

ALANGE'S LAW CLASSES, MAHARASHTRA



**Subject:- Indian Evidence Act
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Sub: The Indians Evidence Act 1872

ASSISTANT PUBLIC PROSECUTOR

Part I

Relevancy of Facts:-

Chapter I

Preliminary:

➤ **Introduction:-**

Laws may be divided into Substantial Laws and Procedural Laws. The Laws by which rights, duties and liabilities are defined are called Substantial Laws. The Law of procedure prescribes the mode by which the application of the substantial law is regulated.

E.g. IPC defines offences and lays down punishment, this is the Substantive Criminal Law. The Cr.P.C deals with the rules of investigation of crime, method of conducting trials, provisions for appeals etc. The Evidence Act is concerned with the mode of proving whether a particular person committed the offence or not thus Cr.P.C and Evidence Act are Procedural Laws.

The Indian Evidence Act can be divided mainly in three Parts. Part I deals with what facts are relevant and may be proved. Part II deals with the general principles Governing "Proof". Part III deals with provisions relating to examination of witnesses.

➤ **May presume, Shall Presume & Conclusive Proof (Section 4):**

May presume

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

The court may presume certain facts about documents.

E.g. The court may presume the genuineness of document or document as true.

The court is at liberty to accept those facts as proved until they are disproved or to call for proof of it. A particular inference may be drawn from a particular fact or from particular evidence until the truth of such inference is disproved.

When it may presume a fact, a court has a discretion to presume it as proved or to call for confirmatory evidence of it.

Sec. 86 to 88 & 90 provide for cases in which the court may presume certain facts about documents like:-

- 1) Certified copy of judgment, the court may presume that it is genuine and accurate.
- 2) As to any book or chart or map published, the court may presume that it was written and published by the person mentioned in it etc.

Shall Presume: - Whenever it is directed by this Act, that the court shall presume a fact, it shall regard such a fact, as proved, unless and until it is disproved.

When it shall presume a fact, it is a direction to the court and a court has no discretion. There the court shall presume a fact as proved and the court has no authority to call for confirmatory evidence of it.

According to Sec. 79 to 85 & 89 provide for cases in which the court shall presume genuine certain facts above document i.e. The court is bound to accept those facts as proved until they are disproved.

e.g. As to a certified a copy which is declared by law to be admissible as to proof of any fact and which was certified by the officer of the Government like City Survey Extract, 7/12 extract. The Court shall presume that it is genuine. It shall presume that the officer who signed or certified it held at the time official character which he claims in it.

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

Sec. 41, 112, 113 declares the principle of conclusive proof.

e.g. U/Sec. 112, the fact that a person is born during a valid marriage between his mother and any man, or within 280 days after its dissolution. The mother remaining unmarried unless non access is proved it shall be conclusive proof of legitimacy of child.

Under the Company Act, the certificate of Registration of Company is conclusive evidence that a company has complied with all requirements of registration of Company.

Chapter II

➤ RELEVANCY OF FACTS

Relevant Fact :- According to Sec. 3, one fact is said to be relevant to another when the one connected with the other in any of the ways relating to the relevancy of facts.

According to Sec. 5 evidence may be given :-

- 1) Of the existence or non existence of every fact is issue and
- 2) Of such other facts as are declared to be relevant, and of no others.

No evidence can be given of a fact which a person is disentitled to prove under the C.P.C.

What facts are given of a fact which a person is disentitled to prove under the C.P.C.

Relevancy and Admissibility under Indian Evidence Act

The expressions relevancy and admissibility are often taken to be synonymous. But they are not the same. Their legal implications are different. All admissible evidence is relevant but all relevant evidence is not admissible. Relevancy is the genus of which admissibility is the species.

Difference between relevancy and admissibility:-

Relevancy	Admissibility
(i) When facts are so related as to render the existence or non-existence of other facts probable according to common course of events or human conduct, they are called relevant.	(i) When facts have been declared to be legally relevant under I.E.Act, they become admissible.
(ii) It is founded on logic and human experience.	(ii) It is founded on law not on logic.
(iii) The question regarding relevancy has been enunciated in Sec.5 to Sec.55 of I.E.Act.	(iii) The question of admissibility are provided in Sec.56 and the following sections.
(iv) It signifies as to what facts are necessary to prove or disprove a fact in issue.	(iv) It is a decisive factor between relevancy and proof.
(v) It merely implies the relevant facts.	(v) It implies what facts are admissible and what are not admissible.
(vi) It is the cause.	(vi) It is the effect.
(vii) The court may apply its discretion.	(vii) There is no scope for the court to apply discretion.
(viii) All admissible facts are relevant.	(viii) All relevant facts are not admissible. Only legally relevant facts are admissible.

A. Facts Logically Connected with a Fact in Issue or Relevant Fact or What facts are relevant (Sec. 6 to 16) :-

The following facts are relevant:-

- 1) **Facts forming part of same transaction or Res-Gestae (Sec. 6)** Facts so connected with a fact in issue as to form part of the same transaction are relevant.

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

This section admits those facts the admissibility of which comes under the technical expression Res-Gestae i.e. the things done including words spoken in this cause of same transaction. But such a fact must form part of the same transaction.

Res gestae includes facts which form part of same transaction. So, it is pertinent to examine what is a transaction, when does it start and when does it ends. If any fact fails to link itself with the main transaction, it fails to be a res gestae and hence inadmissible. If any statement is made under the stress of excitement than such statement form part of the same transaction and is admissible before the court of law. The strength of sec. 6 lies in its vagueness. Each case in criminal law should be judged according to its own merit. When it is proved that the evidence forms part of the same transaction it is admissible under sec. 6 but whether it is reliable or not depends on the discretion of the Judge.

- 2) **Facts which are occasion, cause or effect of facts in issue (Sec. 7)** facts which are the occasion, cause or effect of a relevant facts or facts in issue or also relevant.

E.g. The question is whether A poisoned B. The state of B's health before symptoms arises due to poison and habits of B known to A, which gave an opportunity for the administration of poison are relevant facts.

- 3) **Motive, preparation and previous or subsequent conduct (Sec. 8).** Facts showing a motive or preparation or previous or subsequent conduct in relation to, any fact in issue or relevant fact, also relevant.

E.g. A is tried the murder of B by poisoning. The fact that before the death, of B. A procured poison similar to that which administer to B is relevant.

- 4) **Facts which are necessary to explain or introduce relevant facts etc. (Sec. 9):-** Facts :-

- a) Necessary to explain or introduce a fact in issue or relevant fact or
- b) Which support or rebut an inference suggested by such a fact or
- c) Which establish the identity of anything or person whose identity is relevant.
- d) Which fix the time or place at which any fact in issue or Relevant fact happened or
- e) Which show the relation of parties by whom any such fact was transacted are also relevant facts.

E.g. 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.

Identification Parade :- Identification is an important process in the administration of justice. Where the Court has to know the identity of anything or any person, any fact, which establishes such identity, is relevant. The identity of person can be established by the evidence of persons, who know him. Identification parades are held for the purpose of identifying the persons concerned in an offense or the properties, which are subject matter of an offense.

During the course of investigation test identification parades are arranged by the police either in jail or at some other place. Certain persons are brought to such a place and the accused person mixed with them. In case of Property, the property recovered is mixed with some other properties / articles of similar description. Then the Magistrate or the Panch witnesses will ask the witness to identify the property in question or the accused person. Under Section 9 the evidence given by such witness is relevant.

Section 9 Provides for the Identification "parade of persons" The purpose of Identification test is to test the memory and veracity of a witness, who claims to identify an accused person, who is said to have participated in a crime.

5) **Things said or done by conspirator in reference to common design. (Sec. 10)**
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 so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

E.g. There are reasonable ground for believing that A has joined in conspiracy to wage war against Government of India. The facts that B procured arms in Europe. C Collected money in Calcutta. D persuaded person to join the conspiracy in Bombay etc. are relevant fact.

6) **Facts not otherwise relevant becomes relevant (Sec. 11) Facts:-**

- a) That are inconsistent with any fact in issue or relevant fact.
- b) Which make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable are also relevant.

The question is whether A committed a crime at Calcutta on certain day at a certain time. The fact on that day and time A was at Lahore is relevant.

7) **Suits for damages, Facts to determine amount (Sec. 12):-**

Facts which will enable the court to determine the amount of damages which ought to be awarded are relevant.

e.g. Under Sec. 73 of the Indian Contract Act there are certain rules for determining the amount of damages for breach of contract. Such an evidence is relevant.

In calculating the amount of damages to be paid for the applicant as compensation for death under M. V. Act in an accident, the age, income, dependency of the deceased etc. are relevant facts.

8) Facts relevant when right or custom is in question (Sec. 13):

Where the question is as to the existence of any right or custom:-

- a) Any transaction by which the right or custom was created, claimed, modified, recognized, asserted or decided or which was inconsistent with its existence.
- b) Particular instance in which the right or custom was claimed, recognised or exercised or disputed, or asserted or departed from.

e.g. 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 etc. are relevant facts.

