

BHARATIYA SAKSHYA **ADHINIYAM, 2023**



DETAILED DESCRIPTON

<u>Topics</u>	<u>Description</u>
<u>Introduction</u>	<p>Bharatiya Sakshya Adhiniyam, 2023</p> <p>Bharatiya Sakshya Adhiniyam is a new legislation enacted by the Parliament of India to replace the previous Indian Evidence Act, 1872.</p> <p>It came into force on 1st July 2024.</p> <p>It contains 170 sections divided into 4 parts and 12 chapters.</p> <p>It applies to both civil and criminal proceedings.</p> <p>The "Law of Evidence" may be defined as a system of rules for <u>ascertaining controverted questions of fact</u> in judicial inquiries.</p> <p>Bharatiya Sakshya Adhiniyam extends to the whole of India and <i>applies to all judicial proceedings in or before any Court, including Court-martial.</i></p> <p>But, the Act is NOT applicable to:</p> <ul style="list-style-type: none"> • Affidavits presented to any Court or officer, • proceedings before an arbitrator. <p>Section 2(2): Words and expressions used herein and not defined but defined in the Information Technology Act, 2000, the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Bharatiya Nyaya Sanhita, 2023 shall have the same meanings as assigned to them in the said Act and Sanhitas.</p>
<u>Judicial Proceedings</u>	<p>The Bharatiya Sakshya Adhiniyam, 2023 does not define the term "judicial proceedings" but it is inclusively defined under Section 2(1)(m) of the Bharatiya Nagarik Suraksha Sanhita, 2023 as <i>"any proceeding in the course of which evidence is or may be legally taken on oath"</i>.</p>

<p><u>Evidence</u></p>	<p>The term evidence is defined under Section 2(1)(e) as follows:</p> <p>“Evidence” means and includes:</p> <p>(i) any statements including statements given electronically which the Court permits or requires to be made before it by witnesses, in relation to <u>matters of fact under inquiry</u>; such statements are called ORAL EVIDENCE;</p> <p>(ii) all documents including electronic or digital records produced for the inspection of the Court; such documents are called DOCUMENTARY EVIDENCE.</p> <p>The word evidence signifies only the instruments:</p> <ul style="list-style-type: none"> • by means of which <u>relevant facts</u> are brought before the Court, viz., witnesses and documents, and • by means of which the court is <u>convinced</u> of these facts. <p>In general, the <u>rules of evidence</u> are same in CIVIL AND CRIMINAL PROCEEDINGS but there is a strong and marked difference as to <u>the effect of evidence</u> in civil and criminal proceedings.</p> <p>In other words, in civil proceedings it is sufficient if the evidence shows that in all probability the accused would have committed the wrong; but in criminal proceedings, EVIDENCES MUST SHOW BEYOND ALL DOUBTS that the <u>accused alone would have committed the crime</u>.</p>
<p><u>Fact</u></p>	<p>According to Section 2(1)(f), "fact" means and includes:</p> <p>(a) anything, state of things, or relation of things capable of being perceived by the senses;</p> <p>(b) any mental condition of which any person is conscious.</p> <p>Thus, facts are classified into physical and psychological facts.</p> <p><u>Illustrations</u></p> <p>a) That there are certain objects arranged in a certain order in a certain place, is a fact.</p> <p>b) That a person heard or saw something, is a fact.</p> <p>c) That a person said certain words, is a fact.</p> <p>d) That a person holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact</p>

	<p>Illustrations (a), (b) and (c) are the examples of physical facts; whereas the illustration (d) is the examples of psychological facts.</p>
<p>Facts in issue and Relevant facts</p>	<p>As per Section 3, in any suit or proceeding, evidence may be given of the existence or non-existence of –</p> <p>(i) fact in issue, and</p> <p>(ii) of such other facts as are hereinafter declared to be relevant facts which are associated with (core) facts in issue [S. 4-50],</p> <p>and of no other facts.</p> <p>The EXPLANATION appended to Section 3, however, makes it clear that this section shall not enable any person to give <u>evidence of a fact</u> to which he is disentitled to prove by any provision of the law relating to civil procedure.</p> <p>Facts in issue</p> <p>According to Section 2(1)(g) the expression "facts in issue" means and includes - any fact from which (either singly or jointly in connection with other facts) the existence, non-existence, nature or extent of any right, liability, or disability, <u>ASSERTED OR DENIED</u> in any suit, necessarily arises and upon which a decision must be arrived at.</p> <p>Explanation - Whenever, any Civil Court records AN ISSUE OF FACT, the fact to be asserted or denied in the answer to such issue - is a fact in issue.</p> <p>Illustration 1</p> <p>"A" is accused of the murder of "B". At his trial the following facts may be in issue:</p> <p>(i) that A caused B's death; (ii) that A intended to cause B's death; (iii) that A had received grave and sudden provocation from B; (iv) that A at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.</p> <p>Illustration 2</p> <p>'A' is tried for the murder of 'B' by beating him <u>with a club</u> with the intention of causing his death.</p> <p>At A's trial the following facts are in issue:-</p> <p>1. A's beating B with the club;</p>

2. A's causing B's death by such beating;
3. **A's intention** to cause B's death.

Relevant Fact: Section 2(1)(k)

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 Adhiniyam**" relating to the relevancy of facts.* [Refer section 4 to 50 for legally relevant facts].

Where **in a case direct evidence is not available** to prove a fact in issue, **then** it may be proved by **any circumstantial evidence** and in such a case every piece of circumstantial evidence would be an instance of a "relevant fact".

Logical relevancy and legal relevancy

A fact may either be logically relevant or legally relevant.

Where a fact bears such **casual relation** to the other that it renders **probable** its existence or non-existence, it is said to be a **logically relevant** fact.

