

Law relating to Evidence

Lesson 8

KEY CONCEPTS

■ Oath ■ Relevancy of Evidence ■ Admissibility of Evidence ■ Fact in Issue ■ Admissions ■ Confessions ■ Dying Declaration ■ Opinion of third persons

Learning Objectives

To understand:

- Basic concepts under Law of Evidence
- The importance of relevancy of Evidence
- Need and importance of rules relating to admissibility of Evidence
- Facts in issue and related facts
- Admissions and Confessions
- Privileged Communications
- Provisions relating to Oral, Documentary and E-evidence

Lesson Outline

- Introduction
- Judicial Proceedings
- Few Important Terms
- Classification of Relevant Facts
- Fundamental Rules
- Closely Connected Facts
- Admissions and Confessions
- Opinion of Third Persons
- Facts of which evidence cannot be given (Privileged Communications)
- Oral, Documentary and Circumstantial Evidence
- Presumptions
- Estoppel
- Electronic Evidence (e-Evidence)
- Lesson Round Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (Including Websites / Video Links)

Law are not invented. They grow out of circumstances.

– Azarias

The new criminal laws i.e. **Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023 and Bharatiya Sakshya Adhinyam 2023** have repealed **Indian Penal Code 1860, Criminal Procedure Code 1973 and Indian Evidence Act 1872 (old criminal laws)** respectively.

Therefore, by virtue of **Section 8 of General Clauses Act 1897**, the references to the old criminal laws, unless a different intention appears, be construed as references to the provision of new criminal laws.

REGULATORY FRAMEWORK

- The Bharatiya Sakshya Adhinyam 2023

INTRODUCTION

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 known as “Law of Evidence”.

The Bharatiya Sakshya Adhinyam 2023 an Act to consolidate and to provide for general rules and principles of evidence for fair trial.

JUDICIAL PROCEEDINGS

The Bharatiya Sakshya Adhinyam, 2023 does not define the term “judicial proceedings” but it is inclusively defined under Section 2(1)(m) of the Bharatiya Nagarik Suraksha Sanhita, 2023 as “any proceeding in the course of which evidence is or may be legally taken on oath.

The word evidence in the Act 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 Adhinyam, 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 are which form part of the same transaction, though not in issue, place or at different times and places.

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

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

SCHEME OF THE ADHINIYAM**The Act is divided into four parts**

Part I: PRELIMINARY Chapter I - Preliminary	Part II: RELEVANCY OF FACTS Chapter II: Relevancy of Facts	Part III: ON PROOF Chapter III: FACTS WHICH NEED NOT BE PROVED Chapter IV: OF ORAL EVIDENCE Chapter V: OF DOCUMENTARY EVIDENCE Chapter VI: OF THE EXCLUSION OF ORAL EVIDENCE BY DOCUMENTARY EVIDENCE	Part IV: PRODUCTION AND EFFECT OF EVIDENCE Chapter VII: OF THE BURDEN OF PROOF Chapter VIII: ESTOPPEL Chapter IX: OF WITNESSES Chapter X: OF EXAMINATION OF WITNESSES Chapter XI: OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE Chapter XII: Repeal and Savings
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Relevancy of Facts: Sections 3 to 50 of the Adhinyam deal with relevancy of facts. A fact is also known as Factum Probans or a fact that proves. The question arises what then the term “fact” signifies?

According to section 2(1)(f), “fact” means and includes – (i) any thing, state of things, or relation of things, capable of being perceived by the senses; (ii) any mental condition of which any person is conscious.

Thus facts are classified into physical and psychological facts.

Illustrations.

- (i) That there are certain objects arranged in a certain order in a certain place, is a fact.
- (ii) That a person heard or saw something, is a fact.
- (iii) That a person said certain words, is a fact.
- (iv) That a person holds a certain opinion, has a certain intention, acts in good faith, or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact;

Changes in BSA: Word “man” is replaced by the word “person” in illustrations and illustration (e)-“That a man has a certain reputation, is a fact” is now not the part of BSA.

Illustrations (i), (ii) and (iii), are the examples of physical facts whereas illustration (iv) are the examples of psychological facts.

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

According to section 3 of BSA, 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.

Explanation to section 3, however, explains that section 3 shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to civil procedure.

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, 1908.

