

**Study Material**

**Law of Evidence- I**

**B.A.LL. B (HONS) V SEMESTER**

**Unit-1**

**INTRODUCTION AND GENERAL CONCEPTS IN LAW OF EVIDENCE**

**Importance of necessity of the rules of law of evidence**

**What is evidence law?**

Before dealing with “evidence law”, it is important to discuss about the concept of “evidence” in general since evidence and law of evidence are two different things. The word “evidence” is originated from a Latin term “*evidentia*” which means to show clearly, to make clear to the sight to discover clearly certain, to ascertain or to prove. Thus, evidence is something, which serves to prove or disprove the existence or non-existence of an alleged fact. The party who alleges the existence of a certain fact has to prove its existence and the party, who denies it, has to disprove its existence or prove its non-existence.

However, all facts traditionally considered, as evidence may not be evidence in the eyes of evidence law. Rather, evidence is something presented before the court for the purpose of proving or disproving an issue under question. In other words, evidence is the means of satisfying the court of the truth or untruth of disputed fact between the parties in their pleadings.

The title of the course, is the law of evidence. That does not mean only the rules concerning whether a given piece of information is admissible or not, but also such questions as what happens if there is no evidence on a given point? How much evidence, if any must a party introduce to prevent a court from ruling against him on factual proposition? What are the roles of the judge in evaluating the evidence and the like? To this effect, Robert Arthur Melin [here after referred as Melin], have made an attempt to define evidence law in a more comprehensive way. He defined it as follows:

The law of evidence is the body of legal rules developed and enacted to govern:

- I. Facts that may be considered in court? This is the issue of relevant evidence that one should adduce before the court to support his allegation.
- II. Facts in issue
- III. Facts relevant to facts in issue.
- IV. The methods of securing consideration of these facts.
- V. By proof.
  - a. Real (e.g. documentary, exhibits) evidence.
  - b. Oral evidence

Certain facts, which need not be proved

- I. Judicial notice- Facts so notorious as to facts in public knowledge, capable of being verified by authoritative texts
- II. Judicial admission (facts admitted in pleadings, at open court, in examination of parties, in testimony etc.)

The party that must secure consideration of what facts: This is about burden of proof and degree of proof required to win the case.

- The law of evidence therefore means legal means, exclusive of mere arguments, which tend to prove or disapprove any matter of fact the truth of which is submitted to judicial investigation.
- The law of evidence covers aspects on:
  - Who should adduce evidence before the court?
  - How to obtain such evidence?
  - Procedures of adducing evidence
  - Admissibility & Evaluation of evidence
  - Application of the evidence to render final verdict
- In terms of section 3 of the Evidence Act, Cap 6 R.E 2002

"evidence" denotes the means by which an alleged matter of fact, the truth of which if submitted to investigation, is proved or disproved; and without prejudice to the preceding generality, includes statements and admissions by accused persons.

#### Nature of Evidence law:

Where is the place of evidence law in relation to other laws?

It is important to know the place of evidence law in relation to other laws. Laws may broadly be classified into substantive and adjective. Adjective laws are concerned with the method of presenting cases to court proving them or generally enforcing the rights and duties provided under the substantive laws. While substantive laws, are those that define rights and duties. This forms the greater part of the law, it would seem that it is more important part, since it defines what rights, privileges and duties one person may have against or owe another. However, the rights, privileges and duties that exist under such law will mean nothing unless they can be enforced. This is why adjective law is just as important as the substantive law.

Law of evidence is categorized under adjective law together with procedural laws, both criminal and civil procedure. Of course, some scholars suggested that there will not be any problem if we incorporate rules of evidence as one part of procedural law since they have similar purpose. However, the consensus has been reached in categorizing law of evidence as one part of adjective law for the sake of establishing more effective system of adjudication of cases before the court of law.

Although one can see grains of evidence law in procedural laws, their main dealing is with how pleadings can be framed, investigation conducted, evidence collected etc... This does not necessarily make the law of evidence to be part of procedural law.

There are certain issues procedural laws never address and are left to evidence law. For instance, in the procedural law you did not study about the standard of proof, facts to be proved or need not be proved and the value to be given to each term of evidence etc. These are left to evidence law therefore evidence law is not strictly speaking procedural law, but shares the commonality with procedural laws in the sense that both are means to the enforcement of the substantive law. Thus, evidence law suitably falls within the general category of Adjective laws, which deal with the enforcement of the substantive law.

Purpose or significance of Evidence law:

Evidence is the “Key” which a court needs to render a decision. Without evidence there can be no proof. Evidence provides the court with information. Proving facts through the presentation of evidence mean convincing court to accept a particular version of events. Of course, one can search truth even through violating the constitutional rights of the parties. However, evidences obtained through unlawful means could not contribute for the maintenance of justice in the future. So, the process of proof should be regulated by evidentiary rules and principles in order to achieve accelerated, fair and economic Justice.

In both criminal and civil proceedings, the law of evidence has a number of purposes. In short, the law of evidence regulates the process of proof. The rule of civil and criminal evidence, in conjunction with the rules of procedure, establish the frame work for the process of proof and the conduct of litigation, so that a lawyer advising his client or preparing his case for trial or presenting it to the court or tribunal will know what issues his client must prove in order to succeed.