9) Fact showing state of mind or body or bodily feeling (Sec. 14)

Facts showing the existence of any state of:-

- a) Mind like intention, knowledge, good faith, negligence, rashness, ill will etc. or
- b) Body or
- c) Bodily feeling, when such state of mind or body is relevant.

E.g. 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.

E.g. 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 shoot at B may be proved.

10) Whether Act was accidental or intentional (Sec. 15):

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

e.g. 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, all of which he insured, in each of which a fire occurred and after each of which fires A received payment from a different insurance co. are relevant to show fact that the fires were not accidental.

11) Existence of course of business (Sec. 16):-

Existence of any course of business according to which an act regarding which there is question should have been done.

e.g. The question is whether a particular letter is sent by A. The fact that it was posted in due course and was not returned from post office are relevant facts.

B. Admission (Sec. 17 to 23 and 31) :-

Meaning:-

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 here in after mentioned.

Provisions:-

1) Statements of following persons are Admissions:-

- a) A party to the proceedings.
- b) An agent authorized by such party.
- c) A party suing or sued in a representative character making admissions while holding such a character, like trustee of a public trust.
- d) A person who has a proprietary or pecuniary interest in the subject matter of the suit during the continuance of such an interest.
- e) A person from whom the parties to the suit have derived their interest in the subject matter of the suit during the continuance of such interest.
- f) A person whose position it is necessary to prove in a suit if such a statement would be relevant in a suit brought by or against himself.

E.g. 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 is in arrears of rent is an admission and is a relevant fact as against A.

- g) A person to whom a party to the suit has expressly referred for information in reference to a matter in dispute.

E.g. 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.

2) Against whom Admission may be Proved: (Section 21)

An admission is relevant and may be proved as against the person who makes it or his representative in interest.

It can't be proved by or on behalf of the person who makes it or by his representative, except in 3 cases.

- a) When it is of such a nature that, if the person making it were dead it would be relevant as between third persons under Sec. 32.

- b) When it consists of a statement of the existence of any state of mind or body made at or about the time when such a state of mind or body existed and is accompanied by conduct rendering its falsehood improbable.
- c) It is relevant otherwise than as admission.

E.g. 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.

3) Oral admissions as to the contents of a document are not relevant (Sec.22):-

- a) unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or
- b) unless the genuineness of a document produced is in question.

4) When oral admission as to contents of electronic records are relevant (Section 22A) :-

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

5) Admissions in Civil Cases when Relevant (Section 23):-

In civil cases no admission is relevant, if it is made either:-

- a) upon an express condition that evidence of it is not to be given, or
- b) under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

6) Admissions not conclusive proof, but may estoppel (Section 31):-

An admission is not conclusive proof of the matter admitted but it may operate as estoppel.

Explanation:- Write Explanation about Conclusive Proof.

An admission is not conclusive proof of the matter admitted:-

In *Kishori Lal V/s. Mr. Chaltibai*, AIR 1959 SC 504 held that an admission shifts the onus on the person admitting the fact, on the principle that what a party himself admits to be true may reasonably be presumed to be so, and until the presumption is rebutted, the fact admitted must be taken to be established.

In *Nagubai V/s. B. Shamrao* AIR 1956 SC 593 held that an admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, and the weight to be attached to it must depend upon circumstances under which it is made. It can be shown to be erroneous or untrue, so long as the person to whom it was made has not acted upon it to his detriment, when it might become conclusive by way of estoppel.

Write Explanation about Estoppel(See Sec.115)**Admission may operate as estoppels:-**

Admissions are not conclusive proof of the matter admitted, but they are strong evidence against the person making them.

The person against whom an admission is proved is at liberty to show that it was mistaken or untrue, but such admissions, if they have been acted upon by a third person, and if substantive rights have been created, operate as estoppel.

The party making admissions is bound to make good his representations. Thus, though admissions are not conclusive proof, they are sufficient proof without corroboration.

A person is said to be stopped when he 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. In such cases, neither he nor his representative can deny the truth of that thing.

Confessions Sec. 24 to 30 :-**Meaning: -**

The expression Confession has not been defined in the Evidence Act.

A confession is a statement which either admits the offence or substantially all the facts which constitute the offence.

Stephen defines confession as "A confession is an admission made at any time by any person charged with a crime stating or suggesting an inference that he committed that crime".

Law of confession:-**1) Confession caused by inducement, threat or promise from a person in authority (Section 24):-** A confession is irrelevant:-

- a) It is obtained by any inducement, threat or promise.
- b) Such an inducement etc. must have reference to the charge.
- c) Such an inducement etc. must proceed from a person in authority.
- d) Such an inducement etc. must be sufficient to give the accused grounds for supposing that by making it he would gain an advantage or avoid an evil of a temporal nature in reference to the proceeding against him.

2) A confession made to police officer (Section 25) :-

Is not admissible but a confession in a letter addressed to a police officer would be admissible.

1) Confession not made before a Magistrate (Section 26):-

A confession made by a person in police custody is not admissible unless it is made in the presence of a magistrate.

2) Confession leading to discovery of fact (Section 27):-

When any fact is discovered in consequence of information received from such person so much of the information as relates to the facts discovered is admissible.

3) Confession made after removal of threat, inducement or promise (Section 28):-

A confession made after the removal of the impression caused by such inducement, threat or promise is relevant.

4) Confession made under promise, deception etc. (Section 29)

A confession does not become irrelevant if it is made :-

- a) Under a promise of secrecy.
- b) In consequence of a deception practiced on accused or.
- c) When the accused was drunk.
- d) In answer to questions which the accused need not have answered or.
- e) When the accused was not warned that he was not bound to make it.

7) Confession of Co-accused (Section 30):-

When more person than one are tried jointly for an offence and one of them makes a confession affecting himself and some other of such persons, the confession may be taken into consideration against such other person as well against the person making it.

E.g. 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 A and also against B.

Distinction between Admission and Confession:-

- 1) A confession is a statement made by an accused person which is to be proved against him in a criminal proceeding to establish the commission of an offence by him. While an admission usually relates to a civil transaction and consists of all statements amounting to admission as defined in Sec 18.
- 2) A confession if deliberately and voluntarily made may be accepted as conclusive in itself of the matters confessed. An admission is not a conclusive proof of the matters admitted, but operate as an estoppel.

- 3) A confession always goes against the person making it. An admission may be used on behalf of the person making it under the exceptions provided in see 21.
- 4) The confession of one of two or more accused jointly tried for the same offence can be taken in to consideration against the Co-accused. But an admission by one of several defendants in a suit is no evidence against another defendant.

Extrajudicial Confession : -

It is a confession made out of court, and not as a part of a judicial examination or investigation. Such a confession must be corroborated by some other proof of the corpus delicti, or else it is insufficient to warrant a conviction.

Extrajudicial confession are made by the accused elsewhere than before a magistrate or in court. It is not necessary that the statements should have been addressed to any definite individual. It may have taken place in the form of a prayer. It may be a confession to a private person. An extra-judicial confession has been defined to mean “a free and voluntary confession of guilt by a person accused of a crime in the course of conversation with persons other than judge or magistrate seized of the charge against himself”. A man after the commission of a crime may write a letter to his relation or friend expressing his sorrow over the matter. This may amount to confession.

Extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility. Extra-judicial confession is generally made before private person which includes even judicial officer in his private capacity. It also includes a magistrate not empowered to record confessions under Section 164 of the Cr.P.C. or a magistrate so empowered but receiving the confession at a stage when section 164 does not apply.

Judicial confession	Extra-judicial confession
1. Judicial confessions are those which are made to a judicial magistrate under Section 164 of Cr.P.C. or before the court during committal proceeding or during trial.	1. Extra-judicial confession are those which are made to any person other than those authorized by law to take confession. It may be made to any person or to police during investigation of an offence.
2. To prove judicial confession the person to whom judicial confession is made need not be called as witness.	2. Extra-judicial confession are proved by calling the person as witness before whom the extra-judicial confession is made.
3. Judicial confession can be relied as proof of guilt against the accused person if it appears to the court to be voluntary and true.	3. Extra-judicial confession alone cannot be relied, it needs support of other supporting evidence.

