RELEVANCY AND ADMISSIBILITY OF DYING DECLARATIONS

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DYING DECLARATION

A dying declaration is a declaration made by a person as to the cause of his death or as to any of the circumstances, which resulted in his death. For example, if A has been assaulted by B or has been attacked by B, such a person shortly before his death makes a declaration holding B responsible for the injuries inflicted on him. This is a dying declaration provable at the trial against B.

Relevancy of Dying declaration u/sec.32 Clause (1) of Indian Evidence Act

Sec.32 Clause 1. When it relates to the cause of death.

When the statement 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, in cases in which the cause of that person's death comes into question.

Sec.32 of Indian Evidence Act deals with the relevancy of statements made by persons who cannot be called as witness. Sec.60 of the Evidence Act insists that oral evidence must, in all cases, whatever, be direct. In other words, hearsay evidence is no evidence. For example, where A is accused of the murder of B, shortly before B's death B makes a statement to C holding A responsible for the injuries inflicted on him. At the trial, C to whom dying declaration was made by B deposes as to the statement made by B who cannot be called as witness. This evidence deposed by C, strictly speaking, amounts to hearsay evidence but it is made admissible under Section 32, as the attendance of the witness who made the statement cannot be procured. Hence, Section 32 is an exception to the rule contained in Sec.60 that oral evidence must , in all cases, whatever, be direct.

Section 32 (1) is an exception to the general rule laid down in sec.60 of Evidence Act that hearsay evidence is no evidence unless it is tested by cross examination and reliance can be placed n it, to for the basis for conviction. (**Narain Singh V. State of Haryana**, 2004 Cr.L.J 1409 (SC))

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.

Reasons for the admissibility of a dying declaration

Dying declarations are admissible mainly for two reasons. Firstly, the necessity; the victim being the sole eyewitness of the crime that has been perpetuated upon him, excluding his evidence would defeat the ends of justice. Secondly, they are the declarations made by a person under expectation of death and presumed to be true. These are the two reasons on account of which a dying declaration is made admissible.

Justice Eyere in the case of **R. V. Woodcack**, says :

> "Dying declarations are statements made in extremity when the person is at the point of death; when every motive fr falsehood is silenced and when every hope of this world is gone and when mind is induced by the most powerful spiritual considerations to speak the truth."

The admissibility of dying declaration is based on the maxim: 'Nemo Moriturus Praesumntur Mentire' which means, a person who is about to die would not lie. It is said that truth sits on the lips of a person who is about to dies. The presumption is that when a person is conscious of his impending death, when he is confident of his fast dissolution or when he has resigned from the hope of survival, then in such cases he would not lie because he has to face his Maker, the Almighty in the other world. This is the presumption why a dying declaration made by a person shortly before his death is made admissible under Sec.32 Clause (1) of Evidence Act.

Although it is pointed out that when a person is expecting his death to take place he would not be indulging in falsehood, but that does not mean that such statement loses its value if the person died long after the making of dying declaration. (**Najjm Faraghi Vs. State of West Bengal**, AIR 1998 SC 682).

Mere fact that the declarant had died after six days does not in any way enable the court to hold that the statement was not recorded when the injured was on the verge of his death and it cannot be termed as dying declaration. (**Surendar Vs. State of Haryana**, 2012 Crl.L.J 3458 (P & H) (DB).

Dying declaration cannot be discarded only because death took place after a few days. (**Maniben Vs. State of Gujarath**, AIR 2007 SC, 1932).

The dying declaration, if it is found trustworthy and acceptable, can be the sole basis of conviction. (**Mothilal .S. Rathod Vs. State of Maharastra**, 2007 Crl. L.J. 837 (Bom.)

Section 32 is an exception to the rule against the admissibility of hearsay evidence. A dying declaration becomes relevant on the basis of necessity and is accepted as an exception to the hearsay evidence in order to meet ends of justice and therefore, it need not be corroborated before it is acted upon. (**Bhagwan Tukaram Dange Vs. State of Maharastra**, 2014 Crl.L.J. 1875 (SC).

For the admissibility of a dying declaration the following conditions have to be satisfied:-

(1) The declarant must have died:

The person who made the declaration must be died. If the person is able to survive after making a dying declaration, then such a declaration would not be admissible u/sec.32 (1) as a dying declaration, it is admissible u/sec.157 of the Evidence Act as corroborative evidence. (**Gajula Surya Prakasha Rao Vs. State of A.P.**, 2010 Crl.L.J. 2102). So, the first condition is, unless the declarant is dead, the declaration cannot be made admissible as a dying declaration. Although a statement of the declarant might have been recorded as dying declaration when the declarant was under expectation of the death but as long as the maker of the statement is alive it would remain only in the realm of a statement recorded during investigation and cannot be used as dying declaration. (**Ramprasad Vs. state of Maharastra**, AIR 1999 (SC) 1969).

