Chapter – 14

THE BHARATIYA SAKSHYA ADHINIYAM, 2023

Regulatory Framework

- THE BHARATIYA SAKSHYA ADHINIYAM, 2023

Introduction

Introduction THE BHARATIYA SAKSHYA ADHINIYAM, 2023 of Parliament received the assent of the President on the 25th December, 2023 and is hereby published for general information. It contains 170 sections. An Act to consolidate and to provide for general rules and principles of evidence for fair trial. It applies to all judicial proceedings in or before any Court, including Courts-martial, but not to affidavits presented to anyCourt or officer, nor to proceedings before an arbitrator. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

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[Section2(m)] Judicial Proceedings

The Bharatiya Sakshya Adhiniyam, 2023 does not define the term "judicial proceedings" but it is defined under Section 2(m) of the Bharatiya Nagarik Suraksha Sanhita,2023 as "a proceeding in the course of which evidence is or may be legally taken on oath".

However, the proceedings under the Income Tax are not "judicial proceedings" for the purpose of The Bharatiya Sakshya Adhiniyam,2023. That apart, the Adhiniyam is also not applicable to the proceedings before an arbitrator.

An affidavit is a declaration sworn or affirmed before a person competent to administer an oath. Thus, an affidavit per se does not become evidence in the suits but it can become evidence only by consent of the party or if specifically authorised by any provision of the law.

Meaning of Evidence as Section 2(e) of The Bharatiya Sakshya Adhiniyam,2023

Type of definition	The section uses the words "means and includes". It includes two type of evidences i.e. Oral Evidence and Documentary Evidence.
Oral Evidence	(i) all statements including statements given electronically which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry and such statements are called oral evidence
Documentary Evidence	(i) all documents including electronic or digital records produced for the inspection of the Court and such documents are called documentary evidence

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The word evidence in this Adhiniyam signifies only the instruments by means of which relevant facts are brought before the Court, viz., witnesses and documents, and by means of which the court is convinced of these facts.

Evidence under Section 2 of The Bharatiya Sakshya Adhiniyam,2023 may be either oral or personal (i.e. all statements which the Court permits or requires to be made before it by witnesses, and documentary (documents produced for the inspection of the court), which may be adduced in order to prove a certain fact (principal fact) which is in issue. There must be an open and visible connection between the principal fact and the evidentially facts. Facts which form part of the same transaction, though not in issue, place or at different times and places.

According to Section2(e) of The Bharatiya Sakshya Adhiniyam, 2023 , "evidence" means and includes— (i) all statements including statements given electronically which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry and such statements are called oral evidence; (ii) all documents including electronic or digital records produced for the inspection of the Court and such documents are called documentary evidence;

In general the rules of evidence are same in civil and criminal proceedings but there is a strong and marked difference as to the effect of evidence in civil and criminal proceedings. In the former a mere preponderance of probability due regard being had to the burden of proof, is sufficient basis of a decision, but in the latter, specially when the offence charged amounts to felony or treason, a much higher degree of assurance is required. The persuasion of guilt must

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amount to a moral certainty such as to be beyond all reasonable doubt.

Example

In civil cases, the principle "mere preponderance of probability" is sufficient basis of a decision. But in criminal cases, the principle "beyond all reasonable doubt" is required for taking decision.

Different Types of Evidence

1. Proof of facts by oral evidence: Section 54 provides that all facts, except the contents of documents may be proved by oral evidence. Further, section 55 mandates, Oral evidence must, in all cases whatever, be direct.

Example

A has seen that B has committed theft of the property of C. A tells Z that B has committed the theft. Oral evidence may be given by A, who himself has witnessed the commission of crime.

2. Proof of contents of document: Section 56 states that the contents of documents may be proved either by primary or by secondary evidence. Primary evidence means the document itself produced for the inspection of the Court.

Secondary evidence inter-alia includes certified copies, copies made from the original by mechanical processes, copies made from or compared, counterparts of documents as against the parties who did not execute them, oral accounts of the contents of a document., oral admissions , written admissions, and 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

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in Court, and who is skilled in the examination of such documents.

Section 59 states that documents must be proved by primary evidence except in the cases provided. Section 60 provides that the Secondary evidence may be given of the existence, condition, or contents of a document in the given cases.

3. Evidence relating to electronic record: The contents of electronic records may be proved in accordance with the provisions of section 63 which provides for law relating to Admissibility of electronic records.

Scheme of The Adhiniyam, Relevancy & Admissibility

The Act is divided into Four parts:

Part I

- Chapter I containing Section 1 to 2 deals with preliminary point

Part II

- Relevancy of facts is dealt with in Chapter II containing Sections 3 to 50.

Part III

- On proof (Chapters III to VI) containing Sections 51 to 103.

PART IV

- Production and effect of evidence (Chapters VII to Chapter XII) containing Sections 104 to 170.

