

## LAW OF EVIDENCE.

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 Procedure1..—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 Procedure1." 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.

(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.

Relevant fact means when two facts are related or connected with each other so that any inference can be drawn ,one either taken by itself or in connection with other facts, proves or renders probable the past or present or future existence .i.e, with which we can say such and such fact exist or doesnot exist.Evidence may be given of oral and documentary evidence but as per the procedure laid in CPC and

CrPC. Word used in section, "and of no others" clearly embraces the limitation put on the admissibility of evidences in the court of law. Whether the evidence is relevant and then admissible also. If yes, then court will admit evidence as is mentioned in section 3 about definition of evidence.

## 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 1[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.

Indian evidence act is based on English evidence act ,but in section 6 part of same transaction has been inserted instead of *res gestae* in order to avoid confusion .

*Res gestae* (a Latin phrase meaning "things done")General rule is that hearsay evidence is not admissible but Section 6 is an exception to the rule against Hearsay evidence wherein hearsay evidence is made admissible. The rationale behind this is the spontaneity and immediacy of such statement that there is hardly anytime for concoction. So, such statement must be contemporaneous with the acts which constitute the offence or at least immediately thereafter. Section 6 lays down that facts which are connected with facts in issue form part of the 'same transaction' are relevant facts. All these facts are therefore, admissible in evidence. The law under this section applies to civil cases as well as to criminal cases. *Res gestae* includes facts which form part of same transaction. So, it is pertinent to examine what is a transaction, when does it start and when does it ends. If any fact fails to link itself with the main transaction, it fails to be a *res gestae* and hence inadmissible. If any statement is made under the stress of excitement then such statement form part of the same transaction and is admissible before the court of law. Therefore the *res gestae* as "a transaction is a group of facts connected together to be referred to by a single name such as a crime, a contract, a wrong or any other subject of enquiry which be in issue"—STEPHEN. Facts are so connected with other facts as to form the component of the principle fact and these facts must not be excluded. But if there is an interval, however, slight it may be, which

was sufficient enough for fabrication then the statement is not part of *res gestae*. Each case in criminal law should be judged according to its own merit. When it is proved that the evidence forms part of the same transaction it is admissible under sec. 6 but whether it is reliable or not depends on the discretion of the Judge. The test for determining whether a fact forms part of the same transaction or another “depends upon whether they are so related to one another in point of purpose, or as cause and effect or as probable and subsidiary acts as to constitute one continuous action.” To ascertain whether a series of facts are part of the same transaction, it is essential to see whether they linked together to present a continuous whole. It implies a fact which though not in issue, is so connected with fact in issue “as to form part of same transaction” becomes relevant by itself. The expression *res gestae* as applied to a crime means the complete transaction from its starting point in the act of the accused until the end is reached. What in any case constitutes a transaction depends wholly on the character of the act and the circumstances of the case. It frequently happens that, as evidence of circumstances may be resorted to for the purpose of proving the commission of a particular offence charged, the proof of those circumstances involves the proof of other acts either criminal or apparently innocent. In such cases it is proper that the chain of evidence should be unbroken. The words spoken by the person doing the act, or by the person to whom they were done or by the bystanders (illustration a) are relevant as a part of the same transaction, but it should be borne in mind that such statements or declarations, as they are called, in order that they might be admissible as *res gestae* should be contemporaneous with the transaction in issue, that is, the interval should not be made as to give time and opportunity for fabrication.

In *Ratten v The Queen* A man was prosecuted for the murder of his wife.

His defence was that the shot went off accidentally. There was evidence to the effect that the deceased telephoned say : “Get me the police please”. Before the operator could connect the police, the caller, who spoke in distress, gave her address and the call suddenly ended. Thereafter the police came to the house and found the body of a dead woman. Her call and the words she spoke were held to be relevant as a part of the transaction which brought about her death. Her call in distress showed that the shooting in question was intentional and not accidental. For no victim of an accident could have thought of getting the police before the happening. This then is the utility of the doctrine of *res gestae*. It enables the court to take into account all the essential details of a transaction. A transaction can be truly understood only when all its integral parts are known and not in isolation from each other. The Court of Appeal held in another case that a statement made to a police officer by the victim of an assault identifying the assailant while moving with the police in his car was relevant as showing that he had seen the victim of an assault and who committed it. In *Krishen Kumar Mallik v/s Tate of Haryana* 2011 SCC observed, Section 6 of the Act has an exception to the general rule where-under, hearsay evidence becomes admissible. But as for bringing such hearsay evidence within the ambit of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there could not be an interval which would allow fabrication. In other words, the statements said to be admitted as forming part of *res gestae* must have been made contemporaneously with the act or immediately thereafter. In case of *R v. Bedingfield* a woman, with a throat cut, came suddenly out of a room, in which she had been injured and shortly before she died, said : “Oh dear Aunt, see what Bedingfield has done to me.” It was held that the statement was not admissible. Anything uttered by the deceased at the time the act was being done would be admissible, as, for instance if she has been heard to say

something, as “don't Harry”. But here it was something, stated by her after it was all over. The statement was also held to be not relevant as dying declaration because she did not have the time to reflect that she was dying. (good case for criticism)

In case of R v. Christie an indecent assault was made upon a young boy. Shortly after the incident the boy made certain statements to his mother by which he described the offence and the man who assaulted him. The evidence of the statement was excluded. Remarked that the boy's statement was so separated by time and circumstances from the actual commission of the crime that it was not admissible as part of the *res gestae*.

The emphasis of the courts seem to be that “the words should be at least *de recenti* and not after an interval which should allow time for reflection and concocting a story.” The statement should be an exclamation “forced out of a witness by the emotion generated by an event” rather than a subsequent narrative. The courts have stressing the necessity for close association in time, place and circumstances between the statement and the crucial events.

