

the question was whether A was the illegitimate son of B, evidence of the facts that he in his lifetime recognised A as his son and that after his death his family also recognised A as such was held to justify the finding that A was illegitimate son of B.

65. *Grounds of opinion when relevant.* Whenever the opinion of any living person is relevant, the ground 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.

Evidence Act, 1872. This Article is exact reproduction of section 51, Evidence Act.

1. *Expert, reasons for opinion of.* The opinion of an expert by itself may be relevant but would carry little weight with a Court unless it is supported by a clear statement of what he noticed and on what he based his opinion. The expert should, if he expects his opinion to be accepted, put before the Court all the materials which induced him to come to his conclusion, so that the Court although not an expert, may form its own judgment on those materials. The mere mention of the fact that certain kinds of tests were applied and certain results were obtained might be relevant as a piece of evidence but would not be conclusive. Setting out of the reasons at length will help to clarify his ideas and it will furnish a valuable guide to the parties and to the Court in testing the value to be attached to that opinion. It would also be fairer to the persons against whom the opinion is to be used that the reasons for that opinion are definitely expressed. Thus though Excise Inspectors may be treated as experts in their own branch and may be able to distinguish liquors it is the duty of the Court to ascertain from them the reasons on which their opinion is based in order that the Court may come to its own conclusion as to the correctness or otherwise of the opinion given by them.

Chemical examiner. It is not enough for the chemical examiner merely to state his opinion. He must state the grounds on which he arrived at that opinion. As chemical examiner merely tenders a report and he does not appear and give evidence, it is extremely desirable that his report should be full and complete and should take the place of evidence which he would give if he were called to Court as a witness.

CHARACTER WHEN RELEVANT

66. *In civil cases character to prove conduct imputed irrelevant.* In civil cases the fact that the character of any person concerned is such as

- 10. 12 Moo Ind App 203 (PC).
- 11. AIR 1934 All. 273 (DB)+AIR 1932 All. 53.
- 12. AIR 1954 Pat. 131-1954 Cr. L.J. 201 (DB).
- 13. AIR 1961 MP 5+AIR 1935 Nag. 13+AIR 1959 All. 53.
- 14. AIR 1933 All. 394-34 Cr. L.J. 754 (DB).

render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

Evidence Act, 1872. This Article is exact reproduction of section 52, Evidence Act.

Synopsis

- 1. Scope.
- 2. Character of witness, evidence as to.
- 3. Character of third party, evidence as to.

1. *Scope.* In civil cases, the evidence of character is generally irrelevant unless the character is of the substance in issue, as in cases of defamation where evidence as to general repute of the person defamed, may be given in mitigation of damages claimed. Where the contention that certain pronotes had been obtained from the insolvent while he was under the influence of drink, has been found to be baseless, the general bad character of the insolvent would be quite irrelevant in a civil case where general bad character of the insolvent would be quite irrelevant in a civil case to prove want of consideration.

Character, how may be proved. Character may be proved by (a) "particular instances of conduct, good or bad from which is inferable the permanent disposition that has inspired them", (b) personal knowledge of one who has observed the man, (c) the reputation of the man, the net expression of a multitude of personal opinions" based more or less on personal intercourse.

Good character, inference as to. "Negative evidence, such as 'I never heard anything against the character of the man is the most cogent evidence of a man's good character and reputation because a man's character is not talked about till there is some fault to be found with it. It is the best evidence of his character that he is not talked about at all."

2. *Character of witness, evidence as to.* Art. 66 deals with the relevancy of character evidence in civil cases. Character evidence may not be relevant to decide an issue in a case, but a cross-examining counsel is given liberty under Art. 141 for the purpose of shaking the credit of a witness to put questions to him affecting his character.

