafts of other wills to be prepared of which he did not approve, are relevant. These acts of preparation go to show that the will may be genuine.

Appu vs. State,²⁹

An inn-keeper and his wife were accused of murder of a guest. It is shown that on the night the murder was committed, they sent the maid-servant out of the house so that there may not be anybody to see the offence being committed. When she returned the next morning she was made to sleep in another part of the building. This is a relevant preparation to prevent the discovery of this crime.

Mohan Lal vs. Emperor,³⁰

The accused was charged with cheating for importing goods in Karachi port without paying the proper custom duty. Evidence was adduced of previous visit of the accused to the rot of Okha, where it was said he tried to make some arrangements with the customs whereby he could import other goods without payment of proper duty. The evidence was held admissible.

Conduct:-

Meaning of or what is?

The conduct is the expression in outward behaviours, of the quality or condition operating to produce those effects. These results are the traces by which we may enter the moving cause.

In point of time, conduct is closely associated with the internal condition giving rise to it; nevertheless, the indication is strictly not a concomitant, but a

²⁹ AIR 1971 Mad. 194

³⁰ AIR 1937 Sind 293.

retrospectant one because the argument is backwards from effect (conduct) to cause (internal condition).³¹

Australian Criminal Code, 1995, Schedule, Section 4.1(2) defines “conduct” as meaning –

“(a) do an act; or

(b) omit to perform an act.”

So, conduct includes acts as well as omissions.

Conduct would include not only a single act or omission but also a set of acts and omissions,³² and can generally be taken to mean ‘behavior’.

Conduct may, in certain circumstances, include statements as is made clear by the *Explanation-1*.

Section 8 also makes “conduct” relevant. This provision may be dealt with under three heads, viz.,

1. Whose conduct?
2. What conduct?
3. At what time?

(1) Whose Conduct? Or the conduct of any person an offence against whom is the subject of any proceeding—

The section makes the conduct of the following persons relevant:

1. Any party to any civil suit
2. Any agent of such party
3. The State as the prosecutor in a criminal proceeding
4. The accused in a criminal proceeding

³¹Wigmore, 190.

³²**Section 2, IPC states:** “Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within India.”

Section 33, IPC, provides: “Act”, “Omission”—“The word ‘act’ denotes as well a series of acts as single act: the word ‘omission’ denotes as well as series of omissions as a single omission.”

The General Clauses Act, 1897, defines “act” so as to include “omission” and states in S. 3(2): “‘act’, used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions.”

5. Any person an offence against whom is the subject of any preceding, namely, the victim of a crime.

Civil suit is fought between the plaintiff and the defendant. Barring the cases where the State or the Government is suing or is being sued, in most cases it is the private persons who are parties in a civil proceeding.

In a criminal proceeding, it is the State which conducts the prosecution of the accused and that is so even in cases of the so-called private prosecutions like rape, bigamy and defamation. So, technically, the victim of the crime is not a “party” to the criminal proceeding.

Hence, the section expressly treats the victim of the crime as a party for the purposes of S. 8 to make his conduct also relevant.

Conduct of Woman in Rape Cases:-

Recently in India, brutal rape and murder cases that occurred in New Delhi and elsewhere have given rise to considerable outrage and public debate as to various issues relating to rape law and the need to strengthen it. This led to the passing of the Criminal Law Amendment Act of 2013 which amended the relevant provisions of IPC, CrPC and Evidence Act. In the light of this, it would be fruitful to make a study of the developments in India and also in other countries in this critical area of societal concern.

In a rape case the important question is whether the woman consented to the intercourse and, in this context, her conduct is crucial for deciding the case one way or the other.³³

The conduct of the woman may be relevant –

- a. Under section 6as forming part of the transaction (“hue and cry” doctrine),
- b. Under sections 8 and 9 as conduct influencing or influenced by fact in issue or relevant fact,
- c. Under section 11 rendering the charge “probable or improbable”,

³³ It may be noted that legal concept of consent is different factual notion of consent. Section 375 of IPC, as amended by the Criminal Law Amendment Act, 2013, provides:

“Sixthly—With or without her consent, when she is under eighteen years of age.”