FEW IMPORTANT TERMS

To understand the relevancy it is necessary to know the meanings of the few terms. These are as follows:

Relevant Fact

Section 2(1)(k) of BSA provides the definition of "relevant" as: 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 Adhiniyam relating to the relevancy of facts

Section 4 to 14 provides the provisions relating to closely connected facts.

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 Adhiniyam 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 Adhiniyam 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 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 facts 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.

Facts in Issue

According to section 2(1)(g) of BSA, "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 proceeding, 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: –

- (i) That A caused B's death.
- (ii) That A intended to cause B's death.
- (iii) That A had received grave and sudden provocation from B.
- (iv) That A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature;

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

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.

CLASSIFICATION OF RELEVANT FACTS

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

Classification of relevant facts	
Details	Sections
Closely connected facts	Sections 4 to 14
Admissions	Sections 15 to 25
Statements by persons who cannot be called as witnesses	Sections 26 to 27
Statements made under special circumstances	Sections 28 to 32
How much of a statement is to be proved	Section 33
Judgments of Courts when relevant	Sections 34 to 38
Opinions of third persons, when relevant	Sections 39 to 45
Character when relevant	Sections 46 to 50

FUNDAMENTAL RULES**Fundamental Rules of Evidences**

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.

According to section 2(1)(h) of BSA, Whenever it is provided by this Adhiniyam that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it.

For example: Section 88: Presumption as to certified copies of foreign judicial records, Section 89: Presumption as to books, maps and charts, Section 90: Presumption as to electronic messages, 92. Presumption as to documents thirty years old, etc.

According to section 2(1)(l) of BSA, whenever it is directed by this Adhiniyam that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

For example: Section 78: Presumption as to genuineness of certified copies, Section 79: Presumption as to documents produced as record of evidence, etc., Section 80: Presumption as to Gazettes, newspapers, and other documents; Presumption as to maps or plans made by authority of Government.

Presumption 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 Adhiniyam to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

CLOSELY CONNECTED FACTS

1. **Relevancy of facts forming part of same transaction (Section 4):** 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.

Illustrations.

- (a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.
- (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 jails are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though 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. 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.

- 2. Facts which are occasion, cause or effect of facts in issue or relevant facts (Section 5):** Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Changes in BSA: Words “or relevant facts” added in heading.

Illustration: 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.

- 3. Motive, preparation and previous or subsequent conduct (Section 6):** Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person, an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

The word “conduct” in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Adhiniyam.

When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations

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.

The question is, whether A owes B ten thousand rupees. 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 ten thousand rupees”, and that A went away without making any answer, are relevant facts.

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 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.

- 4. Facts necessary to explain or introduce fact in issue or relevant facts (Section 7):** Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or a relevant fact, or which establish the identity of anything, or person whose identity, is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations

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.

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.

- 5. Things said or done by conspirator in reference to common design (Section 8):** Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration

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

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

- 6. When facts not otherwise relevant become relevant (Section 9):** Facts not otherwise relevant are relevant –
- (1) if they are inconsistent with any fact in issue or relevant fact;
 - (2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustration

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

- 7. Facts tending to enable Court to determine amount are relevant in suits for damages (Section 10):** In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded, is relevant.
- 8. Facts relevant when right or custom is in question (Section 11):** Where the question is as to the existence of any right or custom, the following facts are relevant –
- (a) any transaction by which the right or custom in question was created, claimed, modified, recognised, asserted or denied, or which was inconsistent with its existence;

(b) particular instances in which the right or custom was claimed, recognised or exercised, or in which its exercise was disputed, asserted or departed from.

- 9. Facts showing existence of state of mind, or of body or bodily feeling (Section 12):** Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

Explanation 1. – A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

Explanation 2. – But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.

