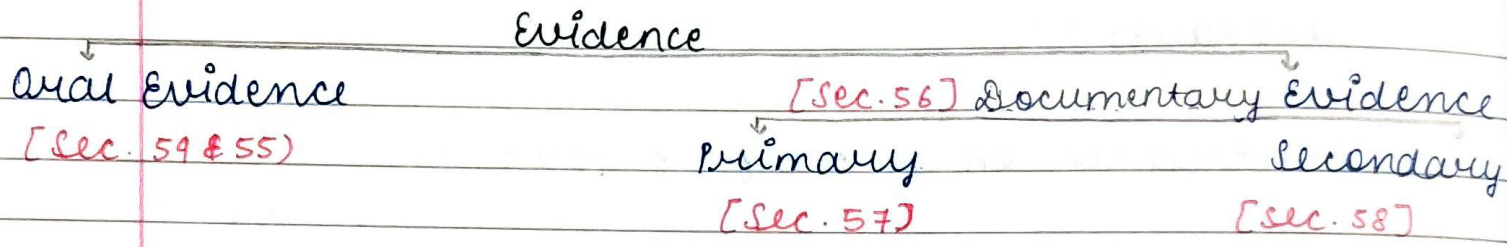
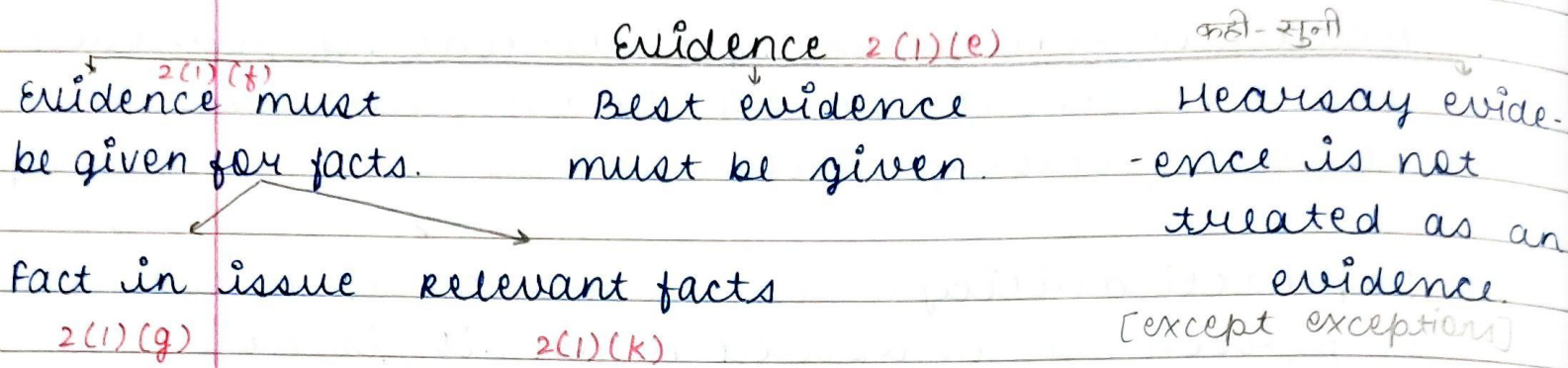


In civil cases - Facts in issue

In criminal cases - Issue of facts

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# BHARTIYA SAKSHYA ADHINIYAM 2023



Fact - 2(1)(f) Fact means & includes -

- |  |  |
|--|--|
| <p>(i) <u>Physical Facts</u> -<br/>(everything around us)</p> <p>(a) Any thing</p> <p>(b) State of thing</p> <p>(c) Relation of thing</p> <p>(d) Capable of perceived by senses.</p> | <p>(ii) <u>Psychological Facts</u></p> <p>Any mental condition of which any person is conscious.</p> |
|--|--|

## \* Types of Facts -

- (1) Fact in issue - It means & include any fact from which either by itself or in connection with other facts, the existence, or non-existence of any right, liability (asserted or denied).
- It is a main fact.
  - It is called principle fact to be proved.