Relevancy of Facts: Sections 3 to 50 of the Adhiniyam deal with relevancy of facts. A fact is also known as Factum Probans or a fact that proves. The

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question arises what then the term "fact" signifies?

Fact

According to Section 2(f), "fact" means and includes:

(a) anything, state of things, or relation of things capable of being perceived by the senses;

(b) any mental condition of which any person is conscious. Thus facts are classified into physical and psychological facts.

Illustrations

(a) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b) That a man heard or saw something, is a fact.

(c) That a man said certain words, is a fact.

(d) That a man 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 the specified time conscious of a particular sensation, is a fact.

(e) That a man has a certain reputation, is a fact.

Illustrations (a), (b) and (c), are the examples of physical facts whereas the illustrations (d) and (e) are the examples of psychological bids.

Evidence may be given of facts in issue and relevant facts.

According to Section 3, evidence may be given in any suit or proceeding of the existence or non existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

The Explanation appended to Section 3, however, makes it clear that this

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section shall not enable any person to give evidence of a fact to which he is disentitled to prove by any provision of the law.

Illustrations

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death. At A's trial the following facts are in issue:-

- A's beating B with the club;
- A's causing B's death by such beating;
- A's intention to cause B's death.

(b) A suitor does not bring with him and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

It is evident that only facts in issue and relevant facts may be given in evidence. To understand the relevancy it is necessary to know the meanings of the few terms. These terms are defined in Section 2. It is explained as follows:-

Relevant Fact

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. (Section 2(k))

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".

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Logical relevancy and legal relevancy

A fact is said to be logically relevant to another when it bears such casual relation with the other as to render probably the existence or non-existence of the latter. All facts logically relevant are not, however, legally relevant. Relevancy under the Act is not a question of pure logic but of law, as no fact, however logically relevant, is receivable in evidence unless it is declared by the Act to be relevant. Of course every fact legally relevant will be found to be logically relevant; but every fact logically relevant is not necessarily relevant under the Act as common sense or logical relevancy is wider than legal relevancy. A judge might in ordinary transaction, take one fact as evidence of another and act upon it himself, when in Court, he may rule that it was legally irrelevant. And he may exclude facts, although logically relevant, if they appear to him too remote to be really material to the issue.

Under The Bharatiya Sakshya Adhiniyam, 2023 ,Legal relevancy is to be considered as against logical relevancy.

Legal relevancy and admissibility

Relevancy and admissibility are not co-extensive or interchangeable terms. 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. Similarly every admissible fact is not necessarily relevant. The tenth Chapter of the Adhiniyam makes a number of facts receivable in evidence, but these facts are not "relevant" under the second Chapter which alone defines relevancy.

Relevancy and admissibility are not co-extensive or interchangeable terms. A fact may be relevant yet not admissible.

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Facts in issue

According to Section 2(g) the expression "facts in issue" means and includes- any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceedings, necessarily follows. Explanation— Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustration

A is accused of the murder of B.

- At his trial the following facts may be in issue:
- that A caused B's death;
- that A intended to cause B's death;
- that A had received grave and sudden provocation from B;

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.

A fact in issue is called as the principal fact to be proved or factum probandum and the relevant fact the evidentiary fact or factum probans from which the principal fact follows. The fact which constitute the right or liability called "fact in issue" and in a particular case the question of determining the "facts in issue" depends upon the rule of the substantive law which defines the rights and liabilities claimed.

Facts in issue and issues of fact

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Under Civil Procedure Code, the Court has to frame issues 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. Thus when described in the context of Civil Procedure Code, it is an 'issue of fact' and when described in the language of Evidence Act it is a 'fact in issue'. Thus as discussed above, distinction between facts in issue and relevant facts is of fundamental importance.

Example

In a case over a disputed property, whether the property was inherited to A. This is issue of fact. Facts in issue may be whether A's father was rightful owner of the property.

Classification of relevant facts

Principles of Sections relating to relevancy of facts are mere rules of logic.

Classification of relevant facts

	Details	Sections
a)	Facts connected with the facts to be proved	Sections 4 to 14
b)	Statement about the facts to be proved e.g. admission, confession	Sections 15 to 25
c)	Statements by persons who cannot be called as witnesses	Sections 26 to 27
d)	Statements made under special circumstances	Sections 28 to 32
e)	How much of a statement is to be proved	Section 33
f)	Judgements of Courts of justice, when relevant	Sections 34 to 38

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g)	Opinions of third persons, when relevant	Sections 39 to 45
h)	Character of parties in Civil cases and of the accussed in criminal cases	Sections 46 to 50

Fundamental rules of Law of Evidence

1. no facts other than those having rational probative value should be admitted in evidence.
2. all facts having rational probative value are admissible in evidence unless excluded by a positive rule of paramount importance.

