



## The Concept of Relevancy, Admissibility and Reliability under Indian

### Evidence Act, 1872 : An Appraisal

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**ABSTRACT:** Whenever a civil or a criminal wrong is committed there are so many surrounding circumstances which are also either created after the wrong or at the time of doing the wrong or before the doing of such wrong. In either of these cases there may be some connection between the wrong committed and the said surrounding circumstances. Out of these, some of these facts may have a logical cause and effect relationship with the fact in issue or other similar facts. This characteristic of these facts is what is called logical relevancy. However, to be relevant for the purposes of Evidence Act,

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it also has to be proved that these facts are related to the fact in issue or other similar facts by one of the methods as provided from Section 6 to 55 of Indian Evidence Act. This is what is called Legal Relevancy. A fact is relevant but not admissible, when that fact is not duly proved. Admissibility means when the court takes judicial notice, where a fact is declared to be relevant under Indian Evidence Act, if duly proved. Admissibility is the character which makes the fact admissible. Admissibility comes at two stages first admissibility of fact and then admissibility of evidence. To prove a fact, evidence is needed and if evidence is admitted by the court then the fact will be admitted automatically because the admitted evidence will prove the fact which is admitted at a initial stage by the court, after this stage of admissibility of fact comes because by the help of the admissibility of evidence, the fact is proved. However, the admissibility of evidence does not automatically result into reliability of evidence i.e. the evidence will be reliable according to the judicial mind of the court, only when the evidence to the satisfaction of the court is able to prove the fact, it will be said to be a reliable piece of evidence. Reliability of the evidence will result into the proof of fact for which the evidence was given.

### **INTRODUCTION:**

In the rule of law there are two types of laws. i.e.

- i. Substantive Law
- ii. Procedural Law

Substantive law provides ‘the right’ and ‘obligations’ to the persons but whereas, the procedural law sets up the procedure to enforce the substantive law. In every proceeding in the Court there must be proof of every fact to establish a reliability of every fact. And the Indian Evidence Act, 1872 has enumerated about the Relevancy, Admissibility and Reliability of the evidences.

Evidence act is a Procedural law, which provides the provisions regarding the Relevancy of Facts, Burden of proof, Admissibility etc.

Evidence Act applies in both, Civil and Criminal type of cases. In civil cases, the rule of probability prevails but, where as in Criminal Cases the case must be proved beyond reasonable doubts, because Benjamin Franklin once quoted that, “that it is better 100 guilty Persons should escape than that one



*innocent Person should suffer*” and this quote has been approved and given recognition under the Criminal Jurisprudence.

The Evidence Act, 1872 has bifurcated evidences only into two types, i.e.

1. Oral Evidences; and
2. Documentary Evidences.

Oral evidences are those evidences which are produced by the witnesses, whether by the direct or indirect witnesses, and there testimonies are recorded before the judge. Documentary Evidences are those evidences which are in written forms, or any kind of articles which includes, Electronic Records etc.

In the Evidence Act, 1872 there are three stages of the evidences, i.e.

*Firsly*, Creating the relevancy of the Evidences

*Secondly*, Admissibility of the Evidences

*Thirdly*, Reliability of the Evidences.

The production of evidence is totally based upon facts, and the fact is meant by anything which can be felt by a human being by their senses, and any mental condition of a conscious human

The facts which can be perceived by the senses of the human that facts are known as the “Physical Fact”

And the facts which are related to mental conditions are called as, Psychological or Mental Fact.

### **Relevancy of Fact:**

Chapter- II of the Act, contain provisions regarding relevancy of the facts, if any evidence is to be produced before the court whether by the prosecution or defense in the cases of criminal, and whether by the plaintiff or defendant in the case of civil, the relevancy of Facts must be proved under Chapter- II of the act. Chapter-II of the acts has enumerated all the logics which a human mind can create regarding the relevancy of facts and set up a legal framework.

Generally the relevancy of facts is of two types. i.e.

- i. Logical Relevancy
- ii. Legal Relevancy

Sir James Fitz James Stephen, explained that relevancy means connection of events as cause and effect, with the a caution that, *“when an inference is to be founded upon the existence of such a connection, every step by which the connection is made out must either be proved, or be so probable under the circumstances of the case that it may be presumed without proof.”*<sup>1</sup>

Thus, Logical relevancy is meant by the facts which are logically connected with each other. Evidence Act, 1872 doesn’t recognize the logical relevancy of facts. It only recognizes the legal relevancy enumerated under Chapter-II. Section-5 of the act doesn’t create any kind of relevancy; it is merely a declaratory section, which declares that, the evidences can only be produced of relevant facts, not of irrelevant facts. And it also gives right to the parties to produce their evidences. So it means that the parties of the cases can produce evidences only on the basis of the relevant fact, not on the irrelevant facts. Whereas, Section 165 gives power to the judge to put any question to the parties or witnesses related to any fact whether relevant or irrelevant and the parties and their agents are not authorized to make any objection regarding the questions framed by the Judge.

