SECTION 32: Cases in which statement of relevant fact by person who is dead or cannot be found, etc ., is relevant. — Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:—

1 when it relates to cause of death. —When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

2 or is made in course of business. —When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the

discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

3 or against interest of maker. —When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

4 or gives opinion as to public right or custom, or matters of general interest. —When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

5 or relates to existence of relationship. —When the statement relates to the existence of any relationship [25] [by blood, marriage or adoption] between persons as to whose relationship [25] [by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

6 or is made in will or deed relating to family affairs. —When the statement relates to the existence of any relationship [by blood, marriage or adoption] between persons deceased, and is

made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait, or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

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

8 or is made by several persons, and expresses feelings relevant to matter in question. —When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question. Illustrations

(a) The question is, whether A was murdered by B; or A dies of injuries received in a transaction in the course of which she was ravished. The question is, whether she was ravished by B; or The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow. Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape, and the actionable wrong under consideration, are relevant facts.

(b) The question is as to the date of A's birth. An entry in the diary of a deceased surgeon, regularly kept in the course of business, stating that, on a given day he attended A's mother and delivered her of a son, is a relevant fact.

(c) The question is, whether A was in Calcutta on a given day. A statement in the diary of a deceased solicitor, regularly kept in the course of business, that, on a given day, the solicitor attended A at a place mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(d) The question is, whether a ship sailed from Bombay harbour on a given day. A letter written by a deceased member of a merchant's firm, by which she was chartered, to their correspondents in London to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

(e) The question is, whether rent was paid to A for certain land. A letter from A's deceased agent to A, saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(f) The question is, whether A and B were legally married. The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(g) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day, is relevant.

(h) The question is, what was the cause of the wreck of a ship. A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(i) The question is, whether a given road is a public way. A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(j) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banya in the ordinary course of his business is a relevant fact.

(k) The question is, whether A, who is dead, was the father of B. A statement by A that B was his son, is a relevant fact.

(l) The question is, what was the date of the birth of A. A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m) The question is, whether, and when, A and B were married. An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(n) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

The general rule is that oral evidence must be direct. The eight clauses of this section are exceptions to the general rule against hearsay.

Section 32(1) : Section 32 (1) When it relates to cause of death.— The provision under section 32(1) relates to the statement made by a person before his death. When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question, and such statements are admissible. There is difference in English and Indian law. In English law Dying declaration is applicable in only criminal cases but in Indian law D.D is applicable in civil and criminal cases. Word "Dying Declaration" means a statement written or verbal of relevant facts made by a person, who is dead. It is the statement of a person who had died explaining the circumstances of his death. This is based on the maxim '**nemo mariturus presumuntur mentri**' i.e. a man will not meet his maker with lie on his mouth. Our Indian law recognizes this fact that 'a dying man seldom lies.' Or 'truth sits upon the lips of a dying man.' It is an exception to the principle of excluding hearsay evidence rule. Section 32 of Indian Evidence act deals with the cases related to that person who is dead or who cannot be found. But here, we are studying about 'dying declaration' which deals with the cases relate to cause of

death. It is mentioned in sub-section (1) of section 32 of Indian Evidence act. A statement by a person who is conscious and knows that death is imminent concerning what he or she believes to be the cause or circumstances of death that can be introduced into evidence during a trial in certain cases.
In Pakala Narayana Swami vs Emperor ((1939) 41 BOMLR 428; AIR 1939 PC 47) on 19/1/1939 , In this case, the statement of Pakala Narayana Swamy's wife '' he is going to Berhampur to get back his amount'' was considered as ''DYING DECLARATION''. In this case, wife of the accused had borrowed money from the deceased in the sum of Rs. 3000 at the interest of 18 percent. Related to his debt a number of letters had signed by the wife of accused which was discovered from the house of deceased after his death. One letter which was not signed by someone had been received by the deceased K.N. on 20th March,1937, it was reasonably clear that it would had come from the wife of accused, who invited him to come Berhampur on that day or next day.
Widow of K.N. had told to the court that his husband had told him that Swami's wife had invited him to come to Berhampur to receive his payment. Next day K.N. left his house to go to Berhampur & on 23rd March, his body, which was cut in to seven pieces, found in a trunk in the compartment of a train at Puri. The accused was convicted of murder & sentenced to death because there were many evidence against him.