Thus, a woman under 18 years of age is deemed not to have consented even if she has, in fact, consented to or *even invited sexual intercourse*. The girl’s consent is no defense because the law considers her to be “too young to consent”.

- d. Under section 14 as showing her state of mind, and
- e. Under sections 157 and 145 for corroborating or contradicting her as a witness.

Tukaram vs. Maharashtra,³⁴

The SC, dealing with a case of custodial rape, reversed conviction by the High Court and restored acquittal by the Sessions judge, and held that absence of hue and cry and resistance on the part of the woman and of any injury to her private parts implied that there was consent on her part.

In fact the defence contended that it was a “peaceful affair”. This was case where an innocent girl was raped by two police officers inside the police station.

In fact, in Tukaram, the Supreme Court’s interpretation of the helpless submission by the rape victim as consent³⁵ attracted severe criticism from eminent academicians. This ultimately led to amendment of IPC and Evidence Act.

It may be noted that Stroud’s Judicial Dictionary explains the expression “consent”, inter alia, as follows:

“Every ‘consent’ to an act, involves a submission; but it by no means follows that a mere submission involves consent.”³⁶

In the case of **K.P. ThimmappaGowda vs. Karnataka,³⁷**

The SC. Set aside the conviction of the appellant by the High Court for rape on the ground that the prosecutrix herself stated in her evidence that she had sex with the appellant on several occasions, and there was a delay of over 8 months in lodging the FIR against the appellant; and that sex with a woman above 16 years of age with her consent is not rape under S. 376 IPC.

2. What Conduct? Or

The conduct in reference to the fact in issue or relevant thereto and conduct in reference to the proceeding—

³⁴AIR 1979 SC 185.

³⁵ In RaoHarnarain Singh Sheoji Singh vs. State, AIR 1958 Punj 123, Punjab High Court said:

“there is a difference between consent and submission and every consent involves a submission but the converse does not follow and a mere act of submission does not involve consent.”

³⁶ Stroud’s Judicial Dictionary, Fourth edn., Vol. 1 (1971), p. 555. See also S. 90 of IPC.

³⁷AIR 2011 SC 2564.

The conduct relevant under the section must be with reference to:

1. Such civil suit or criminal proceeding, or
2. Any fact in issue therein or
3. Fact relevant thereto; and
4. Such conduct influences or is influenced by any fact in issue or relevant fact.

Thus, the conduct to be relevant must be referable to the fact in issue or relevant fact. In fact, preparation and previous attempts are themselves examples of conduct of the accused which give rise to a presumptive proof of his guilt.

Illustration:-

Thus, illustration (e) referred to above is an example of not only “preparation” but also of “previous conduct” of the accused both of which are relevant under S.8.

Thus, if A is charged with the murder of B by shooting at him, and A pleads the defense that it was an accident, the fact that he attempted to shoot at B on an earlier occasion overthrows that defense.

The fact that there was a violent fight between the accused and the deceased the day before the murder and that led the accused to kill the deceased is relevant as the conduct that influenced the fact in issue.

The fact that the accused assumed a false name and absconded is also similarly relevant. Illustration (f) to S. 8 is an example of the accused fleeing from justice.

The fact that the accused has attempted to strifle or thwart at the investigation of the crime is relevant.

S is suspected of having poisoned T. He tried in every way to prevent the body of T from being medically examined. This conduct of S in preventing the medical examination of the body of T is relevant.

R disappeared while living in P’s house. P was suspected of murder. It being proposed to dig the basement of the floor, P objected. The floor was dug and the dead body of R was found. The conduct of P in objecting was admissible.

When a person is accused of a crime, the fact that before or at the time of or after the alleged crime he destroyed or concealed evidence or prevented the presence or procured the absence of the persons who might have been witnesses or suborned persons to give false evidence respecting it is relevant as conduct in reference to the proceeding, conduct to referring the proceeding is illustrated when a party does something in the reference to the proceeding.³⁸

3. At What Time?

A conduct to be relevant under s. 8 need not be contemporaneous. It may be **antecedent or subsequent** to the fact in issue or relevant fact.

