

"Bharatiya Nagarik Suraksha Sanhita, 2023" as introduced in Lok Sabha

## CHAPTER I: PRELIMINARY

- **Clause 1: Short title, extent and commencement**

- The short title of the legislation is the Bharatiya Nagarik Suraksha Sanhita, 2023.
- It extends to the whole of India.
- The explanation clarifies the definition of "tribal areas" within the context of this section, referring to territories that were included in the tribal areas of Assam before 21st January 1972, excluding those within the local limits of Shillong municipality.
- It shall come into force on such date as the Central Government may appoint by notification in the Official Gazette. The "NOTES ON CLAUSES" also confirm this.

- **Clause 2: Definitions**

- This clause defines various terms used in the Sanhita.
- **(a) "audio-video electronic"** includes the use of any communication device for video conferencing, recording identification, search and seizure processes, evidence, transmission of electronic communication, and other purposes as the State Government may provide by rules.
- **(b) "bailable offence"** is an offence shown as bailable in the First Schedule or made bailable by any other law, and **"non-bailable offence"** means any other offence.
- **(c) "charge"** includes any head of charge when the charge contains more than one head.
- **(d) "cognizable offence"** is an offence for which a police officer may arrest without a warrant according to the First Schedule or any other law, and **"cognizable case"** is a case involving such an offence.
- **(e) "complaint"** means any allegation made orally or in writing to a Magistrate to take action under this Sanhita, but does not include a police report.
- **(j) "investigation"** includes all proceedings under this Sanhita for the collection of evidence conducted by a police officer or a person (other than a Magistrate) authorised by a Magistrate. The explanation clarifies that if any provision of a special Act is inconsistent with this Sanhita, the special Act will prevail.
- **(k) "judicial proceeding"** includes any proceeding in which evidence is or may be legally taken on oath.
- **(q) "place"** includes a house, building, tent, vehicle, and vessel.
- **(r) "pleader"** refers to an advocate or a person authorised by law to practice in a court, including any other person appointed with the Court's permission to act in a proceeding.
- **(s) "police report"** means a report forwarded by a police officer to a Magistrate under sub-section (1) of section 176.

- **(t) "police station"** means any declared post or place by the State Government, and includes any specified local area.
- **Clause 3: Construction of references**
  - Unless the context requires otherwise, references in any existing law to a Magistrate, Magistrate of the first class, or Magistrate of the second class shall be construed as references to a Judicial Magistrate of the first class or Judicial Magistrate of the second class, as applicable, exercising jurisdiction in the area.
- **Clause 4: Trial of offences under Bhartiya Nyaya Sanhita and other laws**
  - This clause states that all offences under the Bhartiya Nyaya Sanhita, 2023, shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions of this Sanhita.
- **Clause 5: Saving**
  - This clause provides that, unless there is a specific contrary provision, this Sanhita will not affect any special or local law in force, any special jurisdiction or power conferred, or any special form of procedure prescribed by any other law in force.
- **Clause 6: Classes of Criminal Courts**
  - In every district, the State Government, after consulting with the High Court and by notification, shall establish as many Courts of Judicial Magistrates of the first class and of the second class as specified, and at such places.

## **CHAPTER II: CONSTITUTION OF CRIMINAL COURTS AND OFFICES**

- **Clause 9: Establishment of Courts of Judicial Magistrates**
  - In every district, the State Government shall establish Courts of Judicial Magistrates of the first and second class, at places specified by notification after consultation with the High Court.
- **Clause 17: Appointment of Public Prosecutors**
  - The powers and functions of the **Deputy Director of Prosecution** include examining and scrutinising police reports and monitoring cases punishable by imprisonment for seven years or more but less than ten years to ensure their expeditious disposal.
  - The functions of the **Assistant Director of Prosecution** are to monitor cases punishable by imprisonment for less than seven years.
  - Notwithstanding the above, the **Director, Deputy Director, or Assistant Director of Prosecution** has the power to deal with and is responsible for all proceedings under this Sanhita.
  - The Explanation in Chapter XXIV defines "**Public Prosecutor**" as having the meaning assigned under clause (t) of section 2 and includes an Assistant Public Prosecutor appointed under section 19.
- **Clause 19: Appointment of Assistant Public Prosecutors**

- The Explanation in Chapter XXIV indicates that Assistant Public Prosecutors can be appointed under this section.

### **CHAPTER III: POWER OF COURTS**

- **Clause 26: Offences under other laws**
  - Every Magistrate shall, on receiving a written application from the commanding officer of any unit or body of soldiers, sailors, or airmen stationed or employed at any place, use their utmost endeavours to apprehend and secure any person accused of an offence mentioned in clauses (a) to (d).
- **Clause 33: Public to give information of certain offences**
  - This clause is mentioned in the "NOTES ON CLAUSES" but the content is not provided in the excerpts.

### **CHAPTER IV: AID TO THE MAGISTRATES AND THE POLICE**

- **Clause 34: Duty of officers employed in connection with the affairs of a village to make certain report**
  - Every officer employed in connection with the affairs of a village and every person residing in a village shall forthwith communicate to the nearest Magistrate or the officer in charge of the nearest police station any information they possess regarding certain matters, including the permanent or temporary residence of any notorious receiver or vendor of stolen property in or near such village.
  - The "NOTES ON CLAUSES" summarise this provision.
  - The definition of "officer employed in connection with the affairs of the village" includes a member of the panchayat, the headman, and every officer or person appointed to perform any function connected with village administration.

### **CHAPTER V: ARREST OF PERSONS**

- **Clause 35: Arrest without warrant by police officer**
  - Any police officer may, without a Magistrate's order and without a warrant, arrest any person under specified circumstances. The "NOTES ON CLAUSES" mention this clause generally.
- **Clause 37: Procedure following arrest**
  - The State Government shall establish a Police control room in every district and at the State level.
  - A police officer, not below the rank of Assistant Sub-Inspector, shall be designated in every district and police station to maintain information about arrested persons (names, addresses, offence nature), which shall be prominently displayed, including in digital mode, at every police station and district headquarters.
  - **Clause 38: Obligation of person making arrest to inform about the arrest, etc., to relative or friend**

- Every police officer or other person making an arrest shall prepare a memorandum of arrest.
  - This memorandum must be attested by at least one witness, who can be a member of the arrested person's family or a respectable member of the locality where the arrest was made.
  - It must also be countersigned by the person arrested.
  - The person arrested must be informed that they have the right to have a relative or a friend or any other person named by them informed of their arrest, unless the memorandum is attested by a family member.
  - The "NOTES ON CLAUSES" state that the police officer making an arrest shall forthwith give information regarding the arrest and the place where the arrested person is held to any relatives, friends, or other persons disclosed by the arrested person, and also to the designated police officer in the district.
- **Clause 49: Search of arrested person**
    - A police officer making an arrest or to whom an arrested person is made over may search the person and place in safe custody all articles found, except necessary wearing apparel. A female shall be searched only by a female. The "NOTES ON CLAUSES" summarise this.

## **CHAPTER VII: PROCESSES TO COMPEL APPEARANCE**

- **Clause 64 to 71: Summons**
  - A police station or court registrar shall maintain a register of addresses, email addresses, phone numbers, and other details as prescribed by the State Government.
  - Summons shall, if practicable, be served personally by delivering a duplicate.
  - Summons bearing the image of the Court's seal may also be served by electronic communication as per State Government rules.
  - An affidavit of service may be attached to the duplicate and returned to the Court.
  - All summons served electronically under sections 64 to 71 are considered duly served, and a copy shall be attested and kept as proof.
  - A Court issuing a summons to a witness may simultaneously direct a copy to be served electronically or by registered post to the witness's ordinary residence, business, or workplace.
- **Clause 81: Execution of warrant outside local jurisdiction**
  - When a warrant directed to a police officer is to be executed outside the issuing Court's local jurisdiction, the officer shall ordinarily take it for endorsement to either an Executive Magistrate or a police officer not below the rank of officer in charge of a police station within whose jurisdiction the warrant is to be executed.

- **Clause 83: Procedure on arrest under warrant not endorsed**
  - The Court issuing a warrant shall forward, along with the warrant, the substance of the information against the person to be arrested and any sufficient documents to enable the Court acting under section 83 to decide on bail.

## CHAPTER VIII: PROCESSES TO COMPEL THE PRODUCTION OF THINGS

- **A.—Summons to produce**
  - **Clause 94: Summons to produce document or other thing**
    - Whenever any Court or police officer in charge of a police station considers the production of any document, electronic communication (including devices likely to contain digital evidence), or other thing necessary or desirable for any investigation, inquiry, trial, or other proceeding under this Sanhita, they may issue a summons to the person in whose possession or power such document or thing is believed to be, requiring them to attend and produce it at a stated time and place.
    - The "NOTES ON CLAUSES" mention this clause relates to summons to produce.
    - A person required merely to produce a document or thing complies by causing it to be produced instead of personal attendance.
    - Nothing in this section affects sections 129 and 130 of the Bharatiya Sakshya Adhiniyam, 2023, or the Bankers' Books Evidence Act, 1891, or applies to postal items.
- **B.—Search-warrants**
  - **Clause 96: Search-warrant when may be issued**
    - The provisions of sections 32, 72, 74, 76, 79, 80, and 81 shall apply as far as possible to all search warrants issued under section 96, 97, 98, or 100.
    - Form No. 6 provides the "**Warrant of Attachment to Compel Appearance**" (although section 96 is mentioned, the form relates to attachment). It authorises the seizure of movable property of a named individual to a specified value, pending further court order.
    - Form No. 7 provides the "**Order of Attachment to Compel the Appearance of a Person Accused**" (again, section 96 is mentioned but it's an attachment order).
    - Form No. 10 provides the "**Warrant to Search After Information of a Particular Offence**". It authorises a named police officer to search a specified place for a clearly specified thing essential to an inquiry into a stated offence.
  - **Clause 97: Power to issue search-warrant in case of suspected deposit of stolen property, forged documents, etc.**

- If a District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class has reason to believe, after inquiry, that any place is used for the deposit or sale of stolen property or objectionable articles, they may by warrant authorise a police officer above the rank of constable to enter and search such place with necessary assistance.
- The warrant can authorise the seizure and possession of such property, documents, stamps, seals, coins, or obscene objects, and any instruments/materials believed to be kept for manufacturing forged items.
- Form No. 11 provides the "**Warrant to Search Suspected Place of Deposit**". It authorises a named police officer above the rank of constable to enter and search a described place suspected of being used for the deposit or sale of stolen property or other specified illegal purposes, and to seize any such property found and bring it before the Court.
- **Clause 102: Directions, etc., of search-warrants**
  - This clause, also mentioned in the "NOTES ON CLAUSES", states that the provisions of sections 32, 72, 74, 76, 79, 80, and 81 shall, so far as may be, apply to all search-warrants issued under section 96, section 97, section 98 or section 100.
- **Clause 103: Persons in charge of closed place to allow search**
  - This clause, also mentioned in the "NOTES ON CLAUSES", requires any person residing in or in charge of a closed place liable to search under this Chapter to allow free ingress and provide reasonable facilities for a search upon demand and production of the warrant.
- **Clause 105: Recording of search and seizure through audio-video electronic means**
  - The process of conducting a search of a place or taking possession of any property under this Chapter or section 185, including preparing and signing the seizure list, shall be recorded through audio-video electronic means, preferably a cell phone.
  - The police officer shall forward such recording without delay to the District Magistrate, Sub-divisional Magistrate, or Judicial Magistrate of the first class.
  - The "NOTES ON CLAUSES" explain that this clause aims to ensure transparency by mandating audio-video recording of searches and seizures, with the recording being forwarded to the concerned authority without delay.

## CHAPTER IX: SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR

- **Clause 132: Summons or warrant in case of person not so present**
  - Form No. 14 provides a "**Summons on Information of a Probable Breach of the Peace**". It requires a named individual to appear before the Magistrate to show cause why they should not be ordered to execute a bond to keep the peace, based on credible information suggesting they are likely to commit a breach of the peace.

- **Clause 133: Copy of order to accompany summons or warrant**
  - When a person appears or is brought before a Magistrate in compliance with a summons or warrant issued under section 132, the Magistrate shall inquire into the truth of the information.
  - The "NOTES ON CLAUSES" clarify that every summons or a copy of the order shall accompany a warrant issued under Clause 132, and the serving officer shall deliver such copy to the person served or arrested.
- **Clause 134: Power to dispense with personal attendance**
  - The Magistrate may dispense with the personal attendance of any person called upon to show cause why they should not execute a bond for keeping the peace or good behaviour, if there is sufficient cause, and may permit them to appear by a pleader. The "NOTES ON CLAUSES" reiterate this.
- **Clause 135: Inquiry as to truth of information**
  - When an order under section 130 has been read or explained to a person present in Court, or when a person appears or is brought before a Magistrate under section 132, the Magistrate shall inquire into the truth of the information and take further necessary evidence.
  - Such inquiry shall be conducted, as nearly as practicable, in the manner prescribed for trial and recording evidence in summons-cases.
  - The "NOTES ON CLAUSES" summarise this provision.
- **Clause 136: Order to give security**
  - If, after the inquiry, the Magistrate deems it necessary for keeping the peace or maintaining good behaviour that the person should execute a bond, with or without sureties, the Magistrate shall make an order accordingly. The "NOTES ON CLAUSES" confirm this.
- **Clause 140: Discharge of sureties**
  - A Magistrate may refuse to accept a surety or reject a previously accepted surety if they are deemed unfit, provided an inquiry on oath into the surety's fitness is held or caused to be held by a subordinate Magistrate, and reasonable notice is given to the surety and the person who offered them. The substance of the evidence adduced during the inquiry shall be recorded.

## **CHAPTER X: UNLAWFUL ASSEMBLIES**

- **Clause 150: Power of commissioned or gazetted officer of armed forces to disperse unlawful assembly**
  - When public security is manifestly endangered by an unlawful assembly and communication with an Executive Magistrate is not possible, any commissioned or gazetted officer of the armed forces may disperse such assembly with the help of armed forces, and may arrest and confine any persons forming part of it. However, if

communication with an Executive Magistrate becomes practicable, the officer shall do so and obey the Magistrate's instructions.

## CHAPTER XI: PREVENTIVE ACTION OF THE POLICE

- **Clause 158: Information of design to commit cognizable offences**
  - This clause heading is provided but the content is not in the excerpts.
- **Clause 160: Procedure on order being made absolute and consequences of disobedience**
  - When an order under section 155 or 157 is made absolute, the Magistrate shall give notice to the person against whom it was made, requiring them to perform the directed act within a fixed time, and informing them of the penalty under section 221 of the Bharatiya Nyaya Sanhita, 2023, for disobedience.
  - Form No. 22 provides a "**Magistrate's Notice and Peremptory Order**", giving notice that a prior order requiring a specific action has been found reasonable and proper, has been made absolute, and directing obedience within a stated time under penalty of law.
  - The "NOTES ON CLAUSES" also mention this clause.
- **Clause 161: Injunction to prevent imminent danger or injury during pending inquiry**
  - If a Magistrate conducting an inquiry under sections 155, 156, or 157 believes that immediate prevention or remedy is necessary concerning any property that is the subject of inquiry, they may issue a written injunction to the person in possession or control of it, stating them to refrain from a particular act with respect to the property until the inquiry is concluded.
  - Form No. 23 provides a "**Temporary Injunction Pending Inquiry**", directing a named person to refrain from a specified action as a temporary safeguard pending the inquiry's result.
  - The "NOTES ON CLAUSES" also mention this clause.
- **Clause 162: Magistrate may prohibit repetition or continuance of public nuisance**
  - If a Magistrate receiving a police report or other information and taking evidence deems that any unlawful obstruction or nuisance should be prohibited, they may make a conditional order requiring the responsible person to remove the obstruction or nuisance within a specified time or appear and show cause why the order should not be made absolute.
  - Form No. 24 provides a "**Magistrate's Order Prohibiting the Repetition, etc., of a Nuisance**", reciting that it has been made to appear to the Magistrate that a specified person has caused an unlawful obstruction or nuisance, and directing them to appear and show cause why they should not be ordered to desist from repeating or continuing the same.
  - The "NOTES ON CLAUSES" also mention this clause.
- **Clause 164: Procedure where existence of public right is denied**



- When a person against whom an order under section 162 is made appears and denies the existence of the public right in question, the Magistrate shall inquire into the matter.
- The Magistrate shall peruse statements, hear parties, receive evidence, and take further evidence if necessary, and decide if such right exists. The provisions of section 164 shall apply to such inquiry.
- **Clause 166: Dispute concerning right of use of land or water**
  - If a Magistrate is satisfied from a police report or other information that a dispute concerning land or water within their jurisdiction is likely to cause a breach of peace, they shall make an order in writing requiring the concerned parties to attend Court and submit written statements regarding their claims of actual possession.
  - Form No. 25 provides a "**Magistrate's Order in Proceedings Under Section 145 (Now Section 166)**", recording the Magistrate's satisfaction after inquiry that one of the parties was in possession of the disputed property and declaring that party entitled to possession until legally evicted.
  - Form No. 26 provides another "**Magistrate's Order in Proceedings Under Section 145 (Now Section 166)**", recording the Magistrate's decision after inquiry that neither party was in possession of the disputed property, and attaching it until a competent Court determines the rights of the parties.
- **Clause 167: Local inquiry**
  - Whenever a local inquiry is necessary for sections 164, 165, or 166, a District Magistrate or Sub-divisional Magistrate may depute a subordinate Magistrate to make the inquiry, furnish written instructions, and declare who will pay the expenses. The deputed person's report may be read as evidence. The Magistrate deciding the case may also direct who shall pay the costs incurred by any party, including witness expenses and pleaders' fees.

## **CHAPTER XII: JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS**

- **Clause 172: Accused persons triable in district where act is done or where consequence ensues**
  - For the purposes of this section, "offence" includes any act committed outside India that would be an offence if committed in India.
- **Clause 173 to 191: Information to Police and their powers to investigate**
  - These clauses, listed as headings only, relate to information in cognizable cases, non-cognizable cases and their investigation, police officers' powers to investigate, procedure for investigation, how reports are submitted, the power to hold investigations or preliminary inquiries, the power to require attendance of witnesses, examination of witnesses by police, statements to police (not to be signed and their use in evidence), no inducement to be offered, recording of confessions and statements, medical examination of rape victims, search by police officers, when an officer in charge may require another to issue a search warrant, procedure when investigation cannot be completed in 24 hours, reports of investigation by

subordinate officers, release of accused when evidence is deficient, cases to be sent to Magistrate when evidence is sufficient, and that complainants and witnesses are not to be required to accompany police officers or be subjected to restraint.

## **CHAPTER XII: INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE (Detailed Breakdown of Relevant Clauses)**

- **Clause 173: Information in cognizable cases**
  - Every information about the commission of a cognizable offence, regardless of where it occurred, may be given orally or electronically to the officer in charge of a police station.
  - Oral information shall be reduced to writing and read over to the informant, and every such information, whether written or reduced to writing, shall be signed by the informant.
  - Information given electronically shall be recorded and signed by the informant within three days.
  - The substance of the information shall be entered in a prescribed book.
  - If the information concerns specific offences against women (under sections 64, 66-68, 70, 73-78, or 122 of the Bharatiya Nyaya Sanhita, 2023), it shall be recorded by a woman police officer or officer.
  - The recording of such information shall be videographed.
  - The police officer shall get the informant's statement recorded by a Judicial Magistrate under section 183(6)(a) as soon as possible.
  - A copy of the recorded information shall be given to the informant or victim free of cost.
  - For offences punishable by three to seven years of imprisonment, the officer in charge may, with prior permission from an officer not below Deputy Superintendent of Police rank and considering the offence's nature and gravity, conduct a preliminary inquiry within fourteen days to ascertain if a prima facie case exists, or proceed with investigation if a prima facie case exists.
  - Anyone aggrieved by a refusal to record information about a cognizable offence can send the substance in writing by post to the Superintendent of Police, who, if satisfied, shall either investigate or direct a subordinate to do so, with the powers of an officer in charge of a police station. Failing this, an application can be made to the Magistrate under section 175(3).
  - The "NOTES ON CLAUSES" summarise the process of recording information in cognizable cases, including oral and electronic means, and the provision for preliminary inquiry for offences punishable between three and seven years.
- **Clause 174: Information as to non-cognizable cases and investigation of such cases**
  - This clause heading is provided but the content is not in the excerpts.
- **Clause 175: Police officer's power to investigate cognizable case**

- Without prejudice to section 175, on receiving information of a cognizable offence punishable by three to seven years imprisonment, the police officer in charge may conduct a preliminary inquiry or proceed with investigation with prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence.
- **Clause 176: Procedure for investigation**
  - When a police officer in charge of a police station receives information about an offence punishable by seven years or more, they shall, from a notified date (within five years by the State Government), cause a forensics expert to visit the crime scene to collect forensic evidence and also cause videography of the process on a mobile phone or other electronic device.
  - If forensics facilities are unavailable for such offences, the State Government shall notify the use of facilities from another State until their own are developed.
  - The "NOTES ON CLAUSES" mention clauses 182-187 relate to investigation. Clause 185 specifically relates to search by a police officer. Clause 186 concerns search warrants when an officer in charge requires another to issue one. Clause 187 deals with procedures when investigation cannot be completed in 24 hours.
- **Clause 177: Report how submitted**
  - Every report sent to a Magistrate under section 176 shall, if the State Government directs, be submitted through a superior police officer appointed by the State Government.
  - The superior officer may give instructions to the officer in charge and shall, after recording them on the report, transmit it without delay to the Magistrate.
- **Clause 178: Power to hold investigation or preliminary inquiry**
  - The Magistrate, on receiving a report under section 176, may direct an investigation or, if they think fit, immediately proceed or depute a subordinate Magistrate to proceed to hold a preliminary inquiry or otherwise dispose of the case as per this Sanhita.
- **Clause 179: Police officer's power to require attendance of witnesses**
  - Any police officer investigating under this Chapter may, by written order, require the attendance before themselves of any person within the limits of their own or any adjoining station who appears to be acquainted with the case's facts. Such person is required to attend as directed.
- **Clause 180: Examination of witnesses by police**
  - Any investigating police officer, or any officer not below the rank prescribed by the State Government acting on their request, may orally examine any person believed to be acquainted with the case's facts.
  - Such person is bound to answer truthfully all questions related to the case, except those tending to expose them to a criminal charge, penalty, or forfeiture.