- It is also called Factum Probandum.
- Example - Whether A cause death of B.
- (2) Relevant fact - A fact is said to be relevant to another when it is connected with other in any of ways mentioned in BSA.
- Relevant facts which are connected with fact - in - issue.
- Following relevant facts -
  - (a) Closely connected facts [Sec. 4 to 14]
  - (b) Admission [Sec. 15 to 25]
  - (c) Statement by person cannot be called as witness. [Sec. 26 to 27]
  - (d) Statement made under special circumstances. [Sec. 28 to 32]
  - (e) How much statement to be proved. [Sec. 33]
  - (f) Judgement of court when relevant. [Sec. 34 to 38]
  - (g) Opinion of third person. [Sec. 39 to 45]
  - (h) Character when relevant. [Sec. 46 to 50]

### Evidence

↓  
 Mere pre-ponderance of evidence is enough.

↓  
Civil cases

[More than 50% of evidence in favour is enough to win the case]

↓  
 Case must be proved beyond reasonable doubts.

↓  
Criminal cases

[Total 100% evidence are required to win the case]

Date \_\_\_/\_\_\_/\_\_\_

(1) Oral Evidence-

Sec. 54 - All facts, except content of document may be proved by oral evidence.

Sec. 55 - Oral evidence must be direct, not hearsay.

For example -

i) If it refers to fact which can be seen, it must be of evidence who has seen.

ii) If it refers to fact which can be heard, it must be of evidence who has heard.

iii) If it refers to fact which can be perceived by senses, it must be of evidence who say he perceived.

iv) If it refers to opinion, it must be of evidence who hold such opinion.

(2) Documentary Evidence-

Sec. 56 - Contents of document may be proved either by primary evidence or secondary evidence.

Sec. 57 - Primary Evidence-

(a) The document itself

(b) Each part of several parts of document.

(c) Counter part of document. (Half part of any document)

(d) Lot of documents made through uniform process. Eg: Newspaper

(e)

Sec. 58 - Secondary Evidence-

(a) Certified copy of original

(b) Copy made from mechanical process. (Photocopy)

- (c) copies created from or compared with original.
- (d) oral description of document content.
- (e) counter part of document against parties not executing it.
- (f) oral admission
- (g) written admission
- (h) evidence of a person who has examined a doc., the original which consist of numerous accounts.

**Section 59** - Documents shall be proved by primary evidence only except the cases mentioned under section 60.

**Section 60** - When primary evidence is in possession or power -

- (a) of a person against whom documents is sought to be proved.
- (b) of a person who is out of reach.
- (c) of a person who is legally bound to produce such document but such person does not produce such document.

- when terms & conditions of primary evidence is admitted by party.
- If original one is destroyed.
- If original one is not easily moveable.
- If original is public document.
- If original one consists of numerous accounts.

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\* If a party is having Primary Evidence & still he is producing secondary evidence in court, the court will make negative opinion towards the party. It is known as Rule of Adverse Inference. Case Law - Re. Snehal Bhargav Case.

\* Closely connected facts -

Sec. -4 - Relevancy of facts forming part of same transaction. [Res - Gestae]

→ Facts which though not in issue are so connected with a fact in issue or relevant fact as to form part of same transaction are relevant fact.

Sec. -5 - Facts which are occasioned, cause or effect of fact in issue or relevant facts. (Koi khi

aisa fact jo fact in issue ka occasion / cause / effect bataye wo bhi relevant fact maan liya jayga)

Example → Party me achanak light chali gayi aur chori ho gayi → Occasioned

ii) A aur B ki dushmani hai, then B ka murder → Cause

Sec. -6 - Motive, Preparation, Conduct -

→ Any fact which show motive, preparation for any fact in issue or relevant fact is relevant.

→ Motive means, which moves a person to act in a particular way.

→ Existence of motive is a relevant fact.

→ Motive is first step in every crime.