3. *Character of third party, evidence as to.* The character of a third person cannot, as a rule, be shown in a civil action any more than the character of a party. But where the nature of the action is such that the character of a third person is put in issue, evidence of character is admissible. Thus when a transaction is attacked as not

- 15. AIR 1952 All. 408=ILR 1950 All. 415=1952 Cr. L.J. 786 (DB).
- 16. AIR 1923 Lah. 225+4 Lah. 55=24 Cr. L.J. 693.
- 17. AIR 1958 All. 54 (DB).
- 18. 1986 SCMR 1736=PLJ 1986 SC 530=NLR 1986 SCl 574.
- 19. 1986 SCMR 1736=PLJ 1986 SC 530=NLR 1986 SCl 574.
- 20. AIR 1954 Andhra 32.
- AIR 1952 All. 408=ILR 1950 All. 415=1952 Cr. L.J. 786 (DB).

been vide the evidence of character and general reputation of the attesters is inadmissible. Similarly in probate proceedings, evidence as to general reputation of character which two identifiers of the will enjoyed in the Registration Office, who are both dead, is inadmissible.²

67. In criminal cases previous good character relevant. In criminal proceedings the fact that the person accused is of a good character is relevant.

Evidence Act, 1872. This Article is exact reproduction of section 53, Evidence Act.

Synopsis

1. Scope. In criminal proceedings a man's character is often a matter of importance in explaining his conduct and in judging his innocence or criminality. Many acts of an accused person would be suspicious or free from all suspicion when the Court comes to know the character of the person by whom they are done. Even on the question of punishment an accused is allowed to prove, general good character.³ The Court should pay particular attention to the evidence of the defence witnesses who speak to good character; such evidence should not be discarded or lightly brushed aside unless there are substantial reasons for discrediting it.⁴
2. Past good character, effect of. Past good character does not lead to a presumption of innocence, but once good character is proved, guilt of such man must be proved by evidence of unimpeachable character.⁵ Where, the accused person in a bribery case pleads and produces evidence of good character which the Court regards as satisfactory, and if it appears to the Court that a person possessing such character would not be likely to act, in the circumstances proved to have existed at the time, in the manner alleged by the prosecution, such improbability must be taken into account in determining the question whether or not there is reasonable doubt as to the guilt of the accused person.⁶

Character evidence is a very weak evidence; it cannot outweigh positive evidence in regard to guilt of a person. It may be useful in doubtful cases to tilt the balance in favour of the accused or it may afford a background for appreciating his reactions in a given situation, but it must always give place to acceptable positive evidence.⁷ Thus though evidence of good character and the fact that the accused is an educated man belonging to a good family would render it prima facie unlikely that he

2. 33 Cal. 577 (1901).
3. AIR 1954 SC 51, 1954 SCR 475-1954 Cr. L.J. 338.
4. AIR 1910 Lah. 1051+AIR 1915 All. 415+AIR 1923 All. 35.
5. AIR 1928 Lah. 647-29 Cr. L.J. 740.
6. AIR 1947 Lah. 410 (DB)+AIR 1928 Lah. 674 (Diss).
7. AIR 1965 SC 682.

could be guilty of crimes of violence yet this presumption cannot be pressed too far and would be offences originating in extreme political feeling.⁸

1. Evidence of general repute under section 110, Cr.P.C. The evidence of general repute is hearsay evidence but it has been made admissible in cases under section 110, Cr.P.C. as being a habitual offender, or as being a desperate and dangerous person, his character becomes a fact in issue. Under Art. 67 read with explanation 1 to Art. 68 evidence as to such character becomes relevant. But under the provisions of Qanun-e-Shahadat evidence in such cases can be given only if the reputation or general disposition and not of particular acts by which such a reputation or disposition is shown, the only exception to the rule being that a conviction, though a particular act, may be proved as evidence of bad character.⁹ Section 117, Cr.P.C. provides another exception to that rule by enacting that the fact that a person is an habitual offender or is a desperate and dangerous character may be proved, for the purpose of an enquiry under it by evidence of general repute or otherwise, that is, by particular acts by which such character is established.¹⁰ Enquiries under this Article are governed by the ordinary rules of evidence, and, therefore, evidence, whether of general repute or of particular facts which would not be admissible at an ordinary trial, is not admissible under this Article.¹¹

Who may give evidence as to general repute. Reputation means what is thought of a person by others, and the general reputation of a person is the collective opinion of those in whose midst he lives.¹² Therefore evidence which discloses the existence of collective opinion is evidence in proof of general reputation.¹³ But it need not necessarily be the opinion of the entire community.¹⁴ It is not necessary that witnesses who speak to the general reputation of the accused must be residents of the village where the accused lived. Evidence of witnesses of other villages is also admissible in evidence.¹⁵

68. Previous bad character not relevant, except in reply. In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation 1. This Article does not apply to cases in which the bad character of any person is itself a fact in issue.