(2) Injuries must have caused the death:

The 2nd condition is that the injuries must have caused the death. If a person dies not on account of injuries, which are inflected on him, but on account of some other reasons or aliment the dying declaration would not be admissible. Suppose, a

person who has been assaulted, is admitted in the hospital, and he makes a dying declaration that such and such a person has attacked him, if the person dies not on account of injuries sustained by him, but on account of certain other ailments developed by him, then the dying declaration cannot be proved u/sec.32 (1).

In **Mothi Singh Vs. State of U.P.** (AIR 1964 SC 900), the accused Mothi Singh and Seven other persons were tried for the murder of one Gayacharan. Mothi Singh and another Jagadamba Prasad were convicted by the court and others were acquitted. The deceased Gayacharan who had been attacked and admitted in the hospital made a dying declaration. He died 20 days after his discharge from the hospital, and before the postmortem was conducted the dead body was cremated. This dying declaration sought to be proved against the accused. It was held in Appeal that the dying declaration is in admissible and cannot be proved u/sec.32 (1) because there is no proof to show what exactly caused the death of the deceased.

Where a husband is alleged to have caused death of his wife with a sharp edged weapon, evidence of the relatives of the deceased with reference to the dying declaration of the deceased is not admissible, unless the injury so caused is shown to have proximate connection with her death. (**Imran Khan Vs. State of M.P.** 1995 Crl.L.J. 17 (MP).

A letter addressed by the deceased wife to the police that she was financially exploited by her husband and thereby she was getting starved, cannot said to relate to the cause of her death or circumstances leading to her death. (**Kanthilal Martaji Pandor Vs. State of Gujarath**, AIR 2013 SC 3055).

In **Sudhakar Vs. State of Maharastra** (AIR 2000 SC 2602), a lady school Teacher was gang rapped by the accused Head Master and a co-teacher. 1st information report was lodged with the police 11 days after the alleged incident. Later, the prosecutrix committed suicide after 5 ½ months after the alleged rape. There was no legal evidence on record that the prosecutrix at or about the time of making the statement, had disclosed her mind for committing suicide allegedly on account of humiliation to which she was subjected to on account of rape committed on her. The prosecution evidence did not disclose the cause of death of the deceased. The Supreme Court held that the prosecution has failed to prove its case and the statement

of the deceased to the police cannot be admitted and consequently the conviction cannot therefore be sustained.

(3) The declaration must be as to the cause of death or as to any of the circumstances which resulted in the death:

Any declaration if it pertains to the cause of the death of the declarant and also as to the circumstances that brought about the death is provable u/sec.32 (1) as dying declaration.

Where the police officer recorded the statement of the victim on the very day of the incident and the victim died after lapse of about 25 days, the statement made by the victim is to be regarded as dying declaration admissible in evidence, since there is nexus between the circumstances stated by the victim and her death. (**Ameer Jan Vs. State**, 2004 Crl.L.J. 4801 (Kant.).

Here the declaration relating to circumstances is not as vide as circumstantial evidence, which includes all relevant facts. Evidence cannot be given of circumstances unless they are proximately connected, i.e. closely connected with the actual occurrence of the event. The words "as to any of the circumstances of the transactions which resulted in his death" appearing in sec.32 must have some proximate relations to the actual occurrence and in other words it means that the statement of the deceased relating to the cause of death or the circumstances of the transactions which resulted in his death must be sufficiently or closely connected with the actual transaction. (**Kans Raj Vs. State of Punjab**, AIR 2000 (SC) 2324).

In **Pakala Narayanaswamy Vs. King of Amperior** (AIR 1939 PC 47) the accused was marred to one of the daughter's of the Diwan of Pithapuram Estate, where the deceased by name Nukharaju was a Peon. In 1936 the accused and his wife visited Pithapuram. When they were staying there it was said that they borrowed a sum of Rs.3000/- from the deceased Nukharaju. Later, the accused went back to his place of residence, Berhampur. On 20th March, 1937 the deceased Nukharaju received a letter from the wife of accused asking him to come down to Berhampur for the purpose of collecting the money, which is due to him. The deceased showed the letter to his wife and told that he is proceeding to Berhampur as he was invited to collect the money, which is due. On 21st March he took the train and left for

Berhampur. On 22nd March, 1937, his dead body cut into seven pieces was found in a trunk in a railway compartment at Puri Railway station. After investigation, the accused was arrested and he was tried for the murder. At the trial, the statement made by the deceased to his wife, while showing the letter, that he is proceeding to Berhampur as he was invited to collect the money was held to be admissible as dying declaration u/sec.32 (1).

