Nature and Functions of the Law of Evidence

Introduction

Preamble– Whereas it is expedient to consolidate, defines and amends the Law of Evidence; it is hereby enacted as follows:-

The preamble consolidates laws which existed from before in this area and also provides the aim of the Act as to define and amend the Law of Evidence. Notably it being the outcome of English principle, in case of need the Courts do have to follow them.

Function:-

Every case that comes before a court of law has a fact story behind it. Facts out of which cases arise keep happening in the ordinary course of life. The facts which led up to the climax will have to be recaptured or reconstructed before the court, so that the judge is able to appreciate the real happening. Only then he will be in a position about the rights and liabilities of the parties. Thus, whenever a judge is called upon to pronounce upon the rights and liabilities of parties arising out of facts, certain information about the facts involved must be submitted to him which will create a belief in his mind as to what the real facts are. Facts must be proved in the first instance and then only the matter is ripe for application of relevant laws. [1]

The practical reality is that the truth or merits of a case are worthless unless they can be proved to the acceptance of the judge and thereby to enable him to act on them. The means by which facts are proved are governed by the law of evidence. The function of the law of evidence is to lay down rules according to which the facts of a case can be proved or disproved before a court of law. The means which can be used to prove a fact are all controlled by the rules and principles laid down by the law of evidence.

Nobel Laureate and French theorist, Andre Gide,[2] once said,

"Truth should be the guiding star in the entire judicial process. Truth is the foundation of justice. Dispensation of justice, based on truth, is an essential feature in the justice delivery system. People would have faith in courts when truth alone triumphs. The justice based on truth would establish peace in the society".

Thus it is the well established rule that discovery of truth is the chief goal of justice delivery system of any country. The law in this regard is well settled that it is the fundamental duty of the Court to ascertain the truth and do justice on the basis of truth.

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[1] A legal decision means application of law to facts : Facts + Law= Decision

[2] Andre Paul Guillaume Gide (22 November 1869- 19 February 1951)

Krishna Iyer J in**JasrajInder Singh**[3] described truth and justice as under:

"8…Truth, like song, is whole, and half-truth and can be noise. Justice is truth, is beauty and the strategy of healing injustice is discovery of the whole truth and harmonizing human relations. Law's finest hour is not in meditating on abstractions but in being the delivery agent of full fairness".

The Supreme Court described 'justice' and 'truth' to mean the same, while quoting Anatole France:[4]

"Truth passes within herself a penetrating force unknown alike to error and falsehood. I say truth and you must understand my meaning. For the beautiful words Truth and Justice need not be defined in order to be understood in their true sense. They bear within them a shining beauty and a heavenly light. I firmly believe in the triumph of truth and justice. That is what upholds me I times of trial."

The Supreme Court observed that the presiding officer of a Court should not simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost and that there is a legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice. It has expressed that, to enable the Courts to ward off unjustified interference in their working, those who indulge in acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in Courts when they would find that truth alone triumphs in Courts.[5]

From the ancient times, the constitutional system depends on the foundation of truth. An effort should be made to find the truth; this is the very object for which Courts are created. To search it out, the Court has to remove chaff from the grain. It has to disperse the suspicious, cloud and dust remains, the criminals are clothed with this protective layer to receive the benefit of doubt. So it is a solemn duty of

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[3]JasrajInder Singh vs. HemrajMultanchand, (1977) 2 SCC 155.

[4]Union Carbide Coorporation vs. Union of India and Ors (1989) 3 SCC 38, I (1990) ACC 214, JT 1989 (2) SC 454, (1989) (2) SC 454 (989) 3 SCR 128, 1989 (2) UJ 285 SC.

[5]Chandra Shashivs Anil Kumar Verma 1995 SCC (1) 421.

the Courts, not to merely conclude and leave the case the moment suspicions are created. It is onerous duty of the Court, within permissible limit to find out the truth. It means, on one hand no innocent man should be punished but on the other hand to see no person committing an offence should get scot free. There is no mathematical formula through which the truthfulness of a prosecution or a defence case could be concretized.

It would depend on the evidence of each case including the manner of deposition and his demeans, clarity, corroboration of witnesses and overall, the conscience of a judge evoked by the evidence on record. This is the importance of 'evidence' which is used as devise to find the truth in the Courts of law, Tribunals and other Legal Forums.

Meaning of Evidence-

'Evidence' is a word which derived from the Latin word ***'evidentia'*** which means to show clearly, to make clear to the sight to discover clearly certain, to ascertain or to prove.

1. According to Blackstone-

Evidence "signifies that which demonstrates, makes clear or ascertains the truth of the facts or points in issue either in one side or the other".

2. According to Taylor-

Evidence describes as"all means which tend to prove or disprove any matter, fact, the truth of which is submitted to judicial investigation".[6]

3. According to Dr. Johnson's Dictionary,

The word evidence signifies "the state of being evident, that is plain apparent or notorious".

4. According to Bentham-

[6] Taylor, 'Evidence', Section 1.

'Evidence' as "any matter of fact, the effect, tendency or design of which is to produce in the mind a persuasion affirmative or disaffirmative, of the existence of some other matter of fact"[7]

5.According to Wigmore-

"Evidence" as representing "any knowable fact or group of facts, not a legal or logical principal, considered with a view to its being offered before a legal Tribunal for the purpose of producing a persuasion, positive or negative, on the part of the Tribunal, as to the truth of a proposition, not of law, or of logic, on which the determination of the Tribunal is to be asked".[8]

6. According to Stephen-

"It sometimes means words uttered and things exhibited by witnesses before a Court of Justice. At other times, it means the facts proved to exist by those words or things and regarded as grand work of inference as to other facts not so proved. Again, it is sometimes used as meaning to assert that a particular fact is relevant to the matter under inquiry".[9]

7. According to Phipson-

Evidence means testimony, whether oral or documentary or real, which may be legally received in order to prove or disprove some facts in dispute.

8. According to Best-

"Evidence is any matter of fact, the effect, tendency or design of which is, to produce in the mind, a persuasion, affirmative or disaffirmative of the existence of some other matter of facts".[10]

Section 3 of the Indian Evidence Act defines –

"Evidence means and includes-

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[7]Bentham, 'Judicial Evidence' p. 17.
[8]Wigmore, 3rd Ed. Vol. I, p. 3
[9] Stephen, Introduction to the Law of Evidence.
[10] Best, Evidence".

1. All statements which the Court permits or requires to be made before it by witnesses in relation to matters of facts under enquiry; such statements are called oral evidence.
2. Al documents including electronic records produced for inspection of the Court, such documents are called documentary evidence."

Objection as to definition u/s. 3-

The definition of evidence given in the Act is objected to be too narrow as it does not include the following –

1. Material things other than documents e.g., weapons, articles of stolen property;
2. Statements made out of Court or before the Court by the parties;
3. A thing like struggle in the case of murder;
4. The result of local inquiry or inspection;
5. Identification proceedings.

The answer to the objection can be given that S. 3 is an interpretation clause which only explains the evidence. The definition of "evidence" considered with the definition of "proved" in the Act, will not give rise to such objection.

'Evidence', 'Testimony' and 'Proof' –

- **'Evidence'** means that which makes evident.
- **'Testimony'** is derived from "testes" which means witness. Testimony means statement of witness. Testimony is also evidence.
- **'Proof'** is the result or effect of evidence either in affirmation or negation of an alleged fact.

Thus, the 'evidence' means the fact which proves a fact and 'proof' is the effect of evidence.

Law and Law of Evidence—

Law means the rules which determine our relations. The day-to-day behaviors of individuals are regulated by the law which may be social, customary or the law as made by the State. The law prescribes our rights and duties. This branch of law is called substantive law. Thus, the right to inheritance, the right under the contract, the right of a person who is wronged is contained in the rules of substantive law. What are the duties of a person towards his fellow members are also contained in this branch of law. Thus, the right can be exercised by a person subject to the duty that he should not violate the rights of others. If he breaks this duty, the law provides a penalty for it.

Illustrations:-

1. 'A' has a right to live peaceably but he does not have the right to disturb the peace of others.
2. A has right of personal liberty. It does not mean that he can violate personal liberty of others.
3. 'A' has the right to move on the road by driving a vehicle. He cannot drive the vehicle in such a way as to hurt others by causing accident. If he does so, the law provides the penalty.

For enforcement of right or for compelling other to act according to his duty or to penalize a person, there are rule prescribed by the law. These rules are procedural in nature. The law which prescribes such rules is called 'procedural law'.

Procedural law provides the rules for preceding a matter before the authorities and judiciary. The parties to a legal proceeding, whether the party bringing an action or is defendant in a civil suit or the accused in a criminal case, have to follow the procedural law.

Thus, the tabular form of law in the aforesaid sense can be given as follows:

Stages of Trial and Evidence:-

Civil Case	Criminal Case
1. Filing of suit by the plaintiff. The summons is issued to the defendant.	1. Prosecution is started by the prosecutor or the complaint is filed by a private person in the Court. Summons or warrant is issued to the accused.
2. Striking of issues for the trial by the Court.	2. Framing of charges by the Court.
3. Actual trial of the issues. Evidence is given by the parties to prove or disprove the issues.	3. The evidence is given by the prosecution or the complainant and the accused person when he is tried for an offence charged by the Court.

4. The Court pronounces its opinion after weighing the evidence brought before it. The opinion of the Court is called as judgment.	4. The Court pronounces its opinion after weighing the evidence brought before it. The opinion of the Court is called as judgment.
5. The enforcement of judgment. Execution of decree.	5. The enforcement of judgment i.e., the acquittal or a sentencing the accused.

Thus, from the aforesaid, we come to know that the evidence is led at the third stage of a trial.

Salient Features of the Indian Evidence Act 1872:-

Based on the English Common Law:-

In British India, the Presidencey Courts by virtue of Royal Charter established in Bombay (Mumbai), Madras (Chennai) and Calcutta (Kolkata) followed English rules of the Law of Evidence. In Mofussil Courts, outside the Presidency Towns, there were no definite rules relating to Law of Evidence. The Courts enjoyed unfettered liberty in the matters of admission of evidence. The entire administration of justice in the Mofussil Courts in the absence of any definite rules of Law of Evidence was in total chaos. There was dire necessity for codification of the rules of law of evidence.

The constitution of Mayor's Courts under the Charter 1687 by the East India Company and later the constitution of Mayor's Courts under Charter 1726 as Crown's Courts brought the English Common Law into India and these Courts exercised the civil and testamentary jurisdictions. However, the disputes pertaining to the personal laws were resolved basing on the rules of evidence as laid down in *Shastras* and the Holy Quran. The English Common Law was followed in Indian Courts. As part of the legal procedure the rules of evidence as were prevalent in England, were imported from English Common Law. Slowly, the Principles of Natural Justice, Equity and English Common Law occupied the Indian legal system.

The first Law Commission headed by T.B. Macaulay prepared the drafts of the Indian Penal Code and the Civil Procedure Code and the Criminal Procedure

Code. The Second Law Commission recommended that the English law should be made the basis for codifying the law in India. The CPC. Was enacted in 1857, the Limitation Act in 1859, the Indian Penal Code in 1861 and the Cr. P.C. in 1861.

The Third Law Commission, which was appointed in 1861 prepared a draft Indian Evidence Act, 1872 along with several other Acts. The Commission's draft, however, found no favour in India. Then, in 1870, the task of codification of the rules of Law of Evidence was entrusted to Sir James Fitz James Stephen. He prepared a draft and after eliciting the opinion of Selection Commission, High Courts and Members of the Bar, it was placed before the legislature and it was enacted sir Fitz had prepared the draft by incorporating the relevant provisions from the English Law of Evidence. He did not hesitate to support his act of incorporation of the English Law of Evidence.

The Indian Evidence Act reduces the English law of evidence to the form of express propositions arranged in their natural order with some modifications rendered necessary by the peculiar circumstances of India. It is, in main, drawn on the lines of the English law of evidence.

2. Not exhaustive of the rules of Evidence:

The Evidence Act deals with the subject of Law of Evidence in general; there are other rules of evidence contained in the Evidence Act as well as in those statutes, Acts and Regulations which are not expressly repealed by the Act.

3. Consolidating Act:

The Indian Evidence Act is not merely a fragmentary enactment, but a consolidated one. The reasons and object of consolidation are to see that differences in practice adopted till then by different Courts while admitting evidence are avoided and certain guidelines are given for admitting the evidence relating to different issues in a given case. Secondly, if such consolidation is done by a codified enactment, such law alone should be sought for interpreting the language therein but not on other works to make out what the law was on a particular given point.

4. Procedural Law:

The Law of Evidence is a procedural aw and it would not affect substantive rights the Indian Evidence Act contains all such rules which answers the questions such as “of what matters witnesses can speak, who are competent witnesses, on whom does the burden of proving the case lie, is it on the person asserting the existence of facts or on the person denying their existence, how is the knowledge of the witness to be placed before the Court, how is his story tested by the adverse party, how is the genuineness of documents established can copies of documents be relied upon etc.’ The Evidence Act which is the adjective law steps in for the enforcement of the substantive law.

5. Territorial Extension:-

According to Section 1 of the Indian Evidence Act, 1872, the Indian Evidence Act extends to the whole of India except the State of Jammu and Kashmir. Section 3 of the Indian Evidence Act states that ‘India’ means the territory of India excluding the State of Jammu and Kashmir. Jammu and Kashmir is governed by a separate Evidence Act [(13 of 1977) Samrat] on the same lines as this Act.

6. Applies to the judicial proceedings:

As per Section 1 of the Indian Evidence Act, 1872, it applies to all judicial proceedings in or before any Court, including Court-marital, other than Courts-martial convened under the Army Act (44 & 45 vict. C.58), the Naval Discipline Act (29 & 30 vict., C. 109) or the Indian Navy (Discipline) Act, 1934 (XXXIV of 1934), or the Air Force Act (7 Geo. 5, C. 51)

The provisions of the Act are applicable in proceedings under Foreign Exchange Regulation Act (7 of 1947) as per the judgment given in the case of Shanti Prasad Jain vs. Director of Enforcement, (AIR 1962 SC 1764). This Act also applies in respect to the trial of an election petition, as provided under Section 87(2) of the Representation of the People Act (43 of 1951 as per the judgment of the case of *Kailash vs. Nankhu,* (AIR 2005 SC 2441).

However, this Act does not apply to affidavits presented to any Court or Officer, nor to proceedings before an arbitrator. The Evidence Act has no application to enquiries by Tribunals, even though they may be judicial in character.

The term ‘Judicial Proceedings’ is not defined in this Act, but under Section 2(1) of the Criminal Procedure Code, 1973, it includes any proceedings in the course of which evidence is or may be legally taken on oath. An inquiry about matters of fact, where there is no discretion to be exercised and no judgment to be formed but something is to be done in a certain event as a duty, is not a judicial but an administrative inquiry.

7. Discretion of the Court:

The entire judicial system is run based on the evidence. Though the Indian Evidence Act is a complete Code, its sections are framed in concise. Hence, there is more freedom and discretion to the Courts in admitting and recording evidence. It does not mean that entire procedure is left to the discretion of the Courts. It means that the Courts can exercise their discretionary power within the boundaries of the provisions of this Act. If any evidence is not admissible under this Act, it must be discarded by the Courts for all purposes and in all circumstances.

8. Allows both oral and documentary evidence:

Though there are several kinds of evidence, the Act allows mainly two kinds of evidence i.e. the oral and documentary evidence, which are most important and reliable evidences.

9. No Place for hearsay evidence:

Except in a few cases, hearsay evidence is not admissible under the Indian Evidence Act, 1872. The Act gives importance to the direct and circumstantial evidence only.

10. Protection and Privileges to the witnesses:

The Indian Evidence Act, 1872 provides protection and privileges to certain categories of the witnesses. One of such protections is that no person is bound to incriminate himself.

11. The object is to find out truth:

The sole object and end of the Indian Evidence Act, 1872 is to obtain evidence by which the truth of the several disputed facts of points in issue should come out. It is the duty of the party claiming to prove the substance of the issue to the satisfaction of the Court.

The Law of the Forum (or Court) or the lexfori:

Lexfori means the law of the place of action or the law of the forum of the nation. According to Lord Brougham, “The law of evidence is the lexifori which governs the Court, constitute the basis of the law of evidence. Whether a witness is competent or not; whether a certain matter requires to be proved by writing or not; whether certain evidence proves a certain fact or not; that is to be determined by the law of the country where the question arises, where the remedy is sought to be enforced and where the Court sits to enforce it.”

The law of evidence is lexifori which governs the Courts whether a witness is competent or not whether a certain matter requires to be proved by writing or not, whether certain evidence proves a certain fact or not, these and the like questions must be determined not lege loci contractus but by the law of the country where the question arises where the remedy is sought to be enforced and where the Court sits to enforce it.[11]

The law of evidence is part of the law of procedure i.e. the procedure which a Court has to follow. This is expressed by saying that it is the law of the forum (or Court) or the lexfori. If foreigners come before an Indian Court, they cannot insist upon their law of evidence being followed. The Indian Courts know only the Indian law of evidence and follow it. The evidence, being a procedure has to be governed by the law of the country where the proceedings are taken place. Hence Indian Evidence Act, 1872 extends to the whole of India except the State of Jammu and Kashmir but not to any foreign country as law changes from one country to another country basing on its peculiar circumstances, living style, social, economic, political etc.

Where evidence is taken in one country in aid of a suit or action (i.e. proceeding) in another country, either on ordinary commission or with the

[11][Bain vs. Whitehaven and Furness Junction Railway Co., (1850) 5 HLC 1(19)]

assistance of the local Courts, the law applicable to the recording of the evidence, would be the law prevailing in the country where the proceedings going on.

Evidence given before any Indian Court pertaining to any cause of action that has arisen in Russia or Canada, the USA or the UK etc. will be governed by the law of India only, but not by the Law of Russia or Canada or the USA or the UK etc.