**Main features of Indian Evidence Act, 1872**

1. The Indian Evidence Act 1872 is divided into three parts, 11 chapters and comprises of 167 sections. Part I of the act deals with the Relevancy of facts, Part II deals with proof and the various kinds of evidence and Part III deals with the Production and Effect of evidence.
2. The Act came into force on September 1, 1872.
3. It applies to the whole of India except Jammu and Kashmir.
4. The Act applies to all judicial proceedings in a court including court martials other than courts martial convened under the Army Act, the Naval Discipline Act, the Air force Act.
5. It does not apply on affidavits presented to any Court or Officer and arbitration.
6. The Act is based on English Evidence law with few exceptions.
7. The Indian Evidence Act ,1872 applies to both civil and criminal proceedings.
8. The Act is not exhaustive. There are many statutes which supplement the Evidence Act Some of them are-
  - a. CRPC
  - b. CPC
  - c. Bankers book evidence act
  - d. Stamp act
  - e. Indian Limitation Act
9. The Act deals particularly with the subject of evidence and its admissibility. It is a special law which defines, consolidates and amends the laws of evidence.

10. Parties cannot contract to exclude the provisions of the Act. Evidence excluded by the Act will be inadmissible even if essential to ascertain the truth.
11. The Act stipulates that evidence in a court must be given of facts in issue and relevant facts alone.
12. The Act is dynamic in nature and has evolved with time. Two of the most recent developments in the act came with Information Technology Act, 2000 and Criminal law (amendment) act, 2013.

**Definition (Sec.3)- Facts, Facts in Issue and Relevant facts, Evidence and its Kinds, Proved, Disproved, and not Proved, Presumptions (Sec.4)**

**Section 3, Interpretation clause:** *In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:*

*“Court”.* — *“Court” includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence.*

*“Fact”.* — *“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.*

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

*“Facts in issue”.* — *The expression “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: —*

Prof. Javaid Talib  
Prof. Md. Ashraf  
Dept. of Law, AMU

*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.*

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

*Illustrations:*

*A writing is a document;*

*Words printed, lithographed or photographed are documents;*

*A map or plan is a document;*

*An inscription on a metal plate or stone is a document;*

*A caricature is a document.*

*“Evidence”*. — *“Evidence” means and includes—*

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

*(2) all documents including electronic records produced for the inspection of the Court, such documents are called documentary evidence.*

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

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

*“Not proved”*. — *A fact is said not to be proved when it is neither proved nor disproved.*

*“India”*. — *“India” means the territory of India excluding the State of Jammu and Kashmir.*

*[the expressions “Certifying Authority”, [electronic signature], [Electronic Signature Certificate], “electronic form”, “electronic records”, “information”, “secure electronic record”, “secure digital signature” and “subscriber” shall have the meanings respectively assigned to them in the Information Technology Act, 2000 (21 of 2000).]*

## **Fact**

The term “Fact” under the Evidence Act refers to the following:

1. **External Facts-** Anything or state of a thing or relation of things which is capable of being perceived by the five senses.
2. **Internal Facts-** Any mental condition regarding which a person is conscious of.

The section further consists of the following illustrations:

- The arrangement of certain objects in a certain order is a fact
- A man hearing or seeing something is a fact
- A man uttering certain words is a fact
- A man holding a certain opinion, having certain intention, acting in good faith or in a fraudulent manner, or using a particular word in a particular sense, or being or having been conscious of a particular sensation at a given time is a fact
- A man having a certain reputation is a fact

*Events which have neither occurred in the past nor in the present but are likely to occur in the future does not fall within the ambit of the definition of “Fact” under the Indian Evidence Act, 1872.*

### **Relevant**

Section 3 of the Indian Evidence Act, 1872, defines relevancy as “*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 the Act relating to relevancy of facts.*” The said provisions are contained in **sections 5 to 55** of the Evidence Act.

A fact may either be logically relevant or legally relevant. Where a fact bears such casual relation to the other that it renders probable its existence or non-existence, it is said to be a logically relevant fact. For instance, where it is to be determined whether A has placed the murder weapon in the field or not, the fact that B saw A walking towards the field with the murder weapon is relevant.

The Evidence Act recognizes some of the kinds of causal relations. Thus, those kinds of causal relations which are recognized by law are known as legally relevant fact. Therefore, while all legally relevant facts are logically relevant, all logically relevant facts may not be legally relevant. For instance, an accused gives the following statement- “I have kept in the field the knife with which I killed A.” While the statement may be logically relevant to establish the guilt of the accused, its legal relevancy extends to only so far as it confirms the fact that the accused had kept the knife in the field. This is so because section 27 of the Evidence Act clearly lays down that only that part of the information may be proved which clearly relates to the fact thereby discovered.

### **Facts in Issue**

The expression “Facts in issue” refers to facts out of which a legal right, liability or disability arises and such legal right, liability, or disability is involved in the inquiry and upon which the Court has to give the decision. The question as to what facts may be “facts in issue” must be determined by substantive law or the branch of procedural law which deals with

pleadings. Generally, in criminal cases the charge constitutes the facts in issue whereas in civil cases the facts in issue are determined by the process of framing of issues.

## **Evidence**

*Section 3 of the Indian Evidence Act, 1872 defines Evidence as – “—“Evidence” means and includes —(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence; (2) all documents including electronic records produced for the inspection of the Court; such documents are called **documentary evidence.**”*

Evidence can be said to be any matter of fact which produces a persuasion in the mind regarding the existence and non-existence of some other matter of fact. Evidence may be oral, which refers to the testimony of witnesses, or documentary, which refers to the documents and electronic records tendered before the Court. The guilt of an accused may be proved using circumstantial evidence also.