In the above case, the Privy Council was of the opinion that this statement related to the circumstances that he was proceeding to the spot where he was killed, that he was invited by a particular person or that he was going to meet a particular person and all these constituted circumstances that brought about his death and are therefore admissible as dying declaration. But the Prevy Council observed that the evidence of any such circumstances must be proximately related to the actual occurrence. If they are remotely connected then they are not admissible.

(4) The cause of death of the declarant must be in question:

In order that a dying declaration may be admissible in evidence it is necessary that the cause of the death of the person making the dying declaration must be in issue, but not the cause of the death of some other person. Suppose, A and B are assaulted by C. A, shortly before his death makes a declaration that C attacked B and stabbed him and B died, the dying declaration made by A as to the cause of death of B cannot be proved. It must be as to the cause of death of the declarant himself.

In **Ratan Goud Vs. State of Bihar** (AIR 1959 SC 80) the accused was charged with the murder of a girl by name Baisakhi. According to the prosecution version the mother of the deceased Baisakhi went to forest for the purpose of plucking wild berries leaving her two daughters Baisakhi and Agni in the house and when she returned back she found Agni alone in the house. When she enquired, Agni informed the mother that the accused molested her sister Baisakhi and he also caused her death in the course of that transaction. Agni also made a similar statement to other persons, viz, to the Surpanch and to the police constable. But before her statement could be recorded in judicial proceedings Agni also died and her statement was sought to be proved u/sec.32 (1). It was held that the declaration made by Agni is inadmissible because it is not as to the cause of her death. It is as to the cause of her sister's death.

(5) The dying declaration must be complete:

The dying declaration in order to be admissible in evidence u/sec.32 (1) of the Evidence Act must be complete. Where the declarant collapses even before completing the declaration then such incomplete declaration cannot be accepted in evidence. Suppose, a person who has been stabbed says, A stabbed me because (he wants to say something more but before he could say, he collapses without completing the statement). Question arises whether such incomplete dying declaration can be accepted. The opinion is that if the incomplete dying declaration unmistakably points out the guilt of the accused then there is no harm on relying on such incomplete declaration. This question came in consideration by the Supreme Court in the case Abdul Sattar Vs. State of Mysore (AIR 1956 SC 168), in this case, the deceased was shot dead. He made a dying declaration in which he said that when he approached the house of Abdul Majid, Sattar Shot at him from the bush. He wanted to say something else also but he could not, and then he collapsed. This incomplete dying declaration was sought to be used against Sattar. The court held that although the dying declaration is incomplete, but since it had unmistakably pointed out the guilt of the accused, it can be made admissible u/sec.32 (1).

(6) The declarant must be in a fit condition:

Before a dying declaration is sought to be proved u/sec.32 (1) it must be shown that the declarant was in a fit statement of mind to make the dying declaration, that the declarant was conscious of the surroundings and of the person who attacked him. Normally, whenever a magistrate is required to record a dying declaration, he poses some preliminary questions to the person in order to ensure himself that the person is conscious of the surroundings and is in fit state of mind to make the dying declaration. The preliminary questions put to the declarant are : What is your name? Where are you? Who attacked you? etc. These questions are put to enquire whether the declarant was in a fit state of mind. Also where a doctor certified that the deceased was at the time of making the declaration conscious and was in fit state of mind it is sufficient and can be proved not withstanding the fact that the pulse was not palpable, blood pleasure not recorded and the patient was in a gasping condition. (**State of Haryana Vs. Harpal Singh**, AIR 1978 SC 1530)

In **Kamalesh Rani Vs. State of Haryana** (AIR 1998 SC 1534, the accused was tried for the murder of her daughter-in-law by pouring kerosene and setting her on fire. The doctor assisted by another doctor, recorded the dying declaration of the deceased. They also stated positively that the declarant was in fit condition to give dying declaration. The Supreme Court held that no inference can be raised that she was not able to speak merely because she suffered 80% burns.

