PART I
RELEVANCY OF FACTS
CHAPTER I
PRELIMINARY

INTRODUCTION

The functions of a Court of Justice are two-fold, viz., first, to ascertain the existence or nonexistence of certain facts; second, to apply the substantive law to the ascertained facts and declare the rights or liabilities of parties in so far, as they are affected by such facts. For example, in a criminal trial it must first be ascertained, whether the prisoner committed certain acts or was guilty of certain omissions, and if it is shown that he did commit such acts or was guilty of such omissions the Court proceeds to annex the legal consequence, viz., declare him liable to get certain punishment. In a civil trial, the Court has first to ascertain whether the parties did certain acts, or whether a certain state of things exists, as for instance, whether the defendant executed a certain bond in favour of the plaintiff; or whether the plaintiff is the legitimate son of a certain person, and therefore rightful heir to certain property which he claims under the law of inheritance; or whether a certain house is out of repair, in respect of whichdamages are claimed from a tenant who has covenanted to keep his affairs in repair; or whether a certain stream is fordable which separates accreted soilfrom the plaintiff's estate. The execution or non-execution of the bond by the state of repair or non-repair of the house having been established, the Court annexes the legal consequence, viz., declares the defendant liable to pay or not to pay a certain 48 amount of money. The fact of legitimate son-ship having been proved or disproved, the Court declares that plaintiff has or has no right to possession of certain property. If the facts of each case were undisputed, if there was no contention as to whether certain acts had been committed, or as to whether or not a certain state of things existed, the Court would merely have to apply the substantive law and to declare the consequences resulting from such anapplication, a duty which, though it might occasionally present some difficulty would in the great majority of cases, be sufficiently simple. But men, through

misinformation, mistake, misunderstanding and human imperfection, and occasionally from less excusable causes, seldom admit or are agreed about the facts; and the Court, before it can apply the substantive law, has to sif out from a mass of contradiction, misconception, error, often stupidity, and sometimes dishonestly, fraud and falsehood, the true facts to which the substantive law is to

be applied. The means whereby the Court informs itself of the existence of these facts is called evidence.

EVIDENCE

Meaning of the word "Evidence" The word “evidence” has been derived from the **Latin word "evidens evidere" which means “to show clearly; to make plain, certain or to prove**.” According to **Blackstone**, “Evidence signifies that which demonstrates, makes clear, or accretions the truth of every fact or point in issue, either on the one side or on the other”. The word "evidence” says **Mr. Taylor**, “includes all the legal means, exclusive of mere argument, which tend to prove or disprove any matter of fact, the truth of which is submitted to judicial investigation”. Unless the facts be correctly ascertained, howsoever accurate be the application of the substantive law, the result cannot (except by mere chance) be free from error. The first and most essential step towards a right adjudication is, therefore, to ascertain the facts correctly. The value of rules, which guide and assist in the performance of this duty, must necessarily be very great and thus wesee the importance of the study of the law of Evidence. In Best's Evidence, it is explained that the word 'evidence' signifies in its original sense, the state of beingevident; i.e. plain, apparent, or notorious. But by an almost peculiar inflexion of our language, it is implied to that which tends to render evident or to generate proof. This is the sense in which it is commonly used in our law books. Evidence, thus understood, has been well-defined, any matter of fact, the effect, tendency, or design of which is, to produce in the mind a persuasion, affirmative or disaffirmative, of the existence of some other matter of fact. According to Stephen, Evidence means "That part of the law or procedure which, with a viewto ascertain the individual rights and liabilities in particular cases, decides what facts may or may not be proved in such a case; what sort of evidence has to be given of a fact which may be proved, by whom and in what manner the evidence must be produced relating to a fact which is to be proved." In common speech, evidence is merely that, which makes evident something to someone, as when a person who heard a disputed remark, says that he relies on the evidence of his own ears. But in law, evidence is that which makes evident a fact to a judicial

tribunal. Every judicial proceeding has for its purpose the ascertaining of some right or liability. If the proceeding is criminal, the object is to ascertain the liability to punishment of the person accused of committing a crime; if the proceeding is civil, the object is to ascertain some right of property or of status, orthe right of one party, and the liability of the other, to some form of relief. All rights and liabilities are dependent upon and arise out of facts, and facts fall into two classes, those which can, and those which cannot be perceived by the senses. Of facts which can be perceived by the senses, it is superfluous to give examples. Of facts which cannot be perceived by the senses, intention, fraud, good faith, and knowledge may be given as examples. But each class of fact has in common, one element which entitles them to the name of facts they can be directly perceived either with or without the intervention of the senses. A man can testify to the fact that, at a certain time, he had a certain intention on the same ground as that on which he can testify that, at a certain time and place, he saw a particular man. He has, in each case a present recollection of a past direct perception". Moreover, it is equally necessary to ascertain facts of each class in judicial proceedings, and they must in most cases be ascertained in precisely the same way. Facts may be related to rights and liabilities in one of two different ways: (1) they may be themselves, or in connection with other facts constitute such a state of things thatthe existence of the disputed right or liability would be legal inference from them.From the fact that A is the eldest son of B, there arises of necessity the inference that A is by the law of England the heir-at-law of B, and that he has such rights as that status involves. From the fact that A caused the death of B under certain circumstances, and with a certain intention or knowledge, there arises of necessity the inference that A murdered B, and is liable to the punishment provided by law for murder. Facts thus related to a proceeding may be called facts-in-issue, unless, indeed, their existence is undisputed. (2) Facts which are not themselves in issue in the sense above explained may affect the probability of the existence of facts in issue, and these may be called collateral facts. It appears to us that these two classes comprise all the facts with which it can in any eventbe necessary for Courts of Justice to concern themselves, so that this classification exhausts all facts considered in their relation to the proceeding in which they are to be proved. This introduces the question of proof. It is obvious that whether an alleged fact is a fact in issue or a collateral fact, the Court can draw no inference from its existence till it believes it to exist; and it is alsoobvious that the belief of the Court in the existence of a given fact ought to proceed upon grounds, altogether independent of the relation of the 54 fact to the

