

CIRCUMSTANTIAL EVIDENCE - THE GREY AREA AROUND ITS FIVE GOLDEN PRINCIPLES

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INTRODUCTION

Circumstantial evidence, also called indirect evidence, is a disjointed series of events that establish the circumstances which lead to the events of a crime and from which conclusions can be drawn.¹ Information about the above series of events in criminal cases establishes the facts or circumstances that the parties seek to prove. Sir James Stephen coined the phrase “Circumstantial Evidence” in India and defined it as facts that are relevant to other facts and whose presence can be demonstrated by the existence of those other relevant facts.²

A substantial degree of corroboration supports circumstantial evidence.³ A direct connection between the perpetrator and the offence is necessary for circumstantial proof or evidence.⁴ An unbreakable connection between the perpetrator and the offence is required for a conviction based solely on circumstantial evidence. Through the interaction between the law and judicial interpretation, the idea of circumstantial evidence has developed.

The actions of a person in the vicinity of an accused offence can be taken as an example of circumstantial evidence.⁵ If someone is seen buying an expensive item on a shopping trip after being accused of stealing money, the purchase may be viewed as evidence of the person’s guilt.⁶ The same is true if a witness sees someone standing over a dead body while brandishing a firearm when they arrive at a crime scene just seconds after hearing a gunshot.⁷ Because the person could have been a bystander who picked up the gun after the murderer dropped it, the evidence, in this case, is circumstantial.

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¹ “*Circumstantial Evidence in India*” (LEGAL SERVICES INDIA, 2016), available at:

<<https://www.legalserviceindia.com/article/1136-Circumstantial-Evidence.html>> (Last seen: 24/09/2022).

² Sarathi and Vepa P., “*Historical Background of the Indian Evidence Act, 1872*” (JOURNAL OF THE INDIAN LAW INSTITUTE, 1972), pp. 1–25, available at: <<http://www.jstor.org/stable/43950171>> (Last seen: 24/09/2022).

³ *Ibid.*

⁴ *Ibid.*

⁵ Ajay Kumar Sareen, “*Conviction on the basis of Circumstantial Evidence*” (TYGAR LAW CORPORATE, Jan, 2020), available at: <http://www.tygarlaw.com/conviction-on-the-basis-of-circumstantial-evidence> Last seen: 24/09/2022).

⁶ *Ibid.*

⁷ *Supra* note 2.

Contrary to popular assumption, circumstantial evidence can be used to support convictions. The majority of convictions are at least somewhat supported by circumstantial evidence, which shows a plausible connection between the offender and the offence.⁸

SCOPE

The scope of the paper is limited to the topic of conviction solely on the basis of circumstantial evidence and the grey area surrounding the “Five Golden Principles of Circumstantial Evidence”. The objective of the research paper is to analyze the different aspects of these Golden Principles and to check how in various cases the Supreme Court of India has applied them to arrive at the conclusion of the case and the conviction of the accused. The paper also focuses on how this guidelines are logically flawed and whether these principles can be revamped.

RESEARCH PROBLEM

Circumstantial evidence refers to situations where a witness cannot directly tell you the facts to be proven. To draw conclusions based on circumstantial evidence, one must conclude the facts of the case. For a conviction to be handed down solely based on circumstantial evidence, the ‘Five Golden Principles of Circumstantial Evidence’ is considered as established in the case of *Sharad BirdhichandSarda v. State of Maharashtra*. These five golden principles serve as the Panchsheel of a case’s circumstantial evidence-based proof. However, in my opinion, this approach is flawed as it fails to properly filter out unreliable and irrelevant facts, while building up a chain of inferences towards proving guilt based on circumstantial evidence and thus is a grey area under circumstantial evidence.

RESEARCH QUESTION

Are the Panchsheel guidelines as established in the case of *Sharad BirdhichandSarda v. State of Maharashtra* flawed? If so, how should these guidelines be amended or modified?