Total Sections: There were 167 sections and one Schedule in the original Act of 1872. Section 2 along the Schedule was repealed by the Repealing Act 1938 (1 of 1938). Several amendments were made by changing the existing sections and inserting some new sections.

The newly inserted sections are: 22A, 47A, 53A, 65A, 65B, 73A, 81A, 85B, 85C, 88A, 90A, 111A, 113B, 114A. Sixteen sections have been newly inserted and one section (i.e. Sec.2) has been repealed. Now there are 182 sections in total.

Parts and Chapters:

Parts:

The Indian Evidence Act, 1872 has been divided into **three parts and eleven chapters.**

Part I:

Part I deals with relevancy of facts and consists of **Chapters I & II (Sections 1 to 55).**

Chapter I: Namely, 'Preliminary consists of **Sections 1-4'**.

- Section 1 deals with title, extent and commencement of the Act.
- Section 2 Repeal of Enactments.
- Section 3 deals with interpretation clause.
- Section 4 deals with presumptions of fact and law.

Chapter II:

- It deals with the relevancy of facts and consists **Sections 5to 55**.

- Sections 5 to 16 deals with the relevancy of facts, sections 17 to 23 deals with admissions and Sections 24 to 31 deals with confession.
- Section 32 to 38 deals with statements.
- Sections 39 to 44 relates with judgment.
- Sections 45 to 51 deals with opinion.
- Sections 52to 55 deals with character.

Part II:

Part II deals with the mode of proof and consists of **Chapters III to VI (Sections 56 to 100).**

Chapter III: It deals with facts which need not be proved.

- Sections 56 and 57 deal with the judicial notice.
- Section 58 deals with facts admitted need not be proved.

Chapter IV: It deals with the rules relating to oral evidence.

- Section 59 deals with proof of facts by oral evidence and
- Section 60 deals with oral evidence which must always be direct.

Chapter V: It is concerned with documentary evidence and consists of **Sections 61-90A.**

- Sections 61-66 deal with the mode of proof of contents of document.
- Sections 67-78 deal with the mode of proof of the execution of document. Sections 79-90 deal with certain resumptions to be raised in a judicial proceeding in respect of certain documents.

Chapter VI: This chapter deals with the execution of oral by documentary evidence. It consists of **Sections 91-100**.

- Section 91 deals with the evidence of terms of contracts etc.
- Section 92 deals with the exclusion of evidence of oral agreement.
- Section 93-100 deal with the patent and latent ambiguities contained in such documents.

Part III:

Part III deals with the production and effect of evidence and consists of **Chapters VII-XI (Sections 101 to 167).**

Chapter VII: This chapter is related to the burden of proof and consists of **Sections 101 to 114**.

All these sections deal with the rules relating to burden of proof and person on whom the burden of proof lies to lead the evidence.

Chapter VIII: It deals with estoppel and consists of **Sections 115 to 117**.

- Section 115 deals with estoppel.
- Section 116 deals with estoppel of tenant and of licensee of person in possession. Section 117 deals with estoppel of acceptor of bill of exchange, bailee or licensee.

Chapter IX: This chapter deals with witnesses and consists of **Sections 118 to 134**.

- Sections 118 to 120 deals with competency of witnesses.
- Sections 121 to 134 deal with compellability of witnesses.

Chapter X: This chapter is related to the examination of witnesses and consists of **Sections 135-166**.

- **Sections 135-161** provide the rules of examination of witnesses in judicial proceedings as examination-in-chief, cross-examination and re-examination.
- This chapter also provides what questions can be put to a witness and what questions cannot be asked in examination-in-chief, cross-examination and re-examination.
- Finally this chapter deals with production of documents in **Sections 162-164. Section 165** deals with the Judge's power to put questions or order production.

Chapter XI: This final chapter consists only **one section i.e. Section 167** and deals with the provisions of improper admission and rejection of evidence.

The scope of all the sections can be grouped into five parts, namely:

1. Preliminary;
2. The relevancy of facts in issue;
3. The proof of facts according to their nature, by oral, documentary or material evidence;
4. The production of evidence; and
5. The procedure.

Adversarial System and Inquisitional system:

In India, investigation system is **'Adversarial'** where the investigation of offences is done by the police or other investigating agencies, the investigation being free from judicial supervision or control.

As distinct from it, in **Inquisitorial System**, investigation is supervised by the Magistrates resulting in high rate of conviction.

The Committee on Reforms of Criminal Justice System (Malimath Committee) in its report submitted in March, 2003 felt that air trial and in particular fairness to the accused, are better protected in the Adversarial system but it also felt that some of the good features of inquisitorial system as prevalent in France, Germany and other continental countries could be adopted in India, to strengthen Adversarial System which includes the duty of the court to search for truth, to assign a particular role to the Judges to give directions to the Investigating Officers and Prosecution agencies in the matter of investigation and leading evidence with the object of seeking the truth and focusing on justice to victims. The Committee has made recommendations on five points in this regard.

Classification (Kinds) of Evidence:-

Sir Taylor described the law of evidence as a way through which argument to prove or disprove any issue of fact. The **truth** of which is given to judicial investigation.

Evidence is an important aspect of any case in a court of law because every allegation or demand in court has to be supported by some evidence otherwise it will be considered baseless.

Under Indian evidence Act the word **'evidence' means** only those instruments through which suitable and appropriate facts are brought before the Court and by the help of which the Court is convinced of these facts.

Also, it should be noted that statements given by parties when examined otherwise than as witnesses, *the demeanour (behavior) of the witnesses, consequences of the local investigation or inspection, and material objects other than documents such as weapons, tools, stolen property,etc,* **will not be considered evidence** according to the definition of evidence given under Indian law. Nonetheless, these matters are legitimately taken into consideration by the Court.

A **statemen**t that is being recorded **under Section 164** of the Act is not considered evidence within the purview of the Act.

So, even a **confession** given by an accused will not be considered as evidence in the ordinary sense of the term. Even the entire evidence produced or stated by hostile witnesses are not excluded completely by the court.

It is within the powers of the court through the entire evidence and relevant circumstances to reach its conclusion about the conviction or innocence of the accused person.

According to the definition (S.3) given in the Indian Evidence Act, evidence can be divided into *two categories*:

I. Direct or Primary Evidence (S.3), (S.60):-

Direct or Primary evidence is acknowledged as the**imperative**, **most important evidence for deciding the matter in the issue**. It directly proves or disproves the fact. In such evidence, a specific fact is established directly without providing a reason to connect to the fact.

One hardly needs to point out the illustration provided as the evidence of the witness in court is direct evidence as opposed to a testimony to fact suggesting guilt.

Such evidence is real, tangible, or clear evidence of a fact that requires no thinking or consideration to prove its existence. However, relying on the evidence completely without any reasoning to prove its existence can be considered as a drawback as well. For instance, one may be prosecuted for perjury.

Direct evidence **directly proves a fact or disapproves of the fact** by its virtue. In the case of direct evidence, a particular fact is accepted directly without giving any reason to relate to the fact.

Also, at times the rule of best evidence plays an important part in upholding direct evidence in a court of law.

The rule of the best evidence is a rule of law that onlyincludes the primary evidence in itself. It states that if evidence such as a document or a recording is presented in the court then only the original ones will be admissible unless there is a reason for not using the original one in the court.

i. Oral Evidence: (section 60)

Oral evidence renders to the evidence that is **mainly words spoken by mouth. Oral evidence consists of statements in Court by witnesses**. Primary oral evidence is the evidence that has been **personally heard or seen or gathered by the senses of a witness**. It is called direct evidence as defined by section 60 of the Indian Evidence Act.

According to the definition of evidence (S.3), all statements, which the Court permits or requires to be made by witnesses in relation to matters of fact under inquiry, are called as the oral evidence.

It is adequate to be proved without the support of any documentary evidence, provided it has credibility.

II. Indirect or Mediate or Hearsay evidence:-

Hearsay evidence refers to evidence which the witness has neither personally seen nor heard. It is just reported by the witness and considered to be very weak evidence. In other words, it refers to something that others have said or heard. There are no set standards to receive such evidence provided it has reasonable credibility and nexus. In the absence of such credibility and nexus, it is difficult and dangerous to act upon such evidence. Thus, such a piece of evidence cannot be used if its credibility is not assured and questioned.

Such evidence is often rejected as they are considered to be irrelevant. They are inadmissible because the witness has neither personally seen nor heard. The witness has not perceived the evidence through his senses but has come to know about it through the third person.

Balram Prasad Agrawal vs. the State of Bihar &Ors

In this case, a young married woman named Kiran Devi, daughter of the appellant-complainant, who is alleged to have been murdered by the respondent-accused or to have been forced to commit suicide by falling in a well situated on the backside of the house of the accused. It was said that the information obtained from their neighbours was completely hearsay evidence; however, the respondents were convicted on the basis of hearsay evidence.

It was stated in this case that the evidence of a statement made to a witness who is not himself called as a witness may or may not be hearsay, following are the possible situations:

- It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement.
- It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement but the fact that it was made.

The fact that the statement was made quite apart from its truth is relevant in considering the mental state and conduct of the witness or a person in whose presence these statements were made.

ii. Circumstantial Evidence:

Circumstantial evidence is that which **relates to a series of other factsthan the fact in issue**[12]: but by experience have been found so associated with the fact in issue in relation of cause and effect that it leads to a satisfactory conclusion.

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[12]**Fact in issue** simply means "the disputed facts". In litigation or proceedings, generally, one-party claims that certain facts exist, while other party denies the existence. In this case, the fact that it is accused by one party but denied by the other party is called a fact in issue.
Fact: is a truth as opposed to fiction or mistake. The term 'Fact' means a 'an existing thing'. But under Evidence Act, the meaning of the word is not limited to only what is tangible and visible or, is in any way, the object of sense. According to S.3 of the Indian Evidence Act, 1872 Fact means and includes:
1. Anything, state of things or relation of things capable of being perceived by the senses.

***Evidence relates to facts in issue and relevant fact**:-*

As per section 5 of the Indian Evidence Act, evidence may be presented in a court proceeding of the existence or non-existence of **facts in issue** and of such other facts that are considered relevant by the Act. If the presented evidence relates directly to the existence or non-existence of a fact in issue then the evidence will be **considered direct**, but if the evidence relates to the existence or non-existence of only a **relevant fact** then it will be considered as indirect or circumstantial evidence.

However, direct evidence as understood by this section should not be confused as defined in section 60 of the Indian Evidence Act.

Direct evidence is not used opposed to circumstantial evidence as used regarding hearsay evidence:-

According to section 60, the word 'direct evidence' is used as opposed to 'hearsay evidence' and not in contradistinction to 'circumstantial evidence' and thus, going by the section, circumstantial evidence should always be direct as in the facts from which the existence of the fact in issue is to be established have to be proved by direct evidence and not by any hearsay evidence.

Indirect evidence otherwise known as circumstantial evidence is evidence that gives rise to a logical inference that such a fact does exist.

Phipsonsaysthat "By indirect or presumptive evidence is meant that other facts are thus proved, from which the existence of the given fact may be logically inferred.

Peter Murphy says that "circumstantial evidence is evidence from which the desired conclusion may be drawn but whichrequires the tribunal the fact not only to accept the evidence presented but also draw an inference from it."

Illustration: a) That a man heard or saw something is a fact.
b) That a man said certain words is a fact.
2.) any mental condition of which any person is conscious
Illustration:
a) A person has an intention to commit murder.
b) That a man has certain reputation is a fact.

According to Steve Uglow, "circumstantial evidence…. consists of evidence of circumstances, none of which speak directly to the facts in issue but from which those facts may be inferred. *Feelings of animosity (hatred) towards the victim, presence in the area of the attack, the victim's blood on the accused clothing…all these build up into a strong but inferential case".*

Cross & Tapper say that "circumstantial evidence"…..may be defined as any fact (sometimes called an 'evidential fact', *'factum probans'* or jury may **infer the existence of a fact in issue".**

Essential ingredients to prove guilt by circumstantial evidence are:

- **i** Circumstances from which conclusion is drawn should be **fully proved or established;**
- ii Circumstances should be **conclusive**;
- iii All facts so established should be **consistent** only with the hypothesis of guilt and inconsistent of the accused; (in other words they should not be explainable on any other hypothesis except that the accused is guilty.)
- iv Circumstances should exclude the possibility of guilt of a person other than the accused; (in other words circumstances must shows that only accused committed the offence and not any other person.)
- v There must be a **chain of evidence** showing that the act must have been done by the accused.

Case resting squarely (directly) on circumstantial evidence:-

Alfred Wills in his book 'Circumstantial Evidence' has presented the *rules as to evaluation of Circumstantial Evidence* as under:

- i The facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the *factum probandum*; (ultimate fact to be proven or a fact that is waiting to be roved.)
- ii The **burden of proof** is always on the party who asserts the existence of any fact, which infers legal accountability;
- iii In all cases, whether of direct or circumstantial evidence **the best evidence must be adduced** which the nature of the case admits;

iv In order to justify the inference of guilt, the **inculpatoryfacts*****(is a evidence that shows, ortends to show, a person's involvementin an act, or evidence that can establish guilt.)*****must be incompatible (opposite or conflicting) with the innocence of the accused and incapable of explanation**, upon any other reasonable hypothesis than that of his guilt;

v **If there be any reasonable doubt of the guilt of the accused**, he is entitled as of right to be **acquitted.**

In SharadBirdichandSarda vs. State of Maharashtra,[13]

The deceased Manju was married to the appellant SharadBirdichand on 11th February, 1982. The treatment of her husband and his parents was cruel and harsh. She was treated like a labourer. Things did not improve despite her protests to her husband. She wrote her woeful tale to her sister Anju in the letters and also to her friend but requested Anju not to reveal her sad plight to her parents. Nearly four months after her marriage on 12th June, 1982, she was found dead on her bed. The appellant, SharadBirdichandSarda, his brother RameshwarBirdichandSarda and their uncle were charged for the offence of murder by poisoning. Accused No. 3 was also charged of offence under Section 201 of IPC read with Section 120-B of IPC. On the basis of the letters written by the deceased and her statements to some witnesses and the medical report, the trial Court convicted the appellant and sentenced him to death under Section 302 of IPC. and all the three accused to rigorous imprisonment for two years and a fine of Rs. 2,000/- each under Section 120-B, IPC., but the Court did not award any sentence under Section 201 read with Section 120-B of IPC. The Bombay High Court allowed the apeal of accused Nos. 2 and 3 in full and acquitted them and dismissed the revision application of the State for enhancement of sentences of accused Nos. 2 and 3. The appellant whose conviction and sentence was confirmed by the High Court filed special leave to appeal to the Supreme Court. The Supreme Court gave the benefit of doubt to the accused as the possibility of the deceased having committed suicide by the defence could not be ruled out.

Justice Syed MurtazaFazal Ali of the Supreme Court held—

[13] AIR 1984 SC 1622

"In the cases of murder by administering poison, the Court must carefully scan the evidence and determine the four important circumstances which alone can justify the conviction:

i There is a clear motive for an accused to administer poison to the deceased;
ii That the deceased died of poison said to have been administered;
iii That the accused had the poison in his possession; and
iv That he had an opportunity to administer the poison to the accused."

"In the instant case, taking an overall picture on this part of the prosecution case the position seems to be as follows:"

i If the accused wanted to give poison while Manju was wide awake, she would have put up stiffest possible resistance as any other person in her position would have done. Dr. Banerjee in his postmortem report has not found any mark of violence or resistance even if she was overpowered by the appellant she would have shouted and cried and attracted persons from the neighbouring flats which would have been a great risk having regard to the fact that some of the inmates of the house had come only a short while before the appellant.

ii Another possibility which cannot be ruled out is that potassium cyanide may have been given to Manju in a glass of water if she happened to ask for it.

iii "The third possibility is that as Manju had returned pretty late to the flat and she went to sleep even before the arrival of the appellant and then he must have tried forcibly to administer the poison by the process of mechanical suffocation, in which case alone the deceased could not have been in a position to offer any resistance but this opinion of doctor, has not been accepted by the High Court, after a very elaborate consideration and discussion of the evidence, the circumstances and the medical authorities, found that the opinion the doctor that Manju died by mechanical suffocation had not been proved or at any rate it is not safe to rely such evidence".

iv The other possibility that may be thought of is that Manju died a natural death. This also is eliminated in view of the report of the Chemical Examiner as confirmed by the postmortem that the deceased died as result of administration of potassium cyanide".

v The only other reasonable possibility that remains is that as the deceased was fed up with the maltreatment by her husband, in a combined spirit of revenge and hostility after entering the flat she herself took potassium cyanide and lay limp and lifeless. When the appellant entered the room he must have thought that as she was sleeping she need not be disturbed but when he found that there was no movement in the body after an hour his suspicion was aroused and therefore he called his brother from the adjacent flat to send for Dr. Lodha."

"In these circumstances, it cannot be said that a reasonable possibility ofthe deceased having committed suicide as clear that the circumstances of the appellant having been last seen with the deceased a has administered the poison has not been proved conclusively so as to raise an irresistible inference that Manju's death was a case of blatant homicide"[14].

Regarding circumstantial evidence and weakness of defence, Justice MurtazaFazal Ali held—

It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law. However, where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. in other words, before using he additional link, it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a court.

Before a false explanation can be used as additional link, the following essential conditions must be satisfied:

1. Various links in the chain of evidence led by the prosecution have been satisfactorily proved;
2. The said circumstance point to the guilt of the accused with reasonable definiteness and;
3. The circumstances are in proximity to the time and situation.

[14]Fateh Singh Bhagat Singh vs. State of M.P. 1953 SC 468.