Presumptions

The Court 'may presume' a fact as may be provided by The Bharatiya Sakshya Adhiniyam, 2023, unless and until it is disproved or may call for proof of it. The court shall presume a fact whenever it is directed by this Adhiniyam, and shall regard such fact as proved unless and until it is disproved (Section 2(h)). Presumption has been defined as an inference, affirmative or affirmative of the existence of some fact, drawn by a judicial tribunal, by a process of probable reasoning from some matter of fact, either judicially noticed, admitted or established by legal evidence to the satisfaction of the tribunal. It is an inference of the existence of some fact, which is drawn, without evidence, from some other fact already proved or assumed to exist (wills). Presumption is either of a fact or law. These presumptions which are inference are always rebuttable. Presumption of law is either conclusive or rebuttable.

The Adhiniyam also provides that when one fact is declared by this Act to be conclusive proof of another, the court shall on the proof of the one fact, regard

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the other as proved and shall not allow evidence to be given for the purpose of disproving it.

Relevancy of Facts Connected With The Fact To Be Proved

The facts coming under this category are as follows:

1. Res gestae or facts which though not in issue, are so connected with a fact in issue as to form part of the same transaction.

Section 4 embodies the rule of admission of evidence relating to what is commonly known as res gestae. Acts or declarations accompanying the transaction or the facts in issue are treated as part of the res gestae and admitted as evidence. The obvious ground for admission of such evidence is the spontaneity and immediacy of the act or declaration in question.

Illustration

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

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 (46 P.L.R. 353); (1945) Lah. 146).

(b) 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 gaols are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, although A may not have been present at all of them.

(c) A sues B for a libel contained in a letter forming part of a correspondence.

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Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.

(d) 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.

Thus, the evidence about the fact which is also connected with the same transaction, cannot be said to be inadmissible.

The above section lays down the rule which in English text books is treated under the head of res gestae. It may be broadly defined as matter incidental to the main fact and explanatory of it, including acts and words which are so closely connected therewith as to constitute a part of the same transaction.

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 as to form part of the same transaction and thereby become relevant like fact in issue (AIR 1957 Cal. 709).

2. Facts constituting the occasion, or effect of, or opportunity or state of things (Section 5)

According to section 5, Facts which are the occasion, cause or effect 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. This section makes occasion, cause, effect and opportunity as relevant.

Illustrations

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(a)	The question is, whether A robbed B.
	The facts that, shortly before the robbery, B went to a fair with money in his
	possession, and that he showed it, or mentioned the fact that he had it, to
	third persons, are relevant.
(b)	The question is, whether A murdered B.
	Marks on the ground, produced by a struggle at or near the place whether the
	murder was committed, are relevant facts.
(c)	The question is, whether A poisoned B.
	The state of B's health before the symptoms ascribed to poison, and habits of B
	known to A, which afforded an opportunity for the administration of poison,
	are relevant facts.
	The above transaction provides that, though they are not part of the same
	transaction, are relevant if they are the occasions caused or effects of facts of
	an issue.
3.	Motive, preparation and previous or subsequent conduct.
	According to Section 6, any fact is relevant which shows or constitutes a
	motive or preparation for any fact in issue or relevant fact.
	Motive means which moves a person to act in a particular way. It is different
	from intention. The substantive law is rarely concerned with motive, but the
	existence of a motive, from the point of view of evidence 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. When the question is as to whether a person did a

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particular act, the fact that he made preparations to do it, would certainly be relevant for the purpose of showing that he did it.

The Section makes the conduct of certain persons relevant. Conduct means behaviour. The conduct of the parties is relevant. The conduct to be relevant must be closely connected with the suit, proceeding, a fact in issue or 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. If these conditions are satisfied it is immaterial whether the conduct was previous to or subsequent to the happening of the fact in issue.

Illustrations

(a) A is tried for the murder of B.

The fact that A murdered C, 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.

(b) 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.

(c) 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.

(d) The question is, whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into

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	matters to which the provisions of the alleged will relate that he consulted Vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.
(e)	A is accused of a crime.
	The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.
(f)	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.
(g)	The question is, whether A owes B rupees 10,000.
	The facts that A asked C to lend him money, and that D said to C in A's presence and hearing— "I advise you not to trust A, for he owes B 10,000 rupees", and that A went away without making any answer, are relevant facts.
(h)	The question is, whether A committed a crime.
	The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.
(i)	A is accused of a crime.
	The facts that, after the commission of the alleged crime, he absconded, or was

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	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.
(j)	The question is, whether A was ravished.
	The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.
	The fact that, without making a complaint, A said that A had been raped is not relevant as conduct under this section, though it may be relevant as a dying declaration under clause (a) of section 26, or as corroborative evidence under section 160.
(k)	the question is, whether A was robbed.
	The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made are relevant.
	The fact that A said he had been robbed, without making any complaint, is not relevant, as conduct under this section, though it may be relevant as a dying declaration under clause (a) of section 26, or as corroborative evidence under section 160.
	What is relevant under Section 6 is the particular act upon the statement and the statement and the act must be so blended together as to form a part of a thing observed by the witnesses and sought to be proved.
4.	Facts necessary to explain or introduce relevant facts.

