

Chp. 8.

BSA

\* Facts in issue

Section 3 of BSA says that evidence can be presented in a court case to prove or disprove fact in issue as well as other relevant facts.

one can't use certain evidence if any other law prohibits. CPC might restrict certain evidences in civil cases.

\* Facts in evidence

Section 2(1)(g)

Facts in issue are important facts that directly affect outcome of case.

These facts determine right, liability or disability.

## \* Motive, Preparation and conduct

Any fact that shows the motive behind an action is relevant.

Motive is crucial in criminal cases and must be proven through circumstance evidence. It helps to establish why a person acted in particular way.

Facts that shows a person made preparation for an act are relevant in proving that the person carried out the act.

Conduct means a person's behaviour. Conduct helps the court to understand what exactly happened.

Statements are not considered conduct unless they explain what they did. Conduct may be previous or subsequent.

\* Section 8

If there is a reasonable belief that two or more people conspired to commit a crime anything said, done, written by anyone of them about their shared plan is relevant, this applies to all members of conspiracy, even if they weren't directly involved in specific action or statement.

\* Section 12

Facts that shows person's mental state such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill are relevant.

Even facts that shows person's physical condition or feelings are relevant.

Explanation 1 → to prove a state of mind fact must show person's state of mind in relation to specific issue in question.

Explanation 2 → if person is accused of crime and if their previous crimes are relevant to the case, then previous

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contradiction shall be relevant.

## \* Admissions

Admission refer to statement made by person that suggest any inference about any fact in issue or relevant fact in a case.

Statements can be oral or documentary if electronic record is involved it is relevant if genuineness of that electronic record is not in question.

Admission can be made by party to the case, agent, pre-decessor in interest or someone with a joint interest in the matter.

Admission is best evidence against a person who made it unless it is shown to be untrue or made in circumstances that make it non-binding.

\* statements made under special circumstances

Following statements are relevant in court because they come from special circumstances :-

- a) Business records  
Entries in regular business records are relevant if they relate to something the court is investigating.
- b) Official Records  
Entries made by public servant or other authorized person in public or official records are relevant if they state a fact in issue.
- c) Maps or charts  
Facts in public maps, charts or govt plans are irrelevant when they concern matter represented in such maps.
- d) Govt publications  
Statement in laws, govt acts, notification published in official gazette are relevant when court is considering a public fact.
- e) Foreign law  
Statement in books or reports containing laws of another country are relevant when

court needs to know that law.

\* Statement by person who cannot be called as witness.

→ A statement by person who cannot be called as witness can be admissible in court if its relevant. This include statement made by people who are deceased, cannot be found or are otherwise unable to give evidence are relevant fact in following case:-

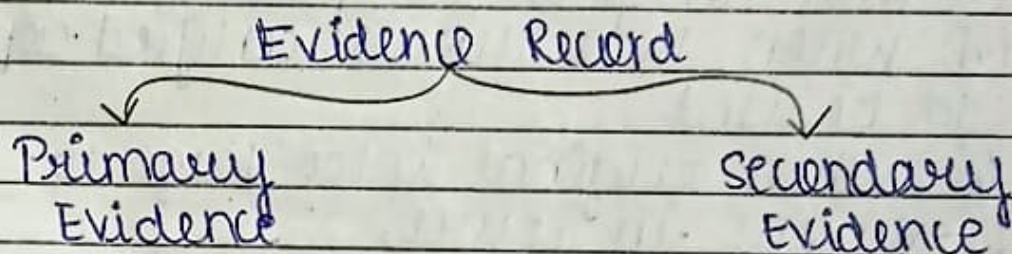
a) Statement relating to cause of death  
A statement about cause of death is called a dying statement. It is admissible as evidence in court if person who made statement before dies and cause of death is in question.

b) Statement relating to course of business  
It refers to record or declaration in ordinary course of business that can be admitted as evidence. This include statement made in books or in documents.

c) Statement against interest  
A statement against interest is a statement that goes against interest of person who made it. It can be used as evidence in court. In criminal case there is other evidence that make statement trustworthy.