It has been held by the Supreme Court in R. M. Malkani v State of Maharashtra, that “a contemporaneous tape-record of a relevant conversation is a relevant fact. It is *res gestae*”. In Uttam Singh vs State of Madhya Pradesh the child witness was sleeping with the deceased father at the relevant time of incident and was awakened by the sound of the fatal blow of the axe on the neck of the deceased. Seeing it, the child shouted to his mother for help by naming the accused as assailant. On hearing the sounds the mother and sisters of the child and other witnesses gathered at the spot. This evidence was held to be admissible as a part of the same transaction as such shout was the natural and probable as per the facts of the case. In this case if child witness failed to react on the spot but spoke later, it could still be

admissible under sec 6. 2002 INDLAW MP 79

In Bishnavs State of West Bengal, AIR 2006 SC 302 at p. 309 para 27, where the two witnesses reached the place of occurrence immediately after the incident had taken place and found the dead body of Prankrishna and injured Nepal in an unconscious state. One of them found the mother of Prannkrishna and Nepal weeping and heard about the entire incident from an eye-witness and the role played by each of the appellants, their testimony was held to be admissible under section 6 of the Evidence Act. In all the cases mentioned above the test applied to make the evidence admissible was to consider that was the statement was made at the spur of the moment without an opportunity to concoct and fabricate anything. Where the judges are satisfied that the reaction was the most immediate result of the circumstances being relevant to the facts in issue, they have allowed such evidence to be admitted.

### **Acts or Omissions as Res Gestae;**

So far as acts and omissions accompanying a transaction are concerned, much difficulty does not arise. Nature of the transaction itself indicates what should be its essential parts. In case of *Milne v Leisler* a question was whether a contract had been made with a person in his personal capacity or as an agent of another. The fact that the contractor wrote a letter to his broker asking him to make inquiries was held to be relevant.

### **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.

Section 7 provides for the relevancy of several classes of facts. With the help of all these facts reasonable presumption can be created about the existence or non-existence of any fact. 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. Occasion**

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.

### **2. Effect:**

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. In Yusufalli Esmail Nagree vs The State Of Maharashtra on 19 April, 1967. n report of S, that the appellant had offered a bribe to him, which S did not accept, the

Police laid a trap. S called the appellant at his residence and in the room where they alone were present, the appellant handed over the bribe to S. In the room a microphone of a tape recorder was concealed and their conversation recorded. The Police officers and the radio mechanic kept concealed in another room. S was the only eye-witness to the offer of the bribe and the tape was kept in the custody of the police inspector but was not sealed. The appellant was convicted under s.165A.I.P.C., which the High Court upheld. In appeal, this Court held: The conviction must be upheld. The imprint on the magnetic tape is the direct effect of the relevant sounds. Like a photograph of a relevant incident, a contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under s. 7 of the Indian Evidence Act. The time and place and accuracy of the recording must be proved by a competent witness and the voices must be properly identified. One of the features of magnetic tape recording is the ability to erase and re-use the recording medium. Because of this facility of erasure and re-use, the evidence, must be received with caution. The court must be satisfied beyond reasonable doubt that the record has not been tampered with.

**3. Cause :** Cause often explains why a particular act was done. 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 .

#### **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.

**Footprints;** Evidence that there were footprints at or near the scene of an offence or that these footprints came from or led to particular place is relevant under section 7 and section 45.

### **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. In Ratten v/s Regnam accused was prosecuted for shooting down his wife and he took the defence of accident, the fact that accused was unhappy with his wife and he was carrying an affair with another woman was held to be relevant as it constituted the state of things in which the principal fact, namely, the shooting down happen.

### **SECTION 8:**

**Motive, preparation and previous or subsequent conduct.**—Any fact is relevant which shows or constitutes a motive or preparation for any

fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto. Explanation 1.—The word “conduct” in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act. Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant. Illustrations

(a) A is tried for the murder of B. The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b) A sues B upon a bond for the payment of money. B denies the making of the bond. The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose is relevant.

(c) A is tried for the murder of B by poison. The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d) The question is, whether a certain document is the Will of A. The facts that, not long before the date of the alleged Will, A made inquiry into matters to which the provisions of the alleged Will relate, that he consulted vakils in reference to making the Will, and that he caused

drafts or other Wills to be prepared of which he did not approve, are relevant.

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

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

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

(h) The question is, whether A committed a crime. The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal and the contents of the letter, are relevant.

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

(j) The question is, whether A was ravished. The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the

circumstances under which, and the terms in which, the complaint was made, are relevant. The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant as a dying declaration under section 32, clause (1), or as corroborative evidence under section 157.

(k) The question is, whether A was robbed. The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant. The fact that he said he had been robbed, without making any complaint, is not relevant, as conduct under this section, though it may be relevant as a dying declaration under section 32, clause (1), or as corroborative evidence under section 157. Motive, generally means that which moves or induces a person to act in a certain way; a desire, fear, reason etc. which influences a person's volition; motive is productive of physical or mechanical motion. Sometimes mere animus such as spite or ill-will, wanton desire to harm without any view to personal benefit is meant. But motive is often used as meaning, purpose, something objective and external as contrasted with a mere mental state. The Supreme Court of India has said motive is something which prompts a man to form an intention and knowledge, is an awareness of consequences of the act. Motive is a moving power which impels action for a definite result or to put in differently, motive is that which incites or stimulates a person to do an act. In law, especially criminal law, a motive is the cause that moves people and induce a certain action. Motive in itself is seldom an element of any given crime; however, the legal system typically allows motive to be proven in order to make plausible the accused's reasons for committing a crime, at least when those motives may be obscure or hard to identify

with. There can hardly be any action without motive. If the offence has been committed voluntarily then presence of motive can not be declined. Since motive sometimes play a very important role in criminal cases, its relevancy is drawn by the courts and supplied as evidence. In a case where there is a clear proof of motive for the commission of crime, it supports the findings of the Court proving the accused guilty of the charges leveled against him or her. In *Kundula Bala Vs State of A.P* 26 March, 1993 SC: In this case the son-in-law before his marriage to the demanded a piece of land from the deceased. The connivance of the mother-in-law was also there before this demand. The marriage took place but the deceased refused to transfer the property in the name of the accused and wanted to give it to the daughter. That infuriated the accused and crime was committed. It was held that there was a strong motive for the accused to commit the crime.

