

2020

# LAW OF EVIDENCE



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**RUBI**  
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## (UNIT -1)

# Indian Evidence Act, 1872

(ACT NO. 1 OF 1872)

**Preamble.**—whereas it is expedient to consolidate, define and amend the Law of Evidence.

**Date of enactment** – 15 March 1872

**Date of enforcement** - 1st September 1872

**Total section** – 167

**Total chapter** – 11

### Introduction and Relevance

**Law – Law are two types**

- I. Substantive law
- II. Procedural law

**Procedural law also two types**

- I. Pleadings and Procedural law
- II. Law of Evidence

## I. Pleading and Procedural law

This law deals with the provisions as to how to prepare a plaint and ascertain responsibility given in the Code of Civil Procedure, 1908. Provisions relating procedure as to how to get an accused person convicted has been dealt within the Code of Criminal Procedure, 1973. Thus, the Code of Civil Procedure and the Code of Criminal Procedure are examples of procedural law.

## II. Law of Evidence

Rules relating to prove a fact, rules relating to examination of the witnesses and what are the facts to be proved, are dealt within the law of evidence. Hence the law of evidence is also a procedural law but it is related to the proving of facts.

### Structure of the Act

**The Indian Evidence Act, 1872 has been divided into three parts :**

Part I (Relevancy of facts)	Chapter 1 Chapter 2	Preliminary (Sections 1-4) Of the relevancy of facts (Sections 5 - 55)
Part II (On proof)	Chapter 3  Chapter 4  Chapte 5  Chapter 6	Facts which need not to be proved (Sections 56 - 58) Of oral evidence (Sections 59 - 60) Of documentary evidence   Sections 61 - 90) Of the exclusion of oral

		by documentary evidence (Sections 91 - 100)
Part III (Production and effect of evidence)	Chapter 7 Chapter 8 Chapter 9  Chapter 10  Chapter 11	Of the burden of proof (Sections 101- 114) Estoppels (Sections 115- 117) Of witnesses (Sections 118- 134) Of the examination of witnesses (Sections 135 - 166) Of the improper admission and rejection of evidence (Section 167)

### Definition

- (i) **Fact**
- (ii) **Relevant**
- (iii) **Fact-in-issue**
- (iv) **Proved**
- (v) **Disproved**
- (vi) **Not proved**
- (vii) **Court**
- (viii) **Document**
- (ix) **Evidence**

(i) **Fact:** - According to S.3, fact means and includes—

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

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

### **Illustrations—**

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

(b) That a man heard or saw something is a fact.

(c) That a man said certain words is a fact.

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

(e) That a man has a certain reputation is a fact.

### **Kinds of Fact:—Fact is of the following two kinds—**

1. **Physical and Psychological Facts** —'Physical' fact is a fact considered to have its seat in some inanimate or animate being, but of the quality by which it is considered animate, but of those which it has in common with class of inanimate things. A horse, a man, is physical facts. This clause refers to external facts, the subject of perception by the five senses, **illustrations (a), (b) and (c) are examples** of this physical fact. A psychological fact is considered to have its seat in some animate being, and that by virtue of the quality by which it is constituted animate. Thus, the existence of visible object, the outward aspect of intelligent agents, range themselves under the former class while to the latter belong such facts as only exist in the mind of individuals, e.g., the sensation or recollecting of which man is conscious, his desires, his intentions in doing particular acts, etc. This clause refers to internal facts the subject of consciousness, such as intention, fraud, good faith and knowledge. The illustrations (d) and (e) are examples of this clause.

2. **Positive and Negative Facts**—the existence of a certain state of things is a positive fact; the non-existence of it is a negative fact. •

**(ii) Relevant:-**

**According to S.3**, one fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

The word "relevant" has two meanings, in one sense it means 'connected' and, in another 'admissible'. According to Stephen, 'relevancy' means connection of events as cause and effect. What is really meant by 'relevant fact' is a fact that has a certain degree of probative force.