LITERATURE REVIEW

PRIMARY SOURCES

✓ STATUTES

⁸*Supra* note 1.

- THE INDIAN EVIDENCE ACT, 1872
- THE CODE OF CRIMINAL PROCEDURE, 1898
- ✓ CASES
 - *SHARAD BIRDHICHANDSARDA V. STATE OF MAHARASHTRA*, AIR 1984 SCC 1622
 - *HANUMANT V. STATE OF MADHYA PRADESH*, AIR 1952 SCC 343
 - *RAJESH TALWAR V. STATE OF UTTAR PRADESH*, CRIMINAL APPEAL No. - 294 of 2014
 - *BARUN CHANDRA THAKUR V. CBI*, (2018) 12 SCC 119
 - *SANTOSH KUMAR SINGH V. STATE THROUGH CBI*, (2010) 9 SCC 747
 - *DR. MRS. NUPUR TALWAR V. STATE OF UTTAR PRADESH AND ANR.*, (1984) 2 SCC 267
 - *R V. EXALL*, [1866] 4 F & F 922
 - *SATHYA NARAYAN V. STATE*, AIR 1953 SCC 385
 - *CHAMBERLAIN V. QUEEN*, (No. 2) [1984] HCA 7

SECONDARY SOURCES

- ✓ COMMENTARIES
 - THE LAW OF EVIDENCE BY BATUK LAL, CENTRAL LAW AGENCY
As the existence of substantive rights can only be shown by the relevant and admissible evidence, the author of this commentary has emphasised the crucial role of the law of evidence in the efficient operation of the legal system. It establishes the fundamental elements of judicial inquiry for the efficient administration of justice.
 - THE LAW OF EVIDENCE BY RATANLAL AND DHIRAJLAL, WADHWA AND COMPANY
The author discussed in this commentary that the law of evidence has to regularly groom itself to face the emerging developments that pose unprecedented problems in collecting evidence and proof of facts. Over the years, the Courts have enriched the lexicon of the law of evidence through judicial precedents and diverse case law.
- ✓ ARTICLES
 - The Rule in Hodge's Case: Rumours of its Death are Greatly Exaggerated- Benjamin Burger, Osgoode Law School Journal

- A Study of Direct Evidence and Circumstantial Evidence with Special Reference to AarushiTalwar Case- Shivi Mishra, International Journal of Law Management and Humanities
- Facts in Issue and Relevant Facts- Harsh Tiwari, Law Times Journal
- Circumstantial Evidence- International Journal of Advanced Legal Research
- Circumstantial Evidence Must Unerringly Infer Guilt For Conviction: Madras High Court Sets Aside Capital Punishment Of Rape & Murder Accused- Sebin James, LiveLaw
- All you need to know about Section 3 of the Indian Evidence Act, 1872- Shivi Khanna, Ipleaders
- Ashwani Kumar: CBI Chief Who Handled AarushiTalwar Murder, Focused on Economic Crimes- The Wire
- Manipulated laboratory report, broken links of evidence; Supreme Court reverses concurrent findings of Courts below to acquit a murder accused- SCC Online Blog
- Circumstantial Evidence-Time to Reassess the “Panchsheel” Approach?— AnamChowdhary, Journal of the Indian Law Institute

METHODOLOGY

The research in the present research paper has adopted a doctrinal method for collecting the required data. This research will be based on analytical and critical studies. The research paper also includes secondary sources, including articles, books and journals.