8. 11 Cr. L.J. 30 (FB) (Mad).
9. AIR 1951 Assam 181 (DB)+AIR 1938 Mad. 482 (DB)+AIR 1929 All. 650 (FB).
10. Art.69 of Qanun-e-Shahadat.
11. AIR 1920 Oudh 255+AIR 1959 All. 347.
12. AIR 1929 All. 273 (DB)+AIR 1920 Oudh 255.
13. AIR 1925 Lah. 166+AIR 1951 Assam 106 (DB)+AIR 1938 Mad. 391.
14. AIR 1951 Assam 106 (DB)+AIR 1914 All. 280-15 Cr. L.J. 705.
15. AIR 1942 Oudh 356-43 Cr. L.J. 398-198 Ind Cas 547.

Explanation 2. A previous conviction is relevant as evidence of bad character.

Evidence Act, 1872. This Article is reproduction of section 54, Evidence Act.

Synopsis

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| 1. Scope and applicability. | 5. Evidence of bad character otherwise relevant. |
| 2. Evidence of bad character--what is. | 6. Explanation 2--Previous convictions as evidence of bad character. |
| 3. Evidence of bad character when relevant. | 7. Previous conviction otherwise relevant. |
| 4. Explanation 1--Where bad character is itself in issue. | |

1. **Scope and applicability.** Evidence of bad character of accused persons is not admissible in evidence in view of the provisions of this Article.¹⁷ The evidence as to general dishonesty of character is not admissible for the purpose of raising a presumption of dishonesty in the particular case under trial.¹⁸

Evidence of association with bad characters. There is no substantial difference between evidence tending to show character of accused and evidence tending to show character of person with whom he is alleged to have associated and the nature of association. Such evidence is therefore inadmissible.¹⁹

Admission of inadmissible evidence. It is duty of Magistrate to refuse to admit evidence regarding character which is inadmissible in law even though no objection has been taken to its admission.²⁰ But admission of evidence contrary to Art. 68 is only a defect or irregularity under Ss. 426 and 439, Criminal P.C.¹ However no Court should be influenced by any knowledge of accused's character from any source except legal evidence produced before it.²

2. **Evidence of bad character--what is.** General reputation must be distinguished from rumour which is inadmissible in evidence.³ A man's general reputation is the reputation which he bears in the place in which he lives amongst all the townsmen, but it is incorrect to say that, because there are rumours in a particular place among a certain class of people that a man has done particular acts or had characteristics of a certain kind, those rumours are in themselves evidence under this Article.⁴ The roots of a bad reputation are often planted in rumour, but no hard and

17. 1901 P. Cr. L.J. 617=NLR 1902 Cr. L.J. 670 (DB)+1981 DLR 402 (DB).
18. 8 Cr. L.J. 411.
19. AIR 1930 Bom. 157=31 Cr. L.J. 1168.
20. AIR 1931 Pat. 345=32 Cr. L.J. 1025.
1. 7 Suth WR (Cr) 7 (DB)+AIR 1959 Cal. 693+AIR 1955 Cal. 559 (DB).
2. AIR 1946 Oudh 233=47 Cr. L.J. 588.
3. AIR 1951 Assam 106 (DB)+AIR 1924 Pat. 500+AIR 1919 Mad. 633.
4. 23 Cal. 621 (DB).

fact rule can be laid down as to how many instances build up a reputation and how long it takes for rumour to ripen into reputation.⁵

Individual opinion. The individual opinion of specified individuals as to the character of another person does not constitute general reputation, and evidence thereof is merely evidence of opinion which is inadmissible except in the particular cases specified in Qanun-e-Shahadat.⁶ A mere suspicion on the part of a witness as to the complexity of the person sought to be proceeded against in certain isolated offences, is only his individual opinion and is not *per se* admissible as evidence of general repute.⁷ However, specific instances from which an inference with regard to fact in issue could be drawn would certainly be admissible.⁸