**Relevant under the Act**—This Act does not give any definition of the word 'relevant'. It only lays down that a fact becomes relevant only when it is connected with other facts in any of the ways referred to, in this Act relating to the relevancy of facts. Under Chapter II, S. 5 to 55, deal with the relevancy of facts. A fact in order to be relevant fact must be connected with the facts-in-issue or with any other relevant fact in any of the ways referred to in Ss, 5 to 55. A fact not so connected is not a relevant fact. The scheme of the Act seems to be to make all relevant facts admissible.

According to Chamberlayne's Modern Law of Evidence, relevant, as applied to evidence, must be understood as touching upon issue which the parties have made by their pleadings so as to assist in getting at the truth of the disputed facts. Whatever evidence will withstand this test should not be objected to. •

**(iii) Fact-in-issue**

—According to S.3, the expression "facts-in-issue" means and includes-any fact from which, either by itself or in connection with other facts, the existence, non



existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding necessarily follows.

Explanation—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact-in-issue. Illustrations—A is accused of the murder of B. At his trial the following facts may be in issue—

That A caused B's death;

That A intended to cause B's death;

That A had received grave and sudden provocation from B;

That A, at the time of doing the act which caused B's death was, by reason of unsoundness of mind, incapable of knowing its nature. The facts-in-issue may by themselves or in connection with other facts constitute such state of things that the existence of the disputed right or liability would be a legal inference from them. The expression means the matter which are in dispute or which form subject of investigation.

'Fact-in-issue' are those facts which are alleged by one party and denied by the other in the pleading in a civil case or alleged by the prosecution and denied by the accused in a criminal case. •

(iv) **Proved**

**According to S.3**, a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. •

(v) **Disproved**

**According to S.3**, a fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its



non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. •

(vi) **Not Proved**

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

(viii) **Court**

**According to S.3**, Court includes all Judges and Magistrates and all persons, except arbitrators, legally authorised to take evidence. The definition of 'Court' in this Act is framed only for the purpose of the Act itself and should not be extended beyond its legitimate scope. Special Laws must be confined in their operations to their special subject. The definition of the word 'court' in the Act is not meant to be exhaustive. So in a trial by jury, the Court does not exclude the jury, In such a case it means to include both the Judge and the Jury. A court does not include an arbitrator though he is legally authorised to take evidence. •

(ix) **Document**

**According to S.3**, "Document" means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means intended to be used, or which may be used for the purpose of recording the matter. For Examples—

- (a) A writing is a document;
- (b) Words printed lithographed or photographed are documents;
- (c) A map or plan is a document;
- (d) An inscription on a metal plate or stone is a document;

(e) A caricature is a document.

The definition of the term 'document' as given U/S. 3 is very wide. In general parlance the word 'document' is understood to mean any matter written upon a paper in some language, such as English, Hindi, Urdu and so on. But according to the definition given in this Act "**document**" means any matter expressed or described upon any substance, paper, stone, or anything by means of letter or marks. The term 'document' includes 'milkman's score'. Exchequer's tallies, a ring, or banner with an inscription, a musical composition, a savage tattooed with words intelligible to himself. Letters or marks imprinted on trees and intended to be used as evidence that the trees have been passed for removal by a Ranger, are documents. •

(vii) **Evidence**

**According to S.3**, "Evidence" means and include -

1. All statement which the Court permit or requires to be made before It by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;
- 2, All documents produced for the inspection of the Court; such documents are called documentary evidence,

The word "evidence" in the Act signifies only the instruments by means of which relevant facts are brought before the court. The instruments adopted for this purpose are witnesses and documents. Under this definition the evidence is divided in two classes: -1. Oral and 2.Documentary,

1. **Oral Evidence**—the oral evidence means statement made by a witness before a court in relation to matter of fact under inquiry.
2. **Documentary Evidence** —when a document is produced in a case in support of the case of the party producing it, the document becomes the documentary evidence in the case. A document is evidence only when it is

produced for the inspection of the Court. Consequently, a writing obtained by the court from the accused for comparison is not evidence as it is not a document produced for the Inspecting of the Court. •

