

## E-CONTENT. LAST CHAPTER.

## CHARACTER WHEN RELEVANT.

SECTION 52: In civil cases character to prove conduct imputed, irrelevant, In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant.

This section deals with the relevancy of character evidence in civil cases. The character of a party to a civil suit cannot be relevant to the decision of issue arising in that suit. When a question arises whether a contract entered between the parties, or whether it is supported by consideration, the character of the plaintiff or defendant is certainly irrelevant to the issue. But there may be cases in which the character of a person may be relevant for the disposal of a suit, such as action for defamation etc. In *Guntaka Hussenaiah Vs Buseti Yerraiah*, AIR 1954 AP 39: Andhra Pradesh High Court said that the section deals with the relevancy of character evidence in civil cases. The character of a party to a civil suit cannot be relevant to the decision of an issue arising in that suit. But this section has no bearing on a case where the veracity of a witness is in question. In *Abdul Shakur and others Vs Kotwaleswar Prasad and others*, AIR 1958 All 54: Allahabad High Court held that where the contention that certain pronotes had been obtained from the insolvent while he was under the influence of drink, has been found to be baseless. Mere general bad character of the insolvent would be quite irrelevant in a civil case to prove want of consideration.

Section 140, 146, 148, 153, 155 of the act deals with the character of a witness. Section 52 to 55 provide for character of parties to proceeding.

There are exceptions to the rule that character is irrelevant unless it is in issue.

1. When character is in issue. Evidence can be given when a party's character is itself a fact in issue. For example, a suit for libel or a divorce suit.

2. Character as to affect damages. When the character of any person is such as to affect the amount of damages which he ought to receive, is relevant. In mitigating damages the evidence of character is relevant.

3. When character became issue from other relevant fact. The facts which are otherwise relevant, are relevant (Section 11) can be taken into account if the court forms an opinion that the character of the party might have been guilty of conduct imported to him or he might not be worthy of credit

**SECTION 53:** In criminal cases, previous good character relevant.—In criminal proceedings, the fact that the person accused is of a good character, is relevant.

Section 53 of IE Act provides that in criminal cases the fact that the person accused is of good character is relevant. This evidence is of importance in weighing the probabilities in doubtful case but it could conveniently be dispensed with in cases where the prosecution case has not been proved. In criminal cases a man's character is often a matter of importance in explaining his conduct and in judging his innocence or criminality. In all case when evidence is admitted touching the general character of the party, it ought manifestly to bear reference to the nature of the charge against him, as for instance if he be accused of theft, that he has been reputed an honest man etc.. In criminal trial it is very often

pleaded that the accused bears a good moral character and the character becomes a material consideration for the court. Naturally, a presumption against the commission of crime arises and sometimes it becomes conclusive. The evidence of bad character is wholly irrelevant and is admissible only in reply. No doubt good character is a good defense, but it is a very weak evidence; it cannot outweigh positive evidence in regard to the guilt of a person. In doubtful case it is rule that the accused may take the plea of possessing good character, otherwise every accused will take the plea. "A man's good character is a fact making strongly for inference that he is innocent. The evidence of good character is therefore, considered in connection with all the evidence bearing upon the question of guilt." Where the circumstances of the cases is such that the good character of the accused person was going to be of no help either way.

SECTION 54: Previous bad character not relevant, except in reply\_In criminal proceedings the fact that the accused person has a bad character is irrelevant ,unless evidence has been given that he has a good character , in which case it becomes relevant.

Explanation 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.—A previous conviction is relevant as evidence of bad character.

Under this section the prosecution can give evidence of bad character of the accused and it is relevant. It can give evidence of bad character only in reply to the accused showing his good character. If the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. The Supreme Court held that his (accused) bad character is not relevant unless he gives evidence of good character in which case by rebuttal evidence of bad character may be adduced.