- The police officer may reduce any statement to writing, making a separate and true record for each person whose statement is recorded. Such statements may also be recorded by audio-video electronic means.
- Statements recorded under sub-section (3) of this section are among the documents to be provided to the accused by the Magistrate under section 230(1)(iii).
- If the statement is from a woman against whom certain offences (under sections 64, 66-68, 70, 71, 73-78 of the Bharatiya Nyaya Sanhita, 2023) are alleged, it shall be recorded by a woman police officer or officer.
- **Clause 181: Statements to police not to be signed: Use of statements in evidence**
  - No statement made to a police officer during investigation, if written, shall be signed by the maker, nor shall it or any record thereof be used for any purpose at any inquiry or trial regarding the offence under investigation when the statement was made, except as provided.
  - If a prosecution witness's written statement was recorded, any duly proved part may be used by the accused, and with court permission by the prosecution, to contradict the witness under section 148 of the Bhartiya Sakshya Adhiniyam, 2023. If so used, any part may be used in re-examination to explain cross-examination matters.
  - This section does not apply to statements under section 26(1) or affect section 23 of the Bharatiya Sakshya Adhiniyam, 2023.
  - An omission to state a fact in a statement may amount to contradiction if significant and relevant in context; whether an omission is a contradiction is a question of fact.
- **Clause 182: No inducement to be offered**
  - This clause heading is provided and mentioned in the "NOTES ON CLAUSES" as relating to investigation, but the content is not in the excerpts.
- **Clause 183: Recording of confessions and statements**
  - Any Judicial Magistrate recording a confession shall record a memorandum at the foot of such record.
  - This memorandum includes a declaration that the Magistrate explained to the person that they are not bound to confess and any confession may be used as evidence, and the Magistrate believes it was made voluntarily, in their presence and hearing, read over and admitted as correct, containing a full and true account.
  - The memorandum must be signed by the Magistrate.
  - The police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (6) of this section as soon as possible, according to section 173(1)(c).
  - Any statement (other than a confession) under sub-section (1) shall be recorded as per the manner for recording evidence, as deemed best by the Judicial Magistrate, who has the power to administer oath.

- In cases of offences punishable with ten years or more imprisonment, life imprisonment, or death, the Judicial Magistrate shall record the statement of any witness brought before them by the police.
- If the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or special educator. Such a statement may be recorded through audio-video electronic means.
- Confessions and statements recorded under this section are among the documents to be provided to the accused by the Magistrate under sections 230(1)(iv) and 231(ii).
- The "NOTES ON CLAUSES" mention this clause relates to investigation.
- **Clause 184: Medical examination of the victim of rape**
  - When a woman is medically examined during a rape investigation, the examination shall be by or under the supervision of a female registered medical practitioner.
  - The registered medical practitioner shall examine the woman without delay and prepare a report including details like the woman's name and address (if known), the person who brought her, her age, description of material taken for DNA profiling, injury marks, general mental condition, and other relevant particulars.
  - The report must precisely state the reasons for each conclusion, the exact times of commencement and completion of the examination, and specifically record that the woman's consent (or consent of a competent person on her behalf) was obtained.
  - The registered medical practitioner shall forward the report to the investigating officer within seven days, who shall forward it to the Magistrate under section 193 as part of the documents referred to in section 193(6)(a).
  - Nothing in this section legalises any examination without consent.
  - "Examination" and "registered medical practitioner" have the same meanings as in section 51.
  - The "NOTES ON CLAUSES" mention this clause relates to investigation.
- **Clause 185: Search by police officer**
  - Whenever a police officer in charge of a station or investigating officer has reasonable grounds to believe that something necessary for an investigation they are authorised to conduct may be found in any place within their station limits, and cannot be obtained otherwise without undue delay, they may, after recording their belief and specifying the thing to be searched for, search or cause a search to be made.
  - A police officer proceeding under sub-section (1) shall, if practicable, conduct the search in person. The search shall be recorded through audio-video electronic means, preferably by mobile phone.

- If the officer cannot search in person and no other competent person is present, they may, after recording reasons, require a subordinate officer to conduct the search, giving a written order specifying the place and the thing to be searched for.
- The process of conducting such a search and seizure, including the seizure list and witnesses' signatures, shall be recorded through audio-video electronic means, preferably a cell phone, and forwarded to the relevant Magistrate without delay, according to section 105.
- The "NOTES ON CLAUSES" explain that this clause relates to search by a police officer. Clause 105, mentioned in "NOTES ON CLAUSES", also pertains to recording search and seizure through audio-video means, and is linked to searches under this section.
- **Clause 186: When officer in charge of police station may require another to issue search-warrant**
  - An officer in charge of a police station or a police officer not below sub-inspector rank investigating a case may require an officer in charge of another police station (in the same or different district) to cause a search to be made in any place where the former officer could conduct such a search within their own station limits.
  - The officer so required shall proceed according to section 185 and forward any found item to the requesting officer.
  - The "NOTES ON CLAUSES" mention this clause relates to requiring another officer to issue a search warrant.
- **Clause 187: Procedure when investigation cannot be completed in twenty-four hours**
  - When a person is arrested and detained, and the investigation cannot be completed within 24 hours (as per section 58), and there are grounds to believe the accusation is well-founded, the officer in charge (if not below sub-inspector rank) shall immediately transmit a copy of specified diary entries to the nearest Judicial Magistrate and forward the accused to that Magistrate.
  - An Executive Magistrate to whom an accused is forwarded shall transmit the case records and diary entries to the nearest Judicial Magistrate before the 24-hour period expires.
  - A Magistrate authorising police custody shall record their reasons. Any Magistrate other than the Chief Judicial Magistrate making such an order shall forward a copy with reasons to the Chief Judicial Magistrate.
  - If, in a summons-case triable by a Magistrate, investigation is not concluded within six months of arrest, the Magistrate shall stop further investigation unless the investigating officer satisfies the Magistrate that continuation is necessary for special reasons and in the interests of justice.
  - The Sessions Judge may vacate an order stopping further investigation under sub-section (9) if satisfied that further investigation ought to be made, and may direct such investigation subject to bail and other conditions.

- The "NOTES ON CLAUSES" mention this clause deals with the procedure when investigation cannot be completed in 24 hours.
- **Clause 188: Report of investigation by subordinate police officer**
  - When a subordinate police officer conducts an investigation under this Chapter, they shall report the result to the officer in charge of the police station. The "NOTES ON CLAUSES" reiterate this.
- **Clause 189: Release of accused when evidence deficient**
  - This clause heading is provided and mentioned in the "NOTES ON CLAUSES", but the content is not in the excerpts.
- **Clause 190: Cases to be sent to Magistrate, when evidence is sufficient**
  - When a police report under section 193 relates to a case to which this section applies, the police officer shall forward various documents to the Magistrate along with the report.
  - These documents include all documents or relevant extracts the prosecution proposes to rely on (other than those already sent), and the statements recorded under section 180 of all proposed prosecution witnesses.
  - The "NOTES ON CLAUSES" mention this clause relates to sending cases to the Magistrate when evidence is sufficient.
- **Clause 191: Complainant and witnesses not to be required to accompany police officer and not to be subjected to restraint**
  - This clause heading is provided and mentioned in the "NOTES ON CLAUSES", but the content is not in the excerpts.

### **CHAPTER XIII: REPORT OF POLICE OFFICER ON COMPLETION OF INVESTIGATION**

- **Clause 193: Report of police officer on completion of investigation**
  - Every investigation under this Chapter shall be completed without unnecessary delay.
  - Investigations into offences under specific sections of the Bharatiya Nyaya Sanhita, 2023 (related to sexual offences) and the POCSO Act, 2012, shall be completed within two months of recording the information.
  - Upon completion, the officer in charge shall forward a report to a Magistrate empowered to take cognizance on a police report, stating various details including the parties' names, nature of information, witnesses' names, whether an offence was committed and by whom, whether the accused was arrested and their status (on bail or in custody), and whether the medical examination report of a woman is attached (in relevant cases).
  - The police officer shall inform the informant or victim of the investigation's progress (including electronically) within 90 days and communicate the action taken to the initial informant as per State Government rules.

- When the report concerns a case under section 190, the police shall forward all relevant prosecution documents and witness statements recorded under section 180 to the Magistrate.
  - If the police believe part of a statement is irrelevant, disclosable to the accused is not essential for justice, or is inexpedient in public interest, they shall indicate that part and request the Magistrate to exclude it from copies given to the accused, stating their reasons.
  - Subject to the above, the police shall submit indexed copies of the police report and other documents to the Judicial Magistrate for supply to the accused under section 230. Electronic supply is considered duly served.
  - Nothing prevents further investigation after the initial report, and any further evidence (oral or documentary) obtained shall be forwarded in further reports to the Magistrate, with sub-sections (3) to (7) applying to these reports as well.
  - The registered medical practitioner's report of a woman's medical examination shall be forwarded to the Magistrate referred to in this section as part of the documents under sub-section (6)(a).
  - The "NOTES ON CLAUSES" explain that this clause relates to the report of the police officer on completion of investigation and that Clause 189 concerns the release of the accused when evidence is deficient, while Clause 190 concerns sending cases to the Magistrate when evidence is sufficient. Clause 289 also refers to the report forwarded by the police under this section in the context of plea bargaining.
- **Clause 194: Police to enquire and report on suicide, etc.**
    - The officer in charge of a police station or any other police officer (specially empowered) shall immediately give information to the nearest Executive Magistrate if they have reason to suspect suicide or death in suspicious circumstances, or if a person has died in police custody.
    - A police officer proceeding under this section may, by written order, summon two or more people for the investigation and any other person acquainted with the facts; those summoned are bound to attend and answer truthfully (except for self-incriminating questions). However, certain vulnerable individuals (minors, seniors, women, disabled persons, acutely ill persons) shall not be required to attend anywhere other than their residence unless willing to attend the police station or within its limits.
    - If a person dies or disappears, or rape is alleged on a woman while in police or authorised custody, a Judicial Magistrate shall hold an inquiry in addition to the police investigation.
    - The Magistrate shall record the evidence taken during such inquiry as appropriate. If deemed expedient to examine an already interred body to discover the cause of death, the Magistrate may order disinterment and examination.
    - Where practicable, the Magistrate shall inform the known relatives of the deceased and allow them to be present at the inquiry.



- The Judicial Magistrate, Executive Magistrate, or police officer holding such an inquiry shall forward the body to the nearest Civil Surgeon or qualified medical person within 24 hours of death, unless impossible for recorded reasons.
- The Explanation defines "relative" for this section.
- The "NOTES ON CLAUSES" state this clause relates to police inquiry and report on suicide, etc..
- **Clause 195: Power to summon persons**
  - A police officer proceeding under section 194 may summon persons for investigation, as detailed above. The "NOTES ON CLAUSES" also mention this.
- **Clause 196: Inquiry by Magistrate into cause of death**
  - This clause deals with the Magistrate's inquiry into the cause of death in specific custodial situations, as described under section 194(2). The "NOTES ON CLAUSES" also mention this.

#### **CHAPTER XIV: CONDITIONS REQUISITE FOR INITIATION OF PROCEEDINGS**

- **Clause 226: Prosecution for offences against the State**
  - Every complaint under sub-section (2) shall set forth the facts constituting the alleged offence, its nature, and other reasonably sufficient particulars to give the accused notice.
  - No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction of the State Government in the case of a person who is or has been the Governor of that State or a Minister of that Government.
- **Clause 233: Procedure to be followed when there is a complaint case and police investigation in respect of the same offence**
  - When it appears to a Magistrate during an inquiry or trial in a complaint case that a police investigation is in progress regarding the same offence, the Magistrate shall stay the proceedings and call for a report from the investigating police officer. The "NOTES ON CLAUSES" reiterate this.

#### **CHAPTER XV: THE CHARGE**

- **A.—Form of charges**
  - **Clause 234: Contents of charge**
    - Every charge shall state the offence the accused is charged with.
    - If the law creating the offence gives it a specific name, that name may be used in the charge.
    - If the law does not give a specific name, so much of the definition must be stated as to give the accused notice of the matter they are charged with.
    - The law and section under which the offence is said to have been committed shall be mentioned.

- The fact that a charge is made implies that every legal condition required to constitute the offence was fulfilled.
- The charge shall be written in the Court's language.
- If the accused has a previous conviction that leads to enhanced or different punishment for a subsequent offence, and it is intended to prove it to affect punishment, the details of the previous conviction shall be stated in the charge. The Court may add this at any time before sentencing if omitted.
- The "NOTES ON CLAUSES" summarise these provisions regarding the contents of a charge.
- **Clause 235: Particulars as to time, place and person**
  - The charge shall contain particulars about the time and place of the alleged offence and the person (if any) against whom or the thing (if any) in respect of which it was committed, as reasonably sufficient to give the accused notice.
  - In cases of criminal breach of trust or dishonest misappropriation of money or movable property, it is sufficient to specify the gross sum or describe the property and the dates between which the offence is alleged, without particular items or exact dates, and such a charge is deemed one offence under section 242, provided the time period does not exceed one year.
  - The "NOTES ON CLAUSES" summarise these requirements.
- **Clause 236: When manner of committing offence must be stated**
  - When the particulars in sections 234 and 235 do not give sufficient notice, the charge shall also contain particulars of the manner in which the alleged offence was committed, sufficient for that purpose. Illustrations are provided. The "NOTES ON CLAUSES" reiterate this.
- **Clause 237: Words in charge taken in sense of law under which offence is punishable**
  - Words used to describe an offence in a charge shall be deemed to have been used in the sense attached to them by the law under which the offence is punishable. The "NOTES ON CLAUSES" explain this.
- **Clause 238: Effect of errors**
  - No error in stating the offence or required particulars in the charge, and no omission to state them, shall be deemed material at any stage unless the accused was actually misled and a failure of justice occurred. Illustrations are provided. The "NOTES ON CLAUSES" explain this provision regarding the effect of errors in charges.
- **Clause 239: Court may alter charge**
  - This clause heading is provided but the content is not in the excerpts.
- **Clause 240: Recall of witnesses when charge altered**

- This clause heading is provided but the content is not in the excerpts.
- **Clause 241: Separate charges for distinct offences**
  - This clause heading is provided but the content is not in the excerpts.

## **CHAPTER XVII: THE TRIAL OF WARRANT-CASES BY MAGISTRATES**

- **A.—Cases instituted on a police report**
  - **Clause 230: Supply to the accused of copy of police report and other documents**
    - When proceedings are instituted on a police report, the Magistrate shall, without delay (and no later than fourteen days from the accused's production or appearance), furnish the accused and the victim, free of cost, with copies of:
      - the police report.
      - the first information report recorded under section 193 (this likely refers to section 173 as section 193 deals with the report on completion of investigation).
      - statements recorded under section 180(3) of all proposed prosecution witnesses, excluding any part requested for exclusion by the police under section 193(7).
      - confessions and statements recorded under section 183.
      - any other document or relevant extract forwarded with the police report under section 193(8) (this likely refers to section 193(6) as section 193(8) concerns copies for the accused).
    - The Magistrate may, after perusing any part of a statement requested for exclusion and considering the police's reasons, direct that a copy of that part (or a suitable portion) be furnished to the accused.
    - If any document is voluminous, the Magistrate may provide copies electronically or direct that it be inspected personally or through an advocate in Court instead of furnishing a physical copy to the accused and the victim (if represented).
    - Supply of documents in electronic form is considered duly furnished.
    - The "NOTES ON CLAUSES" summarise that this clause mandates the Magistrate to furnish copies of the police report and other related documents to the accused and the victim free of cost and within a specified timeframe.
- **B.—Cases instituted otherwise than on police report**
  - **Clause 231: Supply of copies of statements and documents to accused in other cases triable by Court of Session**
    - In cases instituted otherwise than on a police report, if the Magistrate issuing process under section 227 finds the offence exclusively triable by the

Court of Session, they shall forthwith furnish the accused, free of cost, with copies of:

- statements recorded under section 223 or 225 of all persons examined by the Magistrate.
  - statements and confessions, if any, recorded under section 180 or 183.
  - any documents produced before the Magistrate on which the prosecution proposes to rely.
  - If any such document is voluminous, the Magistrate may direct that it be inspected personally or through a pleader in Court instead of furnishing a copy.
  - Supply of documents in electronic form is considered duly furnished.
  - The "NOTES ON CLAUSES" summarise that this clause mandates the supply of statements and documents to the accused in cases triable by the Court of Session but not instituted on a police report.
- **Clause 232: Discharge of accused**
    - This clause heading is provided but the content is not in the excerpts.

#### **CHAPTER XVIII: TRIAL BEFORE A COURT OF SESSION**

- **Clause 251: Procedure in trial before Court of Session**
  - This clause heading is provided but the content is not in the excerpts.

#### **CHAPTER XIX: THE TRIAL OF SUMMONS-CASES BY MAGISTRATES**

- **Clause 265: Evidence for prosecution**
  - In a summons-case, when the accused appears or is brought before the Magistrate, the particulars of the offence shall be stated to them, and they shall be asked if they plead guilty. The Magistrate may then record the plea, and if it is guilty, may convict.
  - The Magistrate may, on the prosecution's application, issue a summons to any of its witnesses to attend or produce any document or thing.
  - On the fixed date, the Magistrate shall take all evidence produced in support of the prosecution. Cross-examination of any witness may be deferred, and any witness may be recalled for further cross-examination. Evidence may be recorded by audio-video electronic means.
- **Clause 266: Evidence for defence**
  - The accused shall then be called upon to enter their defence and produce evidence. Any written statement shall be filed with the record.
  - If the accused, after entering defence, applies to compel the attendance of any witness or the production of any document or thing, the Magistrate shall issue such

process unless the application is considered vexatious, for delay, or to defeat justice, with the grounds for refusal recorded in writing.

## **CHAPTER XX: SUMMARY TRIALS**

- **Clause 287: Record in summary trials**
  - In every summary trial where the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.
- **Clause 288: Language of record and judgment**
  - Every record and judgment in a summary trial shall be written in the language of the Court.
  - The High Court may authorise any Magistrate empowered to try offences summarily to prepare the record or judgment (or both) through an appointed officer of the Chief Judicial Magistrate, and the Magistrate shall sign the prepared record or judgment.

## **CHAPTER XXI: PLEA BARGAINING**

- **Clause 289: Application of Chapter**
  - This Chapter applies to an accused against whom a police report has been forwarded under section 193 alleging an offence other than one punishable by death, life imprisonment, or imprisonment exceeding seven years.
  - It does not apply if the offence affects the socio-economic condition of the country or was committed against a woman or a child below fourteen years.
  - The Central Government shall, by notification, determine the offences affecting the socio-economic condition of the country.
- **Clause 290: Application for plea bargaining**
  - A person accused of an offence may file a plea bargaining application within thirty days from the framing of the charge in the trial court.
  - The application shall briefly describe the case and the related offence, and include an affidavit by the accused stating that they have voluntarily preferred plea bargaining after understanding the punishment, and that they have not been previously convicted in a similar case.
  - Upon receiving the application, the Court shall issue notice to the Public Prosecutor or complainant and the accused to appear on a fixed date.
- **Clause 298: Savings**
  - This clause is listed as a heading under Chapter XXIV (Plea Bargaining) but its content is not provided in the excerpts within this chapter. However, a separate Clause 5 on Saving exists.
- **Clause 299: Statements of accused not to be used**

- Notwithstanding any other law, statements or facts stated by an accused in a plea bargaining application under section 290 shall not be used for any other purpose except for this Chapter.
- **Clause 300: Non-application of the Chapter**
  - Nothing in this Chapter applies to any juvenile or child as defined in the Juvenile Justice (Care and Protection of Children) Act, 2015.

## **CHAPTER XXII: ATTENDANCE OF PERSONS CONFINED OR DETAINED IN PRISONS**

- **Clause 301: Definitions**
  - This clause defines "detained" to include detention under preventive detention laws, and "prison" to include subsidiary jails, reformatories, Borstal institutions, and similar institutions. The "NOTES ON CLAUSES" also refer to these definitions.
- **Clause 302: Power to require attendance of prisoners**
  - Whenever it appears to a Criminal Court during an inquiry, trial, or proceeding that a person confined or detained in prison should be brought before the Court to answer a charge or for any proceedings against them, the Court may make an order requiring the officer in charge of the prison to produce the prisoner.
  - Form No. 36 provides the "**Order Requiring Production in Court of Person in Prison for Answering to Charge of Offence**". It requires the officer in charge of a named jail to produce a named prisoner before the Court on a specified date and time to answer to a stated charge or for a specified proceeding, and to return the prisoner to custody after their attendance is dispensed with, also requiring the prisoner to be informed of the order's contents. The "NOTES ON CLAUSES" also mention this power.
- **Clause 303: Power of State Government or Central Government to exclude certain persons from operation of section 302**
  - This clause heading is provided and mentioned in the "NOTES ON CLAUSES", but the content is not in the excerpts.
- **Clause 304: Officer in charge of prison to abstain from carrying out order in certain contingencies**
  - This clause heading is provided and mentioned in the "NOTES ON CLAUSES", but the content is not in the excerpts.
- **Clause 305: Prisoner to be brought to Court in custody**
  - A prisoner brought before a Court under section 302 shall be kept in custody.
- **Clause 306: Power to issue commission for examination of witness in prison**
  - This Chapter does not prejudice the Court's power under section 319 to issue a commission for the examination of a witness confined or detained in prison. Part B of Chapter XXVI shall apply to such examinations on commission as they apply to others.