Circumstantial evidence refers to the indirect method of proving the guilt of an accused by drawing inferences from certain facts which are closely related to the facts in issue. However, the standard of proof required for circumstantial evidence is quite high and courts are usually cautious while basing convictions upon circumstantial evidence.

## **Section 3 defines proved, disproved and Not Proved as follows:**

### **Proved**

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

### **Disproved**

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

### **Not proved**

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

A fact is said to be not proved when either its existence nor its not existence is proved. It also indicates a state of mind in between the two, that is one cannot say whether a fact is proved or disproved. It negatives both proof and disproof.

**Distinction between Proved, Disproved and Not Proved.**

No	Proved	Disproved	Not Proved
1	The term 'proved' is positive	The term 'disproved' is negative.	The term 'Not Proved' is a mean between the terms proved and disproved
2	When fact is proved the court gives judgment in favour of the person, who has proved it.	When a fact is disproved no further question arises as to its proof.	When a fact is not proved, it implies further evidence either to prove or disprove the fact.

**Section 4, “May presume”:** *Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.*

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

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

**May presume:** A court has discretion to presume a fact as proved, or to call for confirmatory evidence as the circumstances require. In such cases the presumption is not a hard and fast rule. The presumption is *juris et de jure*. The court is free to presume any fact or not as the presumptions are about the question of facts. It may regard such fact as proved, unless and until it is disproved or may call for the proof of it.

If in a case the court has an option to raise the presumption and raises the presumption, the distinction between two categories of presumptions ceases and the fact is presumed, unless and until it is disproved. It is open to the Court upon proof of a marriage on a certain date, either to regard as proved the subsistence of the marriage on a subsequent date unless and until it should be disproved or else to call for proof of it.

Example:

Under section 90 of the Evidence Act when a document of thirty years old is produced before the court, it may be presumed that the document was signed and written by a person by whom it was presumed to have been written and signed. Similarly, Section 88 of this Act deals with presumption (may presume in nature) such as to telegraphic message.

**“Shall presume”:** The court is bound to presume a fact as proved. The presumption is irrebuttable presumption as it is presumption of law. Whenever there is provision to the effect, “that the court shall presume a fact,” the court cannot exercise its discretion, but in such circumstance the court shall have liberty to allow opposite party to adduce evidence to disprove

Prof. Javaid Talib  
Prof. Md. Ashraf  
Dept. of Law, AMU

the fact so presumed. If the party is successful in disproving it the court shall not presume the fact. The expression “shall presume” is to be understood as in terrene i.e. having some import of compulsion.

#### Example:

Under section 89 of the Evidence Act “the court shall presume that every document, called for and not produced after notice to produce attested, stamped and executed in the manner required by law.”

**“Conclusive proof”:** When a fact is a ‘conclusive proof’ of another fact the court has no discretion to disprove it. It is irrebuttable presumption and the court shall not allow evidence to be given for the purpose of disproving it. “Conclusive proof” gives an artificial probative effect by the law to certain facts. No evidence is allowed to be produced with a view to combating that effect. In this sense it is irrebuttable presumption. “Conclusive proof: is also within the realm of the Evidence Act. Where a statute makes certain facts as final and conclusive, evidence to disprove such facts is not to be allowed. This is the strongest of all presumptions. When any person signs a document is presumed that he has read the document properly and understood it and only then he has affixed his signature thereon, otherwise no signature on a document can ever be accepted. “In particular, businessman, seeing careful people (since their money is involved) would have ordinarily read and understood a document before signing it. Hence the presumption would be even stranger in their case.”

#### Example:

Birth during marriage, a final judgment of the court, or a degree conferred by the University.

### **Relevancy and Admissibility**

#### Definition of Relevancy and admissibility

#### Relevancy

Relevant Evidence is evidence that makes a reality practically obligated to be legitimate than it would be without confirmation. Relevant proof might be rejected for unreasonable partiality, perplexity, or a waste of time. The relevant proof is commonly permissible and irrelevant proof is never acceptable. Two main fundamental standards on relevance:

1. Nothing is to be received which is logically not verified regarding the matters which are required to be proved.
2. Unless and until the clear ground of law or policies excludes it, everything which is verified or probative should come in. Relevancy act as a link between a statement of proof and a statement that needs to be proved.

One fact is said to apply to one another when one is associated with the other in any of the ways alluded to in the provisions of The Indian Evidence Act relating to the relevancy of fact.

Indian Evidence Act does not give a particular meaning of relevancy or relevant fact. It essentially depicts when one fact become applicable to another one.

Sec.5 to Sec.55 of Indian Evidence Act gives a few manners by which one fact might be associated with another fact and in this way the idea of relevant fact can be distributed. One

Prof. Javaid Talib  
Prof. Md. Ashraf  
Dept. of Law, AMU

fact is pertinent to another fact if they are associated with one another in any of the ways as portrayed in Section 5 to Section 55. In the event, if a fact isn't so associated, then the fact is irrelevant.

A court may bar important proof when the probative estimation of the proof is significantly exceeded by the peril of at least one of the accompanying: out of line bias; confounding the issues; misdirecting the jury; undue postponement; unnecessarily exhibiting aggregate proof.

### Admissibility

All the relevant facts which are admissible by the court are called admissibility.