For instance, where it is to be determined whether A has placed the murder weapon in the field or not, the fact that B saw A walking towards the field with the murder weapon is relevant.

The Adhiniyam recognizes some of the kinds of causal relations. Thus, those kinds of causal relations which are **recognized by law** are known as **legally relevant** fact.

All facts logically relevant **are not**, however, legally relevant.

Relevancy under the Adhiniyam is not a question of pure logic, but a question of law.

Any fact, however logically relevant, is **NOT** receivable in evidence **unless** it is declared by the Act, to be **relevant legally u/s 4 to 50**.

For instance, an accused gives the following statement- "I have kept in the field the knife with which I killed A." While the statement may be logically relevant to establish the guilt of the accused, its legal relevancy extends to only so far as it confirms the fact that the accused had kept the knife in the field. This is so because proviso to section 23(2) of the BSA clearly lays down that only that part of the information may be proved which clearly relates to the fact thereby discovered.

	<div data-bbox="496 233 1390 474" style="border: 1px solid black; padding: 10px; text-align: center;"> <p><i>Every fact legally relevant will be found to be logically relevant; but every fact logically relevant is not necessarily legally relevant under the Act, because common sense or logical relevancy <u>is wider than</u> legal relevancy.</i></p> </div> <p><u>Legal relevancy and admissibility</u></p> <p>Relevancy and admissibility are not co-extensive or interchangeable terms.</p> <p>A fact may be legally relevant, yet its reception in evidence may be prohibited on the grounds of public policy, or on some other ground. [Sec. 127 to 132]</p> <p><u>Facts in issue and issues of fact</u></p> <p>Under CPC; the Court HAS TO FRAME ISSUES in accordance with legal provisions on all disputed facts which are necessary in the case. These are called issues of fact but the subject matter of an issue of fact is always a fact in issue.</p> <p>Thus, when described in the context of Civil Procedure Code, it is an 'Issue of fact'. And, when described in the language of this Adhiniyam it is a 'fact in issue'.</p>
<p><u>Classification Of Legally Relevant Facts</u></p>	<p>Legally Relevant Facts may be classified in the following form:</p>

	<p>Legally Relevant Facts Classifications</p> <p>Facts connected with the facts to be proved (closely connected facts); (Sections 4 to 14)</p> <hr/> <p>Statement about the facts e.g. admission, confession; (Sections 15 to 25)</p> <hr/> <p>Statements by persons who cannot be called as witnesses; (Section. 26 & 27)</p> <hr/> <p>Statements made under special circumstances; (Sections 28 to 32)</p> <hr/> <p>How much of a statement is to be proved; (Section 33)</p> <hr/> <p>Judgements of Courts of justice, when relevant; (Sections 34 to 38)</p> <hr/> <p>Opinions of third persons when relevant; (Sections 39 to 45)</p> <hr/> <p>Character of parties in Civil cases / criminal cases. (Sections 46 to 50)</p> <hr/>
<p><u>Facts connected with the facts to be proved</u></p> <p>[Closely connected Facts]</p>	<p>The facts coming under this category are as follows:</p> <p>1. <u>RES GESTAE (Section 4)</u></p> <p><i>Res gestae</i> are those facts which are themselves not in issue, but <i>are so connected with a fact in issue as to form part of the same transaction.</i></p> <p>It include all the acts or declarations accompanying the transaction or the facts in issue, and are admitted as evidence.</p> <p><u>Illustration 1</u></p> <p>A is accused of the murder of B by beating him. Whatever was said or done by A or B or by the by-standers at the time of beating, or so shortly before or after it will form the part of the transaction, and is a relevant fact. <i>The word 'by-standers' means the persons who are present at the time of the beating and not the persons who gather on the spot after the beating.</i></p> <p><u>Illustration 2</u></p> <p>A is accused of waging war against the Government of India by taking part in an armed insurrection in which property is destroyed, troops are attacked and jails are broken open. The occurrence of these facts is relevant, as forming part of the</p>

general transaction, though A may not have been present at all of them.

Illustration 3

The question is, whether certain goods ordered from **B** were delivered to **A**. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

The essence of the doctrine of res gestae is that - the facts which, **though not in issue** are so connected with the fact in issue, **so as to form part of the same transaction** and thereby become relevant like fact in issue.

2. Facts which are occasion, cause or effect of facts in issue or relevant facts (Section 5):

Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, **are relevant**.

Illustration - The question is **whether** A robbed B? -

The facts that, shortly before the robbery, **B went to a bank with money in his possession**, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

*The above transaction provides that, **though facts given are not part of the same transaction**, still they are relevant facts if they have **resulted in** the occasions caused or in facts of an issue.*

3. Motive, preparation and previous or subsequent conduct. (Section 6)

As per section 6 of the BSA, 2023, the motive with which a person commits a certain act or the preparation which he makes towards the commission of the act is a relevant fact. The question of motive and preparation is important in cases which purely rely on circumstantial evidence.

MOTIVE

Motive means the **emotion** which moves a person to act in a particular way. It is the **moving power** which impels a person to do a wrongful act. **Motive by itself is not a crime.**

The **substantive law** is rarely concerned with motive, **but** the existence of a motive, from the **point of view of investigation** would be a relevant fact, in every criminal case. **That is the first step in every investigation.**

Motive is a psychological fact and the accused's motive, *will have to be **proved** by circumstantial evidence.*

PREPARATION

Preparation by itself is not a crime. When the question is as to whether a person did a particular wrongful act, **the fact that he made preparations to do it**, would **certainly be relevant** for the purpose of showing that he did it.