object and nature of the proceeding in which its existence is to be determined. The question is, whether A wrote a letter. The letter may have contained the terms of a contract; it may have been a libel; it may have constituted the motive for the commission of a crime by B, it may supply proof of an alibi in favour of A;it may be an admission or a confession of crime; but, whatever may be the relation of the fact to the proceeding, the Court cannot act upon it unless itbelieves that A did write the letter, and that belief must obviously be produced in each of the cases mentioned by the same or similar means. If, for instance, the Court requires the production of the original when the writing of the letter is a crime, there can be no reason why it should be satisfied with a copy when the writing of the letter is a motive for a crime. In short, the way in which a fact should be proved depends on the nature of the fact, and not on the relation of the fact to the proceeding. The instrument by which the Court is convinced of a fact isevidence. It is often classified as being either direct or circumstantial. We havenot adopted this classification. If the distinction is that direct evidence establishes a fact in issue, whereas circumstantial evidence establishes a collateral fact, evidence is classified not with reference to its essential qualities, but with reference to the use to which it is put; as if paper were to be defined, not by reference to on its component elements, but as being used for writing or for printing. We have shown that the mode in which a fact must be proved depends on its nature, and not on the use to be made of it. Evidence therefore, should be defined not with reference to the nature of the fact which it is to prove, but with reference to its own nature. Many a time cases of ambiguity arise in the use of theword "evidence". Sometimes the distinction may be stated thus: Direct evidenceis a statement of what a man has actually seen or heard; circumstantial evidence is something from which facts in issue are to be inferred. If the phrase is thusused the word evidence in the two phrases ‘direct evidence’ and ‘circumstantial evidence’, opposed to each other has two different meanings. In the first, it meanstestimony; in the second, it means a fact which is to serve as the foundation for aninference. It would, indeed, be quite correct, if this view is taken, to say ‘circumstantial’ evidence must be proved by ‘direct evidence’. This would be a most clumsy mode of expression, but it shows the ambiguity of the word ‘evidence’, which means either (1) words spoken or things produced in order to convince the Court of the existence of fact; or (2) facts of which the Court is so convinced to three heads : (a) Oral Evidence; (b) Documentary Evidence; (c) Material Evidence. Finally, the evidence by which facts are to be proved must be brought to the notice of the Court and submitted to its judgment, and the Court

must form its judgment respecting them. Principle of Section 167 It has been provided under Chapter XI of Indian Evidence Act, 1872 that Section 167 deals with Improper Admission and Rejection of Evidence. This section is as under : No new trial for improper admission or rejection of evidence.—The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

RULE OF ENGLISH LAW

This is verbatim Section 57 of the old Act II of 1855; and the rule has been adopted from the practice of the Courts in England. "Where evidence," says Mr. Lush, "has been offered by one party at the trial, and has been improperly rejected or admitted by the judge after hearing the objections of the opposite party, a new trial, as a general rule, may be claimed on the ground that, in so rejecting or admitting the evidence the judge did not rule according to Law."In Reg v. Grant, it was laid down that it is only where the evidence in question is deemed by the Court to have been admissible for the purpose for which it was tendered at the trial, that is rejection forms sufficient ground for a new trial; and that a new trial will not be granted in order that evidence may be given for a purpose other than that for which it was offered, for in such case the fault laywith the party and not with the judge. English and Indian Law in England, in civil cases, the rules as to admissibility may, at the trial be relaxed by the consent ofthe parties. Under the Indian Law, there is no such power. (a) Section 167 applies to civil as well as to criminal cases. (b) The words "in any case" in Section 167 are wide to include criminal trials by jury.

(c) That Section 167 applies to criminal and civil cases is satisfactorily established by Section 1 and by Section 3. (d) And it is so applicable, whether or not the trial has been had before a jury. The provision contained in Section 167, Evidence Act, 1872, applies to all judicial proceedings in or before any Court. When an appeal is grounded for the improper admission and rejection of evidence, the burden of proof is upon the appellant to prove that there was not only an improper evidence or exclusion but there was also a miscarriage of justice being done by such an act. Improper admission or rejection of evidence shall not be ground for a new trial or reversal of decision. If it appears to the court that independently of the evidence rejected to and admitted, there was

sufficient evidence to justify the decision, or that if the rejection evidence had been received, it would not have varied the decision.