Where the father of the deceased and the doctor deposed that the deceased was not in a fit condition to make any statement, the dying declaration of a deceased alleged to have been recorded by the investigation officer cannot be relied upon. (**State of Rajasthan Vs. Ashfaq Ahmad**, AIR 2009 SC 2307)

RELEVANCY AND ADMISSIBILITY OF EXPERT OPINION

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RELEVANCY AND ADMISSIBILITY OF EXPERT OPINION

The aim of the court is to reach a comprehensive, unambiguous, just, and fair conclusion in a matter with the help of evidence before it. In this process, often, courts are unable to evaluate or appraise certain evidence due to technicalities associated with that evidence. In such a situation, expert evidence comes for judicial assistance. Whenever the Court requires forming an opinion on technical issues related to foreign law/science/art, the Court can ask expert's unbiased and scientific opinion on technical issues related to foreign law/science/art, on which the court is unlikely to form correct opinion.

Who is an expert?

An expert witness is one who has devoted time and study to a special branch of learning and thus he is specially skilled on those points on which he is asked to state his opinion. His evidence on such points is admissible to enable the court to come to a satisfactory conclusion.

However, the definition of an expert can be culled out from the provision of Sec.45 of Indian Evidence Act that an 'Expert' means a person who has special knowledge, skill or experience in any of the following fields or subjects:

1) foreign law,
2) science
3) art
4) handwriting or
5) finger impression

and such knowledge has been gained by the expert—

a) by practice,
b) observation or
c) proper studies.

Although the definition of an expert as per Sec.45 is confined only to the five subjects or fields as mentioned above, yet the court may seek opinion of an expert in relation to some more other subjects or fields.

For example, medical officer, chemical analyst, explosive expert, ballistic expert, fingerprint expert etc.

EXPERT'S OPINION AND ITS RELEVANCY

Sec. 45 to Sec.51 under Chapter-II of the Indian Evidence Act provide relevancy of opinion of third persons, which is commonly called in our day to day practice as expert's opinion. These provisions are exceptional in nature to the general rule that evidence is to be given of the facts only which are within the knowledge of a witness. The exception is based on the principle that the court can't form opinion on the matters, which are technically complicated and professionally sophisticated, without assistance of the persons who have acquired special knowledge and skill on those matters.

Facts bearing upon opinion of expert

Section 46 of Indian Evidence Act, 1872 states that when an expert makes any opinion about the evidence which is relevant then the facts given by expert are relevant which they supports or are inconsistent with the opinion of expert.

Illustration: If we need to know whether A is intoxicated by a certain poison, the fact that A exhibits any symptoms which experts affirm or deny being the symptoms of that poison, is relevant.

Opinion as to handwriting, when relevant

Section 47 of Indian Evidence Act, 1872 states that "When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or signed that it was or was not written or signed by that person, is a relevant fact".

Opinion as to electronic signature, where relevant

Section 47A of Indian Evidence Act, 1872 states that: "When the Court has to form an opinion as to the [electronic signature] of any person, the

opinion of the Certifying Authority which has issued the [Electronic Signature Certificate]26 is a relevant fact.]".

Opinion as to existence of right or custom, when relevant

Section 48 of Indian Evidence Act, 1872 states that: "When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant".

Opinion as to usages, tenets, etc., when relevant

Section 49 of Indian Evidence Act, 1872 states that: "When the Court has to form an opinion as to— the usages and tenets of any body of men or family, the constitution and government of any religious or charitable foundation, or the meaning of words or terms used in particular districts or by particular classes of people, the opinions of persons having special means of knowledge can be relevant facts"

Opinion on relationship, when relevant

Section 50 of Indian Evidence Act, 1872 states that: "When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: given that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860)".

Grounds of opinion, when relevant

Section 51 of Indian Evidence Act, 1872 states that: "Whenever the opinion of any living body or living person is relevant, the grounds on

which such opinion is based are also relevant. Illustration An expert may give an account of experiments performed by him for the purpose of forming his opinion".

ADMISSIBILITY OF EXPERT OPINION

Expert opinion is admissible only when an expert is examined as a witness in a court. Unless the expert gives an appropriate reason for his opinion and being tested during the cross-examination of opponent party, an expert opinion cannot be admissible. But in order to curtail the delay and expenses involved in securing assistance of experts, the law has dispensed with examination of some scientific experts.

For example, Sec.293 Cr.P.C. provides a list of some Govt. Scientific Experts as following:-

a) Any Chemical Examiner / Asstt. Chemical examiner to the Govt.

b) The Chief Controller of explosives

c) The Director of Fingerprint Bureau

d) The Director of Haffkein Institute, Bombay

e) The Director, Dy. Director or Asstt. Director of Central and State Forensic Science Laboratory.

f) The Serologist to the Govt.

g) Any other Govt. Scientific Experts specified by notification of the Central Govt.

