

# Overview of Bharatiya Sakshya Adhiniyam, 2023 and Comparison with Indian Evidence Act

By,

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# **INTRODUCTION- GENERAL**

- **A) What is evidence?**
- **B) Why evidence law - Objectives**
- **C) Structure of evidence act and its role in trial**
- **D) Changes brought by BSA**

## **Evidence – What it is?**

- ❖ It is the usual means of proving or disproving a fact under trial or inquiry.**
- ❖ It does not include arguments.**
- ❖ It tends to convince the court of the truth or otherwise of the matter.**

## **Evidence Act tells us:**

- i) What are facts-in-issue.**
- ii) What facts are relevant.**
- iii) What facts are admissible.**
- iv) What facts may be proved.**
- v) What facts may not be proved.**
- vi) What kind of evidence may be given of a fact which is to be proved.**
- vii) Who is to produce such evidence.**
- viii) How it is to be given.**

## **Basic rules of Evidence**

- i) Best evidence must be produced.**
- ii) Hearsay evidence is not admissible.**
- iii) Evidence may be given of facts in issue and relevant facts (Sec. 3).**
- iv) All facts, except the contents of documents, may be proved by oral evidence.**
- v) Facts judicially noticeable need not be proved.**
- vi) Facts admitted need not be proved.**
- vii) Oral evidence must be direct.**

**PART – 1 OF THE BSA  
SECTION 1-2**

## **1. Date of Commencement**

**It shall come into force on 1<sup>st</sup> July, 2024.**

## **2. Applicability**

**(2) It applies to all judicial proceedings in or before any Court, including Courts-martial, but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator**

# The following provisions from IEA have been deleted from BSA:

- 1. Section 3 (j): India
- 2. Section 82: Presumption as to document admissible in England without proof of seal or signature
- 3. Section 88: Presumption as to telegraphic messages
- 4. Section 113: Proof of cession of territory
- 5. Section 166: Power of jury or assessors to put questions



# Colonial and antiquated terminology,

- including references to entities such as the 'Parliament of the United Kingdom', 'Provincial Act', 'London Gazette', 'Commonwealth', 'Privy Council', 'Queen's Printer', and 'Her Majesty', as well as colonial proclamations and orders (as outlined in Section 77 of the BSA, which corresponds to Section 78 of the IEA, and Section 79 of the BSA, corresponding to Section 80 of the IEA), have been eliminated.

**DEFINITION**

# (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**

# *Illustrations*

- (vi) An electronic record on emails, server logs, documents on computers, laptop or smartphone, messages, websites, locational evidence and voice mail messages stored on digital devices are documents;

## *"Otherwise Recorded":*

- *Inclusion of "Otherwise Recorded" further expanded the scope as recording in any form will be covered.*

## Section 2(t) IT Act: “electronic record”

- means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

# Section 2 (o), IT Act - “data”

- (o) “data” means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer;

*(ha)* “communication device”

- means cell phones, personal digital assistance or combination of both or any other device used to communicate, send or transmit any text, video, audio or image;



## (i) “computer”

- means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network;

# (1) “computer system”

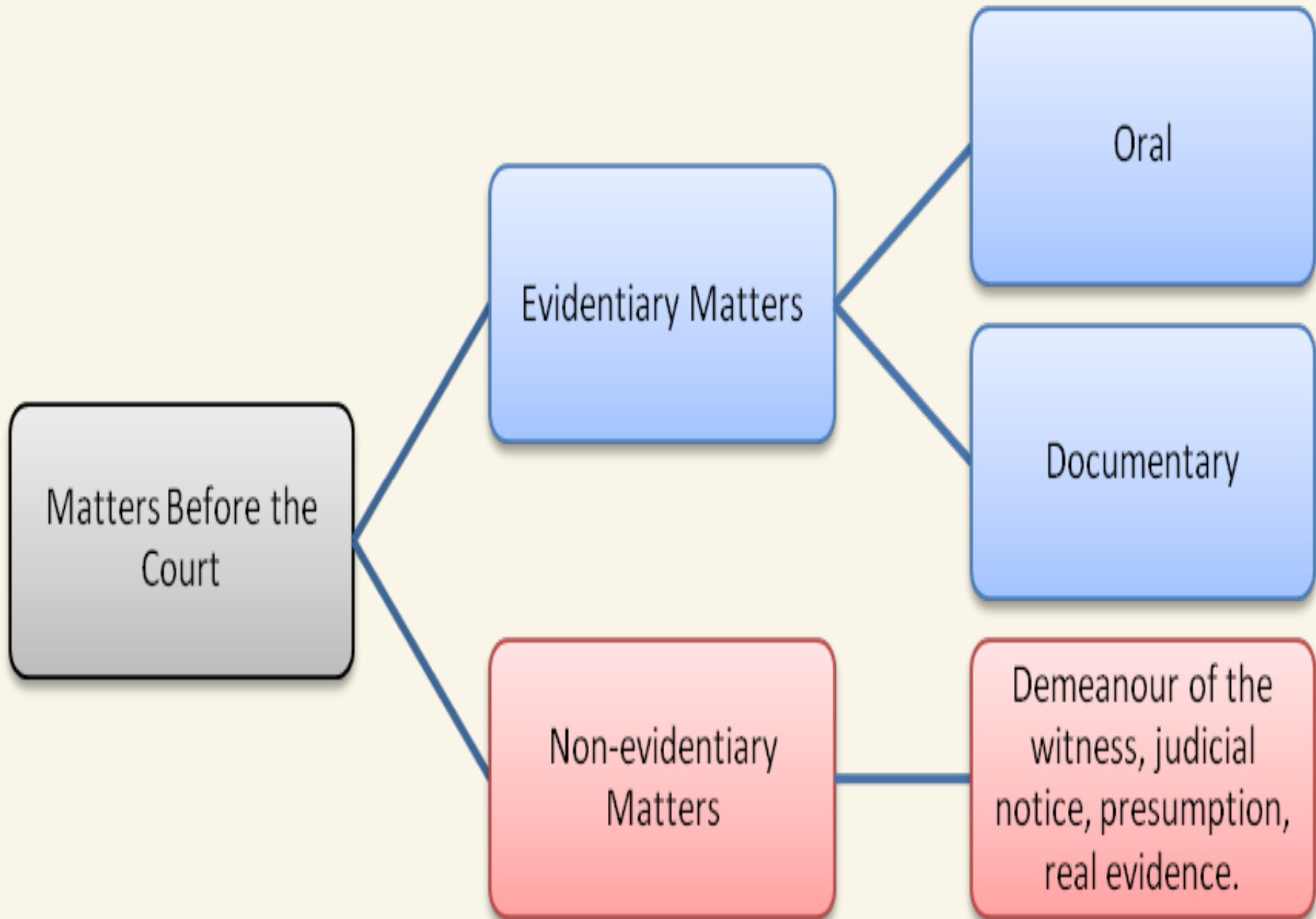
- means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data, and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