## **CHAPTER XXIII: COMMISSIONS FOR THE EXAMINATION OF WITNESSES**

- **Part B (Examination of witnesses on commission)**

- **Clause 325: Execution of foreign commissions**

- This clause heading is provided but the content is not in the excerpts.

## **CHAPTER XXIV: EVIDENCE IN INQUIRIES AND TRIALS**

- **A.—Mode of taking and recording evidence**

- **Clause 307: Language of Courts**

- The State Government shall determine the language of each Court within the State (other than the High Court) for the purposes of this Sanhita.

- **Clause 308: Evidence to be taken in presence of accused**

- Except as otherwise expressly provided, all evidence taken during a trial or other proceeding shall be in the presence of the accused or their pleader (when personal attendance is dispensed with), subject to certain conditions.

- **Clause 309: Record in summons-cases and inquiries**

- In all summons-cases tried by a Magistrate, in all inquiries under sections 165 to 168, and in proceedings under section 493 other than during a trial, the Magistrate shall, as each witness is examined, make a memorandum of the substance of the evidence in the Court's language. If the Magistrate cannot do so, they shall record the reason and cause a memorandum to be made in writing or from their dictation in open Court. The memorandum shall be signed by the Magistrate and form part of the record.

- **Clause 310: Record in warrant-cases**

- In all warrant-cases tried by a Magistrate, the evidence of each witness shall be taken down in writing as the examination proceeds, either by the Magistrate, by their dictation in open Court, or, if the Magistrate is unable due to incapacity, under their direction and supervision by a Court officer appointed for this purpose. Evidence may also be recorded by audio-video electronic means in the presence of the accused's advocate. If the Magistrate directs the evidence to be taken down, they shall record a certificate stating the reason for not taking it down themselves. The evidence shall ordinarily be in narrative form, but the Magistrate may record any part in question-answer form. The recorded evidence shall be signed by the Magistrate and form part of the record.
    - Section 323(1) refers to commissions issued under this section.
    - The "NOTES ON CLAUSES" explain these provisions for recording evidence in warrant-cases.

- **Clause 311: Record in trial before Court of Session**

- In all trials before a Court of Session, witness evidence shall be taken down in writing as examination proceeds, either by the presiding Judge, by their dictation in open Court, or under their direction by a Court officer. Evidence

shall ordinarily be in narrative form, but the Judge may record any part in question-answer form. The recorded evidence shall be signed by the presiding Judge and form part of the record. The "NOTES ON CLAUSES" summarise this.

- **Clause 312: Language of record of evidence**
  - When evidence is recorded under sections 310 or 311: if the witness speaks the Court's language, it shall be recorded in that language; if another language is used, it may be recorded in that language if practicable, otherwise a true translation into the Court's language shall be prepared as the examination proceeds, signed by the Magistrate or Judge, and form part of the record. If evidence is in a language other than the Court's, a true translation shall be prepared as soon as practicable, signed, and form part of the record. However, if evidence is in English and no party requires a translation, the Court may dispense with it. The "NOTES ON CLAUSES" mention this.
- **Clause 313: Procedure in regard to such evidence when completed**
  - As each witness's evidence taken under section 310 or 311 is completed, it shall be read over to them in the presence of the accused (if attending) or their pleader, and corrected if necessary. If the witness denies the correctness of any part, the Magistrate or Judge may make a memorandum of the objection and add necessary remarks instead of correcting the evidence. If the record is in a language the witness does not understand, it shall be interpreted to them in their language. The "NOTES ON CLAUSES" refer to this procedure.
- **Clause 314: Interpretation of evidence to accused or his pleader**
  - This clause heading is provided and mentioned in the "NOTES ON CLAUSES", but the content is not in the excerpts.
- **Clause 315: Remarks respecting demeanour of witness**
  - When a presiding Judge or Magistrate records witness evidence, they shall also record any material remarks about the witness's demeanour during examination. The "NOTES ON CLAUSES" reiterate this.
- **Clause 316: Record of examination of accused**
  - When the accused is examined by a Magistrate or Court of Session, the entire examination (questions and answers) shall be fully recorded by the presiding Judge or Magistrate, or under their direction by a Court officer if the Judge/Magistrate is unable due to incapacity. The record shall, if practicable, be in the accused's examination language or, if not, in the Court's language. The record shall be shown or read to the accused, interpreted if they don't understand the language, and they shall be allowed to explain or add to their answers. It shall then be signed by the accused and the Magistrate or Judge, who shall certify that the examination was in their



presence and hearing and that the record is full and true. The "NOTES ON CLAUSES" summarise this.

- **Clause 317: Interpreter to be bound to interpret truthfully**
  - If an interpreter's services are required by a Criminal Court for evidence or statement interpretation, they shall be bound to provide a true interpretation. The "NOTES ON CLAUSES" reiterate this.
- **Clause 318: Record in High Court**
  - Every High Court may, by general rule, prescribe the manner of taking down witness evidence and accused examinations in cases before it, and such evidence and examination shall be taken down accordingly. The "NOTES ON CLAUSES" explain this.
- **B.—Commissions for the examination of witnesses**
  - **Clause 319: When attendance of witness may be dispensed with and commission issued**
    - This clause heading is provided, suggesting it outlines when a witness's attendance can be excused and a commission for their examination issued. Clause 306 mentions the power to issue commissions for examining prisoners under this section.
  - **Clause 320: Commission to whom to be issued**
    - This clause heading is provided but the content is not in the excerpts.
  - **Clause 321: Execution of commissions**
    - This clause heading is provided but the content is not in the excerpts.
  - **Clause 322: Parties may examine witnesses**
    - Parties to any proceeding where a commission is issued may forward written interrogatories that the Court or Magistrate directing the commission deems relevant. The Magistrate, Court, or officer executing the commission may examine the witness on these. Any party may appear before such authority by pleader or in person (if not in custody) and may examine, cross-examine, and re-examine the witness.
  - **Clause 323: Return of commission**
    - After due execution, any commission issued under section 310 shall be returned with the witness's deposition to the issuing Court or Magistrate. The commission, return, and deposition shall be open for party inspection at reasonable times and may, subject to just exceptions, be read as evidence by either party and form part of the record. Any deposition taken satisfying section 27 of the Bharatiya Sakshya Adhiniyam, 2023, may also be received as evidence in subsequent stages of the case before another Court.
  - **Clause 324: Adjournment of proceeding**

- This clause heading is provided but the content is not in the excerpts.
- **Clause 325: Execution of foreign commissions**
  - This clause heading is provided but the content is not in the excerpts.
- **Clause 326: Deposition of medical witness**
  - The deposition of a civil surgeon or other medical witness, taken and attested by a Magistrate in the accused's presence or on commission, may be given in evidence in any inquiry, trial, or other proceeding, even if the deponent is not called as a witness. The Court may, and shall on application by the prosecution or accused, summon and examine any such deponent on the subject of their deposition.
- **Clause 327: Identification report of Magistrate**
  - Any document purporting to be an identification report under the hand of an Executive Magistrate regarding a person or property may be used as evidence in any inquiry, trial, or other proceeding, even if the Magistrate is not called as a witness. However, if the report contains a statement of a suspect or witness to which specific sections of the Bharatiya Sakshya Adhiniyam, 2023, apply, such statement shall only be used according to those sections. The Court may, and shall on application by the prosecution or accused, summon and examine such Magistrate on the subject of the report. The "NOTES ON CLAUSES" mention this clause.
- **Clause 328: Evidence of officers of the Mint**
  - Any document purporting to be a report by a specified officer of the Mint, Note Printing Press, Security Printing Press, Controller of Stamps and Stationery, Forensic Department/Division, Government Examiner of Questioned Documents, or State Examiner of Questioned Documents, upon a matter duly submitted in any proceeding, may be used as evidence even if the officer is not called as a witness. The Court may summon and examine any such officer on their report, but they shall not be summoned to produce the report's underlying records. Without prejudice to sections 129 and 130 of the Bharatiya Sakshya Adhiniyam, 2023, such an officer shall not, except with permission from their superior, give evidence derived from unpublished official records or disclose the nature/particulars of any test applied. The "NOTES ON CLAUSES" also mention this.
- **Clause 329: Reports of certain Government scientific experts**
  - Any document purporting to be a report by a Government scientific expert (to whom this section applies) on a matter duly submitted for examination/analysis in any proceeding may be used as evidence. The "NOTES ON CLAUSES" also refer to this.
- **Clause 330: No formal proof of certain documents**
  - When any document is filed by the prosecution or accused, its particulars shall be included in a list, and the parties or their advocates shall be called

upon to admit or deny its genuineness soon after supply and no later than thirty days after, although the Court may relax this time limit with recorded reasons. No expert shall be called unless their report is disputed. The list of documents shall be in a form prescribed by State Government rules. If genuineness is not disputed, the document may be read in evidence without proof of signature, although the Court may require such proof. The "NOTES ON CLAUSES" mention this.

- **Clause 331: Affidavit in proof of conduct of public servants**
  - When an application is made in any proceeding alleging misconduct by a public servant, the applicant may provide evidence of the facts by affidavit, and the Court may order that such evidence be given by affidavit. The "NOTES ON CLAUSES" elaborate on this.
- **Clause 332: Evidence of formal character on affidavit**
  - The evidence of any person whose evidence is of a formal character may be given by affidavit and read in evidence subject to just exceptions. The "NOTES ON CLAUSES" also mention this.
- **Clause 333: Authorities before whom affidavits may be sworn**
  - Affidavits under this Sanhita may be sworn before any Magistrate, any Commissioner of Oaths appointed by a High Court or Court of Session, or any notary appointed under the Notaries Act, 1952. The "NOTES ON CLAUSES" list these authorities.
- **Clause 334: Previous conviction or acquittal how proved**
  - This clause heading is provided and mentioned in the "NOTES ON CLAUSES", but the content is not in the excerpts.
- **Clause 335: Record of evidence in absence of accused**
  - If it is proved that an accused person has absconded and there is no immediate prospect of apprehending them, the Court competent to try or commit for trial may, after recording the evidence produced, pronounce judgment notwithstanding the absence of the accused, or make such order as it thinks fit. If a previously absconding accused appears before the Court, they may apply for the recall and re-examination of any witnesses already examined, provided they defray the expenses, and the Court is satisfied the application is made in good faith and not for delay. The "NOTES ON CLAUSES" mention this clause.
- **Clause 336: Evidence of public servants, experts, police officers in certain cases**
  - When a document or report by a public servant, expert, medical officer, or investigating officer is to be used as evidence and such person has been transferred, retired, died, cannot be found, is incapable of giving deposition, or securing their presence would cause undue delay, the Court shall secure the presence of their successor officer holding that post to give deposition on the document or report. The "NOTES ON CLAUSES" summarise this.

## **CHAPTER XXV: GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS**

- **Clause 343: Provision for inquiries and trials being held in the absence of accused in certain cases**
  - This clause heading is provided but the content is not in the excerpts.
- **Clause 346: Procedure when corporation or registered society is an accused**
  - This clause heading is provided but the content is not in the excerpts.
- **Clause 348: Power to summon material witness, or examine person present**
  - Any Court may, at any stage of any inquiry, trial, or other proceeding, summon any person as a witness, or examine any person present though not summoned, or recall and re-examine any person already examined, if their evidence appears essential to the just decision of the case.
- **Clause 349: Power of Magistrate to order person to give specimen signatures or handwriting**
  - If a Magistrate of the first class is satisfied that it is expedient for any investigation or proceeding to direct any person (including an accused) to give specimen signatures, finger impressions, handwriting, or voice sample, they may make an order to that effect. The person shall be produced or attend at the specified time and place and provide the sample. The "NOTES ON CLAUSES" elaborate on this.
- **Clause 350: Expenses of complainants and witnesses**
  - Subject to State Government rules, any Criminal Court may order payment by the Government of the reasonable expenses of any complainant or witness attending for any inquiry, trial, or other proceeding before such Court under this Sanhita. The "NOTES ON CLAUSES" summarise this.
- **Clause 351: Power to examine the accused**
  - In every inquiry or trial, to enable the accused to personally explain any circumstances in the evidence against them, the Court may at any stage, without prior warning, ask them any necessary questions. The accused is not liable to punishment for refusing to answer or giving false answers, but their answers may be considered in the inquiry or trial and used as evidence for or against them in any other inquiry or trial for any other offence the answers may tend to show they committed. The Court may seek help from the Prosecutor and Defence Counsel in preparing relevant questions and may permit the accused to file a written statement as sufficient compliance.
- **Clause 352: Oral arguments and memorandum of arguments**
  - Any party may, soon after closing their evidence, present concise oral arguments and may, before concluding, submit a memorandum to the Court setting forth their arguments concisely under distinct headings, which shall form part of the record. A copy of the memorandum shall be simultaneously given to the opposing party. No adjournment shall be granted for filing written arguments unless the Court, for

recorded reasons, deems it necessary. The Court may regulate oral arguments if they are not concise or relevant.

- **Clause 353: Accused person to be competent witness**
  - Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath to disprove the charges against them or any co-accused in the same trial. However, in proceedings under sections 127, 128, or 129, the accused's failure to give evidence shall not be commented on by any party or the Court or raise any presumption against them or any co-accused.
- **Clause 354: No inducement to be offered**
  - Except as provided in sections 343 and 344, no influence (promise, threat, or otherwise) shall be used to induce an accused person to disclose or withhold any matter within their knowledge.

#### **CHAPTER XXVI: PROVISIONS AS TO INSANE PERSONS**

- **Clause 369 and 374: Provisions related to persons found to be of unsound mind**
  - These sections are referred to in the context of a relative or friend desiring custody of a person detained under these provisions. If the State Government grants such an application, the relative or friend must provide security that the person will be properly cared for, prevented from self-harm or harming others, and produced for inspection as directed.

#### **CHAPTER XXVII: JUDGMENT**

- **Clause 392: Form of judgment**
  - This clause heading is provided but the content is not in the excerpts.
- **Clause 393: Language, contents, etc., of judgments**
  - Every judgment shall be written in the Court's language and contain the points for determination, the decision thereon, and the reasons for the decision. It shall specify the offence and the relevant law/section for conviction and the sentence imposed. If it's an acquittal, it shall state the offence of which the accused is acquitted and direct their release.
- **Clause 394: Previous conviction**
  - When a person previously convicted of an offence punishable with three years or more imprisonment is again convicted of a similar offence by a Court other than a Magistrate of the second class, the Court may, at the time of sentencing, also order that their residence and any changes or absence from it after release be notified for up to five years from the sentence's expiration.

#### **CHAPTER XXVIII: COMPENSATION TO VICTIMS**

- **Clause 396: Power of Court to order payment of compensation**

- Every State Government, in coordination with the Central Government, shall prepare a scheme to provide funds for compensation to victims or their dependents who have suffered loss or injury due to crime and require rehabilitation.
- Whenever a Court recommends compensation, the District Legal Service Authority or the State Legal Service Authority shall decide the amount under this scheme.
- On receipt of such recommendations or an application, the State or District Legal Services Authority shall, after due inquiry (within two months), award adequate compensation.
- To alleviate suffering, the State or District Legal Services Authority may order immediate first-aid or free medical benefits on a certificate from a police officer not below the rank of officer in charge of a police station or a Magistrate, or any other interim relief deemed fit.
- **Clause 397: Hospitals to provide first-aid or medical treatment free of cost**
  - All hospitals (public or private) shall immediately provide first-aid or medical treatment free of cost to victims of offences under specified sections of the Bharatiya Nyaya Sanhita, 2023, and the POCSO Act, 2012, and shall immediately inform the police of such incidents.

#### **CHAPTER XXX: APPEALS**

- **Clause 432: Procedure when Appellate Court desires to take additional evidence**
  - If an Appellate Court deems additional evidence necessary in dealing with an appeal, it shall record its reasons and may either take the evidence itself or direct it to be taken by a Magistrate or, if the Appellate Court is a High Court, by a Court of Session or a Magistrate. When additional evidence is taken by a lower court, it shall certify such evidence to the Appellate Court, which shall then dispose of the appeal. The accused or their advocate has the right to be present when additional evidence is taken. The taking of such evidence is subject to Chapter XXIV as if it were an inquiry.
- **Clause 433: Procedure where Judges of Court of appeal are equally divided**
  - When an appeal is heard by a High Court before a Bench of Judges and they are divided in opinion, the appeal and their opinions shall be laid before another Judge of that Court, who shall deliver their opinion after a hearing, and the judgment or order shall follow that opinion.

#### **CHAPTER XXXI: REVISION**

- **Clause 444: No party to have right to be heard except in certain cases**
  - Unless expressly provided otherwise by this Sanhita, no party has a right to be heard personally or by an advocate before any Court exercising its powers of revision. However, the Court may hear any party if it thinks fit when exercising such powers.
- **Clause 445: Statement by Magistrate of grounds of decision to Revising Court**
  - When the record of a trial held by a Magistrate is called for by the High Court or Court of Session under section 438, the Magistrate may submit a statement with the

record setting forth the grounds of their decision or order and any material facts. The Revising Court shall consider this statement before overruling or setting aside the decision or order.

#### **CHAPTER XXXII: TRANSFER OF CRIMINAL CASES**

- Clauses 455 to 463 are mentioned as headings but their content is not provided.

#### **CHAPTER XXXIV: DISPOSAL OF PROPERTY**

- **Clause 469: Power to make orders when property regarding which offence committed is produced before Criminal Court during inquiry or trial**
  - "Property" includes property of any kind or document produced before or in the custody of the Court, and any property regarding which an offence appears to have been committed or used for commission.
  - The Court or Magistrate shall, within fourteen days of the property's production, prepare a statement describing it in a form and manner prescribed by State Government rules.
  - A photograph or videography of the property shall also be taken, wherever feasible, in the presence of the accused.
  - The statement and the photograph/videography shall be used as evidence in any inquiry, trial, or other proceeding under the Sanhita.
  - The Court or Magistrate shall, within thirty days after preparing the statement and taking the photograph/videography, order the disposal, destruction, confiscation, or delivery of the property as specified.

#### **CHAPTER XXXVI: LIMITATION FOR TAKING COGNIZANCE OF CERTAIN OFFENCES**

- **Clause 483: Exclusion of time in certain cases**
  - In computing the period of limitation, the time required for obtaining government consent or sanction shall be excluded, including the application and receipt dates.
- **Clause 484: Exclusion of time during which proceedings were bona fide pending in wrong Court**
  - This clause heading is provided but the content is not in the excerpts.
- **Clause 485: Exclusion of time during absence of accused from India or certain territories**
  - In computing the period of limitation, the time during which the offender has been absent from India or from any territory outside India under Central Government administration shall be excluded.

#### **CHAPTER XXXVII: MISCELLANEOUS**

- **Clause 527: Case in which Judge or Magistrate is personally interested**
  - This clause heading is provided but the content is not in the excerpts.
- **Clause 528: Practicing advocate not to sit as Magistrate in certain Courts**

- This clause heading is provided but the content is not in the excerpts.
- **Clause 529: Public servant concerned in sale not to purchase or bid for property**
  - This clause heading is provided but the content is not in the excerpts.
- **Clause 530: Saving of inherent powers of High Court**
  - This clause heading is provided but the content is not in the excerpts.
- **Clause 531: Duty of High Court to exercise continuous superintendence over Courts**
  - This clause heading is provided but the content is not in the excerpts.
- **Clause 532: Trial and proceedings to be held in electronic mode**
  - This clause heading is provided but the content is not in the excerpts.
- **Clause 533: Repeal and savings**
  - This clause heading is provided but the content is not in the excerpts.

#### **THE FIRST SCHEDULE**

- This schedule is referred to in the definition of "bailable offence" and "cognizable offence" and provides classifications of offences under the Bharatiya Nyaya Sanhita, 2023. Some examples are given:
  - Abetting commission of offence by the public or by more than ten persons (Section 57): Punishable with imprisonment up to seven years and fine, according to whether the abetted offence is cognizable or non-cognizable and bailable or non-bailable, and triable by the Court by which the abetted offence is triable.
  - Concealing design to commit offence punishable with death or imprisonment for life (Section 58): If the offence is committed, punishment includes imprisonment which may extend to life and fine not less than two lakhs rupees. Cognizable, non-bailable, and triable by the Court of Session.
  - Possession of property on behalf of a member of an organised crime syndicate without satisfactory account (Section 109(7)): Punishable with imprisonment not less than three years but up to ten years, and fine not less than one lakh rupees. Cognizable, non-bailable, and triable by the Court of Session. Such property is also liable for attachment and forfeiture.
  - Petty Organised crime or organised crime in general (Section 110): Punishable with imprisonment not less than one year but up to seven years and fine. Non-cognizable, bailable, and triable by any Magistrate.
  - Offence of terrorist act resulting in death (Section 111): Punishable with death or life imprisonment without benefit of remission. Cognizable, non-bailable, and triable by the Court of Session.
  - Voluntarily causing hurt to extort confession or information, or to compel restoration of property, etc. (Section 118(1)): Imprisonment for 7 years and fine. Cognizable, bailable, and triable by a Magistrate of the first class.



- Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, etc. (Section 118(2)): Imprisonment for 10 years and fine. Cognizable, non-bailable.
- Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter against the President, Vice-President, Governor, Administrator, or a Minister concerning their public functions (when instituted upon a complaint by the Public Prosecutor): Cognizable, non-bailable, and triable by the Court of Session.
- Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter in any other case: Cognizable, bailable, and triable by a Magistrate of the first class.
- Being bound to attend on or supply any want to any prisoner and wilfully refusing or neglecting to do so (Section 355): Imprisonment up to three months or fine up to one thousand rupees or both. Non-cognizable, bailable, and triable by any Magistrate.

## **THE SECOND SCHEDULE**

- This schedule contains forms for various processes under the Sanhita. Examples include:
  - Form No. 6: Warrant of Attachment to Compel Appearance (under section 96).
  - Form No. 7: Order of Attachment to Compel the Appearance of a Person Accused (under section 96).
  - Form No. 10: Warrant to Search After Information of a Particular Offence (under section 96).
  - Form No. 11: Warrant to Search Suspected Place of Deposit (under section 97).
  - Form No. 14: Summons on Information of a Probable Breach of the Peace (under section 132).
  - Form No. 22: Magistrate's Notice and Peremptory Order (under section 160).
  - Form No. 23: Temporary Injunction Pending Inquiry (under section 161).
  - Form No. 24: Magistrate's Order Prohibiting the Repetition, etc., of a Nuisance (under section 162).
  - Form No. 25 & 26: Magistrate's Order in Proceedings Under Section 145 (now Section 166).
  - Form No. 29: Summons to give Evidence.
  - Form No. 30: Special Summons to a Person Accused of a Petty Offence (under section 229).
  - Form No. 35: Summons to an Accused Person.
  - Form No. 36: Order Requiring Production in Court of Person in Prison for Answering to Charge of Offence (under section 302).

- Form No. 37: Order Requiring Production in Court of Person in Prison to Give Evidence.
- Form No. 38: Warrant of Commitment in Certain Cases of Contempt When a Fine is Imposed.

#### **NOTES ON CLAUSES (Additional Information)**

- **Clause 11:** Empowers the High Court to make rules regarding the qualification and experience of persons to be conferred with the powers of a Judicial Magistrate in specific cases or classes of cases.
- **Clause 48:** Empowers the State Government to make rules for the form of the book for entering details of arrested persons.
- **Clause 123:** Explains that every letter of request, summons, or warrant received by the Central Government from, and to be transmitted to, a contracting State shall be transmitted or sent in such form and manner as the Central Government may specify by notification.
- **Clause 124:** Empowers the Central Government to issue notifications directing that the application of Chapter VIII in relation to a contracting State with reciprocal arrangements shall be subject to specified conditions, exceptions, or qualifications.
- **Clause 159:** Relates to the power of the Magistrate to furnish written instructions etc. (likely related to local investigations).

#### **THE BHARATIYA SAKSHYA BILL, 2023**

A Bill to consolidate and to provide for general rules and principles of evidence for fair trial.

#### **PART I**

#### **CHAPTER I: PRELIMINARY**

- **Clause 1: Short title, application and commencement.**
  - This Act may be called the **Bharatiya Sakshya Adhiniyam, 2023**.
  - 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**.
  - It shall come into force on such date as the **Central Government may, by notification in the Official Gazette, appoint**.
- **Clause 2: Definitions.**
  - **(a) "Court"** includes **all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence**.
  - **(b) "conclusive proof"** means **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**.

- (c) **"disproved"** in relation to a fact, means **when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.**
- (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:** A writing, printed, lithographed or photographed words, a map or plan, an inscription on metal or stone, a caricature, and an electronic record on emails, server logs, computer documents, messages, websites, locational evidence, and voice mail on digital devices are all documents.
- (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.**
  - (ii) **all documents including electronic or digital records produced for the inspection of the Court and such documents are called documentary evidence.**
- (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.**
  - **Illustrations:** Objects in a certain order in a place, a person hearing or seeing something, a person saying certain words, and a person holding an opinion, having an intention, acting in good faith or fraudulently, using a particular word in a particular sense, or being conscious of a sensation at a specific time are all facts.
- (g) **"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:** When a court records an issue of fact under the Code of Civil Procedure, the fact asserted or denied in the answer is a fact in issue.
- (i) **"not proved".—A fact is said to be not proved when it is neither proved nor disproved.**
- (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.**

- **(k) "relevant".**—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.**
- **(l) "shall presume".**—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.
- Words and expressions used but not defined in this Adhiniyam, but defined in the Information Technology Act, 2000, the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Bharatiya Nyaya Sanhita, 2023, shall have the same meanings as in those Acts and Sanhitas.

## PART II

### CHAPTER II: RELEVANCY OF FACTS

- **Clause 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 declared to be relevant** in this Adhiniyam, and of no others.
  - This section does not enable a person to give evidence of a fact they are disentitled to prove under civil procedure law.
  - **Illustrations** provide examples of facts in issue in a murder trial and limitations on producing evidence of a bond not readily available at the first hearing of a case.
- **Clause 4: Relevancy of facts forming part of same transaction.**
  - Facts that are **so connected with a fact in issue or a relevant fact as to form part of the same transaction** are relevant, regardless of when or where they occurred.
  - **Illustrations** include what was said or done at a beating forming part of a murder, occurrences during an armed insurrection being part of the same transaction, correspondence related to a libelous letter, and successive deliveries of goods.
- **Clause 5: Facts which are occasion, cause or effect of facts in issue or relevant facts.**
  - Facts that are the **occasion, cause or effect** (immediate or otherwise) of facts in issue or relevant facts are relevant. This also includes facts that constitute the **state of things** under which they happened or afforded an **opportunity** for their occurrence.
  - **Illustrations** include a person going to a fair with money shortly before being robbed, marks on the ground at a murder scene, and the victim's health and habits before being poisoned.
- **Clause 6: Motive, preparation and previous or subsequent conduct.**
  - Any fact showing **motive or preparation** for a fact in issue or relevant fact is relevant.
  - The **conduct** of any party or their agent in reference to the suit or any fact in issue, or the conduct of a person against whom an offence is the subject of a proceeding, is relevant if it **influences or is influenced by any fact in issue or relevant fact**, whether previous or subsequent.

- **Explanation 1:** "Conduct" does not include statements unless they accompany and explain acts other than statements, but this doesn't affect the relevancy of statements under other sections.
- **Explanation 2:** Statements made to or in the presence and hearing of a person whose conduct is relevant, which affect such conduct, are relevant.
- **Illustrations** cover various scenarios such as motive for murder, providing false evidence, running away after an accusation, silence upon hearing a relevant statement, absconding after a warning letter, possession of stolen property, and complaints made shortly after an alleged rape or robbery.
- **Clause 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, establish identity, fix time or place**, or show the **relation of parties** involved in a transaction are relevant to the extent necessary for that purpose.
  - **Illustrations** include the state of property and family at the time of an alleged will, the position and relations of parties in a libel case, an accused person absconding after a crime and their reason for leaving, and the cries of a mob during a riot.
- **Clause 8: Things said or done by conspirator in reference to common design.**
  - Where there is reasonable ground to believe that two or more persons have **conspired** to commit an offence or actionable wrong, anything **said, done or written by any one of them** in reference to their **common intention**, after the intention was first entertained, is a relevant fact against each conspirator to prove the conspiracy and their participation.
  - An **illustration** details how acts and statements of conspirators can be relevant against a co-conspirator even if they were unaware of them or occurred before or after their involvement.
- **Clause 9: When facts not otherwise relevant become relevant.**
  - Facts not otherwise relevant are relevant if they are **inconsistent** with a fact in issue or relevant fact, or if they make the **existence or non-existence** of any fact in issue or relevant fact **highly probable or improbable**.
  - **Illustrations** include an alibi placing the accused far from the crime scene and circumstances narrowing down the possible perpetrators of a crime.
- **Clause 10: Facts tending to enable Court to determine amount are relevant in suits for damages.**
  - In suits claiming damages, any fact that helps the Court **determine the amount of damages** to be awarded is relevant.
- **Clause 11: Facts relevant when right or custom is in question.**
  - When the question is about the existence of a **right or custom**, relevant facts include any **transaction** by which the right or custom was created, claimed, modified,

recognised, asserted, denied, or was inconsistent with its existence, and **particular instances** in which it was claimed, recognised, exercised, disputed, asserted, or departed from.

- An **illustration** concerns the relevance of deeds, mortgages, grants, and instances of exercising or being prevented from exercising a right to a fishery.
- **Clause 12: Facts showing existence of state of mind, or of body or bodily feeling.**
  - Facts showing the existence of any **state of mind** (intention, knowledge, good faith, negligence, ill-will, etc.) or **state of body or bodily feeling** are relevant when such a state is in issue or relevant.
  - **Explanation 1:** A fact relevant to show a state of mind must show it in reference to the particular matter in question.
  - **Explanation 2:** In trials for offences, the accused's **previous commission of an offence** is relevant, and their **previous conviction** is also a relevant fact.
  - Numerous **illustrations** demonstrate the relevance of possessing other stolen articles to show knowledge of theft, possessing other counterfeit currency to show knowledge, previous acts of shooting or sending threatening letters to show intent, expressions of feeling between spouses to show cruelty, statements about symptoms during illness to show cause of death, statements about health at the time of life assurance, and drawing attention to a defect in a hired car to show negligence.
- **Clause 13: Facts bearing on question whether act was accidental or intentional.**
  - When it's questioned whether an act was **accidental or intentional**, the fact that the act formed part of a **series of similar occurrences** in which the person was involved is relevant.
  - **Illustrations** include repeated house fires after insuring them, false entries in accounts consistently favouring the person making them, and delivering counterfeit currency to multiple people shortly before or after another such delivery.
- **Clause 14: Existence of course of business when relevant.**
  - When the question is whether a particular act was done, the existence of any **course of business** according to which it would naturally have been done is a relevant fact.
  - **Illustrations** include the usual process of dispatching letters and the posting and non-return of a letter as evidence of it reaching the recipient.
- **Clause 15: Admission defined.**
  - An **admission** is a **statement** (oral, documentary, or electronic) that suggests any inference as to any fact in issue or relevant fact, made by specified persons under specified circumstances.
- **Clause 16: Admission by party to proceeding or his agent.**
  - Statements by a **party to the proceeding** or their **agent** (expressly or impliedly authorised by them) are admissions.

- Statements by parties suing or sued in a **representative character** are not admissions unless made while holding that character.
- Statements by persons with a **proprietary or pecuniary interest** in the subject matter, made in that capacity, are admissions.
- Statements by persons from whom the parties have **derived their interest** in the subject matter, made during the continuance of that interest, are admissions.
- **Clause 17: Admissions by persons whose position must be proved as against party to suit.**
  - Statements by persons whose **position or liability** must be proved against a party are admissions if such statements would be relevant against those persons in a suit by or against them, and if made while occupying that position or being subject to that liability.
  - An **illustration** involves a rent collector and a statement by the alleged debtor.
- **Clause 18: Admissions by persons expressly referred to by party to suit.**
  - Statements by persons to whom a party has **expressly referred** for information on a disputed matter are admissions.
  - An **illustration** concerns the soundness of a horse where the seller refers the buyer to a third party for information.
- **Clause 19: Proof of admissions against persons making them, and by or on their behalf.**
  - Admissions are relevant and can be proved **against** the person making them or their representative in interest.
  - They **cannot be proved by or on behalf of** the person making them or their representative, except in three cases:
    - When the admission is of a nature that it would be relevant between third persons if the maker were dead (under section 26).
    - When the admission is a statement of the existence of a relevant state of mind or body, made at or about the time it existed, accompanied by conduct making its falsehood improbable.
    - If the admission is relevant otherwise than as an admission.
  - **Illustrations** clarify these exceptions, including statements about the genuineness of a deed, entries in a ship's logbook by a deceased captain, and a date on a letter written by a deceased person.
- **Clause 20: When oral admissions as to contents of documents are relevant.**
  - Oral admissions about the contents of a document are not relevant unless the party proposing to prove them shows they are entitled to give **secondary evidence** of the document's contents, or unless the **genuineness** of the produced document is in question.
- **Clause 21: Admissions in civil cases when relevant.**

- In civil cases, an admission is not relevant if made under an **express condition of confidentiality** or under circumstances from which the Court can infer such an agreement.
- **Clause 22: Confession caused by inducement, threat, coercion or promise, when irrelevant in criminal proceeding.**
  - A confession made due to **inducement, threat, coercion, or promise** from a person in authority is irrelevant in a criminal proceeding if it gives reasonable grounds for believing that the accused would not have made it otherwise.
  - **Proviso 1:** A confession is relevant if the impression caused by such factors has been fully removed in the Court's opinion.
  - **Proviso 2:** A confession otherwise relevant does not become irrelevant merely because it was made under a promise of secrecy, due to deception, while drunk, in answer to questions the accused didn't have to answer, or without a warning that they weren't bound to confess and that it could be used against them.
- **Clause 23: Confession to police officer.**
  - No confession made to a **police officer** shall be proved against a person accused of any offence.
  - No confession made by a person **in police custody** is admissible against them unless made in the **immediate presence of a Magistrate**.
  - **Proviso:** When a fact is discovered due to information received from an accused in police custody, so much of that information (whether a confession or not) that **distinctly relates to the fact discovered** may be proved.
- **Clause 24: Consideration of proved confession affecting person making it and others jointly under trial for same offence.**
  - When multiple persons are tried jointly for the same offence, and a confession by one affecting themselves and others is proved, the Court **may consider** such confession against the others as well as the maker.
- **Clause 25: Admissions not conclusive proof, but may estop.**
  - Admissions are **not conclusive proof** of the matters admitted but may operate as an **estoppel**.
- **Clause 26: Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.**
  - The statement of a relevant fact by a person who is **dead, cannot be found, has become incapable of giving evidence, or whose attendance cannot be procured without unreasonable delay or expense**, is relevant in several cases:
    - **(a) Dying declaration:** When the statement is about the **cause of their death** or circumstances leading to it, in cases where the cause of death comes into question. This is relevant regardless of whether they expected death at the time.



- **(b) Course of business:** When the statement was made in the **ordinary course of business**, especially entries in regularly kept books, discharge of professional duty, acknowledgement of receipt, or the date of a usually dated document.
- **(e) Relationship:** When the statement relates to the existence of any **relationship by blood, marriage, or adoption** between persons, provided the maker had special means of knowledge and the statement was made **before the question in dispute arose**.
- **(f) Family affairs:** When the statement about relationship by blood, marriage, or adoption of deceased persons is in a **will, deed relating to family affairs, family pedigree, tombstone, family portrait**, etc., and was made **before the question in dispute arose**.
- **(g) Transactions related to rights or customs:** When the statement is in a deed, will, or other document related to transactions specified in clause (a) of section 11.
- **(h) Public opinion:** When the statement was made by a number of persons expressing feelings or impressions relevant to the matter.
- Numerous **illustrations** provide examples for each of these circumstances.
- **Clause 27: Relevancy of certain evidence for proving, in subsequent proceeding, truth of facts therein stated.**
  - Evidence given by a witness in a **previous judicial proceeding** or before a legally authorised person is relevant in a **subsequent proceeding** (or later stage of the same proceeding) to prove the truth of the facts stated, if the witness is **dead, cannot be found, incapable of giving evidence, kept away by the adverse party, or if their presence cannot be obtained without unreasonable delay or expense**.
  - **Proviso:** The previous proceeding must have been between the **same parties or their representatives**, the adverse party had the **right and opportunity to cross-examine**, and the **questions in issue were substantially the same**.
  - **Explanation:** A criminal trial or inquiry is deemed to be a proceeding between the prosecutor and the accused.
- **Clause 28: Entries in books of account when relevant.**
  - **Entries in books of account** (including electronic form) regularly kept in the course of business are relevant whenever they refer to a matter the Court has to inquire into, but **such statements alone are not sufficient to charge anyone with liability**.
  - An **illustration** involves account book entries showing a debt.
- **Clause 29: Relevancy of entry in public record or an electronic record made in performance of duty.**
  - An **entry in any public or official book, register, record, or electronic record**, stating a fact in issue or relevant fact, made by a **public servant in their official duty** or by

another person in performance of a duty specially enjoined by law, is itself a relevant fact.

- **Clause 30: Relevancy of statements in maps, charts and plans.**
  - Statements of facts in issue or relevant facts in **published maps or charts generally offered for public sale**, or in **maps or plans made under government authority**, as to matters usually represented therein, are themselves relevant facts.
- **Clause 31: Relevancy of statement as to fact of public nature contained in certain Acts or notifications.**
  - When the Court needs to form an opinion on a fact of a **public nature**, any statement of it in a **recital in a Central or State Act**, or in a **government notification in the Official Gazette** (or purported to be such in printed or electronic form), is a relevant fact.
- **Clause 32: Relevancy of statements as to any law contained in law books including electronic or digital form.**
  - When the Court needs to form an opinion on the **law of any country**, statements of such law in a book purporting to be printed or published under that government's authority (including electronic form), and reports of rulings of that country's courts in similarly purported books, are relevant.
- **Clause 33: What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers.**
  - When a statement of which evidence is given forms part of a **longer statement, conversation, isolated document, book, electronic record, or connected series of letters/papers**, evidence shall be given of **so much and no more** as the Court deems necessary to fully understand the nature and effect of the statement and its circumstances.
- **Clause 34: Previous judgments relevant to bar a second suit or trial.**
  - The existence of a **previous judgment, order, or decree** that operates as a legal bar to a subsequent suit or trial is a relevant fact when the subsequent suit or trial is barred.
- **Clause 35: Relevancy of certain judgments in probate, etc., jurisdiction.**
  - A final judgment, order, or decree of a competent Court in the exercise of **probate, matrimonial, admiralty or insolvency jurisdiction** is relevant and conclusive proof against all the world regarding the legal character conferred, granted, or taken away by such judgment, order, or decree. This includes status as a widow, legal representative, or being adjudicated bankrupt.
- **Clause 36: Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 35.**
  - Judgments, orders, or decrees other than those in section 35 are relevant if they relate to **matters of a public nature relevant to the inquiry**, but they are **not conclusive proof** of what they state.

- An **illustration** concerns a trespass suit where a previous decree regarding a public right of way on the same land is relevant but not conclusive.
- **Clause 37: Judgments, etc., other than those mentioned in sections 34, 35 and 36 when relevant.**
  - Judgments, orders, or decrees other than those in sections 34, 35, and 36 are **irrelevant** unless their existence is a fact in issue or relevant under another provision of this Adhiniyam.
- **Clause 38: Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.**
  - Any party can show that a judgment, order, or decree relevant under sections 34, 35, or 36 (and proved by the adverse party) was delivered by an **incompetent Court** or obtained by **fraud or collusion**.
- **Clause 39: Opinions of experts.**
  - When the Court needs an opinion on **foreign law, science, art, handwriting or finger impressions, or any other field**, the opinions of persons specially skilled in those areas ("experts") are relevant facts.
  - When the Court needs an opinion on matters relating to **information transmitted or stored in any computer resource or electronic/digital form**, the opinion of the **Examiner of Electronic Evidence** (as per the IT Act, 2000) is relevant. An Examiner of Electronic Evidence is an expert for this purpose.
- **Clause 40: Facts bearing upon opinions of experts.**
  - Facts not otherwise relevant are relevant if they **support or are inconsistent** with the opinions of experts when such opinions are relevant.
  - **Illustrations** include symptoms of poisoning affirmed by experts and obstructions in similarly situated harbours.
- **Clause 41: Opinion as to handwriting and signature, when relevant.**
  - When the Court needs an opinion on whether a signature or writing is of a particular person, the opinion of someone **acquainted with that person's handwriting** (having seen them write or received documents in their handwriting) is relevant.
  - An **illustration** involves opinions from a merchant who corresponded with the alleged writer and their clerk and broker.
- **Clause 42: Opinion as to existence of general custom or right, when relevant.**
  - When the Court needs an opinion on the existence of a **general custom or right**, the opinions of persons likely to know of its existence are relevant.
- **Clause 43: Opinion as to usages, tenets, etc., when relevant.**
  - When the Court needs an opinion on the **usages and tenets of any body of men or family, the constitution and governance of a religious or charitable foundation, or**

the meaning of words/terms used in particular districts or by particular classes, the opinions of persons with special knowledge are relevant.

- **Clause 44: Opinion on relationship, when relevant.**
  - When the Court needs an opinion on the **relationship of one person to another**, the opinion expressed by **conduct** by someone who has **special means of knowledge** on the subject (as a family member or otherwise) is relevant.
  - **Proviso:** Such an opinion is not sufficient to prove marriage in proceedings under the Divorce Act, 1869, or prosecutions under specified sections of the Bharatiya Nyaya Sanhita, 2023.
  - **Illustrations** include being usually received as husband and wife and being treated as a legitimate son by family members.
- **Clause 45: Grounds of opinion, when relevant.**
  - Whenever a living person's opinion is relevant, the **grounds** on which that opinion is based are also relevant.
  - An **illustration** allows an expert to describe experiments performed to form their opinion.
- **Clause 46: In civil cases character to prove conduct imputed, irrelevant.**
  - In civil cases, a person's **character** is irrelevant to prove the probability or improbability of conduct imputed to them, except as it appears from otherwise relevant facts.
- **Clause 47: In criminal cases previous good character relevant.**
  - In criminal proceedings, the fact that the accused person is of **good character** is relevant.
- **Clause 48: Evidence of character or previous sexual experience not relevant in certain cases.**
  - In prosecutions for specific sexual offences under the Bharatiya Nyaya Sanhita, 2023, where consent is in issue, evidence of the **victim's character or previous sexual experience** with any person is **not relevant** on the issue of consent or the quality of consent.
- **Clause 49: Previous bad character not relevant, except in reply.**
  - In criminal proceedings, evidence of the accused's **previous bad character is not relevant**, except in reply to evidence of their good character.
- **Clause 50: Character as affecting damages.**
  - In civil cases, a person's **character** is relevant insofar as it affects the amount of **damages** they ought to receive.
  - **Explanation:** "Character" includes both reputation and disposition, but evidence can generally only be given of general reputation and disposition, not specific acts, except as provided in section 49.