4. A conviction may be based on judicial confession.	4. It is unsafe to base conviction on extra-judicial confession.
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C. Statements by a witness who cannot be produced or dying declaration (See 32):-

A statement of relevant fact made by a person:-

- a) Who is dead. b) Who can't be found.
 - c) Who has become incapable of giving evidence or
 - d) Whose attendance can't be procured without unreasonable delay or expense, is relevant under the following circumstances:
- 1) When it relates to the cause of his death.
 - 2) When it is made in the course of business such as an entry in books or acknowledgement of the receipt of any property or date of a document.
 - 3) When it is against the pecuniary or proprietary interest of the person making it or when it would have exposed him to a criminal prosecution.
 - 4) When it gives opinion as to a public right or custom or matters of general interest and it was made before any controversy as to such a right or custom has arisen.
 - 5) When it relates to the existence of any relationship between persons as to whose relationships the maker had special means of knowledge and was made before the question in dispute arose.
 - 6) When it relates to the existence of any relationship bet's person deceased and is made in ay will or deed or family pedigree, or upon any tomb stone, and was made before the question in dispute arose.
 - 7) When it is contend in any deed, will or other document.
 - 8) When it is made by number of persons and expresses feelings relevant to the matter in question.

E.g. 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. Statements made by A as to the cause of her death referring the rape and murder are relevant facts and called dying declaration.

Dying Declaration:

When the statement is made by a person as to the cause of his death or circumstances of the transaction which resulted in his death, when the cause of his death is in question, such statement are relevant whether the person who made them was or was not at the time when they were made under expectation of death & whatever may be the nature of proceeding in which the cause of his death comes into question.

The question is whether A was murdered by B or A dies of injuries received in a transaction in the course which C was ravished. The question is whether C was ravished by B or 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 & the actionable wrong under consideration are relevant facts.

- **Meaning of Dying Declaration :**

A dying declaration is a statement made by a dying person as to the cause of his death or any of the circumstance of transaction which resulted in his death.

If the person making dying declaration chances to live, his statement is inadmissible as dying declaration but it might be relied on under Sec. 157 to corroborate his testimony when examined.

Sec. 60 lays down that oral evidence must be direct. Sec. 32 is an exception to the general rules that, "hear-say evidence is not admissible."

- **Grounds for Admitting D.D. :**

The three main grounds on which D.D.'s are admitted: -

- 1) Death of the declarant.
- 2) Necessity i.e. the victim being generally the only eye witness to the crime, the exclusion of his statement would lead to defeat the ends of justice &
- 3) The sense of impending death, which creates a sanction equal to the obligation of an oath.

The general principle on which D.D.'s are admitted is that they are declaration made in extreme conditions when the party is at the point of death & when every hope of this world is gone when every motive to speak falsehood is silenced & the mind is induced by the most powerful considerations to speak the truth, a situation so solemn & so lawful is considered by the law as creating an obligation equal to that which is imposed by an oath administered in a court.

- **Method of Proving D.D. :**

Statements whether oral or written, must be duly proved, if the statement is oral, persons who heard the statement should depose what they have heard. In the case of written statements, it must be proved by the evidence of the person who recorded it.

If a D.D. is made to a Magistrate, whether such a statement itself can be admitted as evidence without calling the Magistrate as witness has been subjected to a great deal of controversy. The more accepted view is that the Magistrate must be called to prove it. It was observed by Calcutta High Court that the writing made by Magistrate could not be admitted to prove the statement made by deceased. The statement must have been proved in an ordinary way by a person who heard it by deposing it on oath before court of law.

- **D. D. How recorded :**

A statement of the deceased would mean a statement in the words of the deceased & whenever it is practicable to record those statements in words, it must be recorded in the words of deceased.

When the Sub-inspector or Magistrate recording statement does not know the language spoken by deceased though he understands & speak the language he may record the statement in English & if it is recorded & answers given by the deceased those questions & answers must always be recorded to enable the court to understand full significance of the statement.

When statement is result of the replies to the question it is not possible to assess fully the value of replies without knowing what the questions were, since the replies are always given with reference to the questions put. Therefore it is essential to record the question in the precise words in which the questions are put take down the answers in the actual words in which the answers are given, when the statement is the result of the questions put answers given.

Use of Dying Declaration if Declarant Survive:

Death is a must for a Dying Declaration to be admissible. Death need not occur immediately but death must occur. If the declarant survives then the statement will be inadmissible as dying declaration but it can be relied upon as a witness in the court against the accused.

In Ramprasad vs the State of Maharashtra it was observed by the Supreme Court that, while making the statement, the declarant should have been under the expectation of death and if a person making dying declaration survives, then his statement cannot be used under section 32 of the Indian Evidence Act but it is statement in terms of Section 164 of Cr.P.C.

Also if the person making the statement is imbecile or a minor, the declaration will be inadmissible.

Admissibility of depositions, in former trials in subsequent trials (Sec. 33) :-

Evidence given by a witness in a judicial proceeding or before any person authorized by a law to take it, is relevant in a subsequent judicial proceeding or at a later stage of the same proceedings:-

- 1) When the witness is dead
- 2) When he cannot be found
- 3) When he is incapable of giving evidence
- 4) When he is kept out of the way by the adverse party
- 5) When the presence can't be obtained without an amount of delay or expenses which the court considers unreasonable.

Such evidence will only be admissible:-

- 1) If the proceedings was between the same parties or their representative in interest.
- 2) If the adverse party in the first proceeding had the right and opportunity to cross examine and.
- 3) If the questions in issue were substantially the same in the first as in the second proceedings.

D. Statements made under special circumstances (Sec. 34 to 39) :-

There are statements which are relevant under special circumstances these are :-

1) Entries in books of account (Section 34):-

Entries in books of A/c regularly kept in the course of business are relevant. Such entries are not alone sufficient evidence to charge any person with liability.

e.g. A sues B for Rs. 10,000/- 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 to prove the debt without other evidence.

2) Entry in public record (Section 35): -

Entries in public or official books or records made by a public servant or by a person enjoyed by law in the discharge of his duty.

e. g. Certified copies of entries in a register kept by a public servant are admissible in evidence.

3) Statements in maps, charts and plans (Section 36) :-

Statements made in maps or charts offered for public sale or in maps or plans made under the authority of the Central or State Government.

4) Statement as to fact of public nature etc. (Section 37):-

Statements of facts of public nature made in :-

- a) An Act of Parliament.
- b) An Act of Central legislative or any other legislative authority in a State.
- c) Notifications in the official gazette or Govt. gazette or the London Gazette.

5) Statements as to law in law books (Section 38):-

Statements of the law of any court contained in:-

- a) A book published under the authority of the Government of that country.
- b) Published reports of rulings of the courts of such country.

6) Statement forms part of conversation etc. (Section 39):-

When the evidence to be given forms part of a statement, conversation, document, book or series of letters or papers, so much of the statement etc as the court considers necessary to the full understanding of the nature or effect of the statement, shall only be given.

E. Opinions of third persons when relevant (Sec. 45 to 51)

Sometimes the court has to form an opinion on technical matters and in such a cases assistant of experts is necessary, therefore, this Act allows such assistance in the following cases:-

1) Opinion of experts:-

When the court has to form an opinion upon a point of :-

- a) Foreign law
- b) Science,
- c) Art,
- d) As to identity of hand writing,
- e) Finger or palm impressions,

The opinions upon that point of persons specially skilled in such foreign law, Science, Art, or in questions as to identity of hand writing or finger impressions are relevant facts. Such persons are called experts.

An Expert may be defined as: A person who, by practice and observation, as become experienced in any science or trade. He is one who has devoted time and study to a special branch of learning, and is thus specially skilled in that field wherein he is called to give his opinion. The term expert implies both superior knowledge and practical experience in the art or profession.

E.g. The question, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A. The opinions of experts on the question whether the two documents were written by the same person or by different persons are relevant.

2) Opinion of Examiner of Electronic Evidence (Section 45A):-

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 (21 of 2000), is a relevant fact.

Explanation: An Examiner of Electronic Evidence shall be an expert.

3) Facts bearing upon opinions of experts (Section 46):-

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

4) Opinion as to hand writing (Section 47):-

Opinion of a person acquainted with the hand writing of the person by whom a document is written when the court has to form an opinion as to the person by whom it was written.

A person is said to acquainted with hand writing of another person when:-

- a) He has seen that persons writing.
- b) He has received documents to be written by that person in answer to document written by himself or under his authority and addressed to that person, or
- c) In the ordinary course of business document to be written by that person have been habitually submitted to him.

5) Opinion as to digital signature, when relevant (Section 47A):-

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.

6) Opinion as to existence of right or custom (Section 48):-

Opinions as to the existence of a right or custom of a person who knows of its existence are relevant.

7) Opinion as to usages etc (Section 49):-

Opinions of persons having special means of knowledge regarding :-

- a) Usages & tenants of a body of men or family,
- b) The constitution and Government of ay religious or charitable foundation.
- C. The meaning of words or terms used in particular districts or particular classes of people.

8) Opinion on relationship (Section 50):-

Opinion of a person, expressed by his conduct, who as a member of the family has special means of knowledge as to the relationship of one person to another.

E.g. The question is whether A & B were married. The fact that they were usually received and treated by their friends as husband & wife, is relevant.