## (e) “evidence” means and includes—

- (i) all statements including statements given electronically which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry and such statements are called oral evidence<sup>4</sup>;
- (ii) all documents including electronic or digital records produced for the inspection of the Court and such documents are called documentary evidence;

(j) “proved”.—

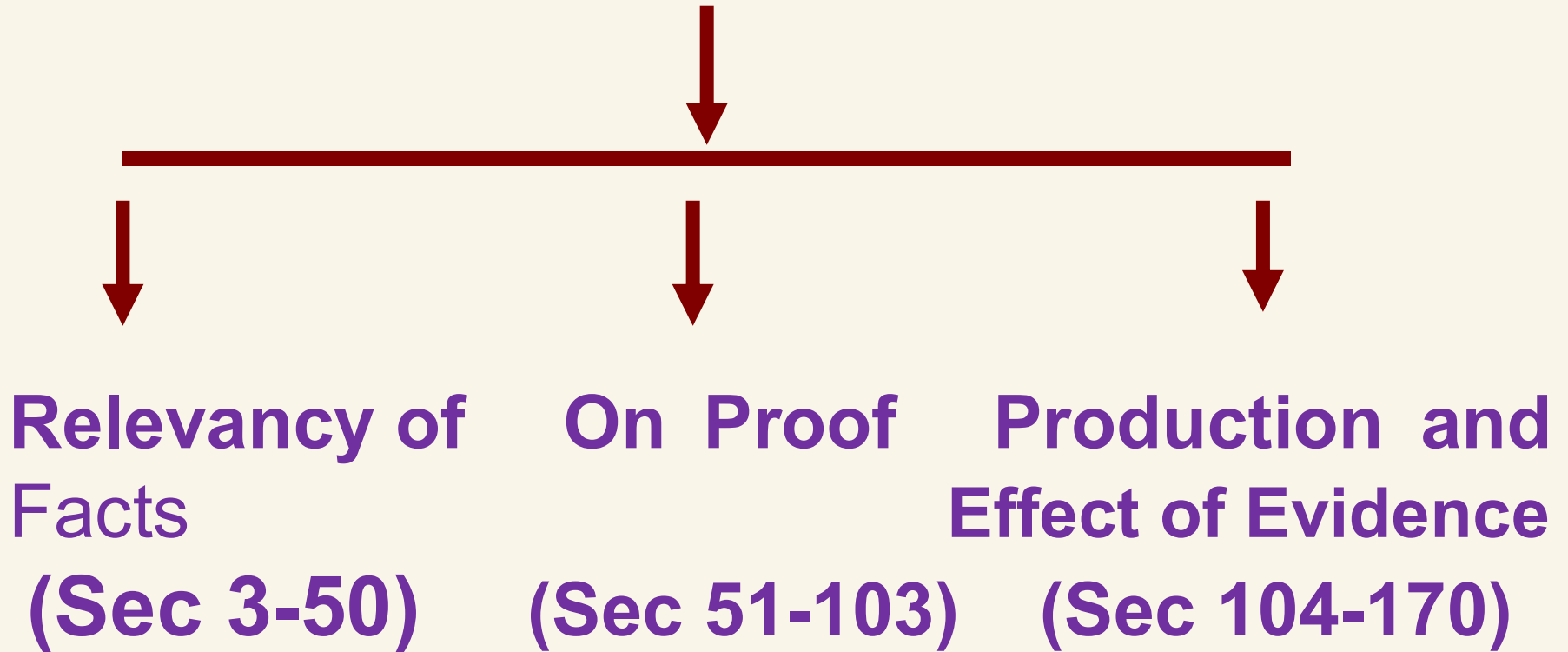
- A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists;



# Section 2 (2)

- (2) Words and expressions used herein and not defined but defined in the Information Technology Act, 2000 (21 of 2000), the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Bharatiya Nyaya Sanhita, 2023 shall have the same meanings as assigned to them in the said Act and Sanhitas.

# **Bharatiya Sakshya Adhiniyam, 2023**



## Part II.

# RELEVANCY OF FACTS

- This part deal with as to which facts, may, and what facts, may, not be proved in civil and criminal cases. In a proceeding, the Court in order to decide a point in controversy has to take some evidence. What sort of evidence, *i.e*, what facts a party may be allowed to proved in a particular case or proceeding has been given in Sec 3-50.



# WHY RELEVANCY PART SO IMPORTANT?

- **3. Evidence may be given of facts in issue and relevant facts.—**
- 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.