If these conditions are fulfilled, then only a Court can use a false explanation or a false defence as an additional link to lend as assurance to the Court and not otherwise. On the facts and circumstances of the present case this does not appear to be such a case. There is a vital difference between an incomplete chain of circumstances and a circumstance, which, after the chain is complete, is added to it merely to reinforce the conclusion of the Court. Where the prosecution is unable to prove any of the essential principles laid down in Hanumant's case, the High Court cannot supply the weakness or the lacuna by taking aid of or recourse to a false defence or a false plea. The cardinal principle of criminal jurisprudence is that a case can be said to be proved only when there is certain and explicit evidence and no pure moral conviction.[15]

The conviction can be based solely on circumstantial evidence. The omissions, contradistinctions and discrepancies which do not go to the heart of the matter have not to be given undue importance so as to shake the basic version of prosecution witness[16]

Five golden principles of circumstantial evidence:-

In SharadBirdichandSarda vs. State of Maharashtra,[17] the Supree Court described five golden principles laid down in ***Hanumant vs. State of M.P.,[18]Panchsheel*** of the proof of a case based on circumstantial evidence. These rules are as follows:

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established.
   It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in ***ShivajiSahebraoBabade vs. State of Maharashtra,***[19] where the following observations were made:

[15]Hanumant vs. State of MP., (1952) SCR 1091.
[16]Madhu vs. State of Karnataka, AI 2014 SC 394.
[17] AIR 1984 SC 1682
[18] AIR 1952 SC 2622
[19] AIR 1973 SC 2622

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict, and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

2. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that the accused is guilty.
3. The circumstances should be of a conclusive nature and tendency.
4. They should exclude every possible hypothesis except the one to be roved, and
5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability that act must have been done by the accused.

Examples of cases:

1. in Awadhi Yadav vs. State of Bihar[20] the accused were held guilty where it was established that-

i There was bitter enmity with the accused and the deceased;
ii That the accused were carrying the dead body of the deceased;
iii They were also carrying Bhola and Pharsa at that time;
iv It was also proved that the deceased had injuries caused the weapons which the accused were carrying and the accused could not explain as to how they happened to carry the dead body.

2. in Dharma RadakaWalvi vs. State of Maharashtra,[21] the accused husband suspected the character of his wife and used to quarrel with her. She once left to her parent's house. Later he compromised and she came back. On one day he strangled her to death and dragged her body to nearby nala. He told with nearby

[20] AIR 1971 SC 69
[21](2002) 10 SCC 233.

persons that she was abducted by 5-6 persons in a truck. He refused to lodge a complaint. In the morning he confessed his guilt and lodged a complaint with the police confessing his guilt. The Court after close scrutiny of the circumstantial evidence convicted him.

3. inSiddaiah vs. State of Karnataka,[22]the husband was charged for the murder of his wife by strangulation and was held guilty by the High Court, relying on the circumstances:

i. that he was a drunkard;

ii. that he and his wife quarreled frequently;

iii. that he admitted his presence at the time of the incident; and

iv. that he had absconded after the incident.

The Supreme Court held, on appeal, that these circumstances were not enough to hold him guilty beyond reasonable doubt.

III. Substantive Evidence and Non-Substantive Evidence:

Substantive evidence is that on which reliance can be placed for the decision of case. It pertains about the rights and duties, and this evidence is reliable for the decision of a case. It credibility or which contradicts a substantive evidence to discredit.

IV. Positive and Negative Evidence:

Positive evidence tends to prove the existence of a fact. If the evidence adduced before the Court and satisfies it as unqualified (unconditional), does not create any doubt, definitive and beyond the reasonable doubts, it is positive evidence. It is also called as affirmative evidence.

Negative evidence is adduced to prove the non-existence of a fact. Generally it is weak evidence. The negative evidence is ordinarily no good evidence. Negative testimony is not as to the immediate fact occurrence, but facts from which you might infer that the act could not possibly have happened.

[22](2003) 10 SCC 224.

V. Best and Inferior Evidence:

The best evidence consists of statements made by a witness or contained in a document. If the person actually perceived something by that sense by which it is capable of perception gives statement in Court and an original document is produced to court for inspection it is called the best evidence.

Inferior evidence is that which suggests that better evidence might be available e.g. a copy of a document which suggests that somewhere the original exists, or a description of an object by a witness when the object could be produced for inspection.

Other types of Evidence:

1. Presumptive or prima facie Evidence:

According to Peter Murphy, "Presumptive or prima facie evidence is the evidence which is declared (usually by statute) to be sufficient evidence of a fact, unless and an opponent adduced contradictory evidence, in which case the tribunal of fact must weigh all the evidence tendered by all parties, in order to decide whether the fact has been proved".

According to S. 84 of the IPC, nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the Act, or that he is doing what is either wrong or contrary to law.

As per s. 82 of the IPC, nothing is an offence which is done by a child under seven years of age.

S. 83 of the IPC states that nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

According to S. 85 of the IPC, nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: Provided that the thing which intoxicated him was administered in him without his knowledge or against his will.

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

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 though evidence can they be roved 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:

1. Physical Facts (External facts) and

2. Psychological facts (Internal facts) (they can be perceived by five senses (they are subject to consciousness)

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)
   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).
   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.
- Psychological facts 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 strains 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.

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 n 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 world '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.[23]

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.

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[23] 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.

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 round inshape. 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 probablywould 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.

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.

<table>
<tr><th colspan="3">Facts</th></tr>
<tr><th>Fact in issue</th><th colspan="2">Relevant facts</th></tr>
<tr><td rowspan="6">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.</td><td colspan="2">One fact is said to be relevant to another when one is connected with the other in any of the following ways.</td></tr>
<tr><td>1</td><td>Facts forming part of the same transaction (s. 6)</td></tr>
<tr><td>2.</td><td>Facts which are occasion, cause or effect of the facts in issue (s.7).</td></tr>
<tr><td>3.</td><td>Motive, preparation, conduct of a party (s.8).</td></tr>
<tr><td>4.</td><td>Facts, necessary to explain the facts in issue (s. 9)</td></tr>
<tr><td>5.</td><td>Things, said or done by conspirators (s. 10).</td></tr>
<tr><td rowspan="5"></td><td>6.</td><td>Facts inconsistent with facts in issue (s. 11).</td></tr>
<tr><td>7.</td><td>Facts helping in the estimate of damages (s. 12.)</td></tr>
<tr><td>8.</td><td>Transaction creating right, etc. (s. 13).</td></tr>
<tr><td>9.</td><td>Facts stating of mind or body (s. 14).</td></tr>
<tr><td>10.</td><td>Facts showing whether act is intentional or accidental (s. 15).</td></tr>
</table>

	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 n 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.,[24] 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.

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.

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[24] 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”.

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:[25]

a) Cause and effect;
b) Occurrence at the same time (unity of time):
c) Occurrence at the same lace (unity of place);[26]
d) Common purpose and design; etc.[27]

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 thedead 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.

[25]Hadu vs. State, AIR.1951 Ori. 53.

[26] 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"

[27]Section 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 ways 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".[28]

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."[29]

[28] 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).

[29] Sarkar's Law of Evidence, eds. M.C. Sarkar et al., Vol. 2 (New Delhi, 2003), pp 73-74.

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.

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 th Evidence Act eaves this mental process of evaluation of witnesses and evidence entirely to the judicial expertise and wisdom.[30]

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-

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[30]**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*.

"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.
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.[31]
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

[31] 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."

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.

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.

Section 6-- Relevancy of Facts forming part of same transaction---

--Facts which,

--though not in issue,

--are so connected with a fact in issue as to form part of the same transaction,

--are relevant,

--whether they occurred at the same time and place or

--at different times and places.

Illustrations:

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or by the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b) A is accused of waging war against the Government of India by taking part in an armed insurrection in which property is destroyed, troops are attacked and gaols (jails) are broken open. The occurrence of these fats is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(c) A sues B a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts though they do not contain the libel itself.

(d) The question is, whether certain goods ordered from B were delivered to A. the goods were delivered to several intermediate person successively. Each delivery is a relevant fact.

Scope:

Under the definition of the word "relevant" in S. 3 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 the Act relating to the relevancy of fact. These particular ways which the law regards as relevancy have been described in S. 6 to 55 which deal with relevant facts.

Facts which are not themselves in issue may affect the probability of the existence of fact in issue and be used as the foundation of inferences respecting them; such facts are described in the Act as relevant facts.

Facts relevant to the issue have been arranged in the following manner:

1. Things connected with the fact in issue as part of the same transaction, occasion, cause, effect, and motive, conduct (S. 6 to 16).
2. Things said viz., admissions, confessions (S. 17 to 31)
3. Statements by persons who cannot be called as witnesses (S. 32 and 33).
4. Statements under special circumstances (S. 34 and 35).
5. Decisions in other cases (S. 40 to 44).
6. Opinions about fact in issue (S. 45 to 51).
7. Character and reputation of parties concerned (S. 52 to 55).

Basis of the rule:

Every facts is a part of other facts. There is no fact which is unconnected with other facts.

"The affairs of men consist of a complication of circumstances so intimately interwoven as to be hardly separable from each other. Each owes its birth to some preceding circumstance and in its turn becomes the prolific parent of others and each during its existence has its inseparable attributes and its kindred facts materially affecting its character and essential to be known in order to right understanding of its nature."

Res Gestae---

The principle underlying Section 6 the following is sometimes termed as *res gestae*.

Section 6 deals with relevancy of “facts forming part of the same transaction”[32] and the principle behind the section is that when a Court is dealing with a transaction, naturally all the facts that constitute that transaction may have to be gone into. This principle is based on the English doctrine of res gestae and the Latin phrase means “things done”.

The use of the words res gestae has been avoided in Section 6 because of lack of specificity of the concept in English law.

The concept of Res Gestae has come to be used as meaning hearsay, circumstantial evidence and so on.

It must, however, be pointed out that though the Evidence Act does not employ the phrase res gestae anywhere, the spirit behind the doctrine of enlarging the focus of spotlight of relevancy to cover certain surrounding facts has been incorporated not only inn S. 6 but also in S. 7 to 10.

‘Res gestae’ is a **Latin term** which means **a fact**, **a transaction, an event**, **thing done; the subject matter**.

The expression ‘res gestae’ means as including everything that may be fairly considered and incident of the event under discussion.

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[32] **Section 220 of CrPC** dealing with “Trial for more than one offence” also employs a similar terminology and provides, inter alia: “(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.”
Section 223 CrPC also employs the terms “different offences committed in the course of the same transaction.” Thus, the term “transaction” is used in CrPC in a different sense so as to include under Section 220 “offences” committed in a “series of acts” forming part of a transaction.
Under Section 6 of Evidence Act each of the offences so committed will be a transaction by itself.
The term “transaction” occurs also in Section 13(a) of Evidence Act but its meaning there is wider than under Section6.
For instance, a judgment is held to be transaction under Section 13(a) but it is not a transaction within the meaning of Section 6.
Section 32(1) also speaks of “circumstances of the transaction that resulted in death.”
See, for a discussion on the meaning of the term “transaction” in CrPC, **Andhra Pradesh vs. CheemalapatiGaneswaraRao&Anr. AIR 1963 SC 1850.**

Res gestae may be **broadly defined** as matter incidental to the main fact and explanatory of it including acts and words which are so closely connected therewith as to constitute a part of the transaction and without a knowledge of which the main fact might not properly understood.

They are the events themselves speaking through the instinctive words and acts of the participants, the circumstances, facts and declarations which grow out of the main fact, are contemporaneous with it and serve to illustrate its character.

Res gestae' of any case properly consists of that portion of actual world's happenings out of which the right or liability, complained or asserted in the proceeding, necessarily, arises.

Apparently the phrase is well established in the Law of Evidence. It is necessary therefore, to understand what it really means.

That has been used in two senses-**in the restricted sense**-it means world's happening out of which the right or liability in question arises.

In the wider sense-it covers all the probative facts by which *res gestae* are reproduced to the tribunal where the direct evidence of witness or perception by the court are unattainable.

In restricted meaning *res gestae* imports the conception of actin by some person producing the effects for which the liability is sought to be enforced in action.

To be clear, in the restricted sense, "facts which constitute *res gestae* must be such as **so connected with the very transaction or fact** under investigation as to constitute a part of it."

Whatever act or series of acts constitute, or in point of time immediately accompany and terminate in. the principal act charged as an offence against the accused from its inception to its consummation and whatever may be said by either of the parties during the continuance of the transaction, with reference to it, including herein what may be said by the suffering party, though in absence of the accused during the continuance of the action or the latter, form part of the principal transaction and may be given in evidence as part of *res gestae* of it.

While, on the other hand, statements made by the complaining party, after all action on the part of wrong-doer has ceased and some time has elapsed donot form part of *res gestae* and should be excluded.

"The res gestae may be defined as those circumstances which are the automatic and undersigned incidents of a particular litigated act and which are admissible when illustrative of such act.

These incidents may be separated from the act by a lapse of time more or less appreciable.

A transaction may last for weeks. The incident may consist of sayings and doings; they may comprise things left undone as well as the things done. They must be necessary incidents of the litigated act in the sense that they are not produced by the calculated policy of the actors.

They are the acts talking for themselves not what people say when talking about the acts.

In other words they must stand on an immediate casual relation to the actual relation not broken by the interposition of voluntary individual witness seeking to manufacture evidence for itself.

The test of the admissibility of evidence as part of *res gestae* is whether the act, declaration or exclamation is so intimately interwoven or connected with the principal facts or even which it characterizes as to be regarded as a part of the transaction itself and also whether it negatives any premeditation or purpose to manufacture testimony".

Res Gestae—Exception to Hearsay—

The doctrine of *res gestae* is considered to be an exception to the hearsay rule. Hearsay is sometimes classified into two kinds, viz.,

(a) Individual Hearsay and

(b) Composite Hearsay.[33]

Illustration (a) to S. 6 says:

"A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact."

Thus, "despite the frequent references in cases on *res gestae* to the evidence of the victim, it seems to be clear that any person's evidence may be *res gestae,* including any witness and the accused".

A might say something in his anger and B might say something in agony or raise a hue and cry. Persons who gathered there might also give vent to their feelings of outrage at murder taking place right in front of them. If a witness deposes in the Court as to what was said by A or B, it is individual hearsay and where he testifies about what a group of by-standers have said, it is composite hearsay.

If A or B deposes as to what he said at the occurrence, that would be direct evidence but the deposition of the witness as to what A or B said is hearsay.

Again, it may not be possible to identify the bye-standers or call all of them as witnesses; consequently, witnesses may be called to testify as to what the bye-standers have said etc.

Here, "the word 'bystanders' means the persons who are present at the time of incident and not the persons who gather on the spot after it.".

Same Transaction:

The term 'same transaction' has not been defined in the Evidence Act. A definition of the word is given **by Stephen,** who says,-

"A group of facts so connected together as to be referred to by a single legal name, as a crime, a wrong or any other subject of enquiry which may be in issue."[34]

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[33]Basu's Law of Evidence, 6th edn., by P.M Bakshi, ed., Vol.2 (New Delhi, 1998), p. 1109.

From its very nature the word 'transaction' is incapable of exact definition. It should be interpreted not in any strict or technical way but in its ordinary etymological meaning of "an affair" or "a carrying through."

The rule of efficient test for determining whether a fact forms part of the same transaction or another "depends upon whether they are so related to one another in point of purpose, or as cause and effect, or as probable and subsidiary acts as to constitute one continuous action."

Proximity of time is not so essential as continuity of action and purpose. On the one hand, the mere proximity of time between several acts will not necessarily constitute them parts of the same transaction, on the other hand, the mere fact that there are intervals of time between the various acts will not necessarily import want of continuity.

To ascertain whether a series of acts are parts of the same transaction, it is essential to see whether they are linked together to present a continuous whole.[35] Section 6 lays down that facts, which form part of the same transaction are relevant.

A transaction may be looked at from different angles:

1. A transaction may consist of not one fact but a set of facts which are connected to each other rand constitute a whole. Stephen's definition highlights this aspect.
2. Sarkar says: "A transaction may constitute a single incident occupying a few moments or it may be spread over a variety of act, declarations etc, occupying much longer time [36] and occurring on different occasions".[37]Sarkar is emphasizing that a transaction might be comprised of plurality of (a) durations, (b) acts etc, and (c) occasions.
3. But here a distinction must be made:

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[34]James Fitzjames Stephen, A Digest of Law of Evidence, (1876, London), Article 3.
[35] Ram Chandra vs. Emperor, AIR 1939 Bom. 129.
[36] In ProtimaDutta vs. State, 1977 (81) Cal. WN 713, the Calcutta High Court held that in cases concerning sustained cruelty by husband towards his wife that leads to her suicide, the "transaction" of systematic ill-treatment for years after the marriage might extend even to a period of three years.
[37]Sarkar's Law of Evidence, eds. M.C. Sarkar et al., Vol. 1 (New Delhi, 2003), p. 121. An "Act" is defined by S. 3 of the General Clauses Act, 1897, as: "'Act', used with reference ot an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions."

i The existence of a tree is a state of things,
ii Falling of a tree is an event and
iii Felling of a tree is an act. [38]

All the three are facts.

A "state of things" need not consist of inanimate objects only. For, instance, "drunken driving" as a "transaction" is a state of things and the law can make it, per se, punishable irrespective of whether it causes injury to somebody, and if it causes injury the law can make that "act" also punishable.

However, a "transaction" does not consist of all kinds of facts, events or occurrences but only those which are the outcomes of exertion of human will whether they fall under "state of things" or "acts" to which the law attaches a label as, for instance, a "contract", "tort" or an "offence".

Within the meaning of S. 6 that a man 'fell' from the toop of a tower is an event and not a transaction but that he "jumped" or was "pushed" from it and died is a transaction.[39]

Again, a "transaction" like "murder" may consist of "physical fact" of killing and also the "psychological fact" of mensrea within the meaning of definition of "fact" in S. 3.

4. A transaction can be a one-of event like a gun-shot or it can be a continuing offence[40] or tort like trespass, terminable at the will of the doer or by the

[38] Jeremy Bentham said: "An act or action, is…an event in so far as it comes to be considered as having had the human will as the immediate cause of it."