9) Grounds of Opinion (Section 51):-

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

F. CHARACTER, WHEN RELEVANT (Section 52 to 55) :-

Character includes both reputation and disposition. Relevancy of character may arise in :-

1) **Civil cases:** - The fact that the character of any person is such as to render probable or improbable any conduct imputed to him is irrelevant except in so far as such a character appears from facts otherwise relevant (Section 52).

But the fact that the character of any person is such as to affect the amount of damages which he ought to receive is relevant (Section 55).

2) **Criminal cases:** - The fact that the accused is of good character is relevant (Section 53) but the fact that he is of bad character is irrelevant unless:-

- a) Evidence has been given that he has a good character
- (b) The bad character is itself a fact in issue (Section 54).

e.g. A previous conviction is relevant as evidence of bad character.

3) Evidence of character or previous sexual experience not relevant in certain cases Sec. 53A:-

In a prosecution for an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, ²[section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB] or section 376E of IPC 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.

Part II**On Proof****Chapter III****Facts which need not be proved (Sec. 56 to 58):-**

There are certain facts which need not be proved. There are:-

1) **Fact judicially noticeable:** - No fact of which the court will take judicial notice need be proved. Thus, facts of which the court will take judicial notice need not be proved. (Section 56)

Sec. 57 enumerates 13 facts of which the court is bound to take judicial notice,

- i) all laws in force in territory of India
- ii) All Acts of British Parliament & local & personal Acts directed by British.
- iii) Articles of war for Indian Army, Navy, Air force.

- iv) The course of proceedings of British Parliament or Constituent Assembly of India & the Parliament & legislature established under any law in force in India.
 - v) The occasions & sign manual of the sovereign of the U.K. & Ireland.
 - vi) All seals of which English Courts take Judicial notice, seals of all courts in India.
 - vii) The occasion to office, name, title, function & signature of gazetted officers.
 - viii) The national Flag of every country recognized by the Govt. of India.
 - ix) The divisions of time, geographical divisions of world & public festival, facts & holidays notified in official gazette.
 - x) The territories under the dominion of Govt. of India.
 - xi) The commencement, continuance or termination of war between the Govt. of India & any other country.
 - xii) Names of Court officials & all advocates, etc. authorized by law to appear or act before the Court.
 - xiii) The rule of the road on land or at sea.
- 2) **Facts admitted:- (Section 58)** Facts which the parties or their agents agreed 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, they are deemed to have admitted by their pleadings.

Chapter IV

Oral Evidence:

Oral evidence must be direct (Sec. 59 to 60) :-

According to Section 59, all facts (except the contents of documents or electronic evidence) may be proved by oral evidence.

According to Section 60, oral evidence must be direct that is to say:-

- 1) If it refers to a fact which would be seen, it must be the evidence of a witness, who says he saw it.
- 2) If it refers to a fact which would be heard, it must be the evidence of a witness who says he heard it.
- 3) 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 in that manner.

- 4) 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.

Direct evidence means testimony given by a man as to what he has himself perceived by his own senses.

Circumstantial Evidence is opposed to direct evidence. It means a fact from which some other fact is inferred.

It means testimony of witness as to other relevant facts from which the facts in issue may be inferred. In cases based on circumstantial evidence such evidence should be so strong also point unmistakably to the guilt of accused.

The fundamental rule by which effect of the circumstantial evidence is to be estimated is in order to justify the inference of the guilt. The unculpalory facts must be incompatible with the innocence of the accused & incapable of explanation upon any other reasonable hypothesis than that of his guilt.

In every case direct evidence of fact is not available & court is bound to take help of surrounding circumstances which speak of forcefully like direct evidence. e.g. In road accident cases, rape cases, etc. the accused does not leave behind much direct evidence but facts tells the story beyond doubt that the accused is guilty of an offence, such evidence is circumstantial evidence.

E.g. If X saw A killing B, this is direct evidence. If B was found dead and killed by a knife. The facts that knife belong to A and A was the only person seen in the vicinity, and A was B's enemy and threatened to kill him would all fall under circumstantial evidence.

➤ **Hear Say Evidence :-**

The best evidence rule means that best evidence must always be produced. Hearsay evidence is no evidence; it is only in exceptional cases, that such evidence is admissible.

Sec. 60, aims at rejection of evidence which is not direct i.e. what is known as hear say evidence is not admissible. The word here say is capable of various meanings:-

1. It means whatever person is heard to say.
2. It means a person declares on information given by someone else.
3. It may be synonymous with irrelevant

➤ **Grounds for rejecting hear say evidence :-**

Generally hearsay evidence is rejected because of following reasons:-

- i) The best evidence is the direct evidence as stated in Sec. 60.
- ii) It is not given on oath.
- iii) It cannot be tested by cross examination.
- iv) It suppresses some better testimony even though available.
- v) Its probative (Judicial) value is very slight.

- vi) It tends to open the door for fraud in the name of another person.
- vii) It is second hand evidence not connected with personal responsibility.
- viii) There is tendency that truth will be diminished by each repetition.

➤ **Exception to rule "here say evidence is not admissible" :-**

1. **Res -gestae : - (Sec. 6).**

A statement made by a person who is not a witness becomes relevant & admissible if the statement is part of the same transaction in question.

2. **Admissions & Confessions :-**

An admission of liability or confession of guilt which takes place outside the court is proved through the testimony of a witness to whom admission or confession is made. Such witness is not witness of fact because he had not seen or observed main occurrence through any of his senses.

3 **Statement relevant under Sec. 32 like dying declaration :-**

Statement which are admitted under sec. 32 are mainly statements of deceased persons or persons who are not available as witnesses. The evidence of these statements in the circumstances mentioned in Sec.32 are proved by testimony of person who heard these statements or otherwise acquired knowledge of the statements. Such evidence is relevant & is declared relevant.

4. **Statements in Public documents :-**

Statements in public documents like. Acts of Parliament, official books & Register can be proved by production of documents & it is not necessary to produce before the Court the draftsman of document. The rule of hearsay may not stand in the way of proving public documents are official records or correspondence, the Court has to raise presumption under Sec. 114.

5. **Evidence in former proceedings :-**

Sec. 33 provides that evidence can be used as evidence of the truth of fact stated in any subsequent between the same parties, if the witness is dead or unavailable for same other reason.

6. **Statement of experts :-**

The opinion of experts expressed in any treatise commonly offered for sale & ground on which opinions are held may be proved by production of such treatises if author is dead or cannot be found or has become incapable of giving evidence or cannot be called as without amount of delay or expenses which the court regards as unreasonable.

7. **Miscellaneous [Whether exception can be extended] :-**

The judicial attitude appears that in the past the practice was that in the past the practice was that when the rule proved highly inconvenient in particular kind of case it was relaxed to meet the ends of justice & hearsay evidence is taken into consideration.

Chapter V

Documentary Evidence :-

The contents of documents may be proved either by primary evidence or secondary evidence (Sec. 61):-

Primary evidence Sec. 62:- It 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. E.g. Chalan.

Where a document is executed in counterpart, 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 made by uniform process such as printing, lithography, each one is primary evidence of the contents of all the rest.

Secondary Evidence Sec. 63:-

It means and includes:-

- 1) Certified copies given under the provisions of this Act.
- 2) Copies made from the original by mechanical processes.
- 3) Copies made from or compared with original.
- 4) Counter parts of documents as against the parties who did not execute them.
- 5) Oral account of the contents of a document, given by some person who has himself seen it.

Proof of documentary evidence: -

According to Sec. 64, generally documents must be proved by primary evidence except in certain cases.

Secondary evidence when admissible (Sec. 65):-

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

- 1) When the document is in the possession of :-
 - a) The person against whom it is to be proved or
 - b) Any person out of the reach of, or
 - c) Any person who is legally bound to produce it, but does not produce it after notice to produce the same.

- 2) When the existence or contents of the original have been proved to have been admitted in writing by the person against whom it is to be proved or his representative. In such a case, the written admission is admissible.
- 3) When the original has been destroyed or lost or when the party offering evidence of its contents can't produce it in reasonable time. In such a case any secondary evidence of its contents is admissible.
- 4) When the original is of such a nature as not to be easily movable. E.g. writing on wall. Secondary evidence is admissible.
- 5) When the original is a public document.
- 6) When the original is a document of which a certified copy is permitted by this Act or any law force in India, a certified copy is admissible.
- 7) When the original consists of numerous accounts or other documents which can't conveniently be examined in court and the fact to be proved is the general result of the whole collection, such a result may be proved by the evidence of any person skilled in the examination of such a documents.

Rules as to notice to produce (Section 66):-

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, 1[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:

Notice to produce a document is not required:-

- (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 of, or not subject to, the process of the Court.

Admissibility of electronic records**Special provisions as to evidence relating to electronic record (Section 65A):**

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

Admissibility of electronic records (Section 65B):

(1) 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 shall be deemed to be a document, if the conditions mentioned in this section are satisfied in relation to the information and computer 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 shall be following: -

(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; and

(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 2 (a) 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, a certificate doing any of the following things:-

(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 for 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 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 by means of any appropriate equipment.