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According to Section 7, such facts are –

(i) which are necessary to explain or introduce a fact in issue or relevant fact, or

(ii) which support or rebut an inference suggested by a fact in issue or relevant fact, or

(iii) which establish the identity of a person or thing whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or

(iv) 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.

Facts which establish the identity of an accused person are relevant under Section 9.

Illustrations

(a) The question is, whether a given document is the will of A.
The state of A's property and of his family at the date of the alleged will may. be relevant facts.

(b) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c) A is accused of a crime.

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The fact that, soon after the commission of the crime, A absconded from his house, is relevant under Section 8, as conduct subsequent to and affected by facts in issue.

The fact that, at the time when he left house, he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that the left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d) 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 explanatory of C's conduct, which is relevant as a fact in issue.

(e) A accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it – "A says you are to hide this". B's statement is relevant as explanatory of a fact which is part of the transaction.

(f) 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.

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 :

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1.	Admissions and confessions
2.	Statements as to certain matters under certain circumstances by persons who are not witnesses
3.	Statements made under special circumstances
(i)	Admissions and Confessions
	Sections 15 to 25 lay down the exceptions to the general rule known as "admissions" and "confessions".
•	Admissions
	An admission is defined in Section 15 as a statement, oral or documentary or contained in electronic form which suggests any inference 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 16-18 and whether it suggests an inference as to a fact in issue or a relevant fact in the case. Thus admission may be verbal or contained in documents as maps, bills, receipts, letters, books etc.
	(However, the word 'statement' has not been defined in the Adhiniyam. Therefore the ordinary dictionary meaning is to be followed which is "something that is stated.")
	An admission may be made by a party, by the agent or predecessor-in-interest of a party, by a person having joint propriety of pecuniary interest in the subject matter (Section 16) or by a "reference" (Section 18).

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❖ Example

The question is, whether a horse sold by A to B is sound. A says to B -- "Go and ask C, C knows all about it." C's statement is an admission. This is an example of reference.

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 party to whom they are made has acted upon and thus altered his detriment.

An admission must be clear, precise, not vague or ambiguous. In Basant Singh v. Janky Singh, (1967) 1 SCR 1, The Supreme Court held:

(i) Section15 of The Bharatiya Sakshya Adhiniyam,2023 makes no distinction between an admission made by a party in a pleading and other admission. Under the Indian law, an admission made by a party in a plaint signed and verified by him may be used as evidence against him in other suits. However, this admission cannot be regarded as conclusive and it is open to the party to show that it is not true.

(ii) All the statements made in the plaint are admissible as evidence. The Court is, however, not bound to accept all the statements as correct. The Court may accept some of the statements and reject the rest."

Admission means conceding something against the person making the admission. 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

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unlikely to make a statement which is self-harming unless it is true evidence of such admissions as received in Court.

These Sections deal only with admissions oral and written. Admissions by conduct are not covered by these sections. The relevancy of such admissions by conduct depends upon Section 8 and its explanations.

Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question. (Section 20)

- **Confessions**

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 confessions are special form of admissions. Whereas every confession must be an admission but every admission may not amount to a confession. Sections 23 to 24 deal with confessions which the Court will take into account. A confession is relevant as an admission unless it is made:

Person in Authority by inducement, threat or promise	(i) to a person in authority in consequence of some inducement, threat or promise held out by him in reference to the charge against the accused; or
Police Officer	(ii) to a Police Officer; or
In custody of police officer	(iii)to any one at a time when the accused is in

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without the presence of magistrate	the custody of a Police Officer and no Magistrate is present.

Thus, a statement made by an accused person if it is an admission, is admissible in evidence. The confession is evidence only against its maker and against another person who is being jointly tried with him for an offence.

Section 24 is an exception to the general rule that confession is only an evidence against the confessor and not against the others.

The confession made in front of magistrate recorded is admissible against its maker is also admissible against co-accused under Section 24.

Case Law

The Privy Council in Pakala Narayanaswami v. Emperor, (1929) PC 47, observed that:
No statement that contains self exculpatory matter can amount to confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. All confessions are admissions but not vice versa.

A confession must, either admit, in terms the offence, or substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, is not of itself a confession. For example, an admission that the accused was the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession of the knife or revolver. A confession cannot be construed as meaning a statement by the accused suggesting the inference that he committed the crime.

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According to Section 22, confession caused by inducement, threat or promise is irrelevant. To attract the prohibition contained in Section 22 of The Bharatiya Sakshya Adhiniyam,2023 the following six facts must be established:

1. that the statement in question is a confession;
2. that such confession has been made by an accused person;
3. that it has been made to a person in authority;
4. that the confession has been obtained by reason of any inducement, threat or promise proceeded from a person in authority;
5. such inducement, threat or promise, must have reference to the charge against the accused person;
6. 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.

