

**Section 9 of Indian Evidence Act read with Section 118 of Indian Evidence Act.**

**Section 9: Explanatory or introductory facts**

These facts are those which are necessary to explain or introduce a relevant issue which is in support of or in rebuttal of an inference that is suggested to establish guilt or the lack thereof. This section makes admissible facts which are necessary to explain or introduce relevant facts, such as place, name, and date, identity of parties, circumstances and relations of the parties. Thus, evidence of other offences committed by the accused is admitted in order to establish his identity or to corroborate the testimony of a witness in a material particular.

❖ **Test Identification parade:**

This is a concept that is not meant for the courts but is for investigation purpose. **It is to enable witnesses to testify** that the accused himself is connected to the commission of the crime and to satisfy authorities regarding the same. An example of this test is the admission of a superimposed photograph of the deceased over the skeleton of a human body to prove the body was that of the deceased.

- ❖ The identification of the accused is a test that is conducted on the witness where the witness identifies and therefore introduces new evidence into the case. This is a common practice where a queue of people is lined and one of them is picked by the

witness, such evidence is admissible under this section using the Test Identification Parade. It is corroboratory practice of prudence to sustain other evidence.

Section 9 of Indian Evidence Act has to be read with Section 118 of Indian Evidence Act.

### **Section 118: Who may testify**

All persons in Court are allowed to testify, with certain exceptions.

#### **The exceptions are:**

- a) If the witnesses would not be able to understand the questions put to them.
  - b) Or if they would be unable to provide rational answers.
  - c) Because of the tender age, old age, disease of body or mind or any other cause.
- A person involved in a felonious crime may also be a witness.
  - A child can also be a witness for as long as the child understands the questions and is in a position to answer.
  - The intellectual capacity of witnesses is necessary to determine their competency.
  - A lunatic person means a person who is a monomaniac or person afflicted with partial insanity.

**A witness under section 9, can identify the accused and can give his/her testimony in Court under section 118, subject to the exceptions laid down.**

### **Section 10 of Indian Evidence Act read with Section 120-A of Indian Penal Code**

#### **Section 10: Conspiracy**

This section provides for **all the relevant statements that are made by conspirators to a common design**. As per this section, if there is a sufficient ground to believe that 2 or more persons have conspired to commit an offence, then the same is sufficient fact against the alleged conspirators and proving the existence of the said conspiracy. **A confession made by a conspirator in presence of a magistrate is admissible under Section 30 and not Section 10**. In certain cases, **if the conspirator has spoken against the conspirators, it can be used as circumstantial evidence**, with or without common intention.

#### **Section 120-A IPC Criminal Conspiracy**

- ❖ This section defines criminal conspiracy.
- ❖ It was added by the criminal law (amendment) of 1913.
- ❖ The liability under this section arises when two or more persons form an agreement to do an illegal act.
- ❖ Agreement is enough to constitute the offence of conspiracy. An attempt or commission is not necessary.
- ❖ Another important facet of the offence under Section 120-A is that there has to be an agreement. A discussion or knowledge of the offence imagined is not enough.
- ❖ The offence is made out, whether or not the act is committed.
- ❖ Criminal conspiracies are only known to the parties in conversation and not by any one else. Hence, mostly evidence is circumstantial.
- ❖ All the members involved in the conspiracy are punished together.

**Section 10 of Indian evidence act, allows for the admissibility of testimony by one accused against the other.**

**Hence, if there is reason to believe that two or more conspirators have decided to commit an offence, then the statement of one can be used to prove the guilt of the other co-conspirator.**

## **Section 11 of Indian Evidence Act read with Section 112 of Indian Evidence Act.**

### **Section 11: Irrelevant facts become relevant**

As suggested by the title, this section provides for those situations in **which irrelevant facts become otherwise relevant** if they are made admissible under this section. **If a fact, which is otherwise irrelevant, disproves or tends to prove or disprove a fact in issue or a relevant fact, the irrelevant fact becomes a relevant one.** The section therefore has a wide scope. The admissibility also depends on three factors, proximity to the issue or fact, extent to which it proves or disproves the same and the extent to which it is inadmissible otherwise.

### **Section 112: Presumption of legitimacy**

The section is based on the **maxim**, *pateris est quem nuptiae demonstrant* meaning “He is the father whom the marriage indicates”. The law presumes that **legitimacy** of the child if,

- a) The child is **born within the period of subsistence of a valid marriage.**
- b) The child is **born with 280 days of the dissolution of marriage**, provided that his mother remains unmarried.