[39] The word transaction is derived from the Latin *transactus*(past participle of *transigere*) to carry out, accomplish. Though the dictionary meaning of the term is generally related to a business "deal", under S. 6 it has a wider legal connotation.

[40] In Bihar vs. DeokaranNenshi, AIR 1973 SC 908: 1973 SCR(3) 1004, SC. observed: A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with."
An example is the offence of non-payment of employer's contribution under the Employees' Provident Fund and Family Pension Fund Act, 1952: BhagirathKanoria vs. Madhya Pradesh, AIR 1984 SC 1688: 1985 SCR (1) 626.
In Ajay Agarwal vs. Union of India, 1993 (3) SCC 609: AIR 1993 SC 1637, it was held that criminal conspiracy is a continuing offence: "the agreement does not come to an end with its making but would endure till it is accomplished or abandoned or proved abortive."

intervention of law. "Continuing offence" as a transaction can be looked at from three angles: continuity from the point of commission (a) over a period of time (b) of different acts, and (c) at different place, the Court in those areas can exercise concurrent jurisdiction. [41]

Unless the Court looks at the entirety of those facts, it will not be able to come to a conclusion as to the nature of the transaction.

Section 6 lays down that the facts which are so connected with the facts in issue that they form part of the same transaction are relevant facts.

Sections 6, 7, 8, and 9 give the various ways in which the **facts are so related to each other to form component of the principal facts**.

These sections enact the law which usually laid down in England in these terms namely, that acts, declarations and incidents which constitute or accompany and explain the fact or transaction is issue are admissible for or against either party as forming parts of the res gestae.

The section renders relevant facts which form part of the same transaction as the fact in issue. Even hearsay statements are admissible under this section if the form part of the transaction.

The facts given in illustration (a) show that event of A murdering B by beating him consists of not only the act of beating but also certain surrounding facts like the utterances of A, the cries of B in agony, and the spontaneous

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Also see, State vs. Nalini, 1999 (5) SCC 253, para. 25: AIR 1999 SC 1640; U.S. vs. Kissal, 218 US 601; etc. where the appellant drove the car on to the foot of a person, rested the car wheel on his foot and switched off the ignition, the Court held that this was a case of continuing battery.

Recently in R. vs. Vu, 2012 SCC 40, the SC of Canada held: "Kidnapping is a continuing offence' and "while the crime of kidnapping may be complete in law when the victim is initially apprehended and moved, the crime will not be complete in fact until the victim is freed."

[41] Thus, S. 178, CrPC provides: "**Place of inquiry or trial**—(a)…(b)..(c)…where an offence is a continuing one, and continues to be committed in more local areas than one,…it may be inquired into or tried by a Court having jurisdiction over any of such local areas."

Section 472 of CrPC deals with limitation for "Continuing Offence" and states: In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues."

Where dowry harassment took place within more than one jurisdiction, it was held that it was a continuing offence and the Courts in any of those areas could entertain the case. Sujata Mukherjee (Smt) vs. Prashant Kumar Mukherjee, (1997) 5 SCC 30: AIR 1997 SC 2465.

outpourings of the bystanders. But they have al occurred at the time of beating or "shortly before or after" it, as the illustration says.

The acts and utterances have all occurred at about the same time and place.

The utterances are spontaneous and contemporaneous. On the other hand, illustration (b) deals with the offence of "waging a war against the Government of India" committed by A, as part of which property is destroyed, troops are attacked and jails are broken open, obviously in concert with different persons and at different times.

While in the 'transaction' of murder in illustration (a) the facts are 'connected' to each other by unity of time and place, in the 'transaction' of waging the war in illustration (b) the factor that connected together the persons, their acts and events was not the coincidence of time and place but the common intention and design that ran though like a thread. In fact, "waging the war against Government of India" is a "continuing offence" in the sense mentioned above.

The Courts appear to have applied different tests for bringing facts within the ring-fence of res gestae depending on whether the facts are physical facts or psychological facts.

Physical Factsforming a part of a transaction:

The facts forming the part of the same transaction with the fact in issue are relevant 'Res gestae' means the complete transaction from its starting point in the act of the accused until the end is reached. What in any case constitutes a transaction depends wholly on the character of the act and the circumstances of the case.

A transaction in its ordinary sense is some business or dealing which is carried on or transacted between two or more persons. Such of those statements made whether at the same time and place or at different times and places, as are connected with a fact in issue also form part of the same transaction. Facts leading to circumstances as to the nearness of the place, continuity of the act and the purpose or design have been considered as part of the same transaction.

Following **test** have been applied **to identify the nexus between 'facts forming part of the *same* transaction**:

a) The cause and;
b) Occurrence at the same time;
c) Occurrence at the same place; and
d) Common purpose and design[42]

As mentioned earlier, illustration (b) to S. 6 and the illustration to S. 10 clearly demonstrate that, in the case of waging the war against the Government of India, destruction of property, assault on troops, breaking open of the jails, publication of material advocating the aims and objects of the operation etc. are all part and parcel of the same transaction called "waging the war against Government of India", though these acts have been done by different persons, at different places and different times. In fact S. 6 itself says that facts may form part of the same transaction "whether they occurred at the same time and place or at different times and places."

Community of purpose and design is the cementing factor that put all those acts and facts in the basket of res gestae.

The time:- No uniformity exists in the length of time over which the transaction shall properly be held to extend. An act may occur within a few seconds. Another act may take some months together. In case where an agreement between the parties has been reached by a series of negotiations, extending over months or even years, the time covered by the transaction will be extended.

Space: The transaction may take within a room, or within a country or beyond the boundaries. No limitation can be imposed as to the territorial boundaries within which the transaction must occur. Those of sudden quarrel,

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[42] In Haduvs State, AIR 1951 Ori 53, the Orissa High Court (per B. Jagnnadha Das, J.) said:
"Where the transaction consists of different acts, in order that the chain of such acts may constitute the same transaction, they must be connected together by proximity of time, proximity or unity of place, continuity of action and community of purpose or design."
In Andhra Pradesh vs. CheemalapatiGaneswaraRao&Anr, AIR 1963 SC 1850, n the context of the use of "same transaction" in S. 220 and 223 of CrPC, the Court said: "where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for transaction to be regarded as the same."

shooting or stabbing may occur at one place and like a rebellion, or other movement may cover the breadth of a country or of continent.

Psychological acts forming part of the transaction, or "words accompanying physical acts":-

Psychological acts forming part of the transaction or words accompanying physical acts may form the part of the same transaction.

The words spoken by the person doing the act, or by the person to whom they were done or by the bystanders are relevant as a part of the same transaction, but it should be borne in mind that such statements or declarations, as they are called, in order that they might be admissible as res gestae should be contemporaneous with the transaction in issue, that is the interval should not be made as to give time and opportunity for fabrication and connection and they should not amount to mere narrative of past occurrence.

They are admitted, when they appear to have been made under the immediate influence of some principal transaction relevant to the issue and are so connected with it as to characterize or explain immediate influence of some principal transaction relevant to the issue.

A bare statement of the complainant to the third person is not admissible; it is the power of perception unmodified by recollection that is appealed to and not of a recollection modifying perception.

Whenever recollection comes in whenever there is opportunity for recollection and explanation the statement cease to be part of the transaction.

A declaration must be substantially contemporaneous with the fact and if it is separated from the fact by an interval which, though however slight allows of fabrication, it cannot be treated as substantially contemporaneous with it and would not the statement of its effect as res gestae and would reduce it to the status of a complaint or narration of a past event.[43]

The statement is not admissible only because it is uttered in the course of the transaction. To be admissible it must be a part of the transaction.

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[43]Kameshwar Prasad Singh vs. Rex, 1951 ALJ 149.

If 'A' assaults 'B' on the neck with a knife and this is seen by bystanders who exclaim, 'A' is killing 'B', the exclamation is as much part of the transaction of murder as the gushing out of the blood from the wound inflicted on the neck with the only difference that the latter is physical reaction to the act whereas the former is the psychological reaction through perception.

While no doubt the spontaneity of the statement is guarantee of the truth the reaction for its admissibility under S. 6 is that it is part of the transaction and not merely because it is spontaneous.

In R. vsBedingfied,[44]

Awoman with a throat cut came out of the room suddenly and said to the witness "Aunt see what Bedingfied has done of me". C.J. Cockburn held it to be not admissible as res gestae because the statement was made after the incident was over.

In R. Vs. Christie,[45]

A statement made by a young boy to his mother shortly after indecent assault on him by the offender was held not to be res gestae as it being so separate by the time and circumstances could not be said to be part of the same transaction.

In Rutten vs. Regina,[46]

The caller a woman giving her address in distress requested the telephone operator to connect the police but call could not be completed as it ended suddenly. When the police came to her house, she was found there dead. Her husband, who was charged of killing her by shooting, took the plead that the fire was accidental but it was held to be intentional on the basis of her call to the operator to connect the police as no victim of accident would think of getting the police prior to the incident . The call by the woman and whatever she said was held to be res gestae.

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[44] (1695) 6 Skin 402.

[45](1914) AC 545, Per Lord Atkinson.

[46](1971) 1 WLR 801 (PC).

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 art 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 to difficult for Judge to say whether a fact canor 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***.[47]

3. R. vs. Richardson,[48] 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 the 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.

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 resects 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**[49]

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

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[47] Jai Nand R. vs. Rex, AIR 1949 All. 291.
[48]Wills, p. 225.Stephen's Introduction to the Law of Evidence p. 93.
[49]AIR.1965 Cal. 252.

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,[50]

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.

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.

[50]Wills on Circumstantial Evidence p. 225.

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,[51]

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.

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

[51] 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.

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 drowining 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**,[52]

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 constitue the state of hings 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 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,[53] 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

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[52]Stephen's Introduction to the Law of Evidence pp. 192-6.

[53](1971) 3 All E. R. 801.Consideed in connection with res gesate,

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 sow the state of things under which the principal fact happened.

Motive, Preparation and Conduct

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

Any fact is relevant

-which shows or constitutes a motive or preparation

-for any fact in issue or relevant fact.

The conduct of any party, or

-of any agent to any party,

-to any suit or proceeding,

-in reference to such suit or proceeding,

-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 includestatements**, 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 that 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 anyagent 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 thesubject 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 I a certain way.[54]

[54]Gangaram vs. Emp., 22 CrLJ 529.

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.

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.[55]

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:

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[55]HazratGul Khan vs. E., 29 Cr. LJ 546.

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 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. State[56]

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, ChhoteLalwas 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.

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[56]1959 ALJ 287.

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.

In State of M.P. vs. Dhirendra Kumar,[57]

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.[58]

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. [59]

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.[60]

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

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[57]AIR 1997 SC 318.
[58] Com. Vs. Webster, 5 Cuch 295 (316).
[59]VinayakDattaDurbhatkar vs. State, AIR 1970 Goa 96 (101): 1970 Cr.LJ. 1081.
[60]Aagupandi vs. State of Tamil Nadu, AIR 2012 sc 2405.

Circumstantial Evidence and Motive:-

In Sheo Shankar Singh vs. State of Jharkhand,[61]

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.

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.[62]

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[61]AIR 2011 SC 1403.

[62]MunishMubar vs. State of Haryana, 2013 SC 651 (para 19).

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."[63]

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 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. [64]

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

Absence of motive is a factor that weighs in favour of the accused as it often forms the fulcrum of the prosecution story.[65]

In case of direct evidence, motive for crime is meaningless.[66] It is in case of circumstantial evidence that motive assumes importance.[67]

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.[68]

Motive loses all significance where prosecution case is fully established by reliable ocular evidence.[69]

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.[70]

Dowry death:-*Motive*---

Motive is inherent in dowry death. It plays a vital role in determining the gilt when only circumstantial evidence is available.[71]

In SarojinivsStateof M.P.[72]

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.[73]

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[64]Algupandi vs. State of Tamil Nadu, AIR 2012 SC 2405.
[65] R. Shaji vs. State of Kerala, AIR 2013 SC 651.
[66]Habib vs. State of Uttar Pradesh, AIR 2013 SC 1764.
[67]SubodhNath vs. State of Tripura, AIR 2013 SC 3726 at p. 3731.
[68]Darbara Singh vs. State of Punjab, AIR 2013 SC 840 at p. 844.
[69]LokeshShivakumar vs. State of Karnataka, AIR 2012 SC 956.
[70]VarunChaudhary vs. State of Rajasthan, AIR 2011 SC 72.
[71]Rajammal vs. State of T.N., 1993 Cr.LJ 3029 (Mad).
[72]1993 AIR SCW 817.

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 form 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.

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).

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[73]KundulaBalaSubrahmaniyam vs. State of A.P., 1993.AIR SCW 1321.

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.[74]

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.

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,[75]

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

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[74]State of Punjab vs. Bittu, AIR 2016 SC 146 p. 150.

[75] AIR 1971 Mad. 194

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,[76]

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 retrospectant one because the argument is backwards from effect (conduct) to cause (internal condition).[77]

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.

[76] AIR 1937 Sind 293.

[77]Wigmore, 190.

Conduct would include not only a single act or omission but also a set of acts and omissions,[78] 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
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,

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[78]**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."

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.[79]

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",
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,[80]

[79] 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".

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 consent[81] 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."[82]

In the case of **K.P. ThimmappaGowda vs. Karnataka**,[83]

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—

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

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[80]AIR 1979 SC 185.

[81] 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."

[82] Stroud's Judicial Dictionary, Fourth edn., Vol. 1 (1971), p. 555. See also S. 90 of IPC.

[83]AIR 2011 SC 2564.

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 striffle 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.[84]

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.[85]

Complaints of the deceased to the police expressing apprehension of death made two months before death are admissible. [86]

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

Previous Conduct—

[84] King Emperor vs. Bhagi Others, AIR 1941 Oudh 359.
[85]Bishwanatha vs. Dhapu Devi, AIR 1960 Cal. 494.
[86]AlijanMunshi vs. State, AIR 1960 Bombay 290.

Preparation for crime and previous threats and attempts to commit crime obviously come under the previous conduct of the accused.[87]

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.[88]

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.[89]

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 hiself is relevant under s.8. [90]

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."[91]

The fact that the accused set up a false plea of alibi is relevant under S. 8 as conduct to shield himself.[92]

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

As observed by Wigmore:

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[87]Sarkar's Law of Evidence, eds. M.C. Sarkar et al., Vol. 1 (New Delhi, 2003), p. 141.

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

[89]Worth vs. R. Co., 51 Fed. 173.

[90]AghnooNagesia vs. Bihar, AIR 1966 SC 119.

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

[92]Ramesh Kumar vs. State, 2010 Cri LJ 85.

> 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 theplace of hiding be in his own home."[93]

However, the Courts have held that a person running away may not necessarily give rise to an inference of guilt as even an innocent an might run away because of fear[94] 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.[95]

In Elavarasam vs. State[96]

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 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.

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[93]Kartarey vs. Uttar Pradesh.AIR 1976 SC 76.

[94] 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.

[95]Sk. Yusuf vs. West Bengal, AIR 2011 SC 2283.

[96]AIR 2011 SC 2816.

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.[97]

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.[98]

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.

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[97]Ram Swami Reddi vs. Emperor, AIR 1931 Mad. 235.
[98]Rameshwar Prasad vs. Rex., 1951 ALJ 149.

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
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,[99]

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,[100]

[99] AIR 1962 Guj 1.

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 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.[101]

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[100] AIR 1937 Rang 83 (FB).

[101] Arun Kumar Banerji vs. State, AIR 1962 Cal. 504.

Section 9----

Facts necessary to explain or introduce relevant facts---

--Facts necessary to explain or introduce a fact in issue or relevant fact, or

--Which support or rebut an inference suggested by a fact in issue or relevant fact, or

--Which establish the identity of 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, tough 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 I 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*resgestae*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,[102]

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 ***Kaism***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.

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[102] AIR 1944 Sind 93.

RahanLalu vs. Emperor,[103]

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.

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,[104]

[103] AIR 1938 Sind. 97.

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 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,[105] 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

[104]AIR 1933 PC 854.
[105]1758, 19, St. Trials 815.

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, voce, handwriting, manner, dress, distinctive marks, faculties, peculiarities, thumb-impression, footprints, as well as residence, occupation, family 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.[106]

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 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

[106] Ram Deo Ram Yadav vs. State of Bihar, AIR 1993 p. 1780.

accused's own act. His mere attendance or the exhibition of body cannot be regarded as furnishing any positive volitional evidentiary act.[107]

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. [108]

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.[109]

In **Ahad Bin Salam vs. State of Andhra Pradesh**,[110]

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 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.[111]

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*.

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[107]PeareLal Shaw vs. State, AIR 1961 Cal 531 para 5.
[108]State of UP. Vs. Sukhpal Singh, AIR 2009 SC 1733 at p. 1733.
[109] Ram Babu vs. State of U.P. AIR 2010
[110]AIR 1999 SC 1617.
[111]Lakhminder Singh vs. State of Punjab, AIR 2003 SC 2577.

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 roved 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,[112]

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.[113]

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[112]AIR 2003 SC 393.

[113]Rajendar Singh vs. State, AIR 1955 NOC 2765.

SECTION -11

When facts not otherwise relevant become relevant ---

Facts not otherwise relevant are relevant---

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

Illustration:-

a) **The question is whether A committed a crime at Calcutta on a certain day.**
   The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.
b) **The question is, whether A committed a crime**.
   The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C or D is relevant.

This section has been expressed in very wide terms, but it does not mean that any and every fact which has a bearing however, remote, on any fact in issue or relevant fact, is relevant. If it were so that would amount to wiping out the theory of relevancy unfolded in the preceding sections and would let on record a mass of collateral facts and would create confusion in Court and prejudice to the parties.

Before a fact can be relevant under this section it must be shown to be admissible.

Section 11 deals with facts which ordinarily have nothing to do with the facts of a case and are not in themselves relevant, but they become relevant only by virtue of the fact that they are either inconsistent with any fact in issue either highly probable or improbable.