As per the Section 136 of the Evidence Act, the final discretion of the admissibility of evidence of the case lies with the judge. Section 136 of the Evidence Act states that exactly when either assembling proposes to give proof of any reality or actuality, the Lord justice may ask the social event proposing to give the proof how the alleged truth, at whatever point illustrated, would be huge; and the judge will surrender the verification if he envisions that the truth, at whatever point appeared, would be relevant, and not something different.

### Essential ingredients of Admissibility

1. The judge is the only person who determines relevancy and admissibility.
2. When an individual proposes to show proof of any fact, the judge may ask an individual to explain 'in what way' the fact is relevant.
3. The judge would concede the particular demonstrated reality just if he is content with the suitable reaction of the individual that it is, to be sure, significant under either provision of S. 6 to 55. Hence the thought of relevancy begins first and of admissibility later and the judge will concede the reality only if it is relevant.

### What is Relevant Evidence?

All reality is relevant which is equipped for bearing any reasonable assumption as to facts in issue or principal matter in dispute. Sir "Stephen," said that relevancy means a connection of event as cause and effect. By and large, the realities significant to an issue are those actualities that are important for evidence or disproof of reality in the issue. Such realities might be given in proof legitimately or inferentially.

What is truly implied by 'relevancy of fact' is a fact that has a specific level of probative power. They are not certainties in issue but rather may influence the probability of reality in the issue.

Relevant evidence is auxiliary or collateral in nature, yet appropriate or likely in offering ascend to a derivation of right or risk by a procedure of thinking.

A fact will be relevant only when it has a link with the facts in issue, but it is not admissible. For example- communication between spouses during the marriage or any professional communication or communication which is made regarding the affairs of the state these all are not admissible but they are relevant. A particular fact is reasonably connected to the main issue it can be easily ascertained by logic and not by law. Therefore, logical relevancy signifies a reasonable link between the facts. Basically, it is a question of fact in which lawyer duty arises

Prof. Javaid Talib  
 Prof. Md. Ashraf  
 Dept. of Law, AMU

and they have to decide whether to tender the proof in the court or not. The Relevant fact is given in evidence to act from Section 5 to 55 and they are admissible in court.

**Case – Knapp v. state**

In the American case of Knapp v. state, the standard of law expressed by the court was that “the assurance of the determination of a particular thing of evidence lays on whether verification of that evidence would sensible in general assistance settle the essential issue at trial.

Essential ingredients of relevance

1. Relevancy is not totally dependent on law.
2. Relevancy is determined on the basis of practical experience, logic, common sense, human experience and basic knowledge of affairs.

Difference between relevance and admissibility

<b>Relevance</b>	<b>Admissibility</b>
At the point when certainties are so related as to render the presence or non-presence of different facts likely as indicated by the normal course of occasions or human conduct, they are called relevancy.	At the point when facts have been announced to be lawfully significant under I. E. Act, they become admissible.
It is found on the basis of the rationale and human experience.	It is established on law, not on the rationale.
The provision regarding relevancy is discussed under Section 5 to 55 of the Evidence Act.	The provision regarding admissibility is discussed under Section 56 of the Indian Evidence Act.
It mainly emphasis on what facts are necessary to prove before the court and not?	Between relevancy and proof, it acts as a decisive factor.
It basically implies the relevant facts.	It mainly focuses on what facts are admissible and what facts are not admissible.
Relevancy is basically a cause.	It is mainly an effect.
The court has the power to apply discretion in relevancy.	The discretion cannot be applied by the court in admissibility.
Admissible facts can be relevant.	Relevant facts are not admissible. Legal relevant facts are admissible.

**Case- *Ram Bihari v State of Bihar***

In this case, the supreme court observed that relevance and admissibility are synonyms to each other but their legal implications are different from each other, and the admissible facts may not be relevant.

Relevant facts (Section 9)

Facts will help in supporting, refuting, clarifying or presenting significant realities are additionally important under this section, for instance, if an individual is absconding away not long after in the wake of being blamed for a wrongdoing, it is applicable as lead ensuing and influenced by certainties in the issue. In *Sainudeen v State of Kerala* (1992 Cr LJ 1644 Kerala), distinguishing proof of the blamed through his voice was significant under this section.

This Section likewise covers test recognizable proof processions (TI parades). Its utility was clarified by the Supreme Court in *Ramanathan v State of TN* (AIR 1978 SC 1201) expressing that the normal and old routine with regards to arranging suspects for distinguishing proof by observers or by the unfortunate casualty winds up fundamental where the personality of the culprit is obscure.

**Case – *Lakkshmandas Chaganla Bhatia v State***

Section 9 of the Evidence Act, 1872, brings out certain facts which can be treated as applicable. On the basis of this case *Lakshmandas Chaganlal Bhatia v. State*, the court laid down some of the following relevant facts:

1. Facts are important to clarify or present reality in issue or relevant fact.
2. Certainties that support or counter an induction proposed by a fact or truth in issue or a relevant fact. Realities that set up the character of anything or individual whose personality or identity is relevant. Substances which fix the time and spot at which any reality in issue or noteworthy assurance occurred. Certainties which shows the relationship of social events by whom any reality in issue or fitting truth was executed.

Another section of the Indian Evidence Act which manages adequacy is Section 11. Section 11 manages those substances which are not regularly noteworthy yet somewhat wound up being significant in the event that they are conflicting with any appropriate truth or they make the proximity or non-closeness of any relevant sureness exceedingly more likely than not or fantastical.