The Court considers the above two points to be **conclusive proof for the legitimacy of child.** The scope of rebuttal lies in the point where **either party can show that the two parties did not have access to each other at any time when the child could have been begotten.** Therefore, the **one who is trying to prove that the child is illegitimate** has to prove ‘**no access**’. This section only applies to cases where

**paternity is in issue. Access or non- access means existence or the lack of existence in opportunity.**

**In order to prove that the child is an illegitimate child, the Husband has to prove non-access. In other words, By proving non-access, the party, thus proves the fact- in-issue, that the child is illegitimate**

## **Section 21 of Indian Evidence Act read with Section 157 of Indian Evidence Act**

### **Section 21 :Admission**

- ❖ Admissions are relevant and may be proved against a person who makes them.
- ❖ They are substantive evidence, but not a conclusive proof.
- ❖ Admissions may be used as estoppel for the party making it.
- ❖ An admission is believed to be true, unless a party rebuts it.
- ❖ Admissions cannot be proved by or on behalf of the person who makes them, or by his representative in interest, except
  - . (1) when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32; <sup>[1]</sup><sub>[SEP]</sub>
  - . (2) when it consists of a statement of the existence of any state of mind or body made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable; <sup>[1]</sup><sub>[SEP]</sub>
  - . (3) when it is relevant otherwise than as an admission. <sup>[1]</sup><sub>[SEP]</sub>
- ❖ An admission can only be believed if the statement is against him.

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

- ❖ A witness's former statement relating to the same fact made at or about the time when the fact took place may be proved, in order to corroborate his present testimony.
- ❖ Here, a witness should make a statement related to a fact, and his statement may be proved later.
- ❖ The statement must be made at once or shortly after getting the reasonable opportunity to make it.
- ❖ If there is a time lapse between the occurrence of act and the statement made, giving time for reflection, then the statement loses its value.

**An former admission made by the witness under section 21 may be used to prove his later statement, under section 157.**

**Section 23 of Indian Evidence Act read with section 63(5) of Indian Evidence Act**

**Section 23: Admission in Civil Cases when relevant**

This section deals with **admissions in civil cases**. In civil cases, admission is not relevant and are excluded in the following 2 scenarios and are therefore excluded –

1. Admissions which are made upon an express condition that evidence of it if not to be given.
2. Under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

The case of *Hoghton v. Hoghton* provided that this section is **to protect the communications which are made without prejudice**. Confidential overtures of

pacification and any other offers or propositions between litigating parties, expressly or impliedly made without prejudice, are excluded on grounds of public policy.

### **Section 63 Secondary Evidence**

This section provides for secondary evidence and accepts the **Oral accounts of the contents of the doc given by some person who himself has seen it.**

### **Section 27 of Indian Evidence Act read with Section 102 of Indian Evidence Act**

#### **Section 27: How much information received from accused may be proved**

It provides for **information received from an accused person**. This section is based on the principle that the confession of the accused is supported by the discovery of facts, and then the confession will be deemed to be done voluntarily and not extracted under pressure. However, this rule is applicable only in certain circumstances they are:

1. If certain facts are deposed to as discovered in consequence of information received from the accused person, in the custody of a police officer.
2. If the information disclosed relates distinctly to the facts discovered.

The main aim of this section in doing this, is to ensure that the confession is corroborated so that there is no evidence that is misused or destroyed in police custody.

### **Section 102: Evidentiary Burden:**

This section stems from the Roman law, *ei qui affirmat, non ei qui negat, incumbit probatio*, meaning, “It is but just that he who invokes the aid of the law should be the first to prove his case.”

It is also called the “**onus of proof**”, or “**burden of evidence**”. Here, it is the plaintiff that starts adducing evidence and does so, till a prima facie case is established. This burden then shifts to the side of the defendant. The two sides continue proving their facts with evidence, till the case is finally decided.

Unlike the legal burden of proof that never shifts, the evidentiary burden keeps shifting. The ultimate proof lies with the party against whom a judgment might be pronounced.

❖ **Burden of proof and onus of proof:**

- The burden of proof usually lies on the plaintiff to prove the case but under Section 101, the burden of proof lies on the party which comes to Court.
- Onus of proof on the other hand, is a limited term which is used when a party has the burden to prove only certain facts. The **onus keeps shifting throughout in a case.**
- The **initial burden is on the plaintiff under Section 102 and shifts to the defendant** as the case proceeds.
- ‘Onus probandi’ is also called right to begin. Onus of proof arises when a fact is to be determined and there is no evidence. Here, the Court decides where the onus of proof lies.

## **Section 28 of Indian Evidence Act in contrast to Section 24 of Indian Evidence Act**

### **Section 24:**

It provides for **confession caused by inducement, threat or promise** and how it is irrelevant in a criminal proceeding as it made by using such external factors. When these are in reference to the charge against the person, proceeding from authority and are sufficient to give the accused reasonable ground as evidence against him, then this section applies. Only if the confession is out of free will, the section applies so as to safeguard the interest of the accused who is subjected to confessions.