In an adoption case deed of adoption found not to be clinching but as evidence of subsequent conduct of the parties is relevant.³⁹

Complaints of the deceased to the police expressing apprehension of death made two months before death are admissible.⁴⁰

The conduct of the parties, etc. is relevant under section 8 –

“if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.”

Though S. 8 says that the conduct is relevant –

“**whether it was previous or subsequent thereto**”, it is obvious that the conduct to be relevant under section 8 must fall within a certain time-frame of proximity as the conduct must either influence or be influenced by any fact in issue or relevant fact.

Thus, the terms “previous or subsequent” are not-ended.

Illustration (i) to S. 8 says:

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 attempt to conceal things which were or might have been used in committing it, are relevant. Here A’s absconding is proof of his

³⁸ King Emperor vs. Bhagi Others, AIR 1941 Oudh 359.

³⁹ Bishwanatha vs. Dhapu Devi, AIR 1960 Cal. 494.

⁴⁰ AlijanMunshi vs. State, AIR 1960 Bombay 290.

attempt to flee from justice and his conduct is directly influenced by the fact in issue.

Previous Conduct—

Preparation for crime and previous threats and attempts to commit crime obviously come under the previous conduct of the accused.⁴¹

Where a person was charged with attempting to smuggle goods at the port of Karachi and it was shown that on an earlier occasion he tried to smuggle goods at another port called Okha and that he tried to come to an understanding with customs officials there was held to be relevant as previous conduct.⁴²

Previous expressions by the accused of ill will or hatred towards or an intention to kill the deceased are all relevant as conduct.

The previous threats are pointers to motive and also amount to conduct.⁴³

Subsequent Conduct---

The conduct of the parties, etc. subsequent to the occurrence is relevant if it is influenced by the fact in issue.

The filing of an FIR. By the accused to divert attention of the police from himself is relevant under s.8. ⁴⁴

Where the accused killed his wife and then lodged an FIR. With the police stating that his wife committed suicide is relevant as the conduct of the accused trying to mislead the police by giving “the case an appearance favourable to himself.”⁴⁵

The fact that the accused set up a false plea of alibi is relevant under S. 8 as conduct to shield himself.⁴⁶

The fact that the accused is trying to flee from justice or abscond is also relevant as an exculpatory fact but the fact that he was unaware of the charge

⁴¹Sarkar’s Law of Evidence, eds. M.C. Sarkar et al., Vol. 1 (New Delhi, 2003), p. 141.

⁴² Referred to in Basu’s Law of Evidence, 6thedn., by P.M. Bakshi, ed., Vol. 1 (New Delhi, 1998), p. 308.

⁴³Worth vs. R. Co., 51 Fed. 173.

⁴⁴AghnooNagesia vs. Bihar, AIR 1966 SC 119.

⁴⁵ See Illustration (e) to S. 8. Purkha Ram vs. State, 1997 Cri LJ 566.

⁴⁶Ramesh Kumar vs. State, 2010 Cri LJ 85.

against him at the time of disappearance might “explain away the guilt significance of the conduct.”

As observed by Wigmore:

Flight from justice, and its analogous conduct, have always been deemed indicative of a consciousness of guilt...it is today universally conceded that the fact of an accused’s flight, escape from custody, resistance to arrest, concealment, assumption of false name, and related conduct, are admissible as evidence of consciousness of guilt, and thus of guilt itself.

As the Supreme Court pointed out, “to be an absconder in the eye of law, it is not necessary that a person should have run away from his home; it is sufficient if he hides himself to evade the process of law, even if the place of hiding be in his own home.”⁴⁷

However, the Courts have held that a person running away may not necessarily give rise to an inference of guilt as even an innocent one might run away because of fear⁴⁸ or nervousness, or out of sheer elemental instinct of self-preservation.

The Supreme Court held recently that it is a settled legal proposition that in case a person is absconding after commission of offence of which he may not even be the author; such a circumstance alone may not be enough to draw an adverse inference against him as it would go against the doctrine of innocence. It is quite possible that he, merely being suspected, may be running away out of fear of police arrest and harassment.

