



FACULTY OF JURIDICAL SCIENCES

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the motives of actions. 'Temper' influences the action of the moment, 'disposition is permanent and settled; 'temper' may be transitory and fluctuating. It is possible and not infrequent to have a good disposition with a bad temper and *vice versa*.

The explanation further provides that except as provided in sec. 54, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

Thus, evidence of reputation or disposition must be confined to the particular traits which the issue is concerned about. Therefore, it would be useless to offer the evidence of a party's reputation for honesty where the fact in issue is cruelty, or of his mild disposition where the fact in issue is fraud. Reputation for honesty would be relevant on an issue of fraud, and a merciful disposition on an issue of cruelty.

Character is not relevant in both civil and criminal cases. However, where character itself is a fact in issue or a relevant fact, evidence of character is admissible. Also, in some other exceptional cases character evidence may become admissible.

Character Evidence

In Respect of the character of a party, cases may be divided into the following two categories:

1. The cases in which character of the party is in issue
2. The cases in which the character of party is not in issue.

When the general character of a party is in issue, naturally, the character of the party is relevant. Thus for example, in a suit for defamation where the alleged defamatory statement is regarding the character of the plaintiff, the plaintiffs character is at issue and therefore, evidence of plaintiffs' character is relevant.

But where general character of the party is not in issue, but is tendered in support of some other issue, as a general rule, in civil cases evidence of character of any party to the suit is excluded. Therefore, sec.52 of the Indian Evidence Act declares that in civil proceedings, evidence of character of a party to prove conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

This general exception is based upon grounds of public policy and fairness, because its admission would surprise and prejudice the parties by taking up their whole careers which they could not possibly come into court preferred to defend.

The Supreme Court has pointed out that the business of the courts is to try the cases and not

the persons. A very bad man may have a very righteous cause.

Sec. 52 refers to character of parties to the suit and not the character of witnesses. Therefore, character of witness may be relevant under sec. 155 to impeach the credit of the witness.

Further, sec. 52 excludes evidence of character from being given only when the purpose of such evidence is to render probable or improbable any conduct imputed to the party. But when the facts which are relevant otherwise than for the purpose of showing character are proved, those facts raise inferences concerning the character of the party to the suit, such facts become relevant not only to prove the facts for which they are directly tendered, but also for the purpose of showing the character of the party concerned.

However, sec. 55 is an exception to this rule under sec. 52. The evidence of character of the plaintiff for the purpose of determining the quantum of damages awardable to him is admissible in civil proceedings.

In civil cases, good character of the plaintiff is presumed. Therefore, good character of the plaintiff may not be proved in aggravation of damages. But bad character is admissible in mitigation of damages provided that it would not, if pleaded, amount to a justification. The argument in favour of considering reputation is that a person should not be paid for the loss of that which he never had.

Character Evidence in Criminal Cases

Secs. 53 and 54 of the Indian Evidence Act, 1872 cover the relevancy of character evidence in criminal cases.

Sec. 53 provides that in criminal proceedings the fact that the person accused is a good character is relevant.

Sec. 54 provides that in criminal proceedings the fact that the accused person has a bad character is not relevant. But if the defence has given evidence to show that he has a good character, evidence of his bad character becomes relevant.

Explanation 1 to sec. 54 provides that bad character of the accused is always relevant in the cases in which his bad character itself a fact in issue.

Explanation 2 to sec. 54 provides that a previous conviction is relevant as evidence of bad character.

One of the basic rules of criminal evidence is that the guilt of the accused must be proven beyond all reasonable doubt. That the accused is of good character creates a doubt in the mind

of the Court about the commission of the offence by the accused. Therefore, in criminal proceedings, the fact that the accused is of a good character, is relevant. To prove the good character of the accused, what must be proved is his general reputation in the community, and not particular good acts by him.

In criminal cases the accused previous bad character is irrelevant. The court is not concerned with his general character. What it is to be proved is the charge in that particular case. The prosecution cannot take the help of bad character of the accused in order to establish its case. Otherwise it would prejudice the minds of the court and there is a possibility that the court may become biased against the accused. Court may come to the conclusion that he has committed the offence in question. Therefore, this would prejudice the fair trial to which the accused is entitled.

Exceptions:

1. The previous bad character is relevant in reply, if the evidence has been given that he has good character. The prosecution can bring the evidence to prove the bad character of the accused.
2. The evidence of bad character can be proved in cases in which the bad Character is in issue.
3. A previous conviction is not admissible in evidence against the accused, except where he is liable to enhanced punishment under Section 75 of the Indian Penal Code, on account of previous conviction, or unless evidence of good character be given, in which case the fact that the accused had been previously convicted of an offence is admissible as evidence of bad character.