

Annexure - 1

Part	Particulars
1	deals further with characteristics of facts and at the end difference of opinions.
2	deals with meaning and characteristics of evidence.
3	Notable Quotes About Facts

PART – 1

1. The very fact that you are here to read this annexure is a reason to thank you. It is so because it means that you are attaching that much importance to it.
2. The most important question is WHY this Annexure.
3. Before going into the question “WHY”, refer following anecdotes / pro-verbs
4. Absence of Proof is not a proof of Absence.
5. A fact remains a fact whether it can be proved or not.

6. The above two are very good and correct proposition but of very less practical value.
7. A fact, if can not be substantiated with underlying proofs, documents, evidences, witnesses etc. will not be accepted to be so.
8. In this regard, there are two concepts namely burden of proof and onus of proof.
9. Burden of Proof means the requirements that are to be completed irrespective of who is to do it to prove a thing.
10. Onus of proof is means whose responsibility is to prove it.
11. **Thus, in practical scenario, if the onus to prove is on you and you can not prove that thing, it will be held against you.**
12. In view of above, there is a great importance for proving the fact, evidence etc.

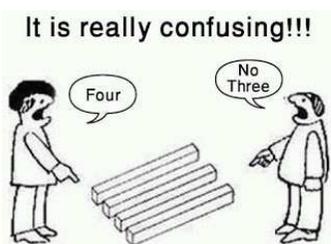
13. The word “evidence” is derived from the latin word “evidere” which means “to show clearly”, to ascertain, to prove.
14. The law of evidence is perhaps as old as human civilization.
15. The Indian Evidence Act, 1872 is one of the beautifully drafted Acts I have seen.
16. The Law commission of India, in its 113th report had suggested some important changes regarding onus of proof i.e. who is obliged to prove or dis-prove a particular thing.
17. Part III of 69th Report extensively deals with the provisions of Evidence Act.
18. It is nothing but extended common sense. Now a day, mere common sense itself is very uncommon.

Application of Principles and difference of opinions

19. The main cause of difference of opinion is the manner in which a person applies the principles which itself depends upon his upbringing, the values he cherish, his current

response to the situation etc. Also, the language has its own limitations like a particular word has multiple meanings and the same situation can be expressed by using different words.

20. At this juncture, it is pertinent to touch upon a topic of difference of opinion.



21. We would like to start with an example.

22. You may be aware about the famous case decided by Supreme Court of India on His Holiness Kesavananda Bharati Sripadagalveru v. State of Kerala decided on 24 April 1973.

23. It comprised of as many as 13 judges

24. The Apex Court had to consider the power of parliament in a sense as to whether it has so unlimited powers so as to amend the basic structure of the Constitution of India?

25. The case was started to re-consider the decision of 11 judges of Apex Court where it was held by majority of 6:5 that Parliament has no power to amend “fundamental rights” at all.

26. The wide compass of discussion was the issues as follows

- What is the meaning of basic structure of constitution of India
- Supremacy of Constitution of India Republican and democratic form of Government
- Secular character of Constitution
- Separation of Power between Legislation, judiciary and executive
- Federal character of Constitution
- Dignity of Individual
- Unity and integrity of nation

27. Six judges held, for different reasons, that the parliament has unlimited powers to amend the Constitution of India.

28. Six Judges held, again for different reasons that the parliament’s rights are limited in respect of amendment to Constitution of India. One judge echoed the theory of limited rights

but his definition of limited rights of amendment was different than the above six judges. Thus the judgement was delivered by a fractured majority of 7:6.

29. The learned law experts said that it was one of the BEST decisions irrespective of the way it was delivered.

30. Another such case which is worth mentioning is on other side i.e. darker side in the case of Additional District Magistrate, Jabalpur Vs. S. S. Shukla etc decided on 28 April 1976

31. An emergency was declared by the Government of India where all the rights of the citizens were suspended including right to life. The constitutional Validity was challenged. It was heard by a bench comprising of 5 judges. With respect, unfortunately, they upheld the validity of this action of the government by a ratio of 4:1. Only one judge, in minority opposed the action of Government.

32. The learned law experts said that it was one of the WORST decisions. Thankfully, it lasted only for a very limited period and emergency came to an end soon.

PART - 2

1. It may be prudent to go through the index of sections of the Act.

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Relevant extracts of The Indian Evidence Act, 1872

"Fact."