### **Preparation:**

Any preparation before crime is committed is also relevant under section 8.. The Supreme Court of India interpreted the word preparation as the word preparation denotes not only to action or process of preparing the components to produce the compound, but also that which is prepared. Preparation consists in arranging or devising the means necessary for the commission of a crime. Every crime is necessarily preceded by preparation. To commit a crime, an offender requires various means. Preparation can be said to the process through which such means are arranged to drive them in order to achieve the ultimate aim that is the motive behind such act. When a question as to whether a person has done a particular act or not, the fact that he made certain preparations which is related to his act, would certainly be relevant for a purpose of showing that he did it. The illustrations (c) and (d) as given in

the explanation attached to section 8 would be very relevant to be referred. Illustration (c) reads A is tried for the murder of B by poison. The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant. R V/S Palmer wherein accused purchased poison is held to be relevant as preparation. The given illustration is self explanatory and clearly reveals the importance of preparation as relevant evidence. The preparation on the part of the accused may be reflected in various stages namely to accomplish the crime, to prevent the discovery of crime or it may be to aid escape of the criminal and avoid suspicion.. **Mohan Lal Vs Emperor** AIR 1937 Sind 293: The accused was charged with cheating for importing goods in Karachi port without paying the proper custom duty. Evidence was adduced of previous visit of the accused to the port of Okha, where it was said he tried to make some arrangements with the customs whereby he could import other goods without payment of proper duty. The evidence was held to be admissible as they were the preparation being made out by the accused in order to do the wrongful act.

**Conduct:** The conduct of the party, conduct of any agent of the party, conduct of the accused influences or is influenced by any fact in issue or relevant fact, such conduct is relevant fact.

Conduct previous or subsequent is relevant.

A conduct to be relevant need not be only previous or subsequent. Both are relevant. Under section 8 previous declaration of intention, threat or attempts to commit an offence are instances of previous or antecedent Conduct and are relevant. In antecedent conduct there is declaration of intention or threat. Such type of conduct may influence or is likely to influence the fact in issue or any relevant fact. A woman and her paramour were accused of murdering her husband. She had

been heard to say of her husband. "I live a most unhappy life with him. I wish his death. If he cannot die I will kill myself." It is relevant Subsequent conduct of a party or person or his agent is relevant under the section. Sudden change of life, silence on part of the accused, false statement, suppression of evidence, running away after occurrence are instances of subsequent conduct. Illustrations (f), (h) and (i) explain the same. Presence of accused at a place where ransom demanded was to be fulfilled and then action of fleeing on spotting the police party is a relevant circumstances and is admissible under this section.

In *Rv/s Palmer* accused tried to bribe the post boy to overturn the carriage in which jar was being conveyed, to be analysed in London, and from which evidence might be obtained of his guilt. And other acts of accused were considered as conduct and relevant under section 8 of act.. In terrorist attack in parliament the accused has purchased ingredients from a shop used IEDs and found in possession of deceased terrorists. The name of the shop and address were already known to the police as name and address of the shop was already mentioned on packets seized. It was held that the conduct of accused in pointing shop and its properties was relevant under this section.

Mere statement is not admissible according to Explanation 1 to Section 8. It lays down that the conduct does not include statements. But the explanation is an exception to this rule. "The statement and the Act which are explained and accompanied by such a statement both are relevant as a composite whole." Those statements which accompany and explain acts, other than statements can be regarded as conduct. For example, a girl was raped and she made a complaint about it to her mother. The circumstances under which and the terms in which the complaint was made, is relevant. It is not necessary that a complaint to

be relevant should have been made only to police station. But false explanation of the accused is also conduct and relevant. Similarly, the accused was charged with gross indecency with a boy of fifteen. Shortly after the offence a complaint was made by the boy to his parents. The particulars of the complaint were held to be relevant.

In *Queen-Empress vs Abdullah* on 27 February, 1885 ALL High court. Question in reference was about admissibility of section 8 or section 32 against accused wherein deceased was attacked by her throat by accused. And deceased before her death was not able to talk but with the help of her mother who supported her elbow narrated by way of signs/(by waving her hand) the name of accused. Majority view was about the admissibility of section 32 but minority view was about the admissibility of section 8. It was discussed that any conduct on the part of the deceased in this case, which had any bearing on the circumstances in which she met her death, would be relevant. But the state of things is this. She, being in a dying state at the hospital, made, in the presence of certain persons, the signs which have been referred to. It is clear that, taking these signs alone, there is nothing to show that they are relevant, because there is nothing which connects them with the cause of death. Then it is argued that since conduct is relevant under certain circumstances, you may with reference to Explanation 2 of Section 8, prove any statements made to the person whose conduct is in question. In order to decide this point the language of Section 8 must be carefully considered. It is to the following effect: "The conduct of any party or of any agent to any party to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct to any person an offence against whom is the subject of any proceedings, is

relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto. Explanation 1.--The word 'conduct' in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act. Explanation 2.--When the conduct of any person is relevant, any statement made to him or in his presence or hearing, which affects such conduct, is relevant." Now the question here in issue is--Did Abdullah kill the deceased by cutting her throat'? The only conduct which is alleged on the part of the deceased is, that she moved her hand in answer to questions put to her by some of the persons at the hospital. If we went no further than this, there would be nothing to show that her conduct in lifting her hand either influenced or was influenced by the fact in issue,--i.e., the cutting of her throat. Then Explanation 2 is brought in; but it is obvious that before you can let in the words of a third person, you must show that the conduct which they are alleged to affect is relevant. And in the present case it is clear that until you let in the words, the conduct is not relevant, and therefore the words cannot be let in because the condition precedent to their admissibility has not been satisfied, and that not having been done, their whole basis fails.