To exclude the confession it is not always necessary to prove that it was the result of inducement, threat or promise. It is sufficient if a legitimate doubt is created in the mind of the Court or it appears to the Court that the confession was not voluntary. It is however for the accused to create this doubt and not for the prosecution to prove that it was voluntarily made. A confession if voluntary and truthfully made is an efficacious proof of guilt.

Confessions vs. Admissions

A confession, however, is received in evidence for the same reason as an admission, and like an admission it must be considered as a whole. Further, there can be an admission either in a civil or a criminal proceedings, whereas there can be a confession only in criminal proceedings. An admission need not

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be voluntary to be relevant, though it may affect its weight; but a confession to be relevant, must be voluntary. There can be relevant admission made by an agent or even a stranger, but, a confession to be relevant must be made by the accused himself. A confession of a co-accused is not strictly relevant, though it may be taken into consideration, under Section 24 in special circumstances.

Confessions are classified as: (a) judicial, and (b) extra-judicial. Judicial confessions are those made before a Court or recorded by a Magistrate under Bharatiya Nagarik Suraksha Sanhita,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. Extra-judicial confessions are those which are made either to the police or to any person other than Judges and Magistrates as such.

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.

Case Laws

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.

In another case, the Supreme Court has further held that the law does not

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require that the evidence of an extra- judicial confession should be corroborated in all cases. When such confession was proved by an independent witness who was a responsible officer and one who bore no animus against the accused, there is hardly any justification to disbelieve it. Also, where the Court finds that the confession made by the accused to his friend was unambiguous and unmistakably conveyed that the accused was the perpetrator of the crime and the testimony of the friend was truthful, reliable and trustworthy, a conviction based on such extra-judicial confession is proper and no corroboration is necessary. Much importance could not be given to minor discrepancies and technical errors (Vinayak Shivajirao Pol v. State of Maharashtra, 1998 (1) Scale 159).

In R. Kuppusamy V. State, 2013 (3) SCC 322, the accused murdered and then went to Vice- President of the panchayat Board and confessed his crime. The court observed that legal provisions well settled that an extra- judicial confession is capable of sustaining a conviction provided that given case which will, however, depend upon the facts and circumstances of each case and on satisfaction of the court as to the reliability of the confession. Keeping in view the circumstances in which the confession is made, the person to whom it is alleged to have been made and the facts available as to truth of such confession that will determine whether together the extra judicial confession ought to be made a basis for holding the accused guilty or not.

Illustrations

1. A undertakes to collect rents from C on behalf of B. B sues A for not collecting rent due from C to B.

A denies that rent was due from C to B. A statement by C that he owed rent to B, is an admission, and is a relevant fact as against A, if A denies that C did

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	owe rent to B.
2.	The question is, whether a horse sold by A to B is sound.
	A says to B-"Go and ask C, C knows all about it". C's statement is an
	admission.
3.	The question between A and B is, whether a certain deed is or is not forged. A
	affirms that it is genuine, B holds that it is forged.
	A may prove a statement by B that the deed is genuine, and B may prove a
	statement by A that the deed is forged; but A cannot prove a statement by
	himself that the deed is genuine, nor can B prove a statement by himself that
	the deed is forged.
4.	A is accused of a crime committed by him at Calcutta.
	He produces a letter written by himself and dated at Lahore on that day, and
	bearing the Lahore post- mark of that day. The statement in the date of the
	letter is admissible, because if A were dead, it would be admissible under
	Section 26(b).
5.	A and B are jointly tried for the murder of C. It is proved that A said-"B and I
	murdered C". The Court may consider the effect of this confession as against B.
6.	A is on his trial for the murder of C. There is evidence to show that C was
	murdered by A and B, and that B said—"A and I murdered C".
	This statement may not be taken into consideration by the Court against A, as
	B is not being jointly tried. (If there is joint trial Section 24 applies)
	Illustrations 5 and 6 are exceptions to the general rule that a confession is only

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	evidence against the person who makes the confession. These are based on
	Section 24 of the Adhiniyam.
7.	Statements by persons who cannot be called as witnesses
	Certain statements made by persons who are dead, or cannot be found or
	produced without unreasonable delay or expense, makes the second exception to
	the general rule. However, the following conditions must be fulfilled for the
	relevancy of the statements:
(a)	That the statement must relate to a fact in issue or relevant fact,
(b)	That the statement must fall under any of following categories:
(i)	the statement is made by a person as to the cause of this death or as to any of
	the circumstances resulting in his death;
(ii)	statement made in the course of business;
(iii)	Statement which is against the interest of the maker;
(iv)	a statement giving the opinion as to the public right or custom or matters of
	general interest;
(v)	a statement made before the commencement of the controversy as to the
	relationship of persons, alive or dead, if the maker of the statement has special
	means of knowledge on the subject;
(vi)	a statement made before the commencement of the controversy as to the
	relationship of persons deceased, made in any will or deed relating to family
	affairs to which any such deceased person belong;
(vii)	a statement in any will, deed or other document relating to any transaction by
	which a right or custom was created, claimed, modified, etc.;
(viii)	a statement made by a number of persons expressing their feelings or
	impression;
(ix)	evidence given in a judicial proceeding or before a person authorised by law to