### **Section 28**

It provides for the confession made after the removal of the impressions caused by inducement or threat as in Section 24 of the Act. This section therefore, acts as an **exception to Section 24**. Where **once the existence of threat, assault, beating or improper inducement has been established, there is a presumption of its continuance**, and the **prosecution has to prove that the impression caused by the original inducement**, beating, assault or threat was fully removed when the prisoner made the confession.

## **Section 166 Indian Evidence Act read with Section 311 Criminal Procedure Code**

### **Section 166: Power of jury or assessors to put questions**

In case a trial is presided over by a **jury or assessors**, they have the right to put questions to the witnesses by the leave of the judge.

### **Section 311 of Criminal Procedure Code**

The judge in a case has a right to summon witness at any stage of enquiry or trial. This section gives the power to the Court to examine anyone present, or call upon anybody for examination or re-examination, who in the opinion of the Court is essential.

### **Section 148 Indian Evidence Act read with section 386 of Criminal Procedure Code**

#### **Section 148: Court to decide when question shall be asked and when witness compelled to answer**

This section is worded to protect the witness from being **wrongly cross-examined**. This section states that if a question is not related to relevant facts, it needs to be determined by court, whether the witnesses are to be compelled to answer or not.

#### **Section 386 of Criminal Procedure Code**

Section 386 of Crpc gives the accused the chance to be heard incase the appellate Court decided to enhance the sentence upon appeal.

### **Section 149 read with proviso to Section 146, further read along with section 53-A of Indian Evidence Act**

#### **Section 149: Question not to be asked without reasonable grounds:**

This section formulates a rule for the advocates. No one is allowed to ask any question under Section 148, unless it is founded on reasonable grounds. If any

information is received by the advocate regarding a witness and he has a reasonable doubt over the matter, the question may be put to the witness.

**Proviso to section 146:**

“Provided that in a prosecution for rape or attempt to commit rape, it shall not be permissible to put questions in the cross-examination of the prosecutrix as to her general immoral character.”

**Section 53-A: Evidence of Character of previous sexual experience not relevant in certain cases.**

- ❖ This section was added in 2013.
- ❖ The sexual experience of a person has been provided as not relevant in certain cases.

**Section 154 of Indian Evidence Act read with Section 207 of Criminal Procedure Code**

**Section 154: Questions by party to his own witness:**

If a party that calls a witness, comes to the conclusion that the witness has turned hostile, with the permission of Court, the party may ask questions which would be put to him in cross-examination. A witness can be asked leading questions or examined by his previous statement.

**Section 207 Criminal Procedure Code**

- ❖ This section is based on the principle of Natural Justice.
- ❖ The accused has the right to know the grounds upon which proceedings have been instituted against him on a police report.

- ❖ It is the duty of the Magistrate to give the accused a copy of the police report, the FIR lodged against him, all the statements given by prosecution witness under sub-section 3 of section 161 of Crpc , all the confessions and statements under section 164 of Crpc and any other relevant document.

## **Section 155 Indian Evidence Act read with section 162 Criminal Procedure Code**

### **Section 155: Impeaching credit of witness:**

This section applies to both criminal and civil cases. The testimony of a witness maybe impeached by the adverse party or by the party who calls the witness, by the permission of Court. This can be done by taking into consideration the following three main points:

- Believing somebody's statement that the witness's statement lacks credibility.
- Witness has indulged in corrupt practices.
- If any former statement made is inconsistent with the evidence at hand.

### **Section 162 Crpc- statements made to the police not to be signed**

- ❖ No statement which is made to the police in writing shall be signed by the witness.
- ❖ The statements are not substantive evidence and cannot be used for corroboration.
- ❖ These statements can be used to test the veracity of the witness.
- ❖ This section bars the use of the statement which is made “during investigation”.

## **Section 156 Indian Evidence Act read with Section 306 of Criminal Procedure Code**

### **Section 156: Questions tending to corroborate evidence of relevant fact admissible:**

A witness's statement can be corroborated by asking him of the surrounding circumstances. Corroboration has to be done through **independent material evidence**.

### **Section 306 of Criminal Procedure Code**

- ❖ If the Court wants evidence against a person involved in the commission of an offence, the court may at any stage of the enquiry of trial may, pardon the person.
- ❖ The person ceases to be an accused and becomes a prosecution witness.
- ❖ This pardon can be given, if the person makes a full and true statement of all the facts within his knowledge.
- ❖ The person now becomes an accomplice.
- ❖ The person who is given the pardon, will be examined as a witness.

## **Section 133 Indian Evidence Act read with Section 315 Criminal Procedure Code**

### **Section 133: Accomplice Evidence**

An accomplice in a crime can be a competent witness against an accused, provided that he is also not tried as an accused. A conviction is not illegal if it is made on evidence of accomplice which is not corroborated.

### **Section 315 of Criminal Procedure Code**

- ❖ An accused can become a competent witness in a criminal trial and he may give evidence on oath.
- ❖ He shall not be made a witness unless he requests to be made a witness in writing.