Evidence of other pending criminal proceeding. The evidence that proceedings under section 110, Criminal P.C., were pending against an accused is not evidence of bad character and is admissible.⁹ But the mere fact that other proceedings are pending against the accused does not prove anything against the accused so far as a particular offence under trial is concerned. Thus the fact that an accused is being prosecuted in some other Court for possession of cartridges is no evidence against him affecting his criminal liability in a case against him for possessing an unlicensed revolver.¹⁰ Similarly in a trial for forgery of a particular document, possession by the accused of a number of documents suspected to be forged is not evidence to prove forgery of the particular documents with which he is charged.¹¹

Criminal tribes. The fact that the accused is a registered member of a criminal tribe is, like previous conviction, a matter from which bad character can be inferred and which may effect the sentence to be passed.¹²

3. **Evidence of bad character when relevant.** According to Art. 68 evidence of bad character and previous conviction of the accused in a criminal trial is admissible, if a foundation is laid for its admission, by the accused offering evidence of his good character, and thus putting the question of his good character in issue.¹³ The evidence of a previous act of dishonesty of the accused can only be allowed to prevent the accused person from pleading that the act under consideration was committed without dishonest intention.¹⁴ Similarly where in a seditious case accused pleads loyal speeches, prosecution can, let in evidence of previous seditious

5. AIR 1951 Assam 106 (DB)+AIR 1913 Pat. 189+AIR 1921 Cal. 625 (DB).
6. 1986 SCMR 1736=PLJ 1986 SC 530=NLR 1986 SCJ 574+AIR 1929 All. 273 (DB)+AIR 1920 Mad. 534 (DB).
7. 1986 SCMR 1736=PLJ 1986 SC 530=NLR SCJ 574+AIR 1930 Lah. 345=32 Cr. L.J. 62+1880 Pun Re (Cr) No. 32, p. 79 (DB)+AIR 1929 All. 273 (DB).
8. 1986 SCMR 1736=PLJ 1986 SC 530=NLR 1986 SCJ 574.
9. AIR 1939 Cal. 497=40 Cr. L.J. 877 (DB).
10. 1946 Jharpur LR 238 (DB).
11. 11 Bom HCR 90 (DB).
12. AIR 1940 Pat. 14=40 Cr. L.J. 833.
13. AIR 1933 Oudh 355=35 Cr. L.J. 273.
14. AIR 1927 Lah. 549 (DB).

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speeches and previous speeches may be admissible also where meaning of the speech is not patent.¹⁵

4. Explanation 1—Where bad character is itself in issue. Art. 68 is not applicable to cases in which bad character of any person is itself a fact in issue.¹⁶ But before an issue can be said to be raised, which will permit the introduction of evidence prejudicial to the accused, it must have been raised in substance.¹⁷ Therefore evidence as to character may be received when the fact as to actual character was placed in issue by the pleadings. In such a case the habits or moral character of a person may be shown by the testimony of one who has personal knowledge of the facts.¹⁸

Offence under section 400, P.P.C. In a trial for an offence under section 400, P.P.C., evidence of previous conviction may be admissible for the purpose of proving habit and association. As habit is a fact in issue in such offence and as habit is a fact in issue in character, the character of the accused itself is a fact in issue for proving a charge under section 400, P.P.C. and therefore evidence of previous conviction not only in respect of dacoities but also in respect of other offences such as theft, burglary and orders under section 109 or section 110, Cr.P.C. may be admissible under Explanations 1 and 2 to the Article.¹⁹ If a gang of persons can be shown to have been associated for the habitual commission of dacoities, evidence as to other crimes committed by the gang may be relevant against the accused.²⁰ Where other evidence has established association for the purpose of habitually committing theft, evidence of convictions for bad livelihood is more valuable.¹

Normally in cases under section 400, P.P.C. general evidence of bad character in the shape of commission of other crimes or conviction for other crimes, such as thefts, burglaries, etc., although inadmissible as evidence of character, may be admissible to prove habit or association.² In a trial under section 400, P.P.C. only conviction for other offences connected with or similar to dacoity is of any value. Therefore evidence of previous convictions on the charge of dacoities and also in respect of other offences such as theft, burglary and orders under section 109 or 110, Cr. P. Code, may be admissible. Such evidence of association to commit offences other than dacoities may not be enough to establish the charge of belonging to a gang for habitually committing dacoities, but the evidence should be relevant for establishing association and if such a gang or certain members thereof have been found to participate in a number of dacoities, the evidence of association based on