## PART III: ON PROOF

### CHAPTER III: FACTS WHICH NEED NOT BE PROVED

- **Clause 51: Fact judicially noticeable need not be proved.**
  - Facts of which the Court will take **judicial notice** need not be proved.
- **Clause 52: Facts of which Court shall take judicial notice.**
  - The Court **shall take judicial notice** of various facts, including: all laws in force in India (including extra-territorial laws), international treaties and conventions involving India, proceedings of the Indian Constituent Assembly and Parliament/State Legislatures, seals of courts and tribunals, seals authorised by the Constitution or laws, accession to office, titles, functions, and signatures of public officers notified in the Official Gazette, existence, title, and national flag of recognised countries, divisions of time, geography, and notified public festivals/holidays, the territory of India, commencement/termination of hostilities, names of court members and officers, and advocates authorised to appear, and the rule of the road.
  - The Court **may refer to appropriate books or documents** for aid on these matters and on public history, literature, science, or art. The Court can refuse to take judicial notice of a fact unless the person requesting it produces necessary reference materials.
- **Clause 53: Facts admitted need not be proved.**
  - No fact needs to be proved if the parties or their agents **agree to admit it** at the hearing, or **agree in writing** before the hearing, or if they are **deemed to have admitted it by their pleadings** under any rule of pleading.
  - **Proviso:** The Court may, at its discretion, require admitted facts to be proved otherwise than by such admissions.

### CHAPTER IV: OF ORAL EVIDENCE

- **Clause 54: Proof of facts by oral evidence.**
  - **All facts**, except the contents of documents, may be proved by **oral evidence**.
- **Clause 55: Oral evidence to be direct.**
  - Oral evidence must be **direct**:
    - If it refers to something seen, it must be from someone who saw it.
    - If it refers to something heard, it must be from someone who heard it.
    - If it refers to something perceived by another sense, it must be from someone who perceived it that way.
    - If it refers to an opinion or grounds for an opinion, it must be the evidence of the person holding that opinion on those grounds.

- **Proviso:** If oral evidence concerns a material thing other than a document, the Court may require its production for inspection.

## CHAPTER V: OF DOCUMENTARY EVIDENCE

- **Clause 56: Proof of contents of documents.**
  - The contents of documents may be proved by either **primary** or **secondary evidence**.
- **Clause 57: Primary evidence.**
  - **Primary evidence** means **the document itself produced for the inspection of the Court**.
  - **Explanation 1:** Each part of a document executed in several parts is primary evidence.
  - **Explanation 2:** Each counterpart of a document executed in counterpart is primary evidence against the executing parties.
  - **Explanation 3:** Where multiple documents are made by one uniform process (like printing), each is primary evidence of the contents of the others, but not of the original if they are copies.
  - **Explanation 4:** Each file of an electronic record created or stored simultaneously or sequentially in multiple files is primary evidence.
  - **Explanation 5:** An electronic record produced from proper custody is primary evidence unless disputed.
  - **Explanation 6:** Each stored recording of a simultaneously stored and transmitted video recording is primary evidence.
  - **Explanation 7:** Each automated storage (including temporary files) of an electronic record in multiple storage spaces within a computer resource is primary evidence.
  - An **illustration** involves printed placards.
- **Clause 58: Secondary evidence.**
  - **Secondary evidence includes:**
    - Certified copies.
    - Copies made by mechanical processes ensuring accuracy, and copies compared with such copies.
    - Copies made from or compared with the original.
    - Counterparts of documents against parties who did not execute them.
    - Oral accounts of the contents by someone who saw the document.
    - Oral admissions.
    - Written admissions.

- Evidence from someone who has examined numerous documents that cannot be conveniently examined in court and is skilled in such examination.
  - **Illustrations** clarify these, including photographs, copies made by copying machines, and transcribed copies. Oral accounts of copies or machine-copies are not secondary evidence of the original.
- **Clause 59: Proof of documents by primary evidence.**
  - Documents shall be proved by **primary evidence**, except in specified cases.
- **Clause 60: 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:
    - When the original is in the possession or power of the person against whom it's to be proved, or someone out of reach of the court's process, or someone legally bound to produce it, and they do not after proper notice.
    - When the existence, condition, or contents of the original have been admitted in writing by the person against whom it is proved or their representative.
    - When the original has been destroyed or lost, or cannot be produced for any other reason not due to the offering party's default or neglect.
    - When the original is not easily movable.
    - When the original is a public document (section 74).
    - When the original is a document of which a certified copy is permitted by law to be given in evidence.
    - When the originals consist of numerous accounts or other documents that cannot be conveniently examined in court, and the fact to be proved is the general result of the whole collection.
  - **Explanations** detail what types of secondary evidence are admissible in each of these scenarios (e.g., any secondary evidence for (a), (c), (d); written admission for (b); certified copy for (e), (f); evidence of general result by a skilled examiner for (g)).
- **Clause 61: Electronic or digital record.**
  - Nothing in this Adhiniyam shall deny the **admissibility of an electronic or digital record** as evidence solely on that basis. Such records shall have the same legal effect, validity, and enforceability as other documents, subject to section 63.
- **Clause 62: Special provisions as to evidence relating to electronic record.**
  - The contents of electronic records may be proved according to the provisions of **section 63**.
- **Clause 63: Admissibility of electronic records.**

- Information in an electronic record **printed on paper, stored on optical/magnetic media or semiconductor memory**, produced by a computer or communication device, or otherwise stored electronically ("computer output") shall be deemed a **document** if the conditions in this section are met. It is admissible without further proof or original production as evidence of the original's contents or any stated fact admissible as direct evidence.
- **(2) Conditions for admissibility of computer output:**
  - The computer output was produced during a period when the device was used regularly to create, store, or process information for regularly conducted activities.
  - During that period, the kind of information in the electronic record was regularly fed into the device in the ordinary course of those activities.
  - The device was operating properly throughout the material part of that period, or any improper operation did not affect the electronic record's accuracy.
  - The information in the electronic record reproduces or is derived from information fed into the device in the ordinary course of those activities.
- **(3) Treatment of multiple devices:** Multiple computers or communication devices used for the same regular activity over a period shall be treated as a single device for this section, whether in standalone mode, on a system or network, or through an intermediary.
- **(4) Certificate required for admission:** A certificate doing the following must be submitted with the electronic record each time it's offered:
  - Identifying the electronic record and how it was produced.
  - Giving particulars of any device involved to show it was a device mentioned in sub-section (3).
  - Dealing with the conditions in sub-section (2). The certificate should be signed by a person in charge of the device or relevant activities, and an expert, and is evidence of the matters stated therein to the best of their knowledge and belief (as per the Schedule).
- **(5) Definitions for this section:**
  - Information supplied to a computer includes any appropriate form, directly or indirectly.
  - Computer output is produced by a device whether directly or indirectly.
- **Clause 64: Rules as to notice to produce.**
  - Secondary evidence of the contents of documents referred to in clause (a) of section 60 (original in possession of adverse party, etc.) shall not be given unless the party proposing it previously gives the party in possession (or their



advocate/representative) such notice to produce it as prescribed by law or as the Court considers reasonable.

- **Proviso:** Notice is not required in several cases, including when the document to be proved is itself a notice, when the adverse party knows they'll be required to produce it, when they obtained the original by fraud or force, when they or their agent have the original in court, when they admit losing it, or when the person in possession is out of reach of the court.
- **Clause 65: Proof of signature and handwriting of person alleged to have signed or written document produced.**
  - If a document is alleged to be signed or written by someone, the signature or handwriting must be proved to be theirs.
- **Clause 66: Proof as to electronic signature.**
  - Except for secure electronic signatures, if an electronic signature is alleged to be affixed, it must be proved to be the subscriber's electronic signature.
- **Clause 67: Proof of execution of document required by law to be attested.**
  - A document required by law to be attested cannot be used as evidence until at least one attesting witness is called to prove its execution, if an attesting witness is alive, subject to court process, and capable of giving evidence.
  - **Proviso:** Calling an attesting witness is not necessary for proving the execution of a registered document (other than a will) under the Indian Registration Act, 1908, unless its execution by the purported executor is specifically denied.
- **Clause 68: Proof where no attesting witness found.**
  - If no attesting witness can be found, it must be proved that at least one attesting witness's attestation is in their handwriting and that the executing person's signature is in their handwriting.
- **Clause 69: Admission of execution by party to attested document.**
  - A party's admission of execution of an attested document is sufficient proof against them, even if the document is legally required to be attested.
- **Clause 70: Proof when attesting witness denies execution.**
  - If an attesting witness denies or does not remember the document's execution, its execution may be proved by other evidence.
- **Clause 71: Proof of document not required by law to be attested.**
  - An attested document not legally required to be attested may be proved as if it were unattested.
- **Clause 72: Comparison of signature, writing or seal with others admitted or proved.**
  - To ascertain if a signature, writing, or seal is of a particular person, it can be compared with any signature, writing, or seal admitted or proved to the Court's satisfaction to be theirs, even if not produced or proved for another purpose.

- The Court may direct anyone present to write words or figures for comparison.
- This section also applies to finger impressions.
- **Clause 73: Proof as to verification of digital signature.**
  - To ascertain if a digital signature is of the purported person, the Court may direct that person, the Controller, or the Certifying Authority to produce the Digital Signature Certificate.
- **Clause 74: Public and private documents.**
  - The following documents are **public documents**: sovereign authority acts or records; official acts or records of tribunals, public officers (legislative, judicial, executive) of any part of India or the Commonwealth, or of a foreign country; public records kept in India of private documents.
  - **All other documents are private.**
- **Clause 75: Certified copies of public documents.**
  - Every public officer with custody of a public document that someone has a right to inspect shall give a certified copy on demand and payment of legal fees, with a signed and sealed certificate at the foot stating it's a true copy.
  - **Explanation:** An officer authorised to deliver such copies in the ordinary course of duty is deemed to have custody.
- **Clause 76: Proof of documents by production of certified copies.**
  - Such certified copies may be produced as proof of the contents of the public documents they purport to copy.
- **Clause 77: Proof of other official documents.**
  - Specifies how various public documents can be proved, such as Central/State Government Acts, orders, notifications, Parliamentary/State Legislature proceedings, presidential/gubernatorial proclamations, foreign laws and legislative proceedings, proceedings of local bodies, and other foreign public documents.
- **Clause 78: Presumption as to genuineness of certified copies.**
  - The Court shall presume the genuineness of documents purporting to be certificates, certified copies, or other documents declared by law to be admissible as evidence of a particular fact, if they appear duly certified by a Central or State Government officer and are substantially in the legally required form and manner. The Court also presumes the signing/certifying officer held the claimed official character.
- **Clause 79: Presumption as to documents produced as record of evidence, etc.**
  - When a document purporting to be a record of evidence from a judicial proceeding or before a legally authorised officer, or a statement/confession of a prisoner/accused taken according to law, and signed by a Judge, Magistrate, or such officer, is produced, the Court shall presume it is genuine, that statements about the

circumstances of its taking are true, and that the evidence/statement/confession was duly taken.

- **Clause 80: Presumption as to Gazettes, newspapers, and other documents.**
  - The Court shall presume the genuineness of documents purporting to be the Official Gazette, a newspaper or journal, and any document required by law to be kept by a person, if kept substantially in the required form and produced from proper custody.
  - **Explanation:** Defines "proper custody".
- **Clause 81: Presumption as to Gazettes in electronic or digital record.**
  - Similar presumption of genuineness applies to electronic or digital records purporting to be the Official Gazette or legally required records, if kept substantially in the required form and produced from proper custody.
  - **Explanation:** Defines "proper custody" for electronic records.
- **Clause 82: Presumption as to maps or plans made by authority of Government.**
  - The Court shall presume that maps or plans purporting to be made by government authority were so made and are accurate, but maps/plans made for a specific cause must be proved accurate.
- **Clause 83: Presumption as to collections of laws and reports of decisions.**
  - The Court shall presume the genuineness of books purporting to be printed/published under government authority and containing laws of that country, and books purporting to contain reports of court decisions of that country.
- **Clause 84: Presumption as to powers-of-attorney.**
  - (Content missing in the provided excerpts).
- **Clause 85: Presumption as to electronic agreements.**
  - (Content missing in the provided excerpts).
- **Clause 86: Presumption as to electronic records and electronic signatures.**
  - In proceedings involving a **secure electronic record**, the Court shall presume (unless proven otherwise) that it has not been altered since the secure status time.
  - In proceedings involving a **secure electronic signature**, the Court shall presume (unless proven otherwise) that it was affixed by the subscriber with the intention of signing/approving.
  - Except for secure records/signatures, nothing in this section creates any presumption about the authenticity and integrity of electronic records or signatures.
- **Clause 87: Presumption as to Electronic Signature Certificates.**
  - The Court shall presume (unless proven otherwise) that the information in an Electronic Signature Certificate is correct (except for unverified subscriber information), if the certificate was accepted by the subscriber.

- **Clause 88: Presumption as to certified copies of foreign judicial records.**
  - The Court may presume that a document purporting to be a certified copy of a foreign judicial record is genuine and accurate if certified in a manner certified by a Central Government representative in that country as commonly used there for certifying judicial records.
  - A Political Agent in a territory outside India is deemed a Central Government representative for this section.
- **Clause 89: Presumption as to books, maps and charts.**
  - The Court may presume that a book it can refer to for public/general interest information, and a published map/chart whose statements are relevant facts and is produced for inspection, was written/published by the purported person at the purported time and place.
- **Clause 90: Presumption as to electronic messages.**
  - The Court may presume that an electronic message forwarded by the originator through an email server to the addressee corresponds with the message fed into the sender's computer, but no presumption is made about who sent the message.
- **Clause 91: Presumption as to due execution, etc., of documents not produced.**
  - The Court shall presume that every document called for and not produced after notice was attested, stamped, and executed as legally required.
- **Clause 92: Presumption as to documents thirty years old.**
  - When a document thirty years old or more is produced from proper custody (as the Court considers proper), the Court may presume that the signature and every other part in the handwriting of a particular person is in that handwriting, and that an executed/attested document was duly executed/attested by the purported persons.
  - The Explanation to section 80 also applies to this section.
  - **Illustrations** clarify what constitutes proper custody.
- **Clause 93: Presumption as to electronic records five years old.**
  - (Content missing in the provided excerpts).

## CHAPTER VI: OF THE EXCLUSION OF ORAL EVIDENCE BY DOCUMENTARY EVIDENCE

- **Clause 94: Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.**
  - When the terms of a contract, grant, or property disposition have been reduced to writing, or when any matter is legally required to be in writing, no evidence of those terms or matter can be given except the document itself or admissible secondary evidence of its contents.
  - **Explanation 1:** This section applies to documents in civil cases.
  - **Explanation 2:** If there are multiple originals, only one needs to be proved.

- **Explanation 3:** Statements of facts in a document other than those referred to in this section do not preclude oral evidence of the same fact.
- **Illustrations** provide examples of contracts in letters, bills of exchange, and the admissibility of oral evidence for collateral facts.
- **Clause 95: Exclusion of evidence of oral agreement.**
  - When the terms of a written contract, grant, or property disposition (or legally required written matter) have been proved under section 94, no evidence of any oral agreement or statement shall be admitted between the parties (or their representatives) to contradict, vary, add to, or subtract from its terms.
  - **Proviso 1:** Any fact invalidating the document or entitling someone to a related decree/order (like fraud, intimidation, illegality, lack of due execution/capacity/consideration, mistake) may be proved.
  - **Proviso 2:** A separate oral agreement on a matter the document is silent on and not inconsistent with its terms may be proved, considering the document's formality.
  - **Proviso 3:** A separate oral agreement forming a condition precedent to the attaching of any obligation under such a document may be proved.
  - **Proviso 4:** A distinct subsequent oral agreement to rescind or modify such a document may be proved, except when the law requires it to be in writing or it has been registered.
  - **Proviso 5:** Usage or custom usually annexed to such contracts may be proved if not repugnant to the express terms.
  - **Proviso 6:** Any fact showing how the document's language relates to existing facts may be proved.
  - Numerous **illustrations** clarify these provisos, including insurance policies, payment agreements, and warranties.
- **Clause 96: Exclusion of evidence to explain or amend ambiguous document.**
  - When the language in a document is **ambiguous or defective on its face**, evidence cannot be given of facts that would show its meaning or supply its defects.
  - **Illustrations** involve uncertain pricing and blanks in a deed.
- **Clause 97: Exclusion of evidence against application of document to existing facts.**
  - When the language used in a document is **plain** and accurately applies to **existing facts**, evidence cannot be given to show it was not meant to apply to those facts.
- **Clause 98: Evidence as to document unmeaning in reference to existing facts.**
  - When the language used is entirely unmeaning in reference to existing facts, evidence may be given to show what the parties meant.
- **Clause 99: Evidence as to application of language which can apply to one only of several persons.**

- When the language could apply to only one of several persons or things, evidence may be given to show which one was intended.
- **Illustrations** involve a "white horse" when the seller has two, and a "Ramgarh" which exists in multiple locations.
- **Clause 100: Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.**
  - When the language applies partly to one set of facts and partly to another, but not wholly to either, evidence may be given to show which set was meant.
  - An **illustration** involves land described with a mismatch between location and occupancy.
- **Clause 101: Evidence as to meaning of illegible characters, etc.**
  - Evidence may be given to show the meaning of **illegible characters, foreign/obsolete/technical/local/regional expressions, abbreviations, and words used in a peculiar sense.**
  - An **illustration** involves "all my mods" where the seller has both models and tools.
- **Clause 102: Who may give evidence of agreement varying terms of document.**
  - Persons who are **not parties** to a document (or their representatives) may give evidence of any facts tending to show a **contemporaneous agreement varying the terms** of the document.
  - An **illustration** involves a credit agreement made orally at the same time as a written sale agreement.
- **Clause 103: Saving of provisions of Indian Succession Act relating to wills.**
  - Nothing in this Chapter affects the provisions of the Indian Succession Act, 1925, regarding the **construction of wills.**

#### **PART IV: PRODUCTION AND EFFECT OF EVIDENCE**

##### **CHAPTER VII: OF THE BURDEN OF PROOF**

- **Clause 104: Burden of proof.**
  - Whoever desires a Court to give judgment on a legal right or liability dependent on the existence of facts they assert **must prove** those facts exist. The burden of proof lies on that person.
  - **Illustrations** include proving a dying declaration by proving death and proving a lost document by proving the loss.
- **Clause 105: On whom burden of proof lies.**
  - The burden of proving any fact necessary to be proved to enable a person to give evidence of any other fact is on the person wishing to give that evidence.
- **Clause 106: Burden of proof as to particular fact.**

- The burden of proving a particular fact lies on the person who wishes the Court to believe in its existence, unless it's directed otherwise by law.
- **Clause 107: Burden of proving fact to be proved to make evidence admissible.**
  - (Covered by Clause 105).
- **Clause 108: Burden of proving that case of accused comes within exceptions.**
  - When accused of an offence, the burden of proving circumstances bringing the case within any General Exception in the Bharatiya Nyaya Sanhita, 2023, or any special exception/proviso in that Sanhita or any law defining the offence, is on the accused, and the Court shall presume the absence of such circumstances.
  - An **illustration** concerns proving circumstances leading to a lesser charge of voluntarily causing grievous hurt.
- **Clause 109: Burden of proving fact especially within knowledge.**
  - When any fact is especially within the knowledge of any person, the burden of proving that fact is upon them.
- **Clause 110: Burden of proving death of person known to have been alive within thirty years.**
  - When it's questioned whether a person is alive or dead, and it's shown they were alive within the last thirty years, the burden of proving they are dead is on the person asserting their death.
- **Clause 111: Burden of proving that person is alive who has not been heard of for seven years.**
  - When it's questioned whether a person is alive or dead, and it's proved they have not been heard of for seven years by those who would naturally have heard if they were alive, the burden of proving they are alive is shifted to the person asserting it.
- **Clause 112: Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.**
  - When persons are shown to have acted as partners, landlord and tenant, or principal and agent, the burden of proving they do not stand, or have ceased to stand, in these relationships respectively, is on the person asserting it.
- **Clause 113: Burden of proof as to ownership.**
  - (Content missing in the provided excerpts).
- **Clause 114: Proof of good faith in transactions where one party is in relation of active confidence.**
  - (Content missing in the provided excerpts).
- **Clause 115: Presumption as to certain offences.**
  - When someone is accused of abetting the commission of certain offences (under specified sections of the Bharatiya Nyaya Sanhita, 2023) and the prosecution shows

that the abetted offence was committed due to the abetment, the Court may presume that the accused abetted the commission.