The report of any of the above Govt. Scientific Experts is admissible in evidence in any inquiry, trial or other proceeding and the court may, if it thinks fit, summon and examine any of these experts. But his personal appearance in the court for examination as witnesses may be exempted unless the court expressly directs him to appear personally. He may depute any responsible officer to attend the court who is working with him and conversant with the facts of the case and can depose in the court satisfactorily on his behalf.

The admissibility of expert opinion in a legal proceeding is determined by the court. Generally, expert opinion is admissible when it is necessary to assist the court

in understanding complex or technical matters that are beyond the knowledge of an average person.

The Hon'ble Supreme Court of India has provided guidance on the admissibility of expert evidence in the case of **Ramesh Chandra Agrawal v. Regency Hospital Limited And Others (2009 SCC 9 709)**, in the below mentioned paragraphs of it's judgment:

> **"EXPERT OPINION**
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> 16. The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the layperson. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the court's knowledge. Thus cases where the science involved, is highly specialized and perhaps even esoteric, the central role of an expert cannot be disputed. The other requirements for the admissibility of expert evidence are:
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> (i) that the expert must be within a recognized field of expertise,
>
> (ii) that the evidence must be based on reliable principles, and
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> (iii) that the expert must be qualified in that discipline.
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> (See **Errors, Medicine and the Law**, Alan Merry and Alexander McCall Smith, 2001 Edn., Cambridge University Press, p. 178.)
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> 18. The importance of the provision has been explained in **State of H.P v. Jai Lal** 1999 7 SCC 280. It is held, that, Section 45 of the Evidence Act which makes opinion of experts admissible lays down, that, when the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness

as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

19. It is not the province of the expert to act as Judge or Jury. It is stated in **Titli v. Alfred Robert Jones** AIR 1934 All 273 that the real function of the expert is to put before the court all the materials, together with reasons which induce him to come to the conclusion, so that the court, although not an expert, may form its own judgment by its own observation of those materials.

20. An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions. (See Malay Kumar Ganguly v. Dr. Sukumar Mukherjee, SCC p. 249, para 34.)

21. In **State of Maharashtra v. Dammu** 2000 6 SCC 269, it has been laid down that without examining the expert as a witness in court, no reliance can be placed on an opinion alone. In this regard, it has been observed in State (Delhi Administration) v. Pali Ram, AIR 1979 SC 14 that "no expert would claim today that he could be absolutely sure that his opinion was correct, expert depends to a great extent upon the materials put before him and the nature of question put to him".

22. In the article "Relevancy of Expert's Opinion" it has been opined that the value of expert opinion rests on the facts on which it is based and his competency for forming a reliable opinion. The evidentiary value of

the opinion of an expert depends on the facts upon which it is based and also the validity of the process by which the conclusion is reached. Thus the idea that is proposed in its crux means that the importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion so that its accuracy can be crosschecked. Therefore, the emphasis has been on the data on the basis of which opinion is formed. The same is clear from the following inference:

"Mere assertion without mentioning the data or basis is not evidence, even if it comes from an expert. Where the experts give no real data in support of their opinion, the evidence even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value.

Relevancy and Admissibility of Civil Court Judgments in Criminal Cases and vice-versa

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RELEVANCY AND ADMISSIBILITY OF CIVIL COURTS JUDGMENTS IN CRIMINAL CASES AND VICE VERSA

‘’Relevancy of judgment,” means every judgment is based upon the facts of each particular case. In simple words, it can be said that each and every case has its own importance. The judgment of each case is based upon the subject matter and it is not necessary that the judgment of one case is interrelated with another case.

However, the concept of inter-admissibility of civil judgments in criminal proceedings and vice-versa theoretically takes to its logical conclusion implying that statements reflecting the facts of a case, the application of appropriate laws to the case in question and the conclusion arising from the analysis in one proceeding can be used in the similar steps of the other proceeding (the two proceedings being civil and criminal).

Statutory mention of inter-admissibility of civil judgments in criminal proceedings and vice-versa

Sections 40, 41, 42 and 43 of Indian Evidence Act, 1872 deal with the admissibility and relevancy of judgments in various legal proceedings, and provide guidelines for the conclusive proof of legal character or entitlement conferred or taken away by judgments, orders, or decrees.

Section 40 of of the Indian Evidense Act, 1872 provide that the existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such court ought to take cognizance of such suit or to hold such trial.