Explanation 1 of Section 8 points to a case in which a person whose conduct is in dispute mixes up together actions and statements; and in such a case those actions and statements may be proved as a whole. But where the statement is made merely in response to some question or suggestion, it shows a state of things introduced, not by the fact in issue, but by the interposition of something else. For these reasons majority hold that signs made by the deceased

cannot be admitted by way of "conduct" under Section 8 of the Evidence Act refer to Illustration (f) of Section 8, which runs thus:

The question is, whether A robbed B. The facts that, after B was robbed, C said in A's presence--'the police are coming to look for the man who robbed B,'--and that immediately afterwards A ran away, are relevant. Minority hold that the signs made by the deceased were the conduct of a "person an offence against whom was the subject of any proceeding," and that they are therefore relevant under Section 8 of the Evidence Act. There remain the question, whether the questions put her were admissible, and whether she can be considered to have adopted the statements which they implied. Now, Explanation 2 to Section 8 provides that "when the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affect such conduct, is relevant." Minority hold that conduct of the person an offence against whom is being investigated is relevant.

## **Section 9 :**

Facts necessary to explain or introduce relevant facts. —Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose. Illustrations

(a) The question is, whether a given document is the Will of A. The state of A's property and of his family at the date of the alleged Will may be relevant facts.

(b) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true. The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue. The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c) A is accused of a crime. The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section 8, as conduct subsequent to and affected by facts in issue. The fact that, at the time when he left home, he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly. The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d) A sues B for inducing C to break a contract of service made by him with A. C., on leaving A's service, says to A— "I am leaving you because B has made me a better offer". This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says, as he delivers it—" A says you

are to hide this”. B's statement is relevant as explanatory of a fact which is part of the transaction.

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

When certain fact can explain any fact in issue or any relevant fact, and by such explanation the parties can support or rebut any inference drawn from such facts, then these types facts are called as explanatory facts, and they are thus relevant. Explanatory facts are those facts which can explain a fact which is already taken and inference are drawn from such facts e.g A is accused of a crime. The fact that, soon after the commission of the crime, A absconded from his house, is relevant under section 8, as a conduct subsequent to and affected by facts in issue. However, the fact that, at the time when he left home he had *sudden and urgent business at the place to which he went* is relevant, as tending to explain the fact that he left home suddenly. The details of the business on which he left are not relevant except in so far as they are necessary to show that the business was sudden and urgent.

Introduce a fact which ultimately assert or deny any fact in issue or relevant fact, A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A – “I am leaving you because B has made me better offer.” The statement is a relevant fact as explanatory of C's conduct which is relevant as a fact in issue.

Support or rebut an inference suggested by a fact in issue or relevant fact, means which supports or props any fact in issue or

fact. A, accused of theft is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it "A says you are to hide this." B's statement is relevant as explanatory of a fact which is part of the transaction. Establish the identity of any thing or person means whose identity is relevant, for example fact that some witnesses identified the accused during Test Identification Parade (TIP) is relevant under this Section.

When question is about time or place at which any fact in issue or relevant fact happened, Post mortem report or other scientific reports, fixing the time of murder etc., through some process are relevant. For example, B, the deceased was last seen taking food at 8 PM. His dead body was recovered next very morning at 6 from agriculture field. Undigested food was found in the stomach of the deceased. It will be concluded that death must have happen within 6 hours of his taking of food i.e. his death must have caused somewhere between 8 PM to 2 AM of the early morning. In *Ram Lochan v/s State of West Bengal*, A.I.R 1963 s.c 1074 held that superimpose photograph of the deceased over the skeleton of a human body recovered from a tank was admissible under section 9 which gives identity of of a thing show the relation of parties by whom any such fact was transacted. A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction. **In State Of Rajasthan vs Sohaniya on 30 May, 2007 it was held by court that** ,Credibility of an eye witness with regard to identification of the accused, ornaments, opium and other stolen properties, the Courts take into account the sound principles of the Criminal Jurisprudence, which are based on the test identification of recoveries, footprint marks etc., to substantiate the direct **evidence**.

Section 9 of the **Evidence Act** which defines **facts** necessary to explain or introduce relevant **facts**, says that if any **fact** which establishes the identity of any person or thing, whose identity is relevant, is admissible. This is commonly known as test identification proceedings, which is conducted mainly for two reasons; firstly for the **satisfaction** of the investigating officer regarding the bonafides of an eye witnesses and secondly reliability of the witness is confirmed by the court when they are put through the process of test identification proceedings before a magistrate or other independent persons. The procedure of test identification is that it should be conducted as far as possible immediately after the arrest of the accused so that the memory of an identifier remains fresh and there should be no special mark on the face or body of the accused persons and identifier may not have any opportunity to see the things or persons to be identified before it is held. This **evidence** of test identification is supporting to the substantive one. Where accused is already known to witness there is no need of such identification. About test identification parade **supreme court of india in State of U.P.Vs. Sukhpal Singh and Ors.** 2009 AIR SC briefed as wherein The prosecution version, as set up in the first information report by Shri Bhagwant Singh, PW2 is that on 1.9.1979 at about 7.45 p.m. in the evening, Hiralal Yadav, the elder brother of the complainant, Kundan Singh, Chhabi Nath Singh, Tikam Singh and Chandan Giri were sitting in the open area of the house of Bhagwant Singh. Aidal Singh, the younger brother of Hiralal and the ladies of the family were inside the house. At that time, about 10 to 15 persons armed with country-made pistols, guns and other weapons entered the house of the complainant. They came for committing dacoity as mentioned in the FIR. They started indiscriminate firing and in the process they killed Hiralal and Aidal Singh and injured Smt.