Illustration

A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss. The fact that, at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

- 10. Facts bearing on question whether act was accidental or intentional (Section 13):** When there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustration

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

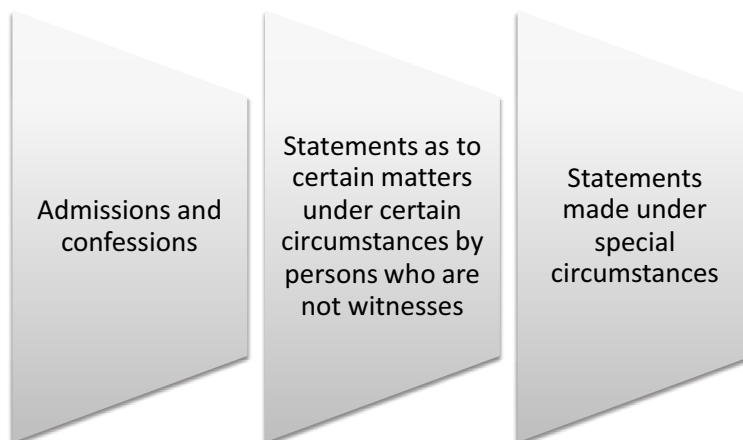
- 11. Existence of course of business when relevant (Section 14):** When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Illustration

- (a) The question is, whether a particular letter was dispatched. The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that particular letter was put in that place are relevant.
- (b) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Return Letter Office, are relevant.

ADMISSIONS AND CONFESSIONS

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:



(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 to 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 Act. 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).

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:

- “(1) Section 15 of the Indian Evidence Act, 1872, 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.
- (2) 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 17), that admissions must be self-harming; and because a person is 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 6 and its explanations.

Oral admissions as to the contents of electronic records are not relevant unless the genuineness of the record produced is in question. (Section 20)

Confessions

Sections 22 to 24 deal with confessions. However, the Adhiniyam 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. Proviso to section 23 and section 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 without the presence of magistrate	(iii) to any one at a time when the accused is in the custody of a Police Officer and no Magistrate is present.

Changes made by BSA:

In section 22 [24 of IEA] - The word “coercion” has been added in 22. Section 28 IEA and Section 29 IEA are given as provisos to Section 22 of the BSA. Heading is dropped as sections are included as provisos.

In section 23(2) [26 of IEA] - Heading is dropped as the section is included as a subsection. Word “whilst” is replaced by “while” and words “such person” are replaced by “him”.

In section 24 [30 of IEA] - A new explanation II is added, mentioning that “A trial of more persons than one held in the absence of the accused who has absconded or who fails to comply with a proclamation issued under Section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023, shall be deemed to be a joint trial for the purpose of this section.”

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.

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.

According to Section 22(1), confession caused by inducement, threat, coercion or promise is irrelevant. To attract the prohibition contained in Section 22 of BSA the following six facts must be established:

- (i) that the statement in question is a confession;
- (ii) that such confession has been made by an accused person;
- (iii) that it has been made to a person in authority;
- (iv) that the confession has been obtained by reason of any inducement, threat, coercion or promise proceeded from a person in authority;
- (v) such inducement, threat, coercion or promise, must have reference to the charge against the accused person;
- (vi) 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, coercion 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 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 *Section 183 of BNSS 2023* after following the prescribed procedure such as warning the accused that he need not to make the confession and that if he made it, it would be used against him. 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 evidences. 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.

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 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).

Illustrations

1. A undertakes to collect rents for 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 B rent is an admission, and is a relevant fact as against A, if A denies that C did 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 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 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, the captain of a ship, is tried for casting her away. Evidence is given to show that the ship was taken out of her proper course. A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under clause (b) of section 26.
5. A is accused of a crime committed by him at Kolkata. He produces a letter written by himself and dated at Chennai on that day, and bearing the Chennai 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 clause (b) of section 26.
6. A is accused of receiving stolen goods knowing them to be stolen. He offers to prove that he refused to sell them below their value. A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.
7. A is accused of fraudulently having in his possession counterfeit currency which he knew to be counterfeit. He offers to prove that he asked a skilful person to examine the currency as he doubted whether it was counterfeit or not, and that person did examine it and told him it was genuine. A may prove these facts.
8. 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.
9. 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.

