

Character when relevant under the Indian Evidence Act

Introduction

We often term the habit of judging people based on their character as normal human nature. Judges are also human beings and the question that arises is, doesn't to know about the character of an individual influence their decision? The next set of questions that arise are, does the character have relevance, especially under the Indian Evidence Act? What is the scope of relevance of character? Answers to all these questions are the takeaway from this article.

The word 'Character'

The term 'character' has not been described in Indian law. The Cambridge dictionary defines conduct as a particular combination of qualities that make a person different from others. Honesty, good-natured, modest, violent temper, etc. are all traits of character.

[Section 55](#) of the Indian Evidence Act provides that the term 'conduct' includes both reputation and disposition. It is normally established that reputation is the general opinion about an individual in the eyes of the others whereas disposition is how that person is in real and what are his inherent qualities.

Evidence of character is irrelevant in civil cases

Section 52

[Section 52](#) of the Indian Evidence Act provides that in civil cases, a fact pertaining to the character of an individual is not relevant. It lays the principle that the character of a party as a piece of evidence can't be used to manifest that conduct attributed to him is probable or improbable.

Illustration-

- 'A', a businessman is charged with fraud.
- In this case, no evidence of the fact can be treated as relevant which states that he is an honest man i.e. the character is such that he can never commit fraud.
- Neither can the opposite party present evidence of the fact that A's character had been so trickery that he must have committed the fraud.

The reasons behind the irrelevance are that a case has to be decided based on the facts of the case and not the character of the parties. Evidence of conduct doesn't just delay the proceedings but also hampers and impairs the mind of the judge. In civil cases, previous convictions of the accused person are irrelevant.

There are a few **exceptions** to Section 52-

- Section 55 of the Evidence Act provides that in civil cases, evidence of the good or bad character of the person that is to receive the amount of damages is relevant. The character of the original plaintiff is relevant.

For example- In a case of the action of damages for rape or seduction, the character of the plaintiff is relevant as it is likely to affect the damages that the plaintiff ought to receive.

- When the character of the party is itself a fact in issue then the evidence pertaining to the character of that party is relevant.

For example- if divorce is sought on the ground of cruelty of husband, in such case evidence pertaining to the character of the husband will be relevant as the cruel character is itself a fact in issue.

In the case of [Scott v. Sampson](#), the court held that the term 'character' should mean a man's reputation and nothing more than "general evidence of reputation".

Evidence of previous good character is relevant in criminal cases

Section 53

Unlike civil cases where the character is irrelevant, in criminal cases it is relevant. [Section 53](#) of The Indian Evidence Act provides that in criminal cases,

the good character of the accused person is relevant. The reason behind this is the basic human psychology that a person of good character will not generally resort to a criminal act. If goodness is proved it helps in a presumption of non-commission of the offence by that individual.

Evidence of good character is always admissible. In a doubtful case, it may be used to tilt the balance in favour of the accused but in a case where there is positive evidence of guilt of the accused then the good character cannot outweigh the positive evidence. It depends on the discretion of the court that how much weight the evidence of the good character has to be given while deciding the case.

In the case of [Habeeb Mohammad v. State of Hyderabad](#), the Supreme Court held that in criminal proceedings, the character of the accused can help in determining the innocence or guilt of the accused. It can help in either making him suspicious or free from all the suspicions. Accused is allowed to prove general good character in the question of punishment.

Evidence of character or previous sexual experience not relevant in certain cases

Section 53A

[Section 53A](#) of the Indian Evidence Act was inserted by Act 13 of 2013. This section provides that in cases where the offence is committed under the following sections of Indian Penal Code-

- [Section 354](#) (Assault or criminal force to woman with intent to outrage her modesty),
- [Section 354A](#) (Sexual harassment and punishment for sexual harassment),
- [Section 354 B](#) (Assault or use of criminal force to woman with intent to disrobe),
- [Section 354 C](#) (Voyeurism),
- [Section 354 D](#) (Stalking),
- [Section 376](#) (Rape),
- [Section 376 A](#) (Intercourse by a man with his wife during separation),

- [Section 376 B](#) (Intercourse by public servant with woman in his custody),
- [Section 376 C](#) (Intercourse by superintendent of jail, remand home, etc.),
- [Section 376 D](#) (Gang Rape),
- [Section 376 E](#) (Punishment for repeat offenders) and,
- an attempt to commit such offences

and the consent or quality of consent is in question, then neither the character of the accused nor the victim is relevant. Evidence pertaining to previous sexual acts of the victim is also irrelevant.

Previous bad character not relevant, except in Reply

Section 54

According to [Section 54](#) of the Indian Evidence Act, evidence pertaining to the fact that the accused has a bad character is not relevant in criminal cases. In other words, the prosecution cannot present evidence of the accused's bad character as a part of the main case.