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	take it, provided that the proceeding was between the same parties or their
	representatives in interest and the adverse party in the first proceeding had
	the right and opportunity to cross examine and the questions in issue were
	substantially the same as in the first proceeding.
	Illustrations
(a)	The question is, whether A was murdered by B; or
	A dies of injuries received in a transaction in the course of which she was
	ravished. The question is, whether she was ravished by B; or
	The question is, whether A was killed by B under such circumstances that a suit
	would lie against B by A's widow.
	Statements made by A as to the course of his or her death, referring
	respectively to the murder, the rape and the actionable wrong under
	consideration are relevant facts.
(b)	The question is as to the date of A's birth.
	An entry in the diary of a deceased surgeon regularly kept in the course of
	business, stating that, on a given day, he attended A's mother and delivered
	her of a son, is a relevant fact.
(c)	The question is, whether A and B were legally married.
	The statement of a deceased clergyman that he married them under such
	circumstances that the celebration would be a crime, is relevant.
(d)	The question is, whether A, who is dead, was the father of B. A statement by A
	that B was his own son, is a relevant fact.
(e)	A sues B for libel expressed in a painted caricature exposed in a shop window.

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	The question is as to the similarity of the caricature and its libellous character.
	The remarks of a crowd of spectators on these points may be proved.
8.	Statements made under special circumstances
	The following statements become relevant on account of their having been made
	under special circumstances:
(i)	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)
(ii)	Entries made in public or official records or an electronic record 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)
(iii)	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)
(iv)	Statement as to fact of public nature contained in certain Acts or notification;
	(Section 31)
(v)	Statement as to any foreign law contained in books purporting to be printed or
	published including in electronic or digital form by the Government of the
	foreign country, or in reports of decisions of that country. (Section 32)
	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,
	electronic record, book or of letters or papers as the Court considers necessary
	in that particular case to the full understanding of the nature and effect of the

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statement, and of the circumstances under which it was made. (Section 33)

Example

A sues B for Rs. 1,000, and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

- Opinion of Third Persons When Relevant

The general rule is that opinion of a witness on a question whether of fact or law, is irrelevant. However, there are some exceptions to this general rule. These are:

(i) Opinions of experts. (Section39(1)):As a general rule the opinion of a witness on a question whether of fact, or of law, is irrelevant. Witness has to state the facts which he has seen, heard or perceived, and noted the conclusion, form of observations. The functions of drawing inferences from facts is a judicial function and must be performed by the Court. However, to this general rule, there are some exceptions as indicated in Section 39(1). Opinions of experts are Relevant upon a point of:

(a) foreign law
(b) science
(c) Art
(d) identity of hand writing
(e) finger impression special knowledge of the subject matter of enquiry become relevant.

Illustrations

(a) The question is, whether the death of A was caused by poison.

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•	Example
	The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.
(b)	The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.
•	Example
	The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant. Similarly the opinions of experts on typewritten documents as to whether a given document is typed on a particular typewriter is relevant.
(ii)	Opinion of Examiner of Electronic Evidence (Section 39(2)): 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 in section 79A of the Information Technology Act, 2000, is a relevant fact.
	Explanation.
	For the purposes of this section, an Examiner of Electronic Evidence shall be an expert.
(iii)	Facts which support or are inconsistent with the opinions of experts are also made relevant. (Section 40): The Facts which are not otherwise relevant becomes relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

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(iv)	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 digital signature of any person, the opinion of the Certifying Authority which has issued the Digital Signature Certificate; (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. 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)
	Witnesses
	Who may testify (Section 124)
	All persons shall be competent to testify (Give evidence) unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions,
(i)	by tender years,
(ii)	extreme old age,
(iii)	disease, whether of body or mind, or
(iv)	any other cause of the same kind.
	Explanation. A person of unsound mind is not incompetent to testify, unless he is prevented by his unsoundness of mind from understanding the questions put to him and giving rational answers to them..

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Witness unable to communicate (Section 125)

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 deemed to be oral evidence.
Also, if the witness is unable to communicate verbally, the Court shall take the assistance of interpreter or a special educator in recording the statement, and such statement shall be video graphed.

Spouse as a witness

In civil proce edings, the spouse of the parties 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 section 128 of The Bharatiya Sakshya Adhiniyam, 2023.

