
PRIOR CONVICTIONS OF THE ACCUSED: DOCTRINAL CONTINUITY UNDER THE INDIAN EVIDENCE ACT AND THE BHARATIYA SAKSHYA ADHINIYAM

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I. Introduction

Section 54 of the Indian Evidence Act 1872¹ excludes the accused's prior convictions from the guilt stage of a criminal trial. Section 14 of the same Act permits their admission where they are relevant to motive, intention, or knowledge.² Both provisions operate simultaneously, and neither takes precedence over the other. This tension has never been resolved. The Bharatiya Sakshya Adhiniyam 2023³ reproduces the same structure without attempting to fix it.

This interaction between exclusion and relevance lies at the heart of the law governing prior convictions. While the statutory rule appears to protect the accused from prejudicial reasoning based on past conduct, its practical operation permits the admission of such evidence through indirect doctrinal pathways. This essay argues that Indian law reflects continuity without conceptual resolution, preserving a framework in which the boundaries of admissibility remain uncertain and largely dependent on judicial interpretation.

A further difficulty lies in the institutional assumptions underlying the rule. The exclusion of prior misconduct was developed in England for a jury system, where lay decision-makers were considered especially vulnerable to prejudice arising from propensity reasoning. India abolished jury trials in 1962 following *M Nanavati v State of Maharashtra*⁴, and criminal adjudication is now conducted entirely by judges. Yet the evidentiary structure designed to shield juries from prejudice remains unchanged. The persistence of this rule, despite the disappearance of its original rationale, underscores the extent to which Indian evidence law operates through inherited continuity rather than reconsidered principle.

¹Indian Evidence Act 1872 (IEA), s 54.

²IEA, s 14.

³Bharatiya Sakshya Adhiniyam 2023 (BSA), s 49; IEA, s 54.

⁴*M Nanavati v State of Maharashtra* AIR 1962 SC 605.

II. Common Law Origins: The Makin Principle

The doctrinal foundation of prior misconduct evidence lies in *Makin v Attorney-General for New South Wales*.⁵ The Privy Council held that evidence of prior criminal acts is inadmissible when introduced solely to demonstrate the accused's propensity to commit crime, but admissible where it is relevant to a specific issue such as intent, knowledge, or absence of accident.

This formulation introduced an inherent tension. While rejecting propensity reasoning, it simultaneously permitted the admission of prior misconduct on grounds that often closely resemble it.⁶ Once such evidence is characterised as relevant to intention or knowledge, it is admitted, even though its practical effect remains the same as the inference the rule seeks to exclude. The distinction is therefore formal rather than substantive.

When incorporated into Indian law through codification, this tension was preserved rather than resolved. The Indian Evidence Act reflects not a settled doctrine, but an inherited ambiguity embedded in statutory form.

III. Statutory Framework

The Indian Evidence Act structures character evidence through interconnected provisions. Section 53 renders the good character of the accused relevant in criminal proceedings.⁷ In *Habeeb Mohammad v State of Hyderabad*,⁸ the Supreme Court acknowledged that character may, in appropriate contexts, assist in evaluating conduct and innocence, and that an accused may rely on such evidence, particularly in adjudication and sentencing.

However, the case does not establish a general doctrine of character evidence and must be read cautiously. Section 54 provides that the bad character of the accused is irrelevant unless evidence of good character has been given. Explanation 2 clarifies that a previous conviction is relevant as evidence of bad character, thereby placing prior convictions within the scope of exclusion at the guilt stage.⁹ This position is significantly qualified by section 14, which

⁵*Makin v Attorney-General for New South Wales* [1894] AC 57 (PC).

⁶*ibid* 65.

⁷IEA, s 53.

⁸*Habeeb Mohammad v State of Hyderabad* AIR 1954 SC 51.

⁹IEA, s 54, Explanation 2.

permits the admission of facts showing intention, knowledge, or state of mind.¹⁰ The interaction between these provisions is central to the doctrine.

