

Law relating to Evidence (Bharatiya Sakshya Adhiniyam) 2023

The "law of evidence" may be defined as a system of rules for ascertaining controversial questions of fact in judicial inquiries.

This system of ascertaining the facts which are the essential elements of a right or liability and is the primary and perhaps the most difficult function of the court, is regulated by a set of rules and principles as "law of Evidence".

Judicial Proceedings [Section 2(1)(m)]

The Bharatiya Sakshya Adhiniyam 2023 does not define the term 'judicial proceedings' but it is inclusively defined under section 2(1)(m) of BNS 2023, as "any proceeding in the course of which evidence is or may be legally taken on oath".

Fact [Section 2(1)(f)]

"fact" means and includes:-

- anything, state of things or relation of things, capable of being perceived by the senses
 - any mental condition of which any person is conscious
- thus these facts are classified into:-

- physical
- psychological

* fact in issue :- fact in issue or imp. facts that directly affect outcome of case, these facts determine whether someone has right liability or disability in the case. Date
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Example :- (Physical fact)

- (a) 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) The man said certain words is a fact.

fact in issue {Section 2(1)(g)}

"fact 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 proceeding, necessarily follows.

Example :- A is accused of the ~~murder~~ ^{murder} of B.

- At his trial the following facts may be in issue.
- that A is caused B's death.
 - that A intended to cause B's death.
 - that A had received glared and sudden provocation from B.
 - that A, at the time of doing the act which caused B's death, was by reason of unboundedness of mind, incapable of knowing its nature.

Relevant fact {Section 2(1)(k)}

A fact is said to be relevant to another when it is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

(Res gestae)

1. Closely connected Facts (Section 4 to 14).

Relevancy of facts forming part of same transaction:- facts which, though not in issue are so connected with a fact in issue or a relevant fact as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

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

* All relevant facts are facts but all facts are not relevant facts.

2. Motive, Preparation and Previous or Subsequent Conduct (Section 6)

Any fact that shows the motive behind an act is relevant. Motive is crucial in criminal cases and must be proven through circumstantial evidence. It helps to establish why a person acted in a particular way. It is a psychological fact.

Preparation:- facts that show a person made preparation for an act are relevant in proving that the person carried out the act.

Conduct:- Conduct means a person's behaviour and helps the court to understand what exactly happened.

Statements are not considered as conduct unless they explain what they did. Conduct may be previous or subsequent.

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

↳ If there is a reasonable belief that two or more people conspire to commit a crime, anything said, done or written, by anyone of them about their shared plan is relevant.

This applies to all members of conspiracy even if they were not involved in specific action or statement.

Short

basically it's an agreement b/w two or more persons to do an legal act by illegal means or a commit in any illegal act (purpose/objective to achieve the object of conspiracy)

4. When facts are not otherwise relevant become relevant (Section 9):

(1) Facts not otherwise relevant are relevant 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.

5. facts tending to enable court to determine amount are relevant in suit 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.

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

— where the question is as to 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

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.

7. 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, immediate or otherwise, of relevant facts or fact in issue, or which contribute to the state of things, under which they happened, or which afforded an opportunity for their occurrence or transaction are relevant.

Example:- The question is, whether A robbed B. The fact that, shortly before the robbery, B went to a fair money in the possession and that he showed it, or mentioned the fact that he had it, to third persons are relevant.

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

According to section 7, such facts are:-

- ① which are necessary to explain or introduce a fact in issue or relevant fact
- ② which support or rebut an inference suggested by a fact in issue or relevant fact
- ③ which establish the identity of a person
- ④ which show the relation of parties.
- ⑤ facts showing existence of any state of mind, or of body or body such as intention etc. - (Section 12)

— facts that show person's mental state such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill, are relevant.

Even facts that show person's physical conditions or feelings are relevant.

Explanation:- To prove a state of mind fact must show person's state of mind in relation to specific issue in question.

and/or

Explanation :- if person is accused of crime, there previous crime are relevant to the case, then previous conviction shall be relevant

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

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

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

— when there is a ques. whether a particular act was done, the existence of any course of business according to which is naturally would have been done, is a relevant fact.

Statement About the facts to be proved.