Thus, mere absconding of the Appellant cannot be taken as a circumstance which would give rise to drawing an adverse inference against him.⁴⁹

In Elavarasam vs. State⁵⁰

The Supreme Court pointed out that in the “post event conduct” the accused might (a) run away from the scene or (b) go to the police station and report or confess and surrender or (c) remain at the scene of offence. Such conduct “may be relevant to determine the culpability of the offender in the light of other evidence

⁴⁷Kartarey vs. Uttar Pradesh. AIR 1976 SC 76.

⁴⁸ In Sat Paul vs. Delhi Administration, AIR 1976 SC 303, the fact that the accused kept mum when his superior officer charged him of taking a bribe did not carry any probative value with the Supreme Court as he explained that he did not protest out of fear and any denial on his part might have made matters worse for getting a bail.

⁴⁹Sk. Yusuf vs. West Bengal, AIR 2011 SC 2283.

⁵⁰AIR 2011 SC 2816.

on record” but the mere fact that he did not flee does not “n itself show that the person concerned was insane” as contended by the defense in this case.

Illustration (c) to S. 9 exemplifies this point and states: A is accused of a crime. The fact that, soon after the commission of the crime, A absconded from his house is relevant under S. 8, as conduct subsequent to and affected by facts in issue. The fact that, at the time he left home, he had sudden and urgent business at the place to which he went is relevant, as tending to explain the fact that he left home suddenly.

However, the Supreme Court pointed out, (T)his Court abandoned the label “consciousness of guilt” when describing evidence of after-the-fact conduct because such a label was thought to be unduly narrow and somewhat misleading. After-the-fact conduct may in fact be put to a wide variety of uses and its utility is not confined to supporting an inference that the accused had a “guilty mind”...this general category of evidence should be referred to by a more neutral term, such as “post-offence conduct”. This label would avoid the twin pitfalls of confining the relevance of such conduct to questions concerning the accused’s state of mind and of subverting the presumption of innocence...the category of post-offence conduct” evidence is much broader as it refers to anything done by the accused after the commission or the offence.

Explanation to S. 8---

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.

Explanation 1:-

Statements of a party to a proceeding accompanying and explaining acts—

Explanation 1 of S. 8 excludes the admissibility of the statement distinguished from conduct. But it allows the statement to be admitted under this section if the statements accompany and explain acts other than the statements.

This explanation points to a case in which a person whose conduct is in dispute mixes up together actions and statements. In such a case those actions and statements may be proved as a whole.

For instance:

Suppose that a person is running down the street in a wounded condition calling out the name of his assailant and the circumstance in which the injuries were inflicted. Here what the injured person says and what he does may be taken together and proved as a whole. Here the statement of the person wounded explains his conduct. The conduct of running away and the cry of the person both show that he has been wounded by such and such person and in such and such condition. Only those statements which accompany and explain acts other than statements can be regarded as conduct.

The statement must amount to complaint---

Illustrations (j) & (k) make statements of persons against whom an offence has been committed relevant but a mere statement is not relevant.

The statements must amount to complaints to be admissible. A mere statement is not relevant. Statement in the shape of complaint is only relevant.

There may be sometimes a difficulty in distinguishing a statement from a complaint.

The essential difference between the two is that a complaint is made with a view to redress or punish and must be made to someone like the police, a parent or some other person to whom the complainant looked for assistance and protection.

For ex.

If A is running out besmeared with blood and crying helplessly to the people of vicinity to save his life from B who had wounded him and is about to beat more. This certainly a complaint.

But, if A leisurely walks down from a place with injuries on his person and when intervened and asked by a bystander he says that B has assaulted him, this is only a statement and not a complaint and is inadmissible.

A woman was raped on 26th of August, 1929, when her husband was away. The husband came home on the 28th and then she told him that she had been raped. This was held not admissible.⁵¹

The applicant was staying in a hotel. Early in the morning he took brandy and upon being annoyed fired a gun on the bearer J. he crouched down and the shot missed him. Afterwards people gathered and J related the story on being asked. It was held not admissible.⁵²

Complaints in answer to questions---

The complaints to be admissible must be volunteered and not in answer to question. But it must be borne in mind that the questions of a leading or suggestive character exclude the evidence. But the questions such as this put by mother or other persons “what is matter”, “why are you crying” would not make the answer inadmissible.