In *Sardar Sardul Singh Caveeshar v State of Maharashtra*,¹¹ the Supreme Court clarified that Indian law permits evidence of both general reputation and general disposition. The Court further observed that prior acts, such as earlier defalcations, may be relevant to establish motive for a subsequent offence, even where the offences themselves are distinct. This demonstrates how prior misconduct may be admitted through relevance-based reasoning, notwithstanding its formal exclusion under section 54.

The Bombay High Court in *Lakshmandas v State*¹² similarly held that section 54 does not override other provisions of the Act. Evidence that is independently relevant under sections 14 or 15 is not excluded merely because it reveals bad character.¹³ While a High Court authority, this reinforces the doctrinal position that section 54 operates within, rather than above, the broader framework of relevance.

IV. Proof and Consequences of Prior Convictions

The legal treatment of prior convictions extends beyond admissibility. Procedurally, section 298 of the Code of Criminal Procedure 1973¹⁴ (now section 336 of the Bharatiya Nagarik Suraksha Sanhita 2023)¹⁵ provides for proof of previous convictions through certified extracts. Substantively, section 75 of the Indian Penal Code 1860¹⁶ (now section 13 of the Bharatiya Nyaya Sanhita 2023)¹⁷ provides for enhanced punishment for repeat offenders.

This reflects a dual structure: while evidentiary rules seek to prevent prejudice at the stage of determining guilt, substantive criminal law explicitly recognises prior convictions at the stage of sentencing. The law thus distinguishes between adjudication and punishment, even while relying on the same underlying facts.

¹⁰IEA, s 14.

¹¹*Sardar Sardul Singh Caveeshar v State of Maharashtra* AIR 1957 SC 747.

¹²*Lakshmandas v State* AIR 1960 Bom 182.

¹³*ibid.*

¹⁴Code of Criminal Procedure 1973 (CrPC), s 298.

¹⁵Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS), s 336.

¹⁶Indian Penal Code 1860 (IPC), s 75.

¹⁷Bharatiya Nyaya Sanhita 2023 (BNS), s 13.

V. Doctrinal Tension: Exclusion and Its Limits

The interaction between sections 53, 54 and 14 produces a framework in which the exclusion of prior convictions is formally maintained but practically limited. Evidence that cannot be introduced to show propensity may nevertheless be admitted establishing motive, intention, or knowledge. In the absence of a structured balancing test, this determination is left largely to judicial discretion.

This ambiguity becomes clearer when placed in a broader evidentiary context. For a significant period, the Indian Evidence Act permitted extensive inquiry into the sexual history of the prosecutrix through section 155(4),¹⁸ which allowed her credibility to be impeached by showing that she was of 'generally immoral character'. The logic underlying this provision was precisely the form of reasoning that section 54 rejects in relation to the accused: that past conduct can be used to draw conclusions about present behaviour.

The contrast is striking. The law treated the accused's prior convictions as prejudicial and therefore inadmissible, while simultaneously permitting similar reasoning to operate against the complainant. In other words, the same evidentiary concern — propensity reasoning — was rejected in one context and accepted in another. This was not merely an inconsistency of outcome, but a contradiction at the level of principle.

Legislative reform has altered this position. Section 155(4) was repealed, and section 53A was introduced by the Criminal Law (Amendment) Act 2013.¹⁹ Section 53A provides that evidence of the victim's character or previous sexual experience shall not be relevant where consent is in issue.²⁰ The intention was to ensure that adjudication focuses on the facts of the incident rather than generalisations drawn from past conduct.

However, the limitation of section 53A is significant: it operates specifically where consent is in issue. In *Tarun Tejpal v State of Goa*,²¹ the Sessions Court admitted evidence relating to the prosecutrix's past sexual conduct and interactions, reasoning that consent was not directly in issue, even though the material effectively portrayed her as being of 'immoral character'. On appeal, the Bombay High Court observed that it was necessary to examine

¹⁸IEA, s 155(4) (repealed by the Criminal Law (Amendment) Act 2013, s 26).