In Khushhal rao v/s state of Bombay AIR 1957 S.C Court held that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made .

In Nallapati Sivaiah vs Sub-Divisional Officer, Guntur, ... on 26 September, 2007 The court has to consider each case in the circumstances of the case. What value should be given to a dying declaration is left to court, which on assessment of the circumstances and the evidence and materials on record, will come to a conclusion about the truth or otherwise of the version, be it written, oral, verbal or by sign or by gestures. It is also a settled principle of law that dying declaration is a substantive evidence and an order of conviction can be safely recorded on the basis of dying declaration provided the court is fully satisfied that the dying declaration made by the deceased was voluntary and reliable and the author recorded the dying declaration as stated by the deceased. This court laid down the principle that for relying upon the dying declaration the court must be conscious that the dying declaration was voluntary and further it was recorded correctly and above all the maker was in a fit condition (mentally and physically) to make such statement.In **Ulka Ram v. State of Rajasthan** Apex Court held that, “when a statement is made by a person as to cause of his

death or as to any circumstances of transaction which resulted into his death, in case in which cause of his death comes in question is admissible in evidence, such statement in law are compendiously called dying declaration."

The Apex Court in its decision in **P.V. Radhakrishna v. State of Karnataka** held that 'the principle on which a dying declaration is admitted in evidence is indicated in latin maxim, nemo morturus procsumitur mentri, a man will not meet his maker with a lie in his mouth. Information lodged by a person who died subsequently relating to the cause of his death, is admissible in evidence under this clause.

In **Wazir Chand v. State of Haryana** in which Court observed pakala ruling(as above discussed) & said, 'applying these to the facts of the case their Lordships pointed out that the transaction in the case was one in which the deceased was murdered on 21st March & his body was found in a trunk proved to be bought on behalf of the accused. The statement made by the deceased on 20th March that he was setting out to the place where the accused was living, appeared clearly to be a statement as to some of the circumstances of the transaction which resulted in his death. Thus the statement was rightly admitted in the case. In the case of R. v. Jenkins(English case) the accused was charged with the murder of a lady. He attacked her at midnight but she had recognized her because

there were sufficient light to identify him. When magistrate's clerk asked her about the accused to record her statement, she told that he was Jenkins who had done the crime. The clerk asked her that, did she make the statement with no hope of her recovery then, she replied that she was making that statement with no hope of recovery. But when the clerk read that statement over to her, before her signing, she told her to add the word 'at present' in that statement.It was held by the court that the statement was not a dying declaration as her insistence upon the words "at present" showed that she had some, however faint hope of recovery.

In case of multiple dying declaration each dying declaration will hav to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other.

Where the dying declaration was not recorded in question-answer form, it was held that it could not be discarded for that reason alone. A statement recorded in the narrative may be more natural because it may give the version of the incident as perceived by the victim.

In the case of Queen-Empress v. Abdullah Accused had cut the throat of the deceased girl & because of that, she was not able to speak so, she indicated the name of the accused by the signs of her hand, it was held by the full bench of the Allahabad High

Court “If the injured person is unable to speak, he can make dying declaration by signs & gestures in response to the question.” In another case The Apex Court observed that “the value of the sign language would depend upon as to who recorded the signs, what gestures & nods were made, what were the questions asked, whether simple or complicated & how effective & understandable the nods & gestures were.”Majority opinion in the case was that the statement given by deceased before her death was dying declaration and admissible under section 32(1).

A dying declaration authenticated by thumb impression was considered to be doubtful in view of the fact that the victim had sustained 100 percent burns.

The Apex Court had held that if a deceased fails to complete the main sentence (as for instance, the genesis or motive for the crime) a dying declaration would be unreliable. However, if the deceased has narrated the full story, but fails to answer the last formal question as to what more he wanted to say, the declaration can be relied upon.