Explanation 2:-

Statement of another affecting conduct of a party to a proceeding ---

Under this Explanation another class of statements i.e., the statements, affecting the conduct of a person, whose conduct is relevant under this section, is admissible. In such cases the conduct of person shows nothing and becomes meaningless unless the statements are put before the court.

Here the statements made in the presence of the party are admissible as the ground-work of that conduct. The conduct in such cases is equivocal and the statements are admissible to explain the conduct.

In other words, under explanation 2, the statements and conduct that are relevant are not of same person but the symbiosis between the two is required in two ways:

1. The statement must have been made to him or in his presence and hearing. In other words, they are not *res inter aliosacta*; (“A matter between others is not our business”) and

⁵¹Ram Swami Reddi vs. Emperor, AIR 1931 Mad. 235.

⁵²Rameshwar Prasad vs. Rex., 1951 ALJ 149.

2. Such a statement affects such conduct.

It is submitted that, under Explanation 2, the statements “**made to him**” and “**made in his presence and hearing**” may be different as telephonic statements would come under the former and not under the latter.

For instance,

Illustration (f) to S. 8 says:

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.

This illustrates the statement “made in his presence and hearing” but if the statement is made on telephone and A runs away it would come under the former but not the latter part of Explanation 2.

In BaiKhatija vs. State,⁵³

The question was whether A murdered B. during the enquiry on C said in the presence of A “the sub-inspector is coming to arrest the man who has murdered B”. Hearing these words of C, A ran away. At trial of A, the words spoken by C that the sub-inspector was coming to arrest the murderer, and after hearing that the conduct of A’s running away were held relevant together. If the words “The sub-inspector was coming to arrest the murderer” had been said to A were not proved, merely saying that A ran away would be meaningless.

Illustrations (i), (g) and (h) of the section are examples of such statements. If the statement has no bearing on the conduct it is not relevant.

In Emperor vs. U. Daranpara,⁵⁴

One A was murdered. Shortly after B rebuked C for having murdered A. B said “*you have murdered A without any cause. You are to be damned for it*”. C keeps silent. This conduct of C keeping silent together with the words spoken to him are relevant.

The accused was charged with the murder of his wife who was missing for some time. A photograph of a dead body recovered by the police was

⁵³ AIR 1962 Guj 1.

⁵⁴ AIR 1937 Rang 83 (FB).

published in a newspaper. Soon after the photograph was published the accused said to B. “People are saying that the photograph is that of my wife. Please go and see”. The accused appeared to be in a disturbed state of mind and tried to away from office taking leave. It was held that the statement of the accused was admissible under explanation.⁵⁵

Section 9----

⁵⁵Arun Kumar Banerji vs. State, AIR 1962 Cal. 504.

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 anything 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.

Illustration---

- 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.

- c) *A is accused of a crime.*

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under S.8 as conduct subsequent to and affected by facts in issue.

The facts that at the time when he left the home he had sudden and urgent business at the place to which he went is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

- d) *A sues B for inducing C to break a contract of service made by him with A. C on leaving A's service, says to A—"I am leaving you because B has made me a better offer." This statement is a relevant fact as explanatory of C's conduct, which is relevant as fact in issue.*
- e) *A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife B says as he delivers it—A says you are to hide this." B's statement is relevant as explanatory of a fact which is part of the transaction.*
- f) *A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of that transaction.*
-

Scope:

S. 7 deals with the admissibility of facts which are the occasion, cause or effect of facts in issue.

S. 9, on the other hand, is concerned with the admissibility of facts which are necessary to explain a fact in issue or relevant fact.