- 15. AIR 1921 Sind 199-26 Cr. L.J. 305.
- 16. AIR 1928 Oudh 430-29 Cr. L.J. 1009 (DB).
- 17. AIR 1950 Him Pra 18-AIR 1949 PC 161.
- 18. 1986 SC MR 1736-PLJ 1986 SC 530-NLR 1986 SCJ 574.
- 19. AIR 1965 Orissa 177-ILR 1950 Cal. 195-1956 Cr. L.J. 1208 (DB).
- 20. AIR 1961 Pat 260 (DB)-AIR 1959 AP 387 (DB)-AIR 1952 Oudh 144 (DB).
- 1. AIR 1956 Orissa 177 (DB)-AIR 1925 Cal. 872 (DB)-AIR 1930 Oudh 455 (DB).
- 2. AIR 1967 SC 545-20 DLR (SC) 49.

speeches and previous speeches may be admissible also where meaning of the speech is not patent.¹⁵

Proof of relevant fact by evidence of bad character. If the evidence of bad character is introduced in order to establish a relevant fact, which cannot be proved otherwise, the evidence is admissible.³ Thus in a prosecution for defamation, the complainant is entitled to rebut the complainant's case that the imputation was likely to harm his reputation. He can do so by showing that the complainant's reputation was already at a low ebb.⁴

Previous similar acts by accused. The evidence that the accused had committed similar criminal acts previously is admissible upon the issue whether acts charged against the accused were designed or accidental, or to rebut the defence otherwise than to him.⁵ But the evidence of previous similar acts is not admissible to prove bad character of the accused or to infer that because he had previously acted in a particular way he must be guilty of the offence charged at a later date. The evidence in the effect that the accused under trial had committed two previous murders and a charge of bad character. Its net result is to create the impression on the mind of the Court that the accused are men of bad character and are in the habit of committing murder for which they are being tried. But such a line of proof is not admissible. It is not admissible to show that the accused had committed murder by Quann-e-Shahadat and should not be allowed.⁶ The fact that the accused was charged for another murder as hired assassin in another case and accused was charged for evidence shortly before the present case under section 302, Cr.P.C. was launched, is irrelevant.⁷ Where the accused was tried for the murder of a woman by poisoning her. Evidence was produced to show that the accused had previously murdered another woman (his wife) under similar circumstances, the evidence was held to be not admissible.⁸ In a case for joint possession of cocaine, the evidence of previous conviction of trafficking in cocaine and history sheet opened by the police was inadmissible.¹⁰

Evidence of police surveillance. When in a criminal case the Court admitted evidence by a police officer that the accused was under police surveillance, the Court is acting in direct contravention of Art. 68. ¹¹ In case of Members of Majlis-e-Shura reference to Article 68 explanation read with President's (Post Proclamation) Order, Article 10 leaves no room to doubt that the 'bad character' as a

- 3. AIR 1930 Oudh 455+AIR 1956 Orissa 177+ILR 38 Cal. 559 (SB).
- 4. 1953 Mad WN 933+AIR 1949 PC 161 (Mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the Court).
- 5. AIR 1960 All. 455-51 Cr. L.J. 964.
- 6. AIR 1942 Pat. 291-43 Cr. L.J. 413 (DB).
- 7. AIR 1920 Bom. 371-43 Cr. L.J. 529 (DB).
- 8. AIR 1951 Mad. 331-ILR 1951 Mad. 544-1952 Cr. L.J. 867 (DB).
- 9. AIR 1949 PC 161-50 Cr. L.J. 770.
- 10. AIR 1928 Oudh 215-29 Cr. L.J. 525.
- 11. AIR 1931 Pat. 343-32 Cr. L.J. 1025.