Sources of data:

1. Legal textbooks
2. Cases
3. Legal journals
4. Online articles

ANALYSIS

Using Circumstantial Evidence to Prove the Guilt on an Accused

Any trial usually revolves around disputed facts, i.e., facts one side wants to prove and the other wants to disprove. The Indian Evidence Act, 1872 (*hereinafter*, “IEA”), basically operates on two categories of facts: facts in issue and relevant facts.⁹ These facts are defined under Section 3 of the IEA, but generally speaking, if these facts are established as true or false, the case is held as over and culpability is applied.¹⁰ For instance, in a murder trial, it would be necessary to prove the facts of causation, *mens rea* and *actus reus* in order to determine the guilt (liability) of the accused.¹¹ As a result, these facts would be the facts in issue, meaning that once proven or disproven, they should be enough to resolve any doubts regarding the guilt or any other liability/right. On the other hand, relevant facts are those facts that are connected to the facts in issue and, when established or refuted, result in an inference regarding the facts under discussion.¹² The IEA’s examples of relevancy must be used to determine whether a fact is relevant or not, which is exclusively a legal concern.¹³ Evidence is used to prove or refute facts, i.e., to show whether a fact is true or false.

The IEA clearly states in Section 5 that only Facts in Issue and Relevant Facts may be the subject of evidence.¹⁴ It follows that a party may offer direct evidence in support of both the relevant fact and the fact in issue.¹⁵ While presenting evidence for a fact in issue, one would aid in settling the fundamental question of rights or obligations, evidence would also be given for relevant or pertinent facts that may be used to infer the validity or falsity of the fact in question or to prove/refute it.¹⁶

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This is where the discussion of circumstantial evidence under the Indian Evidence Act, 1872 starts. By permitting evidence to be supplied for relevant facts, the IEA implicitly creates the possibility that these facts will be used as circumstantial evidence supporting the facts

⁹Harsh Tiwari, “Facts in Issue and Relevant Facts” (LAW TIMES JOURNAL, Jul, 2021), available at: <<https://lawtimesjournal.in/facts-in-issue-and-relevant-facts/>> (Last seen: 25/09/2022).

¹⁰Section 3, *Indian Evidence Act, 1872*.

¹¹“Actus Reus: The Physical Act of Committing a Crime” (LAW SELF), available at: <<https://lawshelf.com/shortvideoscontentview/actus-reus-the-physical-act-of-committing-a-crime>> (Last seen: 25/09/2022).

¹²Shivi Khanna, “All you need to know about Section 3 of the Indian Evidence Act, 1872”, (IPLEADERS, Mar, 2022), available at: <<https://blog.ipleaders.in/all-you-need-to-know-about-section-3-of-the-indian-evidence-act-1872/>> (Last seen: 25/09/2022).

¹³*Ibid.*

¹⁴Section 5, *Indian Evidence Act, 1872*.

¹⁵*Ibid.*

¹⁶“The Legal Concept of Evidence” (STANFORD ENCYCLOPEDIA OF PHILOSOPHY), available at: <<https://plato.stanford.edu/entries/evidence-legal/>> (Last seen: 25/09/2022).

in issue.¹⁷ As a result, circumstantial evidence might be described as those unconnected facts that are nonetheless relevant to the facts in issue and that, when taken all together, leads to the conclusion about the facts in issue. Since circumstantial evidence can support a conviction, it plays a crucial role in criminal proceedings.

In this context, I want to address a specific topic that is frequently debated: the standards that govern what courts accept as “Circumstantial Evidence”, which was established in the case of *Sharad BirdhichandSarda v. State of Maharashtra*¹⁸. My claim is that the Supreme Court’s current threshold is defective because it fails to appropriately weed out unreliable and irrelevant facts while constructing a series of conclusions or circumstances that aim to establish guilt based on circumstantial evidence.

THE FIVE GOLDEN PRINCIPLES OF CIRCUMSTANTIAL EVIDENCE

In the case of *Sharad BirdhichandSarda v. State of Maharashtra*, the Supreme Court established the “Five Golden Principles of Circumstantial Evidence” or the “Panchsheelguidelines” as guidelines to govern convictions based on circumstantial evidence.¹⁹ They have been stated below as follows:

1. It is crucial to carefully examine the conditions from which it is appropriate to infer the guilt of the accused.²⁰
2. The facts thus developed should be compatible only with the hypothesis of the defendant’s guilt, that is to say, under any other hypothesis they should not be explainable but that the defendant is guilty.²¹
3. The circumstances should be strong enough and conclusive to draw a firm conclusion about the guilt of the accused.²²
4. The only theory that should be included is the one that needs to be confirmed. The rest should be omitted.²³
5. There must be a chain of evidence complete and must indicate that the accused must have done the act in all human likelihood.²⁴

¹⁷ “The Rule Against Hearsay” (LAW REFORM), available at: <https://www.lawreform.ie/fileupload/consultation%20papers/wphearsay.html> (Last seen: 26/09/2022).