In a case decided by the Apex Court, the deceased who had made the dying declaration was seriously injured, but was conscious throughout when making the statement. The Court held that mirror incoherence in his statement with regard to facts & circumstances would not be sufficient ground for not relying

on his statement, which was otherwise found to be genuine.

Where the dying declaration of a dowry victim was challenged on the ground that doctor's certificate of mental fitness for statement was not there, the Supreme Court attached no importance to that omission, because the case was not wholly dependent upon the declaration. The facts were on record showing that the injured woman had gone to the hospital all alone changing vehicles on the way. This was sufficient evidence in itself to show her fitness.

The Gauhati High Court has held that when the interested witnesses were attending on the deceased when he was making a dying declaration, & because of the injuries, the deceased was neither physically or mentally fit, no reliance could be placed on the dying declaration, in the absence of evidence to show that the deceased was physically & mentally capable of making the dying declaration, & was not the victim of any tutoring.

clause(2): Statements in course of business; This clause discusses about those statements which are made by a person during the course of business or whose duty it was to make such statement or whose business was such that statements of the kind were to be expected in the ordinary course of things. In order to found a case for the reception of a statement under this clause, it must be proved that the declarant is dead or that he cannot be called as a witness for any of the reasons mentioned in

the section and the burden of proving this is on the person who wishes to give such statement in evidence. In State Of Rajasthan vs Mathura Lal Tara Chand on 20 January, 1971 court held that in the instant case it could not be disputed that the attendence of the Medical Officer, who is dead could not have been procured. Compounder Moti Lai, P.W. 6. has stated before the trial Court that the injury report had been prepared by Doctor Naveen Chand and that it bears his signature. This statement of the compounder proves the injury report on the record and the injury report having been proved, is admissible and relevant Under Section 32(2) which lays that Statements, written or verbal of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases…. (2) When the statement was made by such person in the ordinary course of business, and in particular …. in the discharge of professional duty. The language of the above Quoted section demonstrates that where the medical officer is dead or cannot be found, the aforesaid decisions have no application. The injury report given by the doctor, who is no more in this world, would be admissible and relevant under the aforesaid provisions of law. In this connection a reference is made to Mohan Singh v.

Emperor. A.I.R. 1925 All 413. In that case Sulaiman and Mukherii. JJ., observed: This report would be admissible Under Section 32(2) of the Evidence Act as being a statement made by dead person in the ordinary course of business and in the discharge of his professional duty.

In another- case Ram Balak Singh v. State. Anant Singh and G. M. Prasad. JJ. pointed out thus:

Dr. Bhola Mahto. who had performed the autopsy over the dead body of Kedar at 2 P.M. on the 10th November, 1959, was. at the time of the trial, out abroad, and his post-mortem report (Ex. 3) was proved by Dr. E. N. Pathak (P.W. 6) by proving the handwriting and signature of Doctor Bhola Mahto on the post-mortem report. Since Dr. Bhola Mahto was not easily available the post- mortem report prepared by him would be admissible in evidence.

Clause(3); Statements against the interest of maker: This clause makes a declaration against interest admissible in evidence. This clause is based upon knowledge of human nature. The Full Bench of the Patna High Court in Soney Lall Jha v. Darbdeo Narain Singh (AIR 1935 Pat 167 It was held that, two conditions must be satisfied before a statement is admissible under Section 32(3) of the Evidence Act; firstly, that it must be a statement of a relevant fact and secondly, it must be a statement against the proprietary interest of the person

making it. With regard to what constitutes a statement of a relevant fact, it was observed as follows: "A fact to be relevant or the method of proof to come within any particular section in my judgment must be or do so prima facie. Its relevancy must not and cannot depend upon the proof of other facts and it cannot be such a matter capable of more than one interpretation." It was, therefore, held that the statement of boundaries in a document of title relating to a different land between third parties are not admissible under Section 32(3) of the Evidence Act. . In Sm. Savitri Devi v. Ram Ran Bijoy (AIR 1950 PC 1) it has been held that the principle upon which hearsay evidence is admitted under Section 32(3) of the Evidence Act is that a man is not likely to make a statement against his own interest unless true, but this section does not arise unless the party knows the statement to be against his interest.