**Relevancy of evidence of bad character:**

The prosecution may be permitted to give evidence of bad character only when the accused offers evidence of good character. But evidence of bad character in the first instance by the prosecution is not permitted. "It would only injure the accused by creating a prejudice against him." The prohibition of course will not apply to a case where bad character of any person is itself in issue. It was held by the Supreme Court that the evidence which disclosed certain unpleasant things about the accused was examined by the court in order to ascertain the motive of the murder and not for proving guilt. In *Bai Chaturi W/O Andheribhai And ... vs State* 1960 **Evidence** of general **bad** repute is a type of **evidence** of general **bad character**. It is provided in Section 54 of the **Evidence Act** that in criminal proceedings the **fact** that the accused person has a **bad character** is irrelevant, unless **evidence** has been given that he has a good **character** in which case it becomes relevant. Exception 1 to Section 54 provides that this Section does not apply to cases in which the **bad character** of any person is itself a **fact** in issue. Exception 2 to Section 54 provides that a previous conviction is relevant as **evidence** of **bad character**. It is, therefore, clear that evidence of bad character is relevant only when evidence has been given of good character of the accused and in cases where the bad character of the accused is itself a fact in issue. In *Mankura Pasi v. Queen Empress*, ILH 27 Cal 139, it is held relying on *Queen v. Kamal Fukeer*, 17 Suth WR Cr. 50, that the character of the accused not being a **fact** in issue in the offence of belonging to a gang of persons associated for the purpose of habitually committing theft punishable Under Section 401 of the IPC, evidence of bad character or reputation of the accused was inadmissible for the purpose of proving the commission of that offence. But, in *Bonai "v. Emperor*, ILR 38 Cal 408, it

has been observed that in cases where the other **evidence** has established association for the purpose of habitually committing theft, **evidence** of previous convictions whether for offences against property or for **bad** livelihood, has always been admitted, not as **evidence** of **character**, but as **evidence** of habit. It was also observed that: In cases where the other **evidence** has established association for purposes of habitually committing theft, **evidence** of previous convictions, whether for offences against property or for **bad** livelihood, has always been admitted, not as **evidence** of **character**, but as **evidence** of habit. It was not necessary for the admission of **evidence** of previous convictions that the prosecution should have first affirmatively established the association for the purpose of habitually committing theft. Under Section 401, IPC whether a party of accused persons constituted a gang of persons associated for the purpose of habitual theft, **evidence** that each individual of that party is a convicted thief is relevant **evidence** for the purposes of that question; and whether that **evidence** is tendered before or after the prosecution have established the association is a matter of no particular moment. Ordinarily it does not matter whether such **evidence** is tendered before or after other admissible **evidence**, but at the same time, **evidence** of previous convictions being **evidence** of **bad character** is admissible under Section 54 of the **Evidence Act** only when **bad character** of the accused is a **fact** in issue or when **evidence** has been given of good **character**. Under section 401, IPC **bad character** of the accused is not a **fact** in issue. In view of Section 54 of **Evidence Act**, in cases where **evidence** of good **character** has not been given,, **evidence** cannot be given of **bad character** when **bad character** is merely a relevant **fact** and not a **fact** in issue. Of course to prove the purpose of association of the gang or habit of committing thefts,

**evidence** can be given of commission of other thefts. In such cases under Explanation 2 to Section 54 of **Evidence Act**, **evidence** can be given of previous convictions for theft. The effect of Explanation 1 to Section 54, Evidence Act, is to cancel the effect of Section 54 in cases where the **bad character** of the accused is a **fact** in issue. In the absence of Explanation 1 to Section 54, Evidence Act, **evidence of bad character** of an accused would not have been admissible even when it was a **fact** in issue, because the main part of Section 54, Evidence Act, provides that the **bad character** of an accused is irrelevant in criminal proceedings. The effect of Explanation 1 to Section 54 is to allow **evidence** of a **fact** in issue to be given even in cases where the **fact** in issue happens to be the **bad character** of an accused. In criminal proceedings **evidence** of general **bad character** of an accused cannot be given unless general **bad character** of the accused is a **fact** in issue or unless **evidence** has been given of his good **character**. In cases Under Sections 400 and 401, IPC general **bad character** of accused is not a **fact** in issue, In such cases **evidence** can be given of **bad character** in so far as it is a **fact** in issue, The **fact** in issue in a case Under Section 401 is a particular trait of **bad character**, namely, association for the purpose of habitually committing offences of robbery or theft. **Evidence** can be given of that particular trait of **bad character** but not of general **bad character**. In such a case **evidence** cannot be given that the accused is a murderer or immoral person or a cheat. In the case of *Habeeb Mohammed v. State of Hyderabad* it was held that "In criminal proceedings a man's character is often a matter of importance in explaining his conduct and in judging his innocence or criminality. Many acts of an accused person would be suspicious or free from all suspicion when we come to know the character of the person by whom they are