Section 11 attempts to state in popular language, the general theory of relevancy, and may, therefore, be described as the residuary section dealing with the relevancy of fact.[114]

While the seventh section defines the meaning of the term 'relevancy' in a quasi-scientific language, the present section contains a statement in popular language of what in the former section is attempted to be seated in a scientific language. The practical effect of those two sections is to make every relevant fact admissible as evidence.[115]

The section applies when the question is whether a fact is relevant and not when the question is whether a particular method of proof is admissible under any provisions of the Evidence Act.[116]

The sort of facts, which the section was intended to include, are facts which either exclude or imply, more or less distinctly, the existence of the facts sought to be proved.

Is Section 11 a Catch-all Dragnet? Different Views:-

Section 11 has given rise to a difference of opinion as to its interpretation and operation.

1. **One view** is that the section makes all the logically relevant facts with high probative value admissible under it, even if those facts are not legally relevant under other section. This view virtually blurs the distinction between facts which are logically relevant and those which are legally relevant and "that would amount to wiping out the theory of relevancy."[117]
   As stated in the Chapter on the theory or relevancy, under the Evidence Act, facts are relevant only if they are declared to be relevant by the Act and there

[114]Rangayyan vs. Innasimuthu, AIR 1956 Mad 226, 230, (1955) 2 MLJ 687.
[115] W. Markby, Elements of Law, Vol. 9, Little, Brown & Co. Boston, 1940. Pp. 17, 18.
[116]SoneyLall vs. Darbdeo, AIR 1935 Pat 461, 16 PLT 199 East CrC 649.
[117] M. Monir, Textbook on the Law of Evidence, 8thedn., (Delhi, 2010), p. 60.

is no other way. If S. 11 covers all logically relevant facts with high probative value, then, there is no need for other sections relevancy of facts.

2. Section 11 is stated to be so widely worded as to render the whole scheme of relevancy nugatory.

   West J., observed in R vs. Prabhudas:[118]

   …..is, no doubt, expressed in terms so extensive that any fact which can, by a chain of ratiocination, be brought into connection with another, so as to have a bearing upon a point in issue, may possibly be held to be relevant within its meaning. But the connections of human affairs are so infinitely various and so far-reaching, that thus to take the section in its widest admissible sense would be to complicate every trial with a mass of collateral inquiries limited only by the patience and the means of the parties. One of the objects of the law of evidence, is to restrict the investigations made by court within the bounds prescribed by general convenience, and this object would be completely frustrated by the admission on all occasions, of every circumstance on either side, having some remote and conjectural probative force, the precise amount of which might itself be ascertainable only by a long trial and a determination of fresh collateral issues, growing up in endless succession as the inquiry proceeded.

That such an extensive meaning was not in the mind of the legislature, seems to be shown by several indications in the Act itself.

The illustrations to S. 11 do not go beyond familiar cases in the English law of evidence.[119]

All evidence, which would be held to be admissibly by English law would be properly admitted under this section.

Justice West's objection that S. 11 is too widely framed is itself subjected to the criticism that his objections are also too widely formulated.[120]

It is said that S. 11 ***lets in only those facts which make the existence of fact in issue "highly probable or improbable***".

[118](1874) 11 BHCR 94.
[119]R vs. Parbhudas (1874) 11 BHCR 90, 91.
[120]Vepa P. Sarathi, Law of Evidence, (Lucknow, 2010), reprint, p. 41.

It is submitted that **Justice West's objection** is that ***S. 11 obliterates the distinction between legal and logical relevancy, and leaves the matter of relevancy to the unguided judicial discretion***.

The objection that can be taken against the view mentioned in (1) above is that ***the definition of the term "proved" in S. 3 leaves the question of proof to the "belief" of and assessment of "probability" by the judge, and S. 11 leaves the question of relevancy to the assessment of "high probability" to the judge again***.

However, Sir Stephen accepted the validity of criticism and said:

My theory was expressed too widely in certain parts, and not widely enough in other; and Mr. Whitworth's pamphlet appears to me to have corrected and completed it in a judicious manner. I have accordingly embodied his definition of relevancy, with some variations and additions, in the text. The necessity of limiting in some such way the terms of the 11th section of the Indian Evidence Act may be inferred from a judgment by Mr. Justice West (of the High Court of Bombay), in the case of R. vs. Parbhudas and other….[121]

3. **Sir James Fitzames Stephen gave his own explanation of the section and said**:
   It may possibly be argued that the effect of the second paragraph of S. 11 would be to admit proof of such facts as these (*viz*. statements as to factsby persons not called as witness; transactions similar to but unconnected with the facts in issue; opinions formed by persons as to facts in issue or relevant facts).
   It may for instance, be said:
   A (not called as a witness) was heard to declare that he had seen B commit a crime. This makes highly probable that B did commit that crime. Therefore, A's declaration is a relevant fact under S. 11.
   This was not the intention of the section, as is shown by the elaborate provision contained in the following part of Ch. II (S. 31-39) as the particular classes of statements, which are regarded as relevant facts either

[121] Sir James Stephen, Digest of Law of Evidence (London, 1876), Macmillan and Co., p. 136, Note 6 to Article 9. See also, John D. Heydon, "Reflections on James Fitzjames Stephen, Queensland Law Journal, July 2010, p. 10.

because the circumstances under which they are made invest them with importance, or because no better evidence can be got.

The sorts of facts which the section was intended to include are facts which either exclude or imply more or less distinctly the existence of the facts sought to be proved.

Some degree of latitude was designedly left in the wording of the section (in compliance with a suggestion from the Madras Government) on account of the variety of matters to which it might apply. The meaning of the section would have been more fully expressed if words to the following effect had been added to it:-

"No statement shall be regarded as rendering the matter stated highly probable within the meaning of the section unless it is declared to be relevant fact under some other section of this Act.[122]

4. ***The above explanation by Stephen was criticized by Field. He said***:

   The section can hardly be limited, as has been suggested, to those facts which are relevant under some other provisions of the Act, for this would render the section meaningless.

In a similar vein in State vs. Jagdeo,[123] Desai J., observed:

If a fact is relevant under S. 32, it can be proved notwithstanding that it is not relevant under S. 11 and to say that a fact relevant under S. 11 cannot be proved unless it is covered by the provisions of S. 32 is nothing short of striking out S. 11 from the Evidence Act.

In C. Narayanan vs. State of Kerala,[124] speaking for the Full Bench of the Kerala High Court, Thomas J., (as he then was), observed:

There is nothing in S. 11 of the Act to suggest that it is controlled by any other section. On the other hand the words used in S. 11 indicate that the provision is an exception to other general provisions.

5. It is submitted that Sir Stephen was not speaking of relevancy of "facts" but only of "statements".

[122] Sir James Fitzjames Stephen, The Indian Evidence Act: With an Introduction of the Principles of Judicial Evidence (London, 1872), Macmillan Co., pp. 1600161.
[123] 1955 All LJ 380.
[124]1992 Cri.LJ. 2868.

The question whether statements could be brought under S. 11 even if they were not relevant under sections like 8 and 32 was also a much debated question[125] and Sir Stephen, perhaps, was only saying that statements ought not to be brought under S. 11 if they do not comply with the conditions of sections like 6, 8 and 32.

6. It is evident from the above discussion that Stephen's explanation has been criticized as rendering S. 11 otiose and redundant.

   The other view that all logically relevant facts with a high degree of probability which do not fall under any of the other sections are covered by S. 11 is open to two criticisms:

   Firstly, it presupposes that facts which are so relevant because of a very high degree of probability are omitted by Sir Stephen in all other sections.

   Secondly, that view gives such a long arm to S. 11 that it would render all other sections superfluous and redundant. If a cat can get in through a bigger hole, where is the need for smaller holes!

Appraisal:-

S. 11 is considered to be a residuary section as most of the facts that are typically admissible under this section are also relevant under one or the other sections of the chapter on relevancy.

Illustration (a) to S. 11 is an example of the plea of alibi and Illustration (b) deals with proof of exclusive opportunity to commit a crime. Alibi and opportunity are relevant under S. 7 and S. 9 respectively.

Hence, the section is very rarely, if ever, has been relied upon as the sole basis for admission of facts which are not covered by the other sections.

The words "facts not otherwise relevant" in the beginning of S. 11 have to be taken to mean what they plainly say, that is, facts not relevant under other sections of the Act.

It is submitted that if those facts are statements, they need not be relevant under sections like 6, 8 and 32 but they must not be violative of the safe guards contained in those and other sections pertaining to the relevancy of statements.

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[125] The 69th and 185th Reports of the Law Commission of India on S. 11.

In fact, in SeviganChettiar vs. Raghunatha,[126]Varadachariar J., pointed out:

As regards S. 11, it seems to us, that S. 11 must be read subject to the other provisions of the Act and that a statement not satisfying the conditions laid down in S. 32 cannot be admitted merely on the ground that, if admitted, it may probablize or improbablize a fact in issue or relevant fact.

It is submitted, with great respect, that the above view of the eminent judge with regard to statements places S. 11 in its correct and logical perspective.

If facts other than statements are to be brought under S. 11, those facts need not be relevant also under other sections, because that would render S. 11 redundant, but they cannot be admitted in the name of "high probability" if they are repugnant to basic and fundamental notions of hearsay and ***res inter aliosacta ('A thing done between others')***[127] contained in other sections of relevancy.

Thus, for instance, the bad character of the accused which is declared to be inadmissible by S. 54 cannot be admitted under S. 11 on the ground that it makes the guilt of the accused "highly probable".

In other words, "facts" or "statements" can be relevant under S. 11(a) if they do not offend against any of the other sections of the Evidence Act relating to relevancy and admissibility, and (b) if they render the facts in issue or relevant fact "highly probable or improbable."

Collateral facts which, by way of contradiction, are inconsistent with a fact in issue or another relevant fact, i.e. which make the existence of a fact in issue or a relevant fact probable or improbable, or which, by way of corroboration, are consistent with the existence of a fact in issue or a relevant fact i.e. tend to render the existence of a fact in issue or a relevant fact highly probable, are themselves made relevant by the S. 11 of the Evidence Act.

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[126] AIR 1940 Mad. 273.

[127] If a treaty has not been incorporated into English law by legislation, no one living in England would be subject obligation, derive any benefit nor suffer any diriment by the treaty because they would be not be a party, 'res inter aliosacta'.

This common law doctrine, as applied to contracts, means that the rights of a person who is not a party to the contract cannot be adversely affected.

In evidence, res inter aliosacta prohibits facts from strangers to the litigation as being admissible.

The S. 11 of the Act, however, does not admit of collateral facts which have practically no connection with the main fact.

To make a collateral fact relevant and admissible under S. 11 of the Act, two requirements of law have to be fulfilled—

Firstly, the collateral fact must itself be established by reasonable conclusive evidence and,

Secondly, when established, it must afford a reasonable presumption or an inference as to the matter in dispute.

The admissibility under S. 11 in each case depends on how near is of the facts sought to be proved with the facts in issue, to what degree do they render facts in issue probable or improbable when taken with other facts in the case, and to what extent would the admission of the evidence be inconsistent with principles enunciated elsewhere in the Evidence Act, 1872.

The sort of facts which the S. 11 was intended to include are facts which either exclude the fact in issue or another relevant fact (clause 1) or

Make the existence or non-existence of the fact in issue or relevant fact highly probable (clause 2).

Section 11 controlled by other section –

The terms of S. 11 are no doubt wide, but they must be read subject to the other sections of the Act and, therefore, the fact relied on must be proved in accordance with the provisions of the Act.

If the fact is a statement made by a person who is not called or cannot be called the statement cannot be admitted unless it comes within the subsequent sections of the Act (i.e., S. 32 & 33).

In Bela Rani and Others vs. Mahabir Singh and others[128]

On Beni Ram, who died in 1866, owned the property in dispute. He was succeeded by his wife Mst. Mathuri who died in 1878 and was succeeded by her daughter

[128] 19 ALJ 351.

Mst. Dasodari. Mst. Dasodari transferred the property in dispute to the ancestors of defendants. The plaintiffs purchased the property from the persons who would be entitled to the property on the death of Mst. Dasodari. The plaintiff filed the suit for possession. The main defence was that Mst. Dasodari died more than 12 years prior to the filing of the suit which was accordingly barred by limitation. At the death of Mst. Dasodari applications were made for mutation of some of the property in possession of which she had been. These applications were supported by depositions of the reversioners. Copies of the applications and the depositions were filed by the plaintiff in the present suit. In all these copies the date of the death of Mst. Dasodari was stated to be the 16^{th} of March, 1898. It was argued that the depositions make it highly probable that Dasodari died on the 16^{th} of March, 1898 and therefore they were admissible under S. 11 of the Evidence Act.

Statements:-

From the wording of this section it seems that facts not relevant under nay of the section in the Chapter of Relevancy of Facts (S. 6 to 10 & 12 to 55) are relevant under S. 11.

A statement is included in the definition of the term "Fact" and statements can, therefore, be relevant under S. 11 of the Evidence Act.

S. 17 to 39 deal with the admission in evidence of the statements of persons. If a very wide interpretation is to be given to the words of S. 11, the statements of persons inadmissible under S. 17 to 39 would be admissible under S.s 11,

For instance

at a trial of 'B' of a crime it may be said by a witness that he heard A to declare that he had seen B committing the crime for which he had been charged. This statement of A certainly makes it highly probable that B did commit the crime. Therefore A's declaration may be said to be relevant under S. 11(2). But this was not the intention of the section.

Section 17 to 39, deal with the relevancy of the statements. Statements not relevant under those sections cannot be said to be relevant under S. 11.

The statement of *A* referred to above is not relevant under any of the S. 17 to 39 and so it cannot be relevant under S. 11.

Stephen, in his introduction has very rightly remarked that "the meaning of this section would have been more fully expressed if the words of the following effects had been added to it.

"No statement shall be regarded as rendering the matter stated highly probable within the meaning of this section unless it is declared to be relevant fact under some other section of this Act."

The reason why statements as to fact made by persons not called as witnesses are excluded except in certain specified cases under S. 17 to 39 are various.

In the first place it is a matter of common experience that statements in common conversation are made so lightly, and are liable to be misunderstood or misrepresentation, that they cannot be depended upon for any important purpose unless they are made in special circumstances.

If the statements not admissible under S. 17 to 39 are not admissible under S. 11.

S. 11 makes the existence of 'fact' admissible and not 'statements' as to such existence, unless of course the fact of making that statement is itself a matter in issue.[129]

Analysis of the section:-

S. 11 contain two clauses.

1. The first clause lays down that the facts, which are inconsistent with the facts in issue or relevant facts, are relevant.
2. Under the second clause the facts which by themselves or in connection with other facts make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable are relevant.

I. <u>Facts inconsistent with any fact in issue or relevant facts</u>---

[129]NaimaKhatun vs. Basant Singh, AIR 1934 All. 436.

Under sub-clause (1) of S. 11, facts are relevant because they are inconsistent with any facts in issue or relevant fact.

They are so diametrically opposed to the facts in issue that the existence of those facts makes the existence of those facts in issue or relevant fact impossible.

Under sub-clause (1) of S. 11 the facts are relevant because if they are proved to exist the fact in issue or relevant facts can in no case exist.

The usual theory of inconsistency is that a certain fact cannot co-exist with the doing of the act in question, and therefore, if that fact is true of a person of whom the act is alleged, it is impossible that he should have done the act.

According to Wigmore, "The usual theory of essential inconsistency is that a certain fact cannot co-exist with the doing of the fact in question, and, therefore, if that fact is true of a person of whom the act is alleged, it is impossible that he should have done the act…..The inconsistency to be conclusive in proof, must be essential i.e. absolute and universal, but since in offering evidence, we are not required to furnish demonstration but only fair ground for inference, the fact offered need not have this essential or absolute inconsistency, but merely a probable or presumable inconsistency; and its evidentiary strength will increase with this approach to absolute or essential inconsistency."

'Inconsistency' implies opposition; antagonism; repugnance, containing legal contradiction; showing difference in agreement.

One definition of 'inconsistency' given by the lexicons is repugnance, and one definition given of 'repugnance' is inconsistency.

These words, though not exactly synonymous, may be, and often are, used interchangeably.

One fact is said to be inconsistent with the other when it cannot co-exist with the other.

For example,

The question is, whether 'A' committed a crime a Hyderabad on a certain day. The fact that 'A' was at Lahore on that day is relevant as they cannot co-exist.

Similarly, 'A' is illiterate a crime at Hyderabad on a certain day. The fact that 'A' is illiterate is a fact and 'A' is charged of writing a defamatory article damaging the fame of 'B' is another fact.

Now, these two facts are inconsistent with each other. They cannot co-exist. Hence, 'A' is illiterate is relevant under S. 11.

So under the first clause of S. 11, facts are relevant only because they cannot co-exist with the relevant fact in issue. If their existence is proved the existence of fact in issue or relevant facts are negated.

According to Wigmore, the following five classes of cases that arise for consideration under the S. 11(1):-

i Alibi, the absence of the person charged at the place of occurrence;
ii The absence of a husband (non-access)—a variety of proceedings.
iii Survival of the alleged deceased person after the supposed time of death.
iv The doing of a crime by a third person—commission; and
v The self-infliction of the harm alleged.

1. Plea of Alibi:-

Alibi (alibis, plural) is a Latin term which means elsewhere. Alibi is a claim or piece of evidence that one was elsewhere when an alleged act took place; an excuse.

The term alibi is used to express that defence in a criminal prosecution, where the party accused, in order to prove that he could not have committed the crime charged against him, offers evidence that he was I a different place at the time (Tomlin's Law Dictionary).

Alibi is a plea by a person accused of an offence that he was 'elsewhere'—that having regard to the time and place when and where he is alleged to have committed the offence, he could not have been present.

In DudhNathPandy vs. State of U.P.[130]

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[130]AIR 1985 SC 911.