# Relevancy

- Of relevancy of fact (3-14)
- Admission and Confession (15-25)
- Statement by person who cannot be called as witnesses (26-27)
- Statements made under special circumstances (28-33)
- Judgments of courts of justice when relevant (34-38)
- Opinion Evidence (39-45)
- Character Evidence (46-50)

# WHAT IMPORTANT CHANGES BROUGHT IN THIS PART?

- Merger of provision like Section 22, 22A (BSA Section 20)
- Merger of provision like Section 24, 28 and 29, (BSA Section 22)
- Merger of Provision like Section 25,26 and 27, (BSA Section 23)
- Merger of Provision like Section 45, and 45A (BSA Section 39)
- Merger of Provision like Section 47, and 47A (BSA Section 41)

# RELEVANCY OF FACTS

## BSA 3 – 14 ; IEA 5 - 16

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

4. Relevancy of facts forming part of same transaction

5. Facts which are occasion, cause or effect of facts in issue or relevant facts

6. Motive, preparation and previous or subsequent conduct

7. Facts necessary to explain or introduce fact in issue or relevant facts

8. Things said or done by conspirator in reference to common design

9. When facts not otherwise relevant become relevant

10. Facts tending to enable Court to determine amount are relevant in suits for damages

11. Facts relevant when right or custom is in question

12. Facts showing existence of state of mind, or of body or bodily feeling

13. Facts bearing on question whether act was accidental or intentional

14. Existence of course of business when relevant

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

6. Relevancy of facts forming part of same transaction

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14. Facts showing existence of state of mind, or of body, or bodily feeling

15. Facts bearing on question whether act was accidental or intentional

16. Existence of course of business when relevant

## 4. 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.

*"or a relevant fact".*

- the inclusion of the phrase *"or a relevant fact"* has enormously broaden the ambit of the relevant fact.

## **5. Facts which are occasion, cause or effect of facts in issue or relevant facts.—**

- 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.

## 7. Facts necessary to explain or introduce fact in issue or relevant facts.—

- 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.



# ADMISSIONS

## BSA 15 – 25 ; IEA 17 - 31

15. Admission defined.

16. Admission by party to proceeding or his agent.

17. Admissions by persons whose position must be proved as against party to suit.

18. Admissions by persons expressly referred to by party to suit.

19. Proof of admissions against persons making them, and by or on their behalf.

20. When oral admissions as to contents of documents are relevant.

21. Admissions in civil cases when relevant.

22. Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceeding.

23. Confession to police officer.

24. Consideration of proved confession affecting person making it and others jointly under trial for same offence.

25. Admissions not conclusive proof, but may estop.

17. Admission defined

18. Admission by party to proceeding or his agent; by suitor in representative character; by party interested in subject-matter; by person from whom interest derived

19. Admissions by persons whose position must be proved as against party to suit

20. Admissions by persons expressly referred to by party to suit

21. Proof of admissions against persons making them, and by or on their behalf

22. When oral admissions as to contents of documents are relevant

22-A. When oral admission as to contents of electronic records are relevant

23. Admissions in civil cases, when relevant

24. Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding

25. Confession to police officer not to be proved

26. Confession by accused while in custody of police not to be proved against him

27. How much of information received from accused may be proved

28. Confession made after removal of impression caused by inducement, threat or promise, relevant

29. Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc

30. Consideration of proved confession affecting person making it and others jointly under trial for same offence

31. Admissions not conclusive proof, but may estop

## **20. When oral admissions as to contents of documents are relevant.—**

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

## 22. Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceeding.—

- A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat, coercion or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, 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:
- **Corresponding Law:** S. 24 of Act 1 of 1872.

- Provided that if the confession is made after the impression caused by any such inducement, threat, coercion or promise has, in the opinion of the Court, been fully removed, it is relevant:

- **Corresponding Law:** S. 28 of Act 1 of 1872.

- Provided further that if such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

## The Inclusion of "*Coercion*":

- While Old Sections: Only "*inducement, threat, or promise*" were mentioned as factors affecting the relevance of a confession, the New Section 22 (BSA) includes "*coercion*" as a factor, broadening the scope and providing more comprehensive coverage.

## 23. Confession to police officer.—

- (1) No confession made to a police officer shall be proved as against a person accused of any offence.
- **Corresponding Law:** S. 25 of Act 1 of 1872.
- (2) No confession made by any person while he is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate shall be proved against him:
- **Corresponding Law:** S. 26 of Act 1 of 1872.
- Provided that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact discovered, may be proved.

## 24. Consideration of proved confession affecting person making it and others jointly under trial for same offence.—

- When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.
- *Explanation 1.*—“Offence”, as used in this section, includes the abetment of, or attempt to commit, the offence.

• *Explanation II.*—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.



# STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES

BSA 26 -27 ; IEA 32-33

26. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

27. Relevancy of certain evidence for proving, in subsequent proceeding, truth of facts therein stated.

32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

# STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES

BSA 28 – 32 ; IEA 34 - 38

28. Entries in books of account when relevant.

29. Relevancy of entry in public record or an electronic record made in performance of duty.

30. Relevancy of statements in maps, charts and plans.

31. Relevancy of statement as to fact of public nature contained in certain Acts or notifications.

32. Relevancy of statements as to any law contained in law books including electronic or digital form.

34. Entries in books of account, including those maintained in an electronic form when relevant

35. Relevancy of entry in public record or an electronic record, made in performance of duty

36. Relevancy of statements in maps, charts and plans

37. Relevancy of statement as to fact of public nature, contained in certain Acts or notifications

38. Relevancy of statements as to any law contained in law books

# **Section 32 BSA(Sec 38)**

## **Inclusion of Digital and Electronic Formats:**

- Section 32: Explicitly states that statements about foreign law can be contained in books published in both physical and electronic or digital forms. This indicates a modern approach, recognizing the evolving nature of legal publications and the increasing reliance on digital resources whereas, Section 38: Although it mentions law contained in books, it does not explicitly recognize electronic or digital forms.

# STATEMENT IS TO BE PROVED

BSA 33 ; IEA 39

33. What evidence to be given when statement forms part of conversation, document, electronic record, book or series of letters or papers.