The Indian Evidence Act does not give the definition of the word Relevant but surprisingly from section 5 to section 55 the relevancy of the facts are dealt with. The main problem in this regard is deciding which fact is legally relevant as well as logical in nature. A fact may be logically relevant to a particular case but there is no guarantee that it will be legally admissible in the courts. So all the

<sup>1</sup> See, Sir J.L. Stephen’s Introduction to Evidence Act, 1893 Ed., p. 70.



evidences that are to be produced in the courts have to pass two hurdles it has to be both logically relevant and legally admissible at the same time.. The force of the section lies in the last four words where it is meant that relevancy is actually the test of admissibility .The Supreme Court in this regard said that in most cases the two words admissibility and relevancy are used interchangeably with each other but their legal implication are very different because often relevant facts such as communication between the spouses in marriage is important but not legally admissible. An important section with regard to the relevancy of the facts is section 6 of the Indian Evidence Act which speaks about the relevancy of the facts which form the part of the same transaction. The Indian Evidence Act has very intelligently created a category for the relevancy of facts. The facts which are directly connected to the issue such as motive, cause, effect are most relevant this is contained in sections 6 to section 16 of the Indian Evidence Act. The next important relevant facts were the confessions (sections 17 to section 31) followed by decisions in other cases or the precedents established by law (section 40 to section 44). The principle of section 6 is called *Res Gestae* this simply means a transaction or a thing done.

#### **Admissibility of the Evidences:**

All relevant facts are not admissible, it is depends upon the fact and circumstances of the case that whether the fact is admissible or not. Admissibility is the second stage of evidence. After proving the relevancy of the facts and producing the evidences, the other party shall be given the chance of cross-examination of that particular evidence. If the testimony of that particular evidence remains intact, and then in such case the stage of admissibility arises. The admissibility of facts is the most important factor in deciding whether a particular piece of evidence will help in solving the case. The question of the admissibility of evidence is undoubtedly a question of law which is decided by the judge. Admissibility is founded and based on law and not logic. So surprisingly facts that have no logical relevancy to the issue at hand might be legally admissible in the courts. The main aim of the trial is to find out the truth. To find out the truth generally the widest possible ambit is given so that all evidence can be put before the judges so that a correct decision can be taken. Also it is very interesting to note that after evidence has been declared both logically relevant and legally admissible, the fact about how it has been gathered is irrelevant for the purpose of the case. Sometimes there may be a situation when it is practically impossible to differentiate between an evidence that is admissible and evidence that is not. That is if the inadmissible is mixed up with admissible evidence to such an extent that both cannot be separated, then the whole evidence has to be rejected but this will not hold true if the evidences can be segregated on the basis of their admissibility. There is no distinction between the rules of admitting evidence when it comes to criminal and civil cases. The omission to object about the relevancy of the evidence by the opposing party or by the court itself does not mean that the evidence has been rendered admissible. It is the court's responsibility and duty to reject the evidences which are not admissible. In this regard it is very important to note that it does not matter in the court of law about how particular evidence has been obtained. For all practical purposes even the evidence which has been illegally obtained might be legally admissible. The mere fact that the method of obtaining it is illegal has no effect on the admissibility. The court is only interested in deciding the relevancy of the evidence to the given case. But it does not mean that the court will not look into the originality of the evidence procured that is it will check whether the evidence is free from tampering and mutilation. Example of a logically relevant fact which is not legally admissible will be the confession made by the accused in police custody. The fact that an accused is confessing before the police seems logically relevant but the problem with this sort of situation is that the police may be too eager to solve a case before them and thus they may torture a suspect into accepting the accusation. In the



due process model, the rights and freedoms of the individual are more important and all care and precaution is taken to protect these freedoms. So any confession made in police custody is not legally admissible in courts. Section 136 of the Act, gives the discretionary power to the Judge to the admissibility of that particular evidence. The expression under section 156 “*the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.*” Gives power to the Judge to admit the proved fact if he thinks that, the evidence is relevant regarding the admissibility.

In deciding the question of admissibility, the judge has to remember that in construing a statute like the Evidence Act, where any fact intended to be established has to be, in accordance with the scheme of the act, found to be relevant under the provisions contained in the Act before it can be allowed to be proved, any argument based on plausibility can have no effect.<sup>2</sup>

In criminal cases the principle of ‘*Beyond Reasonable Doubt*’ is to be considered before the admissibility of the evidence, in other words, the evidence must be proved beyond reasonable doubts.