Section 40 deals with the principle of ‘res judicata’ in civil cases or ‘autre fois acquit’ or ‘autre fois convict’, in criminal cases. The section deals with the relevancy of an earlier judgment, order or decree for deciding whether a court can take cognizance of a suit or holding a trial. However, the conditions under which a former judgment, order or decree will prevent a civil or criminal court from taking cognizance of a suit or holding a trial, do not belong to the Law of Evidence but are contained in Section 10-13 and Order 2 Rule 2 of the Code of Civil Procedure, 1908 and to principles of autre fois acquit in Section 300 of the Code of Criminal Procedure, 1973.

Section 41 of theIndian Evidense Act, 1872,says that a final judgment, order, decree or ruling of a court exercising probate (relating to will), matrimonial (marriage, divorce), admiralty (war claims) or insolvency jurisdiction is relevant. This section consist of two parts: •It deals with ***judgment in rem*** i.e. a kind of declaration about the status of a person and is effective to the entire world whether he was a party or not. •A ***judgment in personam*** is when a judgment is given to the parties (e.g. a tort or a contract action) which binds only the parties and is not relevant in any subsequent case. Such judgment is conclusive proof. It refers to a presumption of a particular set of facts which cannot be overruled or changed by additional evidence or argument.	**Section 42 of theIndian Evidense Act, 1872,says that Judgments, orders or decrees other than those mentioned in Sec.41 are admissible under this provision if they relate to matters of public nature relevant to enquiry. However, such Judgments, orders or decrees cannot be regarded as conclusive proof of that which they state.** This section deals with the admissibility of judgments relating to matters of a public nature; but such judgments, orders or decrees are not conclusive proof of that which they state. Matters of public nature include matters, which affect every member of the public viz., a claim to tolls of a public highway; right of ferry; the right to use a part of river bank. Illustration A sues B for trespass on his land. B alleges the existence of a public right of way over the land,which A denies. The existence of a decree in favour of the defendant, in a suit by a against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

The general rule is that a previous judgment cannot be allowed to be given in evidence between the parties in a legal proceeding unless the judgment was between the same parties. But, Sections 41 and 42 are exceptions to that rule. A previous judgment although not between the same parties is admissible under Sec.41 as it is 'a judgment in rem' declaring the status of a person to the whole world. Under Sec.42 also a previous judgment even though not between the same parties is allowed to be given in evidence as it relates to matters of public nature relevant to the enquiry.

Sec.43 of the Indian Evidence Act, 1872, provides that judgments, orders or decrees other that those mentioned in Sections 40,41 and 42 are irrelevant and cannot be proved unless the existence of such judgment, order or decree is a fact in issue or is relevant under some other provisions of Indian Evidence Act.

The purpose of this section is to prohibit the judgments from being given in evidence which are neither inter partite, nor a judgment in rem, nor a judgment relating to matters of public nature.

This can be well explained with the illustration B as given under Sec.43. A prosecutes B for adultery with C, who is A's wife. B denies C being A's wife. But the court convicts A for adultery. Subsequently A also prosecutes C for bigamy by marrying B, while her marriage with A is in subsistence. C says that she was never A's wife. The previous judgment as between A and B convicting B for adultery with C, A's wife is irrelevant as it was not between the same parties and shall not be binding as against C who was not a party to it.

When a judgment is a fact in issue or relevant fact:

A previous judgment can be offered in evidence although it is neither inter parties nor one mentioned in Sections 40, 41 and 42, if the judgment is a fact in issue or declared as relevant under any of the provisions of the Indian Evidence Act. This can be well explained with the illustrations D and E as given under Sec.43.

A has obtained a decree for the possession of land against B. As a consequence of such decree, B's son C, murders A. At the trial of C for the murder of A, previous decree between A and B relevant, as it shows the motive for murder and which motive is relevant under Sec.8 of the Indian Evidence Act. (Illustration D)

A is tried for theft. The fact that a was also previously convicted for a similar offense of theft. The previous conviction would be relevant as a fact is issue under Sec.14 of the Indian Evidence Act. (Illustration E).

Section 44 of the Indian Evidence Act, 1872 provides that any party to a suit or proceeding may show that any judgment, order or decree which is relevant under Sections 40, 41 and 42 and which has been proved by the adverse party, has

been delivered by a court which had no jurisdiction to deliver it or that it was obtained by means of fraud or collusion.

The general rule is, a judgment of a competent court shall be binding on the parties operating as res judicata in subsequent proceedings between the same parties. Sec.44 contains exceptions to this rule, and in fact provides the procedure for the purpose of getting a judgment annulled. A judgment is liable to be impeached under the procedure on the grounds of 'want of jurisdiction', 'Fraud' and 'Collusion'.