39. What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers

# JUDGMENTS OF COURTS WHEN RELEVANT

BSA 34 – 38 ; IEA

34. Previous judgments relevant to bar a second suit or trial.

35. Relevancy of certain judgments in probate, etc., jurisdiction.

36. Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 35.

37. Judgments, etc., other than those mentioned in sections 34, 35 and 36 when relevant.

38. Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.

40. Previous judgments relevant to bar a second suit or trial

41. Relevancy of certain judgments in probate, etc., jurisdiction

42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in Section 41

43. Judgments, etc., other than those mentioned in Sections 40 to 42, when relevant

44. Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved

## 35. Relevancy of certain judgments in probate, etc., jurisdiction.—(

- 1) A final judgment, order or decree of a competent Court or Tribunal, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

# OPINIONS OF THIRD PERSONS WHEN RELEVANT

BSA 39 – 45 ; IEA 45 - 51

## 39. Opinions of experts.

40. Facts bearing upon opinions of experts.

41. Opinion as to handwriting and signature, when relevant.

42. Opinion as to existence of general custom or right, when relevant.

43. Opinion as to usages, tenets, etc., when relevant.

44. Opinion on relationship, when relevant.

45. Grounds of opinion, when relevant.

45. Opinions of experts

45-A. Opinion of Examiner of Electronic Evidence

46. Facts bearing upon opinions of experts

47. Opinion as to handwriting, when relevant

47-A. Opinion as to electronic signature when relevant

48. Opinion as to existence of right or custom, when relevant

49. Opinions as to usages, tenets, etc., when relevant

50. Opinion on relationship, when relevant

51. Grounds of opinion, when relevant

# 39. Opinions of experts.—

- (1) 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.
- **Corresponding Law:** S. 45 of Act 1 of 1872.



## **39 (2) [previous 45A] Opinion of Examiner of Electronic Evidence.—**

- (2) When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000, is a relevant fact

## 41. Opinion as to handwriting and signature, when relevant.—

- (1) 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.
- *Explanation.*—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.

## **41(2) [Previous 47-A.] Opinion as to electronic signature when relevant.—**

- (2) When the Court has to form an opinion as to the electronic signature of any person, the opinion of the Certifying Authority which has issued the Electronic Signature Certificate is a relevant fact.

# CHARACTER WHEN RELEVANT

BSA 46 – 50 ; IEA 52 - 55

46. In civil cases character to prove conduct imputed, irrelevant.

47. In criminal cases previous good character relevant.

48. Evidence of character or previous sexual experience not relevant in certain cases.

49. Previous bad character not relevant, except in reply.

50. Character as affecting damages.

52. In civil cases character to prove conduct imputed, irrelevant

53. In criminal cases, previous good character relevant

53-A. Evidence of character or previous sexual experience not relevant in certain cases

54. Previous bad character not relevant, except in reply

55. Character as affecting damages

# PART III :

## ON PROOF

- This part is deal with the question as to what sort of evidence must be given about the facts, which may be proved, or in other word, this part deals with the manner in which the fact in issue and relevant fact may be proved.
- Thus, Sec 51 to 103 give the method of proving those facts, which are to be proved by the preceding chapter.

# ON PROOF

- Facts which need not be proved (51-53)
- Of oral Evidence (54-55)
- Of documentary evidence (56-73)
- Public Documents (74-78)
- Presumption as to documents (79-93)
- Of exclusion of oral by documentary evidence (94-103).

# FACTS WHICH NEED NOT TO BE PROVED

BSA 51 – 53 ; IEA 56 - 58

51. Fact judicially noticeable need not be proved.

52. Facts of which Court shall take judicial notice.

53. Facts admitted need not be proved.

56. Fact judicially noticeable need not be proved

57. Facts of which Court must take judicial notice

58. Facts admitted need not be proved

## 52. Facts of which Court shall take judicial notice.—

- (1) The Court shall take judicial notice of the following facts, namely.—
  - (a) all laws in force in the territory of India including laws having extra-territorial operation<sup>6</sup>;
  - (b) international treaty, agreement or convention with country or countries by India, or decisions made by India at international associations or other bodies;
  - (c) the course of proceeding of the Constituent Assembly of India, of Parliament of India and of the State Legislatures;
  - (d) the seals of all Courts and Tribunals;



- (e) the seals of Courts of Admiralty and Maritime Jurisdiction, Notaries Public, and all seals which any person is authorised to use by the Constitution, or by an Act of Parliament or State Legislatures, or Regulations having the force of law in India;
- (f) the accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in any Official Gazette;
- (g) the existence, title and national flag of every country or sovereign recognised by the Government of India;
- (h) the divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette;
- (i) the territory of India;

- (j) the commencement, continuance and termination of hostilities between the Government of India and any other country or body of persons;
- (k) the names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of advocates and other persons authorised by law to appear or act before it;
- (l) the rule of the road on land or at sea.
- (2) In the cases referred to in sub-section (1) and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference and if the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