Under S. 9 the following facts are relevant:-

1. Facts which are necessary to explain a fact in issue or relevant fact.
2. Facts which are necessary to introduce a fact in issue or relevant fact.
3. Facts which support an inference suggested by a fact in issue or relevant fact.
4. Facts which rebut an inference suggested by a fact in issue or relevant fact.
5. Facts which establish the identity of anything or person whose identity is relevant.
6. Facts which fix the time or place at which the facts in issue or relevant fact happened.
7. Facts which show the relation of parties by whom any such fact was transacted.

It should be borne in mind that these seven categories of facts are not admissible generally. They are relevant only in so far as they are necessary for the purpose indicated in each category.

1. Introductory or Explanatory Facts or Facts necessary to explain a fact in issue or relevant fact—

There is a kind of evidence which if considered separately and alone from other evidence would not amount to anything; but if it is taken into consideration in connection with some other facts, proved in the case it explains and illustrates them. Sometimes it gives strength to the evidence given by one side and sometimes breaks the force of the evidence given by the other side. Such facts which are necessary to explain a fact in issue or relevant facts are relevant under S. 9 of the Evidence Act.

The explanatory evidence is not relevant in itself. It is neither one of the *res gestae* nor probative in any direct line of proof to the existence of a fact in issue or relevant fact.

The effect of the evidence of the nature is not, however, in all cases affirmative. An explanation made equally will be intended to diminish the force of the evidence produced by the adversary.

These facts are explained by illustrations (a), (b), (e) and (f) to S. 9, and also by illustration (c) to S. 6, and Illustration (d) to S. 8.

Illustrations (d), (e) and (f) to S. 9 are important as they show that the statements made by a person who is not the agent of a person against whom they are to be used behind his back, may be used against him.

Illustration (f) is founded on the famous *Lord Garden's* case and it illustrates the principle that in cases of riot, conspiracy etc. the declarations of all concerned in the common object although not defendants are admissible as explanatory of the common object.

Before questioning a witness, as to the main fact, it is generally desirable and some time necessary to question him about some preliminary facts. Such preliminary facts may have no bearing on the facts in issue; but since they lead to the main fact they are made admissible under this section so as to make the main fact more easily comprehensible.

Under S. 142 the court may permit even leading questions on introductory matters.

The subject of explanatory evidence concerns more the accused or the defendant. Defence of alibi is also explanatory evidence, as its entire inconsistency with the hypothesis that the accused committed the crime.

Noor Mohammad vs. emperor,⁵⁶

Noor Mohammad was tried for abducting *Mst. Saidan*. Once during the investigation *Mst. Saidan* was being taken to the police station. *Noor Mohammad* was loitering in the way. On seeing *Noor Mohammed*, *Mst. Saidan* at once cried out to her brother *Kasim* that this man was one of her abductors. *Kasim* told the head constable who was with them and the head constable forthwith arrested him when the trial proceeded, *Mst. Saidan* was won over by the accused and she did not implicate *Noor Mohammed* nor anybody else. The prosecution wanted to produce *Kasim*, the brother of *Mst. Saidan* to depose that at the time when *Mst. Saidan* was being taken to the police station, seeing *Noor Mohammad*, she had cried of her own accord that he was one of her abductors.

It was held that the statement by *Kasim* that *Mst. Saidan* denounced *Noor Mohammad* as one of the abductors was admissible as explaining the circumstances of *Noor Mohammed's* arrest and also for the purpose of establishing his identity.

RahanLalu vs. Emperor,⁵⁷

The prosecution case was that *RahanLalu* killed his wife on one morning with an axe. Their son a child of 5 years was beside them. He made a cry and his cry attracted the witnesses who found *Rahan* with an axe in his hand and his deceased wife near him. The child's evidence was not recorded. The witnesses deposed as to what the child had said and upon that they reached.

It was held that the witnesses could speak to the nature of the cry and even to what the child said so far as it explains their conduct.

In the case of *RahanLalu* if the child had not said that his father was killing his mother, the witnesses would not have gone there. So the cry and the words of the child explain as to why the witnesses went there.

⁵⁶ AIR 1944 Sind 93.

⁵⁷ AIR 1938 Sind. 97.

Similarly in *Noor Mohammed's case* the accused would not have been identified by the constable nor had he been arrested if *Mst. Saidan* had not said that he was one of her abductors.