## **Relevancy of facts forming part of same transaction**

**( Res-gestae )**

**(section – 6,7,8,9 )**

(xi) **Res-gestae**—According to S.6, the relevancy of the fact forming part of the same transaction, though not in issue, are so connected with a fact-in-issue as to form part of the same transaction are relevant, whether they occurred at the same time and place or a different times and places. For Examples—

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

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

(Hi) The question is, whether certain goods ordered from B were delivered to A .The goods were delivered to several intermediate persons successively each delivery Is a relevant fact.

Thus, the principle laid-down that whenever a "transaction" such as a contract or a crime, is a fact-in-issue, then evidence can be given of every fact which forms part of the same transaction. The section is quite apparently based upon the English doctrine of res-gestae though this word has been scrupulously avoided b)

the section. The reason why this word has been avoided is that the doctrine has been productive of confusion. The phrase is Latin which liberally means "things done" and when translated into English means **"things said and done in the course of a transaction"**. Every case that comes before a Court of Law has a fact story behind it.

Every fact story is made of certain acts, omissions and statements-Every such act, omission or statement as throws some light upon the nature of the transaction or reveals its true quality or character should be held as a part of the transaction and the Evidence of it should be received. A man was prosecuted for the murder of his wife-his defense was that the shot went off accidentally. There was evidence to the effect that the deceased telephoned to say—"Get me the police please". Before the operator could connect the police, the caller, who spoke in distress, gave her address and the call suddenly ended. Thereafter the police came to the house and found the body of a dead woman. Her call and the words she spoke were held to be relevant as a part of the transaction which brought about her death. Her call in distress showed that the shooting in question was intentional and not accidental. For no victim of an accident could have thought of getting the police before happening.

This is the utility of the doctrine of res-gestae. It enables the court to take into account all the essential details of a transaction.

A transaction is a group of facts so connected together as to be referred to by a single name, as a crime, a contract, a wrong or any other subject of inquiry which may be in issue. A transaction can be truly understood only when all its integral parts are known and not in isolation from each other. 'it may be arbitrary and artificial to confine the evidence to the firing of the gun or the insertion of the knife without knowing in a broader sense, what was happening. Thus, in O'Leary Vs. Regent, 1946 evidence was admitted of assaults, prior to a killing, committed by the accused during what was said to be a continuous

**Acts or Omission of Res-gestae**—Acts or omission so far it is concerned/ nature of the transaction may itself guide what should be essential parts. For Example; where there is a conspiracy to overthrow the popular Government of India by force, funds for the purpose are force It trained at Kanpur, All these acts, though isolated in time and space, are still the part of the same transaction. This Is true that these all transactions which are of continuing nature is part of res- gestae.

**Statement as Res-gestae**—where the statements are part of the same transaction the doctrine of res-gcstae would be applied. For Example; an injured person compelled to cry, it is very natural that he got to cry under pain or for help or spell out the name and description of his attacker. If, the transaction e.g., an accident happened in a public place, a number of by slanders will make mutual conversation about the accident. The question is to what extent such statement can be regarded as parts of the transaction. Thus, where a man has killed another by beating him. Whatever was said or done by the offender and the deceased or the by standers at the beating or so shortly before or after it as 10 form part of the transaction, it Is a relevant fact •

**Section 7 :- Facts which are the occasion, cause or effect of facts in issue.**—Facts the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts issue, or which constitute the state of things under which they happened; or whan opportunity for their occurrence or transaction, are relevant.

### **Illustrations**

(a) The question is whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in possession, and that he showed it or mentioned the fact that he had it, to third person, are relevant.

(b) The question is whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the mur was committed, are relevant facts.

(c) The question is whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of known to A, which afforded an opportunity for the administration of poison, are relevant facts.