Clause (4); Opinion as to … public right or custom: in proof of public or general right and customs or matters of public or general interest statements made by deceased persons of competent knowledge as to the existence of such rights , etc. and as to the general reputation thereof in the neighbourhood, if made ante litem motam are admissible. The conditions of admissibility of a statement under this clause are: statement must be in the form of an expression of opinion of a person who cannot be called as a witness for any of the reasons

mentioned in the section, opinion must relate to the existence or non- existence of a public right or custom, opinion must be of persons who would have been likely to be aware of existence of such right etc., and such opinion must have been expressed before any controversy as to the existence of that right etc. arose.

Clause (5):and Clause (6):Declarations about to pedigree.

The declaration under (5) may relate to existence of relationship between persons who are alive or dead, and from persons having sp.knowledge and written or verbal declarations but under clause (6) applies to relationship of deceased, and statement should be written only.

The law dealing with the admissibility of declarations of deceased persons on the question of pedigree as embodied in Section 32(5) of the Evidence Act reproduces the following well-known principles of English Law. "The declaration must have been made 'ante litem motam'. The mere existence of the situation out of which the dispute subsequently arises does not render a declaration inadmissible; nor on the other hand is actual litigation necessary to exclude it; but so soon as a controversy has actually arisen which would naturally create a bias in the mind of one standing in the relation of the declarant, all subsequent declarations become inadmissible. .... .But declarations made before any dispute has arisen, although with

the express view of precluding controversy, are not on that account inadmissible... .But the previous controversy, to render the declaration inadmissible, must have been on precisely the same point" (Wills on Evidence, 3rd edition, page 223) To quote Williams J. in 'Shedden v. Patrick', (1860) 164 E R 958 at p. 966: 'In Bahadur Singh v. Mohar Singh', 24 All 94 also their Lordships admitted in evidence the statement of a deceased person as regards his relationship with the previous owner of the property on the ground "that the claim of kinship now put forward is not a recent invention, but was made nearly fifty years before the commencement of the present suit and was not then seriously controverted, if it was not in terms admitted.

Clause (7): Declarations relating to a transaction by which a right is created, asserted etc.: A statement in any relevant document, however recent and though not more than 30 years old, is admissible. Statements of facts contained in a will of a deceased person tending to show that the properties are his self acquisitions are admissible. This clause is to be read with section 13 (a) of I.E. Act.

Clause (8):Statements made by a number of persons expressing their feelings or expressions:

When a number of persons assemble together to give vent to one common statement which expresses their feelings produced in

their mind at the time of making of statement may be given in evidence.

SECTION 33 Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.— Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable: Provided— that the proceeding was between the same parties or their representatives in interest; that the adverse party in the first proceeding had the right and opportunity to cross-examine; that the questions in issue were substantially the same in the first as in the second proceeding.

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

The section makes the previous deposition admissible only when the witness is dead or cannot be found or is incapable of giving evidence or is kept out of the way by adverse party, or if

his presence cannot be obtained without an unreasonable amount of delay or expense.The section further says that the cases in which evidence given by a witness: (i) in a judicial proceeding, or (ii) before any person who is authorized by law to take evidence, such evidence is relevant in a subsequent proceeding or at the later stage of the same proceeding. The admissibility of such statement and the subject matter do not depend on their intrinsic character but on circumstances on which they are made. : (i) In judicial proceedings. The principle is applicable in judicial proceeding and before any person authorized by law. Judicial proceeding means any proceeding where evidence is taken on oath. The proceeding must be legal proceeding. The first proviso to Section 33 provides "that the proceeding was between the same parties or their representative-in-interest. According to Proviso II the evidence shall not be admitted unless it was tested by cross-examination by the opposite party at the previous proceeding. The rule is that the adverse party must have right to cross-examine the witness. Section 33 applies in civil suit as well as in criminal cases. It would be applicable inter alia in a case where either the witness who has been examined-in-chief is incapable of giving evidence, or is absent, or his presence cannot be detained without any amount of delay or expense which the court considers unreasonable. Sometimes it may happen that a witness did appear before the court and his depositions were