The general rule known as the hearsay rule is what is stated about the fact in question is irrelevant. → This general rule there are three exceptions which are:-

- ① Admission and confessions
- ② Statements as to certain matters under certain circumstances by persons who are not witnesses,
- ③ Statements made under special circumstances,

* Admission (Section 15)

- Admission refers to statement made by person that suggest an inference about a fact in issue or relevant fact in a case.
- Statement can be oral or documentary in electronic stored is involved if it is relevant if genuineness of that electronic stored is not in question.
- admission can be made by party to the case, their agent, predecessor in interest or someone with a joint interest in the matter.
- Admission is a best evidence against to the person who made it ~~when~~ it is shown to be a true or made made in circumstances that make it non binding.
- Admission made by govt. are relevant but not conclusive unless other side agreed based on it.
- Admission must be clear, precise not vague or ambiguous.
- admission must be self naming
- Statement made in plaint (pleading) are admissible as evidence but court is not bound to accept all statements as true.

Admission by conduct are not covered by this section the relevancy depends upon section 6.

* confessions. (Section 22-24)

Confession is a special form of admission where accused acknowledges the offence or facts that constitute the offence.

every confession is an admission but not every admission is a confession.

confession involves acknowledgement of guilt.

confession is 'relevant unless it is made' :-

- (i) as a result of inducement, threat or promise.
- (ii) made to police officer.
- (iii) made by accused in police custody where no magistrate is present.

~~(iv)~~

* confession made in front of magistrate is admissible against maker of confession as well as co-accused.

So confession must be voluntary and must not be obtained through coercion, threat or inducement.

* In Populna Narayanaswami vs Emperor, (Privy Council) held that if statement is containing self exculpatory matter it does not amount to confession.

* mere admission of possession of weapon used in a crime without explaining how weapon was used is not a confession

Difference between Admission and Confession.

Admission	Confession
1. Admission is a statement of a person in which a person in which a fact is admitted.	1. Confession is the admission of guilty by an accused person
2. Admissions are used to determine the rights and liabilities of parties in a matter.	2. Confession is used to establish the guilt of the accused in the trial proceedings.
3. Used as evidence in both civil and criminal proceedings	3. Only criminal proceedings
4. Any person can make an admission.	4. Only accused person can make a confession.
5. Admissions can be made either voluntary or involuntary	5. Confessions can only be made voluntary as involuntary confessions are inadmissible.
6. Admission can be recorded either orally or in writing	6. The CrPc and IEA mandate that confessions need to be recorded in writing

Confessions are classified as :-

(a) Judicial confession ⇒ Judicial confessions are those made before a Court recorded by a Magistrate after following the prescribed procedure such as warning the accused that he need not to make confession and that if he made it it would be used against him.

(b) Extra judicial confession ⇒ 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.

Case law :- Ram Khilan vs. State of Rajasthan.

— The SC 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 trustworthy, the conviction on the basis of extra judicial confession is proper.

* Illustration no :- 1, 2, 5 & 6 by module.

* Statements by person who cannot be called as witness :-

- The statement is made by a person as to the cause of death.
- Statement made in the course of business.
- Statement which is against the Int. of the maker.
- A statement giving the opinion as to the public right or custom.
- A statement in a will.

* all illustrations by Sir notes or module.

- a statement made by a no. of person expressing their feelings.
- a statement made before the commencement of the controversy.

Statements made under special circumstances

Following statements are relevant in court because they come from special circumstances.

- ① Business records:- Entries in regular business records (including electronic records) are relevant if they relate to something the court is investigating.
- ② Official records:- Entries made by public servant or other authorized person in public or official records are relevant, if they state a fact in issue.
Public
- ③ Maps or charts:- Maps or charts or part plans are relevant when they concern matter represented in such maps.
- ④ Court publications:- Statement in law, court books, notifications

officially published in govtⁿ gazette are relevant when court is considering a public fact -

(5) Foreign laws - Statement in Books or reports containing laws of other country are relevant when court needs to know that law

Opinions of third persons when relevant.

(1) Opinions of experts :- Opinions of experts are relevant upon a point of :-

- Foreign law
- Arts
- Science
- Identity of hand writing
- Finger impressions
- Special knowledge of the subject matter of inquiry become relevant

* Illustration :- The ques is whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

(2) Facts which supports or are inconsistent with the opinions of expert are also made relevant.

† The facts which are not otherwise relevant if they support or are inconsistent with the opinions of experts when such opinions are relevant.

Other :- (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.

(b) opinion as to digital signature of any person, the opinion of the certifying authority which has issued the digital signature certificate.

(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,

(d) opinion as to usages etc - words and terms used in particular district, if the person has special means of knowledge of the subject.

facts of which evidence cannot be given
(Privileged communications)

① Evidence of Judges and Magistrates.