There are certain **exceptions** to this section-

- When the accused has submitted any evidence of his good character, in such a case to rebut, the prosecution can present evidence pertaining to the bad character of the accused.
- Explanation 1 to Section 54 provides that when the character is itself a fact in issue then evidence of bad character can be submitted.

Illustration: In a defamation case, the character of the plaintiff becomes a fact in issue. [Section 110](#) of the Code of Criminal Procedure provides that if a person is by habit a robber, a housebreaker, etc. then he is to be bound down.

In the case of [B. Vasanthi v. Bakthavatchalu](#), the characters of both the plaintiff and the defendant were facts in issue and the court considered evidence of the character of both to decide in the best interest, the custody of the children.

Bad character isn't defined in Indian law but it amounts to the general meaning as interpreted by the society. Explanation 2 of section 54 provides that evidence showing any previous conviction is also relevant as evidence of bad character in criminal cases. According to [Section 71](#) of the Indian Penal Code, any person who is already a previous convict should be sentenced a longer term of imprisonment than that is awarded ordinarily.

Character as affecting Damages: Section 55

[Section 55](#) of the Indian Evidence Act states that in cases of civil nature, the character of the person who is ought to receive the amount of damages is relevant. This section is an exception to Section 52 mentioned above. The evidence pertaining to the good or bad character of the accused is irrelevant whereas evidence of the good or bad character of the victim is relevant.

For instance, in cases of seduction or rape or defamation, the evidence of the good or bad character of the original plaintiff is relevant to decide the amount of damages that the plaintiff is ought to receive. This is generally used to reduce the amount of damages.

Explanation of this section states that the term character which is used in sections 52, 53, 54 and 55 includes both reputation and disposition.

- Disposition is often referred to as what a person is in a person's reality. A person's inherent qualities which he had obtained through education, upbringing or any material condition in life is called disposition. A bad reputed person may have a good disposition.
- Reputation is often referred to as the general estimation of a person. It is what other people think about that individual. It is to be noted the evidence of those who do not know the individual but have heard of his reputation is not admissible in court.

Illustration: In the show 'Suits', the character Harvey Specter had a reputation of an arrogant and selfish individual whereas he had a disposition of a highly confident, self-motivated, practical thinker and focused individual. Both of these things combinedly defined the character of Harvey Specter.

Distinction Between Relevancy of character in Criminal and Civil Cases

In order to differentiate the first thing to note is that the Indian Evidence Act talks about two types of characters- good and bad character.

In cases of civil nature, the evidence pertaining to character is irrelevant as per Section 52 of the Evidence Act. There are two exceptions to this rule: first, when the character of the party is a fact in issue then evidence of character is relevant and second, the character of the person who ought to receive the amount of damage is relevant (Section 55).

Whereas in cases of criminal nature, the previous good character of the accused person is relevant (section 53) but the previous bad character is not relevant (section 54). Evidence of the bad character of the accused is relevant in two cases: first, to rebut the evidence of good character presented by the prosecution and second, when the character of the party is itself a fact in issue.

Case laws

. Bharpur Singh v. Parshotam Dass on 2 November 2015

In this case, the Court described the scope of sections 52 and 54 of the Indian Evidence Act. This case was filed to resist an action for recovery brought on a promissory note. While deciding the scope of Section 52, the Court observed that this section refers to a situation where evidence of character is relevant in a civil case. Normally any evidence of character cannot render the probability or improbability of any conduct and is irrelevant in civil cases. If the character is a fact in issue then evidence of character is relevant.

Section 54 observed that previous bad character can be relevant only in case of rebuttal to good character evidence or when the character is a fact in issue.

. Sardar Sardul Singh Caveeshar v. State Of Maharashtra on 18 March 1963

This case is also referred to as the Empire Conspiracy Case. The Court answered the question of what is the evidentiary value of the character of an accused in a criminal case. It observed that Section 53 mentions that the good character of the accused is relevant in cases of criminal nature.

Section 55 of the Act makes it clear that general reputation and general disposition in criminal cases are relevant. The Court also explained the difference

between reputation and disposition. It stated that disposition is 'inherent qualities of a person' whereas reputation is 'general credit of the person amongst the public'. A man may have a good reputation but in reality, may have a bad disposition. The value of evidence depends on the cleverness of the person to hide his real traits, and the witness's opportunity to observe the accused.

The court quoted Wigmore's proposition which stated that evidence can be used in a doubtful case to tilt in favour of the accused but it can't outweigh a piece of evidence which shows the guilt of the accused. Evidence of good character is a weak evidence but can be used in criminal cases.

Conclusion

It is concluded that according to the Indian Evidence Act, in civil cases, the evidence pertaining to character isn't relevant subject to certain exceptions. In criminal cases, the evidence pertaining to good character is relevant but evidence depicting the bad character isn't relevant subject to certain exceptions. Various countries like the USA, UK and many more also deal with the relevance of character as evidence.