Execution of document be proved (Section 67 to 73):-

1. Proof of signature and handwriting of a document (Section 67):-

If a document is alleged to be signed or written by any person, the signature or handwriting as is alleged to be in that person's handwriting must be proved to be in his handwriting.

2. 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.

3. Proof of execution of document required by law to be attested (Section 68):-

Such a document cannot be used in evidence until one attesting witness at least has been called for proving its execution, if there be an attesting witness (i) alive, and (ii) subject to the process of the Court, and (iii) capable of giving evidence. But, it is not necessary even to call an attesting witness if the document (not being a will), is registered, unless its execution by the person by whom it purports to have been executed is specifically denied.

4. Proof where no attesting witness found (Section 69):-

(i) If no such attesting witness can be found, or (ii) if the document has been executed in the United Kingdom, it must be proved that —

- (a) The attestation of one attesting witness at least is in his handwriting; and
- (b) The signature of the person executing the document is in his handwriting.

5. Admission of execution by party to attested document (Section 70):-

The admission of a party to an attested document of its execution by himself is sufficient proof of its execution as against him.

6. Proof when attesting witness denies the execution (Section 71):-

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

7. Proof of document not required by law to be attested (Section 72):-

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

8. Comparison of signature, writing or seal with other admitted or proved (Section 73):-

To ascertain the signature, writing, seal or figure impression of a person, the Court may compare with admitted or proved signature etc. of that person.

The Court may direct any person to write words or figures or make finger impression to enable it to compare them with those alleged to have been written or made by him.

9. Proof as to verification of digital signature (Section 73A):-

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 (21 of 2000).

Public documents:-

According to Sec. 74, Public documents are

- 1) Documents forming the acts or records of acts:-
 - a) of the sovereign authority

- b) of official bodies and tribunals and
 - c) of public officers, legislative, judicial and executive of any part of India or of a foreign country.
- 2) Public records kept in any state of private documents:-

According Sec. 75:- All other documents are private documents

Provisions:-

- 1) **Certified copies of public documents:-** will be given by every public officer having the custody of them on payment of legal fees (Section 76).
- 2) **Proof of Documents by production of certified copies:-** Such a copies may be produced in proof of the contents of the public documents (Section 77).
- 3) **Proof of other official documents:-** Certain public documents are proved in special ways, and not by certified copies. These are Acts or Notifications of the Central Government or of the Crown Representative, or of any State Government proceedings of Legislatures, proclamations issued by Her Majesty or by the Privy Council; Acts or proceedings of the Legislature of a foreign country. As to how they are to be proved. (Section 78)

Presumption As to document (Sec. 79 to 90) :-

A) **Shall presume :-** Sec. 79 to 85 and 89 provide for cases in which the court shall presume to be genuine certain facts about documents. i.e. The court is bound to accept those facts as proved until they are disproved :-

- 1) **Genuineness of certified copies (Section 79):-** As to a certified copy, or other document which is declared by law to be admissible as proof of any fact and which is certified by an officer of Government. The court shall presume that is genuine. It shall also presume that the officer who signed or certified it held at the time the official character which he claims in it.
- 2) **Documents produced as record of evidence as to (Section 80) :-**

Judicial proceeding or the confessions taken in accordance with law and signed by a judge or Magistrate or other officer authorized by law.

The courts shall presume:-

- a) That the document is genuine
 - b) That any statement as to the circumstance under which it was taken is true and
 - c) Such an evidence or confession was duly taken.
- 3) **Gazette, News papers Acts of parliament etc. (Section 81):-**

As to the London gazette or the Govt. Gazette or a newspaper or private Act of parliament or document coming from authority. The court shall presume that it is genuine.

4) Presumption as to Gazettes in electronic forms (Section 81A):-

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.

5) Document admissible in England (Section 82):-

As to a document which would be admissible in an English or Irish court without proof of its seal or stamp or signature or the official character of the person signing it.

The court shall presume :-

- a) That the seal etc. genuine.
- b) That the person signing it held that official position which he claims in it.

6) As to maps or plans (Section 83):-

As to maps or plans made by the authority of Govt.

The court shall presume that they were so made & are accurate.

7) Law books, reports of decisions as to (Section 84):-

- a) Authorized law books containing laws of any country and
- b) Books which contain reports of decisions of courts of such country.

The court shall presume that they are genuine.

8) As to power of Attorney (Section 85):-

As to Power of Attorney executed before and authenticated by, a Notary Public or any Court, Judge, Magistrate, Indian Consul or representative of the Central Government.

The court shall presume that they were so executed and authenticated.

9) Presumption as to electronic agreements (Section 85A):-

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

10) Presumption as to electronic records and [electronic signatures] (Section 85B)

(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 digital signature, the Court shall presume unless the contrary is proved that—

(a) the secure 5[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 5[electronic signature], nothing in this section shall create any presumption, relating to authenticity and integrity of the electronic record or any 5[electronic signature]

11) Presumption as to [Electronic Signature Certificates] (Section 85C):-

The Court shall presume, unless contrary is proved, that the information listed in a 6[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.]

12) As to due execution etc. of documents not produced (Section 89):-

As to a document called for and not produced after notice to produce. The court shall presume that it was duly attested, stamped and executed.

B) MAY PRESUME:-

Section 86 to 88A & 90, 90A provide for cases in which the court may presume certain facts about documents, i.e. the court is at liberty to accept those facts as proved until they are disproved or to call for proof of them.

1) Foreign Judicial Records (Section 86):-

As to a certified copy of any judicial record of a foreign country certified by a representative of the Central Government.

The court may presume that it is genuine & accurate.

2) As to books, maps, charts as to (Section 87):-

Any books to which the court may refer on a matter of public or general interest & any published chart or map produced for its inspection :- The court may presume that it was written and published by the person and at the time & place, by whom or act which it purports to have been written or published.

3) As to telegraphic messages (Section 88):

As to a message forwarded from a telegraph office. The court may presume that it corresponds with the message for transmission at the office from which it was sent.

4) Presumption as to electronic messages (Section 88A):-

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 (21 of 2000).]

5) As to document of 30 years old (Ancient Document) (Section 90) :

As to a document proved to be 30 years old and produced from proper custody. The court may presume:-

- a) That the signature, every other part of such a document, which purports to be in the hand writing of any particular person in that persons hand writing and
- b) That it was duly executed & attested by the person by whom it purports to be executed and attested.

Documents are in proper custody if they are :-

- a) In the place in which &
- b) Under the care of the person with whom, they would naturally be.

6) Presumption as to electronic records five years old (Section 90A):-

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 [electronic signature] which purports to be the [electronic 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.

Part III

Production and Effect of Evidence:-

Chapter VII

Burden of Proof (Sec. 101 to 114) :-

Whoever desires any court to give judgment as to any legal right or liability dependent on facts, which he asserts, must prove that those fact exists. The burden of proof lies on that person who is bound to prove any fact. (Sec. 101).

E.g. 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.

On whom burden of proof lies (Section 102):-

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence were given on either side. During the course of trial the burden may shift from one side to the other.

A sues B for money due on bond the execution of 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 because the bond is not disputed and fraud is not proved.

Rules as to Burden of Proof:-**1) Burden of Proof as to particular fact (Section 103):-**

The Burden of proof as to any particular fact lies on that person who wishes the court to believe it unless the law provided that its proof shall lie on any particular.

2) Burden of Proving fact to be proved to make evidence admissible (Section 104):-

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

e. g. A wishes to prove A dying declaration by B. A must prove B's death.

3) Burden of proving that case of accused comes within exception (Section 105):-

When a person is accused of an offence, the burden of proving that his case falls within any exception in I.P.C. or Any other law lies on him like right of private defense.

4) Burden of proving fact especially within knowledge (Section 106):-

When a fact is within the knowledge of any person the burden of proving it lies on him.

E.g. A is charged with travelling on a Railway without ticket the burden of proving that he had ticket is on him.

5) Burden of proving death of a person known to have been alive within thirty years (Section 107):-

When it is shown that a man was alive within 30 years. The burden of proving that he is dead is on the person who affirms it.

6) Burden of proving that person is alive who has not been heard of for Seven years (Section 108):-

When it is proved that A man has not been heard of for 7 yrs, who would naturally have heard of him, the burden of proving that he is alive lies on the person who affirms it.

7) Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent (Section 109):-

When persons have acted as partners or as landlord and tenant or as principal and agent. The burden of proving that such a relationship has existed, lies on the person who affirms it.

8) Burden of Proof as to Ownership (Section 110):-

When a person is in possession of anything as owner, the burden of proving he is not the owner is on the person who affirms that he is not the owner.

9) Proof of good faith in transaction where one party is in relation of active confidence (Section 111):-

When a person stands towards another in a position of active confidence :- The burden of proving the good faith of any transaction between them lies on the person in active confidence.