Under BSA, a judge or magistrate cannot be compelled to answer questions about their conduct in court or knowledge gained in court, except on the special order of a superior court, but can be examined about other matters that occurred in their presence.

② Communication during Marriage.

No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married.

nor shall he be permitted to disclose any such communication unless the person who made it, or his representative in law, consents, except in suit

- ③ Evidence as to affairs of state.
— 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 or the HOB concerned.

Oral, Documentary and Circumstantial Evidence

Oral evidence means statement which the court permits or requires to be made before it by witness 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)

Direct Evidence

- If it refers to a fact which could be seen, it must be the evidence of a witness.
- If it refers to a fact which could be heard, it must be the evidence of a witness.
- If it refers to a fact, which could be perceived by any other sense or in any other manner.
- If it refers to an opinion or the grounds on which that opinion is held.

Documentary evidence { Section 9(1)(d) }

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 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.

There are 2 types of documentary evidence.

- ① Primary Evidence
- ② Secondary Evidence

Primary Evidence.

"Primary Evidence" means the documents itself produced for the inspection of the court.

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.

Secondary Evidence

Secondary evidence means :-

- ① certified copy
- ② copies made from or compared with the original

- by mechanical process
- (3) copies made from or compared with original.
 - (4) counter parts of documents
 - (5) oral account of the content of a document

Sec'60 Secondary evidence can be used in court when original document is not available in following cases:-

- (1) when original doc. is with someones possession but they don't show it in court you can use secondary evidence. -this applies when
 - a) persons against whom document is being used does not produce it
 - b) person who has it is outside the court reach.
 - c) person legally required to produce the doc fails to do so
- (2) person against whom doc. is being used admits the content of doc. in writing, secondary evidence can be accepted in such case.
- (3) when original doc. is lost or destroyed.
- (4) when original is of nature as not to be easily movable.
- (5) when original is a public document
- (6) when law allows certified copies to be used.
- (7) when original is too large to examine in court.

fundamental rule of evidence

- (1) No fact 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.

* Diff. b/w evidence in civil and criminal cases

Civil cases:- The standard of proof is preponderance of probability. This means that the evidence must show that something is more likely true than other. The decision is based on which side's version of event is more believable.

Criminal cases:- The standard of proof is "beyond all reasonable doubt". This is much higher standard. The evidence must prove defendant's guilt so clearly that there is no reasonable doubt in the mind of judge.

Logical relevancy and legal relevancy

A fact is logically relevant if it has causal relationship with another fact, meaning it could suggest existence or non-existence of that fact.

e.g. if it is raining ground is likely wet.

A fact is legally relevant if it meets specific legal criteria defined by Indian Bharatiya Sakshya Adhiniyam.

All legally relevant facts are logically relevant but all logically relevant facts are not legally relevant.

Judge may consider some logically relevant facts to be too unrelated or not important enough

for a legal case.

Logical relevancy is based on common sense, legal

Relevancy is based on what law permits as evidence. Court only consider facts that are legally relevant means they are allowed under law to be used as evidence.

Legal Relevancy and Admissibility

A fact is relevant when it helps in proving fact in issue.

A fact can be relevant but still not admissible if it goes against legal rules or public policy.

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

Electronic Evidence : { Section 63 }

According to sec. 63. not withstanding anything contained in this Act in force, any information contained in an electronic record which is printed on paper, stored, stored 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 shall be deemed as electronic evidence.

Conditions for computer output (Section 13(2))

To be admissible under this section, electronic record must meet certain conditions.

- ① Record must be created or processed by computer or communication device which was regularly used by persons who control it.
- ② The type of information in electronic record must be regularly entered into the computer or communication device during normal course of business or activities.
- ③ The computer or communication device must have been functioning properly throughout the period.
- ④ The information in electronic record must accurately reflect what was inputted during normal business activities.

Submission of certificate along with the electronic record

When submitting an electronic record as evidence, a certificate must be submitted along with the record. This certificate should include:-

- (a) Description of electronic record and how it was produced.

(b) details of devices used to produce the record, to prove that it was created by computer or communication device.

(c) A confirmation that records were stored and processed regularly and accurately in normal course of business.

· certificate must be signed by person in charge of computer or communication device or expert certifying to detail to the best of their knowledge

Proof of electronic signature

if electronic signature is involved it must be proven that signature ~~must~~ belongs to the subscriber.