# OF ORAL EVIDENCE

BSA 54 – 55 ; IEA 59 - 60

54. Proof of facts by oral evidence.

59. Proof of facts by oral evidence

60. Oral evidence must be direct

55. Oral evidence to be direct.

# OF DOCUMENTARY EVIDENCE

BSA 56 – 73 ; IEA 61 – 73A

56. Proof of contents of documents.

57. Primary evidence.

58. Secondary evidence.

59. Proof of documents by primary evidence.

60. Cases in which secondary evidence relating to documents may be given.

61. Electronic or digital record.

62. Special provisions as to evidence relating to electronic record.

63. Admissibility of electronic records.

64. Rules as to notice to produce.

65. Proof of signature and handwriting of person alleged to have signed or written document produced.

66. Proof as to electronic signature.

67. Proof of execution of document required by law to be attested.

68. Proof where no attesting witness found.

69. Admission of execution by party to attested document.

70. Proof when attesting witness denies execution.

71. Proof of document not required by law to be attested.

72. Comparison of signature, writing or seal with others admitted or proved.

73. Proof as to verification of digital signature.

61. Proof of contents of documents

62. Primary evidence

63. Secondary evidence

64. Proof of documents by primary evidence

65. Cases in which secondary evidence relating to documents may be given

65-A. Special provisions as to evidence relating to electronic record

66. Rules as to notice to produce

67. Proof of signature and handwriting of person alleged to have signed or written document produced

67-A. Proof as to electronic signature

68. Proof of execution of document required by law to be attested

69. Proof where no attesting witness found

70. Admission of execution by party to attested document

71. Proof when attesting witness denies the execution

72. Proof of document not required by law to be attested

73. Comparison of signature, writing or seal with others admitted or proved

73-A. Proof as to verification of digital signature

# WHAT IMPORTANT CHANGES BROUGHT IN THIS PART?

- Some changes to remove obsolete points on judicial notice (Previously 57 and now 52).
- Significant change in definition of Primary Evidence (Previously 62, BSA 57).
- Secondary Evidence BNSS 58.
- Inclusion of new section on digital evidence value 61
- BSA 63 (same as 65B)
- Merger of Provision like Section 74, and 75 (BSA Section 74)

# 57. Primary Evidence.—

- Primary evidence means the document itself produced for the inspection of the Court.
- *Explanation 1.*—Where a document is executed in several parts, each part is primary evidence of the document.
- *Explanation 2.*—Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.
- *Explanation 3.*—Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

- *Explanation 4.*—Where an electronic or digital record is created or stored, and such storage occurs simultaneously or sequentially in multiple files, each such file is primary evidence.

- *Explanation 5.*—Where an electronic or digital record is produced from proper custody, such electronic and digital record is primary evidence unless it is disputed.

- *Explanation 6.*—Where a video recording is simultaneously stored in electronic form and transmitted or broadcast or transferred to another, each of the stored recordings is primary evidence.

- *Explanation 7.*—Where an electronic or digital record is stored in multiple storage spaces in a computer resource, each such automated storage, including temporary files, is primary evidence.



## 58. Secondary evidence.—

- Secondary evidence includes—
  - (i) certified copies given under the provisions hereinafter contained;
  - (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.

## **61. Electronic or digital record.—**

- Nothing in this Adhinyam shall apply to deny the admissibility of an electronic or digital record in the evidence on the ground that it is an electronic or digital record and such record shall, subject to Section 63, have the same legal effect, validity and enforceability as other document.

## **62. Special provisions as to evidence relating to electronic record.—**

- The contents of electronic records may be proved in accordance with the provisions of Section 63.
- **Corresponding Law:** S. 65-A of Act 1 of 1872.

## **63. Admissibility of electronic records.—**

- (1) Notwithstanding anything contained in this Adhinyam, 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.

- (2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:—
- (a) the computer output containing the information was produced by the computer or communication device during the period over which the computer or Communication device was used regularly to create, store or process information for the purposes of any activity regularly carried on over that period by the person having lawful control over the use of the computer or communication device;
- (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer or Communication device in the ordinary course of the said activities;
- (c) throughout the material part of the said period, the computer or communication device was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and
- (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer or Communication device in the ordinary course of the said activities.

- (3) Where over any period, the function of creating, storing or processing information for the purposes of any activity regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by means of one or more computers or communication device, whether—
  - (a) in standalone mode; or
  - (b) on a computer system; or
  - (c) on a computer network; 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.

- (4) In any proceeding where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things shall be submitted along with the electronic record at each instance where it is being submitted for admission, namely:—
  - (a) identifying the electronic record containing the statement and describing the manner in which it was produced;
  - (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer or a communication device referred to in clauses (a) to (e) of sub-section (3);
  - (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person in charge of the computer or communication device or the management of the relevant activities (whichever is appropriate) **and an expert shall be evidence** of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it in the certificate specified in the Schedule.



- (5) For the purposes of this section,—
- (a) information shall be taken to be supplied to a computer or communication device if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- (b) a computer output shall be taken to have been produced by a computer or communication device whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment or by other electronic means as referred to in clauses (a) to (e) of sub-section (3).

## *State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600*

- The earliest notable decision of the Supreme Court in relation to admissibility of electronic records is *State (NCT of Delhi) v. Navjot Sandhu*, which held that irrespective of compliance with the requirements of Section 65B, there is no bar to adduce secondary evidence under Sections 63 and 65, of an electronic record. This judgment was overruled by the Supreme Court in *Anvar* .

# *Anvar P.V. v. P.K. Basheer, (2014)*

## 10 SCC 473

- **Electronic record.**—Admissibility of secondary evidence of electronic record depends upon satisfaction of conditions as prescribed under Section 65-B.
- **Safeguards provided under Section 65-B.**—Safeguards provided under Section 65-B are to ensure the source and authenticity of electronic records. As electronic records are more susceptible to tampering, alteration, transposition, excision, etc., without such safeguards, whole trial based on proof of electronic records can lead to travesty of justice.

- *Anvar* (supra) held that Sections 63 and 65 have no application to secondary evidence by way of electronic record as this is wholly governed by Sections 65A and 65B.
- The Court held that Sections 65A and 65B form a complete code when it comes to admissibility of information contained in electronic records, and an electronic record by way of secondary evidence shall not be admitted unless the requirements under Section 65B are satisfied, including a written certificate under Section 65B(4).
- It was further held that the Evidence Act does not contemplate or permit proof of an electronic record by oral evidence if the requirements under Section 65B are not complied with.
- However, if an electronic record is used as primary evidence under Section 62, the same is admissible in evidence, without compliance with the conditions

# *Shafii Mohammad v. State of Himachal Pradesh, (2018) 2 SCC 801*

- Thereafter, in *Shafii Mohammad* (supra), the Supreme Court held that the requirement of producing a certificate under Section 65B(4) is procedural and not always mandatory.
- A party who is not in possession of the device from which the document is produced cannot be required to produce a certificate under Section 65B(4).
- The Court was of the view that the procedural requirement under Section 65B(4) is to be applied only when electronic evidence is produced by a person who is in control of the said device, and therefore in a position to produce such a certificate.
- However, if the person is not in possession of the device, Sections 63 and 65 cannot be excluded.