***Sheik Ketab-Uddin v. Nagarchand Pattak***– In this case, it was held, that where the executants of a record-holding presentations of cut-off purposes of property are alive and don't give their evidence, such records are not adequate around there.

*Bibi Khaver v. Bibi Rukha*, - In this case, the court said that all together that a security truth might be passable as significant under this segment, the state of the law is that:

The insurance truth must itself be developed by usually indisputable proof.

It must, when developed, bear the expense of a reasonable presumption or deducing concerning the issue in the contest.

Numerous confinements are made in Section 11. **R.v. Prabhudas**— In a charge of fraud, proof of ownership by the blamed for different records suspected to be forged is prohibited.

Another containment referenced for the circumstance **Bela Rani v. Mahabir**. In this case, the Section 11 is also obliged by Section 17-39. Besides, concerning the appropriateness of declarations made by a person since perished, it has been held that except if on the off chance that they are acceptable in chapter 32 and Section 33, Section 11 won't profit to make them proof.

Relevancy is a test for admissibility. The topic of admissibility is one of the laws and is controlled by the Court. In Section 136 of Evidence Act 1950, a variation is made among relevancy and admissibility, on the off chance that it very well may be demonstrated that the proof would be relevant whenever demonstrated, the court will concede proof of it. All admissible evidence is relevant but all relevant evidence is not admissible. An irrelevant truth isn't allowable in court. Be that as it may, in specific cases, proof which isn't relevant under Section 5 to 55 may, in any case, be acceptable.

Evidence is considered as more important in deciding cases over many years. The power vested on the managing official in choosing whether a proof is permissible or not is immense and must be limited through rules. the law identifying with proof isn't reasonable for the present age and it must be changed for the better working of the legitimate framework. An unmistakable line must be drawn between the intensity of the judge and the intensity of the judge all things considered a gigantic power vested on individuals would just bring about defilement of intensity. the law is incomparable and no man should give the optional capacity to twist it to his desire. Each bit of proof which concerns the case must be admissible whether it is found through illicit hunt or some other methods. There are many people among us who evade the eyes of law forever because of inadmissible evidence.

### **Evidence of Relevant Facts (Sec.5)**

**Section 5, Evidence may be given of facts in issue and relevant facts:** *Evidence may be given in any suit or proceedings of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.*

#### ***Explanation:***

*This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.*

#### ***Illustrations:***

*(a) A is tried for the murder of B by beating him with a club with the intention of causing his death.*

*At A's trial the following facts are in issue: —*

*A's beating B with the club;*

*A's causing B's death by such beating;*

*A's intention to cause B's death.*

Prof. Javaid Talib  
Prof. Md. Ashraf  
Dept. of Law, AMU

*(b) A suitor does not bring with him, and have in readiness for production at the first hearing of the case a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.*

### **Principle:**

The section lays down that in a suit or preceding evidence may be given of the existence or non-existence of:

1. Facts which are in issue; and
2. Facts which are relevant according to Sections 6 to 55 of the Act.

### **Scope:**

Where one fact is relevant to another, i.e. when one is connected with other in any of the ways referred to the Chapter II (Sections 6 to 55), it is relevant. The relevant facts are not themselves 'facts in issue' but are so connective with 'facts in issue' that they render the latter probable or improbable. Relevant facts give strength and vigour to the fact in issue. Section 5 excludes everything which is not covered by some other sections of the Chapter. Alternatively, it can be said that "the object of this Chapter is to restrict the investigation made by court within bounds prescribed by general convenience."

This section expressly excludes the evidence of irrelevant facts, that is found in the phrase "and of no others; and therefore, a party is precluded from proving any 'fact' which is not declared relevant by any of the remaining sections of this chapter. Evidence is not permitted to be given to any fact unless it is either a fact in issue or one declared to be relevant by any section of this chapter. "Evidence of all collateral facts, which are incapable of affording any reasonable presumption as to the principal matter in dispute, is excluded to save public time." Thus, 'relevant' means "which is logically probative." In a trial when any evidence is produced, the court, before its admission, should decide its relevancy forthwith. If the evidence lacks of probative value it can be rejected.

The probative value of evidence is the weight to be given to it which has to be judged having regard to the facts and circumstances of each case." It is duty of the court to appreciate evidence minutely, carefully and analyse the same. In case of mistake in description of hand in respect of khata number and plot number it has been decided that boundary of land given in sale deed should be given preference to ascertain the land actually sold.

### **Explanation:**

The explanation appended to this section prohibits any person to give further evidence for getting relief upon facts of documents which he had failed to state or refer in his pleadings under Civil Procedure. There are certain provisions in the Civil Procedure Code for filing documents with the leave of the court. Illustration (b) explains the meaning of the explanation.

### **Relevancy and Admissibility:**

The rules of relevancy declare certain facts relevant but rules of admissibility lay down as to whether the relevant facts may be allowed or excluded. There are marked differences between

Prof. Javaid Talib  
Prof. Md. Ashraf  
Dept. of Law, AMU

the two, as it is said that “all evidence that is admissible is relevant, but all that is relevant is not necessarily admissible.”

‘Relevancy,’ according to Sections 6 to 11 is the connection between cause and effect which occur in judicial proceedings. The question of admissibility, on the other hand, is a question of law to be decided by the judge. The relevancy of facts, according to common course of events either leads to prove or render probable the past, present and future existence and non-existence of the other facts, whereas the admissibility of the relevant facts are to be decided (forthwith) by the court when raised and should not be reserved till the date of judgment. Objection to the admissibility cannot be allowed in appeal.