CONDUCT

Conduct includes – (i) attempt to commit the crime, and (ii) actual commission of crime. Conduct means behaviour. The conduct of the parties is relevant.

The conduct to be relevant **must be closely connected with-**

- (a) the suit, proceeding, or
- (b) a fact in issue, or
- (c) a relevant fact,

i.e., if the Court believes such **conduct** to exist, it must assist the Court in coming to a conclusion on the matter in controversy. It must influence the decision.

The conduct may be previous to **or** subsequent to the happening of **the fact** in issue.

Illustrations

- i. **A is tried for the murder of B - The facts that** A murdered C, and that B knew that A had murdered C, and that B had tried **to extort money** from A by threatening to make his knowledge public, **are relevant.**
- ii. **A sues B** upon a bond for the payment of money. B denies the making of the bond. The **fact** that, at the time when the bond was alleged to be made, B required money for a particular purpose, **is relevant.**
- iii. A is tried for the murder of B by poison. The fact that, before the death of B, A procured poison similar to that which was administered to B, **is relevant.**
- iv. **The question is, whether A robbed B - The facts that**, after B was robbed; C said in A's presence - "the police is coming to look for the man who robbed B", and that immediately afterwards A ran away, **are relevant.**

- v. A is accused of a crime. The facts that, **after the commission of the alleged crime**, A absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, **are relevant**.

4. Facts necessary to **explain or introduce** relevant facts (Section 7)

As per **Section 7**, such facts are -

- (a) which are **necessary to explain or introduce a fact in issue or relevant fact**, or
- (b) which **support or negate** anything suggested by a fact in issue or relevant fact, or
- (c) which **establish the identity of a person** whose identity is relevant, **or fix the time or place** at which any fact in issue a relevant fact happened, or
- (d) which **show the relation of parties** by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations

- i. A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to, A - "I am leaving you because B has made me a better offer". **This statement is a relevant fact as explaining C's conduct**, which is relevant as a fact in issue.
- ii. **A is tried for a riot** and is proved to have marched at the head of a mob. The **cries** of the mob are relevant **as explanatory of the nature of the transaction**.

5. Things **said or done by conspirator** in reference to common design (Section 8)

Where there is reasonable ground to believe that **two or more persons** have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, **after the time when such intention was first entertained by any one of them**, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence

of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the State.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Kolkata for a like object, D persuaded persons to join the conspiracy in Mumbai, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Singapore the money which C had collected at Kolkata, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

6. When facts not otherwise relevant become relevant (Section 9)

Facts not otherwise relevant are relevant—

1. if they are inconsistent with any fact in issue or relevant fact;
2. if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustration

(a) The question is, whether A committed a crime at Chennai on a certain day. The fact that, on that day, A was at Ladakh is relevant. The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b) The question is, whether A committed a crime. The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else, and that it was not committed by either B, C or D, is relevant.

7. Facts tending to enable Court to determine amount are relevant in suits for damages (Section 10)

In suits in which damages are claimed, any fact which will enable the Court to determine the **amount of damages** which ought to be awarded, is relevant.

8. Facts relevant when right or custom is in question (Section 11)

Where the question is as to the existence of any **right or custom**, the following facts are relevant—

- (a) any transaction by which the right or custom in question was created, claimed, modified, recognised, asserted or denied, or which was inconsistent with its existence;
- (b) particular instances in which the right or custom was claimed, recognised or exercised, or in which its exercise was disputed, asserted or departed from.

Illustration

The question is, whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts

9. Facts showing existence of **state of mind, or of body or bodily feeling** (Section 12):

Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

Illustrations

- (a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article. The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.
- (b) A sues B for damage done by a dog of B's, which B knew to be ferocious. The fact that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.
- (c) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss. The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(d) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(e) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

10. Facts bearing on question whether act was accidental or intentional (Section 13)

When there is a question whether an **act was accidental or intentional, or done with a particular knowledge or intention**, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustration

(a) A is accused of burning down his house in order to obtain money for which it is insured. The facts that A lived in several houses successively each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance company, are relevant, as tending to show that the fires were not accidental.

(b) A is accused of fraudulently delivering to B a counterfeit currency. The question is, whether the delivery of the currency was accidental. The facts that, soon before or soon after the delivery to B, A delivered counterfeit currency to C, D and E are relevant, as showing that the delivery to B was not accidental.

11. Existence of course of business when relevant (Section 14)

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.

Illustration

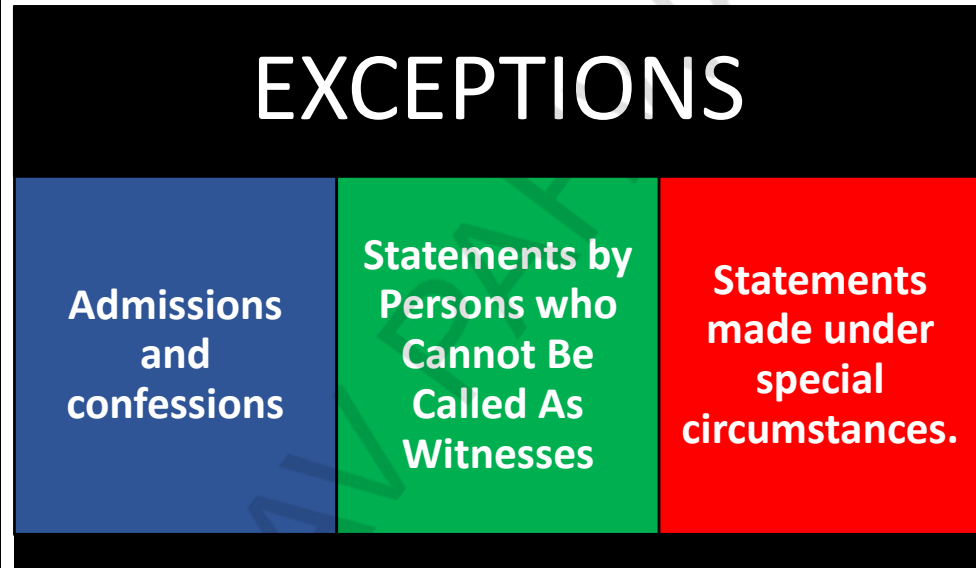
(a) The question is, whether a particular letter was dispatched. The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that particular letter was put in that place are relevant.