*Arjun Panditrao Khotkar v. Kailash  
Kushanrao Gorantyal, (2020) 7  
SCC 1.*

- **Nature and scope.**—The special provisions of Sections 65-A and 65-B are a complete code in themselves when it comes to admissibility of evidence of information contained in electronic records,

*Ravinder Singh v. State of Punjab, (2022) 7 SCC 581.*

- **Admissibility of electronic records.**—Certificate under Section 65-B(4), Evidence Act is mandatory for production of electronic evidence, oral evidence in place of such certificate cannot suffice,

## Section 66 (Previous 67A) Proof as to electronic signature. ∴

- 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.



# Proof as to verification of digital signature (Sec. 73).

- In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct—
- (a) that person or the Controller or the Certifying Authority to produce the Digital Signature Certificate;
- (b) any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by that person.

# PUBLIC DOCUMENTS

BSA 74 – 77 ; IEA 74 - 78

74. Public and private documents.

75. Certified copies of public documents.

76. Proof of documents by production of certified copies.

77. Proof of other official documents.

74. Public documents

75. Private documents

76. Certified copies of public documents

77. Proof of documents by production of certified copies

78. Proof of other official documents

# PRESUMPTIONS AS TO DOCUMENTS

BSA 78 – 93 ; IEA 79 – 90A

- 78. Presumption as to genuineness of certified copies.
- 79. Presumption as to documents produced as record of evidence, etc
- 80. Presumption as to Gazettes, newspapers, and other documents.
- 81. Presumption as to Gazettes in electronic or digital record.
- 82. Presumption as to maps or plans made by authority of Government.
- 83. Presumption as to collections of laws and reports of decisions.
- 84. Presumption as to powers-of-attorney.
- 85. Presumption as to electronic agreements.
- 86. Presumption as to electronic records and electronic signatures.
- 87. Presumption as to Electronic Signature Certificates.
- 88. Presumption as to certified copies of foreign judicial records.
- 89. Presumption as to books, maps and charts.
- 90. Presumption as to electronic messages.
- 91. Presumption as to due execution, etc., of documents not produced.
- 92. Presumption as to documents thirty years old.
- 93. Presumption as to electronic records five years old.

- 79. Presumption as to genuineness of certified copies
- 80. Presumption as to documents produced as record of evidence
- 81. Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents
- 81-A. Presumption as to Gazettes in electronic forms
- 82. Presumption as to document admissible in England without proof of seal or signature
- 83. Presumption as to maps or plans made by authority of Government
- 84. Presumption as to collections of laws and reports of decisions
- 85. Presumption as to powers-of-attorney
- 85-A. Presumption as to electronic agreements
- 85-C. Presumption as to Electronic Signature Certificates
- 86. Presumption as to certified copies of foreign judicial records
- 87. Presumption as to books, maps and charts
- 88. Presumption as to telegraphic messages
- 88-A. Presumption as to electronic messages
- 89. Presumption as to due execution, etc., of documents not produced
- 90. Presumption as to documents thirty years old
- 90-A. Presumption as to electronic records five years old

# Presumption as to Gazettes in electronic or digital record (Sec. 81).

- The Court shall presume the genuineness of every electronic or digital record purporting to be the Official Gazette, or purporting to be electronic or digital record directed by any law to be kept by any person, if such electronic or digital record is kept substantially in the form required by law and is produced from proper custody.
- Explanation.—For the purposes of this section and section 93 electronic records are said to be in proper custody if they are in the place in which, and looked after by the person with whom such document is required to be kept; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render that origin probable.

# Presumption as to electronic agreements (Sec. 85).

- 85. The Court shall presume that every electronic record purporting to be an agreement containing the electronic or digital signature of the parties was so concluded by affixing the electronic or digital signature of the parties.

# Presumption as to electronic records and electronic signatures (Sec. 86).

- 86. (1) In any proceeding involving a secure electronic record, the Court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time to which the secure status relates.
- (2) In any proceeding, involving secure electronic signature, the Court shall presume unless the contrary is proved that—
- (a) the secure electronic signature is affixed by subscriber with the intention of signing or approving the electronic record;
- (b) except in the case of a secure electronic record or a secure electronic signature, nothing in this section shall create any presumption, relating to authenticity and integrity of the electronic record or any electronic signature.

PART A

(To be filled by the Party)

I, \_\_\_\_\_ (Name), Son/daughter/spouse of \_\_\_\_\_  
residing/employed at \_\_\_\_\_  
do hereby solemnly affirm and sincerely state and submit as follows.

I have produced electronic record/output of the digital record taken from the following device/digital record source (tick mark).

Computer/Storage

Media  DVR  Mobile  Flash Drive  CD/DVD

Server  Cloud  Other

Other: \_\_\_\_\_

Make & Model: \_\_\_\_\_ Color: \_\_\_\_\_

Serial Number: \_\_\_\_\_

IMEI/UIN/UID/MAC/Cloud ID \_\_\_\_\_ (as applicable)

and any other relevant information, if any, about the device/digital record \_\_\_\_\_ (specify).

The digital device or the digital record source was under the lawful control for regularly creating, storing or processing information for the purposes of carrying out regular activities and during this period, the computer or the communication device was working properly and the relevant information was regularly fed into the computer during the ordinary course of business. If the computer/digital device at any point of time was not working properly or out of operation, then it has not affected the electronic/digital record or its accuracy. The digital device or the source of the digital record is \_\_\_\_\_

Owned  Maintained  Managed  Operated

by me (select as applicable).