It is stated that the plea of alibi postulates the physical impossibility of the presence of the accused at the scene of offence by reason of his presence at another place. It should be shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed.

Alibi is based on the theory that fact of presence elsewhere is essentially inconsistent with the presence of the accused at the place and time of the alleged occurrence, and the participation in it.

In Munshi Prasad vs. State of Bihar,[131]

It has been held that distance is a material factor in the matter of acceptability of the plea of alibi and the distance of 400-500 yards between the place of occurrence and the place where the accused claimed to be present **cannot be said to be 'present elsewhere'**.

Wigmore states that the argument of alibi is not confined to criminal acts but may be equally applied to the disproof of civil acts, such as the execution of a deed.

Illustration (a) appended to S. 11 of the Evidence Act is the example of alibi. It is as under—

The question is, whether A committed a Crime at Calcutta on a certain day.

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

Alibi evidence, if it could be established, by unsuspected and unbiased testimony, would be the most satisfactory evidence.

In State vs. Murugan,[132]

It has been held that a plea of alibi of the accused cannot be taken into account merely because a certificate has been produced by the accused from his

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[131] AIR 2001 SC 303 (Para 3).
[132] 2002, Cr.L.J. 670.

employer to the effect that the accused was working in the mill at the relevant time of the incident unless he produces some person on behalf of his employer or examines himself in order to make the said document.

Sir Michael states, “It must be admitted that mere alibi evidence lieth under a great and general prejudice and ought to be heard with uncommon caution, but if it appeareth, to be founded in truth it is the best negative evidence that can be offered. It is really positive evidence which in the nature of things necessarily implieth a negative and in many cases it is the only evidence an innocent man can offer.”

Alibi evidence is looked down upon by the Courts, very often as highly suspicious and concocted.

In re: M.K. ThiagarajaBhagavathar,[133]

It has been stated that a defence of alibi, if true, is to be raised at the earliest moment.

Strict proof is required to prove the plea of alibi and the burden was on the accused. The accused persons taking the plea of alibi have to make out the case of their alibi and to satisfy the Magistrate that they were not present at place of occurrence on the day and time of incident.

The plea of alibi must be proved with absolute certainty, so as to completely exclude the possibility of the presence of the person concerned at the place of occurrence.

Alibi is a plea which must be proved to the fullest satisfaction of the Court and for the same the person who takes such plea must put forward cogent evidence in this regard as the burden of the same heavily lies on him under S. 103 of the Evidence Act.

Where there was no contemporaneous document was produced to prove the plea of alibi, it was not accepted. In order to establish the plea of alibi the accused must lead evidence to show that he was so far off at the moment of the crime from the place of occurrence that he could not have committed the offence.

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[133] AIR 1946 Mad. 271.

In TulshiramBhanudasKambale vs. State of Maharashtra,[134]

Where the accused was discharged from a hospital situated 180 kms. away from the time of incident, the plea of alibi was proved.

In Gayadin vs. State of M.P.,[135]

It has been held that the evidence of a highly interested witness supporting the plea of alibi is liable to be rejected.

In Mangru vs. State,[136]

It has been held that the evidence of a highly interested witness supporting the plea of alibi is liable to be rejected.

In Sheo Shankar vs. State,[137]

It has been held that if the alibi evidence be good and no weakness is detected by the Court in it, it should not be given a go-by if the Court comes to know of no weakness in the prosecution evidence. The two cannot be true and the weakness must be found somewhere, however, difficult it might be. If the Court fails to find any weakness in either, the benefit of such a failure must go to the accused and not to the prosecution because a well established alibi must be sufficient to show that the prosecution witnesses were not speaking the truth at least to throw doubt upon their truthfulness. Whenever a defence of alibi is set up and that defence utterly breaks down it is a strong inference that if the prisoner was not in fact where he says he was, then in all probability he was where the prosecution says he was. But the drawing of certain inferences does not mean that the thing is proved. Moreover such inference is to be drawn only when the defence of alibi breaks down and not when it is disbelieved.

In BhuboniSahu vs. The King,[138]

[134]2000 Cr. LJ.1566, Bom.
[135]2005, 12 SCC 267.
[136]1983, All.LJ.3232 (DB).
[137] 1953, Cr.L.J. 1400

It has been observed that when an innocent is accused as guilty, it is very difficult for the Court to guard against the danger. If an Indian villager is charged with having taken part in a crime on a particular night when he was in fact asleep in his hut or guarding his crops he can rely on the evidence of his family members or friends to support his story, and their evidence is interested and not likely to carry weight. The only real safeguard against the risk of condemning the innocent with the guilty lies an insisting upon independent evidence which in some measure implicates each accused.

In Dharamvir vs. State,[139]

Where the accused who was charged with murder, pleaded alibi in his defence that he visited the town situated at short distance. It has been held that no inference can be raised that he stayed in the town that night and hence alibi evidence is not substantial.

In BikauPandey vs. State of Bihar,[140]

It has been held that the plea of alibi cannot be accepted simply because it was accepted in respect of two other accused. This accused was certified to have been on guard duty from a week upto the day of occurrence on a regular basis. There was no material to show that he remained present in the school on that date throughout, besides no appointment letter was produced, his signature on the attendance register were found to be not acceptable and it was not conceivable that a person was appointed on a regular basis only for a week. The plea was rejected.

In JayantibhaiBheenkarBhai vs. State Gujrat,[141]

Where the deceased was assaulted at place ‘S’ at 8 p.m. and the presence of the accused on the date of incident in city ‘A’ at least upto after the mid-day was proved. It was highly improbable that the accused could have returned at place ‘S’ by 8 p.m. the same day.

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[138]AIR 1949 PC 257, 261.
[139]1990, Cr. LJ.839 (All).
[140]AIR 2004 SC 997.
[141]2002 (8) SCC 165.

His plea of alibi was held to be consistent and was also supported by documentary evidence of unimpeachable veracity. Further it has been failed to convince the Court about such alibi evidence, it is not incumbent on the Court to go into the question whether the accused has succeeded in proving the defence of alibi, when the prosecution on which the burden of proving the commission of offence by the accused fastening the liability of guilt on the accused has failed in discharging that burden.

2. Non-access (The absence of a husband):-

Since the legitimacy of a child implies a begetting by the husband, in disproving legitimacy, it would be relevant to prove that the husband had no access to the wife at the probable time of begetting.

3. Survival of the alleged deceased:-

The accused was charged with murdering a person on a particular day. The accused proved that the deceased was alive on a particular date which was two weeks after the day of incidence. This fact is relevant under S. 11, clause (1) only because this is inconsistent with the fact in issue that the accused murdered the deceased person. It is acceptable to a simple common sense that a man alive on a particular day cannot be said to be murdered previous to that date.

For ex.

A is accused of murdering B on the 6^{th} of August, 1951, A tries to prove that B was alive till 31^{st} August, 1951. This fact is relevant under S. 11(1), only because this is inconsistent with the fact in issue that A murdered B on the 6^{th} of August 1951. It is acceptable to a simple common sense that a man alive on the 31^{st} of August, 1951, cannot be said to be murdered on the 6^{th} of August, 1951.

4. Commission of a crime by third person:-

A is charged with the murder of B. A can prove that one C murdered B. Because the fact C murdered B is inconsistent with the fact that A murdered him.

5. Self-infliction of harm:-

'A' is charged with the murder of 'B' by administering poison. Here 'A' can lead evidence under S. 11(1) to prove that 'B' committed suicide by consuming poison and it is relevant as it is inconsistent with the fact in issue that 'A' administered poison to B.

II. <u>Facts making the existence or non-existence of any fact in issue or relevant fact highly probable or improbable (S. 11(2)</u>:-

Under sub-section (2) of S. 11 of the Evidence Act, facts are relevant because it they are proved they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

It deals with both the affirmative and negative aspects of the fact in issue. On the other hand S. 11(2) deals only negative the existence of fact in issue or relevant fact is disproved.

Under clause (1), the facts proved are conclusive. Under clause (2), the facts are relevant only because if they are proved either it becomes highly probable or improbable for the fact in issue to exist.

'Highly probable' or 'improbable'—Meaning of:-

'Probable' means having more evidence for that against; supported by evidence which inclines the mind to believe, but leaves some room for doubt.

'Probable cause' is the belief founded upon reasonable grounds; that apparent state of facts found to exist upon reasonable inquiry; that is, such inquiry as the given case rendered convenient and proper, which would induce a reasonably intelligent and prudent man to believe that the accused person had committed, in a criminal case, the crime charged; and in a civil case that a cause of action existed.

The term 'Probable cause' as used with reference to an action for malicious prosecution, means a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offence with which he is charged.

The words 'Highly Probable' in clause (2) of S. 11 are of great importance. Only such facts are made admissible by this clause as would carry great weight with the court in reaching a conclusion either way, with regard to existence or non-existence of a fact in issue or relevant fact.

It is not mere reasonable probability that is contemplated; on the other hand, a high degree thereof envisaged.

To be clear the clause (2) of S. 11 allows the admission of those facts only, which after being admitted will be of great help in bringing the Court to a conclusion as regards the existence or non-existence of the fact in issue.

If the facts are of little importance they cannot be admitted in evidence. The words 'highly probable' means more than normal standard of probability.

In Brijlal Prasad Sinha vs. State of Bihar,[142]

The police officials were tried for murder of some alleged culprits in encounter. It was alleged by police official that the occupants of vehicle used by deceased were also firing from their firearms. But ballistic report, showed that the pistol found near dead body, from which the deceased were alleged to have fired, were never used and also that those arms were defective. Thus, the allegation regarding the deceasedhad fired from pistol and the ballistic report that pistol was never used and was defective, were held inconsistent fact. The ballistic reports made it highly improbable that the deceased must have fired from alleged pistol. Thus, the ballistic report was admissible under this section, since it made the existence of fact in issue i.e., whether the deceased fired or not, highly improbable. It was more so when it was found that glasses of vehicle in which victims were travelling were broken and there were no marks of firing in which police officials were travelling. The accused were liable to be convicted.

In a case of election petition on ground *mal practice*, the evidence that truck drivers who were carrying the voters for a candidate were convicted is relevant under S. 11.[143]

In Emperor vs. Yaqub,[144]

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[142]AIR 1998 SC 2443.

[143]Pratap Singh vs. Rajendra Singh, AIR 1957 Cal. 709.

A was charged with having obtained money from B by falsely representing that he was servant of one ***Akbari Begum***, a wealthy lady of Rampur who was anxious to lend money on easy terms. B tried to lead evidence that at about the same time A made such a representation to others. It was held that his was admissible only because the fact that A at the same time made the same representation to others makes the fact "that A made such a representation to B'' highly probable.

A is charged of handing over forged currency notes to B representing them to be genuine. B tries to prove that few days after and before A handed over currency notes of the same denomination to C, D, E and F. This fact is relevant because if it is proved that A handed over forged notes to a number of persons at about the time when he is alleged to have handed over a forged note to B knowing it to be forged.

The question in controversy is whether a certain lease granted by A to B is perpetual. B tries to prove that many leases were granted by A to many other persons at the same time and all of which were perpetual leases. This fact is relevant because it makes the factum of the lease I question being perpetual, highly probable.

Admissions [17 to 23 & 31.]& Confessions [S. 24 to 30].

- In Evidence Act, the concept 'admission' has been **defined in S. 17**.
- **Ss. 18-20** specify the person whose admissions are made **relevant**.
- **Section 21** provides the **exceptions** in which admission can be proved by or on behalf of the person making it.
- **Section 22** renders oral admission as to contents of a document **irrelevant**.

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[144] 15 ALJ 241.

- **Section 23** states that no evidence of admission can be permitted in civil suits if it is made upon an understanding that it shall not be given in evidence.
- **Section 31** states that admissions are not conclusive proof unless they operate as estoppel.

Meaning (or definition) of admission:-

Black's Law Dictionary defines- 'admission' as a voluntary acknowledgement made by a party of the existence of certain facts which are inconsistent with his claim in an action.

According to Stephen, "An admission is a statement, oral or written, suggesting an inference as to any fact in issue or relevance or deemed to be relevant to any such fact, made by or on behalf of any party to any proceeding."

An admission is a statement of fact which waives or dispenses with the production of evidence by conceding that the fact asserted by the opponent is true.

Admissions are admitted, because the conduct of a party to a proceeding in respect to the matter in dispute, whether by act, speech or writing, which is clearly inconsistent with the truth of his contention, is a fact relevant to the issue.

The word 'admission' has a technical meaning in law and it has been defined in S. 17 of the Evidence Act.

S. 17. Admission defined---

An admission is a statement, [oral or documentary, or contained in electronic form][145] which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

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[145]Subs. By the Information Technology Act (Act 21 of 2000) S. 92 and Second Sch., w.e.f. 17-10-2000, for the words "oral or documentary".

An 'admission' is a statement of fact which waives or dispense with the production of evidence by conceding that the fact asserted by the opponent is true.

Admissions are admitted because the conduct of a party to a proceeding, in respect to the matter in dispute, whether by acts, speech, or writing, which is clearly inconsistent with the truth of is contention, is a fact relevant to the issue.

Admissions are very weak kind of evidence and the Court may reject them if it is satisfied from other circumstances that they are untrue.[146]

Admission of a party in the proceedings either in the pleadings or oral is the best evidence and the same does not need any further corroboration.[147]

The Supreme Court has observed:

Admissions as defined in sections 17 and 20 and fulfilling the requirements of S. 21 are substantive evidence, *propiovigore (by its own strength)*. An admission is the best evidence against the party making it and, though not conclusive, shifts the onus to the maker on the principle that what a party himself admits to be true may be reasonably presumed to be true so that until the presumption is rebutted the fact admitted must be taken to be true. An assessee cannot resile from is admission made in tax return even at appellate stage.[148]

There is this observation in PHIPSON ON EVIDENCE[149] "Subject to certain exceptions, the general rule, then both in civil and criminal cases, is that any relevant statement made by a party is evidence against himself.

R. vs. Erdheim,[150]

The weight of the declaration is, of course, a totally different matter; this may vary with the circumstances and will not doubt, be greater if against interest at the time, than the contrary".

[146]Latafat Husain vs. LalaOnkar Mal, (1934) 10 Luck 423;
in a claim against railway for loss of goods in transit, the railway receipt contained the remark: 'said to contain' held, this was not admission on the part of the railway as to what were the contents of the consignment. Other records would have to be examined to see-what was the real state of the consignment at the starting point and terminus.

[147]Ahmedsaheb vs. Sayed Ismail, (2012) 8 SCC 516.

[148] Federal Bank Ltd. Vs. State, AIR 1974 SC 1121.

[149] 231 (9th Edn., 1952).

[150](1986) 2 QB 260.

In E.C.T. Farming Society case,[151]

BEG, J. of the SC. observed:

"It is well settled that the effect of an admission depends upon the circumstances in which it was made."

A statement to be used as an admission must be clear, specific and unambiguous and in the own words of the person making it and has to be proved to be so. It is not an inference drawn by anybody which should be taken as an admission. An admission to be worthy of being received in evidence, considered and relied upon, it should firstly be the clear-cut and accurate statement of that every person in his own works. It has to be proved to be the statement of the person who made it.[152]

An admission must be examine as a whole and not in parts.[153] "It is settled law that an admission of any party has to be read in its entirety and no statement out of context can constitute admission of any fact."[154]

Statements in pleadings are admissions against the party making them. He cannot be heard to rely upon favourable parts an otherthrow the rest by oral evidence.[155]

In Union of India vs. Moksh Builders etc.,[156]

The SC. Cited a statement from its own earlier decision to the effect that an admission is substantive evidence of the fact admitted and when properly proved is relevant irrespective of the fact whether the maker approved in the witness-box or not and when he appears, whether he was confronted with those statements or not in case he made a statement contrary to his admissions.

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151 (1974) 2 SCC 319 at 321 : AIR 1974 SC 1121.
152 H. G. Ramachandra Rao vs. Master Srikantha, AIR 1999 Kant 347.
153 Mohammad Koya vs. Muthuboya, (1979) 1 SCR 664: AIR 1979 SC 154.
154 Dharamwati Bai vs. Shiv Singh, AIR 1991 MP 18.
Accordingly a statement of the claimant that her personal estate arising before 1956 Hindu Succession Act was in the management of the Court of Wards could not be taken as an admission that the property in question was not her estate.
155 Sunil Chandra vs. Hemendra, AIR 1991 Pat 203.
156 AIR 1977 SC 408: 1977 Cr. LJ 376.

The Court cited a statement from WIGMORE ON EVIDENCE[157] to the effect that an admission need not be contrary to the maker's interest.

Thus it is not necessary before admitting the evidence of an admission that it should be brought to the notice of the party who made it.[158]

An admission in so far as facts are concerned would bind the maker of the admission but not in so far as it relates to a question of law.

It is immaterial to whom an admission is made. An admission made to a stranger is relevant.

Admissions are as much binding on the Crown as ordinary persons. In English law the term 'admission' is used in civil cases; whereas the term 'confession' is used in criminal cases as acknowledgment of guilt. This distinction is not maintained in the Evidence Act, and S. 17 to 22 are applicable to civil as well as criminal cases.

Statements by the accused are admissions under S. 17 & 18, and prima facie evidence against the maker, but not in his favour.

The word 'confession' has not been defined anywhere. A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime.

Statement is a genus, admission is the species and confession is the sub-species.

A confession, therefore, is a statement made by an accused admitting his guilt. When a party accepts his statement made in earlier proceedings, it amounts to admission.

Prior statement:-

A prior statement in one's own interest may not be evidence, but a prior statement adverse to one's interest would be evidence.[159]

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[157] Vol. 4, p. 1048.
[158] Maimunna Bibi vs. RasoolMian, AIR 1991 PAT 203.
[159] SatrucharlaVijaya Rama Raju vs. Nimmaka Jaya Raju, (2006) 1 SCC 211 : AIR 2006 SC 543.