¹⁸*Sharad BirdhichandSarda v. State Of Maharashtra*, AIR 1984 SCC 1622.

¹⁹*Sharad BirdhichandSarda v. State Of Maharashtra*, AIR 1984 SCC 1622.

²⁰*Ibid.*

²¹*Ibid.*

²²*Ibid.*

²³*Ibid.*

The Panchsheel guidelines seek to give a yardstick for the inference to the Judges to emerge towards the “right direction” since the use of circumstantial evidence is mostly based on inferential reasoning. However, the ambiguous wording and subsequent application of these guidelines have revealed that much of the law surrounding circumstantial evidence is still problematic, unclear and has been left overly open to judicial discretion, as will be detailed below.

THE “FIVE GOLDEN PRINCIPLES OF CIRCUMSTANTIAL EVIDENCE”- A WEAK GATEKEEPER OF FACTS

We can tell from a simple reading of the guidelines of the Panchsheel guidelines that it applies to facts that could form a link in the chain of circumstantial evidence. Points (1) and (3) of the Golden Principles allude to the idea that the facts used to draw a conclusion must be proven. This idea can be regarded as including only pertinent information or facts that must be supported by evidence when read in accordance with Section 5 of the IEA. The way that Indian courts have used these guidelines demonstrates that little thought has been given to the fundamental conditions that the facts must be fulfilled as the foremost and fundamental step, i.e., relevancy of the circumstances and then proving them. Using the guidelines, irrelevant information in various cases has frequently been included as links in the chain of circumstantial evidence. These facts are frequently ones that have not been adequately proven and therefore can be dismissed as “not proved” under Section 3 of the IEA. So courts can thus utilise anything and everything as a link in the chain of circumstantial evidence, which is a problem because it can eventually be detrimental to the Justice System.

In the case of *Rajesh Talwar v. State of Uttar Pradesh*²⁵, it was considered by the trial court that the accused persons’ denial of the incriminating circumstances under Section 313 of the Code of Criminal Procedure (CrPC) was a relevant fact despite the clear prohibition on the use of false pleas as evidence as mentioned in the Section.²⁶ This was done to “fill the missing links” in a case involving circumstantial evidence. The court treated false pleas as the “missing links” even though they were never a “fact” in the first place.²⁷ This demonstrates how irrelevant or non-existent facts are made relevant for the objective of the Panchsheel

²⁴*Ibid.*

²⁵*Rajesh Talwar v. State of Uttar Pradesh*, CRIMINAL APPEAL No. - 294 of 2014.

²⁶*Ibid.*

²⁷Ashwani Kumar, “CBI Chief Who Handled Aarushi Talwar Murder, Focused on Economic Crimes” (THE WIRE, Oct, 2020), available at: <<https://thewire.in/government/ashwani-kumar-dead-cbi-nagaland-aarushi-talwar>><accessed on 3rd May 2021>(Last seen: 26/09/2022).

guidelines. Another case like this is the case of *Santosh Kumar Singh v. State through CBI*²⁸ (also known as the Priyadarshini Mattoo case), in which the Supreme Court arbitrarily deemed the mother's suspicion about the defendant relevant under Section 6 of the Act despite the fact that it did not significantly affect the other strong facts in issue.²⁹

