

1. Under what circumstances character is relevant in civil and criminal cases? Explain.

Ans-

CHARACTER WHEN RELEVANT

In civil cases

Section 52 lays down the broad general principle that the evidence of a party's character cannot be given for the purpose of showing that it renders the conduct imputed to him as probable or improbable.

Sec. 52. In civil cases character to prove conduct imputed, irrelevant. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant.

Thus the general principle is that a party cannot give evidence of his good character for the purpose of showing that it is improbable that he should be guilty of the conduct imputed to him. For example, if a person is charged with negligent driving he cannot give evidence of the fact that his character and conduct has been such that he could not have been guilty of negligence. Similarly, his opposite party cannot give evidence of the fact that his character and conduct had been so bad that he must have been negligent. The reason is that the court has to try the case on the basis of its facts for the purpose of determining whether the defendant should be liable or not. The court has not to try the character of the parties and the evidence of character will not only prolong the proceedings but will also unnecessarily prejudice the mind of the judge one way or other. This principle was laid down as early as 1791 in **Attorney-General v. Bowman**.

EXCEPTIONS

While this is the general principle, exceptions will have to be admitted.

1. Character as affecting damages

The Court is entitled to take note of the character of the plaintiff if it affects the amount of compensation which should be awarded to him.' Section 55 lays down this principle.

The evidence of good or bad character of the defendant is irrelevant to damages. His good character cannot go to reduce damages and his bad character cannot aggravate them. It is only the character of the plaintiff which is declared to be relevant and that too when his character affects the amount of compensation which he ought to receive. This exception has been often used in actions for damages for defamation, or for kidnapping, or rape or for breach of promise of marriage.

Similarly, in an action for breach of promise of marriage, the defendant was allowed to cite evidence of the plaintiff's bad character in mitigation of damages, but such actions have now been abolished. In an

action for damages, for seduction or rape, evidence of bad character of the plaintiff is allowed as it is likely to affect the damages that the plaintiff ought to receive.

2. When character is in issue.

Evidence can be given of a party's character when his character is itself a fact in issue. Where, for example, an action is brought for divorce on the ground of cruelty, the cruel character of the defendant, being a fact in issue, the plaintiff can lead evidence of it. Although there is no direct provision on the point relating to civil cases, this should follow from section 5 itself which provides that evidence can be given of the facts in issue.

3. When character appears from other relevant evidence [S. 52]

A fact which is otherwise relevant cannot be excluded from evidence only because it incidentally exposes or throws light upon a party's character. This appears from the concluding words of S. 52 itself which says that "except in so far as such character appears from facts otherwise relevant.

In criminal cases

Evidence of Good Character Relevant

Sec. 53. In criminal cases previous good character relevant.

In criminal proceedings the fact that the person accused is of a good character is relevant.

Section 53 makes a categorical declaration that "in criminal cases, the fact that the person accused is of a good character is relevant." Thus every accused person is at liberty to give evidence of the fact that he is a man of good character. "There is no doubt that the accused may adduce evidence of his good character in disposal of his guilt. The expression 'good character' has, of course, a known significance in relation to evidence upon criminal trials, for it denotes a description of evidence in disproof of guilt which an accused person may adduce. He may adduce evidence of the favorable character he bears as a factor matter making it unlikely that he committed the crime charged."

The fact that a man has an unblemished reputation leads to the presumption that he is incapable of committing the crime for which he is being tried".

Sec. 54. Previous bad character not relevant, except in reply.

In criminal proceedings the fact that the accused person has a bad character, is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation 1.-This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.-A previous conviction is relevant as evidence of bad character.

When prosecution can give evidence of bad character

The emphasis of the section is that the prosecution cannot lead evidence of the bad character of the accused as part of its original case. They can produce evidence of bad character only in reply to the accused showing his good character. In other words, evidence of bad character becomes relevant only when the accused has adduced evidence to show his good character, otherwise the general principle is that evidence of bad character of the accused is not relevant.

EXCEPTIONS

Criminal cases also admit of certain exceptions. There are certain cases in which evidence of a prisoner's bad character can be given.

1. To rebut prior evidence of good character [S. 54]

While the prosecution has no right to introduce the evidence of the bad character of the accused, if the accused himself has made an issue about his character by giving evidence that he is a man of good character, the prosecution can rebut or contradict such evidence by adducing evidence of his bad character. Section 54 recognizes this exception.

2. Where character is in issue

The ban imposed by section 54 upon the relevancy of the bad character of the accused is not applicable where his character is itself a fact in issue.

3. When otherwise relevant

Evidence can always be given of facts which are relevant under any of the provisions relating to relevancy given in sections 6 to 55 even if such facts incidentally involve or reveal the character of the accused or of the prosecutor)

Sec. 55. Character as affecting damages.-

In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Meaning of character

The explanation to section 55 gives meaning of the expression "character" for the purposes of all the sections relating to relevancy of character and the type of facts which can be used to prove bad character..