Facts Of Which Evidence Cannot Be Given (Privileged Communications)

There are some facts of which evidence cannot be given though they are relevant, such as facts coming under Sections 128, 129, 132 and 133, where evidence is prohibited under those Sections. They are also referred to as 'privileged communications'

Types of privileged communications	
1. Evidence of a Judge or	4. Official communications; (Section

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	Magistrate in regard to certain matters; (Section 127)		130)
2.	Communications during marriage; (Section 128)	5.	Source of information of a Magistrate or Police officer or Revenue officer as to commission of an offence or crime; (Section 131)
3.	Affairs of State; (Section 129)	6.	Professional communication between a client and his barrister, attorney or other professional or legal advisor (Sections 132 and 134). This is not absolute and may waived by the clients.

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.

[Section 127] Evidence of Judges and Magistrates

Under Section 127 of the Adhiniyam, no Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate;

He may be examined as to other matters which occurred in his presence whilst he was so acting.

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[Section 128] Communications during marriage

Under Section128 of the Adhiniyam, 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 married couple. 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 the witness.

[Section 129] Evidence as to affairs of State

Section 129 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.

[Section 132 - 134] Professional communications

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. The rule is founded on the impossibility of conducting legal business without professional assistance and securing full and unreserved communication between the two. Under Section 132 neither a legal

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adviser i.e. a barrister, attorney, pleader or vakil (Section 132) nor his interpreter, clerk or servant (Section 133) can be permitted to disclose any communication made to him in the course and for the purpose of professional employment 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.

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)

Case Law

Case Law Even though the RTI Act seems to be a special statute, the provisions contained therein are general in nature. The same principle cannot be applied to Section132 of The Bharatiya Sakshya Adhiniyam, 2023 which appears to be a special provision in a general law. RTI Act is aimed at and intended to obtain information from the public authorities, whereas Section 132 of the The Bharatiya Sakshya Adhiniyam, 2023 deals with the client- lawyer relationship in their inter se professional dealings. Section 132 of The Bharatiya Sakshya Adhiniyam, 2023 is a special provision and RTI Act is a general Law. Section 3 read with Section 22 of RTI Act is a general provision in the special statute. Section 132 of The Bharatiya Sakshya Adhiniyam, 2023 is not obliterated. It has to be given effect to notwithstanding RTI Act. [Karamjit Singh v. State of Punjab AIR, 2010, (NOC) 699 (P&H)].

In Reshma Majeed v. Shameer Babu, ILR 2019, Kerala 637, High Court of

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Kerala held that "The bar under Section 132 ought not to be mistaken as prohibiting the lawyer of opposite party from being summoned as his own witness, in case where his examination is justified by the circumstances"

Oral, Documentary and Circumstantial Evidence

As discussed above, all facts (except two Sections 51 and 53) which are neither admitted nor are subject to judicial notice must be proved. The Act divides the subject of proof into two parts: (i) proof of facts other than the contents of documents; (ii) proof of documents including proof of execution of documents and proof of existence, condition and contents of documents.

However, all facts except contents of documents may be proved oral evidence (Section 54) which must in all cases be "direct" (Section 55). The direct evidence means the evidence of the person who perceived the fact to which he deposes.

Thus, the two broad rules regarding oral evidence are:

(I) all facts except the contents of documents may be proved by oral evidence;

(II) oral evidence must in all cases be "direct".

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)

[Section 55] Direct evidence

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In Section 55of The Bharatiya Sakshya Adhiniyam, 2023, expression "oral evidence" has an altogether different meaning. It is used in the sense of "original evidence" as distinguished from "hearsay" evidence and it is not used in contradiction to "circumstantial" or "presumptive evidence". According to Section 55 oral evidence must in all cases whatever, be direct; that is to say:

- 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.

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. In defining the direct evidence in Section 55, the Adhiniyam, 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 who did not see it, is not direct but hearsay and so is the evidence as to a statement, by a person who did hear it.

[Section 56] Documentary evidence

A "document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means,

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intended to be used, or which may be used for the purpose of recording that matter. Documents produced for the inspection of the Court is called Documentary Evidence. Section 56 provides that the contents of a document must be proved either by primary or by secondary evidence.

1. Secondary Evidence
2. Primary Evidence

[Section 57] Primary evidence

"Primary evidence" means the document itself produced for the inspection of the Court (Section 57). The rule that the best evidence must be given of which the nature of the case permits has often been regarded as expressing the great fundamental principles upon which the law of evidence depends. The general rule requiring primary evidence of producing documents is commonly said to be based on the best evidence principle and to be supported by the so called presumption that if inferior evidence is produced where better might be given, the latter would tell against the withholder.

[Section 58] Secondary evidence

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 58, "secondary evidence" means and 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;

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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 60 stipulates the cases 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.