### NOTES

This section declares the following facts to be relevant:

- (i) Facts of cause or causation (illustration a);
- (ii) Facts of effect (illustration b)
- (iii) Facts affording occasion or opportunity (illustration c); and
- (iv) Facts constituting the state of things (illustration c).

**Tape recorded conversation.**—It is relevant under Sections 6, 7 and 8.

R. M. Malkani v. State of Maharashtra, AIR 1973 SC 157.

In *Nirmala v. Ashuram*, 2000 Cri L.J. 2001 (Rajasthan), it has been laid down that identification of tape recorded conversations is conclusive subject and in such a situation the Court may direct to tape the voice of the person concerned with a view to know whether the voice is of the same person of whom it is claimed to belong and if the person as directed refuses so to do, a contrary presumption shall be made.

Evidence of tape recorded conversation is admissible provided the conversation is relevant to the matter in issue, there is need of identification of the voice and the accuracy of tape recorded conversation is to be proved by eliminating the possibility of erasing the tape record. The time, place and accuracy of the recording must be proved by a competent witness and the voice must be properly identified. *Usufalli v. State Maharashtra*, AIR 1968 SC 147.



## **Motive, Preparation and Previous or Subsequent Conduct** **(Sec. 8)**

**Motive, Preparation and Previous or Subsequent Conduct** — according to S. 8, any fact is relevant which shows or constitutes a motive or preparation for any act in issue or relevant fact.

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

**Explanation 1.**—The word "conduct" in this section does not include statements, unless those statements, accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Act.

**Explanation 2.**—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

**Scope of S. 8**—S. 8 deals with the relevancy of motive, preparation and conduct. It lays down that—

1. A fact which shows or constitutes a motive for any fact-in- issue or relevant fact, is relevant.
2. A fact which constitutes or shows preparation for any fact in issue or relevant fact, is relevant.
3. Previous or subsequent conduct of any party or of any agent to any party to any suit or proceeding, in reference to -such suit or proceeding, or in reference to



any fact-in-issue or relevant fact, are relevant provided such conduct influences or is influenced by any fact in issue or relevant fact;

4. Previous or subsequent conduct of any person an offence against whom is the subject of any proceeding or suit is relevant provided such conduct influences or is influenced by any fact-in-issue or relevant fact;

5. Statement's accompanying and explaining acts (Explanation-1 )

6. Statements made in the presence and hearing of a person whose conduct is relevant provided the statement affects such conduct.

(a) **Meaning of Motive** —A motive is the reason which moves a man to do a particular Met. It is that which moves him to act. "The common inducement to acts, are the desires of revenging some real or fancied wrong; of getting rid of rival, or an obnoxious connection, or of escaping from the pressure of pecuniary or other obligation or burden; of obtaining plunder or other coveted object; of preserving- reputation or of gratifying some other selfish or malignant passion"

Motive is an emotion, a State of mind, but it is often confused with events tending to excite, to emotion, the outward facts, which may be the stimulus and the cause of the emotion. Motive, in the correct sense is the emotion supposed to have led to the act. It is generally proved by two sorts of circumstantial evidence, namely: 1. Conduct of the person, and 2. by events about that person which could excite that emotion. Conduct is effect and expression of that inward emotion.

Illustrations (a) and (h) of S.fc. art examples of motive —

According to Illustration (a), A has committed murder of which B has knowledge and B tries to extort money from A by threatening to make Ms Knowledge public. A, lit consequence, kitta B also. B's knowledge of A's earlier murder and his threats are relevant as showing motive on A's part to eliminate him also.

(ii) According to the illustration (b), if a person has borrowed money, the fact that he needed the money for a particular purpose it relevant. Similarly, in R.V. Richardson, the fact that the accused was the father of the child of which the

deceased was pregnant at the time was held to be relevant, as he might have killed the girl to save hit character.