¹⁹Criminal Law (Amendment) Act 2013, s 26, inserting IEA, s 53A.

²⁰IEA, s 53A.

²¹*Tarun Tejpal v State of Goa*, Sessions Case No 8/2017 (Sessions Court, Goa, 21 May 2021).

whether material rendered irrelevant under section 53A had nevertheless influenced the acquittal.²²

This episode illustrates two points. First, even after reform, the evidentiary treatment of character remains contested and capable of being narrowed through interpretation. Second, and more fundamentally, it exposes the underlying duality of the law. Indian evidence law has long been wary of admitting prior convictions of the accused on the ground that they create prejudice, yet it was historically willing to admit character-based reasoning against the complainant on the assumption that it was probative. Although the latter position has been corrected in part, the former has never been reconsidered in light of that history.

VI. Continuity under the Bharatiya Sakshya Adhiniyam 2023

The Bharatiya Sakshya Adhiniyam reproduces the structure of the Indian Evidence Act with minimal change. Section 49 mirrors section 54, retaining both the rule and its explanations, while the relevance-based gateways corresponding to section 14 remain intact.²³

The doctrinal ambiguities identified under the IEA persist under the BSA. By contrast, English law has moved towards a structured statutory regime under the Criminal Justice Act 2003.²⁴ Sections 98–113 establish defined gateways for the admission of bad character evidence, including section 101(1)(d), which explicitly permits prior convictions to demonstrate propensity,²⁵ subject to judicial control.²⁶ India's decision not to adopt a comparable framework reflects a legislative preference for continuity, but also a missed opportunity for doctrinal clarification.

VII. Towards a More Coherent Framework

The present framework would benefit from a more structured approach to admissibility. A useful model lies in section 101(1)(d) of the Criminal Justice Act 2003, which allows prior convictions to be admitted demonstrating propensity, subject to judicial safeguards.

Such a provision could require courts to assess whether the prior conviction

²²*State of Goa v Tarun Tejpal*, Criminal Appeal No 282/2021 (Bombay High Court, 19 May 2022).

²³BSA, s 49.

²⁴Criminal Justice Act 2003, ss 98–113.

²⁵*ibid*, s 101(1)(d).

²⁶*ibid*, s 101(3).

demonstrates a pattern sufficiently proximate to the offence charged, whether its probative value outweighs its prejudicial effect, and whether the accused has had a fair opportunity to contest its relevance. These safeguards are absent from the current framework under both the IEA and the BSA. The Law Commission of India, in its 185th Report (2003), examined the provisions relating to character evidence, but no substantive reform followed. The Bharatiya Sakshya Adhiniyam continues this silence, leaving the doctrinal tension unresolved.

VIII. Conclusion

The law governing prior convictions in India reflects a legacy of continuity shaped by common law origins and preserved through statutory reproduction. While section 54 establishes a formal rule of exclusion, its interaction with other provisions allows prior misconduct evidence to enter the trial through indirect routes.

The persistence of this framework is particularly striking given its historical context. A rule designed to protect juries from prejudice continues to operate in a system that no longer uses juries. A doctrine that excluded propensity reasoning for the accused once coexisted with rules that permitted it against the complainant. Although aspects of this asymmetry have been corrected, the underlying principles have not been revisited.

The Bharatiya Sakshya Adhiniyam was enacted with the benefit of over a century of judicial experience, the Law Commission's recommendations, and comparative developments such as the Criminal Justice Act 2003 in England. Its decision to reproduce section 54 without structural reform reflects not oversight, but continuity as a conscious choice. The cost of that choice is the retention of a framework in which the admissibility of prior convictions remains uncertain, inconsistently applied, and insufficiently theorised. A more principled approach requires not merely preserving the rule of exclusion but clarifying when and why it should yield.