The word "character" for this purpose is taken to mean a man's reputation, and the evidence of character was required to be confined only to "general evidence of reputation". This was laid down in **Scott v. Sampson,**

Explanation. In sections 52, 53, 54 and 55, the word "character" includes both reputation and disposition; but except as provided in section 54 evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

2. What is dying Declaration? On what ground it is relevant and admissible in evidence?

Ans- Section 32 is a pretty long one. The section is one of those provisions that provide exceptions to the principle of excluding hearsay evidence. The principle of the section is that a person who has the first-hand knowledge of the facts of a case, but who, for reasons stated in the section, such as death or disability, is not able to appear before the court, then his knowledge should be transmitted to the court through some other person.

Dying declaration or statements relating to cause of death [Clause 1] Sec.32

Such a statement can be proved when it is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death. The statement will be relevant in every case or proceeding in which the cause of that person's death comes into question. The clause further goes on to say that such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

Information lodged by a person who died subsequently relating to the cause of his death, is admissible in evidence under this clause. The clause incorporates the principle of English law relating to what are popularly known as dying declarations but marks a remarkable departure from them. The relevant principles of English law may first be noted.

Dying declaration in English law

A 'dying declaration' means the statement of a person who has died explaining the circumstances of his death. According to English law the statement is relevant only when the charge is that of murder or manslaughter.

Dying declaration under clause (1) of S. 32, Evidence Act Anticipation of death not necessary it is not necessary that the declaring should be under any expectation of death. If the declarant has in fact died and the statement explains the circumstances surrounding his death, the statement will be relevant even if no cause of death had arisen at the time of the making of the statement. The statutory authority is S. 32 (1) itself and the judicial authority is the leading decision of the Privy Council in **Pakala Narayana Swami v. Emperor**.

"The wife of the accused was indebted to the deceased in the sum of Rs. 3,000 which she had borrowed at 18% interest from the deceased on account of their needs about a year before the tragedy. A number

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of letters signed by the accused's wife and which were discovered from the deceased's house clearly proved this fact. On 20th March, 1937, the deceased whose name was K.N. received a letter, which was not signed by anybody but which, it was reasonably clear had come from the accused's wife, invited him to come that day or next day to Berhampur. K. N.'s widow told the court that on that day her husband showed her a letter and said that he was going to Berhampur as the Swami's wife had written to him inviting him to come to receive payment of his dues. K.N. and the wife of the accused were known to each other as she was the of an officer in whose office K.N. was employed as a peon. K.N. left his house the next day in time to catch the train to Berhampur. On Tuesday, 23rd March, his body, cut into seven pieces, was found in a steel trunk in a third class compartment of a train at Puri, where the trunk had been left unclaimed."

The accused was convicted of murder and sentenced to death.

Proximity of time between statement and death

There has to be proximate relationship between the statement and the circumstances of death. The statement of a woman made before the occurrence in which she died that the accused was standing near her with a gun in his hand and this fact being one of the circumstances of the transaction was held to be admissible as a dying declaration being proximate in point of time and space to the happening. Declaration must be about declarant's cause of death.

A declaration of a dying person which explains the cause of death of any other person than the declarant does not qualify as a dying declaration. A stock witness to the abduction of a child was killed. He made a statement. before his death showing the involvement of the accused in the abduction. The Supreme Court held that the declarant was not explaining the cause of his death and, therefore, the statement was not relevant under S. 32.

Need for Corroboration

here is no absolute rule of law, or even a rule of prudence, that a dying declaration unless corroborated by other independent evidence, is not fit to be acted upon and made the basis of a conviction." A dying declaration, once found to be true and voluntary, can be made basis of conviction without further corroboration.

Comparison with Testimony of Accomplice

The court also compared a dying declaration with the testimony of an approver or accomplice and the confession of a co-accused and observed that they should not be equated.

F.I.R. as dying declaration and statements recorded by police where an injured person lodged the first information report and then died, it was held to be relevant as a dying declaration.

Multiple dying declarations

The Supreme Court observed in a case that the mere fact that two different versions were there in which a set of two different persons were indicated the mere fact that one name was common in both the versions, could not be a basis for convicting the named person. If there are two dying declarations giving two different versions, a serious doubt arises about truthfulness of the declaration.²

Dying declaration evidence is based on the principle enshrined in the maxim "nemo moriturus praesumitur mentiri" implying that a man on death bed would not tell a lie to falsely implicate an innocent person.

Identification through dying declaration

One of the chief functions of a dying declaration as piece of evidence is the proper identification of the assailant.

Language of statement

Where the statement was in Telugu and the doctor recorded it in English but the precaution of explaining the statement to the injured person by another doctor was taken, the statement was held to be a valid dying declaration.