- Preparation is arrangement, accused has done to commit crime & it is a relevant fact.
- Conduct means behaviour. The conduct to be relevant must be closely connected with fact in issue or relevant fact.

**Sec. 7-** Facts necessary to explain or introduce a fact in issue or relevant facts or which supports or <sup>(against)</sup> rebut an inference suggested by fact in issue or relevant facts or which establish identify of anything or person or fix the time or place at which fact in issue or relevant fact happened. (Koi bhi aisa fact jo explain ya introduce kare fact in issue ko, use related sabhi facts relevant maane jaayenge.) [eg: Identity of person, thing, etc.]

**Sec. 8-** Things done or said by conspirator - where there is reasonable ground to believe that two or more persons have conspired together to commit offence, any thing said, done or written by anyone of such in reference to their common intention is relevant fact against other. (owing conspiracy, if 1 conspirator kuch bolta, karta ya likhta hai toh wo sabhi conspirators ke against relevant fact maane jaayega.)

**Sec. 9** Inconsistent fact - when facts that are not otherwise relevant become relevant. eg: If B was murdered on Monday at 9 a.m. & A was convicted in this case, if A proves that he was not present in India at that time. It is consistent fact.]

[Koi bhi diso fact, jo court ko enable kare, to determine the right value of damage of the compensation, is also a relevant fact.]

Date \_\_\_/\_\_\_/\_\_\_

BLACK BORDS

Sec. 10 - Facts enable the court to determine damages -

Sec. 11 - Facts relevant when any right or custom is in question - when any right or custom is in question then following facts are relevant -

(a) any transaction by which the right or custom is in question was created, claimed, modified, recognised or denied. (If koi right

question me hai toh koi bhi aisi transaction jo ye dikhaye ki vo right kaise create hua, vo transaction relevant fact hai.)

Sec. 12 - Facts showing any state of mind or any state of body or bodily feeling are relevant fact.

Sec. 13 - When there is question whether an act was accidental or intentional, the fact that such act formed part of series of similar occurrence is relevant.

Sec. 14 - Existence of course of business - When particular act was done, the existence of any course of business according to which it naturally would have done.

Imp.  
\*

Admission / Confession -

Admission

Confession

1) Statement made in civil proceedings

1) Statement made in criminal proceedings.

11) It means voluntary acknowledgement of existence of fact.

11) Admission of guilt / crime.

Date: / /

### Admission

(category)

- III) It is a genus
- IV) Admission can be done by party himself, agent, any person having interest in subject matter.

### Confession

(sub-category)

- III) It is specie
- IV) Confession can be done by only party himself.

V) Every confession is admission

V) Every admission is not confession.

### \* Admission & Confession-

- Admission is a statement in oral, document, e-form, which suggest any conclusion to any fact in issue or relevant fact.
- For Eg- Mr. A made statement that I have to pay rent to Mr. B.
- The word statement is not defined in law, so as to general meaning statement means something stated.
- Admission can be given by -
  - Party
  - Agent
  - Person having int.
- Admission is best evidence against party making the same unless it's true.
- Case Law - **Basant Singh vs. Jenky Singh** - Admission must be clear & precise & not vague.

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(to admit)

- Admission means conceding something against the person making it.
- Admission must be self-harming because person unlikely to make statement which is self-harming.
- Admission must be oral or in written.
- BSA does not define confession, it is just special form of admission.
- Any admission made in criminal proceeding is confession.
- Every confession is admission but every admission is not confession.
- A confession is relevant unless it is made, except
  - (a) If confession is made by inducement / threat / promise.
  - (b) If confession is made to police officer, is invalid.
- Confession is made by person himself & it is not valid against other person.
- Exception of above line → If 2 persons are jointly tried in case, if one person confess, it's binding on second person also.
- Case Law - Pakala Narayan Swami vs. Emperor.  
All confession are admission.