Longshree and Chandan Giri. It is further disclosed in the FIR that the miscreants inquired about the property articles from Suit. Longshree and looted licensed single barrel gun of Aidal Singh and some other articles, the details of which were not given in the FIR. There was moonlight and lantern light at the spot where the incident had taken place. Amongst the miscreants, accused Sukhpal, Harpal, two brothers, sons of Rabti Singh, Ajanti, resident of village Sikanderpur and Munna Giri, resident of Sitapur have been identified in the moonlight and the lantern-light. According to the prosecution, they remained on the spot with other miscreants for about half an hour. It is stated that the incident had taken place on 1.9.1979 at 7.45 am and the FIR was lodged at 9.15 p.m. on the same night. The case against the accused persons was registered and investigated. The injured eye witnesses were medically examined on the same night at the Primary Health Centre, Sikandrarao by Dr. S.K. Jha. The condition of Hiralal and Aidal Singh was precarious and their dying declarations were recorded at Sikandrarao by Shri Ram Autar Saxena, Tehsildar Magistrate, PW9. Later on, both Hira Lal and Aidal Singh succumbed to their injuries. Hon'ble Judges: Dalveer Bhandari and Harjit Singh Bedi said, "Test identification parade not necessary when the accused persons are well known to the eyewitnesses." In the instant case, all the witnesses have stated that they had otherwise known the accused persons and they were not strangers to them. In the moonlight and lantern light they clearly identified them. Therefore, the test identification parade was really not necessary in this case. In this case, all the witnesses have categorically stated that the accused persons committed dacoity and killed Hiralal and Aidal Singh and injured Smt. Longshree and Chandan Giri in the incident. There was adequate light in which they had

recognized these accused persons who were otherwise known to them. The High Court erroneously set aside a well reasoned judgment of the trial court which is based on correct evaluation of evidence of injured eye-witnesses and other witnesses and dying declarations on record. In the instant case, before the trial court an application was filed that the accused persons ought to have been charged under Section 302 IPC instead of Section 396 IPC which was rejected by the trial court on the ground that the accused persons were justifiably charged under Section 396 IPC. The conducting of test identification parade depends on the facts and circumstances of each case

SECTION 10 :

**Things said or done by conspirator in reference to common design:**

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

**Illustration:**

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

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings

advocating the object in view at Agra, and F transmitted from Delhi to G at Kabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

Before discussing section 10 it is to be mentioned that once the conspiracy is over this section has no applicability. Section 10 deals with the admissibility of evidence in a conspiracy case. It is based on the "theory of implied agency." The special feature of the section is that anything said or done or written by any member of conspiracy is evidence and admissible against the other if it relates to the conspiracy. This section has to be read with Section 120A of the Indian Penal Code.. All conspirators must have "common intention" at the time when the thing was said, done or written. Confessions by accused made after the object of the conspiracy is carried out are not relevant as the common intention was not then existing. The first condition for applying Section 10 is that the conspirators have conspired together. The conspiracy is, therefore, an unlawful combination of two or more persons to do an unlawful act or a lawful act by unlawful means. There must be reasonable ground to believe that two or more persons have conspired together to commit an offence. However, a conspiracy is not actionable act giving rise to cause of action. The test is to establish: (i) there is reasonable ground to believe that a conspiracy existed, and (ii) such act was done and the statement made or writing exchanged between conspirators. Thus, "before bringing on record anything said, done or

written by an alleged conspirator the court has to bring on record some evidence which prima facie proves the existence of the conspiracy." All acts and statements of a conspirator can only be used for the purpose of proving the existence of the conspiracy or that a particular person was a party to it. It cannot be used in favour of the other party or for the purpose of showing that such a person was not a party to conspiracy. The common concern and agreement which constitute the conspiracy serve to unify the acts done in pursuance of it. This has been the rule of conspiracy under section 10 that any thing said, done or written by any one of the conspirators against each other is believed to be cons-pirating and is relevant. Once there was sufficient material to reasonably believe that there was concert and connection between persons charged with common design, it is immaterial as to whether they were strangers to each other, or ignorant of actual role of each of them, or that they did not perform any one or more such acts by joint efforts. According to the expression "in reference to their common intention" the statement made or act done by other is a relevant fact and is admissible. In Ghulam Din Bitch v State of J. & K. it was held that in a trial of government employees who were carriage contractors, when there is a finding that there was a close relationship between the carriage contractors and the government employees who had acted in consent, absence of a charge of conspiracy between the two was not material. The statements by one conspirator to another during the period of conspiracy relating to the implementation of that conspiracy and the evidence as to the acts done by him disclosing participation of the other conspirator are relevant. In State of Gujarat v Mohammed Atik the Supreme Court held that any statement by an accused after arrest, whether a confession or otherwise, had not to fall within the