Circumstantial evidence

In English law the expression direct evidence is used to signify evidence relating

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to the 'fact in issue' (factum probandum) whereas the terms circumstantial evidence, presumptive evidence and indirect evidence are used to signify evidence which relates only to "relevant fact" (facta probandum). However, under Section 55 of The Bharatiya Sakshya Adhiniyam, 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. Thus, evidence whether direct or circumstantial under English law is "direct" evidence under Section 55. Before acting on circumstances put forward are satisfactorily proved and whether the proved circumstances are sufficient to bring the guilt to the accused the Court should not view in isolation the circumstantial evidence but it must take an overall view of the matter.

Burden Of Proof

Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

- Example

A desires a Court to give judgment that B shall be punished for a theft which A says B has committed. A must prove that B has committed the theft.

A desires a Court to give judgment that he is entitled to certain land situated in Delhi which is in the possession of B, by reason of facts which he asserts, and which B denies, to be true. A must prove the existence of those facts.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

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- Example

A files a suit against B for his due of salary. A has worked for B, this has been admitted, but B says that I have paid advance to B, which A denies. If no evidence were given on either side, A would succeed, as the service is not disputed and the advance payment has been not proved. Therefore the burden of proof is on B.

However, when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Bharatiya Nyaya Sanhita, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

- Example

A, accused of theft, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A.

Improper Admission & Rejection Of Evidence

The improper admission or rejection of evidence is not a ground for start of a new trial or reversal of any decision. But the court should of the view that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

Presumptions

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The Act recognises some rules as to presumptions. Rules of presumption are deduced from enlightened human knowledge and experience and are drawn from the connection, relation and coincidence of facts and circumstances. A presumption is not in itself an evidence but only makes a prima facie case for the party in whose favour it exists. A presumption is a rule of law that courts or juries shall or may draw a particular inference from a particular fact or from particular evidence unless and until the truth of such inference is disproved.

Three Categories of Presumptions

1. Presumptions of law, It is a rule of law that a particular inference shall be drawn by a court from particular circumstances.
2. Presumptions of fact, it is a rule of law that a fact otherwise doubtful may be inferred from a fact which is proved.
3. Mixed presumptions, they consider mainly certain inferences between the presumptions of law and presumptions of fact.

The terms presumption of law and presumption of fact are not defined by the Adhiniyam. 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 rebuttable presumptions of law; the term "may presume" indicates presumptions of fact.

Example

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

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down the man.

Estoppel

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, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing (Section 121). However, there is no estoppel against the Statute. Where the Statute prescribes a particular way of doing something, it has to be done in that manner only. Other relevant are Sections 122 and 123.

- Principle of Estoppel

Estoppel is based on the maxim 'allegans contratia non est audiendus' i.e. a person alleging contrary facts should not be heard. The principles of estoppel covers one kind of facts. It says that man cannot approbate and reprobate, or that a man cannot blow hot and cold, or that a man shall not say one thing at one time and later on say a different thing.

The doctrine of estoppel is based on the principle that it would be most inequitable and unjust that if one 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 (Sorat Chunder v. Gopal Chunder).

Estoppel is a rule of evidence and does not give rise to a cause of action.

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Estoppel by record results from the judgement of a competent Court (Section 40, 41) (Section 34-35 of Bharatiya Sakshya Adhiniyam, 2023. It was laid down by the Privy Council in Mohori Bibee v. Dharmodas Ghosh, (1930) 30 Cal. 530 PC, that the rule of estoppel does not apply where 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.

In Biju Patnaik University of Tech. Orissa v. Sairam College, AIR 2010 (NOC) 691 (Orissa), one private university permitted to conduct special examination of students prosecuting studies under one time approval policy. After inspection, 67 students were permitted to appear in the examination and their results declared. 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. It was 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.

Different kinds of Estoppel:

1. Estoppel by attestation
2. Estoppel by contract
3. Constructive estoppel
4. Estoppel by election
5. Equitable estoppel

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6.	Estoppel by negligence
7.	Estoppel by silenc
	Electronic Evidence (E-Evidence)
•	Section 61
	Nothing in this Adhiniyam shall apply to deny the admissibility of an electronic
	or digital record in the evidence on the ground that it is an electronic or digital
	record and such record shall, subject to section 63, have the same legal effect,
	validity and enforceability as other document.
•	Section 62
	The contents of electronic records may be proved in accordance with the
	provisions of section 63.
•	Section 63
1.	Notwithstanding anything contained in this Adhiniyam, any information
	contained in an electronic record which is 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 (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 or any contents of the
	original or of any fact stated therein of which direct evidence would be
	admissible.

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2.	The conditions referred to in sub-section (1) in respect of a computer output
	shall be the following, namely:—
	(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.
3.	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 clause (a) of sub-section (2) 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;
	c or (d) on a omputer resource enabling information creation or providing
	information processing and storage; or (e) through an intermediary, all the

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	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.
4.	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.
5.	For the purposes of this section,— (a) information shall be taken to be supplied to a computer or communication device if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment; (b) a computer output shall be taken to have been produced by a computer or communication device

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whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment or by other electronic means as referred to in clauses (a) to (e) of sub section (3).

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