APPLICATION OF THE PRINCIPLE IN CIVIL CASES FIRST APPEALS.—
In the case of Mohar Singh v. Ghariba, the following observations were made by the Privy Council: "It is the duty of their Lordships, who are judges of the facts, in such a case as this, to consider whether, throwing aside the evidence which oughtnot to have been admitted, there still remains sufficient evidence to support the decrees. The Court sitting in first appeal should throw aside the evidence which ought not to have been admitted and then consider whether there still remains sufficient evidence to support the decree. The decree can be supported upon relevant evidence only; and if, after all that is irrelevant has been thrown aside, there does not remain enough that is relevant to support it, the decision must be reversed. The party who is thus defeated may say that if he had known that the evidence given would have been insufficient for the purpose; he could have produced other evidence that would have been sufficient. The answer to this objection is to be found in the observations of their Lordships of the Privy Councilin the case of Nitresar Singh v. Nand Lall. An Appellate Court will not interfere with the decision of a subordinate Court even where a document is wrongly admitted, unless it is satisfied that the improper admission has resulted in a wrong decision on the merits.
Application of the Principle in Criminal Cases The principle of Section 167 was applied upon appeal in Imperatrix v. Pandharinath, to a case tried by a Sessions Judge sitting with a jury. The High Court, after excluding the evidence improperly admitted, found that the remaining evidence was not of such a character that a conviction might reasonably be based upon it; and accordingly the conviction and sentences were reversed. In Queen-Empress v. O'Hara, the Judge read to the jury certain statements made by two witnesses which had not been admitted in evidence. It was held that this was an error calculated to prejudice the prisoner and after a consideration of the remaining evidence, the conviction was set aside. In the case of Queen v. Hurribole Chunder Ghose, certain evidence, which had been improperly admitted, was rejected, and upon the evidence that remainedthe conviction was upheld. In Imperatrix v. Pitambar Jina, it was held that the High Court had power to determine whether the rejection of evidence held to have been improperly admitted should have the effect of varying the result of the trial so that the conviction should be reversed. In Uma Kant Bakshi v. Ganga Narain Chaudhri, the copy of a deposition of a witness was improperly admitted

in evidence. But there being other evidence sufficient to justify the decision, this was not held to be ground of itself for a new trial. In Queen-Empress v. Nand Ram, copies of depositions given at a previous trial were read out to the witnesses who were then crossexamined by the prisoners. It was held that the irregularity was cured by this section. In Queen Empress v. Jhubbo Mahton, irregularities were held not to be objections which would justify an interference with the verdict. Appellate Court has power in the event of admission of inadmissible evidence either to convict or acquit the accused according as the evidence is or is not sufficient for conviction, a new trial may be ordered as in the case of Reg v. Ramaswami Mudaliar. That every breach of Sec. 162, Cr.P.C., will not vitiate a trial was very emphatically pointed out by Sir George Rankin in the case of Sajjad Mirza v. Emperor. Chotzner, J., in the case of Harendra Nath Shah v. Emperor, has pointed out that reception of evidence inadmissible owing to the provisions of Sec. 162, Cr.P.C. is not necessarily fatal. In the case of Nitai Koley v. Emperor, Henderson and Khundkar, JJ., have taken the same view that it must always be a question whether prejudice has been caused in such cases, and if not, whether the materials left are sufficient within the meaning of Sec. 167, Evidence Act. The presumption of the innocence of the accused still persists and the Court of Appeal has to satisfy itself that the judgment of the Magistrate is right. A duty is, as was held in Fidoi Hussein v. Emperor, imposed on an Appellate Court to examine the evidence for the defence and to come to a decision thereon even if the counsel for the appellant has practically ignored it during his arguments. In Kanchan Malik v. Emperor, 66 a Division Bench ruled that in an appeal from a conviction it is for the Appellate Court to be satisfied affirmatively that the prosecution case is substantially true, and that the guilt of the appellant has been established beyond all reasonable doubt. If real injury were done by the prosecution or the Court to an accused person the absence of objection by counsel for the accused would not excuse it. For the ends of justice, the High Court should send the matter back to the Magistrate to determine the guilt or otherwise of the accused after eliminating the evidence of the complainant which he has wrongly admitted. Where a piece of evidence (entry in general diary) which might not have been brought on the record, is used as corroborative evidence. The judgment is not vitiated. It is clear from the language of Section 167 that it is not in every case that the admission of inadmissible evidence will be disregarded on the ground that it appears to the Appellate Court that independently of the evidence improperly admitted there was sufficient evidence to justify the decision.The prosecution, though it had cited as a witness, dropped

him. Held that this was not a case in which evidence could be said to have been rejected within Section 167 of the Evidence Act.

SOURCES OF EVIDENCE

There are two main sources of evidence:

a. Primary and
b. Secondary.

Primary evidence is direct evidence or original copies of a document, secondary evidence is copies of those documents, books of account, etc.

primary evidence is given greater weight than secondary evidence in matters of deciding a case.

PRIMARY EVIDENCE

For example, when two parties enter into a contract, each copy of the contract is primary evidence against the party executing it.

For example, in a continuing contract, that is periodically renewed, each renewal contract is evidence of the contract itself.

SECONDARY EVIDENCE

For example, a photograph of an original document is secondary proof of the document.

For example, an oral account of a document by a person who has herself seen it is secondary proof of the document.