- Lists the specific offences covered.
- **Clause 116: Birth during marriage, conclusive proof of legitimacy.**
  - Birth during a valid marriage or within 280 days after its dissolution (mother remaining unmarried) shall be **conclusive proof** of legitimacy, unless it can be shown the parties had no access to each other when conception could have occurred.
- **Clause 117: Presumption as to abetment of suicide by a married woman.**
  - (Content missing in the provided excerpts).
- **Clause 118: Presumption as to dowry death.**
  - When the question is whether someone has committed dowry death, and it's shown that shortly before death, the woman was subjected to cruelty or harassment by that person for dowry, the Court shall presume that person caused the dowry death.
  - **Explanation:** "Dowry death" has the same meaning as in section 80 of the Bharatiya Nyaya Sanhita, 2023.
- **Clause 119: Court may presume existence of certain facts.**
  - The Court **may presume** the existence of any fact it thinks likely to have happened, considering the common course of natural events, human conduct, and public/private business in relation to the case's facts.
  - **Illustrations** of such presumptions include stolen marked currency found soon after, corroboration of criminals' accounts, and possession of an obligation document by the obligor.
  - The Court shall also consider specified facts when deciding whether these maxims apply.
- **Clause 120: Presumption as to absence of consent in certain prosecution for rape.**
  - In prosecutions for rape under a specified sub-section of the Bharatiya Nyaya Sanhita, 2023, where sexual intercourse is proved and the woman states she did not consent, the Court shall presume she did not consent.
- **Clause 121: Estoppel.**
  - When one person has, by declaration, act, or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither they nor their representative shall be allowed to deny its truth in any suit or proceeding between themselves or their representatives.
  - **Explanation 1:** The acceptor of a bill of exchange may deny it was really drawn by the purported drawer.
  - **Explanation 2:** A bailee delivering bailed goods to someone other than the bailor can prove that person had a right to them against the bailor.



- **Clause 122: Estoppel of tenant and of licensee of person in possession.**
  - A tenant cannot deny that the landlord had, at the beginning of the tenancy, a title to the property. A licensee of immovable property cannot deny that the licensor had the right to possession at the time the license was given.
- **Clause 123: Estoppel of acceptor of bill of exchange, bailee or licensee.**
  - An acceptor of a bill of exchange cannot deny the drawer's authority to draw, but may deny the endorsement's genuineness. A bailee or licensee cannot deny that the bailor or licensor had the authority to bail or grant the license when the bailment/license commenced.

## CHAPTER IX: OF WITNESSES

- **Clause 124: Who may testify.**
  - All persons are competent to testify unless the Court considers they are prevented from understanding questions or giving rational answers due to tender years, old age, disease (physical or mental), or any similar cause.
  - **Explanation:** A person of unsound mind is not incompetent unless their unsoundness prevents understanding and rational answering.
- **Clause 125: Witness unable to communicate verbally.**
  - A witness unable to speak may give evidence in any intelligible manner, like writing or signs, in open court. Such evidence is deemed oral evidence.
  - **Proviso:** If the witness cannot communicate verbally, the Court shall use an interpreter or special educator, and the statement shall be videographed.
- **Clause 126: Competency of husband and wife as witnesses in certain cases.**
  - In criminal proceedings against a person's spouse, the accused's husband or wife shall be a competent witness.
- **Clause 127: Judges and Magistrates.**
  - No Judge or Magistrate shall be compelled to answer questions about their own conduct in court as such Judge or Magistrate, or about anything that came to their knowledge in court as such, but they may be examined on other matters that occurred in their presence while they were acting.
- **Clause 128: Communications during marriage.**
  - No person married or who has been married shall be compelled or permitted to disclose any communication made to them during the marriage by their spouse, unless the person who made it or their representative consents, except in suits between married persons or proceedings where one spouse is prosecuted for a crime against the other.
- **Clause 129: Evidence as to affairs of State.**

- No one can give evidence derived from unpublished official records relating to affairs of State without permission from the head of the concerned department, who can grant or withhold permission as they see fit.
- **Clause 130: Official communications.**
  - No public officer shall be compelled to disclose communications made to them in official confidence if they consider public interest would suffer by disclosure.
- **Clause 131: Information as to commission of offences.**
  - No Magistrate or police officer shall be compelled to say when they received information about an offence, and no revenue officer about an offence against public revenue.
  - **Explanation:** Defines "revenue officer".
- **Clause 132: Professional communications.**
  - No advocate shall be permitted, without the client's express consent, to disclose any communication made for the purpose of their service, state the contents of related documents, or disclose advice given.
  - **Proviso:** This protection does not extend to communications made in furtherance of an illegal purpose or facts observed by the advocate showing a crime or fraud committed since their service began.
  - **Explanation:** The obligation continues after the professional service ends.
  - **Illustrations** clarify these points.
  - Sub-section (2) clarifies that the advocate's attention to a fact in the proviso need not have been directed by the client.
  - Sub-section (3) extends these provisions to interpreters, clerks, and employees of advocates.
- **Clause 133: Privilege not waived by volunteering evidence.**
  - A party giving evidence at their own instance or otherwise does not consent to the disclosure mentioned in section 132. Calling their advocate as a witness only implies consent to disclosure on matters the party questions the advocate about, which they otherwise couldn't disclose.
- **Clause 134: Confidential communication with legal advisers.**
  - No one shall be compelled to disclose confidential communications with their legal adviser unless they offer themselves as a witness, in which case they may be compelled to disclose such communications as the Court deems necessary to explain their evidence, and no others.
- **Clause 135: Production of title-deeds of witness not a party.**
  - A witness not a party to a suit cannot be compelled to produce their title deeds, documents held as pledgee/mortgagee, or documents that might incriminate them,

unless they agreed in writing to do so with the person seeking production or someone they claim through.

- **Clause 136: Production of documents or electronic records which another person, having possession, could refuse to produce.**
  - No one shall be compelled to produce documents/electronic records in their possession/control that another person could refuse to produce if they had them, unless that other person consents to their production.
- **Clause 137: Witness not excused from answering on ground that answer will criminate.**
  - A witness is not excused from answering relevant questions in any suit or proceeding on the ground that the answer will or may tend to incriminate them or expose them to a penalty or forfeiture.
  - **Proviso:** Such compelled answers shall not subject the witness to arrest or prosecution, or be used against them in any criminal proceeding, except for perjury by such answer.
- **Clause 138: Accomplice.**
  - An accomplice is a competent witness against an accused person, and a conviction is not illegal solely because it's based on the corroborated testimony of an accomplice.
- **Clause 139: Number of witnesses.**
  - No particular number of witnesses is required to prove any fact.

## **CHAPTER X: OF EXAMINATION OF WITNESSES**

- **Clause 140: Order of production and examination of witnesses.**
  - The order of producing and examining witnesses is regulated by civil and criminal procedure laws, or by the Court's discretion in their absence.
- **Clause 141: Judge to decide as to admissibility of evidence.**
  - The Judge may ask a party proposing to give evidence how the alleged fact, if proved, would be relevant, and shall admit it if deemed relevant, otherwise not.
  - If evidence is admissible only upon proof of another fact, that fact must be proved first unless the party undertakes to do so to the Court's satisfaction.
  - If the relevancy of one fact depends on another being proved first, the Judge may allow evidence of the first before the second, or require proof of the second first.
  - **Illustrations** provide examples of these scenarios, such as proving death before a dying declaration, proving loss of original before secondary evidence, and determining the order of proving identity and denial of possession.
- **Clause 142: Examination of witnesses.**
  - Examination by the party calling the witness is examination-in-chief. Examination by the adverse party is cross-examination. Examination by the party who called the witness, after cross-examination, is re-examination.

- Examination-in-chief must relate to relevant facts.
- Cross-examination need not be confined to facts testified in chief.
- Re-examination is limited to explaining matters from cross-examination, but new matters (with court permission) allow further cross-examination on those matters.
- **Clause 143: Order of examinations.**
  - Witnesses are first examined-in-chief, then cross-examined, then re-examined.
- **Clause 144: Cross-examination of person called to produce a document.**
  - A person summoned only to produce a document does not become a witness and cannot be cross-examined unless called as a witness.
- **Clause 145: Witnesses to character.**
  - Witnesses to character may be cross-examined and re-examined.
- **Clause 146: Leading questions.**
  - A leading question suggests the answer the questioner desires.
  - Leading questions must not be asked in examination-in-chief or re-examination if objected to by the adverse party, except with court permission.
  - The Court shall permit leading questions on introductory/undisputed matters or those already sufficiently proved.
  - Leading questions may be asked in cross-examination.
- **Clause 147: Evidence as to matters in writing.**
  - A witness can be asked if a contract/grant/property disposition they're testifying about was not in a document. If they say it was or are about to state its contents (which the Court thinks should be produced), the adverse party can object until the document is produced or secondary evidence is permitted.
  - **Explanation:** A witness can give oral evidence of others' statements about document contents if those statements are themselves relevant facts.
  - An **illustration** involves a statement showing motive for assault, even if the related letter is not produced.
- **Clause 148: Cross-examination as to previous statements in writing.**
  - A witness may be cross-examined about previous written statements relevant to the matter without showing them the writing or proving it, but to contradict them with the writing, their attention must be drawn to the contradictory parts before proving it.
- **Clause 149: Questions lawful in cross-examination.**
  - During cross-examination, a witness may be asked questions to test their veracity, discover their identity and position in life, or shake their credit by injuring their character, even if the answers incriminate them or expose them to penalties.

- **Proviso:** In prosecutions for specific sexual offences under the Bharatiya Nyaya Sanhita, 2023, where consent is an issue, it's not permissible to adduce evidence or ask questions in cross-examination about the victim's general immoral character or previous sexual experience to prove consent or its quality.
- **Clause 150: When witness to be compelled to answer.**
  - If a question in cross-examination relates to a matter relevant to the suit/proceeding, section 137 applies (witness not excused from answering incriminating questions, but the answer cannot be used against them in criminal proceedings except for perjury).
- **Clause 151: Court to decide when question shall be asked and when witness compelled to answer.**
  - If a cross-examination question is not relevant to the suit/proceeding but only affects the witness's credit by injuring character, the Court decides if the witness must answer and may warn them they are not obliged to.
  - The Court considers factors like whether the imputation would seriously affect credibility on the testified matter, whether it's too remote or of a nature that wouldn't significantly affect credibility, and the disproportion between the imputation's importance and the evidence's importance.
  - The Court may infer unfavourably from a witness's refusal to answer such a question.
- **Clause 152: Question not to be asked without reasonable grounds.**
  - Questions referred to in section 151 (affecting credit) should not be asked without reasonable grounds for believing the imputation is well-founded.
  - **Illustrations** provide examples of what constitutes reasonable grounds based on information from various sources.
- **Clause 153: Procedure of Court in case of question being asked without reasonable grounds.**
  - If the Court believes such a question was asked without reasonable grounds by an advocate, it may report the circumstances to the High Court or other relevant authority.
- **Clause 154: Indecent and scandalous questions.**
  - The Court shall forbid questions it deems indecent or scandalous, unless they relate to facts in issue or are essential to determine which party's facts are true, as long as they are not intended to insult or annoy.
- **Clause 155: Questions intended to insult or annoy.**
  - The Court shall forbid any question appearing intended to insult or annoy, or needlessly offensive in form even if proper otherwise.
- **Clause 156: Exclusion of evidence to contradict answers to questions testing veracity.**

- When a witness is asked and answers a question relevant only to shake their credit by injuring character, no evidence shall be given to contradict them, but if they answer falsely, they can be charged with perjury.
- **Exception 1:** If a witness denies a previous conviction, evidence of that conviction may be given.
- **Exception 2:** If a witness denies facts suggesting partiality, they may be contradicted.
- **Illustrations** clarify these rules, including scenarios about fraudulent claims, dismissal for dishonesty, presence at a different location, and family feuds.
- **Clause 157: Question by party to his own witness.**
  - The Court may allow the party calling a witness to ask them questions that could be put in cross-examination by the adverse party.
  - Nothing prevents the permitted party from relying on any part of that witness's evidence.
- **Clause 158: Impeaching credit of witness.**
  - The credit of a witness may be impeached by the adverse party (or with court consent, by the party calling them) through:
    - Testimony of those who believe the witness is unworthy of credit.
    - Proof of previous inconsistent statements.
    - Evidence that they have been bribed or accepted an inducement to give evidence.
    - Proof of a previous conviction for an offence.
  - **Illustrations** show the use of previous inconsistent statements to impeach credit.
- **Clause 159: Questions tending to corroborate evidence of relevant fact, admissible.**
  - When a witness intended to be corroborated gives evidence of a relevant fact, they may be questioned about other circumstances observed at or near the time/place of that fact, if the Court believes those circumstances would corroborate their testimony on the relevant fact.
  - An **illustration** involves an accomplice describing unrelated incidents to corroborate their account of a robbery.
- **Clause 160: Former statements of witness may be proved to corroborate later testimony as to same fact.**
  - To corroborate a witness's testimony, any former statement they made relating to the same fact, at or around the time it occurred, or before a legally competent authority to investigate it, may be proved.
- **Clause 161: What matters may be proved in connection with proved statement relevant under section 26 or 27.**

- When a statement relevant under section 26 (statements by dead or unavailable persons) or 27 (previous testimony) is proved, any matter can be proved to contradict or corroborate it, or to impeach or confirm the credit of the person who made it, which could have been proved if that person had testified and denied the suggested matter in cross-examination.
- **Clause 162: Refreshing memory.**
  - A witness may refresh their memory while under examination by referring to a writing made by themselves at the time of the transaction in question or so soon after that the Court deems the transaction was still fresh in their memory.
  - **Proviso 1:** They can also refer to such a writing made by another person if they read it within that timeframe and knew it was correct.
  - **Proviso 2:** With court permission, a witness can refer to a copy of such a document if the original's non-production is sufficiently justified.
  - **Proviso 3:** An expert can refresh their memory using professional treatises.
- **Clause 163: Testimony to facts stated in document mentioned in section 162.**
  - A witness may also testify to facts mentioned in a document used to refresh memory (under section 162) even if they have no specific recollection, if they are sure the facts were correctly recorded.
- **Clause 164: Right of adverse party as to writing used to refresh memory.**
  - Any writing used to refresh memory (under sections 162 & 163) shall be produced and shown to the adverse party if they require it, and they may cross-examine the witness on it.
- **Clause 165: Production of documents.**
  - A witness summoned to produce a document must bring it to court if in their possession/power, despite any objections to its production/admissibility. The Court will decide on the validity of such objections.
  - The Court may inspect the document (unless it concerns State matters) or take other evidence to determine admissibility.
  - If translation is needed, the Court may direct the translator to keep the contents secret (unless for evidence), with disobedience being an offence under the Bharatiya Nyaya Sanhita, 2023.
  - **Proviso:** No Court shall require production of communication between Ministers and the President of India.
- **Clause 166: Giving, as evidence, of document called for and produced on notice.**
  - When a party calls for a document they gave notice to produce, and it's produced and inspected by them, they are bound to give it as evidence if the producing party requires it.
- **Clause 167: Using, as evidence, of document production of which was refused on notice.**

- When a party refuses to produce a document they were given notice to produce, they cannot later use it as evidence without the other party's consent or a court order.
- An **illustration** concerns a party refusing to produce an agreement after being noticed.
- **Clause 168: Judge's power to put questions or order production.**
  - The Judge may ask any necessary question in any form, at any time, to any witness or party about any fact, and may order production of any document/thing to discover or obtain proof of relevant facts. Parties/representatives cannot object to such questions/orders or cross-examine on answers without court leave.
  - **Proviso 1:** Judgments must be based on facts declared relevant and duly proved by this Adhiniyam.
  - **Proviso 2:** This section does not authorise compelling a witness to answer/produce what they could refuse under sections 127-136 if asked by the adverse party, nor allows the Judge to ask improper questions under sections 151/152, nor to dispense with primary evidence except in previously excepted cases.

#### CHAPTER XI: OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE

- **Clause 169: No new trial for improper admission or rejection of evidence.**
  - Improper admission or rejection of evidence is not grounds for a new trial or reversal of a decision if the court hearing the objection finds that, independently of the objected evidence, there was sufficient evidence to justify the decision, or that the rejected evidence would not have changed the decision if received.

#### CHAPTER XII: REPEAL AND SAVINGS

- **Clause 170: Repeal and savings.**
  - The **Indian Evidence Act, 1872, is hereby repealed.**
  - Notwithstanding the repeal, any pending application, trial, inquiry, investigation, proceeding, or appeal immediately before this Adhiniyam comes into force shall be dealt with under the provisions of the Indian Evidence Act, 1872, as if this Adhiniyam had not come into force.

#### THE SCHEDULE

- Provides the **form of the certificate** required for the admissibility of electronic records under section 63(4)(c). It includes **Part A** to be filled by the party producing the electronic record, detailing the device/source, control, proper functioning, hash values, and a solemn affirmation. It also includes **Part B** to be filled by the expert, providing similar details and their solemn affirmation.

Based on the provided excerpts from "sakshya.pdf"

#### PART I: PRELIMINARY

- **Chapter I: Preliminary**



- **Section 1: Short title, application and commencement.**
  - This Act is called the **Bharatiya Sakshya Adhiniyam, 2023.**
  - It is **Act No. 47 of 2023**, enacted on the **25th of December, 2023.**
  - It aims **to consolidate and to provide for general rules and principles of evidence for fair trial.**
  - It **applies to all judicial proceedings in or before any Court, including Courts-martial.**
  - However, it **does not apply to affidavits presented to any Court or officer, nor to proceedings before an arbitrator.**
  - It **shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.**

## **PART II: RELEVANCY OF FACTS**

- **Chapter II: Relevancy of Facts**
  - **Section 2: Definitions.**
    - **(1) In this Adhiniyam, unless the context otherwise requires:**
      - **(a) "Court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence.**
      - **(b) "conclusive proof" means 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.**
      - **(c) "disproved" in relation to a fact, means when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.**
      - **(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 of documents include: writing, printed words, lithographs, photographs, maps, plans, inscriptions on metal or stone, caricatures, and electronic records like emails, server logs, computer documents, laptop or smartphone data, messages, websites, locational evidence, and voicemail on digital devices.
      - **(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.
    - (ii) all documents including electronic or digital records produced for the inspection of the Court and such documents are called documentary evidence.
  - (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.
    - Illustrations of facts include: objects arranged in a certain order, a person hearing or seeing something, spoken words, a person's opinion, intention, good faith, fraudulent act, using a particular word in a specific sense, or being conscious of a sensation at a specific time.
  - (g) "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.
  - (h) "may presume".—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.
  - (i) "not proved".—A fact is said to be not proved when it is neither proved nor disproved.
  - (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.
  - (k) "relevant".—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.
  - (l) "shall presume".—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.
  - (2) Words and expressions used herein and not defined but defined in the Information Technology Act, 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.
- Section 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.**
- This section does not allow a person to give evidence of a fact they are disentitled to prove by civil procedure law.
- Illustrations show how facts in issue are determined in a murder trial and how civil procedure can restrict the introduction of evidence at later stages.
- **Section 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.**
  - Illustrations include statements and actions during a beating, facts related to waging war, letters forming part of a correspondence containing libel, and successive deliveries of goods.
- **Section 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.**
  - Illustrations include a person having money before a robbery, marks at a murder scene, and the victim's health and habits before poisoning.
- **Section 6: Motive, preparation and previous or subsequent conduct.**
  - **(1) Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.**
  - **(2) The conduct of any party or their agent in reference to the suit or any fact in issue or relevant thereto, and the conduct of a person against whom an offence is the subject of a proceeding, is relevant if such conduct influences or is influenced by any fact in issue or relevant fact, whether previous or subsequent.**
  - "Conduct" does not include statements unless they accompany and explain acts, without affecting the relevancy of statements under other sections.
  - Statements made to or in the presence of a person whose conduct is relevant, which affect that conduct, are relevant.
  - Illustrations cover motives for murder, reasons for needing money, providing or concealing evidence, running away after a statement, silence upon hearing a statement, absconding after a warning letter, possession of proceeds of crime, and complaints made shortly after alleged offences like rape or robbery.