Relevancy means what facts may be proved before the court and that facts allowed to be proved under sections 5 to 55 of the Evidence Act, are called relevant, whereas the admissibility is founded on law and not on logic. It is the means and method of proving relevant facts. When the original document is lost it has no effect on decision. If the secondary evidence of the lost document is produced it may be admitted.

In relevancy the court has discretion to play but in admissibility the court is under obligation to follow the law, it has no discretion. Evidence properly admitted for one purpose must be admissible for all purposes in the cause. But in case of proving and disproving facts the relevancy is, no doubt, condition precedent of admissibility. In *Ram Bihari Yadav v State of Bihar*, the Supreme Court has made a difference that frequently the expression ‘relevancy’ and ‘admissibility’ are used as being synonymous with each other but their legal incidents are different, because facts which are relevant may not be admissible. It is a question of law to be determined by *lex fori*. In judicial proceeding ‘relevancy’ is “the rules of allowing or disallowing the facts tried to be proved.”

#### **Applicability of ‘falsus in uno falsus omnibus’:**

The meaning of the maxim is that “false in one thing false is everything.” It is not rule of law. It is only a rule of caution. It is of no application in India under the Evidence Act. Each case has to be appraised in accordance with evidence produced before the court. If the evidence is insufficient and unworthy of acceptance it must be discarded in all respect.

The doctrine is dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some respect, it is to be found that administration of Criminal Justice would come to dead stop. Before rejection of evidence the court has to execute with all care and caution, “because, it is totally unwise to say that the witness is a liar.” Consistent evidence of eye-witness cannot be rejected merely on ground that their evidence has not been accepted with regard to some other accused. The evidence of witness cannot be rejected merely because a part of his testimony may not inspire confidence.

“It is true that the principle *falsus in uno falsus omnibus* is not a rule applicable to our country and the court should make every endeavour to separate the grain from the chaff. It only puts the court on its guard to carefully scrutinize their evidence.” When the evidence of eye-witness was fully corroborated by medical evidence, it was held that merely on the ground that the eye-witnesses has assigned role to other co-accused persons for causing injury on *farsa* and *lathi* had not been found proved, the whole evidence of eye-witnesses would not be discredited.

## **Doctrine of Res. Gestae (Sec.6)**

**Section 6, Relevancy of facts forming part of same transaction:** *Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.*

### ***Illustrations:***

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

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

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

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

### **Evolution of Res Gestae**

Originally the Romans used Res gestae to mean acts are done or actus. It was described by the English and American writers as facts forming the same transaction. Res gestae are the facts that form a part of the same transaction automatically or naturally. They are the acts that speak for themselves. Due to their association with the main transaction, these facts become relevant in the nature of the fact in question. Circumstantial facts are admitted to be part of res gestae, i.e. it is part of the original evidence of what happened. Statements can also accompany physical events such as gestures. Things said or acts done in course of transaction amounts to res gestae.

### **Scope and ambit of Section 6 of the Indian Evidence Act, 1872**

Facts that are so linked to a fact in question that they form part of the same transaction, although not in question, are relevant, whether they occurred at different times and places at the same time.

The principle embodied in law in Section 6, is usually referred to as the res gestae doctrine. The facts that can be proved as a part of res gestae must be facts other than those in question but must be linked to them. Although hearsay evidence is not admissible, it may be admissible in a court of law when it is res gestae and may be reliable proof. The reason behind this is the spontaneity and immediacy of such a statement that for concoction there is hardly any time. Such a statement must, therefore, be concurrent with the acts that constitute the offense or at least immediately thereafter.

Res gestae contains facts that are part of the same transaction. It is, therefore, appropriate to examine what a transaction is, when it begins and when it ends. If any fact does not connect to

Prof. Javaid Talib  
Prof. Md. Ashraf  
Dept. of Law, AMU

the main transaction, it is not a *res gestae* and therefore inadmissible. *Res gestae* includes elements that completely fall outside the definition of modern hearsay, such as circumstantial evidence of a state of mind, so-called “*verbal acts*“, verbal parts of acts, and certain non-verbal behaviour.

Because excited utterances are closely connected with the event in time and the excitement flows from the event, excited utterances have been considered part of the action and therefore admissible despite the rule of hearsay. The hearsay exceptions were also hired by *Res gestae* for present-sense impressions, excited utterances, direct evidence of a state of mind, and statements made to doctors.

Illustrations:

- An injured or injured person’s cry.
- The witness’s cry to see a murder happen.
- The sound of a shot of a bullet.
- The person being attacked is crying for help.
- Gestures made by the person dying etc.

### Definition of Transaction

A transaction, as the term used in this section, is defined as a crime, contract, error, or any other subject of inquiry that may be in question by a single name. It includes both the immediate cause and effect of an act or event and the other necessary antecedents of its occurrence at a reasonable distance of time, place and cause and effect.

Working test for deciding a Transaction

A good working test of deciding what is a transaction is:

- Unity or proximity of place,
- Proximity of time,
- Continuity of actions, and
- Community of purpose.

Continuity of action and community of purpose must be the key test. The condition for admissibility of a statement made by a person at the occurrence scene is time proximity, police station proximity, and continuity of action. The expression does not necessarily suggest time proximity as much as action and purpose continuity.