ADVERSARY PROCEDURE

This refers to the manner in which court proceedings are conducted. In any adversary trial, the opposing sides present evidence, examine witnesses and conduct cross-examinations, each in an effort to produce information beneficial to its side of the case.

lawyering skills would amount to a lot at this stage, and some exemplary lawyers often produce testimony that can lead to many ambiguities. what seemed absolute in direct testimony can raise doubts under cross-examination.

under the adversary system, each side is responsible for conducting its own investigation. in criminal proceedings, the prosecution represents the people at large and has at its disposal the police department with its investigators and laboratories, while the defence must find its own investigative resources and finances.

BEST EVIDENCE RULE:

If there exists a dilemma about the quality of evidence to produce and the depth of investigation, there is a simple rule of evidence law which declares that, in order to prove something that is said or pictured in a piece of writing, recordingit, or photographing the original must be provided unless the original is lost, destroyed, or otherwise unobtainable.

When judges decide a case, they are basically weighing the evidence from both sides and adding them up according to the values assigned to them, to arrive at a verdict of guilty or not guilty.

for instance, the prosecution is required to provide a lot of evidence to establish a case, while the defence merely has to show an ambiguity or a doubt that may destroy the case.

Typically, in a criminal case, the burden of proof on the prosecution is greater.

BURDEN OF PROOF:

The burden of producing evidence means that, in general, the party that makes the claim also has the burden of producing the evidence to prove these facts. However, in some exceptional cases, there may be laws that say that the defendant has to prove that he did not perform the wrongful act. This is known asshifting the burden of proof.

For example under Environmental law, under the precautionary principle, the burden is on the hazardous industry to prove that it has not violated any environmental norms when it undertakes a project.

For example, under the Dowry prohibition law, if a woman, who succumbed to burns under mysterious circumstances, had been married for less than 7 years and it can be proved that she was being harassed by her husband or in-laws for dowry, the burden of proving that dowry death was not committed falls on the husband and his family.

CIRCUMSTANTIAL EVIDENCE

When a case is reconstructed, it is not possible to count on finding exact proof of events that took place in the past. Many cases have been built and decided on the strength of circumstances surrounding the case.

Circumstantial evidence is not considered to be proof that somethinghappened but it is often useful as a guide for further investigation.

For example, Ram and Shyam were always at loggerheads and constantly fighting. One day, Shyam was found murdered, with a knife in his hand which contained a few bloodstains. The fact that ram had some gashes on his arms would be circumstantial evidence.

Circumstantial evidence is used in criminal courts to establish guilt or innocence through reasoning. they also play an important role in civil courts to establish or deny liability. however, it is not so much a type of evidence as it is a logical principle of deduction. deduction is reasoning from general known principles to a specific proposition.

Circumstantial evidence is the basket of unrelated facts that, when considered together, can be used to infer a conclusion about something unknown. information and testimony presented by a party in a civil or criminal action

that permit conclusions that indirectly establish the existence or nonexistence of a fact or event that the party seeks to prove.

An example of circumstantial evidence is the behaviour of a person around the time of an alleged offence. if someone was charged with theft of money and was then seen on a shopping spree purchasing expensive items, the shopping spree might be regarded as circumstantial evidence of the individual's guilt.

Note- In two famous criminal cases that rocked the courts, the jessica lall case and the priyadarshini mattoo case, the accused (manu sharma and santosh kumar, respectively) were convicted over the strength of the circumstantial evidence.

RELEVANCY AND ADMISSIBILITY

According to **Janab's Key to Evidence**, relevancy refers to the degree of connection and probative value between a fact that is given in evidence and the issue to be proved. Relevancy of facts had been provided from Section 5 to 55 of Evidence Act 1950. By referring to the illustration (a) provided in Section 5 where A is tried for the murder of B by beating him with a club with the intention of causing his death. There are three facts in issue to be proved - A's beating B with the club; A's causing B's death by the beating; and A's intention to cause B's death.

A fact is relevant when it is so related to the fact in issue, that they render the fact in issue probable or improbable. For example, to prove the third facts in issue in the example just now, the facts that A and B was having quarrel before themurder happens is relevant to prove the third facts in issue which is A's intention to cause B's death.

Admissibility involves the process whereby the court determines whether the Law of Evidence permits that relevant evidence to be received by the court. The concept of admissibility is often distinguished from relevancy. Relevancy is determined by logic and common sense, practical or human experience, and knowledge of affairs. On the other hand, The admissibility of evidence, depends first on the concept of relevancy of a sufficiently high degree of probative value, and secondly, on the fact that the evidence tendered does not infringe any of the exclusionary rules that may be applicable to it. Relevancy is not primarily dependant on rules of law but admissibility is founded on law. Thus, relevancy usually known as logical relevancy while admissibility is known as legal relevancy. Relevancy is a question of fact which is the duty of lawyers to decide

whether to tender such evidence in the court. On the other hand, admissibility is the duty of the court to decide whether an evidence should be received by the court according to **Augustine Paul JC in the case of Public Prosecutor v. Dato Seri Anwar bin Ibrahim**.

In general, a relevant fact given in evidence under Section 5 to 55 is admissible in the court. However, a relevant fact under Section 5 to 55 may not be admissible if the other sections of the Act do not permit it to be received by the court. These are the main exclusionary rules in the Act which excluded the admissibility of a relevant fact. Hearsay statement, confessions, evidence of the defendant character, exclusion of evidentiary facts by estoppel and exclusion of privileged communication.