2. Introductory facts—

It would be practically impossible, in conducting a suit or proceeding to jump directly on the main fact.

A judge seeks for some introductory matter, just as one hearing the main incident of a story would like to know the circumstances leading up to it and the result that follow it.

Facts which are introductory of a relevant fact are often of a great help in understanding the real nature of the transaction, and in supplying the missing link.

Illustrations (a) and (b) under S. 9 of the Act are examples of the introductory fact.

***In Hunt vs. Swyney*,⁵⁸**

An action was brought by one *Hunt* executor of the will of one shop, against defendant *Swyney* to compel him, to convey certain lands alleged to have been held in trust for plaintiff's testator and setting out the facts relied on. *Mrs. Sharp*, the widow, intervened claiming that the defendant held that land in trust for her and claiming the rent and profits, setting out that the defendant, who was her husband's law clerk, has bought the land referred to with her money and for her, Mrs. Sharp, when in witness's box was asked, "During the year 1881 from December 1st, down to and including the month of October, 1882 was Mr. Swyney the defendant in this action, your agent in rents for you." Objection was raised that it was inadmissible. The objection was ruled out on the ground that it was introductory.

3. & 4. Facts which support and facts which rebut an inference or facts which support or rebut an inference:-

There are certain other classes of the facts which are neither relevant as facts in issue nor as relevant facts. But they either support the inference suggested by

⁵⁸AIR 1933 PC 854.

the fact in issue or relevant fact or they contradict the facts in issue or relevant facts and for the purpose they are relevant.

Illustration (c) under S. 9 of the Evidence Act is an example for the facts which support or rebut an example.

William Barnard,⁵⁹ *illustrated a case ---*

--Where a person is accused of writing a letter threatening him and requiring him to meet at a particular place at an appointed time.

The question is whether 'A' is the author of the letter. The fact that he went to the place at the appointed time would be conduct relevant under S. 9 of the Evidence Act and the fact that 'A' had some other business to transact at that place and time would be relevant as tending to rebut the inference raised by his going to that place that he was the author of that letter.

A is accused of committing robbery. Just after the committal of the offence, A runs away to Calcutta. At the trial of A for robbery the fact that he ran away just after the occurrence is a fact giving inference that he had some concern with the offence. If A adduces evidence to prove that he had a very urgent piece of work at Calcutta and in that connection he went there it will rebut the inference drawn from the fact that he ran away to Calcutta.

5. The facts establish the identity of anything or person—

In judicial proceeding, civil or criminal, the courts have very often to determine the identity of persons or things.

Facts which establish the identity of a person:-

“This section does not deal with testimonial identity. Circumstantial evidence of identity are dealt within this section.”

So when a party's identity with ascertained person is in issue, it may be proved or disproved not only by direct testimony or opinion but by similarity or dissimilarity of personal characteristics, (e.g., height, age, size, hair, complexion, voice, handwriting, manner, dress, distinctive marks, faculties, peculiarities, thumb-impression, footprints, as well as residence, occupation, family

⁵⁹1758, 19, St. Trials 815.

relationship, education, travel religion, knowledge of particular people place or facts and other details of personal history.

In other words, facts which shows the identity of anything or person whose identity is relevant is provable under S. 9 of the Evidence Act.

In case of theft when the stolen property is recovered the identity of such property is required to be established. So also in case of murder, the identity of the weapon with which the murder was committed is required to be established. Facts which prove the identity of these objects is provable under S. 9 of the Evidence Act.

Illustration (f) under S. 9 of the Evidence Act, which is the case of **R vs. Lord George Gordan** is an example for the facts establishing identity.

Here, the accused was tried for a riot and was proved to have marched at the head of a mob evidence of the cries of the mob was received as the cries were relevant because they explain the nature of the transaction as to why the accused was so marching.