(i) <u>want of jurisdiction</u>

A judgment can be got set aside by showing that it was delivered by a court which is not competent to deliver it. Competency means the power of the court to determine a particular subject matter. Competency and jurisdiction are synonymous. Jurisdiction has three fold operation, viz., (i) territorial jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction in relation to subject matter.

Under the code of civil procedure the court exercises jurisdiction only within certain territorial limits. The hierarchy of court is based on the pecuniary value of the subject matter of the suit. Apart from this, the court must also have jurisdiction to deal with the subject matter. For example: a Rent Control Court, which is meant for dealing with certain kinds of subject matter, cannot entertain money suits.

In the realm of criminal proceedings, the code of criminal procedure prescribes the limits of punishment that can be awarded by different categories of criminal courts. If the court of Assistant Sessions Judge awards a punishment of imprisonment for life, which is not competent, it is a case of want of jurisdiction, for an Assistant Sessions Judge is not competent to award life imprisonment to the guilty person.

(ii) <u>Fraud</u>

The term fraud has not been defined in the Evidence Act although its definition can be found in sec.17 of the Indian Contract Act. There is a maxim : FRAUS ET JUS NON-QUAM COHABITANT, which means fraud and right cannot cohabitate or dwell together. In other words, where there is a fraud there cannot be a right. Where there is a right there cannot be fraud. In order to establish fraud it is necessary that two elements must be present: (i) deceit; and (ii) injury. Fraud, in this context, must have been actually practiced on the court with the express purpose of obtaining judgment.

It implies a premeditated and intentional contrivance to keep the parties and the court in ignorance of the real facts and obtaining a decree by that contrivance. (see **Nand Kumar v. Ramjiban**, AIR 1914 Cal. 232)

(iii) Collusion

collusion is a pact between two parties by which the facts put forward as the foundation do not exist or have been corruptly reconcerted with the express purpose of obtaining judgment. The fight between the parties in such collusive proceedings is not a real one and only a sham.

For example, in a divorce proceedings, the husband alleges misconduct and unchastity against the wife. The wife confesses these allegations although they are totally false, with the intention of facilitating the husband to get a divorce decree. A divorce decree is thus obtained from the court on account of collusion between the husband and wife. This decree can be got set aside by showing that it was obtained on account of collusion.

By whom the judgment is to be set aside

Persons who have actually practiced fraud and collusion against the court or entered into collusion for the purpose of obtaining judgment are not competent to get the judgment set annulled, on the ground of fraud and collusion. It is only a person who is not a party to such fraud or collusion and who is affected on account of such judgment is entitled to get the judgment set aside.

For example, if a child is born after a divorce decree is obtained between the husband and wife on account of collusion between them, the said child will necessarily be branded as illegitimate. For the purpose of proving the claim of inheritance to the property, the child is entitled to show that the divorce decree between the husband and wife, was obtained on account of collusion and therefore is liable to be impeached.

A case based analysis of inter-admissibility of civil judgments in criminal proceedings and vice-versa

The Hon'ble Supreme Court of India in the case of **K.G PREMSHANKER V. INSPECTOR OF POLICE AND ANOTHER (2002 AIR SC 3372),** noticing the

Constitution Bench judgment in **M.S. Sheriff** AIR 1954 SC 397 and few other judgments, had recorded its conclusion in para 30 to the following effect :

> *"30. What emerges from the aforesaid discussion is -- (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act;*
>
> *(2) in civil suits between the same parties, principle of res judicata may apply;*
>
> *(3) in a criminal case, Section 300 of CrPC makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied;*
>
> *4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.*
>
> *31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by A on B's property, B filed a suit for declaration of its title and to recover possession from A and suit is decreed. Thereafter, in a criminal prosecution by B against A for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of B over the property. In such case, A may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear.*

Hence, in each and every case, the first question which would require consideration is -- whether judgment, order or decree is relevant, if relevant -- its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case.

The Hon'ble Supreme Court in the above referred **K.G PREMSHANKER** case ultimately held that "**civil proceedings as well as criminal proceedings are required to be decided on the facts and evidence brought on the record by the parties"**. Paras 32, 33 and 34, which are relevant, are quoted below :

"32. In the present case, the decision rendered by the Constitution Bench in M.S. Sheriff case AIR 1954 SC 397, 1954 Cri LJ 109 would be binding, wherein it has been specifically held that no hard-and-fast rule can be laid down and that possibility of conflicting decision in civil and criminal courts is not a relevant consideration. The law envisages 'such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for limited purpose such as sentence or damages'.