E.g. 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.

10) Presumption as to certain offences (Section 111A):-

In reference to disturbed areas certain persons are presumed to have committed the offences stated in Section 121-123 of the Indian Penal Code.

11) Birth during marriage, conclusive proof of legitimacy (Section 112):-

The fact that a person is born during a valid marriage between his mother and any man, or within 280 days after its dissolution, the mother remaining unmarried then unless non access is proved, it shall be conclusive proof of legitimacy of child. (Conclusive Proof).

12) Proof of Cession of Territory (Section 113):-

A notification in the official gazette of a cession of British territory before commencement of Government of India Act, 1935 to any Indian state is conclusive proof that a valid cession took place at the date mentioned in the notification.

13) Presumption as to abetment of suicide by a married woman. (Sec. 113 A):-

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

14) Presumption as to dowry death (Sec. 113 B)

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 has 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.

15) Presumption of Existence of certain facts (Section 114):-

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

The court may presume:-

a. A man in possession of stolen goods, the court presumes him to be either the thief or received goods knowing to be stolen unless he can account for his possession.

e.g. a shopkeeper has in his till a marked rupee soon after it was stolen & cannot account for its possession specifically but is continually receiving rupees in the course of his business. The court may presume that he was received goods knowing them to be stolen.

b. **Accomplice:-**

That an accomplice is unworthy of credit unless he is corroborated in material particulars.

e.g. A person of the highest character is tried for causing a mans death by an act of negligence in arranging certain machinery. B a person of equally good character who also took part in arrangement describes precisely what was done & admits & explains the common carelessness of A & himself.

c. **Presumption of consideration in Negotiable Instrument:**

That a bill of exchange accepted or indorsed was accepted or endorsed for good consideration.

e.g. A the drawer of bill of exchange was man of business. B the acceptor was young & ignorant person completely under A's influence. The Court may presume that such bill is for consideration.

d) **Continuity of things:**

That a thing or state of thing 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.g. It is proved that a river ran in a certain course 5 yrs. ago but it is known that there have been floods since that time which might change its course.

e) **Presumption of validity of judicial & official acts:**

That judicial & official acts have been regularly performed.

e.g. A Judicial act, the regularity of which is in question was performed under exceptional circumstances.

f) Common Course of business:

That the common course of business has been followed in particular cases:

e.g. The question is whether a letter was received it's shown to have posted but usual course of post was interrupted by disturbances.

g) Withholding of evidence:

That evidence which could be & is not produced would if produced be unfavourable to person who withhold it.

e.g. A man refuses to produce a document which would bear on a contract of small importance on which he is sued but it might also injure feelings & reputation of his family.

h) Refusal to answer questions:

If a man refuses to answer questions which he is not compelled by law to answer. The answer if given would be unfavourable to him.

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

i) Document in hands of obligor:

When a document crediting an obligation is in the hands of obligor, the obligation has been discharged.

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

The Court may presume the above facts but the court shall also have regard to such other facts in considering whether such presumption do or do not apply to the particular case before it.

16) Presumption as to absence of consent in certain prosecution for rape (Section 114A):-

In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1860), 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 such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

Explanation.—In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code (45 of 1860).

Presumption of Fact and Law:

Presumption generally means a process of ascertaining few facts on the basis of possibility or it is the consequence of some acts in general which strengthen the possibility and when such possibility has great substantiate value then generally facts can be ascertained. A presumption in law means inferences which are concluded by the court with respect to the existence of certain facts. The inferences can either be affirmative or negative drawn from circumstance by using a process of best probable reasoning of such circumstances. The basic rule of presumption is when one fact of the case or circumstances are considered as primary facts and if they are proving the other facts related to it, then the facts can be presumed as if they are proved until disproved. Section 114 of Indian Evidence Act specifically deals with the concept that ‘the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of (a) natural events, (b) human conduct, and (c) public and private business, in their relation to the facts of the particular case’.

Topic	Presumption of Facts	Presumption of Law
Definition	When presumptions are established on the basis of facts or groups of facts or from the collection of facts.	When presumptions are acknowledged without the help of proof in certain situations or circumstances where court me presumes some facts itself.
Position of Presumption	Uncertain position.	Certain and uniform position.
Performance	They are always rebuttable and can be challenged after establishing probative evidence.	They are conclusive presumption unless proven with probative evidence.

Discretionary Power of Court	Court enjoys discretionary power, either to presume any facts or not.	Court has no discretionary power, and they are bound to presume some facts as such facts are presumed itself by the law.
Source of Presumption	They are derived on the basis of natural law, customary practices, and general mankind experiences.	Judicial customs & practices, the law under the statutes are the only sources of presumption of law.
Examples	Presumption of Foreign Judicial Records, Presumptions of Abetment as to Suicide by a Married Women etc.	Presumption of Innocence, Presumption of declared death in <i>absentia</i> etc.

Chapter VIII

Estoppel (Sec. 115 to 117) :-

Definition (Section 115):-

When one person has by his:-

- a) Declaration,
 - b) Act,
 - c) Omission,
- 1) Intentionally caused or permitted another person to believe a thing to be true and
 - 2) To Act upon such a 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.
- e.g. 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 i.e. he must be stopped.

Rules as to estoppel :-**1) Estoppel of tenants and of licensee (Section 116):-**

A tenant of immovable property or person claiming through such tenant cannot, during the continuance of the tenancy deny that the landlord had a title, to such property. A person who came upon immovable property by the licence of the person in possession thereof, can't deny that the person so in possession had a title at the time when such licence was given.

2) Estoppel of acceptor of bill of exchange (Section 117):-

An acceptor of a bill of exchange can't deny that the drawer had authority to draw or endorse.

But 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.

3) Estoppel of bailee or licensee (Section 117):-

A bailee or licensee can't deny that his bailor or licensor had, (when the bailment or licence commenced,) authority to make such a bailment or grant such a licence.

But 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 if he is sued by the bailor.

Chapter IX**Witnesses (Sec. 118 to 134):-****Who may testify? (Section 118) :-**

All persons are competent to testify unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions due to :-

- 1) Tender years,
- 2) Extreme old age,
- 3) Any other such a cause.

Even a lunatic if he is capable of understanding the questions put to him and given rational answers is a competent witness. No particular number of witnesses is required for the proof of any fact.

Witness unable to communicate orally or Dumb Witnesses:-(Section 119)

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.

Husband & Wife (Section 120):-

Husband or Wife:-

- 1) Of any party to a Civil Suit.
- 2) Of the accused in criminal proceedings is a competent witness. Thus, husband and wife are competent witness for or against each other in civil as well as criminal proceedings.

Privileged Communications (Sec. 121 to 129) :-

Certain witnesses cannot be compelled to disclose certain facts. The law excludes this evidence on the ground of public policy :-

1) Judges and Magistrates (Section 121):-

A Judges or Magistrates can't (except on the special order of some court to which he is subordinate) be compelled to answer any question:-

- a) As to his own conduct, or
- b) As to anything which came to his knowledge as such judge or Magistrate.

He may be examined as to matters which occurred in his presence, while he was so acting.

e.g. A, on his trial before the court of session says that deposition was improperly taken by B, the Magistrate B can't be compelled to answer questions as to this, except upon the special order of a superior court.

2) Communications during marriage (Section 122):-

A person can't be compelled to disclose any communications made to him or her during marriage by any person to whom he or she is or has been married. He will not be permitted to disclose any such communication unless the person who made it or his representative in interest consents except :-

- a) In suits between married persons.
- b) In proceedings in which one married person is prosecuted for a crime against the other.

3) Affairs of State (Section 123):-

No person can give evidence derived from unpublished official records relating to any affairs of states except with the permission of the officer at the head of the department concerned.

The only ground sufficient to justify non production of an official document marked confidential is that production would not be in the public interest.

E.g. Where disclosure would be injurious to nation at defence or to good diplomatic relations or where the practice of keeping a class of documents secret is necessary for the proper functioning of the public service.

4) Official Communications (Section 124):-

No public officer can be compelled to disclose communication made to him in official confidence, if public interest would suffer by the disclosure.

E.g. A Govt. resolution containing opinion of Govt. officers, including a legal advisor is a privileged document under this section.

5) Information as to crime (Section 125):-

A Magistrate or Police officer or Revenue officer can't be compelled to give the source of information received by him as to the commission of an offence.

6) Professional communication (Sec. 126) :-

A Barrister, Attorney, Pleader or Vakil can't disclose, without the client's consent :-

- a) Any communication made to him in the course and for the purpose of his employment.
- b) The contents or condition of any document with which he became acquainted in the course and for the purpose of his employment.
- c) Any advice given by him to his client.

Exceptions:-

Such a protection is not available, from disclosure and which does not extend to :-

- a) Any communication made in furtherance of any illegal purpose.
- b) Any fact observed by a barrister etc. in the course of his employment, showing that a crime or fraud has been committed, since the commencement of his employment.