duly recorded in judicial proceeding where the opposite party exercised rights and opportunities to cross-examine him. However, when he died and could not be found at the later stage of the same proceeding or in any subsequent proceeding between the parties and on the same issues involved therein; the deposition given by the witness in the previous proceeding is relevant under section 33. In G. Bulliswamy vs C. Annapurnamma on 21 October, 1975, after the **evidence** was over, the counsel for the defendant got summoned the original deposition of the handwriting expert which was recorded by the Rent Controller. He wanted to make use of that deposition as **evidence** on his behalf. Thereupon the plaintiff raised an objection that the deposition cannot be admitted in **evidence** under the provision of Section 33 of Indian Evidence Act because the Rent Controller is not a Court, nor is it a judicial proceeding within the meaning of Section 3 of the Indian Evidence Act. On the other hand, the respondent contended that the Rent Controller is a court within the meaning of Section 3 of the Evidence Act and that the deposition was admissible under Section 33 of the **Evidence Act** as otherwise unnecessary delay and expense would ensue. In revision court held that the lower court considered the respective contentions of both the parties and passed the impugned order. The lower court held that the Rent Controller is a court within the meaning of Section 2 of the Evidence Act and

therefore the proceeding before him is a Judicial Proceeding within the meaning of Section 33 of the **Evidence Act**. In revision court held that the lower Court has got no doubt jurisdiction to admit deposition recorded in an earlier proceeding before the Rent Controller, provided that the provisions of section 33 of the Evidence Act are satisfied. In order to invoke Section 33, the lower court should be satisfied that the presence of such an expert cannot be obtained without an amount of delay or expense which under the circumstances of the case, the court considers unreasonable. The lower court has given a finding in paragraph 3 of the order that it would result unnecessary delay and expense if the deposition is not admitted. As stated by me already, there was no data or **evidence** placed by the defendant before the lower court about the delay and expense. This finding therefore, that it would cause unnecessary delay and expense is not based on any **evidence**. Moreover, the lower court has not found that it is unreasonable to summon the presence of the witness as it would result in delay and expense. And held that this is a case for interference under Section 115 of the Civil P.C.

SECTION 34 Entries in books of account including those maintained in an electronic form] when relevant.—[Entries in books of accounts including those maintained in an electronic

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

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

Where the entries in books of account is regularly kept in course of business though relevant are corroborative evidence and mere production and proof of an entry is not by itself sufficient to charge a person with liability. There must be some independence evidence to prove the transaction. Where the principal amount of claim is disputed Bank has to prove the liability by adducing independent evidence and mere production of book entries will not suffice.

Account book is a book maintained properly and regularly. In the case of Dharam Chand Joshi v. Satya Narayan Bazaz, AIR 1993 Gau 35 court held that Unbound sheets of paper are not books of account and cannot be relied upon; The corroboration is the best effort to prove the transaction by which a person may be charged with liability. Certified copies of statement of account under section 4 of the Bankers' Books Evidence Act corroborated by affidavit of a person are sufficient to charge

debtor with liability. In the case of Ishwar Dass v. Sohan Lal, AIR 2000 SC 426Admissibility Entries in account books regularly kept in the course of business are admissible though they by themselves cannot create any liability. Section 34 of the Evidence Act deals with entries in books of account and when the same would be relevant. In the case of L.K. Advani vs Central Bureau Of Investigation on 1 April, 1997 it was discussed whether the alleged entries in the diaries and the loose sheets are admissible under Section 34 of the Evidence Act as contended by the learned counsel for CBI? It envisages " Entries in books of account regularly kept in the course of business are relevant whenever they refer to a matter into which the Court has to enquire but such statement shall not alone be sufficient evidence to charge any person with liability." Thus to make the entries relevant and admissible under Section 34 of the Evidence Act it must be shown : (a) that the said entries are in books of account; (b) the said books of account are being regularly kept in the course of business; (c) the said entries alone be not sufficient enough to charge any person with liability. Thus as per the requirement of law the prosecution in order to make the entries in the said diaries and the loose sheets admissible in evidence must show that the same fall within the ambit of an account book within the meaning of Section 34 of the Evidence Act. In Dharam Chand Joshi v. Satya Narayan Bazaz, AIR 1993 it was held that Books