(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 Return Letter Office, are relevant.

**Statements
about the
Facts To Be
Proved**

The **general rule** known as **the HEARSAY RULE** is that **what is stated about the fact in question is irrelevant.**

To this general rule, there are **three exceptions** which are:



1. ADMISSIONS AND CONFESSIONS

Sections 15 to 25 lay down the first exception to the general rule known as admissions and confessions.

→ Admissions: [Section 15]

An admission is defined under section 15 as a **statement, oral or documentary or contained in electronic form** which **suggests any inference/opinion** as to *any fact in issue or relevant fact*, and which is made **by any of the persons**, and under the circumstances **mentioned under Sections 16 to 18.**

Thus, whether a statement amounts to an admission or not depends upon the question **whether it was made** by any of the persons and in any of the CIRCUMSTANCES described in Sections 16 to 18; **and whether it suggests an inference/opinion** as to a fact in issue or a relevant fact in the case.

Admission may be made by

(i)
a party to
the
proceeding

(ii)
the agent
authorized
by such
party

(iii)
predecessor-in-interest
of a party

(iv)
by a
person
having joint
propriety of
pecuniary
interest in
the subject
matter
(Sec. 16)

(v)
by a
“reference”
(Sec. 18)

Admission by **persons expressly referred** to by party to suit
(Sec. 18)

Statements made by persons to whom a party to the suit has expressly referred *for information in reference to a matter* in dispute are admissions.

Illustration

The question is, whether a horse sold by **A to B** is sound or not. A says to B **“Go and ask C”**. C knows all about it” C’s statement is an admission.

- ❖ An admission is the **best evidence against the party making the same**; *UNLESS it is untrue and made under the circumstances* which does not make it binding on him.
- ❖ An admission by the **Government** is **merely relevant and non-conclusive**, *UNLESS* the **other party** to whom they are made has **acted** upon and thus altered to his **detriment**.
- ❖ All the **statements/admissions** made in the **plaint**, are admissible as evidence. The Court is, however, **not bound** to accept all the statements/admissions **as correct**. The Court may accept some of the statements and reject the rest.
- ❖ Admission means **conceding something against the person** making the admission.

	<p>❖ That is why it is stated AS A GENERAL RULE (the exceptions are in Section 19), that admissions must be self-harming; and because a person is unlikely to make a statement which is self-harming.</p> <p>➔ CONFESSIONS:</p> <p>Sections 22 to 24 deal with confessions. However, the Act does not define a confession, but includes in it admissions of which it is a species. Thus, <u>confessions are special form of admissions</u>.</p> <p>Whereas <i>every confession must be an admission</i> but <i>every admission may not amount to a confession</i>.</p> <p>Proviso to section 23 and section 24 deal with confessions which the Court will take into account.</p> <p><u>A confession is NOT relevant as an admission, IF it is made:</u></p> <ol style="list-style-type: none"> to a person in authority in consequence of some inducement, threat or promise held out by him in reference to the charge against accused; or to a Police Officer; or to any one at a time when the accused is in the custody of a Police Officer and no Magistrate is present. <p>The confession is evidence only against -</p> <ol style="list-style-type: none"> its maker, and against another person who is being jointly tried with him for an offence (i.e. co-accused). <p>The confession made in front of magistrate in a NATIVE STATE / COUNTRY recorded is admissible against its maker is also admissible against co-accused under Section 24.</p> <p>➔ As per Section 22, confession caused by <u>inducement, threat or promise</u> is irrelevant.</p> <p>To attract the prohibition contained in Section 22 of the BSA the following six facts must be established:</p> <ol style="list-style-type: none"> that the <u>statement in question is a confession</u>; and that such confession has been made by an accused person; and that it has been made to a person in authority; and that the confession has been obtained by reason of any
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	<p>INDUCEMENT, THREAT, COERCION OR PROMISE proceeded from a person in authority; and</p> <p>e) such inducement, threat or promise, must have reference to the charge against the accused person; and</p> <p>f) the inducement, threat or promise must in the opinion of the Court be sufficient to give the accused person grounds, which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.</p> <p>To exclude the confession it is not always necessary to prove that it was the result of inducement, threat or promise. <u>It is sufficient if a legitimate doubt is created in the mind of the Court</u> or it appears to the Court that the confession was not voluntary. <u>BURDEN OF PROOF</u> is on the accused to create this doubt and not for the prosecution to prove that it was voluntarily made.</p> <p>➔ Confessions are classified as:</p> <p>(i) Judicial confession, and</p> <p>(ii) Extra-judicial confession.</p> <p>Judicial confessions are those made before a Court or recorded by a Magistrate under Section 183 of the BNSS, 2023 after following the prescribed procedure such as warning the accused that he need not to make the confession and that if he made it, it would be used against him.</p> <p>Extra-judicial confessions are those which are made either to the police or to any person other than Judges and Magistrates as such.</p> <p>An extra-judicial confession, if voluntary, can be relied upon by the Court along with other evidence. It will have to be proved just like any other fact. The value of the evidence depends upon the truthfulness of the witness to whom it is made.</p> <div style="border: 1px solid black; padding: 5px;"> <p>In Ram Khilari v. State of Rajasthan, AIR 1999 SC 1002, the Supreme Court held that where an extra-judicial confession was made before a witness who was a close relative of the accused and the testimony of said witness was reliable and truthful, the conviction on the basis of extra judicial confession is proper.</p> </div>
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Admission v. Confession