ambit of this section. Confession was made by the accused after common intention of parties was no longer in existence, Section 10 cannot be invoked against co-accused. The essence of Section 10 lies within the expression "common intention." The words "common intention" signify a common intention existing at the time when the thing said, was or written by one of them. Any narrative, or statement or confession made to a third party after the common intention or conspiracy was no longer operating and had ceased to exist is not admissible against the other party. Therefore, the statement of woman to the Magistrate was not admissible, as the conspiracy was already completed." This principle was approved by the Supreme Court in *Sardul Singh v State of Bombay* where it held that "principle underlying the reception of evidence under section 10 of the Evidence Act, the statements, Acts, and writing of one co-conspirator as against the other is on the theory of agency." The 'theory of agency' has also been referred to by the Supreme Court in *Badri Rai v State of Bihar* where both accused were held liable and held that the offering of bribe along with the statement was admissible not only against the first appellant but also against the second appellant on the basis of "theory of agency" in pursuance of the object of the conspiracy. It is a principle of common sense that one person alone can never be held guilty of criminal conspiracy for the simple reason that he cannot conspire. There was a case lodged against accused about melting of silver. Those ornaments were being melted by six strangers coming from distant places, with implements for melting, said to have been supplied by Ramji. The seizure was made on the suspicion that the ornaments and the molten silver were stolen property, which were to be sold to Ramji in a shape which could not be identified with any stolen property. After making

the seizure-list of' the properties, thus seized, the police officer arrested Ramji, as also the other six strangers. -Ramji was .released on bail that very day. Police investigations into the case, thus started, followed. During that period, on August 24, 1953, at about 7-30 p.m., the Inspector was on his way from his residential quarters to the police station, when both the appellants accosted him on the road, and Ramji asked him to hush up the case for a valuable consideration. The Inspector told them that he could not talk to them on the road, and that they should come to the police station. Thereafter, the Inspector reported the matter to his superior officer, the D.S.P. (P.W. 8), and to the sub-inspector, P.W. 9, attached to the same police station. On August 31, the same year, the first appellant, Badri, came to the police station,. saw the Inspector in the central room of the thana, and offered to him a packet wrapped in a piece of old newspaper, containing Rs. 500 in currency notes. He told the Inspector, (P. W. 1), that the second appellant, Ramji, had sent the money through him in pursuance of the talk that they had with him in the evening of August 24, as a consideration for hushing up the case that was pending against Ramji. At the time the offer was made, a number of police officers besides a local merchant, (P.W. 7), were present there. The Inspector at once drew up the first information report of the offer of the bribe on his own statement and prepared a seizure-list of the money, thus offered, and at once arrested Badri and put him in the thana lock-up. After the usual investigation the appellants were placed on their trial, "A conspiracy consists not merely in the intention of two or more but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only it is not indictable. When two agree to carry it into effect, the very plot is an act

in itself and the act of each of the parties promise against promise. Again in S.Arul Raja v/s State of Tamil Nadu (2010)8 SCC 233, court held that post arrest statement of A-1 was held to be insufficient to implicate the appellant accused in the said conspiracy as the same was hit by section 10 which refers to the statement of a fellow conspirator that pertains to the common intention behind the act , and such a statement can be used against the other conspirators.And same judgement was given long before in Mirza Akbar v/s Emperor. A.I.R 1940.

#### SECTION 11:

When facts not otherwise relevant become relevant.—Facts not otherwise relevant are relevant—

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable. Illustrations

(a) The question is, whether A committed a crime at Calcutta on a certain day. The fact that, on that day, A was at Lahore is relevant. The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b) The question is, whether A committed a crime. The circumstances are such that the crime must have been committed either by A, B, C or D, every fact which shows that the crime could have been committed

by no one else and that it was not committed by either B, C or D, is relevant.

Object of this section is to admit those facts which will help in sorting fact in issue even though they are irrelevant and this section enlarges the scope of admission of relevant facts. But limitation is put by the provisions of section 5 to section 55 i.e, if that fact is relevant under these provisions then any irrelevant fact will be admissible under section 11. At first sight, it would appear that this section would make every fact relevant because of the wording of clause (b) But care must be taken not to give this section an improperly wide scope by a liberal interpretation of the phrase "highly probable or improbable".

Otherwise, this section might seem to supersede all the other provisions of the Act as to relevancy. Further, the fact relied on must be proved according to the provisions of the Act "S. 11 of the Evidence Act is, no doubt, expressed in terms so extensive, that any fact which can, by a chain of ratiocination, be brought into connexion with another, so as to have a bearing upon a point in issue, may possibly be held to be relevant within its meaning. But the connexions of human affairs are so infinitely various and far-reaching, that thus to take the section in its widest admissible sense, would be to complicate every trial with a mass of collateral inquiries limited only by the patience and the means of the parties." The words "highly probable" are of great importance, and the fact sought to be proved must be so closely connected with the fact in issue or the relevant fact, that a Court will not be in a position to determine it without taking them into consideration. In (Rajendra Singh v. Ramganit Singh, A.I.R. 1954 Patna 566) said about Section 11, Evidence Act (I of 1872) that facts not otherwise relevant are relevant if they are inconsistent with any fact in issue or relevant fact, or if by

themselves or in connection with other facts, they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable. The section has been expressed in very wide language, and, if construed widely, question of valuation, non-passing of consideration, absence of necessity for sale and matters of such nature will certainly be relevant. It has been laid down in many cases, however, that, though the terms of the section are wide, it does not mean that any and every fact, however remote, is relevant because it is shown to have a bearing on a fact in issue or a relevant fact. The section, to my mind, does not admit of collateral facts which have practically no connection with the main fact. It must also be noted that before a fact can be relevant under Section 11, it must be shown that it is admissible. The section declares as admissible, facts which are logically relevant to prove or disprove the main fact or the fact in issue. There may be collateral facts which have no connection with the main fact, except by way of disproving any material facts proved or asserted by the other side, i.e., when they are such as to make the existence of the fact so "highly improbable" as to justify the inference that it never existed. A well-known instance is that of the defence of alibi. Another instance is non-access of the husband to prove illegitimacy of a child. An admissibility under Section 11 depends on the nearness or the connection of the fact sought to be proved with facts in issue, and also on the degree of such nearness or connection. These facts render the fact in issue probable or improbable when taken with other facts in the case.