Where declarant survives

Where the declarant survives, his statement cannot be used as a dying declaration. As long as the maker of the statement is alive, it would remain only in the realm of a statement recorded during investigation. If he survives and appears to give evidence, his declaration, if made before a magistrate, can be used to corroborate or contradict his testimony.

3. What do you understand by judgement –in-rem and judgement in personam?

Discuss the rule in Indian Evidence act regarding the relevancy of judgement in rem.

Ans- RELEVANCY OF JUDGMENTS

The general principle of law is that judgments whether previous or subsequent are not relevant in any case or proceeding. If, for example, an action is started against a manufacturer for supplying defective goods and the court holds the manufacturer to be not liable. Subsequently, another person starts an action against the same manufacturer, for supplying the same kind of defective goods. The previous judgment is not relevant to the subsequent case. Every case has to be decided upon its own facts as they exist between the parties to it and not by reference to the judgments in other cases.

Section 43 of the Evidence Act incorporates this principle and provides that judgments are not relevant unless they are declared to be so by the Act. Civil proceedings for recovery of a loan amount ended by

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settlement. The court said that such proceeding was not of much significance in a subsequent criminal proceeding involving the same matter. Civil and Criminal proceedings on the same subject-matter can proceed simultaneously. Sections 40, 41, 42 and 44 lay down exceptions to this principle.

Exceptions

To the general principle that judgments are not relevant, the Act recognizes a few exceptions. They are to be found in sections 40 to 43.

Judgments in rem

- Judgments for the purposes of relevancy are of two kinds, namely, (1) judgments in rem, and (2) judgments in personam. A judgment in rem is a kind of declaration about the status of a person e.g., that he is an insolvent, and is effective against every body whether he was a party to the proceeding or not. That is why it will be relevant in every case or proceeding in which the solvency of that person is in question. A judgment in personam, on the other hand, means a judgment between the parties, e.g., in a tort or contract action. Such judgments bind only the parties and their representatives-in-interest, and therefore, are not relevant in any subsequent case or proceeding. Judgments of declaratory nature though in personam are also relevant to other proceedings on the subject-matter of the declaration. A judgment of a civil court under the Specific Relief Act, 1963 to the effect that the trust claiming exemption from Income-tax had become a charitable trust after the order of rectification was held to be relevant against the Income-tax Department though it was not a party to the proceeding."

According to the section 41, a judgment in rem dealing with the status or legal character of a person can be pronounced only by the courts exercising the following kinds of jurisdiction :

1. Probate Jurisdiction.
2. Matrimonial Jurisdiction.
3. Admiralty Jurisdiction, and
4. Insolvency Jurisdiction.

A judgment in rem has been defined to be a judgment of a court of competent jurisdiction determining the status of a person or thing, or the dispositions of a thing (as distinct from a particular interest in it) of a party to the litigation.¹ "Such a judgment is conclusive evidence for and against all persons whether parties, privies or strangers, of the matters actually decided.

Probate Jurisdiction. A court of Probate Jurisdiction means a court having jurisdiction under the Indian Succession Act, 1925 to pronounce upon the genuineness of a deceased person's will and under it to grant to a certain person letters of probate so that he may act for the deceased for the execution of his will. A judgment by which any such position or status is granted to any person is conclusive evidence of the fact that he is so entitled and will be relevant in any case in which his status is in question. Such a judgment is effective against the whole world .

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Matrimonial Jurisdiction-A court of Matrimonial Jurisdiction means a court having jurisdiction to decide matrimonial causes under the Native Convert's Marriage Dissolution Act, 1866; The Indian Divorce Act, 1869; the Indian Christian Marriage Act, 1872; the Parsi Marriage and Divorce Act, 1936; Dissolution of Muslim Marriages Act, 1939; the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955.

Admiralty Jurisdiction.-A court of Admiralty Jurisdiction decides cases arising out of war claims. This power is enjoyed by the High Court of India under the Letters Patent.

Insolvency Jurisdiction-A court of Insolvency Jurisdiction means a court exercising power under the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920. The former confers insolvency jurisdiction upon the High Courts and the latter upon the Mofussil Courts.

Conclusive proof and effective date

It is essential for a judgment under section 41 to be regarded as a judgment in rem that it should either confer upon or take away from any person any legal character or it should declare the person to be entitled to any such character, or to be entitled to any specific thing. The judgment should pronounce upon the matter not against any specific person, but absolutely.

Where the judgment deprives a person of any legal character, it is conclusive of the fact that he ceased to possess that character from the date on which the decision declares that he so ceased or should so cease.

Who can raise objection?

Execution proceedings were launched for realization of maintenance. An order was passed attaching husband's immovable property. His mother objected. The judgment was held to be a judgment-in-rem binding on the whole world. But the attachment could be challenged only by the party and not by the husband's mother.