For example, Hearsay evidence is generally excluded even though relevant. For example, Siti saw that Ahmad had killed Vinnie with a knife. Then Siti told whathe saw to Amirul. Here, Amirul cannot become a witness as he did not see the incident himself. The fact that Amirul heard from Siti that Ahmad hadmurdered Vinnie with a knife is relevant as it is based on logic and commonsense. However, such evidence generally is not admissible in the court as it is forbidden by the Law of Evidence. Section 60 stated that oral evidence must be direct. The witness who testifies in court must be the person who perceived the facts with his own sense.

For instance, A confession obtained by any inducement, threats or promise is not admissible under Section 24. A confession to the police officer below the rank in Inspector is not admissible under Section 25. Confession by accused while in custody of police is also not admissible under Section 26 even though it is logically relevant. For example, this is what I noticed in the accused's statement in police report while I was doing my internship in Attorney General's Chambers. In a case where the thief had already admitted to the police officer that he had stolen the hand phone. However, such confession cannot be tendered as an evidence in the court. The accused then founded not guilty by the court because the Deputy Public Prosecutor failed to prove the case beyond reasonable doubt. Here, the fact that the thief had already confessed to the police officer is relevant, however, it is not admissible in the court as it had been forbidden by Section 26of Evidence Act 1950. In the case of Eng Sin v. Public Prosecutor, Gill J held that

the admission by the accused to a doctor that he had killed a man is not admissible as he is still under the custody of a police officer.

An irrelevant fact is not admissible in the court. However, in certain cases, evidence, which is not relevant under Section 5 to 55 may Nonetheless be admissible. Examples include:

Statement of relevant fact by person who is dead or cannot be found: Section 32.

Impeaching credit of witness: Section 155.

Former statements of witness may be proved to corroborate later testimony as to same fact: Section 157.

CONCLUSION

As conclusion, relevancy is a test for admissibility. The question of admissibility is one of law and is determined by the Court. In Section 136 of Evidence Act 1950, a distinction is made between relevancy and admissibility, if it can be shown that the evidence would be relevant if proved, the court shall admit evidence of it.

SECTION - 1

Short title, extent and commencement.—The Indian Evidence Act applies to the whole of India except the State of Jammu and Kashmir and also applies to all judicial proceedings before any Court including Court martial which were in existence during, the British Rule. But it does not apply to any Court Martial established and regulated by (i) The Army Act, (ii) The Naval Discipline Act (iii) The Air Force Act. The Act does not apply to (a) Affidavits and (b) Proceedings before arbitrators.

Affidavits:

According to section 1 Affidavits are strictly related to the facts that the deponent has deposed what he is required to prove from his own knowledge and belief. Affidavit is not a legal evidence unless opposite partygets a right to cross-examine the deponent. No affidavit can be given in the form of evidence under the evidence act, but the court may pass order that any fact can be proved by a affidavit.

It is not included in the definition of the Act unless law specifically permits that something may be forwarded by an affidavit. The Act does not apply to affidavit, but that does not mean that an affidavit by a living person can go

in as evidence propsio vigore without necessity for him to enter the witness-box. In the civil proceedings affidavits are regulated by Order XIX, Rules 1, 2 and 3 and in criminal proceeding sections 295, 296 and 297 deal with it.

Arbitrator: Section 1 has expressly provided that the provisions of the Evidence Act do not apply to any proceeding before an arbitrator. The arbitrators are only bound by the rules of natural justice. They are unfettered by technical rules of evidence. The reason is that the basic objective of arbitration is to avoid technical legal procedures. Besides, an arbitrator is not required to administer an oath as he need not require to examine the witness.

(Section 2 is Repealed by the Repealing Act,1938 (1 of 1938), S.2 and Sch..))

SECTION – 3

In the Indian Evidence Act 1873, the following words and expressions are used in the following senses, unless a contrary intention appears from the context—

COURT: **Court** includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence.

FACT: **Fact** means and includes—

1. Anything, state of things, or relation of things, capable of being perceived by the senses;
2. Any mental condition of which any person is conscious.

ILLUSTRATIONS

1. That there are certain objects arranged in a certain order in a certain place, is a fact.
2. That a man heard or saw something, is a fact.
3. That a man said certain words, is a fact.
4. That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.
5. That a man has a certain reputation, is a fact.

FACT

We all know what a fact is, but many times in a case, disputes arises over the versions of facts that are put forward by the parties. The most important tool that

the Court can use to reconstruct a case and deliver justice is a fact. The definition of a fact is provided in the Evidence Act. For this purpose, fact broadly includes anything in the real or abstract sense that is capable of being perceived by the senses.
For example, if it was proved that a man had lunch at a particular restaurant, then it is a fact that he was at the place before sundown.

This could mean that a mental condition of which any person is conscious could be defined as 'Fact'. Under this definition, a person's opinion or his reputation may be considered as 'fact' for purposes of the case.
For example, Ashok and Hasan were roommates for 4 years during college. If Ashok opined that Hasan was very disciplined and pious, it would be an opinion considered as fact for this purpose.
Of course, with such a broad definition, even the fact that the sun shines in the sky may be submitted to the court in furtherance of admissible evidence and therefore, there is a requirement that the facts be relevant to the case.