The issue of how facts that are not even adequately demonstrated enter the category of circumstantial evidence by utilising the guidelines is clarified by the Supreme Court's dissenting opinion in the *Sharad BirdhichandSarda v. State of Maharashtra*³⁰ (the case that served as the foundation for Panchsheel guidelines). The issue there was whether the husband had poisoned his wife to death. The High Court had upheld that the wife had committed suicide. The majority of the judges considered various facts, such as the husband's extramarital affair, the in-laws' mistreatment, etc., to demonstrate why the wife would have committed suicide.³¹ According to the dissenting opinion of the Supreme Court, these facts were never proven in the case investigation, so using these facts to establish the chain of circumstantial evidence was irrelevant.³² We can argue from this case that the inclusion of such data is also a result of the Judge had previously reached a conclusion (in this case, that the woman committed suicide) based on the facts at hand and now attempting to fill in the blanks in a way that could support that finding.

Similarly, in the case of *Dr. Mrs. Nupur Talwar v. State of Uttar Pradesh and Anr.*³³ (famously known as the Arushi Talwar murder case), the Supreme Court acquitted the accused petitioner and her husband by giving them the benefit of the doubt due to the questionable conduct of the police and Central Bureau of Investigation (CBI). Earlier in 2007, both the accused were convicted in the Sessions Court based on weak fragments of circumstantial evidence by exploiting the Panchsheel Guidelines in an irrelevant manner.³⁴

It is therefore clear that the decision of the Courts to treat a fact as a link in the chain of circumstantial evidence violates the fundamental principles of IEA for relevance and the requirement for the fact to be established. These facts would not have qualified as significant

²⁸*Santosh Kumar Singh v. State through CBI*, (2010) 9 SCC 747.

²⁹*Ibid.*

³⁰*Ibid.*, 18.

³¹*Ibid.*

³² “*Sharad BirdhichandSarda v. State Of Maharastra (Analysis)*” (INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH, Dec, 2020), available at: < <https://www.ijlr.in/2020/12/sharad-birdichand-sarda-v-stateof.html#:~:text=The%20Session%20Court%20convicted%20sharad,the%20court%20declared%20the%20letter> > (Last seen: 28/09/2022).

³³*Dr. Mrs. Nupur Talwar v. State of Uttar Pradesh and Anr.*, (1984) 2 SCC 267.

³⁴*Supra* note 20.

facts if it were not for the links in the chain and the fact that they passed the Panchsheel Guidelines. All these aspects might lead to the wrongful conviction of an accused in the absence of direct evidence, as in the case of the Arushi Talwar murder case, and might deny justice to an innocent person.

THE AFFINITY OF CIRCUMSTANTIAL EVIDENCE WITH THE “CHAIN METAPHOR”

The “Five Golden Principles of Circumstantial Evidence” is focused on completing the chain of events using facts as links. This was famously called the “chain metaphor” in the case of *R v. Exall*³⁵ by the Privy Council. While this metaphor gives meaning to the completion of the chain of events, it is essential to note that not all facts and circumstances are links of a chain and are stranded in a cable in some cases.³⁶ The explicit mention of the “chain metaphor” in the guidelines would rule out the possibility of cases being decided on the basis of circumstantial evidence in situations where the chain metaphor could not be used to prove the situation but instead the “strands in a cable metaphor”, as described in the case of *R v. Exall*.³⁷

If the Panchsheel guidelines only consider cases that use the “chain metaphor”, it could appear that all links must exist for the final conclusion to be formed (as implied by point (2.) of the guidelines), which would render the narrative complete.³⁸ Instead, the “strands in a cable metaphor” would allow for the existence of different facts that might not necessarily constitute links in the chain of events but might still be taken into account as a whole to establish a proper inference.³⁹ However, the deduction must be formed not only from one line of evidence but from all the available lines, as doing otherwise would render the entire narrative incriminating and relying on the chain metaphor would mean limiting the scope of circumstantial evidence. Furthermore, when considering the matter practically, the “strands in a cable metaphor” includes more judicial discretion than what one may anticipate while thinking along the lines of a “chain metaphor”.