of account being only corroborative evidence must be supported by other evidence in order toCharge a person with liability.

SECTION 35 . Relevancy of entry in public [record or an electronic record] made in performance of duty.—An entry in any public or other official book, register or (record or an electronic record], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or [record or an electronic record] is kept, is itself a relevant fact.

This section is based upon the circumstances that in the case of public documents, entries are made in discharge of public duty by an officer who is an authorized a agent appointed for the purpose. To render a document admissible under this section 3 conditions must be fulfilled .Firstly the entry that is relied on must be one in any public or other official book, register or record. Secondly it must be fact in issue. And thirdly it must be made by public officer in the discharge of official duty. The statement of deceased recorded by Chief Judicial Magistrate under Section 164-A Cr.P.C. and endorsement made by him to the effect that statement was recorded as per mandate of Section 164- A Cr.P.C., may be also relevant under Section 35 **Evidence Act.** In The High Court Of Jammu And ... vs

Mahabaleshwar Gourya Naik 1992 ... on 11 December, 2015 court held that To make a document admissible under Section 35, the entry relied on must be one (i) recorded in any public or other official book, register or record; (ii) it must be an entry stating a f**act** in issue or a relevant f**act**; and (iii) it must be made by a public servant in discharge of his official duty. The statement recorded by a Magistrate (Chief Judicial Magistrate, Ganderbal, in the present case), therefore, is in-discharge of his official duty. The statement would, therefore, attract Section 35 **Evidence Act**. Needless to state that the reservation as regards statement not being contemporaneous with the fact in issue, is not to have relevance under Section 35 **Evidence Act**.

In the case of Manindra Chandra v. Gopi Ballav Sen . The case is Collector of Gorakhpore v. Ram Sunder Mal . In that case the plaintiff claimed an impartible estate from the widow of the last holder on the basis of a transfer from the son of one Indrajit Mai. One of the questions in the suit was whether Indrajit Mai was an agnate of Raja Kaushal Kishore Prosad Mal, the last male holder of impartible estate. That depended on the question as to whether Indrajit's lineal male ancestor, Ananda Mal, was a brother of Lakshmi Narayan Mal, the lineal male ancestor of Raja Kaushal Kishore. To prove that f**act**, the plaintiffs filed a certified copy of a decree passed in a suit of 1805 between a female ancestor of Raja Kaushal Kishore and a third person. To the said decree were attached two

genealogical tables (Exs. P-5 and P-6). The decree recited that those pedigrees had been filed by both the parties to the suit. If that statement in the decree was admissible in **evidence** the said pedigrees would have proved the plaintiff's case on the point, for the statement of relationship as made therein would have been almost conclusive, being the statement of the Raja's ancestor. Their Lordships of the Judicial Committee held that the statement in the decree that the pedigrees had been filed by the parties to that suit was admissible under Section 35, Evidence Act. That statement of the Judge in the decree was regarded as an entry in a public record made by a public servant - the Judge - in the discharge of his official duty. The entry in the order sheet by the certificate officer would therefore be admissible under Section 35, Evidence Act, if the statement made therein be of a f**act** in issue or of a relevant f**act**. The f**act** in issue in the case before us is whether the notices, P under Section 7ublic Demands Recovery **Act**, had been served on five of the certificate-debtors and the entry in the order sheet is that they had been served. The entry therefore is **evidence** of the f**act** of service of notice. It is no doubt only one item of **evidence**. But whether from that item of direct **evidence** the Court would be justified in holding that the f**act** of the service of the notices had been sufficiently proved would depend upon the f**acts** and circumstances of the particular case.