(ii) Statements by persons who cannot be called as witnesses

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

1. **Statements relating to cause of death:** When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.
2. **Statement relating to Course of Business:** When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.
3. **Statement against interest:** When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.
4. **Statement relating to the opinion as to existence of Public Right, Custom or matter of Public or General Interest:** when the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.
5. **Statement relating to the existence of any relationship:** When the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.
6. **Statement relating to the existence of any relationship with deceased:** When the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.
7. **Statement in any deed, will or other document relating to right or custom:** When the statement is contained in any deed, will or other document which relates to any such transaction as is specified in clause (a) of section 11 *i.e.* any transaction by which the right or custom in question was created, claimed, modified, recognised, asserted or denied, or which was inconsistent with its existence.
8. **Statement relating to expression feelings or Impression:** when the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

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 raped. The question is whether she was raped 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 cause 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 was in Nagpur on a given day. A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place mentioned, in Nagpur, for the purpose of conferring with him upon specified business, is a relevant fact.
- (d) The question is, whether a ship sailed from Mumbai harbour on a given day. A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in Chennai, to whom the cargo was consigned, stating that the ship sailed on a given day from Mumbai port, is a relevant fact.
- (e) The question is, whether rent was paid to A for certain land. A letter from A's deceased agent to A, saying that he had received the rent on A's account and held it at A's orders is a relevant fact.
- (f) 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.
- (g) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.
- (h) The question is, what was the cause of the wreck of a ship. A protest made by the captain, whose attendance cannot be procured, is a relevant fact.
- (i) The question is, whether a given road is a public way. A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.
- (j) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased business person in the ordinary course of his business, is a relevant fact.
- (k) The question is, whether A, who is dead, was the father of B. A statement by A that B was his son, is a relevant fact.
- (l) The question is, what was the date of the birth of A. A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.
- (m) The question is, whether, and when, A and B were married. An entry in a memorandum book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.
- (n) A sues B for a libel expressed in a painted caricature exposed in a shop window. 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.

(iii) Statements made under special circumstances:

The following statements become relevant on account of their having been made under special circumstances:

- (a) Entries in the books of account, including those maintained in an electronic form, regularly kept in the course of business are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.
- (b) An entry in any public or other official book, register or record or an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record or an electronic record, is kept, is itself a relevant fact.
- (c) Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of the Central Government or any State Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

- (d) When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Central Act or State Act or in a Central Government or State Government notification appearing in the respective Official Gazette or in any printed paper or in electronic or digital form purporting to be such Gazette, is a relevant fact.
- (e) When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published including in electronic or digital form under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book including in electronic or digital form purporting to be a report of such rulings, is relevant.

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 series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made. (Section 33)

OPINION OF THIRD PERSONS

Generally opinion of third persons is irrelevant. However, in the below mentioned cases, opinion of third person may be treated as relevant:

1. **Opinions of experts (Section 39):** When the Court has to form an opinion upon a point of foreign law or of science or art, or any other field, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or any other field, or in questions as to identity of handwriting or finger impressions are relevant facts and such persons are called experts.

Illustration: 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. The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

Further, 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.

2. **Facts bearing upon opinions of experts (Section 40):** acts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustration: The question is, whether an obstruction to a harbour is caused by a certain sea-wall. The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

3. **Opinion as to handwriting and signature, when relevant (Section 41):** When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

- 4. Opinion as to existence of general custom or right, when relevant (Section 42):** When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

The expression “general custom or right” includes customs or rights common to any considerable class of persons.

- 5. Opinion as to usages, tenets, etc., when relevant (Section 43):** When the Court has to form an opinion as to –

- (i) the usages and tenets of any body of men or family;
 - (ii) the constitution and governance of any religious or charitable foundation; or
 - (iii) the meaning of words or terms used in particular districts or by particular classes of people,
- the opinions of persons having special means of knowledge thereon, are relevant facts.

- 6. Opinion on relationship, when relevant (Section 44):** When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

However, such opinion shall not be sufficient to prove a marriage in proceedings under the Divorce Act, 1869, or in prosecution under sections 82 and 84 of the Bharatiya Nyaya Sanhita, 2023.

- 7. Grounds of opinion, when relevant (Section 45):** Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.

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 are mainly covered under Sections 127 to 134 of the BSA, where evidence is prohibited under those Sections. They are also referred to as ‘privileged communications’.

Types of privileged communications	
(i) Evidence of a Judge or Magistrate in regard to certain matters (Section 127)	(iv) Official communications (Section 130)
(ii) Communications during marriage; (Section 128)	(v) Source of information of a Magistrate or Police officer or Revenue officer as to commission of an offence or crime (Section 131)
(iii) Evidence as to Affairs of State; (Section 129)	(vi) Professional communication between a client and his barrister, attorney or other professional or legal advisor (Sections 132(1) &(2) and 134).