**Plea of alibi** : Facts which are irrelevant will be admissible and relevant under section 11 if defence of plea of alibi i.e, his presence elsewhere were taken by accused.e.g, Accused A is charged with murder and he

raises his defence that he was not at the place of occurrence but was outside the station (inconsistent fact) then such plea will be relevant and admissible under section 11.

**SECTION 12:** Facts relevant when right or custom is in question: In suits for damages, facts tending to enable Court to determine amount are relevant.—In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded, is relevant.

Any fact which will help any party to decide the quantum of damages in any suit will be relevant in section 12. Section 12 of the Evidence Act provides for determination of damages when suits for the damages are claimed by the party. Under this section the court can determine the amount of damages in an action based on contract or tort. In a suit for damages, the amount of damages must be a fact in issue. Thus the section lays down that evidence tending to determine, i.e., to increase or diminish damages is admissible. Section 55 of this Act lays down the conditions under which evidence of character may be given in civil cases to affect the amount of damages. Similarly Section 73 of the Indian Contract Act also lays down the rule governing damages in actions in contract. In a suit for damages for a breach of contract of marriage, the evidence as to status of the defendant may be given for determination of the amount of damages.

**SECTION 13:**

Facts relevant when right or custom is in question.—Where the question is as to the existence of any right or custom, the following facts are relevant:—

(a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence;

(b) particular instances in which the right or custom was claimed, recognized, or exercised or in which its exercise was disputed, asserted or departed from. Illustration The question is, whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

Section 13 of Indian evidence act only says relevancy of facts but it doesn't say how such facts are to be proved. Where a person is proved to be in possession of property, he is deemed to be the owner of property therefore all acts which show that the person who did them was in possession of the land on his own behalf are acts of ownership e.g lease of land, putting up boundary etc.

This section applies to all kinds of rights and customs. Where a right is claimed by virtue of a custom, all the essentials of custom bearing on it have to be established. Right includes both corporeal and incorporeal right. Custom is a rule in force by virtue of long usage and has obtained

the force of law. It can be private, public or a general custom (local customs, caste or class customs and trade customs)

Transaction in section 13 is a business or dealing which is carried on or transacted between two or more persons; it is something which has been concluded between persons by a cross or reciprocal action; and in the larger sense, it means that which is done. (Rangayyan v.

Innasimuthu, A.I.R. 1956 Madras, 226) A transaction is not confined to a dealing with property between two persons inter vivos, but can be taken also to include a testamentary dealing with the property.

(Periasamiv. Varadappa, A.I.R. 1950 Mad. 486) The requisites of a valid custom are that it should be ancient, certain and reasonable, and that it should not be opposed to decency or morality. No custom which is opposed to public policy can be recognised. It must also not be contrary to justice, equity and good sense. It may be general or special. The words 'transaction' and 'particular instances' in S. 13 have given rise to a number of conflicting decisions as to whether judgments not inter parties (i.e., not between the same parties) are admissible as 'transactions' or 'particular instances'. The various rulings of the High Court's lay down that previous judgments not being between the same parties are relevant under this section as being transactions or particular instances in which a right or custom (not of a public nature) was asserted, denied, etc. in a litigation, but not as embodying the judicial opinion pronounced therein, i.e., not as res judicata.

## SECTION 14 AND SECTION 15( READ TOGETHER)

SECTION 14: Facts showing existence of state of mind, or of body or bodily feeling.—Facts showing the existence of any state of mind, such

as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling, is in issue or relevant.

1[Explanation 1.—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.1[Explanation 1.—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question." Explanation 2.—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.]

### Illustrations

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article. The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession, to be stolen. 2[(b) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit. The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant. The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.]

(c) A sues B for damage done by a dog of B's, which B knew to be ferocious. The facts that the dog had previously bitten X, Y, and Z, and that they had made complaints to B, are relevant.

(d) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious. The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person.

(e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B. The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question. The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(f) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss. The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(g) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor. A's defence is that B's contract was with C. The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the

management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(h) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found. The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found. The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(i) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(j) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing intention of the letters.

(k) The question is, whether A has been guilty of cruelty towards B, his wife. Expressions of their feeling towards each other shortly before or after the alleged cruelty, are relevant facts.

(l) The question is, whether A's death was caused by poison. Statements made by A during his illness as to his symptoms, are relevant facts.

(m) The question is, what was the state of A's health at the time when an assurance on his life was effected. Statements made by A as to the state of his health at or near the time in question are relevant facts.

(n) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured. The fact that B's attention was drawn on other occasions to the defect of that particular carriage, is relevant. The fact that B was habitually negligent about the carriages which he let to hire, is irrelevant.

(o) A is tried for the murder of B by intentionally shooting him dead. The fact that A, on other occasions shot at B is relevant, as showing his intention to shoot B. The fact that A was in the habit of shooting at people with intent to murder them, is irrelevant.

(p) A is tried for a crime. The fact that he said something indicating an intention to commit that particular crime is relevant. The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

The presence of requisite mental element or state of mind is an essential condition for liability. In criminal cases, Mens rea is relevant for the Court to infer the intention of accused in committing the alleged offense. Not only intention section 14 attracts previous judgement convicting the accused for the same offense is relevant and admissible to prove his state of mind. Any Facts intended to be proved to show the state of mind of the accused must be connected with the particular matter in question. Facts showing generality cannot be admissible. Also actus rea deals with the state of the body of the accused or the deceased. When an intoxicated person kills another by repeated stab wounds, requisite knowledge and intention can be presumed. In Aveson

v/s Kinnaird 1805 (king's bench) wherein an action upon a policy of life insurance on the life of the plaintiff's wife. She having died, the question was whether the statements of the good health of the assured given at the time of a visitor whom she told in the course of casual conversation that she was in a bad state of health. The court allowed the visitor to give evidence of this fact. But such fact to be admitted under section 14 or section 15 should be connected with each other so that any probable inference could be drawn from the collected facts. They must be linked together by the chain of cause and effect in some reasonable manner before an inference may be drawn. A fact in issue cannot be proved by showing that facts similar to it, but not part of the same transaction, have occurred at other times. Thus, when the question is whether a person has committed a crime, the fact that he had committed a similar crime some time ago is irrelevant. In R. v. Shellaker (1914 1 K.B. 414), it was held that to prove the occurrence of sexual intercourse on a given occasion, prior and subsequent acts between the same parties are admissible.