"Fact" means and includes--

- (1) any thing, state of things, or relation of things, capable of being perceived by the senses;
- (2) any mental condition of which any person is conscious.

"Relevant."

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

"Facts in issue."

The expression "facts in issue" means and includes--

any fact from which, either by itself or in connection

with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.--Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, 1* any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

"Document".

"Document" 1* means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

"Evidence."

"Evidence" means and includes--

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;

such statements are called oral evidence;

(2) all documents produced for the inspection of the

Court; such documents are called documentary evidence.

"Proved."

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Disproved."

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or

considers its non-existence so probable that a prudent man ought, under the circumstances of the particular

case, to act upon the supposition that it does not exist.

"Not proved."

A fact is said not to be proved when it is neither proved nor disproved.

4. "May presume."-Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it:

"Shall presume."-Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved:

"Conclusive proof."-When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

Existence of course of business when relevant.

16. Existence of course of business when relevant.-When there is a question whether a particular act was done, the existence of any

course of business, according to which it naturally would have been done, is a relevant fact.

Illustrations

(a) The question is, whether a particular letter was despatched. The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that particular letter was put in that place are relevant.

(b) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant.

CHAPTER VII

OF THE BURDEN OF PROOF

101. Burden of proof.

101. Burden of proof.-Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

102. On whom burden of proof lies.

102. On whom burden of proof lies.-The burden of proof in a suit or proceeding lies on that

person who would fail if no evidence at all were given on either side.

103. Burden of proof as to particular fact.-The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the

proof of that fact shall lie on any particular person.

104. Burden of proving fact to be proved to make evidence admissible.

104. Burden of proving fact to be proved to make evidence admissible.-The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

113A. Presumption as to abetment of suicide by a married woman.

3*[113A. Presumption as to abetment of suicide by a married woman.-When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband

and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may

presume, having regard to all the other circumstances of the case,

that such suicide had been abetted by her husband or by such relative of her husband.

Explanation.--For the purposes of this section, "cruelty" shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).]

114A. Presumption as to absence of consent in certain prosecutions for rape.

1*[114A. Presumption as to absence of consent in certain prosecutions for rape.-In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and

she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.]

122. Communications during marriage.

122. Communications during marriage.-No person who is or has been married shall be compelled to disclose any communication made to him

during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between

married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

126. Professional communications.

126. Professional communications.-No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's

express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state

the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice

Illustrations

(a) A, a client, says to B, an attorney--"I have committed forgery and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure.

(b) A, a client, says to B, an attorney--"I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

(c) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book, charging A with the sum said

to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

127. Section 126 to apply to interpreters, etc.

127. Section 126 to apply to interpreters, etc.-
The provisions of

section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakils.

128. Privilege not waived by volunteering evidence.

128. Privilege not waived by volunteering evidence.-If any party to a suit gives evidence therein at his own instance or otherwise, he

shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and if any

1. Subs. by Act 18 of 1872, s. 10, for "criminal". 2. Ins. by s. 10, ibid.

53 party to a suit or proceeding calls any such barrister, 1*[pleader], attorney or vakil as a witness, he shall be deemed to have consented

to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

129. Confidential communications with legal advisers.

129. Confidential communications with legal advisers.-No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

A studious lawyer does not mean that he has vast oratory skills which is used to labour on hair splitting arguments on every letter of law. Lawyers have to channelise their knowledge to enhance the dynamic concept of law in order to benefit the parties whose brief they hold but, at the same time, such arguments should also benefit the larger sections of the society.

Just as stagnant water is unfit for drinking and flowing water is pure, law is never static; of course if every issue is settled there may be a problem for survival of lawyers. Any way law is

and can never be static, more particularly economic legislations, wherein – in the process of making them simpler – they are made more complex and every time an issue comes up before the court one need to compare the old provisions with the new provisions to analyse the intent for insertion of new provisions. Even under the old law one cannot be complacent by assuming that the law is well settled because every time you read a provision, based upon your experience and insight, one may get a new spark as to how to interpret a particular word/sentence contextually.

Part 3

Notable Quotes About Facts.

1. A concept is stronger than a fact.
2. A fact in itself is nothing. It is valuable only for the idea attached to it, or for the proof which it furnishes.
3. A fact is like a sack -- it won't stand up if it's empty. To make it stand up, first you have to put in it all the reasons and feelings that caused it in the first place.
4. A world of facts lies outside and beyond the world of words.
5. All generous minds have a horror of what are commonly called "facts." They are the brute beasts of the intellectual domain. Who does not know fellows that always have an ill-conditioned fact or two that they lead after them into decent company like so many bull-dogs, ready to let them slip at every ingenious suggestion, or convenient generalization, or pleasant fancy? I allow no "facts" at this table.
6. Anyone who knows a strange fact shares in its singularity.