- **Section 7: Facts necessary to explain or introduce relevant facts.**
  - **Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by such facts, or which establish identity, or fix time or place, or show the relation of parties involved, are relevant insofar as they are necessary for that purpose.**
  - Illustrations include the state of property for determining the validity of a will, the position of parties in a libel case, the reason for sudden departure of an accused person, and the cries of a mob in a riot case.
- **Section 8: Conspiracy.**
  - **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 them in reference to their common intention, after the intention was first entertained, is a relevant fact against each conspirator, to prove both the conspiracy and their participation.**
  - An illustration demonstrates the wide scope of this provision, even for actions or statements the accused was unaware of or occurred before or after their involvement.
- **Section 9: When facts not otherwise relevant become relevant.**
  - **Facts not otherwise relevant are relevant if:**
    - **(1) they are inconsistent with any fact in issue or relevant fact.**
    - **(2) 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.**
  - Illustrations include an alibi for a crime and circumstances limiting the possible perpetrators.
- **Section 10: Facts tending to enable Court to determine amount are relevant in suits for damages.**
  - **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.**
- **Section 11: Facts relevant when right or custom is in question.**
  - **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.**
  - An illustration relates to the right to a fishery, citing deeds, mortgages, grants, and instances of exercise or obstruction.
- **Section 12: Facts showing existence of state of mind, or of body or bodily feeling.**
  - **Facts showing the existence of any state of mind (intention, knowledge, good faith, negligence, etc.) or state of body or bodily feeling are relevant when the existence of such a state is in issue or relevant.**
  - A relevant state of mind must exist in reference to the particular matter in question.
  - In cases of offences, previous commission and conviction of similar offences are also relevant.
  - Numerous illustrations demonstrate the application of this section to various states of mind, including knowledge of stolen goods, knowledge of a fictitious payee, ill-will in defamation, intent to kill or threaten, cruelty in a marriage, and the cause of death or state of health.
- **Section 13: Facts bearing on question whether act was accidental or intentional.**
  - **When there is a question whether a particular act was done, the existence of any course of conduct of which such particular act formed part, is a relevant fact.**
  - Illustrations show how a series of similar events (fires in insured houses, false entries in accounts, delivery of counterfeit currency) can indicate intention rather than accident.
- **Section 14: Existence of course of business when relevant.**
  - **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.**
  - Illustrations relate to the dispatch and receipt of letters based on the ordinary course of postal business.
- **Admissions (Sections 15-21)**
  - **Section 15: Admission defined.**
    - **An admission is 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, hereinafter mentioned.**
  - **Section 16: Admission by party to proceeding or his agent.**

- **(1) Statements made by a party to the proceeding, or by an agent expressly or impliedly authorised by them, are admissions.**
- **(2) Statements made by:**
  - **(i) parties suing or sued in a representative character, if made while holding that character.**
  - **(ii) (a) persons with proprietary or pecuniary interest in the subject matter, made in that capacity.**
  - **(b) persons from whom the parties derived their interest, made during the continuance of that interest.**
- **Section 17: Admissions by persons whose position must be proved as against party to suit.**
  - **Statements by persons whose position or liability needs to be proven against a party are admissions if such statements would be relevant against them in a suit by or against them, made while occupying that position or being subject to that liability.**
  - An illustration involves a rent collector and a tenant's statement about rent owed.
- **Section 18: Admissions by persons expressly referred to by party to suit.**
  - **Statements by persons to whom a party has expressly referred for information on a disputed matter are admissions.**
  - An illustration is asking about a horse's soundness by referring to someone with knowledge.
- **Section 19: Proof of admissions against persons making them, and by or on their behalf.**
  - **Admissions are relevant and can be proved against the person making them or their representative. However, they cannot be proved by or on behalf of the person making them or their representative, except in specific cases:**
    - **(1) when it would be relevant as a statement by a deceased person under Section 26.**
    - **(2) when it is a statement of the existence of a relevant state of mind or body, made at the time it existed, accompanied by conduct making its falsehood improbable.**
    - **(3) if it is relevant otherwise than as an admission.**
  - Illustrations clarify when a party can and cannot prove their own statements.
- **Section 20: When oral admissions as to contents of documents are relevant.**

- **Oral admissions about the contents of a document are not relevant unless secondary evidence of the document's contents is permissible or the genuineness of the produced document is in question.**
  - **Section 21: Admissions in civil cases when relevant.**
    - **In civil cases, an admission is not relevant if made upon an express condition of confidentiality or under circumstances suggesting an agreement of confidentiality.**
- **Confessions (Sections 22-23)**
  - **Section 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 it appears to the Court to have been caused by any inducement, threat, coercion, or promise from a person in authority, sufficient to give the accused reasonable grounds for supposing that by making it they would gain any advantage or avoid any evil related to the charge against them.**
    - **However, a confession is relevant if the impression caused by such factors has been fully removed.**
    - **Further, a confession otherwise relevant does not become irrelevant merely because it was made under a promise of secrecy, due to deception, while drunk, in answer to questions the accused didn't have to answer, or without a warning about not being bound to confess.**
  - **Section 23: Confession to police officer.**
    - **(1) No confession made to a police officer shall be proved as against a person accused of any offence.**
    - **(2) No confession made by a person in police custody, unless made in the immediate presence of a Magistrate, shall be proved against them.**
    - **However, facts discovered as a consequence of information received from an accused in police custody may be proved, limited to the information directly relating to the fact discovered.**
- **Statements by Persons Who Cannot Be Called as Witnesses (Sections 26-32)**
  - **Section 26: Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.**
    - **Statements, written or verbal, of relevant facts made by a person who is dead, cannot be found, has become incapable of giving evidence, or whose attendance cannot be procured without unreasonable delay or expense, are relevant in the following cases:**

- **(a) Dying declaration:** When the statement relates to the cause of their death or the circumstances leading to it, in cases where the cause of death is in question. Relevancy is not affected by the expectation of death or the nature of the proceeding.
- **(b) Course of business:** When the statement was made in the ordinary course of business, including entries in business books, discharge of professional duty, acknowledgements of receipt, commercial documents, and dates of letters or documents usually dated.
- **(e) Relationship:** When the statement relates to the existence of a relationship by blood, marriage, or adoption, made by a person with special knowledge, before the question in dispute arose.
- **(f) Family affairs:** When the statement relates to family relationships of deceased persons, made in wills, deeds relating to family affairs, pedigrees, tombstones, family portraits, etc., before the question in dispute arose.
- **(g) Transactions relating to rights or customs:** When the statement is contained in a document relating to transactions specified in Section 11(a).
- **(h) Public feeling:** When the statement was made by a number of persons and expressed feelings or impressions relevant to the matter.
- **Section 27: Relevancy of certain evidence for proving, in subsequent proceeding, truth of facts therein stated.**
  - Evidence given by a witness in a judicial proceeding or before a legally authorised person is relevant in a subsequent proceeding (or later stage of the same proceeding) to prove the truth of the facts stated, if the witness is dead, cannot be found, is incapable of giving evidence, is kept away by the adverse party, or their presence cannot be obtained without unreasonable delay or expense.
  - This applies provided the proceeding was between the same parties or their representatives, the adverse party had the right and opportunity to cross-examine, and the issues were substantially the same.
  - A criminal trial or inquiry is deemed to be between the prosecutor and the accused.
- **Section 28: Entries in books of account when relevant.**
  - Entries in regularly kept books of account (including electronic form) are relevant whenever they refer to a matter the Court has



**to inquire into, but such statements alone are not sufficient to charge any person with liability.**

- An illustration shows account book entries are relevant but need corroboration to prove a debt.
- **Section 29: Relevancy of entry in public record or an electronic record made in performance of duty.**
  - An entry in a public or official book, register, record, or electronic record, stating a fact in issue or relevant fact, made by a public servant in their official duty or by another person in performance of a duty specially enjoined by law, is itself a relevant fact.
- **Section 30: Relevancy of statements in maps, charts and plans.**
  - Statements of facts in issue or relevant facts in published maps or charts generally offered for public sale, or in maps or plans made under the authority of the Government, regarding matters usually represented therein, are themselves relevant facts.
- **Section 31: Relevancy of statement as to fact of public nature contained in certain Acts or notifications.**
  - When the Court needs to form an opinion on a fact of a public nature, any statement of it in a Central or State Act recital, or a Government notification in the Official Gazette (printed or electronic), is a relevant fact.
- **Section 32: Relevancy of statements as to any law contained in law books including electronic or digital form.**
  - When the Court needs to form an opinion on the law of any country, statements of such law in books purporting to be published under the authority of that government (including electronic form), and reports of rulings of that country's courts in similarly published books, are relevant.
- **Section 33: What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers.**
  - When a statement given in evidence is part of a longer statement, conversation, isolated document, a document within a book, part of an electronic record, or a series of letters, evidence shall be given of only so much as the Court considers necessary for a full understanding of the nature and effect of the statement and its circumstances.
- **Judgments (Sections 34-37)**
  - **Section 34: Previous judgments relevant to bar a second suit or trial.**
    - The existence of a final judgment, order, or decree of a competent Court in a previous suit, appeal, or proceeding creates a bar to a

subsequent suit or trial between the same parties (or their representatives) for the same cause of action.

- This is related to the principle of *res judicata*.
- **Section 35: Relevancy of certain judgments in probate, etc., jurisdiction.**
  - A final judgment, order, or decree of a competent Court in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction is relevant evidence against all the world regarding the legal character conferred, granted, or taken away by such judgment.
- **Section 36: Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 35.**
  - Judgments, orders, or decrees other than those in Section 35 are relevant if they relate to matters of public nature relevant to the inquiry, but they are not conclusive proof of what they state.
  - An illustration involves a dispute over a public right of way and a previous decree regarding the same right.
- **Section 37: Judgments, etc., other than those mentioned in sections 34, 35 and 36 when relevant.**
  - Judgments, orders, or decrees other than those in Sections 34, 35, and 36 are irrelevant unless their existence is a fact in issue or is relevant under another provision of the Adhiniyam.
  - Illustrations show when a judgment between different parties on a similar issue is irrelevant.
- **Opinions of Third Persons When Relevant (Sections 38-45)**
  - **Section 38: Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.**
    - Any party to a suit or proceeding may show that any judgment, order, or decree relevant under Sections 34, 35, or 36 was obtained by fraud or collusion, or that the Court rendering it lacked competence.
  - **Section 39: Opinions of experts.**
    - (1) When the Court has to form an opinion upon a point of foreign law, science or art, 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 in questions as to identity of handwriting or finger impressions, are relevant facts. Such persons are called experts.
    - (2) When the court needs to form an opinion on matters relating to information transmitted or stored in electronic form, the opinion of

**the Examiner of Electronic Evidence (as per the Information Technology Act, 2000) is a relevant fact. Such an examiner is considered an expert.**

- **Section 40: Facts bearing upon opinions of experts.**
  - **Facts not otherwise relevant are relevant if they support or are inconsistent with the opinions of experts when such opinions are relevant.**
  - Illustrations involve symptoms of poisoning and obstructions in harbours.
- **Section 41: Opinion as to handwriting and signature, when relevant.**
  - **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.**
  - Acquaintance can arise from seeing someone write, receiving letters from them, or through regular business correspondence.
- **Section 42: Opinion as to existence of general custom or right, when relevant.**
  - **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.**
  - An illustration concerns the right of villagers to use a well.
- **Section 43: Opinion as to usages, tenets, etc., when relevant.**
  - **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.**
    - **(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.**
- **Section 44: Opinion as to relationship, when relevant.**
  - **When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact.**

- This opinion is not sufficient to prove marriage in divorce proceedings or certain prosecutions under the Bharatiya Nyaya Sanhita, 2023.
- Illustrations involve being treated as husband and wife by friends or as a legitimate son by family members.
- **Section 45: Grounds of opinion when relevant.**
  - **Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant.**
  - An expert may describe experiments performed to form their opinion.
- **Character When Relevant (Sections 46-50)**
  - **Section 46: In civil cases, irrelevant, except as otherwise provided.**
    - In civil cases, the fact that a person's character makes any imputed conduct probable or improbable is irrelevant, except insofar as such character appears from otherwise relevant facts.
  - **Section 47: In criminal cases previous good character relevant.**
    - In criminal proceedings, the fact that the person accused is of good character is relevant.
  - **Section 48: Evidence of character or previous sexual experience not relevant in certain cases.**
    - In prosecutions for specific offences under the Bharatiya Nyaya Sanhita, 2023 (related to sexual offences) where consent is in issue, evidence of the victim's character or previous sexual experience is not relevant on the issue of consent or the quality of consent.
  - **Section 49: Previous bad character not relevant, except in reply.**
    - In criminal proceedings, the fact that the accused has committed or been convicted of any offence is irrelevant unless evidence has been given that they have good character, in which case it becomes relevant.
  - **Section 50: Character as affecting damages.**
    - In civil cases, the fact that a person's character affects the amount of damages they ought to receive is relevant.
  - **Explanation to Sections 46-50: "Character" includes both reputation and disposition, but evidence generally should be of general reputation and disposition, not specific acts, except as provided in Section 49.**

### **PART III: ON PROOF**

- **Chapter III: Facts Which Need Not Be Proved (Sections 51-53)**

- **Section 51: Fact judicially noticeable need not be proved.**
  - **No fact of which the Court will take judicial notice needs to be proved.**
- **Section 52: Facts of which Court shall take judicial notice.**
  - **(1) The Court shall take judicial notice of the following facts:**
    - All laws in force in India, including those with extra-territorial operation.
    - International treaties, agreements, or conventions with other countries, and decisions made by India in international bodies.
    - The course of proceedings of the Constituent Assembly, Parliament, and State Legislatures.
    - The seals of all Courts and Tribunals.
    - Seals of Admiralty and Maritime Courts, Notaries Public, and seals authorised by the Constitution or law in India.
    - Accession to office, names, titles, functions, and signatures of public officials in any State if their appointment is notified in the Official Gazette.
    - The existence, title, and national flag of every country or sovereign recognised by the Government of India.
    - The divisions of time, geographical divisions of the world, and public festivals/holidays notified in the Official Gazette.
    - The territory of India.
    - The commencement, continuance, and termination of hostilities between India and any other country or body.
    - The names of court members, officers, deputies, subordinates, and advocates authorised to appear before it.
    - The rule of the road on land or at sea.
  - **(2) The Court may refer to appropriate books or documents for aid in cases under subsection (1) and on matters of public history, literature, science, or art. It may refuse to take judicial notice of a fact unless the person requesting it produces the necessary book or document.**
- **Section 53: Facts admitted need not be proved.**
  - **No fact needs to be proved in any proceeding if the parties or their agents agree to admit it at the hearing, agree to admit it in writing before the hearing, or if it is deemed admitted by pleadings under any rule of pleading in force.**
  - The Court may, at its discretion, still require admitted facts to be proved otherwise.

- **Chapter IV: Of Oral Evidence (Sections 54-55)**
  - **Section 54: Proof of facts by oral evidence.**
    - **All facts, except the contents of documents, may be proved by oral evidence.**
  - **Section 55: Oral evidence to be direct.**
    - **Oral evidence must be direct. If it refers to:**
      - A fact that could be seen, it must be the evidence of someone who saw it.
      - A fact that could be heard, it must be the evidence of someone who heard it.
      - A fact perceived by another sense, it must be the evidence of someone who perceived it that way.
    - If oral evidence refers to the existence or condition of a material thing other than a document, the Court may require its production for inspection.
- **Chapter V: Of Documentary Evidence (Sections 56-93)**
  - **Section 56: Proof of contents of documents.**
    - **The contents of documents may be proved either by primary or by secondary evidence.**
  - **Section 57: Primary evidence.**
    - **Primary evidence means the document itself produced for the inspection of the Court.**
    - Explanations clarify that each part of a document executed in several parts, each counterpart of a document executed in counterparts, and each document made by a uniform process (like printing) are primary evidence. Copies of a common original are not primary evidence of the original.
    - Specific rules for electronic records define primary evidence, including multiple simultaneous or sequential files, records produced from proper custody (unless disputed), simultaneously stored and transmitted video recordings, and multiple storage spaces in a computer resource.
    - An illustration involves printed placards.
  - **Section 58: Secondary evidence includes:**
    - Certified copies.
    - Copies made by mechanical processes ensuring accuracy and copies compared with such copies.
    - Copies made from or compared with the original.
    - Counterparts of documents against parties who did not execute them.

- Oral accounts of the contents by someone who saw the document.
- Oral admissions.
- Written admissions.
- Evidence of someone who has examined numerous documents and is skilled in such examination, regarding the general result of the collection.
- Illustrations clarify different scenarios of secondary evidence based on photographs, machine copies, and transcribed copies.
- **Section 59: Proof of documents by primary evidence.**
  - **Documents shall be proved by primary evidence except in the cases hereinafter mentioned.**
- **Section 60: Cases in which secondary evidence relating to documents may be given.**
  - Secondary evidence may be given in the following cases:
    - When the original is in the possession or power of the party against whom it is to be proved, or a person out of reach of the Court, or legally bound to produce it, and they fail to do so after proper notice.
    - When the existence, condition, or contents of the original have been admitted in writing by the adverse party or their representative.
    - When the original has been destroyed or lost, or cannot be produced for other reasons not due to the offering party's default or neglect.
    - When the original is not easily movable.
    - When the original is a public document under Section 74.
    - When a certified copy is permitted by law to be given in evidence.
    - When originals consist of numerous accounts that cannot be conveniently examined in Court, and the fact to be proved is the general result.
  - Explanations specify the types of secondary evidence admissible in each case.
- **Section 61: Admissibility of electronic records.**
  - **Nothing in this Adhiniyam shall deny the admissibility of an electronic or digital record on the ground that it is such a record. Subject to Section 63, it shall have the same legal effect, validity, and enforceability as other documents.**
- **Section 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.**
- **Section 63: Admissibility of electronic records.**
  - **(1) Information in an electronic record printed on paper, stored on optical/magnetic media or semiconductor memory, produced by a computer or communication device (computer output) is also deemed a document if the conditions in this section are met. It is admissible without further proof or production of the original, as evidence of the original's contents or any stated fact, if direct evidence of that fact would be admissible.**
  - **(2) Conditions for admissibility of computer output:**
    - The computer/device was used regularly to create, store, or process information for regular activities by a person with lawful control.
    - Information of the kind in the electronic record (or from which it's derived) was regularly fed into the computer/device in the ordinary course of those activities.
    - The computer/device operated properly during the relevant period, or any malfunction did not affect the record or its accuracy.
    - The information reproduces or is derived from information fed into the computer/device in the ordinary course of said activities.
  - **(3) Multiple computers/devices used regularly for the same purpose are considered a single device for this section.**
  - **(4) To give a statement in evidence under this section, a certificate must be submitted with the electronic record, at each instance of submission, doing the following:**
    - Identifying the electronic record and how it was produced.
    - Giving particulars of any device involved to show it was a computer/communication device as defined.
    - Dealing with any of the conditions in subsection (2).
    - The certificate must be signed by a person in charge of the computer/device or management of relevant activities (whichever is appropriate), and an expert. The certificate is evidence of the stated matter, sufficient if stated to the best of the person's knowledge and belief as per the Schedule.
  - **(5) Definitions for this section:**
    - Information is supplied to a computer/device if supplied in any appropriate form, directly or indirectly (with or without human intervention).



- Computer output is produced by a computer/device whether produced directly or indirectly (with or without human intervention) by appropriate equipment or other electronic means as defined in subsection (3).
- **Section 64: Rules as to notice to produce.**
  - **Secondary evidence of documents under Section 60(a) (original in possession of adverse party etc.) shall not be given unless the party proposing it has previously given notice to the party in possession (or their advocate/representative) to produce it, as prescribed by law or as the Court deems reasonable.**
  - This notice is not required in certain cases, such as when the document is itself a notice, the adverse party knows they will be required to produce it, they obtained it by fraud or force, they have it in Court, they admitted its loss, or they are out of reach of the Court.
- **Section 65: Proof of signature and handwriting of person alleged to have signed or written document produced.**
  - **If a document is alleged to be signed or written by a person, the signature or handwriting must be proved to be theirs.**
- **Section 66: Proof as to electronic signature.**
  - **Except for secure electronic signatures, if an electronic signature is alleged to be affixed, it must be proved to be the subscriber's signature.**
- **Section 67: Proof of execution of document required by law to be attested.**
  - **A document required by law to be attested cannot be used as evidence until at least one attesting witness is called to prove its execution, if such a witness is alive, subject to court process, and capable of giving evidence.**
  - This is not necessary for registered documents (except wills) unless execution is specifically denied.
- **Section 68: Proof where no attesting witness found.**
  - **If no attesting witness can be found, it must be proved that the attestation of at least one witness is in their handwriting and that the signature of the executing person is in their handwriting.**
- **Section 69: Admission of execution by party to attested document.**
  - **The admission by a party to an attested document of its execution by themselves is sufficient proof against them, even if attestation is legally required.**
- **Section 70: Proof when attesting witness denies execution.**
  - **If an attesting witness denies or does not recall the execution, it may be proved by other evidence.**

- **Section 71: Proof of document not required by law to be attested.**
  - **An attested document not required by law to be attested may be proved as if it was unattested.**
- **Section 72: Comparison of signature, writing or seal with others admitted or proved.**
  - **(1) To ascertain if a signature, writing, or seal is that of a particular person, it may be compared with one admitted or proved to the Court's satisfaction to be theirs.**
  - **(2) The Court may direct a person present to write words or figures for comparison.**
  - **(3) This also applies to finger impressions with necessary modifications.**
- **Section 73: Proof as to verification of digital signature.**
  - **To ascertain if a digital signature is that of the purported person, the Court may direct that person, the Controller, or the Certifying Authority to produce the Digital Signature Certificate.**
- **Section 74: Public and private documents.**
  - **(1) The following documents are public documents:** Documents forming the acts or records of the sovereign authority, official bodies, tribunals, and public officers (legislative, judicial, and executive) of any country; public records kept in any State of private documents.
  - **(2) All other documents are private.**
- **Section 75: Certified copies of public documents.**
  - **Every public officer having custody of a public document that anyone has a right to inspect shall provide a certified copy upon demand and payment of legal fees. The certificate, signed and dated with their name and official title, and sealed if authorised, confirms it as a true copy.**
  - Any officer authorised by official duty to deliver such copies is deemed to have custody.
- **Section 76: Proof of documents by production of certified copies.**
  - **Certified copies may be produced to prove the contents of public documents or parts thereof.**
- **Section 77: Proof of other official documents.**
  - Specifies how various types of public documents can be proved, including Acts, orders, or notifications of the Central or State Government; proceedings of Parliament or State Legislatures; proclamations by the President or Governors; acts of foreign executives or legislatures; proceedings of municipal or local bodies; and other foreign public documents.