³⁵*R v. Exall*, [1866] 4 F & F 922.

³⁶Anam Chowdhury, “Circumstantial Evidence — Time to Reassess the “Panchsheel” Approach?” (LEGAL BLOGPOST, Nov, 2020), available at: <<https://theproofofguilt.blogspot.com/2020/11/guest-post-circumstantial-evidence-time.html>>(Last seen: 27/09/2022).

³⁷*Ibid.*

³⁸*Ibid.*

³⁹*Ibid.*

If we merely use the “chain metaphor” to limit our discretion, it is more likely that poor decisions will be made to establish the chain of events and can subsequently be overturned on appeal. *Arushi Talvar murder case, Hanumant v. State of Madhya Pradesh* and *Sharad Birdichand* are some notable cases that fell prey to this. Utilizing the “strands in a cable metaphor” could therefore help to lower the costs and time associated with achieving judicial downturns.

Along with these, it must be acknowledged that it might be challenging to determine which metaphor applies to which situation. The two metaphors may occasionally be combined in a case; for instance, factual testimony may be described using the “chain metaphor” while additional material is supplied using the “strands in a cable metaphor”. Both metaphors should be used in the Panchsheel guidelines in order to cover all probable circumstances that fall under the purview of circumstantial evidence and draw the proper conclusions from them.

THE ISSUE OF HOLDING CIRCUMSTANTIAL EVIDENCE BEYOND REASONABLE DOUBT

The “Chamberlain Directive”, which is also followed in India as can be seen in the case of *Sathya Narayan v. State*⁴⁰, was established in *Chamberlain v. Queen*⁴¹, which ruled that all the essential facts have to be proven beyond a reasonable doubt.

Similar to this perception, it can be argued that the Panchsheel guidelines should specify that the standard of proof should be focused on the requirements of Section 3 of the IEA and not necessarily beyond a reasonable doubt for the individual facts that constitute the links of the chain or the strands of the cable.⁴² It makes sense to hold individual facts to such a high standard of proof when the final inference is to be made from the entire set of facts rather than these specific facts. From the prosecution’s perspective, it does nothing but makes it excessively difficult to establish the proper chain of events while convicting a person solely on the basis of Circumstantial Evidence.⁴³

⁴⁰*Sathya Narayan v. State*, AIR 1953 All 385.

⁴¹*Chamberlain v. Queen*, (No. 2) [1984] HCA 7.

⁴²Anam Chowdhury, “Circumstantial Evidence — Time to Reassess the “Panchsheel” Approach?” (LEGAL BLOGPOST, Nov, 2020), available at: <<https://theproofofguilt.blogspot.com/2020/11/guest-post-circumstantial-evidence-time.html>>(Last seen: 28/09/2022).

⁴³ David Hammer, “The Continuing Saga of the Chamberlain Direction: Untangling the Cables and Chains of Criminal Proof” (RESEARCH GATE, 2009), available at: <https://www.researchgate.net/profile/David-Hamer-2/publication/228184775_The_Continuing_Saga_of_the_Chamberlain_Direction_Untangling_the_Cables_and

The ultimate conclusion regarding settling the question of guilt must be an autonomous step in which it should be essential to put the inference to the level of proof beyond a reasonable doubt.⁴⁴ If every single detail has to be proven without the possibility of a doubt, very little can be established. Therefore, it must be made clear in the guidelines that determining each fact may not require proving them beyond a reasonable doubt.