done” It was also suggested in this case that evidence of good character would be of importance in cases where the act amounts to an offence only by reason of it being done with a vicious intention to show the improbability of the existence of such intent. In cases where intention is not the essence of the act, evidence of good character would only be of use if there exists some doubt as to whether the accused was the person who committed the act. In *Nikka Singh vs State Of Haryana* on 16 July, In criminal proceedings the fact that the accused person has a **bad character** is irrelevant unless **evidence** has been given that he has a good **character** in which case it becomes relevant. In terms of the explanation, the section is inapplicable to cases in which the **bad character** of any person is itself a **fact** in issue. Besides, previous conviction is relevant as **evidence** of **bad character**. In criminal cases in view of the mandate of Section 54 of the **Evidence Act**, **bad character** of an accused for establishing his guilt is inconsequential. It is a protection given to an accused so as not to be put in the category of persons having **bad character** except to the extent the circumstances are mentioned in the provision. In the matter of *Shyama Charan Sri Ram Saran Vs. The State*, reported in AIR 1969 Allahabad 61, it appears that, the Sessions Judge questioned the appellant regarding his **antecedents**. The High Court observed as under : "In criminal proceedings, the **fact** that the accused person has a **bad character** is irrelevant, unless **evidence** has been given that he has a good **character**, in which case it becomes relevant The bad character of the appellant was not itself a fact in issue in the case. Under law, the Sessions Judge could examine the appellant only about the **evidence**, which was proposed to be used against him. So, this kind of **evidence** was clearly in-admissible, and we have ignored it completely, while judging the guilt of the appellant." Hon'ble Supreme Court, in the matter of *Ram Lakhan Singh & ors. Vs. The State of Uttar Pradesh*, reported in AIR 1977 SC 1936, In our system of law an accused starts with a presumption of innocence. His **bad character** is not relevant unless he gives **evidence** of good **character** in which case by rebuttal, **evidence** of **bad character** may be adduced. This question was examined by court of appeal in *R v/s Butter Waser* 1948 where the accused was facing trial for causing wounds with intent to do grievous hurt. The injured person and his wife gave evidence that the accused slashed his face with a razor. Both of them were cross- examined

on behalf of the accused as to their bad character. The accused however, gave no evidence from his side, but the prosecution produced a police officer who gave evidence of the previous convictions of the accused and also of his bad character. LORD GODDARD, C.J., delivering the judgement of the court of appeal, held that such evidence was not admissible. The accused merely attacked the character of the prosecution witness, he did not give evidence of his own character and therefore the prosecution had no right to show that the accused was a man of bad character.

**SECTION 55: Character as affecting damages.**—In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant. Explanation.—In sections 52, 53, 54 and 55, the word “character” includes both reputation and disposition; but 1[except as provided in section 54], evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown. In sections 52, 53, 54 and 55, the word “character” includes both reputation and disposition; but 2[except as provided in section 54], evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

Section 55 lays down that,—(i) it is applicable only in a suit for damages, (ii) the character of the plaintiff only is relevant and such character of the plaintiff is relevant only as to affect the amount of damages to be awarded to the plaintiff. The explanation of the Section 55 defines the word ‘character’ which includes both reputation and disposition. Evidence cannot be given of particular facts, but only of general reputation and general disposition. It is only in civil case where the question of damages is to be awarded to the plaintiff is concerned, that the character of plaintiff becomes relevant. In India the word character includes both disposition and reputation. Disposition success the inherent qualities of a person, reputation means the general credit of a person amongst the public. Section 55 is an exception to the general rule laid down in Section 52 of the Act, which provides that the character of the party in civil case is not relevant. In civil cases good



character being presumed may not be proved in aggravation of damages, but bad character is admissible in mitigation of damages, provided that it would not, if pleaded, amount to a justification. According to this section the character of the party to a civil suit is relevant if it is of such a nature as to affect the amount of damages which the plaintiff ought to receive. In such type of cases damages are always in issue. For example, in case of adultery the plaintiff's bad character may be proved; in case of divorce the husband's cruel character is relevant. Similarly, in case of breach of promise of marriage the plaintiff's character being immoral may be relevant. Thus the plaintiff's bad character in case of adultery, husband's cruel character in divorce case or plaintiff's immoral character in breach of promise of marriage would affect the amount of damages. The damages should, therefore be commensurate with this pain, which must vary according as the character of wife or daughter had been previously unblemished or otherwise. There has been considerable doubt, whether in an action for defamation, evidence can be admitted to impeach the plaintiff's previous general character, and to show that, at the time of the publication, he labored under a general suspicion of having been guilty of the charge imputed to him by the defendant.