RELEVANT: One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

DEFINITION OF RELEVANT
The word relevant is used in the Act to mean both (i) admissible, and (ii) connected with the case. One fact is said to be relevant to another when the one isconnected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.
If admissibility and nexus are the two criteria for relevance, a submission may be rejected for its irrelevance if

1. The connection between the main facts and the evidentiary facts is too remote, or if
2. The evidence is rendered superfluous due to an admission by the opposite party, or
3. It is rendered superfluous by the admissions of the parties.

For example, if a person's house has been robbed, then the fact that his maid has an extra key is a relevant fact.
For example, if a Majid has been murdered, the fact that he received a death threat is a relevant fact.

FACTS IN ISSUE: The expression **facts in issue** means and includes- Any fact from which, either by itself or in connection with other facts, the existence, non-

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

EXPLANATIONS

Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact, to be asserted or denied in the answer to such issue is a fact in issue.

ILLUSTRATIONS

A is accused of the murder of B.

At his trial the following facts may be in issue—

- That A caused B's death;
- That A intended to cause B's death;
- That A had received grave and sudden provocation from B;
- That A at the time of doing the act which caused B's death, was, by reason of unsoundness of mind incapable of knowing its nature.

FACT IN ISSUE

A **"fact in issue"** forms the core of the case. It is the essence of the dispute at hand and it consists of all the facts, due to which or connected to which, there is disagreement between the parties.

It includes any fact from which, either by itself or in connection with another fact, there may be a disagreement about the existence, nature and extent of any right or liability.

For example, Niteshwar Prasad was brought before a Court on the charge of murder of Venkatesh. He pleaded that he committed it upon grave provocation because he had caught Venkatesh committing adultery with his wife. The Court held that determining whether adultery was committed was a fact in issue.

DOCUMENT:

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

ILLUSTRATIONS

- A writing is a document;
- Words printed, lithographed or photographed are documents;
- A map or plan is a document;

- An inscription on a metal plate or stone is a document;
- A caricature is a document.

In general, Document is a record or the capturing of some event or thing so that the information will not be lost. Usually, a document is written, but a document can also be in other forms like pictures and sound.

EXAMPLES OF DOCUMENTS :

Here are some examples of Documents - Birth Certificate, Bank Statement, Wills and Deeds, Newspaper issues, Individual newspaper stories oral history recordings, Executives orders etc.

DEFINITION OF DOCUMENT :

The document can be defined as, "A piece of written, printed or electronic matter that provides information or evidence or that serves as an official record".

TYPES OF DOCUMENT

Documents are divided into two categories Private Documents and **Public Documents**.

PUBLIC DOCUMENTS :

According to Section 74 of Indian Evidence Act, 1872 the Following Documents are Public **DOCUMENTS:**

(1) Documents forming the acts, or records of the acts—
(i) of the sovereign authority,
(ii) of official bodies and tribunals, and
(iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country;
(2) Public records kept in any State of private documents.

PRIVATE DOCUMENTS :

As per Section 75 of Evidence Act, "All other documents other than those, Enlisted in Section 74 of the Evidence Act are Private Documents."

Evidence means and includes—

All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;
such statements are called oral evidence;
All documents including electronic records produced for the inspection of the Court;
such documents are called documentary evidence.

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

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

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

India: **India** means the territory of India excluding the State of Jammu and Kashmir.

The expressions **Certifying Authority**, **digital signature**, **Digital Signature Certificate**, **electronic form**, **electronic records**, **information**, **secure electronic record**, **secure digital signature** and **subscriber** shall have the meanings respectively assigned to them in the Information Technology Act, 2000.

SECTION – 4

"MAY PRESUME".—Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

"SHALL PRESUME".—Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

"CONCLUSIVE PROOF".—When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

PRESUMPTIONS AS TO INDIAN EVIDENCE ACT DOCUMENTS

Presumptions are inferences which are drawn by the court with respect to the existence of certain facts. When certain facts are presumed to be in existence the party in whose favor they are presumed to exist need not discharge the burden of proof with respect to it. This is an exception to the general rule that the party which alleges the existence of certain facts has the initial burden of proof but presumptions do away with this requirement.

Presumptions can be defined as an affirmative or negative inference drawn about the truth or falsehood of a fact by using a process of probable reasoning from what is taken to be granted. A presumption is said to operate where certain fact are taken to be in existence even there is no complete proof. A presumption is a rule where if one fact which is known as the primary fact is proved by a partythen another fact which is known as the presumed fact is taken as proved if there is no contrary evidence of the same. It is a standard practice where certain facts are treated in a uniform manner with regard to their effect as proof of certain other facts. It is an inference drawn from facts which are known and proved. Presumption is a rule which is used by judges and courts to draw inference from a particular fact or evidence unless such an inference is said to be disproved.

Presumptions can be classified into certain categories:

(a) Presumptions of fact.
(b) Presumptions of law.
(c) Mixed Presumptions.

Presumptions of fact are those inferences which are naturally and logically derived on the basis of experience and observations in the course of nature or the constitution of the human mind or springs out of human actions. These are also called as material or natural presumptions. These presumptions are in general rebuttable presumptions.