In a case where there was murder and dacoity, the trial Court and the appellate Court placed much importance on the evidence of identify of the accused and convicted the accused; the Supreme Court held that until the exceptional circumstances are not proved the Supreme Court will not revalue the evidence (given before the Lower Court) because to give the importance of such kind of witness is subject matter of the Court of fact (not the appellate Court). inthese circumstances due to lack of revaluation of fact the conviction of the accused is confirmed.⁶⁰

Test Identification Parade---

There was no specific provision in the Evidence Act or Code of Criminal Procedure regarding identification parade of the accused till 2005. By the amendment of Cr.P.C. in 2005, a new S. 54A was inserted for identification of person arrested S. 54A is as follows:

“Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the court, having jurisdiction may on

⁶⁰ Ram Deo Ram Yadav vs. State of Bihar, AIR 1993 p. 1780.

the request of the officer-in-charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit.”

This provision enable the police to seek permission of the Court for identification of the accused and the Court may determine the manner of identification. The manner of identification includes ‘identification parade’. The police is not bund to hold identification parade.

Constitutionality of test identification parade---

A Magistrate’s order requiring a person to attend test identification parade does not violate his fundamental right under A. 20(3) of the Constitution. The identification of an accused at test identification parade by someone is not the accused’s own act. His mere attendance or the exhibition of body cannot be regarded as furnishing any positive volitional evidentiary act.⁶¹

Test Identification Parade –

Test Identification Parade is meant to test the veracity of the witness and his capacity to identify unknown persons. Thest Identification Parade is not necessary where all the witnesses state that they otherwise know accused persons and they are not strangers to them and in the moonlight and lantern, they clearly identified them.⁶²

Identification parade belongs to the stage of investigation and if adequate precautions are ensured, the evidence with regard to Test Identification Parade may be used by the Court for the purpose of corroboration.

The purpose of test Identification Parade is to test and strengthen trustworthiness of substantive evidence. It is for this purpose that Test Identification Parade is to test and strengthen trustworthiness of the substantive evidence of a witness in Court.⁶³

In Ahad Bin Salam vs. State of Andhra Pradesh,⁶⁴

Police asked witness as to whether he could identify the persons who were on scooter and who threw bomb towards the deceased. The witness replied in

⁶¹PeareLal Shaw vs. State, AIR 1961 Cal 531 para 5.

⁶²State of UP. Vs. Sukhpal Singh, AIR 2009 SC 1733 at p. 1733.

⁶³ Ram Babu vs. State of U.P. AIR 2010

⁶⁴AIR 1999 SC 1617.

affirmative. The accused persons were shown to him for identification and he identified them. It was held not to be test identification parade.

Where the eye-witness cannot give the name of the offender but claims that he can identify him, it is necessary to hold Test Identification Parade.⁶⁵

6. Facts which fix the time or place of facts in issue or relevant facts:-

Under this section facts which are necessary to fix time and place of the occurrence are relevant. The fact of time or place becomes very important when the accused pleads *alibi*.

The question is whether murder of A was committed by B. it must be proved at what time, A was murdered because it is very necessary that B must be present near A at the time of murder. If the time and place of murder is not known it cannot be said that B murdered A. if A is murdered at Allahabad at 10 a.m. on 3rd of October, 1950, and if it is proved that B was at Calcutta at 10 a.m. on the same day, B cannot be the murderer of A. so these facts which fix the time and place of the facts in issue or relevant facts are relevant.

In Bhim Singh vs. State of Haryana,⁶⁶

The question was as to time of death. Time was variation in evidence. Evidence of prosecution witness sought to be corroborated by stomach contents of the deceased as found in post-mortem report. This piece of evidence can be relied as conclusive evidence in absence of their being some other evidence to show when the deceased had his last meal or when the deceased went to answer the call of nature.

So far as they are necessary for that purpose---

The words “are relevant in so far as they are necessary for that purpose” in S. 9 are important and should not be lost sight of in applying S.9. Collateral facts enumerated under the section are ordinarily not admissible in evidence unless appears that such facts are directly connected with the facts in issue. In other words, explanatory or introductory facts can be proved if they have a direct bearing on the fact in issue.⁶⁷

⁶⁵Lakhminder Singh vs. State of Punjab, AIR 2003 SC 2577.

⁶⁶AIR 2003 SC 393.

⁶⁷Rajendar Singh vs. State, AIR 1955 NOC 2765.