33. Hence, the observation made by this Court in V.M. Shah case (1955) 5 SCC 767, 1995 SCC (Cri) 1077 that the finding recorded by the criminal court stands superseded by the finding recorded by the civil court is not correct enunciation of law. Further, the general observations made in Karam Chand case (1970) 3 SCC 694 are in context of the facts of the case stated above. The Court was not required to consider the earlier decision of the Constitution Bench in M.S. Sheriff case as well as Sections 40 to 43 of the Evidence Act."

In **Seth Ramdaya Jat v. Laxmi Prasad** (2009) 11 SCC 545, the Hon'ble Supreme court had an occasion to consider the provisions of Sections 41 to 43 of the Evidence Act where the Hon'ble Supreme Court laid down that ***"a judgment in a criminal court***

is admissible for a limited purpose". After noticing the provisions of Sections 40 to 43 of the Evidence Act, the Apex Court laid down the following in para 13 :

> "13. … A judgment in a criminal case, thus, is admissible for a limited purpose. Relying only on or on the basis thereof, a civil proceeding cannot be determined, but that would not mean that it is not admissible for any purpose whatsoever."

It was further held that "a decision in a criminal case is not binding in a civil case". In para 15, the following was laid down : (Ramdayal Jat case)

> *"15. A civil proceeding as also a criminal proceeding may go on simultaneously. No statute puts an embargo in relation thereto. A decision in a criminal case is not binding on a civil court. In M.S.Sheriff v. State Of Madras, AIR 1954; 1954 Cri LJ 1019, a Constitution Bench of this Court was seized with a question as to whether a civil suit or a criminal case should be stayed in the event both are pending. It was opined that the criminal matter should be given precedence. In regard to the possibility of conflict in decisions, it was held that the law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. It was held that the only relevant consideration was the likelihood of embarrassment."*

In **Vishnu Dutt Sharma v. Daya Sapra (Smt) Sapra** (2009) 5 SCC (Civ) 253 = (2010) 1 SCC (Cri) 1229, the Hon'ble Supreme Court again reiterated that "**a judgment of a criminal court in civil proceedings will have only a limited application and finding in a criminal proceeding by no stretch of imagination would be binding in a civil proceeding"**. Referring to Section 40 of the Evidence Act, the Hon'ble Supreme Court laid down the following in para 23 :

> *"23. … This principle would, therefore, be applicable, inter alia, if the suit is found to be barred by the principle of res judicata or by reason of the provisions of any other statute. It does not lay down that a judgment of the criminal court would be admissible in the civil court for its relevance is limited. (See Seth Radayal Jat v. Laxmi Prasad). The judgment of a criminal court in a civil proceeding will only have limited application viz. inter alia, for the purpose as to who was the accused and what was the result of the criminal proceedings. Any finding in a criminal proceeding by no stretch of imagination would be binding in a civil proceeding."*

A two-Judge Bench of Hon'ble Supreme Court in **Kishan Singh v. Gurpal Singh (2010) 8**, after noticing the several earlier judgments, concluded that "**finding of fact recorded by the civil court does not have any bearing so as the criminal case is concerned and vice versa"**. In para 18, the following was laid down :

> *"18. Thus, in view of the above, the law on the issue stands crystallised to the effect that the findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration."*

A three-Judge Bench of Hon'ble Supreme Court in **Satish Chander Ahuja v. Sneha Ahuja (2021) 1 SCC 414**, in full agreement with the view of expressed by Hon'ble

Madras High Court in K**. Subramani V. Director of Animal Husbandry,** held that **"there is no embargo in referring to or relying on an admissible evidence, be of a civil court or criminal court both in civil or criminal proceedings".**

Hon'ble Madras High Court in K**. Subramani V. Director of Animal Husbandry** (2009) 1 Mad LJ 363 has made the following observations in para 7:

> *"7. A decision of the criminal court does not have the effect of binding nature on the proceedings before the civil court including the Motor Accident Claims Tribunal for the reason that the proof in both the civil and criminal cases are having two different categories of standards. In criminal cases, guilt of the accused must be proved beyond reasonable doubt, while in civil cases, the rights of the parties or matter in issue shall be decided on preponderance of probabilities. If a party to the case relies upon a decision of the criminal court and insists the civil court to give credence to the said decision, it is incumbent upon the party to gather further materials in the case, which would support the observations and the decisions of the criminal court. If any material is available in the case, which would corroborate or strengthen the decision of the criminal court, then, there is no embargo for the civil court to place reliance upon it."*

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