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disqualification becomes a fact in issue and hence the evidence brought on the record by the petitioner is admissible as well as relevant.¹²

Offence under section 401, P.P.C. Under section 401, P.P.C., when associating with a gang is not proved, the fact that an accused person is of bad character or is reputed to be a thief or a habitual thief is no evidence against him for the purposes of a charge under section 401, Penal Code and it being evidence of bad character is not admissible in evidence.¹¹

5. Evidence of bad character otherwise relevant. Under Art. 68, evidence otherwise relevant is not rendered inadmissible merely because it shows bad character or commission of an offence other than the one with which the accused is charged.¹⁴

Evidence of character providing motive for offence. Evidence of bad character cannot be given for the purpose of showing that the accused were of such a disposition that they were likely to commit the crime charged. But that prohibition does not in any way affect evidence which is required to prove a motive for the crime or which is otherwise relevant.¹⁵ Thus evidence which discloses certain unpleasant things about the appellants in the past may be examined by the Court in order to ascertain the motive for murder and not for the purpose of determining as to whether the appellants were persons of bad character likely to commit a murder.¹⁶

6. **Explanation 2—Previous convictions as evidence of bad character.** The principle underlying Art. 68 is that previous conviction is declared inadmissible against an accused except where evidence of bad character is relevant.¹⁷ It follows that proof of previous conviction for theft as evidence to draw an inference as to the character of the accused cannot be considered in a trial of the accused under section 411, Penal Code.¹⁸ In criminal proceedings where evidence has been given that the accused has a good character any evidence of bad character including his previous convictions becomes relevant.¹⁹ But where evidence of good character is not given, and bad character is not in issue, the evidence of a previous conviction is not admissible.²⁰

Proof of previous conviction. Art. 68 does not relate to the manner of proof of previous convictions. It relates only to the proof of previous convictions in certain cases.¹ Therefore the accused can be questioned about previous convictions only when there is legally admissible evidence on record showing that he has committed

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previous offences and this evidence must fall either within section 511, Criminal P.C. of Art. 68.²

A previous conviction or acquittal may be proved by the admission of the fact by the accused.³ In the other cases proper way to prove a conviction is either (1) by an extract certified under the hand of the officer in whose custody are the records of the Court which convicted; or (2) by a certificate under the hand of the officer in charge of the Jail in which the punishment or any part thereof was undergone, or else by production, of the actual warrant of commitment under which the punishment was suffered. In every case there must be evidence as to the identity of the accused person with the person so convicted.⁴

Conviction must be previous of offences under trial. Convictions which are subsequent to the charge in question are not previous convictions within the meaning of Art. 68, and hence are inadmissible in evidence.⁵ Evidence of previous convictions for dacoity is admissible to prove an offence under this Article. Evidence of such convictions after the date of charge are not admissible to prove an offence under section 400, P.P.C.⁶

7. **Previous conviction otherwise relevant.** The term 'bad character' and 'previous conviction' cannot be treated as having exactly the same meaning and scope. Though the fact of bad character is irrelevant except as provided in this Article itself it does not follow that a previous conviction is similarly irrelevant.⁷ The second explanation to this Article does not say that a previous conviction is never relevant unless evidence of bad character is relevant or is itself a fact in issue, but says that wherever the evidence of bad character is relevant, evidence of previous conviction is relevant.⁸

Admissibility for awarding sentence. Art. 68 does not lay down that previous conviction may not be taken into consideration in passing sentence.⁹ The reason for it is that this Article, is part of the law of evidence, and not a part of Penal law. Ordinarily evidence of bad character including a previous conviction is irrelevant to help establish a person's guilt; but law of evidence does not define or profess to define those matters which a Court should consider in using its discretion in passing sentence.¹⁰ Moreover previous conviction can be taken into consideration at the time

12. KLR 1986 CC 238.
13. AIR 1914 Lah. 539-16 Cr. L.J. 33.
14. AIR 1932 Cal. 474-33 Cr. L.J. 834 (DB).
15. AIR 1926 Pat. 232-27 Cr. L.J. 484 (DB).
16. PLD 1957 SC (Ind) 179.
17. AIR 1924 Rang. 91-25 Cr. L.J. 618.
18. 5 Cal. 768 (DB).
19. AIR 1960 AP 490 (DB)+1895 Pun Re (Cr.) No. 7, p. 26 (DB).
20. AIR 1935 Sind 115 (DB)+AIR 1920 Pat. 351+AIR 1923 Bom. 71.
1. AIR 1941 Sind 173-43 Cr. L.J. 12 (DB).