Changes in Section 132(1) &(2) BSA [126 of IEA]: The words “barrister, attorney, pleader or vakil” are replaced by “advocate”. Word “employment” is replaced by “service”.

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.

Evidence of Judges and Magistrates

Under Section 127 of BSA, 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.

Communications during marriage

Under Section 128 of BSA, 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.

Evidence as to affairs of State

Section 129 of the BSA 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.

Professional communications

Section 132 of BSA deal with the professional communications between an advocate and a client, which are protected from disclosure. A client cannot be compelled and an advocate 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 these sections neither an advocate nor his interpreter, clerk or employees can be permitted to disclose any communication made to him in the course and for the purpose of professional employment of such advocate 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.

Further, under section 134, no one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

Changes in Section 132 of BSA [126 of IEA]: The words “barrister, attorney, pleader or vakil” are replaced by “advocate”. Word “servant” is replaced by “employee”.

ORAL, DOCUMENTARY AND CIRCUMSTANTIAL EVIDENCE

Oral Evidences

All facts, except the contents of documents may be proved by oral evidence (Section 54). The contents of documents may be proved either by primary or by secondary evidence (Section 55).

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)

Direct Evidence

In Section 55 of the BSA, 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.

However, the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

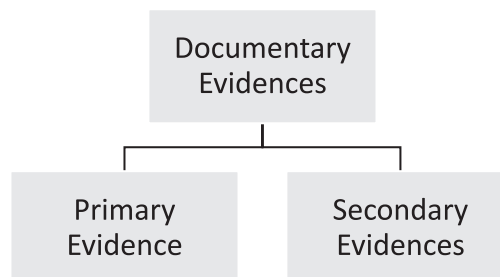
Further, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

Documentary Evidences

According to section 2(1)(d) “document” means any matter expressed or described or otherwise recorded upon any substance by means of letters, figures or marks or any other means or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter and includes electronic and digital records.

And according to section 56, the contents of documents may be proved either by primary or by secondary evidence.

So, the documentary evidences can further be classified in two ways i.e. Primary or Secondary.



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.

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 Sanhita. According to Section 58, "secondary evidence" means and includes:

- (i) certified copies given under the provisions after section 58;
- (ii) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;
- (iii) copies made from or compared with the original;
- (iv) counterparts of documents as against the parties who did not execute them;
- (v) oral accounts of the contents of a document given by some person who has himself seen it;
- (vi) oral admissions;
- (vii) written admissions;
- (viii) 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.
- (c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.
- (d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.

Further, section 60 provides the Cases in which secondary evidence relating to documents may be given. Secondary evidence may be given of the existence, condition, or contents of a document in the following cases, namely:

- (a) when the original is shown or appears to be in the possession or power –
 - (i) of the person against whom the document is sought to be proved; or
 - (ii) of any person out of reach of, or not subject to, the process of the Court; or
 - (iii) of any person legally bound to produce it,

- and when, after the notice mentioned in section 64 such person does not produce it;
- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;
 - (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;
 - (d) when the original is of such a nature as not to be easily movable;
 - (e) when the original is a public document within the meaning of section 74;
 - (f) when the original is a document of which a certified copy is permitted by this Adhiniyam, or by any other law in force in India to be given in evidence;
 - (g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

Explanation. – For the purposes of –

- (i) clauses (a), (c) and (d), any secondary evidence of the contents of the document is admissible;
- (ii) clause (b), the written admission is admissible;
- (iii) clause (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible;
- (iv) clause (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such document.

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

Section 63 is non-obstante clause which provides that 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.

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

PRESUMPTIONS

The Sanhita 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

(i) Presumptions of law, It is a rule of law that a particular inference shall be drawn by a court from particular circumstances.

(ii) Presumptions of fact, it is a rule of law that a fact otherwise doubtful may be inferred from a fact which is proved.

(iii) 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 Sanhita. Section 2(1)(b), (h) and (l) 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.

ESTOPPEL

When we see a man knocked down by a speeding car and a few yards away, there is a car going, there is a presumption of fact that the car has knocked down the man.

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.

Sections 122 and 123 are also other important sections relating to Estoppel of tenant and of licensee of person in possession and Estoppel of acceptor of bill of exchange, bailee or licensee.