Presumptions of law are those inferences which are said to be established by law. It can be subdivided into rebuttable presumptions of law and irrebuttable presumptions of law. Rebuttable Presumptions of law are those presumptions of law which hold good until they are disproved by evidence to the contrary. Irrebuttable Presumptions of Law are those presumptions of law which are held to be conclusive in nature. They cannot be overturned by any sort of contrary evidence however strong it is.

Mixed Presumptions are certain inferences which can be considered as observations of law due to their strength or importance. These are also known as presumptions of mixed law and fact and presumptions of fact recognized by law.

This project primarily deals with discretionary presumptions with respect to documents under the Indian Evidence Act. Discretionary presumptions relating to documents are given under Section 86, 87, 88, 90 and 90-A of the IndianEvidence Act. Chapter 1 deals with analysis of section 4 of the Indian evidenceact. Chapter 2 deals with discretionary presumptions relating to documents.

Analysis of section 4 of the Indian evidence act

Section 4 of the Indian Evidence Act deals with three categories of presumptions
Discretionary Presumptions
Mandatory Presumptions
Conclusive Proof

The Sections of the Indian Evidence Act which deal with Discretionary Presumptions relating to documents are sections 86, 87, 88, 90 and 90-A. These Presumptions are those in which the words may presume are used in the sections and the words may presume is used signifies that the courts of law have discretion to decide as to whether a presumption is allowed to be raised or not. Inthe case of such presumptions the courts of law will presume that a fact is provedunless and until it is said to be disproved before the court of law or it may call for proof of a fact brought before it. The Sections of the Indian Evidence Act which deal with Mandatory Presumptions are Section 79, 80, 80-A, 81, 82, 83 85 and 89.These Presumptions are those in which the words shall presume is used. In case of such presumptions the courts of law will presume that a fact before it is proveduntil and unless it is disproved. The words shall presume signify that the courts have to mandatorily raise a presumption and such a presumption which is raised shall be considered to be proved unless and until the presumption is said to be disproved and there is no discretion left to the court therefore there is no needfor call of proof in this case. It is like command of the legislature to the court to raise a presumption and the court has no choice but to do it. The similarity between discretionary and mandatory presumptions is that both are rebuttable presumptions.

Conclusive Proof is defined under Section 4 that one fact is said to be conclusive proof of another fact when the court shall on the proof of a certain fact regard another fact to be proved and the court shall not allow any evidence which shall to be given for the purpose of disproving such a fact. Conclusive Proof is also known as Conclusive Evidence. It gives certain facts an artificial probative effect by law and no evidence shall be allowed to be produced which will combat that effect. It gives finality to the existence of a fact which is sought to be established.

This generally occurs in cases where it is in the larger interest of society or it is against the governmental policy. This is an irrebuttable presumption.
The general rule about burden of proof is that it lies on the party who alleges the fact to prove that the fact exists. But a party can take advantage of the presumptions which are in his favor. If the prosecution can prove that the conditions of a presumption are fulfilled and such a presumption is of rebuttable nature then the burden of prove to rebut it is always on the party who wants to rebut it.

DISCRETIONARY PRESUMPTIONS RELATING TO DOCUMENTS

Discretionary presumptions are those presumptions where the discretion is left to the court whether or not to raise the presumption. The provisions in which the words “may presume" are used are discretionary presumptions. The discretionary presumptions relating to documents are provided under Sections 86, 87, 88, 90 and 90-A of the Indian Evidence Act. Section 86 lays down the principle that the court may make a presumption relating to the genuineness and accuracy of a certified copy of a judicial record of any foreign country if the said document is duly certified in accordance with the rules which are used in that country for certifying copies of judicial records. The presumption under this section is permissive and imperative in nature and hence should be complied with. But the court has the discretion to decide whether the presumption should be raised or not. If there is no certificate under this section then a foreign judgment is not admissible as evidence in court. But this does not mean that it excludes other proof. It is not necessary that the foreign judgment should have already been admitted as evidence so as to give rise to this presumption.
The presumption under Section 87 is related to the authorship, time and place of the book or map or chart and not related to accuracy or correctness of facts contained in the book, map or chart. The accuracy of the information in the map, book or chart is not conclusive but in the absence of contrary evidence it is presumed to be accurate. The accuracy of the information in a map or a chart depends on the source of information. The age of the publication is also not important the court can refer to any publication as long as it is relevant to the suit brought before it.
The presumption under Section 88 is based on the principle that the acts of official nature are performed in a regular manner. Under this section the court accepts hearsay statement as evidence about the identity of the message which was delivered. The requirement under this section that no presumption shall be

made with regard to the person who has delivered the message for the purpose of transmission is mandatory and should be necessarily complied with. This presumption only operates if the message has been delivered to the addressee otherwise the message is not held to be proved. This presumption applies only those messages which are transmitted to the addressee through the telegraphic office. This presumption also applies to radio messages.

The form which is given to the post office by the sender of the message is the original of the telegram and not the form given by the post office to the addressee. Either the original copy must be submitted before the court by a post office official or proof of its destruction must be given before copy can admittedas secondary evidence before the court under this section.

According to Section 88 there is only a presumption that the message received by the addressee corresponds to the message delivered for transmission to the telegraph office and there is no presumption as to the person who delivered the said message for transmission. But the proof relating to the authorship of the message is not direct but of a circumstantial nature. The content of the message read in context with the chain of correspondence is proof relating to the authorship of the message.