(b) **Meaning of Preparation**—Evidence tending to show that the accused made preparation to commit a crime, is always admissible. Preparation only evidences a design or plan to do a certain thing as planned. It is not always carried out but it is more or less likely to be carried out. The existence of the plan is always used in daily life as the basis of inferences to the act planned.

Preparation by itself is no crime. The act of purchasing a pistol for the purpose of shooting down a man or a match box for burning a house, is by itself no offence. But once an offence has been committed, the evidence of preparation becomes most important for the crime must have been committed by the man who was preparing for it. Thus, For Example, the sharpening of a knife before an affray in which the knife was used is relevant as an act of preparation. For the same reason, it is relevant to show that the accused hired a revolver a few days before the murder.

**Illustration (c) to S. 8** refers to an act of preparation. Where death is caused by poisoning, the fact that shortly before the accused procured poison similar to that which was administered is relevant.

**Illustration (d) to S.8** refers to the acts of preparation that go before the making of a will. In reference to wills the question usually arises whether the will is genuine or forged. The illustration says that not long before the date of the will, the testator made inquiries into the matter to which the provisions of the will relate, that he consulted vakils in reference to making the will and that he caused drafts of other wills to be prepared of which he did not approve, are relevant. These acts of preparation go to show that the will may be genuine.

**Meaning of Conduct**—The conduct is the expression in outward behaviour of the quality or condition operating to produce those effects, These results are the traces by which we may infer the moving cause. A man's conduct includes what he does and what he omits to do. Conduct may, in certain circumstances, include statements as is made clear by the explanation 1.

**Previous or Subsequent Conduct**—A conduct to be relevant U/S. 8 need not be contemporaneous. It may be antecedent or subsequent to the fact-in-issue or relevant fact. In an adoption case deed of adoption found not to be clinching but as evidence of subsequent conduct of the parties is relevant. Complaints of them deceased to the police expressing apprehension of death made two months before death are admissible.

**Illustrations to S 8.** Explain the relevancy of the conduct as under— For Examples—

(e) A is accused of a crime.

The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

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

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

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

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

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

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant

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

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

The fact that without making a complaint, she said that she had been ravished, is not relevant as conduct under this section, though it may be relevant:

As a dying declaration U/S. 32, clause (1),

Or as corroborative evidence U/S. 157.

(k) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had, been robbed, without making any complaint, is not relevant as conduct under the section, though it may be relevant:

as a dying declaration U/S. 32 clause (1), Or

as corroborative evidence U/S. 157.

## **(Section 9 )**

### **Facts necessary to explain or introduce relevant facts.**

Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish

identity of anything or person whose identity is relevant, or fix the time or place which any fact in issue or relevant fact happened, or which show the relation of parties whom any such fact was transacted, are relevant in so far as they are necessary for purpose.

#### Illustrations

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

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

(b) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c) A is accused of a crime.

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

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

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

(d) A sues B for inducing C to break a contract of service made by him with A. C, leaving A's service, says to A—"I am leaving you because B has made me a

better off This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue. . \_ 1

(e) A, accused of theft, is seen to give the stolen property to B, who is seen to give to A's wife. B says as he delivers it—"A says you are to hide this." B's statement relevant as explanatory of a fact which is part of the transaction.

(f) A is tried for a riot and is proved to have marched at the head of a mob. The conduct of the mob are relevant as explanatory of the nature of the transaction.

### Notes

Section 9 declares the following kinds of facts to be relevant:

- (i) Introductory facts (illustrations (a) and (b));
- (ii) Explanatory facts (illustrations (a), (c), (d), (e) and (f));
- (iii) Supporting or rebutting facts [illustration (c)];
- (iv) Facts identifying person or things (identification parade);
- (v) Facts fixing the time and place;
- (vi) Facts showing the relation of parties.

Identification Parade.—By whom it is to be held?

In *Ram Kishan v. State of Bombay*, AIR 1953 Bilaspur 3, Hon'ble Supreme Court has said that any person may hold identification parade and on the same basis, Supreme Court in the said case accepted identification parade held by the arbitrators.