**Explanation I:** Evidence must relate not to the state of mind in general but to the state of mind in reference to the particular matter in question. i.e., state of mind to be proved must not merely a general tendency or disposition towards conduct of a similar description to that in question but a condition of thought and feeling, having distinct and immediate reference to the matter which is under inquiry. In Emperor v/s Haji Sher Mohammad accused were charged under s. 400 IPC for belonging to a gang of persons associated for the purpose of habitually committing dacoity. The prosecution sought to prove that some of the accused had been previously convicted of theft or had been ordered to give security for good behavior on the ground of being habitual thieves.

It was held that evidence was not admissible under s.14 because the offence of which accused were being tried was a particular one of belonging to a gang of dacoits and simple theft would not show an intention to belong to a gang of dacoits.

### **Previous conviction of accused (S. 14 Expln. 2):**

When the previous commission by the accused of an offence is relevant, the previous conviction of such person is also a relevant fact.

A previous conviction may be relevant under S. 8 as showing motive. It may be relevant under S. 14 (Expln. 2) when the existence of any state of mind or bodily feelings is relevant. It may also be relevant under S. 43. [See Illustration (e) and (f) to S. 43]e.g Emperor v/s Allocomiya Husan evidence of previous conviction was made admissible in order to show state of mind of person under section 14.

### **SECTION 15:**

Facts bearing on question whether act was accidental or intentional.— When there is a question whether an act was accidental or intentional, [or done with a particular knowledge or intention,] the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.—When there is a question whether an act was accidental or intentional, 1[or done with a particular knowledge or intention,] the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant." Illustrations

(a) A is accused of burning down his house in order to obtain money for which it is insured. The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after

each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(b) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive. The question is, whether this false entry was accidental or intentional. The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c) A is accused of fraudulently delivering to B a counterfeit rupee. The question is, whether the delivery of the rupee was accidental. The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B, was not accidental.

Relevancy of facts under section 15 was discussed in *Makin v. Attorney General for New South Wales* [1894] AC 57 which is a famous decision of the Privy Council where the modern common law rule of similar fact evidence originated. A husband and wife were charged with murdering a child they were fostering and burying it in their backyard. During their trial evidence of twelve other babies found buried in the backyards of their previous residences was offered as evidence. The appeal was based on whether this evidence was admissible or whether it was unfairly prejudicial to their defence. Lord Herschell held that the evidence, in this case, was admissible, however, as a general rule evidence of a past similar event should not be admissible unless there

are exceptional circumstances. *It is undoubtedly not competent for the prosecution to adduce evidence tending to show that 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. On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused. The statement of these general principles is easy, but it is obvious that it may often be very difficult to draw the line and to decide whether a particular piece of evidence is on the one side or the other.* In *R v Smith*, 1915, (11 Cr App R, 229), the ‘brides in the bath’ case, the defendant was accused of one murder but evidence was offered of two more. The admission of this evidence followed similarly from the improbability that three different women with whom he had gone through a form of marriage, and who had made financial arrangements from which he would benefit, had all drowned in the bath by accident shortly afterwards. In these two classic cases the probative power of the similar fact evidence, which made it just to admit it in spite of its prejudicial effect, derived from the improbability of the strikingly similar facts having any rational explanation other than the guilt of the accused.

## **SECTION 16:**

Existence of course of business when relevant.—When there is a question whether a particular act was done, the existence of any course

of business, according to which it naturally would have been done, is a relevant fact. Illustrations

(a) The question is, whether a particular letter was despatched. The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that particular letter was put in that place, are relevant.

(b) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

The posting of a letter may be proved by the person who posted it or by showing facts from which the posting may be presumed. For instance, evidence of posting may be given by proving that the letter was delivered to a clerk whose duty it was, in the ordinary course of business, to post it, or that it was put into a post-box which is cleared everyday by the postman.

Proof of posting letters raises a presumption that it reached its destination in due course. The post-mark on the envelope is prima facie evidence of the date, time and place of posting. Further, when the acknowledgment of a registered letter comes back (to the sender) with a signature purporting to be that of the addressee, there is a presumption of the fact of service. But the presumption is rebuttable as was held in *Mubarak Ali Ahmad v/s State of Bombay*. AIR 1957 The main contention in respect of these letters is that there is no proof that they were received by the appellant at Karachi. It is contended that evidence given by either Jasawalla or the complainant that the originals were written and posted is not relevant to show that the same have been received. It is urged that the proof of mere posting of a letter is

not presumptive evidence of the receipt thereof by the addressee unless there is also proof that the original has not been returned from the Dead Letter Office. Illustration (b) to s. 16 of the Indian Evidence Act, 1872, is relied on for the purpose and it is urged that a combination of the two facts is required to raise such a presumption. We are quite clear that the illustration only means that each one of these facts is relevant. It cannot be read as indicating that without a combination of these facts no presumption can arise. 'Indeed that section with the illustrations thereto has nothing to do with presumptions but only with relevance. Some cases relating to this have been cited before us. We have considered the same but it is unnecessary to deal with them.