I state that the HASH value/s of the electronic/digital record/s is \_\_\_\_\_, obtained through the following algorithm.

SHA1:

SHA256:

MD5:

Other \_\_\_\_\_ (Legally acceptable standard)

(Hash report to be enclosed with the certificate)

(Name and signature)

Date (DD/MM/YYYY): \_\_\_\_\_

Time (IST): \_\_\_\_\_ hours (In 24 hours format)

Place: \_\_\_\_\_

PART B

(To be filled by the Expert)

I, \_\_\_\_\_ (Name), Son/daughter/spouse of \_\_\_\_\_  
residing/employed at \_\_\_\_\_ do hereby solemnly affirm and  
sincerely state and submit as follows.

The produced electronic record/output of the digital record are obtained from  
the following device/digital record source (tick mark).

Computer/Storage Media  DVR  Mobile  Flash Drive  CD/DVD   
Server  Cloud  Other  \_\_\_\_\_

Other: \_\_\_\_\_

Make & Model: \_\_\_\_\_ Color: \_\_\_\_\_

Serial Number: \_\_\_\_\_

IMEI/UIN/UID/MAC/Cloud ID \_\_\_\_\_ (as applicable)

and any other relevant information, if any, about the device/digital record  
\_\_\_\_\_ (specify).

I state that the HASH value/s of the electronic/digital record/s is  
\_\_\_\_\_, obtained through the following algorithm.

SHA1:

SHA256:

MD5:

Other \_\_\_\_\_ (Legally acceptable standard)

(Hash report to be enclosed with the certificate)

(Name, designation and signature)

Date (DD/MM/YYYY): \_\_\_\_\_

Time (IST): \_\_\_\_\_ hours (In 24 hours format)

Place: \_\_\_\_\_

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# **PUBLIC DOCUMENTS**

## 74. Public and private documents.—

- (1) The following documents are public documents:—
  - (a) documents forming the acts, or records of the acts—
    - (i) of the sovereign authority;
    - (ii) of official bodies and tribunals; and
    - (iii) of public officers, legislative, judicial and executive of India or of a foreign country;
  - (b) public records kept in any State or Union territory of private documents.
- (2) All other documents except the documents referred to in sub-section (1) are private.

# OF THE EXCLUSION OR ORAL EVIDENCE BY DOCUMENTARY EVIDENCE

BSA 94 – 103 ; IEA 91 - 100

94. Evidence of terms of contracts, grants and other dispositions of property

reduced to form of document.

95. Exclusion of evidence of oral agreement.

96. Exclusion of evidence to explain or amend ambiguous document.

97. Exclusion of evidence against application of document to existing facts.

98. Evidence as to document unmeaning in reference to existing facts.

99. Evidence as to application of language which can apply to one only of several persons.

100. Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

101. Evidence as to meaning of illegible characters, etc.

102. Who may give evidence of agreement varying terms of document.

103. Saving of provisions of Indian Succession Act relating to wills.

91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document

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98. Evidence as to meaning of illegible characters, etc

99. Who may give evidence of agreement varying terms of document

100. Saving of provisions of Indian Succession Act relating to wills

# PART IV :

## PRODUCTION AND EFFECT OF EVIDENCE (104 -170)

- This part deals with production and effect of evidence. This part looks into the question of the manner in which the proof is to be produced.
- On whom the burden is or who should adduced evidence?
- Doctrine of estoppel.
- How evidence is to be adduced?
- Effect of mistake in admission or rejection of evidence.

# Production and Effect of Evidence

- of the Burden of Proof (104-120)
- Estoppel (121-123)
- Of Witnesses (124-139)
- Of the Examination of Witnesses (140-168)
- Of improper admission and rejection of Evidence (169)
- Repeal (170)

# OF THE BURDEN OF PROOF

## BSA 104 – 120 ; IEA 101 – 114A

- 104. Burden of proof.
- 105. On whom burden of proof lies.
- 106. Burden of proof as to particular fact.
- 107. Burden of proving fact to be proved to make evidence admissible.
- 108. Burden of proving that case of accused comes within exceptions.
- 109. Burden of proving fact especially within knowledge.
- 110. Burden of proving death of person known to have been alive within thirty years.
- 111. Burden of proving that person is alive who has not been heard of for seven years.
- 112. Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.
- 113. Burden of proof as to ownership.
- 114. Proof of good faith in transactions where one party is in relation of active confidence.
- 115. Presumption as to certain offences.
- 116. Birth during marriage, conclusive proof of legitimacy.
- 117. Presumption as to abetment of suicide by a married woman.
- 118. Presumption as to dowry death.
- 119. Court may presume existence of certain facts.
- 120. Presumption as to absence of consent in certain prosecution for rape.

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- 113-A. Presumption as to abetment of suicide by a married woman
- 113-B. Presumption as to dowry death
- 114. Court may presume existence of certain facts
- 114-A. Presumption as to absence of consent in certain prosecution for rape