E.g. 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.

According to Sec. 127 :-

The principle of non disclosure of professional communications applies to the clerks or servants of Barristers etc.

A person cannot be compelled to disclose any confidential communication which has taken place between him and his legal advisor.

7) Other Provisions:-

a. Privilege not waived by volunteering evidence (Section 128):-

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.

b. Confidential communications with legal advisers (Section 129):-

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 communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

c. Production of title-deeds of witness not a party (Section 130):-

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 pledge 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.

d. Production of documents or electronic records which another person, having possession, could refuse to produce (Section 131):-

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.

e. Witness not excused from answering on ground that answer will criminate (Section 132):-

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:

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.

f. Number of witnesses (Section 134):-

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

EVIDENCE OF ACCOMPLICE Sec. 133 & Illustration(b) to Sec. 114

According to Sec. 133 :-

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. The evidence of accomplice, though it is un-corroborated may form

the basis for a conviction. This section is the only absolute rule of law as regards the evidence of an accomplice.

But illustration (b) to Sec. 114 is a rule guidance to which also the court should have regard i.e. It is also to be considered, the combined effect of Sec. 133 and illustration (b) to Sec. 114 is that though the conviction of an accused on the testimony of an accomplice can't be said to be illegal the courts will as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars.

According to Sec. 114 the court may presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars. But the court shall regard such a fact. Illustration (b)-A, a person of highest character is tried for causing a mans death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangements describes precisely what was done and admits and explains the common carelessness of A and himself.

An accomplice is one who is a guilty associate in crime. Where the witness sustains such a relations to the criminal act that he could be jointly indicated with the accused, he is an accomplice.

The court may consider though it is not bound to consider, an accomplice is unworthy of credit unless he is corroborated in material particulars. The evidence of an accomplice requires to be accepted with a great deal of caution and scrutiny because:-

- 1) He has a motive to shift guilt from himself.
- 2) He is an immoral person likely to commit perjury (giving of false evidence).
- 3) He hopes for pardon or has secured it and so favours the prosecution.

An accomplice is a person who particulates in the commission of the actual crime charged against the accused. Therefore he is to be a participant criminal.

There are two cases in which a person has been held to be an accomplice even if he is not a participant criminal.

- 1) Receivers of stolen property are taken to be accomplices of the thieves from whom they receive goods, on a trial for theft.
- 2) Accomplices in previous similar offences committed by the accused on trial are deemed to be accomplices in the offence for which the accused is on trial when evidence of the accused having committed crimes of identical type on other occasions be admissible to prove the system and intent of the accused in committing the offence charged.

The evidence of an accomplice must be confirmed not only as to the circumstances of the crime but also as to the identity of the prisoners. This corroboration need not be by direct evidence that the accused committed the crime. It is sufficient if there is circumstantial evidence of his connection with the crime. According to English law the judge should warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice even though it is permitted.

Chapter X

Examination of Witnesses (Sec. 135 to 165) :-

1) Order of production and examination of witnesses:- (Sec. 135)

The order of production and examination of witnesses is regulated by the C.P.C. or Cr. P.C. or by the discretion of the court.

2) Judge to decide to admissibility of evidence:- (Sec. 136)

The judge may ask how a particular fact is relevant and admit the evidence if he thinks the fact would be relevant. If the relevancy of a fact depends on proof of some other fact, such a later fact must be proved first unless the party undertakes to prove it subsequently and the court is satisfied with such an undertaking.

3) a) Examination in Chief :- (Sec. 137)

The examination of a witness by the party who calls him is called examination in chief.

Examination in Chief will ordinarily be in the form of a connected narrative brought out by questions put to the witness by the party calling him. It must relate to relevant facts. No leading questions can be asked. A witness must depose to such facts only as are within his own knowledge. Whatever may be the nature of the subject, the witness has any personal recollection of the fact under investigation he may state what he remembers concerning it and leave the judge of the weight of his testimony.

It is the duty of counsel to bring out clearly and in proper chronological order every relevant fact in support of his client's case to which the witness can depose. But counsel must not suggest to the witness what he is to say. A honest witness should be left to tell in his own way with as little interruption from counsel as possible.

b) Cross examination :-

The examination of a witness by the adverse party is called cross examination.

The testimony of a witness is not legal evidence unless it is subject to cross examination and where no opportunity has been given to the opposite parties counsel to test the veracity of the witness. The evidence of a such witness is not legal testimony and can't be the basis of a judicial pronouncement.

The objects of cross examination are to impeach the accuracy, credibility and general value of the evidence given in chief, to shift the facts already stated by the witness, to detect and expose defects or to discover suppressed facts which will support the case of the cross examining the party.

A skillful cross examination is the highest attainment of advocates art. It is difficult to frame any rules covering it, its technique can be acquired only by long practice. This act has laid down some rules of guidance. The cross examination must be related to relevant facts.

c) Re-examination:-

The examination of a witness subsequent to the cross examination by the party who called him, is called, re-examination.

The object of re-examination is to give the party calling a witness an opportunity of filling in the lacuna or explaining the inconsistencies which cross examination has discovered in the examination in chief of the witness.

Accordingly, it is limited to the explanation of matters referred to in cross examination. It is in the nature of examination in chief because no leading questions can be asked.

4) Order Of Examination:- (Sec. 138)

- a) Witness are first examined in chief, then cross examine and then re-examined.
- b) The examination and cross examination must relate to relevant facts, but the cross examination need not contain to the facts to which the witness testified on his examination in chief.
- c) The re-examination must be directed to the explanation of matters referred to in cross examination.
- d) If any new matter is introduced in re-examination, the adverse party may further cross examine upon that matter.

5) Cross Examination Of Person Called To Produce A Document:- (Sec. 139)

A person summoned to produce a document does not become a witness and can't be cross examined unless he is called as a witness.

6) Witnesses To Character:- (Sec. 140)

Witnesses to character may be cross examined and re-examined.

7) Leading Questions:- (section 141to 143)

Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question. (Section 141)

Such a questions must not, (if objected to by the adverse party,) be asked in an examination in chief or in a re-examination, except with the permission of the court. (Section 142)

The Court will permit such a questions:-

- a) As to matters which are introductory or undisputed or already sufficiently proved. (Section 142)
- b) In cross examination. (Section 143)

Generally if the answer to the form of Yes or No, such questions are leading questions because they suggest the answer in the question itself.

e.g. A question asked to a witness whether you have seen the said accident ? The answer to the question is yes or no therefore such a question is a leading question.

Generally leading questions are not permitted in examination in chief & re-examinations but such questions are permitted in cross examination.

8) Evidence As To Matters In Writing: - (Section 144)

Any witness may be asked whether any contract, grant, or other disposition of property as to which he is giving evidence was not in writing & if he says that it was the adverse party may object to such a evidence being given until the document is produced or facts proved for the admission of secondary evidence.

9) Cross Examination As To Previous Statement In Writing:- (Sec. 145)

A witness may be cross examined as to previous statements made by him and reduced into writing without such writing being shown to him or proved, But if it is intended to contradict him by the writing, his attention must be called to those parts of it which are to be used for the purpose of contradicting him.

Contradiction, Omission and Subtraction: -

Contradiction – The dictionary defines it as *contradiction is the act of saying something that is opposite or very different in meaning to something else what is said earlier.*¹ In trials, while cross examination a contradiction happens when a witness under oath says something that is opposite or very different in the meaning or other wise to what is mentioned in the previous statement recorded.

Omission - The dictionary defines it as *something that has been left out or excluded.* In trials, while cross examination, an omission takes place when the witness purposely or otherwise misses out/omits any fact or statement he has made in his/her statement recorded earlier.

So, Omissions and Contradictions relate to previous statement made by a witness (most commonly u/s 161 of Code of Criminal Procedure 1973). Omission means missing to state something from the earlier statement. Contradiction means stating something different from the earlier statement. Causes, and more particularly, effects of such 'something missing (omissions)' and 'something different (contradictions)' have to be dealt with by the trial Judge while weighing and appreciating the testimonies of witnesses.

Note:- Write Section 145 of Evidence Act (Cross Examination as to previous statement in writing)

Write Section 92 Evidence regarding contradiction and Subtraction

10) Questions Lawful In Cross Examination:- (Sec. 146)

When a witness cross examined he may be asked any questions which tend :-

- a) To test his veracity.
- b) To discover who he is what is his position in life and
- c) To shake his credit by injuring his character.

11) When witness to be compelled to answer (Section 147):-

If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 132 shall apply thereto.