## \* Documentary Evidence

According to sec 2(1)(d) document means any matter expressed or described or otherwise recorded upon any substance by means of letters, figures or marks, one of those means intended to be used or which may be used for purpose of recording that matter and include electronic & digital record.



a) Primary Evidence = It means documents itself produced inspection of court.  
Primary evidence is the best evidence.

b) Secondary Evidence = It can be used in court when original document not available in following cases :-

① when original document in court is with someone's possession but they don't show it in court, you can use secondary evidence. This applies when :-

- Person whom against document is being used doesn't produce it.
- Person who has it is outside court reach.

• Person legally required to produce a document fails to do so.

(ii) Person against whom document is being used admits content of document in writing secondary evidence can be accepted in such case.

(iii) when original document is lost or destroyed

(iv) when original is of nature is not be easily available

(v) when original is public document

(vi) when law allows certified copy to be used.

(vii) when original is too large to examine in court.

### \* Fundamental Rules of evidence.

> No facts other than having rational probative value should be admitted in evidence

> All facts having rational probative value are admissible in evidence unless excluded by a positive rule of paramount experience.

\* Difference between evidence in civil & criminal case.

- Civil cases - the standard of proof is preponderance of probability. This means the evidence must show that something is most likely true than other. The decision is based on which side version event is more believable.
- Criminal cases - The standard of proof is beyond all reasonable doubt. This is much higher standard. The evidence must prove defendant guilty so clearly that there is no reasonable ground in the mind.

\* Difference between logical relevancy & legal relevancy.

> Logical Relevancy is based on common sense, legal relevancy is based on what law permit as evidence. Court only consider fact that are legally permitted means they are allowed under law to be used as evidence.

> Legal Relevancy and admissibility

- A fact is relevant when it helps in proving fact in issue.
- A fact can be relevant but still not admissible if it goes against legal rules & public policy.
- So, relevancy & admissibility are not co-extensive or interchangeable terms.
- A fact may be relevant yet not admissible.

\* Conditions for computer output Sec 63(2)

To be admissible under this section, electronic record must need certain conditions -

- a) Record must be created or processed by computer or communication device which was regularly used by person who controls it.
- b) The type of information & electronic

record must be regularly entered into the computer or communication device during normal course of business activity.

- c) The computer or communication device must have been functioning properly throughout the period.
- d) The information & electronic record must accurately reflect what was input during normal business activity.

#### \* Submission of evidence in electronic mode.

When submitting an electronic record in evidence certificate must be submitted along with the court. This certificate should include :-

- a) Description of electronic record & how it was produced.
- b) Details of device used to produce the record to prove that it was created by computer or C-Device.
- c) Confirmation that record were stored & produced regularly & accurately in normal course of business.
- d) Certificate must be signed by person in charge of computer or communication device or an expert certifying the details to the best of their knowledge.

## \* Proof of Signature (electronic) [Sec 66]

1) electronic signature is involve  
It must be proven that signature  
belongs to subscriber.

\* Are all facts logically relevant are  
not legally relevant? Explain

- > A fact is logically relevant if has  
casual relationship with another  
fact, meaning it could suggest  
existence or non-existence of that fact.
- > E.g = If its raining, ground is  
likely wet
- > A fact is legally relevant if it meets  
specific legal criteria defined by  
Indian evidence etc
- > All legally relevant fact are logically  
relevant But not all logically relevant  
facts are legally relevant.
- > Judge may consider some logically  
relevant facts as too unrelated or not  
important enough for legal case.
- > Logical relevancy is based on common  
sense, legal relevancy is based on what  
law permits as an evidence.
- > Courts only consider facts that are legally  
relevant means they are allowed under  
law to be used as evidence

## \* Estoppel

&gt;

Estoppel means commitment

&gt; Principle of Estoppel :

"allegans contraria non est averendus"

&gt; When you say something or when you make statement. If you lead other person to believe something that is true then you afterward not deny &amp; if someone believe on your statement and acted on that behalf afterward you can't deny.

&gt; Types of estoppel

- estoppel by attestation
- estoppel by contract
- constructive estoppel
- estoppel by election
- estoppel by negligence
- equitable estoppel
- estoppel by silence