A transaction may be a single incident occurring for a few moments or it may be spread across a variety of acts, statements, etc. All of these constitute incidents that accompany and tend to explain or qualify the fact in question, although not strictly constitute a fact in the matter. All these facts are only relevant when they are connected by time proximity, unity or location proximity, continuity of action and community of purpose or design.

### Relevance of Evidence

As one and the same part of the transaction, evidence relating to the main subject matter is relevant. Two separate offenses may be so inseparably linked that the proof of one necessarily involves proving the other, and in such a case proving that one cannot be excluded from prosecution, as the other proves.

Proof of other offenses by the accused would be relevant and admissible if a nexus existed between the offense charged and the other offenses or the two acts formed part of the same transaction to fall within Section 6. Simply because it occurred at or about the same time as the Trial offense *res gestae*, an offense that is completely separate and disconnected is not allowable.

### Relevance of Facts

Facts which are, immediately or otherwise, the occasion, cause or effect of relevant facts or facts in question, or which constitute the state of affairs under which they occurred, or which provided an opportunity for their occurrence or transaction, are relevant. Facts forming part of the same transaction are admissible in the previous section. Evidence relating to collateral facts is admissible where such facts occur, where reasonable presumption as to the disputed matter has been established, and where such evidence is reasonably conclusive. The section provides for the admission of several classes of facts related to the transaction under inquiry which are-

1. As being the occasion or cause of a fact,
2. As giving an opportunity for its occurrence,
3. As being its effect, and
4. As constituting the state of things under which it happened.

### Test for Admission of Evidence under Res Gestae

First, the judge must take into consideration the circumstances in which the particular statement was made to satisfy him that the event was as unusual or beginning or fanatical as it was to dominate the victim's thoughts, so that his statement was an instinctive reaction to that event, thus giving no real opportunity for reasoned reflection.

The statement must be so closely associated with the event that aroused the statement that it can be fairly stated that the declaring mind was still dominated by the event in order to be sufficiently spontaneous. Therefore, the judge must be satisfied that the event providing the trigger mechanism for the statement was still in operation.

With regard to the possibility of reporting facts narrated in the statement if only the ordinary error of human recollection is relied on, this goes to the weight to be attached and not to the admissibility of the statement and is therefore a matter for the jury.

The test to be used in deciding whether a statement made by a bystander or a victim indicating an attacker's identity is admissible can be submitted as-

- Was that spontaneous?
- Was the identification relevant?
- Has there been any real possibility of error?

- Was there a concoction opportunity?

### Where does the jury stand?

The admissibility test is based on the exact contemporary approach set out in the case of *Bedingfield*, as opposed to the flexible and accommodating approach set out in the case of *Foster*. It was precisely in order to resolve this ambiguity that the Privy Council gave up the test of contemporaneity in *Ratten's* case and adopted the test of "*spontaneity and involvement*."

In *Ratten's* case, Lord Wilberforce argued that the test should not be uncertain whether making the statement was part of the transaction in some sense. This can often be hard to establish, which is why he emphasized spontaneity as the basis of the test. He said that hearsay evidence may be admitted if the statement providing it is made under conditions of involvement or pressure (always of approximate but not exact contemporaneity) that exclude the possibility of concoction or distortion to the advantage of the manufacturer or the disadvantage of the accused.

### Principle of Admissibility of Declarations Accompanying Acts

1. The statement (oral and written) must relate to the act in question or relevant to it; it is not admissible simply because it accompanies an act. Moreover, the statement must relate to and explain the fact that it accompanies, and not independent facts previously or subsequently unless such facts form part of a continuous transaction.
2. The statement must be substantially at the same time as the fact and not just the narrative of the past.
3. The statement and the act may be made by the same person, or they may be made by another person, e.g. victim, assailant, and bystander statements. In conspiracy, it is admissible to riot the statements of all concerned in the common object.
4. Although it is admissible to explain or corroborate or to understand the meaning of the act, a declaration is not proof of the truth of the stated matters.

### Cases

The test applied to make the evidence admissible in all the following cases was to consider that the statement was made in the spur of the moment without an opportunity to concoct and do anything. Where the judges are satisfied that the reaction was the most immediate result of the facts concerned being relevant to the circumstances, they have allowed such evidence to be admitted.

#### *Vasa Chandrasekhar Rao vs Ponna Satyanarayana,*

His wife and daughter were killed by the accused. Deposition of the deceased's father that the father of the accused made a telephone call to him, saying his son had killed the deceased was not found admissible. The question before the court was that it was possible to admit the deposition of the accused father under Section 6 and is *Res Gestae* going to be a hearsay exception?

Failing to find out whether the information given by the accused father to the deceased's father who killed his wife and daughter was refused to accept the evidence as relevant under Section

Prof. Javaid Talib  
Prof. Md. Ashraf  
Dept. of Law, AMU

6 either at the time of the crime being committed or immediately thereafter to form part of the same transaction.

*Gentela Vijayavardhan Rao And Anr vs State of Andhra Pradesh,*

Under res gestae, the appreciable interval between the act of carnage and the recording by the magistrate of the statement was found inadmissible.

*Bishna vs State of West Bengal,*

Both witnesses arrived in an unconscious state immediately after the incident and found the dead body of Prankrishna and wounded Nepal. One of them found Prannkrishna's and Nepal's mother weeping and heard from an eyewitness that their testimony was admissible under Section 6 of the Evidence Act about the whole incident and the role played by each of the appellants.