- **Presumptions as to Documents (Sections 78-93)**
  - **Section 78: Presumption as to genuineness of certified copies.**
    - (1) The Court shall presume the genuineness of documents purporting to be certificates, certified copies, or other documents admissible by law as proof of a particular fact, if they appear duly certified by a Central or State Government officer, provided they are substantially in the legally prescribed form and manner of execution.
    - (2) The Court shall also presume that the signing/certifying officer held the claimed official character at the time of signing.
  - **Section 79: Presumption as to documents produced as record of evidence, etc.**
    - When a document is produced as a record or memorandum of evidence given by a witness in a judicial proceeding or before a legally authorised officer, or as a statement or confession by a prisoner/accused taken according to law, and it purports to be signed by a Judge, Magistrate, or such officer, the Court shall presume its genuineness, the truth of statements about the circumstances of its taking, and that the evidence/statement/confession was duly taken.
  - **Section 80: Presumption as to Gazettes, newspapers, and other documents.**
    - The Court shall presume the genuineness of documents purporting to be the Official Gazette, a newspaper or journal, or a document directed by law to be kept by any person, if kept substantially in the required form and produced from proper custody.
    - Explanation defines "proper custody".
  - **Section 81: Presumption as to Gazettes in electronic or digital record.**
    - The Court shall presume the genuineness of electronic or digital records purporting to be the Official Gazette or legally required to be kept, if kept substantially in the required form and produced from proper custody.
    - Explanation defines "proper custody" for electronic records.
  - **Section 82: Presumption as to maps or plans made by authority of Government.**
    - The Court shall presume that maps or plans purporting to be made by government authority were so made and are accurate. However, maps/plans made for a specific cause must be proved accurate.
  - **Section 86: Presumption as to electronic agreements.**

- The Court shall presume that every electronic record purporting to be an agreement containing the electronic signatures of the parties was so concluded by affixing the electronic signatures of the parties.
- Section 87: Presumption as to Electronic Signature Certificates.
  - The Court shall presume the correctness of information in an Electronic Signature Certificate (except unverifiable subscriber information) if accepted by the subscriber, unless proven otherwise.
- Section 88: Presumption as to certified copies of foreign judicial records.
  - (1) The Court may presume the genuineness and accuracy of a document purporting to be a certified copy of a foreign judicial record if it is certified in a manner certified by a Central Government representative in that country as commonly used for such certifications.
  - (2) Defines "Political Agent" as a representative of the Central Government for this section.
- Section 89: Presumption as to books, maps and charts.
  - The Court may presume that books of public/general interest and published maps/charts (with relevant statements) produced for inspection were written/published by the stated person at the stated time and place.
- Section 90: Presumption as to electronic messages.
  - The Court may presume that an electronic message forwarded by the originator through an email server to the addressee corresponds with the message as fed into the computer for transmission. However, there is no presumption as to the sender's identity.
- Section 91: Presumption as to due execution, etc., of documents not produced.
  - The Court shall presume that a document called for and not produced after notice was attested, stamped, and executed as required by law.
- Section 92: Presumption as to documents thirty years old.
  - When a document purporting or proved to be thirty years old is produced from proper custody, the Court may presume that the signature and every other part of the document purporting to be in a person's handwriting is in that handwriting, and that executed/attested documents were duly executed/attested.
  - The Explanation to Section 80 also applies here.

- Illustrations clarify what constitutes proper custody.
- **Section 93: Presumption as to electronic records five years old.**
  - Where any electronic record, purporting or proved to be five years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the electronic signature which purports to be the electronic signature of any particular person was so affixed by him or any person authorised by him in that behalf.
  - The Explanation to Section 81 also applies here.
- **Chapter VI: Of the Exclusion of Oral Evidence by Documentary Evidence (Sections 94-103)**
  - **Section 94: Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.**
    - When the terms of a contract, grant, or other property disposition have been reduced to a document, or when any matter is legally required to be in document form, no evidence can be given to prove the terms except the document itself or admissible secondary evidence of its contents.
    - Explanations clarify that only one original needs to be proved if there are multiple, and oral evidence of other facts in the document is not precluded.
    - Illustrations show how contracts in letters or bills of exchange must be proved, and when oral evidence of collateral facts is admissible.
  - **Section 95: Exclusion of evidence of oral agreement.**
    - Once a contract, grant, or property disposition is proved according to Section 94, no oral agreement or statement between the parties or their representatives can be admitted to contradict, vary, add to, or subtract from its terms.
    - **Provisos allow proof of:**
      - Facts that would invalidate the document or entitle someone to a related decree (fraud, intimidation, illegality, lack of due execution, incapacity, want/failure of consideration, mistake).
      - Separate oral agreements on matters the document is silent on, and not inconsistent with its terms (considering the document's formality).
      - Separate oral agreements constituting a condition precedent to the obligation under the contract.
      - Distinct subsequent oral agreements to rescind or modify the contract, except when the contract must be in writing or is registered.
      - Usage or custom usually annexed to such contracts, if not repugnant to the express terms.

- Facts showing how the document's language relates to existing facts.
  - Illustrations provide examples of when oral evidence is excluded or admitted.
- **Sections 96-102 deal with the interpretation of documents when the language is ambiguous, plain but not applying to facts, plain but unmeaning, applying to one of several persons/things, applying partly to one set of facts and partly to another, or contains illegible/technical terms.** In these cases, evidence can be given to explain the meaning or application of the language.
- **Section 103: Saving of provisions of Indian Succession Act relating to wills.**
  - **Nothing in this Chapter affects the provisions of the Indian Succession Act, 1925, regarding the construction of wills.**

#### **PART IV: PRODUCTION AND EFFECT OF EVIDENCE**

- **Chapter VII: Of the Burden of Proof (Sections 104-120)**
  - **Section 104: Burden of proof.**
    - **Whoever desires a Court to give judgment on a legal right or liability dependent on the existence of facts they assert must prove those facts. The burden of proof lies on that person.**
  - **Section 105: On whom burden of proof lies.**
    - **The burden of proof in a suit or proceeding lies on the person who would fail if no evidence at all were given on either side.**
  - **Section 106: Burden of proof as to particular fact.**
    - **The burden of proving any particular fact lies on the person who wishes the Court to believe in its existence, unless otherwise provided by law.**
  - **Section 107: Burden of proving fact to be proved to make evidence admissible.**
    - **The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.**
    - **Illustrations relate to proving death for a dying declaration and loss of a document for secondary evidence.**
  - **Section 108: Burden of proving that case of accused comes within exceptions.**
    - **When accused of an offence, the burden of proving circumstances bringing the case within any General Exceptions in the Bharatiya Nyaya Sanhita, 2023, or any special exception/proviso in that Sanhita or the law defining the offence, is on them. The Court shall presume the absence of such circumstances.**
  - **Sections 110-114 deal with the burden of proof in specific situations like ownership, good faith in transactions with active confidence, the fact of death**

after being unheard of for seven years, and the existence of partnership, tenancy, and ownership.

- **Section 115: Presumption in certain cases of abetment of suicide by a married woman.**
  - **(1) When a woman commits suicide within seven years of her marriage, and it is shown that her husband or any relative of her husband had subjected her to cruelty, the Court may presume that such suicide had been abetted by her husband or such relative.**
  - **(2) Specifies the relevant offences under the Bharatiya Nyaya Sanhita, 2023 related to this presumption.**
- **Section 116: Presumption as to legitimacy of child born during marriage.**
  - **Birth during a valid marriage or within 280 days of its dissolution (mother remaining unmarried) is conclusive proof of legitimacy, unless it can be shown the parties had no access to each other when conception could have occurred.**
- **Section 118: Presumption as to dowry death.**
  - **When the question is dowry death and it's shown the woman was subjected to cruelty or harassment for dowry demand by that person soon before her death, the Court shall presume that person caused the dowry death.**
  - Explanation defines "dowry death" as per the Bharatiya Nyaya Sanhita, 2023.
- **Section 119: Court may presume existence of certain facts.**
  - **(1) The Court may presume the existence of any fact it thinks likely to have happened, considering the common course of natural events, human conduct, and public/private business in relation to the case facts.**
  - **(2) Illustrations provide examples of such presumptions, including:** stolen property found with a shopkeeper; the account of a crime by separated co-criminals corroborating each other; bills of exchange accepted for good consideration; the continued existence of a thing/state within its usual lifespan; regular performance of judicial/official acts; following the common course of business; withholding evidence leading to an unfavourable inference; refusal to answer a non-compelled question leading to an unfavourable inference; and possession of an obligation-creating document by the obligor implying discharge. The subsection also lists factors the Court should consider when applying these maxims.
- **Section 120: Presumption as to absence of consent in certain prosecution for rape.**
  - **In a prosecution for rape under the specified section of the Bharatiya Nyaya Sanhita, 2023, if sexual intercourse by the accused is proved and the woman states in court she did not consent, the Court shall presume she did not consent.**

- Explanation defines "sexual intercourse" with reference to the Bharatiya Nyaya Sanhita, 2023.
- **Chapter VIII: Estoppel (Sections 121-123)**
  - **Section 121: Estoppel of tenant and of licensee of person in possession.**
    - No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had, at the time when such licence was given, possession of such property.
    - Explanation 1 clarifies that the acceptor of a bill of exchange can deny it was drawn by the purported drawer.
    - Explanation 2 states a bailee delivering bailed goods to someone other than the bailor can prove that person had a right to them against the bailor.
  - **Section 123: Estoppel of acceptor of bill of exchange, bailee or licensee.**
    - The acceptor of a bill of exchange shall not be permitted to deny that the drawer had authority to draw such bill; but the endorser may deny that the bill was really drawn by such person as it purports to have been drawn.
    - The bailee or licensee shall not be permitted to deny that the bailor or licensor had, at the beginning of the bailment or licence, any authority to make such bailment or grant such licence.
- **Chapter IX: Of Witnesses (Sections 124-139)**
  - **Section 124: Who may testify.**
    - All persons are competent to testify unless the Court considers them prevented from understanding questions or giving rational answers due to tender years, extreme old age, disease (physical or mental), or any similar cause.
    - A person of unsound mind is not incompetent unless their unsoundness prevents understanding questions and giving rational answers.
  - **Section 125: Witness unable to communicate verbally.**
    - A witness unable to speak may give evidence intelligibly through writing or signs in open Court; such evidence is deemed oral evidence.
    - If the witness cannot communicate verbally, the Court shall take assistance of an interpreter or special educator, and the statement shall be videographed.
  - **Section 126: Competency of husband and wife as witnesses in certain cases.**



- **(1) In all civil proceedings, the parties to the suit and their spouses are competent witnesses.**
- **(2) In criminal proceedings against any person, the spouse of such person shall be a competent witness.**
- **Section 128: Communications during marriage.**
  - **No person married or previously married shall be compelled to disclose any communication made to them during the marriage by their spouse, nor permitted to disclose it without the spouse's (or their representative's) consent, except in suits between married persons or proceedings where one spouse is prosecuted for a crime against the other.**
- **Sections 129-131 cover privileges related to evidence concerning affairs of State, official communications, and information about the commission of offences given to Magistrates, police, and revenue officers.** Disclosure is generally not compelled without permission from the relevant head of department or if it would harm public interest.
- **Section 132: Professional communications.**
  - **(1) No advocate shall be permitted, without their client's express consent, to disclose communications made during their professional service, the contents/condition of documents they became acquainted with during such service, or advice given to the client during such service.**
  - This does not protect disclosure of communications made in furtherance of an illegal purpose or facts observed by the advocate showing a crime/fraud committed since the service began.
  - **(2) It is immaterial whether the advocate's attention to such facts was directed by the client or not.**
  - The obligation of confidentiality continues after the professional service ends.
  - Illustrations clarify the scope of this privilege.
  - **(3) This section applies to interpreters and clerks/employees of advocates.**
- **Section 133: Privilege not waived by volunteering evidence.**
  - **A party giving evidence in a suit does not thereby consent to the disclosure mentioned in Section 132. Calling their advocate as a witness only implies consent to disclosure on matters the advocate is questioned about, which they otherwise couldn't disclose.**
- **Section 134: Confidential communication with legal advisers.**
  - **No one shall be compelled to disclose confidential communications with their legal adviser, unless they offer themselves as a witness, in which case they may be compelled to disclose such communications necessary to explain their given evidence, but no others.**

- **Section 135: Production of title-deeds of witness not a party.**
  - A non-party witness cannot be compelled to produce their title deeds, documents held as pledge/mortgage, or documents that might incriminate them, unless they agreed in writing to produce them with the person seeking production or someone they claim through.
- **Section 136: Production of documents or electronic records which another person, having possession, could refuse to produce.**
  - No one is compelled to produce documents/electronic records in their possession/control that another person could refuse to produce if they had possession/control, unless that other person consents.
- **Section 137: Witness not excused from answering on ground that answer will criminate.**
  - A witness is not excused from answering relevant questions, even if the answer might incriminate them or expose them to penalty/forfeiture.
  - However, a compelled answer shall not subject them to arrest/prosecution or be proved against them in a criminal proceeding, except for perjury.
- **Section 138: Accomplice.**
  - An accomplice is a competent witness against an accused, and a conviction based on corroborated accomplice testimony is not illegal.
- **Section 139: Number of witnesses.**
  - No particular number of witnesses is required to prove any fact.
- **Chapter X: Of Examination of Witnesses (Sections 140-168)**
  - **Section 140: Order of production and examination of witnesses.**
    - The order of producing and examining witnesses is governed by civil and criminal procedure laws, or by the Court's discretion in the absence of such law.
  - **Section 141: Judge to decide as to admissibility of evidence.**
    - (1) The Judge may ask a party proposing evidence how the alleged fact would be relevant and shall admit it if deemed relevant.
    - (2) If a fact's admissibility depends on proving another fact first, the latter must be proved before the former, unless the party undertakes to prove it and the Court is satisfied.
    - (3) If the relevancy of one fact depends on another being proved first, the Judge may allow evidence of the first before the second, or require proof of the second before the first, at their discretion.
    - Illustrations provide examples of the order of proof.
  - **Section 142: Examination of witnesses.**

- (1) Examination-in-chief is by the party who calls the witness.
- (2) Cross-examination is by the adverse party.
- (3) Re-examination is by the calling party, subsequent to cross-examination.
- **Section 143: Order of examinations.**
  - (1) Witnesses are first examined-in-chief, then cross-examined (if desired by the adverse party), then re-examined (if desired by the calling party).
  - (2) Examination-in-chief and cross-examination must relate to relevant facts, but cross-examination need not be confined to the matters of the examination-in-chief.
  - (3) Re-examination is limited to explaining matters from cross-examination; new matter introduced with Court permission allows further cross-examination on that matter.
- **Section 144: Cross-examination of person called to produce a document.**
  - A person summoned only to produce a document does not become a witness and cannot be cross-examined unless called as a witness.
- **Section 145: Witnesses to character.**
  - Witnesses to character may be cross-examined and re-examined.
- **Section 146: Leading questions.**
  - (1) A leading question suggests the answer the questioner wants.
  - (2) Leading questions must not be asked in examination-in-chief or re-examination if objected to by the adverse party, except with Court permission.
  - (3) The Court shall permit leading questions on introductory, undisputed matters, or those already sufficiently proved.
  - (4) Leading questions may be asked in cross-examination.
- **Section 147: Evidence as to matters in writing.**
  - A witness can be asked if a contract/grant/property disposition they are testifying about was in a document. If they say it was or are about to state the contents of a document that should be produced, the adverse party can object until the document is produced or secondary evidence is justified.
  - Explanation allows oral evidence of statements about document contents if those statements are relevant facts themselves.
  - An illustration shows a statement revealing motive is admissible even if the related letter is not produced.
- **Section 148: Cross-examination as to previous statements in writing.**

- A witness may be cross-examined about previous written statements relevant to the matter without showing them the writing or proving it. However, to contradict them with the writing, their attention must be drawn to the contradictory parts before proving it.
- **Section 149: Questions lawful in cross-examination.**
  - In cross-examination, a witness may be asked questions that tend to test their veracity, discover their identity and position in life, or shake their credit by injuring their character, even if the answer might incriminate them or expose them to penalty/forfeiture.
  - A proviso restricts cross-examination about the victim's general immoral character or previous sexual experience in certain sexual offence prosecutions where consent is an issue.
- **Section 150: When witness to be compelled to answer.**
  - If a cross-examination question relates to a matter relevant to the suit, Section 137 (not excused from answering on grounds of self-incrimination) applies.
- **Section 151: Court to decide when question shall be asked and when witness compelled to answer.**
  - (1) If a cross-examination question relates to irrelevant matters (except as it affects credit by injuring character), the Court decides if the witness must answer and may warn them they are not obliged to.
  - (2) The Court considers factors like whether the imputation would seriously affect credibility on the matter testified to, whether the imputation is too remote or insignificant, and the disproportion between the importance of the imputation and the evidence.
  - (d) The Court may infer unfavourably from a witness's refusal to answer.
- **Section 152: Question not to be asked without reasonable grounds.**
  - Such questions as in Section 151 should not be asked without reasonable grounds for believing the imputation is well-founded.
  - Illustrations provide examples of reasonable and unreasonable grounds.
- **Section 153: Procedure of Court in case of question being asked without reasonable grounds.**
  - If the Court believes such a question was asked without reasonable grounds by an advocate, it may report the circumstances to the High Court or other relevant authority.
- **Sections 154-155 empower the Court to forbid indecent/scandalous questions (unless related to facts in issue) and questions intended to insult or annoy.**
- **Section 156: Exclusion of evidence to contradict answers to questions testing veracity.**

- **If a witness answers a question relevant only to their credit (by injuring character), no evidence can be given to contradict them. If they answer falsely, they can be charged with perjury.**
- Exceptions allow contradicting denial of previous conviction and denial of facts tending to impeach impartiality.
- Illustrations clarify the application of this rule.
- **Section 157: Question by party to his own witness.**
  - **(1) The Court may allow the party calling a witness to put questions to them as if in cross-examination by the adverse party (treating the witness as hostile).**
  - **(2) This does not prevent the calling party from relying on any part of that witness's evidence.**
- **Section 158: Impeaching credit of witness.**
  - **The credit of a witness may be impeached by the adverse party (or with Court consent, by the calling party):**
    - By evidence of persons who believe the witness unworthy of credit based on their knowledge.
    - By proof of a previous statement inconsistent with their current testimony.
    - By evidence of conviction for any crime.
- **Section 159: Questions tending to corroborate evidence of relevant fact, admissible.**
  - **When a witness gives evidence of a relevant fact, they may be questioned about other circumstances observed at or near the time/place of that fact, if the Court believes such circumstances, if proved, would corroborate their testimony on the relevant fact.**
  - An illustration involves corroborating an accomplice's account of a robbery with independent evidence of unrelated incidents during their journey.
- **Section 160: Former statements of witness may be proved to corroborate later testimony as to same fact.**
  - **To corroborate a witness's testimony, any former statement they made about the same fact, at or around the time it occurred, or before a legally competent authority, may be proved.**
- **Section 161: What matters may be proved in connection with proved statement relevant under section 26 or 27.**
  - **When a statement relevant under Section 26 or 27 is proved, all matters that could have been proved to contradict, corroborate, impeach, or**

**confirm the credit of the maker (if they had been a witness and denied the suggested matter in cross-examination) may also be proved.**

- **Section 162: Refreshing memory.**
  - **(1) A witness may refresh their memory during examination by referring to a writing made by themselves at the time of the transaction or so soon after that the Court deems the transaction fresh in their memory.**
  - They may also refer to such a writing made by another person if read by the witness within that timeframe and known to be correct when read.
  - **(2) With Court permission, a witness may refer to a copy of such a document if the original's non-production is sufficiently explained.**
  - Experts may refresh memory using professional treatises.
- **Section 163: Testimony to facts stated in document mentioned in section 162.**
  - **A witness may testify to facts in a document mentioned in Section 162 even if they have no specific recollection, if they are sure the facts were correctly recorded.**
  - An illustration involves a book-keeper testifying to entries in regularly kept business books they know were correct, even if specific transactions are forgotten.
- **Section 164: Right of adverse party as to writing used to refresh memory.**
  - **Any writing referred to under Sections 162 and 163 must be produced and shown to the adverse party if requested, and they may cross-examine the witness on it.**
- **Section 165: Production of documents.**
  - **(1) A witness summoned to produce a document must bring it to Court if in their possession/power, despite objections to its production/admissibility.**
  - The Court decides the validity of such objections.
  - **(2) The Court may inspect the document (unless it concerns State matters) or take other evidence to determine admissibility.**
  - **(3) If translation is needed, the Court may direct the translator to keep contents secret (unless for evidence), with disobedience being an offence under the Bharatiya Nyaya Sanhita, 2023.**
  - No Court shall require production of communications between Ministers and the President of India.
- **Section 166: Giving, as evidence, of document called for and produced on notice.**
  - **If a party calls for a document they gave the other party notice to produce, and it is produced and inspected by the calling party, they are bound to give it as evidence if the producing party requires.**

- **Section 167: Using, as evidence, of document production of which was refused on notice.**
  - **A party refusing to produce a document after notice cannot later use it as evidence without the other party's consent or a Court order.**
  - An illustration shows a defendant cannot produce the original agreement to contradict secondary evidence when they initially refused to produce it.
- **Section 168: Judge's power to put questions or order production.**
  - **The Judge may ask any necessary question in any form, at any time, of any witness or party about any fact, and may order the production of any document/thing to discover or obtain proof of relevant facts.**
  - Parties/representatives cannot object to such questions/orders, nor cross-examine on answers without Court leave.
  - Judgments must be based on relevant and duly proved facts as per the Adhinyam.
  - This section does not authorise compelling a witness to answer/produce if they could refuse under Sections 127-136, nor allow improper questions under Sections 151/152, nor dispense with primary evidence except as previously allowed.
- **Chapter XI: Of Improper Admission and Rejection of Evidence (Section 169)**
  - **Section 169: No new trial for improper admission or rejection of evidence.**
    - **Improper admission or rejection of evidence is not grounds for a new trial or reversal of a decision if the Court finds that, independent of the objected evidence, there was sufficient evidence to justify the decision, or that the rejected evidence would not have varied the decision.**
- **Chapter XII: Repeal and Savings (Section 170)**
  - **Section 170: Repeal and savings.**
    - **(1) The Indian Evidence Act, 1872, is hereby repealed.**
    - **(2) Notwithstanding the repeal, pending applications, trials, inquiries, investigations, proceedings, or appeals immediately before the date this Adhinyam comes into force shall be dealt with under the Indian Evidence Act, 1872, as if this Adhinyam had not come into force.**
- **THE SCHEDULE**
  - Provides the form for the **CERTIFICATE** to be submitted with electronic records under Section 63(4)(c).
  - **PART A** is to be filled by the Party producing the electronic record, detailing the device/source, its control, proper functioning, and hash values.
  - **PART B** is to be filled by the Expert, confirming the device/source and the hash values.