- 2 kinds of confession -
  - (a) **Judicial**- Confession made before court or magistrate. It is always valid.
  - (b) **Extra-Judicial**- Confession made before police officer. It is invalid, except -
    - Confession plus facts are presented before Police Officer & it is found that those facts are true.
    - If confession made in front of police officer in presence of close relative of accused & testimony of such relative is true.  
Case Law - **Ram Khilari vs. State of Rajasthan.**
    - Confession made in front of Police (+) Magistrate.
- \* Statement made under special circumstances
  - (a) Entries in books of accounts including those maintained in e-form & regularly kept in ordinary course of business.
  - (b) Any entry made in public or official book & made by public servant.
  - (c) Statement of facts in issue or relevant facts made in published map or charts generally offered for public sale.
  - (d) When the court has to form an opinion as to existence of any fact of public nature, any

statement of it recited in central act or state act is relevant fact.

(e) When court has to form an opinion as to law of any country, any statement of such law contained in book published under authority of govt. of such country.

\* Opinion of third person-

Sec. 39 - Opinion of Experts - When court has to form opinion upon point of foreign law, or of science or any other field or as identity of handwriting or finger expression then opinion of person expert in above field is relevant.

Sec. 40 - Facts not otherwise relevant are relevant if they support opinion of experts.

Sec. 41 - Opinion as to handwriting / sign - When court has to form an opinion as to person by whom any document was written or signed the opinion of any person acquainted with the handwriting of person is relevant.

Sec. 42 - When court has to form an opinion as to existence of any right or custom then opinion of such person who knew existence of such right or custom is relevant.

Sec. 43 - When court has to form opinion as to -  
(a) Usage & tenets of any body of men or family.

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(b) The constitution & governance of charitable or religious institution.

(c) Meaning of word used in particular districts.

then opinion of person having knowledge of above is relevant.

ec. 44- Opinion on relationship - when court has to form an opinion on relationship of 1 person with another person then opinion of family member or otherwise who has knowledge of same is relevant.

ec. 45- Ground of opinion - whenever opinion of person is relevant then ground on which opinion is based also relevant.

\* Privileged Communication -  
General Rule - Witness must fully disclose the truth & produce relevant document.

Exceptions:-

1) Professional Communication -

- Section 132 of BSA deals with privileged comm. between advocate & client which are protected from disclosure.

- A client cannot compelled & advocate cannot be allowed without express consent of client to disclose communication, disclose in professional confidence.

- The rule is based on impossibility of conducting legal business.
- ii) Communication during marriage-
- Section 128 of BSA deals with communication between husband & wife during marriage.
  - It is privileged communication & its disclosure cannot be enforced.
  - It is based on principle of domestic peace & confidence between married couple.
  - **Exceptions** - A) Divorce      B) Criminal case
- iii) Evidence of judges & magistrate-
- U/s 127 of BSA, no judge or magistrate shall except upon special order of superior court be compelled to answer any question as to his conduct in court as judge or magistrate.
- iv) Evidence as to affair of state.- [Sec. 129]
- Section 129 of BSA apply only to evidence denied from unpublished official record relating to affairs of state.
  - No one is allowed to give evidence from unpublished official record.

## \* Concept of Estoppel -

- i) The General Rule of Estoppel is when one person has by his declaration, act or omission intentionally permitted another person to believe a thing to be true & acted upon then such person shall be stopped from denying such thing.
- ii) Estoppel is based on maxim *Allegans contraria non est audiendus*. It means a person alleging contrary facts should not be heard.
- iii) A person cannot blow hot & cold at same time.
- iv) Case Law - *Mohini Bivi vs. Dhano Das Ghosh*.  
Estoppel does not apply where statement is made to person who know the real facts.