Principle of Estoppel

Estoppel is based on the maxim ‘*allegans contraria 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. Estoppel by record results from the judgement of a competent Court. 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 pursuing 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



ELECTRONIC EVIDENCE (E-EVIDENCE)

The contents of electronic records may be proved in accordance with the provisions of section 63 of BSA.

Admissibility of electronic records

According to section 63, 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.

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

- (a) the computer output containing the information was produced by the computer or communication device during the period over which the computer or Communication device was used regularly to create, store or process information for the purposes of any activity regularly carried on over that period by the person having lawful control over the use of the computer or communication device;

- (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer or Communication device in the ordinary course of the said activities;
- (c) throughout the material part of the said period, the computer or communication device was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and
- (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer or Communication device in the ordinary course of the said activities.

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

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

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

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

Submission of certificate along with the electronic record

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

- (a) identifying the electronic record containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer or a communication device referred to in clauses (a) to (e) of sub-section (3);
- (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person in charge of the computer or communication device or the management of the relevant activities (whichever is appropriate) and an expert shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it in the certificate specified in the Schedule.

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

CASE LAWS***Amllesh Kumar v. The State Of Bihar, Supreme Court, 09.06.2025***

The Hon'ble Supreme Court has held that an accused person has a right to voluntarily undergo a narco-analysis test, but at the appropriate stage of the trial, that is, when the accused is exercising his right to lead the evidence. Having said that, there is no indefeasible right of the accused to undergo a narco-analysis test as the right is dependent on many factors to be considered by the Court concerned.

LESSON ROUND-UP

- The law of Evidence may be defined as a system of rules for ascertaining controverted 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 known as "law of Evidence".
- The word evidence in the Sanhita 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 the Sanhita 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.
- 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: (i) Admissions and confessions; (ii) Statements as to certain matters under certain circumstances by persons who are not witnesses; and (iii) Statements made under special circumstances.
- All facts which are neither admitted nor are subject to judicial notice must be proved. The Sanhita 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.
- 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. There are three categories of presumptions: (i) presumptions of law, which is a rule of law that a particular inference shall be drawn by a court from particular circumstances; (ii) presumptions of fact, it is a rule of law that a fact otherwise doubtful may be inferred from a fact which is proved; (iii) mixed presumptions, they consider mainly certain inferences between the presumptions of law and presumptions of fact.
- 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.
- According to section 63, 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.

GLOSSARY

Judicial Proceedings: According to Section 2(1)(m) of the BNSS as “a proceeding in the course of which evidence is or may be legally taken on oath”.

Documentary Evidence: All documents including electronic records produced for the inspection of the Court are called documentary evidence.

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 proceedings, necessarily follows.

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

Confessions: The confession is an admission, which is evidence only against its maker and against another person who is being jointly tried with him for an offence. A confession must, either admit, in terms the offence, or substantially all the facts which constitute the offence.

Judicial Confessions: Judicial confessions are those made before a Court or recorded by a Magistrate under the BNSS after following the prescribed procedure.

Extra Judicial Confessions: Extra-judicial confessions are those which are made either to the police or to any person other than Judges and Magistrates as such.

Privileged Communication: There are some facts of which evidence cannot be given under Bharatiya Sakshya Adhiniyam, 2023 though they are relevant. They are referred to as ‘privileged communications’

Primary Evidence: Primary evidence means the document itself produced for the inspection of the Court.

Estoppel : Estoppel is based on the maxim ‘allegans contraria non est audiendus’ i.e. a person alleging contrary facts should not be heard.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. What is oral, documentary and circumstantial evidence?
2. Differentiate between Primary Evidence and Secondary Evidence.
3. Explain in Brief Principal of Estoppel.
4. Write a short note on Admissions and Confession.
5. State the cases in which opinion of expert is relevant.
6. Write a short note on admissibility of electronic evidence.

LIST OF FURTHER READINGS

- Bare Act of Bharatiya Sakshya Adhiniyam, 2023
- “Relevancy, Proof and Evaluation of Evidence in Criminal Cases” authored by Mr. Justice U.L. Bhat
- Vepa P. Sarathi, Law of Evidence, 6th Edition.

OTHER REFERENCES (INCLUDING WEBSITES / VIDEO LINKS)

- https://www.mha.gov.in/sites/default/files/250882_english_01042024.pdf