S. No.	ADMISSION	CONFESSION
1.	It can take place in civil as well as criminal cases.	It can take place in criminal cases only .
2.	An admission may be without direct acknowledgement of liability.	It is direct acknowledgment of guilt on the part of the accused.
3.	It can be made by anyone including witness.	It can be made by accused only .
4.	It need not be a voluntary statement.	It must be a voluntary statement .
5.	It can be made before anyone.	To be a judicial confession , it must be made only before Magistrate .
6.	Admission made by an agent will bind the principal.	It will bind only the maker unless it is case of co-accused .
7.	All the admissions are not confession.	All the confessions are basically admissions.

2. STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES (Section 26)

Statements (written or verbal) of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases, namely:

- i. When it relates to cause of his death, or
- ii. is made in the course of business, or
- iii. is made against the interest of the maker, or
- iv. gives an opinion as to public right or custom, or matters of general interest, or
- v. relates to the existence of a relationship, or
- vi. is made in will or deed relating to family affairs, or

	<p>vii. in document relating to transaction mentioned in section 11, clause (a), or</p> <p>viii. is made by several persons and expresses feelings relevant to a matter in question.”</p> <p><u>Illustrations</u> – Refer ICSI module</p> <p><u>3. STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES</u></p> <p>The following statements become relevant on account of their having been made under special circumstances:</p> <p>(a) Entries made in books of account, including those maintained in an electronic form regularly kept in the course of business. Such entries, though relevant, cannot, alone, be sufficient to charge a person with liability; (Section 28)</p> <p>(b) Entries made in public or official records or an <i>electronic record</i> made by a public servant in the discharge of his official duties, or by any other person in performance of a duty specially enjoined by the law; (Section 29)</p> <p>(c) Statements made in published maps or charts generally offered for the public sale, or in maps or plans made under the authority of the Central Government or any State government; (Section 30)</p> <p>(d) Statement as to fact of public nature contained in certain Acts or notification; (Section 31)</p> <p>(e) Statement as to any foreign law contained in books purporting to be printed or published <u>including in electronic or digital form</u> by the Government of the foreign country, or in reports of decisions of that country. (Section 32)</p>
<u>How much of a statement is to be proved</u>	<p>When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or is contained in part of electronic record or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, <i>electronic record</i>, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement and of the circumstances under which it was made. (Section 33)</p>

<u>Opinion of Third Persons Are Relevant</u>	<p>As a general rule, the opinions of a third person's are irrelevant in evidence law. They form a part of “res inter alios acta” which means any act done between two persons does not harm or benefit others. But Sections 39 to 45 deal with the cases when the opinions of third parties become relevant.</p> <p>However, there are some exceptions to this general rule.</p> <p>1. Opinion of Experts (Section 39)</p> <p>According to Section 39(1), there are 5 situations when the opinion of third parties can become relevant. They are matters regarding –</p> <ul style="list-style-type: none"> (a) Foreign law- Many times there are foreign laws which come in to question (b) Science- All the tests that are performed on the basis of scientifically established principle. (c) Arts- For example, expert evidence of historians is to be taken to show a work of art belongs to Hindus or Muslims or any other religion. (d) Handwriting- In cases of forgery. Handwriting evidence comes into question. Under section 73 court itself can check handwriting. Under section 47 expert evidence with regard to handwriting can be taken. (e) Finger impressions- Science of fingerprints were first developed in Kolkata. In 1897 the first fingerprints bureau of the world was first set up. Since then there has been tremendous improvement in the science of finger impressions in the world. <p>In these scenarios the opinions of experts in the relevant matter will be relevant in the case and the court can form an opinion based on the opinion of those experts.</p> <p><u>Illustrations</u></p> <ul style="list-style-type: none"> ▪ If the question in the court is that if ‘A’ was killed by poison or not then the evidence was given by a specialist or expert of the symptoms will be relevant. ▪ If the question before the court is whether a certain document is written by ‘A’ or not and another document is produced before the court and is proved or admitted to be written by ‘A’ then the opinion of experts on whether the two documents are written by the same person or not will be relevant. <p>Section 39(2) states that when in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to</p>
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in section 79A of the Information Technology Act, 2000, is a relevant fact.

Explanation: For the purposes of this sub-section, an Examiner of Electronic Evidence shall be an expert.

2. Facts which support or are inconsistent with the opinions of experts are also made relevant. (Section 40)

Illustration

In a case where the handwriting of a person is in question and the court has to determine as to if the accused has written a certain document or not and the handwriting expert has already given his opinion and said that the document in question is actually written by the accused, then, in this case, a letter proved to be written by the accused will be relevant if it can support or contradict the expert opinion, even if it has got no connection with the case.