Admissions in criminal proceedings:-

Every admission made by a accused person is not, in the view of the law, a confession, nor can it be held that admissions mean only statements made by parties to civil proceedings, and do not include statements made by parties in criminal proceedings.

Every statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact made by an accused person is an admission under S. 17 and 18, and under S. 19 an admission may be proved as against the person who makes it unless, under some provision of the Evidence Act or other law, it is rendered inadmissible.

Under S. 24-26 statements made by accused persons are inadmissible, subject to the provisions of S. 27 to 29, when such statements are confessions.

A confession which is inadmissible may yet for other purposes be admissible as an admission under S. 18 against the person who makes it in civil matters.

Thus, admission of guilt by a person to a police officer, though not receivable in evidence in a criminal trial, may be proved in civil proceedings as an admission under this section and S. 18 and 21.

In SashidharaKurup vs. Union of India,[160]

It was held that the admissibility of plea of guilt can be determined only if the plea is recorded in the words used by the accused. The accused simply said that he was guilty of the charge. This did not constitute an admission of guilt.

Admission in publication:-

The court said that statement made in a book, though cannot be regarded as conclusive admissions. They can be taken as an additional circumstance alongwith the other circumstances for determining whether the conduct of the appellant amounted to waiver and/or abandonment of the right in respect of the articles I question.[161]

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[160]1994 Cr LJ 375 (Gau).

[161] Karan Singh (Dr.) vs. State of J & K, (2004) 5 SCC 698: AIR 2004 SC 2480.

Oral or documentary—Judicial or extra-judicial:-

Admissions may be oral or contained in documents, e.g., letters, depositions, affidavits, plaints, written statements, deeds, receipts, horoscopes. Admissions in pleadings are judicial admissions. They can be made the foundation of rights.

In K.K. Chari vs. R.M. Sheshadri,[162]

DUA J said:

"If he tenant in fact admits that the landlord is entitled to possession on one or the other of the statutory grounds mentioned in the Act, it is open to the Court to act on the admission and make an order for possession in favour of the landlord without further enquiry."

The material for the satisfaction of the Court "may take the shape either of evidence recorded or produced in the case, or it may partly or wholly be in shape of an express or implied admission made in the compromise agreement itself."[163]

Explaining the weight of a judicial admission as compared with informal or causal admissions, SARKARIA J said:

"Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under S. 58, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions is fully binding upon the party that makes them and constitutes a waiver of proof. They by themselves can be the foundation of therights of the parties. O the other hand, evidentiary admissions which are receivable at the trial as evidence, is by themselves not conclusive. They can be shown to be wrong.

Post-dated cheque in satisfaction of debts amounts to acknowledgment off liability irrespective of the fact whether the cheque is honoured or not.[164]

Admissions may be implied from the acquiescence of a party. Admissions in the written statement filed in some other case have been held by the Supreme

[162] (1973) 1 SCC 761 at p. 774 : AIR 1973 SC 1311.

[163]NagindasRamdas vs. Dalpatram, (1974) 1 SCC 242 at p. 252 : AIR 1974 SC 471.

[164]Rajpati pd. Vs. Kaushalya Kaur, AIR 1981 Pat 187.

Court to be an important piece of evidence and, therefore, entitled to its due weight, though like all other admissions, it is neither conclusive nor irrebutable.

The general rule is that admissions are admissible against the party making them and not against any other party. The exceptions to this rule are mentioned in S. 18 to 20.

A statement by an applicant for old age pension in her cross-examination that she was getting old age pension and that her form was filled by the *pardhan* of the village was held not to have the effect of an admission in respect of the contents of her application.[165]

Voluntary:-

For an admission to have the effect of substantive evidence it must be voluntary. An examinee gave undertaking that if he did not file his employer's permission, the university right do anything it liked. That did not put him out of Court.

"It is well settled that admission made in ignorance of legal rights or under duress cannot bind the maker."

The examinee submitted the undertaking under the constraint of not being permitted. The consequences of the University's failure to scrutinize his form and to find out the fraud, if any, cannot be visited upon the candidate.

Similarly, an admission made by a party in a previous criminal proceeding in order to get rid of the chances of conviction was held to be *in terrorem*[166]and, therefore, of very little significance.[167]

In a suit for eviction, vague allegations about the ownership of the premises by the tenant, could not be treated as his admission about the contract of tenancy with the landlord. [168]

Admissions as hearsay---

[165]Twatku vs. Surti, AIR 1997 HP 76.

[166] In terrorem, Latin for "into/about fear", is a legal threat, usually one given in hope of compelling someone to act without resorting to a lawsuit or criminal prosecution.

[167]Mohd.Vs. Mohd. AIR 1976 SC 1569 : (1976) 4 SCC 780.

[168]Anurag Misra vs. Ravindra Singh, AIR, 1994 All 174.

Examining the nature of the evidence of an admission and distinguishing it from hearsay.

PARKE B sad:[169]

"The rule as to the production of the best evidence is not at all infringed. It does not apply to the present case (oral admissions as to the contents of a document). That rule is founded on the supposition that a party is going to offer worse evidence than the nature of the case admits. But what is said by party to the suit is not open to that objection. We, therefore, think it is a sound rule that admissions made by a party to a suit may be received against him."

There is no general agreement on admissions as hearsay.

A learned commentator says:

"Whether an admission is an exception to the hearsay rule depends upon one's definition of hearsay. If we define hearsay as an extra-judicial statement offered as tending to prove the truth of the mater stated, an admission clearly falls within it. It must be conceded that the rule which makes admissions receivable is older than the hearsay rule and is a necessary concomitant of the accepted doctrine that evidence of any relevant conduct of a party is admissible against him."[170]

A passage in WIGMORE ON EVIDENCE[171] has been adopted by the Allahabad High Court,[172] "The theory of the hearsay rule is that an extra-judicial assertion is excluded unless there has been a sufficient opportunity to test the grounds of assertion and the credit of the witness by cross-examination by the party against whom it is offered, e.g., if Jones had said out of court, "The party-opponent Smith is entitled to an opportunity to cross-examine Jones upon that assertion. But if it is Smith himself who said out of court, "borrowed this fifty dollars", certainly Smith cannot complain of lack of opportunity to cross-examine himself before his assertion is admitted against him. Such a request would be

[169]Shatleric vs. Pooley, (1840) 151 ER 579.

[170] MORGAN, BASIC PRINIPLES OF EVIDENCE, 265 cited by EDWARDS, CASES ON EVIDENCE IN AUSTRALIA, 507 (1968).

[171] Vol. 4, S. 1048.

[172]Ayodhaya Prasad Bhargava vs. Bhawani Shankar Bhargava, AIR 1957 All 15.

absurd. Hence the objection of the hearsay rule falls away, because the very basis of the rule is lacking viz., the need and prudence of affording an opportunity for cross-examination."

Persons whose admissions are relevant---

List of persons whose admissions are relevant is to be found in the provisions of sections 18 to 20. Admissions made by any other persons are not receivable in evidence. Thus, the statements of some officers admitting their guilt that lesser number of persons were shown on records of the factory so as to keep it out of the application of the Central Excise was held to be not an admission against the owner.

Failure to prove the defence does not amount to an admission, nor does it reverse or discharge the burden of proof of the plaintiff.

S.18. ---Admission by party to proceeding or his agent:-

Statements made by a party to the proceeding, or

By an agent to any such party,

Whom the Court regards,

Under the circumstances of the case,

As expressly or impliedly authorized by him to make them, are admissions.

By suitor in representative character---

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

Statements made by---

1) ***By party interested in subject-matter***—*Persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested,*
   or
2) ***By person from whom interest derived***---*Persons from whom the parties to the suit have derived their interest in the subject-matter of the suit,*
   Are admissions, if they are made during the continuance of the interest of the persons making the statements.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES

OR

STATEMETNS BY PERSONS UNAVAIBLE

SECTION 32 & 33

S. 32. Cases in which statements of relevant fact by person who is dead or cannot be found etc. is relevant—

Statement, written or verbal,

--of relevant facts made by a person

--who is dead, or

--who cannot be found, or

--who has become incapable of giving evidence, or

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

--are themselves relevant facts in the following cases:

1. ***When it relates to cause of death***—
   When the statement is made by a person as to the cause of his death, oras to any or the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever *may be the nature of the proceeding in which the cause of his death comes into question.*

2. ***Or is made in course of business****—*

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

3. ***Or against interest of maker****---*

When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution orto a suit for damages.

4. ***Or gives opinion as to public right or custom, or matters of general interest****—*

When the statement gives the opinion of any such person,as to the existence of any public right or custom or matter of public or general interest,of the existence of which,if it existed,he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

5. ***Or relates to existence of relationship****—*

When the statement relates to the existence of any relationship by blood,marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

6. ***Or is made in will or deed relating to family affairs***—

When the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree[173], or upon any tombstone, family portrait[174] or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

7. ***Or in document relating to transaction mentioned in section 13, clause(a)[175]***-

When the statement is contained in any deed, will or other document which related to any such transaction as is mentioned in section 13, clause (a).

8. ***Or is made by several persons and expresses feelings relevant to matter in question***—

When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations—

a) **The question is, whether A was murdered by *B*;** or
A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B; or
The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.
Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration are relevant facts.
b) **The question is as to the date of A's birth**.

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[173]PEDIGREE, descents.**A succession of degrees from the origin**; it is the state of the family as far as regards the relationship of the different members, their births, marriages and deaths; this term is applied to persons or families, who trace their origin or descent. **Ancestry**.
[174]A photo that consists of a mother, a father, and their children (although grandparents may apply). Except when an orphan takes them they are called selfies.
[175]**S. 13: Facts relevant when right or custom is in question**—
(a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence;

An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that on a given day, he attended A's mother and delivered her of a son, in relevant fact.

c) **The question is, whether A was in Calcutta on a given day**.

A statement in the diary of a deceased solicitor, regularly kept in the course of business that, on a given day the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

d) **The question is, whether a ship sailed from Bombay harbor on a given day**.

A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbor, is a relevant fact.

e) **The question is, whether rent was paid to A for certain land**.

A letter from A's deceased agent to A saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

f) **The question is, whether A and B were legally married**.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

g) **The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by hi is dated on that day is relevant**.

h) **The question is, what was the cause of the wreck of a ship**.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

i) **The question is, whether a given road is a public way**.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

j) **The question is, what the price of grain was on a certain day in a particular market. A statement of the price, made by a deceased *baniya* in the ordinary course of his business, is a relevant fact**.

k) **The question is, whether A, who is dead, was the father of B**.

A statement by A that B was his son, is relevant fact.

l) The question is, what the date of birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

m) **The question is, whether, and when, A and B were married**.

An entry in a memorandum book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

n) **A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libelous character. The remarks of a crowd of spectators on these points may be proved**.

The section is one of those provisions that provide exceptions to the principle of excluding hearsay evidence.

The exceptions to the hearsay evidence have been directed by necessity. This rule excluding the hearsay evidence is relaxed so far as the statements contained in S. 32 & 33 are concerned.

The general ground of admissibility of the evidence referred to in these sections is that no better evidence could be produced.

The phrase ‘hearsay evidence’ is not used in the Act; because it is inaccurate and vague. Before such evidence is let in, the Court must arrive at a finding on evidence formally and regularly taken and recorded that one or other of the grounds specified into eh section exists. The admission of such deposition in evidence without such finding is illegal.

In other words, the principle of the section is that a person who has the first-hand knowledge of the facts of a case, but who, for reasons stated in the section, such as death or disability, is not able to appear before the court, then his knowledge should be transmitted to the court through some other person. If he recorded his knowledge somewhere, for example, on a portrait or register, that record may be produced or if he told his knowledge to another person that other person may appear to testify of what he was told.

The reason for the exception is obvious. The law wants the best evidence in each case. The best evidence is a document or the personal knowledge of a witness, and if the document has been lost or that witness is unable to appear before the court, then those who have either seen that document or shared that knowledge of that person will be considered as the best evidence.

The section comes into play when the person whose statement is sought to be proved has died, or cannot be found, or has become incapable of giving evidence or whose attendance can be procured at an amount of delay or expense which under the circumstances of the case appears to the court to be unreasonable.

Proof of these facts will have to be offered in the first instance to make the evidence relevant.[176]

Thus if the ground of relevancy is the death of the person concerned, his death must be proved, for if he is still alive, he must appear in person.

Incapacity to give evidence may be due to any cause, for example, the person may be too old or ill to move or his capacity has been emaciated by age or he may be insane. Temporary illness should not have the same effect.

Cases in which statement of relevant fact by person who is dead or cannot be found etc. is relevant:

S. 32 of the Evidence Act states that cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant:-

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense, which under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:

1. When it relates to cause of death; or
2. Is made in course of business; or
3. Against interest of maker; or
4. Gives opinion as to public right or custom, or matters or general interest; or
5. Relates to existence of relationship; or
6. Is made in will or deed relating to family affairs; or
7. In document relating to transaction mentioned in S. 13, clause (a) or
8. Is made by several persons and expresses feelings relevant to matter in question.

Persons who cannot be called as witnesses:

Following are the classes of persons who cannot be called as witness under S. 32 and their statements are allowed to be proved in their absence.

[176] This is the effect of S. 104 of the Evidence Act.

1. **Persons who are dead**:-

Before admitting evidence under S. 32 the death of the person whose statement is to be proved must strictly be proved. Death is universally considered to be sufficient to satisfy the necessity of the principle. The statements of dead persons are admitted as relevant upon the principle that by the death of the person the better evidence cannot be laid. Where person making a dying declaration survives, his statement will not be admitted under S. 32. It may be admitted in any other section of the Act.

According to S. 108 of Evidence Act where a person is not heard of for a period of seven years by those who would naturally have heard of him had he been alive, the presumption is that he is dead. But no such presumption can be raised in respect of fugitives from justice.

In order to make the statements made by persons prior to their death, admissible under S. 32 it is necessary that the fact of death of the person must be proved unless the fact of death of the person can be presumed under S. 108 of the Evidence Act.

2. **Persons who cannot be found**:

A person may be said to have been not found when it is known who he was but in spite of reasonable search he could not be found. In this case there must be proof of a diligent search for that person and it must be proved to the satisfaction of the Court that all efforts have been made to locate the witness and the efforts failed.

3. **Persons who have become incapable of giving evidence**:

Attendance of the persons can be waived and their statements can be allowed to be proved on the ground of medical evidence that they have become incapable of giving evidence due to mental derailment or serious illness.

However, temporary illness or mere confinement without illness have been held to be not amounting to incapacity where the fact of incapacity is questioned it has to be proved with the help of medical opinion.

Where a person has become mentally deranged, any statement made by hi prior to his mental disease relevant to the matter in issue, can be proved without calling such person.

4. **Persons whose attendance cannot be procured without an amount of delay or expense**:

Attendance of witnesses can be dispensed with and their statements can be allowed to be proved in their absence by showing that their attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appear to the Court unreasonable.

For example, where a witness in foreign country and the Court is of the opinion that the delay and expense involving in calling such witness are unreasonable, it may dispense with the attendance of such witness and allow his statement to be proved in his absence taking the circumstances of the case into consideration.

DYING DECLARATION

WHAT IS DYING DECLARATION?Section 32(1)

A dying declaration is a declaration or statement written or verbal made by a person as to the cause of his/her death, or as to any of the circumstances of that transaction which resulted in his/her death.

It is a statement, which must have been made by the deceased before his death.

Dying declaration are statements made by a dying person as to the injuries which culminated in his death or the circumstances under which the injuries were inflicted.

For example:-

If A assaulted by B and A dies. A shortly before his death makes a declaration holding B responsible for the injuries inflicted on him with spear. This statement of A is admissible as it relates to the cause of his death as a dying declaration at the trial against B.

Statements made by a deceased long period to the occurrences resulting in death are not dying declarations and not admissible under the S. 32(1) of the Evidence Act.

Section 32 makes admissible, the statement of a person who dies, whether the death is homicide or a suicide, provided the statement relates to the cause of death or deals with circumstances leading to death.

Law Relating to Dying Declaration:-

S. 32(1):-

When it relates to cause of death:-

"***When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.***

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death and whatever may be the nature of the proceeding in which the cause of his death comes into question".

Illustration: - (a)to the section 32 of the Act states:

"The question is whether A was murdered by B; or

A dies of injuries received in a transaction in the course of which she was ravished B. the question is, whether she was ravished by B; or

the question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements may by A to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts"

Essentials or Conditions for the relevancy and admissibility of dying declaration:-

1. **The declarant must have died**:--

The first condition is that the person who made the declaration must be dead. If the person making a dying declaration chances to live, his statement is inadmissible as a dying declaration under S. 32(1), but it might be relied on under the provision of S. 157, to corroborate his testimony when examined and also under S. 155 for the purpose of contradiction or can be used as an admission under S. 23 of the Evidence Act, or is relevant and admissible as res gestate under S. 6 of the Evidence Act.

Where the police recorded a statement of the victim while he was being treated in the hospital and that statement was treated as an FIR and later the declarant survived, and then such statement could not be a dying declaration under S. 32(1) and could be used only to corroborate or contradict the declarant's testimony in Court. If the declarant dies, then that statement would become substantive evidence under S. 32(1).

2. **The dying declaration must be a statement: Written or verbal**:-

The word 'statement' means that which is stated. It may be in written or oral form.

The dying declaration is not a statement which requires to be in writing. Oral evidence would prove the declaration 'verbal' means by words. It is not necessary that the words should be spoken, but also includes gestures, signs etc. such as a nod or a shake of the head made by a dying man, unable to speak, in answer to questions put to him.

The questions put to the injured person who is unable to speak and the signs made by him in reply taken together amount to "verbal statements" within the meaning of this section.[177]

3. **Injuries are the cause of his death**:-

Before the statement of a person as to cause of his death may be used as dying declaration it must be proved that his death was caused by the injury he received in the incident for which accused is being prosecuted. If a person dies not on account of injuries which are inflicted on him but on account of some other reasons or ailment the dying declaration would not be admissible.