THE PROBLEM IN INFERENCE: JUDGING CASES SOLELY BASED ON CIRCUMSTANTIAL EVIDENCE

No criteria have been provided in the Panchsheel guidelines to evaluate the dimensions of inferences derived, making it difficult to assess the level of deductive reasoning involved in circumstantial evidence. The “Hodge warning”⁴⁵, which addressed the concern that hypothesis and inference can be confused, was also taken into account by Indian court rulings in cases like *Hanumant v. State of Madhya Pradesh* and *Chandmal v. Province of Rajasthan*, supporting the idea that unchecked inferences can be perilous. Although inference is easy to deduct when there is direct evidence, cases based exclusively on circumstantial evidence have a lengthier path from the evidence to the relevant fact.⁴⁶

The opinions that judges get from a given circumstance are significantly influenced by their personal prejudices or biases as well as by the media. The terms “common sense”, “society’s knowledge” and “news reports and debates by media” are all misleading because the Judge of a Court is required to use different criteria to determine what counts as knowledge or experience.⁴⁷ Only facts that support the inferences already established by the Judge are permissible in situations requiring circumstantial evidence, where an inference must be drawn from the narrative in order to determine guilt, which causes a problem.⁴⁸

I would contend that *Sharad Birdichand* is a good example of this dynamic in action. Before deducing any additional inferences from the suicide inference in this case, the Trial Court and

[Chains of Criminal Proof/links/5c43ee6c458515a4c732ecab/The-Continuing-Saga-of-the-Chamberlain-Direction-Untangling-the-Cables-and-Chains-of-Criminal-Proof.pdf](#)>(Last seen: 28/09/2022).

⁴⁴*Ibid.*

⁴⁵ Benjamin Burger, “*The Rule in Hodge’s Case: Rumours of its Death are Greatly Exaggerated*” (OSGOODE LAW SCHOOL JOURNAL, 2005), available at: https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=3424&context=scholarly_works>(Last seen: 29/09/2022).

⁴⁶*Ibid.*

⁴⁷*Supra* note 37.

⁴⁸*Ibid.*

High Court had determined that it was a case of suicide.⁴⁹For instance, it was said that the dead left the door open after committing herself because she wanted her spouse to walk in⁵⁰; it simply said this is the bootstrapping approach in action.⁵¹The issue with the reasoning, in this case, didn't start here; rather, the facts themselves were comprehended from a predominately male perspective, which had an impact on how the other facts were interpreted as components of the chain of circumstantial evidence for the claim of suicide.⁵²

The case of *Barun Chandra Thakur v. CBI*⁵³ is an excellent example of how judges get influenced. In this case, a Second Standard student was discovered dead in the toilet of Ryan International School in Gurugram. According to the initial report by police, the bus conductor was detained on suspicion of sexually assaulting the boy before killing him.⁵⁴ But due to the influence of the media, the case became a nationwide debate, and the conductor was declared a criminal by the media.⁵⁵ This led to the accused being convicted by the CBI court for murder based on circumstantial evidence, which was not at all authentic and, in my opinion, was delivered speedily as the case had become a national concern.⁵⁶ Later on, it was discovered that a student from class XI had murdered him in an effort to delay the exams.⁵⁷ Even though the bus conductor was acquitted, he suffered a lot of setbacks in his personal life and career because of the bad judgement by the CBI.⁵⁸

SUGGESTIONS TO REVAMP THE “FIVE GOLDEN PRINCIPLES OF CIRCUMSTANTIAL EVIDENCE”

The problems raised above in the previous sub-themes demonstrate that the “Five Golden Principles of Circumstantial Evidence” requires modifications in order to establish uniform

⁴⁹Anubhav Shukla and Mohd. Shabaz, “*Sharad BirdhichandSarda v. State of Maharashtra*” (HEIN ONLINE, 2021), Vol.- 4, Issue- 3, available at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ijlmhs11&div=486&id=&page=>>(Last seen: 26/09/2022).

⁵⁰*Ibid.*

⁵¹*Ibid.*

⁵² “*Circumstantial Evidence*” (RACOLB LEGAL, Oct, 2018), available at: <http://racolblegal.com/circumstantial-evidence/>>(Last seen: 29/09/2022).

⁵³*Barun Chandra Thakur v. CBI*, (2018) 12 SCC 119.