2. AIR 1939 Sind 203=40 Cr. L.J. 770 (DB).
3. PLD 1961 Dacca 307=PLD 1958 Lah. 421=10 DLR (WP) 69+PLD 1959 Pesh. 70+AIR 1944 Lah. 25+AIR 1929 Lah. 961.
4. AIR 1928 Lah. 107=28 Cr. L.J. 968.
5. 1 Cal WN 146.
6. PLD 1967 Dacca 310 (DB).
7. AIR 1914 Bom. 216=16 Cr. L.J. 83 (DB).
8. 28 Bom. 129 (FB).
9. AIR 1929 Mad. 306=30 Cr. L.J. 471.
10. AIR 1914 Bom. 216 (DB) (Where a previous conviction is relevant with reference to the question of the applicability of S. 562, Criminal P.C., and also on question of punishment, it may be taken into consideration in giving punishment after accused is found guilty).

of awarding punishment not as evidence of bad character under the provisions of Art. 68 but under the provisions of section 562 of the Criminal P.C.¹¹

Enhancement of sentence. Previous conviction of the accused is relevant when the question is of enhancement of sentence.¹²

Admissibility under Art. 27. A previous conviction is relevant under Art. 27 when the existence of any state of mind such as intention, knowledge, etc., or existence of any state of body or bodily feeling is in issue or relevant.¹³ Similarly, evidence of previous conviction of a person or that he has been bound over under preventive sections of Cr.P.C. is excluded as evidence of character, though it is admissible under Art. 27 to prove habit and association.¹⁴

Admissibility under section 110, Cr.P.C. The fact that the person proceeded against has committed a number of thefts, or that he associates with bad characters can be proved in proceeding under section 110, Cr.P.C.¹⁵ But the existence of such convictions is not by itself sufficient to justify an order for security. Weight and regard must be given to the period that has elapsed subsequent to the last conviction in order to see whether during that period he has shown a disposition to conduct himself properly or whether there are indications that he has continued the previous course though he may not have actually brought himself within the clutches of law.¹⁶

Ex Family Cases
69. *Character as affecting damages.* In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Explanation. In Articles 66, 67, 68 and 69 the word "character" includes both reputation and disposition; but except as provided in Article 68, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

Evidence Act, 1872. This Article is reproduction of section 55, Evidence Act.

Synopsis

1. Suit for damages.
2. Evidence of general reputation and disposition.

1. **Suit for damages.** Evidence under Art.69 about the character of a person is relevant in connection with the amount of damages in civil cases.¹⁷

11. AIR 1928 Rang. 200-29 Cr. L.J. 869 (FB).
12. AIR 1960 AP 490 (DB).
13. 1895 Pun Re (Cr) 7, p.26.
14. AIR 1928 Oudh 430-29 Cr. L.J. 1009.
15. AIR 1933 All. 674-35 Cr. L.J. 284+AIR 1934 Oudh 49.
16. AIR 1921 Lah. 179+AIR 1929 All. 273 (DB)+AIR 1925 Bom. 195.
17. AIR 1932 Nag. 158-34 Cr. L.J. 154.

2. **Evidence of general reputation and disposition.** The evidence of general reputation and general disposition is relevant in a criminal proceeding. Under Qanun-e-Shahadat, unlike in England, evidence can be given both of general character and general disposition. Disposition means the inherent qualities of a person; reputation means the general credit of the person amongst the public. There is a real distinction between reputation and disposition. A man may be reputed to be a good man, but in reality he may have a bad disposition. The value of evidence as regards disposition of a person depends not only upon the witness's perspicacity but also on their opportunities to observe a person as well as the person's cleverness to hide his real traits. But the disposition of a man may be made up of many traits, some good and some bad, and only evidence in regard to a particular trait with which the witness is familiar would be of some use.¹⁸ Art. 69 allows as admissible the evidence of general reputation and of general disposition but not of particular facts or of traits. The principles of law in a criminal prosecution for defamation are not any different in this matter. In this respect in either case loss of reputation is the foundation for an action for prosecution.¹⁹

18. AIR 1965 SC 682.

19. AIR 1961 Punj. 215+AIR 1917 Low Bur 7.