7. As a general rule, the most successful man in life is the man who has the best information.
8. Blessed is the man who, having nothing to say, abstains from giving us wordy evidence of the fact.
9. Comment is free but facts are sacred.
10. Conclusive facts are inseparable from inconclusive except by a head that already understands and knows.
11. Every fact is related on one side to sensation, and, on the other, to morals. The game of thought is, on the appearance of one of these two sides, to find the other; given the upper, to find the under side.
12. Facts and truth really don't have much to do with each other.
13. Facts are counter revolutionary.
14. Facts are facts and will not disappear on account of your likes.
15. Facts are generally over esteemed. For most practical purposes, a thing is what men think it is. When they judged the earth flat, it was flat. As long as men thought slavery tolerable, tolerable it

was. We live down here among shadows, shadows among shadows.

16. Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence.
17. Facts are the most important thing in business. Study facts and do more than is expected of you.
18. Facts are ventriloquists' dummies. Sitting on a wise man's knee they may be made to utter words of wisdom; elsewhere, they say nothing, or talk nonsense, or indulge in sheer diabolism.
19. Facts can't be recounted; much less twice over, and far less still by different persons. I've already drummed that thoroughly into your head. What happens is that your wretched memory remembers the words and forgets what's behind them.
20. Facts don't cease to exist because they are ignored.
21. "There is nothing more deceptive than an obvious fact."

22. "You can spend your whole life building a wall of facts between you and anything real."
23. "I don't pretend to know everything; I just only speak on matters I know I'll win."
24. "Facts are stubborn things, but statistics are pliable."
25. "For every fact there is an infinity of hypotheses. "
26. "It is the absence of facts that frightens people: the gap you open, into which they pour their fears, fantasies, desires."
27. "I'm a fake fact factory. The things I make are the things I make up. Also, as a side business, I make love. Actually, I just made that up."
28. "I'm more interested in arousing enthusiasm in kids than in teaching the facts. The facts may change, but that enthusiasm for exploring the world will remain with them the rest of their lives."
29. "I tell myself, as sternly as possible, that is how things work here. We do dangerous things and people die. People die, and we move on to the next

dangerous thing. The sooner that lesson sinks in, the better chance I have at surviving initiation."

30. "Sometimes, some lies that spoken with high confidence
31. could be more receptive than facts that spoken with doubt."
32. "So you have to accept facts as fact."
33. "The truth is more important than the facts."
34. "The facts are always less than what really happened."
35. "Beyond the obvious facts that he has at some time done manual labour, that he takes snuff, that he is a Freemason, that he has been in China, and that he has done a considerable amount of writing lately, I can deduce nothing else."
36. "Science is built up of facts, as a house is built of stones; but an accumulation of facts is no more a science than a heap of stones is a house."
37. "Appearances are not reality; but they often can be a convincing alternative to it. You can control appearances most of the time, but facts are what they are. When the facts are too sharp, you can

craft a cheerful version of the situation and cover the facts the way that you can covered a battered old four-slice toaster with a knitted cozy featuring images of kittens."

38. "Science, my boy, is made up of mistakes, but they are mistakes which it is useful to make, because they lead little by little to the truth."
39. "In my experience, the most staunchly held views are based on ignorance or accepted dogma, not carefully considered accumulations of facts. The more you expose the intricacies and realities of the situation, the less clear-cut things become."
40. "Now, what I want is Facts. Teach these boys and girls nothing but Facts. Facts alone are wanted in life. Plant nothing else, and root out everything else. You can only form the minds of reasoning animals upon Facts; nothing else will ever be of any service to them."
41. "I am not one of those who in expressing opinions confine themselves to facts."
42. "Facts must be faced. Vegetables simply don't taste as good as most other things do."

43. Get your facts first, then you can distort them as you please.
44. I am a firm believer in the people. If given the truth, they can be depended upon to meet any national crisis. The great point is to bring them the real facts.
45. The grand aim of all science is to cover the greatest number of empirical facts by logical deduction from the smallest number of hypotheses or axioms.
46. It could probably be shown by facts and figures that there is no distinctly native criminal class except Congress.
47. There's a world of difference between truth and facts. Facts can obscure the truth.
48. My music will go on forever. Maybe it's a fool say that, but when me know facts me can say facts. My music will go on forever.
49. Trust your hunches. They're usually based on facts filed away just below the conscious level.
50. Facts are stubborn things; and whatever may be our wishes, our inclinations, or

the dictates of our passions, they cannot alter the state of facts and evidence.