⁵⁴*Ibid.*

⁵⁵ “Boy’s death in Gurugram school: Victim’s father expresses dissatisfaction over SC verdict” (The Indian Express, Jul, 2022), available at: < <https://www.newindianexpress.com/nation/2022/jul/13/boys-death-in-gurugram-school-victims-father-expresses-dissatisfaction-over-sc-verdict-2476186.html>> (Last seen: 30/09/2022).

⁵⁶*Ibid.*

⁵⁷*Ibid.*, 48.

⁵⁸*Supra* note 50.

criteria to be applied in cases solely involving circumstantial evidence. The principles can be converted into simpler as well as more definitive versions as follows:

- I. As mentioned under Chapter II of the Indian Evidence Act, the facts and circumstances from which the culpability is to be inferred should be pertinent to the fact in question.
- II. These facts or circumstances must be established with admissible proof or evidence.
- III. Section 3 of the Indian Evidence Act should be set as the standard of evidence for such facts or circumstances
- IV. These facts or circumstances should serve as strands in the concluding cable of circumstantial evidence or they may serve as links in the chain of circumstantial evidence, depending on each specific case at hand.
- V. The conclusion made from the combination of the circumstantial evidence must be such that it solely supports the view that the accused is guilty and leaves no room for a plausible alternative theory that the accused is innocent.

While it is evident that reframing the principles like this still does not address the issue of inferences, it is still possible to control this issue to some extent if the facts or circumstances introduced as the “links in the chain” or “strands in the cable” are pertinent and supported as needed by the IEA. At the very least, this would guarantee that these facts or circumstances are considered circumstantial evidence, which the Judge would not merely accept arbitrarily. It is however impossible to say with assurance that inferences can be controlled in all situations. However, there might be systematic attempts to support Judges’ existing training in an effort to lessen the influence of biases while delivering judgements. Subsequently, the importance of it cannot be overstated because, in several of the cases solely based on circumstantial evidence, someone’s (accused person’s) liberty is at risk.

CONCLUSION

Most democratic nations around the world have built their legal systems on the idea that a person is innocent until proven guilty.⁵⁹ The same has been the case with India. Therefore, it is the duty of the Judge to see beyond any reasonable doubt that the accused has committed the offence.⁶⁰ This is why it is necessary for the Indian Courts to view all facts and

⁵⁹ “*The Right to Fair Trial*” (Fairtrials.org), available at: <https://www.fairtrials.org/the-right-to-a-fair-trial/> (Last seen: 30/09/2022).

⁶⁰ *Supra* note 31.

circumstances carefully and reasonably while holding cases solely based on circumstantial evidence.

In the landmark judgement of *Sharad BirdhichandSarda v. State of Maharashtra*, the “Five Golden Principles of Circumstantial Evidence” (also known as Panchsheel guidelines) was established to deal with cases based on circumstantial evidence. However, by following these guidelines, irrelevant facts and circumstances have been frequently added as links in the chain of circumstantial evidence in a variety of cases. Examples of such cases are *Rajesh Talwar v. State of Uttar Pradesh* and *Santosh Kumar Singh v. State through CBI*. This has been done as the Panchsheel guidelines have been established only on the basis of the “chain metaphor” excluding the “strands in a cable metaphor”. If these guidelines are amended on the basis of both metaphors, cases will become easier to be dealt with.

Along with the modifications in the guidelines, it should also be looked into the matter that Judges do not deliver judgements based on personal biases and the influence of media.⁶¹ Such was in the case of *Sharad Birdhichand*, where the facts were comprehended solely from a male perspective, which impacted how the other facts were interpreted as links in the chain of circumstantial evidence for suicide. This can be outdone by including some more steps in the existing training in an effort to lessen the influence of biases while delivering judgements.

If all these steps are taken, a systemic process will be present for providing justice to the innocent correctly in cases of circumstantial evidence and we will not see cases like *BarunChandra Thakur v. CBI* or the ArushiTalvar murder where the actual murder could not be acquired but innocent people get punished.

⁶¹*Ibid*, 40.