It is the duty of Judge to exercise his power carefully because admissibility of evidences creates the mitigating and aggravating factors in the mind of Judge, and the judgment is based upon the admitted evidences. While admitting the evidences he should not be prejudice and hasty.

#### **Reliability:**

Reliability is the third and final stage of evidence. In context of evidence, reliability is meant by the evidences which are considered by the Judge while delivering the Judgment. After the stages of relevancy and admissibility, as per Section 165 proviso, the judge shall consider the duly proved and relevant facts as the basis of his judgment. And prepare a balance sheet in his mind of the Mitigating and Aggravating evidences on which judgment relies.

#### **Distinction between Relevancy and Admissibility:**

The previous part of the project dealt with the matter of relevancy and the admissibility of the facts . It is very important therefore to clearly describe the distinction between the two. The first and foremost distinction between the two is that admissibility of the evidence is strictly based on the strict questions of law whereas the relevancy is not a question of law rather it is based on the probability and the logic. The next fundamental difference between the two is the basic feature of the two. That is admissibility decides whether relevant evidence has to be admitted or not whereas the relevancy declares whether the evidence is logically relevant to the facts of the given case.

#### **Facts which are Legally not admissible but Logically Relevant:**

These are the most important for the purpose of the solving of a case because they seem very logically connected to the issue however due to some reason they are not legally admissible under the Indian Evidence Act. Section 24 under the Indian Evidence Act is very important in this regard. It is related to confession made due to threat, inducement or a promise. Confession has been defined as “*it is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime*” so there are two conditions which need to be fulfilled when a confession is made either the confession must be direct with the accused stating explicitly that he has committed the crime or an inference can be made from his statements about his involvement in the crime. Since confession is a

<sup>2</sup> B.N.Kashyap v. Emperor, 1945 Lah. 23: I.L.R. 1944 Lah. 408: 217 I.C 284 (F.B.)



very important piece of evidence it is very important to examine whether the confession has been made out of free will or it has been made through coercion. Only confessions made out from free will can be accepted. The evidence will be admissible only after the court is totally satisfied that the accused was a free man at the time of confession and that his movements were not controlled by the police or any other investigative agency for the purposes of securing the confession. Also the case where the accused makes a confession thinking that the authorities would soften their attitude towards him then that confession is said to be non voluntary. Another section which deals with the logically relevant but legally inadmissible facts is section 25 which deals with the confession made to a police officer. The main principle behind rejecting the confession made under the police officer is that the evidence is considered to be untrustworthy. As for the timing of the confession is concerned all confessions made to the police before or during the investigation are considered to be invalid. It is important to note that only confessions made in presence of police are not admissible however all the statements that the accused has given to the police can be proved and used against the accused. However confessions made to the magistrate under section 164 Cr.P.C which is admissible in the court.

Section 52 also talks about facts which are logically relevant but not legally admissible. It deals with the prior conduct and character of the accused. The main example of this section is cases of rape where the defence side in most cases tries to blame the victim by questioning the character of the victim. The prior conduct might seem logically relevant but it is not legally admissible. However according to section 53 in criminal cases the previous good conduct does become relevant. Section 122 also is of this type. The communication between the spouses is logically relevant but not legally admissible.

### **Facts which are Legally admissible and relevant but not Logically Relevant:**

This is completely different to the previous section where legally relevant facts are not legally admissible. Here the facts are legally admissible but not logically relevant. Section 146 of the Indian Evidence Act is the section relevant here because it talks about the questions in the cross examinations of the witness. This is logically irrelevant because during the cross examination the witness might under pressure and nervousness accept all the charges put by the opponent lawyer and this might subvert the judicial process. Also the cases where custody battle is fought, the child might be brainwashed by the mother and this is logically not relevant because it is commonly known fact that small children are very close to their mothers. Section 53 is also an example of the same where the prior conduct is relevant in criminal cases this is not logically relevant because prior good conduct is no guarantee that the accused will not go back on his previous vitiated conduct.

Section 11 is a very important section as it talks about the facts which are not relevant now but might become relevant at later stage due to further investigation. It has to be read with other important sections of the Indian Evidence Act that is sections 32 and 33. This section does not fall under the previous categories but it is important from the independent standpoint as it talks about the facts which are not logically relevant at the present moment but can become potentially very important for the case.

### **CONCLUSION:**



To conclude it must be said that the Indian Evidence Act is very important for a country like us which follows the due procedure model and is a great check on the powers of the arbitrariness of the judges. The legal relevancy, admissibility and reliability are very important for the evidence to be used properly for any particular case. These three hurdles have to be crossed and it does not matter if the fact is logically relevant but not legally admissible because it renders the evidence useless.

## REFERENCES

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