3. Others: In addition to the opinions of experts, OPINION of any other person is also relevant in the following cases:-

- (a) Opinion as to the handwriting of a person **if the person** giving the opinion is **acquainted with the handwriting** of the person in question; [Section 41(1)]
- (b) opinion as to the electronic signature of any person, the opinion of the **Certifying Authority** which has issued the **Electronic Signature Certificate** is a relevant fact. [Section 41(2)]
- (c) Opinion as to the existence of any general **right or custom** if the **person** giving the opinion is likely to be aware of the existence of such right or custom; (Section 42)
- (d) Opinion as to **usages etc. of words** and terms used in particular districts, if the person has special means of knowledge on the subject; (Section 43)
- (e) Opinion expressed by conduct as the **existence of any relationship by persons** having special means of knowledge on the subject. (Section 44)

	<p>Section 45: <u>Grounds of opinion when relevant</u></p> <p>It says that whenever opinion of a living person becomes relevant then the grounds on which his opinion is based also becomes relevant.</p> <p><u>Illustration</u></p> <p>If an expert is giving his opinion on something then all those experiments performed by him because of which he reached that opinion also becomes relevant.</p>
<u>(Witnesses)</u>	<p><u>WHO MAY TESTIFY?</u></p> <p>All persons <u>shall</u> be competent to testify (give evidence) <u>unless</u> the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions,</p> <ol style="list-style-type: none"> i. by tender years, ii. extreme old age, iii. disease, whether of body or mind, or iv. any other cause of the same kind. <p>Explanation: A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.</p> <p><u>WITNESS UNABLE TO COMMUNICATE</u></p> <p>A witness who is unable to speak may give his evidence in any other manner. The requirement is that he should make it intelligible such as by writing or by signs. However, such writing must be written and the signs made in open Court. The evidence so given shall be <u>deemed to be oral evidence</u>. Also, if the witness is unable to communicate verbally, the Court shall take the <u>assistance of an interpreter or a special educator</u> in recording the statement, and such statement shall be video graphed.</p> <p><u>SPOUSE AS A WITNESS</u></p> <p>In civil proceedings, the <u>spouse of the parties</u> is a competent witness. They may testify in favour or in against. In criminal proceedings against any person, the spouse may give evidence. However, these provisions are subject to section 128 of the BSA, 2023.</p>

<p>Facts Of Which Evidence Cannot Be Given (Privileged Communications)</p>	<p>There are some facts of which evidence cannot be given though they are relevant, such as facts are mainly covered under Sections 127 to 134 of the BSA, where evidence is prohibited under those Sections. They are also referred to as <u>privileged communications</u>.</p> <p>Privileged communication is the communication between individuals who are in a protected relationship by the virtue of which, the details of their communication cannot be disclosed.</p> <p>To qualify as privileged communication, there are certain conditions that need to be fulfilled. These are:</p> <ul style="list-style-type: none"> ➤ The communication should take place between individuals who are in a protected relationship, and ➤ The communication should happen in a private setting, and ➤ The information communicated should not be disclosed to a third party. <p>A witness though compellable to give evidence is privileged in respect of particular matters within the limits of which he is not bound to answer questions while giving evidence. These are based on PUBLIC POLICY and are as follows:</p> <ul style="list-style-type: none"> (a) Evidence of a Judge or Magistrate in regard to certain matters; (Section 127) (b) Communications during marriage; (Section 128) (c) Affairs of State; (Section 129) (d) Official communications; (Section 130) (e) Source of information of a Magistrate or Police officer or Revenue officer as to commission of an offence or crime; (Section 131) (f) In the case of professional communication between a client and his advocate or other professional or legal advisor (Sections 132 to 134). But, this privilege is not absolute and the client is entitled to waive it. <p>Section 128: <u>Spousal Communication</u></p> <p>Communication between the husband and the wife DURING MARRIAGE is privileged and its disclosure cannot be enforced. This provision is based on the principle of domestic peace and confidence between the spouses. The Section contains two parts; the first part deals with the privilege of the witness while the second part of the Section deals with the privilege of the husband or wife of</p>
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	<p>the witness.</p> <p>Section 129: Evidence as to affairs of State</p> <p>It applies only to evidence derived from unpublished official record relating to affairs of State. According to Section 129, no one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.</p> <p>Section 132 to 134: Professional communications</p> <p>Section 132 to 134 deal with the professional communications between a legal adviser and a client, which are protected from disclosure. A client cannot be compelled and a legal adviser cannot be allowed without the express consent of his client to disclose oral or documentary communications passing between them in professional confidence.</p> <p>The rule is founded on the impossibility of conducting legal business without professional assistance and securing full and unreserved communication between the two.</p> <p>Under Sections 132 neither a legal adviser i.e. an Advocate [Section 132(1)] nor his interpreter, clerk or servant [Section 132(3)] can be permitted to disclose any communication made to him in the course and for the purpose of professional service of such legal adviser or to state the contents or condition of any document with which any such person has become acquainted in the course and for the purpose of such employment.</p> <p>In general, it is not open to a party to test the credit or impeach the “truthfulness of a witness” offered by him. But, the Court can IN ITS DISCRETION ALLOW a party to cross examine his witness” if the witness unexpectedly turns hostile. (Section 157).</p>
<u>Oral Evidences</u>	<p>All facts, except the contents of documents may be proved by oral evidence (Section 54).</p> <p>The contents of documents may be proved either by primary or by secondary evidence (Section 55).</p> <p>Thus, the two broad rules regarding oral evidence are:</p> <ul style="list-style-type: none"> (i) All facts except the contents of documents may be proved by oral evidence; (ii) Oral evidence must in all cases be “direct”.