In Chandra Bhan Singh vs. State[178]

The deceased Shaitan Singh himself lodged report in which he narrated the story of incident. After the medical examination the deceased developed tetanous and died of it. Hence it was held that the statement of deceased could not be used as dying declaration.

In Moti Singh vs. State of UP[179]

Gaya Charan received gunshot injuries. He was admitted into a hospital. His declaration was recorded. He went out of the hospital and afterwards died. It was

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[177]Sudama vs. King-Emperor, (1949) Nag 301.
[178][1971] Cr. LJ. 94.
[179]AIR 1964 SC 900.

not proved that he died of the injuries received at the incident. His evidence did not amount to be a dying declaration and was excluded.

4. **Circumstances of the transaction which resulted in his death**:-

The words 'resulted in his death' to not mean 'cause his death'. The expression "any of the circumstances of the transaction which resulted in his death" are wide enough to include the motive of the alleged Crime. When motive was tried to be inferred by the prosecution from the statement made by the deceased, if it was held, in

Public Prosecutor vs. Munigan[180]

That such statement was not admissible, since general expressions including suspicion or fear, not directly related to the cause of death, are not admissible.

Pakala Narayana Swami vs. Empror[181]

"The wife of the accused was indebted to the deceased in the sum of Rs. 3,000/- which she had borrowed at 18% interest from the deceased on account of their needs about a year before the tragedy. A number of letters signed by the accused's wife and which were discovered from the deceased's house clearly proved this fact. On 20th March, 1937, the deceased whose name was K.N. received a letter, which was not signed by anybody but which, it was reasonably clear had come from the accused's wife, invited him to come that day or next day to Berhampur. K.N.'s widow told the court that on that day her husband showed her a letter and said that he was going to Berhapmur as the Swami's wife had written to him inviting him to come to receive payment of his dues. K.N. and the wife of the accused were known to each other as she was the daughter of an officer in whose office K.N. was employed as a peon. K.N. left his house the next day in time to catch the train to "Berhampur. On Tuesday, 23rd March, his body, cut into seven pieces, was found in a steel trunk in a third class compartment of a train at Puri, where the trunk had been left unclaimed."

The accused was convicted of murder and sentenced to death. The evidence against him was, firstly, his indebtedness to the deceased, secondly, the statement

180 AIR 1941 Mad. 359.
181 AIR.1939 P.C. 47.

of the deceased to his wife that he was going to the accused, thirdly, the steel trunk was purchased by a *Dhobie*(washerman) for and on behalf of the accused. Some other details about the arrival of the deceased at the accused's house, discovery of blood-stained clothes and transportation of the trunk ot the station were also proved. The accused appealed to the Privy Council on the grounds that the statement of the deceased to his wife that he was going to the accused was wrongly admitted under S. 32(1) and that the statement of the accused to the police that the deceased arrived at his place was admitted in violation of S. 162, the Cr.P.C. referring to the first argument.

LORD ATKIN said, "A variety of questions has been mooted in the Indian "Courts as to the effect of this section (S. 32(1). It has been suggested that the statement making it must be at any rate near death, that the "circumstances" can only include acts done when and where the death was caused.

Their Lordships are of opinion that the natural meaning of the words used do not convey any of these limitations. The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transaction; general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person or that he had been invited by such person to meet him, would each to them be circumstances of the transaction, and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused.

"Circumstances of the transaction" is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence", which includes evidence of all relevant facts. It is on the other hand narrower than "res gestae" circumstances must have proximate relations to the actual occurrence."

Applying these to the facts of the case their Lordships pointed out that the transaction in the case was one in which the deceased was murdered on 21st March and his body was found in a trunk proved to be bought on behalf of the accused. The statement made by the deceased on 20th March that he was setting out to the place where the accused was living, appeared clearly to be a statement as to some of the circumstances of the transaction which resulted in his death. Thus the statement was rightly admitted.

The SC. has emphasized the need for effort by courts, as far as possible, to include a statement within the scope of S. 32(1).

Hence, statements as to any of the circumstances of the transaction which resulted in the death would be included. But not where the statement has no such relationship.

In a case before the SC. there was a telephonic conversation between the deceased and one of the witnesses. It did not relate to the cause of his death or to any of the circumstances of the transaction which resulted in his death. The court said that the statement did not come within the purview of S. 32(1)

The deceased stated in his letter that in the event of his death, the accused (appellant) should be held responsible as he intended to kill him. The court said that it was only an apprehension expressed by the deceased. It did not refer to any circumstances of a transaction which resulted in his death. The evidence was not admissible as a dying declaration.[182]

The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed.

The circumstances must be the circumstances of the transaction; general expressions indicating fear or suspicion, whether of a particular individual or otherwise and not directly related to the occasion of the death, will not be admissible.

The expression means only such facts or series of facts which have direct or organic relation to the death. The circumstances must have some proximate relation to the actual occurrence. Any statement made by the deceased long before

[182] BabubhaiBhimahaiBokharia vs. State of Gujarat, (2014) 5 SCC. 568.

the incident of murder will not be admissible. There need not necessarily be a direct nexus between 'circumstances' and 'death'.

It is enough is if the words spoken by the deceased refer to any circumstance which has connection with any of the transactions which ended up in the victim's death.

The words 'statements as to any of the circumstances' are by themselves capable of expanding the width and contours of the scope of admissibility. When the word 'Circumstances' is linked to transaction which resulted in his death', the subsection casts the net in a very wide dimension anything which has a nexus with his death, proximate or distant, direct or indirect can also fall within the purview of this section.

Evidence cannot be given of circumstances unless they are proximately connected, i.e., closely connected with the actual occurrence of the event.

The words "as any of the circumstances of the transactions which resulted in his death" appearing in section 32 must have some proximate relations to the actual occurrence and in other word it means that the statement must be sufficiently or closely connected with the actual transaction.

The problem of proximity was for the first time raised before the SC. In

Sharad vs. Maharashtra[183]

It has been held that the test of proximity cannot be literally issued and practically reduced to a cut and dried formula of universal application. Distance of time would depend on or vary with the circumstances of each case.

For example, where death is a logical consequence of a continuous drama long in process and in a way a finale the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would above to be read as an organic whole and not torn from the context.

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[183]AIR 1984 SC 1622.

Where death takes place within a short time of the marriage or the distance of time is not spread over more than three to four months, the statement may be admissible.

The SC. Has, further, held that there were two possibilities namely it may be a cause of suicide or murder and the expression 'Cause of death' applies to both.

Sometimes letters written even 5 years prior to the event are admissible under section 32(1).

In Ranjith Singh vs. State of Punjab[184]

It has been held that the letters written even 5 years prior to the event are admissible under S. 32(1) as dying declaration because they alleged of the circumstances that brought about his death.

In Sudhakar vs. State of Maharashtra[185]

It has been held that where the statement of the prosecutrix was recorded by the police 11 days after she was raped and she committed suicide after more than five and half moths, her statement, not being in the circumstances which resulted in her death, could not be related as a dying declaration.

In Gkulchandra vs. State[186]

One Swarnalatawas maltreated by the family members of her father-in-law and mother-in-law. Being sick of their treatment she committed suicide by being run down by a train. The in-laws were prosecuted for abetting Swarnalata to commit suicide and the letters written by Swarnalata were produced as circumstances relating to her death as dying declaration. But the Court held that these letters are not proximate by connected with the occurrence and therefore they are not admissible under S. 32(1).

[184]AIR 1952 HP 81.
[185]AIR 2000 SC 2602.
[186] AIR 1950 Cal. 306.

5. **The Cause of the death of the declarant must be in question**:-

A dying declaration would be relevant in any proceedings, Civil or Criminal, where the cause of death comes into question. Wherever the cause of the person's death is a point at issue, the statement will be admissible.

The statement as to the cause of death or as to any circumstances of the transaction which resulted in his death is relevant.

The nature of the proceeding in which the cause of his death comes into question need not necessarily be a charge of murder or homicide. It may be a charge of a different nature or it may be a civil action. The only material point is that the cause of deceased's death must come into question irrespective of the nature of the proceeding in which it comes into question. The mere facts that the charge of murder failed would not make the statement inadmissible.

In order that a dying declaration may be admissible in evidence it is necessary that the cause of the death of the person making the dying declaration must be in issue, but not the cause of the death of some other person.

In Ratan Goud vs. State of Bihar[187]

It has been held that the statement of the deceased did not relate to the cause of her death or any of the circumstances related to her death; on the contrary the statements related to the death of her sister and they were not admissible under S. 32(1) of the Evidence Act.

However, in

Kashinath vs. State of Maharashtra[188]

It has been held that in certain circumstances about death of another is relevant.

6. **The declaration must be complete**:-

A dying declaration must be complete, from the point of view of the declarant. If he had said all that he wanted to say it would be relevant. But it

[187] AIR 1959 SC 18.

[188] 1984 Cr.LJ 1447.

happens that after making same statements he is about to state something more when he becomes unconscious and dies, the statement would be incomplete dying declaration and therefore will not be relevant.

In Cyril Waugh vs. King,[189]

It was held that that dying declaration was inadmissible because on its face it was incomplete and no one could tell what the deceased was about to add. But however the incomplete dying declaration unmistakably points out the guilt of the accused then there is no harm on relying on such incomplete declaration.

In Abdul Sattar vs. State of Mysore[190]

It has been held that if the statement though incomplete in the sense that the declarant could not state all what he wanted to state, yet whatever he stated is complete in respect of a certain fact the statement would not be excluded on the ground if it's being incomplete.

In Muniappan vs. State of Madras[191]

It has been held that the incomplete dying declaration is admissible because it unmistakably points out the guilt of the accused.

7. **Declaration be taken as a whole**:-

Though there is a controversy on this point, in some cases it has been held that it must be taken as a whole.

In Tafiz Parmanik vs. Emperor,[192]

It has been held that if a statement is admissible, it must either go in a whole or not at all.

In re Maneem Edukondalu[193]

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[189] 1950 ALJ 412 (PC).
[190] AIR 1956 SC 168.
[191] AIR 1962 SC 1252.
[192] AIR 1930 Cal. 229.
[193] AIR 1957 AP 729.

It has been held that parts of the statements made here and there cannot be divested from there context for the purpose of propping up the prosecution Case.

However, in Lala Ram vs. State,[194]

It has been held that if a portion of a dying declaration is untrue the rest of it cannot be necessarily rejected and if part of it is shown to be false, the court may declare to believe the rest without corroboration.

8. **Declaration should be precise**:-

Dying declaration should be short, concise and to the point. Detailed statement covering the minutest details could not be expected from the declarant who is under a severe stress and agony. The mere fact that the dying declaration did not contain the detailed version of the occurrence was no ground to disbelieve it.

9. **The declarant must be competent**:-

The person who is making a dying declaration must be competent. Even a dying declaration made by an infant is admissible but the competency of the minor has to be determined in terms of section 118[195] of the Evidence Act.

10. **The declarant must be in a fit condition**:-

Before a dying declaration is sought to be proved under S. 32(1), it must be shown that the declarant was in a fit state mind to make the dying declaration, that the declarant was conscious of the surroundings and of the person who attacked him.

Multiple dying declarations:-

In Nallam Veera Satyanandam vs. Public Prosecutor, High Court of AP[196]

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[194] AIR 1953 MB 249.

[195] S. 118 -Who may testify.

All persons shall be competent to testify unless the Court considers that they are prevented from understanding the question put to them, or from giving rational answer to those questions, by tender years, extreme old age, disease, whether of body and mind, or any other cause of the same kind.

In the case of multiple dying declarations, each dying declaration had to be considered independently on its merit as to its evidentiary value. One cannot be rejected because of the consents of the other.

Where there are more than one dying declaration, it is the duty of the Court to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs.

If there are two dying declarations giving two different versions, a serious doubt arises about truthfulness of the declarations.

The victim woman stated in her first statement that she caught fire accidentally, but in her second statement she accused her mother-in-law of throwing a burning kerosene lamp on her. She received 57% burn injuries and died. She changed her statement when her parents came in and she mustered courage to record the truth. There was history of torture by in-laws. In these circumstances the court held the second version to be reliable.[197]

Reasons (or Justification) for the admissibility and validity of dying declaration:-

The reasons for so accepting a dying declaration may best be stated in the words of poets.

Matthew Arnold says in Soharab and Rustum:

"Truth sits upon the lips of dying men"

This is cited in Babulal vs. Sate of MP.,[198]

And Shakespeare, in Richard II, says:

"Where words are scarce they are seldom spent in vain,

They breach the truth that breathe their words in pain"

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[196] AIR 2004 SC 1708.

[197] Sayarabano vs State of Maharashtra, (2007) 12 SCC. 562.

[198] AIR 2004 SC 846 Para 7)

The admissibility of dying declaration is based on the maxim **"Nemo mortiturus praesumutur mentire" which means "No one at the point of death is presumed to lie". Or "a man will not meet his creator or maker with a lie in his mouth**.

The presumption is that when a person is conscious of his impending death, when he is confident of his fast dissolution or when he has resigned from the hope of survival, then in such cases he would not lie because a man will not meet his maker with a lie in his mouth.

In Ram Mani Yadav vs. State of UP,[199]

It has been held that a dying declaration made by the victim in a fit mental condition and on the verge of death has a special sanctity; at the solemn moment, a person is most unlikely to make an untrue statement, the shadow of impending death is itself the guarantee of the truth of his declaration as to the causes or circumstances leading to his death; a dying declaration is almost sacrosanct.

In R. vs. Woodcack[200]

It has been decided that dying declarations are statements made in extremity when the person is at the point of death; when every motive for falsehood is silenced and when every hope of this would is gone and when his mind is induced by the most powerful spiritual considerations to speak the truth.

The dead person cannot come and be a witness. The reasons for admitting the evidence of dying declaration are (a) that it is the best evidence available, and (b) the occasion is solemn, and the dying man has to face his Maker without any motive for telling a lie.

In Radhakrishna vs. State of Karnataka[201]

The dying declarations are admitted mainly of its necessity as the victory being generally the only principal eye-witness to the crime, the exclusion of the statement might deflect the end of justice. Secondly they are the declarations made

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[199] 2003, CrLJ 4131.
[200] 1789, 1 Leach 500. 168 E.R. 352.
[201] AIR 2003 SC 2859 (para 11)

by a person with the sense of impending death, which creates a sanction equal to the obligation of an oath.

In Najjani Faragai vs. State of West Bengal[202]

It has been stated that although it is pointed out that when a person is expecting his death to take place he would not be indulging in falsehood, but that does not mean that such a statement loses its value if the person died long after the making of dying declaration.

Experience shows that very often the dying man takes that last opportunity to implicate all his enemies and thus wreak a sweet vengeance on them. Hence, the dying declaration should be admitted with utmost care when accepting as evidence.

The judicial Standards for appreciation of Evidentiary or Probate Value of Dying Declaration:-

Importance of Dying Declaration:-

The probative value of dying declaration as an evidence is the weight to be given to it which has to be judged having regard to the facts and circumstances of teach case.

A dying declaration made by a person who it dead as to cause of his death or as to any of the circumstances of the transaction which resulted in his death, in case in which cause of his death comes in question, is relevant under S. 32 of the Evidence Act and is also admissible in evidence.

Though dying declaration is indirect evidence being specie of hearsay, yet is an exception to the rule against admissibility of hearsay evidence.

Indeed, it is substantive evidence and like any other substantive evidence requires no corroboration for forming basis of conviction of an accused.

There are different opinions on the evidentiary value of dying declaration. One opinion is that a dying declaration is not a weak type of evidence.

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[202] AIR 1998 SC 682.

Another opinion is that a dying declaration is a weak type of evidence and it must be corroborated by other evidence.

Principles governing dying declarations:-

The Courts have laid down in several judgments the principles governing dying declaration, which can be summed up as under:

i. There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.

ii. If the Court is satisfied that the dying declaration is true and voluntary, it can base conviction on it, without corroboration.

iii. The Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration.

iv. Where dying declaration is suspicious it should not be acted upon without corroborative evidence.

v. Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected.

vi. A dying declaration which suffers from infirmity cannot form the basis of conviction.

vii. Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected.

viii. Equally, merely because it is a brief statement it is not to be discarded. On the shortness of the statement itself guarantees truth.

ix. Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail.

x. Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon.

Some other recent decisions needing notice are:

Surinder Kumar vs. State of Haryana[203]

This was also a case of bride burning and deceased has suffered 70% burs. Dying declaration of the deceased was challenged on the basis of the evidence of doctor admitting the deceased in the hospital and recorded that the deceased had suffered burn injuries while cooking. The evidence was held not sufficient to discredit dying declaration.

In surajmal vs. State of Punjab,[204]

The Medical Officer had during cross-examination stated that he was not sure if the prosecution version of the incident was correct and hence he did not attest the statement. This statement was used to submit that dying declaration was unreliable. The Court rejected the submission and held that the sporadic admission of Medical Officer could not in any way affect the veracity of the statement in dying declaration.

In Gangotrisingh vs. State of UP.[205]

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[203] AIR 992 SC 2037.
[204] AIR 1992 SC 559.
[205] AIR 1992 SC 948.

The challenge to an otherwise proper dying declaration was made on the basis of statement of Medical Officer that the patient had told him that some unknown person had shot at him. Since the Court found that the dying declaration was recorded by an Executive Magistrate and there was no evidence of tutoring, the same could not be rejected only because of the aforesaid state of Medical Officer.

It may, therefore, be taken to be well established that though the Court would subject the dying declaration to a close scrutiny to ascertain whether it was honest and truly the statement was made by the deceased, it would not reject the same on extraneous consideration such as admissions made by Medical Officer during cross-examination or the like. Indeed once the Court holds that the dying declaration contains the statement of the deceased as to the cause of death and if the same was recorded before anyone had the opportunity to tutor the deceased, the same will be accepted and relied upon.