# ESTOPPEL

BSA 121 – 123 ; IEA 115 - 117

121. Estoppel.

122. Estoppel of tenant and of licensee of person in possession.

123. Estoppel of acceptor of bill of exchange, bailee or licensee.

115. Estoppel

116. Estoppel of tenant; and of licensee of person in possession

117. Estoppel of acceptor of bill of exchange, bailee or licensee

# OF WITNESSES

## BSA 124 – 139 ; IEA 118 - 134

### 124. Who may testify.

125. Witness unable to communicate verbally.

126. Competency of husband and wife as witnesses in certain cases.

127. Judges and Magistrates.

128. Communications during marriage.

129. Evidence as to affairs of State.

130. Official communications.

131. Information as to commission of offences.

### 132. Professional communications.

### 133. Privilege not waived by volunteering evidence.

134. Confidential communication with legal advisers.

135. Production of title-deeds of witness not a party.

136. Production of documents or electronic records which another person, having possession, could refuse to produce.

137. Witness not excused from answering on ground that answer will criminate.

### 138. Accomplice.

139. Number of witnesses.

118. Who may testify

119. Witness unable to communicate verbally

120. Parties to civil suit, and their wives or husbands, Husband or wife of person under criminal trial

121. Judges and Magistrates

122. Communications during marriage

123. Evidence as to affairs of State

124. Official communications

125. Information as to commission of offences

126. Professional communications

127. Section 126 to apply to interpreters, etc

128. Privilege not waived by volunteering evidence

129. Confidential communications with legal advisers

130. Production of title-deeds of witness not a party

131. Production of documents or electronic records which another person, having possession, could refuse to produce

132. Witness not excused from answering on ground that answer will criminate

133. Accomplice

134. Number of witnesses



- NO MAJOR CHANGES
- SECTION 126 & 127 MERGED (S 132)
- SECTION NUMBERS CHANGED

### 138. Accomplice.—

- An accomplice shall be a competent witness against an accused person; and a conviction is not illegal if it proceeds upon the corroborated testimony of an accomplice.

### 133. Accomplice. (OLD)

- An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

# OF EXAMINATION OF WITNESSES

BSA 140 – 168 ; IEA 135 - 165

140. Order of production and examination of witnesses.

141. Judge to decide as to admissibility of evidence.

142. Examination of witnesses.

143. Order of examinations.

144. Cross-examination of person called to produce a document. 145. Witnesses to character.

146. Leading questions.

147. Evidence as to matters in writing.

148. Cross-examination as to previous statements in writing.

149. Questions lawful in cross-examination.

150. When witness to be compelled to answer.

151. Court to decide when question shall be asked and when witness compelled to answer.

152. Question not to be asked without reasonable grounds.

153. Procedure of Court in case of question being asked without reasonable grounds.

135. Order of production and examination of witnesses

136. Judge to decide as to admissibility of evidence

137. Examination-in-chief

138. Order of examinations

139. Cross-examination of person called to produce a document

140. Witnesses to character

141. Leading questions

142. When they must not be asked

143. When they may be asked

144. Evidence as to matters in writing

145. Cross-examination as to previous statements in writing

146. Questions lawful in cross-examination

147. When witness to be compelled to answer

148. Court to decide when question shall be asked and when witness compelled to answer

149. Question not to be asked without reasonable grounds

150. Procedure of Court in case of question being asked without reasonable grounds

154. Indecent and scandalous questions.  
155. Questions intended to insult or annoy.  
156. Exclusion of evidence to contradict answers to questions testing veracity.  
157. Question by party to his own witness.  
158. Impeaching credit of witness.  
159. Questions tending to corroborate evidence of relevant fact, admissible.  
160. Former statements of witness may be proved to corroborate later testimony as to same fact.  
161. What matters may be proved in connection with proved statement relevant under section 26 or 27.  
162. Refreshing memory.  
163. Testimony to facts stated in document mentioned in section 162.  
164. Right of adverse party as to writing used to refresh memory.  
165. Production of documents.  
166. Giving, as evidence, of document called for and produced on notice.  
167. Using, as evidence, of document production of which was refused on notice.  
168. Judge's power to put questions or order production

151. Indecent and scandalous questions  
152. Questions intended to insult or annoy  
153. Exclusion of evidence to contradict answers to questions testing veracity  
154. Question by party to his own witness  
155. Impeaching credit of witness  
156. Questions tending to corroborate evidence of relevant fact, admissible  
157. Former statements of witness may be proved to corroborate later testimony as to same fact  
158. What matters may be proved in connection with proved statement relevant under Section 32 or 33  
159. Refreshing memory  
160. Testimony to facts stated in document mentioned in Section 159  
161. Right of adverse party as to writing used to refresh memory  
162. Production of documents  
163. Giving, as evidence, of document called for and produced on notice  
164. Using, as evidence, of document, production of which was refused on notice  
165. Judge's power to put questions or order production  
166. Power of jury or assessors to put questions

## 165. Production of documents.—

- (1) A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility:
  - Provided that the validity of any such objection shall be decided on by the Court.
- (2) The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

- (3) If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence and, if the interpreter disobeys such direction, he shall be held to have committed an offence under Section 198 of the Bharatiya Nyaya Sanhita, 2023:

- Provided that no Court shall require any communication between the Ministers and the President of India to be produced before it.

- **Corresponding Law:** S. 162 of Act 1 of 1872.

## **168. Judge's power to put questions or order production.—**

- The Judge may, in order to discover or obtain proof of relevant facts, ask any question he considers necessary, in any form, at any time, of any witness, or of the parties about any fact; and may order the production of any document or thing; and neither the parties nor their representatives shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

- Provided that the judgment must be based upon facts declared by this Adhinyam to be relevant, and duly proved:
- Provided further that this section shall not authorise any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under Sections 127 to 136, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 151 or 152; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.
- **Corresponding Law:** S. 165 and 166 of Act 1 of 1872.



# OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE

BSA 169 ; IEA 167

169. No new trial for improper admission or rejection of evidence.

167. No new trial for improper admission or rejection of evidence

# REPEAL AND SAVINGS

BSA 170 ; IEA -

170. Repeal and savings.

# 170. Repeal and savings.—

- (1) The Indian Evidence Act, 1872 (1 of 1872) is hereby repealed.
- (2) Notwithstanding such repeal, if, immediately before the date on which this Adhinyam comes into force, there is any application, trial, inquiry, investigation, proceeding or appeal pending, then, such application, trial, inquiry, investigation, proceeding or appeal shall be dealt with under the provisions of the Indian Evidence Act, 1872, as in force immediately before such commencement, as if this Adhinyam had not come into force.

**THANKS**