	<p>Oral evidence means statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry. But, if a witness is unable to speak he may give his evidence in any manner in which he can make it intelligible as by writing or by signs. (Section 125)</p>
<u>Direct Evidence</u>	<p>In Section 55 of the BSA, 2023 expression “oral evidence” has an altogether different meaning. It is used in the sense of “original evidence” as <u>distinguished from</u> “hearsay” evidence and it is <u>not used in contradiction</u> to “circumstantial” or “presumptive evidence”.</p> <p>According to Section 55 oral evidence must in all cases whatever, be direct; that is to say: —</p> <ul style="list-style-type: none"> • if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it; • if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it; • if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner; • if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds. <p>Thus, if the fact to be proved is one that could be seen, the person who saw the fact must appear in the Court to depose it, and if the fact to be proved is one that could be heard, the person who heard it must appear in the Court to depose before it and so on.</p> <p>In defining the direct evidence in Section 55, the Act impliedly enacts what is called the rule against hearsay. Since the evidence as to a fact which could be seen, by a person <i>who did not see it</i>, is not direct but hearsay and so is the evidence as to a statement, by a person who did hear it.</p>
<u>Documentary Evidence</u>	<p>According to section 2(1)(d), “document” means any matter <u>expressed or described or otherwise recorded</u> upon any <u>substance</u> by means of letters, figures or marks or any other means or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter and includes <u>electronic and digital records</u>.</p> <p>Section 56: This section states that if a document is produced before a court, it may either be produced by-</p> <ul style="list-style-type: none"> (i) primary evidence, or (ii) secondary evidence.

Primary evidence (Section 57)

Primary evidence means that the **original document** is itself presented before the court.

- Where the document is executed in several parts, each part is primary evidence of the document.
- Where a document is executed in counterparts, each counterpart is primary evidence against the party signing it.
- Where an electronic or digital record is created or stored, and such storage occurs simultaneously or sequentially in multiple files, each such file is primary evidence.
- Where an electronic or digital record is produced from proper custody, such electronic and digital record is primary evidence unless it is disputed.
- Where a video recording is simultaneously stored in electronic form and transmitted or broadcast or transferred to another, each of the stored recordings is primary evidence.
- Where an electronic or digital record is stored in multiple storage spaces in a computer resource, each such automated storage, including temporary files, is primary evidence.

Secondary evidence (Section 58)

Secondary evidence is generally in the form of compared copies, certified copies or copies made by such mechanical processes as in themselves ensure accuracy. Section 58 defines the kind of secondary evidence permitted by the Act. According to Section 63, "**secondary evidence**" includes -

- (1) **certified copies** given under the provisions hereafter contained;
- (2) copies made from the original **by mechanical processes** which in themselves **ensure** the accuracy of the copy, and copies compared with such copies;
- (3) copies made from or **compared** with the original;
- (4) **counterparts of documents** as against the parties who did not execute them;
- (5) **oral accounts of the contents** of a document given by some person who has himself seen it;
- (6) oral admissions;
- (7) written admissions;

(8) evidence of a person who has examined a document, the original of which consists of numerous accounts or other documents which cannot conveniently be examined in Court, and who is skilled in the examination of such documents.

Illustrations

(a) A photograph of an original is **secondary evidence** of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy compared with a copy of a letter made by a **copying machine** is **secondary evidence** of the contents of the letter if it is shown that the copy made by the copying machine was made from the original.

Section 59: Documents must be proved by the Primary evidence except in certain cases provided in section 60.

Section 60: Cases where secondary evidence can be given

It stipulates the cases / situations in which **secondary evidence relating to documents may be given**. As already stated documents must be proved by Primary evidence but in certain cases for example, where the document is lost or destroyed or the original is of such a nature as not to be easily movable, or consists of numerous documents, or is a public document or under some law by a certified copy, the existence, condition or contents of the document may be proved by secondary evidence.

Special Provisions as to Evidence Relating to Electronic Record:

Section 62 provides that the contents of electronic records may be proved in accordance with the provisions of Section 63.

Under Section **63(1)**, any information contained in an **electronic record** which is printed on a paper, stored, recorded or copied in optical or magnetic media or semiconductor memory which is produced by a computer or any communication device or otherwise stored, recorded or copied in any electronic form (hereinafter referred to as the computer output) **shall be DEEMED to be also a document, if the conditions mentioned in this section are satisfied** in relation to the information and computer in question and shall be admissible in any proceedings, **without further proof** or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible. The conditions in respect of a computer output related above, have been stipulated under Section 63 (2) of the BSA, 2023.

<p><u>Circumstantial Evidence</u></p>	<p>In English law the expression direct evidence is used to signify evidence relating to the 'fact in issue' (<i>factum probandum</i>) whereas the terms circumstantial evidence, presumptive evidence and indirect evidence are used to signify evidence which relates only to "relevant fact" (<i>facta probandum</i>). However, under Section 55 of the BSA, 2023, the expression "direct evidence" has altogether a different meaning and it is not intended to exclude circumstantial evidence of things which could be seen, heard or felt.</p> <p>Thus, evidence whether direct or circumstantial under English law is "direct" evidence under Section 55.</p> <p>BEFORE acting on circumstances put forward are satisfactorily proved and whether the proved Circumstances are sufficient to bring the guilt to the accused <u>the Court should not view in isolation the circumstantial evidence but it must take an OVERALL VIEW of the matter.</u></p>
<p><u>Presumptions</u></p>	<p>The Act recognises some rules as to presumptions. Rules of presumption are <u>deduced</u> from enlightened human knowledge and experience and are drawn from the connection, relation and coincidence of facts and circumstances.</p> <p>A presumption is not in itself an evidence but only makes a prima facie case for the party in whose favour it exists.</p> <p>A presumption is a rule of law that courts or juries shall or may draw a particular inference/opinion from a particular fact or from particular evidence unless and <u>untill</u> the truth of such inference/opinion is <u>disproved</u>.</p> <p>There are three categories of presumptions:</p> <ul style="list-style-type: none"> (i) <u>Presumptions of LAW</u>, which is a rule of law that a particular inference shall be drawn by a court from particular circumstances. (ii) <u>Presumptions of FACT</u>, it is a rule of law that a fact otherwise doubtful may be inferred from a fact which is proved. (iii) <u>MIXED presumptions</u>, they consider mainly certain inferences between the presumptions of law and presumptions of fact. <p>The terms presumption of law and presumption of fact are not defined by the Act. Section 2 only refers to the terms "conclusive proof", "shall presume" and "may presume". The term "conclusive proof" specifies those presumptions which in English Law are called irrebuttable presumptions of law; the term "shall presume" indicates</p>