Identification of accused by witness in the Court is substantial piece of evidence where accused is not known previously by the witness. *Suresh Chandra v. State of Bihar* AIR 1994 S.C. 2420.



## **(Section 10)**

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

Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well 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.

#### **Illustrations'**

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

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

#### **NOTES**

The underlying principle of Section 10 is that transaction of a stranger may not affect other parties.

- Definition of conspiracy should be taken from Section 120-A, IPC.
- There are four essential elements of a conspiracy:



- (1) Two or more than two persons;1
- (2) An agreement among them;
- (3) Illegal object thereof, and;
- (4) Achieving of object by illegal means.

### **Important decision**

1. Badri Prasad V. State of Bihar AIR 1968 SC.
2. Mirza Akbar V. Emperor AIR 1940 P.C.
3. R. V. Black (1844) Q and B.

Section 10 of the Indian Evidence Act is more exhaustive than that of English law.

## **Alibi**

**Alibi—According to S. 11**, facts not otherwise relevant are relevant —

1. If they are inconsistent with any fact-in-issue or relevant fact;
2. If by themselves or in connection with other facts they make the existence or non-existence of any fact-in-issue or relevant fact highly probable or improbable. For Examples—
  - (a) The question is, whether A committed a crime at Calcutta on a certain day. The fact that, on that day, A was at Lahore is relevant. The fact that near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.
  - (b) The question is, whether A committed a crime. The circumstances are such that the crime must have been committed either by A, B, C, or D. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B,C or D is relevant.

**Inconsistent Facts and Probabilities**—S.11 deals with facts which ordinarily have nothing to do with the facts of a case and are not in themselves relevant, but they become relevant only by virtue of the fact that they are either inconsistent with any fact-in-issue or relevant fact or they make the existence of a fact in issue or a relevant fact either highly probable or improbable.

**Inconsistent Facts—Plea of Alibi**—Evidence can be given of facts which have no other connection with the main facts of a case except this that they are inconsistent with a fact-in-issue or a relevant fact. Their inconsistency with the main facts of the case is sufficient to warrant their relevancy. This section enables a person charged with a crime to take what is commonly called the plea of alibi which means his presence elsewhere at the time of the crime. His presence elsewhere is inconsistent with the fact that he should be present at the place of the crime. Where, For Example, a person is charged with murder which took place at Calcutta he can take the defense that on the day in question he was in Bombay. In order to prove his presence in Bombay he may show his attendance at some place, For Example, the fact that he visited a doctor or a vakil and he noted his visit in a professional diary or that he posted a letter written by himself on that day from Bombay, or that he encashed a cheque at Bombay.

It is well-settled that the burden of substantiating the plea of alibi and making it reasonably probable lies on the person who sets it up, The Supreme Court has stated—"The plea of alibi postulates the physical impossibility of the presence of the accused at the scene of the offence by reason of his presence at another place. The plea can, therefore, succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed". Applying this to the facts of the case the court held that the plea of alibi was not established as the gap between the factory where the accused worked and where he was present at 8.30 A.M. and the place of murder which took place at 9 A.M. was so short that the accused could have easily reached there.

**Facts Showing Probabilities**—Evidence can be given of every fact which by itself or in connection with other facts makes the existence or non-existence of any

fact-in-issue or relevant fact highly probable or improbable. In many cases, particularly in reference to some of the facts which are not directly provable, the court has to go by the probabilities of the situation. If, For Example, there are five persons in a room and one of them is murdered in circumstances which show that it is the handiwork of any one or more of them. Evidence will be allowed of every fact which makes it probable which one of them caused the death or which one of them was probably not connected with it. Where a person is charged with cheating, evidence can be given of the fact that he belonged to an organization of habitual cheats as this would make it probable that he committed the crime. •

**Reference :-**

- 1. Bare Act.**
- 2. Ratan Lal & Dhiraja Lal - the Law of Evidence**
- 3. Avtar Singh - Principles of Law of Evidence**