v) Case Law - *Biju Patnaik vs. Sairam College*

vi) Different type of estoppel -

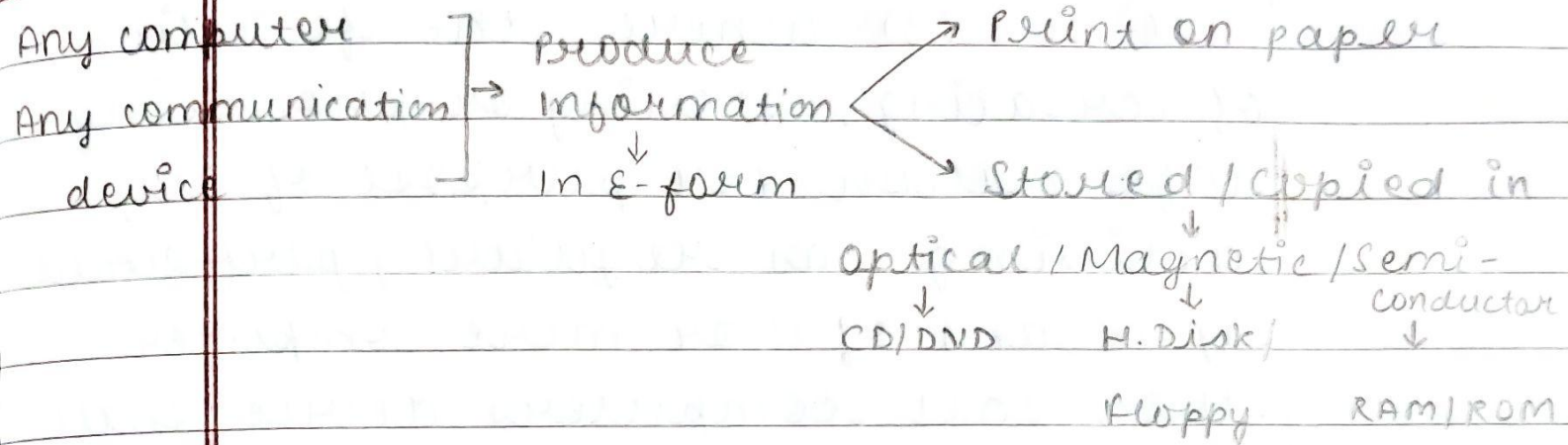
- (a) Estoppel by attestation
- (b) Estoppel by contract
- (c) Constructive Estoppel
- (d) Estoppel by election
- (e) Estoppel by negligence
- (f) Estoppel by silence

Imp:

Section 63(1) - E-evidence

Notwithstanding anything contained in BSA, any information contained in an e-record which is printed on paper, stored, recorded or copied in optical <sup>CD/DVD</sup> or magnetic media or <sup>Hard disk / floppy disk</sup> semi-conductor <sup>RAM/ROM</sup> memory which is produced by computer or any <sup>mobile phone / tab</sup> communication device shall also be deemed to document & shall be admissible in any proceeding without further proof or production of original subject to conditions mentioned v/s 63(2).

[Koi bhi information jo,



toh usko ye below mentioned conditions follow karni padegi, tabhi usko e-evidence maana jayega.]

**Section 63(2) - Conditions -**

- 1) Such computer used regularly to store or process information of any activity by person who has control over such computer.
- 2) Information feeding in computer was on regular basis.
- 3) Such computer was operating properly during such period.
- 4) Information in e-record re-produced in ordinary course of business.



which condition mentioned in section 63(2) relates.

\* Concept of Presumption-

- 1) Rule of presumption derived from enlightened human knowledge & experience & derived from connection, relation & co-incident of facts & circumstances.
- 2) A presumption is not itself evidence but make prima facie case for party in whose favour it exists.
- 3) Categories of presumption -
  - (a) Presumption of Law - It is rule of law that particular inference shall be drawn.
  - (b) Presumption of Fact - It is rule of law that facts otherwise doubtful maybe inferred from fact.  
↓  
conclusion

(c) Mixed Presumption - They consider mainly certain inference between presumption of law & facts.

\* Statement by person who can't be called witness.

\* Dying Declaration -

When statement is made by a person as to cause of his death, or as to any of circumstances of transaction which resulted in his death.

Such statement are relevant facts.