Section 88-A is similar to Section 88 in structure and it is like an extension of Section 88 which deals with the transmission of electronic message. According to this section the court may presume that an electronic message forwarded by the originator through an electronic mail server to be addressee to whom the message purports to be addressed corresponds with the message with the message as fed into his computer for transmission but the court shall not make any presumption as to the person by whom the message is sent. **The terms “addressee" and “originator" given in this section can be defined by looking into Clauses (b) and (za) of Subsection (1) of Section 2 of the Information Technology Act of 2000.**

Section 90 deals with presumption relating to ancient documents or documents which are **30 years old.** The basis of Section 90 is the principle of convenience and necessity. The basic objective of this section is to reduce any difficulties facedby persons who want to prove the handwriting, execution and attestation ofancient documents for establishing their case.

Under this section the court may make the following presumptions with respect to ancient documents: a) the signature and every part of handwriting of such a person and b) that the document was duly executed and attested by the person it is supposed to be executed and attested. The presumption under this section

does not apply to other aspects of the document like its contents or its authenticity. The presumption under this section applies to all the documents which come under the definition given under Section 3 of the Indian Evidence Act. It applies to books of accounts, testamentary documents, private and public documents. This presumption does not apply to anonymous documents.

For the presumption under Section 90 to be applicable the following conditions have to be fulfilled:

The document should be proved or purported to be 30 or more years old. There must be some evidence or at least a prima facie case should be made out to support that the document is 30 years old. This is however a rebuttable presumption. Ancient documents can be read as evidence without any formal proof. The period of 30 years is commuted from the date of the execution of the document to the date on which it is put as evidence.

The document should be produced from proper custody. It can be proved that document is produced from proper custody either by giving evidence to prove the fact or show that the person who produced it was the depository of the document.

The document should be original and not certified copies or registered copies. If an original document is not produced before the court and no reason is given for the non production of the original documents the certified copies are not admissible before the court. However if a copy of a document can be admitted as secondary evidence under Section 65 and is produced from proper custody and is over thirty years old then signature which authenticates the document may be presumed as genuine but this does prove the execution of the document. Certified copies are admissible if the original document is in the possession of the opposite party. Certified copies are also admissible to prove contents of the original if the original copy is lost.

This presumption applies only in the case of proving the signature and the handwriting of the document. If the documents do not have a signature then the presumption under Section 90 does not apply to it. The definition of signature under this section includes thumb impressions if there is no evidence to the contrary. However the signature under this section does not include seals because seals do not fall within the definition of signature given in the General Clauses Act. However there are certain causes which weaken the presumption under Section 90 are:

The court may presume the genuineness of the document if it more than 30 years and produced from proper custody. The presumption is weakened by circumstances which raise doubts authenticity of the document. When the genuineness of the document is disputed the court has to consider external and internal evidence related to it in order to decide whether there was proper execution and signature.

When the document is suspicious on the face of it the court need not presume that the document was executed by the person purported to have executed it.

Section 90-A is similar to Section 90 of the Indian Evidence Act in structure and is like an extension of Section 90 which applies to electronic records which are 5 years old. According to this section if any electronic record purporting or proved to be 5 years old is produced from custody which the court in the particular case considers proper the court may presume that the electronic signature which purports to be the electronic signature of any particular person was so affixed by him or authorized by him in this behalf.

The explanation to this section states that the electronic records are said to be in proper custody if they are in the place in which and under the care of the person with whom they naturally be but no custody is said to be improper if it is proved to have a legitimate origin or the circumstances of the case are such as to render such an origin probable.

CONCLUSION

Discretionary presumptions are those presumptions in which court will presume a fact to be proved until it is disproved or may call proof upon it. In the case of such presumptions the court has the choice to decide whether to raise the presumption or not.

Discretionary presumptions given under Section 86 to 88-A and Section 90-A are self explanatory in nature. However with respect to the interpretation of Section 90 there is lot of questions. First issue is on how the period of 30 years is calculated to find out if a document is 30 years old or not. According to the current position of law to find whether a document is thirty years or not the period has to be calculated from the date of execution of the document and not from the date which the document is filed in court. Next there is the issue as to whether the mere production of the document would enough to attract section

90. According to the present position of law mere production is not enough the production has to be from proper custody. Proper custody of a document means that the document is possession of such a person that it does not bring about any

suspicion fraud or doubt. Proper custody does not mean most proper place forthe document to be deposited it just requires that there should be a sufficient explanation about the origin of the document. Proper custody thus means the document should be in such a place or with such a person where or in whose possession can be reasonably expected to be. The third issue is on whether section 90 is applicable to copies of document. The current position of law is that Section 90 is applicable to only original documents and not to copies of documents. However in copies of documents(whether certified copies or registered copies) which can be admitted as secondary evidence under Section65 which is over 30 years old and is produced from proper custody only the signature which authenticates the document can be presumed to be genuine and not the execution of the said document. Certified copies are admissible to prove the contents of the original document if the original document is proved to be lostin proper custody or it is in the possession of the adverse party. But these certified copies do not prove the execution of the original documents only the contents of the same. The next issue is on whether documents with respect to which presumption under Section 90 can be raised should be signed. The current position of law is that only the documents which are signed attract the presumption under Section 90. If the document does not have a signature then Section 90 is not applicable. Signature here includes thumb impressions but does not include seals.