### Expansion of the Doctrine of Res Gestae

Slowly, courts have extended the scope of this section to cases like domestic violence, child witness, etc. Domestic violence and cases of assault necessarily involve a surprising event, often involving the issue of excited utterances. In these cases, only victims can identify the alleged culprit. Therefore, such testimony of victims must be admitted. Cases of rape usually occur in isolation. There is therefore no eye witness to an event like this. Cases of rape and domestic violence differ from any other crime.

Usually, evidence is brought to res gestae if it cannot be brought to any other section of the Indian evidence act. The intention of lawmakers was to avoid injustice where cases are dismissed due to lack of evidence. If any statement under Section 6 is not admissible, it may be admissible in accordance with Section 157 as corroborative evidence.

Court has always believed that this doctrine should never be unlimitedly extended. For this reason, the "*continuity of transaction*" test was always considered by Indian courts. Any statement made following a long gap that was not a response to the event is not admissible under Section 6 of the Evidence Act. But courts allowed some statement that was spoken after a long gap from the occurrence of the transaction because there was enough evidence that the victim was still under the stress of excitement and so everything that was said was a reaction to the occurrence.

The strength of Section 6 is its vagueness. There is no distinction in this section between the word transaction used. It varies from case to case. Every criminal case on its own merit should be judged. The evidence is admissible under Section 6 if it is proven to be part of the same transaction, but whether it is reliable or not depends on the discretion of the judge.

### **Facts Constituting Occasion, Cause or effect of Facts in Issue (Sec.7)**

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

### ***Illustrations:***

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

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

(b) *The question is, whether A murdered B.*

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

(c) *The question is, whether A poisoned B.*

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

### **Scope:**

The scope of Section 7 is wider than Section 6. Section 6 deals with relevant facts forming part of the same transaction, whereas Section 7 provides for the relevancy of several classes of facts. Sometimes, it is difficult to prove whether fact forms part of the same transaction, but there are several collateral facts which are not part of the same transaction, are required to be judicially considered for ends of justice provided they constitute the occasion, cause or effect or provide opportunity for the happening of the facts in issue. "Evidence relating to collateral facts is admissible when such facts will, if established, establish reasonable presumption as to the matter in dispute and when such evidence is reasonably conclusive." The relevancy is determined by human experience.

For example, whenever a quantity of blood is found in particular place, a man may reasonably think and infer that some living being has been cut or it has been seriously injured at that place. So, the fact as to presence of blood is the effect of some living being having been cut or injured at that place. Another example is that whether a person has committed a particular crime, the fact is that he had also committed similar crime in the past. It can be said that the commission of crime in the past is not relevant under section 6 but is relevant under section 7. The Section 7 therefore provides for admission of several classes of facts under enquiry when they are connected in particular ways. These modes of connection are:

1. As being the occasion or cause of a fact;
2. As being its effect;
3. As giving opportunity for its occurrence; and
4. As constituting the state of things under which it happened.

### **1. Cause and occasion of facts:**

Evidence relates to set of circumstances which constitute cause and occasion for the happening of facts in issue is relevant. The cause and effect of particular fact in the past will have the same cause and effect in future. The question is whether 'G' was murdered by 'A.' Q a girl refused A's (accused) offer of sex. 'G' was alone at her home at the time of murder being the occasion of murder and for refusal of sex by 'G' is the cause and occasion of the murder.

### **2. Effect:**

Prof. Javaid Talib  
Prof. Md. Ashraf  
Dept. of Law, AMU

An effect is the ultimate result of an act done, which not only keeps records of the happening of the act but also provides helps to know the nature of act. So, the facts which are the effects, immediate or otherwise of a fact in issue or relevant fact, are relevant under section 7. Illustration (b) states that the marks near the place where the murder took place are instances of murder. The marks or foot prints is relevant as an effect. Similarly, the effect of conversation may be proved with the help of Tape recorder.

### **3. Cause and effect:**

A student was charged for trespassing girls' hostel at night. The fact is that the coat of the student (accused) was recovered from the room of a girl who was his classmate. The recovery of coat is relevant and shows the cause and effect.

### **4. Opportunity:**

Facts affording opportunity for occurrence of the fact in issue are the relevant. Illustration (c) refers to circumstances for administering poison is relevant. An opportunity may be either mere opportunity or exclusive opportunity. Mere opportunity for a person to do something which may give rise an inference that he did it is relevant. In exclusive opportunity it proves conclusively that the act was done by the person having exclusive opportunity to do it. The evidence of a woman who was alone in the house on particular day was held admissible to show that it afforded an opportunity to the accused to commit rape, is relevant under section 7 of the act.

### **5. State of things:**

The state of things means the set of facts which has to be placed before the court as a background in order to make principal fact intelligible to them. It is relevant.

### **Example:**

Accused husband was prosecuted for shooting down his wife as he was unhappy with his wife and was carrying an affair with another woman. Unhappiness of the husband and affairs with another woman were held to be relevant which constituted the state of thing in which the principal fact, 'shooting down' happened.

### **Suggested Readings:**

1. Indian Evidence Act, 1872 (Relevant Statutory Provisions)
2. Monir: Law of Evidence
3. Batuk Lal: Law of Evidence
4. Ratan Lal & Dhiraj Lal: Law of Evidence
5. Avtar Singh: Principles of Law of Evidence
6. Tandon: Indian Evidence Act
7. R. Dayal: Indian Evidence Act
8. Dr. Satish Chandra: Indian Evidence Act