SECTION 36 Relevancy of statements in maps, charts and plans.—Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of 1[the Central Government or any State Government], as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.—Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of [the Central Government or any State Government], as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

This section mentions two kinds of maps and charts i.e, 1.maps or charts generally offered for public sale. 2. Maps or plans made under the authority of government. The admissibility of the first kind of maps rests upon the ground that they contain the result of inquires made under competent authority , concerning matters in which the public are interested. And the admissibility of of other one rest on the ground that, being made and published under the authority of government , they must be taken to have been made by, and to be the result of the study or inquires of competent persons.

SECTION 37 : Relevancy of statement as to fact of public nature, contained in certain Acts or notifications.—When the

Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament (of the United Kingdom], or in any [Central Act, Provincial Act, or 3[a State Act], or in a Government notification or notification by the Crown Representative appearing in the Official Gazette or in any printed paper purporting to be the London Gazette or the Government Gazette of any Dominion, colony or possession of His Majesty is a relevant fact.]—When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament [of the United Kingdom], or in any 4[Central Act, Provincial Act, or 5[a State Act], or in a Government notification or notification by the Crown Representative appearing in the Official Gazette or in any printed paper purporting to be the London Gazette or the Government Gazette of any Dominion, colony or possession of His Majesty is a relevant fact.]"

This section makes recitals of a fact of a public nature relevant,if the recital is contained,either in any enactment or in any notification appearing in any Indian Gazette,London Gazetteetc. In Vimla Bai (Dead) By Lrs vs Hiralal Gupta And Ors on 22 December, 1989 S.C it was held that Section 37 of the Evidence Act 1872 postulates that any statement made in Govt. Gazette of a public nature is a relevant fact.

SECTION 38: Relevancy of statements as to any law contained in law-books.—When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

The law of British India requires no proof as the courts are bound to take judicial notice of it.This section applies only when court has to form an opinion as to law of any foreign country. In Estate of VR. RM. S. Chockalingam Chettiar v. Commissioner of Income-tax where the High Court held that the validity of a testamentary disposition in regard to immovable properties situate in a foreign country was a question of f**act** and that finding could not to be interfered with by the High Court in a reference. It is relevant to point out that under the English law, foreign law can be proved only by expert testimony and not by mere production of books containing foreign law as is permissible in India under section 38 of the **Indian Evidence Act**, 1872. Under that **section** courts can take judicial ntoice of a foreign statue contained in a book issued under the authority of the foreign Government

SECTION 39 What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers.—When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or is contained in part of electronic record or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, electronic record, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.]

If a fact given in evidence is (i) a longer statement, or (ii) a conversation, or (iii) an isolated document, or (iv) a document contained in a book, or (v) a series of letters of papers, the court has discretion to use the relevant portion of the conversation, document, books or series of letters or papers and requires the production of that portion or pages. In other words, the evidence shall be given of only explanatory or qualifying part of the statement, document, book etc. Same is applicable to electronic record under the section. The statements made in books cannot be relied on unless supported by contemporaneous records means such documents which explain that part of statement, and on the

basis of principles of justice judge admits evidence which is his complete discreation. In the case of Cbi vs Venkata Subbarao Vs on 17 October, 2011 Shri I.J.S. Gulati, advocate for A1 & A2 also submits that as per PW16 Inspector B.K. Pradhan, TLO entire case property was deposited in the Maalkhana on the same date i.e. 28.10.1999 but PW11 Inspector C.K. Sharma, Part I.O. to whom investigation was marked on 04.11.1999 interalia testified that sealed cassette etc. were taken by him from previous I.O. Further according to DW1 Constable Narender Kumar, as per Ex.DW1/1, case property of this case was deposited in Maalkhana on 01.11.1999. So, it is claimed that possibility of Ex.P11 being tampered with, can not be ruled out in this regard, reliance has been placed on Section 39 Indian **Evidence Act**, 1872.