12) Questions As To Character:- (Sec. 148 & 149)

If a question in cross examination is irrelevant the court may warn him that he is not obliged to answer it. The court in deciding whether a particular question is proper or not consider the following rules :-

- a) Such questions are proper if the imputation would seriously affect the opinion of the court as to the credibility of the witness.
 - b) Such question are improper.
- 1) If the imputation relates matters so remote in time or it would not affect the opinion of the court as to the credibility of the witness.
 - 2) If there is a great disproportion between the importance of the imputation and importance of evidence of a witness.

13) Procedure of Court in case of question being asked without reasonable grounds (Section 150):-

If the Court is of opinion that any such question was asked 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 such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

14) Questions That Will Be Forbidden By The Court:- (Sec. 151 & 152)

The court will forbid:

- a) Any question which it regards as indecent or scandalous unless it refers facts in issue or to matters necessary to be known in order to determine the facts in issue (Section 151).
- b) Any question which appears to the court to be intended to insult or annoy or to be offensive in form (Section 152).

15) Answers to Questions As To Character Can't Be Contradicted :- (Sec. 153)

When a witness answers any question which is relevant in so far as it shakes his credit, no evidence can be given to contradict him but if he answer falsely, he may be charged with giving false evidence.

16) Hostile Witness: - (Sec. 154)

Nowhere hostile term is used nor is described in respect of hostility. Hostile means adverse, unfavorable or alien. These words have been borrowed from the British Law. In a criminal trial when a prosecution witness is summoned to produce evidence he appears before the court but does not confirm his previous evidence / statement recorded or collected by the investigative agency. He is called adverse witness or a hostile witness.

Question by parties to his own witness :- (Section 154):-

The court may permit the person who calls a witness to put any questions to him, which might be put in cross examination by the adverse party.

This is only allowed if the witness proves to be a hostile witness i.e. one who from the manner in which he gives evidence shows that he is not desirous of telling the truth to the court. A witness who is gained over by the other party is hostile witness. The new fact that at a trial before session court a witness tells a different story from truth told by him before Magistrate does not make hostile. The court can permit on demand by a party who calls a witness to declare the witness as hostile and then cross examination by the party who calls the witness is permitted.

17) Impeaching Credit Of Witness:- (Section 155)

The credit of witness may be impeached in the following ways by the adverse party or with the consent of the court by the party who calls :-

1) By evidence of persons who testify that they from the knowledge of the witness believe him to be unworthy of credit.

In order to impeach the character of a witness for veracity witness may be called to prove that his general reputation is such that they would not receive him upon his oath such a evidence can be given, where the general reputation of a witness has been impeached the party calling him may establish his credit by cross examining the witness who has stated against him as to their means of knowledge and the grounds of their opinion.

e.g. A sues B for the price of goods sold & delivered to B. C says that delivered the goods to B evidence is offered to show that on a previous occasions, says that he had not delivered the goods to B the evidence is admissible.

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 is admissible.

The credit of a witness may be impeached on the ground that he had accepted :-

- a) A bribe.
- b) An offer of a bribe.
- c) Any other corrupt inducement. It was open to the defendant that the witness of the plaintiff was bribed of and establish this fact by giving evidence.

- 3) By proof of former statement inconsistent with any part of his evidence which he is liable to be contradicted.

The words which is liable to be contradicted means which is relevant to the issue. A conversation recorded in a tape recorder is admissible in evidence under this clause. The F.I.R. may be used to contradict the statement of witness. A previous statement of a witness before Police Officer can be used but it cannot be used as substantive evidence.

e.g. 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 wound was not given by A. The evidence is admissible.

18) Corroborating Evidence Or Corroboration (Sec. 156):-

Questions tending to corroborate evidence of relevant fact, 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 a 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.

Corroborating Evidence is evidence that tends to support a proposition that is already supported by some initial evidence, therefore confirming the proposition. For example, W, a witness, testifies that she saw X drive his automobile into a green car. Meanwhile, Y, another witness, testifies that when he examined X's car, later that day, he noticed green paint on its fender. There can also be corroborating evidence related to a certain source, such as what makes an author think a certain way due to the evidence that was supplied by witnesses or objects.

19) Former statements of witness may be proved to corroborate later testimony as to same Fact (Section 157):-

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.

20) What matters may be proved in connection with proved statement relevant under section 32 or 33 (Section 128):-

Whenever any statement, relevant under section 32 or 33, is proved, all matters may be proved either in order to contradict or to corroborate it, 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.

21) Refreshing Memory (Section 159 To 161) :-

A witness may refresh his memory by referring to:-

- 1) Any writing made by himself :
 - a) At the time of the transaction concerning which he is questioned.
 - b) So soon afterwards that the transaction was fresh in his memory.
- 2) In such a writing made by another person and read by the witness and known by him to be correct, while his memory was still fresh.
- 3) Professional treatises : If he is an expert.

A witness may with the court's permission, refer to a copy of any document to which he might refer if it were produced provided there is sufficient reason for the non production of the for original, he may also testify to fact mentioned in any such documents, although he has no recollection of them, if he is sure that the facts were correctly recorded in the document.

Any document to refresh memory must be shown to the adverse party, who may cross examine the witness upon it.

22) Production of documents (Section 162):-

A witness summoned to produce a document must, if it is in possession or power bring it to court, notwithstanding any objection which there may be so its production or admissibility. The validity of such objection will be decided by the Court. The Court may inspect the document unless it refers to matters of state or take evidence to determine 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 (45 of 1860).

23) Giving, as evidence, of document called for and produced on notice (Section 163):-

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.

24) Using, as evidence, of document production of which was refused on notice (Section 164):-

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.

25) Courts Questions Or Power Of Court To Put Questions Section 165 & 166 :-

The judge may, in order to ascertain relevant facts :-

- 1) Ask any question at any time to any witness or parties, about relevant or irrelevant facts, though the judgment must be based upon relevant facts only.
- 2) Order the production of any document or thing.

The parties can't object to this course or can they cross examine a witness upon any answer given in reply.

This section is intended to give the judge with the most extensive power possible for the purpose of getting the truth, there is danger in some cases that the whole truth may not come out before the court. The judge in order to discover truth may exercise this power.

The Judge Can't

- 1) Compel a witness to answer a question or produce a document which such witness would be entitled to refuse to answer or to produce under section 121 to 132 (Privileged communications) at the instance of the adverse party.
- 2) Ask any question as to credit which it would be improper for any other person to ask under section 148/149.
- 3) Dispense with primary evidence of any document except where secondary evidence is admissible.

Chapter XI

Improper Admission Or Rejection Of Evidence Section 167 :-

The improper admission or rejection of evidence is not a ground :-

- 1) For a reversal of the judgment or
- 2) For a new trial of the case.

If the court thinks :-

- a) That independently of the evidence admitted, there was sufficient evidence to justify the decision.
- b) That if the rejected evidence had been received it ought not to have varied the decision.

The object of the section is that the court of appeal or revision should not disturb a decision on the ground of improper admission evidence or rejection of, in spite of such a evidence, there are sufficient materials in the case justify the decision. In short

technical objection will not be allowed where substantial justice appears to have been done.

Question Bank

1. Write short note relevancy of fact and admissibility in evidence.
2. Write Short Note On :
 1. Res Gestae
 2. Purpose and evidentiary value of Test Identification Parade
 3. When fact otherwise not relevant becomes relevant.
 4. Distinguish between Relevant fact and Fact in issue.
10. Define " Admission " and explain ' Admission are not conclusive proof of the fact admitted , but they may operate as a estoppel'.
11. Write Difference between Admission and Confession.
12. When are statement made by a person who is dead relevant and admissible in Evidence.
13. Write a short note on :
 - a. Entries in Books of account
 - b. Expert Opinion
14. Explain the difference between direct Evidence and Hearsay evidence , State under which Circumstances hearsay Evidence is admissible and what are the reason for the same ?
15. Discuss facts which need not be proved ?
16. Discuss primary evidence and Secondary evidence?
17. Write a note on Proof of execution of document required by law to be attested ?
18. Discuss special provision as to evidence relating to electronic record and its admissibility?
19. What is Public document ? What are special provision in Evidence Act regarding public document ?
20. Distinguish between Public document and private document ?
21. Write in brief provision relating to Presumption as to Documents

22. Explain the provision relating to admissibility of oral evidence when terms of contract are reduced into writing by parties?
 23. What is Burden of Proof ? On Whom burden of proof lies ? Does burden of proof shift ?
 24. What are the Presumption arising out of Section 114 of the Indian Evidence Act ?
 25. State about Conclusive Presumption under Indian Evidence Act.
 26. State the Presumption as to Dowry Death under Indian Evidence Act.
 27. State the Presumption as to Abetment of suicide by married woman.
 28. Write a short note on Estoppel.
 29. Who is an Accomplice ? How his Evidence is to be assessed ?
 30. What is Examination in chief ? When leading Question can be asked in Examination in chief ?
 31. Write Short Note on :
 - a. Impeaching credit of witness
 - b. Hostile Witness
 - c. Refreshing Memory
 - d. Cross Examination of Witness
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