	<p>rebuttable presumptions of law; the term “may presume” indicates presumptions of fact.</p> <p><u>Illustration</u></p> <p>When we see a man knocked down by a speeding car and a few yards away, there is a car going, there is a presumption of fact that the car has knocked down the man.</p>
<u>Estoppel</u>	<p>The general rule of estoppel is when one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, <u>neither he nor his representative shall be allowed</u> in any suit or proceeding between himself and such person or his representative to deny the truth of that thing (Section 121).</p> <p><i>However, there is no estoppel against the Statute.</i> Where the Statute prescribes a particular way of doing something, it has to be done in that manner only. Other relevant Sections are Sections 116 and 117.</p> <p><u>PRINCIPLE OF ESTOPPEL</u></p> <ul style="list-style-type: none"> • Estoppel is based on the maxim '<i>allegans contraria non est audiendus</i>' i.e. a <u>person alleging contrary facts should not be heard.</u> The principles of estoppel cover one kind of facts. It says that man cannot approbate and reprobate, or that <u>a man cannot blow hot and cold,</u> OR <u>that a man shall not say one thing at one time and later on say a different thing.</u> • The doctrine of estoppel is based on the principle that it would be most inequitable and unjust that done person, by a representation made, or by conduct amounting to a representation, has induced another to act as he would not otherwise have done, the person who made the representation should not be allowed to deny or repudiate the effect of his former statement to the loss and injury of the person who acted on it. <i>Sarat Chunder v. Gopal Chunder 1892</i> <p><u>Illustration</u></p> <p>A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it.</p> <p>Here, the land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.</p> <ul style="list-style-type: none"> • It was laid down by the Privy Council in <i>Mohori Bibee v. Dharmodas Ghosh</i> that the rule of estoppel does not apply where

	<p>the statement is made to a person who knows the real facts represented and is not accordingly misled by it. The principle is that in such a case the conduct of the person seeking to invoke rule of estoppel is in no sense the effect of the representation made to him. The main determining element is not the effect of his representation or conduct as having induced another to act on the faith of such representation or conduct.</p> <ul style="list-style-type: none"> In <i>Biju Patnaik University of Tech. Orissa v. Sairam College</i>, one private university permitted to conduct special examination of students pursuing studies under one time approval policy. <p>After inspection, 67 students were permitted to appear in the examination and their results declared.</p> <p>However, university declined to issue degree certificates to the students on the ground that they had to appear for further examination for another condensed course as per syllabus of university.</p> <p>Court held that once students appeared in an examination and their results declared, the UNIVERSITY IS ESTOPPED from taking decision withholding degree certificate AFTER declaration of results.</p> <p><u>DIFFERENT KINDS OF ESTOPPEL</u></p> <ul style="list-style-type: none"> ➤ Estoppel by attestation ➤ Estoppel by Contract ➤ Constructive estoppel ➤ Estoppel by Election ➤ Equitable estoppel ➤ Estoppel by Negligence ➤ Estoppel by Silence.
<p><u>Electronic Evidence</u> (E-EVIDENCE)</p>	<p>The contents of electronic records may be proved in accordance with the provisions of section 63 of BSA.</p> <p><u>Admissibility of electronic records</u></p> <p>According to section 63, notwithstanding anything contained in this Adhiniyam, any information contained in an electronic record which is <u>printed on paper, stored, recorded or copied in optical or magnetic media or semiconductor memory which is produced by a computer or any communication device or otherwise stored, recorded or copied in any electronic form</u> (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in under <u>section 63(2)</u> are satisfied in relation</p>

to the information and computer in question and **shall be admissible in any proceedings**, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

As per **section 63(2)**, the **conditions** in respect of a computer output are as follows:

- (a) the computer output containing the information was produced by the computer or communication device during the period over which the computer or Communication device was used regularly to create, store or process information for the purposes of any activity regularly carried on over that period by the person having lawful control over the use of the computer or communication device;
- (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer or Communication device in the ordinary course of the said activities;
- (c) throughout the material part of the said period, the computer or communication device was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and
- (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer or Communication device in the ordinary course of the said activities.

Treatment of activity regularly carried on over a period by means of one or more computers or communication

Where over any period, the function of creating, storing or processing information for the purposes of any activity regularly carried on over that period as mentioned in section 63(2)(a) was regularly performed by means of one or more computers or communication device, whether—

- (a) in standalone mode; or
- (b) on a computer system; or
- (c) on a computer network; or
- (d) on a computer resource enabling information creation or providing information processing and storage; or (e) through an intermediary,

all the computers or communication devices used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer or communication device; and references in this section to a computer or communication device shall be construed accordingly.

Submission of certificate along with the electronic record

In any proceeding where it is desired to give a statement in evidence by virtue of this section, a **certificate** doing any of the following things shall be submitted along with the electronic record at each instance where it is being submitted for admission, namely:

- (a) identifying the electronic record containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer or a communication device referred to in clauses (a) to (e) of sub-section (3);
- (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person in charge of the computer or communication device or the management of the relevant activities (whichever is appropriate) and an expert shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it in the certificate specified in the Schedule.

Further, as per **section 66 of BSA**, except in the case of a secure electronic signature, if the electronic signature of any subscriber is alleged to have been affixed to an electronic record, the fact that such electronic signature is the electronic signature of the subscriber **must be proved**.