51. Death and vulgarity are the only two facts in the nineteenth century that one cannot explain away.
52. We are not afraid to entrust the American people with unpleasant facts, foreign ideas, alien philosophies, and competitive values. For a nation that is afraid to let its people judge the truth and falsehood in an open market is a nation that is afraid of its people.
53. There are no facts, only interpretations.
54. To state the facts frankly is not to despair the future nor indict the past. The prudent heir takes careful inventory of his legacies and gives a faithful accounting to those whom he owes an obligation of trust.
55. Facts are stubborn things.
56. A man is the whole encyclopedia of facts.
57. Every religion is true one way or another. It is true when understood metaphorically. But when it gets stuck in

its own metaphors, interpreting them as facts, then you are in trouble.

58. I don't make jokes. I just watch the government and report the facts.
59. There are no eternal facts, as there are no absolute truths.
60. I believe that imagination is stronger than knowledge. That myth is more potent than history. That dreams are more powerful than facts. That hope always triumphs over experience. That laughter is the only cure for grief. And I believe that love is stronger than death.
61. Face the facts of being what you are, for that is what changes what you are.
62. The time to take counsel of your fears is before you make an important battle decision. That's the time to listen to every fear you can imagine! When you have collected all the facts and fears and made your decision, turn off all your fears and go ahead!
63. I have a theory about the human mind. A brain is a lot like a computer. It will only take so many facts, and then it will go on overload and blow up.

64. All political thinking for years past has been vitiated in the same way. People can foresee the future only when it coincides with their own wishes, and the most grossly obvious facts can be ignored when they are unwelcome.
65. Prejudice is a great time saver. You can form opinions without having to get the facts.
66. Traditional education is based on facts and figures and passing tests - not on a comprehension of the material and its application to your life.
67. As for gun control advocates, I have no hope whatever that any facts whatever will make the slightest dent in their thinking - or lack of thinking.
68. People will generally accept facts as truth only if the facts agree with what they already believe.
69. Despite my firm convictions, I have always been a man who tries to face facts, and to accept the reality of life as new experience and new knowledge unfolds. I have always kept an open mind, a flexibility that must go hand in hand with every form of the intelligent search for truth.

70. Telling a teenager the facts of life is like giving a fish a bath.
71. Everyone is entitled to his own opinion, but not his own facts.
72. Knowledge comes, but wisdom lingers. It may not be difficult to store up in the mind a vast quantity of facts within a comparatively short time, but the ability to form judgments requires the severe discipline of hard work and the tempering heat of experience and maturity.
73. Part of the reason that our politics seems so tough right now and facts and science and argument does not seem to be winning the day all the time is because we're hardwired not to always think clearly when we're scared. And the country's scared.
74. The degree of one's emotions varies inversely with one's knowledge of the facts.
75. I believe in innovation and that the way you get innovation is you fund research and you learn the basic facts.
76. I make up my opinions from facts and reasoning, and not to suit any body but

myself. If people don't like my opinions, it makes little difference as I don't solicit their opinions or votes.

77. All significant truths are private truths. As they become public they cease to become truths; they become facts, or at best, part of the public character; or at worst, catchwords.
78. Our esteem for facts has not neutralized in us all religiousness. It is itself almost religious. Our scientific temper is devout.
79. Those who forget good and evil and seek only to know the facts are more likely to achieve good than those who view the world through the distorting medium of their own desires.
80. Mankind is not a circle with a single center but an ellipse with two focal points of which facts are one and ideas the other.
81. The sway of alcohol over mankind is unquestionably due to its power to stimulate the mystical faculties of human nature, usually crushed to earth by the cold facts and dry criticisms of the sober hour.

82. The truth is more important than the facts.
83. Mistakes can be corrected by those who pay attention to facts but dogmatism will not be corrected by those who are wedded to a vision.
84. Sometimes paranoia's just having all the facts.
85. The main facts in human life are five: birth, food, sleep, love and death.
86. We do not talk - we bludgeon one another with facts and theories gleaned from cursory readings of newspapers, magazines and digests.